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ORIGINAL

Decision No. 55049

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JACK G. BOOTH, Complainants, vs. ESTATES WATER COMPANY, PIONEER TITLE INSURANCE AND TRUST COMPANY, a corporation, CUCAMONGA WATER CO., a corporation, and ADOBE WATER COMPANY, a corporation, Defendants.	)	Case No. 5804

Nichols, Cooper, Hickson and Lamb by Raymond G. Lamb, for complainant.
Surr and Hellyer by James R. Edwards, for Pioneer Title Insurance and Trust Company, Cucamonga Water Co., Adobe Water Company, and Estates Water Company, defendants.
Charles W. Drake, for the Commission staff.

O P I N I O N

By Decision No. 25167, dated September 12, 1932, in Application No. 18227 (38 C.R.C. 18) Estates Water Company, Ltd.,[1] a California corporation, was granted a certificate of public convenience and necessity to construct, maintain and operate a water system "in that certain locality generally known and designated as the Red Hill District, the same being practically coterminous with the Cucamonga Basin and situated a short distance east of the northern portion of the City of Upland in San Bernardino County..."

At the time this certificate was granted, one H. F. Naisbitt was president of the corporation. No information has

1 Hereinafter called "Estates".

been given the Commission as to the issuance of any shares of the corporation, and no authority for issue has been granted.

On October 19, 1932, Estates Water Company, Ltd., filed its Rule and Regulation No. 19 which, among other things, provided as follows:

> "2. Extensions to serve Tracts or Subdivisions: Refund shall be made for each bona fide consumer within the subdivision upon the basis that the cost of each 150 feet of main within the subdivision bears to the total amount of the original deposit, provided no refund shall be made after a period of ten years from the date of completion of the installation."

This rule was signed by H. F. Naisbitt, President of Estates Water Company, Ltd.

Sometime thereafter, as a result of certain transactions with Naisbitt, who was then operating the water system, the defendant, Pioneer Title Insurance and Trust Company, a corporation,[2] acquired control of said water system. Pioneer, however, authorized Naisbitt to continue to manage the water system as its agent.

As such agent, Naisbitt, sometime prior to June 10, 1953, entered into certain transactions with the complainant's agent contemplating the service of water to a subdivision tract which the complainant was proposing to develop for residential purposes. In the course of these transactions Naisbitt said that Estates would serve water in the tract in question, No. 4224. On or about June 10, 1953, written memoranda were signed by Naisbitt and the agent reflecting an agreement whereby Estates agreed to supply water in said Tract No. 4224 for a subdividion numbering a total of 65 lots, and the complainant's agent agreed, on complainant's behalf, to

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2 Hereinafter called "Pioneer".

deliver to Estates, ten shares of the corporate stock of the San Antonio Water Co., free of charge.

Further written memoranda were signed by Naisbitt on June 16, 1954, and on October 2, 1954, reflecting agreement to supply water to Tract No. 4224, the earlier one stating that "service will be made according to the regulations of the Public Utilities Commission of the State of California."

On September 28, 1954, the Commission issued Decision No. 50580, in Case No. 5501, in which public utility water companies in California were directed to make certain changes in their water main extension rules, including a modification of the method of making refunds to subdividers of the cost of extensions of water service into subdivisions. The decision, however, contained this proviso: "In effecting transition from the present extension rule to a new rule, public utility water systems in California should apply the provisions of their present rules for main extensions to those prospective customers who have signed applications for service or those who have actively negotiated in good faith for service during the six-month period prior to the date of issuance of this decision."

On November 18, 1954, Estates, by H. F. Naisbitt, forwarded to the complainant a letter repeating the terms of the agreement to furnish domestic water to all lots in said Tract No. 4224, including the agreement of the subdivider to deliver to Estates ten shares of stock of San Antonio Water Company, and the agreement of Estates to refund to the subdivider the cost of the water system in said Tract No. 4224 in accordance with the regulations of the Public Utilities Commission of the State of California. At the bottom of this letter, the complainant affixed his signature beneath the word "Accepted."

Upon receipt of this letter, the complainant purchased ten shares of San Antonio Water Co. stock for the sum of $4,025 and delivered them to Estates. These shares later passed into the hands of Pioneer.

The water system in Tract No. 4224 was completed on June 1, 1955, and now serves 64 homes. The cost incurred by the complainant in the installation of this water system, which he agreed to defray in the first instance was $6,492.60.

