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Decision No. 91558 APR 15 1980 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOSEPH W. GARCIA, dba SECURITY WROUGHT IRON & FIXTURES CO., Complainant, vs. PACIFIC TELEPHONE AND TELEGRAPH COMPANY, Defendant.	Case No. 10755 (Filed June 12, 1979)

Joseph W. Garcia, for himself, complainant.
Stanley J. Moore, Attorney at Law, for defendant.

O P I N I O N

Complainant, Joseph W. Garcia, dba Security Wrought Iron & Fixtures Co., and defendant, Pacific Telephone and Telegraph Company, entered into a contract on April 20, 1978, which provided that the defendant would provide certain advertising in its yellow pages directory for the complainant, and complainant would pay defendant $150 per month for one year and approximately 19 days commencing July 1, 1978, for a total of $1,896, for such advertising.

By this complaint, the complainant seeks an order of the Commission rescinding the contract, declaring it null and void in its entirety, and an order that the complainant owes no sum whatever to the defendant.

The complainant alleges that the contract was obtained by the defendant as a result of fraud exercised by the representative of the defendant and there was a material failure of consideration by the defendant in that the defendant failed in a material respect to comply with the terms of the contract. The complainant also alleges that the contract contained no provision that he could cancel the contract within three business days as required by "...Section 226.9(a) of Regulation Z of the Federal Laws", and that defendant, whose office was in the city of San Diego, had no business license as required by Section 17500.3 of the Business and Professions Code and the city of San Diego Municipal Code, Section 33.1402. He alleged further that the contract was not complete because the advertising copy was not attached thereto at the time he signed the document.

Defendant denies that the contract is invalid, void, or voidable or that its agent made any misrepresentations or committed any fraud whatever, and denies that there was a failure of consideration. It set forth three affirmative defenses. In the first defense it denies that its agent made any promise to revise the index of the yellow pages directory, or that he discussed the matter with the complainant, and that the advertising order or contract itself contains a provision that the order shall constitute the entire written contract between the complainant and the defendant, so that complainant cannot claim that the contract was conditioned on any promise to revise the index of the classified directory; that complainant was not prevented from advertising under additional classifications, he was aware that the other classifications existed and believed that they were of value to his business, and had he desired to do so, he could have advertised under the additional classifications.

The second affirmative defense sets forth generally that even if his allegation that he signed the advertising order on April 20, 1978 only because of a misrepresentation that he could not advertise at all if he did not sign it at that time, it was explained to the complainant that priority of position of his advertisement was determined by the date of execution of the advertising order; and by the terms of the contract, he could have terminated the contract at any time prior to the advertising closing date, which was June 16, 1978, but he apparently did not desire to do so.

In the third affirmative defense, defendant admits that there is a slight difference between the size of type on the layout complainant submitted to the defendant and the type actually printed. Defendant believes that the slight difference in type size did not result in any diminution in the value of the advertisement, and therefore there was no failure of consideration. Defendant denies that complainant is entitled to any relief whatever and requests that the complaint be dismissed.

A hearing was held on January 15, 1980 in San Diego before Administrative Law Judge James D. Tante. The parties were authorized to submit further argument, by letters to the hearing officer, concerning the effect of local licensing requirements and the alleged three-day right of cancellation requirement, on or before January 25, 1980, and the case was submitted as of that latter date. Both parties submitted argument by their respective letters.

Exhibit 1, partial testimony of complainant, was received in evidence, except the last part thereof beginning on page 3 with the paragraph commencing with the words "I hereby" through the end of such exhibit, in that it was ruled

that that matter was irrelevant; and with the exception of the paragraph commencing on page 2 with the words "With reference" and ending on page 3 with the words "these proceedings", which matter was objected to by defendant and the objection was taken under submission. Exhibit 6, an information sheet concerning solicitors, peddlers, and interviewers, apparently published by the city of San Diego, was introduced in evidence by complainant, objected to by defendant as being irrelevant, and the question as to whether it would be received was taken under submission. Exhibit 7, a letter from the city of National City dated January 10, 1979, indicating that Lee Miller, an employee of defendant, did not have a business license to solicit in that city in 1978, was introduced by complainant, objected to by defendant as being irrelevant, and the question of its receipt in evidence was taken under submission. Exhibit 9, a letter dated June 12, 1979 from complainant to defendant, was offered by complainant, objected to by defendant as irrelevant, the objection was sustained, and it was marked for identification only.

