

A-5029-04T5

RECEIVED
APPELLATE DIVISION

SEP 22 2005

SUPERIOR COURT
OF NEW JERSEY

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APPELLATE DIVISION
DOCKET NO.: A-005029-04-T5

THEODORE AND FRANCIS
VAGIAS,

Plaintiffs,

vs.

WOODMONT PROPERTIES,
LLC., WOODMONT COURT AT
MONTVILLE, LLC, AND
WEICHERT CO. (FORMERLY
WEICHERT REALTORS),

Defendants.

ON APPEAL FROM ORDERS GRANTING
SUMMARY JUDGMENT AND DENYING
RECONSIDERATION AND AWARDING
COUNSEL FEES AND EXPERT COSTS UNDER
RULE 4:21A-6(c)(3) and (4) BY THE
SUPERIOR COURT OF NEW JERSEY, LAW
DIVISION, MORRIS COUNTY

DOCKET NO.: MRS-L-2245-02

SAT BELOW:

Hon. David B. Rand, J.S.C.

Hon. Catherine Langlois, J.S.C.

FILED
APPELLATE DIVISION

JUL 18 2005

PLAINTIFFS/APPELLANTS' BRIEF
AND
APPENDIX VOLUME I

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ACTING CLERK

Original

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PRELIMINARY STATEMENT

This action involves a real estate transaction in which the purchasers were led to believe that the home they were purchasing was in the Montville section of Montville Township rather than the Towaco section, where it was actually located. The builder/developer, Woodmont Properties, LLC and Woodmont Court at Montville, LLC ("Woodmont") misrepresented the location and the realtor, Weichert Co. ("Weichert") compounded the misrepresentation, confirming the false information.

The purchasers did not learn that the home they had purchased was in the Towaco section and school district until after they moved in. They filed a lawsuit seeking damages against both the builder/developer and the realtor under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. The claim against the builder/developer was referred to binding arbitration, in accordance with the contract of sale, and the case continued against the realtor Weichert.

Weichert filed a motion for summary judgment, arguing that its agent's statement that the home was in Montville was not a misrepresentation but was only an "omission", which requires proof of intent to deceive. Since Montville is in Montville Township and the home was in the Towaco section of Montville Township, Weichert claimed that the "omission" was the word "Township" from the Weichert agent's statement or, that the

"omission" was not advising plaintiffs that the home was in the Towaco section of Montville Township.

The court below agreed and granted Weichert's motion dismissing the claim against it, stating that the statement that the home was in Montville was imprecise and vague, that it constituted "puffery", "advertising", an "effort to sell" and as such was not a violation of the Consumer Fraud Act.

It is submitted that this decision was erroneous, especially in light of the court's finding that plaintiffs had made it clear to the Weichert agent that they did not want to live in Towaco or Pine Brook and the fact that the house was not in the school district they wanted, did not have a Montville address and was worth \$90,000.00 less than a comparable house in Montville, where they wanted to live and where they thought the house was located.

PROCEDURAL HISTORY

The Complaint in this action was filed on July 3, 2002, asserting claims under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., against builder/developer Woodmont Properties, LLC and Woodmont Court at Montville, LLC ("Woodmont") and realtor Weichert Co., formerly Weichert Realtors ("Weichert") (Pa 95).

Weichert's Answer was filed on August 20, 2001 (Pa 161) and Woodmont's on August 27, 2002 (Pa 166).

On January 10, 2003, an Order was signed by the Honorable Barbara Zucker-Zarett dismissing the Complaint against the Woodmont defendants and compelling arbitration, as required by the contract of sale of the subject residential property (Pa 195).

On January 10, 2003, an Order was also entered by Judge Zucker-Zarett dismissing the Complaint against Weichert for failure to answer interrogatories (Pa 196). The Complaint against Weichert was reinstated by Order entered on January 25, 2003 by the Honorable Deanne M. Wilson (Pa 215).

There was discussion between the parties as to whether Weichert would become a party to the arbitration applicable to the developer, Woodmont, but this did not materialize. Further, Woodmont was insured by Legion Insurance Company and the stay in effect related to the insurance company's bankruptcy was

applicable to the litigation and the arbitration (Pa 197, 263, 269).

On October 9, 2003, an arbitration was conducted in the Morris County Superior Court action, resulting in a finding of 80% liability against Woodmont and 20% against Weichert. The arbitrator stated that plaintiffs purchased a home that they had been led to believe was located in a different section of Montville Township than it actually was and in a different school district; that the builder misrepresented the address and Weichert confirmed the error. No damages were awarded, however, because expert testimony as to damages was not submitted and a Trial de Novo was filed by plaintiffs (Pa 149).

On October 10, 2003, an Order was entered by Judge Wilson denying plaintiffs' motion to extend the discovery period (Pa 219). Plaintiffs filed a motion for leave to appeal, which was denied by the Honorable Howard H. Kestin by Order entered on November 20, 2003 (Pa 221).

The case was scheduled for trial on February 23, 2004. Weichert's counsel filed a motion for summary judgment on December 16, 2003 arguing that plaintiffs had not provided any expert report to establish their damages. Plaintiffs' expert report was served on December 29, 2003. The report set forth a differential in prices of homes comparable to plaintiffs home in

Towaco as selling for \$90,000.00 less than comparable homes in Montville (Pa 223, 239).

Weichert then filed a motion seeking to bar the testimony of plaintiffs' expert. By Orders entered on January 23, 2004, Judge Wilson denied Weichert's motions for summary judgment and to bar plaintiffs' expert from testifying at trial but permitted Weichert to submit a certification for the fees incurred in said motions. The Orders also established a schedule for the submission of Weichert's expert report and expert depositions and adjourned the trial date, stating that trial would not take place before April 9, 2004. Judge Wilson granted Weichert's fee application by Order filed on February 6, 2004 (Pa 260, 274, 275, 278).

The trial was subsequently scheduled for July 14, 2004. On the following morning Weichert's attorneys notified plaintiffs' attorneys that they had a conflict of interest with regard to the cross-claims against Woodmont since they had represented Woodmont in another matter. A new trial date of October 4, 2004 was assigned to permit new counsel to appear on behalf of Weichert; this date was adjourned to November 8, 2004 and then to March 21, 2005. A Substitution of Attorney was filed on or about September 30, 2004 (Pa 280).

On August 9, 2004, plaintiffs filed a motion for fees involved in preparation for the July 14, 2004 trial date and this

motion was granted by Judge Wilson by Order dated October 29, 2004 (Pa 286).

Woodmont filed a motion on August 11, 2004 to compel arbitration of the entire dispute between the parties, including the claim and cross-claim against Weichert and another motion on October 6, 2004 seeking to dismiss Weichert's claim against it for indemnification, which motions were denied. Woodmont then served an expert report and plaintiffs filed a motion to bar the report, which was granted by Order of Honorable David B. Rand on January 31, 2005 (Pa 276).

On February 2, 2005, Weichert served the motion for summary judgment that is the subject of this appeal. The motion was granted by Order of the Honorable Catherine Langlois on March 4, 2005 (Pa 1).

Plaintiffs filed a motion seeking reconsideration of the summary judgment decision, which motion was denied by Judge Langlois by Order entered on April 20, 2005 (Pa 3). Plaintiffs thereafter filed a Notice of Appeal (Pa 5).

STATEMENT OF FACTS

In 1999, Ted and Frances Vagias were looking for a home in New Jersey. The couple had married in 1995 and for the next four to five years lived in Dayton, Ohio and then Rochester, New York, where they were re-located in the course of Ted's work as a management consultant. They returned to New Jersey with their young son, stayed with Frances' parents in Fairfield, where Frances had grown up, and began house-hunting (Pa 75).

The Vagiases limited their search to homes in Montville and Mountain Lakes and looked at homes in Short Hills as well. They worked with realtors in the towns they were interested, looked at advertisements and drove around looking at houses themselves. The realtor they were working with for homes in Montville was Gabrielle Dingle of Weichert Co. ("Weichert"). The Weichert name and phone number was on a "for sale" sign in Montville that they drove past and liked and when they called the number they were put in touch with Ms. Dingle. They worked with Ms. Dingle for about six months, seeing houses in Montville, and were in contact with her on a weekly basis during that period (Pa 76-78).

Towards the end of 1999, the Vagiases saw an advertisement in the Star Ledger advertising homes being built by Woodmont Properties ("Woodmont"), The newspaper advertisement stated

that four and five bedroom estate homes were being built in a "prestigious new Montville enclave" of 25 homes priced from the high \$500's. The advertisement stated: "Great Montville Address", and "The Perfect Mix ... A Montville Address, A Woodmont Home" (Pa 78, 20-21, 26-27).

The Vagiases contacted Gabrielle Dingle, brought the project to her attention and then went with her to the site, where they met with Ed Tomback, Director of Sales for Woodmont. There was some discussion about the enclave being close to 287 and the presence of power lines during which both Mr. Tomback and Ms. Dingle stated that the property was in Montville and had a Montville address. Frances Vagias testified as follows as to the conversation (Pa 80):

Q: My question is did she ever tell you that it was in Montville before you moved in?

A: Yes.

Q: When?

A: When we were looking at the homes. It wasn't Gabrielle. The advertisements said it's in Montville, Montville Township saying in Montville and a Montville address.

Q: Okay.

A. And she was under the assumption that it's in Montville with a Montville address. So we were all fooled. We were all thinking that I was buying a house in Montville.

Q: All right. Maybe I didn't ask the question the right way; maybe I did.

I recognize that you've told us you saw an ad that referred to the house being in Montville and maybe mentioned a Montville address and then you brought that - - that lead you to the property and then you brought Gabrielle involved?

A: Uh-huh.

Q: And did you show Gabrielle the ad that you had gotten from the Star-Ledger?

A: I don't remember. I believe Gabrielle had the ad herself also. I don't remember if I showed it to her. I don't remember if I told her look in the Star-Ledger. We were both working together.

Q: Did she ever - - did she ever say to you words to the effect that this house that you want, that you're interested in being built by Woodmont, is in Montville?

A: Yes.

Q: She said that. When did she say that?

A: Referring to the advertisement. This house, it's beautiful, in Montville, Frances.

Q: So if I understand you now, you're saying she, in effect, was reading off the ad with you when you were going on about it?

A: No, she knew I was looking in Montville, so she was under the assumption that this development was in Montville in Montville Township.

Q: And that assumption came from the ad?

A: The ad and Ed spoke to her with me and with my husband and Ed said, Beautiful. Who

cares about 287? You have a Montville address. What are you worried about? Montville.

And further, (Pa 82-83):

Q: Before, we took our break you said that Gabrielle had told you that this house was in Montville and then I asked you some more questions about that. I'd like you to now, as best as you can, tell us exactly what words she used?

MS. MINERVINI: Objection to form.

Exactly and - -

MR. BALDWIN: As best as you can.

MS. MINERVINI: I'm going to object to the form of the question but you can answer.

A: Before we went to Ed?

Q: Yes.

A: Fran, I think this is it. It's a beautiful house. It's in Montville. Don't worry about, you know, the power lines and 287. Montville, you know, you want a new house.

* * * * *

Q: But you - - all right. Now, up to that point when Gabrielle was with you and Ed said whatever it is he said, had she said anything to you about the house being located in Montville or anyplace else?

A: She said, This is a great house in Montville.

Ted Vagias confirmed that Gabrielle Dingle stated that the Woodmont home was located in Montville, as follows (Pa 44).

Q: I'll repeat myself verbatim. Did you ever ask Gabrielle to determine whether this property was in the Montville section of Montville Township?

A: Yes. I said to Gabrielle, Wow, this is Montville? She said, Yeah, this is Montville.

Q: And that's how you asked?

A: Yes, because we had lead with the foundation that we were only looking for houses in the Montville section of Montville Township. So if you find us something else, we're not interested. And I did ask her a follow up by saying what do you know about the builder?

Q: And what did she - did she do that?

A: She went with the same marketing materials and she said they're in business 30 years. They're a credible builder. They're supposed to know what they're doing.

The Vagiases entered into a contract of sale for the purchase of a home in the Woodmont enclave on January 11, 2000. The contract sales price was \$679,900.00. Weichert received a commission of \$7,500.00 (Pa 175-191, 91-92).

The closing took place on November 8, 2001. With options and other charges, the gross amount due from the Vagiases was \$743,435.38. The property purchased was described in the HUD Uniform Settlement Statement as 23 Bonnieview Lane, Montville, New Jersey (Pa 91-92).

About a month later, just before Christmas, Ted Vagias was advised by a family member that a Christmas card addressed to the Vagiases at 23 Bonnieview Lane, Montville, New Jersey was returned. Ted Vagias called his credit card, utility and cablevision companies and was advised that the cablevision bill had been returned. He was told by New Jersey Gas and New Jersey Power & Light that Woodmont had set up service to the property with an address in Towaco, New Jersey and when he went to the Montville post office, he was told that the home was located in Towaco, not Montville (Pa 45, 37-38, 124).

Frances Vagias testified that she was aware that Montville is a section of Montville Township, and that Montville Township had two other sections, Pine Brook and Towaco. She testified that she was specifically looking for a home in Montville because of the schools and prestige attached to that community, as follows (Pa 57-58):

Q: Okay. And what were you told?

A: There's three sections of Montville Township: Pine Brook, Towaco and Montville. And I was specifically looking in Montville because there was a top 75 schools in New Jersey and William Mason was one of them in Montville, not Towaco, and my son doesn't go to that school.

Q: Is William Mason an elementary school?

A: Yes.

* * * *

Q: Did you look for a home in any other towns?

A: Yes.

Q: What towns?

A: Boonton Township.

Q: Right. Any others?

A: Mountain Lakes, many homes, Short Hills, and Montville in Montville Township.

Q: How many homes did you look at in Short Hills?

A: Three or four homes.

Q: Did you have any discussion that Short Hills is just a section of Millburn Township?

A: Yes.

Q: Were you aware of that?

A: Yes. Short Hills is a better location and more prestigious. I needed a Short Hills address. I wanted a Short Hills address, not a Millburn address, big difference.

Q: But still the Township of Millburn?

A: Just like Towaco and Montville, big difference.

Q: I wanted a prestigious address. I worked hard and I wanted to live in Montville in Montville Township, not Towaco. And Louis in the advertisement said all this in Montville and a Montville address.

* * * *

A: Before I signed the contract there was the top 75 schools in New Jersey and William Mason was one of them, and William Mason is in Montville in Montville Township, not my son's school, Cedar Hills in Towaco in Montville Township. And Ed Tomback told me that your son will be going to William Mason grammar school, and I said what more can I ask for? My son's going to be going to the top 75 schools in New Jersey, elementary schools.

My other complaint was they promised me that there would be a wall going up 297. That was my main concern. I never thought I would be living in Towaco. I thought I would be living in Montville.

The Complaint in this action, filed on July 3, 2002, asserts claims against Weichert and Woodmont under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. Following the filing of Answers and conduct of written discovery and plaintiffs' depositions, Woodmont filed a motion seeking to compel the claim asserted against it to be dismissed and transferred to binding arbitration¹, which motion was granted on January 10, 2003 (Pa 96, 195).

Some months later, on October 9, 2003, a court ordered arbitration was conducted in the Morris County Superior Court action resulting in a finding of 80% liability against Woodmont and 20% against Weichert. The arbitrator stated that plaintiffs purchased a home that they had been led to believe was located in a different section of Montville Township than it actually was

¹ The arbitration also includes a claim against Woodmont involving soil contamination and environmental issues. These issues are to be resolved before reaching the Consumer Fraud Act claims against Woodmont.

and in a different school district; that the builder misrepresented the address and Weichert confirmed the error. No damages were awarded, however, because expert testimony as to damages had not submitted. Plaintiffs filed a demand for a Trial de Novo (Pa 149).

After a series of motions, plaintiffs were granted leave to file their expert report as to damages and a new discovery schedule was entered to allow for the filing of Weichert's expert report as well as expert depositions. Plaintiffs' expert set forth a differential in prices of homes comparable to plaintiffs' home in Towaco as selling for \$90,000.00 or 10% less than comparable homes in Montville (Pa 248).

On February 2, 2005, Weichert served the motion for summary judgment that is the subject of this appeal. The motion was granted by the Honorable Catherine Langlois, who stated as follows (T 24-25 to 26-33):

It's clear that they went there once or twice and, ultimately, did ask their agent to assist them, come with them to look at the home and to proceed in the closing.

And in that context we have to put it into the - accepting their statements that they had told her that they wanted to purchase in Montville, not in Towaco or in Pine Brook; yet, throughout the process, they even agree and not a disputed fact, that Gabriella was herself unaware that the home was in the Towaco section.

Therefore, any - therefore, any statements she made that, yes, you're purchasing your home in Montville would have to be an act of omission in not telling them that it was in the Towaco section and required Towaco on an envelope.

In that context, the plaintiffs have not established that she acted knowingly - that she acted with knowledge or with the intent ultimately to deceive them on the basis of their own deposition testimony. And the motion will be granted.

Even if I consider this an affirmative statement that even - didn't even require her knowledge, I cannot under any context here consider this to be or rise to the level of an unconscionable commercial practice because the Consumer Fraud Act itself does not cover and is not meant to prohibit at the most what are imprecise or vague or - or puffery type of remarks. That this is advertising and this is an effort to sell.

And in our advertising and our efforts to sell, whether you're a realtor or whether you're the - in this context the realtor, the effort is to - and you're allowed to encourage people to act when they find a home that they like. And while the most that I could find is that when everyone is referring to Montville it was in the - in an - perhaps an imprecise way that, yes, you live in Montville and you're going to pay your town - you live in Montville Township, you pay your taxes to Montville Township, you have all the benefits of a good school system in Montville Township, you may tell people you live in Montville Township. But it's certainly not in my mind an unconscionable commercial practice that you have - not to tell them that your envelope has to say Towaco on it.

And at the most, I would find that, even if there were affirmative statements, they were merely imprecise or vague. They were not of such a material fact that it could be considered an unconscionable commercial practice, at least as related to Weichert Realtors.

So I will grant the motion for summary judgment on behalf of Weichert.

Plaintiffs moved for reconsideration of this decision, arguing that the Weichert realtor, Gabrielle Dingle, made an affirmative misrepresentation when she told the Vagiases that the Woodmont home was located in "Montville" and that at the very least there was a factual dispute as to whether Ms. Dingle meant Montville or Montville Township when she made these statements. Plaintiffs also questioned the court's conclusion that even if Ms. Dingle made an affirmative misrepresentation that the house was in Montville, this did not rise to the level of an unconscionable commercial practice because the statement was "puffery", "advertising", an "effort to sell", and was not a statement of a material fact (Pa 11).

The motion for reconsideration was denied. Judge Langlois gave the following reasons (Pa 4):

The court's findings were placed on the record 3/4/05. Motion merely reflects plaintiffs' same argument that the statements (accepting, made in plaintiffs' perspective) were affirmative misrepresentations, not omissions, as within meaning of Consumer Fraud Act.

The court concluded otherwise, reasons placed on record. Nothing plaintiff has argued - again - compels this court to vacate decision. (Noting that court was not given benefit of transcript of motion). However analyzed - and court reviewed statements from both perspectives - comments made by Weichert realtor did not rise to level of "unconscionable commercial practice". There is no affirmative representation that plaintiffs would have Montville (section) mailing address.

At the most an omission, with no proof of knowledge.

P.S. Can't plaintiffs just get a mailbox (P.O.) for Montville?

It is submitted that plaintiffs wanted something other than a mailing address or post office box. They wanted a house in Montville and they wanted their child to attend the Montville school, the William Mason school. They were clearly deceived and misled as to what to them was a material fact to the purchase of their home and they are entitled to have the fact issues outstanding in this case resolved by a jury at trial.

POINT I

THE COURT BELOW ERRED IN RULING THAT THE STATEMENTS OF WEICHERT'S AGENT, GABRIELLE DINGLE, WERE NOT AFFIRMATIVE MISREPRESENTATIONS AS A MATTER OF LAW AND THAT THERE WAS NO GENUINE ISSUE OF MATERIAL FACT

The Consumer Fraud Act, in N.J.S.A. 56:8-2, provides as follows:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice ...

In Ji v. Palmer, 333 N.J. Super. 451, 755 A.2d 1221 (App. Div. 2000), the Appellate Division stated as follows in discussing the above provision (755 A.2d at 1227):

The Consumer Fraud Act is intended to protect consumers from deception and fraud, "even when committed in good faith," Gennari v. Weichert Co. Realtors, 148 N.J. 582, 604, 691 A.2d 350 (1997); see also Cox v. Sears Roebuck & Co., 138 N.J. 2, 16, 647 A.2d 454 (1994). "An intent to deceive is not a prerequisite to the imposition of liability." Gennari, supra, 148 N.J. at 605, 691 A.2d 350 (citing Strawn v. Canuso, 1490 N.J. 43, 60, 657 A.2d 4210 (1995)). Consumer fraud may consist of affirmative acts or acts of omission. Strawn, supra, 140 N.J. at 60, 657 A.2d 420. In contrast

to a claim of an actionable "omission," which requires a finding that the defendant acted "knowingly," ibid, "[o]ne who makes an affirmative misrepresentation is liable even in the absence of knowledge of the falsity of the misrepresentation, negligence, or the intent to deceive." Gennari, *supra*, 148 N.J. at 605, 691 A.2d 350; Strawn, *supra*, 140 N.J. at 60, 657 A.2d 420.

In Ji v. Palmer, the purchaser of a four-unit complex had been looking for investment property. The real estate broker was aware of this fact. The property in question, however, although used as a four-unit complex for some time, was restricted from such use by the applicable zoning ordinance. The broker had stated at the closing that the Certificate of Occupancy produced by the seller satisfied the zoning ordinance. The broker testified that he thought this was acceptable. The trial court dismissed the Consumer Fraud Act claim against the broker, stating as follows (755 A.2d at 1225):

At the close of plaintiffs' proofs, the trial court entered a judgment of involuntary dismissal in favor of Catrambone. See R. 4:37-2(b). The court identified the single issue to be decided as follows:

whether Catrambone engaged in affirmative acts so as to induce plaintiffs into believing that the premises in question could be legally used as a four-family building or by remaining silent when he knew that it could not be.

The court concluded that no rational fact finder could find that Catrambone knew that the property was subject to zoning constraints because the testimony was

uncontradicted that he was under the impression "as was everyone else involved in this deal, that it could be used for four units." It rejected plaintiffs' argument that a review of income and expense figures relating to the rental units constituted an "affirmative misrepresentation." It stated that "[Catrambone] went over figures that were provided by others; that's what he did," conduct which, the court remarked, "could not possibly be what is intended to be covered by the Consumer Fraud Act as a misrepresentation."

The Appellate Division, however, reversed, stating as follows (755 A.2d at 1228):

In order to establish an affirmative misrepresentation violative of the Consumer Fraud Act, plaintiffs were not required to show Catrambone's knowledge of the falsity of his statement or an intent to deceive. Strawn, supra, 140 N.J. at 60, 657 A.2d 420. An affirmative misrepresentation in the context of the Act is "one which is material to the transaction and which is a statement of fact, found to be false, made to induce the buyer to make the purchase." Gennari v. Weichert Co. Realtors, 288 N.J. Super. 504, 535, 672 A.2d 1190 (App. Div. 1996), aff'd 148 N.J. 582, 691 A.2d 350 (1997). A statement or matter is material if:

(a) a reasonable person would attach importance to its existence in determining a choice of action ...; or (b) the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it.

[Restatement (Second) of Torts §538(2) (1977).]

See also Strawn, supra, 140 N.J. at 64 n. 4, 657 A.2d 420. Whether or not Catrambone's statement was material is a fact issue left unresolved by the trial court. Ji may or

may not have attached importance to the statement in determining whether to close title, or Catrambone may or may not have known that Ji regarded or was likely to regard the statement as important in deciding his choice of action. Because Ji candidly acknowledged during his testimony that he did not recall any conversation regarding the Certificate of Land Use, a fact finder may reasonably conclude that Catrambone's statement was inconsequential. But the entirety of the testimony and proofs must be considered in resolving that issue.

The facts in the case at bar clearly involve a misrepresentation as to the location of the home that plaintiffs were considering. Thus, plaintiffs' Counter Statement of Material Facts, submitted in opposition to Weichert's motion for summary judgment, stated as follows (Pa 128-130):

1. Plaintiff, Theodore Vagias testified that he and his wife had discussions with the Weichert sales agent prior to learning about the home at Woodmont Court at Montville and that the sales associate was made aware that the plaintiffs were looking for a home in the Montville section of town and not in the Pine Brook or Towaco sections of Montville Township (See deposition of plaintiff, Theodore Vagias (sic) at Page 55, Line 19-Page 56, Line 2, attached to certification as Exhibit "B".)

2. At his deposition, Mr. Vagais (sic) responded to a question asking whether the Weichert Sales Associate was asked to determine whether the home was located in the Montville section of Montville Township, by stating "Yes." He stated that the Weichert Sales Associate stated "Yeah, this is Montville." (See deposition of Theodore

Vagais (sic), Page 59, Line 9-14 attached to certification hereto as Exhibit "B".)

3. Mr. Vagais (sic) testified regarding conversations with the Weichert Sales Associate at the location. He stated that the Weichert Sales Associate stated "This is Montville." (See deposition of Theodore Vagais (sic), Page 54, Line 23, Page 55, Line 10, attached to certification as Exhibit "B".)

4. Plaintiff Frances Vagais (sic) testified that she had conversations with the Weichert Sales Associate where she discussed with the sales associate that she was not looking in Pinebrook or Towaco. She testified that the sales associate stated "[Frances, Montville in Montville Township." (See deposition of Frances Vagais (sic) at Page 112, Line 4 - Line 15, attached as Exhibit "C").

5. Plaintiff Francis Vagais (sic) testified that, while visiting the site with the Weichert Associate, the Weichert Associate told her that the home was in Montville. (See deposition of Frances Vagais (sic), Page 111, Line - Line 11, attached to certification as Exhibit "C".)

6. Plaintiff, Frances Vagais (sic) testified regarding conversations with the Weichert Sales Associate before going to the site and before speaking with the sales associate from Woodmont Court at Montville. Mrs. Vagais (sic) testified that the sales associate stated that she would get information and bring that with her to any visit to a house. The sales associate also stated "It's in Montville," prior to the meeting with the sales associate from Woodmont Court at Montville. (See deposition of Frances Vagais (sic), Page 120, Line 5 - Line 121, Line 11 attached to certification as Exhibit "C".)

In granting Weichert's motion for summary judgment, the court below ruled that the statements made by the Weichert agent were not affirmative misrepresentations and that even if affirmative misrepresentations, these statements were not so material as to be considered an unconscionable commercial practice in violation of the Consumer Fraud Act.

The court below's ruling that Ms. Dingle's statement was not an affirmative misrepresentation, but was an omission, was erroneous. The question raised by the ruling is: What was omitted. If the court is saying that Ms. Dingle omitted to state "Township" after stating that, "Yeah, this is Montville", this raises the question of whether saying "Montville" only is different from saying "Montville Township". As there are three separate sections of the Township, one of which is "Montville", there clearly are different meanings to the phrases "Montville" and "Montville Township". This is especially true since Montville is considered to be more prestigious than Towaco or Pine Brook and this fact is reflected in the differential in house values between Montville and Towaco. Ms. Dingle's meaning in making the statement and the meaning taken by the plaintiffs at the very least raises an issue of fact.

It is submitted that Ms. Dingle's reference to "Montville" in her statements to plaintiffs affirming that the house was in Montville was a reference to the Montville section of the

Township, where plaintiffs clearly wanted to live and where they had told Ms. Dingle they wanted to live during the six months that they worked with her in their search for a home. Ms. Dingle's statements were clearly affirmative misrepresentations and the decision of the court below is erroneous on this point.

It should be noted that the distinction between affirmative misrepresentations and omissions is not always clear in Consumer Fraud Act cases. Thus, the "fine legal distinction" between a violation resulting from the omission of facts and one resulting from inaccurate facts was referred to by Justice Handler in his dissent in Chattin v. Cape May Greene,, Inc., 124 N.J. 520, 591 A.2d 943 (1991). The fact that there is no clear line of demarcation separating an act of misrepresentation from one of omission is also noted in the concurring opinion of Justice Stein. Thus Justice Handler states as follows (591 A.2d at 947-948):

I agree with the majority that the trial court's instructions intimated, if not fully explained, that an omission of a material fact requires knowledge, and, further, that a "misrepresentation" could consist of an "incomplete" statement, .i.e., omitted material facts. I also agree that the instructions did not delineate or differentiate adequately between a violation of the Consumer Fraud Act ("Act") for a misrepresentation consisting only of incorrect facts and a violation for knowingly omitting a material fact. However, although the deficiency in the instructions would appear to be more than

technical or insubstantial, in the context of the evidence in this case, it did not have the capacity to mislead or confuse the jury. The jury's answers to the interrogatories were based on the fair and complete presentation of the evidence. Those answers clearly indicated that defendant Cape May Greene, Inc. ("CMG") was found liable only for misstating facts, not for omitting any. Because an "omission" was not involved in the misleading statement, that obviated the need to delineate the difference between the two kinds of misstatements or to determine whether the statement was made with knowledge or intent to deceive.

The Act prohibits "deception" and "misrepresentation" in connection with the sale or advertisement of merchandise without regard to the state of mind of the seller. Fenwick v. Kay Am. Jeep, Inc., 72 N.J. 372, 377, 371 A.2d 13 (1977); N.J.S.A. 56:8-2. The Act neither elucidates nor defines those terms. We have stated that the "prime ingredient of deception" is the "capacity to mislead." Fenwick, supra, 72 00162 948 N.J. at 378, 371 A.2d 13; see In re Syhack, 177 N.J. Super. 358, 363, 426 A.2d 1031 (App. Div.) certif. denied, 87 N.J. 352, 434 A.2d 95 (1981); c f. N.J.S.A. 2C:20-4 (creation or reinforcement of false impression or failure to correct false impression that deceiver previously created or reinforced constitutes deception). A misrepresentation imports falsity or inaccuracy. See, e.g., N.J.S.A. 51:11-1 (defines misrepresentation as "any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts"); N.J.S.A. 51:4-23, and certainly encompasses an untrue statement of fact. Black's Law Dictionary 1152 (4th ed. 1968). Those terms, the, may be contrasted with a statement that misleads merely because of the failure to include material facts. N.J.S.A. 56:8-2; Webster's

Ninth New Collegiate Dictionary 823 (1987). With respect to such statements, the Act expressly requires knowledge or scienter as a basis for liability. It does not require such a showing for a violation through a misrepresentation consisting only of inaccurate or false facts.

Justice Stein in his concurring opinion, states as follows (591 A.2d at 947):

Because the substantive distinction between an affirmative misrepresentation and a knowing omission is elusive, I am of the view that the trial court on remand should evaluate carefully the evidence to determine whether it is sufficient to permit a jury to find that the use of the phrase "insulated windows" could constitute a misrepresentation not requiring proof of an intent to deceive. If it is not sufficient, the jury should be permitted to determine only whether the statement constitutes a concealment, suppression, or omission of a material fact and, if so, whether defendant intended to deceive its customers.

The question in Chattin was whether the phrase "insulated windows" in a developer's brochure and oral representations referred to a window with a double pane of glass and an insulated frame or to a window with a double pane of glass without an insulated frame. The Appellate Division stated that the determination as to whether the phrase constituted an affirmative misrepresentation or an omission was for the jury. By the same token, the statement that the house was in Montville and the evidence supporting plaintiffs' claim that the Montville referred to was the Montville section of Montville Township and

did not encompass the Towaco section or the Pine Brook section should be presented to the jury at trial for it to determine whether, in view of all the circumstances, the Weichert agent made an affirmative misrepresentation in violation of the Consumer Fraud Act.

ALL-STATE LIND
COTTON CONTENT

POINT II

THE COURT BELOW WAS IN ERROR IN RULING THAT EVEN IF GABRIELLE DINGLE'S STATEMENT THAT THE HOME WAS IN MONTVILLE WAS AN AFFIRMATIVE MISREPRESENTATION, IT DID NOT VIOLATE THE CONSUMER FRAUD ACT.

The unlawful affirmative acts covered by the Consumer Fraud Act include any unconscionable commercial practice, deception, fraud, false pretense, false promise and misrepresentation. Unconscionable commercial practices, deceptions and misrepresentations are separate categories of unlawful affirmative acts. A misrepresentation imports falsity or inaccuracy, an assertion not in accordance with the facts, an untrue statement of fact. If a misrepresentation is made, it is considered an act within the ambit of the Consumer Fraud Act. It is not necessary for the misrepresentation to also be an unconscionable commercial practice, as stated by the court below. N.J.S.A. 56:8-2; Chattin, supra.; Ji v. Palmer, supra.; Leon v. Rite Aid Corporation, 340 N.J. Super. 462, 774 A.2d 674 (App. Div. 2001).

In discussing the interpretation of §56:8-2 of the Consumer Fraud Act, the Appellate Division stated as follows in Leon (774 A.2d at 678-679):

This statutory scheme distinguishes between wrongs committed by affirmative acts and wrongs committed by a failure to act. Cox v. Sears Roebuck & Co., supra, 138 N.J. at 17, 647 A.2d 454. As to those violations

committed by omission, a plaintiff must demonstrate a defendant's knowledge and intent. In Fenwick, the court said, in the context of the above-quoted statutory language, "the requirement that knowledge and intent be shown is limited to the concealment, suppression or omission of any material fact." Fenwick, supra, 72 N.J. at 377, 371 A.2d 13. Implicit therein is that a plaintiff must also show that the omitted information related to a material fact.

However, when a plaintiff's claim is that there was an affirmative act such as fraud or deception, it is not necessary that plaintiff show either defendant's knowledge or intent or that the misrepresentation was of a material fact. In the present case, the trial court was critical of plaintiff's complaint because there was no showing of a false statement of material fact and therefore, in its view, "there could be no violation ... [the] consumer fraud act." The court relied upon Rodio v. Smith, 123 N.J. 345, 587 A.2d 621 (1991), for that proposition. In our view, the trial court misconstrued Rodio and thereby reached an erroneous interpretation of the statute.

In Rodio, the court was concerned in part with whether defendant's use of the slogan, "[y]ou're in good hands with Allstate," constituted either common law fraud or a violation of the Consumer Fraud Act. The court found that the challenged language did not rise to the level of common law fraud because the slogan was not a statement of material fact. The slogan was also not a violation of the Consumer Fraud Act because it was mere "puffery" and therefore not false, deceptive, misrepresentative, or "any other unlawful practice within the ambit of the Consumer Fraud Act." Id. at 352, 587 A.2d 621.

We do not read Rodio for the proposition that a plaintiff must prove a misstatement

of material fact when claiming an affirmative act of misrepresentation, although the abbreviated manner in which the court therein quoted the statute might lead to such a conclusion. Grammatically, "material fact" is within the second part of a compound subject describing that which the statute declares to be an unlawful practice. The statutory elements are in the disjunctive. D'Ercole Sales, Inc. v. Fruehauf Corp., 206 N.J. Super. 11, 22, 501 A.2d 990 (App. Div. 1985). In Fenwick, the court stated that, "[t]he capacity to mislead is the prime ingredient of deception or an unconscionable commercial practice." Fenwick, supra. 72 N.J. at 378, 371 A.2d 13; accord In re Shack, 177 N.J. Super. 358, 363, 426 A.2d 1031 (App. Div.), certif. denied, 87 N.J. 352, 434 A.2d 95 (1981). A false statement of fact is not, however, an essential ingredient of a plaintiff's cause of action based on affirmative wrongdoing. The trial court's statement that, "absent a finding of false statement of material fact, there could be no violation of a consumer fraud act ..." in our view is a misreading of Rodio.

It is submitted that plaintiffs' claim and legal contentions are supported by the facts and warranted by the case law interpreting the various provisions of the Consumer Fraud Act. The purpose of the Consumer Fraud Act is to prevent deception and to promote truth and fair dealing. The Act is to be construed liberally in favor of consumers. Although there may be fact issues outstanding in this case to be resolved by a jury, plaintiffs were clearly misled and did not receive what they wanted, a house in Montville.

The court below referred to this deception as "puffery type of remarks" or "advertising" and stated that a realtor in an effort to sell is allowed to encourage people to act when they find a home that they like (T25-23 to 26-6).

It is submitted that the misrepresentation involved in this case is not "puffery" and that a realtor is not allowed to encourage people to buy a home by misleading them and making false statements about its location.

ALL-STATE BOND
COTTON CONTENT

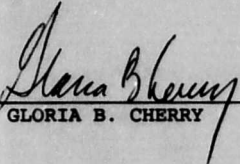
CONCLUSION

In view of the foregoing, the decision granting Weichert's motion for summary judgment should be reversed and the case remanded for trial.

Respectfully submitted,

BRAFF, HARRIS & SUKONECK
Attorneys for Theodore and
Frances Vagias

By:



GLORIA B. CHERRY

DATED: July 14, 2005

COPY

FILED

MAR 4 - 2005

CATHERINE LANGLOIS, J.L.C.
JUDGE'S CHAMBERS
MORRIS COUNTY COURTHOUSE

LADDEY, CLARK & RYAN
Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880
Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiffs,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF WEICHERT
CO.

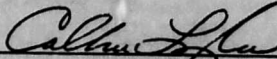
THIS MATTER having been opened to the Court by Laddey, Clark & Ryan, attorneys for Defendant, Weichert Realtors, Lawrence J. Supp, Esq., appearing, on a motion for Summary Judgment; and Eric L. Grogan, Esq., of the law firm of Braff, Harris & Sukonek, attorneys for Plaintiffs, appearing in opposition to the motion; the Court having considered the papers submitted in support of and in opposition to the motion;

IT IS on this 4 day of March, 2005, ORDERED:

1. Defendant Weichert Co. (Weichert Realtors) be and is hereby granted Summary Judgment dismissing all claims and cross-claims filed against it, with prejudice;

2. A copy of this Order shall be served upon all parties within seven (7) days of its receipt by counsel.

FOR THE REASONS STATED ON THE RECORD 3/4/05


Catherine M. Langstaff, Judge
Superior Court of New Jersey, J.S.C.

Opposed

Unopposed

MAL
N:\USERS\Clients\4413-25 - Weichert ads Vagias\Summary Judgment Order.doc
02/02/05

COPY

FILED

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
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LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677
Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

APR 20 2005

CAROLINE LANGLOIS, I.S.C.
JUDICIAL CHAMBER
MORRIS COUNTY COURTHOUSE

THEODORE AND FRANCIS VAGIAS

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY**

Plaintiff,

DOCKET NO. MRS-L-2245-02

v.

Civil Action

**WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C., AND WEICHERT CO.
(FORMERLY WEICHERT REALTORS),**

Defendants.

ORDER
*Denying Motion for
Reconsideration*

This matter having been opened to the Court on the application of Braff Harris & Sukoneck, attorneys for Plaintiffs, Theodore and Francis Vagias, upon a Notice of Motion for Reconsideration, and the Court having considered the papers, heard the arguments of counsel, and for good cause shown

IT IS, on this *20* day of *April*, 2005,

ORDERED that

1. The Court's prior order dated *March 4*, 2005 granting summary judgment as to defendant Weichert Company is hereby reversed; and it is ~~is~~ *Done*
2. FURTHER ORDERED that plaintiff's complaint against defendant Weichert Company is hereby reinstated; and it is

3. FURTHER ORDERED that a conformed copy of this Order be served upon all counsel within seven (7) days of receipt of same by attorneys for Plaintiffs, Theodore and Francis Vagias.


J.S.C.

DATED:

 opposed

 unopposed

Catherine M. Langlois, Judge
Superior Court of New Jersey

Reasons - The court's findings were placed on the record 3/4/05. Motion merely reflects plaintiff's same argument that the statements (accepting, made in plaintiff's perspective) were affirmative misrepresentations, not omissions, as within meaning of Consumer Fraud Act. The Court concluded otherwise, reasons placed on record. Nothing plaintiff has argued - again - compels this court to vacate decision. (Noting that Court was not given benefit of transcript of motion) However analyzed - and Court reviewed statements from both perspectives - comments made by Weichert realtor did not rise to level of "unconscionable commercial practices." There is no affirmative representation that plaintiff would have Morville (section) mailing address. At the most an omission, with no proof of knowledge.

P.S. Can't plaintiff just get a mailbox (P.O.) for Morville?

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Telephone: (973) 994-6677
Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

**THEODORE AND FRANCIS
VAGIAS,**

Plaintiffs,

vs.

**WOODMONT PROPERTIES, LLC.,
WOODMONT COURT AT
MONTVILLE, LLC, AND
WEICHERT CO. (FORMERLY
WEICHERT REALTORS),**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

**ON APPEAL FROM SUPERIOR COURT
OF NEW JERSEY**

**LAW DIVISION: MORRIS COUNTY
ORDER OF THE HONORABLE CATHERINE M.
LANGLOIS DATED APRIL 20, 2005
DENYING MOTION FOR RECONSIDERATION
OF ORDER DATED MARCH 4, 2005
GRANTING SUMMARY JUDGMENT IN FAVOR
OF WEICHERT CO.**

DOCKET NO. MRS-L-2245-02

CIVIL ACTION

NOTICE OF APPEAL

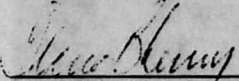
**TO: James M. Flynn, Clerk
Superior Court of New Jersey, Appellate Division
Hughes Justice Complex
Trenton, New Jersey 08625**

**ON NOTICE TO: Thomas N. Ryan, Esq.
Laddy, Clark & Ryan
60 Blue Heron Road
Sparta, New Jersey 07841**

PLEASE TAKE NOTICE that the undersigned, on behalf of plaintiffs Theodore and Francis Vagias, hereby appeal to the Superior Court of New Jersey, Appellate Division, from the Order of the honorable Catherine Langlois dated April 20, 2005 denying the plaintiff's Motion for Reconsideration of the Order dated March

4, 2005 granting summary judgment in favor of Weichert Co. Copies of said Orders are attached, as well as the Order of the Honorable Barbara Zucker-Zarett dated January 10, 2003 dismissing the Complaint against Woodmont Properties, L.L.C. and Woodmont Court at Montville, L.L.C.

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs
Theodore and Francis Vagias



GLORIA B. CHERRY

DATED: May 24, 2005

APPELLATE DIVISION CIVIL CASE INFORMATION STATEMENT

TITLE IN FULL:
Vagias, Theodore v. Weichert & Co.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.:**

APPELLANT'S ATTORNEY(S):

NAME	ADDRESS	TELEPHONE	CLIENT
Gloria B. Cherry	570 West Mount Pleasant Avenue Livingston, NJ 07039	973-994-6677	Theodore and Francis Vagias

RESPONDENT'S ATTORNEY(S)*:	NAME	TELEPHONE	CLIENT
	Thomas N. Ryan, Esq. Laddy, Clark & Ryan 60 Blue Heron Road Sparta, NJ 07841	973-729-1880	Weichert Co.

(* INDICATE WHICH PARTIES, IF ANY, DID NOT PARTICIPATE BELOW OR WHO WERE NO LONGER PARTY TO THE ACTION AT THE TIME OF ENTRY OF THE ORDER/JUDGMENT BEING APPEALED.)
GIVE DATE AND SUMMARY OF JUDGMENT OR DECISION BEING APPEALED AND ATTACH A COPY:

An Order was entered on January 10, 2003 by the Honorable Barbara Zucker-Zarett dismissing the Complaint against Woodmont Properties L.L.C. and Woodmont Court at Montville, L.L.C. and compelling arbitration. The attorney for the said defendants, Sidney J. Bernstein, was therefore not a party to the action at the time of entry of the Orders being appealed

GIVE DATE AND SUMMARY OF JUDGMENT OR DECISION BEING APPEALED AND ATTACH A COPY:
Order of the Honorable Catherine Langlois dated April 20, 2005 denying Motion for Reconsideration of Order dated March 4, 2005 granting summary judgment to Weichert & Co.

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third party claims and applications for fees? **NO**

If so, has the order been certified as final pursuant to R.4:42-2?

(If the order has not been certified leave to appeal must be sought. R.2:2-4, 2:5-6.)

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this state being questioned? (R. 2:5-1(h)). **NO**

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

Plaintiffs Theodore and Frances Vagias purchased a home in a development known as Woodmont Court at Montville. Gabrielle Dingle of defendant Weichert Co. was the buyers agent for this sale. Prior to this purchase, the plaintiffs had discussions with Ms. Dingle that they were looking in specific areas for a new home. This included the Montville section of Montville Township, and not the Towaco or Pine Brook sections of Montville Township.

Prior to the purchase, plaintiffs met with Ms. Dingle at the site and spoke about the home. In a conversation at the site, Ms. Dingle stated that the home was located within "Montville". Thereafter, plaintiffs

purchased the home. After moving in, the plaintiffs learned that the home was not located in the Montville section of the Township, but rather in the Towaco section of the Township.

Plaintiffs brought a lawsuit, alleging violations of the Consumer Fraud Act, N.J.S.A. 56:8-2. After discovery, defendant Weichert Co. brought a motion for summary judgment, which was heard on March 4, 2005. The court granted defendant's motion for summary judgment, which was heard on March 4, 2005. The court granted defendant's motion, ruling, as a matter of law, that the statements made by Ms. Dingle at the site were not affirmative misrepresentations, but rather omissions. Appellants contend that this was error. The court also ruled that, even if the statements were to be considered an affirmative statement, they were not so material as to be an unconscionable practice. Appellants, contend that this was also error.

A motion for reconsideration and rehearing of the court's order granting summary judgment in favor of defendant Weichert Company was filed on March 21, 2005, returnable April 15, 2005. This motion was denied on April 20, 2005, precipitating this appeal.

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THIS APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.)

1. The court below erred in ruling that the statements of Gabrielle Dingle, agent for Weichert Company, were omissions rather than affirmative misrepresentations and that there were no genuine issues of material fact.
2. The court below erred in ruling that even if the statements of Gabrielle Dingle were affirmative misrepresentations, they did not rise to the level of unconscionable practice under the New Jersey Consumer Fraud Act.

IF YOU ARE APPEALING FROM A JUDGEMENT ENTERED BY A TRIAL JUDGE SITING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue a oral findings or opinion? Yes (on the record 3/4/05)
2. Did the trial judge issue written findings or opinion? Yes (4/20/05 Order)

Caution: Before you indicate that there was neither an opinion nor findings, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

Date of your inquiry:

Will the trial judge be filing a statement or opinion pursuant to R. 2:5-1(b)?

Civil appeals are screened under the Civil Appeals Settlement Program to determine their potential for settlement or, in the alternative, a simplification of issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a conference. No

Explain your answer:

1. IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (A) Arises from substantially the same case or controversy as this appeal? NO
(B) Involves an issue that is substantially the same, similar or related to an NO

issue in this appeal?

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR
CONTROVERSY? NO

In the event there is any change with respect to any entry on the Case Information Statement, appellant shall have a continuing obligation to file an amended Case Information Statement on the prescribed form.

Theodore and Francis Vargas
Name of Appellant

Gloria B. Cherry
Name of Counsel of Record

Date

Signature of Counsel of Record

May 24, 2005

Gloria B. Cherry

9a

**BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW**

Eric L. Grogan

**570 W. MT. PLEASANT AVENUE
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**Writer's
e-mail address
elgrogan@bhs-law.com**

**305 Broadway, Seventh Floor
New York, New York 10007
(212) 599-2085
Facsimile (212) 822-1479**

March 18, 2005

Superior Court of New Jersey
Morris County Civil Division
P. O. Box 910
Morristown, New Jersey 07963-0910

**Re: Vagias, Theodore v. Woodmont Homes
Docket No.: MRS-L-2245-02
Our File No.: 244.14899**

Dear Sir/Madam:

This office represents Plaintiffs, Theodore and Francis Vagias, in connection with the above-captioned matter. Enclosed please find a Brief, an original and one copy of a Notice of Motion and Certification of Eric L. Grogan, Esq. Also enclosed are an original and three copies of a proposed form of Order. This motion is returnable April 15, 2005. Kindly file the original documents, returning the copies marked "filed" to our office in the envelopes provided.

We enclose herein our check for the applicable filing fee.

By copy of this letter, we are serving copies of the aforementioned papers upon all parties of their counsel of record.

Very truly yours,

BRAFF, HARRIS & SUKONECK


ERIC L. GROGAN

ELG:ep
Enclosures
cc: All Counsel of Record

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677
Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

THEODORE AND FRANCIS VAGIAS

Plaintiff,

v.

**WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C., AND WEICHERT CO.
(FORMERLY WEICHERT
REALTORS),**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY**

DOCKET NO. MRS-L-2245-02

Civil Action

**NOTICE OF MOTION FOR
RECONSIDERATION**

RETURNABLE: April 15, 2005

TO: Thomas N. Ryan, Esq.
Laddy, Clark & Ryan
60 Blue Heron Road
Sparta, NJ 078741

Sydney J. Bernstein, Esq.
554 South Livingston Avenue
Livingston, NJ 07039

SIR(S):

PLEASE TAKE NOTICE that on Friday, April 15, 2005, at 9:00 a.m. or as soon thereafter as counsel may be heard, the undersigned, attorneys for the Plaintiffs, Theodore and Francis Vagias, shall move before such Judge or Judges hearing Motions in the above-named Court for an Order for Reconsideration. Plaintiffs will rely upon the Supporting Certification of Eric L. Grogan and documents attached hereto.

11a

PLEASE TAKE FURTHER NOTICE that the undersigned hereby requests oral argument in this matter, and has, accordingly annexed a proposed form of Order.

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs, Theodore and
Francis Vagias

By: Eric L. Grogan
ERIC L. GROGAN

Dated: March 18, 2005

Pretrial Date: None to Date

Calendar Date: None to Date

Trial Date: None to Date

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677
Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

THEODORE AND FRANCIS VAGIAS

Plaintiff,

v.

**WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C., AND WEICHERT CO.
(FORMERLY WEICHERT REALTORS),**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY**

DOCKET NO. MRS-L-2245-02

Civil Action

Certification of Counsel

Eric L. Grogan by way of Certification in lieu of Affidavit
says:

1. I am an attorney at law of the State of New Jersey and an associate at the law firm of Braff Harris & Sukoneck, attorneys for plaintiffs, Theodore and Francis Vagias, in the above captioned matter. I am fully familiar with the facts hereinafter set forth.

2. I make this certification in support of plaintiff's motion for reconsideration of a prior Court ruling granting summary judgment as to defendant Weichert Company.

3. Enclosed as Exhibit "A" is a copy of the motion papers filed by defendant Weichert Company for a motion for Summary Judgment returnable March 4, 2005.

4. Attached as Exhibit "B" are the papers filed by plaintiffs in opposition to Weichert's motion for summary judgment returnable March 4, 2005.

5. Attached as Exhibit "C" is a copy of the Order dated March 4, 2005 and cover letter enclosing order granting summary judgment as to defendant Weichert Company, dated March 9, 2005.

I hereby certify that the foregoing statements made by me are true. I am aware that if any statement made by me is willfully false, I am subject to punishment.


Eric L. Grogan

DATED: March 18, 2005

EXHIBIT A

15a

LADDEY, CLARK & RYAN
ATTORNEYS AT LAW

EC

BRIAN M. LADDEY
RICHARD I. CLARK
THOMAS N. RYAN
ANDREW A. FRASER

80 BLUE HERON ROAD
SPARTA, NEW JERSEY 07871-2600
(973) 729-1880
FAX: (973) 729-1224

- NJ & NY BARS
- NJ & PA BARS
- NJ, NY & MA BARS
- RULE 1:40 QUALIFIED MEDIATOR
- CERTIFIED BY THE SUPREME COURT OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY

ANGELO J. BOLCATO
MICHAEL S. GAROFALO
LAWRENCE J. SUPP
JARROD C. COFRANCECO
DEBORAH L. SHEWARD
LAUREN D. MCFADDEN

RICHARD A. STERN
OF COUNSEL

E-MAIL: info@laddey.com

www.laddey.com

February 2, 2005

Motion Clerk
MORRIS COUNTY SUPERIOR COURT
LAW DIVISION
Washington and Court Streets
P.O. Box 910
Morristown, New Jersey 07963

244-14899

971

Re: *Vegins v. Woodmont Properties, LLC, et al*
Docket No. MRS-L-2245-02
Our File No. 4413-25

Dear Sir or Madam:

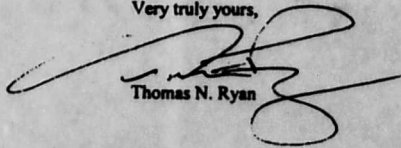
Enclosed please find an original and one copy of the following documents which are being filed on behalf of Defendants Weichert Co., March 4, 2005:

1. Notice of Motion for Summary Judgment, with Proof of Service;
2. Certification of Lawrence J. Supp, Esq.;
3. Statement of Undisputed Material Facts Submitted by Defendant Weichert Co.;
4. Supporting Brief; and
5. Proposed form of Order.

Kindly file and return the additional copy of each marked "filed" in the self-addressed, stamped envelope provided.

Thank you for your courtesy.

Very truly yours,



Thomas N. Ryan

TNR:mal
Enclosures
VIA FEDERAL EXPRESS

cc: Eric L. Grogan, Esq., VIA FEDERAL EXPRESS
Sidney J. Bernstein, Esq., VIA FEDERAL EXPRESS

16a

LADDEY, CLARK & RYAN
Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880
Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,
Plaintiffs,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

**NOTICE OF MOTION FOR SUMMARY
JUDGMENT**

TO: Eric L. Grogan, Esq.
BRAFF, HARRIS & SUKONECK
570 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039-0657
Attorneys for Plaintiffs

Sidney J. Bernstein Esq.
554 So. Livingston Avenue
Livingston, New Jersey 07039
Attorney for Woodmont Defendants

PLEASE TAKE NOTICE that the undersigned attorney for Defendants, Weichert Co., will move before the Superior Court of New Jersey, Law Division, Morris County, on Friday, March 4, 2005, at nine o'clock in the forenoon, or as soon thereafter as counsel

1
17a

may be heard, for an Order Granting Summary Judgment in favor of Weichert Co., dismissing all claims and cross-claims filed against it.

We shall rely upon the enclosed Brief and Exhibits in support hereof.

Oral argument is requested if opposition is filed.

This matter has been listed for trial on March 21, 2005.

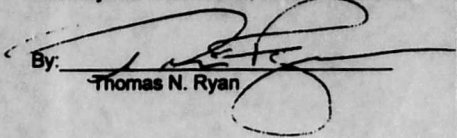
Pursuant to Rule 1:6-2(a), a copy of the proposed Order is annexed hereto and the motion shall be deemed uncontested unless responsive papers are timely filed and served stating with particularity the basis of the opposition to the relief sought.

LADDEY, CLARK & RYAN
Attorneys for Defendants, Weichert Realtors

Dated:

2/2/05

By:


Thomas N. Ryan

CERTIFICATION OF MAILING

The undersigned hereby certifies that the within Notice of Motion was filed and served on the following counsel within the time prescribed by Rule 1:6-3.