It is not necessary for us to decide what is the legal effect of the various memoranda signed by Naisbitt and the complainant's agent. It is sufficient that the memoranda of June 10, 1953, and June 16, 1954, warrant a finding that the complainant through his agent had applied for water service, and had actively negotiated in good faith for such service during the 6-month period prior to the date of the issuance of Decision No. 50580, and that he was therefore entitled to the benefit of the provisions of the rule which Estates had originally filed on October 19, 1932.

It is this rule that must govern the rights of the parties dealing with respect to the extension of water service into Tract No. 4224. The complaint requests an order directing the defendant to pay to the complainant the sum of $6,492.60 together with interest thereon, at the rate of 35 per cent of the gross annual revenues for ten years from the water system installed in Tract No. 4224, until said sum has been paid in full, and that the defendants be further ordered to transfer and assign to the complainant ten shares of San Antonio Water Company stock, or in the alternative to pay to the complainant the sum of $4,025. Complainant, however, had misconstrued the rule under which he will be found to be entitled to refund. That rule is as hereinbefore stated, and

does not provide for the 35 per cent of annual revenue for ten years, as requested by complainant.

In their answer the defendants admitted many of the material allegations of the complaint, and expressed a willingness to be ordered to enter into an agreement under which Pioneer, or its assignee, shall pay to the complainant for the installation of the water system in Tract No. 4224, whatever sum the Commission finds to have been expended by the complainant in its installation of said system under such terms and conditions as are consistent with the rules and regulations of the Public Utilities Commission. At the hearing counsel for the defendants again expressed this willingness on behalf of his clients.

The defendants, however, denied any obligation to return to the complainant the ten shares of San Antonio Water Company stock, or the sum of $4,025, on the ground that prior to the installation of the water system in Tract No. 4224, this tract was not within the certificated area of Estates, and that, therefore, Naisbitt was entitled to require the delivery of these shares of stock as a condition to rendering water service in Tract No. 4224.

We are of the opinion that Naisbitt had no right to demand ten shares of stock in San Antonio Water Company as a condition to the rendering of water service by Estates Water Company, Ltd., in the complainant's proposed subdivision Tract No. 4224. Such a condition was not warranted by the water main extension rule contained in the tariff duly filed with the Commission and in effect when the negotiations for water service were being conducted. Whether Tract No. 4224 was within or without Estates' certificated area, the company had no right, as we have held in several other cases, to impose conditions not contained in its filed rules and regulations

without the authority of the Commission. Yucca Water Company, Ltd., 54 C.P.U.C. 441; DiLiberto v. Park Water Company, 54 C.P.U.C. 639; Plunkett v. Park Water Company, 54 C.P.U.C. 644.

In a statement filed at the close of the evidence, counsel for the defendants stated that "If the Commission rules that Estates Water Company, Ltd., was not entitled to require delivery of the water stock as a condition of providing water service, we request that the order direct that the stock be returned to Booth for the reason that the financial condition of Estates Water Company, Ltd., is such that it cannot afford the loss which would otherwise accrue."

O R D E R

Upon the basis of the foregoing findings and conclusions, it is hereby ordered as follows:

1. Upon ascertaining the total number of feet of water main installed in Tract No. 4224, and the resulting cost of each 150 feet of main based upon a total installation cost of $6,492.60, the defendant, Pioneer Title Insurance and Trust Company, a corporation, shall forthwith pay to the complainant an amount equal to sixty-four times said resulting cost of each 150 feet of main, and hereafter a further amount equal to said resulting cost of each 150 feet of main for each additional bona fide customer in said tract to whom water service subsequently shall be first rendered up to and including June 1, 1965. However, said defendant shall not be obligated to refund in the aggregate an amount greater than the amount of the original deposit of $6,492.60.

2. The defendant, Pioneer Title Insurance and Trust Company, a corporation, shall forthwith deliver to the complainant 10 shares of the corporate stock of San Antonio Water Company, or, in the alternative, at said defendant's election, shall pay to the complainant the sum of $4,025.

3. The defendant Pioneer Title Insurance and Trust Company, a corporation, shall report compliance with this order to the Commission within ten days after the effective date of this order.

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

Dated at San Francisco, California, this 31st day of May, 1957.

President

Commissioners