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MAIL DATE

12/18/97

Decision 97-12-116

December 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MIKE AND KATHLEEN LYON,
dba ORLAND FLORIST,

Complainants,

v.

MATRIX TELCOM,

Defendant.

ORIGINAL

C. 93-06-051

(Filed June 17, 1993)

**ORDER DENYING DEFENDANT'S APPLICATION FOR
REHEARING OF D.95-03-040**

I. SUMMARY

Matrix Telecom ("Matrix") has filed an application requesting "partial" rehearing of our Decision (D.) 95-03-040, wherein we granted Mike and Kathleen Lyon ("Complainants") compensation from the Advocates' Trust Fund ("Trust") for their substantial contribution in bringing to the Commission's attention a significant enforcement matter.¹ We found that Complainants had devoted considerable time and expense in presenting a case against Matrix which revealed the problem of unauthorized switching of telephone service, a tariff violation which could detrimentally affect many other telecommunications consumers in California. (D. 95-03-040, mimeo, p. 4.) Compensating Complainants for their efforts, we determined, was consistent with the purposes of

¹ We are unable to find the meaning of Matrix's request for a partial rehearing in the application.

the Trust. Because Matrix has failed to demonstrate legal error in our decision, as required by Section 1732 of the California Public Utilities Code, the application for rehearing is denied.

II. DISCUSSION

Complainants initially prevailed in their complaint against Matrix. In D. 94-03-045, we found that Matrix had impermissibly switched one of Complainants' business lines to Matrix's long distance service. We therefore ordered that Matrix make reparations to Complainants in the amount of \$700.20 for service charges paid and unauthorized excessive rates. (D.94-03-045, mimeo, Ordering paragraph No. 2.)²

Complainants subsequently filed, on April 15, 1994, a request for compensation from the Trust in the amount of \$45,177. (Request for Compensation from the Advocates' Trust Fund, p.13.) The request included a related request that Matrix be ordered to reimburse the Trust for any compensation awarded to Complainants. On May 4, 1994, Matrix filed a reply to Complainants' request, stating concisely : "Matrix Telecom does not wish to lodge a formal objection to Complainants' request for compensation from the Advocates' Trust Fund."³ After a thorough evaluation of the detailed data submitted by Complainants with respect to their monetary expenses and the time devoted to the matter, we ordered in D. 95-03-040 that the Trustee of the Trust award

² By clerical error, this initial decision on the complaint, D.94-03-045, was not correctly identified on pages 1 and 4 of D.95-03-040. Matrix appears not to have been prejudiced by this error in that Matrix accurately references D.94-03-045 in its application. We will herein order the necessary corrections.

³ The remainder of Matrix's entire reply to Complainants' request for compensation from the Trust is as follows: "However, Matrix Telecom does believe it appropriate to note that Decision No. 94-03-045 is the subject of a pending application for rehearing. Moreover, as Decision No. 94-03-045 was issued in an expedited complaint proceeding, any findings, conclusions, or orders contained therein are neither precedent nor binding on the Commission or any court. (Pub. Util. Code § 1705.)" Matrix fails to make an intelligible connection between these last two assertions regarding the initial complaint decision, and Matrix's position on the separate request for compensation from the Trust. As a point of information, we note that some of the issues raised by Matrix in its application for rehearing of the initial complaint decision were denied in D.94-07-069, and some were recalendered under the Commission's regular procedure. The recalendered issues were then consolidated with the investigatory proceeding, I. 94-03-020.

Complainants \$17,883 (plus interest). In the same decision, we deferred the question whether Matrix should be ordered to reimburse the \$17,883 to the Trust for consideration in an investigatory proceeding that we had contemporaneously established, I. 94-03-020.

Matrix now seeks rehearing on two grounds:

1. Matrix claims its due process rights were violated by D.95-03-040 "... to the extent that findings or conclusions therein are intended to be binding in other proceedings." (Matrix's Application for Partial Rehearing of Decision No. 95-03-040 ("Application"), p. 1);
2. Matrix asserts it "has good and substantial reasons for objecting to the requirement to reimburse the Trust...." (Ibid, p. 3.)

We find the due process claim to be without merit, and the second claim to be outside of the scope of the decision and moot.

There is a fundamental logical flaw in the contention that Matrix's due process rights have been violated if some unspecified result occurs in the future in some other proceeding. Matrix does not trace the logic of this argument. The simple fact is that Matrix had notice of the request for compensation filed by Complainants and Matrix expressly declined to object to this request:

"Matrix Telecom does not wish to lodge a formal objection to Complainants' request for compensation from the Advocates' Trust Fund." (Matrix's May 4, 1994 Reply to Complainant's Request for Compensation from the Advocates' Trust Fund, p. 1.)

