

sjg/EK

Decision No. 78928

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EDWARD ADOLF SONNENFELD,  
Complainant,

vs.

GENERAL TELEPHONE COMPANY of  
California,  
Defendant.

Case No. 9202  
(Filed March 12, 1971)

ORDER OF DISMISSAL

Insofar as material, complainant alleges:

"The complainant herein commenced doing business as Eddie's T.V. and Eddie's Cal-Vista T.V. in the year 1948.

"General Telephone Company of California, through their agent, Richard Oefinger, sales representative, came to me for renewal of the existing add (sic) in the Monrovia Yellow Pages for my business in the month of September, 1970. Said agent executed with me a contract for the add for another year.

"Subsequent thereto, I had several telephone conversations with Mr. Oefinger and he informed me that if I didn't pay for a disputed bill for the add in the Covina Yellow Pages, he would cancel the add in the Monrovia Yellow Pages.

"I told Mr. Oefinger on several occasions that I did not owe General Telephone Company any money for the add in the Covina Yellow Pages, and that I depend almost entirely upon the yellow

page advertisements in the phone book for my business. I warned him several times that he was wrong and that he should not cancel my add in the yellow pages in Monrovia as we had a binding contract and I did not owe any money to General Telephone at all. I told him that if the add was cancelled, I would lose my business because I depend upon the telephone add for my business almost exclusively.

"Nevertheless on October 7, 1970, I received a cancellation of the add in the Monrovia Yellow Pages, signed by Mr. Oefinger.

"On February 5, 1971, I received a letter from General Telephone Company stating that I did not in fact owe any money for the Covina yellow pages and they gave me credit for the sum of \$421.99.

"Because of the wilful disregard of the General Telephone Company, I did not have my add in the Monrovia yellow pages, and my business has suffered as a result thereof. I am in danger of having to close my business because of such acts by the General Telephone Company."

The complainant further alleges:

"I have lost and will lose a minimum of \$10,000.00 for the year 1971 and it will take another two years to re-establish contacts with my customers and new customers as they think I am out of business because I am not in the yellow pages in Monrovia. I will sustain damages in the sum of \$5,000.00 per year for the years 1972 and 1973.

"Because of the wilful disregard of the General Telephone Company, I request punitive damages in the sum of \$10,000.00."

The defendant pleads that the complaint is defective in that it fails to state a cause of action as required by Section 1702 of the Public Utilities Code, and that the complaint should be dismissed since the relief requested is beyond the jurisdiction of the Commission. The defendant further requests that, pending a ruling on the motion to dismiss, that portion of the prayer which requests punitive damages in the sum of \$10,000.00 be stricken. The defendant also states certain denials and, by way of an affirmative defense, alleges that it paid to complainant, by mistake, the sum \$421.99, and that complainant now owes said sum to defendant.

The Commission has great power relative to the entities whose rates, services and facilities it controls but it is limited in its jurisdiction to hear and determine only such complaints as are germane to regulation and control of public utilities (Motor Transit Company v. Railroad Commission of the State of California, et al, 189 Cal. 573. Pacific Telephone and Telegraph Company v. John E. Eshleman, et al, 166 Cal. 640).

Legally we do not have jurisdiction with respect to monetary damages which may have accrued to complainant because of billing (Postal Telegraph-Cable Company v. Railroad Commission of the State of California, 197 Cal. 426 at 437). The Commission has repeatedly held that it has no jurisdiction to award damages for tortious conduct by a public utility toward its customers (W. M. Glynn, v. Pacific Telephone Company, 62 Cal. P.U.C. 511; Postal Telegraph-Cable Company v. Railroad Commission of the State of California, supra;

Joe Vila v. Tahoe Southside Water Utility, 233 Cal. App. 2d 469 at 479; Isabelle A. Goodspeed v. Great Western Power Company of California, 33 Cal. App. 2d, 245 at 264).

If the complainant does not get adequate service from the telephone facilities furnished to him by defendant, the Commission only has jurisdiction to order reparation of some or all of the charges paid by complainant. If complainant is entitled to any damages his remedy is in the courts (Public Utilities Code Section 2104, Vila v. Tahoe Southside Water Utility, supra).

In the Vila case, supra, the court states at page 479:

"By statute, the Commission is empowered to enforce its orders by suit (Sec. 2102), <sup>1/</sup> by mandamus or injunction (Sec. 2102); it also has power to impose fines (Sec. 2100) and recover them by an action (Sec. 2104). It may also punish for contempt (Sec. 2112). But Section 2106 is the only statutory authority for the recovery, by a person injured, of damages, compensatory and exemplary. The Commission has no authority to award damages."

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<sup>1/</sup> References to Code Sections are to California Public Utilities Code Sections.

The court further stated, at page 480:

"We attribute to the legislature an intent in enacting section 2106 to provide the prospective user wrongfully deprived of service to which he is entitled with a speedy and adequate remedy in the (superior) Court."

This language is pertinent to the case herein considered. If complainant is entitled to damages, he has access to the courts.

Inasmuch as the relief sought is beyond the jurisdiction of this Commission

IT IS ORDERED that the complaint is dismissed.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 19th day of JULY, 1971.

Chairman  
William Sproule - J  
[Signature]  
James L. Sturgeon

Commissioners

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

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.