

JUN 3 1992

Decision 92-06-014 June 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael Joseph DiMaggio,)
 Complainant,)
 vs.)
 Pacific Bell,)
 Defendant.)

ORIGINAL
 (ECP)
 Case 86-09-027
 (Filed September 17, 1986)

O P I N I O N

This order grants, in part, the request of Michael Joseph DiMaggio (DiMaggio) for compensation in this complaint case. DiMaggio filed the request for compensation on April 1, 1992 for his successful litigation of this complaint against Pacific Bell (Pacific) regarding lawful treatment of customer billing records. DiMaggio requests compensation from the Advocates' Trust Fund (Trust).

I. History of the Proceeding

DiMaggio filed a complaint against Pacific Bell on September 17, 1986. The complaint alleged that Pacific had unlawfully used DiMaggio's customer billing records in the course of an investigation of employee fraud.

In Decision (D.) 92-03-031, we found in favor of DiMaggio and ordered Pacific to cease using customer billing records for purposes unrelated to its utility operations. We fined Pacific \$1,000 for violating D.92860 and directed Pacific to file a statement of corporate policy regarding its handling of customer billing records consistent with the decision. DiMaggio now seeks compensation from the Trust for his participation in this case.

II. Issues

A. Is DiMaggio's Request for Compensation from the Trust Appropriate in this Case?

The Commission created the Trust on November 11, 1982. By its terms, the Trust may be used for intervenor fees in "quasi-judicial" complaint case as defined by CLAM v. PUC. The Trust is designed to provide compensation where it might not otherwise be available, for example, through our intervenor compensation program as set forth in Rule 18.7.

Most compensation requests brought before us are filed according to Rule 18.7 rather than from the Fund. Rule 18.7 permits compensation for participation in proceedings which affect rates. This case affects the utility's use of customer billing records and not rates. The proceeding was quasi-judicial in nature. It is appropriate therefore that DiMaggio has requested funding from the Trust rather than pursuant to Rule 18.7.

B. Is DiMaggio Eligible for Compensation?

Pursuant to D.92-03-090, the Commission considers the party's own economic interest in pursuing litigation. DiMaggio's complaint did not seek remuneration from Pacific or any other party. Rather, the complaint sought findings which would have the effect of protecting the privacy rights of utility customers. DiMaggio's economic interest was not sufficient to motivate participation in this case and DiMaggio is therefore eligible for compensation under the rules of the Trust.

C. Did DiMaggio Make a Substantial Contribution?

Fees paid out of the Trust may be awarded where a private party has "made a direct, primary, and substantial contribution to

the result of the case," under the Trust. An award is based on three factors, each discussed in turn below.

1. The Strength or Societal Importance of the Public Policy Vindicated by the Litigation

The Trust requires the Commission to consider the societal importance of the issues litigated by the party seeking compensation. DiMaggio's complaint raised issues relating to the privacy rights of utility customers. The importance of such rights is well-established in law and our decisions. DiMaggio's complaint therefore vindicated important public policy matters.

2. The Number of People Standing to Benefit from the Decision

The Trust requires that the Commission consider the number of people standing to benefit from a decision which is the subject of a request for compensation.

The privacy issue addressed in DiMaggio's complaint applies to all utility customers in the state. We have no evidence that utilities other than Pacific have improperly used customer billing records. Nevertheless, Pacific's misinterpretation of Commission decisions and case law could have affected any of its several million customers. The resolution of DiMaggio's complaint issues therefore affected a large number of customers.

3. The Necessity for Private Enforcement and the Magnitude of the Resultant Burden on the Complainant

In making an award, the Trust requires the Commission to consider the necessity for private enforcement and the magnitude of the resultant burden on the complainant.

Absent DiMaggio's complaint, we have no reason to believe Pacific's inappropriate use of customer billing records would have been brought to our attention. It appears, therefore, that

action by a customer or other directly affected party was necessary.

In bringing the case before the Commission, DiMaggio had to investigate the circumstances of the case and determine on his own whether Pacific's actions were lawful. It appears, therefore, that DiMaggio's burden was significant.

