

Decision No. 92113 AUG 19 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bernard Solomon,
Complainant,

vs.

General Telephone Co. of
California and Pacific Telephone
Company,

Defendants.

Case No. 10814
(Filed December 17, 1979)

ORDER OF DISMISSAL

Complainant alleges that he was president and principal stockholder of Ful-Security Alarm Co. (Ful-Sec), a California corporation, and that Capa Security Systems, Inc. (Capa) purchased all the Ful-Sec stock owned by complainant under an agreement dated June 30, 1978. Complainant further alleges that prior to the transfer of stock, complainant and Capa contacted defendants General Telephone Company of California (General) and The Pacific Telephone and Telegraph Company (Pacific) to discuss network design and equipment relocation and to coordinate the move with both defendants since they would be providing service to Capa following the transfer. Prior to the transfer, General was providing Ful-Sec with eight circuits on account No. 198-7926.

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Complainant further alleges that on July 1, 1978 Capa completed the takeover of Ful-Sec's General telephone account and that Capa continued the circuit relocation coordination with both defendants since several additional new circuits were to be provided Capa by Pacific. He states that severe problems and delays were encountered by Capa during the conversion, that accounts were lost due to poor service provided by defendants, and that, as a result, Capa found it impossible to continue operations and defaulted on its agreement with complainant. When complainant attempted to meet with Pacific to discuss a deferred payment plan for the delinquent indebtedness incurred by Capa, he alleges that defendants refused to discuss the matter of payment with him.

Complainant also alleges that because he was under extreme pressure to protect the interests of subscribers of the alarm system (which Capa had taken over from Ful-Sec), he entered into an agreement with West Coast Alarm Company (West Coast), another alarm system company, to assist in monitoring and providing service until the issues could be resolved.

The complaint states that on January 5, 1979 complainant paid Pacific the sum of \$4,500, which was the delinquent amount owed by Capa to Pacific. On January 22, 1979 complainant's attorney made payment to General in the amount of \$783.70, which General claimed was due. ✓

Complainant further alleges that the quality of service provided by defendants was poor, that repair and maintenance were inefficient, that severe losses to subscribers occurred due to these factors, and that the lack of cooperation on the part of defendants caused complainant considerable financial loss.

Complainant seeks relief in the nature of an order from the Commission, ordering General to refund the sum of \$783.70 and Pacific to refund the sum of \$4,500.00 to complainant and to cancel all balances shown on the records of defendants as being due from Ful-Sec.

Pacific filed a motion to dismiss and answer to the complaint and General filed motions to strike, to dismiss, and an answer to the complaint.

Pacific alleges that complainant has failed to state a cause of action against it since Pacific's records do not show any balance due from Ful-Sec and that the \$4,500 sent to Pacific by complainant was part payment, under some kind of financial arrangement made between complainant and West Coast, of monies owed to Pacific by Capa. Pacific alleges that the obligation to pay the remaining monies owed by Capa to Pacific was undertaken by West Coast following its assumption of responsibility for the balance due on the Capa accounts. Pacific denies that complainant ever suggested to it that there had been service problems or that there was any other specific reason to question the amount due on the two Capa accounts. According to Pacific, complainant was satisfied that the balance due on the Capa accounts was correct and that complainant's payment of the \$4,500 was the result of

complainant's attempt to reach a satisfactory agreement with West Coast. Pacific alleges that complainant's cause of action, if any, is against Capa or West Coast, not against Pacific. It thus asks that the complaint be dismissed for failing to state a cause of action under Public Utilities Code (Code) Section 1702^{1/} and Rule 9^{2/} of the Commission's Rules of Practice and Procedure (Rules). In the alternative, Pacific requests that if the gravamen of complainant's complaint relates to Pacific's service, then he should be required to amend his complaint to include sufficient detail to enable Pacific to respond.

General's motion for dismissal, like Pacific's, is based upon the ground that the complaint fails to state a cause of action against General under Code Section 1702. It alleges that nowhere does the complaint state what was done or not done by General which would entitle complainant to a refund of the \$783.70 paid to General on behalf of complainant. In addition, General alleges, as grounds for dismissal, that complainant makes only vague

1/ Code Section 1702 provides, in relevant part:

"Complaint may be made by...any...person..., by written petition or complaint, setting forth any act or thing done...by any public utility, ...in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission. . . ."

