

ORIGINAL

Decision No. 68021

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HAROLD MILGRIM, DBA CALIFORNIA
PROFESSIONAL AGENCY,

Complainant,

vs

GENERAL TELEPHONE COMPANY,
a corporation,

Defendant.

Case No. 7853
(Filed February 27, 1964)

Harold Milgrim, complainant.
A. M. Hart and H. Ralph Snyder, by H. Ralph Snyder,
for defendant.
Robert O. Lamson, for the Commission staff.

O P I N I O N

This matter was heard and submitted before Examiner
Patterson in Los Angeles on June 4, 1964.

Complainant testified that he and his partner, doing
business as the California Professional Agency, started an insurance
business in which they endeavored to solicit prospective clients
by telephone appointments made by employees who were to be speci-
fically trained on the job.

About the end of June, 1963, they rented an office at
1502 Service Avenue, West Covina, in which to conduct the business,
and they met with a sales representative of defendant on a Friday
(July 12, 1963) to discuss the type of telephone service required.
He (complainant) testified that the discussion was not completed

on that day and that the representative, instead of meeting with them on the following Monday, as planned, called by telephone and stated that he had worked out the proper system for their operation and that it would be installed.

Hand sets and eight telephone lines were installed on July 18, 1963, and equipment to permit monitoring of the lines used by the telephone solicitors was installed on August 5, 1963. After the monitoring equipment had been installed the partners realized it was inadequate for their purposes as, contrary to their understanding of the nature of the equipment ordered, there were no busy lights to indicate when any of the four lines utilized by the telephone solicitors was being used. He stated that this inadequacy had a serious effect upon the business operation as it was necessary to train the solicitors on the job by monitoring their conversations with prospective clients and, if necessary, cutting in on the conversations and aiding the employees. As a result of the dissatisfaction with the installation a meeting was held with defendant's unit sales manager (September 30, 1963) who agreed to replace the equipment which had been installed with equipment incorporating the desired feature of busy lights to indicate which of the lines were in use. The changeover of equipment was started but was never completed because of the work stoppage occasioned by the strike, involving defendant, which began on October 18, 1963.

It is complainant's contention that if proper attention had been given by defendant to his telephone requirements the correct type of equipment would have been installed and the

partners would have been in a position to have successfully monitored the solicitors' calls and thereby could have trained them properly and the business would have been a success. He testified, however, that about the middle of December 1963, because of lack of funds, they were unable to continue the insurance business, the operation was closed, and removal of the telephone installation was requested.

Complainant requests an order which will set aside defendant's claim for payment of the outstanding bill for telephone service of approximately \$1,200 and additionally he seeks to recover damages in the amount of \$13,000 for business losses sustained because of the alleged negligent and improper handling of the telephone installation.

Defendant presented testimony through the two representatives who had conducted most of the negotiations with complainant. The sales representative who took the order for the telephone service testified that the partners seemed to be extremely well satisfied with the arrangements which were made at the meeting on July 12, 1963, and he denied that any further meeting was planned for the following Monday. The equipment which was agreed upon as a result of that meeting was a 12-button key strip equipped with busy and signal lights which would permit identification of the lines in use. Such equipment was never installed, however, because of a limitation in duct capacity and since the building was new and of sophisticated styling and design it was understood that the building owner would not permit the installation of exposed wiring. Defendant's unit sales manager testified that through an agreement between defendant's PBX man

and complainant, a secretarial answering cabinet was installed instead of the 12-button key strip. The sales manager testified that these two units of equipment are functionally similar except that the secretarial answering cabinet is equipped with a neon light that only activates when there is ringing in on one of the lines, there being no busy lamps to identify which line is being used. He further testified that the matter of limitation in duct capacity was explained to complainant but he did not know whether or not the PBX man informed him that he would lose the desired feature of the busy lamp on the substitute equipment.

The sales manager testified that as a result of complainant's dissatisfaction with the installation, contact was made with the building owner who agreed to permit some wiring to be installed outside of the duct system, and installation of equipment equivalent to that originally ordered, was started but was never completed because of the strike. Although the sales manager was sure that the wiring problem had been discussed with the building owner prior to the original installation, he did not know to what degree efforts had been made at that time to secure permission for installation of wiring outside of the duct system which was necessary to meet the subscriber's requirements.

Complainant denied that he was informed that the installation of the substitute equipment was occasioned by a shortage of duct capacity. He testified that in leasing an office in this particular building the partners were assured that they could be provided with the telephone service desired, and therefore, when the problem of duct capacity arose, if they had been informed, they could have taken the matter up with the landlord and could have rejected the lease unless the landlord agreed to the installation.

Exhibit No. 1 presented by defendant is a summary statement of the bills rendered to complainant for telephone service. An analysis of this exhibit reveals that the total billing for telephone service including installation of equipment was \$2,032.63. Credit adjustments totaling \$484.93 were applied for various changes which were made in the equipment and credit for a payment of \$353.65 was made on September 6, 1963. This leaves a net balance allegedly due of \$1,194.05.

The evidence in this proceeding shows that complainant required a certain specific type of telephone installation. The record is clear that defendant did not take the necessary reasonable steps in July or August 1963 to install the specific type of equipment required by complainant and, when in early October defendant had made the necessary arrangements and agreed to change the equipment, it was barred from so doing because of the strike, heretofore referred to. As a consequence of this sequence of events, none of which was subject to complainant's control, complainant did not obtain the specific type of telephone service desired.

Defendant's rules specify its liability for errors or omissions in directory listings and for interruption to service, but liability for failure to provide a specific type of service, after agreeing to supply such service, is not specified. Despite the lack of a rule concerning this, it is simple and pure logic that a subscriber should not pay the full tariff charges for a service when he has received something less than the service for which he contracted.

Based upon the record we find that:

1. After taking complainant's order for a specific type of telephone service, defendant failed to provide that service.

2. Payment made by complainant to defendant in the amount of \$353.65 represents adequate compensation for the telephone service rendered.

3. The balance of \$1,194.05 which defendant alleges is due from complainant is not a valid charge against complainant and is not due or owing to defendant and should be canceled.

We conclude that defendant's motion to dismiss the complaint and to strike certain portions thereof should be denied and that complainant should be granted relief as specified in the following order.

ORDER

IT IS ORDERED that:

1. Defendant's motion to dismiss the complaint and to strike certain portions thereof is denied.
2. Defendant shall cancel the charge in the amount of \$1,194.05 claimed to be due from complainant.
3. In all other respects the relief sought by complainant is denied.

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

Dated at San Francisco, California, this 13th day of OCTOBER, 1964.

I dissent.
George G. Grover

Frederick B. Helms
President

George G. Grover

William L. Bennett

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioners