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Decision 97-10-055 October 22, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Oliver Svenson,

Complainant,

v.

Pacific Bell (U 1001 C),

Defendant.

ORIGINAL
(ECP)

Case 97-07-055
(Filed July 31, 1997)

Oliver Svenson, for himself, complainant.
Douglas Phason, for Pacific Bell, defendant.

OPINION

This case involves a disputed bill of \$1,202.47 for residential telephone service to Apartment 6, 400 N. Doheny Drive, Los Angeles. Complainant says he did not authorize the service; defendant says he did. Public hearing was held September 12, 1997.

Complainant testified that he lives at Apartment 3, 400 N. Doheny Drive. His business required a foreign language translator and he hired his neighbor who lived in Apartment 6 as a translator. As part of the neighbor's compensation, complainant had Pacific Bell install in Apartment 6 on December 19, 1995, telephone 310-271-0512, with the bill to be sent to complainant at Apartment 3. The service was toll restricted. On December 30, 1995, complainant decided the employment relationship with his neighbor was unworkable and he had the telephone disconnected. He paid the bill of \$39.75.

On January 2, 1996, a person called Pacific Bell and requested that the service for 310-271-0512 be reconnected in Apartment 6 with the bill sent to complainant in

Apartment 3. The person calling gave Mr. Svenson's social security number and driver's license number as identification. Pacific Bell had those numbers in its file because of prior service rendered to Mr. Svenson. The service was connected without toll restriction.

Pacific Bell's witness testified that Pacific Bell sent bills to complainant at Apartment 3, for service provided 310-271-0512. Those bills were partially paid between February 1996 and April 1996. Because of past due bills on the account Pacific Bell sent a disconnect notice to complainant in May 1996. The service was disconnected May 29, 1996 at complainant's request. The balance due on the account is \$1,202.47.

Complainant testified that he never requested Pacific Bell to reconnect 310-271-0512 on January 2, 1996 and he does not know who did; he never received any telephone bills for the account until May 1996, when he immediately requested closure; he never made a payment on the account and he does not know who did.

Pacific Bell's witness testified that all requests regarding 310-271-0512 were through telephone calls. It has nothing in writing from complainant. Pacific Bell does not know who paid the bills for 310-271-0512, nor whether the payments were cash or check. Payments were made in person at an office of Pacific Bell.

The question for decision is whether or not it was the complainant, Oliver Svenson, who called Pacific Bell on January 2, 1996 requesting reconnect, or was it an impostor. Pacific Bell does not know who called; complainant denies calling. Pacific Bell does not know who made the partial payment of the bills for the service; complainant denies paying the bills. Pacific Bell says the bills for service at Apartment 6 were sent to Apartment 3; complainant denies receiving the bills until the final bill of May 28, 1996, at which time complainant told Pacific Bell that he had not ordered the service, would not pay for it, and requested disconnect.

Weighing the evidence, we are of the opinion that complainant has sustained his burden of proof that he did not authorize the service reconnect on January 2, 1996 and is not liable for payment. Pacific Bell was defrauded, but not by complainant.

Mr. Svenson's situation is substantially different from that set forth in Malik vs. GTE California, D.95-04-025 in C.94-07-004, rehearing denied D.96-09-047. In Malik we held an innocent, but negligent, third party liable for a telephone bill incurred by his roommates. Malik shared an apartment with two others. Malik agreed to common use of a telephone over which a heavy volume of long distance calls were placed. The telephone was originally in a roommate's name, but unknown to Malik the roommate switched the telephone to Malik's name, using Malik's social security number, driver's license, and other information sufficient to withstand a credit check by the utility. After the transfer, the telephone bills increased dramatically and the roommate disappeared.

Malik is distinguishable from the facts in the case at bar. In Malik, we concluded that Malik "was negligent in permitting unauthorized knowledge and use of his personal identification criteria." (Malik D.95-04-025 at Mimeo., 8); and we held Malik responsible "for the loss occasioned by his act of entering in an agreement for sharing of a telephone bill with roommates." (D.96-09-047, Mimeo., 3.)

None of those two factors appears in this case: there is no showing of negligence on the part of Svenson and there was no agreement (after the first termination of service) by Svenson to use a common telephone.

O R D E R

IT IS ORDERED that:

1. Pacific Bell shall cancel the \$1,202.47 charge on complainant Oliver Svenson's account .

2. This proceeding is closed.

This order is effective today.

Dated October 22, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners