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Decision No. 90661 AUG 14 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MONTGOMERY HIGHLANDS HOMEOWNERS ASSOCIATION, an unincorporated association, et al.,

Complainants,

vs.

MONTGOMERY HIGHLANDS COMPANY, a dissolved partnership, et al.,

Defendants.

Case No. 10299
(Filed March 29, 1977)

TEMPORARY CEASE AND DESIST ORDER

Complainants allege in the complaint that defendants as present owners of certain property in the Montgomery Heights subdivision near Saratoga are conducting operations as a public utility in furnishing water to the property owners located within the subdivision.

On August 13, 1979 complainants filed a Petition For Cease and Desist Order seeking an ex parte cease and desist order from this Commission as follows:

- (a) Ordering defendants, and each of them, not to discontinue or interrupt, or cause to be discontinued or interrupted the complainants' existing domestic water service pending further hearing and order of this Commission.
- (b) Ordering defendants to do all things reasonably necessary to maintain the existing domestic water service to complainants.

In support thereof complainants allege as follows:

Defendant Stephens College has commenced foreclosure proceedings on the subject property, including the appurtenant water system, pursuant to Civil Code §2924 and the provisions of certain

deeds of trust. Complainants are informed and believe and on that basis allege that the 90-day redemption period has passed and that the date of sale is September 7, 1979. The trustor under these deeds of trust is Saratoga Vista II, a joint venture consisting of defendants Ronald P. Vielicka and Nancy M. Vielicka, his wife, Marcello Y. Cayetano and Araceli Q. Cayetano, his wife, and Donald E. Prather and Eunice F. Prather, his wife.

Complainants have received notice by letter from Saratoga Vista II that it has requested that on August 16, 1979 San Jose Water Works discontinue domestic water service, and that Pacific Gas and Electric Company discontinue provision of power, to the appurtenant water system which serves complainants' homes and property and is the subject of the complaint herein.

The discontinuance of these services would leave complainants without domestic water service in their private homes. This would result in immediate, permanent, and irreparable injury to the person and property of each of complainants. The provision of domestic water service is a fundamental necessity of life and is essential to the health and safety of complainants and their property. The discontinuance of this service poses a grave threat to complainants.

Based on the above the Commission finds that:

1. Complainants have been notified by defendants (Saratoga Vista II) that their domestic water service will be discontinued on August 16, 1979.
2. Discontinuance of domestic water service will result in immediate, permanent, and irreparable harm to complainants.
3. A public hearing is not necessary.

The Commission concludes:

1. That a temporary cease and desist order should be issued as set forth in the order herein pending determination of the issues raised in the complaint.
2. That an emergency exists which requires action by the Commission without notice on the public agenda of the proposed action.

3. The order should be effective immediately.

IT IS ORDERED that:

1. Defendants Ronald P. Vielicka and Nancy M. Vielicka (husband and wife), Marcello Y. Cayetano and Araceli Q. Cayetano (husband and wife), and Donald E. Prather and Eunice F. Prather (husband and wife), a joint venture known as Saratoga Vista II, and defendant Stephens College, shall cease and desist from discontinuing the purchase of water from San Jose Water Works and the purchase of electricity from Pacific Gas and Electric Company necessary for the supply of domestic water service to complainants by defendants. *Hearing will be held in the near future.*

2. The above-named defendants shall do everything necessary to furnish and maintain the water supply to complainants in the same amount and under the same conditions as the existing water service until further order of the Commission. *Km*

3. The Executive Director shall cause personal service of this order to be made upon defendants' attorneys of record:


John S. Perkins, Esquire
Berliner, Cohen and Biagini
101 Park Center Plaza, Suite 700
San Jose, California 95113

and


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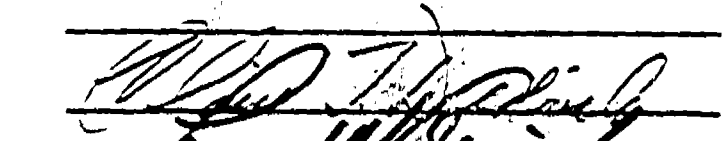
Marvin Handler, Esquire
Handler, Baker and Greene
100 Pine Street
San Francisco, California 94133

The effective date of this order is the date hereof.
Dated AUG 14 1979, at San Francisco, California.



President





Commissioners

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