Eric L. Grogan, Esq.
BRAFF, HARRIS & SUKONECK
570 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039-0657
Attorneys for Plaintiffs

Sidney J. Bernstein Esq.
554 So. Livingston Avenue
Livingston, New Jersey 07039
Attorney for Woodmont Defendants

LADDEY, CLARK & RYAN
Attorneys for Defendants, Weichert Realtors

Dated: *February 2, 2005*

By: *Lawrence J. Supp*
Lawrence J. Supp

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02/01/05

LADDEY, CLARK & RYAN
Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880
Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,
Plaintiffs,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

STATEMENT OF UNDISPUTED
MATERIAL FACTS SUBMITTED BY
DEFENDANT WEICHERT CO.

1. The plaintiffs purchased a new home to be constructed in a development known as Woodmont Court at Montville. Defendant Woodmont Properties, the developer of the property, placed display advertisements in the newspaper which stated that this development has a "great Montville address." [Advertisements, Exhibit A].
2. The plaintiffs claim that they saw the advertisements [Exhibit B, deposition of Theodore Vagias, at 53-17 to 54-1], and went to see the property on their

own before bringing a realtor, a Weichert sales associate [Exhibit B at 50-2 to 50-17], who had previously shown them other properties.

3. Weichert did not list this property for sale, and did not advertise or market this property, but was merely identified by the buyer's as their real estate agent. The agent did receive approximately 1/5 of the Sales Commission [Exhibit D, HUD-1].

4. The property was listed by Associated Sales, Inc., a real estate brokerage company having the same address as Woodmont. Woodmont's attorney also shared the same address [Exhibit E, Information Sheet from Contract for Sale].

5. The plaintiffs claim that the builder's on-site representative, Ed Tombeck, made a verbal statement that the property was in Montville [Exhibit B at 54-2 to 54-22].

6. After the plaintiffs moved into the home, they learned that it had a Towaco mailing address [Exhibit B at 12-2 to 12-18].

7. The property is situated in Montville Township [Exhibit B at 8-19 to 9-2] but it has a Towaco mailing address.

8. There are three post offices in Montville Township. One is called the Montville post-office. The others are the Towaco post-office and the Pine Brook post office. [Exhibit B at 9-18 to 12-18].

9. Towaco and Pine Brook are not municipalities [2005 N.J. Lawyer's Diary].

10. The plaintiffs allege that Weichert violated the Consumer Fraud Act by reason of the following conduct:

(a). The plaintiffs allege "at no point during their viewings of various homes in the development, nor during any telephone conversations, nor during any discussions, nor during any exchanges of correspondence, did any representative of Weichert Co. (formerly Weichert Realtors) advise the plaintiffs that the development was located in the Section of Towaco rather than in the Town of Montville." [Exhibit F, Complaint, Count Three, para. #4; Exhibit G, Interrogatory Answers #5 and #7].

(b). The plaintiffs allege that "Weichert Co. (formerly Weichert Realtors) made several affirmative representations that the home was located in Montville rather than the Township of Montville or the section of Towaco." [Exhibit F, Complaint, Count Three, para. #8; Exhibit G, Interrogatory Answers #6 and #7].

11. In his deposition, plaintiff Theodore Vagias testified that Weichert's sales associate Ms. Dingle was "as confused as we were" about the mailing address [Exhibit B at 68-15].

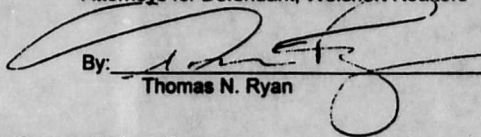
12. In her deposition, plaintiff Frances Vagias testified that both she and Ms. Dingle were "under the assumption" that the home would have a Montville address, and that both were "fooled" by the builder's misrepresentations [Exhibit C at 110-1 to 111-18].

LADDEY, CLARK & RYAN
Attorneys for Defendant, Weichert-Realtors

Dated:

2/2/05

By:



Thomas N. Ryan

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02/01/05

LADDEY, CLARK & RYAN
Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880
Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiff,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

**CERTIFICATION OF
LAWRENCE J. SUPP, ESQ.**

LAWRENCE J. SUPP, ESQ., of full age, certifies as follows:

1. I am a duly licensed and practicing attorney at law and am fully familiar with the facts set forth in this Certification.
2. **Exhibits A** – advertisement by builder showing a Montville address.
3. **Exhibit B** – deposition transcript of Theodore Vagias.
4. **Exhibit C** – deposition transcript of Frances Vagias.
5. **Exhibit D** – HUD -1 Uniform Settlement Statement for Theodore and Frances Vagias.

6. Exhibit E – Information Statement from Contract of Sale.
7. Exhibit F – Complaint filed July 3, 2002 with Law Division, Morris County.
8. Exhibit G – Plaintiff's Answer to Interrogatories propounded by Defendant, Weichert Co.
9. All exhibits attached hereto are authentic copies.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

LADDEY, CLARK & RYAN
Attorney for Defendant, Weichert Realtors

By: *Lawrence J. Supp*
LAWRENCE J. SUPP

Dated: February 1, 2005

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02/02/05

EXHIBIT A

25a

WOODMONT
PROPERTIES

LARGE HOMES. SMALL NEIGHBORHOOD. GREAT MONTVILLE ADDRESS.



A prestigious new Montville enclave of just 25 magnificent estate homes each on at least a 3/4 acre homesite.
Priced from the high '500's.

If location is everything then this is a golden opportunity. Become part of the most sought-after excitement in Montville. Not only can you preview these beautifully spacious homes on up to 1.5 acres, you'll also be able to take advantage of fantastic pre-construction prices. Check out the great location, convenient for commuting with terrific schools. Designed and built by leading home builder, Woodmont Properties, these expertly crafted homes are already the talk of Montville. Come see what everyone is talking about.

WOODMONT COURT

4 & 5-Bedroom Estate Homes
Pre-Construction priced
from the high \$500's.

Directions: I-287 to Exit 47. Go South on Rt. 202. Turn right onto Vahlhalla Rd and then right onto Old Lane Extension. Homes and Sales Center on left. Open Weekends 12-5 and Weekdays by appt. Phone: 973-394-9111 & Weekdays. Call Tel at 973-316-9400 ext. 308
www.woodmontproperties.com

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DEFENDANT'S
EXHIBIT
DW-8-d
van 1/9/02

EXHIBIT A
DEFENDANT'S
EXHIBIT
DW-5

Directions from
the extension Road

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- NOR
- 30 disti
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- Large h
- Easy co
- Sprawl

IMMEDIATE OCCUPANCY

The Perfect Mix ...

DEFENDANT'S EXHIBIT

DW9 ed
v9 11/19/02

A Montville Address.
A Woodmont Home.



Woodmont Court

AT MONTVILLE

If you're looking for a luxury estate home with upscale design, quality craftsmanship, and outstanding living space ... and if a prestigious community with one of the most strategic locations in Northern New Jersey interests you, ... *you need look no further than Woodmont Court in Montville.* Here you will find a quiet enclave community of 25 estate homes, each with 4 or 5 bedrooms and 3 car garage, situated on a large homesite of 3/4 acre to 1.5 acres.

Become part of the Woodmont Experience

Quality crafted Woodmont homes define the meaning of happy home ownership now, lasting value in the years ahead. Visit beautiful Montville today and see what all the excitement is about.

Luxury Estate Homes Set In One of North Jersey's Great Communities. Preview Priced From \$599,990

Sales Office Open Noon
to 5 pm daily Except Wednesday.
Call Ed Tombok for an appointment
973-394-9111



Directions: I-287 N to Exit 47. Make right at light onto Main Rd. (Rt. 202 S). Travel 1/2 mile to Withalla Rd. and turn right. Proceed 4/10 mile to Old Lane Extension and turn right.

Woodmont Court entrance will be on left.
www.woodmontproperties.com



We Feature
Quality Anderson® Windows

DEFENDANT'S EXHIBIT

DW-6

EXHIBIT B

28a

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

THEODORE AND FRANCES VAGIAS, :
 :
Plaintiffs, : DEPOSITION OF:
 :
-vs- :
 : THEODORE VAGIAS
WOODMONT PROPERTIES, LLC, :
WOODMONT COURT AT MONTVILLE, :
LLC and WEICHERT CO. (Formerly :
WEICHERT, REALTORS), :
 :
Defendants. :

TRANSCRIPT of the stenographic notes of
the proceedings in the above-entitled matter,
as taken by and before VIRGINIA GRAVES, a
Certified Shorthand Reporter and Notary Public
of the State of New Jersey, held at the offices
of BRAFF, HARRIS & SUKONECK, ESQUIRES, 570 West
Mt. Pleasant Avenue, P.O. Box 657, Livingston,
New Jersey 07039, on Tuesday, November 19, 2002,
commencing at 3:01 p.m.

KNARR-RICHARDS ASSOCIATES
Certified Shorthand Reporters
P.O. Box 335
Morris Plains, New Jersey 07950
(973) 539-7150

1 APPEARANCES:

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MRAY, HARRIS & SINDWICH, ESQUIRES
BY: FRANCIS A. MINERVINI, ESQUIRE
470 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039
Attorneys for the Plaintiff

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KRAEMER, BURNS, MYTAMA, LOWELL & HULKA, ESQUIRES
BY: SIDNEY J. BERNSTEIN, ESQUIRE
678 Huzzels Avenue
Springfield, New Jersey 07081
Attorneys for the Defendants Woodmont Properties,
LLC, & Woodmont Court at Montville, LLC

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RODERICK, WENHAM & GRAYNER, ESQUIRES
BY: ALAN J. BALDWIN, ESQUIRE
29 South Street
Morristown, New Jersey 07960
Attorney for Defendant Walchert Co.

1 THEODORE VAGIAS,
2 residing at 23 Bonnicview Lane, Towaco,
3 New Jersey 07082, having first been duly
4 sworn by the Notary, testifies as follows:
5
6 DIRECT EXAMINATION BY MR. BERNSTEIN:
7

8 Q. Mr. Vagias, your attorney has just
9 given me some photocopies of advertisements for
10 the housing development and I'm going to ask the
11 court reporter to mark them with one number.

12 MR. BALDWIN: Can I ask you to do it
13 with different ones because they didn't all come
14 out at the same time?

15 MR. BERNSTEIN: Sure, whatever. Oh,
16 you want a different one for each page you mean?

17 MR. BALDWIN: Yes.

18 MR. BERNSTEIN: Okay. I thought it was
19 one.

20 (An off-the-record discussion takes
21 place.)

22 (Ad is marked DW-8 for identification.)

23 (Ad is marked for DW-9 identification.)

24 (Ad is marked for DW-10 for identification.)

25 (Ad is marked DW-11 for identification.)

Page 4

INDEX

2 WITNESS DIRECT CROSS

3 THEODORE VAGIAS

4 BY: MR. BERNSTEIN 4, 79
5 BY: MR. BALDWIN 45

EXHIBITS

NO.	DESCRIPTION	PAGE
14	DW-8	4
15	DW-9	4
16	DW-10	4
17	DW-11	4
18	DW-12	5
19	DW-13	37

1 (Ad is marked DW-12 for identification.)

2 Q. Again, I apologize, Vagias?

3 A. Vagias.

4 Q. Vagias. What's your date of birth?

5 A. 12/25/1964.

6 Q. And what is your education, educational
7 background? I mean, are you a college graduate?

8 A. Yes.

9 Q. Where? What college?

10 A. Syracuse University.

11 Q. What year?

12 A. '87.

13 MR. BERNSTEIN: Off the record.

14 (An off-the-record discussion takes
15 place.)

16 MR. BERNSTEIN: Back on the record.

17 Q. What type of employment do you engage
18 in?

19 A. Management consulting.

20 Q. For which company?

21 A. Mason, Harriman & Company.

22 Q. Okay. Do you have any degrees beyond
23 Syracuse, beyond your bachelor's?

24 A. Yes.

25 Q. What do you have?

Page 3

Page 5

Page 2 - Page 5

30a

1 A. I have a master's in telecommunication
2 management.

3 Q. From where?

4 A. Stevens Institute.

5 Q. Okay. And where did you grow up?

6 A. In Newton, New Jersey.

7 Q. Did you have any contacts with the Town
8 of Montville before buying this house?

9 A. Not that I recall.

10 Q. And do you recall looking at other
11 homes in Montville before buying this house?

12 A. Yes.

13 Q. Can you recall either the addresses or
14 the streets of those homes?

15 A. Yes.

16 Q. Can you give me an idea what they were?

17 A. Yes. They were homes off of -- coming
18 from Fairfield we would drive up Hook Mountain.
19 Then as we were going up the hill, we would tend
20 to hang a left and there was new developments.

1 (An off-the-record discussion takes
2 place.)

3 Q. The locations of these homes?

4 A. Yes. They were at the top of that hill
5 off of Hook Mountain on the left as you were going

Page 6

1 towards Change Bridge. Then there were homes in
2 that development and new ones that were being
3 constructed.

4 Q. Was that the Pine Brook section of the
5 Township of Montville?

6 A. I recall it to be the Montville section
7 of Montville Township.

8 Q. Do you recall whether there was any
9 sign or any other indication of where the Pine
10 Brook section stopped and the Montville section
11 began?

MS. MINERVINI: I'm sorry. What period
of time was this?

Q. Oh, the period of time when you were
looking at these homes that you just referred to?

A. No, I don't remember a sign delineating
the two areas.

Q. At the time you were looking did you
have in your mind that you wanted only one
particular section of the township?

A. Yes.

Q. And why was that?

A. We wanted Montville in Montville
Township because of the prestige.

Q. And what do you mean by prestige?

Page 7

Page 6 - Page 9

1 A. I refer to it as the name of the town
2 where you're looking, the town you live. We were
3 concentrating on homes in Montville or in Mountain
4 Lakes and we had looked at some homes in Short
5 Hills/Summit area. So we wanted a name brand,
6 prestigious neighborhood that we could afford.

7 That's what I refer to as prestige.

8 Q. Was prestige related to mailing
9 address?

10 MS. MINERVINI: Objection to form. You
11 can answer.

12 A. I thought they were one and the same,
13 mailing address being -- can you tell me what you
14 mean by mailing address?

15 Q. Just where someone would have to put
16 the address of the letter to get to you?

17 A. That's vague. I don't understand.

18 Q. We'll leave that alone.

19 Is your present home located in the
20 Township of Montville?

21 A. Yes.

22 Q. Okay. Do you pay your real estate
23 taxes to the Township of Montville?

24 A. Yes.

25 Q. Is your home protected by the Township

Page 8

1 of Montville Police Department?

2 A. Yes.

3 Q. Earlier today your wife testified that
4 your son went, I think it's called, to the Cedar
5 Grove school. Is that the right name, Cedar
6 Grove, Cedar Hill, rather?

7 A. Correct on the second.

8 Q. Cedar Hill School. Okay. Is that
9 school part of the Township of Montville Board of
10 Education school system?

11 A. I believe so.

12 Q. Is your home served by the Township of
13 Montville library system?

14 A. I believe so.

15 Q. And does the Township of Montville
16 Water and Sewer Department serve your home?

17 A. Yes.

18 Q. Is Towaco one section of the Township
19 of Montville?

20 A. Yes.

21 Q. And what are the other sections of the
22 Township of Montville?

23 A. Pine Brook -- can you rephrase that
24 question because I think you --

25 Q. Oh, I said what are the other sections

Page 9

31a

1 of the Township of Montville?
 2 A. Correct. The other sections of the
 3 Township of Montville are Montville and Pine
 4 Brook.
 5 Q. When you and your wife first started
 6 looking at houses, did you start dealing with
 7 brokers in general or did you just drive around
 8 yourself to begin looking up in Montville?
 9 A. We did a combination of two things:
 10 We -- well, we used Realtors.
 11 Q. Yes?
 12 A. And we drove around.
 13 Q. Okay. Was it your practice, you and
 14 your wife, to tell --
 15 A. I take that back. There's a third
 16 thing we did.
 17 Q. Yes?
 18 A. We would look at advertisements.
 19 Q. Was it your practice, you and your
 20 wife, when you would meet with real estate
 21 brokers -- and I'm not limiting this to Weichert.
 22 I'm just talking about real estate brokers in
 23 general. Did you tell them that you were only
 24 interested in one section of the Township of
 25 Montville?

Page 10

1 A. Yes, when we were working with Realtors
 2 that were -- I'm looking for the word -- working
 3 in those types of towns. When we were looking in
 4 Mountain Lakes, we asked Mountain Lake Realtors to
 5 assist us with homes in that town. When we were
 6 looking in Montville Township, we asked Realtors
 7 to help us look in Montville.
 8 Q. You mean the Montville section?
 9 A. That's correct.
 10 Q. Did you ever have a real estate broker
 11 say to you, I have a nice house. It's in the Pine
 12 Brook section?
 13 A. I recall Realtors would talk to us
 14 about Pine Brook properties and we would ask them
 15 to move on. We were interested in Montville
 16 section.
 17 Q. Did you ever go look at a home in the
 18 Pine Brook section?
 19 A. I recall driving past homes that we
 20 said we're not interested in.
 21 Q. With the real estate broker?
 22 A. With a Realtor.
 23 Q. Did you ever look at any homes prior to
 24 the home you live in now in the Towaco section?
 25 A. I don't recall looking at Towaco homes

Page 11

1 because we weren't interested in Towaco.
 2 Q. Was there ever a time when you thought
 3 that Towaco was actually a separate town?
 4 MS. MINERVINI: Objection. Time prior
 5 to what? I mean, at any time ever?
 6 Q. At any time ever did you ever think
 7 that Towaco was actually a separate town?
 8 A. Yes.
 9 Q. When was that time?
 10 A. After I had realized that we were now
 11 living in Towaco, I wrote a letter to Woodmont
 12 referring to Towaco as a town, and then wrote
 13 another letter apologizing and re -- about that
 14 letter being written as town. It should have said
 15 section.
 16 Q. You wrote a second letter to Woodmont
 17 explaining that?
 18 A. That's correct.
 19 Q. I ask if you can provide that second
 20 letter at some point to your Counsel?
 21 A. Your client signed for that letter when
 22 it was received by the mail.
 23 Q. Did you keep a copy of it?
 24 A. Yes.
 25 Q. That's what I say. If you could

Page 12

1 provide a copy to your Counsel unless it's
 2 somewhere in what you gave us? Could be.
 3 MS. MINERVINI: I think it's in
 4 something that I gave you, but if it's not, please
 5 write me a letter. I'll have my client search his
 6 records and we will produce a copy of that.
 7 Q. Mr. Vagias --
 8 A. Vagias.
 9 Q. Vagias, Vagias. Mr. Vagias, do you
 10 have any thoughts on the present value of your
 11 home?
 12 MS. MINERVINI: Objection to form. You
 13 can answer.
 14 A. Yes.
 15 Q. What do you think the present value is?
 16 A. I think it's above 500,000.
 17 Q. How much did you pay for the home?
 18 A. Around 730,000.
 19 Q. Do you think the present value is above
 20 730,000?
 21 A. Based on?
 22 Q. Just what you know generally of the
 23 market in the Township of Montville?
 24 A. I would hope but I don't know. I would
 25 hope.

Page 13

1 Q Do you think that being so close to
2 Route 287 is a negative factor for the value of
3 the house?

4 MS. MINERVINI: Objection to form. You
5 can answer.

6 A. I don't understand. Tell me what you
7 mean by being negative.

8 Q. Do you think it's helpful that the
9 house is so close to 287?

10 MS. MINERVINI: Objection to form. I
11 don't know what you mean by helpful.

12 MR. BERNSTEIN: I'll rephrase it.

13 Q. Do you think that being close to 287 is
14 something that tends to make the house more
15 valuable or less valuable?

16 MS. MINERVINI: Objection to form and
17 you can answer the question.

18 A. It was a negative impact on us to be in
19 bird's eye view of 287 along with hearing the
20 noise from 287, so it caused a negative impact.

21 Q. Does having a Towaco mailing address
22 result in any practical problems for you?

23 A. What do you mean by practical?

24 Q. Let me rephrase it. Do you have any
25 problems of any nature arising from the fact that

Page 14

1 you have a Towaco mailing address?

2 MS. MINERVINI: Objection to form. You
3 can answer. You can answer.

4 A. Yes.

5 Q. What are the problems?

6 A. I don't have a Montville address. I

7 paid for a Montville address so I'm now stuck with
8 a Towaco address. That's a problem.

9 Q. Are you done?

10 A. Go ahead.

11 Q. How do you know you paid for a
12 Montville address?

13 A. I paid for a Montville address when I
14 was told that we were getting a Montville address.
15 I paid for a Montville address when I received the
16 deed that said I lived in Montville, New Jersey.
17 I paid for a Montville address when I spoke to
18 your representatives who told me I lived and I was
19 going to live in Montville and I was going to have
20 a Montville address.

21 Q. Had you looked at homes in the
22 Montville section of the Township of Montville
23 before buying this house? I think you said you
24 did?

MS. MINERVINI: Yes. Objection. Asked

Page 15

Page 14 - Page 17

1 and answered.

2 Q. What price range were those homes in,
3 the ones that you were looking at before that were
4 in the Montville section of the Township of
5 Montville?

6 A. In the 500 -- ranging -- depending on
7 the time frame, when?

8 Q. Well, give me the whole range from --

9 A. Tell me the time.

10 Q. When did you begin looking in the
11 Montville section?

12 A. I looked in the Montville section once
13 in 1994.

14 Q. And why didn't you buy at that time?

15 A. I was relocated to Dayton, Ohio.

16 Q. How long were you in Dayton, Ohio?

17 A. About two years.

18 Q. And then when you came back from
19 Dayton, did you go live in Fairfield?

20 A. That's correct.

21 Q. And then when did you start looking
22 again when you were living in Fairfield?

23 A. When we got back to Fairfield we
24 started looking again in different towns.

25 Q. What year was that?

Page 16

1 A. I take that back, in the towns that we
2 discussed, the Short Hills, the Montville section
3 of Montville Township and Mountain Lakes and
4 Fairfield.

5 Q. And what year was that that you began
6 again?

7 A. '96 and '97 time frame.

8 Q. Did you meet with representatives of
9 Woodmont at any time?

10 A. What do you mean by -- what point of
11 time? What's any time?

12 Q. Let me rephrase it. When was the very
13 first time you met with a representative of
14 Woodmont and tell me who that representative was?

15 A. It was a December time frame with Ed.

16 Q. Tomback?

17 A. Tomback.

18 Q. What year was that?

19 A. That was in the year 2000.

20 Q. Let me just refresh your memory by
21 saying that your contract of sale was January 11,
22 2000?

23 A. And one.

24 MS. MINERVINI: Yes.

25 MR. BALDWIN: It's incorrect on the

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1 front page.

2 MR. BERNSTEIN: I take that back. It's
3 a typo.

4 MS. MINERVINI: I wanted to say on the
5 complaint it also has the 2000 number rather than
6 the 2001.

7 MR. BALDWIN: It has to be dismissed.

8 MR. BERNSTEIN: Fine.

9 Q. Can you tell me the substance of your
10 discussions with Ed Tomback?

11 A. When?

12 Q. Beginning with the first time you met
13 with him and going forward?

14 A. Sure. When we met with him in 2000,
15 December time frame, I followed the directions via
16 this advertisement to the location, went in. My
17 wife was in the car. I went into the building and
18 introduced myself to Ed, and he gave me the
19 marketing materials.

20 Q. Any discussion with him then?

21 A. Yes.

22 Q. What was the discussion?

23 A. I asked him did the marketing materials
24 have the prices in here? Is this preconstruction
25 and about the houses that were in the neighborhood

Page 18

1 and the lots that were open.

2 Q. Okay. Then when was the next time you
3 saw him?

4 A. My wife and I had discussed the
5 marketing materials and we called Gabrielle who
6 set up an appointment for us.

7 Q. And that appointment was with Ed
8 Tomback?

9 A. No, it was with Ed and Gabrielle who
10 we felt obligated to Gabrielle because she was
11 assisting us in looking at homes in Montville, and
12 we said we found a new construction property.

13 Q. Where did the meeting take place?

14 A. At Woodmont Court.

15 Q. In the sales office or a trailer?

16 A. Correct.

17 Q. And who was present at the meeting?

18 A. Myself, Ed, my wife, and Gabrielle.

19 Q. And what was the substance of the
20 discussion?

21 A. Homes, the available lots, some of our
22 concerns about 287, the lots that were available,
23 the pricing and options, costs.

24 Q. You mean extras in the house?

25 A. Extras.

Page 19

1 Q. Sure.

2 A. Along with discussions about the school
3 system.

4 Q. What was the discussion about the
5 school system?

6 A. We had asked where would our kids be
7 going.

8 Q. And what did Tomback say?

9 A. He asked us the ages of our children,
10 and we said they would be in kindergarten, and he
11 said William Mason. We discussed some concerns
12 with Gabrielle at the time and kind of pulled off
13 to the side and I was talking with Frances and
14 Gabrielle saying 287 is right here. It's right
15 here. And then we kind of rallied again with Ed,
16 and Ed said this is a wonderful neighborhood.

17 This is a great town. You're going to be right
18 here in Montville and you got a Montville address.

19 Q. Did you or your wife ever check with
20 the board of education to see if someone who lived
21 in your development would go to the school you
22 mentioned, Cedar Hill?

23 MS. MINERVINI: Objection to form. You
24 can answer, Ted. At what point, by the way?

25 Q. At any point?

Page 20

1 A. What do you mean by a member of the
2 board of education?

3 Q. Well, let me rephrase it.

4 Did you or your wife make any inquiry
5 on your own as to where a kindergarten child
6 living in your development would go to school
7 within the Township of Montville?

8 A. Yes, we did.

9 Q. Where did you inquire?

10 A. With our Realtor. That was Ed at the
11 time. It was a combo between Ed and Gabrielle but
12 we inquired with Ed.

13 Q. That was the discussion you just
14 mentioned?

15 A. Yes.

16 Q. Okay. But --

17 A. We also had additional discussions with
18 Ed about William and Mason, where we would find
19 it, how we would get there. And then we had
20 another additional conversation with a member of
21 the board of education who was a teacher at
22 William and Mason, and she told us about how great
23 the school was and she was ecstatic that Leo was
24 going to school there.

25 Q. Leo is the name of your child?

Page 21

1 A Leonidas.
 2 Q. What is the name of that person that
 3 you spoke with, the teacher you mentioned?
 4 A. Her name is Elaine and she's my wife's,
 5 in-laws', neighbor. When we found out we were
 6 going to William and Mason, we told my in-laws who
 7 then indicated that Elaine is a teacher there.
 8 And we confronted her and she said yes, and she
 9 would find out who his teacher might be. Then we
 10 were given directions by Ed. We went by the
 11 school.
 12 Q. Your wife had testified earlier today
 13 that she visited the house while it was being
 14 constructed almost on an every-day basis. Did you
 15 accompany her on a lot of those trips?
 16 A. No.
 17 Q. How often did you yourself go look at
 18 the house during construction?
 19 A. Several dozen times but no accurate
 20 number.
 21 Q. Right. When you would go look at it,
 22 where were you coming from most of the time?
 23 A. I took two routes: the one that was
 24 the easiest which was hopping on 287 but it was
 25 the longest, and then I took the route that my

Page 22

1 wife indicated prior.
 2 Q. That prior what you just mentioned is
 3 the one where you're going up Horseneck onto
 4 Change Bridge and making the right-hand turn onto
 5 Change Bridge and going over to 202?
 6 A. You make the Horseneck to Change
 7 Bridge, Change Bridge. That's a right.
 8 Q. Yes.
 9 A. Then you make a left onto 202.
 10 Q. Correct.
 11 A. And then a right onto Valhalla. That
 12 was one of the routes.
 13 Q. Yes. When you were going that route,
 14 which was heading north on Change Bridge and then
 15 making a left to 202, do you recall seeing any
 16 signs on 202 at the point where Change Bridge runs
 17 into 202?
 18 A. No, because --
 19 MS. MINERVINI: Objection to form.
 20 What kind of signs?
 21 Q. Any signs indicating names of sections
 22 or names of towns?
 23 A. The signs that I would see were 202. I
 24 wasn't looking for signs. I was trying to
 25 remember the routes there. Once it was ingrained

Page 23

1 in my mind, I did it without -- almost in my sleep
 2 but never sleeping.
 3 Q. Do you have any recollection of --
 4 MS. MINERVINI: That was a good one.
 5 Q. -- of seeing a sign at that point at
 6 202 with an arrow that pointed toward Towaco?
 7 A. No, I wasn't interested in looking for
 8 signs. Like I said, I took the route one or two
 9 times. Then it got ingrained in my mind and I
 10 would just try to get there. Many times you don't
 11 stop at that light. You're in line.
 12 Q. Do you recall on any of your trips
 13 going up to see the home whether you noticed any
 14 signs at all with any arrows for Towaco?
 15 A. No, but I saw a lot of signs for
 16 Woodmont at Montville on the roads. They would
 17 put them in different spots so you knew how to
 18 find it.
 19 Q. What street would that be on?
 20 A. On Valhalla down on 202 was a turn
 21 there. You would see a Woodmont at Montville
 22 sign. So they left the bread crumbs so I could
 23 find the house.
 24 Q. Did you ever complain to any of your
 25 neighbors in the development that you didn't like

Page 24

1 being in the Towaco section?
 2 MS. MINERVINI: Is this after they --
 3 Q. Well, at any time either before you
 4 moved in or after you moved in, at any time?
 5 A. Yes.
 6 Q. Who?
 7 A. I did not complain but I had spoken to
 8 a person who had confronted me about living in
 9 Towaco.
 10 Q. Who was that person?
 11 A. His name was Joe Intile. I don't know
 12 the spelling.
 13 Q. What is your best idea of how it might
 14 be spelled?
 15 A. I-N-T-I-L-E I guess.
 16 Q. Does he own a home in the development?
 17 A. Yes.
 18 Q. And what was the -- when do you recall
 19 that conversation taking place?
 20 A. That conversation took place summertime
 21 of 202.
 22 MS. MINERVINI: 2002.
 23 THE WITNESS: 2002. He came and drove
 24 into my parking lot of my home with his wife.
 25 MS. MINERVINI: Driveway.

Page 25

1 THE WITNESS: Driveway, yeah, not
 2 parking lot, and indicated he was having an issue
 3 with the builder who misrepresented to him options
 4 for his home. And he was trying to find out if
 5 other folks in the neighborhood were
 6 misrepresented the same way in accordance to
 7 options, having options paid up front and that
 8 those options would be taken off of the closing
 9 price. And we indicated that we had that occur to
 10 ourselves, and he indicated with his wife, Bobbi,
 11 that the same situation had happened to several
 12 folks within the development. And I said -- and
 13 he said, Would you be willing to sign a document
 14 that indicated that this had occurred to you? And
 15 I said, I need to discuss that with someone. And
 16 he said, Well, it's finally nice to meet the
 17 jerks. And I said, What do you mean? He goes,
 18 Louis told us about the jerks that are suing him
 19 'cause they've got a Towaco address. And I said,
 20 Well, I mean, I really don't want to talk about
 21 it. That's Louis Znotnick, Zlotnick.
 22 MS. MINERVINI: Off the record.
 23 (An off-the-record discussion takes
 24 place.)
 25 Q. Mr. Vagias -- I got it right that

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1 time -- I'm going to show you Exhibits DW-8
 2 through DW-12 and I represent to you that these
 3 are newspaper advertisements which your attorney
 4 gave to us today, and I'm going to ask you to take
 5 a look at them and then I'm going to have a few
 6 questions for you. Let's do them one at a time.
 7 This is DW-8. Can you look at that and
 8 tell me what paper that was in and what the date
 9 was?
 10 A. Yes, it's in the Star-Ledger.
 11 Q. Right.
 12 A. Dated October 22nd, 2000.
 13 Q. 2000. Did you or your wife see that in
 14 the paper on October 22, 2000?
 15 A. Yes.
 16 MS. MINERVINI: Well, I'm going to
 17 object to the form only to the extent -- I mean,
 18 was it on October 22nd that you saw it, you know,
 19 for certain? I mean --
 20 MR. BALDWIN: That was the question.
 21 MR. BERNSTEIN: That was my question.
 22 MS. MINERVINI: But I don't think he
 23 listened to it, you know.
 24 MR. BERNSTEIN: You could read it back.
 25 You want to read back the question?

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1 MS. MINERVINI: That's fine. You know
 2 what? Let the question stand.
 3 THE WITNESS: Yes, yes. During the
 4 months of Octoberish, November, October, I had
 5 seen articles for Woodmont Properties and cut one
 6 out and saved it. And I wanted to make sure I had
 7 the right article, so I went to the library and
 8 got the right article.
 9 Q. Was this DW-8 article the first time
 10 you had seen anything about the Woodmont
 11 development?
 12 A. No. During the months of October I'd
 13 seen several articles and then cut one out in that
 14 month and saved it.
 15 Q. That would have a date other than
 16 October 22?
 17 A. No, to the best of my recollection it
 18 was this article in October that I cut out.
 19 Q. So my question is was this the first
 20 article that you saw about the Woodmont
 21 development?
 22 MS. MINERVINI: Do you understand the
 23 question that he's asking?
 24 THE WITNESS: No.
 25 Q. Okay. This article that you say was

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1 from the Star-Ledger dated October 22, 2000, my
 2 question is: Is this the first article of
 3 an advertisement you ever saw about the Woodmont
 4 development?
 5 A. Yes, this article was the first one
 6 that I started to cut and I cut out.
 7 Q. So this was the very first time you saw
 8 anything about Woodmont?
 9 A. Yes, this type of article.
 10 Q. And this specific article was the one
 11 that brought your attention to Woodmont?
 12 A. Correct.
 13 MR. BERNSTEIN: Let the record reflect
 14 when I say article, it's just an advertisement.
 15 Q. And what, if anything, did you do as a
 16 result of seeing this article?
 17 A. I cut the article out and saved it
 18 'cause we wanted to go look at this property.
 19 Q. Then when was the first time you went
 20 and looked at the property?
 21 A. About Decemberish.
 22 Q. December of 2000?
 23 A. That's correct, about a month later,
 24 plus.
 25 Q. And then -- strike that.

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1 Did this copy -- strike that.
 2 Did you keep your own file with copies
 3 of advertisements as you went along on Woodmont?
 4 A. I began to keep copies of
 5 advertisements.
 6 Q. For Woodmont?
 7 A. For Woodmont and I even kept a couple
 8 after we closed.
 9 Q. And this was the very first one you saw
 10 of Woodmont?
 11 A. It was this article I had seen for
 12 Woodmont. It was this article that I cut out and
 13 I used to get directions.
 14 Q. DW-9, which is another Woodmont
 15 advertisement, want to tell me, please, what paper
 16 that was and when you saw it?
 17 A. This was in the Star-Ledger and it was
 18 January 21st.
 19 Q. January 21st of what year?
 20 A. 2001.
 21 Q. And you had already gone up to the
 22 Woodmont development prior to the January 21,
 23 2001 advertisement?
 24 A. Correct. And I cut this out and saved
 25 it because it's my house. It's the same picture

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1 of the house I bought.
 2 Q. Now, which exhibit number is your
 3 house?
 4 MS. MINERVINI: DW-9.
 5 Q. DW-9 is your house?
 6 A. Correct. We were pumped, meaning
 7 psyched, ecstatic, happy that this was the picture
 8 of our house.
 9 Q. What's the name of your model?
 10 A. Kent Five.
 11 Q. Kent Five. Okay.
 12 (An off-the-record discussion takes
 13 place.)
 14 Q. I'm going to show you now, Mr. Vagias,
 15 DW-10 which is another advertisement for Woodmont.
 16 Can you tell me what paper that was in and when
 17 you first saw it?
 18 A. This was in the Star-Ledger.
 19 Q. Right.
 20 A. And it's dated February 4 of 2001. It
 21 also caught our attention because it's the exact
 22 model that we were -- we had signed for and we
 23 were having constructed.
 24 Q. That's also a Kent model, Kent Five?
 25 A. The model, the same model.

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1 Q. Okay.
 2 A. Different brick.
 3 Q. So you would clip out these articles
 4 and kind of keep a personal file?
 5 A. Correct.
 6 Q. 'Cause it was the Woodmont development?
 7 A. That's correct. It was reinforcing in
 8 our minds the happiness of getting into our first
 9 house. We were pretty excited.
 10 Q. And I'm going to show you DW-11 and ask
 11 you what paper and what date?
 12 A. The Star-Ledger, February 11th, also
 13 had my picture of the model of the home that I was
 14 having constructed: "All this and Montville,
 15 too." I was going to be living in Montville, New
 16 Jersey. The rest is history. The rest of the
 17 story is Montville.
 18 Q. That's sufficient.
 19 A. It's sufficient 'cause I -- it says
 20 price, 599, and prices from 650 to 900 in
 21 Montville, New Jersey.
 22 Q. Right. Do you live in the Township of
 23 Montville?
 24 MS. MINERVINI: Objection to form.
 25 MR. BERNSTEIN: What's wrong with the

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1 'form?
 2 MS. MINERVINI: I'm objecting to the
 3 form.
 4 Q. The question is do you live in the
 5 Township of Montville?
 6 MS. MINERVINI: I think it's
 7 argumentative. I think we all know what he means
 8 when he's referring to an advertisement that says
 9 a Montville address and a Woodmont home. Your
 10 question of whether he lives in the Township of
 11 Montville is argumentative.
 12 MR. BERNSTEIN: Do you instruct him not
 13 to answer?
 14 MS. MINERVINI: I'm instructing him not
 15 to answer.
 16 Q. I'm going to show you DW-12 and again
 17 ask you what newspaper and what date?
 18 A. This was the Star-Ledger, February
 19 18th, 2001. It's "All this and Montville, too."
 20 Q. Did you ever speak with any people at
 21 the Township of Montville Town Hall to determine
 22 exactly what Towaco was, to determine whether
 23 Towaco was a section of the Township of Montville?
 24 A. Specifically?
 25 Q. Any person working in the Montville

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1 Town Hall?

2 MS. MINERVINI: I don't think he
3 understands the question.

4 Q. I'm simply asking if you made any
5 inquiry of any employees of the Township of
6 Montville at the town hall as to whether Towaco
7 was a section of the Township of Montville? I
8 just want to know if you made any inquiry from
9 town hall?

10 MS. MINERVINI: This is before he
11 bought or after he bought?

12 Q. Actually, at any time?

13 A. After we closed on the home and in
14 about the late December time frame I went to the
15 town zoning office and the town tax office to
16 inquire about Towaco and to voice a complaint.

17 Q. And what did they tell you?

18 A. The zoning office didn't know where I
19 lived. She said I should go talk to the tax
20 office because the development was so new it
21 wasn't on her map. And the tax officer indicated
22 that I do live in Towaco, not Montville, even when
23 I produced my deed. The zoning person's name is
24 Liz Johansen, J-O-E-H-A-N-S-E-N.

25 Q. That's sufficient. Mr. Vagias, I want

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1 to show you again --

2 A. Do you need the tax person's name? .

3 Q. No. I want to show you again Exhibit
4 DW-2 which is your letter of March 7th, 2002 and I
5 direct your attention to the top of the second
6 page, it begins down the bottom of the first page,
7 where you wrote to Mr. Widmont and requested a
8 refund of \$230,000. My question is how did you
9 come up with a figure of \$230,000?

10 A. After realizing that we lived in
11 Towaco, not in Montville, I had to go find out
12 what this was all about. And I looked up
13 documents on what the property values were in
14 Towaco and in Montville. And then I came to the
15 conclusion that the property that was sold to me
16 was acquired for 125,000. The square footage on
17 the home was roughly 35 -- 3380 square feet.

18 MS. MINERVINI: You can finish your
19 answer. Go head.

20 Q. All right.

21 A. I took an estimate of about \$75 a
22 square foot for what it took to build a home and
23 came out to about 300,000, and then I put a margin
24 compatible to what Woodmont Court was charging us
25 for options of about 40 percent and got to

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1 500,000. And I deducted that Mr. Widmont had
2 misrepresented and lied to us and sold me a home
3 that was only worth 500,000. So I asked for
4 230,000 back from the 730,000 that I paid for a
5 home in Montville, New Jersey, not Montville
6 Township's Towaco section, but Montville in
7 Montville Township.

8 Q. Could you explain how you got that
9 hundred and twenty-five thousand dollar figure you
10 mentioned?

11 A. Yes. I started to look at the deeds
12 that were presented to me and then went to the
13 township office and tried to find out how much the
14 property was worth or how much it was paid for by
15 Woodmont Properties. And they came out to "X"
16 million and I divided the "X" million by 25 or 27
17 lots. Don't correct me on the math. I came out
18 to a figure of on or about 125,000 for the cost of
19 the lot, and then I came up with the figure of
20 about \$75 for a builder to build a house per
21 square foot.

22 Q. And where did you get the figure of \$75
23 from?

24 A. I spoke to folks and tried to get an
25 understanding of what the square footages for a --

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1 costs for a house conservatively for someone to
2 build it. And I didn't take into account the
3 better negotiated rates in which the Woodmont
4 property folks may have negotiated a better rate,
5 maybe \$50 a square foot. I went with the more
6 average of \$75 a square foot which is a little
7 higher.

8 Q. How much were the extras on your house,
9 if you recall?

10 A. About 50,000.

11 Q. About 50,000.

12 A. Options which we were told would come
13 off the closing price of the home but didn't.

14 MS. MINERVINI: Do you need a break?

15 THE WITNESS: No.

16 MS. MINERVINI: Ginny?

17 THE REPORTER: I'm okay.

18 MS. MINERVINI: Okay. We're going to
19 take a five-minute break. He does want a break.

20 MR. BALDWIN: Okay.

21 (An off-the-record discussion takes
22 place.)

23 (Chronology is marked DW-13 for
24 identification.)

25 Q. Okay. I just have a couple of more

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1 questions, Mr. Vagias.

2 A. Sure.

3 Q. I think you said in connection with
4 these newspaper ads DW-8 through DW-12, I thought
5 I heard you mention something about you went to a
6 library. I wasn't clear on what you meant by
7 that, something about going to a library to get
8 copies of those or was I just wrong?

9 A. No. I went to find the exact --

10 Q. Original?

11 A. -- original.

12 Q. Oh, original of the newspaper?

13 A. Of the newspaper for the time frame
14 that I had cut it out, and I went and found in
15 October my ads and I cut out the date that, to the
16 best of my recollection, was the exact date of the
17 day I cut my ad out and that was the October 22nd
18 ad.

19 Q. Oh, okay. I'm just a little bit
20 confused. When you kept your file at home, did
21 that file consist of the original newspaper
22 clippings of the ads?

23 A. Yes.

24 Q. Oh, and you still have them?

25 A. I have not been able, since we've

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1 moved, been able to find a lot of the real estate
2 related things because we had moved in and 2
3 this is not the stuff that we really need. We
4 kept some articles about the house because we were
5 -- if I can make an analogy. It's like, you know,
6 playing football. Your picture's in the paper.
7 So we wanted to cut out some of those old
8 pictures. So as the ads were being in the paper
9 when the house was being built, we would cut out
0 ads and add it to the scrapbook. So we are in
1 search of my scrapbook.

2 Q. Right. But just so I'm clear or the
3 record is clear, the DW-8 to DW-12, those were
4 advertisements that you actually saw in the paper
5 on the dates they came out in the newspaper?

6 A. Yes, those are ads that I saw and cut
7 out.

8 Q. Okay. And if you went to the library
9 at a later point, it was only to make a
0 photocopy of something that had been misplaced?

1 A. Correct.

2 Q. That's fine. Mr. Vagias, is your main
3 complaint the Towaco mailing address? Is your
4 main complaint against Woodmont that when people
5 write to you, it has to be a Towaco mailing

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1 address? Is that the main problem you have with
2 Woodmont, the mailing address?

3 A. The complaint was documented in the
4 information that was sent to your office, but if I
5 can paraphrase what I think you're saying, my main
6 complaint is --

7 Q. Right.

8 A. -- that I was lied to because I was
9 buying a home in the Montville section of
10 Montville Township and got a house in the Towaco
11 section of Montville Township which changed my
12 life personally and in my business.

13 Q. How did it change your life?

14 A. I had committed to my wife that I was
15 going to get her a good house. For five years we
16 relocated four or five times, four times, to and
17 from Ohio, to and from Rochester, New York. I
18 kept telling my wife, I'm going to put you in a
19 beautiful house. It's going to be in a great
20 location. You're going to get a beautiful house.
21 And we kept looking. We looked through
22 Realtors in good sections. We looked in the
23 newspaper, and when we'd see articles in there for
24 Montville and Montville Township, we'd cross out
25 Montville Township and we'd circle the ones that

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1 said Montville. Those were articles by different
2 Realtors, including Weichert.

3 We would drive around and look in
4 sections in Montville for houses, look for a sign
5 that goes up or we would look for a house. And I
6 promised that I'd put her in a beautiful home.
7 When we found out we didn't live in Montville, we
8 lived in Towaco, it was a crushing blow. Not only
9 did it crush me from a family perspective, but my
10 business, I had incorporated in Montville, and I
11 told my partner we were going to have a business
12 in a real prestigious area. And when I found out
13 it was in Towaco, I had to do a shuffle. And
14 since then we've had to say we have our -- we have
15 to refer to our documentation through our New York
16 office, not Montville, because Towaco is an
17 unknown.

18 Q. You mean it's not a widely-known name?

19 A. Widely? Can you spell it?

20 Q. I can, T-O-W-A-C-O. It's an old indian
21 name.

22 A. You're one of the lucky ones.

23 Q. The business you mentioned with your
24 partner, are you in your own business?

25 A. Yes.

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1 Q Oh, so the consulting business is your
2 own business?
3 A. Correct.
4 Q. Do you have an office in your house?
5 A. I work out of the house and I work out
6 of New York.
7 Q. So you also have an office in New York?
8 A. Correct. We maintain space in New York
9 and we maintain space --
10 MS. MINERVINI: For the record, you
11 should sit back because the court reporter needs
12 to hear you, and when you lean in, I think her
13 screen is blocking what she hears.
14 THE WITNESS: The mailing address in
15 Towaco is not referred to as Towaco. We keep it
16 as now Montville.
17 Q. But how do you receive letters if it's
18 referred to as Montville?
19 A. I have to have everything sent to New
20 York.
21 Q. Oh, so you mean you put Montville on
22 your letterhead as a second office but --
23 A. I stopped doing that. I couldn't do
24 it.
25 Q. So you don't get business mail at home?

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1 It all goes to New York?
2 A. That's correct other than incorporation
3 papers that I had to incorporate the business.
4 Q. Okay.
5 A. Also, my company is called Mason comma
6 Harriman & Company. We went -- my partners and I
7 did some market research to find a good name for
8 the company, Chester, and we looked at several
9 names. And I came back with, Hey, my son's going
10 to Mason, William Mason in a couple of years.
11 Let's use Mason as the name of this company comma
12 Harriman & Company. Hey, let's incorporate it in
13 New Jersey because a large piece of our business
14 is -- targets the pharmaceutical industry.
15 Montville, everybody knows where Montville is.
16 Well, they don't, and they don't know where Towaco
17 is either.
18 Q. What again is the nature of your
19 business?
20 A. Management consulting.
21 Q. For the telecommunications industry did
22 you say?
23 A. No. We utilize former chief
24 information officers as management consultants in
25 turnarounds and workouts.

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1 Q. Oh.
2 A. We retain executives who have a minimum
3 of 25 years of experience: to do turnarounds and
4 workouts.
5 Q. So you place them in the corporate -- a
6 corporate situation and you help them get this new
7 position?
8 A. We retain former executives with 25
9 years of experience whose titles were chief
10 information officer in a Fortune 100 company and
11 we utilize those folks as our management
12 consultants within client sites who are in need of
13 a restructuring or a turnaround that are going
14 through an integration, a merger, or a
15 divestiture.
16 Q. Where is your office in New York City?
17 A. Our space is at 15 West 36th Street,
18 New York.
19 Q. And you actually go there?
20 A. I go to New York to go to client sites.
21 We use the space as a name of the space that we
22 can't use now because I don't have a Montville
23 address for the company.
24 Q. I know you mentioned a few minutes back
25 you don't take the train. There's a train I

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1 believe at a Towaco station that goes to New York?
2 A. Correct.
3 Q. That's of no help to you?
4 A. What do you mean by help?
5 Q. Well, is there yet a direct train to
6 New York City from the Towaco train station?
7 A. I don't know. I don't take the train.
8 I commute.
9 Q. You go by car?
10 A. I have two means of transportation that
11 I found that are the most successful: I drive to
12 Willowbrook Mall. I take the park and ride or I
13 drive to Secaucus and take the park and ride.
14 MR. BERNSTEIN: Okay. I have no
15 further questions.
16
17 CROSS-EXAMINATION BY MR. BALDWIN:
18
19 Q. Mr. Vagias, do you have a business
20 card? Do you have a business card?
21 A. Yes.
22 Q. Can I have a card?
23 A. Sure.
24 MR. BERNSTEIN: I'd like one also, if
25 you don't mind.

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1 MR BALDWIN: Thank you.
 2 THE WITNESS: I hope I don't meet a
 3 client because those are my last two business
 4 cards.
 5 MR. BERNSTEIN: Oh, I'll give it back
 6 to you.
 7 THE WITNESS: I hope you mention my
 8 name, just kidding.
 9 Q. Let me ask some questions --
 10 A. Sorry.
 11 Q. -- so we can all get out of here.
 12 You described -- you described two
 13 visits to the subject property, the first one with
 14 your wife when you went there and met Ed in
 15 December of 2000 and you got some marketing
 16 materials and then a second visit this time with
 17 Gabrielle, your wife, and again you met Ed and you
 18 discussed schools and some other things?
 19 A. Correct.
 20 Q. Just want to make sure I have the cast
 21 of characters right. The first meeting, the first
 22 trip to the site, Gabrielle from Weichert was not
 23 involved. Correct?
 24 A. She was not present.
 25 Q. She was not present. She was there the

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1 second time?
 2 A. Correct.
 3 Q. Was there a third or fourth or
 4 subsequent visit to the site with Gabrielle? And
 5 let me say what I told your wife. If you don't
 6 remember, just say you don't remember, and we'll
 7 go on.
 8 A. I don't remember a third visit with
 9 Gabrielle specifically. I remember a third visit
 10 or fourth visit with myself to put a deposit on
 11 the property for Ed, for -- with Ed. And I recall
 12 a conversation with Gabrielle prior to that that
 13 we were going through with this.
 14 Q. Your wife said and you may have also
 15 said that you saw one of these ads in the
 16 Star-Ledger in October and that lead to the visit
 17 to the site in December?
 18 A. Correct.
 19 Q. Was it you or your wife that saw the ad
 20 first?
 21 A. I don't recall.
 22 Q. Now, your wife said that ad lead to a
 23 phone call to Gabrielle. My question is do you
 24 recall whether you called Gabrielle or whether
 25 your wife did?

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1 A. Your sequence may be off
 2 Q. Okay. Correct me.
 3 A. Visit to the site resulted in a phone
 4 call to Gabrielle.
 5 Q. So -- okay. So your first visit that
 6 you went to the site without Gabrielle, she hadn't
 7 even heard from you yet. You just saw the ad and
 8 went?
 9 A. Correct.
 10 Q. I guess you liked what you saw and then
 11 after that you contacted her and said you've been
 12 to the site?
 13 MS. MINERVINI: Objection to form but
 14 you can answer that.
 15 Q. Is my recitation of the facts correct?
 16 A. We're missing a few things.
 17 Q. Sure. Fill in the blanks, please?
 18 A. Sure. I received the marketing
 19 material from Ed and indicated to Ed we were
 20 working with a Realtor because I recall him
 21 mentioning something about a Realtor, and got in
 22 the car, spoke to my wife about the materials.
 23 The reason my wife doesn't recall this as well as
 24 I do is because we used three approaches for
 25 looking at the houses: We used Realtors, as I

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1 said earlier, in the parts of the towns that we
 2 were interested in because it was a best-kept
 3 secret that these Realtors would know of
 4 properties that were coming on the market before
 5 other Realtors would, and if we were friendly with
 6 them, they'd get them to us so we could get in
 7 there and make a bid quickly.
 8 The second was through advertisements
 9 in the paper where we would instinctively cross
 10 out Montville Township, Pine Brook, or towns that
 11 we didn't want and circle the towns that we did
 12 such as Montville, the section of Montville
 13 Township.
 14 And the third was driving around. And
 15 we would then make a phone call when we would see
 16 the lot and ask the Realtor can you tell us
 17 something over the phone. Many times they
 18 wouldn't. They'd have someone call us back. I
 19 don't recall if Gabrielle had called us back or
 20 how that situation occurred, but I recall us
 21 calling on the property and getting the ball
 22 rolling many times in that method.
 23 Q. All right. To the extent that you
 24 remember what happened with the property you
 25 bought --

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1 A. Yes.
 2 Q. -- let's talk about that. I'm just
 3 trying to get the chronology down.
 4 A. Yes.
 5 Q. The first thing is you saw the ad?
 6 A. Correct.
 7 Q. Second thing is you went to the site
 8 with your wife, met Ed, got the marketing
 9 materials and talked to your wife about what you
 10 had seen?
 11 A. Correct.
 12 Q. Is it -- is it after that that you
 13 first called Gabrielle?
 14 A. Correct.
 15 Q. Do you remember whether it was you or
 16 your wife that made the call?
 17 A. I believe it was my wife.
 18 Q. Were you there when she made the call?
 19 A. I recall her mentioning -- I recall
 20 discussing it with Frances that, you know, Fran,
 21 Gabrielle's been so good. She's been taking us
 22 around to houses. We could go in there, go back
 23 and see what we could do with finding out more
 24 about this property and maybe looking at these
 25 houses in more detail, or we could work through

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1 Gabrielle. Gabrielle's been our agent, our right
 2 hand in kind of watching the post for us. Why
 3 don't we call her because then she'll at least be
 4 compensated for the time she put in and maybe get
 5 the commission. And Fran said yes, so whether she
 6 made the phone call in front of me or she made it
 7 without me, I don't recall the details of that.
 8 Q. And is it accurate to say that as a
 9 result of that phone call, you then returned to
 10 the site with Gabrielle and at that time talked to
 11 Ed and talked about the schools and William Mason
 12 and so forth?
 13 A. Correct. With one note.
 14 Q. Sure.
 15 A. She scheduled the appointment.
 16 Q. Oh, so she would have been in touch
 17 with you once or twice to schedule it?
 18 A. Yes, and we went.
 19 Q. At that meeting at the site with
 20 Gabrielle was that the first time you ever
 21 discussed the property with her, Gabrielle, that
 22 is?
 23 A. I believe so.
 24 Q. Did Gabrielle tell you -- sorry?
 25 A. We actually got out of the car together

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1 and started talking about also the properties as
 2 we were going into the meeting with Ed
 3 Q. Who is the "we"? Who are you talking
 4 about?
 5 A. Frances and Gabrielle.
 6 Q. So you drove in the same car?
 7 A. I don't think so. We got out of the
 8 car and together were walking to the building.
 9 Q. I see. At any time during that meeting
 10 did Gabrielle say anything to you about the
 11 location, about the town that this property was
 12 in, or the section of the town the property was
 13 in, or the mailing address of the property?
 14 A. We were -- there's a lot of things
 15 there, so which one do you want me to talk about
 16 first?
 17 Q. Well, I'm trying to find out what
 18 Gabrielle said, not what Ed said, what Gabrielle
 19 said. What did Gabrielle say to you about the
 20 mailing address of the property, if anything?
 21 MS. MINERVINI: Objection to form.
 22 MR. BALDWIN: What's wrong with the
 23 form?
 24 MS. MINERVINI: You're referring to the
 25 property with this distinction that's lawyer

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1 created which is a mailing address versus where
 2 the house is located. I have yet to see anybody
 3 buy a house ever to say I bought a house in
 4 Allendale but it has a mailing address of Saddle
 5 River. I think most people buy a home and say my
 6 house is in Allendale, period, and the mailing
 7 address is implied. So when you use the term, Did
 8 Gabrielle say anything about the mailing address,
 9 I have an objection because I think it is an
 10 artificial, lawyer-created word.
 11 MR. BALDWIN: Can I have the ad,
 12 please?
 13 Q. Mr. Vagias, I'm showing you DW-8 --
 14 MS. MINERVINI: Vagias.
 15 MR. BALDWIN: I'm sorry. It's late in
 16 the day and I'm getting tired.
 17 Q. Do you see the DW-8?
 18 A. Yes.
 19 Q. At the top, among other things, it
 20 says, "Great Montville address." You see where it
 21 says that?
 22 A. Yes.
 23 Q. And you understand that that is
 24 referring to the Woodmont project that you bought
 25 your house in?

