

ORIGINAL

Decision No. 86548

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALFRED L. PADWAY DBA INSURANCE
PERSONNEL SERVICE,

Complainant,

vs.

PACIFIC TELEPHONE COMPANY,

Defendant.

Case No. 10077
(Filed April 2, 1976)

Alfred Padway, for himself, complainant.
Norah S. Freitas, Attorney at Law, for
The Pacific Telephone and Telegraph
Company, defendant.

O P I N I O N

By this complaint, Alfred Padway alleges that he is a customer of The Pacific Telephone and Telegraph Company and advertises his business in the yellow pages of the San Francisco Telephone Directory; that defendant failed to comply with his request to change the name of his business listed in the yellow pages from Insurance Employment Agency to Insurance Personnel Service in the directory issued in September 1975 and make the same name change in his directory assistance listing; and that as a result of this, he lost business and had the value of his contracts with defendant reduced. Complainant requests an adjustment of his base telephone and yellow page advertising bills.

In its answer, defendant alleges that complainant did not inform it of the requested name change until after the September 1975 directory was issued; that subsequent thereto, his directory assistance listing was changed; that in an attempt

to settle the matter, it had offered to adjust 33-1/3 percent of the charges for that portion of the directory advertising and exchange service which could have been affected by the alleged error; and that the offer was rejected by complainant. Defendant denies that complainant is entitled to any relief and requests that the complaint be dismissed.

Public hearing was held before Examiner Arthur M. Mooney in San Francisco on July 12, 1976, on which date the matter was submitted.

Complainant

The following evidence was presented by complainant:

He was first licensed by the Bureau of Employment Agencies of the State of California in May 1970 under the business name Padway Insurance Personnel Agency and later changed his business name registered with the bureau to Insurance Employment Agency and again changed it to Insurance Personnel Service on January 1, 1975. The business conducted under this name is located in San Francisco and involves the recruitment and placement of personnel in positions in the insurance field in California. Since May 1, 1975, he has also been licensed by the Bureau of Employment Agencies to do business under the name Multiple Listing Personnel Service which is a referral service business for other types of employment. This latter business is in the beginning stages and is not involved in the complaint. Prior to his personnel service businesses, he operated an insurance agency.

On or about January 1, 1975 he telephoned defendant and informed one of its employees that the name of his company had been changed to Insurance Personnel Service. On May 22, 1975 a representative of defendant visited his place of business to take his order for advertising in the 1975 directory. He informed the representative that the name of his business had been changed from

that shown in the current directory, and the representative told him that this would be no problem. He signed the directory advertising order. Exhibit 1 is a photostatic copy of his copy of the order. On his copy, he crossed out his former business name which had been typed on the order form and wrote in the correct new name, Insurance Personnel Service. He does not know if the representative made the same name change on defendant's copy. He requested a change in the type and size of the telephone number from that shown in his ad in the September 1974 directory. He also requested that he be furnished with a proof of the new ad. This was furnished to him. The proof incorrectly showed his former business name. He immediately telephoned defendant regarding this and requested another proof. He was informed by one employee of defendant that it was then too late to give another proof and by another employee that the Commission did not require it to give proofs to customers. He also made additional telephone calls to defendant subsequent to January 1, 1975 informing it of the name change. Seldom were his telephone calls to defendant given to the same employee to answer.

The telephone number listed for him in the yellow page ad and in the white pages is 391-5900. His equipment includes the base telephone with several extension telephones. All are equipped with buttons and an intercom circuit. The equipment is connected to several outside lines and has a rotary system so that if one line is busy, an incoming call will be automatically transferred to a free line. The charge for this service, which he believes includes one additional outside line, is \$53.10 per month. He has two additional telephone numbers, 391-4740 and 391-4847, and the charges for them are \$7.50 and \$9.60 per month, respectively. These two lines are also on the rotary system and are not listed in the telephone directory. All of the equipment functions properly. The charge for the erroneous

ad in the yellow pages and incorrect business name listing in the white pages of the September 1975 directory is \$36.20 per month.

Because of his dispute with defendant regarding the incorrect name, he deposited the amount he was billed by defendant for August 1975 with the Commission. This amount was later turned over to defendant. He made an additional deposit with the Commission which was returned to him several months later. Since September 1975 he has made no payment to defendant on his account. His telephone service has been continued.

The relief he now seeks is a 100 percent reduction of all charges for telephone service and directory advertising from January 1, 1975 through the one-year life of the September 1975 directory. He pointed out that the reason for requesting the additional relief for the period January through August 1975 was because of defendant's failure to make the business name change in its directory assistance listing which he requested in January 1975. In this connection, he stated that his business has been conducted under the new name since January 1, 1975 and that because directory assistance had the wrong name, he had lost potential clients.

