

BOB STARZ
PLS REVIEW



Los Angeles Times ARCHIVES

HELP

Sunday, August 24, 1997

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A Blow Against Bureaucracy; SPECIAL REPORT * A couple who built a small house with their own hands ended up with criminal records and a \$1.5-million fine, but now they've won . . . ;

By: DOUG SMITH
TIMES STAFF WRITER

With the clarity of hindsight, it is easy to see that Kathleen Kenny blew it when she fashioned the little red house out of a dilapidated chicken coop--without taking out a building permit.

In the five years since the transgression came to light, she has been in a war of attrition with the county and state, losing at almost every turn.

Kenny and her companion, Arthur Starz, Midwest transplants who thought they had found the ideal life in rustic Topanga Canyon building small affordable houses with their own hands, now have criminal records--16 building code violations--and a Coastal Commission fine that is somewhere around \$1.5 million and growing by \$1,000 every day.

Throughout their conflicts with the bureaucracy, the couple has maintained that they followed every instruction to the letter, spent thousands of dollars and turned in voluminous documents, which public officials routinely dismissed as inadequate or lost.

In contrast, county and state officials characterized Kenny and Starz as scofflaws who complained constantly but made no effort to obtain permits and refused to cooperate with inspectors.

But the couple held onto the belief that they would one day be vindicated if they could tell a jury their side of the story.

DOUG SMITH RACCO

Improbably, they were right. Using the little-exercised civil provision of the federal Racketeer Influenced and Corrupt Organizations Act, which allows individuals to seek damages for corrupt government actions, the couple finally got their chance last month to show that they were victims of government fraud.

In a verdict that stunned legal pundits, a jury found that two county building officials defrauded the couple in a racketeering enterprise designed to extort money for building permits, and awarded them \$33,000 in damages.

They had no lawyer to guide them through the dense procedures of U.S. District Court and the RICO law, a challenge for the best attorneys.

"For a person acting on their own behalf to win, it's a coup of the first order," marveled Notre Dame law professor G. Robert Blakey, the principal author of the RICO statute.

Among the most stunned were lawyers for Los Angeles County, who declined to discuss the case while they consider a number of options, including whether to appeal or to pay the damages.

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The eight-day trial, in U.S. District Court in Los Angeles, proved as odd an event as the five-year soap opera that led up to it.

Kenny, a tense woman with a silvery-gold ponytail and a penchant for thinking out loud, argued points of law, questioned witnesses and addressed the jury with a halting and sometimes tearful delivery, raising frequent objections from Deputy Los Angeles County Counsel Paul Yoshinaga.

At the outset, Judge Consuelo B. Marshall delivered what seemed a crushing blow to the couple's case, ruling that they could not introduce thousands of pages of exhibits or call any witnesses other than the four defendants and themselves.

In retrospect, the ruling may have been a boon to Kenny by focusing her case.

Kenny, who was once an insurance fraud investigator, set out to prove fraud--that the county officials used their position of authority to extort money from the public in exchange for permits.

➤ Taking the stand herself, Kenny testified that the couple spent more than \$14,000 on filing fees and reports trying to get a permit for the red house without success. She argued that the defendants conspired to withhold the permit because she and Starz refused to pay bribes and went public with their story. --

➤ Kenny managed to air the most damaging of the excluded exhibits by handing them to the defendants on the witness stand to help them refresh their memories.

The technique had its maximum effect with the central defendant, associate building engineer Grant Lawseth. At first, Lawseth denied having performed any professional duties on behalf of people with whom he had business relationships.

But when handed documents by Kenny, he admitted to conducting building inspections, and in some cases to writing letters of support to the Coastal Commission for business associates, including a developer who purchased a lot from him for \$115,000 more than he paid for it.

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"He looked fishy all over the place," said juror Rusty Tollitson, a buyer for Cal State Pomona College. "He looked like he had other people intimidated and he ran the whole show. Some of the things he said were ridiculous."

The source of the couple's legal saga is a 724-square-foot cottage. It is one of three houses Kenny, 55, and Starz, 58, built on Cave Way, a leafy, one-block lane above the Topanga town center, famed locale of artisans, longhairs, New Age seers, rugged individualists and, of late, upscale movie studio hands.

For the other two, built on vacant lots, they obtained the array of approvals required by county agencies such as health and planning, as well as the California Coastal Commission. A permit from the commission is required because the area is in a coastal zone.

They say they believed that no permit was necessary for the red house because they built--following a commonly exercised Topanga tradition--on the foundation of an older structure variously described as a chicken coop or a hippie flophouse, or both.

Among the many bootlegged structures that dot the Topanga landscape, the red house attracted no attention for a year until a county inspector showed up in April 1991, referring to "their problem."

Over the next eight months, he returned eight or nine times. Although he never cited the house, he repeatedly urged Kenny to contact a certain architect who could help them, Kenny testified.

Confirmed do-it-yourselfers, the couple were not interested in a pricey consultant. They began tape-recording the inspector, capturing his urgings that they "get in the system" and "go for the ride."