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1 A Correct
 2 Q During your first visit to the site
 3 with Gabrielle did she say anything to you about
 4 the great Montville address?
 5 A Yes.
 6 Q What did she say?
 7 A. In conversations about the area we
 8 expressed some concerns that the highway was right
 9 there and pulled off to the side with Gabrielle
 10 and Frances and we started talking about the types
 11 of houses that we were looking at in Montville
 12 section of Montville Township and that this was
 13 new construction. We hadn't been looking at new
 14 construction. And Ed came over and was watching
 15 us in this dialogue back and forth and he said
 16 you're in a -- this is a Montville address. This
 17 is Montville. And Gabrielle said -- well, there
 18 was a resistance about the discussion because she
 19 was having a discussion with us versus Ed, and
 20 then we started talking about the Montville
 21 address with Gabrielle, Ed and Frances, and that
 22 was the selling point.
 23 Q. What did Gabrielle say about the
 24 Montville address, not what Ed said, what did
 25 Gabrielle say?

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1 A. I just remember the references to,
 2 yeah, this is the nice -- this is a nice section.
 3 This is Montville. This is nice. And she was --
 4 I don't remember. I can't paraphrase anything
 5 that Gabrielle would have said other than she was
 6 concurring with Ed and talking to us about our
 7 concerns with the power lines and the road, and
 8 that it was a little -- it was in a different
 9 price range than what she was looking for, but it
 0 was Montville, so maybe it was worth it.

1 Q. Can you remember anything specific that
 2 Gabrielle said about --

3 MS. MINERVINI: During this one
 4 conversation?

5 Q. During this conversation about the
 6 Montville address?

7 A. Not during that conversation.

8 Q. Okay.

9 A. But with other conversations it was --

0 we were specifically discussing Montville

1 addresses and she was well informed and

2 in concurrence -- concurred with our choices for

3 wanting a Montville section, Montville Township

4 home. She knew we were looking in Montville. She

5 knew we weren't looking in Pine Brook. We had no

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1 reason to be looking in Towaco, Towaco. It was
 2 Montville.
 3 Q. Was there any subsequent conversations
 4 with --
 5 A. And I think there was a little --
 6 Q. Please --
 7 A. Go head.
 8 Q. Do you want to ad to your prior answer?
 9 A. I mean, there was a little bit of
 10 relief with her. You could see that we had found
 11 a place that we were looking at that we were kind
 12 of being happy with, looked like this was the
 13 Montville property that we wanted. So she had
 14 brought a bunch of documents with her.
 15 Q. What documents?
 16 A. She always carried stacks of paper that
 17 talked about the addresses.
 18 Q. Do you have those papers with you?
 19 A. No, she would but you could ask her.
 20 She would have them.
 21 Q. Do you -- yes?
 22 MS. MINERVINI: I think he's referring
 23 to MLS documents.
 24 MR. BALDWIN: I don't know what he's
 25 referring to.

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1 THE WITNESS: Yeah, I guess they're
 2 called MLS's where you have a property in
 3 Montville, stuff that she was looking at for us.

4 Q. Did she show you an MLS document for
 5 the Woodmont property?

6 A. I don't recall. We brought her there
 7 so she could be our Realtor representing us as she
 8 was on other properties that we were looking for.

9 She was asking questions, you know, about the size
 10 of the homes, the size of the homes in this
 11 section, a little about the -- excuse me -- 287,

12 a little about the power lines, about the
 13 construction, the name of the company, the quality
 14 of the -- the name of the firm, and the school
 15 system. And Ed used his continuous salesy type of

16 one liners, like, Hey, what are you worried about?
 17 This is Montville. You're going to have great
 18 school systems. You're going to live in
 19 Montville. You have a Montville address. It was
 20 a great trademarked kind of quote. You're going
 21 to have a Montville address. It was that one
 22 liner.

23 Q. That was Ed's one liner?

24 A. Ed's one liner and Gabrielle was there
 25 while Ed used those pitches.

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1 Q What is it that she did or didn't do
2 that led you to sue her?
3 A. What she didn't do is represent us to
4 tell us that we were going to live in Towaco. She
5 was our point guard. She was supposed to protect
6 us. She was our soldier on the wall and she was
7 misled just like we were.
8 Q. Did you ever ask her to check to make
9 sure this house was in the Montville section of
10 Montville?

11 MS. MINERVINI: Objection to form.

12 MR. BALDWIN: What's wrong with the
13 form?

14 MS. MINERVINI: You can answer.

15 A. We had asked her --

16 MR. BALDWIN: Whoa, whoa, what's wrong
17 with the form?

18 MS. MINERVINI: The form is not, you
19 know, what kind -- did you establish a contract
20 with her about what her roles were and what her
21 obligations were? You lead him into that
22 question. If you want to ask him, Did you set
23 specific parameters for what she would do for you
24 as your agent, he can answer that question, but
25 asking him, So did you ever ask her to do her job,

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1 that's a little different, and that's why I'm
2 objecting to the form. If you want an open-ended
3 question, he's happy to answer it.

4 MR. BALDWIN: Well, we'll get to that.
5 Are you telling him not to answer the question?

6 MS. MINERVINI: I'm not telling him not
7 to answer the question. I'm objecting to the
8 form.

9 Q. I'll repeat myself verbatim. Did you
10 ever ask Gabrielle to determine whether this
11 property was in the Montville section of Montville
12 Township?

13 A. Yes. I said to Gabrielle, Wow, this is
14 Montville? She said, Yeah, this is Montville.

15 Q. And that's how you asked?

16 A. Yes, because we had lead with the
17 foundation that we were only looking for houses in
18 the Montville section of Montville Township. So
19 if you find us something else, we're not

20 interested. And I did ask her a follow up by
21 saying what do you know about the builder?

22 Q. And what did she -- did she do that?

23 A. She went with the same marketing
24 materials and she said they're in business 30
25 years. They're a credible builder. They're

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1 supposed to know what they're doing
2 Q. Did you ever sign an agreement with
3 Gabrielle or Weichert that would outline what your
4 relationship with her was?
5 A. I don't recall signing an agreement. I
6 recall discussing some terms of relationships
7 where she would represent us on property. She
8 would be, like, our representative versus the
9 representative of the seller.
10 Q. And did you see anything in writing to
11 that effect?

12 A. I recall her giving us some
13 documentation because she was legally bound at the
14 time to always give her clients some kind of
15 paperwork that said, hey, I'm going to be one of
16 your representatives just so you know.

17 Q. Do you have that paperwork?
18 A. No, but I think if you ask her about
19 that she would discuss the documentation that she
20 provided us with which is this kind of -- and I'm
21 using laymen terms -- you know, this paperwork
22 that kind of tells you what kind of representative
23 she is as a Realtor.

24 Q. Yes, but you don't have that anymore,
25 whatever that paperwork is?

1 A. I don't recall where we have this stuff
2 because since the move, we kind of tossed as much
3 stuff as possible because we were moving into a
4 new house in Montville in Montville Township.

5 Q. Besides --

6 A. Didn't think we needed it.

7 Q. Besides the ads that we were looking
8 at, DW-8 through 12, did you see any other
9 advertising for this property besides these
10 examples?

11 MS. MINERVINI: Was this before or
12 after they purchased the home?

13 MR. BALDWIN: It's an ever question.

14 Q. Did you ever see any other advertising
15 besides these examples here?

16 A. Yes.

17 Q. Do you -- was it substantially the same
18 as what you have here?

19 A. No, it was more detailed. After we
20 bought -- after we had signed for the home
21 throughout that summer of 2001 we'd always see ads
22 in the paper with Louis getting quoted about the,
23 you know, the prestige of living in, you know, the
24 Montville address.

25 Q. How about before you bought the

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1 property? Did you see any other ads besides these
 2 before you bought the property?
 3 A. No.
 4 Q. Okay. Now, while we had a break I had
 5 one of the documents that your attorney provided
 6 us marked DW-13. Could you take a look at that?
 7 A. Yes.
 8 Q. Can you tell me what it is?
 9 A. Well, it's a chronology of events that
 10 were going on.
 11 Q. Prepared by whom?
 12 A. Myself.
 13 Q. Is what is contained in that chronology
 14 true to the best of your knowledge?
 15 A. I pulled these from my outlook as I
 16 would document things that were going on.
 17 Q. My question is: Is the information
 18 contained on DW-13 true to the best of your
 19 knowledge?
 20 A. Yes.
 21 Q. And you prepared that DW-13?
 22 A. No. I pulled these from a scheduler
 23 that as things would happen to me or happen, I
 24 would kind of make a note to myself. I'd write
 25 stuff down on a piece of paper and then I'd write

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1 some stuff in the computer. And then I started
 2 pulling them as I could find them under house and
 3 pulled them together and made this chronology.
 4 Q. It sounds like you wrote the words
 5 first, either a note or --
 6 A. Yes.
 7 Q. -- on your computer and then later on
 8 you compiled DW-13?
 9 A. Yes.
 10 Q. But they're all your words?
 11 A. Yes.
 12 Q. Okay. Could I have it for a second?
 13 The first date is the closing date, November 8th,
 14 '01?
 15 A. Yeah.
 16 Q. Right. By the way, do you have your
 17 own copy of this you can look at?
 18 A. Yeah.
 19 Q. So I'll look at mine. You look at
 20 yours. The first date is the closing date?
 21 A. Yes.
 22 Q. Do you have anywhere notes or computer
 23 entries concerning this transaction that predate
 24 November 8th, '01?
 25 A. I have notes that I wrote down

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1 on pieces of paper and I've been --
 2 Q. That document events before the 8th of
 3 November?
 4 A. Yeah.
 5 Q. Have you given those notes to your
 6 attorney?
 7 A. No, because I've been looking for
 8 documents or papers that I've been having up to
 9 this time frame.
 10 MS. MINERVINI: Could you clarify when
 11 he's --
 12 MR. BALDWIN: I will.
 13 MS. MINERVINI: Thank you.
 14 Q. Are you talking handwritten notes?
 15 A. Both hand written --
 16 Q. And computer notes?
 17 A. Yes.
 18 Q. And they would have been made to -- by
 19 you documenting events prior to November 8th of
 20 '01?
 21 A. Right.
 22 Q. Okay. So, in theory, you could, if
 23 asked, compile a similar document going back
 24 really to the beginning of this whole transaction.
 25 Right?

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1 A. In theory, yes.
 2 Q. Okay. Don't throw those notes away.
 3 MS. MINERVINI: Well, if he finds them.
 4 Q. Yes. Do you know where the notes are?
 5 A. We've been scrambling to find
 6 everything.
 7 Q. How about the computer entries?
 8 A. I pulled these just from the 8th.
 9 Q. But are there other computer entries
 10 that predate the 8th?
 11 A. Yes.
 12 Q. And you know where those are. Right?
 13 A. Yes.
 14 Q. Also in the documents that were
 15 provided today I had this marked DW-7.
 16 A. Yes.
 17 Q. Do you know what the story behind that
 18 is?
 19 A. Yes.
 20 Q. What generated that document?
 21 A. Gabrielle told my wife that all her
 22 postage was coming back to her and Fran didn't
 23 understand why. Then we realized on this date
 24 somewhere in the third week of December that we
 25 didn't live in Montville, New Jersey, at 07045.

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1 We lived in Towaco, New Jersey, at 07082. So at
 2 some time after that point Fran informed
 3 Gabrielle, and I remember Gabrielle actually
 4 calling me once and saying, I've got a bunch of
 5 stuff I've sent you. And Gabrielle put all that
 6 stuff in another envelope, a big manila envelope,
 7 no, white tissue envelope, and mailed it to our
 8 new address. I got all that and tossed it in a
 9 corner.

10 Q. What was it?
 11 A. Just a bunch of stuff that was in this
 12 envelope saying our new address.

13 Q. But I don't understand what the stuff
 14 was?
 15 A. Well, after I one day cut it open I
 16 started taking out more envelopes like this.

17 Q. Right. Like DW-7?
 18 A. That's correct. And in there these
 19 were all sealed envelopes with some cards that had
 20 come back to Gabrielle. So Gabrielle was kind
 21 enough to take all her returned mail and throw it
 22 in the right address, the new address, the address
 23 that we found out we now lived in and got it to
 24 us.

25 Q. But do you know why -- I understand

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1 some of her pain from finding out that we didn't
 2 live in Montville. We lived in Towaco.

3 Q. Okay. And do you think that
 4 conversation is what generated DW-7?
 5 A. I would only speculate. You'd have to
 6 ask Gabrielle if what she sent us was based on
 7 that conversation.

8 Q. Okay.
 9 A. It doesn't make sense to me.

10 Q. DW-7 doesn't make sense to you?
 11 A. It doesn't make sense that a letter in
 12 there says Towaco but she's sending it to
 13 Montville.

14 Q. Well --
 15 A. I think she was as confused as we were
 16 getting into the house that we thought we were in
 17 Montville.

18 Q. Mr. Vagias, do you recall if these
 19 documents which we've marked collectively as DW-7
 20 actually came together in the mail?
 21 A. Oh, yes.
 22 Q. Oh, they did?
 23 A. So we're all clear --
 24 Q. Yes.
 25 A. -- I received an envelope to 23

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1 that it got sidetracked because of the address
 2 problem, but do you know why it was that Gabrielle
 3 sent you those documents that you have in your
 4 hands that have been marked DW-7?
 5 A. Yeah, because it was being returned to
 6 her. That's why she sent it to us.

7 Q. That explains why she sent it to you
 8 finally, but why did she send it to you in the
 9 first place?
 10 A. I don't know. All these had been
 11 opened by your office. They were all sealed, most
 12 of them, except the big envelope that I opened.

13 Q. You had a lawyer represent you in
 14 connection with the closing?
 15 MS. MINERVINI: Ted --
 16 A. Yeah, this makes sense. This letter
 17 is --
 18 MS. MINERVINI: Ted, Ted, there's a
 19 question posed to you.
 20 MR. BALDWIN: I withdraw the question.
 21 THE WITNESS: Go ahead.
 22 Q. Do you want to add to your answer
 23 before when I asked you about DW-7?
 24 A. I know Frances made a -- had a
 25 discussion with Gabrielle in which she reflected

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1 Bonnieview Lane, Towaco, New Jersey, in which that
 2 envelope had other envelopes like this --
 3 MS. MINERVINI: And let the record
 4 reflect that he just held up DW-7.
 5 MR. BALDWIN: Yes.
 6 A. -- that were sealed, returned to
 7 Weichert, Realtor, sent by Gabrielle to 23
 8 Bonnieview Lane, Montville, New Jersey 07045.

9 Q. Where are the other envelopes that you
 10 got in that big envelope?
 11 A. I provided everything to my attorney.
 12 MR. BALDWIN: Okay.
 13 MS. MINERVINI: And let the record
 14 reflect they were copied and provided to Counsel.
 15 MR. BALDWIN: Okay.
 16 Q. Now, I was going to ask you. Your wife
 17 said you were represented by a lawyer in
 18 connection with this transaction. Right?
 19 A. Yes.
 20 Q. Did you ever tell your lawyer that this
 21 Montville address was of critical importance to
 22 you?
 23 MS. MINERVINI: Could you -- what
 24 was -- could you repeat that question again?
 25 Could you read back the question?

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1 MR. BALDWIN: It's easier to repeat it.
2 Q Did you ever tell your lawyer, your
3 closing attorney, that the Montville address was
4 of critical importance to you?

5 A Yes.

6 Q Was that conversation with your closing
7 attorney before the closing itself, like, when you
8 were negotiating the contract?

9 MS. MINERVINI: I'm going to object to
10 the question in the sense that, you know, this is
11 attorney-client privilege, and they haven't named
12 their attorneys, and I don't think that they're
13 waiving their privilege.

14 MR. BALDWIN: It seems to me that in a
15 case where the plaintiffs are claiming to have
16 been misled by certain parties they've elected to
17 sue that a possible defense is that their reliance
18 was actually placed elsewhere, i.e., on their
19 closing attorney, and I think that -- I think
20 it's -- I'm trying to get the case name, 478
21 Realty Corp. versus some bank. Unfortunately, I
22 don't know the cite. But the point is that
23 communications with an attorney which are the
24 subject of a later claim of detrimental reliance
25 on somebody else are fair game for discovery

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1 because, in theory at least, if the plaintiffs
2 relied on their lawyer to confirm the address,
3 confirm the location, they couldn't then later
4 claim that they relied on either, in this case,
5 the real estate agent or the builder. And I just
6 want to find out if that took place. I'm not
7 looking for a broad-based waiver of the
8 attorney-client privilege.

9 MS. MINERVINI: No, I appreciate that,
10 but given the facts that the plaintiffs have not
11 instituted suit against their lawyers, I do not --
12 I have not had a conversation with my client about
13 whether or not he is willing or interested in
14 waiving a privilege that he has with his attorney
15 relative to this transaction. That's one.

Two, his claim against Weichert Realty
as well as Woodmont Properties is based on the
Consumer Fraud Act, the failure to -- either the
affirmative representation that the home was in
Montville or the omission of advising these
clients that the home was located in Towaco.

MR. BALDWIN: Right.

MS. MINERVINI: Therefore, there was no
detrimental reliance argument. They're basing it
on statutory obligation on behalf of your client

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1 as well as on behalf of Woodmont Properties that
2 they provide material facts accurately to our
3 clients.

4 And to my client, having said that, the
5 case that you've cited I have not read, and I just
6 have not had any opportunity to discuss this issue
7 with my client, and I would prefer that he not
8 testify about his conversations with his lawyer
9 about this transaction. Obviously, you are free
10 to do what you need to do for this lawyer, but I
11 can't counsel my client without having a full
12 discussion. I don't even know what he discussed
13 with his lawyer so --

14 MR. BALDWIN: Okay.

15 Q. In terms of the damages in the case,
16 have you consulted with any real estate agents,
17 brokers or appraisers who have shared with you an
18 opinion that the property that you ended up buying
19 is worth less than the property you thought you
20 were buying?

21 A. There were a bunch of things there.
22 Which one do you want me to answer first?

23 Q. I'm not sure what you mean by a bunch.
24 Have you ever talked to any real estate agents,
25 brokers, or appraisers about the value of your

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1 house?

2 MS. MINERVINI: At what point?

3 MR. BALDWIN: Ever. He's only owned it
4 for a year.

5 MS. MINERVINI: Well, prior to --

6 A. I spoke with Angie Tomia when we were
7 looking at -- from Prudential -- when we were
8 looking at relocating overseas to see if I could
9 rent the home.

10 Q. And she's the one your wife testified
11 that the rental value would be less with a Towaco
12 address than the Montville address? She's the
13 agent from Prudential?

14 A. She's the agent from Prudential who
15 came and visited me and saw the home and gave me a
16 quote on Montville houses, and then came back and
17 said that she couldn't give me that quote because
18 it would be about a thousand dollars less because
19 the house was in Towaco.

20 Q. I recall reading in your notes here,
21 DW-13, that she would not commit that opinion to
22 writing. Is that correct?

23 A. She would not commit that to writing.

24 Q. So let's put her aside. Have you ever
25 talked to any other real estate agent, real estate

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1 broker or appraiser about the value of your house?
 2 A. She did commit in writing that the
 3 quote would be at 43 to 4500.
 4 Q. Okay. Want the reporter to repeat the
 5 question?
 6 A. Go ahead.
 7 Q. Putting her aside, have you ever talked
 8 to any other real estate agent, real estate broker
 9 or appraiser about the value of your house?
 10 A. I spoke to friends who had friends that
 11 were Realtors who do the inquiries for us about
 12 the differences in property values within Towaco
 13 and Montville.
 14 Q. Who did you talk to? Who's the friend
 15 you talked to?
 16 A. I talked to a friend of mine who
 17 checked with friends over at Coldwell Banker.
 18 Q. Who is your friend? What is his name
 19 or her name?
 20 A. I don't know. I don't want them --
 21 MS. MINERVINI: I think that he -- I
 22 think your question was -- in fact, I think he
 23 didn't even answer your question. I think your
 24 question was did you speak to any real estate
 25 brokers, any experts in the real estate field

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1 about the value. And his response was I spoke to
 2 friends who spoke to...so that's not even
 3 responsive. So I think that, in addition, Mr.
 4 Vagias does not want to get his friends involved
 5 in this litigation. So I'm going to ask that you
 6 withdraw the question as a courtesy to all of us
 7 since it's quarter to five and this friend
 8 obviously couldn't possibly be proffered for an
 9 expert opinion.
 10 MR. BALDWIN: Of course not, but the
 11 real estate agent he spoke to might be, and if I
 12 can identify the friend, I can identify the real
 13 estate agent. I don't understand why you're
 14 saying as a lawyer this is impermissible inquiry.
 15 I didn't bring it up; your client did.
 16 MS. MINERVINI: That's true enough. If
 17 you remember the name of your friend, you can go
 18 ahead and answer.
 19 THE WITNESS: No, I didn't talk to
 20 Realtors about this. We were ashamed of the fact
 21 that we were now in a property in Towaco. We were
 22 insulted with what was going on, and we were we
 23 were trying to keep a low profile trying to figure
 24 out what was happening here. We were trying to
 25 tell as few people as possible because people were

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1 sending us Christmas cards and holiday cards and
 2 getting them back. We had bragging rights for a
 3 couple of months saying, Hey, we're going to be
 4 living in Montville, Montville, here's the
 5 address, ho, ho, ho. And afterwards the only
 6 phone calls I could make were to parents and the
 7 debtors that weren't getting their checks because
 8 the mail wasn't coming to me.
 9 Q. You said before we got sidetracked that
 10 you had spoke to a friend who spoke to a real
 11 estate agent friend of his or her. In that
 12 sequence of communications, did you ever get an
 13 opinion of value of your house?
 14 A. I got opinions.
 15 Q. Well, what were they?
 16 A. That Towaco is not the same as
 17 Montville.
 18 Q. And who said that?
 19 A. It's different folks in conversation
 20 about the differences in the towns.
 21 Q. Who?
 22 A. I prefer not to involve my friends in
 23 the discussions of reaching out for information
 24 about this painful event.
 25 Q. Did your friends, who you will not

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1 identify, tell you the name or names of the real
 2 estate agents that they spoke to?
 3 A. They -- one actually spoke to an
 4 attorney.
 5 Q. What's the attorney's name?
 6 A. I don't know.
 7 Q. Did the friend or friends that you will
 8 not disclose the names of --
 9 A. Yes, actually, another person did tell
 10 me about the differences in values.
 11 Q. Who was that?
 12 A. His name was David Pelosi.
 13 Q. Who is David Pelosi?
 14 A. He's the mortgage rep at Hudson City
 15 Savings and he had indicated he had seen a case
 16 like this before that happened.
 17 Q. Involving Montville and Towaco?
 18 A. No, involving something in Summit or
 19 Short Hills and that I should seek some legal
 20 help.
 21 Q. All right. Just so we're all clear on
 22 the record, you actually discussed this situation
 23 with a friend or friends and you're not going to
 24 share the name with us. Right?
 25 A. I prefer not to, yes.

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1 Q And your friend or friends in turn
 2 spoke to somebody else in the real estate field--
 3 A. Yes.
 4 Q -- and reported back, and you're not
 5 going to tell us what they said, and you're not
 6 going to tell us their names either. Is that so?
 7 MS. MINERVINI: I'm going to object.
 8 You can't -- that wasn't even a question. That
 9 was an argument or a summation that you would make
 10 to the jury.
 11 MR. BALDWIN: How about a transcript
 12 and I'll give it to a judge on a motion?
 13 MS. MINERVINI: Well, the reality is he
 14 did not say that somebody gave him a value. He
 15 spoke to people about the situation. Those people
 16 told him there was a difference between Towaco and
 17 Montville. You want the names of the people that
 18 are going to tell you about Towaco and Montville?
 19 Why don't we leave tonight and go to every door in
 20 Towaco and Montville and say to the people that
 21 live there: Is there a difference between Towaco
 22 and Montville? And I bet you your salary this
 23 week that the answer to that is going to be, Yep,
 24 it's better to live in Montville. And I don't
 25 need an expert to say it and neither do you.

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1 you show him or raise with him for discussion the
 2 advertisements that were marked DW-8 through
 3 DW-12? Did you point them out to him? Were they
 4 discussed?
 5 A. Actually, it's funny you say that
 6 because I had -- we had a kind of a comical
 7 rapport with Ed. Ed is a very salesy, comical
 8 kind of fellow. And when I walked into the
 9 trailer and I came in with that piece of paper,
 10 the ad, I said, Hey, is this you? He's, like,
 11 Yep, that's us, Woodmont Properties. Great. I
 12 found it. And I kind of glanced around. We
 13 talked a bit and I picked up the marketing
 14 materials he provided me and went out to my wife.
 15 Q. Did you ask him in either that meeting
 16 or any other meeting you had with Ed is this a
 17 Montville address?
 18 MS. MINERVINI: Objection to form but
 19 you can answer.
 20 A. In several meetings where we had
 21 concerns when we were talking, especially the
 22 first one where Gabrielle was present, my wife was
 23 present and myself --
 24 Q. Right.
 25 A. -- I said the highway is right here.

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1 MR. BALDWIN: I thought it would be
 2 better to live in Towaco myself.
 3 MS. MINERVINI: Stop riding him about
 4 this friend. Make a motion. Make a motion.
 5 Really, make the motion, and I'll stand in front
 6 of the judge. It's fine.
 7 MR. BALDWIN: All I want to do --
 8 MS. MINERVINI: He's not comfortable
 9 telling you who his friend is, you know, I'm
 10 sorry. I can't force him to do it. Let a judge
 11 order him to do it.
 12 MR. BALDWIN: Francine, I haven't asked
 13 him the name of the friend. All I'm trying to do
 14 is establish what it is he's not telling me. All
 15 is right?
 16 We're done. I'm done. Are you done?
 17 MR. BERNSTEIN: Let me ask one quick
 18 question.
 19 MR. BALDWIN: We're not done. I'm
 20 done.
 21 MF. BERNSTEIN: Really, just one.

REDIRECT EXAMINATION BY MR. BERNSTEIN:

Q. In your meetings with Mr. Tomback did

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1 He said, Hey, you're going to be living in
 2 Montville. This is a Montville address. That was
 3 the verbatim pitch, kind of that trademark quote
 4 that we would hear: You're going to be living in
 5 Montville. This is a Montville address.
 6 Q. Right. Did he say it's a Montville
 7 mailing address or he just said it's a Montville
 8 address?
 9 MS. MINERVINI: I'm going to object to
 10 the form on the same basis I objected to the form
 11 before. Most people when they buy a house do not
 12 buy a mailing address. They buy a home. The home
 13 is located in the town in which the mail is
 14 received. So I'm not going to have my client
 15 answer this question about a mailing address, no.
 16 If you want to ask him --
 17 MR. BERNSTEIN: I think it's a question
 18 of fact. All I'm asking is what Ed Tomback said.
 19 It's a question of fact.
 20 MS. MINERVINI: Fran testified all day,
 21 he testified all day, about Ed Tomback saying,
 22 Hey, you're living in Montville. It's a Montville
 23 address. Hey, it's Montville. Hey, it's a
 24 Montville address. A question of fact I think has
 25 been established.

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1 MR. BERNSTEIN: So you're instructing
 2 him not to answer?
 3 MS. MINERVINI: I'm going to instruct
 4 him not to answer a mailing address question.
 5 MR. BERNSTEIN: I have no further
 6 questions.
 7 MS. MINERVINI: We're done.
 8 THE WITNESS: Okay.
 9 MR. BALDWIN: Quickly, before somebody
 10 thinks of something.
 11 MR. MINERVINI: Give me a couple of
 12 minutes.
 13 (The deposition is adjourned at
 14 5:05 p.m.)
 15
 16
 17
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 19
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 23
 24
 25

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CERTIFICATE

1
 2
 3 I, VIRGINIA GRAVES, a Notary Public and
 4 Certified Shorthand Reporter of the State of New
 5 Jersey, do hereby certify that prior to the
 6 commencement of the examination, THEODORE VAGIAS
 7 was duly sworn by me to testify the truth, the
 8 whole truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing
 10 is a true and accurate transcript of the testimony
 11 as taken stenographically by and before me at the
 12 time, place and on the date hereinbefore set
 13 forth.

14 I DO FURTHER CERTIFY that I am neither
 15 a relative nor employee nor attorney nor counsel
 16 of any of the parties to this action and that
 17 I am neither a relative nor employee of such
 18 attorney or counsel and that I am not financially
 19 interested in the action.
 20

21 DATED: December 9, 2002

22 VIRGINIA GRAVES, CSR
 23 Notary Public of the State of New Jersey
 License No. 310294

24 My commission expires July 12, 2004
 25

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EXHIBIT C

51a

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

THEODORE AND FRANCES VAGIAS,	:	
	:	
Plaintiffs,	:	DEPOSITION OF:
	:	
-vs-	:	
	:	FRANCES VAGIAS
WOODMONT PROPERTIES, LLC,	:	
WOODMONT COURT AT MONTVILLE,	:	
LLC and WEICHERT CO. (Formerly	:	
WEICHERT, REALTORS),	:	
	:	
Defendants.	:	
-----	:	

TRANSCRIPT of the stenographic notes of the proceedings in the above-entitled matter, as taken by and before VIRGINIA GRAVES, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, held at the offices of BRAFF, HARRIS & SUKONECK, ESQUIRES, 570 West Mt. Pleasant Avenue, P.O. Box 657, Livingston, New Jersey 07039, on Tuesday, November 19, 2002, commencing at 10:19 a.m.

KNARR-RICHARDS ASSOCIATES
 Certified Shorthand Reporters
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 5 Attorney for the Plaintiff

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 7 BY: SIMON J. BERNSTEIN, ESQUIRE
 8 675 Morris Avenue
 9 Springfield, New Jersey 07081
 10 Attorneys for the Defendants Woodmont Properties,
 11 LLC, & Woodmont Court at Montville, LLC

12 BRODERICK, HENHARE & GRATHER, ESQUIRES
 13 BY: ALAN J. BALONIS, ESQUIRE
 14 20 South Street
 15 Morristown, New Jersey 07960
 16 Attorney for Defendant Walchert Co.

1 FRANCIS VAGIAS,
 2 residing at 23 Bonnieview Lane, Towaco,
 3 New Jersey 07082, having first been duly
 4 sworn by the Notary, testifies as follows:
 5

6 DIRECT EXAMINATION BY MR BERNSTEIN:

7
 8 Q. Mrs. Vagias, I'm going to be asking you
 9 some questions and the reporter can only take down
 10 an oral response, not a nod of the head. If I
 11 haven't made myself clear, if you don't understand
 12 a question, just let me know that and I'll try to
 13 rephrase it for you.

14 Is your home located in the Township of
 15 Montville, Morris County, New Jersey?

16 A. Yes.

17 Q. Do you pay real estate taxes to the
 18 Township of Montville?

19 A. Yes.

20 Q. Is your home protected by the Township
 21 of Montville Police Department?

22 A. Yes.

23 Q. Is your home within the Township of
 24 Montville Board of Education school system?

25 A. Yes.

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1 INDEX

2 WITNESS DIRECT CROSS

3 FRANCES VAGIAS

4 BY: MR. BERNSTEIN 4

5 BY: MR. BALONIS 81

12 EXHIBITS

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19 DN-4	Photograph	57
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21 DN-6	Contract	119
22 DN-7	Documents	119

1 Q. Do you have any children?

2 A. Yes.

3 Q. Are they in school yet?

4 A. Yes, my one child is.

5 Q. How old is the child?

6 A. Five.

7 Q. Where does the child go to school?

8 A. Cedar Hill, Towaco, New Jersey.

9 Q. Is Cedar Hill located within the
10 Township of Montville?

11 A. Yes.

12 Q. What's the address of Cedar Hill

13 School, do you know, or what street is it on?

14 A. It's off Valley, I'm sorry, Peace

15 Valley? I'll find out for you. It's in Towaco,
16 New Jersey.

17 Q. Yes. Is it a public school?

18 A. Yes.

19 Q. Okay. Is that school where your son
20 goes within the Township of Montville Board of
21 Education school system?

22 A. Yes.

23 Q. Is your home served by the Township of
24 Montville library system?

25 A. Yes.

Page 3

Page

1 Q Do you have a library card for that
2 library?
3 A Yes.
4 Q Do you take books out from that
5 library?
6 A. Yes.
7 Q. Is your home served by the Township of
8 Montville First Aid Squad?
9 A. No.
10 Q. Do you know who services --
11 A. Towaco.
12 Q. Does the Township of Montville Water
13 and Sewer Department serve your home?
14 A. Yes.
15 Q. And do they send you a separate bill
16 for water and sewer charges for the Township of
17 Montville?
18 A. Yes.
19 Q. And you pay that to the Township of
20 Montville?
21 A. Yes.
22 Q. Is Towaco a section of the Township of
23 Montville?
24 A. Yes.
25 Q. How do you define section?

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1 MR. BERNSTEIN: Do you want to read
2 back the question?
3 MS. MINERVINI: I don't think she
4 understands the question. Why don't you ask her a
5 question she can answer.
6 MR. BERNSTEIN: Okay.
7 Q. Is Towaco one of the neighborhoods of
8 the Township of Montville?
9 MS. MINERVINI: Objection. We just --
10 you just asked her that question and she doesn't
11 seem to be able to understand what you're asking
12 her.
13 MR. BERNSTEIN: You objected to the
14 question and we rephrased it.
15 MS. MINERVINI: But you didn't rephrase
16 it.
17 MR. BERNSTEIN: I believe I did
18 rephrase it. I'll ask you again.
19 Q. How do you define Towaco?
20 A. A lower section of Montville.
21 Q. A lower section? Why is it lower?
22 A. The houses are appraised lower.
23 Q. How much did you pay for your house?
24 A. 730.
25 Q. Are homes in your development now

Page 5

1 A. There's three sections in Montville
2 Township: Towaco, Montville, Pine Brook.
3 MR. BERNSTEIN: Do you have a question?
4 MS. MINERVINI: No.
5 Q. Are sections synonymous with
6 neighborhoods?
7 A. Yes.
8 MS. MINERVINI: Objection. You can
9 answer it.
10 Q. Repeat your answer, please?
11 A. Yes.
12 Q. So a section of Montville is like a
13 neighborhood of Montville?
14 MS. MINERVINI: Objection to the form.
15 MR. BERNSTEIN: I'll rephrase it.
16 Q. Is the Towaco section of Montville one
17 of the neighborhoods of Montville?
18 MS. MINERVINI: Could you repeat that
19 question?
20 (Whereupon, the reporter reads as
21 requested.)
22 MS. MINERVINI: I'm going to object to
23 the form of the question. You can answer.
24 Q. You can answer the question.
25 A. If Towaco is --

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1 selling for approximately 900,000?
2 A. I don't know.
3 Q. Okay. Have you spoken with any
4 neighbors as to the value of homes in the
5 development in the past few months?
6 A. No.
7 Q. Does your contract of sale state that
8 your home is in the Township of Montville?
9 A. Yes, but it's a wrong address. Anybody
10 who sends me mail with Montville Township, they
11 get it sent back. That's false. It's illegal.
12 Q. Why is it illegal?
13 A. Because my contract says 23 Bonnieview
14 Lane, Morris Township -- excuse me -- Montville
15 Township, New Jersey, and my friends send me
16 letters and they've received them back. My
17 address is 23 Bonnieview Lane, Towaco, New Jersey.
18 Q. That is your mailing address. Correct?
19 A. And my address, yes.
20 Q. That is your mailing address. Correct?
21 A. And -- yes.
22 Q. Okay. Is it your legal address in the
23 Township of Montville?
24 MS. MINERVINI: Objection to form. I
25 don't know that the witness has the capacity to

Page 9

1 answer that question as to what's legal and not

2 legal

3 MR. BERNSTEIN: I'll rephrase it.

4 Q. Did the deeds by which you and your

5 husband took title provide that this home is

6 located in the Township of Montville, --

7 A. No.

8 Q. -- Morris County?

9 A. No, it says Montville in Montville

10 Township.

11 Q. Morris County, New Jersey?

12 A. Yes.

13 Q. Okay. Is your home presently listed

14 for sale?

15 A. No.

16 Q. Okay. Do you have any thought as to

17 the value of your home at the present time?

18 A. No.

19 Q. Okay. Have you spoken to any

20 real estate agents within the last few months as

21 to the value of your home?

22 A. Not to the value of my home, to we

23 almost were relocated and my house is not in

24 Montville. It's in Towaco and it has a lower

25 price to it.

Page 10

1 Q. Did the real estate agents give you an

2 idea as to what the price would be?

3 A. We were going to rent our house out.

4 Q. How much did they say you could rent it

5 for?

6 A. We thought we said Montville and they

7 said 5500, and then they came back and they said

8 you live in Towaco and it's worth 4500 a month.

9 Q. That's a monthly rental. Right? Does

10 your street run off a street called Old Lane

11 Extension?

12 A. Yes.

13 Q. Are you familiar generally with the

14 type of homes that are on Old Lane Extension?

15 A. Yes.

16 Q. Would you describe those homes as being

17 upscale?

18 MS. MINERVINI: Objection to form.

19 A. No.

20 Q. Do you think that the homes on Old Lane

21 Extension have market value in excess of a half a

22 million dollars at the present time?

23 MS. MINERVINI: Objection to form.

24 A. I'm not a Realtor.

25 Q. If you know.

Page 11

1 MR. BERNSTEIN: Let me show this first

2 to your attorney. This is a certification of

3 Gertrude Atkinson, the town clerk of Montville

4 Township.

5 MS. MINERVINI: I'm not letting you

6 show her that.

7 MR. BERNSTEIN: Why not?

8 MS. MINERVINI: What are you

9 confronting her with, a certification from the

10 Township of Montville?

11 MR. BERNSTEIN: No. I'm going to ask

12 this witness --

13 MS. MINERVINI: I think she's answered

14 those questions.

15 MR. BERNSTEIN: Nope. I'm going to ask

16 this witness to read paragraph two of this

17 certification and tell me if she agrees with it or

18 disputes it. It's statements of fact.

19 MS. MINERVINI: She's answered every

20 single one of those questions you've posed. She's

21 answered every single one of those questions you

22 posed. You've asked her whether the police

23 department is serviced by the Township of

24 Montville. She answered affirmatively. You've

25 asked her if she has a library card in the

Page 1:

1 Township of Montville. She's answered

2 affirmatively. You've asked her whether or not --

3 she testified herself there are three sections of

4 the Township of Montville. She's not being

5 confronted by a certification she hasn't had an

6 opportunity to review prior to this.

7 MR. BERNSTEIN: I'll give her an

8 opportunity to review it with you.

9 MS. MINERVINI: A five-minute review?

10 She's not answering the questions. She's answered

11 each of the questions posed in that second

12 paragraph individually.

13 MR. BERNSTEIN: Some she hasn't. Okay.

14 Q. Mrs. --

15 MR. BERNSTEIN: Number one, let me

16 state for the record my objection to Counsel's

17 refusal to --

18 MR. BALDWIN: Why don't you have it

19 marked?

20 MR. BERNSTEIN: Let me mark this.

21 Let's mark it D-1.

22 (An off-the-record discussion takes

23 place.)

24 MS. MINERVINI: Are you naming it DW?

25 What did you decide?

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55a

1 MR. BALDWIN: Call it whatever you
 2 want. Call it DW. That's fine with me.
 3 MR. BERNSTEIN: Call it DW-1.
 4 (Certification is marked DW-1 for
 5 identification.)
 6 Q. Mrs. Vagias, have you ever seen --
 7 MS. MINERVINI: Could you tell me the
 8 name of the person who's written that
 9 certification? Gertrude --
 10 MR. BERNSTEIN: Gertrude H. Atkinson,
 11 A-T-K-I-N-S-O-N. She is the clerk of the Township
 12 of Montville.
 13 Q. Mrs. Vagias, have you spoken with any
 14 of the town officials at town hall as to whether
 15 Towaco is a part of the Township of Montville?
 16 MS. MINERVINI: Objection to form. You
 17 can answer it.
 18 A. Yes.
 19 Q. Whom did you speak with?
 20 A. I don't recall.
 21 Q. When did you speak with them,
 22 approximately?
 23 A. As soon as I found out that I live in
 24 Towaco and not Montville.
 25 Q. Do you mean as soon as you found out

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1 grief from the town because your wife spoke to the
 2 town and now they're under pressure.
 3 Q. Who was the town manager you spoke
 4 with? Excuse me. Strike that. Who was --
 5 A. You asked me that. I said I don't
 6 recall but I do have her name written down
 7 somewhere.
 8 Q. You referred to speaking with someone
 9 from the Woodmont organization a moment ago?
 10 A. My husband.
 11 Q. Oh, do you know that person?
 12 A. Rich.
 13 Q. Do you know his last name?
 14 A. Powellhouse I believe. Don't quote me
 15 on it.
 16 MR. BALDWIN: Could the witness
 17 possibly spell what you think it is because I
 18 didn't understand what you said?
 19 THE WITNESS: No, it's Rich and his
 20 last name begins with P. I have it written down.
 21 Q. Do you know whether the Township of
 22 Montville has one governing body?
 23 A. No.
 24 Q. Do you know if the Township has one
 25 police department?

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1 your mailing address was Towaco?
 2 MS. MINERVINI: Objection to form.
 3 Q. You can answer.
 4 A. As soon as Don Widmont's company lied
 5 to me with the advertisement of the newspaper
 6 saying all Montville and a Montville address, and
 7 I don't have a Montville address.
 8 Q. You don't have a Montville mailing
 9 address?
 10 A. Address. I live in Towaco.
 11 Q. Do you think Towaco is a separate town
 12 of the State of New Jersey?
 13 MS. MINERVINI: Objection to form.
 14 It's been asked and answered a number of times.
 15 She's not answering it again.
 16 Q. What -- strike that.
 17 What was the substance of your
 18 discussion with the person at town hall in
 19 Montville town hall?
 20 A. I said, Are you aware that Don Widmont
 21 is selling these properties saying that the homes
 22 are in Montville in Montville Township and not
 23 Towaco in Montville Township? And they said they
 24 are not aware of it and the project manager spoke
 25 to my husband and said he's been getting a lot of

Page 15

1 MS. MINERVINI: Objection to form.
 2 Asked and answered. Go ahead. Answer it.
 3 Q. You can answer it.
 4 A. Yes.
 5 Q. There's one police department for the
 6 entire Township of Montville?
 7 A. Yes, but a separate fire department, a
 8 Towaco fire department.
 9 Q. Okay. Mrs. Vagias, what's the date of
 10 your birth?
 11 A. August 26th, 1971.
 12 Q. And what is your educational
 13 background?
 14 A. Associate's degree.
 15 Q. From what school?
 16 A. UMDNJ.
 17 Q. In what field is that in?
 18 A. Dental hygiene.
 19 Q. Are you a dental hygienist?
 20 A. Yes.
 21 Q. Do you presently work as a dental
 22 hygienist?
 23 A. Yes.
 24 Q. In what town?--
 25 A. Livingston.

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1 Q For which dentist?
 2 A Dr Gary Krugman, K-R-U-G-M-A-N.
 3 Q Do you work full time?
 4 A Yes.
 5 Q What town did you grow up in?
 6 A Up to age 12, Parsippany.
 7 Q Yes?
 8 A And then after that, Fairfield.
 9 Q Fairfield, New Jersey?
 10 A Yes.
 11 Q That's the Fairfield I assume that's
 12 near Bloomfield Avenue, near Bloomfield Avenue or
 13 near Route 46?
 14 A Fairfield next to Montville.
 15 Q Okay. So you grew up next to the town
 16 of Montville?
 17 A Yes.
 18 MS. MINERVINI: Is that Montville or
 19 Montvale?
 20 THE WITNESS: Montville.
 21 MS. MINERVINI: Montville?
 22 THE WITNESS: Uh-huh.
 23 Q It's same town you live in now?
 24 A No, I live in Towaco.
 25 Q Did you have any contacts with the town

Page 18

1 A Yes.
 2 Q Is it located within the Township of
 3 Montville?
 4 A Yes.
 5 Q Did you look at any other houses in
 6 Montville before buying this house?
 7 A Yes.
 8 Q Where did you look?
 9 A Off Horseneck Road. I don't recall the
 10 street but I have many listings we put in bids.
 11 Q And your bids were not accepted?
 12 A One of them had radon and another one
 13 no, it was -- no.
 14 Q Okay. What section of Montville is
 15 that house located in?
 16 A Montville in Montville Township.
 17 Q And do you remember the name of that
 18 street?
 19 MS. MINERVINI: Objection. I think
 20 she's answered that question.
 21 A No, but I have it written down.
 22 MR. BERNSTEIN: I'd ask Counsel to
 23 provide me with the name of that street.
 24 MS. MINERVINI: If she has that
 25 information written down, I'll be happy to provide

Page 20

1 of Montville before you bought your house?
 2 A Yes.
 3 Q What were the contacts?
 4 A Asked about their school system and
 5 the neighborhood.
 6 Q Did you speak with people about the
 7 school system and the neighborhood?
 8 A Yes.
 9 Q Do you remember which people?
 10 A No. It was prior, four or five years
 11 ago.
 12 Q Before you bought the house?
 13 A Uh-huh.
 14 Q And what was your purpose in asking
 15 about that?
 16 A If the school system is good, if the
 17 neighborhoods are nice, low crime.
 18 Q Okay. And what were you told?
 19 A There's three sections of Montville
 20 Township: Pine Brook, Towaco and Montville. And
 21 I was specifically looking in Montville because
 22 there was a top 75 schools in New Jersey and
 23 William Mason was one of them in Montville, not
 24 Towaco, and my son doesn't go to that school.
 25 Q Is William Mason an elementary school?

Page 19

1 it.
 2 MR. BERNSTEIN: She says she does.
 3 Q Was that street off Horseneck Road?
 4 A Yes.
 5 MR. BERNSTEIN: Horseneck is
 6 H-O-R-S-E-N-E-C-K, just how it sounds.
 7 Q Did you look for a home in any other
 8 towns?
 9 A Yes.
 10 Q What towns?
 11 A Boonton Township.
 12 Q Right. Any others?
 13 A Mountain Lakes, many homes, Short
 14 Hills, and Montville in Montville Township.
 15 Q How many homes did you look at in Short
 16 Hills?
 17 A Three or four homes.
 18 Q Did you have any discussion that Short
 19 Hills is just a section of Millburn Township?
 20 A Yes.
 21 Q Were you aware of that?
 22 A Yes. Short Hills is a better location
 23 and more prestigious. I needed a Short Hills
 24 address. I wanted a Short Hills address, not a
 25 Millburn address, big difference.

Page 21

1 Q But still the Township of Millburn?
 2 A Just like Towaco and Montville, big
 3 difference.
 4 Q Why did you want to live in Montville?
 5 A I wanted a prestigious address. I
 6 worked hard and I wanted to live in Montville in
 7 Montville Township, not Towaco. And Louis in the
 8 advertisement said all this in Montville and a
 9 Montville address.
 10 Q Is the Towaco neighborhood of Montville
 11 next to the Montville neighborhood of Montville?
 12 MS. MINERVINI: Objection to form. You
 13 can answer.
 14 A I believe Lake Valhalla is next to
 15 Towaco which is a prestigious area which their
 16 mailing address is Montville, yes.
 17 Q In your opinion are there prestigious
 18 looking homes in the Towaco section?
 19 A Nice looking homes.
 20 MS. MINERVINI: Objection to form.
 21 MR. BERNSTEIN: She answered. Did you
 22 get the answer?
 23 THE REPORTER: Yes.
 24 MS. MINERVINI: And I'm still going to
 25 object to the form.

Page 22

1 A. I'd, the salesperson
 2 Q When was that?
 3 A. Right before I bought, right before I
 4 signed the contract.
 5 Q. What did you ask?
 6 A. I asked this -- is this Montville
 7 and he said yes, not Montville Township; is this
 8 Montville in Montville Township and he said yes.
 9 I said I'm a little concerned that I'm right off
 10 287. He goes you have all -- you live -- you have
 11 a Montville address.
 12 Q. When was that discussion?
 13 A. Before I signed the contract.
 14 Q. Do you have any other complaints
 15 against the developer?
 16 A. Yes.
 17 Q. What's that?
 18 A. Many things.
 19 Q. Can you tell me some of them?
 20 MR. BERNSTEIN: Excuse me. I assume
 21 you're not communicating which the Rule prohibits.
 22 MS. MINERVINI: I'm not communicating.
 23 I just wrote street off of Horseneck Road.
 24 MR. BERNSTEIN: Okay. Because under
 25 the Rules now there's no communication.

Page 24

1 MR. BERNSTEIN: That's fine.
 2 Q. How do you define the word
 3 "community"?
 4 MS. MINERVINI: Objection to form.
 5 Q. You can answer.
 6 MS. MINERVINI: You can answer.
 7 A. Community?
 8 Q. Yes.
 9 A. A neighborhood.
 10 Q. Would you say that Towaco was a
 11 neighborhood of the Township of Montville?
 12 MS. MINERVINI: Objection to form.
 13 A. You asked me that again.
 14 Q. Just repeat your answer if you don't
 15 mind.
 16 A. Yes.
 17 MS. MINERVINI: Objection to form.
 18 MR. BERNSTEIN: She answered.
 19 Q. Okay. Why are you suing the Woodmont
 20 defendants in this case?
 21 A. They lied to me.
 22 Q. How did they lie to you?
 23 A. I specifically asked if this is in
 24 Montville and they said yes.
 25 Q. Whom did you ask?

Page 23

1 MS. MINERVINI: I appreciate what the
 2 Rules say.
 3 A. Before I signed the contract there was
 4 the top 75 schools in New Jersey and William Mason
 5 was one of them, and William Mason is in Montville
 6 in Montville Township, not my son's school, Cedar
 7 Hills in Towaco in Montville Township. And Ed
 8 Tomback told me that your son will be going to
 9 William Mason grammar school, and I said what more
 10 can I ask for? My son's going to be going to the
 11 top 75 schools in New Jersey, elementary schools.
 12 My other complaint was they promised me
 13 that there would be a wall going up 287. That was
 14 my main concern. I never thought I would be
 15 living in Towaco. I thought I would be living in
 16 Montville.
 17 Q. Could you see Route 287 from your
 18 house?
 19 A. You can hear it, yes.
 20 Q. Were you aware of that before you
 21 bought the house?
 22 A. Yes.
 23 Q. Did you know 287 was there?
 24 A. Yes.
 25 Q. Did the builder mislead you at all as

Page 25

1 to 287 being there?
 2 MS. MINERVINI: Objection to form.
 3 A. No, but they said there would be a wall
 4 going up and all my neighbors know about that.
 5 Q. Do you have any problems receiving your
 6 mail delivery?
 7 A. Yes.
 8 Q. What's the problems?
 9 A. All my friends and family think I live
 10 in Montville, and they've gotten Christmas cards
 11 sent back to them because I don't live in
 12 Montville. I live in Towaco.
 13 Q. How many days a week does the mailman
 14 bring the mail to your house?
 15 A. Six days a week.
 16 Q. Do you receive things that are properly
 17 addressed to you?
 18 A. After I specifically told them I live
 19 in Towaco and some of them write Montville
 20 Township and they sent it back because I live in
 21 Towaco.
 22 Q. Is your problem with the Towaco mailing
 23 address something of prestige as you view it?
 24 MS. MINERVINI: Objection to form.
 25 Q. You can answer.

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1 A. Repeat that.
 2 Q. Is your problem with the Towaco mailing
 3 address a matter of prestige?
 4 A. Yes. I bought a very expensive home
 5 and not in Montville, in Towaco.
 6 Q. Is your main complaint that you live in
 7 the Towaco section or is your main complaint that
 8 your mailing address is Towaco?
 9 MS. MINERVINI: Objection to form. If
 10 you want to ask the witness whether she has a
 11 complaint, you can ask her, but you can't give her
 12 an either/or proposition.
 13 MR. BERNSTEIN: I'll rephrase the
 14 question.
 15 MS. MINERVINI: I think the witness has
 16 testified about a school system. I think the
 17 witness has testified about --
 18 MR. BERNSTEIN: You don't have to
 19 refresh her. She knows what she's testified to.
 20 MS. MINERVINI: -- about buying a
 21 piece of property that was located in Montville.
 22 MR. BERNSTEIN: We know what the
 23 witness testified.
 24 MS. MINERVINI: If you want to ask her
 25 what her main complaint is, please ask her a

Page 27

1 direct question
 2 Q. What is your main complaint?
 3 A. I don't live in Montville. I live in
 4 Towaco.
 5 Q. Do you live in Towaco for purposes of a
 6 mailing address?
 7 MS. MINERVINI: Objection to form. If
 8 you want to ask her why she --
 9 MR. BERNSTEIN: I'll rephrase that.
 10 Q. Is your main complaint that your
 11 mailing address is Towaco?
 12 MS. MINERVINI: Objection to form.
 13 A. My main --
 14 Q. You can answer it.
 15 A. My main complaint is Don Widmont lied
 16 to me. I live in Towaco, not Montville like he
 17 advertised.
 18 Q. If you had a Montville mailing address,
 19 would you have still brought this lawsuit?
 20 MS. MINERVINI: Objection to form.
 21 Q. You can answer.
 22 MS. MINERVINI: I'm sorry. Repeat the
 23 question again.
 24 MR. BERNSTEIN: Read it back, please.
 25 (Whereupon, the reporter reads as

Page 2

1 requested.)
 2 MS. MINERVINI: Objection to form. Are
 3 you asking her whether if she lived in the town of
 4 Montville or are you asking her if she had a
 5 mailing address because there's a difference?
 6 MR. BERNSTEIN: Well, she does live in
 7 the town of Montville legally.
 8 MS. MINERVINI: No.
 9 THE WITNESS: A town of Montville
 10 Township.
 11 MS. MINERVINI: Wait, wait, wait, let
 12 me finish. If you want to ask her whether if her
 13 address was 23 Bonnieview Lane, Montville, New
 14 Jersey, she still would have brought this lawsuit,
 15 you can ask her that question. If you're going to
 16 ask her whether or not it's about a mailing
 17 address versus what's on her deed --
 18 MR. BERNSTEIN: I'll rephrase the
 19 question.
 20 MS. MINERVINI: I mean, if she lived in
 21 Montville, what she purchased, that's what her
 22 contract of sale says, she wouldn't have brought a
 23 lawsuit because she would have bought what she
 24 bargained for.
 25 MR. BERNSTEIN: I'll rephrase the

Page 2

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1 question.
 2 Q If your mailing address was 23
 3 Bonnieview Lane, Montville, New Jersey, your
 4 mailing address, would you have brought this
 5 lawsuit?
 6 A. No, it's not. That's not my address.
 7 MS. MINERVINI: But then again she
 8 would have had what she bought.
 9 MR. BERNSTEIN: The Rules really
 10 provide for no communication. She's been asked
 11 the question and answered it.
 12 MS. MINERVINI: I'm not communicating
 13 with her.
 14 MR. BERNSTEIN: Well, it sounds as if
 15 you might be suggesting an answer.
 16 MR. BALDWIN: Be back in a second.
 17 Don't stop on my account.
 18 MR. BERNSTEIN: Okay.
 19 Q. Have you made inquiry at the Montville
 20 Post Office as to whether you could get a
 21 Montville mailing address?
 22 MS. MINERVINI: Objection to form.
 23 A. Yes.
 24 Q. Okay. And what were you advised?
 25 A. I live in Towaco, not Montville.