Exhibit 2, Section 226.9(a) of certain regulations of the Federal Reserve System of the United States Government; Exhibit 3, certain pages from the San Diego classified directory of 1976-77; Exhibit 4, certain pages from the classified directory of 1977-78; Exhibit 5, certain pages from the classified directory of 1978-79; Exhibit 8, a letter dated June 15, 1979 from defendant to complainant, and a copy of the order involved in this case; Exhibit 10, page 1800 of the classified directory for 1979-80; Exhibit 11, an advance copy of the completed ad and certain notations; and Exhibit 12, a comparison of the advance copy and the published ad which appeared in the October 1978 San Diego directory, were received in evidence.

Complainant testified for himself and called two employees of defendant, Leon D. Miller, a classified directory sales representative, and Edmund Arguello, an artist, to testify in his behalf. Leon D. Miller testified for defendant.

The transaction involved herein took place in the city of National City and not in the city of San Diego, and Exhibit 6 purports to be the result of a city of San Diego ordinance regarding the licensing of solicitors, peddlers, and interviewers; therefore, it is irrelevant and the objection of the defendant to its admission into evidence is now sustained. There was an objection to Exhibit 1, the first full paragraph beginning on page 2 with the words "With reference" and ending on page 3 with the words "these proceedings". Insofar as that paragraph, and the testimony of the complainant, pertains to an information sheet issued by the city of San Diego (Exhibit 6), the objection is sustained.

Rule 73 of the Commission's Rules of Practice and Procedure provides that official notice may be taken of such matters as may be judicially noticed by the Courts of the State of California. Section 452(b) of the Evidence Code, read in connection with the definition of public entity as defined by Section 200 of the Evidence Code, authorizes official notice of municipal ordinances. But neither a trial court nor this Commission is required to take such official notice unless the party requesting it gives the adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request, and furnishes the court with sufficient information to enable it to take official notice of the matter. (Section 453 of the Evidence Code.)

Exhibit 7, a letter from the city of National City dated January 10, 1979, stating that Lee Miller, an employee of defendant, and defendant did not have business licenses to solicit in that city in 1978, is not relevant in that there is no evidence whatever to show that such a business license was necessary, or to show the purpose of such a license if it were necessary. Complainant did not introduce any evidence, or give defendant notice and request the Commission to take official notice of such an ordinance if one did, in fact, exist. Therefore, the objection to the testimony set forth in Exhibit 1 relating to Exhibit 7, and Exhibit 7, is sustained as being irrelevant under the circumstances.

Complainant has not paid the $1,896 in dispute or deposited any sum with the Commission.

As a general rule, a complaint to determine the validity of a utility bill in dispute while service is allowed to continue is processed after the complainant has paid the sum contended by the utility to be due or deposited the same with the Commission. However, notwithstanding the fact that the bill in dispute has not been paid and has not been deposited with the Commission, the matter has been set for hearing, the hearing has occurred, and it would serve no useful purpose not to proceed; therefore, we shall proceed to determine the issues in this case.

The Commission is vested with jurisdiction in all reparation cases. (Carnation Co. v Southern Pacific Company (1950) 15 CPUC 345.) The only relevant jurisdiction conferred upon the Commission to grant monetary awards is contained in California Public Utilities Code Sections 734, 735, and 736,

which deal with reparations. (Mak v Pacific Tel. & Tel. (1971) 72 CPUC 735.) Only a court has the power to award consequential damages as opposed to reparation. Reparation is limited to a refund or adjustment of part or all of the utility charge for a service or a group of related services. Consequential damages, on the other hand, is an amount of money sufficient to compensate an injured party for all the injury proximately caused by a tortious act, or to replace the value of performance of a breached obligation. (Pacific Tel. & Tel. (1971) 72 CPUC 705.)

There was no evidence to indicate that defendant was in violation of any provision of Section 17500.3 of the Business and Professions Code of California.

The contract of April 20, 1978 was complete as of that date subject to certain conditions. Complainant was to submit the advertising display to defendant, the display was subject to defendant's approval, and either party could cancel before June 16, 1978. The display was submitted, approved, and neither party cancelled. Complainant's contention that he should not be required to pay defendant on the basis of an incomplete contract is without merit.

