

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-270

FEBRUARY TERM, 2004

	} APPEALED FROM:
Gene Duprey, Hilda	}
Duprey, Keith Duprey and	} Franklin Superior Court
Laurie Duprey	}
	}
v.	} DOCKET NO. S126-99 Fc
	}
Richard Deso and Suzanne	} Trial Judge: Geoffrey Crawford
Deso	}
	}

In the above-entitled cause, the Clerk will enter:

Defendants in this consumer fraud action appeal from a superior court judgment in favor of plaintiffs, claiming that the award of attorney= s fees in excess of \$14,000 was excessive. We affirm.

This case arose out of real estate transaction in 1992, in which defendant Richard Deso, a licensed real estate broker, and his wife Anne sold plaintiffs a lot in the City of St. Albans and agreed to construct a two-family home on the property. Several years later, it was discovered that Deso had erroneously sited part of the residence on the adjoining landowner= s property, resulting in violations of various permit and zoning requirements. To resolve the zoning and encroachment problems, plaintiffs were compelled to negotiate settlements over a period of several years with the City, the State, and their neighbors, and ultimately filed this action against defendants, alleging consumer fraud, breach of contract, and other claims.

Following a court trial, the court issued a written decision in favor of plaintiffs, finding defendant Richard Deso liable under the Consumer Fraud Act, and both Richard and Suzanne Deso liable for breach of warranty. The court awarded damages of nearly \$23,000, which included over \$14,000 in attorney= s fees under 9 V.S.A. ' 2461(b), which authorizes an award of A reasonable attorney= s fees@ to consumers who sustain damages from practices prohibited by the Act.\* The court noted that the award of attorney= s fees was supported by plaintiffs= attorney= s statement detailing the hourly work expended over several years to remedy the encroachment and zoning problems and to litigate the case, and found that the hourly rate of \$100 was reasonable and that the total amount of fees incurred was reasonably attributed to this effort.

In their pro se appeal, defendants argue that the fees charged by plaintiffs= counsel were A unrealistic and unfounded,@ and assert that the sum of \$5000 would have been A reasonable and fair.@ Where, as here, a court determines that the Consumer Fraud Act has been violated, it is required to award reasonable attorney= s fees. 9 V.S.A. ' 2461(b); Esperance v. Benware, 2003 VT 43, & 21, 830 A.2d 675, 683. In determining the amount of such an award, the court normally determines the number of hours reasonably expended on the case multiplied by a reasonable hourly rate, and then adjusts the total fee upward or downward based on such factors as the novelty of the legal issues, the attorney= s experience, and the results obtained in the litigation. L= Esperance, 2003 VT at & 22. We will not disturb the court= s award absent an abuse of discretion. Id. & 28.

The court here found that plaintiffs= attorney= s hourly rate of \$100, and the number of hours expended on the case, were reasonable. These findings were supported by itemized billing records, as well as the testimony of an expert witness. The court also noted that the legal negotiations with the State, City, and neighbors to remedy the encroachment

and zoning problems had been arduous, and it was readily apparent that those efforts had been eminently successful. Apart from merely asserting that the court's award was unreasonable, defendants offer no argument and cite no evidence to contradict the court's findings. Accordingly, we find no abuse of discretion, and therefore no basis to disturb the judgment.

Plaintiffs have also requested an award of attorney's fees incurred on appeal. This request is properly directed to the trial court. See V.R.A.P. 39(f) (claims for attorney's fees arising on appeal must be made by motion in the trial court pursuant to V.R.C.P. 54(d)(2)).

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Paul L. Reiber, Associate Justice

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Footnote

\* The damages for breach of warranty included \$3500 in attorney's fees incurred for remediation, for which both defendants were liable. Defendant Richard Deso was solely liable for the balance of the attorney's fee award for the consumer fraud violation.