

JUL 18 1997

Decision 97-07-050 July 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DAMASHI ENTERPRISES, INC.,)

Complainant,)

vs.)

PACIFIC BELL,)

Defendant.)

Case 97-07-050
(Filed March 29, 1996)

ORIGINAL

Donald Rich, Attorney at Law, for Damashi
Enterprises, Inc., complainant.

Colleen M. O'Grady, Attorney at Law, for
Pacific Bell, defendant.

Richard Munquia, Los Angeles Police Department,
interested party.

O P I N I O N

Summary

By this decision we deny the complaint of Damashi Enterprises against Pacific Bell (Pacific) seeking restoration of business telephone numbers as an interim relief, service reconnection, and suspension of payments of bills for telephone service and advertisement.

Background

This complaint was filed by Damashi Enterprises, Inc. against Pacific on March 29, 1996, seeking the following:

- interim relief by restoring business service to telephone numbers; (213) 627-8789, (310) 271-1575, (310) 328-8626, (310) 338-9775, (310) 550-7315, and (818) 795-3699;
- all telephones be connected with full service; and
- telephone bills and advertising bills be suspended from the time of service disconnection to restoration of service.

On February 20, 1996, the Honorable Richard Berry, Judge of the Municipal Court, County of Los Angeles, Los Angeles Judicial District, issued a magistrate's finding that there was probable cause to conclude that the telephone service provided to complainant have been or are to be used by complainant as instruments to violate or assist in violation of the penal laws of the State of California. Pacific and General Telephone Company (GTEC)¹ were ordered to disconnect the existing service for a one-year period, further ordering that no referral service be provided for those numbers.

Pacific disconnected the numbers on February 22, 1996.

Under Pacific's Rule 31, an evidentiary hearing was held before an administrative law judge on April 18, 1996, to determine whether complainant should have the Pacific telephone services restored.

At the hearing, the following persons appeared:

- Donald Rich, attorney for complainant.
- Colleen O'Grady, attorney, and Nancy Hensley, case manager for Pacific.
- Richard Munguia, detective for the Los Angeles Police Department (LAPD), administrative vice division.

Decision (D.) 91188, dated January 8, 1980, sets out the procedure whereby telephone service provided by a telephone utility is to be disconnected when the service is being used for illegal purposes. That decision required disconnection of existing service upon receipt from any authorized official of a law enforcement agency of a document, signed by a magistrate, finding that probable cause exists to believe that the service is or will be used to violate or assist in the violation of the law. Included in the magistrate's writing must be a finding that there is probable cause to believe not only that the subject telephone facilities have been

¹ General Telephone Company, the name used in the magistrate ruling should properly be GTE California, Incorporated.

or are to be used in the commission or facilitation of illegal acts, but that the character of such acts is such that, absent immediate and summary action, significant dangers to the public health, safety, or welfare will result. (Id., pp. 98-99.)

The Los Angeles Police Department, as the concerned law enforcement agency under Schedule Cal. P.U.C. No. D&R 3rd Rev. Sheet 61 has:

"4.(1) the burden of proving that the use made or to be made of the service is prohibited by law, or that the service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in the violation of the law and that the character of such acts is such that, absent immediate and summary action in the premises, significant dangers to the public health, safety, or welfare will result, and

"(2) the burden of persuading the Commission that the service should be refused or not be restored."

Testimony of Los Angeles Police Department

The LAPD participated in the hearings, providing documentary evidence and the testimony of Detective Munguia. Detective Munguia, testifying on behalf of the Los Angeles Police Department, explained the circumstances leading up to the request for a court order to disconnect services. In the course of his duties as a vice detective, he had noticed advertisements for escort services in the entertainment section of the classified advertisements of local newspapers, such as the L.A. Express. Munguia routinely contacts advertisers that are shown as not licensed, to inform them of the requirement to be licensed by the proper local jurisdiction, and to inform them that the Police Department is aware that many of these advertisers are fronts for prostitution.

Munguia testified that he and other LAPD detectives rented hotel rooms seven times during this undercover investigation, each time calling one of complainant's business phone numbers listed in advertisements for an escort. In each instance, the detective was told the price, usually \$200 for an hour, and when he agreed, was told that a young woman arrive, typically in about an hour. When the woman arrived, she told the detective to sign a short contract which indicated the charge and length of escort service, and that there would be no refunds. Once signed, the woman refused to perform a massage claiming she was not licensed to massage, and performed no prostitution or other physical services. She told the detective that the escort service was only for being in the same room with the client, with no physical contact offered or allowed.