Page 30

1 that discussion?
 2 A. If my address is Montville or Towaco
 3 and they said you have -- you live in Towaco. You
 4 have a Towaco address. Montville Post Office is
 5 totally different from Towaco Post Office. I
 6 don't live in Montville.
 7 Q. Did you ask that post office individual
 8 whether it would be possible to obtain a post
 9 office box with a Montville mailing address?
 10 MS. MINERVINI: Objection to the form.
 11 You can answer.
 12 A. I don't want a P.O. box.
 13 Q. But did you ask the question?
 14 MS. MINERVINI: Objection to form.
 15 A. No.
 16 Q. Are you aware that you can obtain a
 17 post office box with a Montville address?
 18 A. I'm aware that I can obtain a P.O. box
 19 any town in the State of New Jersey.
 20 Q. Are you aware that you can obtain a
 21 P.O. box at the post office located in the
 22 Montville section of the Township of Montville?
 23 MS. MINERVINI: Objection. She's
 24 answered that question. She just testified she
 25 can get it in any town in the State of New Jersey.

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1 Q. Did you ask if you can obtain a post
 2 office box --
 3 MS. MINERVINI: Objection to form.
 4 MR. BERNSTEIN: I didn't finish the
 5 question.
 6 Q. In your discussions with the Montville
 7 Post Office officials did you ask --
 8 A. I don't have a Montville Post Office.
 9 I have a Towaco Post Office.
 10 Q. Did you ever speak with any people at
 11 the Towaco Post Office who work in the post
 12 office?
 13 A. Yes.
 14 Q. Did you ever speak with any people who
 15 work in the post office that's located in the
 16 Montville section of the town?
 17 MS. MINERVINI: Objection to form.
 18 Q. You can answer.
 19 A. Repeat the second question.
 20 MR. BERNSTEIN: Let me rephrase it.
 21 Q. You stated that you did speak with
 22 people who work in the post office that's located
 23 in the Towaco section?
 24 A. The Towaco Post Office, yes.
 25 Q. And can you tell me the substance of

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1 MR. BERNSTEIN: I want to hear her say
 2 it with respect to Montville Township.
 3 A. I never asked for that.
 4 Q. Are you aware you can get it if you
 5 want it?
 6 A. I don't want a P.O. box.
 7 MS. MINERVINI: Off the record.
 8 Q. My question is --
 9 MR. BERNSTEIN: Let me just once more
 10 and we'll go off the record.
 11 Q. My only question is -- I'm not asking
 12 whether or not you want it. I understand. My
 13 only question is simply are you aware that if you
 14 did want it, you could obtain a P.O. box with a
 15 Montville address? Are you aware you can?
 16 A. I said I could get a P.O. box anywhere
 17 in New Jersey.
 18 MS. MINERVINI: Objection.
 19 A. I have one in Sparta. I had one in
 20 Fairfield and I had one in Morristown. So if I'd
 21 like one in Montville, I could have one in --
 22 Q. Why did you have one in Sparta?
 23 A. I have one and I have a temp agency.
 24 Q. A business that you have?
 25 A. Uh-huh.

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1 MR. BALDWIN: Can you answer out loud,
2 please?

3 MS. MINERVINI: She just did.

4 MR. BALDWIN: I heard uh-huh and I

5 don't know what the reporter heard.

6 THE WITNESS: Yes, yes.

7 MR. BALDWIN: Thank you.

8 Q. You still have that temp agency now?

9 A. Yes.

10 Q. And does that agency have an actual
11 address in Sparta?

12 A. My dental assistant lives in Sparta.

13 Q. And you also mentioned Morristown. Why
14 did you get a P.O. box in Morristown?

15 A. I don't have a P.O. box in Morristown.

16 My husband has a P.O. box, had a P.O. box, in
17 Morristown.

18 Q. Did you make any inquiries as to the
19 mailing address prior to buying your home?

20 MS. MINERVINI: Objection. You can
21 answer.

22 A. Can you repeat that again?

23 MR. BERNSTEIN: I'll strike the
24 question.

25 Q. Is there something different about

1 MS. MINERVINI: Good answer.

2 Q. Why do you think in your mind, why do
3 you think that Montville is more prestigious than
4 Towaco?

5 A. Bigger homes, multi-million dollar
6 homes.

7 Q. Are there -- to your knowledge are
8 there any multi-million dollar homes in Towaco?

9 A. Not like -- not as Montville in
10 Montville Township, and nobody knows Towaco.

11 Everybody knows Montville is a prestigious area.

12 Q. And you had mentioned earlier that you

13 lived for a time in Fairfield, the town of
14 Fairfield which was next to the town of Montville?

15 A. Yes.

16 Q. Were you aware then that there were
17 different sections in the town of Montville?

18 A. No, there's only one section:

19 Fairfield and Fairfield.

20 Q. Let me reframe that. When you were

21 living in the town of Fairfield, were you aware

22 that the Township of Towaco had three different
23 sections?

24 MR. BALDWIN: Montville.

25 Q. The Township of Montville?

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Page 3-

1 living in the Towaco section of the Township of
2 Montville than living in another section in the
3 Township of Montville?

4 A. What other section would that be?

5 There's two other sections in Montville Township,
6 Pine Brook or Montville?

7 Q. What's different about living in the
8 Towaco section than living in the Montville
9 section of the Township of Montville?

10 A. Yes.

11 Q. No, I say what is different? That's
12 the question. What is the difference?

13 A. What is the difference between living
14 in Towaco than Montville --

15 Q. Yes.

16 A. -- in Montville Township?

17 Q. Right. What is the difference?

18 A. It's a more lower-class section.

19 Q. How is it lower class?

20 A. Just like Pine Brook is. Montville is
21 more prestigious than the other two communities.

22 Q. What do you base that statement on
23 about being more prestigious?

24 A. Even Don Widmont thinks so, too.

25 Q. Why?

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1 A. Yes, I was aware. I specifically asked
2 my Realtor, I want Montville in Montville
3 Township; big difference, Pine Brook and Towaco.

4 Q. And which Realtor was that conversation
5 with?

6 A. All my Realtors. I've worked with 20
7 Realtors.

8 Q. How long were you looking for a house
9 in the Township of Montville before you bought
10 this house?

11 A. I was married in 1995 and I was
12 relocated back and forth, probably five, six
13 years.

14 Q. Was there ever a point in time where
15 you thought that Towaco was actually a separate
16 town?

17 A. I knew there were three sections in
18 Montville Township. I knew of Towaco. I did not
19 want a Towaco house -- I wanted a Montville
20 house -- or a Pine Brook. The Realtor would tell
21 me there's a house in Pine Brook. There's a house
22 in Towaco. And I would specify I want a Montville
23 in Montville Township.

24 Q. Okay...My question is was there ever a
25 point in time when you thought Towaco was actually

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1 a separate town?

2 A A separate section from Montville

3 Township.

4 Q My question --

5 MR. BERNSTEIN: You want to read back
6 the question?

7 (Whereupon, the reporter reads as
8 requested.)

9 If you're having trouble understanding
10 that, let me rephrase it by saying when I say
11 separate town, I don't mean a section of the
12 Township of Montville. I'm asking whether you in
13 your own mind at any point in time thought that
14 Towaco was a separate town.

15 A. I thought it was a separate -- a
16 different section from Montville.

17 Q. So is it fair to say what you're saying
18 to me now is you never thought at any time that
19 Towaco was a separate town all by itself?

20 A. No.

21 MR. BERNSTEIN: Okay. This is a letter
22 that Mr. Vagias has written to Donald Widmont
23 dated March 7th, 2002. I'm marking that Exhibit
24 2.

25 MS. MINERVINI: Can I see that before

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1 we --

2 MR. BERNSTEIN: Yes, I'll give you a
3 copy.

4 (Letter is marked DW-2 for
5 identification.)

6 MR. BALDWIN: If I can just glance at
7 it briefly. Do you have another copy?

8 MR. BERNSTEIN: Yes, I'll give you a
9 copy.

10 MR. BALDWIN: I'll give it right back.
11 I just want to read it.

12 MR. BERNSTEIN: No problem.

13 (An off-the-record discussion takes
14 place.)

15 Q. Mrs. Vagias, the reporter has marked as
16 Exhibit DW-2 a letter dated March 7th, 2002
17 written by your husband to the attention of Donald
18 Widmont, W-I-D-T-M-O-N-T, who is a principal in
19 the defendant Woodmont. Did you discuss that
20 letter with your husband at any time?

21 A. Yes.

22 Q. Okay. I want to show you the letter
23 and specifically to make it a little easier for
24 you I've put four check marks where I can
25 represent to you there is reference to the home

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1 being located in the town of Towaco and I want to
2 know why the letter refers to the town of Towaco?

3 MS. MINERVINI: I'm going to object to
4 the question to the extent that Ms. Vagias didn't
5 write the letter. I know that she just testified
6 that she and Mr. Vagias discussed the letter. I
7 don't know that they discussed every word that was
8 used in the letter. To the extent that you know
9 the answer to that, you certainly may answer that.
10 I don't know that you would.

11 MR. VAGIAS: I can follow up.

12 A. I know that there was -- there's a
13 section of Towaco, not Montville, not the town.

14 Q. Let me ask you another question, Mrs.
15 Vagias, with respect to this letter. Did you and
16 your husband discuss the wording of the letter
17 before it was sent to Donald Widmont?

18 MS. MINERVINI: Objection to form.

19 A. Not every word on both papers.

20 Q. Did you read a draft of the letter
21 before it was sent?

22 A. Yes.

23 Q. Okay. Did you notice that the letter
24 was referring at four separate places on the first
25 page to the town of Towaco?

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1 MS. MINERVINI: Objection to form. You
2 can answer. Do you want her to count that?

3 THE WITNESS: Can you repeat that
4 again?

5 MS. MINERVINI: Do you want her to
6 count it now or do you want her to know back then
7 whether she counted it?

8 MR. BERNSTEIN: No, let me rephrase the
9 question for you.

10 Q. Do you see reference on the first page
11 of that letter in more than one instance to the
12 town of Towaco?

13 A. Yes.

14 MS. MINERVINI: You know, Mr.
15 Bernstein, I have to tell you I'm objecting to
16 this line of questioning because my clients, from
17 what I understand, are not -- they are not on
18 trial here. There hasn't been one question about
19 what the basis of their claim is, why they claim
20 it, other than you asking them -- other than you
21 asking them why did you bring this suit and when
22 she said because Donald Widmont lied to me.
23 She's not in a position here -- my client is not
24 here to defend herself--So whether or not there's
25 four towns in there, six towns in there, seven

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1 towns there, all your line of questioning is not
2 about finding out what the basis of their claim
3 is. It's to intimidate and to argue with her.
4 MR. BERNSTEIN: Now, number one, just
5 for the record, I totally object to what you said.
6 As you're well aware, what I'm asking is well
7 within what the Rules permit by way of discovery
8 deposition.
9 MS. MINERVINI: In what way is this
10 relevant?
11 MR. BERNSTEIN: In addition, in
12 addition, whether or not they were under the
13 mistaken belief that Towaco was a town as opposed
14 to a section has relevance for the lawsuit.
15 MS. MINERVINI: Well, the Consumer
16 Fraud Act talks about misrepresentation. Are you
17 going to say to me that whether or not they
18 thought it was a section or a town has any
19 relevance to whether or not there was a
20 misrepresentation as to the location of the home?
21 MR. BERNSTEIN: Legally the home is in
22 the Township of Montville.
23 Q. Let me ask you this. Did you read a
24 draft of the letter before your husband sent it?
25 A. Yes.

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1 Q. Did you have any problem with the
2 wording of the letter?
3 A. I didn't know about the town of Towaco.
4 I know there's a section of Montville Township
5 which is Towaco.
6 MS. MINERVINI: I'd like to take a
7 break, five-minute break.
8 MR. BERNSTEIN: Sure.
9 MS. MINERVINI: I need something to
10 drink.
11 MR. BERNSTEIN: Do you have any water,
12 Fran?
13 MS. MINERVINI: You know, that's what
14 I'm -- I'm going to get us a pitcher of water.
15 MR. BERNSTEIN: Thank you.
16 (Whereupon, a short recess is taken.)
17 MR. BERNSTEIN: Okay. We're going to
18 go back on the record.
19 Q. Could you tell me, Mrs. -- am I saying
20 it right?
21 A. Vagias.
22 Q. Vagias, what is the square footage of
23 your house, approximately?
24 A. Thirty-four and change -- excuse me --
25 3380.

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1 Q. Three thousand -- I just want to make
2 sure -- 3,380 square-foot house?
3 A. Less than 3400 square foot.
4 Q. Three thousand three hundred eighty
5 square foot?
6 A. Uh-huh.
7 Q. Does that include the basement?
8 A. No.
9 Q. Is the basement finished?
10 A. No.
11 Q. And how many bedrooms do you have in
12 the house?
13 A. Four.
14 Q. How many bathrooms?
15 A. Bathrooms? Half means without a
16 shower? Am I correct?
17 Q. I'm not sure if half means -- well,
18 just answer what you have and we'll figure it out.
19 What do you have?
20 A. I have two and-a-half baths.
21 Q. Okay. So you have two full bathtubs?
22 A. Yes, and one full bath and one --
23 Q. I'm sorry?
24 A. -- one powder room.
25 Q. How many showers?

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1 A. Two.
2 Q. Two showers. Okay. Can you tell me
3 roughly how big the piece of property is?
4 A. It's over an acre.
5 MR. BALDWIN: Excuse me for one second.
6 Can we go off the record to ask Counsel a
7 question?
8 (An off-the-record discussion takes
9 place.)
10 Q. Do you enjoy living in your house?
11 A. No.
12 Q. Why?
13 A. I don't have a Montville address. I
14 don't live in Montville.
15 Q. Aside from the fact that you don't have
16 the -- a Montville mailing address, just leaving
17 that aside for a moment, do you physically like
18 the house that you bought?
19 A. No, Don lied, Don's workers lied to me.
20 They said they would put -- not a fence, something
21 up against 287.
22 Q. Isn't there a wall down by 287?
23 A. No.
24 Q. There's no wall by 287?
25 A. Very -- you see the highway from 287.

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1 There's no wall. They promised me a wall.
 2 Q. Did they say they were going to build a
 3 wall?
 4 A. The town, the Township of Montville
 5 would build a wall. They said that it's in
 6 progress, another lie Don Widmont's people said
 7 to me.
 8 Q. Isn't there a wall next to 287?
 9 MS. MINERVINI: Objection. She asked
 10 and answered that there isn't a wall.
 11 A. No.
 12 Q. So your testimony is that there is no
 13 wall next to 287?
 14 A. No.
 15 Q. No wall at all?
 16 A. Not covering the highway.
 17 Q. That's not my question. My question --
 18 A. I don't -- I know that there's bushes
 19 but I don't believe there's a wall there, no.
 20 Across from 287 there's a wall.
 21 Q. When was the first time that you
 22 learned that the home was in the Towaco section?
 23 A. When either my mortgage company or my
 24 cable company or my telephone company, I know I
 25 have it written down, called me and said I do not

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1 A. From my mother's house.
 2 Q. Was that in Fairfield?
 3 A. Yes.
 4 Q. And what road or what street route
 5 would you generally take visiting during
 6 construction going from Fairfield to the site of
 7 the home? How would you go?
 8 A. Horseneck Road to Change Bridge to Lake
 9 Valhalla to Old Lane Extension.
 10 MR. BERNSTEIN: Could you just read
 11 back that answer for me, please.
 12 THE WITNESS: Horseneck --
 13 MR. BERNSTEIN: No, she'll give it to
 14 me.
 15 (Whereupon, the reporter reads as
 16 requested.)
 17 MR. BERNSTEIN: That's correct.
 18 THE WITNESS: Before Lake Valhalla --
 19 I'm sorry -- excuse me -- 202, then Lake Valhalla
 20 Road, then Old Lane Extension.
 21 MR. BERNSTEIN: Okay.
 22 Q. So you would come from Fairfield
 23 heading west on Horseneck Road. Then you would
 24 make a right-hand turn onto Change Bridge Road.
 25 Correct?

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1 live in Montville. I live in Towaco in Montville
 2 Township. To them Towaco is totally different
 3 from Montville. And I had to change all my bills
 4 for the cable company, to the New Jersey gas and
 5 electric. I wasn't getting any bills sent to me,
 6 even my mortgage company.
 7 Q. At this point in time have you informed
 8 your friends and relatives and the business
 9 vendors that your mailing address is Towaco?
 10 A. Yes.
 11 Q. Do you receive your mail?
 12 A. Towaco, New Jersey.
 13 Q. But do you receive it?
 14 A. Yes.
 15 Q. Okay. Can you tell me approximately
 16 how many times a week -- strike that.
 17 Can you tell me approximately how many
 18 times you would visit the home while it was being
 19 constructed?
 20 A. Every day, almost every day.
 21 Q. Almost every day.
 22 MR. BERNSTEIN: I'll wait. Oh, thank
 23 you.
 24 Q. When you were visiting the home during
 25 construction where were you generally coming from?

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1 A. Yes.
 2 Q. Then you would take Change Bridge until
 3 it ends in Route 202?
 4 A. Uh-huh.
 5 Q. Correct? Then you would make a left
 6 turn on 202?
 7 A. No, a right turn -- excuse me -- a
 8 left, a left, yes.
 9 Q. A left turn on 202. Then you would
 10 make a right turn on Valhalla Road or Lake
 11 Valhalla Road. Then you would make a right turn
 12 on Old Lane Extension. Correct? And then you
 13 would take Old Lane Extension all the way to your
 14 development and make a left turn onto Bonnieview?
 15 A. Uh-huh.
 16 MR. BALDWIN: You have to say yes or
 17 no.
 18 THE WITNESS: Yes.
 19 MR. BERNSTEIN: I'm sorry.
 20 MS. MINERVINI: Just 'cause she can't
 21 take it down.
 22 THE WITNESS: Okay.
 23 MR. BERNSTEIN: Fran, I'm going to have
 24 this marked. It's one of the advertising things
 25 which you probably have.

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<p>1 MS. MINERVINI: I well --</p> <p>2 MR. BERNSTEIN: I'm going to correct it</p> <p>3 up. It's going to be --</p> <p>4 MS. MINERVINI: Well, actually, you're</p> <p>5 not because we have the promotional package. They</p> <p>6 have the original promotional package and this is</p> <p>7 a different map than the one in their promotional</p> <p>8 package. So I guess she'll just testify to that.</p> <p>9 MR. VAGIAS: That's not the map.</p> <p>10 MR. BERNSTEIN: I'm not involved with</p> <p>11 that. That's not where I'm coming from.</p> <p>12 MR. VAGIAS: That's not the map.</p> <p>13 That's a new one.</p> <p>14 MS. MINERVINI: Okay. All right.</p> <p>15 MR. BERNSTEIN: You'll see for my</p> <p>16 purposes it's not going to be relevant which map</p> <p>17 it is.</p> <p>18 MR. VAGIAS: It's not the map.</p> <p>19 MR. BERNSTEIN: Would you please mark</p> <p>20 this? I think it would be DW-3.</p> <p>21 (An off-the-record discussion takes</p> <p>22 place.)</p> <p>23 (Map is marked DW-3 for</p> <p>24 identification.)</p> <p>25 Q. Mrs. Vagias --</p>	<p>1 about the route that she took. I don't think the</p> <p>2 map is necessary for illustrative purposes. I'm</p> <p>3 not going to have her do that.</p> <p>4 MR. BERNSTEIN: So you refuse to let</p> <p>5 her highlight the route she testified to?</p> <p>6 MS. MINERVINI: That's right. She just</p> <p>7 testified what the route was. If she was unable</p> <p>8 to name the roads, I would say, well, okay.</p> <p>9 MR. BERNSTEIN: Okay.</p> <p>10 Q. Now, --</p> <p>11 MR. BALDWIN: Can I see the map?</p> <p>12 MR. BERNSTEIN: Off the record a</p> <p>13 minute.</p> <p>14 (An off-the-record discussion takes</p> <p>15 place.)</p> <p>16 Q. Mrs. Vagias, am I correct that when you</p> <p>17 just went through the directions you took, one</p> <p>18 part of the direction was that you would be</p> <p>19 heading north on Change Bridge Road and then you</p> <p>20 would get to the point where Change Bridge ends</p> <p>21 and you would make a left on 202 and go from that</p> <p>22 point, and as you testified, it ends up in the</p> <p>23 development. And you said you basically were</p> <p>24 looking at the construction every day.</p> <p>25 Approximately what period of time are we talking</p>
<p>1 A. Vagias.</p> <p>2 MS. MINERVINI: Vagias.</p> <p>3 MR. BERNSTEIN: I'm sorry.</p> <p>4 Q. I'm going to show you --</p> <p>5 MS. MINERVINI: It's that "g" that</p> <p>6 screws everyone up.</p> <p>7 THE WITNESS: Silent "g".</p> <p>8 MS. MINERVINI: Silent "g".</p> <p>9 Q. I'm going to show you what's been</p> <p>10 marked as DW-3 which has some road designations on</p> <p>11 it, and I'm going to ask you to please take this</p> <p>12 highlighter and take your time and simply show me</p> <p>13 with the highlighter the way you just testified</p> <p>14 you would get to the development?</p> <p>15 MS. MINERVINI: Mr. Bernstein, I'm</p> <p>16 going to object to that because she testified very</p> <p>17 clearly about the way in which she got to the</p> <p>18 development. This map that you're proffering as</p> <p>19 DW-3 is a map that I believe serves your purposes.</p> <p>20 It was not a map that was in their promotional</p> <p>21 literature. It has little designations on it</p> <p>22 which would, if you just looked at the map</p> <p>23 highlighted with the road designation, would make</p> <p>24 you think it gave her notice of certain things.</p> <p>25 My witness -- my client testified very clearly</p>	<p>1 about that you were coming almost every day? Was</p> <p>2 it several months? How long are we talking about</p> <p>3 here?</p> <p>4 A. I asked first if I was allowed to visit</p> <p>5 my construction and the project manager said you</p> <p>6 can come and visit every day.</p> <p>7 Q. That's okay.</p> <p>8 A. So --</p> <p>9 Q. I have no problem with that.</p> <p>10 A. I don't know if --</p> <p>11 Q. Let me ask it this way. Do you think</p> <p>12 during the course of construction did you visit</p> <p>13 more than 50 times?</p> <p>14 A. Yes.</p> <p>15 Q. More than a hundred times?</p> <p>16 A. It was -- it was my dream. Even at</p> <p>17 nighttime I'd -- you know --</p> <p>18 Q. I'm just trying to get an idea of how</p> <p>19 many times you drove to see the house. Was it</p> <p>20 more than a hundred?</p> <p>21 A. How many days did it take to build the</p> <p>22 house?</p> <p>23 Q. Let me ask you that. Roughly how many</p> <p>24 months did it take to build it?</p> <p>25 A. From March till --</p>

1 Q I could refresh your memory. Your
2 contract was January 11, 2000 and you closed title
3 November 8, 2001, if that helps you at all. So it
4 was roughly 22 months between the contract and the
5 closing. I don't know, you know, what the
6 construction timetable was.

7 A. Yeah, maybe a hundred times.

8 Q. Okay. And, basically, you would take
9 that same route coming up Horseneck, making the
10 right on Change Bridge?

11 A. Uh-huh.

12 Q. Coming to where Change Bridge ends in
13 202?

14 MS. MINERVINI: I'm going to object to
15 the form. You can answer.

16 MR. BERNSTEIN: Can I ask you why you
17 object to the form?

18 MS. MINERVINI: Well, you said
19 basically you took the same way each time.

20 THE WITNESS: I didn't take the same.

21 MS. MINERVINI: I mean, I understand
22 what your question is that more times than not
23 that's the route she would take, but basically
24 that's the route she took, I object to the form.

25 Q. Was that the principal route you took

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1 coming across Change Bridge?

2 A. Most of the time.

3 MR. BERNSTEIN: Okay. I'm going to ask
4 the reporter to mark this I guess it would be
5 DW-4.

6 MS. MINERVINI: You know I'm going to
7 object to this photograph.

8 THE WITNESS: But that's not -- I've
9 never seen it.

10 MS. MINERVINI: Stop, stop. The
11 witness isn't going to be shown a photograph
12 unless you have some representation from some
13 independent source authenticating that that
14 photograph is what it's supposed to be.

15 THE WITNESS: Can I --

16 MR. VAGIAS: No.

17 MR. BERNSTEIN: No, no communication.

18 MS. MINERVINI: You know what?
19 Actually, my documents are here. I need a
20 five-minute break so I can just get you each a
21 copy of the documents that you've requested and
22 I'm going to ask you not to look at the
23 photographs and to come with me.

24 (An off-the-record discussion takes
25 place.)

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1 MS. MINERVINI: For purposes of the
2 record, I just want to make a representation that
3 both Counsel for Woodmont Properties and Counsel
4 for Weichert Realty made a demand that the
5 witnesses bring with them any and all documents in
6 their possession relevant to the litigation.

7 Those documents are now being produced to both
8 counsel. It's a copy of all the documents that
9 these -- that my clients have in their possession,
10 including but not limited to, correspondence from
11 Weichert Realty; the promotional literature of
12 Woodmont Properties prior to the purchase of this
13 home; my clients' file designated as mortgage
14 commitment letters and home insurance; my clients'
15 file designated as closing papers; my clients'
16 file designated as a deed and title work; my
17 clients' file designated as recent letters to
18 Woodmont; my clients' file designated as
19 advertising in chronological order; my clients'
20 file designated legal correspondence; and there is
21 two sections of documents produced which are
22 returned letters from Weichert, Realtors to the
23 clients at their Montville address which were
24 returned by the post office; multiple listing of
25 property and another series of envelopes from

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1 Weichert, Realtors to the plaintiffs at their
2 Montville address returned by the post office.

3 MR. BERNSTEIN: This is one full set
4 for me?

5 MS. MINERVINI: And one full set for
6 you.

7 MR. BALDWIN: Thank you, Fran.

8 MR. BERNSTEIN: Okay. I'm going to ask
9 the reporter to mark this photograph which I
10 represent for the record that I took myself.

11 (Photograph is marked DW-4 for
12 identification.)

13 MS. MINERVINI: Before you go --

14 MR. BERNSTEIN: I know you may object.

15 MS. MINERVINI: No, I want to put my
16 objection on the record.

17 MR. BERNSTEIN: Let me just finish,
18 though, and then you can do it.

19 MS. MINERVINI: Okay.

20 MR. BERNSTEIN: Let me just finish.

21 DW-4 is a photograph which I myself took and it
22 shows a sign which is on 202 at the point where
23 Change Bridge Road ends into 202. There are two
24 signs and the sign that I am interested in
25 for purposes of this case is the top sign which

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1 I has an arrow pointing toward Towaco. And I want
2 to ask the witness if she ever remembers seeing
3 this sign
4 MS. MINERVINI: I am going to object to
5 this photograph being shown to the witness. I
6 have no basis for knowing that this sign is where
7 you say it is, where it's located. I have no
8 familiarity with this section myself. I don't
9 know that my client does. I don't know that this
10 is being representative for what it is, so I can't
11 have my client answer questions about it.

12 MR. BERNSTEIN: So just for the record,
13 you refuse to have your client answer questions
14 based upon the photograph which has been marked
15 DW-4.

16 MS. MINERVINI: Based upon the lack of
17 authentication for the photograph.

18 MR. BERNSTEIN: Okay.

19 Q. Now, Mrs. Vagias, I'm going to ask you
20 this. You've testified to going to see the house
21 under construction on a number of occasions, and
22 you testified to traveling north on Change Bridge
23 Road and then making the left turn on 202. Do you
24 recall seeing any signs on 202 pointing to Towaco
25 during any of your trips? Do you remember any

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1 signs pointing to Towaco?
2 A. Some signs.
3 Q. So you remember some signs pointing to
4 Towaco?
5 A. But not in my development.
6 Q. Do the signs you remember point in the
7 general direction of where your development was?
8 A. No.

9 Q. Where did they point?
10 A. There is a section -- there is a sign
11 where Towaco is -- if you're looking at it
12 straight on, you make a left. I make a left but a
13 quick right. If I proceeded left, it would be in
14 Towaco, but I made a quick right.

15 Q. Where did you make a quick right?

16 A. On Old Lane that says in Montville.

17 Then a left in Woodmont Court in Montville, not in
18 Towaco. If that was there, I would have known,
19 but Don gave false information again.

20 Q. Do you recall the location of the sign
21 you've just referred to? Do you recall what
22 street it was on?

23 A. On 202.

24 MS. MINERVINI: You know, there's a --

25 Q. Do you recall --

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1 A. And going from 46 on Change Bridge
2 Road, there's Montville there, too.

3 MS. MINERVINI: Can we go off the
4 record for a second?

5 MR. BERNSTEIN: Yes.

6 (An off-the-record discussion takes
7 place.)

8 MR. BERNSTEIN: Okay. This one you're
9 not going to object to, Fran, because it's your
10 own complaint.

11 MR. BALDWIN: Oh, she'll object.

12 MR. BERNSTEIN: I'll get this marked as
13 an exhibit, Fran. This is a photocopy of your
14 complaint. I'll get it marked. I think it's
15 DW-5.

16 (Copy of Complaint is marked DW-5 for
17 identification.)

18 Q. Mrs. Vagias, I'm going to ask you some
19 questions about your own complaint, but before I
20 do that, I want to ask you just one more question.

21 Have any of your neighbors in the
22 development told you that they don't like the
23 Towaco section?

24 A. Not in those words.

25 Q. What words have they said?

Page 6

1 A. They were fooled saying that they saw
2 the advertisements saying that they are going to
3 be having all this in Montville and a Montville
4 address and then they finally saw that they had a
5 Towaco address.

6 Q. Could you give me the names and
7 addresses of the people who told you they were
8 fooled?

9 A. I know them by their first name.

10 Q. Sure. Do these people actually live in
11 your development now?

12 A. Yes.

13 Q. Do you know the address of their homes?

14 A. Down the street from me, I mean, in the
15 development, Woodmont, that Woodmont sold the
16 house.

17 Q. How many people have told you that they
18 were fooled?

19 A. One definitely. I was quiet about it
20 because I was embarrassed that I live in the
21 section of Towaco and not Montville and Peru down
22 the street was in tears.

23 Q. Could you spell that?

24 A. Peru, her first name Peru.

25 Q. Her first name is P-E-R-U?

Page 6:

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67a

1 A Uh-huh.
 2 Q And she's a person who bought in the
 3 development?
 4 A Uh-huh.
 5 MR. BALDWIN: You have to say yes or
 6 no.
 7 THE WITNESS: Yes.
 8 Q Did she complain to you it was in
 9 Towaco?
 10 A Yes.
 11 Q Before you signed up your contract,
 12 were any homes completed in the development? Were
 13 people actually living in it before you signed up?
 14 A One house.
 15 Q Did you, before you bought your house,
 16 did you talk to that person who lived there?
 17 A No.
 18 Q Okay. At any time prior to your actual
 19 closing of title did you speak with any of the
 20 people who were actually living in the
 21 development?
 22 A No.
 23 Q Okay. Did you yourself --
 24 A Excuse me. Can you rephrase that
 25 last -- when I did the contract or when I --

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1 built by the Township of Montville? Is that the
 2 wall you're talking about?
 3 A Yes.
 4 Q Okay. Did your discussions with these
 5 Gil and Michelle, did you say anything to them
 6 about this is the Towaco section?
 7 A I didn't know. I thought I was living
 8 -- going to move into a Montville in Montville
 9 Township like Don said when he advertised a
 10 Montville address, so it wasn't my concern.
 11 Q When was the first time you actually
 12 realized you were in the Towaco section?
 13 A When I was living in my house.
 14 Q You mean the house at 23 Bonnieview?
 15 A In Towaco.
 16 Q After you moved in?
 17 A When I moved into my house.
 18 Q Right.
 19 A Three weeks -- two to three weeks after
 20 in my house saying I don't live in Montville.
 21 Q And who said that?
 22 A The mortgage company. I live in
 23 Towaco.
 24 Q And that's the first time that you
 25 learned that?

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1 MR. BERNSTEIN: The reporter can read
 2 it back. Sorry. Can you read that one back?
 3 (Whereupon, the reporter reads as
 4 requested.)
 5 A. Closing of title means my --
 6 Q. The actual closing. I can give you the
 7 date.
 8 A. Yes, I did speak.
 9 Q. To people who lived there?
 10 A. To one family.
 11 Q. Who was that?
 12 A. Michelle and Gil which purchased a
 13 home.
 14 Q. The first name of the wife is Michelle?
 15 A. Michelle.
 16 Q. And the husband is?
 17 A. Gill.
 18 Q. Do you know their last name?
 19 A. No, I don't.
 20 Q. And what was that discussion about?
 21 A. The noise from 287, very loud, and they
 22 also had been promised the -- for a wall to be up.
 23 Q. For a wall by 287 you're saying?
 24 A. Uh-huh.
 25 Q. That was a wall that was supposed to be

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1 A. Yes.
 2 Q. Did the mortgage company say that in
 3 connection with mail being sent to you?
 4 A. I wasn't getting any mail because the
 5 address that Don said that my house was going to
 6 be is not, which was a lie.
 7 Q. Prior to buying the house did you
 8 yourself ever make any inquiry as to what section
 9 of the Township of Montville you were moving to,
 10 you yourself?
 11 A. Yes, I specified that before.
 12 Q. What was that?
 13 A. I wanted Montville in Montville
 14 Township.
 15 Q. No, but did you --
 16 A. I didn't put any bids in a Towaco in
 17 Montville Township. I put only bids in Montville
 18 in Montville Township or any Pine Brook in
 19 Montville Township.
 20 Q. I'm sorry?
 21 A. Or any --
 22 Q. I'm sorry. Can you explain about Pine
 23 Brook? I don't know --
 24 A. I didn't put any bids in Pine Brook in
 25 Montville Township. I specifically asked. Even

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1 my Realtor was fooled.
 2 Q. So you never put a bid on the home in
 3 the Pine Brook section. Correct?
 4 A. Or in Towaco.
 5 Q. And you -- strike that.
 6 Did you put bids on homes -- did you
 7 make bids on homes that were in the Montville
 8 section of the Township of Montville?
 9 MS. MINERVINI: Objection. Asked and
 10 answered, but you can answer again.
 11 Q. You can answer it again.
 12 A. Yes.
 13 Q. How many bids?
 14 A. In five years, five to seven.
 15 Q. Bids, and those bids were all on homes
 16 that were in the Montville section of the Township
 17 of Montville?
 18 A. Yes.
 19 Q. Do you remember any of the addresses of
 20 those homes?
 21 A. I -- I have them written down.
 22 MR. BERNSTEIN: Okay. I would ask that
 23 your Counsel provide me with those addresses.
 24 MS. MINERVINI: Sure.
 25 Q. Okay. Now, Mrs. Vagias, I'm going to

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1 ask you some questions as to the complaint which
 2 you and your husband have filed in this case.
 3 MS. MINERVINI: Off the record.
 4 (An off-the-record discussion takes
 5 place.)
 6 Q. Mrs. Vagias, you have before you a copy
 7 of the complaint in the case?
 8 A. Uh-huh.
 9 MS. MINERVINI: You need to say yes or
 10 no.
 11 Q. Say yes or no.
 12 A. Yes.
 13 Q. Have you ever read this complaint?
 14 A. Yes.
 15 Q. Do you recall when you read it?
 16 MS. MINERVINI: If you don't recall,
 17 you don't recall.
 18 A. I don't recall.
 19 Q. Okay. Let me just direct your
 20 attention to paragraph 5 on page 2 and that
 21 paragraph refers to an advertisement for the
 22 development, and it quotes that the advertisement
 23 said located in the prestigious Morris County --
 24 prestigious Morris County community of Montville,
 25 New Jersey. In your own words, is a community the

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1 same as a neighborhood?
 2 A. No.
 3 Q. What do you think a community means?
 4 A. Bigger than a neighborhood.
 5 Q. Do you think that you live in the
 6 community of Montville, New Jersey?
 7 A. No.
 8 Q. Do you tell people that you live in
 9 Montville, New Jersey?
 10 A. No, Towaco, New Jersey.
 11 Q. So you --
 12 A. When I say I live in Montville and they
 13 have to write or send me a letter, they think I'm
 14 a liar.
 15 Q. But have you ever had discussions with
 16 people where the subject of mailing isn't
 17 involved?
 18 A. Yes, my cousin lives in Montville.
 19 Q. Do you refer to yourself as living in
 20 Montville in discussions with people?
 21 A. No.
 22 Q. You tell everyone you live in Towaco?
 23 A. Towaco, and if they...
 24 Q. Okay. Paragraph 10 on page 3 refers to
 25 Ed Tomback, T-O-M-B-A-C-K, and it states that you

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1 met with him throughout the summer and fall of
 2 1999. That's in paragraph 10 on page 3?
 3 A. Uh-huh.
 4 MS. MINERVINI: You have to say yes or
 5 no.
 6 THE WITNESS: Yes.
 7 Q. Can you tell me the substance of your
 8 discussions with Ed Tomback?
 9 A. If -- if this house is in Montville in
 10 Montville Township, and is my son going -- if I
 11 buy the house, is my son going to be going to
 12 William Mason in Montville, New Jersey, not
 13 Towaco, New Jersey, because it was the top 75
 14 schools, elementary schools in New Jersey, and if
 15 there will be a wall going up 287 which he
 16 specifically told me. And he said what do you
 17 have to worry? You're going to have a Montville
 18 address and that's a lie.
 19 Q. Did you ask him if you were going to
 20 have a Montville address?
 21 A. Yes.
 22 Q. Do you recall when that was, that
 23 discussion?
 24 A. Before purchased -- before I did the
 25 contract on the house.

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1 Q Okay

2 A Even the signs going in

3 the neighborhood: Woodmont Court in Montville,

4 not Montville Township, Montville.

5 Q You referred before to a list of the 75

6 top schools in New Jersey. Did you actually have

7 a or see a written list that listed the schools?

8 A Yes.

9 Q Do you still have a copy of that?

10 A Yes.

11 Q I'd ask your Counsel to get me a copy

12 of that?

13 A Yes.

14 Q And William Mason School was on that

15 list?

16 A Yes, in Montville, not Towaco.

17 Q Approximately how many times did you

18 meet with Ed Tomback?

19 MS. MINERVINI: And this is during the

20 summer/fall of 1999?

21 THE WITNESS: Yes.

22 MR. BERNSTEIN: Yes, your complaint.

23 A. Three, four times.

24 Q. Was that at the model house?

25 A. The trailer, at the trailer.

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1 Q Okay. What was the substance of your

2 discussion with Danielle?

3 A. My options.

4 Q. As to what?

5 A. Of my house.

6 Q. You mean extras? Did you ever discuss

7 with Danielle anything about what section of town

8 it was in?

9 A. They specifically told me --

10 MS. MINERVINI: Objection to form.

11 A. -- Montville in Montville Township. I

12 didn't need to ask Danielle. Danielle might have

13 been the secretary. I asked the sales

14 representative of Don Widmont, Ed Tomback, and he

15 said I will be having a Montville address. I even

16 showed him the advertisement, and he said, You're

17 correct. You'll be having a Montville address.

18 Q. Did anyone else from Woodmont tell you

19 that also about the Montville address?

20 A. Ed, Louis.

21 Q. Who is Louis?

22 A. Zolteck or Zoltnick. I don't know how

23 to spell his last name.

24 Q. Who was he?

25 A. I believe he's the vice president or a

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1 Q. Was anyone else present when you were

2 there with Ed Tomback?

3 A. My husband.

4 Q. Okay.

5 A. And then my Realtor.

6 Q. What's the name of your Realtor?

7 A. Gabrielle Dwingie, D-W-I-N-G-L-E.

8 Q. Paragraph 11 states that you also met

9 with Danielle, D-A-N-I-E-L-L-E, last name is a

10 long one, I-N-T-R-A-B-A-R-T-O-L-A, a

11 representative of Woodmont Properties. Do you

12 recall when you met with Danielle?

13 A. Is Danielle the mortgage representative

14 or does she work in the Parsippany --

15 MS. MINERVINI: She doesn't recall.

16 THE WITNESS: She doesn't work -- I

17 don't recall when I spoke to her.

18 Q. Let me ask you this way. I'm referring

19 to your complaint, paragraph 11. Did you ever

20 personally meet with Danielle?

21 A. In the Parsippany office.

22 Q. The Parsippany office of Woodmont?

23 A. Yes.

24 Q. Okay. And was she a secretary there?

25 A. I don't know.

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1 private manager and the decorator for Don

2 Widmont. I forget her name.

3 Q. What was Louis's last name did you say?

4 A. Zoltnick I believe, Z-O-L-T-N-I-C-K. I

5 might pronounce it wrong.

6 Q. And you met with this Louis Zoltnick

7 and he was from Woodmont?

8 A. Yes.

9 Q. And what was the substance of that

10 discussion with Louis?

11 A. About my house, about my options, about

12 Montville, what a beautiful section Montville in

13 Montville Township is. Not on the contract does

14 it say Towaco, not on any of the advertisement

15 says Towaco, not in my contract or anything,

16 anything they gave me, not even a letter "T",

17 everything Montville.

18 Q. Did you ask Louis what section of town

19 the house was in?

20 MS. MINERVINI: Objection to form.

21 MR. BERNSTEIN: What's your objection

22 form?

23 MS. MINERVINI: She testified that

24 Louis told her that she was in Montville, so why

25 would she say to him, Oh, are you sure I live in

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1 the Township of Mont -- in the section of
 2 Towaco --
 3 MR. BERNSTEIN: That wasn't my
 4 question. My question is --
 5 MS. MINERVINI: But she testified.
 6 MR. BERNSTEIN: My question is --
 7 MS. MINERVINI: She doesn't have an
 8 obligation to ask, does she?
 9 MR. BERNSTEIN: I'm just asking if she
 10 asked.
 11 MS. MINERVINI: Well, you know.
 12 MR. BERNSTEIN: I'm asking a fact
 13 question.
 14 Q. Did you ask Louis if the home was in
 15 the Towaco section?
 16 MS. MINERVINI: Objection to form.
 17 Q. You can answer.
 18 A. No, because Louis lied and so did Don
 19 and everybody lied. They said the house is in
 20 Montville in Montville Township. All their
 21 advertisement, with a Montville address. I was
 22 confident in my builders. I could trust them. I
 23 thought I could trust them. They lied. They're
 24 liars.
 25 Q. But then why --

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1 A. I don't want a Towaco address. I want
 2 a Montville address, I wanted.
 3 Q. Since you were under the impression it
 4 was in the Montville section of Montville, why did
 5 you ask Ed Tomback what section it's in?
 6 A. Could you repeat that again for me?
 7 Q. Yes. You --
 8 MS. MINERVINI: I don't think she even
 9 testified to that.
 10 MR. BERNSTEIN: I'm not sure what she
 11 testified to. I'm trying to clear it up.
 12 MS. MINERVINI: I'm pretty clear.
 13 MR. BERNSTEIN: Okay.
 14 Q. You have stated that based on the
 15 Woodmont advertisements you believed the home was
 16 in the Montville section of the Township of
 17 Montville. That's what you believed. And I'm
 18 asking since you had that belief to begin with,
 19 what made you even ask Ed Tomback what section of
 20 town this house is in?
 21 MS. MINERVINI: Objection. Asked and
 22 answered. She testified about the nature of her
 23 conversation with Ed Tomback. They were talking
 24 about the school system, William Mason. They were
 25 talking about 287 being close and he said what are

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1 you worried about? You're on the address of
 2 Montville and I've heard her testimony three
 3 times.
 4 MR. BERNSTEIN: That's not my question,
 5 though.
 6 Q. My question is why did you ask Ed
 7 Tomback since you were certain in your mind that
 8 you were in the Montville section?
 9 A. I wanted to confirm with the
 10 advertisement they gave me when I drove up to the
 11 trailer of Woodmont: Is this Woodmont Properties?
 12 Is this in Montville in Montville Township? Ed
 13 looked at the advertisement and said, "You are
 14 correct. This is Woodmont Properties in Montville
 15 in Montville Township."
 16 Q. Was that the very first time you drove
 17 up there?
 18 A. Yes.
 19 Q. And Ed Tomback was the man you met
 20 with?
 21 A. I believe it was the second time
 22 because the first time I believe they're closed on
 23 Saturdays and open on Sundays, which sometimes
 24 it's vice versa, and the second time I was there.
 25 Q. So it's your testimony that in your

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1 initial meeting with Ed Tomback you wanted to
 2 confirm that it was the Montville section of
 3 Montville Township and he said it was?
 4 A. Yes.
 5 Q. Is that your testimony?
 6 A. Yes.
 7 Q. Mrs. Vagias, could you please look at
 8 page 6 of your complaint, paragraph 23, which
 9 states that you've had a loss of money as to the
 10 value of the home. Do you see that?
 11 A. Uh-huh, yes.
 12 Q. Do you have any thoughts as to how much
 13 money you think you've lost?
 14 A. No.
 15 Q. Do you have any thoughts as to whether
 16 your home may be more valuable today than it was
 17 when you bought it?
 18 A. Any house in New Jersey is
 19 more valuable today than two years ago. Real
 20 estate is up.
 21 Q. Were there any individuals of Woodmont,
 22 other than the people you've mentioned who you
 23 spoke with, any other people, you've mentioned Ed
 24 Tomback and Danielle and Louis, and I'm simply
 25 asking was there anyone else who worked for

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1 Woodmont that you remember speaking with about the
2 house?

3 A. Before Don hired or Rich, the project
4 manager, there was Tony.

5 Q. Was he a project manager?

6 A. Uh-huh.

7 Q. Do you recall any discussions with
8 Rich?

9 A. Rich was at the end of -- in the middle
10 or maybe at the end of the house being finished
11 and he was under assumption in Montville because
12 either I or my husband approached him afterwards
13 and he -- he didn't speak to us because I said,
14 Are you aware that I live in Towaco and not
15 Montville? I was shocked. I was mortified I
16 don't have a Montville -- I don't live in
17 Montville. I live in Towaco.

18 Q. So this discussion was after you
19 learned you were in Towaco?

20 A. Uh-huh. I even went to the town and
21 one of the clerks at the town said, Well, you
22 know, Towaco, one of these days, will have value
23 like Montville, but not like Montville. Montville
24 is prestigious. Pine Brook and Towaco are not
25 like Montville, no comparison. You ask any

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1 Q. Well, the actual price being paid by
2 purchasers?

3 A. Neighbors don't tell me how much they
4 bought their house but, like, real estate, it's
5 been going up the past two years.

6 Q. And it's been going up in the Towaco
7 section of the Township of Montville also.
8 Correct?

9 A. And Dover, New Jersey.

10 MR. BERNSTEIN: I'm finished with Mrs.
11 Vagias.

12 MS. MINERVINI: Do you have some
13 questions for Mrs. Vagias.

14 MR. BALDWIN: Sure.

15 MR. BERNSTEIN: Let me just state one
16 thing for the record. I have not had the
17 opportunity to look at any of the documents that
18 you gave to us at -- I don't know -- eleven
19 o'clock or 11:15.

20 MS. MINERVINI: Right.

21 MR. BERNSTEIN: And it's now just about
22 twelve o'clock, but subject to that, I'll stop at
23 this point.

24 MR. BALDWIN: All right.
25

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1 Montville resident or any Towaco resident: You
2 live in Towaco?

3 Q. Let me ask you this. Have you seen any
4 nice homes in the Towaco section?

5 MS. MINERVINI: Objection to form.

6 MR. BERNSTEIN: You can answer it.

7 MS. MINERVINI: You know, what's nice?
8 I mean, you know --

9 A. Nice, yeah.

10 Q. Do you think there's some homes that
11 you've seen in the Towaco section that are
12 presently worth above a half a million on today's
13 market?

14 A. Yeah, yeah.

15 Q. Have you seen some in the Towaco
16 section that are worth about 700,000 on today's
17 market?

18 A. I don't know. I don't look. I bought
19 my house.

20 Q. Have you heard about the selling prices
21 in your development in the last six months? Have
22 you heard anything about the prices they're
23 getting?

24 MS. MINERVINI: The selling price or
25 the offering price or the selling price?

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1 CROSS-EXAMINATION BY MR. BALDWIN:

2

3 Q. Mrs. Vagias, let me -- my name is Alan
4 Baldwin. I'm representing Weichert, Realtors and
5 it's my turn to ask you some questions.

6 At the very beginning of the deposition
7 you said that somebody had told you that if you
8 rented your house with a Montville address, you'd
9 get \$5500 a month, but if you rented it with a
10 Towaco address, you'd get \$4500 a month. Do you
11 remember testifying about that?

12 A. Yes.

13 Q. Who said that to you?

14 A. Prudential.

15 Q. Prudential what?

16 A. Prudential Realtors, my husband and I.

17 Q. You went to Prudential Realtors?

18 A. My husband went to Prudential Realtors
19 but she called us back and spoke to us.

20 Q. Okay. I just noticed you glanced at
21 your husband to kind of clarify the point?

22 A. Yeah.

23 Q. If you don't know the answer to the
24 question, just tell me you don't know and I'll ask
25 him later.

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1 A. I do know.
 2 Q. I'd rather find out what you know and
 3 not what --
 4 A. It was six months ago, you know, I
 5 didn't -- you know, I don't know the exact date.
 6 I don't --
 7 Q. Do you know the name of the person you
 8 spoke to?
 9 A. No, but maybe my husband will.
 10 Q. I'll ask him.
 11 A. Okay.
 12 Q. Did you get anything in writing from
 13 the person, like, a market analysis of some kind?
 14 A. I believe we have a writing for a
 15 Towaco address.
 16 Q. I'm not sure I understand what that
 17 means.
 18 A. We live in Towaco.
 19 Q. I understand that.
 20 A. And she gave us a price for the house
 21 in Towaco. We don't live in Montville, so she
 22 couldn't give us a price in Montville.
 23 Q. Did the person you're talking about
 24 come to the house?
 25 A. Yes.

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1 also mentioned that you learned of the fact that
 2 you had a Towaco mailing address when either the
 3 cable company, the mortgage company, or one of
 4 the utility companies brought that to your
 5 attention?
 6 A. Yes.
 7 Q. Do you remember talking about that?
 8 And I think you said in your deposition that you
 9 actually wrote down some information when either
 10 the cable company, the mortgage company, or
 11 the utility company talked to you about your
 12 address?
 13 A. Wrote down what kind of information?
 14 Q. That's my next question to you. Did
 15 you make any kind of notes or diary entries or a
 16 log of some kind in relation to your discovery of
 17 the property address being in Towaco?
 18 A. I wrote it down. I was shocked.
 19 Q. What did you write down?
 20 A. That now I live in Towaco, not
 21 Montville.
 22 Q. Do you still have the piece of paper
 23 that you wrote that down on?
 24 A. I don't know, Alan.
 25 Q. Did you give it to your lawyer?

Page 8

1 Q. Were you there when he or she was
 2 there?
 3 A. No.
 4 Q. As far as you know, was your husband
 5 there when he or she was there?
 6 A. Yes.
 7 Q. And that person, whoever it was from
 8 Prudential, gave you or your husband something in
 9 writing. Right?
 10 A. In Towaco address.
 11 Q. Regardless of --
 12 A. Not Montville, Towaco, yes.
 13 Q. Regardless --
 14 A. Yes.
 15 Q. Please, regardless of what it said or
 16 what --
 17 A. I just need to make it specific.
 18 Q. Regardless of what it said, you have
 19 something in writing that you got from this
 20 Prudential agent in writing?
 21 A. Yes.
 22 Q. Have you given a copy of that to your
 23 lawyer?
 24 A. No.
 25 Q. Okay. Earlier in your deposition you

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1 A. Was it important that I should have
 2 wrote it down? My address now says --
 3 Q. Whether it's important or not is for
 4 another day. I'm just asking you if you --
 5 A. I don't know if I gave --
 6 Q. -- if you still have the paper?
 7 A. I don't know if I gave that piece of
 8 paper to my attorney.
 9 Q. What did the paper say?
 10 A. That I was mad that I live in Towaco,
 11 not Montville in Montville Township. Actually, I
 12 was fuming.
 13 Q. Other than the agent for Prudential,
 14 did you, not your husband, but did you ever speak
 15 to any other real estate agents or appraisers
 16 about the market value of your house?
 17 A. No.
 18 Q. In the letter that your husband wrote
 19 to -- I'm sorry -- to Mr. Widtmont, Widtmont, I
 20 guess dated March 7th, 2002, he concluded by
 21 saying that Woodmont owed you and your husband
 22 \$230,000. You see that?
 23 A. Yes.
 24 Q. Do you know where that number came
 25 from?