When complainant referred to Section 226.9(a) of the regulations of the Federal Reserve System, he may have intended to refer instead to the Consumer Credit Protection Act commonly known as "Truth-in-Lending" (TIL), 15 USCS, Sections 1601-1665, which is implemented by Regulation V issued by the Board of Governors of the Federal Reserve System and found at 12 CRF 226. TIL was enacted to foster the informed use of credit by consumers through assuring meaningful disclosure of credit terms in order that consumers might more readily compare various credit terms available (15 USCS, Section 1601). For purposes of the Act,

"consumer credit" means credit offered or extended to a natural person in which the money, property, or service, which is the subject of the transaction, is primarily for personal, family, or agricultural purposes, and for which either a finance charge is or may be imposed, or which, pursuant to an agreement, is or may be payable in more than four installments (12 CFR Section 226.2, subdivision (k)). The Act does not apply to extensions of credit to organizations, including government, or for business or commercial purposes, other than agriculture. (See 13 Cal Jur 3d, Consumer and Borrower Protection Laws, Section 77-80; Glaire v La Lanne-Paris Health Spa, Inc. (1974) 12 Cal 3d 915.) The charge was in compliance with applicable tariffs, there was no evidence that interest was to be charged directly or indirectly, and the transaction involved was not within TIL in that it was not a transaction for personal, family, household, or agricultural purposes, but for business or commercial purposes, other than agriculture, and therefore, not within any of the provisions of TIL.

At the hearing, complainant contended that the contract involved herein should be declared invalid and should be rescinded by reason of Section 1689, et seq., of the Civil Code of California. Section 1689.6 of that code provides in subsection (a): "In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation contract or offer until midnight of the third 'business day' after the day on which the buyer signs an agreement or offer to purchase which complies with Section 1689.7." Section 1689.5 defines a home solicitation contract or offer to mean "any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises. . . ."; and subsection (d) defines

appropriate trade premises to mean "premises at which either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises." The contract involved herein was made at either the trade premises of complainant or defendant, or both; and there is no evidence that complainant gave notice of cancellation as required by Section 1689.6; therefore, the contentions of complainant regarding Section 1689, et seq., of the Civil Code are without merit.

Although not mentioned by complainant, the Unruh Act, Section 1801, et seq., of the Civil Code, was adopted in an effort to correct abusive practices in the field of retail installment sales of consumer goods and services, including abusive credit practices, which protection was not deemed necessary for equally competent businessmen dealing with each other in arm's-length transactions, so that Act would not be applicable in this case. (See 13 Cal Jur 3d, Consumer and Borrower Protection Laws, Section 81-114.)

If the purpose of a municipal ordinance of National City, if there was such an ordinance, was for the purpose of raising revenue, and the defendant did not have such a license, then the ordinance would offer no assistance to the complainant. (Wood v Krepps (1914) 168 Cal 382, 387-8.) If, however, the object of such an ordinance in requiring a license for the privilege of carrying on a certain business was to prevent improper persons from engaging in that particular business, or for the purpose of regulating for the protection of the public, the imposition of the penalty amounts to a prohibition against doing business without a license and a contract made by an unlicensed person in violation of the statute or ordinance may be void. (Wood v Krepps, supra.)

The hearing officer communicated with the writer of Exhibit 7, the City Treasurer of National City, and determined that Title 6, Chapter 6.48 of the Municipal Code, Business Licenses and Regulations, provides in Section 6.48.010:

> "6.48.010 Identification cards required. Every person who is a peddler, solicitor or demonstrator (whether or not engaged in interstate commerce) is required to have an identification card.
>
> "This chapter shall not be construed as providing for or exacting a license fee from any person dealing in interstate commerce.
>
> "Solicitors are required to register with the city and procure the required I.D. card. The five dollar fee is not a license fee, but is a service charge for local control. (Ord. 1401, 1974; Ord. 708 Section 57, 1944; prior code Section 2391)."

