

Decision No. 71267

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rodolfo Cortez,
 Complainant,
 vs.
 The Pacific Telephone and
 Telegraph Company,
 Defendant.

Case No. 8312
 Filed December 3, 1965

Rodolfo Cortez, in propria persona.
 Arthur T. George & Pillsbury, Madison and Sutro, by
Richard W. Odgers, for defendant.

O P I N I O N

Complainant asks this Commission to cancel a classified directory advertising contract entered into between complainant and defendant, to relieve complainant of the charges incurred under the contract, and for such other relief as may be granted. Defendant has answered, denying the material allegations of the complaint, and has filed a motion to dismiss the complaint on the ground that it is barred by Section 735 of the Public Utilities Code (two-year statute of limitations).

The matter was heard before Examiner Robert Barnett on March 15 and 23, 1966 at Los Angeles and was submitted on the latter date.

Complainant's Testimony

Complainant testified as follows:

In 1962 he opened a store to sell used clothing. He obtained

business telephone service from defendant and placed a large ad (1/8 page), similar to those of some of his competitors, in the 1962 classified directory to advertise his business. He also had a smaller ad. The large ad showed his business telephone number (463-2141) and his residence telephone number (No 4-1818). Business was bad in his first year of operations. When the time came to renew the advertising for the forthcoming 1963 classified directory, defendant's salesman called on him. The salesman recommended that he continue with the same size ads in the 1963 directory as in the 1962 directory, but he said that he only wanted one small ad. The salesman said that that was wrong; if he took a large ad it would be the only large ad on the page in the new directory. He accepted the salesman's recommendation and placed an order for a large ad (1/8 page) and a small ad. The cost of the large ad was \$70 per month.

Upon his receipt of the 1963 classified directory (sometime between July 26 and August 4, 1963), he discovered that the same large ads as appeared in the 1962 directory appeared in the 1963 directory. Two months after the 1963 directory had been issued, with business still bad, he came to the Commission's Customer Service Unit for advice on how to stop the charges for the large ad. He was advised to change his business telephone number. He did so and also requested that the telephone company not refer calls from the old number (463-2141) to the new number (463-6603); the telephone company complied. However, he still was charged for the large ad. He again complained about this charge and the company began referring calls from his old number to his new number. Defendant gave him a credit on his advertising charge for the time there was no referral. He tried to negotiate directly with the company to obtain

relief from the advertising charges but was told that he had to pay the charges in full or go out of business. A few days later defendant, apparently unsolicited, changed his business telephone number back to 463-2141. Unfortunately, complainant had already changed his business cards and signs to show the 463-6603 number. After the change back to 463-2141, persons who called 463-6603 were referred to a number in Burbank rather than to 463-2141. He then filed a complaint against defendant (Case No. 8252 filed August 19, 1965) which was dismissed, after his failure to amend, for noncompliance with the Commission's Rules of Procedure.

(Decision No. 69839, dated October 26, 1965.)

During this period defendant assigned his delinquent account to a collection agency. This agency filed suit against him in Municipal Court and attached his bank account. He paid \$75 to the collection agency to release the attachment. This \$75 is the only money paid by him to defendant for advertising in the 1963 classified directory. He finally closed his used clothing business in September, 1965.

On cross-examination he stated that there were at least twenty other used clothes dealers in Los Angeles. One of these competitors, Celebrities Apparel, is located across the street from his place of business. After entering into the agreement for the 1963 directory advertising, he asked someone at Celebrities Apparel if they were going to cancel their large ad in the classified directory. He was told that it was not definite whether or not the large ad would be canceled.

He testified that in 1964 a directory salesman (not the same person who called on him in 1963) also stated that if he ordered a large ad in the 1964 directory it would be the only large ad on the page. He did not order a large ad.

Complainant's wife testified that she was present in 1963 when defendant's salesman promised her husband that his large ad would be the only large ad on the page.

