

Decision 89 11 043 NOV 2 2 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rafael B. Lopez,)
)
 Complainant,)
)
 vs.)
)
 Pacific Gas and Electric Company,)
)
 Defendant..)

ORIGINAL

Case 88-10-013
(Filed October 6, 1988)

Rafael B. Lopez, by Gloria Pariseau, for
 Rafael B. Lopez, complainant.
Roger Peters and Mark Huffman, Attorneys
 at Law, for Pacific Gas and Electric
 Company, defendant.

OPINION

Complainant, Rafael B. Lopez, represented by Gloria Pariseau (Pariseau), complains that \$4,039.83 in electric and gas charges were wrongfully transferred to his account from the accounts of a tenant, Joan Smith (Smith), for payment by complainant. Complainant requests that these charges be removed from his account.

Defendant alleges that these charges are for usage prior to August 25, 1987 when complainant was the customer of record on this account. Defendant requests that the complaint be denied.

Hearing was held in San Francisco on December 29, 1988. Lopez did not attend the hearing. Defendant objected to proceeding without Lopez. Defendant moved to dismiss or, in the alternative, to postpone the proceeding until Lopez could attend. Defendant based its motion on the fact that Lopez' signature on the complaint could not be verified. The day prior to the hearing, Pariseau told defendant she could not remember if Lopez had signed

the complaint. Defendant had been unable to reach Lopez since the filing of the complaint. Defendant desired to discuss settlement of the complaint and refused to do so with Pariseau.

Pariseau opposed a continuance. In response to the motion to dismiss, she presented cancelled checks with Lopez' signature which were similar to the signature on the complaint. Pariseau presented a letter from Lopez which was attached to the complaint when it was filed. The letter authorizes her to represent Lopez during the proceeding. She explained that at the time the complaint was filed Lopez knew he would be out of the country at the end of the year. He was advised by Commission Consumer Affairs staff to attach this letter to the complaint. Pariseau indicated Lopez would return January 3, 1989. To resolve defendant's objections, she offered to have Lopez telephone or meet with defendant when he returned. The motion to dismiss or postpone the proceeding was denied. However, Pariseau was directed to have Lopez contact defendant as soon as he returned. The parties agreed to notify the assigned ALJ should settlement be reached. No such settlement has been received.

Complainant and defendant presented evidence to support their respective allegations. Pariseau was complainant's only witness. Smith was not present at the hearing. Pariseau, administrative assistant to complainant, handles all of complainant's business transactions. Pariseau testified that Smith rented space in a building owned by Lopez on January 1, 1987. At that time, Lopez had three open Pacific Gas and Electric Company (PG&E) accounts: The Sandwich Shop, Flower Shop and house (landlord responsible areas) account. Lopez was billed at an address different from that of the rented premises. Pariseau received and delivered all PG&E bills for the Sandwich and Flower shop to Smith after she moved in on January 1, 1987. Pariseau made no payments for Lopez on these accounts at any time. Pariseau reminded and later constantly insisted that Smith place these

accounts in her name. Sometime in the summer of 1987, Smith told Pariseau she had done so and had arranged to pay a deposit and the outstanding balance in Lopez' name in installments. Pariseau believed Smith, especially since Lopez received no further bills for these accounts.

Pariseau did not know of Smith's payment problems with PG&E until after Smith was evicted. Pariseau found a termination notice on the door of the Sandwich Shop on January 19, 1988. The notice was for Smith's account in the amount of \$7,037.54. Pariseau called PG&E to inform them that Smith had been evicted. The PG&E representative offered to settle the account for \$4,000. Pariseau refused and indicated Lopez was not liable for the bill.

Pariseau received a shut-off notice May 26, 1988 for approximately \$4,305.38 even though the April bill for the period ending April 28th indicated a balance of \$265.55. This May bill indicated a transfer of amounts from Smith's accounts to Lopez' accounts. Pariseau called PG&E again.

Pariseau testified that these charges had not appeared on Lopez' house account from January to April, 1988, but were transferred from Smith's account. On June 20, 1988, a PG&E representative verified that these accounts were placed in Smith's name on March 24 and August 25, 1987.

Smith filed bankruptcy on February 3, 1988 listing a debt owed to PG&E of \$9,177. Smith rejected her contract with Lopez, and Lopez filed a claim for \$12,786.09.