2/ Rule 9 of the Commission's Rules provides, in part:

"A complaint may be filed by any...person, ..., setting forth any act or thing done or omitted to be done by any public utility, ...in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission."

references to service problems, uncompleted lines, and losses to subscribers and that it is impossible to determine which of the defendants complainant is referring to. Furthermore, General states that the complaint fails to comply with Rule 10^{3/} of the Commission's Rules in that it lacks allegations of fact which advise General of the grounds of the complaint. According to General, only three paragraphs of the complaint clearly refer to General; one paragraph alleges no wrongdoing (paragraph 4); one paragraph alleges only a failure to discuss a billing dispute (paragraph 7); and one paragraph alleges a payment under protest of a disputed bill, but not the reason the bill was disputed. General contends that all other paragraphs in the complaint refer to "defendant" and "utility" in ambiguous ways, such as to make it impossible to determine whether complainant is referring to General or Pacific, or both. For these same reasons General moves to have the Commission strike paragraphs 4, 6, 7, 9, and 10 of the complaint.

In its answer, Pacific admits that on June 27, 1978, a data grade bridged alarm circuit provided by General was converted to a Pacific circuit and that on August 17, 1978, a second data grade bridged alarm circuit was added by Pacific. The customer for both circuits was Capa. Pacific

3/ Rule 10 of the Commission's Rules provides, in part:

"The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired."

admits some delay in the installation of the second circuit and service difficulties due to the fact that these types of circuits were and are highly complex ones running through areas served by General and Pacific, but denies that the delay or service difficulties were of unusual magnitude. Pacific also avers that the changeover of the General circuit was accomplished ahead of schedule. Pacific also attributes many inaccurate and unnecessary reports of trouble made by Capa employees to their own poor training, inexperience, and lack of proper supervision, and alleges that it responded promptly to Capa's many trouble reports and corrected all sources of trouble which had not tested "okay". Pacific alleges it knows of no complaints from Ful-Sec, Capa, or West Coast about delays in installation, overall quality of service, or losses to alarm customers and specifically denies each and every allegation of poor service, severe problems, and delays contained in the complaint.

Pacific alleges that on December 26, 1978, West Coast assumed responsibility for payment of the \$9,021.81 balance owing on the Capa accounts (Exhibit A of Pacific's answer) and signed Requests for Supersedure to assume such responsibility. Pacific, who had previously been informed by West Coast that \$4,500 of the \$9,021.81 balance might be paid by complainant as part of an agreement between complainant and West Coast, received a check on January 5, 1980 from complainant in the amount of \$4,500. This amount, when received from complainant, was applied by Pacific to the balance due on the Capa accounts.

Pacific further alleges that it has always kept its customers, Capa and West Coast, fully advised as to the amounts due for service provided to them. Furthermore, Pacific states complainant was not a customer of Pacific's telephone service and it contends it had no obligation to provide him with an accounting, invoicing, or review of charges on the two Capa accounts, and did not do so. According to Pacific, complainant never requested anything more than a brief verbal breakdown of the accounts and that when Pacific was advised that West Coast and complainant were arranging to have West Coast take over the two Capa accounts, it cooperated fully with West Coast and complainant. In all other respects, Pacific denies each and every allegation in the complaint.

On February 29, 1980 the assigned Administrative Law Judge (ALJ) communicated in writing to complainant and advised him that after reading the complaint and defendants' answers and motions to dismiss, it was determined that the complaint did not appear to comply with the provisions of Code Section 1702 and Rules 9 and 10 of the Commission's Rules and thus it would probably be dismissed as filed. Specifically, complainant was advised that with respect to General: the complaint fails to state what was done or not done by General which would entitle complainant to a refund of \$783.70 and that the vague references to service problems, losses to subscribers, review of charges, lack of cooperation, etc., were insufficient to determine which defendant was being referred to and what provision of law or order of the Commission is alleged to have been violated. He was also informed that it was not possible to

extricate a clear and unambiguous cause of action from his pleading and that the same held true with respect to Pacific. He was advised that his pleading stated no facts which would entitle him to a refund of the \$4,500 he was seeking from Pacific, nor did it appear that there was any contractual relationship between complainant and Pacific which would give him standing to bring a cause of action before the Commission against Pacific.