The term "itinerant merchant" or "itinerant vendor" refers to one who travels from house to house or place to place to sell or to solicit to sell his goods and includes those known as hawkers, peddlers, and solicitors. The term "peddler" is derived from an old Scotch word "ped," meaning a bag, and was originally defined as one who went about carrying a bag filled with goods which he exposed for sale, sold, and delivered to persons along the way; the word is generally considered synonymous with "hawker". The term "solicitor" includes the class of persons who, going from person to person or from house to house, seeks orders, subscriptions, or contributions. (40 Cal Jur 3d Itinerant Merchants, Section 1.)

Here, defendant's representative communicated with and visited complainant at the latter's place of business for the purpose of renewing or changing complainant's yellow pages ad.

Neither defendant or its representative was a peddler, solicitor, or demonstrator, and therefore neither was subject to the provisions of Section 6.48.100.

In the 1979 regular session of the Legislature (the first half of the 1979-1980 session) Section 728.2 was added to the Public Utilities Code, effective January 1, 1980, which discontinued the Commission's regulation of telephone directory advertising until January 1, 1983. Prior to the effective date of that statute, the Commission had jurisdiction over and the right to regulate form, content, and cost of telephone directories. (California Fireproof Storage Co. v Brundige (1926) 199 Cal 185; Dollar-A-Day Rent-A-Car Systems, Inc. v Pacific Tel. & Tel. (1972) 26 CA 3d 454.) The subject of this dispute occurred prior to January 1, 1980 and during which time the Commission had jurisdiction over defendant with respect to its yellow pages directories. Defendant had its tariffs regarding yellow pages directories on file with the Commission, the Commission did regulate defendant with respect to its directories, and there was no violation of any of its tariffs by defendant regarding the transaction in this case.

The authority to regulate the business of defendant, including the publication of its yellow pages directory prior to January 1, 1980, was in the State, by this Commission, and was a matter of statewide concern. By issuing and maintaining tariffs relating to defendant, and by regulating the business of defendant generally, this Commission has preempted the field and any conflict between regulation by this Commission and the city of National City, if any, must be resolved in favor of the Commission; therefore, if there was an ordinance requiring a regulatory license, it is not applicable to defendant. (See Pac. Tel. & Tel. v Los Angeles (1955) 45 Cal 2d 272, 279;

Pac. Tel. & Tel. v San Francisco (1959) 51 Cal 2d 766, 774, 776; Modesto Irr. Dist. v Modesto (1962) 210 CA 2d 652, 654.) Because the telephone directory advertising service was regulated by the Commission and provided pursuant to tariffs filed with the Commission, complainant's obligation to pay for the advertising is valid and enforceable, regardless of any contrary result which might obtain under contract law. The courts have repeatedly held that filed tariffs are not mere contracts, but have the force and effect of law. (See Dyke Water Co. v Public Utilities Com. (1961) 56 Cal 2d 105, 123, cert. denied, (1961) 368 US 939; Trammell v Western Union Tel. Co. (1976) 57 CA 3d 538, 550; South Tahoe Gas Co. v Hofmann Land Improvement Co. (1972) 25 CA 3d 750, 761; Dollar-A-Day Rent-A-Car Systems, Inc. v Pacific Tel. & Tel. (1972) 26 CA 3d 454, 457.)

"Tariffs are strictly construed and no understanding or misunderstanding of either or both of the parties is enough to change the rule. The carrier cannot by contract, conduct, estoppel, waiver, directly or indirectly, increase or decrease the rate as published in the tariff of the carrier until the published tariff itself is changed." (Transmix Corp. v Southern Pac. Co. (1960) 187 CA 2d 257, 264, cited with approval in Empire West v Southern California Gas Co. (1974) 12 Cal 3d 805, 809 and in South Tahoe Gas Co. v Hofmann Land Improvement, supra.)

The reason for the inflexible enforcement of the tariffed rates rests in the antidiscrimination provisions of Section 532 of the Public Utilities Code. (Empire West v Southern California Gas Co., supra.) The policy expressed there is appropriate for application in the present case. It would be unfair to other advertisers, and indeed to the general ratepayers, for complainant to receive the tariffed advertising service free. As stated in the cases cited above, this antidiscrimination policy

overrides the contractual principles on which complainant seemingly relies. Thus, even if a different result would obtain in a case based solely on contractual relations, complainant's obligation to pay for the telephone directory advertising is enforceable here, where the relationship is established by tariffs which have the force and effect of law.

