

FILED
DEC 06 1995

STATE OF CALIFORNIA

By Victoria Dillon
Victoria Dillon

In the Matter of the Accusation of

RONAN JEROME ERICKSON,
and TOUCHSTONE PROPERTIES, INC.,

Respondent(s).

OA# No. N 9507051

The Proposed Decision dated November 8, 1995, 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 26, 1995.

IT IS SO ORDERED 11/27, 1995

JIM ANTT, JR.
Real Estate Commissioner

In Love

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	No.: H-7252 SF
	)	
RONAN JEROME ERICKSON, AND	)	OAH No.: N 9507051
TOUCHSTONE PROPERTIES, INC.,	)	
	)	
	)	
Respondents.	)	
	)	

PROPOSED DECISION

This matter was heard before Melissa G. Crowell, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 30, 1995, in Oakland, California.

The Department of Real Estate was represented by Susan M. Rossi, Staff Counsel.

Respondent Ronan Jerome Erickson was present. Respondent and Touchstone Properties, Inc. were represented by Maxine Monaghan, Attorney At Law, 1537 De Anza Boulevard, San Mateo, California, 94403-9340.

The record was left open until October 15, 1995, for submission of additional hearing briefs. A brief from respondent was received September 6, 1995, and marked as Exhibit C for identification only. Also filed by respondent on September 6, 1995, were two letters of reference. Having received no objection by the Department, those letters were marked as Exhibit D for respondent and received in evidence as administrative hearsay. On September 11, the Department submitted a closing reply brief which was marked as Exhibit 8 for identification only. The record was thereafter closed and the matter was submitted.

FINDINGS OF FACT

I

Les. R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, made and filed the accusation in his official capacity.

II

A. Respondent Ronan Jerome Erickson (respondent Erickson) is presently licensed and/or has licensing rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as a restricted real estate broker and as broker-officer of respondent Touchstone Properties, Inc. Respondent's restricted real estate broker license was suspended indefinitely on June 13, 1995.

B. Respondent Touchstone Properties, Inc. (respondent Touchstone) is presently licensed and/or has licensing rights under the Real Estate Law as a real estate corporation, acting by and through respondent Erickson as designated broker-officer. The corporate license was cancelled as of June 13, 1995.

III

The accusation was amended at the hearing to (1) delete all references in the accusation to Touchstone Financial Services, Inc. as a respondent, and (2) to delete the allegations of Paragraphs II and V.

IV

On or about August 19, 1994, a judgment confirming an arbitration award in favor of cross-complainants Gail Brashear et al. and against respondents Erickson and Touchstone was entered in the Superior Court for the City and County of San Francisco, in Case No. 947750. The judgment, which ordered respondents to pay cross-complainants \$529,889.39, is now final.

The judgment provides in relevant part: "The evidence demonstrated that . . . Erickson misled (either intentionally or negligently) the cross-complainants when he induced them to enter into the purchase of the real estate property commonly known as 765 O'Farrell Street, San Francisco, California."

Respondent argues that judgment was not based on "fraud, misrepresentation, or deceit" within the meaning of Business and Professions Code section 10177.5. His argument is twofold: (1) the legal basis of the judgment is ambiguous; and (2) a judgment based on negligent misrepresentation is not grounds for disciplinary action under section 10177.5.

Respondents Erickson and Touchstone were held jointly and severally liable for the judgment, which reflected the cross-complainants' original investment (\$299,937.38) plus interest from October 31, 1986 to June 30, 1994.

The decision of the arbitrator sufficiently establishes its legal basis: respondents misled (either intentionally or unintentionally) the cross-complainants and as a result of that misleading, the cross-complainants were induced to purchase the subject property. The term "mislead" can only mean one thing in that context: misrepresentation. Although the arbitrator did not decide whether that misrepresentation was intentional, it did make a finding that at a minimum the misrepresentation was negligent.

The civil judgments specified in Business and Professions Code section 10177.5 are "fraud, misrepresentation, or deceit." Misrepresentation under the statute may be intentional or negligent. (Norman I. Krug Real Estate Investments, Inc. v. Praszker (1994) 22 Cal.App.4th 1814, 1821.)

In light of the above, the judgment against respondents is one based upon grounds of fraud, misrepresentation, or deceit, with reference to a transaction for which a real estate license is required within the meaning of Business and Profession Code section 10177.5.

V

On November 15, 1993, effective December 8, 1993, in Case No. H-6886 SF the Real Estate Commissioner revoked the real estate broker license of respondent Erickson but granted him the right to a restricted real estate broker license for violations of sections 10145 and 10177, subdivision (d), of the Business and Professions Code, and of sections 2831 and 2726 of Title 10 of the California Code of Regulations.

