

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 11, 2009

TO PARTIES OF RECORD IN CASE 08-08-014, DECISION 09-03-006

On February 4, 2009, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 15.5(a) of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ MICHELLE COOKE for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision 09-03-006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Anthony Robinson,

Complainant,

vs.

Verizon Wireless (VAW) LLC (U3029C),
dba Verizon Wireless,

Defendant.

Case 08-08-014
(Filed August 1, 2008)

Anthony Robinson, in pro per, complainant.
Rynae Benson and Edward R. McGah, Attorney at law,
Verizon Wireless LLC, d/b/a Verizon Wireless,
for defendant.

**PRESIDING OFFICER'S DECISION
DISMISSING COMPLAINT WITHOUT PREJUDICE**

Summary

Case 08-08-014 is dismissed without prejudice, and this proceeding is closed.

Background and Procedural History

Complainant Anthony Robinson (Robinson) filed this complaint on August 1, 2008. The proceeding was initially filed under the Commission's Expedited Complaint Proceeding (ECP) rules, but was subsequently

recalendared for hearing under the Commission's regular procedure, as explained below.

A timely answer was filed by defendant Cellco Partnership d/b/a/ Verizon Wireless (Verizon), and the matter was set to be heard on October 20, 2008, as an ECP, or small claims case, because of the amount of money that appeared to be in controversy.

The complaint identifies the issues to be considered as follows:

Verizon (sic) failure to inform complainant of contract. Verizon's desire to enforce provisions of contract against complainant.

The complaint also identifies the exact relief desired by the complainant as,

Liquidated damages clause un-enforceable against defendant (sic). Any damages of Defendant (sic) has erroneously impacted complainant's credit....

Verizon's answer includes a general denial of the allegations of the complaint. On October 15, 2008, the assigned Administrative Law Judge (ALJ) convened a conference call with the parties to clarify the issues and the status of the case. At the conclusion of the conference call, Robinson objected to having this matter heard under our ECP rules and requested that the case be heard under the Commission's regular procedure. The ALJ granted this request and issued a ruling pursuant to Public Utilities Code section 1702.1, subdivision (a), and Rule 4.5, subdivision (g), of the Commission's Rules of Practice and Procedure, terminating this case as an ECP and recalendaring it for hearing under our regular procedure, on the grounds that the public interest so required.

The case was set for an evidentiary hearing (EH) on January 16, 2009. Considerable discussion of the issues took place between the ALJ and the parties before the hearing commenced, and then again on the record during the

consideration of preliminary matters. No witnesses were sworn, and no testimony or other evidence was received for the record before the EH adjourned.

Based upon the parties' statements during the course of these preliminary discussions, it became apparent to the ALJ that no payment of the contested early termination charge, or liquidated damages, was ever made to Verizon, and that Verizon had reversed, or corrected, its reporting of Robinson's nonpayment to credit bureaus. Both parties confirmed that this was correct. Based upon the parties' express agreement to those facts, the ALJ determined that every issue raised by the complaint and answer had been resolved.

Despite the absence of a dispute, Robinson sought to have this matter adjudicated to decide whether, under the circumstances, the parties had entered into a valid contract. The ALJ declined to hold the hearing for this purpose, because there was no allegation in the complaint that Verizon had violated a statute, rule, order or tariff, and because there was no basis for awarding relief from the Commission beyond that which he had already obtained. The contract no longer existed, and its validity was not in issue because the entire matter was moot. Consequently, the ALJ, on his own motion, stated that he would dismiss the case, and he adjourned the hearing.

Discussion

Based upon Robinson's own acknowledgement that he had never paid the early termination charge at issue and that Verizon had reversed the adverse credit reporting concerning his nonpayment, we conclude that Robinson suffered no cognizable harm as a consequence of entering into his service agreement with Verizon, and that there was no basis for maintaining his complaint under Public Utilities Code section 1702.

In order to ensure that Robinson is not foreclosed from bringing any legitimate dispute before the Commission on the basis of the factual circumstances alleged in his complaint, we will dismiss this matter without prejudice. This means that Robinson may file a new complaint based on the same transaction, but he must satisfy the requirements of Public Utilities Code section 1702 if he does so, as those requirements are jurisdictional.

Findings of Fact

1. The complaint in this case identifies this issue to be considered by the Commission as follows:

Verizon (sic) failure to inform complainant of contract. Verizon's desire to enforce provisions of contract against complainant.

2. The complaint identifies the exact relief sought by the complainant as follows:

Liquidated damages clause un-enforceable against defendant (sic). Any damages of Defendant (sic) has erroneously impacted complainant's credit....

3. The defendant, Verizon, does not seek to enforce any provision of its contract with the complainant, including the liquidated damages (i.e., early termination) clause.

4. Any impact of complainant's failure or refusal to pay liquidated damages to defendant on complainant's credit has been rectified by defendant.

5. Complainant has already obtained all the relief he seeks in his complaint.

Conclusions of Law

1. There is no need to address the issue of the validity of the contract between complainant and defendant, as there is no subsisting contract and the issue is moot.

2. There is no basis for maintaining the complaint pursuant to Public Utilities Code section 1702, because there is no allegation that the defendant did, or omitted to do, any act or thing in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission.

3. C.08-08-014 should be dismissed.

4. Dismissal of the complaint should be without prejudice to permit complainant to file a new complaint based upon the facts underlying the present complaint, if those facts would constitute an act or omission that the Commission may consider under Public Utilities Code section 1702.

O R D E R

IT IS ORDERED that Case 08-08-014 is dismissed without prejudice.

This order is effective today.

Dated March 11, 2009, at San Francisco, California