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1 A No. I did not write the letter.
 2 Q I understand that. I'm just asking you
 3 if you know where the number came from?
 4 A No.
 5 Q With regard to the school system in
 6 Montville, I understand your child goes to --
 7 A Cedar Hill.
 8 Q -- Cedar Hill school. What grade does
 9 Cedar Hill School go to?
 10 A Fifth or sixth, sixth.
 11 Q And then there's a middle school in
 12 Montville -- correct?
 13 A Yes.
 14 Q -- called Lazar, and that school, the
 15 Lazar School, draws from the entire area of
 16 Montville Township. Right?
 17 A Grades 5th through 7th I believe, yes.
 18 Q And that would encompass students from
 19 Towaco, Montville and Pine Brook. Right?
 20 A I don't know about -- yes.
 21 Q They all go to Lazar?
 22 A Yes.
 23 Q And once they get out of Lazar, they
 24 all go to Montville High School. Correct?
 25 A Yes, but it doesn't go in the top 75

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1 schools in New Jersey. William Mason, that is in
 2 Montville in Montville Township.
 3 Q Is Montville Township one of the top 75
 4 high schools in New Jersey?
 5 A I don't know. I don't think so.
 6 Q Okay.
 7 A Maybe a hundredth or a hundred and
 8 fifty. Don't quote me the number. But I don't
 9 know the top 75th.
 10 Q And were you represented by a lawyer in
 11 connection with your purchase of this house?
 12 A Yes.
 13 Q Who is the lawyer that represented you?
 14 A Maria Tsitsiragos.
 15 Q And can I ask you to spell her last
 16 name?
 17 A T-S-I-T-S-I-R-A-G-O-S, I believe.
 18 Q Does she work in her own law firm?
 19 A Yes.
 20 Q Under her own name?
 21 A I believe, yes.
 22 Q Do you know the address?
 23 A No.
 24 Q Do you know the town she's in?
 25 A Westfield.

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1 Q You mentioned also that you have a
 2 cousin who lives in Montville. Who is that
 3 cousin?
 4 A Joanna Rouskas, R-O-U-S-K-A-S.
 5 Q And what is her street address?
 6 A I don't know the number, on Arthur Lane
 7 in Montville, New Jersey. She specified to me I
 8 don't live in Montville. I live in Towaco, big
 9 difference.
 10 Q What's the nearest major streets to
 11 Arthur Lane?
 12 A Change Bridge.
 13 Q Is Arthur Lane down near the Lazar
 14 School?
 15 A Further down.
 16 Q Further down Change Bridge. Have you
 17 ever seen a map anywhere that delineates where the
 18 various sections of Montville are?
 19 A Yes.
 20 Q Do you have -- did you ever give a copy
 21 of that map to your lawyer?
 22 A Yes, Don Widmont's map.
 23 MR. BALDWIN: Counsel, would that be
 24 in --
 25 THE WITNESS: Don Widmont's map I gave

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1 to my attorney.
 2 Q I'm sorry?
 3 A The map that Don, Woodmont Properties,
 4 gave to me.
 5 Q Let me rephrase the question because
 6 I'm not sure we understood each other. Have you
 7 ever seen a map that delineates where within
 8 Montville Township the borders of the Towaco
 9 section, the Montville section, and the Pine Brook
 10 section are?
 11 A Yes.
 12 Q Where did you see such a map?
 13 A.
 14 Don Widmont's map.
 15 MR. BALDWIN: Can I ask Counsel is that
 16 map in this pile of documents you gave me?
 17 MS. MINERVINI: I produced to you the
 18 documents that were provided to me from my
 19 attorney -- from my clients. Excuse me. To the
 20 extent that there's a map in that promotional
 21 material, that's the map that --
 22 MR. BERNSTEIN: It was in there.
 23 MS. MINERVINI: That's the map that was
 24 provided to me from my clients.
 25 Q While I'm going through this looking

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1 for that --
 2 MR. BERNSTEIN: I saw it before.
 3 Q. Let me ask you this question. Where
 4 did you live before you moved to the home in
 5 Towaco?
 6 A. Fairfield.
 7 Q. And how long had you lived in Fairfield
 8 before that?
 9 A. On and off, five years.
 10 Q. Who were you living with in Fairfield?
 11 A. My mother and father.
 12 Q. So you and your husband were living
 13 together with your mother and father?
 14 A. Yes. We were -- in five years we were
 15 in Dayton, Ohio, then Rochester, New York, and I
 16 was pregnant and I was living with my mother
 17 awhile.
 18 Q. I lost you. When --
 19 A. We were relocated, and in the five
 20 years, I have it written down, I don't know
 21 specific times, but I was living with my mother.
 22 Q. I'd like to clarify that, if I may.
 23 Immediately before moving to the Towaco house you
 24 were living with your mother in Fairfield.
 25 Correct?

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1 A. Yes.
 2 Q. Was there a period of time when you
 3 moved away from Fairfield and then moved back to
 4 Fairfield?
 5 A. Yes.
 6 Q. When did that occur?
 7 A. We were married in 1995; '95 through
 8 '96 or '97 we were in Dayton, Ohio.
 9 Q. I'm sorry. '96 or '97 you were in
 10 Dayton, Ohio?
 11 A. Yes.
 12 Q. Okay.
 13 A. I have it written down and --
 14 Q. What do you have it written down in?
 15 And if so, is that writing something you gave to
 16 your attorney?
 17 A. Yes.
 18 Q. And is that writing something in this
 19 pile?
 20 MS. MINERVINI: No, it's in Answers to
 21 Interrogatories which have yet to be served.
 22 MR. BALDWIN: Okay. In other words,
 23 it's a draft answer provided by your clients?
 24 MS. MINERVINI: Yes.
 25 Q. Okay. You're hesitating about the

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1 year, but are you sure that there was one year
 2 when you lived in Dayton, Ohio?
 3 A. Yes.
 4 Q. Did you live in a rental in Dayton,
 5 Ohio?
 6 A. Yes.
 7 Q. With your husband?
 8 A. Yes.
 9 Q. And then moved back to Fairfield?
 10 A. Yes.
 11 Q. Now, before you moved to Dayton, you
 12 were living in Fairfield. Right? Yes?
 13 A. Yes.
 14 Q. And before that move was there another
 15 period of time when you moved away from Fairfield
 16 then moved back?
 17 A. No.
 18 Q. So it was Fairfield, then Ohio,
 19 Fairfield, Towaco in that sequence?
 20 A. Fairfield, Dayton; Dayton, Fairfield;
 21 Fairfield, Rochester; Rochester, Fairfield;
 22 Fairfield, Towaco.
 23 Q. I missed Rochester. When did you move
 24 to Rochester?
 25 A. I believe '98.

1 Q. And how long did you live there?

2 A. One year.

3 Q. Did you rent?

4 A. Yes.

5 Q. Is the house in Towaco your first --

6 A. Yes.

7 Q. -- owned property?

8 A. Yes.

9 Q. And as far as you know, is it your

10 first -- is that the first property your husband

11 ever owned?

12 A. Yes.

13 Q. Who does your husband work for?

14 A. Mason & Harriman.

15 Q. I'll ask him more, but what do they do?

16 A. A consulting company.

17 Q. At some point in your deposition you

18 mentioned dealing with approximately 20 different

19 real estate agents. Do you remember saying that?

20 A. Yes.

21 Q. Over what period of time were you

22 dealing with these 20 agents?

23 A. From 1994 before we got married.

24 Q. Until you bought the property in

25 Towaco?

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1 A Yes
 2 Q Do you have business cards or other
 3 writings from any of those 20 agents that would
 4 give you their names or the brokerages for whom
 5 they worked?
 6 A. I have some of them.
 7 Q. Have you given them to your attorney?
 8 A. Have I? No.
 9 Q. As you sit here, do you remember the
 10 names of any of those 20 agents? And you don't
 11 have to say Gabrielle Dwingle because you already
 12 mentioned her name but any other agencies you can
 13 remember?
 14 A. Alex Panos I believe his last name was,
 15 P-A-N-O-S. I knew a lot of first names.
 16 Q. Do you remember the name of the
 17 brokerage agencies for which any of them worked?
 18 A. Yes.
 19 Q. Who did they work for?
 20 A. Another one was from Weichert,
 21 Realtors.
 22 Q. Okay. Who was that?
 23 A. In the same office as Gabrielle. I
 24 believe his first name was -- it was a couple of
 25 years ago. I don't recall.

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1 Q. All right.
 2 A. But I most likely have his card.
 3 Q. Thank you. Do you remember any other
 4 brokerages for whom the 20 agents worked?
 5 A. Yes, Coldwell Banker.
 6 Q. Okay. Any others?
 7 A. Burgdorf Realtors, Gail Lowenstein.
 8 Q. Gail Lowenstein?
 9 A. Lowenstein.
 10 Q. Is that a broker or is that the agent
 11 you worked with?
 12 A. Broker. Burgdorf, Gail Lowenstein,
 13 Coldwell Banker. There's another Realtor in
 14 Fairfield, Lattimer Realtors. That's it.
 15 Q. Besides Gabriella and the man whose
 16 name you don't remember, did you have contact with
 17 any other Weichert agents out of this 20?
 18 A. No.
 19 Q. Would you describe for me how it is you
 20 came into contact with Gabriella?
 21 A. There was a house in Montville in
 22 Montville Township that we called and she was
 23 patient and consistent with us, and she was trying
 24 to help us find a house in Montville in Montville
 25 Township.

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1 Q. You say --
 2 A. And she called and she said about a
 3 house in Montville but it needed a lot of work,
 4 and we did put a bid in, and it didn't go through
 5 and she -- she was with us so long that my husband
 6 and I were driving through the area and we would
 7 specifically say we want Montville in Montville
 8 Township.
 9 Q. You said that you first came in contact
 10 with Gabriella because there was a house in
 11 Montville that you saw and you called?
 12 A. Yes.
 13 Q. Was there a sign in front of that house
 14 with a phone number on it?
 15 A. Yes.
 16 Q. And is that how you got in touch with
 17 her?
 18 A. Yes.
 19 Q. By calling on that sign?
 20 A. Yes.
 21 Q. And do you remember where that house
 22 was?
 23 A. Montville in Montville Township.
 24 Q. Do you remember a street address?
 25 A. Off Horseneck Road, Horseneck Road on

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1 the left-hand side.
 2 Q. Was the house on Horseneck Road?
 3 A. No.
 4 Q. And based on that phone call was it
 5 Gabriella that answered the phone?
 6 A. I might have called and left a message
 7 and she called me back.
 8 Q. And do you remember when that was?
 9 A. Two, three years ago.
 10 Q. Can you remember what it is that you
 11 said to her in that first phone conversation?
 12 A. I want a house in Montville in
 13 Montville Township.
 14 Q. Well, weren't you calling about a
 15 specific house that you had seen?
 16 A. And I knew it was in Montville.
 17 Q. How did you know that?
 18 A. There were -- it was right next to
 19 Fairfield where I knew Pine Brook was on the
 20 another side and Towaco was on the other side.
 21 Q. So you knew it was in Montville based
 22 on what you knew, not what anybody told you.
 23 Right?
 24 A. Uh-huh, and the Realtors told me in
 25 Montville.

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1 Q You saw a sign on a house and you
2 called the number on the sign. Right?

3 A. Yes.

4 Q. And it turned out to be a Weichert
5 office. Is that what you said?

6 A. Yes.

7 Q. And you left a message for Gabrielle
8 and she called you back?

9 A. Yes.

10 Q. Now, how did you know to ask for
11 Gabrielle by name?

12 A. How did I ask for Gabrielle? I believe
13 she left her name and maybe I called and -- it was
14 a long time. I mean --

15 MS. MINERVINI: Yes.

16 Q. If you don't remember the answer to a
17 question, just say you don't know and we'll go on.

18 A. I don't remember.

19 Q. Okay.

20 A. I'm trying to.

21 Q. Let me try and go back over what we
22 talked about so I can confirm what you do
23 remember. You do remember that there was a house
24 off of Horseneck Road that had a sign on it and
25 that you called the number on the sign. Is that

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1 clear in your mind?

2 MS. MINERVINI: You should say yes to
3 each fact he says so we can move past this line of
4 questioning.

5 A. Fact, to my knowledge, yes.

6 Q. Okay. This is all to your knowledge?

7 A. To my knowledge.

8 Q. If you don't know the answer, say I
9 don't know. It's okay. You dialed the number on
10 the sign and it was a Weichert office and you
11 don't remember how but Gabrielle called you back?

12 A. Called back.

13 Q. When Gabrielle called back, were you
14 still interested in this house off of Horseneck
15 Road?

16 A. Yes.

17 Q. And you at that point, before she said
18 anything, you believed that house was in
19 Montville, right, based on the location?

20 A. Yes.

21 Q. And the proximity to Fairfield?

22 A. Yes.

23 Q. In your first conversation with

24 Gabrielle did you talk about that house?

25 MS. MINERVINI: Objection.

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1 MR. BALDWIN: And the basis for the
2 objection is?

3 MS. MINERVINI: Because she testified
4 she called about the house for sale. What else
5 would they talk about?

6 MR. BALDWIN: Well, is that an
7 objection to form? I don't quite understand the
8 basis for the objection.

9 MS. MINERVINI: Did you talk about
10 the...No, we talked about the weather.

11 MR. BALDWIN: I asked -- let's have
12 this conversation out of -- outside the presence
13 of your clients. If you want to talk about it,
14 let's do it outside the presence of your --

15 MS. MINERVINI: It's 12:30.

16 MR. BALDWIN: Stop. Let's talk about
17 it outside the presence of your clients or let me
18 ask the questions. These are not improper
19 questions.

20 MS. MINERVINI: Did you have a
21 conversation about the house? Yes, I called about
22 the house. Go ahead.

23 MR. BALDWIN: Listen, stop testifying
24 for her. That's not what she said. Now, if you
25 want to discuss it, we can do it outside your

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1 client's presence.

2 MS. MINERVINI: There's no reason for
3 me to go outside my client's presence. She
4 testified she saw a sign on the house. I called
5 Weichert. Weichert -- I think she called me back.
6 We were talking about the house.

7 MR. BALDWIN: That's not what she said,
8 and I'm trying to find out what she said, and I've
9 given her every opportunity to say she doesn't
10 remember.

11 MS. MINERVINI: And the relevance of
12 this having to do with the house she bought later
13 on is God knows. But go ahead. Let's keep her
14 here till three o'clock talking about this
15 conversation.

16 MR. BALDWIN: You just killed two
17 minutes.

18 Q. It's very important that I find out
19 from you as best as you can remember --

20 A. Okay.

21 Q. -- exactly what you said to Weichert's
22 agents and what they may have said to you. To the
23 extent that you don't remember, tells you don't
24 remember. --

25 A. Okay.

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1 Q To the extent you do remember, tell us
 2 what you do remember. Now, your first
 3 conversation with Gabrielle when she called you
 4 back, do you remember what you talked about?
 5 A About the house.
 6 Q Okay. The house that was off Horseneck
 7 Road. Did she have any information about that
 8 house?
 9 A Yes.
 10 Q What did she tell you about that house?
 11 A How big the house was, how large the
 12 acre was or half an acre or a quarter -- three
 13 quarters of an acre, how old the house was in
 14 Montville, New Jersey.
 15 Q After that phone conversation, did you
 16 have more contact with Gabrielle?
 17 A More about the house?
 18 Q No, just contact. Did you call her?
 19 Did she call you?
 20 A I said call me back if there are other
 21 homes in the area --
 22 Q Okay.
 23 A -- of Montville.
 24 Q And did she do that?
 25 A Yes.

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1 A It was in the newspaper: "All this and
 2 Montville, too."
 3 Q Did you save the ad?
 4 A Yes.
 5 Q Did you give it to your attorney?
 6 A Yes.
 7 MS. MINERVINI: They just gave it to me
 8 this morning. I have not had an opportunity to
 9 look at it. They had a separate file of
 10 advertisements. I have not had the opportunity to
 11 look at them.
 12 MR. BERNSTEIN: Is that ad in these
 13 documents?
 14 MS. MINERVINI: No, it's not. I was
 15 just given them this morning.
 16 MR. BALDWIN: Well, let's go off the
 17 record for a second.
 18 (An off-the-record discussion takes
 19 place.)
 20 MR. BALDWIN: We can go back on the
 21 record.
 22 Q Do you remember the publication that
 23 you saw the ad in?
 24 A Star Ledger.
 25 Q Did you see more than one ad for the

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1 Q About how much time passed after that
 2 first conversation until she called you back with
 3 more information about houses?
 4 A She'd call me every week.
 5 Q In working with her, did you make any
 6 offers on any other houses?
 7 A I don't remember.
 8 Q Did she take you inside any houses?
 9 A Yes.
 10 Q Do you remember the addresses of any of
 11 the houses she took you --
 12 A No, I don't remember.
 13 Q Let me finish the question so that we
 14 don't talk at the same time.
 15 A I thought you finished the question.
 16 Q I'm sorry. I'll raise my hand when I'm
 17 done.
 18 A Okay.
 19 Q Do you remember about how long you
 20 worked with her before signing the contract to buy
 21 the house in Towaco?
 22 A Thank you. I'm thinking to myself.
 23 Approximately six months prior.
 24 Q And how did you first become aware of
 25 the Woodmont project?

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1 Woodmont project or just one?
 2 A More than one.
 3 Q Did you save all the ads you saw?
 4 A Saved all the ads that I saw? I have
 5 copies of most of the ads.
 6 Q And those copies have now been given to
 7 your attorney?
 8 A Yes.
 9 Q Did you see ads in any other
 10 publication besides the Star-Ledger?
 11 A Of Woodmont?
 12 Q Yes.
 13 A I don't remember.
 14 Q What did you do after you saw the ad
 15 for the Woodmont project? And I'm focusing,
 16 obviously, on your efforts to buy the house, and I
 17 don't want to know about going shopping or
 18 something irrelevant.
 19 A I don't -- I believe my husband and I
 20 took a drive.
 21 Q To the site?
 22 A To the site.
 23 Q And can you describe for us what
 24 condition the site was in when you first went
 25 there?

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1 A I believe there were only two homes --
 2 excuse me -- two or three homes and a trailer.
 3 They were Weichert.
 4 Q I'm sorry?
 5 A Weichert was showing these homes.
 6 Q How do you know that?
 7 A Weichert or Century 21.
 8 MS. MINERVINI: You can't say anything.
 9 THE WITNESS: Two homes were for sale
 10 and I called.
 11 Q You called who?
 12 A Gabrielle.
 13 Q Just to recap this then, your lawyer
 14 doesn't like when I do this, but your first
 15 knowledge of the Woodmont project was obtained
 16 from an ad in the Star-Ledger?
 17 A Yes.
 18 Q And the next thing you did after seeing
 19 the ad was to take a drive with your husband to go
 20 to the site?
 21 A Yes.
 22 Q And when you got to the site you saw
 23 two or three homes that were standing. Right?
 24 A Yes.
 25 Q And a construction trailer?

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1 A. Yes.
 2 Q. And something telling you that Century
 3 21 was showing the property?
 4 A. I don't remember if it was -- it was a
 5 broker.
 6 Q. But you don't remember who?
 7 A. I don't remember.
 8 Q. Did you have any contact with anybody
 9 at the site on that occasion?
 10 A. I don't remember if I spoke to Ed
 11 before speaking to Gabrielle or I spoke to
 12 Gabrielle then I spoke to Ed, but it was at the
 13 same time of everything, the same period.
 14 Q. But you don't remember?
 15 A. I don't remember. I saw so many homes.
 16 Q. Okay.
 17 A. And some with Gabrielle and some
 18 without Gabrielle. But she was my Realtor, and I
 19 liked her, and I didn't want her to lose out on
 20 the commission because I'm an honest and loyal
 21 person, so I would -- if I found a house before
 22 she found a house, I would say take me there.
 23 Q. And that's what happened in this case.
 24 Right?
 25 A. Yes. I don't remember if it happened

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1 in that case. She might have more knowledge than
 2 I do.
 3 Q. About what?
 4 A. About if I told her about Woodmont
 5 Properties -- excuse me -- I told her about
 6 Woodmont Properties. I don't remember if we went
 7 with her first to Woodmont Properties or I went
 8 without her to Woodmont Properties, but I saw the
 9 ad before she mentioned it to me.
 10 Q. All right. So --
 11 A. But I don't remember if I went with her
 12 the first time or I went without her the first
 13 time.
 14 Q. All right. When you brought the
 15 Woodmont Properties project to her attention,
 16 whenever that was, what did you say to her?
 17 A. I said, Gabrielle, there's new
 18 construction. I've finally realized that I -- I
 19 don't like an older house. It needs a lot of
 20 work. I like a cleanliness -- you know, I just
 21 don't have vision. Let's look for newer homes and
 22 can you look into the Woodmont Properties.
 23 Q. What did she say?
 24 A. Yes.
 25 Q. And what did she do?

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1 A. I don't know what she did. Maybe she
 2 called Ed for the appointment and brought us over
 3 or maybe we took a ride there.
 4 Q. You don't remember whether you went
 5 there with her in the car?
 6 A. I don't remember. I know we did go
 7 there with her, but I don't know which -- which
 8 time, before or after.
 9 Q. Did she have any information for you on
 10 the project that was in addition to or different
 11 from what you saw in the ad?
 12 A. No. If she had any -- say --
 13 Q. Did she provide you with any
 14 information on the project which was in addition
 15 to or different from what you saw in the ad?
 16 A. I know that she never told me it was in
 17 Towaco.
 18 Q. Did she ever tell you that it was in
 19 Montville?
 20 A. Yes, she even gave me a Christmas card
 21 and it would be returned and she was shocked and
 22 very, very disappointed.
 23 Q. Well, the Christmas card would have
 24 been after you moved in. Right?
 25 A. Yes.

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1 Q My question is did she ever tell you
 2 that it was in Montville before you moved in?
 3 A Yes.
 4 Q When?
 5 A When we were looking at the homes. It
 6 wasn't Gabrielle. The advertisements said it's in
 7 Montville in Montville Township saying in
 8 Montville and a Montville address.
 9 Q Okay.
 10 A. And she was under the assumption that
 11 it's in Montville with a Montville address. So we
 12 were all fooled. We were all thinking that I was
 13 buying a house in Montville.
 14 Q. All right. Maybe I didn't ask the
 15 question the right way; maybe I did.
 16 I recognize that you've told us you saw
 17 an ad that referred to the house being in
 18 Montville and maybe mentioned a Montville address
 19 and then you brought that -- that lead you to the
 20 property and then you brought Gabrielle involved?
 21 A. Uh-huh.
 22 Q. And did you show Gabrielle the ad that
 23 you had gotten from the Star-Ledger?
 24 A. I don't remember. I believe Gabrielle
 25 had the ad herself also. I don't remember if I

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1 showed it to her. I don't remember if I told her
 2 look in the Star-Ledger. We were both working
 3 together.
 4 Q. Did she ever -- did she ever say to you
 5 words to the effect that this house that you want,
 6 that you're interested in being built by Woodmont,
 7 is in Montville?
 8 A. Yes.
 9 Q. She said that. When did she say that?
 10 A. Referring to the advertisement. This
 11 house, it's beautiful, in Montville, Frances.
 12 Q. So if I understand you now, you're
 13 saying she, in effect, was reading off the ad with
 14 you when you were going on about it?
 15 A. No, she knew I was looking in
 16 Montville, so she was under the assumption that
 17 this development was in Montville in Montville
 18 Township.
 19 Q. And that assumption came from the ad?
 20 A. The ad and Ed spoke to her with me and
 21 with my husband and Ed said, Beautiful. Who cares
 22 about 287? You have a Montville address. What
 23 are you worried about? Montville.
 24 Q. I'll get to the conversation in a
 25 25 minute.

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1 A I was never told this is Towaco
 2 Q. I understand that completely.
 3 A. They misled me.
 4 Q. I understand that. What I'm trying to
 5 find out is what you were told. You quoted --
 6 more or less quoted Gabriella as saying, Oh, look
 7 at this. It's even in Montville. When she said
 8 that, was she looking at the ad and referring to
 9 what the ad said? Is that what you're telling us?
 10 MS. MINERVINI: Objection.
 11 A. I don't remember. We had
 12 conversations. We spoke with each other.
 13 Frances, Montville in Montville Township. She
 14 knew I wasn't looking in Pine Brook and Towaco. I
 15 wanted Montville.
 16 Q. Okay.
 17 A. And my child's education comes from
 18 kindergarten. I don't want him to go to the top
 19 high school. I want him to go to the top
 20 elementary school, the beginning foundation. So
 21 everything was all together, Montville-Montville.
 22 There were many houses in Pine Brook and many
 23 houses in Towaco.
 24 Q. Meaning what?
 25 A. For sale.

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1 Q. You didn't make offers on any of those
 2 houses?
 3 A. No.
 4 Q. Because they weren't in Montville?
 5 A. They weren't in Montville.
 6 Q. But you brought the Woodmont project to
 7 her attention. Correct?
 8 A. I believe, yes.
 9 Q. And you brought it to her attention and
 10 either showed her the ad or she got the ad
 11 herself?
 12 A. Go on the Internet or pick up the
 13 newspaper. Look what I saw.
 14 Q. Did you go on the Internet yourself?
 15 A. No.
 16 Q. Do you know if she did?
 17 A. I don't know.
 18 Q. Did she have any written material
 19 describing the property or the project other than
 20 an ad you may have given her?
 21 A. She always had papers with her.
 22 Q. Did she ever show the papers to you?
 23 A. I don't remember. We saw many homes.
 24 Q. Going back to the sequence again, after
 25 seeing the site and then discussing the project

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1 with Gabrielle, did you eventually go to the site
2 with her?
3 A. Yes.
4 Q. Did you go to the site with her on more
5 than one occasion?
6 A. One or two occasions.
7 Q. And with regard to those one or two
8 occasions, I think you said you met a fellow named
9 Ed. Is that right?
10 A. Yes.
11 Q. And that's Ed that worked for Woodmont?
12 A. Yes.
13 Q. And then had a conversation with him in
14 the presence of Gabrielle?
15 A. Yes.
16 Q. What did he say to you in the presence
17 of Gabrielle?
18 A. I don't remember. I remember we were
19 specifically -- he was showing us the model and
20 how -- how beautiful, how, you know, nice the
21 house is.
22 Q. And you mentioned Ed telling you
23 something like, Don't worry about 287. You've got
24 a Montville address. Do you recall whether that
25 was said in the presence of Gabrielle or not?

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1 A. I don't recall. I know he said it in
2 the presence of my husband, but I don't recall if
3 Gabrielle was with us.
4 Q. Besides the two visits you made to the
5 site with Gabrielle, one or two, did I understand
6 you correctly to say that you visited that site
7 about a hundred times during the process of the
8 construction?
9 A. Yes.
10 Q. And you would have had numerous
11 conversations with Ed or other people that worked
12 there. Correct?
13 A. Not Ed so much because Ed I was already
14 -- I already did the contract, so Ed is the sales
15 guy. I would speak to the project manager or to
16 Louis or to Leah I believe her name was.
17 Q. Did Gabrielle have any more
18 involvements in your visits to the property after
19 those initial one or two?
20 A. After we signed the contract, no, she
21 never came.
22 Q. I was asking you before about the
23 conversation in which you said that Gabrielle --
24 A. I even told Ed with the 287 there's
25 also power lines behind our house. Don't worry

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1 about it. It's Montville address. I forgot the
2 power lines were a big issue, too. Power lines
3 are right behind our house.
4 Q. A big issue to who?
5 A. To Ed and to Gabrielle.
6 Q. What was Gabrielle's spin on the power
7 lines?
8 A. Gabrielle was a good Realtor. She
9 never pushed me, you know, she wanted me to be
10 happy but --
11 Q. And did she --
12 A. -- the only way I was buying this
13 house was a Montville address. 287 is facing me.
14 I'm practically on 287. Power lines are behind my
15 house. Montville address, I want a Montville
16 address. I want to live in a prestigious area,
17 not Towaco.
18 Q. Did -- in your discussions with
19 Gabrielle about the property, and I'm assuming,
20 tell me if I'm wrong about this, all the
21 conversations with her took place before you
22 signed the contract?
23 MS. MINERVINI: Objection to form.
24 A. I don't remember.
25 Q. It was a badly worded question. Did

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1 you have any conversations with Gabrielle about
2 the property after you signed the contract?
3 A. After I signed the contract if I had
4 conversations with Gabrielle, yes.
5 Q. About the property?
6 A. About the property?
7 Q. Yes.
8 A. What about the property? If it's in
9 Towaco or --
10 Q. Anything about the property, the
11 location, the power lines, 287, anything. Did you
12 talk to her about anything about the property?
13 A. When I signed the contract I would
14 maybe tell her that building a house is
15 frustrating.
16 Q. Sort of commiserating, that kind of
17 conversation?
18 A. Yeah.
19 Q. But was there anything substantive
20 about the house, its location, its condition with
21 Gabrielle after the contract was signed?
22 A. I don't remember.
23 Q. Who prepared the contract?
24 A. Don Widmont. What contract are you
25 talking about?

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1 Q You signed a contract to buy the house.
2 didn't you?
3 A Yes.
4 Q Let me ask you a question. You bring
5 up a good point. Did you ever sign any kind of
6 agreement with Gabrielle appointing her or asking
7 her to work as your agent?
8 A. I believe that's what Realtors do.
9 Q. Well, my question is do you recall
10 signing any kind of agreement to that effect?
11 A. I believe that agreement, if they show
12 you a house -- I don't know what the agreement
13 was, but I believe I did sign papers. I don't
14 know if I -- she would know. I don't remember.
15 Q. Do you have copies of what you signed,
16 if you signed anything?
17 A. I usually keep copies.
18 Q. Have you given them to your lawyer?
19 A. No.
20 Q. When you saw the ad --
21 MR. VAGIAS: Is there any way she can
22 take a couple of minutes' break? She's getting
23 drained. I can tell.
24 MR. BALDWIN: Want to take a break?
25 MS. MINERVINI: Off the record.

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1 MR. BALDWIN: I'll rephrase it because
2 it was probably convoluted.
3 MS. MINERVINI: Could you put it in a
4 time frame, too?
5 Q. Before we took our break you said that
6 Gabrielle had told you that this house was in
7 Montville and then I asked you some more questions
8 about that. I'd like you to now, as best as you
9 can, tell us exactly what words she used?
10 MS. MINERVINI: Objection to form.
11 Exactly and --
12 MR. BALDWIN: As best as you can.
13 MS. MINERVINI: I'm going to object to
14 the form of the question but you can answer.
15 A. Before we went to Ed?
16 Q. Yes.
17 A. Fran, I think this is it. It's a
18 beautiful house. It's in Montville. Don't worry
19 about, you know, the power lines and 287.
20 Montville, you know, you want a new house.
21 Q. How would she have known about the
22 power lines and 287?
23 A. We're talking about before we stepped
24 foot --
25 Q. The first thing she said to you about

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1 MR. VAGIAS: She's thinking about --
2 MS. MINERVINI: Off the record.
3 (An off-the-record discussion takes
4 place.)
5 (Whereupon, a short recess is taken.)
6 (Contract is marked DW-6 for
7 identification.)
8 (Documents are marked DW-7 for
9 identification.)
10 MR. BALDWIN: Let's go back on the
11 record.
12 Q. And let's start off by beating a dead
13 horse.
14 A. Okay.
15 Q. I asked you some questions before about
16 conversations with Gabrielle and what she may have
17 said to you and what you may have said to her. I
18 want to go back to that topic.
19 Using as best as you can your memory to
20 tell us the exact words she used, to the best of
21 your recollection, what did she -- did Gabrielle
22 say about the house you bought and the town of
23 Montville?
24 MS. MINERVINI: Objection to form. Two
25 bases: One --

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1 the house, the first?
2 A. Okay. The first: Fran, let's go.
3 I'll get information. She always had information.
4 Before we went to any house at any place, she had
5 all information with her, either through the
6 computer or calling other people, and she said
7 let's go and see.
8 Q. And that was in response to you saying
9 I saw this ad for this great house. Let's go look
10 at it or words to that effect. Right?
11 A. Yes, in Montville.
12 Q. Right. You saw a great house in
13 Montville. So then you go there and you meet Ed.
14 Now, was Gabrielle there when you first went there
15 and met Ed?
16 A. Was Gabrielle there the first time I
17 met Ed? Gabrielle was there when we first spoke
18 to Ed and Ed showed us the house. We might have
19 met Ed briefly for two minutes. I don't remember.
20 But I know that I was with Gabrielle and Ted that
21 she showed us the house.
22 Q. Ted or Ed?
23 A. Ted, my husband, that Ed showed us the
24 house and Gabrielle, like a Realtor, your
25 representative, telling him how -- what do you

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1 I think about the taxes? Is there any water in the
 2 basement of the two new houses? Is it in -- you
 3 know, I don't think she doubted -- I don't think
 4 we doubted Ed. The advertisement said it was
 5 Montville. Ed said it's in Montville.
 6 Q. With regard to Gabrielle --
 7 A. The two signs that you go in the
 8 development says Woodmont Court in Montville, --
 9 Q. With regard to Gabrielle --
 10 A. -- not Towaco.
 11 Q. I'm sorry. You done?
 12 A. Yeah.
 13 Q. Okay. With regard to Gabrielle, was
 14 she being told, as you were by Ed, that the house
 15 was in Montville?
 16 MS. MINERVINI: Objection to form. I
 17 don't know that my client can testify as to what
 18 Gabrielle was told.
 19 MR. BALDWIN: No. Well, that's -- I'll
 20 rephrase it.
 21 A. I don't know.
 22 Q. When you went to the project with
 23 Gabrielle and met Ted --
 24 A. Ed.
 25 Q. Ed. I'm sorry.

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1 MR. VAGIAS: Ed.
 2 MR. BALDWIN: I'm sorry.
 3 Q. When you went to the project with
 4 Gabrielle, that's your first time there with her,
 5 and you met Ed and Ed said, Don't worry about the
 6 power lines, don't worry about 287, it's in
 7 Montville, was Gabrielle there listening to that
 8 conversation? Was she with you at that time?
 9 MS. MINERVINI: And, again, I'm just --
 10 if you don't know, I'm just going to instruct my
 11 client if she doesn't know, her answer should
 12 be --
 13 MR. BALDWIN: I said that twice all
 14 already.
 15 MS. MINERVINI: -- she doesn't
 16 remember.
 17 A. I don't know if it was the first time
 18 or the second time.
 19 Q. Was there a time when Gabrielle was
 20 with you and possibly her husband and Ed?
 21 A. Yes.
 22 Q. And during that -- at that time was
 23 that the occasion that you say Ed told you, Don't
 24 worry about the power lines, don't worry about
 25 287, you're in Montville?

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1 MS. MINERVINI: Objection to form.
 2 MR. BALDWIN: What's wrong with the
 3 form?
 4 MS. MINERVINI: I don't know that Ed
 5 only said that once to her.
 6 A. Maybe Ed said it once to me: Don't
 7 worry about the power lines, and then another time
 8 don't worry about 287.
 9 Q. I'm trying to find out what he said in
 10 front of Gabrielle. Whatever he said, what did he
 11 say in front of Gabrielle? What did she hear, if
 12 you know?
 13 A. That it's a great -- Montville's a
 14 great town, a great place, in Montville Township,
 15 great school systems, top 75 elementary school. I
 16 brought my paper and I said, "Look, Ed," and I
 17 went in the trailer place and they had all
 18 information. They even had information to the
 19 train station and the train station is not
 20 Montville, it's Towaco train station, and I knew I
 21 wasn't going in Towaco. I'm in Montville. Towaco
 22 is down further. I thought that was Towaco
 23 section, not in my area. And another thing, one
 24 house could separate a section of Montville
 25 Township, one house between Pine Brook and

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1 Montville, one house between Montville and Towaco,
 2 one house between Towaco -- I don't believe Towaco
 3 and Pine Brook, but all those three houses, but
 4 it's a different prestigious.
 5 Q. Can you tell me what it is that Ed said
 6 to you in front of Gabrielle?
 7 A. All this in Montville. You're not
 8 going to get anything like this in Montville.
 9 Q. Anything else?
 10 A. And I don't remember but maybe he said
 11 in --
 12 MS. MINERVINI: Don't guess.
 13 MR. VAGIAS: Don't guess.
 14 THE WITNESS: No, I don't remember.
 15 MS. MINERVINI: Don't say anything.
 16 THE WITNESS: I don't remember.
 17 Q. But you -- all right. Now, up to that
 18 point when Gabrielle was with you and Ed said
 19 whatever it is he said, had she said anything to
 20 you about the house being located in Montville or
 21 anyplace else?
 22 A. She said, This is a great house in
 23 Montville.
 24 Q. And when did she say that?
 25 A. While we were looking at the house, the

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1 model house or the house for sale.
 2 Q Was she talking about a mailing address
 3 at that point or was she --
 4 MS. MINERVINI: Objection to form.
 5 A. About the house.
 6 Q. The house?
 7 A. She was informed that the house was
 8 Montville in Montville Township. That's why she
 9 sent me a Christmas card, and I never received it
 10 because she was shocked that under her assumption
 11 it was in Montville, not Towaco.
 12 Q. Who informed her that it was in
 13 Montville?
 14 MS. MINERVINI: Objection to the form
 15 to the extent that my client doesn't -- can't --
 16 MR. BALDWIN: She just said --
 17 MS. MINERVINI: -- can't testify as to
 18 who informed Gabrielle.
 19 MR. BALDWIN: Okay.
 20 Q. You just said that Gabrielle was
 21 informed that it was in Montville. My question
 22 is --
 23 A. After all the paper -- after all her
 24 cards she was shocked that I was in Towaco.
 25 Q. I accept that as the truth.

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1 attorney got it?
 2 A. I must have given it to her. I don't
 3 know.
 4 Q. You don't have to read it out loud,
 5 just look at it. Why don't you glance at the rest
 6 of the pages there so you have an idea of what the
 7 whole package consists of?
 8 MS. MINERVINI: And when it was sent to
 9 you. Take your time to look at it.
 10 THE WITNESS: Uh-huh.
 11 MR. BALDWIN: Was this something I
 12 wasn't supposed to see?
 13 MS. MINERVINI: No, this was part of
 14 the documents that were given to my clients
 15 demonstrating that obviously you're -- off the
 16 record.
 17 (An off-the-record discussion takes
 18 place.)
 19 MR. BALDWIN: On the record. Can I ask
 20 you a question?
 21 THE WITNESS: Uh-huh.
 22 Q. You're looking through the documents
 23 that --
 24 A. She --
 25 Q. Let me finish the question.

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1 A. And the advertisements.
 2 Q. My question is you just said Gabrielle
 3 was informed that the house was in Montville. Do
 4 you know who informed her of that?
 5 A. I don't know. I don't know. She's a
 6 Realtor. She did research herself.
 7 Q. Let me show you a couple of documents
 8 that have been marked for identification. These
 9 are out of your stack of documents. It appears to
 10 be an envelope with some enclosures.
 11 MS. MINERVINI: This is --
 12 (An off-the-record discussion takes
 13 place.)
 14 Q. All right. That's DW-7, Mrs. Vagias.
 15 That's DW-7?
 16 MS. MINERVINI: She's looking through
 17 the documents.
 18 MR. BALDWIN: I'm just trying to
 19 clarify what it is she's looking at.
 20 MS. MINERVINI: Yes, it's marked as
 21 DW-7 for identification.
 22 MR. BALDWIN: Okay.
 23 A. I never got this letter.
 24 Q. Well, if I represent to you that your
 25 attorney just gave it to me, do you know how your

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1 A. Go ahead.
 2 Q. You've been looking through the
 3 documents which together are called DW-7. Is that
 4 correct?
 5 A. Yes.
 6 Q. Have you ever seen those before today?
 7 A. I've seen -- I've seen them before.
 8 Q. Can you tell me how you came to have
 9 those documents?
 10 A. Gabrielle sent them to me.
 11 Q. Why did she do that, if you know?
 12 A. I thought they were all under
 13 Montville, but now I see that I live in Towaco,
 14 that two so far are in Zip Code 07045 which is
 15 Montville. Mine is 07082 which I see a few I
 16 believe where it says section, Towaco.
 17 Q. My question is -- and I apologize if I
 18 didn't make myself clear -- how is it that you
 19 came to have these documents that are called DW-7
 20 for this deposition?
 21 A. Gabrielle sent them to me.
 22 Q. And do you know why she sent them to
 23 you?
 24 A. Saying that -- --
 25 MS. MINERVINI: Well --

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1 A Yes, Montville, New Jersey, and it was
2 a returned address.
3 Q Do you know why she sent those
4 documents to you?
5 A Saying that Towaco --
6 MS MINERVINE: No, no, no, listen to
7 the question.
8 MR. VAGIAS: Do you know why?
9 MS. MINERVINE: He's asking why, not
10 what it says, why did she send them to you?
11 THE WITNESS: To show me the houses.
12 Q Had you had some kind of conversation
13 with her beforehand that would have lead her to
14 send you those documents?
15 A I said I live in Towaco.
16 Q You said that to who?
17 A To Gabrielle.
18 Q But when?
19 A She saw I lived in Towaco. She works
20 for Weichert, Realtors.
21 Q When did you tell Gabrielle that you
22 lived in Towaco?
23 A I -- she was sending the cards and she
24 couldn't -- prior to this sending me a Christmas
25 card I believe, and it wasn't getting to my home

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1 address, and she saw me at the office, but --
2 Q She saw you at what office?
3 A Dr. Krugman's office.
4 Q Who is Dr. Krugman?
5 A She's my patient, the dentist.
6 Q Gabrielle is one of your patients?
7 A Patient. After she became my Realtor,
8 she became one of my patients. And she never
9 spoke to me, Frances, Towaco in Montville. That's
10 why I'm a little shocked. You know, I looked at
11 all the papers. There's a lot of information.
12 And I thought it was another returned address.
13 Q Do you know why Gabrielle sent you --
14 stop -- sent you this document, DW-7, which seems
15 to consist of real estate listings for different
16 houses in and around Montville? Do you know why
17 she sent this to you?
18 A If you read it, it says Towaco.
19 MS. MINERVINE: Wait, wait, objection
20 to the form. She's been asked that question; she
21 answered it. She answered that Gabrielle sent her
22 that when she told Gabrielle that, Oh, my God, my
23 house is in Towaco.
24 Q Is your lawyer testifying for you
25 correctly?

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1 A Yes, yes
2 Q That's good.
3 MS. MINERVINE: That's what she just
4 testified to. You're not listening. You're
5 really not. She testified to that.
6 MR. BALDWIN: I'm struggling.
7 MS. MINERVINE: 'Cause you're not
8 listening.
9 Q You say you had a conversation that
10 lead to this?
11 A She called me at the office and she
12 said, Frances, what's going on? I can't give you
13 a Christmas card.
14 Q All right.
15 A I said, Gabrielle, I don't live in
16 Montville. I live in Towaco.
17 Q And as a result of that conversation
18 she sent DW-7?
19 A I don't remember when she sent me that.
20 Maybe you spoke to her and she sent that to me,
21 but she knows I was looking in Montville in
22 Montville Township.
23 Q Did you have a conversation with
24 Gabrielle in which you questioned the value of
25 your house?

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1 A She was shocked.
2 Q That's not my question. My question
3 is: Did you have a conversation with Gabrielle --
4 A I don't remember.
5 Q Let me just finish the question. Did
6 you have a conversation with Gabrielle in which
7 you expressed some concern to her about the value
8 of the house you had bought?
9 MS. MINERVINE: Is this after she found
10 out she lived in Towaco?
11 MR. BALDWIN: This is ever.
12 MS. MINERVINE: Well, no, I mean --
13 A No, after I found out Towaco.
14 Q Did you have a conversation with
15 Gabrielle about -- a concern about the value of
16 the house you had bought?
17 A I think I spoke to her about it.
18 Q What did you say?
19 A I can't believe I don't live in
20 Montville. I have a Towaco address.
21 Q What did she say?
22 A What did she say? She was shocked.
23 She said, you know, calm down. Don't be sad. And
24 I think she was also surprised. You could speak
25 to her yourself.

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1 Q Did you ever ask her for information on
2 the value of houses in Towaco versus the value of
3 houses in Montville?

4 MS. MINERVINI: At what point is this?

5 Q Ever?

6 A. After I closed on the house.

7 Q Okay.

8 A. I was concerned. I believe I might
9 have, yes.

10 Q Well, you did or you didn't or you
11 don't remember?

12 A. Either her or my other Realtors. I
13 most likely -- I was frustrated I believe, yes.

14 Q About what?

15 A. That I don't have a Montville address.

16 How many times do you need to say that?

17 Q I'm trying to find out why --

18 MS. MINERVINI: She has so testified --

19 MR. BALDWIN: Look --

20 MS. MINERVINI: -- about what this is
21 about and you know she has. Off the record.

22 A. I don't remember.

23 (An off-the-record discussion takes
24 place.)

25 MR. BALDWIN: We're back on the record

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1 now. Good.

2 Q Now, also in the documents -- do you
3 have the contract?

4 MR. BERNSTEIN: It's been marked as an
5 exhibit.

6 MR. BALDWIN: Yes, don't put it away.

7 MS. MINERVINI: Counsel, I'll make the
8 representation that I testified that there was
9 a -- I made the representation that the map that
10 was in the promotional literature was not the same
11 as this map presented by counsel. I have not had
12 an opportunity to look for my originals, and I
13 still believe that there's a different map than
14 what's been processed here, but as part of what's
15 been produced to you is the same map.

16 MR. BERNSTEIN: Correct.

17 MS. MINERVINI: I'm saying there's
18 another map.

19 MR. BERNSTEIN: There may be another
20 map but DW-3 is part of what you produced to us
21 today.

22 MS. MINERVINI: That's right. That's
23 right.

24 MR. BALDWIN: Can I ask a question of
25 the witness?

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1 MS. MINERVINI: Sure.

2 Q Mrs. Vagias, I'm showing you what was
3 marked earlier as DW-3. You may remember seeing
4 that earlier this morning?

5 A. Yes.

6 Q Do you remember seeing this earlier
7 this morning?

8 A. Yes.

9 Q Okay. Your attorney handed me some
10 documents and I've opened up a page and it appears
11 to be a photocopy of DW-3. Is that what it
12 appears to be to you?

13 A. Yes.

14 Q So my question then is with regard to
15 DW-3 have you seen that before today?

16 A. Yes.

17 Q How did you first come to see DW-3?

18 A When Ed gave me the pamphlet about the
19 new construction.

20 MR. BALDWIN: Excuse me. Counsel,
21 would you please ask your other client to --

22 MS. MINERVINI: Off the record for a
23 second if you don't mind.

24 (An off-the-record discussion takes
25 place.)

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1 MS. MINERVINI: Back on the record.

2 Q And I'll repeat for you, Mrs. Vagias,
3 if you don't know the answer to a question because
4 you don't remember or you never knew it, just say
5 you don't know and I'll go on to another subject.
6 All right?

7 A. Okay.

8 Q I'm not trying to trick you. I'm
9 trying to find out what happened.

10 Now, my question was, before the
11 interruption, can you tell me how you first came
12 to see DW-3?

13 MS. MINERVINI: Objection. Asked and
14 answered. She testified --

15 MR. BALDWIN: But the answer was
16 interrupted.

17 Q Are you satisfied that your answer
18 before was completed on this?

19 A. Yes.

20 Q Okay. Have you ever been shown any
21 other maps different from DW-3 by any of the
22 defendants in this case?

23 A. No.

24 Q All right. Now I've had this document
25 marked DW-6 and I again got it out of the

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1 documents your attorney provided us, and I'd like
 2 to ask you some questions about that.
 3 MR. BERNSTEIN: Can I see it for a
 4 second? Oh, right, right, right. Okay.
 5 Q. Have you had a chance to look at DW-6?
 6 A. Yes.
 7 Q. Is that a copy of the contract that you
 8 and your husband signed to buy the property from
 9 Woodmont?
 10 A. Yes.
 11 Q. Can I have it back, please? I've
 12 flipped through to what appears to be page number
 13 17 in DW-6 and I'd like to ask you with regard to
 14 the signatures where it says buyers, is one of
 15 those signatures yours?
 16 A. Yes.
 17 Q. Which one?
 18 A. The top one.
 19 Q. Do you recognize the bottom signature?
 20 A. Yes.
 21 Q. That would be your husband?
 22 A. Yes.
 23 Q. On the seller's side it appears to be
 24 signed by Donald Widmont. Do you recall seeing
 25 him sign the contract?

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1 A. No.
 2 MR. BALDWIN: Do you have a paper clip
 3 around?
 4 MS. MINERVINI: Here you go.
 5 Q. Now, you realize that you have started
 6 a lawsuit against Weichert, Realtors. Correct?
 7 A. Yes.
 8 Q. And is it correct that the only
 9 Weichert agent that you dealt with concerning this
 10 property is Gabrielle?
 11 A. Yes.
 12 Q. Can you tell me in your own words what
 13 it is that Gabrielle did or didn't do that has
 14 lead you to file a lawsuit against her?
 15 A. That she didn't inform me that it's the
 16 section of Towaco in Montville Township. After
 17 the fact that I bought the house she informed me.
 18 She never told me prior. And I really think she
 19 was -- she was misled, too, because of her
 20 expressions. She was shocked that it's Towaco,
 21 New Jersey, not Montville, New Jersey. Even my
 22 contract doesn't say Towaco, so it --
 23 MS. MINERVINI: That's okay.
 24 MR. BALDWIN: That was intended to be
 25 provided?

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1 MS. MINERVINI: Yes.
 2 MR. BALDWIN: Sorry.
 3 MS. MINERVINI: I think it's a good
 4 document for the defendants to have in their
 5 possession.
 6 MR. BALDWIN: Almost done. You're in
 7 the home stretch.
 8 THE WITNESS: Thank God, I went first.
 9 Q. Did you ever find out how many K to six
 10 schools there are in Montville Township?
 11 MS. MINERVINI: At what point?
 12 Q. Ever? I said ever.
 13 A. Yes.
 14 Q. How many are there?
 15 A. I believe six.
 16 Q. So in addition to the one that you
 17 thought your son was going to go to and the one he
 18 actually goes to, there are four other ones.
 19 Right?
 20 A. Three or four other ones.
 21 Q. Have you ever found out from any source
 22 ever what areas of the township send their
 23 children to each of those five or six schools?
 24 MS. MINERVINI: Could you read back
 25 that question, please?

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1 MR. BALDWIN: I thought that was a
 2 pretty good question.
 3 MS. MINERVINI: I got lost somewhere.
 4 (Whereupon, the reporter reads as
 5 requested.)
 6 A. What do you mean by that?
 7 Q. Good question. Well, your child goes
 8 to one particular school?
 9 A. Yes.
 10 Q. And the determination that your child
 11 would go to that school was made by somebody on
 12 the school board. Right?
 13 A. Yes.
 14 Q. And would you agree that the school
 15 board has, in effect, cut up Montville Township
 16 and decided that certain children living in
 17 certain areas would go to certain schools; other
 18 children living in other areas would go to other
 19 schools?
 20 A. Yes.
 21 Q. You understand that's how it works. So
 22 my question is have you ever found out from any
 23 source how geographically within Montville
 24 Township it's determined that children will go to
 25 one of those schools or another?

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1 MS. MINERVINE: I'm going to object to
2 the question because I don't understand the
3 question.
4 Q Do you understand the question?
5 A Not really.
6 Q Okay. Well, you're the only one that
7 matters. I'll try again.
8 Presumably if you lived in a different
9 area of Montville, whether it was Pine Brook,
10 Montville or Towaco, but a different area than the
11 one you live in now, your child would go to a
12 different school. Right?
13 A. Yes. Pine Brook goes to Pine Brook
14 schools; Montville children go to Montville
15 schools; Towaco children go though Towaco schools.
16 Q. But there are five K to six schools.
17 Correct?
18 A. Five or six.
19 Q. Okay. There are only three sections in
20 Montville?
21 A. Three sections.
22 Q. Well, that suggests that children from
23 -- well, that suggests -- forget it, forget it.
24 MS. MINERVINE: Yes.
25 MR. BALDWIN: I'm not even going to go

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1 there. I'm withdrawing the question. I gave it
2 my best shot, I can't make it clear, so I'm going
3 to withdraw it.
4 I got a question for you. We ready?
5 MR. BERNSTEIN: This is an easy one.
6 Q. Do you know if any children living in
7 the Towaco section of Montville Township go to the
8 William Mason School?
9 MS. MINERVINE: Objection to form.
10 MR. BALDWIN: What's wrong with the
11 form?
12 MS. MINERVINE: Do you know any
13 children?
14 MR. BALDWIN: Yes. What's wrong with
15 the form?
16 MS. MINERVINE: Is that to say of all
17 the children that live in Towaco is there one that
18 goes to Montville and does she know it?
19 MR. BALDWIN: No.
20 Q. The question is --
21 A. I don't know. I asked in my
22 neighborhood. All the children go to Cedar Hill.
23 MS. MINERVINE: And from what I
24 understand, Mr. Tomback didn't say she was going
25 to go to any other school but William Mason School

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1 so.
2 Q. Earlier in your deposition when you
3 were being questioned this morning you said that
4 you -- I think you said that you have written down
5 somewhere the addresses of the homes in Montville
6 that you tried to -- that you were interested in
7 buying?
8 A. Yes.
9 Q. Is that correct? Do you have -- did
10 you give that written list to your attorney?
11 A. No, because that was past between five
12 to six years that --
13 MR. BERNSTEIN: On the record, I think
14 I made a request that you provide it to your
15 attorney?
16 THE WITNESS: Yes.
17 MR. BERNSTEIN: And she was going to
18 provide it.
19 MS. MINERVINE: I was certainly going
20 to take it under advisement.
21 MR. BALDWIN: I guess I'm done.
22 THE WITNESS: Thank God.
23 MS. MINERVINE: Okay.
24 MR. BALDWIN: I can ask you some more
25 questions if you want.

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1 MS. MINERVINE: No, you've got Ted this
2 afternoon, guys. This is not your only shot at
3 the pop or pop at the shot, whatever.
4 MR. BERNSTEIN: When are we coming back
5 here?
6 MS. MINERVINE: We're coming back in an
7 hour.
8 MR. BERNSTEIN: How late do you think
9 we're going to go? How late can you stay? I
10 don't mind.
11 MS. MINERVINE: How long do you think
12 you're going to need?
13 MR. BERNSTEIN: Maybe not that long.
14 MR. BALDWIN: The advantage of going
15 first is you get to leave, but the second dep is
16 always shorter than the first dep because now we
17 know what you're going to say.
18 MS. MINERVINE: The second dep also
19 ends up being a little more pointed than the first
20 dep. But if we start -- I mean, it's twenty to
21 two now.
22 MR. BALDWIN: Be back by quarter after.
23 MS. MINERVINE: I don't know that I can
24 get to get lunch, get back and eat and look
25 through the documents and all.

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1 MR. BALDWIN: You can have an hour.
 2 MS. MINERVINI: She needs an hour. You
 3 don't need to take this.
 4 (An off-the-record discussion takes
 5 place.)
 6 MR. BALDWIN: I would like to say one
 7 thing on the record before we break for lunch and
 8 that is that I'm very appreciative of the problems
 9 that Counsel has getting documents together
 10 because I've been there myself, but I'm reserving
 11 my right based on what I see in the ads to, on a
 12 different convenient date, redepose this witness
 13 on what those documents reveal if there's anything
 14 I see needs to be covered. We can argue about it
 15 some other day.
 16 MR. BERNSTEIN: I make the same
 17 request.
 18 MR. BALDWIN: I just want don't want
 19 this to be construed as a waiver.
 20 MR. BERNSTEIN: I make the same
 21 request.
 22 MS. MINERVINI: To the extent that the
 23 ad -- there are questions you have about the ad
 24 towards Miss Vagias --
 25 MR. BALDWIN: Yes.