The prior disciplinary action also involved the O'Farrell Street property. In this action, the Commissioner found grounds to discipline respondents^{1/} with respect to their practices in receiving and disbursing funds held in trust for others.

VI

On November 15, 1993, effective December 8, 1993, in Case No. H-6886 SF, the Real Estate Commissioner suspended the real estate corporation license of respondent Touchstone for violations of sections 10145 and 10177, subdivision (d), of the Business and Professions Code, and of Sections 2831 and 2726 of Title 10 of the California Code of Regulations.

^{1/} Also disciplined was Touchstone Properties, Inc. dba Keystone Property Management, Inc., a real estate broker corporation acting by and through respondent Erickson as designated broker-officer.

VII

Respondent Erickson is married, and has a child from a former marriage for whom he pays child support. He is presently unemployed and supported by his wife.

Respondent Erickson entered the field of real estate in 1977, after working some 18 years for Arc Electric Company, where he worked as, among other things, an estimator. Respondent is licensed as an electrical contractor and a general contractor with the Contractors' State License Board.

Respondent Erickson's two witnesses attested to his good character, honesty and trustworthiness in connection with the business dealings they have had with him. Letters submitted on behalf of respondent Erickson also attest to respondent's integrity, professionalism and friendship. Respondent is active in his church, and is a member of the Columbia Masonic Lodge, the Pernicious Masonic Temple, and the Scottish Rite Temple.

VIII

Respondent is candid in his assessment of his role in the purchase and ultimate foreclosure of the O'Farrell Street property: he did his best, there is nothing he would have done differently, and the cause was the downturn in the economy. That assessment is plainly inconsistent with the finding of the arbitrator that it was respondent's negligent misrepresentations which caused the loss. Mitigation with respect to the judgment has not been demonstrated.

Respondent Erickson's apparent unwillingness to take responsibility for being the cause of the loss is troubling. He has demonstrated no remorse for the cross-complainants' loss, and has failed to make a single payment on the judgment. It does not appear that he has any plans for making restitution in the future.

Respondent's witnesses and letters regarding his character and good business practices do not assist in determining whether as to this prior judgment there was mitigation or whether there has been rehabilitation since that judgment was rendered.

It is also noted that the judgment is less than two years old, and that respondent has a restricted broker license.

In light of the above, sufficient mitigation and rehabilitation have not been demonstrated. It would therefore be contrary to the public interest to issue respondent a restricted real estate broker license.

DETERMINATION OF ISSUES

I

By reason of the matters set forth in Finding IV, cause to suspend or revoke the real estate corporation license and licensing rights of respondent Touchstone exists under Business and Professions Code section 10177.5.

II

By reason of the matters set forth in Finding IV, cause to suspend or revoke the real estate broker license of respondent Erickson exists under Business and Professions Code section 10177.5.

III

The matters set forth in Findings V, VI, VII and VIII were considered in making the following determination: it would be contrary to the public interest to issue respondent Erickson a restricted real estate broker license.

ORDER

All real estate licenses and licensing rights of respondent Ronan J. Erickson and Touchstone Properties, Inc. are revoked.

Dated: November 8, 1995

Melissa G. Crowell

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

Mag
Sac

JUN 16 1995

By Victoria Dillon
Victoria Dillon

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12) No. H-7252 SF
13 RONAN JEROME ERICKSON,)
14 Respondent.)

17 TO: RONAN JEROME ERICKSON

18 On December 8, 1993, a restricted real estate broker
19 license was issued by the Department of Real Estate to Respondent
20 on the terms, conditions and restrictions set forth in the Real
21 Estate Commissioner's Decision in Case Number H-6886 SF. This
22 Decision granted the right to the issuance of a restricted real
23 estate license subject to the provisions of Section 10156.7 of the
24 Business and Professions Code and to enumerated additional terms,
25 conditions and restrictions imposed under authority of Section
26 10156.6 of said Code.

27 *///*

1 On June 5 , 1995, in Case Number H-7252 SF, an
2 Accusation by a Deputy Real Estate Commissioner of the State of
3 California was filed charging Respondent with violations of
4 Section 10177.5 of the Business and Professions Code of the State
5 of California.

6 NOW, THEREFORE, IT IS ORDERED under authority of Section
7 10156.7 of the Business and Professions Code of the State of
8 California that the restricted real estate broker license
9 heretofore issued to Respondent and the exercise of any privileges
10 thereunder is hereby suspended pending final determination made
11 after the hearing on the aforesaid Accusation.

