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Jury Finds Sperry Van Ness Liable for Fraud

Additional claims remain to be resolved by the court

A Los Angeles Superior Court jury found **Sperry Van Ness**, an Orange County-based national commercial real estate brokerage company, and its principals, Mark Van Ness and Rand Sperry, liable for a verdict in excess of $5 million in favor of owners and managers of a Sperry Van Ness office in Encino, Raffi Krikorian and LASVN#2.

The jury found Sperry Van Ness liable for fraud, breach of fiduciary duty and breach of contract relating to its operation of the Encino office.

The claims related to Sperry Van Ness' fraud and concealment regarding its franchise program, failure to have a real estate broker's license for its management company and opening competing company-owned offices in LASVN#2's exclusive Los Angeles County territory. The jury found that this resulted in the destruction of the LASVN#2 office. The claims included an award of $900,000 in punitive damages.

Plaintiffs' attorney, Marc Smith of Krane & Smith said the verdict was significant because it validates the importance of full disclosure to protect franchisees who make substantial investments of time and money in a franchise.

Officials from the Irvine-based real estate services firm, said Sperry Van Ness plans to challenge the verdict and emphasized that the case was a dispute over a partnership and not a reflection on the service the firm provides to clients.

"Regardless of the outcome of the case, this will have no impact on our business," officials said in a prepared statement. "We have adequate resources to handle this verdict, but we fully expect to be vindicated. We feel the jury failed to recognize the validity of our claims against Krikorian for fraud, breach of contract and breach of fiduciary duty."

Krikorian and LASVN#2, a limited partnership, claimed that in 1994 Sperry Van Ness fraudulently induced them to enter into management agreements and invest four years of time and effort and $300,000 to develop the Los Angeles County office for Sperry Van Ness. Sperry Van Ness violated its management agreements by opening a competing company-owned office within LASVN#2's Los Angeles County territory and raiding LASVN#2's key employees. Within months, LASVN#2 was out of business.

A significant issue in the case was Sperry Van Ness' representations contained in the 1994 management agreements that the arrangement "could not be construed as a franchise."

At trial, it was established that Sperry Van Ness had registered a Franchise Offering Circular with the Department of Corporations in 1993. Sperry Van Ness never disclosed this to the plaintiffs at the time the management agreements were entered into and Sperry Van Ness denied the existence of its franchise program prior to trial.

During the trial, the jury was shown correspondence, franchise offering circulars and records from the Department of Corporations, which established that Sperry Van Ness had concealed its franchise program.

Prior to trial, the trial court determined Sperry Van Ness' management agreements did constitute a franchise. This was significant, according to Smith, because the Sperry Van Ness franchise provided territorial protections to the franchisees to protect them from competing company-owned Sperry Van Ness offices within a protected territory. Sperry Van Ness did not provide this protection in the management agreements.

Sperry Van Ness contends that the firm had already terminated its management contract with Krikorian prior to the time the litigation was initiated.

"Sperry Van Ness took all necessary actions to develop legal and binding contracts in our relationship with Krikorian," according to the firm's statement. "and we believe we acted ethically and fairly, as we do in all of our business dealings."

The trial started April 1. The jury deliberated four days before returning the verdict.

The jury's award included $2.8 million for loss of the LASVN#2 business, $1 million to Krikorian relating to his employment agreement and $900,000 in punitive damages. Additional claims remain to be resolved by the court, including equitable claims and attorneys' fees and costs.