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BEFORE THE DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Lynda Montiel
Lynda Montiel

* * *

In the Matter of the Accusation of)
TOUCHSTONE FINANCIAL SERVICES, INC.,)
RONAN JEROME ERICKSON, and)
TOUCHSTONE PROPERTIES dba KEYSTONE)
PROPERTY MANAGEMENT,)
Respondent(s).)

No. H-6886 SF

OAH N 43079

DECISION

The Proposed Decision dated October 25, 1993,
of the Administrative Law Judge of the Office of Administrative
Hearings is hereby adopted as the decision of the Real Estate
Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on December 8th, 1993.

IT IS SO ORDERED November 15, 1993.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	Case No. H-6886 SF
	)	
TOUCHSTONE FINANCIAL SERVICES, INC.)	)	OAH No. N 43079
RONAN JEROME ERICKSON, and	)	
TOUCHSTONE PROPERTIES dba KEYSTONE	)	
PROPERTY MANAGEMENT,	)	
	)	
Respondents.	)	

PROPOSED DECISION

On September 27, 1993, in San Francisco, California, Ruth S. Astle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Deidre L. Johnson, Staff Counsel represented the complainant.

Bruce W. Lilienthal, Attorney at Law, 220 Montgomery Street, 15th Floor, San Francisco, California 94104-9736 represented respondents.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Edward V. Chiolo made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California and not otherwise.

II

Respondents Touchstone, Keystone and Erickson are presently licensed and have license rights under the Real Estate Law.

III

At all times herein mentioned, respondent Erickson was licensed as a real estate broker and as a broker-officer of Touchstone and Keystone.

IV

At all times herein mentioned, respondents Touchstone and Keystone were licensed as real estate broker corporations acting by and through respondent Erickson as designated broker-officer.

V

Whenever reference is made herein to an act or omission of respondents, that allegation shall be deemed to mean that the officers, directors, employees, and agents and real estate licensees employed by or associated with respondents committed such act or omission while engaged in the furtherance of the businesses or operations of respondents and while acting within the course and scope of their authority and employment.

VI

Beginning about June 27, 1989, respondents, acting on behalf of others in expectation of compensation, leased or rented, offered to lease or rent, solicited prospective tenants, and collected rents from certain real properties located in or near San Francisco, California.

VII

During the course of the property management activities described above, respondents received and disbursed funds held in trust on behalf of others.

VIII

In connection with the receipt and disbursement of trust funds described above, respondents deposited those funds in the following accounts:

1. Keystone Property Management, Division of Touchstone Properties, Trust Account Number 605-8-23966, First Interstate, 490 Brannan Street, San Francisco
2. Keystone Associates #1, Merrill Lynch
3. Keystone Associates #2, Merrill Lynch.

IX

In connection with the collection or disbursement of the trust funds, respondents failed to deposit and maintain the trust funds in those bank accounts in such a manner that as of October 31, 1991, there was a shortage of \$31,062.26 in the trust fund account.

X

In connection with the collection and disbursement of those trust funds, in those bank accounts, respondents failed to obtain the prior written consent of their principals for the reduction of the aggregate balance of trust funds in those accounts to an amount less than the existing aggregate trust fund liability to the owners of those funds, in conformance with the law; failed to deposit trust funds into a trust fund account in the name of respondents as trustees at a bank or other financial institution, in conformance with the law with respect to Keystone Associates #1 and #2; deposited trust funds into an interest bearing account without complying with the requirements of the law; failed to retain the records required by the law for a three year period; and failed to have a written agreement with each of their licensed salespersons covering material aspects of the relationship between the parties.

XI

At the time of the audit, respondent was managing about 45 properties with about 55 owners. He did not use any of the money for his own personal gain directly, but he did try to manipulate the money to keep his clients happy by paying mortgage loan payments out of the account without making sure that there were sufficient funds to cover the payment from that building.

XII

Respondent has altered his business practices somewhat by tracking the amounts for each property contained in the trust account and the percent of ownership of each client. However, he indicated that he still makes payments out of the trust account on funds that may not clear the bank and he still credits a building with a positive account balance if a client has sufficient money in the account because of balances on other buildings even if one of the buildings has a negative balance. He does not have an agreement in writing from his clients to do this.

XIII

Respondent has made restitution to the trust account from his own personal funds so that no client is out any money because of the trust fund shortages.

XIV

Respondent has some employees on salary instead of commissions and those employees did not have written employment agreements. Respondent now has written agreements with all of his employees.

