Judge dismisses criminal case involving Delray Beach remodeling company

Defendants acquitted after monthlong trial

By Jon Burstein, Sun Sentinel

FORT LAUDERDALE —
The monthlong trial of two men on construction-related theft and fraud charges ended abruptly Thursday with a Broward judge dismissing the case moments before closing arguments were to begin.

Acting Broward Circuit Judge Joel Lazarus ruled prosecutors failed to meet their burden in proving Douglas Livingston and John Ostendorf had any intent to steal money from customers of Delray Beach home-remodeling company Home Team Advantage.

The six-member jury had been set to consider 21 felony charges first brought against the two men in March 2009.

While Livingston, 43, and Ostendorf, 39, scored a legal victory, both remained in the Broward County Jail Thursday night without bond, They are awaiting trial on criminal charges related to another home-remodeling company, Oakland Park-based HomeCo Unlimited, that they were involved with before Home Team Advantage.

Livingston's attorney, Michael D. Weinstein, said that with Home Team Advantage, it was simply the case of a business that failed.

"Is it criminal that it failed? The judge has clearly and resoundingly said, 'No,'" Weinstein said.

Livingston testified problems arose with construction jobs because of delays caused by hurricanes, permitting issues and subcontractors, Weinstein said.

Livingston was the sole defense witness after jurors heard days of testimony from upset Home Team Advantage clients.

They said the company would do demolition work on their homes and then not show up for weeks — sometimes months — leaving their houses and lives in disrepair. The work that was done, they said, was shoddy.

Coconut Creek resident Kelly Rein said she gave the company about $40,000 for a remodeling job that she had to hire another contractor to complete after it wasn't finished in two years. Rein testified at the trial.

"I'm really disappointed," Rein said of the judge's ruling. "I put my trust in the justice system and it failed."

Assistant State Attorney Catherine Maus coiuld not be reached for comment, despite an attempt by phone.

Authorities first arrested Livingston and Ostendorf in November 2004, charging both with 65 felony counts for allegedly taking HomeCo clients' money for jobs never started or never completed. Livingston, who was HomeCo's chief executive officer, also was charged with five counts of extortion with customers accusing him of threatening them.

While awaiting trial on the HomeCo Unlimited charges, they were involved with Home Team Advantage. Ostendorf held the contracting license for the company and Livingston has been described as a salesman.

Ostendorf voluntarily surrendered the license in February 2009 after customers complained to the Florida Department of Business & Professional Regulation.

The two men went to trial in February 2008 on the HomeCo charges, but a mistrial was declared when Livingston was hurt in a car crash on the third day of testimony. Livingston's attorneys then argued he was incompetent to proceed in the HomeCo case because of his head injuries.

A judge ordered that he was fit to stand trial.

The HomeCo case has not been scheduled. Weinstein said he will ask for Livingston to be granted a bond because he has been held without one since his November 2008 arrest by Delray Beach police on charges related to Home Team Advantage. Those charges have been dismissed.

Marcus Griggs, Ostendorf's attorney, said his client recognizes Thursday's ruling was "one battle in a war."

Weinstein said Livingston was elated with the decision.

"He waved to his kids and he told his son he won," Weinstein said.

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