

LITIGATION FILES

Friends Put Their New Firm To the Test, Win Big Case

By Joan Osterwalder

Micah R. Jacobs and Eric K. Ferraro, friends since law school, dreamed of owning a small, successful law firm. They achieved their goal last year by founding the San Francisco business law firm Jacobs & Ferraro. This month, the two made their mark with their first big multi-million-dollar win.

Jacobs & Ferraro represented former iPlace Inc. minority shareholders who alleged they were fraudulently induced to sell their business to Homestore Inc. in exchange for artificially inflated stock in the online real estate company. On Aug. 9, Homestore agreed to settle the securities fraud case for \$23 million. *MemberWorks Inc. v. Homestore.com Inc.*, 02-3553 (D. Conn., filed March 1, 2002).

"This result that we've achieved in this lawsuit is not only an excellent result for our clients but also represents a complete validation of our business model," said Ferraro, who can see Alcatraz from his office.

The lawsuit was the first securities fraud case for Jacobs & Ferraro, which will celebrate its one-year anniversary Sept. 15.

"The Homestore matter meant a lot to us," said Jacobs, a one-time layoff victim who previously worked on a landmark cybersquatting case. "We were thrilled for our clients, but it was also personally satisfying, especially considering it came almost exactly a year after we started this firm."

iPlace, a real estate information provider, was formed in April 2000 through the merger of three companies. In August last year, Westlake Village-based Homestore agreed to buy iPlace for \$150 million.

About \$72 million was to be paid in cash and the remainder in common stock worth \$78 million at the time of the sale. But Homestore's share price dropped dramatically after it disclosed accounting problems.

After Homestore announced in February that it intended to sell iPlace for \$130 million,

MemberWorks Inc., iPlace's former majority shareholder, filed suit in U.S. District Court in Connecticut to block the sale. The minority shareholders intervened. The plaintiffs alleged that Homestore had not yet paid its stock purchase price for acquiring iPlace.

The court allowed the sale to proceed but ordered that \$58 million be placed in a constructive trust pending resolution of the case.

MemberWorks, represented by New York's Greenberg Traurig, will get \$19.2 million, and Jacobs & Ferraro's clients will receive \$3.8 million. The remaining \$35 million will go to Homestore, which admitted no wrongdoing in the settlement.

"This is really a private dispute, and Homestore thought this is the best way to resolve it," said Homestore lawyer Robert C. Vanderet of O'Melveny & Myers. "It was a very amicable and quickly resolved settlement."

Jacobs and Ferraro met during their first year at Golden Gate University School of Law and stayed in touch after Jacobs transferred to Boalt Hall.

After graduating, Ferraro worked for Mullen & Filippi in employment defense litigation and then did plaintiffs' civil rights work for the Law Offices of Mayor Joseph L. Alioto & Angela Alioto.

Ferraro wanted to be a corporate and business lawyer and joined Methven & Associates, which acted as outside general counsel to the software, health care, gaming and food and beverage industries.

In August last year, however, he decided to go out on his own.

In the meantime, Jacobs worked for big law firms such as Cooley Godward and Wilson, Sonsini, Goodrich & Rosati in the Bay Area and

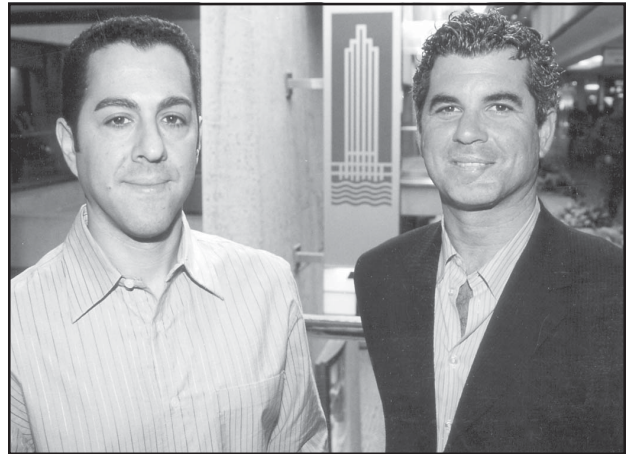


Photo by S. Todd Rogers

Eric Ferraro, left, and Micah Jacobs made a splash this year with their first big win.

McCutchen, Doyle, Brown & Enersen in Los Angeles.

He helped Blue Mountain Arts, an electronic greeting cards provider, win a restraining order against Microsoft, prohibiting the company from distributing software that interfered with Blue Mountain's Internet business, according to Jacobs & Ferraro.

Jacobs also was co-counsel for Panavision in one of the first known cybersquatting cases. *Panavision v. Toeppen* became a widely watched case in which the 9th U.S. Circuit Court of Appeals found that California courts have jurisdiction over out-of-state defendants harming California residents through the Internet and that the Federal Trademark Dilution Act prohibits the improper commercial use of Internet domain names, according to Jacobs & Ferraro.

But fate seemed to have something else in mind for Jacobs. A senior associate at Cooley Godward, he was one of the firm's widespread layoff victims in August 2001.

"It turned out to be a blessing in disguise," Jacobs said. "That was the opportunity for me to pursue the dream that Eric and I had been talking about."