Munguia had several of the women arrested for not having an escort license.

LAPD had been contacted by several clients of Damashi who were dissatisfied with the service. Typically they felt that they had been defrauded and misled as to the nature of the services to be provided.

Testimony of Complainant

The complainant's counsel rested without offering any evidence or witness.

Testimony of Pacific

Pacific testified that it believed the request for disconnection to be valid and therefore disconnected the services requested by the Court. Only the five numbers listed on the magistrate order were disconnected. The sixth number listed by Damashi in the complaint, (310) 328-8626, was not disconnected, and is still in service to the best of Pacific's knowledge.

Discussion

It has been determined that telephone service is an interest in property entitled to protection against taking without due process. To disconnect, there must be probable cause to believe that facilities are being or are to be used to commit illegal acts, and that the character of the acts is such that, absent summary action, significant dangers to public health, safety, and welfare will result. (Goldin v. Pub. Util. Comm., 23 C.3d 638, 663 (1979).)

Prior to termination of service, the law enforcement agency must show an impartial tribunal that there is probable cause to act, in a manner reasonably comparable to a proceeding before a magistrate to obtain a search warrant. (Sokol v. Pub. Util. Comm., 53 Cal. Rptr. 673, 679 (1966), 65 CPUC2d 247, 256 (1966).)

Probable cause for issuance of a search warrant is approximately the same as that justifying arrest without warrant; reasonable and probable cause exists if a person of ordinary care and prudence would be led to conscientiously entertain honest and strong suspicion that the accused is guilty or that contraband is present. (People v. Scott, 66 Cal. Rptr. 257, 259 CPUC2d 768 (1968).)

The Commission's obligation is to review the showing made before the magistrate in order to determine whether telephone service should be restored. The Commission might find sufficient basis for denying restoration on the magistrate's order based on the record before the magistrate. "In a civil administrative proceeding of this nature, where the liberty of the subscriber is not at stake, it is sufficient for purposes of the interim protection involved that the Commission limit itself to the face of the affidavits and an assessment of their adequacy to support the magistrate's finding." (Goldin v. Pub. Util. Comm. at 668.)

The United States Supreme Court has adopted the "totality of the circumstances" analysis to determine the sufficiency of an affidavit in support of a search warrant. According to the court:

"The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of the reviewing court is simply to ensure that the magistrate had a 'substantial basis for...conclud(ing)' that probable cause existed." (Illinois v. Gates, 462 U.S. 213, 238 - 239 (1983).)

In California, the totality of the circumstances test is used to assess whether a search warrant affidavit based on hearsay established probable cause (People v. Rothen, 203 CA 3d 684 (1988)); and whether hearsay or double hearsay information of criminal activity will support issuance of a search warrant depends not upon terminology or ritualistic formula, but upon the quality and persuasiveness of the information itself. (See People v. Superior Court of Santa Clara City, 91 Cal. App. 3d 463; 154 Cal. Rptr. 157 (1979).)

This Commission is not a forum to relitigate a magistrate's finding of probable cause; the complainant must avail himself of procedures before the criminal courts to address that issue. (See D.87642 in the complaint of Marvin Goldin (Summerwind) v. Gen. Tel. Co. of Cal. 82 CPUC 332 at 339 (1977).)

This proceeding is an administrative proceeding pursuant to a complainant seeking restoration of telephone service. This is a civil proceeding; it is not a quasi-criminal matter. There is no requirement of proof beyond a reasonable doubt that the subscriber of the telephone service committed a violation of any law. For discontinuance of service, Tariff Rule 31 requires a showing by the law enforcement agency to a magistrate of a

probable cause to find that the use made or to be made of the service is prohibited by law, or that the service is being or is to be used directly or indirectly to assist in the violation of the law.

The LAPD under Rule 31 has the burden of convincing the CPUC of the threatened prohibited use of the telephone. The extent of certainty is a civil degree of certainty, not a criminal law requirement of certainty beyond a reasonable doubt.

But let us review the content of the record developed by LAPD before the CPUC. In this case, LAPD informed the magistrate that it determined that respondent's business, Cameo Escort Service, was involved in illegal activity through its telephone numbers, and was illegally taking the money of male clients, and that restoration of its telephone numbers would only permit it to continue to operate illegally and take the money of clients illegally. Judge Berry issued a magistrate order finding that there was probable cause to believe that the respondent's telephone facilities were used to commit or facilitate illegal acts, necessitating immediate and summary action to disconnect respondent's telephone facilities, and not reissue any of the numbers for one year, to protect the public health, safety and welfare.

