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Decision 91-07-012 July 2, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Werner E. Lang,

Complainant,

vs.

GTE California, Inc.,

Defendant.

ORIGINAL

Case 90-12-058
(Filed December 19, 1990)

OPINION

Background

Complainant Werner E. Lang filed this complaint seeking a Commission determination that he is not responsible to GTE California, Inc. (GTE) for unpaid telephone bills on account (213) 305-2878, totaling \$1,515.86. Mr. Lang bases his claim on the following contentions.

1. He established service in the business name, Enterprises for Trading and Consulting, Inc., and not in his personal name.
2. He sold the business to Jim B. Taylor on June 1, 1989. On June 5, 1989 he called GTE to change the business name to QM Sport and Fashion, Inc., and he verified in August 1989 that GTE had changed the responsible party for the account to Mr. Taylor.
3. GTE claimed Mr. Lang was responsible only after trying unsuccessfully to collect from both Mr. Taylor and Tom Albright, who owned the home where Mr. Taylor last operated the business.
4. Mr. Taylor used the service and is responsible for the total unpaid amount.

GTE responds that it provided service to Enterprises for Trading and Consulting, Inc., and later to QM Sport and Fashion, Inc., but that Mr. Lang was the customer of record at all times.

At the hearing on February 25, 1991 Mr. Lang testified for himself. GTE presented the testimony of Customer Representative Tom Ward.

Mr. Ward testified as follows:

1. GTE threatened to disconnect service to Mr. Albright, account (213) 398-1722, unless he paid the unpaid balance from account (213) 305-2878. Mr. Albright then filed a supersedure request with GTE for account (213) 398-1722, allowing continued service without liability for the prior service.
2. GTE wrongly attempted to collect the unpaid balance from Mr. Taylor and Mr. Albright; it later determined from its records that Mr. Lang was the customer of record.
3. Mr. Lang's continued financial interest in Mr. Taylor's business confirms Mr. Lang's liability for the total unpaid balance.

Discussion

The issue is whether Mr. Lang is responsible for the phone service after he sold the business on June 1, 1989, and if so, for what period. The service was finally terminated on February 5, 1990.

Mr. Lang states that he established the service in the business name Enterprises for Trading and Consulting, Inc. Under GTE Rule 5, Establishment and Reestablishment of Credit, in order to obtain business service, an applicant must establish credit by identifying a responsible party. The responsible party remains financially liable for costs until the account is closed or until a new responsible party is established. In this case, Mr. Lang established the credit and was clearly responsible until a new responsible party was established.

Next, Mr. Lang contends that because he sold the business to Mr. Taylor on June 1, 1989, he called GTE on June 5, 1989 to change the business name from Enterprises for Trading and Consulting, Inc., to QM Sport and Fashion, Inc. and to change the responsible party to Mr. Taylor. Lang further recalls confirming on August 28, 1989 that Mr. Taylor was shown as the responsible party on GTE's records.

GTE records presented at the hearing show the June 5, 1989 change in business name, but no change in responsible party. The record shows a handwritten note, "Same customer Werner Lang." GTE has no record of the August 28 confirmation call by Mr. Lang.

Mr. Lang further contends that GTE went to him for payment only after unsuccessfully trying to collect from Mr. Taylor and Mr. Albright. GTE tries to excuse those collection attempts as inadvertent errors. However, we believe that those collection attempts were not a mistake, since bills are normally rendered to the party of record. If GTE believed Mr. Lang to be the responsible party, and if its records so indicated, we see no reason why it would first exhaust all other attempts at collecting. The evidence indicates that GTE believed Mr. Taylor or Mr. Albright to be the responsible party. Mr. Lang apparently was considered only as a last resort if all other collection efforts failed.

Based on Mr. Lang's testimony that he requested a change in the responsible party on June 5, and based on GTE's testimony that it first sought to collect the unpaid amounts from Mr. Taylor and Mr. Albright, we conclude that Mr. Lang was not the responsible party after June 5, 1989.