In June, 1988, Pariseau received another shut-off notice for \$4,572.59. Pariseau asked the attorney representing Lopez in the Smith bankruptcy proceeding, J. Robert Foster, to write to PG&E. Foster wrote a letter to PG&E Customer Service on June 6, 1988 informing them that Lopez was not liable for these amounts.

There was no response from PG&E. Pariseau later informed PG&E that they were named as a creditor in the Smith bankruptcy and mailed copies of the proceeding to Mr. Baumanis, PG&E Credit

Supervisor. PG&E has refused to remove the charges from Lopez' account.

Complainant believes that since Smith filed bankruptcy and PG&E cannot collect from her, the charges have been transferred back to Lopez for collection.

Mr. Baumanis, PG&E credit supervisor, testified he investigated Lopez' complaint by reviewing company records and discussing the matter with customer representatives. He found that the gas meter was turned off on March 24, 1987, but no request was made at that time for Smith to become the customer of record.

Baumanis agreed that on August 25, 1987, Smith became the customer of record on the two accounts in question. Baumanis explained that the procedure for collection at the time an account is closed is to send a closing bill. Baumanis assumes a closing bill was sent to Lopez after August 25th when Smith became the new customer of record.

The outstanding balance under Lopez' name was transferred to Smith on November 3, 1987. Baumanis assumes that this transfer was done pursuant to Lopez' request. Baumanis presumes a request by Lopez to place this usage in Smith's account was made and honored to help Lopez collect the bill from Smith. However, he contends that this transfer was an error because the usage was incurred in Lopez' name. This error was corrected on February 24, 1988 by transferring the balance to the original Lopez account, which was then closed.

When the balance was not collected under Lopez' closed account, normal company practice would be to transfer the balance to an open Lopez account, in this case, the house account.

Baumanis testified that PG&E did not attempt to collect the Lopez balance from Smith in the bankruptcy proceeding but filed a claim for amounts outstanding in Smith's accounts. PG&E's claim in the bankruptcy proceeding for Smith's outstanding balance has not been paid.

Baumanis introduced as exhibits the company records of the five accounts involved in this complaint. Those documents show the following transactions:

1. On January 28, 1987, Lopez was the customer of record on two accounts, YVF 88 62701 (the Sandwich Shop) and YVF 88 62636 (the Flower Shop). Monthly usage is recorded in these accounts until August 25, 1987.
2. From January 28 to August 25, 1987 the transactions recorded in the Sandwich Shop account are monthly payments beginning April 1, a check charge and reversal of payments in June and August, and a deposit paid in July.
3. From January 28 to August 25, 1987 the transactions recorded in the Flower Shop account are monthly payments beginning April 1 and a check charge and reversal of payment in June.
4. On August 25, 1987, Joan Smith became the customer of record on the Sandwich Shop and Flower Shop accounts. Two different account numbers were assigned, YVF 8862637-1 (Flower Shop) and YVF 8862702-7 (Sandwich Shop). Separate records appear for each customer of record.
5. At the time of this change in the customer of record on the two accounts, the amount due under Lopez' name in the Sandwich Shop

account was \$3,558.13 and on the Flower Shop account, \$481.70. These accounts were constantly in arrears from January 1 until August 25, 1987.

6. Payments are recorded under the Sandwich Shop account in Lopez' name on September 15 and 24, and October 12. Adjustments to reverse these payments are recorded on October 8, 14, 22, and 26. (Baumanis, witness for defendant, testified that one of the checks tendered for payment was from Smith.) After these adjustments the outstanding balance is again \$3,558.13.
7. The balance of \$3,558.13 in the Lopez Sandwich Shop account and the balance of \$481.70 in the Lopez Flower Shop account were transferred to YVF 8862702 (Smith) on November 3.
8. On February 24 these balances were transferred back to the originating Lopez accounts and on May 19 they are both transferred to the open Lopez house account YVF 8862964-8.
9. Usage in the Flower Shop account under Smith was billed monthly from August 28 to December 29, 1987. The transactions during this period include two returned checks and the transfer of charges from Lopez. On February 24 these charges were transferred

back to Lopez. The final balance is \$1,357.44.

10. Usage in the Sandwich Shop account under Smith was billed monthly from August 28 to December 29, 1987. The transactions include two returned checks and the transfer of charges from the Lopez account and back to Lopez. The final balance is \$3,579.41.
11. Lopez' house account, YVF 882964-8, shows a transfer of \$3,558.13 and \$481.70 on May 19, 1988, and monthly usage and payments until November 28th. The final amount due is \$4,303.09, of which \$3,558.13 and \$481.70 are presently in dispute.

