

CONSUMER FRAUD ACT HAS ITS LIMITS

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The New Jersey Appellate Division has ruled that the Consumer Fraud Act does not apply to the sale of a business even when the sale of business includes the sale of land.

The Consumer Fraud Act is a plaintiff-friendly law. The Act requires a lesser standard of proof than a common-law fraud claim and automatically gives successful plaintiffs three times their actual damages and their legal fees in bringing the lawsuit under the Act.

The Consumer Fraud Act is supposed to be interpreted liberally, but the reach of the Act has often been uncertain, because New Jersey courts have also ruled that the Act does not apply every time goods, services or real estate are sold. The courts must therefore decide on a case-by-case basis whether to apply the Act.

In *539 Absecon Boulevard v. Shan Enterprises Limited Partnership, et al.*, A-2250-06, (March 26, 2009), the Appellate Division reversed the decision of a trial judge who held that the Consumer Fraud Act applied to the sale of a hotel combined with the sale of real estate.

Before the closing, the buyers inspected the hotel's profit and loss statements and tax returns and saw that its revenues increased over three years before the sale. At the closing, the buyers bought the hotel and real estate next to the hotel. After the closing, the buyers lost money on the hotel and said that they learned that the hotel's past revenues included large cash payments from a mysterious company that never used the rooms it rented.

The case was tried before a judge, rather than a jury. The trial judge found that the seller lied about the revenue that the hotel generated, but said that this was probably due to money laundering and not done to inflate the value of the hotel's revenues. The trial judge found that the buyers would never have closed if they knew the hotel's real revenues.

The trial judge said that the buyers' damages were caused by agreeing to a price based on an overestimation of the value of the hotel, caused by the seller's inflating the hotel's revenues. The trial judge ruled that while the Consumer Fraud Act probably did not apply to the sale of a business, this was not the sale of a business, but rather a sale of real estate with improvements by the sellers, who owned several properties. This finding was significant, because only *professional* sellers of real estate can be liable under the Consumer Fraud Act.

The trial judge trebled the damages and awarded the buyers their legal fees, as required by the Act, and awarded the plaintiffs approximately \$2 million in damages. Both sides appealed.

The Appellate Division said that the core legal issue was whether the Consumer Fraud Act applies "to a sale of an ongoing business, where the sale includes real property connected to that business." The Appellate Division found that the Consumer Fraud Act did not apply, because the sale in this case was really the sale of a business in which the sale of real estate was incidental to the business sale. The Appellate Division said that even though the conduct of the sellers "was far from exemplary," the Consumer Fraud Act did not apply.

The verdict for the buyers was reversed and, unfortunately for them, they did not meet the higher legal standard to prove common-law fraud, which would have entitled them to damages for the seller's misrepresentation.