In deciding whether to order restoration of service, we find it reasonable to analyze the case in the light of the totality of the circumstances to answer whether the situation in its totality persuades us to restore service. We will accord this case due consideration regardless of whether the patrons of the Damashi Enterprise sought to engage in an illegal act.

The clients of Damashi Enterprises are clearly an unhappy lot who were totally dissatisfied with Damashi's escort services because they did not receive the prostitution service which they sought and expected based on the advertisements and telephone conversations with Damashi's dispatchers, notwithstanding the fact

that no direct evidence exists in this record to show that any verbal explicit promise of prostitution was made by Damashi. We rely on Mr. Munguia to assess the circumstances that led to his conclusions that Damashi was committing fraud and grand theft.

According to Mr. Munguia the services offered by escort services, while some may be legitimate and licensed escort services, "a good portion of escort services that advertise in these publications [Yellow Pages, San Fernando Valley west edition] are merely fronts for prostitution activity where they have girls that come out and solicit a client for an act of prostitution..." (at Page 28, Tr., Vol.1). And Damashi, operating under different aliases, was basically holding out as a typical escort service.

There is no indication in this record that Damashi's dispatchers were telling their callers that the service was only an escort service, not a prostitution service, that there was no prostitution involved or that the money to be paid was unrefundable. We agree with Mr. Munguia that had Damashi informed its clients of what services would be provided, and what would not be provided though expected by the customer, it would have practically no "business." (Page 71, Tr. Vol. 1, Munguia.) But for obvious business reasons Damashi's dispatchers and escorts did not do any of that. To the contrary they maintained a carefully organized outfit that imparts a strongly implied (but not explicit) promise of prostitution with catchy identifying names such as Abracadabra, Mystique, City Girls, Private Angels and others. The dispatchers do not require that the client go somewhere with the Private Angel accompanying him. Rather, they do not go anywhere.

Damashi's dispatchers would describe the Private Angel to the caller, presumably noting physical attributes. They would quote him a price for "a session" as though we all know what a "session" is. A "session" is typically an hour. The dispatcher sends a young girl to the premises of the client to perform services for about 60 minutes in the meeting room, with the express

intent of collecting unrefundable money on the front end. Everything about this leads the client implicitly to believe that there would be prostitution for which a sizable payment was due and payable in advance of service. In almost every case presented, money was collected as a first order of business without any oral explanation about what service was going to be provided and what was not, to the client; and the client is then goaded to sign a receipt basically acknowledging the money was not refundable. Then, and only then, the client was told in no uncertain terms that the service he sought, prostitution, would not be rendered. He then was told that he had agreed to an unrefundable payment for service that does not include sexual activities. The service of the Private Angel was mere presence for a measured time. The pattern of this bait-and-switch transaction described by Mr. Munguia confirms this tactic was employed for the purpose of collecting fees and refusing the anticipated service, leaving the client with no recourse to redress his grievances.

This case should be decided without regard to the moral questions that are raised by the nature and type of illicit service sought by the would be clients and surreptitiously promised and sold without delivery. Clearly, if the individuals seeking this sexual interest had their wishes fulfilled they hoped to engage in an unlawful activity which might have led to their arrest and possible conviction. Consequently, that would have been a sufficient cause for service disconnection; and in that case, there might not have been the empathy invoked for the aggrieved clients under the present circumstances. But instead the case before us alleges deceit and fraud against a part of the public that may be participants in a different kind of crime. The latter issue is moot for the purpose of our analysis. So we are compelled to focus our attention on the protection of public safety and welfare. It behooves us to note that our interest in public safety and welfare is not necessarily limited to the welfare and safety of law abiding

citizens only. Our interest in this regard is broad and accordingly provides equal protection to all Californians.

In the cases presented to us for our consideration, the safety and welfare of the the Damashi's patrons as well as escorts was endangered because of the nature of the business transaction offered and completed. An angry and dissatisfied client is a danger to the escort and himself. The possibility of the danger faced is demonstrated by one of the incidents described by Detective Munguia in which the client attempted to forcefully take back his money after being told no sexual services were to be provided.² He was subsequently jailed after the women reported a robbery to the Los Angeles Sheriff's Department.

Mr. Munguia's allegation that the actions of Damashi constitutes actionable fraud or grand theft is well placed. We are concerned here with both law violation which endangers the public health, safety or welfare, thus justifying the summary disconnection authorized by Rule 31 and our refusal to restore service. Our conclusion based, on the evidence presented in this case, is that the use made of the service is prohibited by law, and that the service was used as an instrumentality, directly or indirectly, to violate or assist in the violation of the law.