Complainant was granted 15 days within which to file and serve an amended complaint which complied with the provisions of Code Section 1702 and Rules 9 and 10 of the Commission's Rules or else indicate any legal reason why his complaint should not be dismissed.

On March 14, 1980 complainant submitted an amended complaint to the ALJ for filing, but it was returned to complainant who was informed that it was unacceptable for filing because it still failed to comply with the provisions of the Code and the Commission's Rules. ~~Complainant was advised that an amended complaint supersedes the original complaint and that the sufficiency of an amended complaint is determined without further reference to the original filed complaint.~~ Since complainant's amended complaint appeared to elaborate on the contents of his original complaint, it was even more vague and unintelligible than the original complaint when read by itself. Aside from the improper form of the amended complaint, complainant was advised that the major defect in his amended complaint was the failure to allege a violation of any provision of law or order of the Commission.

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Discussion

From an examination of the pleadings the nondisputed facts appear to be as follows. Complainant in his individual capacity filed this complaint against General and Pacific. Complainant was the president of and sole stockholder in Ful-Sec. This corporation subscribed to eight General circuits, under one account number, which it used to monitor and service various subscribers of its security alarm system. In 1978 Capa entered into negotiations with complainant to purchase all stock owned by complainant and to take over the operation of Ful-Sec. During these negotiations, complainant and Capa contacted defendants to discuss the design of telephone networks and to schedule equipment relocation since it required new service from Pacific in addition to the existing General account and the coordination of both defendants. On July 1, 1978 Capa completed the takeover of Ful-Sec and continued alone thereafter the coordination of equipment relocation and the telephone system with one or both defendants. Two new circuits to be provided Capa by Pacific were put into operation in October 1978. One of these circuits was a changeover from a General circuit to a Pacific circuit and was accomplished ahead of schedule. The other circuit, provided by Pacific, was delayed because of various technical factors. Sometime thereafter in 1978, Capa defaulted on its agreement of purchase made with complainant, and complainant began the process of regaining control of the stock and business operations transferred to Capa.

At the time of such default, Capa had incurred telephone and equipment charges on the General accounts in the amount of \$783.70 and an indebtedness to Pacific of \$9,021.81 for telephone services. The \$783.70 was owed on two telephone numbers which were ordered discontinued on August 10, 1978. In November 1978 complainant and West Coast apparently entered into an agreement whereby West Coast would take over the monitoring function and service of the alarm security services formerly operated by Ful-Sec, which complainant had transferred to Capa. West Coast assumed responsibility for payment of the \$9,021.81 balance due Pacific on two Capa accounts and both West Coast and Capa representatives signed requests for supersedure of the accounts on January 1, 1979. West Coast informed Pacific that \$4,500 of the \$9,021.81 would be forthcoming from complainant as part of an agreement between complainant and West Coast, and a check for \$4,500 was subsequently received by Pacific from complainant. With respect to Pacific, the only issue is the \$4,500 paid to Pacific by complainant in partial payment of the \$9,021.81 Capa debt, which had been assumed by West Coast.

With respect to General, the issue is the \$783.70 paid by complainant in payment of charges on two telephone numbers apparently used by Capa after its purchase of complainant's stock but for which complainant was still the customer of record inasmuch as no requests for supersedure of the accounts had been executed by complainant and Capa, nor received by General.

From the pleadings, it would appear that complainant may have a possible cause of action against Capa, West Coast, or possibly both in another forum, but not against General or Pacific before this Commission.

In the case of General, complainant was still the customer of record for the two telephone numbers which Capa used following its purchase of stock and takeover of Ful-Sec on July 1, 1979 inasmuch as no signed requests for supersedure of the accounts were ever submitted to General. General had no legal recourse against Capa for the debt associated with these telephone numbers since it had not executed a request for supersedure and thus did not assume any obligation to General. General's tariff Schedules D and R, Rule 8, provides that a supersedure is required to relieve an outgoing customer of responsibility for bills submitted on its telephone accounts. Since no supersedure request had been received by General, it was entirely proper for complainant to be billed for the outstanding and unpaid bill for services provided by General. Thus, complainant can seek redress in the courts from Capa for possible breach of contract or other action.

