

Decision 89 04 003 APR 12 1989

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Everardo Branford, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 Los Angeles Cellular )  
 Telephone Company (U-3009-C), )  
 )  
 Defendant. )

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Mailed

APR 12 1989

(ECP)  
Case 88-12-013  
(Filed December 5, 1988)

Everardo Branford, for himself.  
Susan Joseph, for Los Angeles Cellular  
 Telephone Company, defendant.  
Mark Higgins, for Beverly Hills  
 Communications Enterprises, intervenor.

O P I N I O N

Complainant, Everardo Branford, seeks to have the electronic serial number (ESN) associated with his cellular telephone activated by defendant Los Angeles Cellular Telephone Company (LACTC). LACTC refuses to activate the ESN and provide service to complainant's cellular telephone because the ESN is in the account of Beverly Hills Communications Enterprise (BHCE) and because there are unpaid telephone bills attributed to the ESN and indications of misuse of the telephone. A public hearing was held on March 10, 1989 before Administrative Law Judge Robert Barnett.

This case involves the ownership of a cellular telephone. In order to operate, each cellular telephone has two functioning numbers--a conventional telephone number (which can be changed) and an ESN (which cannot be changed). The ESN is burned into a computer chip installed in the telephone. Its function is to identify the particular unit at the cellular telephone company's switch so that proper billing and use can be monitored. The

telephone number and ESN must match at the point of switch. Should a subscriber fail to pay his cellular telephone bill or misuse the cellular telephone, the cellular telephone company can deactivate the ESN and thereby prevent calls from being sent or received by the particular cellular telephone.

Complainant testified that he was employed by BHCE in 1987 as a sales executive selling cellular telephones. In April 1988 complainant agreed to purchase a cellular telephone from BHCE for \$1,000, to be deducted from complainant's commission checks. The ESN of this telephone was activated by LACTC for the account of BHCE in April 1988. Complainant was to take possession of the telephone after he had paid \$500. On June 1, 1988 complainant took possession. By August 1988 the entire \$1,000 was paid and in August complainant left the employ of BHCE. Complainant used the telephone as part of his sales work at BHCE. When he left BHCE, he asked LACTC to transfer the ESN to his account; LACTC refused because, on June 24, it had suspended services for failure of BHCE to pay its bill and because BHCE asserted that it was the owner of the telephone and the ESN.

Complainant testified that he wants the ESN activated and transferred to his name so that he can sell the cellular telephone and recover his \$1,000. He doesn't want to use the telephone. He is willing to return the telephone to BHCE if BHCE will refund his \$1,000.

The owner of BHCE intervened and testified that he permitted complainant to use the cellular telephone, that complainant never paid anything for it, that complainant took the telephone when he left BHCE's employment, and that the telephone is valued at \$1,000. He permitted complainant to use BHCE's line of credit with LACTC to make and receive calls with the cellular phone, but complainant was to pay his own cellular telephone bill. This was the same arrangement BHCE had with all its salespeople. He said that \$1,932 in cellular telephone bills was incurred by

complainant against which he offset \$725 from complainant's commission checks. He testified that complainant owes him \$2,207 (\$1,932 in telephone charges plus \$1,000 for the telephone, less \$725 withheld from commissions). He is willing to take \$1,207 plus the telephone in full settlement of his claim.

The representative of LACTC said that her company recognizes BHCE as the owner of the ESN and will not activate and transfer the ESN to complainant until BHCE authorizes the transfer and complainant shows that he is a bona fide purchaser of the telephone and does not owe money to LACTC.

In our opinion, this case belongs in the Municipal Court--small claims division. Complainant wants his \$1,000 back and is willing to return the cellular telephone. BHCE has cross-claims against complainant of \$2,207 for unpaid telephone bills and the cost of the telephone. LACTC is an innocent third party that wants to get paid. At the hearing, all parties agreed that this was a dispute over money which should be heard in small claims court. It involves public utility service only peripherally. We will dismiss this complaint without prejudice and instruct the parties to pursue their remedies in the municipal court.

O R D E R

IT IS ORDERED that the complaint is dismissed without prejudice.

This order is effective today.

Dated APR 12 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

Commissioner Frederick R. Duda  
being necessarily absent, did  
not participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

*Victor Weissert*

Victor Weissert, Executive Director

*VB*