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Decision 92-09-057 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Virgilio's Restaurant

Complainant,

vs.

Pacific Bell

Defendant.

(ECP)
Case No. 92-01-035
(Filed January 15, 1992)

ORDER DENYING REHEARING OF DECISION 92-05-014

VIRGILIO'S RESTAURANT (Complainant) has filed an application for rehearing of Decision (D.) 92-05-014. We have considered the application and are of the opinion that good cause for rehearing has not been shown.

Facts

Complainant is a restaurant in Los Angeles. Pacific Bell disconnected service to Complainant on May 22, 1991 for failure to pay its bill, and later charged it the \$200 allowable under tariff to reconnect service. In January of 1992 Complainant filed its formal complaint with us against Pacific Bell, alleging that service had been disconnected without proper notice and therefore Complainant should not have to pay the reconnection fee. The complaint also alleged violations of the Fair Debt Collection Practices Act of 1978, Ca.Civ.C. §§ 1788 et seq. Complainant asked for \$5,000 compensation for lost revenues caused by what it called "intentional and willful misconduct," and for an additional \$1,000 in punitive damages under the Act.

Hearing was set for hearing on April 6, 1992 in Los Angeles. No one appeared on behalf of Complainant. Accordingly, on May 8, 1992, we issued D.92-05-014, dismissing the complaint for failure to prosecute. On May 7, however, our Los Angeles

office received a document entitled "petition for rehearing" from Complainant, offering "unforeseen circumstances" as a reason for setting a new hearing date.

Kale Williams of our Docket Office tried to reach Carl Lawton, Complainant's President, by telephone but was unable to do so. On May 18, he wrote to Lawton informing him that the decision in question was D.92-05-014, that it had become final on May 8, and that the application for rehearing of D.92-05-014 should be filed by June 8. He also indicated to Lawton that "Your application should give a more detailed explanation for your request for a new hearing date other than 'unforeseen circumstances.'" He quoted Rule 86.1 of our Rules of Practice and Procedure (which states the requirements for the contents of an application for rehearing) and directed Lawton to our Public Advisor in case he needed assistance preparing his application.

On July 14, the Docket Office received Complainant's application for rehearing, consisting of a complaint form filled out in handwriting. The application simply alleges that it is timely, without offering any justification for the request for a new hearing date. Pacific Bell has filed a response to the application.

Timeliness

The first application, typewritten on one of our complaint forms, reached us before any decision was ever issued and therefore does not comply with Public Utilities Code § 1731 (b), which provides that "After any order or decision has been made by the commission, any party ... may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing." It also fails to comply with Rule 85, which provides, in part, that "The application shall be filed within 30 days after the date of issuance" (Emphasis added.)

The first application also failed to specifically state the grounds on which Complainant requested a new hearing date. The entire text of the allegation is: "This is a [petition] to

set aside the Administrative Law Judge's submission to dismiss the case, and to set a new hearing date, due to [unforeseen] circumstances that prevented the plaintiff [from attending] the initial hearing." There is no mention of what the "unforeseen circumstances" were, or why we should grant Complainant's request. Because of its improper timing we will not consider it except as discussed below.

Good Cause

The second application, despite the information given in Williams' letter, did not cure the problems of the first. It was not filed until July 14, 67 days after the issuance of D.92-05-014 and 30 days after the date specified in Williams' letter as the proper deadline. The entire text of the allegation in this application is: "This is a timely application for a [rehearing of] the decision of May 8th in the above case. Please be advised [that] the original application for a [rehearing] was mailed timely, but crossed mail with the 'Opinion' decision."

Applying Rule 87, we will look at the first application as incorporated by reference into the second. But, even giving the most liberal latitude to Complainant, it is not possible to find good cause to grant a second hearing in the bare allegation of "unforeseen circumstances." There is no indication, for example, that Complainant made any effort to inform Pacific Bell or us that it would not appear at the hearing, or any reason why it could not have done so. There is no indication of what those unforeseen circumstances were, that might conceivably show good reason to allow Complainant a second chance.

Nor does lack of familiarity with our procedures excuse the lateness and insufficiency of Complainant's application in the light of Williams' letter. Complainant failed to take advantage of this information, and the application has not shown good cause for rehearing.

The Money Damages

In any event, we have no authority to order Pacific Bell to pay Complainant any of the money damages it claims.

While we do have jurisdiction to order Pacific Bell to repay the \$ 200 reconnection fee, if it were shown to have charged it wrongfully, we do not have authority to enforce provisions of the Fair Debt Collection Practices Act. Ca.Civ.C. § 1788.30 (f). We may hear evidence in a complaint that the utility has violated the law in question, but we cannot make a money award. If Complainant can establish a case against Pacific Bell for such violations, it must do so in the Superior Court in order to claim its award.

THEREFORE, IT IS ORDERED that rehearing of D.92-05-014 is hereby denied.

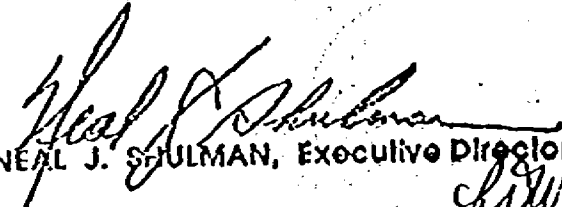
This order is effective today.

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. SCHULMAN, Executive Director