In the case of Pacific, neither Ful-Sec nor complainant was a customer of its services. Services were provided to Capa and following Capa's default on its agreement with complainant and the incurring of a \$9,021.81 debt to Pacific for services, a supersedure of the Capa accounts and an assumption of responsibility of Capa's obligation by West Coast were executed and filed with Pacific. Complainant, who was not a customer of Pacific, nor billed by Pacific, voluntarily forwarded \$4,500 of the \$9,021.81 obligation to

Pacific under some type of agreement entered into between complainant and West Coast. Now, some 11 months later, complainant seeks to have the Commission order \$4,500 returned by Pacific and \$783.70 returned by General without alleging any specific basis for such order.

Neither the complainant's original complaint nor the rejected amended complaint complies with either the Code section or Commission Rules previously cited.

Specifically, the complaint contains vague and unintelligible references to service problems and losses to subscribers, but fails to state by whom; alleges a failure to give a review of charges, but does not specify which charges; and alleges lack of cooperation, etc., but fails to identify which defendant is being referred to with respect to those allegations. The complaint is also insufficient from which to determine which provision of law or order of the Commission is alleged to have been violated, and it is not possible to extricate a clear and unambiguous cause of action from it. There are no facts stated which would appear to form a basis which would entitle complainant to a refund of the \$4,500 he seeks from Pacific, especially since there does not appear to be a customer-utility relationship between complainant and Pacific at any time with respect to the allegations contained in the complaint.

If, as it appears from the pleadings, complainant entered into some kind of agreement with West Coast to pay a portion of the delinquent Pacific telephone/equipment charges incurred by Capa and did so, in the amount of \$4,500, complainant may have a possible cause of action in another

forum against West Coast. But from a reading of the pleadings, there simply is no contractual relationship or customer-utility relationship between complainant and Pacific which would give him standing to bring a cause of action against Pacific before this Commission. For these reasons, the action against Pacific should be dismissed.

Likewise, with respect to General, the complaint fails to state what was done or not done by General which would entitle him to a refund of the \$783.70 paid to General by complainant for the delinquent charges incurred by Capa during or after the time Capa negotiated with complainant for the purchase of his stock and assumed operational control of complainant's business.

Although the allegations in the complaint speak of Capa's assumption of complainant's business, Capa and complainant never executed and delivered the required supersedure forms to General which would relieve complainant from further responsibility for the telephone service provided by General and which would have transferred such responsibility to Capa. Thus, it would appear that any action concerning the refund of the \$783.70 paid to General by complainant would be an action against Capa rather than General. Complainant was responsible to General for the \$783.70 bill and paid it. Since the complaint fails to state what was done or not done by General which would entitle complainant to a refund, and complainant did not file an amended complaint to remedy this defect, the action against General should be dismissed.

Findings of Fact

1. Complainant's pleading is vague, unintelligible, and ambiguous from which it is not possible to extricate a clear and unambiguous cause of action.

2. Complainant's pleading fails to state a cause of action as required by Code Section 1702 because it does not set forth any act or thing done or omitted to be done which is claimed to be in violation of any provision of law or of any order or rule of the Commission.

3. Complainant's pleading fails to meet the requirements of Rule 10 of the Commission's Rules. It fails to set forth in ordinary and concise language so as to completely advise the defendants and the Commission of the facts constituting the grounds of the complaint in sufficient detail, the injury complained of, or as to which of the defendants he is referring to in his allegations.

4. Complainant was granted leave to amend his complaint so as to comply with Code Section 1702 and Rules 9 and 10 of the Commission's Rules, but the amended complaint submitted by complainant was also insufficient and was rejected.

Conclusion of Law


Since complainant's pleading does not comply with the provisions of Code Section 1702 and Rules 9 and 10 of the Commission's Rules, and he has failed to adequately amend his complaint within the time permitted, it should be dismissed.

C.10814 ALJ/ems/ec


Therefore, IT IS ORDERED that Case No. 10814 is dismissed.

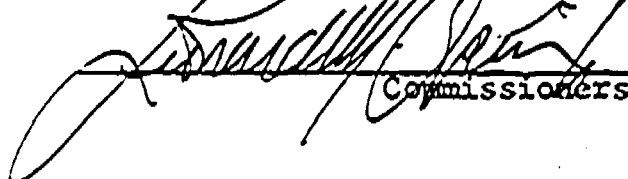
The effective date of this order shall be thirty days after the date hereof.

Dated AUG 19 1980, at San Francisco, California.



President





Commissioners

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