

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

CHARLES STONE, )  
 )  
 Plaintiff, )  
 vs. )  
 ALASKA REAL ESTATE COMMISSION, )  
 )  
 Defendant. ) CASE NO. 3AN-15-10764 CI

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**ORDER**

**Introduction.**

While licensed as a real estate agent Charles Stone was convicted of Unsworn Falsification in the Second Degree, a misdemeanor. Alaska Statute 11.56.210 defines that crime as follows:

- (a) A person commits the crime of unsworn falsification in the second degree if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement that the person does not believe to be true
- (1) in an application for a benefit; or
  - (2) on a form bearing notice, authorized by law, that false statements made in it are punishable.

Stone had applied for public benefits.<sup>1</sup> He failed to disclose a bank account and rental income.<sup>2</sup> He received certain benefits that he would not have

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<sup>1</sup> Decision Granting Summary Adjudication (29 September 2015) , OAH 15-0464-REC (“Decision”) at 2.

<sup>2</sup> *Id.*  
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received had he disclosed complete and accurate information about the bank account and rental income.<sup>3</sup> One component of his sentence was the requirement that he pay restitution of \$11,434.89.<sup>4</sup>

The Alaska Real Estate Commission is required to revoke an agent's license in certain circumstances, including upon conviction of certain crimes.

Alaska Statute 08.88.071(a)(11) provides:

(a) The commission shall

...

(11) revoke the license of a broker, associate broker, or real estate salesperson who is convicted of a felony or other crime committed while licensed under this chapter that, in the judgment of the commission, affects the ability of that person to practice as a broker, associate broker, or real estate salesperson competently and safely or who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or **fraud**; notwithstanding AS 08.88.171, a person whose license is revoked under this paragraph is not qualified to obtain or renew a license under AS 08.88.171(a)--(c) until seven years have elapsed since the person completed the sentence imposed for the conviction.<sup>5</sup>

The commission accused Stone of conduct that allegedly violated AS 08.88.071. An administrative judge concluded that a conviction for Unsworn Falsification in the Second Degree constitutes fraud and that Stone's license should be revoked. Stone appeals. The Court concludes that the administrative judge's conclusion was correct and affirms the revocation.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Boldface supplied.

## Discussion

There is no statutory definition of fraud for purposes of AS 08.88.071. Nor is there a specific crime entitled fraud. The parties attempt to parse meaning from the various headings in the chapters and articles of Title 11, wherein statutory crimes, including various ones that are arguably versions of fraud, are defined. But the Court finds those efforts to be of little use. Individual statutory crimes could be grouped in any number of ways without changing the meaning of the crimes themselves. The groupings are for little more than the convenience of the reader.

The word “fraud” is a common one and its general meaning is not difficult to discern.<sup>6</sup> The Oxford English Dictionary gives several related definitions:

1. The quality or disposition of being deceitful; faithlessness; insincerity.<sup>7</sup>
2. Criminal deception: the using of false representations to obtain an unjust advantage or to injure the rights or interests of another.
3. An act of deception, an artifice by which the right or interest of another is injured, a dishonest trick or stratagem.<sup>8</sup>

Black’s Law Dictionary defines the term similarly: “1. A knowing misrepresentation of the truth or concealment of a material fact to induce another

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<sup>6</sup> The Court has not considered the material from the Alaska Department of Health and Social Services referred to by the State in its brief (at 6) and objected to by Stone in his reply (at 4-5).

<sup>7</sup> This definition is noted to be “Now rare.”

<sup>8</sup> OXFORD ENGLISH DICTIONARY 1073 (compact ed. 1971).

to act to his or her detriment. 2. A misrepresentation made recklessly without belief in its truth to induce another person to act.”<sup>9</sup> Webster’s New College Dictionary defines fraud to be “A deliberate deception practiced so as to secure unfair or unlawful gain.”<sup>10</sup>

The essence of fraud is the use of deception or misrepresentation to gain an advantage. By committing the crime of Unsworn Falsification, Stone made a false written statement in an application for a benefit “with the intent to mislead a public servant in the performance of a duty.”<sup>11</sup> That was fraud.

Stone argues that fraud, for the purposes of AS 08.88.071, requires more than misrepresentation or deception. In addition, he argues, there must be proof that a second party has actually relied upon a false representation and further that the second party suffered damage as a result of the reliance. Stone points to the definition of fraud used in another administrative case.<sup>12</sup> That case defined fraud to include the elements of reliance and damage.<sup>13</sup> Stone reasons that Unsworn Falsification does not meet this definition of fraud as one may be found guilty of that crime without proof of reliance or actual damage.

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<sup>9</sup> BLACK’S LAW DICTIONARY 731 (9<sup>th</sup> ed. 2009).

<sup>10</sup> WEBSTER’S NEW COLLEGE DICTIONARY 454 (3<sup>rd</sup> ed. 2008).

<sup>11</sup> AS 11.56.210(a).

<sup>12</sup> *In the Matter of John M. Downs*, OAH No. 10-0501 REC.

<sup>13</sup> *Id.* at 12.

It is true that Stone's unsworn falsification was completed once he submitted his false application, having intended to mislead the recipient agency. It was not necessary that the agency rely upon his false statement and issue undeserved benefits to him.

The Court concludes, however, that the commission, for purposes of determining whether a real estate agent should be allowed to continue to practice, could reasonably construe fraud not to require reliance and actual damages. It could reasonably construe the offending and disqualifying conduct to be the intentional deception and misrepresentation. An agent who engages in the misrepresentation necessary for the crime of Unsworn Falsification is reasonably deemed unsuitable to work in the industry. It is not necessary that the commission permit agents to deceive and misrepresent, intending that persons be misled, as long as the deception or misrepresentation is not successful. Intentional deceptors have engaged in the type of behavior that the legislature and commission have determined should not be tolerated in the real estate industry.

But even if the fraud must include reliance and actual damages, the commission did not err in its discipline of Stone. The commission reasonably construed Stone's behavior to have resulted in a second party relying on his misrepresentation and suffering damages as a result. Stone was provided public benefits in the form of food stamps, Alaska temporary assistance, and Medicaid

benefits.<sup>14</sup> He was required to pay restitution of \$11,434.89<sup>15</sup> which the commission could reasonably infer was a measure of the benefits that he received because he did not reveal all of his assets and income in the hopes of obtaining benefits he was not eligible to receive.

**Conclusion.**

The commission's decision to revoke Stone's license is **AFFIRMED**.

**DONE** this 27th day of May 2016, at Anchorage, Alaska.

*Signed*

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William F. Morse  
Superior Court Judge

[This document has been modified to conform to the technical standards for publication.]

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<sup>14</sup> Decision at 2.

<sup>15</sup> *Id.*