

ORIGINAL

Decision No. 69025

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Walter Schumacher,

Complainant,

vs.

Case No. 8152

The Pacific Telephone and Telegraph
Company,

Defendant.

ORDER OF DISMISSAL

In substance the complaint herein alleges that under an "advertising deal" between defendant and the San Francisco Hearing Center in June of 1964 complainant's business was disrupted, and expenses were forced upon complainant in connection with his answering service. The public was advised in newspapers that by dialing 775-2182 they would receive a free hearing test. Complainant's telephone, 775-2181, was flooded with calls from misdialings. Constant ringing of complainant's telephone made it impossible to carry on his business of teaching, and when not there his answering service was flooded with calls for which he was charged.

The complaint alleges further that defendant was warned that such disruptions of businesses had occurred previously under similar deals. Defendant refused to change the number in the advertisement although it knew it was disrupting complainant's business. Defendant refused complainant's request for reimbursement of the expense forced upon complainant.

The prayer of the complaint is for an order for reimbursement of the expenses forced on complainant "and for damages for the disruption of my business."

Pursuant to procedural Rule 12, a copy of the complaint was mailed to defendant by way of information, and defendant's counsel submitted a statement of asserted defects. Counsel urged dismissal in that the complaint failed to allege violation of law, filed tariffs, or of any rule or order of the Commission, and that the Commission is without jurisdiction to award damages for alleged negligence.

A copy of the statement was sent to complainant, who was asked to advise whether he wished to request dismissal without prejudice, file an amended complaint, or rely upon the present pleading. Complainant relies upon the present pleading.

In Jones v. Pacific Telephone, 61 Cal.P.U.C. 674, a complaint alleged in part that charges to complainant's telephone arose solely through defendant's misconduct in maintaining on the rear of complainant's building, at shoulder height, an unprotected junction box, available and exposed to tampering and improper connections. The complainant sought damages, or if this were beyond jurisdiction, to find that defendant's action was wilful and irresponsible, so as to provide a foundation for court action.

At page 675 the Commission held as follows:

"The Commission is without jurisdiction to award damages for the reasons stated in the complaint, or to make the requested finding as a basis for court action. The third cause of action, as well as the request for damages, * * * will be stricken from the complaint."

Warren v. Pacific Telephone, 54 Cal.P.U.C. 704, concerned errors and omissions in a telephone directory. It was held that determination of legal claims of negligence is reserved to the courts.

In Glynn v. Pacific Telephone, 62 Cal.P.U.C. 511, the complaint sought damages based upon an allegation that complainant was forced out of business because of continued service interruptions. The Commission held that it was without jurisdiction in that case "to determine the existence of liability or to award damages for alleged loss of business resulting from the acts or omissions of public utilities."

In Vila v. Tahoe Southside Water Utility, 233 A.C.A. 566, decided April 6, 1965, the District Court of Appeal held that the Superior Court, under Public Utilities Code sec. 2106, has jurisdiction over actions for damages against public utilities. The Court said that "section 2106 is the only statutory authority" [in the Public Utilities Code] "for the recovery, by a person injured, of damages, compensatory and exemplary. The commission has no authority to award damages. That was sought in M.L.M. Jones v. Pacific Tel. & Tel. Co. (Nov. 1963) 61 Cal.P.U.C. 674, where the commission asserted its lack of jurisdiction either to make a finding concerning, or to order, damages." (233 A.C.A. at 576.)

Case No. 8152 is hereby dismissed for failure to state a cause of action within the jurisdiction of the Commission.

Dated at San Francisco, California, this 11th day of MAY, 1965.

[Signature] President
George L. Brown
Avogadro
William W. Beards Commissioners

Commissioner Frederick B. Holboff, being necessarily absent, did not participate in the disposition of this proceeding.