

**CONSUMER PROTECTION****Consumer Fraud Act — Negligence****Termite inspector not certified or licensed as claimed****SETTLEMENT** **\$200,000**

CASE Kevin and Doreen Odell v. Gerald Guilfoyle, trading as Guardian Home Inspections and Jerard McCaffrey, No. BER-L-4904-01

COURT Bergen County Superior Court, NJ

JUDGE Joseph Rosa, Jr.

DATE 9/19/2003

PLAINTIFF

ATTORNEY(S) Robert S. Dowd, Jr., Sternlieb & Dowd, Hackensack, NJ

DEFENSE

ATTORNEY(S) Alexander G. Pappas, Harwood Lloyd, Hackensack, NJ

FACTS & ALLEGATIONS Plaintiffs Kevin Odell, 46, and Doreen Odell, 44, hired Guardian Home Inspections of Cresskill to perform a home inspection and wood-destroying-insect inspection on a Westwood house that they were in contract to buy. On May 3, 1999, Jerard McCaffrey, Guardian's independent contractor inspector, performed the inspection.

The Odells claimed that the resulting reports failed to identify a variety of problems. Most significantly, they claimed that McCaffrey did not report observable evidence of past termite infestation, damage and treatment. In addition, they claimed that he did not identify any significant problems with the house as a result.

The Odells closed on the purchase on June 15. In April 2000, they discovered a substantial termite swarm in their home. Subsequent investigation revealed significant termite damage. The Odells installed a termite baiting system, but the problem continued.

Guardian's promotional literature claimed that it was "fully certified" and "licensed" to perform termite inspections and that its inspectors were "licensed building inspectors" and members of the American Society of Home Inspectors.

However, Guardian stipulated that McCaffrey was, in fact, neither licensed nor certified to perform a termite inspection and was neither a licensed building inspector nor a member of the American Society of Home Inspectors at the time of the inspection.

The Odells sued McCaffrey and Guardian Homes in the Special Civil Part of the Bergen County Law Division, which at that time had a jurisdictional maximum limit of \$10,000. After depositions were concluded, the Odells retained their current counsel, who obtained an order transferring the case to the Law Division. The Odells current counsel then obtained leave to file an amended complaint, which included a cause of action under the New Jersey's Consumer Fraud Act and named as individual defendants McCaffrey and Guardian's owner, "Gerald Guilfoyle, trading as Guardian Home Inspections."

The Odells retained a termite expert and a home inspection expert, both of whom opined that the inspector was negligent, that many of Guardian's promo-

tional claims were untrue and that the termite baiting system would not solve their termite problem. The Odells also retained an engineering expert and a home contractor expert, who outlined the reconstruction necessary to solve the problems with the home that were responsible for the continuation of other termite problem and to solve other structural problems with the way the crawl spaces were constructed on the left side of the home.

The defendants' home and engineering experts disputed the extent of the negligence and the need for the reconstruction sought by the Odells.

INJURIES/DAMAGES The Odells incurred costs of \$1,075 to repair past termite damage, \$2,793 for the installation and maintenance of a termite baiting system and \$5,217 in engineering and architectural fees in connection with the future reconstruction necessary to remedy the problems at the home.

Future reconstruction costs were estimated to be between \$105,000 and \$116,000. After the reconstruction was completed, the Odells' expert appraiser estimated that the fair market value of the home would be \$25,000 less due to the stigma associated with the past termite infestation at the home.

The total past and future damages claimed by the Odells was estimated to be between \$143,000 and \$155,000.

RESULT On the Friday before the Monday scheduled trial, the parties settled for \$200,000.

DEMAND Several months before trial, the plaintiffs presented a \$250,000 settlement demand.

OFFER None reported

INSURER(S) Commercial Underwriters Insurance Company

PLAINTIFF
EXPERT(S) Thomas A. Parker, Ph.d., entomology, Lansdowne, PA
Kathleen Eldridge, P.E., engineering, Ridgewood, NJ
Paul Hutt, inspection, Teaneck, NJ
Gail Smith, appraisal, Oak Ridge, NJ
James A. Burke, construction cost estimates/analysis, Washington Township, NJ

DEFENSE
EXPERT(S) Patrick Porzio, inspection, Edison, NJ
Bernard P. Lorenz, engineering, Edison, NJ

EDITOR'S NOTE Defense counsel did contribute to this report.

—Alison Love