Their recalcitrance eventually brought them face to face with Lawseth, an official Kenny said she had come to think of as "the Wizard of Oz" because of his reputed power to get things done while remaining out of public sight.

In an acrimonious meeting, Lawseth told Starz: "You're in a lot of trouble."

But Kenny had a plan to fight back.

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The Balance Sheet awoke Topanga one December morning with a howl of anger. The eight-page newsletter, mailed to 3,000 residences, promised to expose the "good old boy network . . . that appears to control the town by two means: the power to reward and the power to harm."

In several installments, Kenny identified property owners she thought had been rewarded with quick approval of building plans and those harmed by long delays.

The March Balance Sheet probed the question, "Who Is Grant Lawseth?" It detailed numerous real estate activities of the brusque, gravelly voiced inspector and alleged that he used his position to "treat his friends" and "trick his enemies."

Soon, Lawseth and four other county officials showed up with two sheriff's deputies and a search warrant.

The same day, the Coastal Commission, which had also been the butt of the Balance Sheet, served the couple with a lawsuit seeking millions of dollars in fines for building the red house without a coastal permit.

Then the district attorney filed 16 counts of misdemeanor building code violations--as serious as building a house without a permit and as small as illegally installing a water heater. In yet another lawsuit that is still pending, Lawseth accused Kenny and Starz of defamation, alleging damage from about 40 statements in the Balance Sheet.

They were found guilty in May 1994 of the building code violations. But Los Angeles County Superior Court Judge James Albracht's sentence was notably lenient.

"Heaven forbid the Building and Safety Department should descend and inspect my house, your house, or anybody's house," Albracht said, criticizing the system for giving inspectors too much discretionary power.

He sharply rejected the prosecutor's insistence on jail time, saying he considered the couple honest idealists who "didn't want to do the dancing you have to do to cooperate with Building and Safety."

Still, he fined each \$2,500 and put them on probation with an order to obtain the proper permit.

But they weren't done in court yet. They still had to defend themselves against the Coastal Commission lawsuit.

Six months later, after seven weeks of testimony, Superior Court Judge Victoria Chaney issued a 125-page ruling finding Starz's "blatant" disregard for the Coastal Act to be "the most serious type of violation which, if allowed to go unsanctioned, would lead to a breakdown of the controls established in the Coastal Act."

She fined the couple \$1,000 a day--state lawyers had suggested \$10,000 a day--retroactive to the construction of the house, for a total of \$798,000 on the day of the ruling.

In their bleakest moment, glimmers of hope began to appear.

For one thing, Albracht repeatedly denied the district attorney's demands to jail the couple or to order them to raze the red house, noting Topanga's widespread and largely unprosecuted illegal housing.

"Somehow the thought of putting these two otherwise law-abiding people in jail because they have . . . a very well-built, neat, clean structure . . . surrounded virtually by junk and people living in trees and under bushes . . . strikes me as being incongruous and illogical," Albracht said.

And the Los Angeles County auditor-controller's office had opened an investigation into the couple's claim that they were victims of governmental fraud.

An investigator concluded that Lawseth engaged in conflicts of interest by approving inspections for his own business associates, that associates of Lawseth and others in the Calabasas building office paid lower fees than others, that some permits were processed in improbably short times, and that some projects lacking required fire protection were nonetheless approved by Lawseth.

But once again, vindication eluded the couple.

Deputy Dist. Atty. Bill Seki said his office concluded that the report identified some alleged crimes, but that the statute of limitations had expired and that other allegations were not sufficiently documented.

The RICO case was the idea of Venice lawyer James Fosbinder, who specializes in battling government abuse.

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Its chances, considered by legal experts poor from the start, dimmed when the star witness, a Santa Monica builder who claimed to have paid \$75,000 in bribes to county building officials, died before he could testify.

Then a falling out with Fosbinder early this year left the couple without an attorney and they couldn't find a replacement.

For legal advice, Kenny turned to the Internet, digging into federal procedures available in cyberspace after each day's hearing to find counter-arguments to the many defense motions for dismissal.

Despite the improbable victory, Kenny made mistakes that may have cost her.

In closing arguments, she spoke eloquently of feeling downtrodden for defending her rights. But she neglected to suggest a dollar value for the wrong.

The jurors struggled with the damage question, Tollitson said. Those favoring a much higher figure were not able to persuade others who saw the couple as partly responsible for their own problems, Tollitson said.

The \$33,000 they awarded is inconsequential compared to the fines the couple owe. An attorney for the Coastal Commission said officials do not believe it is a good use of taxpayer money to attempt to collect the fine because the couple doesn't have the money to pay it, but that it remains in effect.

For Kenny, the vote of confidence from the jury was worth more than money.

"I didn't think we were going to prevail," she said. "We did it just to see it through to the end."

PHOTO: Kathleen Kenny and Arthur Starz stand beside little red house that has been at the center of several court battles.

PHOTOGRAPHER: ANACLETO RAPPING / Los Angeles Times

PHOTO: Kathleen Kenny and Arthur Starz among boxes of material they used to win case against county officials.

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