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1 MS. MINERVINI: -- I'm not bringing
 2 her back.
 3 MR. BALDWIN: Well, then, she should
 4 stay and show us the ads. I'm just saying I don't
 5 want this to be construed as a waiver later on if
 6 an argument arises.
 7 MR. BERNSTEIN: Well, for the record,
 8 let me just say my notice of deposition was served
 9 approximately two months ago calling for
 10 documents. The first I got was October --
 11 MS. MINERVINI: Mr. Bernstein, the ads
 12 were given to me this morning.
 13 MR. BALDWIN: That's okay.
 14 MS. MINERVINI: I'm not bringing my
 15 client back so you can ask her about an ad that
 16 says it's a great Montville address. I'm not
 17 doing it. I'm not doing it. You'll have Mr.
 18 Vagias and you'll have the ability to ask him. If
 19 you demonstrate -- think about what you're saying.
 20 If you demonstrate when this ad says a great
 21 Montville address, and you ask Mr. Vagias this
 22 afternoon: Did you see this ad before you went to
 23 look at the property? Yes, I did. Was this the
 24 ad that made you go to the property? Yes, I did.
 25 Let's say, hypothetically, Mrs. Vagias didn't see

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1 the ad? What are you saying here? You don't have
 2 a liability?
 3 MR. BALDWIN: You're good but it's
 4 unnecessary. All I said was I don't want this to
 5 be construed as a waiver. If I see something I
 6 think needs to be revisited, I may revisit it.
 7 That's all I said. I don't want to resolve it now
 8 or argue about it.
 9 MS. MINERVINI: Okay.
 10 MR. BERNSTEIN: Can I leave my file
 11 here?
 12 MS. MINERVINI: Yes. See you in an
 13 hour.
 14 MR. BERNSTEIN: See you in an hour,
 15 Fran.
 16 (Whereupon, a short recess is taken.)
 17 (The deposition is adjourned at
 18 1:46 p.m.)
 19
 20
 21
 22
 23
 24
 25

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1 CERTIFICATE
 2
 3 I, VIRGINIA GRAVES, a Notary Public and
 4 Certified Shorthand Reporter of the State of New
 5 Jersey, do hereby certify that prior to the
 6 commencement of the examination, FRANCES VAGIAS
 7 was duly sworn by me to testify the truth, the
 8 whole truth and nothing but the truth.
 9 I DO FURTHER CERTIFY that the foregoing
 10 is a true and accurate transcript of the testimony
 11 as taken stenographically by and before me at the
 12 time, place and on the date hereinbefore set
 13 forth.
 14 I DO FURTHER CERTIFY that I am neither
 15 a relative nor employee nor attorney nor counsel
 16 of any of the parties to this action and that
 17 I am neither a relative nor employee of such
 18 attorney or counsel and that I am not financially
 19 interested in the action.
 20
 21 DATED: December 9, 2002
 22 VIRGINIA GRAVES, CBE
 23 Notary Public of the State of New Jersey
 24 License No. X202026
 25 My commission expires July 12, 2004

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EXHIBIT D

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HUD UNIFORM SETTLEMENT STATEMENT

OMB Approval No. 2530-0047

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			SETTLEMENT STATEMENT	
B. TYPE OF LOAN			6. File Number	7. Loan Number
1. Conv Units	3. FHA 4. VA	2. Multi 5. X Conv Int	8. Mortgage Insurance Case Number	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.				
NOTE: TIN - Taxpayer Identification Number				
D. NAME AND ADDRESS OF BORROWER:		E. NAME, ADDRESS AND TIN OF SELLER:		F. NAME AND ADDRESS OF LENDER:
THEODORE VAGIAS FRANCES VAGIAS 23 PHYLIS LANE FAIRFIELD, NJ 07004		WOODMONT COURT@MONTVILLE, LLC 119 CHERRY HILL ROAD PARSIPPANY, NJ 07054		HUDSON CITY SAVINGS BANK WEST 80 CENTURY ROAD PARAMUS, NJ 07652
G. PROPERTY LOCATION:		H. SETTLEMENT AGENT NAME, ADDRESS AND TIN		I. SETTLEMENT DATE
23 BONHIEW LANE MONTVILLE, NEW JERSEY		MARIA TSITSIRAGOS, ESQ. 118 Westfield Avenue, Clark, NJ PLACE OF SETTLEMENT		07066-2408 22-3399332
BL. 21.01, LOT 42.12		118 WESTFIELD AVENUE CLARK, NEW JERSEY 07066		11/08/2001

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price	679,990.00	401. Contract sales price	679,990.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (Line 1400)	10,533.62	403. Options	51,652.00
104. Options	51,652.00	404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes 01/01/2001-11/08/2001	409.76	406. City/town taxes 01/01/2001-11/08/2001	409.76
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109. Survey	850.00	409. Survey	850.00
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	743,435.38	420. GROSS AMOUNT DUE TO SELLER	732,901.76

200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money	166,293.80	501. Earnest deposit	166,293.80
202. Principal amount of new loan(s)	550,000.00	502. Settlement charges to seller (Line 1400)	39,817.10
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Refundable Commitment Fee	5,500.00	504. Payoff of first mortgage loan Valley Natl.	200,000.00
205.		505. Payoff of second mortgage loan Handelbaum	93,164.20
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes		510. City/town taxes	
211. County taxes		511. County taxes	
212. Assessments		512. Assessments	
213.		513. Water/Sewer charges thru	
214.		514. 11/8/01	282.36
215.		515.	
216. Taxes Current Year 2010.40		516.	
217. Pay Dism 7.722		517.	
218. Seller Paid 2010.40		518.	
219. Seller Owe (days) 312		519.	
220. TOTAL PAID BY/OR BORROWER	721,793.80	520. TOTAL REDUCTION AMOUNT DUE SELLER	499,557.46

300. CASH AT SETTLEMENT FROM/TOR BORROWER		600. CASH AT SETTLEMENT FROM/TO SELLER	
301. Gross amount due from borrower (Line 120)	743,435.38	601. Gross amount due to seller (Line 420)	732,901.76
302. Less amount paid by/bor borrower (Line 220)	721,793.80	602. Less reduction in amount due seller (Line 520)	499,557.46
303. CASH FROM BORROWER	21,641.58	603. CASH TO SELLER	233,344.30

SELLER'S STATEMENT

The information contained in Blocks E, G, H, and I and on line 401 (or, if line 401 is asterisked, line 403 and 404) is important tax information and is being furnished to the Internal Revenue Service (see Seller Certification). If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported. You are required to provide the Settlement Agent with your correct taxpayer identification number. If you do not provide the Settlement Agent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law. Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

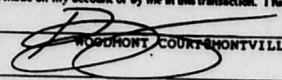
DEFENDANT'S
EXHIBIT
DW-1 ID
2-3-04 JZ

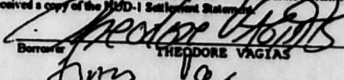
91a

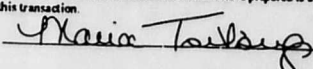
L. SETTLEMENT CHARGES

700 TOTAL SALES-BROKER'S COMMISSION based on price \$ 679,990.00 @ 1% (Portion of Commission (line 700) as follows)		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
701	\$		
702	\$		
703	Commission paid at Settlement Associated Sales		
704	Weichert Realtors		
800	ITEMS PAYABLE IN CONNECTION WITH LOAN		
801	Loan Origination Fee \$		
802	Loan Discount \$		
803	Appraisal Fee to		
804	Credit report to		
805	Lender's Inspection Fee		
806	Mortgage Insurance Application Fee to		
807	Assessment Fee		
808	Loan Application Fee (\$750.00 POC)		
809	Refundable Commitment Fee of 1% (\$5,500.00 POC)		
810			
811			
900	ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE		
901	Interest from 11/08/2001-11/30/2001 @ \$101.710 per day	2,339.38	
902	Mortgage Insurance Premium for		
903	Hazard Insurance Premium for		
904			
905			
1000	RESERVE DEPOSITED WITH LENDER		
1001	Hazard insurance		
1002	Mortgage insurance		
1003	City Property Taxes 3 month(s) @ \$ per month	3,474.24	
1004	County Property Taxes		
1005	Annual assessments		
1006			
1007			
1008	Aggregate Accounting Adjustment		
1100	TITLE CHARGES		
1101	Settlement or closing fee to		
1102	Abstract or title search to		
1103	Title Examination to		
1104	Title insurance binder to		
1105	Document preparation to		
1106	Notary fee to		
1107	Attorney's fees to MARIA TSITSIRAGOS, ESQ. (Includes line numbers: 1101, 1105, 1106)	1,250.00	
1108	Title Insurance to ABI TITLE INSURANCE AGENCY, LLC (Includes line numbers: 1102, 1103, 1104)	2,950.00	
1109	Lender's coverage \$ 550,000.00		
1110	Owner's coverage \$ \$679,990.00		
1111			
1112			
1113			
1200	GOVERNMENT RECORDING AND TRANSFER CHARGES		
1201	Recording fee: Deed \$ 60.00 Mortgage \$ 60.00 Release \$ 100.00	120.00	100.00
1202	City/county tax/stamps: Deed \$ Mortgage \$		
1203	State tax/stamps: Deed \$ Mortgage \$		
1204	Realty Transfer Fee		3,135.00
1205			
1300	ADDITIONAL SETTLEMENT CHARGES		
1301	Escrow fee		
1302	Post Inspection to		
1303	Notices of Settlement		
1304	Federal Express Fees	50.00	
1305	Bank attorney fee: Dieffenbach, Witt & Birchby	150.00	
1306		200.00	
1307			
1308			
1400	TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K)	10,533.62	39,817.10

CERTIFICATION: I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I received a copy of the HUD-1 Settlement Statement.

Seller

 RODMONT COURT, MONTVILLE

Borrower

 THEODORE VAGIAS
 Frances Vagias
 Frances Vagias

Seller
 The HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds disbursed or to be disbursed by the undersigned as part of the settlement of this transaction.


- 11/08/2001

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EXHIBIT E

93a

INFORMATION STATEMENT

Buyers' Attorney: Maria Tzitsigagos
WEST FIELD OR CLARK

Telephone _____
Facsimile _____

Seller's Attorney:
STELLA V. BONDAR, ESQ.
Law Offices of Bruce D. Nimensky
119 Cherry Hill Road, Suite 110
Parsippany, New Jersey 07054
Telephone (973) 257-3100
Facsimile (973) 257-3105

Broker(s):
ASSOCIATED SALES INC.
Ed Tomback
119 Cherry Hill Road, Suite 110
Parsippany, New Jersey 07054
Telephone (973) 316-9400

GABRIELE IRLINGER-DINGLE
WACKET VENTURES
101 CLOMFIELD AVE.
WEST CAROLINA N.S.
07006
*7500 Commission

Buyer(s): T. VAGAS 157-72-1560
F. VAGAS

Home Telephone ~~973-882-8885~~
Office Telephone 201-709-0875

Buyer(s) Social Security Number(s): 157-72-1560
136-84-5824

Seller:
WOODMONT COURT AT MONTVILLE, L.L.C.
119 Cherry Hill Road, Suite 110
Parsippany, New Jersey 07054
Telephone (973) 316-9400

EXHIBIT F

95a

DEFENDANT'S
EXHIBIT
DWS
VA 11/19/62

JUL 3 11 23 AM '62

MICHAEL J. ANNEBOLD
MORRIS COUNTY

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 457
LIVINGSTON, NEW JERSEY 07033
Telephone (973) 944-6677
Attorneys for Plaintiffs,
Our File No. 227.14899

THEODORE and FRANCES VAGIAS,
Plaintiffs,

vs.

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS)

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. *MNSL-2245-6*

Civil Action

COMPLAINT

COPY

Plaintiffs, **THEODORE AND FRANCES VAGIAS**, residing at 2
Bonnieview Lane, Montville, New Jersey complaining of the
Defendants **WOODMONT PROPERTIES, L.L.C., WOODMONT COURT AT
MONTVILLE, L.L.C. and WEICHERT CO.** (formerly WEICHERT REALTORS;
says:

FIRST COUNT

1. At all times relevant to this Complaint, Defendant,
Woodmont Properties L.L.C. was organized and existing under the
laws of the State of New Jersey, with its registered office located

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DEFENDANT'S
EXHIBIT
DW-3

at 119 Cherry Hill Road, in the Township of Parsippany, County of Morris, State of New Jersey.

2. At all times relevant to this Complaint Defendant Woodmont Properties was engaged in the residential land development and home building industry. Woodmont Properties developed a community of residential homes. The name of the development was Woodmont Court at Montville, located at Old Lane Extension in Montville Township.

3. Donald Witmond is the principal of Woodmont Properties and is well versed in land evaluation, analysis, marketing and sales since he founded the company in 1963.

4. Woodmont Properties is a real estate organization headquartered in Parsippany, New Jersey, specializing in the acquisition, development, construction and management of new and rehabilitative commercial properties as well as new residential communities.

5. The advertisement for Woodmont Court at Montville describes the development as "located in the prestigious Morris County Community of Montville, New Jersey."

6. Part of Woodmont Court at Montville's promotional package of literature includes a copy of an article that appeared in the Star Ledger explaining that Woodmont Properties is "offerin Woodmont Court in Montville" because "Montville, in Morris County is quite popular with buyers due to its placement.."

7. Another promotional advertisement describes Woodmont Court at Montville as "Woodmont Court is value packed, quality crafted and customized new homes built by one of New Jersey's mos

experienced and successful home builders but that's only part of the story. The rest of the story is ... Montville! These homes are set in one of the northern New Jersey's most prestigious, best located communities."

8. A star on a map included in the Woodmont Court at Montville, L.L.C.'s promotional materials indicates where the Woodmont Court at Montville community is located. The name "Montville" is one inch lower than the star indicating where the community is located. The name Towaco is located approximately 4 to 5 inches higher than the star and to the very far right hand corner of the map.

9. Woodmont Properties internet site reiterates the promotional literature regarding the development's location and describes the development as located in "the prestigious Morris County Community of Montville".

10. The plaintiff in purchasing their home met Ed Tomback, Director of Sales for Woodmont Properties at Woodmont Court at Montville throughout the summer and fall of 1999.

11. The plaintiff also met and viewed various homes in the Woodmont Court at Montville development with Danielle Intrabartola, a representative of Woodmont Properties at Woodmont Court at Montville. At no point during their viewing of any of the homes in the development, nor during any telephone conversations, nor during any discussions, nor during exchanges of correspondence, did any representative of Woodmont Properties advise the plaintiffs that the development was located in the Section of Towaco rather than in the Town of Montville.

12. Based upon the promotional literature, and representations by Woodmont Properties representatives the plaintiffs believed that the property was located in the Town of Montville.

13. On January 11, 2000 the Plaintiffs entered into a Contract of Sale and Land and for a Building of a house with Woodmont Court at Montville, L.L.C. for the purchase of 23 Bonnieview Lane, Block 2101, Lot 42.12 in Montville Township, Morris County. Plaintiffs entered into said Contract of Sale for the purchase of their home based upon the "understanding" that the home was located in the Town of Montville.

14. Plaintiffs closed on said property on November 8, 2001. By the first week in December, 2001 Plaintiffs were not receiving mail at their home. During the third week of December Plaintiff Theodore Vagias was advised by a family member that a Christmas card addressed to his home with an address of Montville, New Jersey was returned to the sender.

15. Plaintiff called his credit card companies and the telephone, gas and electric company to ascertain the status of his bills. Cablevision advised that the plaintiff's bill addressed to 23 Bonnieview Lane, Montville, New Jersey was returned. New Jersey Gas advised plaintiffs that service was started by the builder and the builder set up service to Montville with an address in Towaco. New Jersey Power & Light advised plaintiffs that Barbara from Woodmont Properties and/or Woodmont Court at Montville, L.L.C. set up service with a Towaco address.

16. On January 7, 2002 plaintiff Theodore Vagias went to the Montville post office and was advised by a postal employee that his home was located in Towaco. The postal employee advised plaintiff that this situation has occurred before.

17. Plaintiffs wrote a letter to Woodmont Properties dated March 7, 2002 requesting an adjustment in the price of their home based on the fact that their home was located in Towaco and not in the "prestigious Morris County Community of Montville."

18. By letter dated March 11, 2000, David Witmond of Woodmont Properties stated that "to his knowledge there is no town of Towaco. In the approvals and development of the properties, he dealt with the Township of Montville, paid taxes to the Township of Montville for the property and subdivision approvals were granted by the Township of Montville. The property is indeed located in the Township of Montville as stated on the Deed of Conveyance."

19. The sale of home and building of a home in this cause are within the scope of the Consumer Fraud Act, N.J.S.A. 56:A et seq.

20. In engaging in the above conduct, Defendant Woodmont Properties committed an unconscionable commercial practice, deception, fraud, falsity or misrepresentation in connection with the sale of the home.

21. In the sale of the home purchased by the plaintiffs defendants made several affirmative representations that the home was located in Montville rather than the Township of Montville or the section of Towaco. Defendant affirmatively misrepresented a material fact to this transaction at issue in that its various

promotional literature described the property as being located in the "prestigious community of Montville".

22. The location of the plaintiff's home in the Town of Montville was a material part of the decision to purchase the home.

23. As a result of Defendant, Woodmont Properties' unlawful conduct plaintiff has suffered an ascertainable loss of money and the value of their home is significantly less since the home is located in Towaco rather than in Montville.

WHEREFORE plaintiffs request judgment against Defendant Woodmont Properties for compensatory damages, treble damages, reasonable attorney's fees, filing fees and cost of suit; and any further relief which this Court may deem just and proper.

SECOND COUNT

1. Plaintiffs, repeat and reallege the allegations in the First Count as if set forth in length herein.

2. At all times relevant to this Complaint, Defendant, Woodmont Court at Montville, L.L.C. is a limited liability corporation organized and existing under the laws of the State of New Jersey with its registered office located at 119 Cherry Hill Road, in the Township of Parsippany County, Morris, State of New Jersey.

3. At all times relevant to this Complaint, Defendant Woodmont Court at Montville, L.L.C. was a residential land development company in the business of constructing and selling residential homes within the development. The name of the development was Woodmont Court at Montville, located at Old Lane Extension in Montville Township.

4. The advertisement for Woodmont Court at Montville describes the development as "located in the prestigious Morris County Community of Montville, New Jersey."

5. Part of the promotional package for the property include a copy of an article that appeared in the Star Ledger explaining that Woodmont Properties is "offering Woodmont Court in Montville because "Montville, in Morris County, is quite popular with buyers due to its placement." Another promotional advertisement prepared by Woodmont Properties related to the Woodmont Court at Montville describes "Woodmont Court is value packed, quality crafted and customized new homes built by one of New Jersey's most experienced and successful home builders but that's only part of the story. The rest of the story is ... Montville! These homes are set in one of the northern New Jersey's most prestigious, best located communities."

6. A map included in Woodmont Court at Montville's promotional materials indicates a star where the Woodmont Court at Montville Community is located. The name Montville is two inches lower than the star indicating where the community is located. The name Towaco is located approximately 4 to 5 inches higher than the star and to the very far right hand corner of the map.

7. The plaintiff in purchasing their home met Ed Tomback, Director of Sales for Woodmont Properties at Woodmont Court at Montville throughout the summer and fall of 1999.

8. The plaintiff also met and viewed various homes in the Woodmont Court at Montville Development with Danielle Intrabartolo, a representative of Woodmont Properties at Woodmont Court at

Montville. At no point during their viewing of any of the homes in the development, nor during any telephone conversations, nor during any discussions, nor during any exchanges of correspondence, did any representative of Woodmont Court at Montville, L.L.C. advise the plaintiffs that the development was located in the Section 2101 Towaco in the Township of Montville rather than in the Town of Montville.

9. Based upon the promotional literature, the representations by the Woodmont Court at Montville and the representations that the property was located in the Town of Montville, the plaintiffs decided to purchase a home in the development. The location of the home in the Town of Montville was a material part of the transaction.

10. On January 11, 2000 the plaintiffs entered into a Contract of Sale and Land and for a Building of a House with Woodmont Court at Montville, L.L.C. for the purchase of 2 Bonnieview Lane, Block 2101, Lot 42.12 in Montville Township Morris County.

11. Plaintiffs closed on said property on November 8, 2001. By the first week in December, 2001 Plaintiffs were not receiving mail at their home. During the third week of December Plaintiff Theodore Vagias was advised by a family member that a Christmas card addressed to his home with an address of Montville, New Jersey was returned to the sender.

12. Plaintiff called his credit card companies and the telephone, gas and electric company to ascertain the status of his bills. Cablevision advised that the plaintiff's bill addressed to

23 Bonnieview Lane, Montville, New Jersey was returned. New Jersey Gas advised plaintiffs that service was started by the builder and the builder set up service to Montville with an address in Towaco. New Jersey Power & Light advised plaintiffs that Barbara from Woodmont Properties and/or Woodmont Court at Montville, L.L.C. set up service with a Towaco address.

13. On January 7, 2002 plaintiff Theodore Vagias went to the Montville post office and was advised by a postal employee that his home was located in Towaco. The postal employee advised plaintiff that this situation has occurred before.

14. Plaintiffs wrote a letter to Woodmont Properties dated March 7, 2002 requesting an adjustment in the price of their home based on the fact that their home was located in Towaco and not in the "prestigious Morris County Community of Montville."

15. By letter dated March 11, 2000 to David Witmont of Woodmont Properties responded that "to his knowledge there is no town of Towaco. In the approvals and development of the properties, he dealt with the Township of Montville, paid taxes to the Township of Montville for the property and subdivision approvals were granted by the Township of Montville. The property is indeed located in the Township of Montville as stated on the Deed of Conveyance."

16. The sale of home and building of a home in this case are within the scope of the Consumer Fraud Act, N.J.S.A. 56:A et seq.

17. In engaging in the above conduct Defendant, Woodmont Court at Montville, L.L.C. committed an unconscionable commercial

practice, deception, fraud, falsity or misrepresentation in connection with the sale of the home.

18. In the sale of the home purchased by the plaintiffs defendant Woodmont Court at Montville, L.L.C. made several affirmative representations that the home was located in Montville rather than the Township of Montville or the section of Towaco. Defendant affirmatively misrepresented a material fact to this transaction at issue in that its various promotional literature described the property as being located in the "prestigious community of Montville".

19. As a result of defendant Woodmont Court at Montville, L.L.C.'s unlawful conduct, plaintiffs have suffered an ascertainable loss of money, as the value of their home is significantly less since the home is located in Towaco, rather than in Montville.

WHEREFORE plaintiffs request judgment against defendant Woodmont Court at Montville, L.L.C. for compensatory damages, treble damages, reasonable attorney's fees, filing fees and cost of suit; and any further relief which this Court may deem just and proper.

THIRD COUNT

1. Plaintiffs repeat and reallege the allegations pled in the First and Second Count as if set forth in length herein.

2. At all times relevant to this Complaint, Defendant, Weichert Co. (formerly Weichert Realtors) was a corporation organized and existing under the laws of the State of New Jersey.

Weichert

with its corporate headquarters located at 225 Littleton Road City of Morris Plains, County of Morris, State of New Jersey.

3. The plaintiffs in purchasing their home worked with Gabrielle Dingle, a realtor with defendant Weichert.

4. The plaintiffs met and viewed various homes in the Woodmont Court at Montville development with Gabrielle Dingle of Weichert Co. (formerly Weichert Realtors). Defendant Gabrielle Dingle, at no point during their viewings of any of the homes in the development, nor during any telephone conversations, nor during any discussions, nor during any exchanges of correspondence, did any representative of Weichert Co. (formerly Weichert Realtors) advise the plaintiffs that the development was located in the Section of Towaco rather than in the Town of Moptville.

5. On January 11, 2000 the plaintiffs entered into a contract of sale and land and for a building of a house with Woodmont Court at Montville, L.L.C. for the purchase of 23 Bonnieview Lane, Block 2101, Lot 42.12 in Montville Township, Morris County. The location of the home in the Town of Montville was a material part of the transaction.

6. The sale of home and building of a home in this cause are within the scope of the Consumer Fraud Act, N.J.S.A. 56:A et seq.

7. In engaging in the above conduct, Defendant Weichert Co. (formerly Weichert Realtors) committed an unconscionable commercial practice, deception, fraud, falsity or misrepresentation in connection with the sale of the home.

8. In the sale of the home purchased by the Plaintiffs Defendant Weichert Co. (formerly Weichert Realtors) made several

affirmative representations that the home was located in Montville rather than the Township of Montville or the section of Towaco. Defendant affirmatively misrepresented a material fact to the transaction at issue.

9. As a result of defendant's unlawful conduct plaintiff has suffered an ascertainable loss of money as the value of their home is significantly less since the home is located in the Section of Towaco rather than in the Town of Montville.

WHEREFORE, Plaintiffs request judgment against defendant Weichert Co. (formerly Weichert Realtors) for compensatory damages, treble damages, reasonable attorney's fees, filing fees and cost of suit; and any further relief which this Court may deem just and proper.

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs

By: 

BRIAN C. HARRIS

Dated: June 25, 2002

JURY DEMAND

Plaintiffs hereby requests a trial by jury as to all issues herein.

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs

By: 

BRIAN C. HARRIS

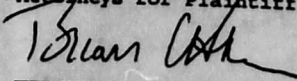
Dated: June 25, 2002

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-1, Brian C. Harris, Esq., is designated as trial counsel on behalf of Plaintiffs, Theodore and Frances Vagias

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs

By:



BRIAN C. HARRIS

Dated: June 25, 2002

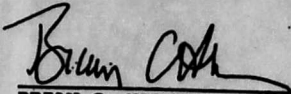
CERTIFICATION PURSUANT TO RULE 4:5-1

1. I certify that I am not aware of the matter in controversy being the subject of any other action pending in any Court or Arbitration Forum.

2. I certify that no such action or arbitration proceeding is presently contemplated.

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs

By:



BRIAN C. HARRIS

Dated: June 25, 2002

CERTIFICATION

It is hereby certified that a copy of the within Complaint is being served and filed within the time prescribed by Rule 4: and Rule 4:8-1.

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs

By: 

BRIAN C. HARRIS

Dated: June 25, 2002

EXHIBIT G

112a

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677

Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

THEODORE and FRANCES VAGIAS,

Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

vs.

Civil Action

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

PLAINTIFFS' ANSWERS TO
INTERROGATORIES PROPOUNDED BY
DEFENDANT, WEICHERT CO.
(formerly WEICHERT REALTORS)

Defendants.

TO: Martin Newmark, Esq.
Broderick, Newmark & Grather
20 South Street
Morristown, NJ 07962
ATTORNEYS FOR WEICHERT CO. (formerly WEICHERT REALTORS)

Plaintiffs, Theodore and Frances Vagias, hereby respond to
Interrogatories as follows:

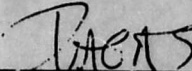
1. Any and all parties to this action, their servants, representatives, employees, Gabrielle Irlinger-Dingle of Weichert Realtors, Jamie Kiefe of Weichert Realtors, Danielle M. Intrabartola of Woodmont Properties, Ed Tomback, Director of Sales for Woodmont Properties, any and all parties or persons named in any parties' answers to interrogatories or during the deposition of any parties, witnesses, and/or experts, any person, party, representative or witness named in any document exchanged in discovery. The plaintiffs reserve the right to supplement their response to this interrogatory as discovery progresses.
- * 2. Upon the advice of counsel, this question cannot be answered as presently phrased. This interrogatory demand is overly broad and unduly burdensome. However, without waiving objection, plaintiffs intend to rely upon the informational pamphlet provided to them during the purchase of the home as well as the map contained in said pamphlet, and any and all documents provided to the plaintiffs by either Weichert Realtors or Woodmont Properties. This answer may be supplemented as discovery progresses.
3. Upon the advice of counsel, this question cannot be answered as presently phrased. However, without waiving objection, no.
4. Upon the advice of counsel, this question cannot be answered as presently phrased. However, without waiving objection, yes. On March 7, 2002, plaintiff Theodore Vagias wrote a letter to the attention of Donald Widmont. Follow up letters were sent on March 14, 2002 and March 25, 2002. See copies attached hereto.
- oK 5. Plaintiffs had conversations with Gabrielle Dingler of Weichert Realtors regarding the property. Plaintiffs do not have a specific recollection of each of these conversations, nor do they recall the specific dates and place. During none of these conversations did the Weichert realtor disclose that the location of the home was in Towaco, rather than Montville. Also, see deposition testimony of plaintiffs regarding conversations with Weichert Realtors.
- 6. Defendant, Weichert, made representations that the home was located in Montville, rather than in the Township of Montville or the section of Towaco.
7. Defendant, Weichert, failed to advise plaintiffs that the home was located in the section of Towaco in the Township of Montville, rather than being located in Montville.
8. See answers to interrogatory #6 and #7.
9. Upon the advice of counsel, this question cannot be answered as presently phrased. However, without waiving objection, the

home, with an address in Towaco is worth less than the comparable home located in Montville. In addition, plaintiffs' child goes to the elementary school located in Towaco rather than in Montville. This answer may be supplemented.

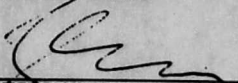
10. Upon the advice of counsel, this question cannot be answered as presently phrased. However, without waiving objection, see photograph, advertisements, map, letters and other documents identified at the depositions of plaintiffs. This answer may be supplemented as discovery progresses.
11. To be supplied pursuant to the Rules of Court.
12. Yes. Maria Tsitsiragos, Marcus Plaza, 118 Westfield Avenue, Clark, NJ 07066.
13. Upon the advice of counsel, this question cannot be answered as presently phrased. However, without waiving objection, defendant Weichert made representations that the home was located in Montville rather than the Township of Montville or the section of Towaco. Defendant, Weichert, did not provide information that the house was located in Towaco.

CERTIFICATION

I certify that the foregoing statements made by me are true.
I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.



THEODORE VAGIAS



FRANCES VAGIAS

Dated: 6/22/03

BRODERICK, NEWMARK & GRATHER

A Professional Corporation

20 South Street

Morristown, NJ 07960

973-538-0084

Attorneys for Defendant, Weichert Co.

THEODORE AND FRANCES VAGIAS,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION -MORRIS COUNTY
	:	:
Plaintiffs,	:	DOCKET NO. MRS-L-2245-02
	:	:
vs.	:	Civil Action
	:	:
WOODMONT PROPERTIES, LLC,	:	INITIAL SET OF INTERROGATORIES
WOODMONT COURT AT MONTVILLE, LLC :	:	:
and WEICHERT CO. (Formerly	:	:
WEICHERT, REALTORS),	:	:
	:	:
Defendants.	:	:

TO: Brian C. Harris, Esq.
Braff, Harris & Sukonek
570 W. Mt. Pleasant Avenue
Livingston, NJ 07039
Attorney for Plaintiffs

DEMAND is hereby made of Plaintiffs for certified answers to the annexed Interrogatories within the time prescribed by the Rules of Court.

BRODERICK, NEWMARK & GRATHER
Attorneys for Defendant,
Weichert Co.

Dated: August 20, 2002

BY: 
MARTIN NEWMARK

117a

1. Set forth the names and addresses of all persons known to the Plaintiffs to possess knowledge or facts relevant to the within suit.

2. Describe, and if available to Plaintiffs, annex hereto any and all documents or writings of any kind which the Plaintiffs may rely on in support of their claims against Weichert, Realtors.

3. Have you at any time communicated with anyone via e-mail regarding the subject matter of this lawsuit? If the answer is yes, state the following: (a) the names and addresses of all participants to the e-mail exchange; (b) the date or dates of the e-mail exchange; (c) the substance of what was communicated; (d) if hard copies exist, attach copies to your answers.

4. Have you at any time communicated in writing with anyone regarding the subject matter of this lawsuit? If the answer is yes, state the following: (a) the names and addresses of all recipients of such writings; (b) the date or dates of the writings; (c) the substance of what was communicated; (d) if copies exist, attach copies to your answers.

5. Set forth the substance of all conversations between Plaintiff and the agents, servants, or representatives of Weichert, Realtor indicating (a) the names of the parties to each such conversation; (b) when such conversations took place; (c) where such conversation took place; (d) who witnessed such conversation; and (e) what was said by each party to the conversation (in substance).
6. Describe in detail each and every act performed by Weichert, Realtors or its servants, agents or representatives which Plaintiffs claims should not have been performed and set forth how such act caused Plaintiffs to suffer any loss.
7. Describe in detail each and every act Plaintiffs claim Weichert, Realtors or its servants, agents or representatives failed to perform which Plaintiffs claim should have been performed and set forth how the failure to perform such act caused the Plaintiffs to suffer any loss.
8. Describe in detail the conduct of Weichert, Realtors or its servants, agents or representatives which Plaintiffs claim to have been wrongful.

9. Set forth in detail all losses Plaintiffs claim to have sustained in consequence of the alleged wrongful acts of Weichert, Realtors or its servants, agents or representatives.
10. Are there any photographs, documents, videotapes, or tangible evidence which in any way supports any of Plaintiffs' claims? If the answer is yes, please describe the photographs, documents, videotapes, or tangible evidence and provide copies with your answers.
11. Set forth the name, address and areas of expertise of each and every expert who may testify for you at the time of trial. As to each such expert, state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and provide a summary of the grounds for each opinion. Attach copies of all reports prepared by such experts to your answers.
12. Were Plaintiffs represented by an attorney or attorneys with regard to the contract that is the subject matter of this lawsuit? If so, state: (a) the name(s) and address(es) of such attorney(s); (b) the date such representation commenced; and (c) the date such representation terminated.
13. Do you contend that Weichert, Realtors or its servants, agents or representatives had information concerning the subject premises

which should have been disclosed to other parties to this lawsuit or to third parties not involved in this suit? If so, state:

- a) The name of the servant, agent or representative of Weichert, Realtors who had such knowledge;
- b) The substance of the knowledge possessed;
- c) The name of the party to whom the knowledge should have been disclosed;
- d) The complete factual basis for your contention that the individual named in response to Part (a) had the knowledge;
- e) The name and address of each individual who may be called as a witness at trial to prove any of the above facts, and;
- f) Attach copies of all writings which you may offer into evidence in support of the above facts.

Thursday, March 07, 2002

Woodmont @ Montville, LLC
Suite 110
119 Cherry Hill Road
Parsippany, NJ 07051

Attn: Donald Widmont

Dear Donald,

As you are well aware, we closed on our home on November 8th 2001 and received a deed from your company of Woodmont Court @ Montville, LLC. The deed, which has been recorded, states that our home at 23 Bonnieveiw Lane (Lot 42.12 Block 21.01) is located in the town of Montville, in Montville Township. The belief that our home was located in the town of Montville was further supported by the various brochures, internal documentation and marketing literature furnished by Woodmont Properties / GVA Williams that we collected and were provided by your firm. One can only imagine the tremendous confusion and disbelief that we have experienced upon discovering that our home, with Lot 42.12, Blk 21.01, with the development name of Woodmont @ Montville, is actually located in the town of Towaco in Montville Township. Certainly one has to question why the name of the development is not Woodmont @ Towaco.

It is because we have been lead to believe through your company's literature, the name of the development, and the executed deed, that we purchased a home from you in the town of Montville, that we now request to meet with you in order to discuss this matter in detail.

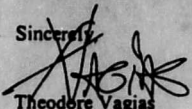
Woodmont Properties proclaims to have 37 years of experience in residential land development and home building, and we further understand that Woodmont Properties / GVA Williams has over that time purchased substantial tracks of land within Montville Township. It certainly follows that Woodmont Properties Inc. knows, or had reason to know, at the time that it sold us our home that we purchased a home in the town of Towaco not Montville. Moreover, Woodmont Properties Inc. certainly expects, or has reason to expect, that new home buyers such as ourselves would rely upon Donald Widmont and Woodmont Properties Inc.'s representations as to the location of the home and that the price of such home would be reflected with the home's location. It was only after trying to establish telephone and cable services that we were informed that the home we purchased from your company is located in the town of Towaco and not Montville. Also, through discussions with the Montville township offices, the Morris County Recording Office, Montville post office, and Towaco post office, we have come to understand that your company knew, or had reason to know, that Woodmont @ Montville is a development in the town of Towaco and not Montville.

Accordingly, we have requested a meeting with you to discuss the equitable resolution to this matter. We purchased our home from you for \$735,000, which dollar amount represents the price we expected to pay for a home in Montville. Accordingly, we believe Woodmont

Properties Inc. owes us a total of \$230,000, which represents the market value difference between buying a house in Towaco and not Montville.

We ask that you respond to this letter within ten (10) days of your receipt. If you refuse to meet with us or otherwise fail to respond to this letter within the said 10-day period, please be advised that we will take actions necessary to protect our rights. I trust you realize the sensitivity of this situation, and at present it is in both parties' best interests to keep this matter confidential. I can be reached at 201-709-0875.

Sincerely,



Theodore Vagias

Thursday, March 11, 2010

Woodmont *vs* Montville, LLC
Suite 110
119 Cherry Hill Road
Parsippany, NJ 07054

Attn: Donald Widmont

Dear Donald,

Thank you for correcting my typing error in the early version of this letter. However that has not resolved this matter.

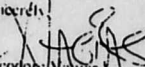
As you are well aware, we closed on our home on November 8th 2001 and received a deed from your company of Woodmont Court *vs* Montville, LLC. The deed, which has been recorded, states that our home at 23 Bonneyview Lane (Lot 42 12 Block 21 01) is located in the section of Montville, in Montville Township. The belief that our home was located in the section of Montville was further supported by the various brochures, internal documentation and marketing literature furnished by Woodmont Properties / GVA Williams that we collected and were provided by your firm. One can only imagine the tremendous confusion and disbelief that we have experienced upon discovering that our home, with Lot 42 12 Blk 21 01, with the development name of Woodmont *vs* Montville, is actually located in the section of Towaco in Montville Township. Certainly one has to question why the name of the development is not Woodmont *vs* Towaco.

It is because we have been lead to believe through your company's literature, the name of the development, and the executed deed, that we purchased a home from you in the section of Montville, that we now request to meet with you in order to discuss this matter in detail.

Woodmont Properties proclaims to have 37 years of experience in residential land development and home building, and we further understand that Woodmont Properties / GVA Williams has over that time purchased substantial tracts of land within Montville Township. It certainly follows that Woodmont Properties Inc. knows, or had reason to know, at the time that it sold us our home that we purchased a home in the section of Towaco not Montville. Moreover, Woodmont Properties Inc. certainly expects, or has reason to expect, that new home buyers such as ourselves would rely upon Donald Widmont and Woodmont Properties Inc.'s representations as to the location of the home and that the price of such home would be reflected with the home's location. It was only after trying to establish telephone and cable services that we were informed that the home we purchased from your company is located in the section of Towaco and not Montville. Also, through discussions with the Montville township offices, the Morris County Recording Office, Montville post office, and Towaco post office, we have come to understand that your company knew, or had reason to know, that Woodmont *vs* Montville is a development in the section of Towaco and not Montville.

Accordingly, we have requested a meeting with you to discuss the equitable resolution to this matter. We purchased our home from you for \$735,000, which dollar amount represents the price we expected to pay for a home in Montville. Accordingly, we believe Woodmont Properties Inc. owes us a refund of \$230,000, which represents the market value difference between buying a house in Towaco and not Montville.

We ask that you respond to this letter within ten (10) days of your receipt. If you refuse to meet with us or otherwise fail to respond to this letter within the said 10-day period, please be advised that we will take actions necessary to protect our rights. I trust you realize the sensitivity of this situation, and at present it is in both parties' best interests to keep this matter confidential. I can be reached at 201-709-40875.

Sincerely,

Theodore Williams

Monday, March 8, 2002

Woodmont *vs* Montville, LLC
Suite 170
119 Cherry Hill Road
Parsippany, NJ 07054

PLEASE NOTE: This is the 2nd attempt to send the following certified letter. An original was sent on March 7th, in which you responded. The following was sent on March 14th, yet the postal certification was not returned.)

Attn: Donald Widmont

Dear Donald,

Thank you for correcting my typing error in the early version of this letter. However that has not resolved this matter.

As you are well aware, we closed on our home on November 8th 2001 and received a deed from your company of Woodmont Court *vs* Montville, LLC. The deed, which has been recorded, states that our home at 23 Bonnieview Lane (Lot 42 12 Block 21 01) is located in the section of Montville, in Montville Township. The belief that our home was located in the section of Montville was further supported by the various brochures, internal documentation and marketing literature furnished by Woodmont Properties / GVA Williams that we collected and were provided by your firm. One can only imagine the tremendous confusion and disbelief that we have experienced upon discovering that our home, with Lot 42 12, Blk 21 01, with the development name of Woodmont *vs* Montville, is actually located in the section of Towaco in Montville Township. Certainly one has to question why the name of the development is not Woodmont *vs* Towaco.

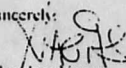
It is because we have been lead to believe through your company's literature, the name of the development, and the executed deed that we purchased a home from you in the section of Montville, that we now request to meet with you in order to discuss this matter in detail.

Woodmont Properties proclaims to have 37 years of experience in residential land development and home building, and we further understand that Woodmont Properties / GVA Williams has over that time purchased substantial tracks of land within Montville Township. It certainly follows that Woodmont Properties Inc. knows, or had reason to know, at the time that it sold us our home that we purchased a home in the section of Towaco not Montville. Moreover, Woodmont Properties Inc. certainly expects, or has reason to expect, that new home buyers such as ourselves would rely upon Donald Widmont and Woodmont Properties Inc.'s representations as to the location of the home and that the price of such home would be reflected with the home's location. It was only after trying to establish telephone and cable services that we were informed that the home we purchased from your company is located in the section of Towaco and not Montville. Also, through discussions with the Montville township offices, the Morris County Recording Office, Montville post office, and Towaco post office, we have come to understand that your company knew, or had reason to know, that Woodmont *vs* Montville is a development in the section of Towaco and not Montville.

Accordingly, we have requested a meeting with you to discuss the equitable resolution to this matter. We purchased our home from you for \$735,000, which dollar amount represents the price we expected to pay for a home in Montville. Accordingly, we believe Woodmont Properties Inc. owes us a refund of \$230,000, which represents the market value difference between buying a house in Towaco and not Montville.

We ask that you respond to this letter within ten (10) days of your receipt. If you refuse to meet with us or otherwise fail to respond to this letter within the said 10-day period, please be advised that we will take actions necessary to protect our rights. I trust you realize the sensitivity of this situation, and at present it is in both parties' best interests to keep this matter confidential. I can be reached at 201-709-4875.

Sincerely,


Theodore Vargas

Cc: Sam Mathews

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW

ERIC L. GROGAN

570 W. MT. PLEASANT AVENUE
P. O. BOX 657
LIVINGSTON, NEW JERSEY 07039-0657
(973) 994-6677
Facsimile (973) 994-1296

Writer's
E-Mail Address
elgrogan@bhs-law.com

305 Broadway, Seventh Floor
New York, New York 10007
(212) 599-2885
Facsimile (212) 822-1479

February 15, 2005

VIA LAWYERS SERVICE

Motions Clerk
Superior Court of New Jersey
P. O. Box 910
Morristown, New Jersey 07963-0910


Re: Vagias, Theodore v. Woodmont Court at
Montville, LLC
Docket No.: MRS-L-2245-02
Our File No.: 244.14899

Dear Sir/Madam:

This office represents plaintiffs Theodore and Frances Vagias in the above matter. Currently, defendant, Weichert Realtors has a motion for Summary Judgment returnable on Friday, March 4, 2005. Enclosed please find a Certification, Response to Statement of Material Facts and Brief in Opposition to that motion. Please forward these papers to the Judge who will be hearing that motion.

Sincerely,

BRAFF, HARRIS & SUKONECK


ERIC L. GROGAN
ELG/ep

cc: Sidney J. Bernstein, Esq.
Thomas N. Ryan, Esq.

126a

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039

Telephone: (973) 994-6677

Attorneys for Plaintiffs, Theodore and Frances Vagias

Our File No. 244.14899

THEODORE AND FRANCIS VAGIAS

Plaintiff,

v.

**WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C., AND WEICHERT CO.
(FORMERLY WEICHERT
REALTORES),**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY**

DOCKET NO. MRS-L-2245-02

Civil Action

**RESPONSE TO STATEMENT OF
MATERIAL FACTS SUBMITTED BY
WEICHERT CO. AND
COUNTERSTATEMENT OF
MATERIAL FACTS**

1. Admitted.

2. Admitted.

3. Admitted in part. Weichert was not "merely identified" by the buyers as their real estate agent. Plaintiffs had discussions with the agent regarding their request to only seek homes in the Montville Section of Montville Township. (See deposition of Theodore Vagias, Page 55 Line 11-Page 56, Line 2 attached to certification as Exhibit "B".)

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted that the Complaint makes these allegations. However, plaintiff also provided information in answers to interrogatories and depositions regarding the allegations against defendant Weichert.

11. Objection. Plaintiff Theodore Vagias, in his deposition offered an opinion, stating that "I think she was as confused as we were getting into the house that we thought we were in Montville." (See deposition of Theodore Vagias at Page 68, Line 15-17, attached to certification as Exhibit "B".) This dealt with communications with the Weichert Sales Associate after plaintiffs had in fact moved into the home.

12. Objection. Plaintiff, Frances Vagias provided an opinion regarding the understanding of the Weichert sales associate. She testified "so we were all fooled." (See deposition transcript of plaintiff, Frances Vagias, Page 110, Line 1 - Page 111, Line 18 attached hereto as Exhibit "C".)

COUNTER-STATEMENT OF MATERIAL FACTS

1. Plaintiff, Theodore Vagias testified that he and his wife had discussions with the Weichert sales agent prior to learning about the home at Woodmont Court at Montville and that the sales associate was made aware that the plaintiffs were looking for a home in the Montville section of town and not in

the Pinebrook or Towaco sections of Montville Township. (See deposition of plaintiff, Theodore Vagais at Page 55, Line 19-Page 56, Line 2, attached to certification as Exhibit "B".)

2. At his deposition, Mr. Vagais responded to a question asking whether the Weichert Sales Associate was asked to determine whether the home was located in the Montville section of Montville Township, by stating "Yes." He stated that the Weichert Sales Associate stated "Yeah, this is Montville." (See deposition of Theodore Vagais, Page 59, Line 9-14 attached to certification hereto as Exhibit "B".)

3. Mr. Vagais testified regarding conversations with the Weichert Sales Associate at the location. He stated that the Weichert Sales Associate stated "This is Montville." (See deposition of Theodore Vagais, Page 54, Line 23, Page 55, Line 10 attached to certification as Exhibit "B".)

4. Plaintiff Frances Vagais testified that she had conversations with the Weichert Sales Associate where she discussed with the sales associate that she was not looking in Pinebrook or Towaco. She testified that the sales associate stated "Frances, Montville in Montville Township." (See deposition of Frances Vagais at Page 112, Line 4 - Line 15, attached as Exhibit "C".)

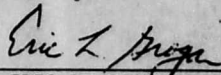
5. Plaintiff Francis Vagais testified that, while visiting the site with the Weichert Associate, the Weichert

Associate told her that the home was in Monville. (See deposition of Frances Vagais, Page 111, Line 4 - Line 11, attached to certification as Exhibit "C".)

6. Plaintiff, Frances Vagais testified regarding conversations with the Weichert Sales Associate before going to the site and before speaking with the sales associate from Woodmont Court at Montville. Mrs. Vagais testified that the sales associate stated that she would get information and bring that with her to any visit to a house. The sales associate also stated "It's in Montville," prior to the meeting with the sales associate from Woodmont Court at Montville. (See deposition of Frances Vagais, Page 120, Line 5 - Page 121, Line 11 attached to certification as Exhibit "C".)

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs, Theodore and
Frances Vagias

By:


ERIC L. GROGAN

Dated: February 15, 2005

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039

Telephone: (973) 994-6677

Attorneys for Plaintiffs, Theodore and Frances Vagias

Our File No. 244.14899

THEODORE AND FRANCIS VAGIAS

Plaintiff,

v.

**WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C., AND WEICHERT CO.
(FORMERLY WEICHERT
REALTORES),**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY**

DOCKET NO. MRS-L-2245-02

Civil Action

**CERTIFICATION OF ERIC L.
GROGAN, ESQ.**

Eric L. Grogan by way of Certification hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and an associate at the Law Firm of Braff, Harris, & Sukoneck, attorneys for plaintiffs in the above matter. As such, I am fully familiar with the fact as hereinafter set forth.
2. I make this certification in support of plaintiff's opposition to the motion for Summary Judgment filed by defendant, Weichert Realtors.
3. Enclosed as Exhibit "A" is a copy of the Complaint filed on July 3, 2002.
4. Attached as Exhibit "B" are portions of deposition transcript of plaintiff Theodore Vagias.
5. Attached as Exhibit "C" are portions of the deposition transcript of plaintiff Frances Vagias.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the forgoing statements made by me are willfully false, I am subject to punishment.

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs, Theodore and Frances Vagias

By: *Eric L. Grogan*
ERIC L. GROGAN

Dated: February 14, 2005

EXHIBIT A

133a

EXHIBIT B

134a

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

1 THEODORE AND FRANCES VAGIAS, :

2 :

3 Plaintiffs, :

4 DEPOSITION OF:

5 -vs- :

6 THEODORE VAGIAS

7 WOODMONT PROPERTIES, LLC, :

8 WOODMONT COURT AT MONTVILLE, :

9 LLC and WEICHERT CO. (Formerly :

WEICHERT, REALTORS), :

Defendants. :

10

11

12 TRANSCRIPT of the stenographic notes of

13 the proceedings in the above-entitled matter,

14 as taken by and before VIRGINIA GRAVES, a

15 Certified Shorthand Reporter and Notary Public

16 of the State of New Jersey, held at the offices

17 of BRAFF, HARRIS & SUKONECK, ESQUIRES, 570 West

18 Mt. Pleasant Avenue, P.O. Box 657, Livingston,

19 New Jersey 07039, on Tuesday, November 19, 2002,

20 commencing at 3:01 p.m.

21

22

23 KNARR-RICHARDS ASSOCIATES

24 Certified Shorthand Reporters

25 P.O. Box 335

Morris Plains, New Jersey 07950

(973) 539-7150

1 A. Correct.

2 Q. During your first visit to the site
3 with Gabrielle did she say anything to you about
4 the great Montville address?

5 A. Yes.

6 Q. What did she say?

7 A. In conversations about the area we
8 expressed some concerns that the highway was right
9 there and pulled off to the side with Gabrielle
10 and Frances and we started talking about the types
11 of houses that we were looking at in Montville
12 section of Montville Township and that this was
13 new construction. We hadn't been looking at new
14 construction. And Ed came over and was watching
15 us in this dialogue back and forth and he said
16 you're in a -- this is a Montville address. This
17 is Montville. And Gabrielle said -- well, there
18 was a resistance about the discussion because she
19 was having a discussion with us versus Ed, and
20 then we started talking about the Montville
21 address with Gabrielle, Ed and Frances, and that
22 was the selling point.

23 Q. What did Gabrielle say about the
24 Montville address, not what Ed said, what did
25 Gabrielle say?

1 A. I just remember the references to,
2 yeah, this is the nice -- this is a nice section.
3 This is Montville. This is nice. And she was --
4 I don't remember. I can't paraphrase anything
5 that Gabrielle would have said other than she was
6 concurring with Ed and talking to us about our
7 concerns with the power lines and the road, and
8 that it was a little -- it was in a different
9 price range than what she was looking for, but it
10 was Montville, so maybe it was worth it.

11 Q. Can you remember anything specific that
12 Gabrielle said about --

13 MS. MINERVINI: During this one
14 conversation?

15 Q. During this conversation about the
16 Montville address?

17 A. Not during that conversation.

18 Q. Okay.

19 A. But with other conversations it was --
20 we were specifically discussing Montville
21 addresses and she was well informed and
22 in concurrence -- concurred with our choices for
23 wanting a Montville section, Montville Township
24 home. She knew we were looking in Montville. She
25 knew we weren't looking in Pine Brook. We had no

1 reason to be looking in Towaco, Towasco. It was
2 Montville.

3 Q. Was there any subsequent conversations
4 with --

5 A. And I think there was a little --

6 Q. Please --

7 A. Go head.

8 Q. Do you want to add to your prior answer?

9 A. I mean, there was a little bit of
10 relief with her. You could see that we had found
11 a place that we were looking at that we were kind
12 of being happy with, looked like this was the
13 Montville property that we wanted. So she had
14 brought a bunch of documents with her.

15 Q. What documents?

16 A. She always carried stacks of paper that
17 talked about the addresses.

18 Q. Do you have those papers with you?

19 A. No, she would but you could ask her.
20 She would have them.

21 Q. Do you -- yes?

22 MS. MINERVINI: I think he's referring
23 to MLS documents.

24 MR. BALDWIN: I don't know what he's
25 referring to.

1 that's a little different, and that's why I'm
2 objecting to the form. If you want an open-ended
3 question, he's happy to answer it.

4 MR. BALDWIN: Well, we'll get to that.
5 Are you telling him not to answer the question?

6 MS. MINERVINI: I'm not telling him not
7 to answer the question. I'm objecting to the
8 form.

9 Q. I'll repeat myself verbatim. Did you
10 ever ask Gabrielle to determine whether this
11 property was in the Montville section of Montville
12 Township?

13 A. Yes. I said to Gabrielle, Wow, this is
14 Montville? She said, Yeah, this is Montville.

15 Q. And that's how you asked?

16 A. Yes, because we had lead with the
17 foundation that we were only looking for houses in
18 the Montville section of Montville Township. So
19 if you find us something else, we're not
20 interested. And I did ask her a follow up by
21 saying what do you know about the builder?

22 Q. And what did she -- did she do that?

23 A. She went with the same marketing
24 materials and she said they're in business 30
25 years. They're a credible builder. They're

1 some of her pain from finding out that we didn't
2 live in Montville. We lived in Towaco.

3 Q. Okay. And do you think that
4 conversation is what generated DW-7?

5 A. I would only speculate. You'd have to
6 ask Gabrielle if what she sent us was based on
7 that conversation.

8 Q. Okay.

9 A. It doesn't make sense to me.

10 Q. DW-7 doesn't make sense to you?

11 A. It doesn't make sense that a letter in
12 there says Towaco but she's sending it to
13 Montville.

14 Q. Well --

15 A. I think she was as confused as we were
16 getting into the house that we thought we were in
17 Montville.

18 Q. Mr. Vagias, do you recall if these
19 documents which we've marked collectively as DW-7
20 actually came together in the mail?

21 A. Oh, yes.

22 Q. Oh, they did?

23 A. So we're all clear --

24 Q. Yes.

25 A. -- I received an envelope to 23

EXHIBIT C

141a

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

THEODORE AND FRANCES VAGIAS,	:	
	:	
Plaintiffs,	:	DEPOSITION OF:
	:	
-vs-	:	
	:	FRANCES VAGIAS
WOODMONT PROPERTIES, LLC,	:	
WOODMONT COURT AT MONTVILLE,	:	
LLC and WEICHERT CO. (Formerly	:	
WEICHERT, REALTORS),	:	
	:	
Defendants.	:	

TRANSCRIPT of the stenographic notes of
the proceedings in the above-entitled matter,
as taken by and before VIRGINIA GRAVES, a
Certified Shorthand Reporter and Notary Public
of the State of New Jersey, held at the offices
of BRAFF, HARRIS & SUKONECK, ESQUIRES, 570 West
Mt. Pleasant Avenue, P.O. Box 657, Livingston,
New Jersey 07039, on Tuesday, November 19, 2002,
commencing at 10:19 a.m.

