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Decision 91-03-055 March 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Wendell P. Wong, M.D.,

ORIGINAL

Complainant, vs. GTE California Incorporated, Defendant.
Case 90-12-034 (Filed December 12, 1990)

GTE California Incorporated,

Defendant.

OPINION

Dr. Wendell P. Wong, M.D., for himself,
complainant; Edward R. Duffy, for GTE
California, Inc., defendant.

This complaint was filed December 12, 1990 by Dr. Wendell P. Wong against GTE California, Inc. (GTE) requesting that GTE be enjoined from assessing Dr. Wong for delinquent fees allegedly owed, and from terminating any of Dr. Wong's telephone services as a result of his failure to pay GTE therefor.

The complaint was heard in Los Angeles before Administrative Law Judge (ALJ) John Lemke on February 14, 1991 and submitted thereafter.

Dr. Wong's complaint alleged generally as follows:

1. The account in question is in the name of Terracom/Medical Accounts Group of California, a California general partnership (the company). The company is no longer operating, but was engaged in the business of providing computerized billing services to health care providers. It was founded by Medical Accounts Group (MAG), an Indiana corporation engaged in the business of providing computerized billing services nationally to health care providers.

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2. Because of Dr. Wong's prominence in the health care community in southern California, MAG solicited him to invest in its California operations with a view to Dr. Wong thereafter soliciting local health care providers with whom he was familiar to be customers of MAG's services. As a result, Dr. Wong formed a corporation which became one of the corporate general partners of the company.

3. Dr. Wong was only one of several shareholders in Telisis, Inc., one of the corporate partners of the company. He is an eye surgeon, and never personally engaged in the business of providing computerized medical billing services to health care providers or any other service industry. He had no involvement in the day-to-day operations of the company, nor was he a paid employee thereof. His sole involvement was as an outside investor, and as a person attempting to generate customers for the company.

4. The California Center for Eye Surgery, Dr. Wong's eye care group, became a customer of the company. As a result of billing responsibilities assumed by the company for Dr. Wong's practice, extensive personal information regarding Dr. Wong was taken and placed in the company's computers for purposes of state and federal billing programs. Dr. Wong believes that certain personnel of the company, confusing his dual role as the company's first customer and as an outside investor, utilized such personal information from the computer records of the company and provided such information to GTE without direction or authority, so indicating to GTE that Dr. Wong was the responsible party for all phone services provided by GTE to the company.

5. Such unauthorized advice to GTE, and GTE's reliance thereon, is the basis for GTE's claim against Dr. Wong for payment of the delinquent account, totaling \$1,218.31, which funds have been deposited with the

Commission. He has never guaranteed payment of such amounts on behalf of the company. Aside from his initial capital investment in the corporate general partnership of the company, he had no further financial involvement or investment in the company. GTE has no written guarantee or other affirmation that Dr. Wong is personally responsible for the charges incurred by the partnership for GTE services, and absent such written guarantee he should not be responsible as a result of a fraudulent act committed by another unaffiliated party.

In its answer GTE alleged that Dr. Wong is the customer of record for account numbers (213) 540-1220 and (213) 316-3377, and that the billings to these numbers are correct. It maintains that GTE has acted in accordance with all of the terms and conditions contained in its tariffs, particularly Tariff Schedule Cal. P.U.C. No. D&R, Rule 22, and also its Tariff Schedule Cal. P.U.C. Definitions, which are relevant to this proceeding.

Rule 22 of GTE's Tariff Schedule No. D&R contains the following definition:

"Customer: The person in whose name the service is furnished as evidenced by the signature on the application or contract for that service, or in the absence of a filed instrument, by the receipt and payment of bills regularly issued in his name regardless of the identity of the actual user of the service."

A contract was not executed for the service involved, nor was there an application therefor bearing Dr. Wong's signature.

Evidence

Dr. Wong sponsored Exhibit 1, a letter from GTE dated November 15, 1990 to Terracom-Medical Accounts, c/o Wendell Wong, MD, advising that there was an unpaid balance of \$1,218.31 due on telephone number (213) 540-1220, "formerly listed your name." The letter was addressed to "DEAR TERRACOM-MEDICAL ACCOUNTS GROUP." The letter further advised that in order to prevent disconnection

of (213) 316-3377, Dr. Wong's business phone, full payment of the amount due on the 540-1220 number would have to be paid by November 30, 1990. A letter dated December 11, 1990 similarly addressed advised Dr. Wong that the delinquent charges had been scheduled for assignment to a collection agency.

