

ORIGINAL

Decision No. 57507

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALBERT SARNI,
Complainant,

vs.

THE PACIFIC TELEPHONE & TELEGRAPH CO.,
a corporation,
Defendant.

Case No. 6172

Franklin D. Laven for complainant.
Lawler, Felix & Hall, by Thomas E. Workman, Jr.,
for defendant.
Roger Arnebergh, City Attorney, by John T. Neville,
Deputy City Attorney, for the Los Angeles
Police Department, intervener.

O P I N I O N

By the complaint herein, filed on August 27, 1958, Albert Sarni alleges that he has a grocery store at 1161 Sunset Boulevard, Los Angeles; that the telephone service at said address was removed by Los Angeles police on August 6, 1958, in the course of an investigation of bookmaking activities; that at that time and place complainant's brother, Martin Sarni, was on the premises and was arrested for bookmaking; that if said telephone was used for illegal purposes, such use was without complainant's knowledge or consent; and that the telephone service is necessary for the conduct of complainant's grocery business.

On September 10, 1958, by Decision No. 57307 in Case No. 6172, this Commission issued an order directing the telephone

company to restore telephone service to complainant pending a hearing on the matter.

On September 18, 1958, the telephone company filed an answer, the principal allegation of which was that on or about August 11, 1958, it had reasonable cause to believe that the telephone service furnished under number MADison 9-1942 at 1161 West Sunset Boulevard, 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, and that having such reasonable cause the defendant was required to disconnect the service pursuant to this Commission's Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853). The defendant further alleged that the subscribers to the said telephone service were complainant and Martin Sarni, under the listing "Sunset Drive-In Market."

A public hearing was held in Los Angeles before Examiner Kent C. Rogers on September 30, 1958, and the matter was submitted.

The complainant testified that he and his brother, Martin Sarni, own and operate a grocery store at 1161 Sunset Boulevard, Los Angeles; that there was, on and prior to August 6, 1958, a telephone and an extension on the premises; that this telephone service is necessary for the conduct of the business; that on August 6, 1958, in his absence, the telephone was removed but was subsequently restored; and that the brother is a horse player, but the witness did not know he was using the telephone for such purposes. The complainant further testified that the store area is approximately 50 by 100 feet; that on August 6, 1958, there was a

telephone in the grocery department and an extension in the meat market; that the only employees are his brother, his father-in-law, and himself; that his brother played the horses and telephoned his bets over the store telephone; that he never heard anyone else phone in bets; that he figured it was his brother's business if he phoned in bets; and that his brother has discontinued his betting over the telephone.

Exhibit No. 1 is a copy of a letter from the Commander of the Administrative Vice Division of the Los Angeles Police Department to the defendant, advising defendant that the telephone facilities at the Sunset Drive-In Market at 1161 Sunset Boulevard were, on August 6, 1958, being used for the purpose of disseminating horse racing information which was being used in connection with bookmaking, in violation of Section 337a of the Penal Code, that the telephone facilities at said address had been removed, and requesting that the said telephone services be disconnected. It was stipulated that this letter was received by the defendant on August 11, 1958; that pursuant to such letter the said telephone services were disconnected by defendant on August 13, 1958; that on September 11, 1958, the services were reconnected pursuant to this Commission's Decision No. 57307, supra; and that the telephone company acted with reasonable cause as that term is defined in Decision No. 41415, supra, in disconnecting the service inasmuch as it had received Exhibit No. 1.

A Los Angeles police officer attached to the Vice Detail testified that prior to August 6, 1958, he had information that the telephone on the premises at 1161 Sunset Boulevard, Los Angeles,

was being used for bookmaking; that on said day he entered the premises at about 2 p.m.; that Martin Sarni and another man were at the telephone; that the telephone rang, Martin answered it, spoke into the telephone and wrote on a 3- by 5-inch pad; that Martin Sarni hung up the phone and then called a number on the phone and talked; that he placed Martin Sarni under arrest; that the 3- by 5-inch pad contained a record of seven or eight horse race bets; and that he searched and found betting markers and one owe sheet by the telephone.

In the light of this record we find that the action of the telephone company was based upon reasonable cause as that 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 Albert Sarni 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 upon the evidence of record and the findings herein,

IT IS ORDERED that complainant's request for restoration of telephone service be denied and that said complaint be and it hereby is dismissed. The temporary interim relief granted by Decision No. 57307 in Case No. 6172 is hereby set aside and vacated.

IT IS FURTHER ORDERED that upon the expiration of 30 days after the effective date of this order the complainant herein, or Martin Sarni, may file an application for telephone service, and

if such filing is made The Pacific Telephone and Telegraph Company shall install telephone service at the Sunset Drive-In Market at 1161 Sunset Boulevard, 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 21st day of October, 1958.

E. L. Fox
President

W. E. Mitchell

Paul Winterstein

Walter K. ...

Frederick Jensen
Commissioners