At the hearing complainant stated that the principal contention raised by his complaint was that the contract should not be enforced because it was obtained by fraud, and because there was a material failure of consideration. He sought to introduce evidence (see Exhibit 9) that he attempted to have defendant continue his advertising in the next issue (1979-80) of the yellow pages, even though he had not paid the $1,896 which defendant contended was due and unpaid, he had not deposited any sum with the Commission pending the determination of this complaint, and that issue was not raised by his complaint. It was explained to him that he could have deposited the amount in dispute with the Commission and the advertising would not have been terminated pending the dispute (defendant's tariff Schedule Cal. P.U.C. No. 36-T, Original Sheet 48-B, Rule 10, filed August 23, 1979). The objection of defendant to the introduction of such testimony regarding the refusal of defendant to continue his advertising in the subsequent yellow pages directory was sustained as being irrelevant in this case.

Complainant testified that he is in the security wrought iron and fixtures business, dealing in windowguards, gates, rails, and fences. He stated that previously his ad in the yellow pages directory had appeared under the heading "Iron", was indexed under "Iron" and there was a cross-reference to "Iron" under "Wrought Iron" in the index (Exhibit 3), and did not appear under the heading, nor was there a reference to such heading,

pertaining to his main products which were windowguards, gates, rails, and fences.

He testified that he signed the agreement for the yellow pages advertising at his place of business on April 20, 1978, at which time he told Leon D. Miller, the advertising sales representative of defendant, that the previous indexing was inadequate and that it would have to be changed. He stated that Mr. Miller said that that would present no problem, that the Los Angeles office would take care of it, and that without that representation he would not have signed the contract. He testified that Exhibit 4 showed that the indexing does not refer to the display ad which is placed on page 730 of the yellow pages directory under any of his principal products, windowguards, gates, rails, or fences, but only under iron with a cross-reference to wrought iron; and that this was contrary to the representation made by Mr. Miller, was inadequate to serve his purpose, and that the misrepresentation of defendant's employee constituted fraud which should excuse him from any and all payments which might be called for by the terms of the contract.

Complainant testified that defendant's representative told him that he would have to sign the order on the date it was signed to reserve his space in the directory or that he, complainant, would not be able to insert an ad in the directory. He testified that Mr. Miller assured him that Mr. Miller would have an ad drawn up by his art department which would suit him, but that this was not done and in due time, with some assistance from an artist employed by defendant, complainant composed his own ad, which is attached to his complaint as Exhibit 3; the ad was not published in the directory as requested, but was published as set forth in Exhibit 4 attached to his complaint.

He testified that he signed a copy of the final ad as proposed by defendant, Exhibit 11, and that the words he placed on the ad which he sent back to defendant, "Do not change size of letters or digits", related to his request that they not change the size of the letters or digits from the manner in which he had submitted his ad to the manner in which they appeared on Exhibit 11. He testified that at a time later than June 16, 1978, he made an effort to prevent the printing of the ad in the directory, but was told that it was too late to do so as the directory had already gone to print.

Leon D. Miller, the advertising sales representative of the classified department of defendant who dealt with complainant in this matter, stated that in 90 percent of his transactions he sees the advertiser only on one occasion but he had three or four contacts with complainant in this case concerning this matter. He stated absolutely that there was no discussion between him and complainant regarding indexing and he made no statement whatever that the Los Angeles Office would take care of the indexing problem for complainant. He stated that the institution of a new indexing procedure would have been very complicated. He stated that June 16, 1978 was the closing date stamped on the order, he told complainant that the earlier he signed his order the better off he would be because he would have a priority over subsequent advertisers for the more prominent space, and complainant did have priority over two similar ads which were received at a later date. He stated absolutely that he did not tell complainant that unless his order was signed on April 20 that it would not be printed.

The witness testified that the first page of Exhibit 12 set forth the ad as requested by complainant, and the second page set forth the ad as it was printed in the directory. He stated

that it is his opinion that the second ad is more appealing to the eye with the slightly smaller type, and there is less distraction from that ad than there would have been from the ad as submitted by complainant.

