

ORIGINAL

Decision No. 91191 JAN 8 - 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FAYE WILLARD,)
)
 Complainant,)
)
 vs.)
)
 GENERAL TELEPHONE COMPANY)
 OF CALIFORNIA,)
)
 Defendant.)

Case No. 10712
(Filed January 22, 1979)

Faye L. Willard, for herself, complainant.
Albert M. Hart, H. Ralph Snyder, Jr.,
and Dale W. Johnson, by Dale W. Johnson,
 Attorney at Law, for General Telephone
 Company of California, defendant.

O P I N I O N

This is a complaint by Faye Willard (Willard) against General Telephone Company of California (General). The complaint relates to the appropriate heading under which the American Association of Dental Victims (Association) should be listed in the yellow pages of General's Long Beach telephone directory.

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis on September 18, 1979 and it was submitted on that date.

The following findings of fact summarize the background of the instant controversy:

Findings of Fact

1. Association considers itself a "movement" rather than an "orthodox type" of organization. It does not count individual dental victims, i.e., anyone who considers himself or herself injured as a result of dental services, as members. It counts its membership by the number of its branches. A branch consists of one or more persons. Each branch is autonomous. There are presently 13 branches in 11 states.

2. Willard constitutes Association's Long Beach Branch.

3. The Long Beach Branch does not have a public office. All business is conducted by mail or telephone. Association has a dual listing with a business conducted by Willard and her husband.

4. Willard does not make dental referrals. If a request for the name of a dentist is received, the caller is referred to the local dental society. She gives information about dental procedures and differing theories of dentistry. Willard advises aggrieved patients on how to file complaints. Willard does not attempt to rate dentists.

5. In 1977, Willard contracted for and received advertising for Association in the yellow pages of General's Long Beach directory under the heading of "Dental Information Bureaus".

6. On December 23, 1977, the attorney for the Harbor Dental Society wrote General questioning the appropriateness of including Association under the heading of "Dental Information Bureaus". The letter also attempted to question the bona fides of Association.

7. General conducted an investigation of whether Association's listing was properly included under the heading "Dental Information Bureaus" after receipt of the letter from the attorney for the dental society.

8. After investigation, General had no criticism of Association or any of its purposes but determined that Association was not properly listed under "Dental Information Bureaus". Willard was advised that Association would not be listed under that heading in the 1978 and ensuing directories but could be listed under other headings. Willard demanded that Association be listed under "Dental Information Bureaus" or, in the alternative, a new heading of "Dental Information Organizations" be created and Association listed under that heading.

9. On April 28, 1978, General's directory publishing agent notified Willard that the request for including Association under the heading of "Dental Information Bureaus" or creating a new heading of "Dental Information Organizations" was denied. Willard was advised that Association could be listed under one or more of four headings: "Associations", "Consumer Protection Organizations", "Ombudsmen", and "Social Service and Welfare Organizations". It was suggested that "Consumer Protection Organizations" would be the best heading for Association. Willard did not list under any of the proffered headings and the instant complaint ensued. Association has been listed in the white pages of the directory during the dispute and pendency of this action.

10. General's definition of the classification "Dental Information Bureaus" limits that heading to a bureau, recognized in the profession, which is in the business of providing lists of dentists to persons who do not have a dentist and are looking for one. General has similar categories for the medical and legal professions.

11. Since the informational bureau category precedes the general listing of professionals, it is closely monitored by General; mainly, to prevent the listing of bogus bureaus where members of the profession seek to gain an advantage by having a priority position over those included in the general listing.

12. There are presently more than 2,000 classifications available for General's yellow pages.

Issues

The material issues presented herein are as follows:
Did General act improperly or arbitrarily by refusing to include Association under the heading of "Dental Information Bureaus"? Did General act improperly or arbitrarily in refusing to create a new heading of "Dental Information Organizations"?

Discussion

Willard contends that General's refusal to include Association under the "Dental Information Bureaus" heading violates the First and Fourteenth Amendments to the Constitution of the United States. There is no merit in this contention.

The Constitution does not require that the establishment of classified headings be left to the whim of each customer. (Columbia Broadcasting v Democratic Comm. (1972) 412 US 94,124.) To do so would invite jockeying for advantages and cause proliferation of the yellow pages so they would not be useful to all of General's customers. As indicated, Willard has been listed in the white pages of General's directory and has been offered and declined listings under four yellow page classifications. It is clear that none of Willard's Federal or California Constitutional rights have been violated. (Associates & Aldrick Co. v Times Mirror Co. (9th Cir. 1971) 440 F 2d 133;

Arvins v Rutgers (3d Cir. 1966) 385 F 2d 151, cert. denied, 390 US 920; Chicago Joint Bd v Chicago Tribune Co. (7th Cir. 1970) 435 F 2d 470, cert. denied, 402 US 973.)