Defendant's Testimony

Defendant's classified directory advertising salesman, who called on complainant in 1963, testified as follows: He is one of more than 100 salesmen selling classified advertising. Complainant's store is in his territory, as is Celebrities Apparel. On January 11, 1963 he sold a large ad to Celebrities Apparel. Early in 1963 he called on complainant several times in order to sell him classified advertising. He recommended that complainant improve his 1962 large ad with additional art work; complainant agreed and on February 28, 1963 complainant signed a contract for a large classified ad. The commission on this ad was less than \$10. About April 1, 1963 complainant notified defendant that the large ad should be canceled. He went out to complainant's place of business and persuaded him not to cancel. At no time did he promise complainant that complainant's ad would be the only large ad on the page. He added that May 3, 1963 was the cut-off date for changing a classified ad and that a salesman who misrepresents facts to a customer is subject to dismissal.

Other witnesses for defendant testified that referral service was started after complainant's telephone number was changed to 463-6603 because complainant's residence telephone was listed in the ad and because the business was still going on; that defendant has no record of complainant ever stating to an employee of defendant, prior to filing a complaint with the Commission, that a misrepresentation was involved in his order for a classified ad; and that

directory advertising salesmen only call on accounts in their own territory.

The salesman for the 1964 directory whose territory encompassed complainant's place of business testified that he never saw complainant before this hearing, never spoke to complainant, and never visited complainant's place of business.

Discussion

Defendant filed a motion to dismiss the complaint on the ground that complainant's cause of action is barred by Section 735^{1/} of the Public Utilities Code. We agree.

Complainant requests, in substance, that defendant's charges for directory advertising be canceled. These charges amount to approximately \$840, of which complainant has paid \$75. In general, the Commission is not a body charged with the enforcement of private contracts and no facts have been adduced which suggest that this case involves an exception to the general rule. However, we can award reparation (Public Utilities Code Section 734)^{2/} for the amount of money unreasonably collected from a ratepayer by a

1/ "...All complaints for damages resulting from a violation of any of the provisions of this part, except Sections 494 and 532, shall either be filed with the commission, or where concurrent jurisdiction of the cause of action is vested by the Constitution and laws of this State in the courts, in any court of competent jurisdiction, within two years from the time the cause of action accrues, and not after."

2/ "When complaint has been made to the commission concerning any rate for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount therefor in violation of any of the provisions of this part, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection if no discrimination will result from such reparation...."

utility for utility services improperly furnished. (See Penaloza v. P.T.&T., Dec. No. 69392, in Case No. 3091, Dated July 13, 1965.) In this case our reparation jurisdiction is limited to the \$75 payment.

The statute of limitations governing reparation claims is two years. (Public Utilities Code Section 735.) This complaint was filed December 3, 1965. If a false statement concerning complainant's directory advertising was made (and because of the nature of our disposition of this case we do not reach that question), it was made before May 4, 1963. Complainant would not have been aware of the truth or falsity of statements made to him by defendant's directory salesman until the classified directory was issued, between July 26 and August 4, 1963. Therefore, complainant's cause of action accrued no later than August 4, 1963 and was barred two years later. The complaint filed December 3, 1965 is barred by the statute of limitations.

Findings of Fact

1. This complaint, filed December 3, 1965, alleges, in substance, that defendant made a misrepresentation of fact which induced complainant to purchase classified advertising. Complainant's evidence showed that he paid \$75 toward the charges for the advertising. Based on these allegations, his request for a refund of said \$75 properly invokes our reparation jurisdiction.

2. The complaint is based upon a contract for classified directory advertising for the 1963 classified directory entered into between complainant and defendant on February 28, 1963. This contract could have been canceled by complainant at any time prior to May 4, 1963.

3. Any statements concerning complainant's contract for classified directory advertising for the 1963 classified directory made by defendant's salesman to complainant, the truth or falsity of which is in dispute, occurred prior to May 4, 1963.

4. Complainant was not aware of the truth or falsity of statements made to him by defendant's salesman concerning his directory advertising prior to the distribution of the 1963 classified directory.

5. Complainant's cause of action accrued on or before August 4, 1963, the last date when copies of the 1963 classified directory were distributed. At that time he knew, or reasonably should have known, of the truth or falsity of statements made to him by defendant's salesman.

6. The complaint herein, having been filed December 3, 1965, is barred by the two-year limitation of Public Utilities Code Section 735.

Based on the foregoing findings of fact the Commission concludes that the complaint should be dismissed.

ORDER

IT IS ORDERED that the complaint is dismissed.

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

Dated at San Francisco, California, this 15th day of SEPTEMBER, 1966.

 President
George T. Grover

 Commissioner
William L. Bennett

 Commissioner
W. J. ...

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.