

MS

Decision No. 77920

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CLARENCE WENDELL ELLERS,
Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,
Defendant.

Case No. 8901
(Filed March 12, 1969)

Clarence W. Ellers and Elizabeth Ann
Ellers, for complainant.
Richard Siegfried, for defendant.

O P I N I O N

This is a complaint by Clarence Ellers against The Pacific Telephone and Telegraph Company (PT&T).

Complainant basically requests the following:

1. That this Commission find the contract he signed for advertising with PT&T null and void because of fraud.
2. Full relief from any and all billing from PT&T for one year.

On April 24, 1969, defendant filed an answer to the complaint which denied that complainant is entitled to any relief and which requested that the complaint be dismissed. As an affirmative defense defendant alleges: that the advertising in question was printed in the February 1969 San Jose directory pursuant to the contract signed by complainant; that complainant never requested any copy changes other than provided for in the contract; that in the absence of written notice from complainant terminating such advertising prior to the closing date of the directory, the contract was binding upon complainant; and that the relief sought by complainant is inappropriate under Schedule Cal.P.U.C. No. 39-T, 7th Revised Sheet.

Hearing was held before Examiner Gillanders at San Francisco on August 26, 1969. The matter was submitted on September 8, 1969, upon receipt of the transcript.

At the hearing, defendant in its opening statement stated that in its view there were really only two issues:

1. The cancellation of the quarter-page ad and the promises made surrounding that.
2. The claim of complainant that he would have made a number of changes in his advertising program had he received proofs as were promised by the salesman.

Defendant then admitted that in its investigation it had overlooked the uncontradicted fact that its salesman did promise complainant that he would receive proofs of all of his advertising. Because proofs were promised, when under directory practices and procedures no proofs were due, defendant amended a settlement offer it had made to complainant by letter on August 13, 1969. It offered a 100% adjustment for the ad that complainant wished cancelled and a 100% adjustment for the trade names listing covering those products complainant no longer handles. On the basis of its offer and of the tariff provision relating to liability, defendant stated that the only issue left to be heard was the question of whether complainant is entitled to more than a 50% adjustment for defendant's failure to send proofs on which complainant could have made changes.

Complainant did not accept defendant's offer as he stated that he was not claiming an error or omission but was claiming two points of absolute fraud concerning the contract and that he wanted the contract declared null and void.

Complainant presented the testimony of four witnesses, including himself. Defendant presented one witness.

It is well established that relief of the type sought by complainant should be pursued in some other forum.

Findings and Conclusion

The Commission finds that:

1. Defendant offered a settlement to complaint.
2. Complainant refused such settlement.
3. Defendant's offer was fair and reasonable under the facts disclosed by the evidence.

The Commission concludes that the relief requested by complainant must be sought in some other forum and therefore the complaint should be denied.

O R D E R

IT IS ORDERED that the relief sought by complainant is denied and the complaint is denied.

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

Dated at San Francisco, California, this 10th day of NOVEMBER, 1970.

Chairman

Richard
William J. Quinn
J. P. Vukasin, Jr.
Vernon L. Sturgeon
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.