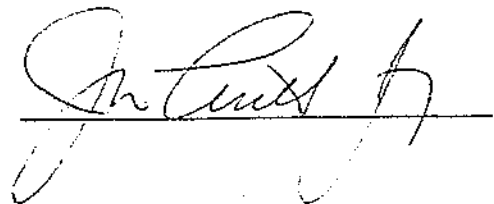
12 IT IS FURTHER ORDERED that all license certificates and
13 identification cards issued by the Department of Real Estate which
14 are in the possession of Respondent be immediately surrendered by
15 personal delivery or by mailing in the enclosed self-addressed,
16 stamped envelope:

17 DEPARTMENT OF REAL ESTATE
18 ATTN: Flag Section
19 P. O. Box 187000
20 Sacramento, CA 95818-7000

21 This Order shall be effective immediately.

22 DATED: 6-13-95

23 JIM ANTT, JR.
24 Real Estate Commissioner

25 
26
27

1 SUSAN M. ROSSI, Counsel
2 Department of Real Estate
185 Berry Street, Room 3400
San Francisco, CA 94107-1770
3 Telephone: (415) 904-5917
4
5
6

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JUN 05 1995

DEPARTMENT OF REAL ESTATE

By Victoria Dillon
Victoria Dillon

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)
11 RONAN JEROME ERICKSON,)
TOUCHSTONE FINANCIAL)
12 SERVICES, INC., and)
TOUCHSTONE PROPERTIES, INC.,)
13 Respondents.)
14

NO. H- 7252 SF

ACCUSATION

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against RONAN JEROME ERICKSON, TOUCHSTONE FINANCIAL
18 SERVICES, INC., and TOUCHSTONE PROPERTIES, INC. (hereinafter
19 "Respondents"), is informed and alleges as follows:
20

21 I

22 Respondent RONAN JEROME ERICKSON is presently licensed
23 and/or has license rights under the Real Estate Law, Part 1 of
24 Division 4 of the Business and Professions Code (hereinafter
"Code") as a restricted real estate broker.
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II

1 Respondent TOUCHSTONE FINANCIAL SERVICES, INC. is
2 presently licensed or has license rights under the Real Estate
3 Law, Part 1 of Division 4 of the Code as a real estate
4 corporation.

delete

III

6 Respondent TOUCHSTONE PROPERTIES, INC. is presently
7 licensed or has license rights under the Real Estate Law, Part 1
8 of Division 4 of the Code as a real estate corporation.

IV

10 The Complainant, Les R. Bettencourt, a Deputy Real
11 Estate Commissioner of the State of California, makes this
12 Accusation in his official capacity.

V

14 On or about October 20, 1993, in the Superior Court,
15 City and County of San Francisco, State of California, in Case No.
16 941716, a final judgment was entered against Respondents, each and
17 all of them, based on grounds of fraud, misrepresentation, or
18 deceit with reference to a transaction for which a real estate
19 license is required.

delete

VI

21 On or about August 19, 1994, in the Superior Court, City
22 and County of San Francisco, State of California, in Case No. 947
23 750, a final judgment was entered against Respondent RONAN JEROME
24 ERICKSON and against Respondent TOUCHSTONE PROPERTIES, INC., based
25 on grounds of fraud, misrepresentation, or deceit with reference
26 to a transaction for which a real estate license is required.
27

VII

1 The facts set forth in Paragraphs V and VI, above,
2 constitute cause under Section 10177.5 of the Code for the
3 suspension or revocation of all licenses and license rights of
4 Respondents under the Real Estate Law.

5 PRIOR DISCIPLINARY ACTION

6 VIII

7 On November 15, 1993, effective December 8, 1993, in
8 Case No. H-6886 SF, the Real Estate Commissioner revoked the real
9 estate broker license of Respondent RONAN JEROME ERICKSON but
10 granted Respondent RONAN JEROME ERICKSON the right to a restricted
11 real estate broker license for violations of Sections 10145 and
12 10177(d) of the Code and Sections 2831 and 2726 of Title 10 of the
13 California Code of Regulations.

14 IX

15 On November 15, 1993, effective December 8, 1993, in
16 Case No. H-6886 SF, the Real Estate Commissioner suspended the
17 real estate corporation licenses of Respondents TOUCHSTONE
18 FINANCIAL SERVICES, INC. and TOUCHSTONE PROPERTIES, INC. for
19 violations of Sections 10145 and 10177(d) of the Code and Sections
20 2831 and 2726 of Title 10 of the California Code of Regulations.

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27

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


Les R. Bettencourt
Deputy Real Estate Commissioner

Dated at San Francisco, California
this 5th day of June, 1995.