

APR 10 1991

Decision 91-04-008 April 10, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VITO FRANCO,)
)
 Complainant,)
)
 vs.)
)
 SOUTHERN CALIFORNIA EDISON)
 COMPANY,)
)
 Defendant.)

ORIGINAL

Case 90-11-052
(Filed November 28, 1990)

Patricia A. Aldridge, for Southern California Edison Company.

OPINION

This is a complaint by Vito Franco (Franco) against Southern California Edison Company (Edison). Franco complains about Edison requiring the payment of \$765.00 as a deposit and the payment of \$500.01 on account for previous service rendered for which payment was not made in order for electric service to be restored at 9881 Brier Lane, Santa Ana.

Edison admits that it required a deposit of \$765.00, payment of \$485.01 for past unpaid bills, and a reconnection charge of \$15.00 for restoration of electric service at 9881 Brier Lane. It contends the charges were in accordance with its tariff. Edison attached to its answer: (1) Records indicating that the previous occupant at 9881 Brier Lane, 1st City C/S (1st City), had electric service disconnected for nonpayment of bills. (2) A report by the Sheriff's Department of Orange County that 1st City was using 9881 Brier Lane to conduct sex club parties. The report indicates that Vito Franco told the sheriff's investigators that he was running the business for the owner of 1st City.

Because of the unusual events which occurred in this matter the assigned Administrative Law Judge (ALJ) ordered that the matter become a regular complaint rather than one under the expedited complaint procedure (ECP).

A duly noticed public hearing was held in this matter before ALJ Donald B. Jarvis in Los Angeles on February 1, 1991, and the matter was submitted subject to the filing of transcript which occurred on February 14, 1991. Franco was not present at the hearing. As indicated, the ALJ ordered that the matter be a regular complaint and the proceedings were taken down by a court reporter. (Public Utilities Code § 1706.)

The Commission makes the following findings and conclusion.

Findings of Fact

1. The Commission takes official notice that the notice of hearing was mailed to the parties on January 7, 1991. Prior to the setting, each party was contacted by the Calendar Clerk and indicated that February 1, 1991 was an acceptable date for hearing.

2. On January 28, 1991, the ALJ received a telephone call from a person purporting to be Franco's son. The person alleged that Franco had suffered a heart attack and requested a 15-day continuance. The ALJ advised the caller that the appropriate way to handle the matter was to submit something in writing together with a statement from the attending physician indicating the nature of the illness and the circumstances involved. The caller requested the Commission's fax number which was given to him. He was advised that any fax needed to be confirmed with an original document.

3. On January 30, 1991, the ALJ received the following fax:

"Dear Judge Jarvis:

"Pursuant to our conversation on January 27, 1991, this is to confirm that my father Vito Franco is in Kaiser Hospital in room 221A and

we hope to have him released within the next 10 days.

"Please continue his hearing during his period in the hospital.

"If you have any questions, please do not hesitate to contact me.

"Very Truly Yours,

/s/ Lou
Louis Franco"

The date of the conversation is erroneously given as Sunday, January 27, 1991 rather than Monday, January 28, 1991. No original document has ever been received by the Commission.

4. The contents of the fax did not meet the requirements for seeking a continuance. However, since the matter was at the time an ECP matter and Franco had no counsel, the ALJ directed the Commission's Southern California representative to ascertain the facts so a continuance could be granted, if warranted.

5. The following facts were transmitted to the ALJ and received in evidence at the hearing.

- a. The Commission's Southern California representative submitted the following statement:

"At your request, I had my secretary, Alice Owens, contact the three Kaiser Permanente Hospitals in the area (Bellflower, Los Angeles and Fontana) to see if they had a patient by the name of Vito Franco. All three hospitals indicated that no such patient had been admitted."

- b. The secretary of the Southern California representative submitted the following declaration:

"At the request of Michael A. Doyle, I contacted three Kaiser Permanente

Hospitals in the area (Bellflower, Los Angeles and Fontana) on January 30, 1991, to see if they had a patient by the name of Vito Franco admitted. Each hospital advised me that no such person by that name was admitted to their hospital.

"I declare under penalty of perjury that the foregoing is true and correct.

Alice M. Owens

2-1-91
Date"

6. A continuance was not warranted in this matter.
7. Franco did not appear at the hearing for which appropriate notice was given.

Conclusion of Law

The complaint should be dismissed with prejudice for lack of prosecution.

ORDER

IT IS ORDERED that Case 90-11-052 is dismissed with prejudice.

This order becomes effective 30 days from today.

Dated April 10, 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


NEAL J. GAULTMAN, Executive Director
DB