

Decision 00-03-002 March 2, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Country Place Homes, Inc.,

Complainant,

vs.

Pacific Bell,

Defendant.

Case 99-05-033
(Filed May 18, 1999)

OPINION

Summary

The complaint of Country Place Homes, Inc. is dismissed with prejudice.

Background

Country Place Homes (complainant) is a residential real estate brokerage firm. Complainant formerly operated under a Century 21 franchise. Cendant Corporation (Cendant) is the parent marketing company for Century 21. Complainant is represented by its president and owner, Bernice Cannutt (Cannutt).

On May 18, 1999, complainant filed this complaint against Pacific Bell (Pacific) alleging that Pacific disconnected complainant's telephone service without Cannutt's authorization, request or knowledge, and further, that Pacific refused to restore service. Consequently, complainant alleges it had to close down a 21-year-old business and incurred severe financial loss.

On July 26, 1999, a prehearing conference (PHC) was held in Palmdale, California.

Position of Complainant

Complainant believes that a conspiracy existed between account executives of Pacific in charge of accounts for Century 21 real estate brokers and Cendant, the parent company of the Century 21 franchise. Complainant contends that Pacific's account executives assisted Cendant in eliminating, through disconnection of telephone service, the two Century 21 franchises owned by complainant.

Position of Defendant

Pacific's answer states that its records show that over the last 20 years complainant subscribed to several business telephones accounts under the names of Century 21 Aqua Dulce and Century 21 Tapadero. Pacific contends that it consistently billed complainant monthly pursuant to its tariffs. However, on several occasions when complainant did not pay its telephone bills, Pacific sent complainant disconnection notices advising complainant of Pacific's intentions to disconnect telephone services. Pacific avers that on May 21, 1998, pursuant to its tariffs, Pacific disconnected service to account 661-268-0121 for non-payment. Pacific asserts that on May 22, 1998, complainant called Pacific regarding the disconnection of service and advised Pacific that complainant had filed a complaint with the Commission against Pacific and that \$1,742.08 had been impounded for complainant's unpaid telephone bill to account 661-268-0121.

Pacific denies that it, or any of its employees, ever engaged in a conspiracy with Cendant to sabotage complainant's business. Further, Pacific denies that it betrayed the public trust and caused financial destruction of complainant's business. Pacific believes that the central issue of the complaint involves a private dispute between complainant and Cendant.

Discussion

The relief sought in the written complaint is vague. At the PHC, Administrative Law Judge (ALJ) DeUlloa asked Cannutt several times to articulate the relief sought. Cannutt offered compelling statements regarding her good business sense and judgment. Cannutt described her ability to prosper and grow a real estate business in recessionary times. However, Cannutt did not seek to have service restored since she had already been forced to close her real estate business. Further, Cannutt acknowledged that the Commission lacks jurisdiction to award damages. Additionally, Cannutt acknowledged that Pacific was owed \$1,742.08, and Cannutt agreed that the amount held in impound by the Commission should be released to Pacific. At the PHC, Cannutt requested that the Commission investigate her accusations that Pacific conspired with Cendant to destroy her real estate business.

Cannutt's plight and ultimate loss of her business is distressing. However, based on the facts recited, we find that Cannutt's main grievance is with Cendant, an entity over which we lack jurisdiction. We are without authority to investigate complainant's grievances against Cendant. Thus, this complaint should be dismissed with prejudice.

The matter was categorized as an adjudicatory proceeding and the instructions to answer indicated that hearings were necessary. Based on our conclusion that complainant is unable to articulate specific relief that we may grant, we change the prior determination from "hearings are required" to "no hearings are required."

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were received.

Findings of Fact

1. Complainant is unable to request relief that the Commission is able to grant.
2. Complainant has deposited to the Commission's impound account a total of \$1,742.08, representing a billing dispute with Pacific.
3. Pacific is owed \$1,742.08 for service provided.

Conclusions of Law

1. This complaint should be dismissed with prejudice.
2. The impounded funds held by the Commission should be released to Pacific Bell.
3. No hearings are required in this matter.
4. In the interest of closing this case, the order should become effective on the date that it is signed.

O R D E R

IT IS ORDERED that:

1. Case (C.) 99-05-033 is dismissed with prejudice.
2. The Commission's Fiscal Office shall release to Pacific Bell \$1,742.08 which was impounded in this proceeding.

C.99-05-033 ALJ/JRD/sid *

3. C.99-05-033 is closed.

This order is effective today.

Dated March 2, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners