

ORIGINAL

Decision 83 09 010 SEP 7 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Daniel A. Kosth, dba)
Interbanc Data Exchange)
146 N. Golden Mall)
Burbank, CA 91502)
(213) 841-8202,)

Complainant,)

vs.)

Pacific Telephone)
26 North Marengo Avenue)
Pasadena, CA 91105)
(213) 796-3730,)

Defendant.)

Case 82-10-05
(Filed October 15, 1982)

Daniel A. Kosth, for himself, complainant.
Michael D. Sasser, Attorney at Law, for
defendant.

ORDER OF DISMISSAL

Complainant Daniel A. Kosth brings this complaint against defendant Pacific Telephone and Telegraph Company for gross misrepresentation, inadequate installation, poor and negligent service, and interference with trade conduct. Complainant requests an order from the Commission requiring defendant, among other things, to:

1. Fully credit and refund remaining Horizon installation charges of \$1,917.65 to complainant.
2. Reduce complainant's monthly billing charges for the period March 1982 to July 1982 by \$819.33 per month for a

total of \$4,096.65, which resulted from defendant's recommended installation of a Horizon System.

3. Require defendant to review and calculate the monthly zone and long-distance savings to which complainant was entitled had defendant provided the WATS and foreign exchange lines complainant requested during the period March through July 1982.
4. Refund to complainant those moneys currently held in the Commission's trust funds amounting to \$9,024.76.

In its answer defendant generally denies each of complainant's allegations and requests that the complaint be dismissed and sums deposited with the Commission be disbursed to defendant.

This matter came on regularly for hearing on December 13, 1982. During the proceeding complainant and defendant entered into a stipulated agreement under which it was agreed that:

1. Complainant's outstanding balance of \$18,885.98 would be reduced by defendant in the amount of \$2,264.77.
2. All sums on deposit with the Commission would be released to defendant and credited against complainant's remaining outstanding balance.
3. Complainant agreed to pay defendant the remaining balance in three installments beginning January 15, 1983.
4. If complainant requested new telephone service, defendant would comply with such request providing the initial installment payment of the outstanding balance owed by complainant was timely paid.
5. Defendant would cancel the balance due on the "Madison Special Accounts" in the amount of \$378.68.

6. Complainant was to remiss, release, and forever discharge defendant from any and all claims relating to the complaint filed in this matter and withdraw this complaint.

On January 20, 1983 defendant informed the assigned Administrative Law Judge (ALJ) that it had sent the stipulated agreement and withdrawal form in writing to complainant but had received no response. Defendant also informed the ALJ that complainant failed to make the first of the agreed upon three installment payments.

On January 20, 1983 the ALJ contacted complainant and was informed that complainant decided not to sign the stipulated agreement or the withdrawal request and that he had consulted an attorney in the matter.

Because of the large sums of money placed on deposit by complainant and because complainant failed to go forward with his complaint or abide by his stipulated agreement made during the hearing, the ALJ issued a ruling and order on February 22, 1983 that the amount of \$9,024.76, which was on deposit with the Commission, be disbursed to defendant.

In late January 1983 complainant informed the ALJ by letter that a petition for bankruptcy had been filed on his behalf and that he had retained counsel. Accompanying his letter was a notice of stay issued by the United States Bankruptcy Court, Central District of California, in Case No. LA 82-21819 JD. In March and April 1983 the ALJ made several attempts to contact complainant's attorney but was unsuccessful and there was no response from the attorney to several requests that the attorney contact him. In June 1983 the ALJ was successful in contacting the attorney who indicated that he was filing a civil action for damages against

defendant in the Superior Court and that he would take no further action on the complaint before the PUC. On June 13, 1983 the ALJ wrote to the attorney setting forth his understanding of their telephone conversation of June 9 and the ALJ informed the attorney that the attorney's decision not to pursue the complaint matter with the Commission could only be construed as complainant's abandonment of Case 82-10-05 and that unless the ALJ heard otherwise from the attorney by June 30, 1983, an order of dismissal would be prepared because of lack of prosecution. There has been no response to the letter from complainant's attorney.

Findings of Fact

1. During hearings on this complaint on December 13, 1982, complainant and defendant entered into a stipulation in which it was agreed that the outstanding balance of \$18,885.98 owing to defendant by complainant was to be reduced in the amount of \$2,264.77; moneys on deposit with the Commission were to be disbursed to defendant and credited against complainant's outstanding balance; defendant was to cancel the "Madison Special Accounts"; a remaining balance was to be paid by complainant to defendant in three installments commencing in January 1983; and the complaint was to be dismissed by complainant.
2. Following the December 13, 1982 stipulation, complainant refused to comply with the terms of the stipulation.
3. On December 15, 1982 complainant filed a petition for bankruptcy in the United States Bankruptcy Court, Central District of California.
4. In June 1983 complainant's attorney notified the ALJ that he will no longer pursue the complaint matter before the Commission.

5. In a letter dated June 13, 1983 from the ALJ, complainant's attorney was given until June 30, 1983 to indicate an intent to prosecute the complaint matter or else an order of dismissal for lack of prosecution would be issued.

6. There has been no response from complainant's attorney to the June 13, 1983 letter.

Conclusion of Law

The matter should be dismissed for lack of prosecution.

IT IS ORDERED that Case 82-10-05 is dismissed for lack of prosecution.

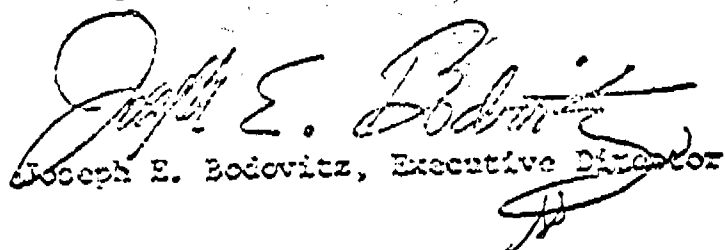
This order becomes effective 30 days from today.

Dated SEP 7 1983, at San Francisco, California.

Commissioner William T. Begley
being necessarily absent, did
not participate.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director