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Decision 91-05-036 May 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Hecht, Greenfield & Riskin, Inc.,
Formerly Hecht, Diamond &
Greenfield, Inc.,

Complainant,

vs.

GTE,

Defendant.

ORIGINAL

Case 90-10-030
(Filed October 9, 1990)

Mervyn L. Hecht, Attorney at Law, for
Hecht, Greenfield & Riskin, Inc.,
complainant.

Robert N. Herrera and Kenneth K. Okel,
Attorneys at Law, for GTE California
Incorporated, defendant.

Ronald Greenfield, Attorney at Law, for
himself, interested party.

O P I N I O N

Complainant alleges that the defendant allowed the interested party to use the complainant's business telephone number without proper authority. Complainant requests that the number be placed on referral.

The complaint was filed on October 9, 1990. A timely answer was filed by defendant on November 19, 1990. A public hearing was held in Los Angeles before Administrative Law Judge O'Leary on January 9, 1991. The matter was submitted February 5, 1991, the date the transcript was filed.

Evidence was submitted by complainant, defendant, and the interested party.

The evidence on behalf of complainant consisted of testimony and exhibits submitted by Mervyn L. Hecht, the president

of complainant. The evidence on behalf of defendant consisted of testimony and exhibits presented by two witnesses, a staff administrator, and a business service representative. The evidence on behalf of the interested party consisted of testimony on his behalf.

The factual situation surrounding this complaint is fairly straight forward and can be summarized as follows:

The complainant, a professional law corporation, ceased the practice of law in September 1989. At that time, pursuant to an oral request by one of the shareholders, namely Ronald Greenfield, the telephone directory listing of two telephone numbers, both within area code 213, (454-0621 and 454-1351) was changed from complainant to "Ronald S. Greenfield, Attorney at Law."

The complainant contends that since it is a corporation, no change should have been made unless it was in writing in accordance with defendant's Supersedures Methods and Procedures, dated April 1989 (Exhibit 9). Specifically, that document provides as follows:

Signature Requirements

Business customers are required to complete Supersedure Request forms(s) when responsibility of telephone service changes:

- o From a sole ownership or a partnership to a corporation.
- o From a corporation to a sole ownership or a partnership.
- o When an existing customer of record incorporates and is an officer of the corporation.

Complainant requests that the 454-0621 be placed on referral. It requests no corrective action with respect to 454-1351.

Defendant contends that it had no record of complainant being a corporation and therefore did not require a signature for the requested change.

Greenfield testified that at the time of the cessation of the practice of law there was in effect a shareholder's agreement. Portions of the agreement are included in Exhibit 5. Paragraph 23 of the agreement provides as follows:

"Any dispute, including a dispute over the validity of or rescission of this Agreement, shall be settled by arbitration in Los Angeles County in accordance with the rules (then in effect) of the American Arbitration Association. Judgment upon the award rendered may be entered in any Court having jurisdiction."

Greenfield testified that there is presently pending before the American Arbitration Association a request that telephone numbers 454-0621, 0622, and 0623 be placed on referral.

We have carefully reviewed the filed tariffs of defendant. We can find no rule or requirement that requests for change of a directory listing from a corporation to a sole proprietorship need be in writing. The procedure set forth in Exhibit 9 with respect to the completion of a supersedure request form is an internal procedure of defendant which is not embraced in any rule set forth in any filed tariff.

Section 1702 of the Public Utilities Code provides as follows:

"Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic or municipal corporation, by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed

to be in violation, of any provision of law or of any order or rule of the commission. No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electric, water or telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service."

Internal procedures are for the discretionary use of employees in accomplishing their tasks. The failure of an employee of a public utility to follow an internal procedure, which procedure is not a rule set forth in a filed tariff, is not a violation of any provision of law or of any order or rule of the Commission. Thus, the relief sought by the complainant should be denied.

Findings of Fact

1. On or about September 1, 1989, complainant ceased the practice of law.
2. On or about September 1, 1989 Greenfield, a shareholder of complainant, made an oral request to change the directory listing of two telephone numbers including (213) 454-0621 from complainant to himself as a sole proprietor.
3. Defendant has a procedure wherein requests to change directory listings from a corporation to a sole proprietorship are to be in writing.
4. The procedure set forth in Finding 3 is neither a tariff rule nor a rule of this Commission.

Conclusion of Law

Defendant is not in violation of any provision of law or of any order or rule of this Commission.

O R D E R

IT IS ORDERED that the relief sought by complainant is denied and that this proceeding is closed.

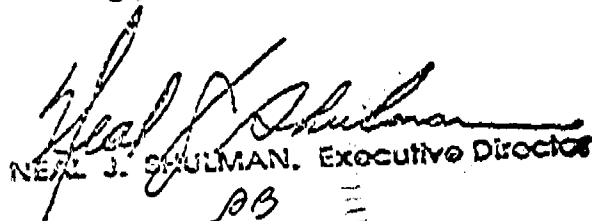
This order becomes effective 30 days from today.

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

PATRICIA M. ECKERT
President
G. MITCHELL WILK
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director