Discussion

Rule 1 of defendant's tariffs provides that the customer of record is responsible for charges incurred in his/her account. The customer of record is defined as the person signing the application for service or, in the absence of a written application, the person who regularly receives and pays bills.

Pariseau alleged that Smith told her arrangements had been made with PG&E for Smith to pay Lopez' outstanding balance. This testimony is hearsay. There is no evidence to corroborate this allegation.

Under the undisputed facts in this case, Lopez received the bills during the period in dispute. Pariseau gave the bills to Smith for payment. However, giving the bills to the tenant, Smith, did not alter Lopez' responsibility for payment. For over six months Lopez received bills in his name. Six months is more than enough time for Smith to assume responsibility for utility bills.

When Smith did not place the accounts in her name within a reasonable time, Lopez or Pariseau should have notified PG&E of the problem and, at a minimum, sought its advice.

Pariseau testified that she did not know of Smith's delinquent accounts until January, 1988. However, Pariseau should have known the status of these accounts since the monthly bills were mailed directly to Lopez at an address different from Smith's. Each monthly statement from January, 1987 to August, 1987 shows delinquent amounts.

We find that Pariseau's insistence month after month that Smith place the accounts in her name was not sufficient to terminate Lopez' liability for payment of the usage incurred in the accounts in dispute.

We deny the relief requested.

Findings of Fact

1. On January 28, 1987, Lopez was the customer of record on two accounts, YVF 88 62701 (the Sandwich Shop) and YVF 88 62636 (the Flower Shop). Monthly usage, billing, payments, and miscellaneous transactions are recorded in these accounts until August 25, 1987.

2. On August 25, 1987, Joan Smith became the customer of record on the Sandwich Shop and Flower Shop accounts. Two different account numbers were assigned, YVF 8862637-1 (Flower Shop) and YVF 8862702-7 (Sandwich Shop).

3. At the time of this change in the customer of record on the two accounts, the amount due under Lopez' name in the Sandwich Shop account was \$3,558.13 and on the Flower Shop account, \$481.70.

4. Payments are recorded under the Sandwich Shop account in Lopez' name on September 15 and 24 and October 12, 1987. Adjustments to reverse these payments are recorded on October 8, 14, 22 and 26, 1987. One of the checks tendered for payment was from Smith. After these adjustments the outstanding balance is again \$3,558.13.

5. The balance of \$3,558.13 in the Lopez Sandwich Shop account and the balance of \$481.70 in the Lopez Flower Shop account are transferred to YVF 8862702 (Smith) on November 3, 1987.

6. On February 24, 1988 these balances are transferred back to the originating Lopez accounts and on May 19, 1988 they are both transferred to the open Lopez house account YVF 8862964-8.

7. Usage in the Flower Shop account under Smith is billed monthly from August 28 to December 29, 1987. The transactions during this period include two returned checks and the transfer of charges from Lopez. On February 24 these charges are transferred back to Lopez. The final balance is \$1,357.44.

8. Usage in the Sandwich Shop account under Smith is billed monthly from August 28 to December 29, 1987. The transactions include two returned checks and the transfer of charges from the Lopez account and back to Lopez. The final balance is \$3,579.41.

9. Lopez' house account, YVF 882964-8, shows a transfer of \$3,558.13 and \$481.70 on May 19, 1988, and monthly usage and payments until November 28th.

10. Pariseau alleged that Smith told Pariseau she had changed the name on the Sandwich and Flower Shop accounts and made arrangements to pay a deposit and the outstanding balances in installments. There is no evidence to support whether this statement is true. Defendant knows of no such arrangements.

11. Lopez billing address is different from the billing address of Smith.

12. Pariseau delivered PG&E bills for the Sandwich and Flower Shop to Smith during her tenancy. Delinquent amounts in these accounts appear from January 1 to August 25, 1987.

13. Pariseau made no payments for Lopez on the Sandwich and Flower Shop accounts during Smith's tenancy.

14. Smith was evicted by Lopez in January, 1988.

15. Smith claimed a debt owed to PG&E of \$9,177 in her bankruptcy filed February 3, 1988. PG&E filed a claim for \$1,357.44 and 3,579.41 against Smith in the bankruptcy proceeding.

Conclusion of Law

Complainant's request to remove \$4,039.83 from his bill should be denied.

ORDER

IT IS ORDERED that the complaint is denied.

This order is effective today.

Dated NOV 22 1989, at San Francisco, California.

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

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

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Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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