GTE argues that Mr. Lang was responsible for the account because of his continued financial interest in the business. Under the sale agreement, Mr. Lang sold the business to Mr. Taylor for the price of \$1, and was to receive 10% of the corporate net profits for the 12 months following the sale. GTE further argues

that in providing financial assistance to the business, Mr. Lang retained responsibility for the business.

We disagree. Mr. Lang's entitlement to a share of net earnings did not make him responsible for the bills of the business; rather it is merely a condition of the sale. Similarly, the fact that Mr. Lang financially assisted the business after the sale does not make him liable for its bills.

Finally, we consider GTE's actions in administering its rules and practices relative to service termination for nonpayment of bills. Under GTE Rule 11, service may be disconnected 15 days after presentation of monthly bills; if a balance from a previous bill has not been paid, service may be discontinued prior to the 15 days. Based on testimony that Mr. Taylor operated the business during this period, and did not pay his bills, we assume that no payments were made after Mr. Lang paid the May bill. This assumption appears consistent with the buildup of the past due balance.

When the June bill was not paid, GTE could have taken action 15 days after its presentation in late June, or by about July 10. If GTE waited until a second bill had been issued with an unpaid balance, it could have taken action any time after that bill had been rendered late in July. In this case, GTE could have taken action by early August. Even if there were as a delay of several weeks until the account appeared on the list of delinquent accounts, GTE could have discontinued service by late August.

Mr. Ward testified that it is not customary for GTE to allow an account to get so delinquent before terminating service. Business accounts are sometimes allowed to carry balances higher than residential accounts, but not for thousands of dollars. Asked by the administrative law judge when GTE would ask the customer to pay up or lose service, Mr. Ward answered:

"...it would be on a monthly basis. For example, for one month, if there was a balance carried forth, I can't give you a specific

amount, however, we would send a notice. If payment was not received nor was there an attempt to establish payment arrangements, the service would be discontinued when it appeared on what we call a list of delinquent accounts."

In this case the service was discontinued only after the manager at the apartment complex contacted GTE requesting that service be terminated since the apartment was then vacant. The termination apparently took place more than eight months after bills were not paid. Mr. Ward offers no justification for the delay in discontinuing service.

GTE was clearly negligent in not following its rules and allowing the account, with average monthly charges less than \$200, to build-up an unpaid balance of over \$1,500.

Since we have concluded that Mr. Lang is not responsible for the service after June 5, 1989, we will hold him responsible only for service from May 22 to June 5, or about one-half of the June bill of \$249.49, which is for service through June 21. We will order Mr. Lang to pay GTE one-half of that amount, or \$124.74.

Findings of Fact

1. Mr. Lang filed a complaint seeking a determination that he is not responsible for \$1,515.86 in unpaid GTE phone bills on account (213) 305-2878.
2. Mr. Lang established service on the account in the business name Enterprises for Trading and Consulting, Inc.
3. Mr. Lang sold the business to Mr. Taylor on June 1, 1989.
4. The business name on the account was changed to QM Sport and Fashion, Inc. on June 5, 1989.
5. The account had no unpaid balance when Mr. Lang sold the business.
6. GTE attempted to collect the unpaid bills from Mr. Taylor and Mr. Albright before attempting to collect from Mr. Lang.
7. The unpaid balance accumulated to nearly ten times the normal monthly bill before GTE disconnected the service. The

disconnection occurred only after the apartment manager where the service was rendered requested it since the apartment was vacant.

8. GTE's Rule 11 provides for timely disconnection of service for nonpayment of bills. GTE did not follow the rule in this case.

Conclusions of Law

1. Mr. Lang should be ordered to pay GTE \$124.74 for service on the account to June 5, 1989.

2. Mr. Lang should not be held responsible for charges to the account after June 5, 1989.

3. Except to the extent granted, the complaint should be denied.

ORDER

IT IS ORDERED that:

1. Werner E. Lang shall pay GTE California, Inc. (GTE) \$124.74 for service to account (213) 305-2878.

2. GTE shall allow Mr. Lang up to six months to pay this amount, in equal installments and without interest.

3. Except to the extent granted, the complaint in Case 90-12-058 is denied.

This order becomes effective 30 days from today.

Dated July 2, 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

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NEAL J. SHULMAN, Executive Director