XV

Respondent continues not to run a daily balance on his trust account and is not aware, on a daily basis, what the status of the account is. While he claims that the computer now has the capability of giving that information, he does not keep track of it or print it out. It was not established whether or not the computer had the ability to create a columnar record of the daily deposits and disbursements of the trust accounts at the time of the audit. No such record has been produced. Respondent still does not pay attention to that information which may still lead to trust fund shortages on a short term basis when money is paid out on properties where rent checks or other deposits have not cleared the bank.

XVI

Respondent has brought his trust fund in compliance with the requirements of the law. He had verbal permission to place the funds of two clients in separate interest bearing account. He now has that permission in writing. The funds are now in an FDIC insured account.

XVII

Respondent attributes most of the trust fund shortage to one property that had a negative cash flow¹. Respondent paid out money on behalf of the property and then requested it be replaced by the owner. This practice is not in compliance with the requirement of the law. Respondent must have the money in the account before making any payments on behalf of a client. Frankly, respondent still does not seem to take this requirement literally, since he apparently does not wait until

¹ There is a civil lawsuit pending on this property. That lawsuit has not been taken into account for any purpose in this decision and this decision in no way is intended to preclude any further action by the Department as a result of that lawsuit.

rent check or other deposits clear before he makes payments based on those deposits.

XVIII

Respondent has attended a great deal of continuing education in order to be better prepared to meet the requirement of the law.

DETERMINATION OF ISSUES

I

By reason of the matters set forth in Findings VI through X, cause for disciplinary action exists pursuant to sections 10145 and 10177(d) of the Business and Professions Code and sections 2831 and 2726, Title 10 of the California Code of Regulations.

II

The matters set forth in Findings XI through XVIII have been considered in making the following order.

ORDER

A. All licenses and licensing rights of respondents Touchstone Financial Services, Inc., Touchstone Properties dba Keystone Property Management are suspended for two years from the effective date of this Decision, provided, however, that the suspension shall be stayed upon the following terms and conditions:

1. Respondents' license and license rights shall be actually suspended for a period of 5 days. Respondents may, pursuant to section 10175.2, petition the Commissioner to pay a monetary penalty and thereby further stay imposition of the terms of the actual suspension.
2. Respondents shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.
3. The Commissioner may, if a final subsequent determination is made, after hearing or upon stipulation, that cause for disciplinary action occurred during the term of the suspension provided for in condition "1", vacate and set

aside the stay order including any further stay imposed pursuant to section 10175.2. Should no order vacating the stay be made pursuant to this condition or condition "4" below, the stay imposed herein shall become permanent.

4. Pursuant to section 10148 of the Business and Professions Code, respondents shall pay the Commissioner's reasonable cost for an audit to determine if respondents have corrected the trust fund violation(s) found in paragraphs VI through X of the Findings of Fact. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondents shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondents and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until respondents enter into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued, either in accordance with this condition or condition "3," the stay imposed herein shall become permanent.

B. All licenses and licensing rights of respondent Ronan Jerome Erickson under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of

the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.
4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.
6. Respondent shall report in writing to the Department of Real Estate as the Real Estate

Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accounting of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which the respondent engaged during the period covered by the report.

7. Pursuant to section 10148 of the Business and Professions Code, respondent shall pay the Commissioner's reasonable cost for an audit to determine if respondent has corrected the trust fund violation(s) found in paragraphs VI through X of the Findings of Fact. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATED: October 25, 1993

Ruth S. Astle
RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

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MAR 16 1993

DEPARTMENT OF REAL ESTATE

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By Lynda Montiel
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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of)
TOUCHSTONE FINANCIAL SERVICES, INC.,)
RONAN JEROME ERICKSON, and)
TOUCHSTONE PROPERTIES dba KEYSTONE)
PROPERTY MANAGEMENT,)
Respondents.)

No. H-6886 SF

ACCUSATION

The Complainant, Edward V. Chiolo, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against TOUCHSTONE FINANCIAL SERVICES, INC. (hereafter
TOUCHSTONE), TOUCHSTONE PROPERTIES dba KEYSTONE PROPERTY
MANAGEMENT (hereafter KEYSTONE), and RONAN JEROME ERICKSON
(hereafter ERICKSON), is informed and alleges as follows:

I

The Complainant, Edward V. Chiolo, a Deputy Real Estate
Commissioner of the State of California, makes this Accusation
against Respondents in his official capacity and not otherwise.

///

II

Respondents TOUCHSTONE, KEYSTONE and ERICKSON are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code").

