

Mailed

SEP 25 1991

Decision 91-09-051 September 25, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joseph Dadon,

Complainant,

vs.

Pacific Bell,

Defendant.

ORIGINAL

Case 91-02-089
(Filed February 20, 1991)

Joseph Dadon, for himself, complainant.
Colleen M. O'Grady, Attorney at Law, for
Pacific Bell, defendant.

OPINION

Background

Complainant Joseph Dadon filed this complaint seeking Commission determination that he is not responsible to Pacific Bell (PacBell) for \$1,138.51 in unpaid telephone bills on account (818) 343-1500. Dadon bases his claim on the following contentions.

1. He never established the service, which was located in his home.
2. The only contact he had with PacBell regarding business service was in relation to a fax service.
3. The phone service was used solely for a business he worked for, Advertising Promotes Sales, Inc. (APS).
4. APS paid the bills for the service until it went out of business. Dadon never paid for the service.
5. Since APS established and used the service, APS is responsible for the total unpaid amount.

PacBell responds that on August 29, 1989, Dadon established service in his home under the listed name of Alter Ego Communication, and the billed party name of Joseph Dadon. On September 7, 1989, Dadon ordered the listed name to be changed to APS, with no change in the billed party.

At the hearing on June 3, 1991, Dadon testified for himself. PacBell presented the testimony of Manager Steven Black and Service Representative Nancy Flowers.

Black testified as follows:

1. He was the service representative in the La Crescenta office during the time of the service to (818) 343-1500.
2. That service was requested in August 1989, for two lines in rotation, with calls rotating to the second line if the first line is busy, and billed to Dadon as a sole proprietorship.
3. Service was established without deposit or advance payment based on Dadon's good credit record on his residence service, (818) 782-4100.
4. Bills for the service were always sent to Dadon's home address, 4041 Vanalden Avenue in Tarzana.
5. APS is a California corporation in good standing, with the same home address as Dadon's. APS' chief executive officer is Sylvia Frias, who is Dadon's wife; Frias is her birth name.

Flowers testified about the contacts with Dadon in August 1990, based on her recollection and on the notes of the calls taken by her and other customer service representatives who talked to Dadon. Flowers' testimony may be summarized as follows:

1. Dadon called on August 13, 1990, stating that APS was claiming bankruptcy. PacBell called the California bankruptcy department and was advised there was no bankruptcy filed for APS.

2. Dadon called on August 28, 1990, stating that he was not the responsible party, rather Advertising Promotes Sales, Inc., of Connecticut (APS Conn.) was responsible, for the following reasons:
 - a. He was employed by APS Conn., and rented space in his home to them for business purposes.
 - b. APS Conn. promised to reimburse him if he put the service in his name.
 - c. He has been trying to get the billing corrected.
 - d. APS Conn. has not been paying him.
 - e. He never really used the service.

At the hearing Dadon denied that he had ever requested service from PacBell on the account, stating that Doreen Monk had requested the service for APS Conn. He argues that Exhibit A attached to the complaint shows that APS Conn. is the responsible party for the service. Exhibit A is a copy of a handwritten letter to the Commission from Monk, stating that the business lines installed in the home of Dadon were the responsibility of APS, presumably APS Conn., and not Dadon. Monk's letter has a return address in Danbury, Connecticut. Monk's letter does not explain the basis for her conclusion that the lines are not Dadon's responsibility.

Dadon testified that APS was set up as a California corporation with the same name as, and at the request of, APS Conn. Dadon further testified that the bills had been sent to APS Conn., who had paid them, until the time of unpaid balance accumulation. Dadon stated that he could prove that APS Conn. had been billed for the service. He was assigned a late-filed exhibit number and ordered to file this exhibit by July 8, 1991. On June 11, 1991, the exhibit was received, which was a copy of a bill to a different phone account in Ridgefield, Connecticut, listing Dadon and Monk.

On the exhibit Dadon wrote that "their accountant," ostensibly APS Conn.'s accountant, is unwilling to further cooperate.

Finally, Dadon acknowledged that he had used the phone service both for business and for personal use.

Discussion

The issue is whether Dadon is responsible for the unpaid bills for phone service.

Dadon attempts to prove his case on possible errors by PacBell, yet he has not presented convincing evidence of relevant errors. PacBell suggests that APS may have been set up in California for the purpose of avoiding responsibility for phone service. Dadon acknowledges that APS has never conducted any business of any kind since it was established, but denies any illegal or unethical operation or intent.

We have no evidence that a Connecticut corporation of the name APS even exists. Dadon attempts to show that Monk obtained the service. PacBell argues that it is highly unlikely that this occurred, since the voice of a female would likely be distinguished from Dadon, and that the error would have to have occurred several times; first, to establish service with Alter Ego Communication as the business name, then to change Alter Ego Communication to APS. In any event, we have no convincing evidence that the bills for this service were ever sent to any party other than Dadon at his residence. Evidence presented by PacBell shows that the business name was changed, but that Dadon was always the responsible party. The subject service was located in Dadon's home.

We note the substantial differences between the notes and recollection by PacBell of Dadon's conversations with them, and Dadon's testimony at the hearing. Dadon alleges that PacBell's notes of the calls are erroneous. Flowers explains that these notes are taken at the time of the call, as verbatim as practical, recording the substance of each conversation. We have no reason to believe these notes are not reasonably accurate.

Dadon attempts to cast doubt and makes many allegations but is unable to prove them. While we cannot positively determine who actually obtained the service, we can conclude that Dadon was aware that the billing was in his name. The evidence demonstrates that the bills were sent to Dadon at his residence. Dadon is unable to substantiate his claim that the bills were sent to APS Conn. If APS Conn. actually paid the bills for a period of time, that was due to an agreement between APS Conn. and Dadon, and does not relieve him of responsibility for the service. PacBell was not involved in such an arrangement, and cannot collect unpaid bills from APS Conn.

We conclude that Dadon is responsible for the account, and owes the total unpaid balance to PacBell.

The complaint should be denied.

Findings of Fact

1. Dadon filed a complaint seeking a determination that he is not responsible for \$1,138.51 in unpaid PacBell phone bills on account (818) 343-1500.

2. Service on the account was established in the business name Alter Ego Communication on August 29, 1989, with Dadon as the billed party, and in his home.

3. The business name on the account was changed to APS on September 7, 1989, with no change in the billed party.

4. APS is a California corporation with Dadon's wife as its chief executive officer.

5. Dadon failed to provide adequate evidence that he is not responsible for the service or that the bills for the service were sent to any party other than himself.

Conclusions of Law

Dadon is responsible for \$1,138.51 in unpaid bills on account (818) 343-1500.

2. The complaint should be denied.

[Handwritten signature and stamp]
Executive Director

ORDER

IT IS ORDERED that the complaint in Case 91-02-089 is denied.

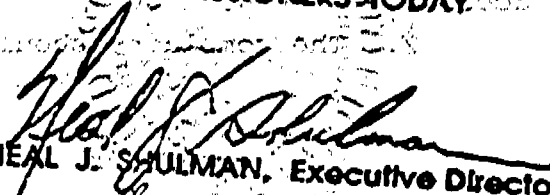
This order becomes effective 30 days from today.

Dated September 25, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I abstain.
/s/ G. MITCHELL WILK
Commissioner

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


NEAL J. SCHULMAN, Executive Director