D. Are DiMaggio's Cost Estimates Reasonable?

The Commission is required by the Trust instrument to determine a reasonable level of fees according to the time spent, expenses, level of skill, and comparable fees paid to others practicing public utility law.

DiMaggio requests a compensation award in the amount of \$6,270 for work accomplished in the course of the complaint. Specifically, DiMaggio requests compensation for 83 hours of work at a rate of \$75 an hour plus \$45 for postage, copying, and telephone expenses.

The Commission has awarded attorney's fees in the range of \$150 to \$200. Expert witness fees have been in the range of \$50 to \$150 per hour. DiMaggio is not an attorney or other expert. His participation in the proceeding required some sense of his legal rights but did not require any particular expertise or training. DiMaggio's request for compensation does not provide any evidence regarding the reasonableness of his proposed hourly rate. Without some demonstration of the value of his time, we believe \$75 an hour is high. In D.90-08-007, we granted compensation to a non-expert complainant at a rate of \$40 an hour for his successful litigation of a complaint. We believe \$40 an hour is a reasonable rate to apply to DiMaggio.

DiMaggio's estimated time and expenses are reasonable. We therefore grant the following award to DiMaggio:

Intervenor fees (83 x \$40)	\$3,320
Expenses	<u>45</u>
Total	\$3,365

III. Compliance with D.92-03-031

D.92-03-031 directed Pacific to submit a statement of corporate policy regarding its treatment of customer billing information and to submit \$1,000 to the State's General Fund. The Commission Advisory and Compliance Division (CACD) informs the assigned administrative law judge that Pacific has complied with these requirements. Accordingly, this proceeding should be closed.

As set forth in past decisions, this order provides for interest commencing the 75th day after the filing of DiMaggio's compensation request. Interest is calculated at the three-month commercial paper rate beginning on June 16, 1992 and continuing until the Trust makes full payment of the award.

Findings of Fact

1. DiMaggio has filed a request for compensation from the Trust for its participation in this proceeding.
2. The purpose of the Trust is to provide compensation in quasi-judicial proceedings and in cases where funding would not otherwise be available.
3. DiMaggio's complaint is a quasi-judicial proceeding.
4. D.92-03-031 found in favor of DiMaggio's complaint alleging violations of privacy rights by Pacific.
5. DiMaggio's economic interest was not sufficient to motivate participation in this case. DiMaggio is therefore eligible for compensation under terms of the Trust.
6. DiMaggio made a substantial contribution to the proceeding.
7. DiMaggio's request for compensation of 83 hours of work in this complaint, plus \$45 of expenses, is reasonable.
8. A reasonable hourly rate for DiMaggio's participation in this complaint is \$40.

9. CACD has informed the assigned ALJ that Pacific has complied with the directives of D.92-03-031.

Conclusions of Law

1. The Commission should grant DiMaggio's request for compensation in this proceeding at an hourly rate of \$40.
2. The Commission should direct the Trustee of the Advocates' Trust Fund to award to DiMaggio \$3,365.
3. Because Pacific has complied with the directives of D.92-03-031, this proceeding should be closed.

ORDER

IT IS ORDERED that:

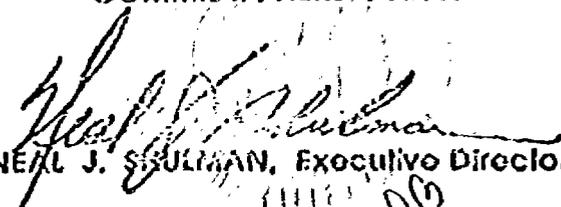
1. Michael Joseph DiMaggio's (DiMaggio) request for compensation from the Advocates' Trust Fund is granted in part.
2. Trustee, Sumitomo Bank, shall pay to DiMaggio the sum of \$3,365 plus interest at the three-month commercial paper rate commencing on June 15, 1992 and continuing until payment is made.
3. The Executive Director shall serve Sumitomo Bank and Trust Company a copy of this decision by certified mail.
4. This proceeding is closed.

This order is effective today.

Dated June 3, 1992, at San Francisco, California.

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

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

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NEAL J. SULLIVAN, Executive Director