III

At all times herein mentioned, respondent ERICKSON was licensed as a real estate broker and as the broker-officer of TOUCHSTONE and KEYSTONE.

IV

At all times herein mentioned, respondents TOUCHSTONE and KEYSTONE were licensed as real estate broker corporations acting by and through respondent ERICKSON as designated broker-officer.

V

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents", such allegation shall be deemed to mean that the officers, directors, employees, and agents and real estate licensees employed by or associated with Respondents committed such act or omission while engaged in the furtherance of the businesses or operations of Respondents and while acting within the course and scope of their authority and employment.

VI

Beginning on or before June 27, 1989, Respondents, acting on behalf of another or others in expectation of compensation, leased or rented, offered to lease or rent,

1 solicited prospective tenants, and/or collected rents from certain
2 real properties located in or near San Francisco, California.

3 VII

4 During the course of the property management activities
5 described in Paragraph VI, Respondents received and disbursed
6 funds held in trust on behalf of another or others.

7 VIII

8 In connection with the receipt and disbursement of trust
9 funds described above, Respondents deposited said funds in
10 accounts known as:

11 ACCOUNT

BANK

12 KEYSTONE PROPERTY MANAGEMENT
13 Division of Touchstone Properties
Trust Account Number 605-8-23966

First Interstate
490 Brannan Street
San Francisco, CA

14 KEYSTONE ASSOCIATES #1

Merrill Lynch

15 KEYSTONE ASSOCIATES #2

Merrill Lynch

16 IX

17 In connection with the collection or disbursement of
18 said trust funds, Respondents failed to deposit and maintain said
19 trust funds in said bank accounts in such a manner that as of
20 October 31, 1991, there was a shortage of \$31,062.26 in said trust
21 fund account.
22

23 X

24 In connection with the collection and disbursement of
25 said trust funds, in said bank accounts, Respondents:

26 (1) Failed to obtain the prior written consent of their
27 principals for the reduction of the aggregate balance of trust

1 funds in said bank accounts to an amount less than the existing
2 aggregate trust fund liability to the owners of said funds, in
3 conformance with Section 2832.1, Title 10, California Code of
4 Regulations (hereinafter "Regulations").

5 (2) Failed to deposit trust funds into a trust fund
6 account in the name of Respondents as trustees at a bank or other
7 financial institution, in conformance with Section 2830 of the
8 Regulations with respect to Keystone Associates #1 and #2.

9 (3) Deposited trust funds into an interest bearing
10 account without complying with the requirements of Section
11 10145(d) of the Code.

12 (4) Failed to retain the records required by Sections
13 2831 and 2831.1 of the Regulations for a three year period.

14 (5) Failed to have a written agreement with each of
15 their licensed salespersons covering material aspects of the
16 relationship between the parties.

17 XI

18 The facts alleged above are grounds for the suspension
19 or revocation of the licenses and licenses rights of Respondents
20 under the following provisions:

21 (1) As to Paragraph IX, under Section 10145 of the Code
22 in conjunction with Section 10177(d) of the Code.

23 (2) As to Paragraph X(1), under Section 2832.1 of the
24 Regulations in conjunction with Section 10177(d) of the Code.

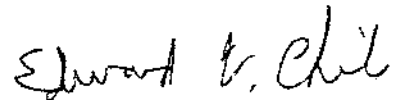
25 (3) As to Paragraph X(2), under Section 2830 of the
26 Regulations and Section 10145 of the Code in conjunction with
27 Section 10177(d) of the Code.

1 (4) As to Paragraph X(3), under Section 10145 of the
2 Code in conjunction with Section 10177(d) of the Code.

3 (5) As to Paragraph X(4), under Sections 2831 and
4 2831.1 of the Regulations in conjunction with Section 10177(d) of
5 the Code.

6 (6) As to Paragraph X(5), under Section 2726 of the
7 Regulations in conjunction with Section 10177(d) of the Code.

8 WHEREFORE, Complainant prays that a hearing be conducted
9 on the allegations of this Accusation and that upon proof thereof
10 a decision be rendered imposing disciplinary action against all
11 licenses and license rights of Respondents, under the Real Estate
12 Law (Part 1 of Division 4 of the Business and Professions Code)
13 and for such other and further relief as may be proper under other
14 provisions of law.

15 

16 EDWARD V. CHIOLO
17 Deputy Real Estate Commissioner

18 Dated at San Francisco, California,
19 this 23rd day of February, 1993.