

Local-regional/B1-3
Business/B4-7

Metro

71 homeowners breathing easier after jury rules against Home S&L

By Brett DelPorto
Deseret News staff writer

Home Savings and Loan violated state and federal securities laws and defrauded 71 homeowners who invested in the bankrupt AFCO Enterprises, a 12-member jury decided Tuesday evening.

The U.S. District jury also said in its verdict that AFCO mastermind Grant C. Affleck was under the control of Home Savings when he approached the homeowners in

late 1981 and convinced them to take out second mortgages on their homes to invest in AFCO.

For those reasons, jurors said, Home Savings may not foreclose on the mortgages and must pay an as-yet undetermined amount of damages to the homeowners. Home Savings must also pay a total of \$10,000 in punitive damages for willfully and maliciously defrauding four of the homeowners.

The verdict, which came at the end of three days of deliberations,

brought smiles of relief to the handful of investors in the audience when the jury returned shortly before 6 p.m. Other investors contacted by phone expressed relief that their two-year battle to save their homes was not in vain.

"I was apprehensive," said Owen Michaelis, West Jordan, who was awarded \$2,000 in punitive damages. "We've been on pins and needles waiting on what the jury would say. But now the jury's back, and I think it's just great."

"I'm so relieved and excited," said Dorothy Tobler, Bountiful, who, along with her husband, Grant Tobler, took out a \$59,000 loan from Home Savings. "It's been very nerve-wracking and stressful. I've just been a bundle of nerves."

Andrew Roberts, Tooele, another AFCO investor, said he, too, was pleased with the verdict.

"I am very much relieved," he said. "I just couldn't see how something like this could happen in America."

Despite the hardships, Roberts said he learned a valuable lesson from the experience: "There's no free lunch."

The homeowners' attorneys were equally happy, though more guarded in their remarks.

"We are very much pleased with the verdict relative to the punitive damages as well as the other items," said plaintiffs' attorney Gary A. Weston. "The jury worked diligently and gave the appropriate response to the evidence."

Weston declined to comment further, pointing out that many other AFCO related cases have yet to go trial and might be prejudiced by a slip of the tongue. One such case involves 22 counts of criminal fraud against Affleck and goes to trial Aug. 27.

See JURY on B-2

2 B DESERET NEWS, WED. P.M./THURS. A.M., AUGUST 15-16, 1984

Jury

Continued from B-1

The immediate effect of the ruling on Home Savings is unknown. Home Savings had hopes to recover from homeowners more than \$1 million in second-mortgage loans, most of which was invested in AFCO.

Home Savings attorney Thomas Quinn also refused to comment, as did Home Savings President Fred Smolka, who was present throughout the trial. Weston said, however, that he expects Home Savings will appeal the verdict.

The six-week trial, which concluded Thursday, featured testimony from witnesses who told of meeting with Affleck in 1981. They said Affleck promised he would make the monthly mortgage payments and pay them 10 percent on their investment. Many said they didn't know of Home Savings' involvement in the transactions until they began receiving overdue notices when AFCO failed to make the mortgage payments.

The homeowners testified that Affleck's persuasiveness was due largely to his professed ties to The Church of Jesus Christ of Latter-day Saints.

Former Home Savings employees testified that they backdated and improperly notarized loan documents. A former Home Savings loan representative also testified that he accepted a \$15,000 fee from AFCO — a payment homeowners' attorneys contended was a bribe.

Those irregularities in processing the AFCO loans apparently convinced the jurors that Home Savings violated the Securities Exchange Acts of 1933 and 1934, as well as the Utah Uniform Utah Securities Act and state and federal truth-in-lending regulations. The jurors also ruled Home Savings committed fraud on each of the homeowners.

In each of the 36 claims, the jurors held that Home Savings and AFCO violated the securities laws and that Home Savings was liable to the plaintiffs as a "controlling person" over Affleck and/or AFCO. The jury also ruled that Home Savings aided and abetted AFCO in violation of the 1934 act.

But the jury ruled that Home Savings was not guilty of conspiring with Affleck and AFCO in the violation of the laws. All of the plaintiffs' conspiracy charges were denied.

The jury did, however, rule that Home Savings committed fraud on each of the plaintiffs and that the plaintiffs were eligible to recover damages. The amount of the damages will be determined later by Colorado Judge John L. Kane, who has presided over the case because all three of Utah's federal judges declined, presumably because they may know some of the plaintiffs.

With regard to the fraud count, the jury also awarded punitive damages in four instances. Two plaintiffs received \$3,000 each and two others

\$2,000 each.

In order to award punitive damages, the jurors had to find not only that Home Savings defrauded the investor, but that it did so willfully and maliciously. Neither attorneys nor the jurors would elaborate on the rationale for that decision.

But Clinton A. Loveland, Brigham City, who was awarded \$2,000 in punitive damages, believes the common thread in the punitive cases was an immediate attempt by the four investors to rescind their loans.

Loveland met with Affleck on Nov. 21, 1981, and signed the loan generation papers. But three days later, Loveland was having second thoughts, and phoned Home Savings to call off the deal. At that time, he was told he had waived his three-day right to rescind his loan because he had signed documents that were backdated.

"I signed on Saturday, called on Tuesday, and they said 'Hey, you're too late,'" Loveland recalled.

The backdated documents were also central to the plaintiffs' claim that Home Savings violated one or more provisions of state and federal truth-in-lending statutes. Because the backdated documents effectively denied homeowners their right to rescind, the jurors ruled that each of the homeowners should now be allowed to void their loans.

The only catch was that some homeowners still have to pay a certain amount of money to Home Savings in order to rescind their loans. Weston said he believed those payments represent interest paid by AFCO on investments or amounts paid by Home Savings to retire some homeowners' existing debts as part of the second-mortgage transaction.

The amounts that homeowners must pay back are range from zero for Stanley and Teri Cullimore to \$21,297.27 to the Toblers. Mrs. Tobler said part of that figure comes from loans of \$7,000 and \$8,000 that were paid off by Home Savings. Another \$4,000 came from AFCO in the form of interest payments.

"It's only fair to return back what they (Home Savings and AFCO) had given to us," Mrs. Tobler said.

Other investors, however, were baffled as to how the jurors arrived at the amounts to be paid back.

"I don't understand how they got \$135," said Michaelis, the West Jordan investor. "AFCO didn't pay off anything for us and we got nothing from Home Savings."