

Decision No. 51385

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HARRY H. LEVY & LEO P. GRATZ,)
)
 Complainants,)
)
 vs.)
)
 THE PACIFIC TELEPHONE AND TELEGRAPH)
 COMPANY, a corporation,)
)
 Defendant.)

Case No. 5624

Charles C. McCarthy, for complainants.
Pillsbury, Madison & Sutro, and Lawler, Felix &
Hall, by L. B. Conant, for defendant.

O P I N I O N

The complaint filed on February 24, 1955 alleges that Harry H. Levy and Leo P. Gratz, known as 575 Club (sic), 575 South Fairfax Avenue, Los Angeles 36, California, prior to February 15, 1955, were the subscribers and users of telephone service furnished by The Pacific Telephone and Telegraph Company under number YO. 9315 at 575 South Fairfax Avenue, Los Angeles, California; that on February 15, 1955, the telephone facilities were disconnected by the defendant after the Los Angeles Police Department advised it that the complainants were using the telephone to violate or aid and abet the violation of the law; that the complainants have made demand upon defendant to have the telephone facilities restored but defendant has refused and does

now refuse to do so; that the complainants have suffered and will suffer irreparable injury to their reputations and a great hardship as a result of being deprived of said telephone facilities; and that complainants did not knowingly use and do not now intend to use said telephone facilities as an instrumentality to violate the law nor in aiding and abetting such violation.

On March 9, 1955 the telephone company filed an answer in which, among other things, it alleged that it had reasonable cause to believe that the use made or to be made of the telephone service furnished by defendant to complainants under number YOrk 9315 at 575 South Fairfax Avenue, Los Angeles 36, California, was prohibited by law and that such service was being or was to be used as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law, and that defendant, having a reasonable cause, was required to and did on or about February 10, 1955 disconnect and discontinue the service pursuant to Decision No. 41115, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on April 4, 1955, at which time evidence was presented and the matter was submitted.

Seymour Levy, the son of complainant Harry Levy, testified that since December 1954 he has been tending bar from 8:00 a.m. to 6:00 p.m. at 575 South Fairfax Avenue. This place, he said, contains a bar and tables, and on January 27, 1955 had a telephone at one end of the bar, about 14 feet from the cash register. On that day, the witness said, Harry Schafer came on

the premises at between 3:00 p.m. and 3:30 p.m., ordered a beer and sat at a table to drink it. There were at that time, he said, about twenty or twenty-five customers in the place. Ten or eleven of these were at the bar and the balance were seated at tables. The next thing the witness knew a man in plain clothes, who identified himself as a police officer, started asking questions. The officer asked the witness if he knew Schafer was bookmaking, how often Schafer was in the place and how often Schafer used the telephone. The witness said he informed the police officer that he did not know Schafer was bookmaking and that he was in the place quite often and used the telephone frequently. The witness further testified that on January 27, 1955 Harry Schafer had just walked in at the time of his arrest; that he believes that Schafer did not use the telephone that day, and that he heard no conversation relative to racing and saw no betting paraphernalia; that Schafer first came in about one week after the witness started working at the bar; that Schafer did not make or receive an unusual number of telephone calls; and that he has not seen Schafer since January 27, 1955.

Harry Levy testified that he and Leo P. Gratz are partners at 575 South Fairfax Avenue, Los Angeles; that his son started working in the place in December 1954 because of witness's health; that he works on the premises two days a week on the bartenders' days off; that he has seen Harry Schafer on the premises; that he does not recall seeing Harry Schafer with scratch sheets; and that he needs the telephone for emergencies as at night the nearest telephone is four or five blocks away.

A supervising agent for the defendant testified that on about February 8, 1955 he received a letter (Exhibit 1) from the Chief of Police of the City of Los Angeles advising him that the telephone at 575 South Fairfax Avenue was being used for receiving and forwarding bets, and that on or about February 10, 1955 the telephone facilities were removed from the premises and a central office disconnection was effected.

A Los Angeles police officer testified that on January 27, 1955, at about 3:30 p.m., he and his partner, acting on information that bookmaking was being carried on at complainants' place of business at 575 South Fairfax Avenue, entered said premises and took seats at the bar. He said he observed a man, later determined to be Harry Schafer, talking on the telephone. He said he saw Schafer hang up the telephone, sit at the bar and take a National Daily Reporter out of his pocket. This paper, he said, gives a list of horses running at the various race tracks. He and his partner searched Schafer and found betting markers on him. While the officers were searching Schafer the telephone rang. The witness said his partner answered the telephone, that a woman asked if he was Harry, that the partner said he was and the woman gave him a wager on a horse. The officer said he talked to the complainant's son, Seymour Levy, and asked him about Schafer. The officer said the son stated that Schafer had been in and out since the son had been working and that what Schafer was doing might be illegal, but that it was none of his business and that he had seen Schafer make and receive telephone calls. The officer said that Schafer

was placed under arrest for suspicion of bookmaking. On cross examination by complainants' attorney, the officer testified that the betting markers found in Schafer's pocket were for races being run at Santa Anita that day and were in Schafer's handwriting. The officer's partner corroborated his testimony.

The position of the telephone company was that as it had received the letter from the Chief of Police of Los Angeles (Exhibit 1), it acted with reasonable cause in disconnecting the telephone service.

After a careful consideration of this record we find that the telephone company's action was based upon reasonable cause as said term is used in Decision No. 41415, supra. We further find that the telephone facilities in question were used for bookmaking purposes.

O R D E R

The complaint of Harry H. Levy and Leo P. Gratz against The Pacific Telephone and Telegraph Company having been filed, public hearing having been held thereon, the Commission being fully advised in the premises and basing its decision upon the evidence of record,

IT IS ORDERED that the complainants' request for restoration of telephone service be denied and that the said complaint be and it hereby is dismissed.

IT IS FURTHER ORDERED that upon the expiration of thirty days after the effective date of this order the complainants herein may file an application for telephone service and if such filing is made The Pacific Telephone and Telegraph Company shall

install telephone service at complainants' place of business at 575 South Fairfax Avenue, Los Angeles, California, such installation being subject to all duly authorized rules and regulations of the telephone company and to the existing applicable law.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California,
this 5th day of APRIL, 1955.

John P. Hill
President

Justus J. Caswell

Ray L. Gutierrez

William J. Cook

Commissioners