This statement, moreover, is echoed in the present application for rehearing. Matrix states quite clearly that based on its own assumptions regarding the request for compensation from the Trust: "...Matrix had no true interest at stake in the matter." (Matrix's Application, p. 2.) We remind Matrix, therefore, that it had declined to lodge a formal objection to a request for \$45,177 in

compensation, which as it turned out, was considerably more than the \$17, 883 we granted.

Where a party has due notice of the issues presented and the opportunity to be heard on the issues, we see no rationale that could transform the party's freely made decision to forego the opportunity to be heard into a due process violation.

Matrix also does not assist our efforts to understand its position with an articulation of some other substantive or procedural flaw in our rendering of D.95-03-040 which would possible qualify as a due process violation. Matrix comes close to revealing what it has in mind where it asserts that if the Commission's intent was to require Matrix to reimburse the Trust for the amount awarded to Complainants, then, Matrix contends, "Matrix was deprived of a reasonable opportunity to object to the factual assertions upon which the award of compensation was based." (Application, p. 3.) Matrix also complains of some unspecified precedent being unfairly established. Again, the logic of the argument based on a conditional supposition is wanting. We reiterate, the controlling fact is that Matrix expressly declined to object to the specific requests set out in detail in Complainants' filing.

Furthermore, in D.95-03-040 we did not make a finding or an order on the merits with regard to the question whether Matrix should reimburse the Trust for the compensation granted to Complainants. Instead, we deferred that question to I. 94-03-020, the proceeding we had opened to more broadly investigate Matrix's operations and the possibility of imposing penalties in addition to the reparations awarded in Complainants' case. (D.95-03-040, p. 6.) Deferring the question of Matrix's reimbursement to the Trust does not establish what Matrix loosely refers to as a "precedent" on the merits of the question, nor does it demonstrate Matrix was prevented from challenging the amount of the

compensation requested by Complainants by anything other than its decision not to do so.

Finally, Matrix cannot reasonably claim that it was surprised by the possibility that the Commission would at some point consider whether Matrix should reimburse the Trust. Complainants' request for compensation, of which Matrix had due notice, specifically included the recommendation that Matrix be ordered to reimburse the Trust if compensation were awarded. Complainants stated:

"...Complainants feel strongly and would like to request at this time, that the ATF [i.e. Advocates' Trust Fund] Commission demand reimbursement in full from the Defendant for what ever monies are dispensed by the ATF to Complainants in regards to case 93-06-051....Reimbursement by Defendant to the ATF would allow said monies to remain in the ATF where the money belong (sic) for future victims."

(Complainant's Request for Compensation, filed April 15, 1994, p. 13.)

Complainants thereby clearly informed Matrix that the Commission was being asked to consider ordering Matrix to reimburse the Trust. Complainants also provided in two appendices a detailed breakout of their requested compensation for \$45,177. In face of these requests, Matrix opted not to lodge an objection.

In addition, subsequent to the filing of Matrix's present application, Matrix was able to contest the question whether it should be ordered to reimburse the Trust when that issue was heard in the investigatory proceeding. Although Matrix did not prevail, and we ordered Matrix to reimburse the Trust (D.96-09-090, Ordering Paragraph 2.), Matrix had the opportunity to present its arguments

against reimbursement, which we carefully considered. That particular matter is now moot. ⁴

III. CONCLUSION

With respect, therefore, to both the issue of the level of compensation from the Trust awarded to Complainants, and the issue of Matrix reimbursing the Trust, Matrix has had due notice and the opportunity to be heard. With respect to both issues, Matrix freely declined to lodge objections when it had the chance to do so. With respect to the second issue, because it was deferred to another proceeding, Matrix was able to participate subsequently in a hearing where its arguments were considered. We find, therefore, no due process violation.

For the foregoing reasons, we conclude that Matrix has not met its burden of demonstrating legal error either in our process or in the orders made in D.95-03-040.

IT IS THEREFORE ORDERED that:

1. The application filed by Matrix for rehearing of D.95-03-040 is denied.
2. D. 95-03-040 shall be modified:
 - at page 1, last paragraph, to substitute "D.94-03-045"
 - for the reference to D. 93-04-035, and at page 4, next to last paragraph, to substitute "D.94-03-045" for each of the two references to D.93-03-045.

⁴ Matrix has not filed a timely application for rehearing of D.96-09-090, and the reimbursement order in that decision is now final.

3. The above-captioned complaint docket, C.93-06-051, is hereby closed.

This order is effective today.

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

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners