

ORIGINAL

Decision No. 58329

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JENNIE DONOVAN, also known as
 JO ANN BONNICI, doing business as
 JO ANN'S MASSAGE STUDIO,

Complainant,

vs.

THE PACIFIC TELEPHONE & TELEGRAPH
 COMPANY, a corporation,

Defendant.

Case No. 6158

William L. Ferdon, for complainant.
Pillsbury, Madison and Sutro by Dudley A. Zinke,
 for respondent.

O P I N I O N

Complainant filed this complaint on July 24, 1958. She alleged that she was the operator of a massage studio in San Francisco. She was arrested and charged with violation of two sections of the Penal Code and two sections of the Municipal Police Code of San Francisco. The defendant discontinued her telephone service upon receiving information that such instrumentality was being used to violate or to aid and abet violation of the law. She denied that the telephone service was so used. She alleged that the service was necessary to the conduct of her business. She prayed for interim, and, after hearing, permanent restoration of her telephone service.

Interim relief was granted by Decision No. 57048, dated July 29, 1958, herein. On August 4, 1958, the defendant filed its answer. It alleged in substance that it had reasonable cause to believe that its service to complainant had been, or would be, used as an instrumentality to violate, or to aid and abet violation of,

the law, and service was therefore discontinued pursuant to Commission Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P. U. C. 853).

This matter was continued from time to time to allow the associated criminal case to be completed. Public hearing was held before Examiner John Power on April 2, 1959, and the matter was submitted.

Two police officers of the City and County of San Francisco testified, as did a special agent of defendant. Through the special agent, a letter of the San Francisco Police Chief to defendant's chief special agent was introduced. This letter requested the discontinuance of service because the telephone service was being used in violation of certain laws specified by the Chief of Police. It was upon receipt of this letter that service was disconnected.

During the pendency of this Commission proceeding, the complainant was tried twice. In the first trial, the jury disagreed. In the second, the complainant was convicted of violation of one of the four counts involved. During the course of the two trials the other three counts were dismissed.

The nature of this offense was developed in the testimony of the two police officers involved. A statement of complainant's counsel was in agreement with their testimony. It appears that one of the officers called complainant's telephone number. A woman answered. The officer made an appointment for a massage. He went to complainant's studio and received the massage. At the conclusion of this service a conversation was initiated respecting further services which would involve violation of a section of the San Francisco Police Code. Such negotiations went far enough for the complainant and another to be arrested.

To summarize, the telephone was utilized in the first, or legal transaction. In the second transaction, all parties were present in one place and did not need, or use, the telephone.

After full consideration of the record, we now find that the telephone company's action was based upon reasonable cause, as that term is used in Decision No. 41415, supra. We further find that the evidence fails to show that complainant's telephone was used as an instrumentality to violate or to aid and abet the violation of the law.

O R D E R

Complaint having been filed and answered, a public hearing having been held and the Commission basing its decision upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that the order of the Commission in Decision No. 57048, dated July 29, 1958, temporarily restoring telephone service to complainant, be made permanent, such restoration 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 Los Angeles, California, this 28th day of April, 1959.

E. Lynn Fox
President
E. B. ...
...
Theodore Jenner
Commissioners