Willard next contends that General's failure to include Association under the sought heading or its failure to create the requested heading is a violation of Section 453 of the Public Utilities Code. The pertinent portion of that statute is as follows:

"(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

Public utility regulation encompasses the concept of reasonable classifications (Cal Const., Art. XII, Sec. 6; Pub. Util. Code §§ 455, 495, 703; Wood v Public Utilities Comm. (1971) 4 C 3 288, cert. denied 404 US 391). Where a reasonable classification is established there is no preference or unreasonable discrimination. Thus, the questions presented are: Is General's definition of "Dental Information Bureaus" which excludes Association, reasonable? Is General's refusal to adopt a classification of "Dental Information Organizations" unreasonable?

To determine if General's classification actions were reasonable, it is necessary to consider whether it acted contrary to law or in an arbitrary or unreasonable manner. (Angel Appliance Service v PT&T (1974) 76 CPUC 646, 648; Viviano v PT&T (1968) 69 CPUC 158.) Aside from the alleged violation of constitutional rights heretofore considered, Willard fails to cite any statute or rule or order of the Commission which was violated by the classification actions taken by General. The remaining question to be considered is whether General acted in an arbitrary or unreasonable manner.

The record indicates that General has adopted classifications establishing yellow page headings for referral services in various professions including dentistry, medicine, and law. In the case of dentistry, the heading is entitled "Dental Information Bureaus". In all of the professions, the referral heading is defined and limited to entities recognized in the profession whose business is to provide lists of members of that profession to persons seeking their professional service. This classification is not arbitrary or unreasonable. In limiting the classification to only entities making referrals, General has provided a tool for consumers to expeditiously locate professional assistance. This may be particularly important in times of emergency. Since the classification is not arbitrary or unreasonable and Association does not meet the requisites for inclusion thereunder, it was not arbitrary or unreasonable to exclude it from the heading "Dental Information Bureaus".^{1/}

^{1/} There is testimony that there may be an entity which does not provide referrals being listed under the referral heading of another profession. General indicated that the listing was under investigation, and if it were found to be improper, the listing would be removed from the referral heading. In the Limitation of Liability case, it was stated that "The record and common sense indicate that some directory errors and interruptions of service are inevitable in the operations of a telephone company." (In re Limitation of Liability of Telephone Corporations (1970) 71 CPUC 229, 242.) Where an isolated error occurs, prompt enforcement of the applicable rule is more in the public interest than abolishing the rule.

General did not act in an arbitrary or unreasonable manner when it refused to establish a new heading entitled "Dental Information Organizations". There are more than 2,000 listings available in General's directory. If the requested heading were adopted, it appears that Association would be the only entity listed thereunder. There are four headings available to Association: "Consumer Protection Organizations", "Associations", "Ombudsmen", and "Social Service and Welfare Organizations". If each entity listed under those headings were permitted to create additional separate headings in categories where it has concerns, there would be a proliferation of the yellow pages. Usefulness, conservation, and common sense indicate that the yellow pages should not be unnecessarily expanded.

No other points require discussion. The Commission makes the following additional findings and conclusions.

Additional Findings of Fact

13. General did not act arbitrarily or unreasonably in refusing to include Association under the heading of "Dental Information Bureaus" in the yellow pages of its Long Beach directory.

14. General did not act arbitrarily or unreasonably in refusing to create a new heading entitled "Dental Information Organizations" in the yellow pages of its Long Beach directory.

Conclusions of Law

1. General has not violated any right afforded Willard under the provisions of the Federal or California Constitutions.

2. General has not violated any provision of law or order or rule of the Commission by refusing to include Association under the heading of "Dental Information Bureaus" in the yellow pages of its Long Beach directory.

3. General has not violated any provision of law or order or rule of the Commission by refusing to create a new listing entitled "Dental Information Organizations" in the yellow pages of its Long Beach directory.

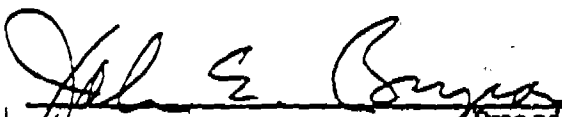
4. Willard is entitled to no relief in this proceeding.


O R D E R


IT IS ORDERED that complainant is entitled to no relief in this proceeding and Case No. 10712 is denied.


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

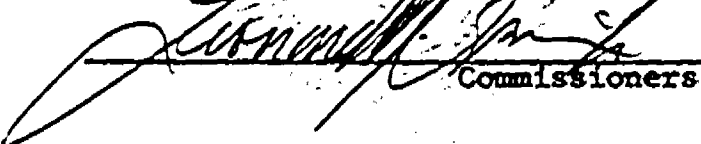
Dated JAN 8 - 1980, at San Francisco, California.



President








Commissioners