We see dangers to public health, safety and welfare in the kind of business Damashi's enterprises conduct. Some of the escorts have repeatedly violated local laws to the extent that they were not licensed in cities or towns that require escorts to be licensed and despite the repeated warnings by the police. As to

² Mr. Munguia reports that an individual secured a room in West Hollywood and called for two women from Damashi's services. The two women showed up, took \$450 and refused physical contacts which led the individual to demand refund. He managed to recover the money but ended up in jail for alleged robbery. (Munguia testimony, at page 31, Tr. Vol. 1.)

that, we do not see it as a violation that would cause significant dangers to the public health, safety or welfare, to independently serve as a basis to refuse service. But, we view it as an indication of Damashi's disregard for the law. We consider it as an element in the totality of circumstances that lead us to believe there is good reason based on the record to believe Damashi engaged and would engage in unlawful activities.

In conclusion, we find that law enforcement has satisfactorily met its burden of proof to justify maintaining the disconnection of telephone services of Damashi.

Finally, Damashi asks that the charges for both service and advertising be suspended during the time his service is disconnected. Service charges cease during the period of disconnection, according to Pacific witness Hensley. Regarding the request that advertising charges also be suspended, Pacific points out that the Commission has no jurisdiction over directory advertising and its charges. Public Utilities Code § 728.2(a) states in part, "...the Commission shall have no jurisdiction or control over classified telephone directories or commercial advertising included as part of the corporation's alphabetical telephone directories, including the charges for..." Thus, while other avenues for relief may exist, the Commission is precluded from addressing that request.

Findings of Fact

1. Complainant offered escort services using telephone directory advertising and telephone service.
2. The escort service provided involved conversation only, with no physical contact.
3. Complainant may have operated its escort service without the requisite license in certain communities.
4. The claimed activities presented danger to the public health, safety or welfare.

5. Telephone service to telephone number (310) 328-8626 was not disconnected.

6. The Commission has no jurisdiction over classified telephone directory or commercial advertising charges.

Conclusions of Law

1. LAPD has met its burden of proof that telephone numbers (213) 627-8789, (310) 271-1575, (310) 338-9975, (310) 550-7315, and (818) 795-3699 were used as instruments to violate or assist in the violation of the law, and that the character of those acts is such that if telephone service were not discontinued, significant dangers to public health, safety or welfare will result.

2. The relief requested by complainant should be denied with respect to reconnecting telephone service to those telephone numbers that were disconnected as a result of the magistrate's order in this proceeding.

3. No other relief should be granted.

4. This order should be effective on the date signed.

O R D E R

IT IS ORDERED that:

1. The relief requested by complainant is denied with respect to reconnecting telephone service to those telephone numbers that were disconnected as a result of the magistrate's order in this proceeding.

2. This proceeding is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

I dissent.

/s/ P. GREGORY CONLON
President

I dissent.

/s/ HENRY M. DUQUE
Commissioner

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"4.(1) the burden of proving that the use made or to be made of the service is prohibited by law, or that the service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in the violation of the law and that the character of such acts is such that, absent immediate and summary action in the premises, significant dangers to the public health, safety, or welfare will result, and

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Discussion

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But let us review the content of the record developed by LAPD before the CPUC. In this case, LAPD informed the magistrate that it determined that respondent's business, Cameo Escort Service, was involved in illegal activity through its telephone numbers, and was illegally taking the money of male clients, and that restoration of its telephone numbers would only permit it to continue to operate illegally and take the money of clients illegally. Judge Berry issued a magistrate order finding that there was probable cause to believe that the respondent's telephone facilities were used to commit or facilitate illegal acts, necessitating immediate and summary action to disconnect respondent's telephone facilities, and not reissue any of the numbers for one year, to protect the public health, safety and welfare.

In deciding whether to order restoration of service, we find it reasonable to analyze the case in the light of the totality of the circumstances to answer whether the situation in its totality persuades us to restore service. We will accord this case due consideration regardless of whether the patrons of the Damashi Enterprise sought to engage in an illegal act.

The clients of Damashi Enterprises are clearly an unhappy lot who were totally dissatisfied with Damashi's escort services because they did not receive the prostitution service which they sought and expected based on the advertisements and telephone conversations with Damashi's dispatchers, notwithstanding the fact

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Mr. Munguia's allegation that the actions of Damashi constitutes actionable fraud or grand theft is well placed. We are concerned here with both law violation which endangers the public health, safety or welfare, thus justifying the summary disconnection authorized by Rule 31 and our refusal to restore service. Our conclusion based, on the evidence presented in this case, is that the use made of the service is prohibited by law, and that the service was used as an instrumentality, directly or indirectly, to violate or assist in the violation of the law.