KNARR-RICHARDS ASSOCIATES
Certified Shorthand Reporters
P.O. Box 335
Morris Plains, New Jersey 07950
(973) 539-7150

1 Q. My question is did she ever tell you
2 that it was in Montville before you moved in?

3 A. Yes.

4 Q. When?

5 A. When we were looking at the homes. It
6 wasn't Gabrielle. The advertisements said it's in
7 Montville in Montville Township saying in
8 Montville and a Montville address.

9 Q. Okay.

10 A. And she was under the assumption that
11 it's in Montville with a Montville address. So we
12 were all fooled. We were all thinking that I was
13 buying a house in Montville.

14 Q. All right. Maybe I didn't ask the
15 question the right way; maybe I did.

16 I recognize that you've told us you saw
17 an ad that referred to the house being in
18 Montville and maybe mentioned a Montville address
19 and then you brought that -- that lead you to the
20 property and then you brought Gabrielle involved?

21 A. Uh-huh.

22 Q. And did you show Gabrielle the ad that
23 you had gotten from the Star-Ledger?

24 A. I don't remember. I believe Gabrielle
25 had the ad herself also. I don't remember if I

1 showed it to her. I don't remember if I told her
2 look in the Star-Ledger. We were both working
3 together.

4 Q. Did she ever -- did she ever say to you
5 words to the effect that this house that you want,
6 that you're interested in being built by Woodmont,
7 is in Montville?

8 A. Yes.

9 Q. She said that. When did she say that?

10 A. Referring to the advertisement. This
11 house, it's beautiful, in Montville, Frances.

12 Q. So if I understand you now, you're
13 saying she, in effect, was reading off the ad with
14 you when you were going on about it?

15 A. No, she knew I was looking in
16 Montville, so she was under the assumption that
17 this development was in Montville in Montville
18 Township.

19 Q. And that assumption came from the ad?

20 A. The ad and Ed spoke to her with me and
21 with my husband and Ed said, Beautiful. Who cares
22 about 287? You have a Montville address. What
23 are you worried about? Montville.

24 Q. I'll get to the conversation in a
25 minute.

1 A. I was never told this is Towaco.

2 Q. I understand that completely.

3 A. They misled me.

4 Q. I understand that. What I'm trying to
5 find out is what you were told. You quoted --
6 more or less quoted Gabriella as saying, Oh, look
7 at this. It's even in Montville. When she said
8 that, was she looking at the ad and referring to
9 what the ad said? Is that what you're telling us?

10 MS. MINERVINI: Objection.

11 A. I don't remember. We had
12 conversations. We spoke with each other.
13 Frances, Montville in Montville Township. She
14 knew I wasn't looking in Pine Brook and Towaco. I
15 wanted Montville.

16 Q. Okay.

17 A. And my child's education comes from
18 kindergarten. I don't want him to go to the top
19 high school. I want him to go to the top
20 elementary school, the beginning foundation. So
21 everything was all together, Montville-Montville.
22 There were many houses in Pine Brook and many
23 houses in Towaco.

24 Q. Meaning what?

25 A. For sale.

1 the house, the first?

2 A. Okay. The first: Fran, let's go.
3 I'll get information. She always had information.
4 Before we went to any house at any place, she had
5 all information with her, either through the
6 computer or calling other people, and she said
7 let's go and see.

8 Q. And that was in response to you saying
9 I saw this ad for this great house. Let's go look
10 at it or words to that effect. Right?

11 A. Yes, in Montville.

12 Q. Right. You saw a great house in
13 Montville. So then you go there and you meet Ed.
14 Now, was Gabrielle there when you first went there
15 and met Ed?

16 A. Was Gabrielle there the first time I
17 met Ed? Gabrielle was there when we first spoke
18 to Ed and Ed showed us the house. We might have
19 met Ed briefly for two minutes. I don't remember.
20 But I know that I was with Gabrielle and Ted that
21 she showed us the house.

22 Q. Ted or Ed?

23 A. Ted, my husband, that Ed showed us the
24 house and Gabrielle, like a Realtor, your
25 representative, telling him how -- what do you

LADDEY CLARK & RYAN

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- NJ & PA BARS
- NJ, NY & MA BARS
- RULE 1:10 QUALIFIED MEDIATOR
- CERTIFIED BY THE SUPREME COURT OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY

E-MAIL: tc@lclaw.com

www.lclaw.com

March 9, 2005

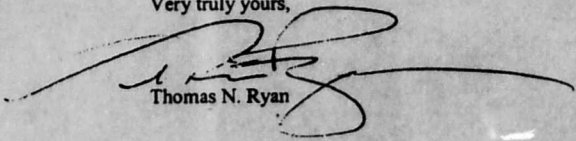
Eric L. Grogan, Esq.
BRAFF, HARRIS & SUKONECK
570 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039-0657

Re: *Vagias v. Woodmont Properties, LLC, et al*
Docket No. MRS-L-2245-02
Our File No. 4413-25

Dear Mr. Grogan:

Enclosed please find a copy of the *Order Granting Summary Judgment In Favor of Weichert Co.* which was signed and filed by the Honorable Catherine Langlois, J.S.C. on March 4, 2005.

Very truly yours,


Thomas N. Ryan

TNR:rn
Enclosure

147a

COPY

FILED

MAR 4 - 2005

CATHERINE LANGLOIS, J.L.C.
JUDGE'S CHAMBERS
MORRIS COUNTY COURTHOUSE

LADDEY, CLARK & RYAN

Attorneys-at-Law

60 Blue Heron Road

Sparta, New Jersey 07871-2600

(973) 729-1880

Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiffs,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF WEICHERT
CO.**

THIS MATTER having been opened to the Court by Laddey, Clark & Ryan, attorneys for Defendant, Weichert Realtors, Lawrence J. Supp, Esq., appearing, on a motion for Summary Judgment; and Eric L. Grogan, Esq., of the law firm of Braff, Harris & Sukonek, attorneys for Plaintiffs, appearing in opposition to the motion; the Court having considered the papers submitted in support of and in opposition to the motion;

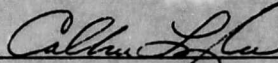
IT IS on this 4 day of March, 2005, **ORDERED:**

1. Defendant Weichert Co. (Weichert Realtors) be and is hereby granted Summary Judgment dismissing all claims and cross-claims filed against it, with prejudice;

1
148a

2. A copy of this Order shall be served upon all parties within seven (7) days of its receipt by counsel.

FOR THE REASONS STATED ON THE RECORD OF 2/4/05



Catherine M. Longo, Judge
Superior Court of New Jersey

J.S.C.

Opposed
 Unopposed

MAL
N:\USERS\Clients\4413-25 - Welchert ads Vagias\Summary Judgment Order.doc
02/02/05

A-5029-04 T5

THEODORE AND FRANCIS
VAGIAS,

Plaintiffs,

vs.

WOODMONT PROPERTIES, LLC.,
WOODMONT COURT AT
MONTVILLE, LLC, AND
WEICHERT CO. (FORMERLY
WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-005029-04-T5

ON APPEAL FROM ORDERS GRANTING
SUMMARY JUDGMENT AND DENYING
RECONSIDERATION BY THE SUPERIOR
COURT OF NEW JERSEY, LAW DIVISION,
MORRIS COUNTY

DOCKET NO.: MRS-L-2245-02

SAT BELOW:
Hon. Catherine Langlois, J.S.C.

PLAINTIFFS - APPELLANTS'

APPENDIX VOLUME II

FILED
APPELLATE DIVISION

JUL 18 2005

J. Henry C. Thomas
ACTING CLERK

BRAFF, HARRIS & SUKONECK
570 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039
973-994-6677
Attorneys for Plaintiffs
Theodore and Frances Vagias
Our File No. 244.14899

ON THE BRIEF:
Gloria B. Cherry, Esq.

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**SUPERIOR COURT OF NEW JERSEY
REPORT AND AWARD OF ARBITRATION**

ARBITRATION TYPE (Check one)

AUTO

PERSONAL INJURY

OTHER CIVIL

VAGIAS

PLAINTIFF

DOCKET NO. MRS-1-2245-02

ARBITRATION NO. _____

TODAY'S DATE OCT. 9, 2003

WOODMONT Properties, LLC
et al

DEPENDANT

The undersigned made the following awards for the reasons set forth:

PLAINTIFF'S purchased home that had been led to believe was LOCATED IN A DIFFERENT SECTION OF HOURLY LEASERSHIP than it actually was, and IN A DIFFERENT SCHOOL DISTRICT THAN IT ACTUALLY IS. PLAINIFF'S DAMAGE NOT PROVEN.

	PARTY	IT'S CLAIM	LIABILITY	DAMAGES*
DEF	WOODMONT	(OUT ON ADR)	0%	* Exclusive of prejudgment interest. 0 *
DEF	Weichert Co.		%	
DEF			%	
PL	THEODORE VAGIAS		%	
PL	FRANKS VAGIAS		%	* DAMAGES NOT PROVEN, EXPERT TESTIMONY IS REQUIRED TO PROVE DIMINUTION OF VALUE. IT'S EMOTIONAL DAMAGES ARE UNDERSTOOD BUT NOT RECOVERABLE IN A PROPERTY DAMAGE ACTION

ARBITRATOR: Please sign below and print name under signature.
Kevin F. Coluthoun
 KEVIN F. COLUTHOUN

Parties desiring to reject this award and obtain a trial de novo must file with the division manager a trial de novo request together with a \$200 fee within thirty (30) days of today. Parties requesting a trial de novo may be subject to payment of counsel fees and costs as provided by R. 4:21A-6(c). Note that unless otherwise expressly indicated, this award will be filed today.

Counsel acknowledge receipt of this award by signing below. Please print name under signature.

Eric G. Groban
ERIC GROBAN - IT

Allan Baldwin
ALLAN BALDWIN - Δ

FOR INTERNAL EVALUATION PURPOSES. PLEASE COMPLETE THE FOLLOWING:

Amount of medical expenses claimed at the hearing for each party making a bodily injury claim.

PARTY	AMOUNT
_____	\$ _____
_____	\$ _____

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677

Attorneys for Plaintiffs/Appellants, Theodore and Francis Vagias
Our File No. 244.14899

THEODORE and FRANCES VAGIAS,

Plaintiff,

vs.

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
APPELLATE DOCKET NO. A-

Sat Below: Honorable Deanne Wilson, J.S.C.
Docket No. MRS-L-2245-02

NOTICE OF MOTION FOR LEAVE TO
FILE AN APPEAL

TO: James M. Flynn, Clerk
Appellate Division Clerk's Office
Hughes Justice Complex
25 W. Market Street
P.O. Box 006
Trenton, New Jersey 08625-0006

Alan J. Baldwin, Esq.
Broderick, Newmark & Grather
20 South Street
Morristown, New Jersey 07960

SIR(S):

PLEASE TAKE NOTICE that as soon thereafter as counsel may be
heard, the undersigned, attorneys for plaintiffs/appellants, shall
move before such Judge or Judges hearing Motions in the above-named

150a

Court for an Order to file a Motion for Leave to Appeal. Plaintiffs/Appellants will rely upon the annexed Supporting Certification and Letter Brief.

PLEASE TAKE FURTHER NOTICE that the undersigned hereby requests that this matter be submitted to the Court for ruling on the papers, pursuant to Rule 1:6-2, and has, accordingly, annexed a proposed form of Order. In the event that this matter is not determined pursuant to Rule 1:6-2, then the moving party herein hereby requests oral argument.

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs/Appellants

By: 

Eric L. Grogan

DATED: October 23, 2003

Pretrial Date: None to Date

Calendar Date: None to Date

Trial Date: _____

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677

Attorneys for Plaintiffs/Appellants, Theodore and Francis Vagias
Our File No. 244.14899

THEODORE and FRANCES VAGIAS,
Plaintiff,

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
APPELLATE DOCKET NUMBER: A-

vs.

Sat Below: Honorable Deanne Wilson, J.S.C.
DOCKET NO. MRS-L-2245-02

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

SUPPORTING CERTIFICATION

Defendants.

Eric L. Grogan, of full age, hereby certifies as follows:

1. I am an Attorney at Law of the State of New Jersey and an associate in the firm of Braff, Harris & Sukoneck, attorneys for plaintiffs/appellants, Theodore and Francis Vagias in the above matter. I make this Certification in support of plaintiff/appellants' Motion to for Leave to file an Appeal.

2. This matter regards the sale of a residential home to plaintiffs/appellants. Allegations of fraud were made against the developer and realtor.

1522

3. On July 3, 2002 the Complaint was filed against defendants Woodmont Properties, LLC, Woodmont Court at Montville, LLC and Weichert Co. (formerly Weichert Realtors). (See Complaint, attached at Appendix Pa 1).

4. Weichert Co. provided an Answer on August 20, 2003. (See Answer of Weichert Co., attached at Appendix Pa 16).

5. Woodmont Properties, LLC and Woodmont Court at Montville, LLC provided an Answer on August 27, 2003. (See Answer of Woodmont Properties, LLC and Woodmont Court at Montville, LLC, attached at Appendix Pa 21).

6. The Contract of Sale of Land and for the building of a house which was signed by the plaintiffs and defendant, Woodmont Court at Montville, LLC included a term that all controversies between those parties must be submitted to Alternative Dispute Resolution (see Contract of Sale and for the building of a house, Paragraph 26, attached at Appendix Pa 30).

7. On January 10, 2003 a Motion was heard, filed by Woodmont Properties, LLC to strike the Jury Demand or to Compel Arbitration in this matter pursuant to Paragraph 26 of the Contract.

8. Defendant Weichert attempted to join the Motion of Woodmont to dismiss the case based on the contract clause calling for arbitration. (Attached at Appendix Pa 47 is Weichert's correspondence to the Court, dated January 3, 2003, calling for the enforcement of the arbitration clause and calling for the parties to be compelled to resolve the dispute through binding arbitration.)

9. On the date of oral argument, the motion was granted dismissing the case and sending it to arbitration as to Woodmont. Weichert's request to join in the motion was denied. (See Order dated January 10, 2003 dismissing Woodmont only and compelling arbitration, attached at Appendix Pa 50.)

10. Upon information and belief, counsel for Weichert had discussions with prior counsel from this office that the parties agreed that Weichert would also be a party to the arbitration pursuant to the contract as opposed to this litigation.

11. On that same date, January 10, 2003, an Order was entered dismissing plaintiffs' Complaint for failing to answer Interrogatories against Weichert. Upon information and belief, there was no oral argument on this motion. (See Order dated January 10, 2003 dismissing Complaint as to Weichert, attached at Appendix Pa 51.)

12. The discovery end date of January 25, 2003 passed while the case was dismissed without prejudice.

13. Upon information and belief, counsel for Woodmont Properties, LLC and Woodmont Court at Montville, LLC advised that those defendants are insured by Legion Insurance. Counsel advised that Legion was in rehabilitation.

14. Counsel was made aware of an Order applicable to Legion Insurance and its insured in the Commonwealth of Pennsylvania and elsewhere that all actions or arbitrations were stayed. The Pennsylvania Order was made applicable to actions in the State of New Jersey. Based on this stay, arbitration did not proceed in

this matter. (See Order regarding Legion Insurance Company dated March 28, 2002, attached to Appendix at Pa 52.)

15. The stay in Pennsylvania, made applicable to actions in New Jersey, was extended by Order dated September 25, 2002. (See Order dated September 25, 2002, attached at Appendix Pa 64.)

16. The stay for matters involving Legion insurers and its insureds continued to be stayed by further Orders. (See Orders dated March 27, 2003, April 29, 2003, May 29, 2003 and June 25, 2003, attached at Appendix Pa 66, Pa 67, Pa 68 and Pa 69).

17. A Motion to Dismiss Plaintiffs' Complaint with Prejudice was then filed by defendant Weichert.

18. The attorney handling the case for this firm left the firm, causing a disruption regarding this matter. She advised that counsel for Weichert had made representations that Weichert would participate in the binding arbitration procedure along with Woodmont.

19. Thereafter, this office provided discovery to Weichert, reinstating the Complaint against Weichert on July 25, 2003. (See Order dated July 25, 2003, attached at Appendix Pa 70.)

20. This office's understanding was that Weichert would participate in the binding arbitration with Woodmont.

21. A letter was sent to counsel for Weichert to confirm that they would participate in the binding arbitration pursuant to the Contract of Sale. (See letter dated July 9, 2003, attached at Appendix Pa 72.)

22. On July 28, 2003 counsel for Weichert forwarded a letter stating that they would advise this office regarding the

arbitration pursuant to the contract. (See letter dated July 28, 2003 attached at Appendix Pa 73.)

23. On July 28, 2003 Legion Insurance was placed into liquidation. This Order triggered the state guarantee associations to begin defending policy owners.

24. For the first time, on August 22, 2003, this office learned from defendant Weichert that they did not intend to proceed with the binding arbitration pursuant to the Contract of Sale, but would remain in this litigation.

25. Discovery was served on defendant Weichert, which was returned as being served after the discovery end date.

26. A motion was brought pursuant to Rule 4:24-1 to extend discovery for exceptional circumstances. This motion was heard on October 10, 2003, and the Court denied that request. (See Order dated October 10, 2003, attached at Appendix Pa 74.)

27. This appeal follows from a denial of the motion to extend discovery as discovery is necessary for the proper prosecution of this case.

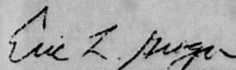
28. Extraordinary circumstances are shown in this case, based on information provided by prior counsel, who has since left this firm, regarding Weichert's participation in binding arbitration. In addition, the stay of all litigation and arbitration for Legion insureds put a stay on that binding arbitration.

29. The fact of prior counsel leaving the firm, the representations made to prior counsel regarding this case going to binding arbitration pursuant to the contract terms, and the stay on that arbitration based on Woodmont having been insured by Legion

Insurance Company are extraordinary circumstances calling for the extension of discovery at this time.

30. A request is made for sixty days to complete discovery, including interrogatories, depositions and expert discovery.

I hereby certify that the foregoing statements made by me are true and correct to the best of my knowledge and belief. I am aware that if any statement made by me is wilfully false, I am subject to punishment.



ERIC L. GROGAN

DATED: October 23, 2003

CERTIFICATION OF MAILING

ERIC L. GROGAN, ESQ., hereby certifies as follows:

1. On this date, an original and one copy of the annexed Notice of Motion and Supporting Certification, together with an original and three copies of the proposed Order, have been forwarded to the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market Street, Trenton, New Jersey 08625 via Lawyers Service.

2. On this date, a copy of the Notice of Motion, Supporting Certification and proposed form of Order were sent via Lawyers Service to the following:

Alan J. Baldwin, Esq.
20 South Street
Morristown, New Jersey 07960
Attorneys for Defendant/Respondent, Weichert Co.

Honorable Deanne Wilson, J.S.C.
Morris County Courthouse
Washington & Court Streets
Morristown, New Jersey 07963

I hereby certify that the aforesaid statements made by me are true and correct. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.



ERIC L. GROGAN

THEODORE and FRANCES VAGIAS,

Plaintiff,

vs.

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
APPELLATE DOCKET NO. A-

Sat Below: Honorable Deanne Wilson, J.S.C.
Docket No. MRS-L-2245-02

APPENDIX TO NOTICE OF MOTION FOR LEAVE TO FILE AN APPEAL

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677

Attorneys for Plaintiffs/Appellants, Theodore and Francis
Vagias

On the Brief: Eric L. Grogan, Esq.
Of Counsel: Brian C. Harris, Esq.

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BRODERICK, NEWMARK & GRATHER
A Professional Corporation
20 South Street
Morristown, NJ 07960
973-538-0084
Attorneys for Defendant, Weichert Co.

THEODORE AND FRANCES VAGIAS,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION -MORRIS COUNTY
	:	
Plaintiffs,	:	DOCKET NO. MRS-L-2245-02
	:	
vs.	:	Civil Action
	:	
WOODMONT PROPERTIES, LLC,	:	ANSWER ON BEHALF OF
WOODMONT COURT AT MONTVILLE, LLC	:	WEICHERT CO.
and WEICHERT CO. (Formerly	:	
WEICHERT, REALTORS),	:	
	:	
Defendants.	:	

WEICHERT CO. (herein Weichert), by way of answer to the Complaint, says:

FIRST COUNT

1. The allegations of paragraphs 1, 2, 3 and 4 are admitted.
2. This Defendant has insufficient knowledge upon which to form a belief as to the allegations of paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and, accordingly, leaves the Plaintiffs to their proofs.

SECOND COUNT

1. This Defendant repeats its answers to the allegations of the First Count as if set forth herein at length.

2. The allegations of paragraphs 2 and 3 are admitted.

3. This Defendant has insufficient knowledge upon which to form a belief as to the allegations of paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, and, accordingly leaves the Plaintiffs to their proofs.

THIRD COUNT

1. This Defendant repeats its answers to the First and Second Counts of the Complaint as if set forth herein at length.

2. The allegations of paragraph 2 and 3 are admitted.

3. The allegations of paragraph 4 are denied.

4. Except to admit the January 11, 2000 contract, this Defendant has insufficient knowledge upon which to form a belief as to the allegations of paragraph 5 and, accordingly, leaves the Plaintiffs to their proofs.

5. The allegations of paragraph 6, 7, 8 and 9 are denied.

CROSS - CLAIMS

FOR CONTRIBUTION

While denying any liability on their part, these Defendants assert that if any award is made to the Plaintiffs, they are entitled to contribution under the New Jersey Joint Tortfeasors Act, as well as an allocation of fault as called for under the Comparative Negligence Act.

FOR INDEMNIFICATION

While denying any liability on their part, these Defendants assert that their negligence, if any, was passive, vicarious and secondary while the negligence of the other parties to this action was active and primary, therefor entitling these Defendants to indemnification by such parties. These Defendants in good faith and at the direction of Co-Defendants may have committed a tort and is, therefore, entitled to implied indemnity against Co-Defendants.

S E P A R A T E D E F E N S E S

FIRST SEPARATE DEFENSE

Plaintiffs fail to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

Plaintiffs' losses, if any, were caused by co-Defendants and/or third parties over whom these Defendants had no control.

THIRD SEPARATE DEFENSE

Plaintiffs suffered no loss.

FOURTH SEPARATE DEFENSE

Plaintiffs' recovery, if any, should be barred or reduced in accordance with the law of comparative negligence.

FIFTH SEPARATE DEFENSE

These Defendants breached no duty owed to Plaintiffs.

SIXTH SEPARATE DEFENSE

Plaintiffs' claim is barred by the doctrine of equitable estoppel.

SEVENTH SEPARATE DEFENSE

Plaintiffs' claim should be barred by the doctrine of mutual mistake.

EIGHTH SEPARATE DEFENSE

Plaintiffs' claim should be barred or reduced in accordance with the doctrine of avoidable consequence.

NINTH SEPARATE DEFENSE

Plaintiffs' claim should be barred by the doctrine of estoppel by deed.

TENTH SEPARATE DEFENSE

Plaintiffs have waived their claim.

ELEVENTH SEPARATE DEFENSE

Plaintiffs' claim is barred by the Statute of Frauds.

TWELFTH SEPARATE DEFENSE

Plaintiffs' claim is barred by the Statute of Limitations.

THIRTEENTH SEPARATE DEFENSE

Plaintiffs' claim is barred by the entire controversy doctrine.

FOURTEENTH SEPARATE DEFENSE

Plaintiffs have failed to mitigate their damages.

BRODERICK, NEWMARK & GRATHER
Attorneys for Defendant
Weichert Co.

BY: 
MARTIN NEWMARK

Dated: August 20, 2002

CERTIFICATION

The undersigned hereby certifies as follows:

1. That the within pleading was filed and served within the time provided by the Rules of Court.

2. That on information supplied to the undersigned, the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding nor is any such action or proceeding contemplated. I know of no other party who should be joined in the within action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dated: August 20, 2002 
MARTIN NEWMARK

KRAEMER, BURNS, MYTELKA, LOVELL & KULKA, P.A.
675 Morris Avenue
Springfield, New Jersey 07081
(973) 912-8700

Attorneys for Defendants, Woodmont Properties, L.L.C. and
Woodmont Court At Montville, L.L.C.

THEODORE and FRANCES VAGIAS,

Plaintiffs.

vs.

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO: MRSL-2245-02

Civil Action

**ANSWER AND SEPARATE
DEFENSES OF DEFENDANTS
WOODMONT PROPERTIES L.L.C.
and WOODMONT COURT AT
MONTVILLE, L.L.C.**

Defendants, Woodmont Properties, L.L.C. ("Woodmont Properties") and
Woodmont Court at Montville, L.L.C. ("Woodmont Court"), by way of Answer to the
Complaint of the plaintiffs, say:

FIRST COUNT

1. Woodmont Properties admits paragraph 1.
2. Woodmont Properties admits paragraph 2.
3. Woodmont Properties admits paragraph 3.
4. Woodmont Properties admits paragraph 4.
5. The advertisement speaks for itself, and reference is made thereto.
6. The promotional package speaks for itself, and reference is made thereto.

A21 166a

7. The promotional advertisement speaks for itself, and reference is made thereto.
8. The Map speaks for itself, and reference is made thereto.
9. The internet site speaks for itself, and reference is made thereto.
10. Woodmont Properties admits that plaintiffs met with Ed Tomback, Director of Sales.
11. Woodmont Properties admits that plaintiffs met with Danielle Intrabartola.
12. Woodmont Properties denies that there were any representations or promotional literature to cause plaintiffs to believe that the new home was located in any municipality other than the Township of Montville. The home is located in the Township of Montville.
13. The Contract of Sale speaks for itself, and reference is made thereto. Woodmont Properties denies any "understanding" that the home was located in any municipality other than the Township of Montville. The home is located in the Township of Montville.
14. Woodmont Properties admits that the title closed on November 8, 2001. Woodmont Properties has no knowledge or information as to mail received by plaintiffs.
15. Woodmont Properties has no knowledge as to discussions between plaintiffs and various third parties.
16. Woodmont Properties has no knowledge as to discussions between plaintiff, Theodore Vagias and postal employees.
17. The letter written by plaintiffs speaks for itself, and reference is made thereof.

18. The letter dated March 11, 2000 speaks for itself, and reference is made thereof.

19. Woodmont Properties denies that there are any violations of the Consumer Fraud Act, N.J.S.A. 56:A et seq.

20. Woodmont Properties denies the allegations set forth in paragraph 20.

21. Woodmont Properties denies the allegations set forth in paragraph 21, except that the house is located in the "community" of Montville. Reference to ^{the} ~~its~~ house being located "in the prestigious community of Montville," encompasses, and is synonymous with the Township of Montville.

22. Woodmont Properties has no knowledge as to the thinking process of plaintiffs as to their decision to purchase the new home.

23. Woodmont Properties denies the allegations set forth in paragraph 23.

SECOND COUNT

1. Woodmont Court repeats all of the Answers of the First Count as if set forth at length herein.

2. Woodmont Court admits the allegations set forth in paragraph 2.

3. Woodmont Court admits the allegations set forth in paragraph 3.

4. The written advertisement speaks for itself, and reference is made thereto.

5. The written promotional package speaks for itself, and reference is made thereto.

6. The Map speaks for itself, and reference is made thereto.

7. Woodmont Court admits that plaintiffs met with Ed Tomback, Director of Sales.

8. Woodmont Court admits that plaintiffs met with Danielle Intrabartola.

9. Woodmont Court denies that the promotional literature or representations by agents of defendant indicated the property was located in the Town of Montville, as opposed to the Township of Montville. Woodmont Court denies that the location of the home was a material part of the transaction.

10. The contract of sale speaks for itself, and reference is made thereto.

11. Woodmont Court admits closing title on November 8, 2001, but has no knowledge as to the receipt of mail or discussions as to mail by plaintiffs with third parties.

12. Woodmont Court has no knowledge as to discussions between plaintiffs and various third parties.

13. Woodmont Court has no knowledge as to discussions by plaintiff, Theodore Vagias and postal employees.

14. The letter speaks for itself, and reference is made thereto.

15. The letter speaks for itself, and reference is made thereto.

16. Woodmont Court denies any violation of the Consumer Fraud Act, N.J.S.A. 56:A et seq.

17. Woodmont Court denies paragraph 17.

18. Woodmont Court denies paragraph 18. Any reference in promotional literature to the property being located "in the prestigious community of Montville", encompasses, and is synonymous with, the Township of Montville. Woodmont Court denies any misrepresentation.

19. Woodmont Court denies paragraph 19.

WHEREFORE, defendants request judgment dismissing the Complaint, and seek counsel fees and costs of suit, and any further relief which this Court may deem just and proper.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

The Township of Montville is comprised of 3 contiguous neighborhoods, known as Montville, Towaco and Pine Brook. The sole municipal entity is the Township of Montville, which encompasses all 3 neighborhoods. The Township of Montville has: one governing body; one police department; one school system for all public schools; one library system, one Township of Montville Municipal Utilities Authority (water and sewer) and one First Aid Squad. All real estate taxes for all 3 neighborhoods are paid to the Township of Montville. Defendants properly advertised the home as being in the "community" of Montville. The various aforesaid public entities serve all residents and businesses of the Township of Montville, encompassing all 3 neighborhoods.

SECOND SEPARATE DEFENSE

There was no misrepresentation. The new home purchased by plaintiffs is in the Township of Montville. There is no separate "Town" of Towaco. There is no separate "Town" of Pine Brook.

THIRD SEPARATE DEFENSE

All municipal approvals required for the housing development, including subdivision approval, were obtained from the Township of Montville. Defendant Woodmont paid all of the real estate taxes to the Township of Montville. The chain of title, as well as the Deed to plaintiffs, demonstrate that the property is in the Township of Montville.

FOURTH SEPARATE DEFENSE

The Township of Montville is synonymous with "Montville" or the "community" of Montville. The sole governing entity is the Township of Montville. A postal system designation for the convenience of postal employees is irrelevant and does not

transform the Towaco neighborhood into a municipal entity. In addition, if plaintiffs desire a "Montville" mailing address, plaintiffs can obtain a post office box with a Montville address.

FIFTH SEPARATE DEFENSE

It is legally and factually impossible to provide plaintiffs with a Deed for a home other than in the Township of Montville. The Township of Montville comprises the 3 neighborhoods as aforesaid. The Towaco neighborhood is part of the Township of Montville.

SIXTH SEPARATE DEFENSE

Plaintiffs have not sustained any damages. The value of the new home they purchased is equal to, or in excess of, the purchase price they paid. Plaintiffs were, or should have been aware, that the home they purchased was in the Township of Montville, which encompasses 3 contiguous neighborhoods known as Pine Brook, Montville and Towaco.

SEVENTH SEPARATE DEFENSE

There was no obligation on defendants to discuss with plaintiffs the various neighborhoods of the Township of Montville.

EIGHTH SEPARATE DEFENSE

Defendants breached no duty owed to the plaintiffs.

NINTH SEPARATE DEFENSE

Each Count of the Complaint fails to state a cause of action upon which relief can be granted.

TENTH SEPARATE DEFENSE

Plaintiffs' claims are barred by the doctrine of Unclean Hands.

ELEVENTH SEPARATE DEFENSE

Plaintiffs' claims are barred by the doctrine of Laches.

TWELFTH SEPARATE DEFENSE

Plaintiffs' claims are barred by the doctrine of Waiver.

THIRTEENTH SEPARATE DEFENSE

Plaintiffs' claims are barred by the doctrine of Estoppel.

FOURTEENTH SEPARATE DEFENSE

Plaintiffs' claims are barred by the applicable of the Statute of Limitations.

FIFTEENTH SEPARATE DEFENSE

Defendants reserve the right to insert additional defenses and/or supplement, alter or change their answer upon the revelation of more definite facts by the plaintiffs and/or completion of further discovery and investigation.

SIXTEENTH SEPARATE DEFENSE

Defendants hereby reserve the right to repeat and incorporate each and every separate defense to be set forth by the co-defendant, Weichert Co. in its answers to the complaint, as if fully set forth herein.

SEVENTEENTH SEPARATE DEFENSE

The New Jersey Consumer Fraud Act ("Act") does not apply. Plaintiffs have no standing to bring a claim. In any event, there is no violation of the Act by defendants.

KRAEMER, BURNS, MYTELKA,
LOVELL & KULKA, P.A.
Attorneys for Defendants,
Woodmont Properties, L.L.C. and
Woodmont Court At Montville, L.L.C.

By: 

Sidney J. Bernstein

DATED: August 27, 2002

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-1, the Court is advised that Sidney J. Bernstein, Esq., is hereby designated as trail counsel on behalf of the defendants, Woodmont Properties, L.L.C. and Woodmont Court At Montville, L.L.C.

KRAEMER, BURNS, MYTELKA,
LOVELL & KULKA, P.A.
Attorneys for Defendants,
Woodmont Properties, L.L.C. and
Woodmont Court At Montville, L.L.C.

By: 

Sidney J. Bernstein

DATED: August 27, 2002

CERTIFICATION PURSUANT TO RULE 4:5-1

1. I certify that I am not aware of the matter in controversy being the subject of any other action pending in any court or arbitration forum.
2. I certify that no such action or arbitration proceeding is presently contemplated.

KRAEMER, BURNS, MYTELKA,
LOVELL & KULKA, P.A.
Attorneys for Defendants,
Woodmont Properties, L.L.C. and
Woodmont Court At Montville, L.L.C.

By: 

Sidney J. Bernstein

DATED: August 27, 2002

CERTIFICATION

It is hereby certified that a copy of the within Answer was filed within the time provided by the Rules of Court.

KRAEMER, BURNS, MYTELKA,
LOVELL & KULKA, P.A.
Attorneys for Defendants,
Woodmont Properties, L.L.C. and
Woodmont Court At Montville, L.L.C.

By: 
Sidney J. Bernstein

DATED: August 27, 2002

**CONTRACT OF SALE OF LAND
AND FOR THE BUILDING OF A HOUSE**

BETWEEN: WOODMONT COURT AT MONTVILLE, L.L.C.,
(SELLERS)

AND: Theodore VAGIAS
FRANCES VAGIAS
(BUYERS)

PREMISES: 23 DONWIEVIEW LANE
BLOCK 2101 LOT 42.12
MONTVILLE TOWNSHIP
MORRIS COUNTY, NEW JERSEY

DATED: JANUARY 11, 2000

NOTICE
To Buyer and Seller:

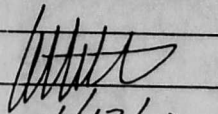
You Must Read This Notice Before Signing

The Supreme Court of New Jersey requires real estate brokers to give you the following information before you sign this contract. It requires us to tell you that you must read all of it before you sign. Here is the information for both buyer and seller:

1. I am a real estate broker. I represent the seller. I do not represent the buyer. The title company does not represent either the seller or the buyer. Furthermore, both the seller and the buyer should know that it is in my financial interest that the house be sold and the closing be completed. My fee is paid only if that happens. The title company has the same interest, for its insurance premium is paid only if that happens.
2. I am not allowed, and I am not qualified, to give either the seller or buyer any legal advice. Neither the title company nor any of its officers are allowed to give either the seller or buyer any legal advice. Neither of you will get any legal advice at any point in this transaction unless you have your own lawyer. If you do not hire a lawyer, no one will represent you in legal matters either now, or at the closing. I will not represent you and the title company and its officers will not represent you in those matters.
3. The contract attached to this notice is the most important part of the sale. It determines your rights, your liabilities, and your risks. It becomes final when you sign it -- unless it is canceled by your lawyer within three days -- and when it does become final you cannot change it, nor can any attorney you may hire thereafter change it in any way whatsoever.
4. The buyer especially should know that if he or she has no lawyer, no one will be able to advise him or her what to do if problems arise in connection with your purchasing this property. Those problems may be about various matters, including the seller's title to the property. They may affect the value of the property. If either the broker or title company sees that there are problems and that because of them you need your own lawyer, they should tell you. However, it is possible that they may not recognize the problems or that it may be too late for a lawyer to help. Also, they are not your lawyers and they may not see the problem from your point of view.
5. Whether you, seller or buyer, retain a lawyer is up to you. It is your decision. The purpose of this notice is to make sure you have some understanding of the transaction, the risks, who represents whom, and what their interests are, when you make that decision. The rules and regulations concerning brokers and title companies prohibit each of them from suggesting that you are better off without a lawyer. If anyone makes that suggestion to you, you should carefully consider whose interest they are serving. The decision whether to hire a lawyer to represent your interests is yours and yours alone.

The undersigned acknowledge that before signing the contract they received and read a copy of this Notice that is attached as a cover page to this Contract of Sale.

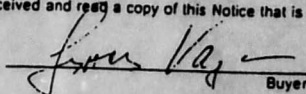
Seller



Seller

Date:

1/13/01



Buyer

Buyer

Date:

1-12-01

1 This sentence concerning who the broker represents presumes that the broker represents the Seller. This can be changed if the broker is a buyer-broker or a dual agent.

INFORMATION STATEMENT

Buyers' Attorney:

Maria Tsitsigagos

WEST FIELD OR CLARK

Telephone _____

Facsimile _____

Seller's Attorney:

STELLA V. BONDAR, ESQ.

Law Offices of Bruce D. Nimensky

119 Cherry Hill Road, Suite 110

Parsippany, New Jersey 07054

Telephone (973) 257-3100

Facsimile (973) 257-3105

Broker(s):

ASSOCIATED SALES INC.

Ed Tomback

119 Cherry Hill Road, Suite 110

Parsippany, New Jersey 07054

Telephone (973) 216-9400

GABRIELLE IRLINGER-DINGLE
WEICHERT REALTORS
1081 BLOOMFIELD AVE.
WEST CAROLINA N.J.
07006
#7500 Commission

Buyer(s):

T. VAGAS
F. VAGAS

157-72-1560

Home Telephone ~~973-882-8685~~

Office Telephone 201-709-0875

Buyer(s) Social Security Number(s):

157-72-1560

136-84-5824

Seller:

WOODMONT COURT AT MONTVILLE, L.L.C.

119 Cherry Hill Road, Suite 110

Parsippany, New Jersey 07054

Telephone (973) 316-9400

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**CONTRACT OF SALE OF LAND
AND FOR THE BUILDING OF A HOUSE**

THIS IS A LEGALLY BINDING CONTRACT THAT WILL BECOME FINAL WITHIN FIVE BUSINESS DAYS. DURING THIS PERIOD YOU MAY CHOOSE TO CONSULT AN ATTORNEY WHO CAN REVIEW AND CANCEL THIS CONTRACT. SEE SECTION 23.0 FOR DETAILS

THIS WRITTEN AGREEMENT IS KNOWN AS A "CONTRACT FOR SALE" and is signed on

January 11, 2000

BETWEEN: WOODMONT COURT AT MONTVILLE, L.L.C.,
whose address is 119 Cherry Hill Road, Suite 110
Parsippany, New Jersey 07054
(hereinafter referred to as the "SELLER") who is also the BUILDER

AND: THEODORE VAGIAS
FRANCES VAGIAS
whose address is 23 PHYLLIS LANE
FARFIELD N.J. 07004
(hereinafter referred to as the "BUYERS").

PREMISES: 23 BONWIEVIEW LANE
BLOCK 21.01 LOT
MONTVILLE TOWNSHIP
MORRIS COUNTY, NEW JERSEY

DATED: January 11, 2000

1.0

BASIC TERMS

- 1.10 PURCHASE PRICE (THE "BASE PURCHASE PRICE") \$ 679,990
- 1.11 EXTRAS AND OPTIONS AS PER ATTACHED SCHEDULE (ATTACHED AS EXHIBIT A) \$
- 1.12 TOTAL PURCHASE PRICE (BASE PURCHASE PRICE PLUS EXTRAS AND OPTIONS) \$ 679,990
- 1.13 INITIAL DEPOSIT (UPON EXECUTION OF CONTRACT) \$ 2500
- 1.14 BALANCE OF 10% OF TOTAL PURCHASE PRICE (UPON COMPLETION OF ATTORNEY REVIEW) \$ 65,499
- 1.15 ADDITIONAL DEPOSIT 10% OF THE TOTAL PURCHASE PRICE (TO BE PAID AT THE TIME OF COMPLETION OF FOUNDATION) \$ 67,999
- 1.16 ADDITIONAL DEPOSIT 10% OF THE TOTAL PURCHASE PRICE (TO BE PAID AT THE TIME OF COMPLETION OF ROOF AND INSTALLATION OF WINDOWS) \$ 67,999
- 1.17 BALANCE TO BE PAID AT CLOSING OF TITLE (TOGETHER WITH THOSE ADDITIONAL SUMS THAT MAY BE DUE AT CLOSING PURSUANT TO THE TERMS OF THIS CONTRACT) \$ 475,993

1.2 ESTIMATED CLOSING DATE: August 1, 2001
(NOTE: IF THE HOUSE IS TO BE BUILT, THEN 6 MONTHS FROM THE DATE THE BUILDING PERMITS ARE ISSUED)

1.3 MORTGAGE AMOUNT: \$500,000

1.31 DEADLINE FOR BUYER TO OBTAIN WRITTEN MORTGAGE COMMITMENT: Feb 11, 2001

1.4 NAME(S) OF REAL ESTATE BROKER(S):
A) ASSOCIATED SALES - ED TOMBACK
B) GABRIELLE RILINGER-DINGLE
Weichert Realtors
\$7500 Commission

1.5 PROPERTY DESCRIPTION: BLOCK 21.01 LOT 42.12

STREET ADDRESS: 23 Bonnieview Lane

1.51 ON A MAP ENTITLED Montville

1.52 MUNICIPALITY OF MONTVILLE TOWNSHIP

1.6 DESCRIPTION OF DWELLING: KENT V - 3376 S. H. GARAGE BUILT
2 1/2 BATHS, WALK-OUT BASEMENT 3 CAR GARAGE

1.61 PLANS DRAWN BY Thomas J. Brennan
(SEE RENDERING ATTACHED EXHIBIT B)

1.62 PLANS DATED: 6/18/99

1.7 COST OF SURVEY TO BE PAID BY BUYERS: \$350.00

COST OF STAKES/CORNER MARKERS
TO BE PAID BY BUYERS: \$ 125.00 / EACH

2.0 **CONSTRUCTION OF HOUSE** The Seller has built or will build a house upon the property described in Section 1.5 above. The Buyers agree to buy the house and property. The house will be substantially similar to the house described in Section 1.6 above and as provided in the specifications, if any, attached to this Contract as Exhibit "B". In the event the house is to be constructed in accordance with an existing model, it is understood that the decorations, wall coverings, furniture, upgraded items, options and extras are not included unless otherwise specified in this Contract. If the house has been partially or fully constructed as of the date of this Contract any difference between the plans and specifications and the actual construction shall be determined in favor of the actual construction. All selections in place or installed as of the date of this Contract shall not be changed except pursuant to Section 17.0 below.

2.1 **SPECIFICATIONS** The specification sheets attached to this Contract, if any, are made a part of this Contract by reference. The specifications shall have the highest priority in interpreting this Contract. Unless partially completed at the time of purchase, the "as built" conditions of completed items shall take precedence over all documentation. Any inconsistent terms, provisions or itemizations between the specifications attached to this Contract, and the blueprints or specifications attached to the blueprints, shall be resolved in favor of the specifications attached to this Contract.

3.0 **PROPERTY** The property to be sold consists of: (a) the lot designated in Section 1.5 above; (b) the house to be built or which has been built described in Section 1.6 above; and (c) all of the Seller's rights related to the lot (hereinafter referred to as the "Property").

4.0 **PURCHASE PRICE** The Buyers will pay to the Seller the Total Purchase Price as specified in Section 1.12, together with those additional sums that may be due in accordance

with the terms of this Contract.

4.1 PAYMENTS The payments set forth in Sections 1.13 through 1.16 (hereinafter referred to as the "Progress Payments") may be by personal check, payable to the Seller. The balance to be paid at closing (Section 1.17) must be paid by bank, certified or New Jersey Attorney's trust account check. However, no payment may be by third-party check. A "third-party check" is a check that is endorsed to a payee who is not on the face of the check. Any payments, which may be made by personal check, shall be subject to collection. In the event any personal check is returned to Seller as uncollectible, the Buyers will be deemed in default and the Seller will not be obligated to perform its obligations under this Contract.

4.2 PROGRESS PAYMENTS In the event the Buyers fail to make any of the Progress Payments set forth in Sections 1.14, 1.15 and 1.16, the Seller shall have the option to terminate this Contract. In the event the Seller elects not to terminate the contract, Seller shall be entitled to an additional payment at the time of closing title in addition to the balance of the Total Purchase Price set forth in Section 1.12 above. This payment shall be in an amount equal to the prime rate of interest plus 2% applied to the unpaid progress payment from the date upon which it was due through the date of the closing of title. The "prime rate" of interest applicable to this provision shall be the same as published in the Wall of Street Journal from time to time.

5.0 BUYER'S REPRESENTATIONS The Buyers represent that they have sufficient personal funds to pay the difference between the Total Purchase Price and the mortgage they are to obtain and have additional monies to pay the closing costs. The Buyers understand that the Buyers' closing costs may include the Buyer's attorney's fee, recording fees, survey, charges imposed by the mortgage lender, title search and insurance fees and charges specified in this Contract.

6.0 MORTGAGE CONTINGENCY The Buyers agree to immediately apply for a mortgage loan. Buyer agrees to pay not more than three (3) points. Buyer shall apply for a conventional mortgage with a thirty (30) year term at prevailing interest rates. If Buyer has not obtained a written mortgage commitment, or if the Buyer has not notified the Seller, in writing, of Buyers' decision to terminate the transaction because Buyer has failed to obtain a mortgage commitment, on or before the date set forth in Section 1.31 above, then the mortgage contingency shall be deemed waived and the contract shall be in full force and effect. The method of notifying the other party shall be in accordance with Section 28.0 below.

7.0 CLOSING DATE The Buyers and Seller agree that the date specified in Section 1.2 is an estimated date for closing provided Buyers timely satisfy or waive the mortgage contingency. The closing will be held at the LAW OFFICES OF BRUCE NIMENSKY, ESQ., 119 Cherry Hill Road, Suite 110, Parsippany, New Jersey or the offices of Buyers' attorney or Buyers' lending institution in the State of New Jersey as agreed by the parties. In the event the Buyers or their lender, request the Seller to close in any location other than the offices of the Seller's attorney, the Buyers agree to pay the sum of Three Hundred Fifty (\$350.00) Dollars to the Seller for additional attorney fees for the change of location in New Jersey. The transfer of the Deed and the payment of all monies is called the "Closing". If the Buyer shall not close

title by the tenth (10th) day following receipt of notice that Seller has or will obtain a Certificate of Occupancy by said tenth (10th) day, then the Buyer will reimburse the Seller for all carrying costs from the date set for closing in the notice through the actual date of closing. The Buyer will not be required to pay this charge if the Seller has adjourned the closing. "Carrying Costs" means real estate taxes, utilities, insurance, and interest on the proceeds due to the Seller at the prime rate in effect as published in the Wall Street Journal, on the date of Closing plus two (2%) percent, pro rated from the date Buyers are obligated to close in accordance with this Section to the date of actual closing. The Seller's remedy set forth in this Section is in addition to all other remedies the Seller may have pursuant to the terms of this Contract or as provided by applicable laws.

8.0 TRANSFER OF TITLE At the Closing, the Seller will transfer ownership of the Property to the Buyers by a deed known as Bargain and Sale with Covenants against Grantor's Acts. The Seller will also deliver an Affidavit of Title and if the Seller is a Corporation, it will also deliver a Corporate Resolution authorizing the sale.

8.1 POSSESSION OF LAND AND BUILDING(S) The Buyers may occupy the Property and have all its benefits immediately upon the Closing. The Buyers' agents, subcontractors and employees may enter the Property before Closing provided they first obtain written permission from the Seller. Entry without such written permission will be a breach and default of the terms of this Contract. Entry by the Buyers or the Buyers agents, subcontractors, employees or invitees will be at Buyers' sole risk. If the Buyers occupy the Property prior to the Closing without the prior written consent of the Seller, the Seller may declare the Buyers in default, and take any action permitted by law to obtain possession of the Property.

9.0 BUYER'S AND SELLER'S PERFORMANCE

9.1 If the Buyers do not make the payments specified in the Basic Terms (Sections 1.13 through 1.17) when due or do not perform their obligations required by this Contract the Buyers shall be in breach, in which event the Buyers authorize the Seller to keep the deposit monies in Seller's possession to the extent of ten (10%) percent of the Purchase Price together with the cost of extras and change orders. When the Seller returns the balance of any deposit monies to the Buyers, without interest, the Contract shall be deemed canceled. Thereafter, neither of the parties shall have any further rights or obligations to the other. The Buyers and Seller agree that it is reasonable and customary for the Seller to lose money in the event the Buyers do not comply with their obligations under this Contract, but it is difficult to estimate the exact amount of the Seller's damages. As a result, the Buyers and Seller agree that the amount specified in this Section is a fair estimate of the Seller's damages.

9.2 The Buyers and Seller agree that in the event the Seller cannot complete the dwelling and/or close title with the Buyers (unless the Seller's failure is willful and solely for the Seller's monetary advantage), the Seller will only be responsible to return to the Buyers all deposit monies paid hereunder, without interest, together with the costs of any extras previously paid.

10.0 TITLE The Seller shall convey marketable title to the Buyers. "Marketable Title" for the purposes of this Contract means the state of title that a title insurance company licensed to do business in New Jersey will, at standard rates, issue a title policy to the Buyers

11.0 CONDITIONS OF TITLE The title to the Property shall be subject to the following

11.1 Building and zoning restrictions and regulations of municipal, Federal and other governmental authorities, in effect at the date of closing;

11.2 Such facts as an accurate survey may show provided it does not show any gores or substantial encroachments;

11.3 Easements, restrictions and covenants of record or as granted by the Seller prior to Closing provided the restrictions do not contain any forfeiture clauses;

11.4 The right of the public and utility companies in the street adjoining the property,

11.5 The standard and customary printed exceptions set forth in an ALTA form title insurance policy;

11.6 The lien of real estate taxes for the balance of the tax year (subject to the terms of Section 15.0); and

11.7 Title which will not be insured at standard rates, or which is subject to conditions other than those provided in Section 11 is "unmarketable title". If the title to the Property is "unmarketable" and the Seller is not able or not willing to correct the defects which make title "unmarketable", Seller will return to the Buyers all deposit monies, without interest, together with the cost of any extras previously paid. After the deposit monies are returned to Buyers, the Contract shall be deemed canceled. In the event Buyers shall fail to notify Seller in writing within forty-five (45) days of the date hereof of objections to Seller's state of title, Buyers shall be deemed to have accepted Seller's state of title.

12.0 SELLER'S REPRESENTATIONS, PUNCH LIST AND WARRANTIES

12.1 The Seller will build the house in a good and workmanlike manner and will provide good and proper materials for the construction of the house in accordance with the plans and specifications. The Seller has the right to substitute materials of equal or better quality than those provided in the plans and specifications or as shown in a Model house.

12.2 The Seller will deliver, at Closing, a Certificate of Occupancy for the house or in the case of unfinished items, a temporary Certificate of Occupancy with appropriate surety posted if required by the issuing authority to assure completion of the house. The house will be considered substantially completed and ready for closing when a permanent or temporary Certificate of Occupancy is issued. The acceptance of the Deed by the Buyers will indicate that the Buyers acknowledge that the house is in good condition and ready for occupancy and that the Seller has completed all of its obligations unless otherwise agreed, in writing, by the

parties at the time of closing.

The Buyer shall accept the Seller's written agreement (hereafter "punch list") to complete the unfinished items after the closing of title. The punch list shall be compiled by both parties immediately prior to the closing of title, and a walk-through shall be conducted to prepare it. The punch list shall be signed by both parties, dated and attached to the closing statement. The Seller shall not be obligated to complete any unfinished items not set forth on the punch list. No escrow will be established for the completion of any items of construction.

12.3 At Seller's expense, the Seller will deliver, at Closing, proof of compliance with the New Home Warranty and Builder's Registration Act (N.J.S.A. 46:38-1 et. seq.) No other warranty, guaranty or representation, whether expressed or implied, is offered by the Seller. The Seller is not responsible for the survival of any trees, shrubs, grass seed or soil erosion on the Property.

13.0 ADJUSTMENTS Taxes for the current year, meter, water and sewer fees will be adjusted as of the date of Closing. In the event any taxes charged after the Closing for the construction of a new house or other improvements are for a period prior to the date of Closing ("Added Assessment"), Seller shall pay its share of the taxes upon receipt of a copy of the bill for the added assessment. The Seller shall pay the Realty Transfer Tax imposed on the transfer of title.

14.0 DELAY IN COMPLETION In the event completion of the dwelling or the issuance of a Certificate of Occupancy is delayed for any reason including, but not limited to, strikes, weather conditions, delays in the furnishing of services by sub-contractors, delays in obtaining materials, delays in obtaining approvals or inspections for a Certificate of Occupancy, the Closing date will be delayed for a sufficient time to allow the Seller to complete the dwelling, unless the Buyers and Seller agree in writing to cancel this Contract. Any costs or expenses incurred by Buyers due to delays shall not be the responsibility of the Seller, unless Seller has willfully delayed the closing solely for the purpose of Seller's monetary advantage. In the event any such condition results in a delay of the closing in excess of one (1) year beyond the Estimated Closing Date set forth in Section 1.2 above, the Seller shall have the right to terminate this Contract.

14.1 GOVERNMENTAL MORATORIUMS OR BANS In the event the Seller is unable to complete the construction of the dwelling, and/or close title within one (1) year of the Estimated Closing Date set forth in Section 1.2 due to the imposition of any municipal, county, state or federal moratorium or ban, or the withholding of any required permit or approval, the Seller shall have the right to terminate this Contract. Thereafter, the Seller shall return all deposit monies paid by the Buyers, without interest, together with the cost of all extras as set forth in Section 9 above. For the purposes of this agreement the concept of "moratorium or ban" shall include, but not be limited to, a restriction on new connections to sanitary sewers, a limitation of on-site sanitary disposal facilities, an exercise of sovereign jurisdiction over lands designated as "wellands", or the unavailability of potable drinking water.

14.2 SELLER'S INABILITY TO OBTAIN BUILDING PERMIT In the event the

construction of the house has not commenced prior to the execution of this Contract, Buyers agree that Seller's obligations pursuant to this Contract are conditioned on its ability to obtain a building permit to construct the house in accordance with the plans and specifications described in Section 1.6 above.

In the event the Seller shall not obtain a building permit within sixty (60) days of the Buyers' satisfaction of the mortgage contingency, the Seller shall have the right to terminate the Contract and shall refund all deposit or payments made under the Contract, without interest, pursuant to Section 9 above. In the event a building permit cannot be obtained without the approval of a variance by the municipal body having jurisdiction over such an application, the Seller shall not be required to pursue any such variance.

