

Mailed

SEP 3 1992

Decision 92-09-005 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Stuart J. Niemi,

Complainant,

vs.

GTE California Incorporated,

Defendant.

Case 91-03-012
(Filed March 5, 1991)O P I N I O NBackground

Complainant Stuart J. Niemi (Niemi) alleges that on two occasions he made payments in cash to the GTE California Incorporated (GTEC) office located at 1301 Sixth Street in Santa Monica, but the payments were not credited to his account. The payments were in the amounts of \$58.06 on June 11, 1990, and \$68.49 on July 3, 1990. The latter amount was payment for a check with insufficient funds in that amount. The amount on deposit with the Commission is \$131.24, slightly more than the two amounts in question, perhaps due to a fee for the returned check in July.

Niemi bases his claim on the following contentions:

1. He has used this facility to pay his bills, usually in cash, since about 1982 or 1983, without incident.
2. The facility appeared to be a GTEC office, although he now realizes it was operated by National Payment Network (NPN), a private company under contract to GTEC.

GTEC responds that it notified customers by letter of September 26, 1988 that the Santa Monica payment center on Sixth Street had reopened for convenience of the customers. The letter indicates that the center is staffed by NPN employees.

GTEC maintains that it is not responsible for alleged payments when there is no record of them; no cancelled check, no cash receipt. In addition, the payment facility allegedly had a sign stating that cash payments were no longer accepted.

GTEC argues that Niemi should have pursued this matter with NPN rather than GTEC, since the former is an independent contractor. GTEC asserts that Niemi could have joined NPN in this proceeding, or could have pursued the matter separately with it.

Discussion

There is very little hard evidence in this complaint. Niemi has no proof of his cash deposits, and neither GTEC nor NPN have any record of them.

Similarly, while GTEC witness Thomas Ward (Ward) testified that the payment center had a sign indicating that cash payments would no longer be accepted, Ward had not seen the sign. Rather he relied on the statement of NPN.

In a matter with little evidence, we must consider the demeanor of the complainant. We are impressed with the apparent sincerity and honesty of the complainant. Niemi stressed that the amount of money is not significant, but that he felt wronged by the treatment of this matter by GTEC.

We are particularly concerned with GTEC's attitude that because NPN was a independent contractor, GTEC is not responsible for its operations. This position is totally wrong and cannot be supported. Niemi did not contract with NPN, GTEC did. Whether Niemi should have known that the payment center was not operated by GTEC is irrelevant; it was a facility authorized by GTEC for payments. Therefore, GTEC cannot escape responsibility in this circumstance.

Regarding payment with cash, we have only hearsay testimony that a sign was posted that cash was no longer accepted. GTEC witness Ward did not confirm this by viewing the payment

center, and therefore did not know how visible the sign was, if indeed there was such a sign.

We believe that if the payment center did not wish to accept cash, it or GTEC should have actively notified customers. For example, if customers deposited cash, they should have been notified by letter to cease this practice. The mere acceptance of cash payments ratifies the method of payment. Furthermore, while GTEC emphasizes its letter of September 26, 1988 that notified customers of the reopened payment center, the letter is mute about cash payments. Finally, if cash was not acceptable, the payment envelope should have clearly stated so; apparently it did not.

We believe Niemi reasonably assumed that cash payments were safe, since he had paid by cash more often than not for eight years, and never had a problem. As Niemi stated, paying by cash is a convenience to many people who don't have a checking account, and who wish to eliminate the cost and inconvenience of using money orders for payment.

We conclude that Niemi did make the cash payments he alleges, and that GTEC did not take adequate measures to inform customers to not pay in cash. Unless customers are made aware that cash is not acceptable, they cannot be expected to assume they are at substantial risk in doing so. We note that the payment center is now operated by GTEC; whether the change resulted in part from other complaints of this type is not known. GTEC states that the change was a matter of economics.

We will order the \$131.24 deposit disbursed to complainant Niemi.

Findings of Fact

1. Niemi filed a complaint seeking credit for two bills allegedly paid in cash in June and July of 1990 at the NPN office at 1301 Sixth Street in Santa Monica.

2. GTEC contracted with NPN to handle payment of its bills at the Santa Monica location.

3. Niemi had paid his bills at the Santa Monica location for several years, frequently in cash, and without problems.

4. GTEC sent a letter dated September 26, 1988 to local customers informing that the Santa Monica office would reopen and be operated by NPN. The letter did not indicate that cash payments are inappropriate, or that GTEC is not responsible for the actions of NPN.

5. The Santa Monica location is no longer operated by NPN.

Conclusions of Law

1. Neither GTEC nor NPN adequately informed customers to not pay bills in cash at the Santa Monica location.

2. GTEC is fully responsible for the actions of its subcontractor NPN in collecting customer payments.

3. Niemi should be credited for the amounts paid in June and July 1990.

ORDER

IT IS ORDERED that:

1. GTE California Incorporated shall credit complainant Stuart J. Niemi for payments made on June 11 and July 3 of 1990 in the amounts \$58.06 and \$68.49, respectively.

2. The \$131.24 fee impounded by the Commission shall be disbursed to Stuart J. Niemi.

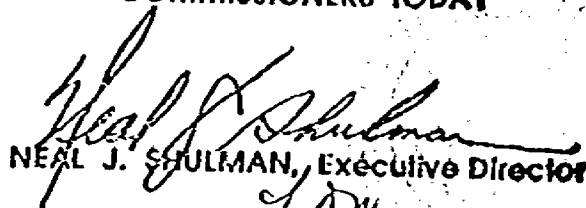
3. Except to the extent granted, the complaint is denied.
This order becomes effective 30 days from today.
Dated September 2, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director