

ORIGINAL

Decision No. 85772

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of RICHARD A. HOWARD,

Complainant,

vs.

RADIO DISPATCH CORP., a corporation;
CARL B. HILLIARD, JR., an individual;
DOES I through III, capacities unknown,

Defendants.

Case No. 9876
(Filed February 14, 1975)

Ronald M. Sohigian, Attorney at Law,
for Richard A. Howard, complainant.
Hilliard, McGuire & Bauer, by Carl
Hilliard, Attorney at Law, for
Radio Dispatch Corp. and Carl B.
Hilliard, defendants.
Warren Palmer, Attorney at Law,
for Industrial Communications
Systems, Inc., interested party.
R. Roger Johnson, for the Commission
staff.

OPINION AND ORDER

Complainant (Howard) and the individual defendant (Hilliard) each own one-half of the outstanding stock of the corporate defendant (RDC). In September, 1974, the Superior Court for San Bernardino appointed a receiver pendente lite for RDC upon the ex parte petition of Hilliard. That litigation was later transferred to the Superior Court for Orange County as Case No. 220031, entitled Carl B. Hilliard, Jr., Plaintiff, vs. Radio Dispatch Corp. and Richard A. Howard, et al., Defendants and Richard A. Howard, Cross-Complainant vs. Carl B. Hilliard, Jr., Radio Dispatch Corp., et al, Cross-Defendants. These are the same parties involved in the instant case.

Prehearing conference was held before Examiner Phillip E. Blecher on May 22, 1975, at which time the presiding examiner abated any action in the instant matter until final judgment in the pending court case in the Superior Court of Orange County.

On February 20, 1976, the court, after a nonjury trial, issued its findings of fact, conclusions of law and final judgment, which, in brief, absolved both individuals of any fraudulent or dishonest acts or other conduct which would justify removal of either as a corporate director of RDC, allowed the parties to remain in status quo, and terminated the receivership forthwith, requiring the receiver to render the customary final report and accounting. This judgment order has been introduced into evidence as Exhibit 1.

On March 16, 1976, counsel for Howard requested dismissal without prejudice in a letter to the presiding examiner.

While the above judicial determination is not binding on this Commission, the issues, findings of fact, and conclusions of law there found are sufficiently similar to the instant case so that a hearing here would involve substantially the same or similar evidence, and would serve no useful purpose. Additionally, the relief requested by Howard is now moot in light of the termination of the receivership and the resolution of the issues between the parties in the court action. However, we believe that the dismissal should be granted with prejudice so that these issues cannot be retried in subsequent litigation before this Commission.

Therefore, upon written request of complainant, and the prior determination of similar issues in the above cited case,

IT IS ORDERED that Case No. 9876 is dismissed with prejudice.

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

Dated at San Francisco, California, this 17th day of MAY, 1976.

[Signature]
President

[Signature]

[Signature]
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.