

ORIGINAL

Decision No. 56083

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CERTIFIED HOMES, INC.,	)	
	)	
Complainant,	)	Case No. 5887
	)	
vs.	)	
	)	
PARK WATER COMPANY, a corporation,	)	
	)	
Defendant.	)	

Schapiro & Malamed, attorneys, by Daniel S. Malamed and Jack G. Schapiro, for complainant.

Gibson, Dunn & Crutcher, attorneys, by Max Eddy Utt and Richard L. Wells, for defendant.

DECISION AND ORDER ON MOTION TO DISMISS

Certified Homes, Inc., a corporation, filed the above-entitled complaint on January 24, 1957, against Park Water Company, a public utility water corporation under the jurisdiction of this Commission, alleging that defendant had made fraudulent representations to it prior to September 6, 1954, regarding defendant's Rule and Regulation No. 15, defendant's then-filed main extension rule applicable to subdivisions, tracts, or organized service districts, and had induced it to enter into a contract with L. A. Decomposed Granite Co., Inc., for the advancement thereto of \$19,875, without refund, for water service to be furnished by defendant in Tract No. 19881.

Complainant sought an order by the Commission that defendant cause to be reformed the contract of September 6, 1954, by and between L. A. Decomposed Granite Co., Inc., and complainant, to provide:

- (a) That defendant be substituted as a party to said contract in lieu of and instead of L. A. Decomposed Granite Co., Inc.,
- (b) That refund and adjustment provisions be provided therein in conformance with Rule and Regulation No. 15; and that retroactive payments be made to complainant in accordance with said Rule and Regulation No. 15 as it pertains to refunds and adjustments for the reasonable actual cost of installation, and
- (c) That defendant agree to pay to complainant a reasonable value for and on account of the conveyance by complainant to defendant of that portion of Lot 158, Tract No. 19881, Los Angeles County, conveyed to defendant by complainant.

Complainant further sought an order of the Commission that defendant pay interest to complainant at the rate of 7 percent per annum on any refunds and adjustments which should have been made from the dates such were due to the date of such payment; that defendant pay to complainant the costs and expenses incurred by complainant in connection with the proceedings on its complaint, and for such other further relief as might be appropriate under the circumstances.

Defendant's answer was filed on February 15, 1957, and among other things defendant alleged that, because the relief sought was based on allegations of fraudulent representations and fraudulent intent as a ground for the reformation of a written contract to which it was not a written party, and that because the complaint contained no allegation that L. A. Decomposed Granite Co., Inc., is a public utility or is subject to the jurisdiction of the Commission, the Commission had no jurisdiction of the subject matter of the complaint or the relief sought therein.

A public hearing was held before Examiner Stewart C. Warner on October 7, 1957, at Los Angeles. Defendant made a motion that the complaint be dismissed on substantially the same ground as set forth in the answer.

Sections of the prayer for relief are couched in such manner as to take them outside the scope of this proceeding. The allegations of the complaint indicate that L. A. Decomposed Granite Co., Inc., is a proper party herein. Complainant will be permitted to file an amended complaint bringing in L. A. Decomposed Granite Co., Inc., as a party defendant and in which the relief sought is limited to a request that defendant Park Water Company be ordered to comply with its Rule and Regulation No. 15. The motion to dismiss will be denied.

Therefore, IT IS ORDERED:

- (1) That complainant, within 15 days after the effective date of this order, may file an amended complaint in

accordance with the above decision.

(2) That the motion to dismiss the complaint is denied.

The Secretary of the Commission is directed to serve a certified copy of this order upon complainant and defendant.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 14th day of January, 1958.

Paul E. Breen  
President

Paul L. Lintner

William H. Hadley

R. Hardy

S. J. Fox  
Commissioners