

ORIGINAL

Decision No. 88702 APR 18 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ELAINE I. BRUNO,  
Complainant.

vs.

GENERAL TELEPHONE COMPANY  
OF CALIFORNIA,  
Defendant.

Case No. 10414  
(Filed September 6, 1977)

Elaine I. Bruno, for herself,  
complainant.  
Hart, Snyder, Johnson, and Potter,  
by Richard E. Potter, Attorney  
at Law, for General Telephone  
Company of California, defendant.

O P I N I O N

Complainant (Bruno) contends that certain charges billed her by defendant (General) in connection with business telephone (714) 629-5091 for service at R & D Appliance, 4750 Holt Avenue, Montclair, San Bernardino County, are not owed by her. On October 12, 1977 General filed its answer to the complaint denying the essential allegations. General asserts, among other things, that Bruno owed \$1,189.30 for service on number 629-5091 and has paid that amount in full. Bruno seeks reparations for the amounts she paid which were not owed by her.

Public hearing was held before Administrative Law Judge Norman Haley at Pomona on December 16, 1977, and the matter was submitted.

Complainant's Presentation 8191 81 RPA

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Bruno testified on her own behalf and also called a business associate and his wife. She bought R & D Appliance from Robert F. Robbins and filed her dba on March 4, 1977. Assertedly, Robbins had previously bought the business from Donald E. Kutch. At the time of Bruno's purchase there was a bill of \$444.80 covering four months service to Robbins on number 629-5091 which she assumed. She said she was helping Robbins because the Board of Equalization was going to close him down. In the middle of April Bruno and Kutch went to General and Kutch made a payment of \$275. Bruno assertedly had number 629-5091 transferred to Kutch who signed for it on March 29. On May 4 an employee of General informed Bruno that Kutch had ordered the telephone turned off because he had been unaware that the bill Bruno owed was as high as it was. Bruno tried to get General to reassign number 629-5091 back to Robbins, but was unsuccessful. On August 11 Bruno called 629-5091 twice and Robbins answered both times. She contends that Robbins should not be using that number. She contends that number 629-5091 was disconnected for nonpayment and out of service from May until August 1977 at which time a Mr. Roach superseded it from Kutch. Bruno said she did not understand how Kutch could have signed the number over to Roach because from May to August the number belonged to General. She is of the opinion that the number should not have been transferred to someone not involved in the transactions at issue without the bill being paid in full. She contends that since Kutch took over the telephone number he should assume the monies owed; that she is not responsible for the bill; and that the matter should be between Robbins, Kutch, and General.

Defendant's Presentation

General admits that Bruno bought the R & D Appliance business and made arrangements with General to pay the outstanding bill for the business' telephone numbers. General denies that any telephone number of said business was thereafter transferred from Bruno to Kutch. General asserts that on March 11, 1977 Bruno assumed liability for all outstanding charges on number 629-5091, which served R & D Appliance; that Bruno was informed the balance owing as of March 5, 1977 was \$1,101.10; and that on April 29, 1977 Kutch signed a guarantor form and a supersedure request for 629-5091. On May 4, 1977 the guarantee was rescinded on the grounds of either fraud or misrepresentation upon Kutch's statement that Bruno had misrepresented to him the amount owing on the 629-5091 account. General alleges that the supersedure by Kutch never became effective so Bruno was still the customer who owed the bill. On May 4, 1977 a temporary disconnect was made due to nonpayment. On May 11, 1977 Bruno's service was permanently disconnected due to nonpayment of a final balance of \$1,189.30. On September 30, 1977 Bruno paid General \$1,189.30 in payment of the balance on number 629-5091.

Evidence on behalf of General was presented by two of its employees in Pomona. One of these was a customer representative who takes care of customers coming into the public office in relation to bills or any account activity. The other employee is a customer service superintendent who supervises seven customer representative supervisors in their business office to see that General's practices and procedures are followed. She is responsible for bill collections in her office, and has authority to cancel, waive, or rescind supersedures in appropriate cases.

According to General's witnesses Kutch signed a request to supersede number 629-5091 from Bruno. Before completing the transaction it was determined that the amount of unpaid bill was higher than Kutch originally had been quoted by General. The reason for the change in the account was due to one or more of Bruno's checks being returned for insufficient funds. This kept the account in a highly volatile condition. One of the checks that had been in process was for about \$278 and neither Kutch nor General was initially aware of the unpaid amount. Kutch offered to make some payment by BankAmericard but General does not accept payment by that method. Kutch did not have sufficient cash. Assertedly, he became very upset and contended he should not be responsible for the account because the amount actually due was substantially higher than he was quoted at the time he signed up. He demanded that the supersedure be canceled. The matter was referred to a supervisor and then to the customer service superintendent. After investigation the superintendent canceled the supersedure. Number 629-5091 is currently in service. The superintendent stated that Roach came to the public office and requested a telephone number. The service had been discontinued for some time and General employees were able to establish through identification that he was not previously associated with the account. He agreed to pay the directory advertising charges that were pending on the account. He was not charged for the telephone service amounts that were owing.

Discussion

The principal issue is whether Bruno or Kutch is the party owing the money to General. No documentary evidence was offered. Neither Bruno nor General called Robbins, Kutch, or Roach to testify. Based on the evidence it is clear that at the time of supersedure request General quoted Kutch an incorrect amount owing on number 629-5091 because one or more of Bruno's checks upon which the quotation was based subsequently were returned by the bank for insufficient funds. When Kutch subsequently was informed of the higher amount owing he demanded that the guarantee and supersedure be rescinded. General agreed to the rescission. Kutch did not supersede from Bruno. Bruno owed \$1,189.30 to General for the closing balance on number 629-5091 and has paid that amount. Number 629-5091 was properly assigned to Roach on or about August 1977.

Findings

1. On March 11, 1977 Bruno assumed liability for all outstanding charges on telephone number (714) 629-5091.
2. On April 29 Kutch signed a guarantor form for number 629-5091.
3. The outstanding charges on number 629-5091 quoted Kutch by General were less than those subsequently determined by General as the result of one or more of Bruno's checks being returned by the bank for insufficient funds.
4. Kutch was unwilling to pay the higher outstanding charges resulting from one or more of Bruno's checks being returned for insufficient funds.
5. The guarantee signed April 29 was rescinded by General on May 4 upon Kutch's representation that Bruno had misrepresented to him the amount owing on the 629-5091 account.

6. On May 4 a temporary disconnect of number 629-5091 was made due to nonpayment.

7. On May 11 Bruno's service on number 629-5091 was permanently disconnected due to nonpayment of a final balance of \$1,189.30.

8. On September 30 Bruno paid General \$1,189.30 in payment of the balance on number 629-5091.

9. The correctness of the final balance of \$1,189.30 is not at issue.

10. Kutch did not supersede number 629-5091 from Bruno.

11. Bruno was the party owing General the final balance of \$1,189.30 for number 629-5091.

12. None of the final balance of \$1,189.30 paid by Bruno to General should be returned by General to Bruno.

It is concluded that the relief requested in this proceeding 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 thirty days after the date hereof.

Dated at San Francisco, California, this 18<sup>th</sup> day of APRIL, 1978.

Robert B. Quinn  
President  
William J. Quinn  
James L. Sturgeon

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

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Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.