

ORIGINAL

Decision No. 51857

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NORMAN CARO,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 5633

Joseph T. Forno for complainant. Pillsbury, Madison & Sutro and Lawler, Felix & Hall, by L. B. Conant, for defendant.

O P I N I O N

The complaint, filed on March 16, 1955, alleges that Norman Caro of 5028 Maplewood Avenue, Los Angeles, California, prior to March 3, 1955, was a subscriber and user of telephone service furnished by defendant company at that address under number Hollywood 5-3698; that on or about March 3, 1955 the telephone facilities of complainant were disconnected by the defendant pursuant to a letter which defendant received from the Los Angeles Police Department; that complainant has made demand upon the defendant for the restoration of the facilities, but defendant has refused; that complainant has suffered and will suffer irreparable injury to his reputation and great hardship as a result of being deprived of said telephone facilities; and that complainant did not use and does not now intend to use said telephone facilities as an instrumentality to violate the law nor in aiding or abetting such violation.

On March 29, 1955, by Decision No. 51260 in Case No. 5633, this Commission issued an order directing the telephone company to restore service to complainant pending a hearing on the matter.

On April 6, 1955 the telephone company filed an answer, the principal allegation of which was that the telephone company, pursuant to Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853), had reasonable cause to believe that the telephone service furnished to complainant under number HOLLYWOOD 5-3698, at 5028 Maplewood Avenue, Los Angeles, California, 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.

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on May 13, 1955, and the matter was submitted.

The complainant testified that he was the subscriber to defendant's services under the number HOLLYWOOD 5-3698 at 5028 Maplewood Avenue; that on March 2, 1955 he was arrested at that address for bookmaking, and this charge was later reduced to possession of betting markers; that any records of bets he may have had in his possession were his own records of his own bets; and that he is in the freight consolidating business and needs the telephone for business calls in the early mornings.

On cross-examination complainant testified that he bets on horses from time to time; that he personally hands his bets to a man on the corner and does not use the telephone to make bets; and that on March 31, 1955 the telephone was restored and that he has the same number as before.

A police officer for the City of Los Angeles testified that on March 2, 1955, at 2:00 p.m., he and three other police officers went to 5028 Maplewood Avenue; that the officers were admitted by Norman Caro; that they identified themselves and Caro fled to the rear rooms; that he saw Mrs. Caro leaving a closet; that Caro and his wife were placed under arrest; that in the closet the officers found a telephone, a National Daily Reporter and a betting marker; that Caro was asked if the betting marker was his and he said he had not seen it; that the officer told Caro that he had information that some one was making book over the telephone and asked Caro if he was bookmaking; that Caro denied this, but stated that he had been arrested once for bookmaking at the same location; that Caro pleaded guilty to possession of a betting marker.

On cross-examination the officer testified that complainant and his wife were arrested on suspicion of bookmaking, a felony; that the district attorney refused to issue a felony complaint; that there was no wire tap on the telephone; that Caro never told him what the numbers on the betting marker represented; that the first officer at the door when it was opened by Caro identified himself as a police officer and showed his badge; that the complainant fled when the badge was shown to him.

In rebuttal, complainant testified that the officers were in overalls and said they understood he had trouble with his telephone, and did not identify themselves as police officers until they were in the house, and when they did he stopped moving; that he made all the notations on the papers which the officer described as a betting marker, but that he does not know what the notations meant.

Another police officer testified that the officers had no search warrant at the time they entered the house.

Exhibit No. 1 is a letter from the Chief of Police of the City of Los Angeles received by the defendant telephone company on March 8, 1955, advising the defendant that the telephone facilities were being used and would be used to violate the law. The position of the telephone company was that as a result of the receipt of this letter it acted with reasonable cause as that term is defined in Decision No. 41115, supra, in disconnecting and refusing to reconnect the service until ordered to do so by this Commission.

After consideration of this record, we now find that the telephone company's action was based upon reasonable cause as such term is used in Decision No. 41115, supra. We further find that the telephone facilities were used for bookmaking purposes.

O R D E R

The complaint of Norman Caro against The Pacific Telephone and Telegraph Company having been filed, a public hearing having been held thereon, the Commission being fully advised in the premises and basing its decision on the evidence of record,

IT IS ORDERED that the complainant's request for restoration of telephone service is denied, and that the said complaint be, and it hereby is, dismissed. The temporary interim relief granted by Decision No. 51260 in Case No. 5633 is hereby set aside and vacated.

IT IS FURTHER ORDERED that upon the expiration of thirty days after the effective date of this order the complainant may file an application for telephone service, and if such filing is

made The Pacific Telephone and Telegraph Company shall install telephone service at complainant's residence at 5028 Maplewood 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 23rd day of August, 1955:

John E. Mitchell
President

Matthew J. Capener

William K. ...

B. Hardy

Commissioners

Commissioner Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.