

ORIGINAL

Decision No. 76584

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUNRISE REALTY CORPORATION
A California corporation,

Complainant,

vs.

JENSEN WATER COMPANY, a public
utility, L. D. TALLENT, as
President,

Defendants.

Case No. 8953
Filed August 13, 1969

Eugene L. Wolver, for Sunrise Realty
Corporation, complainant.
L. Dee Tallent, for himself and for
Jensen Water Company, defendants.
Jerry J. Levander, for the Commission
staff.

O P I N I O N

Sunrise Realty Corporation (Sunrise) seeks an order requiring defendant Jensen Water Company (Jensen) to refund certain sums of money advanced pursuant to Jensen's filed tariffs and main extension rule. Sunrise also seeks a declaration that a contract between it and defendant L. D. Tallent (Tallent) is null and void because it is in violation of Jensen's filed tariffs. Public hearing was held before Examiner Robert Barnett at Los Angeles on November 12, 1969 at which time the matter was submitted.

Tallent agreed to construct a water system for Sunrise in a subdivision known as Cabazon Estates No. 3 for \$10,000. By supplemental agreement Sunrise agreed to pay an additional amount of not more than \$6,360, apparently toward the cost of installation of water meters on each lot in the subdivision. The issues in this case are the relationship between Tallent and Jensen and the interpretation of the supplemental agreement.

Tallent testified that the supplemental agreement was not intended to cover the cost of water meters, which he admitted was the obligation of the utility to supply. He testified that at the time the supplemental agreement was signed he estimated his out-of-pocket construction expense was \$10,000. (It actually came to \$10,160.) He was willing to construct the system for \$10,000, but because he was only charging for his out-of-pocket expenses he wished to make certain that Jensen would have no expense in providing meters for the system. He insisted on the supplemental agreement so that Tallent would receive enough money to hold Jensen harmless for any expenses Jensen might incur in providing meters to the property. He also felt that this additional sum would allow a profit margin for him and compensate for the use of his construction equipment on the job but not included in the costs of the water system.

He agreed that the \$10,000 advanced for the water system was subject to refund under Jensen's main extension rule. He stated that the reason no refunds have been made to date was because the sums involved have been small and he expected off-setting payments for meters.

In our opinion the supplemental agreement was intended to cover the cost of water meters as stated in the agreement. Also, the fact of common ownership of the water company and the construction company, the statement in the supplemental agreement that it was to cover payment for water meters, the fact that Jensen could not lawfully enter into a contract with Sunrise to pay for meters, and the admitted attempt of Tallent to enter into an agreement to obtain payment for a public utility obligation of Jensen, shows that Tallent, for the purpose of constructing a water system on Cabazon Estates No. 3, was the alter ego of Jensen.

Findings of Fact

1. Tallent is a real estate broker and sometime builder in and around Cabazon, Riverside County, California. He is also the president and sole stockholder of the Jensen Water Company, a public utility certificated by this Commission and serving water in Cabazon. Sunrise is a land development company operating in and around Cabazon. Prior to June 1964 Tallent and Sunrise were business associates involved in land transactions in and around Cabazon. At this time Sunrise purchased a tract of land known as Cabazon Estates No. 3 for the purpose

of subdividing the land and selling it to the public for use as sites for mobile homes. Cabazon Estates No. 3 was not within the certificated area of any public utility water company but was adjacent to the certificated area of Jensen. On June 11, 1964, Sunrise and Tallent entered into a contract whereby Tallent agreed to install a complete water system for the purpose of distribution of water for domestic service to the Cabazon Estates No. 3 subdivision for the agreed price of \$10,000. Also, on June 11, 1964 Sunrise and Tallent entered into a supplemental agreement whereby Sunrise agreed to pay the cost of installation of water meters on each lot in Cabazon Estates No. 3. The amount to be paid was not to exceed \$40 a lot, and Sunrise agreed that after five years it would pay not more than \$40 per lot for the installation of meters on any lot for which meters had not yet been installed. As the subdivision has 159 lots this supplemental agreement provided for a maximum payment of \$6,360. Tallent constructed the water system as agreed and Sunrise paid to Tallent the sum of \$10,000. On April 1, 1965 Jensen and Sunrise entered into a main extension contract whereby Jensen agreed to refund to Sunrise \$10,000 pursuant to its main extension rule.

2. By Decision No. 68671, dated March 2, 1965 the Commission granted a certificate to Jensen to serve Cabazon Estates No. 3. Service began immediately and in 1965 there was one customer on the line. By 1968 there were 31 metered customers on the line. Gross water revenue between 1965 and 1968 inclusive was \$1,753.59. Between 1965 and 1969 Sunrise did not pay any monies pursuant to the supplemental agreement concerning water meters. In 1969 Tallent demanded \$6,360 pursuant to the supplemental agreement. During the period 1965 through 1969 no payments were made by Jensen to Sunrise pursuant to the refund provisions of Jensen's main extension rule.

3. Jensen's main extension rule (Rule No. 15 C.1. a.) states, in part, "the costs of the extension shall include necessary service stubs or service pipes, fittings, gates and housing therefor, and meter boxes, but shall not include meters."

4. During the time that the water system for Cabazon Estates No. 3 was contracted for and constructed Tallent was the alter ego of Jensen. The cost of the water system should be recorded on Jensen's books at its original actual cost which is \$10,160.^{1/}

^{1/} The staff asserts that the water system should be reflected on the books of Jensen at a cost of \$8,900. They arrived at this figure through a computed unit cost study based on average prices of Jensen's transmission and distribution mains, services, and fire hydrants. In our opinion the actual construction costs are reasonable and will be used.

5. The supplemental agreement dated June 11, 1964 providing for Sunrise to pay for the cost of installing water meters is void because it was entered into by Tallent as the alter ego of Jensen and was in violation of Jensen's filed main extension rule.

6. Sunrise should pay to Jensen the sum of \$160, the difference between the amounts advanced for the construction of the water system and the actual cost of the water system.

7. Jensen should refund to Sunrise 22 percent of all revenue received from the sale of water to the customers located in Cabazon Estates No. 3 pursuant to his filed main extension rule. There is now due and owing from Jensen to Sunrise the amount of \$385.79 pursuant to the refund provisions of Jensen's filed tariffs covering the period 1965 through 1968 inclusive.

The Commission concludes that complainant is entitled to the relief set forth in the following order.

O R D E R

IT IS ORDERED that:

1. Sunrise Realty Corporation shall pay to Jensen Water Company \$160.

2. Jensen Water Company shall pay to Sunrise Realty Corporation \$385.79 and such further sums when they may become due under the main extension refund agreement between the parties.

3. Jensen Water Company shall record on its books the amount of \$10,160 as the original cost of its water system installed in Cabazon Estates No. 3, Cabazon, California.

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

Dated at San Francisco, California, this 23rd day of DECEMBER, 1969.

William J. Quinn, Jr.
President

Augustan

William J. Quinn, Jr.

Thomas J. Quinn

Yvonne L. Quinn
Commissioners