Defendant

The advertising sales representative of defendant who handled complainant's account for the 1975 San Francisco Directory presented the following evidence: Any changes requested by a customer are processed by the business office handling the customer's account. He personally made a search of the records of the business office handling complainant's account and also the records of the directory department and found no record of any request for a name change by complainant in January 1975. There was a record in the business office files of a request by complainant

on January 31, 1975 for an additional business line, and according to this office's files, the first time complainant requested the name change was September 2, 1975. He visited complainant's place of business in March 1975 to review his advertising for the September 1975 directory and informed him that the closing date for receiving ads for the book was June 5, 1975. Complainant stated he was not ready to place his ad at that time and asked him to return just prior to the closing date which he did on May 22, 1975. At that time, he reviewed with complainant the items of advertising that were shown on his current contract and in his line listings in the white and yellow pages and in his one-inch informational ad in the September 1974 directory. Complainant at no time informed him that there had been a change in the business name shown in the 1974 contract and directory. However, complainant did request that some changes be made in the format of the informational ad to be included in the September 1975 directory and requested a proof copy of the ad. Exhibit 2 is a photostatic copy of defendant's copy of the advertising contract signed by complainant on May 22, 1975 for the September 1975 directory. This is the same document introduced in evidence by complainant as Exhibit 1. However, the typed name Insurance Employment Agency has not been crossed out and is the only business name shown on the copy of the contract in Exhibit 2. Also, Exhibit 3, which is a photostatic copy of the copy sheet he prepared for the new directory and which was approved and signed by complainant, has the same business name on it as shown in the September 1974 directory. He did not inform complainant that a proof would be furnished before the June 5, 1975 closing date for the new directory. He had no further contact with complainant.

The following evidence was presented by an official of the General Administration - Directory Department of defendant: His primary responsibility is to review formal complaints involving

the directory department. Exhibit 4 is a copy of the proof of the informational ad which was mailed to complainant on July 9, 1975. The business name shown on the proof is Insurance Employment Agency. Complainant returned the proof and requested several changes in the format but not in the business name. The returned proof was signed by complainant and dated July 11, 1975 by him. A member of defendant's Contracts Verification Group called on defendant on July 21, 1975 to discuss the changes, which complainant accepted. At this meeting complainant did not request a change in the business name shown in the proof, and he was informed that no additional proofs could be provided. The new directory was delivered to customers between August 27 and September 6, 1975. According to the records of the business office, complainant called this office on August 29, 1975 and claimed that he ordered his listing changed prior to the directory closing date, and during a subsequent conversation, asserted that his listing was to have been changed in January 1975. On September 2, 1975 complainant again called the Business Office and this time requested that his business name be changed from Insurance Employment Agency to Insurance Personnel Service, and the application for name change was sent to complainant and signed and returned by him. On October 6, 1975 complainant again called the business office and claimed that his listing with Directory Assistance was still incorrect. However, according to the business office records the name change had been made on the directory assistance records several days after the September 2, 1975 order was taken. Complainant filed informal complaints with defendant in October 1975 and January 1976 and in both instances, defendant took the position that it had published the listings and advertisings as requested by the customer; that it had no record of the alleged name change request in January 1975; and that complainant had ample opportunity to verify his business name listing in the sales contract and proof. Since the filing of the complaint herein, the witness has met

with complainant on April 29, 1976 and has had several conversations with him subsequent thereto, and on the remote possibility that complainant had called the business office in January 1975 regarding the name change, offered to adjust 25 percent of the basic telephone service and advertising charges that would have been affected. The adjustment totaled \$304.20 for the year. Complainant said he would consider the offer, and on May 5, 1976 stated he would withdraw his complaint if defendant would give an adjustment of \$625 on the total bill and accept time payments on the balance of approximately \$600. The counter offer was refused and complainant was informed that failure to pay disputed bills could result in discontinuance of telephone service and refusal to accept advertising for future directories. Complainant was also informed that he could deposit disputed payments with the telephone company or with the Commission and this was confirmed by a letter addressed to complainant, a copy of which is included in Exhibit 6. Complainant has not made any payment since August 1975 for basic exchange, toll, and advertising charges. His current total balance due as of June 26, 1976 is \$1,798.03. Action on this balance is being withheld and a tentative ad for the September 1976 directory has been taken from complainant pending the decision in this matter.

The official testified that according to his information, the two additional lines, 391-4740 and 391-4847, which complainant has are not connected to the 391-5000 rotary system, and complainant is not charged for them being on the rotary system; that for this reason, the charges for the other two lines were not considered in the compromise offer made by defendant and which complainant refused; and that the compromise offer covered only the 12-month period of the September 1975 directory since only a change in the directory assistance listing could have been made during the earlier period from January to August 1975.

The attorney for defendant stated that reason for the compromise offer was to avoid the time and expense of a hearing and that since it had not been accepted prior to the hearing, it is now withdrawn.