Dr. Wong emphasized, and a GTE representative affirmed, that there had been no unpaid bills on this account until July 1990, when the company Terracom/MAG became defunct. Dr. Wong's office is in Suite 274, on the second floor of the building located at 21350 Hawthorne Blvd., Torrance. The office of Terracom/MAG was also located at the same address, but in Suite 164 on the first floor. Dr. Wong's unrefuted testimony is that he was an investor, owning 55% of the stock in Terracom, Inc. Terracom, Inc. was a co-partner, with MAG of California, in the company known as Terracom/MAG. A Mr. Douglas Plank was the president of Terracom, Inc.

GTE introduced Exhibit 3, an Equipment Summary dated July 27, 1988 indicating that a company known as Telisis Health Care had ordered certain equipment from GTE. Telisis was the name of Terracom, Inc. prior to a corporate name change, and was shown as doing business at 21350 Hawthorne Blvd., Suite 274. The contact person shown on the document is Ann Mulligan, telephone number (213) 316-3377. Ann Mulligan worked for Dr. Wong, and also for Telisis (Terracom), according to Dr. Wong's testimony. GTE also introduced telephone pages from its October 1990 Directory showing listings for Telisis. The yellow pages listing shows a telephone number of 316-3377, which is Dr. Wong's office number. GTE believes it to be significant that Dr. Wong's office established a health care service, i.e. Telisis Health Care, using two telephone numbers still in existence.

Exhibit 7 is a GTE internal memorandum showing Dr. Wong's social security number and Drivers License number, with a client Reference No. showing the Telisis telephone number, 540-1220. This

is the principal reason GTE believes Dr. Wong should be held liable for the delinquent amount--that Ann Mulligan, acting on behalf of Dr. Wong, ordered the service incurred in connection with telephone number 540-1220.

In summary, Dr. Wong maintains that charges are being assessed against him as being responsible for payment of the delinquent charges involved, but that he never authorized the service; rather, it was an employee of the partnership who gave his name, social security, and driver's license numbers and mistakenly and without authorization or knowledge on his part gave Dr. Wong's name as the party responsible for charges. The party responsible for delinquent charges, Dr. Wong insists, is the partnership known as Terracom/MAG.

Discussion

It is Dr. Wong's testimony that he was a shareholder in a corporation which was a partner in the partnership known as Terracom/MAG, the party which incurred the charges at issue in connection with telephone number (213) 540-1220. The partnership, since dissolved, had paid all bills up until mid-1990. GTE is holding Dr. Wong responsible only because his name had been given to them by Ann Mulligan, who worked for him, but who also worked for Terracom/MAG (the company).

The definition of "Customer" contained in GTE's tariff D&R 22 is relevant to the determination of responsibility here. Since a contract for service was not executed, the latter part of the definition is the pertinent portion for purposes of this proceeding: "...or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in his name regardless of the identity of the actual user of the service." There is no record evidence that bills have been regularly issued and paid in Dr. Wong's name; they were apparently paid by Terracom/MAG. In light of this and the unrefuted testimony of Dr. Wong that he was merely an investor in a corporate partner of

the customer, Terracom/MAG, we find that no responsibility attaches to Dr. Wong for payment of the delinquent fees involved in this proceeding. In the circumstances, GTE should be ordered to refrain from billing Dr. Wong for the delinquent fees, and from threatening to discontinue his telephone service at (213) 316-3377.

ORDER
IT IS ORDERED that GTE California, Incorporated shall refrain from billing Dr. Wendell P. Wong for the delinquent charges applicable in connection with telephone number (213) 540-1220, and from threatening to discontinue service to telephone number (213) 316-3377. Complainant's deposit of \$1,218.31 shall be disbursed to him immediately upon issuance of this order.

This order is effective today.

Dated March 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT

President

G. MITCHELL WILK

JOHN B. OHANIAN

DANIEL WM. FESSLER

NORMAN D. SHUMWAY

Commissioners

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

Neil J. Sullivan, Executive Director

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