Edmund Arguello, employed by defendant as an artist for the past 25 years, testified at the request of complainant. He stated that he prepared an ad which was not satisfactory to complainant, and that in due time complainant prepared and presented his ad to defendant. The witness stated he told complainant that the printer may not have the exact type used in the ad presented by complainant, and that either complainant would have to furnish a display of the type of that size or the printer would use type as close to that size as he had available. He testified that, referring to Exhibit 12, the manner in which the ad appeared in the directory was better and more desirable than the manner in which it had been submitted to defendant in that the way it appeared provided sufficient space, prevented the ad from being too crowded with printing, and as such tends to keep the reader's eye into the ad and not run out to some other ad.

The evidence indicates that the complainant was familiar with yellow pages advertising and the manner in which such advertising was indexed. The sales representative for the defendant was convincing in his testimony that he had not discussed indexing with the complainant, and possibly the complainant may have misunderstood the statements of the defendant's representative or may have forgotten the conversation that took place in April of 1978. In addition, the complainant did not testify that the defendant's representative said anything concerning indexing except that his Los Angeles

office would take care of it. It appears that there was no such representation and therefore no fraud on the part of the defendant.

The ad that appeared in the yellow pages directory was very similar to the ad which had been presented to the defendant by complainant (Exhibit 12). The testimony was to the effect, and a comparison of the ads seems to substantiate the testimony, that the ad, as it appeared in the yellow pages, was superior to that requested by the complainant. In addition, the complainant was told that if he wanted type used that was not available to defendant's printer, he would have to furnish the layout, and he did not do so. It appears further that the ad, as presented by defendant and thereafter published in the yellow pages, was approved by complainant. There does not appear to be a failure of consideration on the part of defendant, and it appears that the $1,896 in dispute is owed by complainant to defendant, and complainant is not entitled to reparation in any amount.

Findings of Fact

1. April 20, 1978 complainant signed an order for advertising in the defendant's 1978-1979 yellow pages at a total monthly charge of $150 for a period slightly in excess of 12 months, which was the duration of that issue of the classified directory, for a total sum of $1,896. On that same date, the contract was accepted by a representative of defendant, and was consistent with defendant's applicable tariffs filed with the Commission.

2. The contract provided that the closing date of advertising for the forthcoming issue was June 16, 1978, after which request for new, additional, or cancellation of advertising would not be accepted. This provision permitted complainant to cancel at any time up to the date mentioned, a period of almost two months, if he desired to do so. Complainant did not cancel,

nor did he notify defendant of his intent to cancel, at any time before June 16, 1978.

3. Defendant's representative made no statement to complainant concerning indexing of the ad, and made no misrepresentation to complainant. Defendant committed no fraud with respect to the transaction.

4. The ad requested by complainant appeared for the entire period of the yellow pages 1978-1979 year in substantially the manner in which it had been presented, and thereafter approved, by complainant.

5. Defendant has performed all that it has been required to perform under the provisions of the contract, complainant has not paid any sums whatever to defendant, and there is now due and owing to defendant by complainant the sum of $1,896.

6. There was no interest to be charged directly or indirectly, the transaction involved was not within Truth-in-Lending, 15 USCS, Sections 1601-1665, or any of the regulations implementing such legislation.

7. Section 1689, et seq., of the Civil Code of California was not applicable in that it was not made at other than appropriate trade premises and, in addition, complainant had almost two months, a period greatly in excess of three days, in which he could have cancelled, but elected not to do so.

8. The Unruh Act, Section 1801, et seq., of the Civil Code, is not relevant to the transaction, as that legislation was adopted in an effort to correct abusive practices in the field of retail installment sales of consumer goods and services, including abusive credit practices, which protection was not deemed necessary for equally competent businessmen dealing with each other in arm's-length transactions, as existed in this case.

The Commission concludes that the contract between the parties, as set forth as Exhibit 1 to the complaint, is not void or voidable, is consistent with defendant's tariffs, was entered into voluntarily by the parties without any misrepresentation or fraud by the defendant, that defendant fully executed its obligation under the terms and provisions of the contract, complainant has not complied with the terms of the contract, and complainant is indebted to defendant in the sum of $1,896 pursuant to the terms of the contract. The relief sought by complainant should be denied and the provisions of the contract should not be abrogated, rescinded, cancelled, or declared void.

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 APR 15 1980, at San Francisco, California.

President

Commissioner John E. Bryson, being necessarily absent, did not participate.