Discussion

The primary issue for our determination is the date on which defendant was placed on notice by complainant that his business name had been changed from Insurance Employment Agency to Insurance Personnel Service. The evidence presented by both sides on this issue has been recited in detail above. It is complainant's position that he first notified defendant of the change by telephone on or about January 1, 1975. It is defendant's position that it has no record of any such name change until late August 1975, which was after the September 1975 directory had been printed and was being issued, and that a formal request for the name change was not made by defendant until September 2, 1975.

Other than the handwritten notation made by complainant on his copy of the advertising contract (Exhibit 1), we have only his testimony to support his contention that he notified defendant of the name change prior to latter August 1975. In this connection, it is noted that a similar name change was not written on defendant's copy of the contract (Exhibit 2). There is no reasonable explanation in the record before us of why complainant did not see to it that defendant's advertising sales representative wrote the name change on defendant's copy of the sales contract (Exhibit 2) and the copy sheet (Exhibit 3). This obviously was not complainant's responsibility; however, it does seem unlikely that the representative would have failed to make the name change on the two documents had complainant clearly indicated to him that the name should be changed. In this regard, it is the representative's testimony that he has no recollection of any such request by

complainant. Furthermore, there has been no reasonable explanation of why complainant did not correct the business name shown on the proof (Exhibit 4) which he returned to defendant on July 11, 1975 when he did indicate thereon several changes he wished made in the format of the ad. Complainant's statement that he had a telephone conversation with defendant regarding the proof and did mention the name change during these conversations is not persuasive. The weight of the evidence clearly supports defendant's assertions that it was not informed by complainant during the contract negotiations and review of proof for the September 1975 directory that there was a change in complainant's business name.

As to complainant's assertion that he notified defendant by telephone on or about January 1, 1975 of the name change, defendant claims that it has no record of any such telephone request. Assuming that the request had been made and not complied with, complainant certainly had ample opportunity to see to it that the new name was shown on defendant's copy of the advertising sales contract or the copy sheet or the proof he returned for the September 1975 directory, which he did not do.

From a review of the evidence, we are not persuaded that complainant communicated to defendant his request that his business name be changed prior to the closing date of the directory.

Regarding complainant's contention that the directory assistance listing was not changed to show his new business name, the evidence presented by defendant that this was done shortly after he formally notified it of the change on September 2, 1975 and executed the required name change document is persuasive.

There is no sound basis on the record before us for granting the sought or any other relief. The relief requested will be denied.

Findings

1. Complainant operates an employment service which recruits and places people in the insurance field. His place of business is in San Francisco.

2. The name of complainant's insurance employment business was changed from Insurance Employment Agency to Insurance Personnel Service on or about January 1, 1975.

3. Complainant is a customer of defendant. In addition to receiving telephone service, complainant's business is listed in the white and yellow sections of the directory and he has a one-inch informational ad in the yellow pages of the San Francisco telephone directory.

4. Complainant's business was listed in the September 1974 directory under the name Insurance Employment Service.

5. Complainant on his copy of the advertising contract for the 1975 directory crossed out the name Insurance Employment Agency which had been typed on it and wrote in the name Insurance Personnel Service. A similar change is not shown on defendant's copy of the contract or on the copy sheet and ad proof for the 1975 directory which were signed by complainant.

6. Defendant has no record of any request by complainant that the business name in his listings and ad in the September 1975 directory be changed to Insurance Personnel Service until late August 1975, which was after the directory was printed and was being distributed.

7. The evidence is not persuasive that complainant communicated to defendant prior to the time referred to in Finding 6 that his business name had been changed.

8. Within a reasonable time after complainant notified defendant that his business name had been changed to Insurance Personnel Service, defendant made the necessary change in its directory assistance listing.

9. No negligence has been shown on the part of defendant in the listings and ad in its September 1975 directory for complainant or in its assistance listings for complainant.

Conclusion

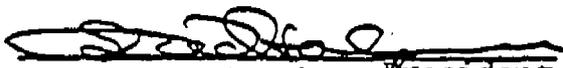
The relief requested should be denied.

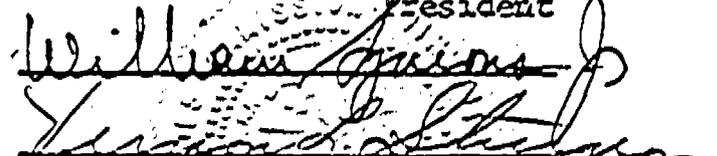
O R D E R

IT IS ORDERED that the relief requested is denied.

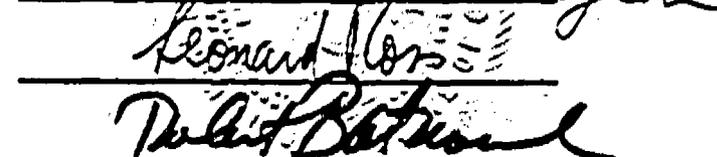
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 26th day of OCTOBER, 1976.



President


Leonard V. ...



Commissioners