We see dangers to public health, safety and welfare in the kind of business Damashi's enterprises conduct. Some of the escorts have repeatedly violated local laws to the extent that they were not licensed in cities or towns that require escorts to be licensed and despite the repeated warnings by the police. As to

² Mr. Munguia reports that an individual secured a room in West Hollywood and called for two women from Damashi's services. The two women showed up, took \$450 and refused physical contacts which led the individual to demand refund. He managed to recover the money but ended up in jail for alleged robbery. (Munguia testimony, at page 31, Tr. Vol. 1.)

intent of collecting unrefundable money on the front end. Everything about this leads the client implicitly to believe that there would be prostitution for which a sizable payment was due and payable in advance of service. In almost every case presented, money was collected as a first order of business without any oral explanation about what service was going to be provided and what was not, to the client; and the client is then goaded to sign a receipt basically acknowledging the money was not refundable. Then, and only then, the client was told in no uncertain terms that the service he sought, prostitution, would not be rendered. He then was told that he had agreed to an unrefundable payment for service that does not include sexual activities. The service of the Private Angel was mere presence for a measured time. The pattern of this bait-and-switch transaction described by Mr. Munguia confirms this tactic was employed for the purpose of collecting fees and refusing the anticipated service, leaving the client with no recourse to redress his grievances.

This case should be decided without regard to the moral questions that are raised by the nature and type of illicit service sought by the would be clients and surreptitiously promised and sold without delivery. Clearly, if the individuals seeking this sexual interest had their wishes fulfilled they hoped to engage in an unlawful activity which might have led to their arrest and possible conviction. Consequently, that would have been a sufficient cause for service disconnection; and in that case, there might not have been the empathy invoked for the aggrieved clients under the present circumstances. But instead the case before us alleges deceit and fraud against a part of the public that may be participants in a different kind of crime. The latter issue is moot for the purpose of our analysis. So we are compelled to focus our attention on the protection of public safety and welfare. It behooves us to note that our interest in public safety and welfare is not necessarily limited to the welfare and safety of law abiding

5. Telephone service to telephone number (310) 328-8626 was not disconnected.

6. The Commission has no jurisdiction over classified telephone directory or commercial advertising charges.

Conclusions of Law

1. LAPD has met its burden of proof that telephone numbers (213) 627-8789, (310) 271-1575, (310) 338-9975, (310) 550-7315, and (818) 795-3699 were used as instruments to violate or assist in the violation of the law, and that the character of those acts is such that if telephone service were not discontinued, significant dangers to public health, safety or welfare will result.

2. The relief requested by complainant should be denied with respect to reconnecting telephone service to those telephone numbers that were disconnected as a result of the magistrate's order in this proceeding.

3. No other relief should be granted.

4. This order should be effective on the date signed.

that, we do not see it as a violation that would cause significant dangers to the public health, safety or welfare, to independently serve as a basis to refuse service. But, we view it as an indication of Damashi's disregard for the law. We consider it as an element in the totality of circumstances that lead us to believe there is good reason based on the record to believe Damashi engaged and would engage in unlawful activities.

In conclusion, we find that law enforcement has satisfactorily met its burden of proof to justify maintaining the disconnection of telephone services of Damashi.

Finally, Damashi asks that the charges for both service and advertising be suspended during the time his service is disconnected. Service charges cease during the period of disconnection, according to Pacific witness Hensley. Regarding the request that advertising charges also be suspended, Pacific points out that the Commission has no jurisdiction over directory advertising and its charges. Public Utilities Code § 728.2(a) states in part, "...the Commission shall have no jurisdiction or control over classified telephone directories or commercial advertising included as part of the corporation's alphabetical telephone directories, including the charges for..." Thus, while other avenues for relief may exist, the Commission is precluded from addressing that request.

Findings of Fact

1. Complainant offered escort services using telephone directory advertising and telephone service.
2. The escort service provided involved conversation only, with no physical contact.
3. Complainant may have operated its escort service without the requisite license in certain communities.
4. The claimed activities presented danger to the public health, safety or welfare.

O R D E R

IT IS ORDERED that:

1. The relief requested by complainant is denied with respect to reconnecting telephone service to those telephone numbers that were disconnected as a result of the magistrate's order in this proceeding.

2. This proceeding is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

I dissent.

/s/ P. GREGORY CONLON
President

I dissent.

/s/ HENRY M. DUQUE
Commissioner