

Decision No. 62477**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Eugene Paplham,

Complainant,

vs.

Case No. 7136

Southern California Gas Co.,
a corporation,
(F. M. Banks, President)

Defendant.

ORDER OF DISMISSAL

The complaint herein states it is based on alleged misrepresentation and concealment of material facts essential to complete a year-round air conditioning system in complainant's home. Complainant alleges that in June of 1959 an air conditioning sales representative of defendant brought a contractor to complainant's home; that complainant was assured a particular unit and installation would provide a system as good or better than stated in literature distributed by defendant; that for a specified sum the system would be installed, and excess dirt removed from underneath the house; and that defendant's representative stated that defendant would approve plans for work started, check the job, give service, and stand behind the completed system.

The complaint contains allegations setting forth a chronology of events, extending over a period of fifteen months, and concerning installation of the system by the contractor. Among other things, it is alleged that workmen damaged the premises; the city inspector stated the job was not acceptable and that a permit was required; that changes were made in the installation; that later

defendant's representative advised that the system was not acceptable to defendant; that subsequently the Chief Building Inspector of the city advised that the installation "was inspected and accepted"; that thereafter defendant advised that further plans would be made to correct the installation; that the contractor advised that defendant wanted \$2,000, their attorneys would do the collecting, and the contractor would not do any more work; that defendant's representatives looked at the system, stated the installation "is just no good", and that complainant would be mailed a set of plans with a letter explaining changes to be made; that a representative of defendant advised complainant of receipt of two estimates from contractors for installation of a system, but that the present system would have to be completely removed; that a representative of defendant advised complainant that defendant "is renegeing on everything they have told me to date"; that complainant received an unsigned plan of present installation and recommended changes from defendant's representative; that a proposal was received from defendant's representative, "The Gas Co. will do, etc., If I place the full amount in escrow and instruct same to give said money to the Gas Co. on the say-so of their contractor"; that later complainant was informed that because he would not accept the proposal "as it was" the matter had been turned over to the claims department, and there was a claim against complainant for \$1,155; that later complainant was informed defendant was not concerned about the failure of the installation nor the damage to complainant's home; and that complainant was served with a summons.

The complaint alleges further that damage "accomplished during the installation of this abortive system has not been restored"; that gas usage and bills have increased approximately 100% without any advantage; that family suffering has increased due to lack of an air conditioning system; and that the "inefficiency" of defendant necessitated complainant to expend numerous

hours, and monies in the amount of over \$1100.

Complainant requests an order for

- "1. Complete removal of the system.
2. My home restored to status quo.
3. Adjustment on all gas bills received.
4. Compensation for time and monies expended due to the inefficaciousness, misrepresentation, and concealment of material facts by the Southern California Gas Company.
5. Remuneration for any debt caused by the existence of this abortive system, until it is completely removed from my home.
6. Until the pending court case is settled payment of all debt accrued; this case was originated by the arrogant claims of the Southern California Gas Company."

A copy of the complaint was mailed to defendant, and defendant's counsel submitted a statement of asserted defects, taking the position that the complaint is defective in that the requested relief, based upon a contract for purchase and installation of an air-conditioning unit, is beyond the Commission's jurisdiction; that the request for compensation for time and money expended due to defendant's alleged misrepresentation and concealment of material facts is properly the subject of a tort action and not within the Commission's jurisdiction; that the matter of alleged damage to complainant's home and the request for restoration is not within the Commission's jurisdiction, and that defendant was not a party to the contract; and that while the matter of adjustment of gas bills is within the Commission's jurisdiction, the complaint does not state facts sufficient to constitute a cause of action.

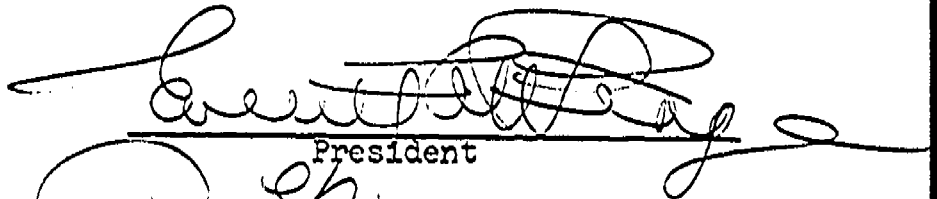
Under the Commission's regulatory jurisdiction it is not empowered to decide all controversies in which a public utility may be involved. It is without jurisdiction to determine the existence of or liability for alleged negligence. Nor may it award damages, or compensation because of alleged misrepresentation or concealment of material facts. The power to decide such matters rests with the courts. And it appears from the complaint that complainant and

defendant are involved in pending court litigation relating to the subject matter of the complaint.

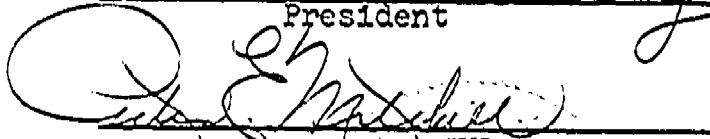
The complaint, insofar as it requests adjustment on gas bills, does not comply with our procedural rules in that it does not set forth clearly the facts constituting the grounds of complaint as to rates or charges.

IT IS ORDERED that Case No. 7136 is hereby dismissed for failure to state a cause of action within the Commission's jurisdiction and for noncompliance with the Commission's procedural rules.

Dated at San Francisco, California, this 29th day of August, 1961.



President









Commissioners