15.0 RISK OF LOSS If the Property is damaged and the cost of repair exceeds twenty (20%) per cent of the Total Purchase Price, the Seller will have the right to repair the damage and complete the house or to cancel this Contract. If the Contract is canceled pursuant to this paragraph, all deposit monies will be returned to the Buyers, without interest, pursuant to Section 9 above.

16.0 LOCATION OF HOUSE The Seller shall position the house and driveway on the lot and establish the elevation of the house, and its relative height in relation to the street. The Seller shall also determine all issues as to site grading and may construct the house in reverse, or "mirror image" of the plans. The Seller may consult with the Buyers as to the position of the house and whether the house is to be built in mirror image, but the final determination shall be made by the Seller.

17.0 EXTRAS, OPTIONS AND CHANGE ORDERS

17.1 Any extras, options or change orders not a part of this Contract may be ordered only through a written agreement called a change order with the Seller or the Seller's designated representative together with a thirty percent (30%) deposit paid within seven (7) days of the change order. In the event the thirty percent (30%) is not paid within such time period, the change order shall be void. The balance due for the change order will be paid at closing. The subcontractors and employees performing construction work at the Property are not Seller's designated representatives for the purpose of this Section. Seller shall have no responsibility whatsoever for any option, extra or change order which is ordered through anyone other than the Seller or Seller's designated representative, and any such extra, option or change order will be omitted from the representations and warranties of the Seller set forth in this Contract. If Seller receives a bill from any of its subcontractors for work ordered by the Buyers directly through a subcontractor not authorized by Seller, the Buyers shall pay Seller the full amount of such bill plus twenty (20%) percent at Closing, without any deduction relating to the quantity, quality or nature of the work performed.

17.2 Buyers acknowledge that the Builder will incur expenses in connection with the ordering and installation of options and extras during the course of the construction of the house. Additionally, any options or extras installed do not necessarily add value to the house in the event the Buyers do not close and the house must be sold to other Buyers.

Accordingly, Buyers agree to pay in full for any options and extras ordered during the mortgage contingency period whether or not they are successful in obtaining a firm, written commitment for the mortgage loan. In the event the Buyers did not pay for the options and extras, the Seller shall be entitled to deduct the cost of the options and extras from the deposit monies prior to returning the deposit monies to the Buyers. Therefore, the Buyers agree that the Seller shall retain all installed materials concerning such options and extras.

17.3 CONTINGENCIES Seller shall not be obligated to commence construction of the home or the ordering and installing of extras until all contingencies that are the responsibility of the Buyers are satisfied or waived. However, if the house is under construction, construction will not be delayed or altered by Seller pending the Buyers' satisfaction or waiver of its contingencies.

18.0 SURVEY The Seller will provide a final survey prior to the Closing, which will be certified, to persons named by the Buyers. The Buyers or their attorney will provide the names to which the survey will be certified not later than thirty (30) days prior to the Estimated Closing Date. The survey does not include: (i) stakes or other permanent markers; or (ii) a metes and bounds description of the Property. The Buyers agree to pay the Seller the amount specified in Section 1.7 for the survey at Closing. In the event that the Buyers order a staked survey, they shall so notify the Seller not later than sixty (60) days prior to the Estimated Closing Date for closing. The cost of each stake or permanent marker of \$75.00 each shall be paid by the Buyers. Please advise the surveyor and the Builder at the time that the survey is ordered whether or not your clients have elected to have stakes set.

19.0 BROKER The parties represent and warrant to each other that the Broker(s) named in Section 1.4 was (were) the sole real estate Broker(s) or agent(s) responsible for Buyers' introduction to the Property. The party who shall be in breach of this representation and warranty shall be responsible for any resulting commission and shall pay for all costs relating to the defense of a lawsuit commenced by a Broker or salesperson claiming a commission as a result of a breach of the representation and warranty contained in this Section.

20.0 RECORDING The Buyers may not record this Contract. If the Buyers attempt to record this Contract, or, in fact, do record it, such act will make the Contract void and the Seller shall be excused from performing its obligations under this Contract. The Seller may keep the Buyers' deposit money if this should happen and shall not have to complete the Contract. This Section shall not prohibit the Buyers from filing a Notice of Settlement immediately prior to Closing.

21.0 ASSIGNMENT The Buyers may not assign, that is, give their rights under this Contract to someone else unless Buyers have obtained prior written consent of the Seller to assign this Contract.

22.0 BUYERS' CHOICE OF MATERIALS AND COLORS Buyers will make all selections, including but not limited to their choice of roofing, siding, brick, cabinets, appliances, tile, flooring, colors, and/or materials offered by the Seller within seven (7) days of the date of execution of this Contract. In the event the Buyers fail to timely make their selections, the

Seller shall make the selections for the Buyers. The Buyers are advised that the Seller is not responsible to "chase" the Buyers to make selections, and it is the Buyers' responsibility to insure that all selections have been made in a timely manner. The Buyers recognize that if the house is already under construction Buyers' selections may be limited.

22.1 SUBSTITUTION OF BUYERS' SELECTIONS In the event that the Buyers have made a selection, and the Seller subsequently is unable to obtain that color or item, the Seller shall give the Buyers three (3) days written notice to make another selection. If the Buyers fail to make the substitute selection in writing within three (3) days thereof, the Seller will have the right to use its own judgment in the selection, and the Buyers will accept those colors, fixtures and/or materials selected by the Seller

23.0 ATTORNEY REVIEW The Buyers and the Seller may choose to have an attorney study this Contract. The attorney must complete his or her review of the Contract within five (5) business days. The five (5) business days are counted from the date of delivery of the signed Contract to the Buyers and the Seller. The Buyer and the Seller may agree in writing to extend the five (5) day period for attorney review. If an attorney for the Buyers or the Seller reviews and disapproves of the Contract, the attorney must notify the Realtor(s) if any are involved in the transaction, and the other party named in this Contract within the five (5) day period and may include suggested revisions. Otherwise, this Contract will be legally binding as written. The attorney must send the notice of disapproval to the Seller or Buyers, as the case may be, and the Realtor(s) by certified mail, by telegram or by delivering it personally. The telegram or certified letter will be effective upon sending. The personal delivery will be effective upon delivery to the Seller or Buyer, as the case may be, and the Realtor(s).

24.0 FLOOD CERTIFICATION If the Buyers determine that the Property is located in a designated Flood Zone or Area which requires Buyers to purchase flood insurance prior to the mortgage lender advancing the mortgage proceeds, the Buyers may terminate the Contract by providing the Seller written notice within five (5) days of the date of this contract. In such event, the deposit money shall be returned to Buyers without interest. If the Seller is not in receipt of the notice required above within five (5) days of the date of this Contract, the Buyers shall be deemed to have waived their rights under this provision.

25.0 TRIAL BY JURY WAIVER The parties to this agreement waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter arising out of or in any way connected with this Agreement and/or the Property, including, but not limited to, the construction of the house, repairs to the house, the relationship of Seller and Buyer, the Buyer's use and occupancy of the house and Property, governmental approvals or permits, alleged torts, negligence, fraud, misrepresentation or any cause of action legal or equitable in nature. The terms of this paragraph shall survive closing of title or termination of this Agreement. It is the parties' intention that any disputes that arise between the parties shall be resolved without trial by jury pursuant to the Alternate Dispute Resolution set forth in Section 26.0 below.

26.0 ALTERNATE DISPUTE RESOLUTION The Buyer and the Seller recognize and acknowledge that a controversy or dispute may arise in connection with the dwelling and/or

land to be conveyed pursuant to this Agreement. The parties further acknowledge and agree that it will be more expedient and cost effective to have any such dispute or controversy resolved by the Alternative Dispute Resolution rather than in a court of law. Therefore, the parties hereto do agree that in the event of a dispute or controversy, for any reason, concerning any matters, it shall be resolved and determined by a retired former Judge of the Superior Court associated either with Jams, Inc. or Endispute, Inc., both located in Morristown, New Jersey. In the event Jams, Inc. or Endispute, Inc. shall not be available, the parties shall utilize the American Arbitration Association. The determination reached through this forum shall be binding and conclusive on the parties and shall not be subject to appeal or review. The dispute shall be submitted to Jams, Inc. or Endispute, Inc., who shall appoint one former Superior Court Judge to determine the issue or issues in controversy or dispute. The cost of the proceeding shall be equally divided between the parties and the parties shall abide by the rules and procedures established through this Alternate Dispute Resolution method. The terms of this Section 26.0 shall survive the closing of title.

27.0 **HEADINGS** The headings contained in this Contract are for convenience only and shall not be used in interpreting the meaning or scope of any Section.

28.0 **NOTICES** Notices provided in this Contract may be sent to the attorney for the Buyers or Seller in place of the Buyers or Seller. All notices shall be hand delivered or mailed by certified mail, return receipt requested.

29.0 **PARTIES LIABLE** This contract is binding upon all parties who sign it and all that succeed to their rights and responsibilities.

30.0 **COMPLETE AGREEMENT** This Contract is the entire and only agreement between the Buyers and the Seller. This Contract replaces and cancels any previous agreements between the Buyers and the Seller. This Contract can only be changed by an agreement in writing signed by both Buyers and Seller. The Seller states that the Seller has not made any other contract to sell the Property to anyone else.

31.0 **SIGNS** The Buyers agree that they shall not, either before or after the closing of title, place any signs, statues, notices, billboards or similar structures at, in, on or about any portion of the Property (or in the dwelling or in automobiles exposed to view by the general public) which is the subject matter of this Agreement for any purpose whatsoever, except "for sale" signs permitted by law and any applicable homeowners association. This provision shall survive the closing of title and delivery of the deed to the Buyers, and shall remain in effect for a period of three (3) years after the date of closing title. In the event that the Seller enforces this provision in any Court of competent jurisdiction, the Buyers shall be required to pay the Seller for reasonable attorney's fees and costs of suit, regardless of the outcome of any such litigation.

32.0 **NOTIFICATION REGARDING OFF-SITE CONDITIONS** Pursuant to the "New Residential Construction Off-Site Conditions Disclosure Act," P.L. 1995, c. 253 (C.46:3C-1 et. seq.), Sellers of newly constructed residential real estate are required to notify Buyers of the availability of lists disclosing the existence and location of off-site conditions which may affect

the value of the residential real estate being sold. The lists are to be made available by the Municipal Clerk of the Municipality within which the residential real estate is located and in other municipalities that are within one-half mile of the residential real estate. The address(es) and telephone number(s) of the Municipalities relevant to this project and the appropriate Municipal Offices where the lists are made available are listed below. Buyers are encouraged to exercise all due diligence in order to obtain any additional or more recent information that they believe may be relevant to their decision to purchase the residential real estate. Buyers are also encouraged to undertake an independent examination of the general area within which the residential real estate is located in order to become familiar with any and all conditions that may affect the value of the residential real estate.

The Buyers has five (5) business days from the date the contract is executed by the Buyers and the Seller to send notice of cancellation of the contract to the Seller due to off-site conditions. The notice of cancellation shall be sent by certified mail, return receipt requested. The cancellation will be effective upon the notice of cancellation being mailed. If the Buyers do not send a notice of cancellation to the Seller in the time or manner described above, the Buyers will lose and be deemed to have waived the right to cancel the contract as provided in this notice.

**Municipal Clerk, Montville Township
Municipal Building
195 Changebridge Road
Montville, New Jersey 07045-9498
Telephone (973) 331-3300
Facsimile (973) 402-0787**

33.0 MEGAN'S LAW STATEMENT Upon New Jersey Law, the County Prosecutor determines whether and how to provide notice of the presence of convicted sex offenders in an area. In their professional capacity, real estate licensees are not entitled to notification by the County Prosecutor under Megan's Law and are unable to obtain such information for you. Upon closing, the County Prosecutor may be contacted for such further information as may be disclosable to you.

34.0 ROCK EXCAVATION Buyers and Seller acknowledge that Seller may encounter rock during the construction of the footings and foundation of the house that cannot be removed without blasting. If rock is encountered, Seller will notify the Buyers of the rock condition within ten (10) days of said discovery. Seller will further advise the Buyers of the estimated cost of removing the rock as part of said notice. Buyers will within three (3) days after receipt of said notice, time being of the essence, determine whether the Buyers want to: (i) pay for the cost of the rock blasting, or (ii) terminate the Contract. In the event Buyers fail to notify Seller, in writing, of their election within said three (3) day period, the Buyers shall be deemed to have elected to waive their right to terminate. In the event that the Buyers choose to absorb the cost of the rock blasting, or have been deemed to have waived the option to terminate, the Buyers shall pay the estimated cost of rock blasting to the Seller within seven (7) days of receipt of said notice. The Seller agrees to accept the payment of the estimated cost of the rock blasting as payment in full and neither side shall be entitled to any adjustment whether or

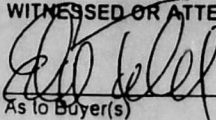
not the actual cost of the rock blasting exceeds or is less than the estimated cost. In the event that the Buyers elect to terminate the Contract, then all deposit monies and any payments for options and extras shall be returned to the Buyers, without interest, and neither party shall have any further obligation to the other.

35.0 RADON Seller agrees that Buyers shall be permitted to inspect the premises after the closing but not later than thirty (30) days after the closing for the presence of radon gases in excess of 4.0 pico curries. In the event Buyers' inspection reveals radon gases in excess of 4.0 pico curries Buyers shall have the option to have Seller install a fan exhaust. In the event Buyers choose to have Seller install the fan exhaust, Buyers shall pay Seller \$300.00 ("Payment for Remediation"). Within sixty (60) days of Seller's receipt of the Payment for Remediation, Seller shall install the fan exhaust. Thereafter, Seller shall have no further responsibility with regard to radon gases. Seller shall assign to Buyer all warranties regarding the equipment installed.

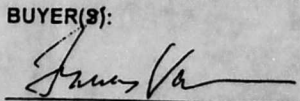
36.0 LANDSCAPING Seller shall top soil, rake, seed, hay and fertilize the lawn on the Property ("Seller's Landscaping Responsibility"). Once Seller has completed Seller's Landscaping Responsibility, Buyers shall assume all responsibility, and be solely responsible for the watering, fertilization and maintenance of the lawn. Buyers hereby release Seller from any responsibility for lack of grass growth due to any conditions, including but not limited to soil erosion.

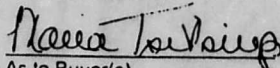
SIGNED AND AGREED TO BY:

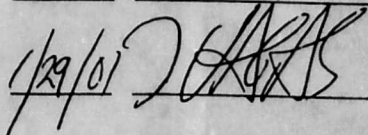
WITNESSED OR ATTESTED:


As to Buyer(s)


DATE: 1/12/01

BUYER(S): 
BUYER


As to Buyer(s)

1/29/01 
BUYER

WITNESSED OR ATTESTED:

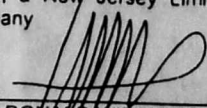

As to Seller

DATE:

1/13/01

SELLER:

WOODMONT COURT AT MONTVILLE,
L.L.C., a New Jersey Limited Liability
Company

By 
DONALD WITMONDT
MEMBER

M

BRODERICK, NEWMARK & GRATHER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

20 SOUTH STREET

MORRISTOWN, N.J. 07960

(973) 538-0084

(973) 538-4242

FAX (973) 538-2509

E. F. BRODERICK (1929-1987)

I. EZRA NEWMARK (1925-1979)

CAROLYN N. DALY*

* MEMBER OF N.J. AND NY BARS

EDWARD F. BRODERICK, JR.*

MARTIN NEWMARK

FRANCIS C. GRATHER**

ALAN J. BALDWIN**

* CERTIFIED BY THE SUPREME COURT
OF N.J. AS A CIVIL TRIAL ATTORNEY

* MEMBER OF N.J. AND IDAHO BARS

* CERTIFIED BY THE SUPREME COURT

OF N.J. AS A MATRIMONIAL LAW ATTORNEY

* FELLOW AMERICAN ACADEMY OF
MATRIMONIAL LAWYERS

January 3, 2003

Honorable Barbara Zucker-Zarett, J.S.C.

Morris County Courthouse

P.O. Box 910

Morristown, NJ 07963-0910

Re: Weichert Co., et als ads Vagias

Docket No. MRS-L-2245-02

Dear Judge Zucker-Zarett:

Pending before Your Honor is a motion brought by the defendant, Woodmont Court at Montville, LLC, to dismiss the plaintiffs' Complaint and to enforce an arbitration clause contained in the real estate contract negotiated between the parties. The plaintiff has now filed opposition to that motion and asserts the legal defense of fraud in the inducement, contending that the arbitration clause was contained in a contract which was, itself, induced by the underlying fraud. Plaintiffs argue that this makes the contract "void or voidable" and that, therefore, the arbitration clause should not be enforced.

New Jersey law is clear and to the contrary. In Van Syoc v. Walter, 259 N.J. Super. 357 (App. Div. 1992), cert. denied 133 N.J.

P.47

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January 3, 2003

Page 2

430 (1993) the Appellate Division affirmed the decision of a trial court which had granted summary judgment dismissing the plaintiffs' Complaint. The plaintiffs had started their action in order to bar arbitration pursuant to an arbitration clause contained in a construction contract entered into between plaintiffs and the defendant. The trial judge had based his decision on Prima Paint Corp. v. Flood & Conklin Manufacturing Co., 388 U.S. 395, 87 S.Ct 1801, 18 L.Ed. 2d 1270 (1967) which held that "absent a claim of fraud directed at the arbitration clause itself, a claim of fraud in the inducement of the contract is a matter for the arbitrators". Van Syoc at 339. The plaintiffs have offered no factual evidence whatsoever to support an argument that the arbitration clause itself was the product of fraud. If they attempted to do so, they would fail.

Documentation previously provided to the court by counsel for Woodmont Court establishes beyond doubt that the contract in question was itself the subject of extensive negotiations between counsel for the plaintiffs and the co-defendant and that the arbitration clause was in the original proposed contract suggested by co-defendant's counsel and remained in each draft exchanged between the parties thereafter. The language remained in the final draft which was executed by the parties. The transaction has since closed and the

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January 3, 2003

Page 3

real estate conveyed to the plaintiffs. Far from being slipped into the contract in a fraudulent manner, the provisions at issue were accepted by the parties and left in the contract on the apparent advice of counsel.

This court should enforce the arbitration clause and compel the parties to resolve their disputes in that forum

Respectfully submitted,



Alan J. Baldwin

AJB:mno

cc: Francine Minervini, Esq.
Sidney J. Bernstein, Esq.

FILED

LOVELL & KULKA, P.A.

JAN 10 2003

07001

J. I.S.C.
CLERK OF COURT
MORRIS COUNTY
CLERK HOUSE

Defendants, Woodmont Properties, L.L.C. and
Woodmont Court At Montville, L.L.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO: MRSL-2245-02

THEODORE and FRANCES VAGIAS,
Plaintiffs.

Civil Action

s.
WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),
Defendants.

**ORDER
DISMISSING COMPLAINT AND
COMPELLING ARBITRATION**

This matter having been heard on the return date of a Notice of Motion of the
Woodmont defendants to compel arbitration and strike jury demand; and this Court
having heard oral argument on January 10, 2003, this Court having read the Brief and
certifications submitted on behalf of the Woodmont defendants, and having read the
opposing papers submitted on behalf of plaintiffs, and for good cause being shown;

IT IS, on this 10 day of January, 2003

As THE 2 Woodmont DEFENDANTS

ORDERED, that the Complaint of plaintiffs be and hereby is dismissed, and the
plaintiffs shall be compelled to submit their claims to arbitration, pursuant to the
Contract of Sale.

Barbara Zucker-Zarett

Barbara Zucker-Zarett, Judge
Superior Court of New Jersey

J.S.C.

Pa 50

195a

PLAINT

FILED

JAN 10 2003

BRODERICK, NEWMARK & GRATHER
A Professional Corporation
20 South Street
Morristown, NJ 07960
973-538-0084
Attorneys for Defendant, Weichert Co.

THEODORE AND FRANCES VAGIAS,

Plaintiffs,

vs.

WOODMONT PROPERTIES, LLC,
WOODMONT COURT AT MONTVILLE, LLC
and **WEICHERT CO. (Formerly**
WEICHERT, REALTORS),

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - MORRIS COUNTY
:
: DOCKET NO. MRS-L-2245-02

Civil Action

ORDER

THIS MATTER being brought before the court by the firm of Broderick, Newmark & Grather, attorneys for defendant, Weichert Co., and good cause appearing,

IT IS on this 10 day of *January*, 2003

ORDERED that plaintiffs' Complaint is hereby dismissed without prejudice for failure to answer interrogatories, and further

ORDERED that a copy of this Order be served on all parties within 7 days hereof.

Barbara Zucker-Zarett

Barbara Zucker-Zarett, Judge
Superior Court of New Jersey
J.S.C.

Opposed
 Unopposed

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Kokon,
Insurance Commissioner of the
Commonwealth of Pennsylvania,

Plaintiff

v.
Legion Insurance Company
One Logan Square, Suite 1400
Philadelphia, PA 19103

Defendant

Docket No. 183 M.D. 2002

ORDER

AND NOW, this ^{28th} day of MARCH, 2002, upon consideration of the Petition for Rehabilitation ("Petition") filed by the Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner"), the Court hereby finds that it is in the best interest of Legion Insurance Company ("Legion"), its policyholders, creditors, and the public, that Legion be placed into Rehabilitation in accordance with provisions of Article V of the Insurance Department Act of 1921, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§221.1-221.63, and that sufficient grounds exist for the entry of an Order of Rehabilitation ("Order"), based on Legion's consent to rehabilitation under 40 P.S. §221.14(12). NOW, therefore, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The Petition for Rehabilitation filed by the Commissioner is granted.

2. Effective April 1, 2002, Legion is hereby placed in rehabilitation pursuant to the provisions of Article V of the Insurance Department Act, supra.

3. M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, is, and her successors in office are, hereby appointed Rehabilitator of Legion, directed to take immediate possession of its property, business and affairs as Rehabilitator pursuant to the provisions of Article V of the Insurance Department Act, supra, and to take such action as the nature of this case and the interests of the policyholders, creditors, or the public may require.

4. The Rehabilitator shall have full powers and authority given the Rehabilitator under Article V of the Insurance Department Act, supra, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Rehabilitator under Article V of the Insurance Department Act, supra, and under this Order.

ASSETS OF THE ESTATE

5. As provided in Section 515(c) of Article V of the Insurance Department Act, supra, as Rehabilitator, the Commissioner is hereby directed to take possession of the assets, contracts and rights of action of Legion, of whatever nature and wherever located, whether held directly or indirectly. According to Section 515(c), supra, "the

filing or recording of this Order with the clerk of the Commonwealth Court or recorder of deeds of the county in which the principal business of Legion is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds would have imparted."

6. All banks, investment bankers, or other companies, entities, or persons having in their possession assets which are, or may be, the property of Legion are hereby ordered to advise the Rehabilitator, and any agents and attorneys for the Rehabilitator (collectively, the "Rehabilitator") immediately of such assets and to identify such assets for the Rehabilitator, and are further ordered not to disburse, convey, transfer, pledge, assign, hypothecate, encumber or in any manner dispose of such assets without the prior written consent of, or unless directed in writing by, the Rehabilitator. Any checks or other payments which have, as of the date of this Order, been actually mailed or actually delivered to the payee will, provided same are otherwise proper and in compliance with relevant law, be honored without prejudice to the rights of the Rehabilitator regarding recoupment from the recipient. Such persons and entities, and all other persons and entities, are enjoined from disposing of or destroying any records pertaining to any business transactions between Legion and banks, brokerage houses or other persons or companies having done business with Legion or having in their possession assets, which are, or were, the property of Legion.

7. All insurance agents, managing general agents, brokers or other persons having sold policies of insurance and/or collected premiums on behalf of Legion shall account for all earned premiums and commissions and shall account for and pay all premiums and commissions unearned due to policies canceled in the normal course of business, directly to the Rehabilitator at the offices of Legion within 30 days of the date of this Order, or the date of receipt, whichever is later, or appear before this Court to show good cause as to why they should not be required to account to the Rehabilitator. No insurance agent, broker, or other person shall use premium monies owed to Legion for any purpose other than payment to the Rehabilitator.

8. At the request of the Rehabilitator, all attorneys employed or retained by Legion as of the date of this Order shall, within 30 days of such request, report to the Rehabilitator the name, company claim number, if applicable, and status of each case or matter they are handling on behalf of Legion. The Rehabilitator need not make payment for any unsolicited reports.

9. At the request of the Rehabilitator, any company providing telephone service to Legion shall provide new telephone numbers and refer calls from the numbers presently assigned to Legion to any such new numbers and perform any other changes necessary to the conduct of the Rehabilitation of Legion.

10. Any premium finance company which has entered into a contract to finance a policy which has been issued by Legion shall pay the premium owed to Legion directly to the Rehabilitator at the Offices of Legion.

11. The United States Postal Service is requested to provide any information requested regarding Legion and to handle future deliveries of Legion mail, as directed by the Rehabilitator.

12. Any entity furnishing water, electric, sewage, garbage or trash removal services to Legion shall maintain such services and transfer any such accounts to the Rehabilitator as of the date of this Order, unless instructed to the contrary by the Rehabilitator.

13. Any entity furnishing claims processing or data processing services to Legion shall maintain such services and transfer any such accounts to the Rehabilitator as of the date of this Order, unless instructed to the contrary by the Rehabilitator.

14. Any entity which has custody or control of any data processing information and records including, but not limited to, source documents, all types of electronically stored information, master tapes or any other recorded information relating to Legion, shall transfer, at the request of the Rehabilitator, custody and control of such records to the Rehabilitator.

15. At the request of the Rehabilitator, Legion, its affiliates, and its officers, directors, trustees, employees, agents and attorneys, are hereby ordered to deliver to the Rehabilitator keys or access codes to the premises where Legion conducts its business and to any safe deposit boxes, and to advise the Rehabilitator of the combinations or access codes of any safes or safe keeping devices of Legion.

16. Legion, its affiliates, and its officers, directors, trustees, employees, agents, accountants, actuaries, auditors and attorneys, are hereby ordered to identify for the Rehabilitator all of the assets, books, contracts, causes of actions, funds, documents, records, files, credit cards, work papers and related documents, investigative materials, or other property of any nature of or related to Legion, whether in paper, electronic, magnetic, or other form, to tender or make readily available to the Rehabilitator, at the Rehabilitator's request, all of the foregoing, and to advise and cooperate with the Rehabilitator in identifying and locating any of Legion's assets.

17. Except for policies or contracts of insurance, the Rehabilitator, in her discretion, may affirm or disavow any executory contracts to which Legion is a party. The entry of this Order of Rehabilitation shall not constitute an anticipatory breach of any such contracts.

EXPENSES, POLICYHOLDER AND CERTIFICATE CLAIMS,
OTHER PAYMENTS AND LAWSUITS

18. The Rehabilitator may, in her discretion, pay expenses incurred in the ordinary course of Legion's business in rehabilitation and may, in her discretion, pay the actual, reasonable, and necessary costs of preserving or recovering the assets of Legion and the costs of goods and services provided to Legion's estate. Such costs shall include but not be limited to: (a) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the Commonwealth of Pennsylvania Insurance Department ("Department"), the Commissioner or the Rehabilitator to perform services relating to the Rehabilitation of Legion or the feasibility, preparation, implementation, or operation of a rehabilitation plan; (b) compensation and other costs related to representatives and employees of Legion or its affiliates who perform services for Legion; and (c) a reasonable allocation of costs and expenses associated with time spent by Department personnel in connection with the Rehabilitation of Legion.

19. In the event that this Court issues an order appointing the Insurance Commissioner of the Commonwealth of Pennsylvania as liquidator of Legion, the actual, reasonable and necessary costs of preserving or recovering assets of Legion and the costs of goods or services provided to and approved by Legion (In Rehabilitation), under paragraph 18 of this Order, during the period of Rehabilitation will be treated as "costs and expenses of administration," pursuant to 40 P.S. §221.44.

20. The Rehabilitator may, in her discretion, pay claims for losses, in whole or in part, under policies and contracts of insurance and loss adjustment expenses as identified in Section 544(b) of the Insurance Department Act, supra, 40 P.S. §221.44(b), provided, however, that the Rehabilitator shall not have the discretion to pay, and may not pay, bad faith claims or claims for extra-contractual charges or damages.

21. No payments of any type shall be made to any claimants of Legion as identified in Section 544(c) through (i) of the Insurance Department Act of 1921, supra, 40 P.S. §221.44(c) through (i), except in the discretion of the Rehabilitator.

22. All persons, in the Commonwealth or elsewhere, are enjoined and restrained from: (a) instituting or further prosecuting any court action (whether at law, in equity, or otherwise) or arbitration or mediation against Legion or the Rehabilitator; (b) obtaining preferences, judgments, attachments, garnishments or liens, including obtaining collateral in any litigation, mediation, or arbitration involving Legion, the Rehabilitator, or Legion's assets and property; (c) levying any execution process against Legion, the Rehabilitator or Legion's assets and property in the Commonwealth of Pennsylvania or elsewhere; or (d) making any assessments or indirectly collecting such assessments by setting them off against amounts otherwise payable to Legion.

23. Pursuant to Section 221.15(c) of the Insurance Department Act of 1921, supra, the Rehabilitator is specifically authorized, in her sole discretion, to enter into agreements to and otherwise take possession of the statutory deposits held by any state or

territory and to do all things necessary to manage and apply the deposits in accordance with any such agreements. Legion shall not post additional statutory security deposits in any state or territory.

24. a. All court actions, arbitrations and mediations currently or hereafter pending against Legion in the Commonwealth of Pennsylvania or elsewhere are hereby stayed.

b. All court actions, arbitrations and mediations currently or hereafter pending against an insured of Legion in the Commonwealth of Pennsylvania or elsewhere are stayed for ninety (90) days from the effective date of this Order or such additional time as the Rehabilitator may request.

25. No judgment, order or arbitration award against Legion or an insured of Legion entered after the date of filing of the Petition for Rehabilitation and no judgment, order or arbitration award against Legion or an insured of Legion entered at any time by default or by collusion need be considered as evidence of liability or quantum of damages by the Rehabilitator.

REINSURANCE

26. The amounts recoverable by the Rehabilitator from any reinsurer of Legion shall not be reduced as a result of this rehabilitation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each such

reinsurer of Legion is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with Legion. The Rehabilitator may, in her discretion, terminate, rescind, or commute any contract with a reinsurer or reinsurers.

NEW OR RENEWAL BUSINESS

27. The Rehabilitator is authorized to accept or reject new, existing, or renewal business. In implementing this paragraph, the Rehabilitator shall have the discretion to, inter alia, accept, reject, or cancel new, existing or renewal business, and write renewal business for time periods less than one year.

INJUNCTION AGAINST INTERFERING WITH REHABILITATION

28. Until further order of this Court, all affiliates of Legion, persons, corporations, partnerships, associations, accountants, actuaries, auditors, counsel, custodians, and all other entities, wherever located, are hereby enjoined and restrained from interfering in any manner with the Rehabilitator's possession and rights to the assets and property of Legion and from interfering in any manner with the conduct of the rehabilitation of Legion. Those affiliates of Legion, persons, corporations, partnerships, associations, accountants, actuaries, auditors, counsel, custodians, and all other entities are hereby enjoined and restrained from wasting, transferring, selling, concealing, terminating, canceling, destroying, shredding, disbursing, disposing of, or assigning any

assets, books, contracts, causes of action, funds, records, files, credit cards, work papers and related documents, investigative materials, or other property of any nature of or related to Legion, whether in paper, electronic, magnetic, or other form.

INJUNCTION AGAINST ACTIONS BY SECURED CREDITORS

29. All secured creditors or parties, pledgees, lienholders, collateral holders or other persons claiming secured, priority or preferred interests in any property or assets of Legion are hereby enjoined from taking any steps whatsoever to transfer, sell, assign, encumber, attach, dispose of, or exercise, purported rights in or against any property or assets of Legion.

NOT A DECLARATION OF INSOLVENCY

30. This Order shall not be deemed a finding or declaration of insolvency such as would activate the provisions of the Pennsylvania Property and Casualty Insurance Guaranty Act, 40 P.S. §§991.1801-9911.1820, or the provisions of similar acts of any other state or territory.

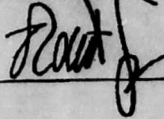
VIOLATIONS OF THIS ORDER

31. Any person violating any provision of this Order may be held in contempt of Court.

JURISDICTION

32. This Court shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

BY THE COURT



J.

Certified from the Record

MAR 28 2002

and Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken, Insurance Commissioner, :
Commonwealth of Pennsylvania, :
Plaintiff :
: :
: :

v. :
: :

No. 183 M.D. 2002

Legion Insurance Company, :
Defendant :
: :

ORDER

AND NOW, this 25th day of September, 2002, upon consideration of the Petition for Liquidation filed by the Rehabilitator of Legion Insurance Company (in Rehabilitation), it is hereby ORDERED as follows:

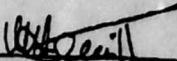
1. A hearing will be held on the Petition for Liquidation at a date to be determined after a Prehearing Conference.
2. A Prehearing Conference will be held October 4, 2002, at 10:00 a.m. in Courtroom No. 2, South Office Building, Harrisburg, Pennsylvania.
3. The Rehabilitator shall use good faith efforts to give notice of the Prehearing Conference by facsimile to all entities or persons who have a claim against Legion and have expressed an objection to, or support of, the entry of a Liquidation Order to the Rehabilitator.
4. The Liquidator shall cause notice of the Prehearing Conference on the Liquidation Petition to be published in newspapers of general circulation where Legion Insurance Company (in Rehabilitation) has its principal places of business and in the national edition of *The Wall Street Journal*.

Sep. 25. 2002 3:46PM

No. 1020 P. 3

5. Pending a hearing on the Liquidation Petition, the Stay set forth in Paragraph 24 of the March 28, 2002 Order is extended for sixty-four (64) additional days. Court actions, arbitrations and mediations, including but not limited to discovery, currently pending, or hereafter filed, against Legion Insurance Company (In Rehabilitation) or its insureds in the Commonwealth of Pennsylvania or elsewhere, are stayed beginning September 28, 2002 and ending December 1, 2002.

6. Pending a hearing on the Liquidation Petition, Paragraph 20 of the March 28, 2002 Order is amended as follows: the Rehabilitator's authorization to make continued payment of claims arising under policies of workers compensation and under policies providing accident and health benefits or certain hardship claims arising under various insurance policies is revoked in those states where statutory deposits for the benefit of such claimants are not made available to the Rehabilitator for the payment of said claims; provided, however, where good cause exists to make said payment notwithstanding the refusal of state officials to make available statutory deposits, the Rehabilitator may seek authorization from this Court for such payment. This revocation takes effect as soon as the Rehabilitator can implement the systems for terminating claim payments but in no case later than thirty (30) days after entry of this Order.



MARY HANNAH LEAVITT, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M Diane Koken, Insurance
Commissioner, Commonwealth
of Pennsylvania,

Plaintiff

v.

No. 183 M.D. 2002

Legion Insurance Company,
Defendant

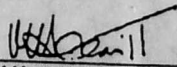
Re: Petition for Liquidation of Legion Insurance Company (In Rehabilitation)

AMENDED ORDER

AND NOW, this 27th day of March, 2003, our order in the above-captioned matter, filed March 26th, 2003, and dated January 26th, 2003 is amended to reflect the corrected date of filing as follows:

"AND NOW, this 26th day of March, 2003, after reviewing the Rehabilitator's Motion to Extend Stay of Litigation, it is hereby ORDERED as follows."

In all other respects, the order shall remain in effect.


MARY HANNAH LEAVITT, Judge

Rec'd By Legist

APR 5 2003

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken, Insurance
Commissioner, Commonwealth
of Pennsylvania,

Plaintiff

v.

Legion Insurance Company,
Defendant

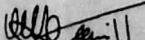
No. 183 M.D. 2002

Re: Petition for Liquidation of Legion Insurance Company (In Rehabilitation)

ORDER

AND NOW, this 29th day of April, 2003, after reviewing the Rehabilitator's Motion to Extend Stay of Litigation, it is hereby ORDERED as follows:

The Stay set forth in Paragraph 5 of the September 25, 2002 Order is extended for thirty-one (31) days. Court actions, arbitrations and mediations, including but not limited to discovery, currently pending, or hereafter filed, against Legion Insurance Company (In Rehabilitation) or its insured in the Commonwealth of Pennsylvania or elsewhere, are stayed beginning May 1, 2003 and ending May 31, 2003.



MARY HANNAH LEAVITT, Judge

Certified from the Record

APR 29 2003
and Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken, Insurance
Commissioner, Commonwealth
of Pennsylvania,

Plaintiff

v.

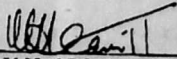
Legion Insurance Company,
Defendant

No. 183 M.D. 2002

ORDER

AND NOW, this 29th day of May, 2003, after reviewing the Rehabilitator's Motion to Extend Stay of Litigation, it is hereby ORDERED as follows:

The Stay set forth in Paragraph 5 of the September 25, 2002 Order is extended for thirty (30) days. Court actions, arbitrations and mediations, including but not limited to discovery, currently pending, or hereafter filed, against Legion Insurance Company (In Rehabilitation) or its insured in the Commonwealth of Pennsylvania or elsewhere, are stayed beginning June 1, 2003 and ending June 30, 2003.



MARY HANNAH LEAVITT, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken, Insurance
Commissioner, Commonwealth
of Pennsylvania,
Plaintiff

v

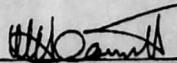
No. 183 M.D. 2002

Legion Insurance Company,
Defendant

ORDER

AND NOW, this 25th day of June, 2003, after reviewing the Rehabilitator's Motion to Extend Stay of Litigation, it is hereby ORDERED as follows:

The Stay set forth in Paragraph 5 of the September 25, 2002 Order is extended for thirty-one (31) days. Court actions, arbitrations and mediations, including but not limited to discovery, currently pending, or hereafter filed, against Legion Insurance Company (In Rehabilitation) or its insureds in the Commonwealth of Pennsylvania or elsewhere, are stayed beginning July 1, 2003 and ending July 31, 2003.



MARY HANNAH LEAVITT, Judge

FILED

JUL 25 2003

DEPARTMENT OF TREASURY
TREASURY DEPARTMENT

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677

Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

THEODORE and FRANCES VAGIAS,
Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

vs.

Civil Action

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

ORDER

Defendants.

This matter having been opened to the Court on the application of Braff, Harris & Sukoneck, attorneys for Plaintiffs, Theodore and Frances Vagias, for an Order to Restore the Complaint; and the Court having reviewed and considered the papers, ^{unopposed} and having heard ~~the arguments of counsel~~, and for other good cause having been shown;

IT IS, on this ^{25th} day of ^{July}, 2003;

ORDERED that:

1. Plaintiff's Complaint against defendant Weichert' Company is hereby restored; and it is further ordered that ^{215a}

A 70

2. Payment of a \$300.00 restoration fee to the Clerk of the Superior Court has been made by the attached check; and it is further ordered that

3. A copy of this Order shall be served upon all parties within 7 days of the date herein.

Deanne M. Wilson

DEANNE M. WILSON
JUDGE OF THE SUPERIOR COURT

J.S.C.

 opposed
 X unopposed

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW

ERIC L. GROGAN

570 W. MT. PLEASANT AVENUE
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(973) 994-6677
Facsimile (973) 994-1296

Writer's
E-Mail Address
elgrogan@bhs-law.com

305 Broadway, Seventh Floor
New York, New York 10007
(212) 599-2085
Facsimile (212) 822-1479

July 9, 2003

VIA CERTIFIED MAIL/RRR
AND REGULAR MAIL

Alan J. Baldwin, Esq.
20 South Street
Morristown, New Jersey 07960

Re: **Vagias, Theodore v. Woodmont Court at Montville, LLC**
Docket No.: **MRS-L-2245-02**
Your File No.: **10783-02 (SJB)**
Our File No.: **244.14899**

Dear Mr. Baldwin:

This office represents Theodore and Frances Vagias.

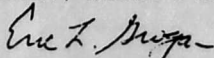
The above parties claim that there was consumer fraud, commonlaw fraud, breach of contract and environmental contamination to the property purchased. Given these claims, the homeowners hereby request that this dispute be forwarded to alternative dispute resolution, pursuant to Paragraph 26.0 of the Contract of Sale of Land and for the Building of a House in this matter.

We request that you acknowledge that a conflict exists and that this matter will be put to alternative dispute resolution.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

BRAFF, HARRIS & SUKONECK



ERIC L. GROGAN

ELG/az

cc: Theodore and Frances Vagias
Sydney Bernstein, Esq.

1072 217a

BRODERICK, NEWMARK & GRATHER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

20 SOUTH STREET

MORRISTOWN, N.J. 07960

(973) 538-0084

(973) 538-4242

FAX (973) 538-2509

E. F. BRODERICK (1929-1967)
I. EZRA NEWMARK (1925-1979)

CAROLYN N. DALY*

* MEMBER OF N.J. AND N.Y. BARS

EDWARD F. BRODERICK, JR.*
MARTIN NEWMARK
FRANCIS G. GRATHER**
ALAN J. BALDWIN*

* CERTIFIED BY THE SUPREME COURT
OF N.J. AS A CIVIL TRIAL ATTORNEY

** CERTIFIED BY THE SUPREME COURT
OF N.J. AS A MATRIMONIAL LAW ATTORNEY
* FELLOW AMERICAN ACADEMY OF
MATRIMONIAL LAWYERS

July 28, 2003

Eric L. Grogan, Esq.
Braff, Harris & Sukonek
570 W. Mt. Pleasant Avenue
Livingston, NJ 07039

Re: Vagias v. Weichert Co.

Dear Mr. Grogan:

I have your letter of July 9th.

I have discussed its contents with my client and will get back to you as soon as a decision is made.

Meanwhile, please advise as to the status of your motion to restore.

Very truly yours,


Alan J. Baldwin

AJB:mno

FILED

OCT 10 2003

**DEANNE AL WILSON
JUDGE SUPERIOR COURT**

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677

Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

THEODORE and FRANCES VAGIAS,

Plaintiff,

vs.

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

Civil Action

ORDER

This matter having been opened to the Court on the application of Braff, Harris & Sukoneck, attorneys for Plaintiffs, upon a Notice of Motion extend discovery for exceptional circumstances pursuant to Rule 4:24-1; and the Court not having received any objection from the defendant; and this matter having been submitted to the Court for ruling on the papers, pursuant to Rule 1:6-2; and the Court having considered the pleadings; and for other good cause having been shown;

IT IS, on this *10th* day of *October*, 2003,

ORDERED that:

Pa 74 219a

Denied

1. Discovery is hereby ~~extended~~ for ~~sixty~~ days from the date of this Order, for completion of discovery, including interrogatories, depositions and expert discovery; and

2. A conformed copy of this Order be served upon all counsel within 7 (1) days of receipt of same by attorneys for Plaintiffs, Theodore and Francis Vagias.

Deanne M. Wilson

J.S.C.

DATED: 10 October 03

DEANNE M. WILSON
JUDGE OF THE SUPERIOR COURT

X opposed

unopposed

Counsel's move from one firm to another is not an exceptional circumstance. The fact remains that nothing happened in this case for more than SIX months - no discovery, no litigation, no arbitration. If Counsel was of the impression that Weichert was arbitrating rather than litigating, arbitration should have been pursued. If Counsel was of the impression that Weichert was litigating, discovery should have been produced. Neither was accomplished and the discovery end date ran... a long time passed before anything happened... and the discovery end date ran. That is not an exceptional circumstance.

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW

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Facsimile (212) 822-1479

December 2, 2003

Adam J. Baldwin, Esq.
Weichert Company
Broderick, Newmark & Grather
20 South Street
Morristown,, New Jersey 07960

RE: Client: Theodore and Francis Vagias
Plaintiff: Theodore and Francis Vagias
Our File No.: 244.14899

Dear Mr. Baldwin:

Enclosed please find a copy of an order dated November 20, 2003 denying the motion for leave to appeal, executed by the Honorable Howard H. Kestin P.J.A.D.

Very truly yours,

BRAFF, HARRIS & SUKONECK



ERIC L. GROGAN

ELG/ep
Enclosure

220a

48
AM - 123-03T1

ORDER ON MOTION

THEODORE AND FRANCES VAGIAS
VS
WOODMONT PROPERTIES LLC ET AL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. AM-000123-03T1
MOTION NO. M -001117-03
BEFORE PART: D
JUDGE(S): KESTIN
AXELRAD

MOTION FILED: OCTOBER 27, 2003
ANSWER(S) FILED: NOVEMBER 03, 2003

BY: THEODORE VAGIAS
BY: WEICHAFT CO

RECEIVED
APPELLATE DIVISION

NOV 20 2003

SUBMITTED TO COURT: NOVEMBER 17, 2003

ORDER

SUPERIOR COURT
OF NEW JERSEY

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS
17th DAY OF NOVEMBER, 2003, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT
- FOR LEAVE TO APPEAL

GRANTED DENIED OTHER
() (X) ()

SUPPLEMENTAL:

FILED
APPELLATE DIVISION

NOV 20 2003

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

Jim Flynn
CLERK OF THE APPELLATE DIVISION

Jim Flynn
CLERK

MRS L-2245-02

FOR THE COURT:

JUEAC

Howard H. Kestin
HOWARD H. KESTIN P.J.S.A.D.

221a

BRODERICK, NEWMARK & GRATHER

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ATTORNEYS AT LAW

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(973) 538-4242

FAX (973) 538-2508

December 16, 2003

7/10/11
E. F. BRODERICK (1929-1987)
I. EZRA NEWMARK (1925-1979)

EDWARD J. BRODERICK, JR.*
MARTIN B. BRODERICK*
FRANCIS C. BRODERICK*
ALAN J. BALDWIN*

* CERTIFIED BY THE SUPREME COURT
OF N.J. AS A CIVIL TRIAL ATTORNEY
* CERTIFIED BY THE SUPREME COURT
OF N.J. AS A MATRIMONIAL LAW ATTORNEY
* FELLOW AMERICAN ACADEMY OF
MATRIMONIAL LAWYERS

Morris County Civil Division
P.O. Box 910
Morristown, NJ 07963-0910

Re: Weichert Co., et als ads Vagias
Docket No. MRS-L-2245-02


Dear Sir or Madam:

Enclosed please find an original and a copy of a Notice of Motion, an original Brief, an original Certification, two copies of a proposed form of Order, two return envelopes and a check in the amount of \$30.00.

Please file the original Notice of Motion, returning the copy stamped "Filed" to me in the enclosed envelope.

Please forward the remaining documents to the judge assigned to rule on the motion.

Very truly yours,


Alan J. Baldwin

AJB:mmo
Enclosures
cc: Eric Grogan, Esq.

222a

BRODERICK, NEWMARK & GRATHER
A Professional Corporation
20 South Street
Morristown, NJ 07960
973-538-0084
Attorneys for Defendant, Weichert Co.

THEODORE AND FRANCES VAGIAS, : SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION -MORRIS COUNTY
:
: DOCKET NO. MRS-L-2245-02
:
: Civil Action
:
: **NOTICE OF MOTION**
:
WOODMONT PROPERTIES, LLC, :
WOODMONT COURT AT MONTVILLE, LLC :
and WEICHERT CO. (Formerly :
WEICHERT, REALTORS), :
:
: **Defendants.** :

TO: Eric Grogan, Esq.
Braff, Harris & Sukonek
570 W. Mt. Pleasant Avenue
Livingston, NJ 07039

COUNSEL:

PLEASE TAKE NOTICE that on January 23, 2004 I shall appear before the judge assigned to rule on civil motions in the Morris County Courthouse at 9:00 a.m. in the forenoon or as soon thereafter as counsel may be heard to seek an Order dismissing all claims against Weichert Co.

I shall rely on the Brief and Certification submitted herewith.

Oral argument is requested.

BRODERICK, NEWMARK & GRATHER
Attorneys for Defendant,
Weichert Co.


ALAN J. BALDWIN

Dated: December 16, 2003

CERTIFICATION OF MAILING

1. My name is Mary M. Onufrick. I am a legal assistant with the law firm of Broderick, Newmark & Grather, attorneys for defendant, Weichert Co.

2. On December 16, 2003 I personally mailed an original and a copy of a Notice of Motion, an original Brief, an original Certification and two copies of a proposed form of Order to: Morris County Civil Division, P.O. Box 910, Morristown, New Jersey 07963-0910.

3. On December 16, 2003 I personally mailed a copy of a Notice of Motion, Brief, Certification and proposed form of Order to: Eric L. Grogan, Esq., Attorney for plaintiffs, Theodore and Frances Vagias, Braff, Harris & Sukonek, 570 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

I hereby certify that the above statements are true. I am aware that if any of the above statements are willfully false, I am subject to punishment.

Mary M. Onufrick
MARY M. ONUFRICK

Dated: December 16, 2003

SUPERIOR COURT OF NEW JERSEY

MORRIS COUNTY - LAW DIVISION

Plaintiffs : Docket No. MRS-L-2245-02
: :
THEODORE AND FRANCES VAGIAS, : Civil Action
: :
vs. : :
: :
Defendants : :
: :
WOODMONT PROPERTIES, LLC, : :
WOODMONT COURT AT MONTVILLE, LLC : :
and WEICHERT CO. (Formerly : :
WEICHERT, REALTORS), : :

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

BRODERICK, NEWMARK & GRATHER
20 SOUTH STREET
MORRISTOWN, NJ 07960
973-538-0084
Attorneys for Defendant,
Weichert Co.

On the Brief: Alan J. Baldwin, Esq.

INTRODUCTION

The plaintiffs filed a Complaint on June 3, 2002 naming as defendants the builder/developer which had sold them a new home and Weichert Co., the real estate broker involved in the transaction.

They allege in their Complaint that they were told by the builder that the home had a "Montville address" while, in fact, the home has a "Towaco address". The plaintiffs concede that the home is, in fact, located in Montville Township, New Jersey.

Discovery has now concluded and the case is scheduled for trial on January 22, 2004. The plaintiffs have not provided any expert proof to establish their damages. Based on binding case law the absence of such proof is fatal to their claims against Weichert and these claims should be dismissed.

PROCEDURAL HISTORY

Plaintiffs' Complaint was filed June 3, 2002. Weichert Realtors is mentioned in only the Third Count of the Complaint. In that count the plaintiffs allege that Weichert, through its agent, failed to disclose material facts and made material misrepresentations to them concerning the location and address of their home. They allege that these actions violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. A copy of the Complaint is attached to the enclosed Certification as Exhibit A.

The Complaint alleges that as a result of the above described conduct "plaintiff has suffered an ascertainable loss of money as the value of their home is significantly less since the home is located in the section of Towaco rather than in the town of Montville".

Plaintiffs made a motion which was returnable on October 10, 2003 to extend discovery. That motion was denied. A copy of Judge Wilson's Order of that date is attached to the enclosed Certification as Exhibit B.

Plaintiffs then filed a motion with the Appellate Division for leave to appeal Judge Wilson's Order. That motion was denied by the Appellate Division on November 17, 2003. A copy

of the Appellate Division Order is attached to the enclosed Certification as Exhibit C.

The case is scheduled for trial on February 23, 2004.

UNDISPUTED FACTS

1. Plaintiffs allege that Weichert violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (See Third Count of Complaint).

2. Interrogatories were served by counsel for Weichert Realtors on plaintiffs' counsel on or about August 20, 2002 (See Certification of Alan J. Baldwin, Exhibit D).

3. Question #9 of the Interrogatories asked that the plaintiffs

Set forth in detail all losses plaintiffs claim to have sustained in consequence of the alleged wrongful acts of Weichert, Realtors or its servants, agents or representatives.

(See Certification of Alan J. Baldwin, Exhibit D).

4. In response to Question #9 the plaintiffs answered as follows:

"Upon the advice of counsel, this question cannot be answered as presently phrased. However, without waiving the objection, the home, with an address in Towaco is worth less than the comparable home located in Montville. In addition, plaintiffs' child goes to the elementary school located in Towaco, rather than in Montville. This answer may be supplemented."

(See Certification of Alan J. Baldwin, Exhibit E).

5. Interrogatory #11 asked that the plaintiffs

Set forth the name, address and areas of expertise of each and every expert who may testify for you at the time of trial. As to each such expert, state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and provide a summary of the grounds for each opinion. Attach copies of all reports prepared by such experts to your answers.

(See Certification of Alan J. Baldwin, Exhibit D).

6. In response to Interrogatory #11 the plaintiffs replied as follows:

"To be supplied pursuant to the rules of court."

(See Certification of Alan J. Baldwin, Exhibit E).

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW

ERIC L. GROGAN

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Facsimile (212) 822-1479

January 9, 2004

Motions Clerk
Superior Court of New Jersey
P. O. Box 910
Morristown, New Jersey 07963-0910


Re: Vagias, Theodore v. Woodmont Court at Montville, LLC
Docket No.: MRS-L-2245-02
Our File No.: 244.14899

Dear Sir/Madam:

This office represents plaintiffs, Theodore and Francis Vagias in the above matter. Currently, defendant Weichert Company has a motion for summary judgment returnable on Friday, January 23, 2004. Please accept the enclosed brief in opposition of the motion of Weichert Company. Please forward this opposition to the judge assigned to hear the motion. This office requests oral argument.

Very truly yours,

BRAFF, HARRIS & SUKONECK


ERIC L. GROGAN

ELG/ep
Enclosure
cc: Alan J. Baldwin, Esq.

THEODORE and FRANCES VAGIAS,

Plaintiff,

vs.

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT
MONTVILLE, L.L.C. and WEICHERT
CO. (formerly WEICHERT
REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

Civil Action

=====

**BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY DEFENDANT,
WEICHERT COMPANY.**

=====

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657

LIVINGSTON, NEW JERSEY 07039
TELEPHONE: (973) 994-6677

ATTORNEYS FOR PLAINTIFFS, THEODORE AND
FRANCIS VAGIAS
OUR FILE NO.: 244.14899

ON THE BRIEF
ERIC L. GROGAN, ESQ.
OF COUNSEL
BRIAN C. HARRIS

233a

PROCEDURAL HISTORY

Plaintiffs filed a complaint on June 3, 2002 naming as defendants the builder/developer of the housing development in which plaintiff bought, along with the real estate broker on their behalf with regard to the purchase of their home, Weichert Company. Plaintiffs allege that Weichert, through its agent, failed to disclose material facts and material misrepresentations to them concerning the location and address of their home. They had been advised that their home would have a Montville address when in fact their home has a Towaco address. Plaintiffs also had been told that their children would attend the elementary school in the Montville Section of town. In fact, their children go to the elementary school in the Towaco Section of town. Plaintiffs allege that defendant Weichert Company violated the New Jersey Consumer Fraud Act, N.J.S.A.56:8-1 et seq. (A copy of the complaint is attached as Exhibit "A".)

In January, 2003 a motion had been filed by the developer, Woodmont Properties, LLC to dismiss the complaint and move plaintiff's claims against Woodmont to binding arbitration pursuant to the purchase contract. Weichert attempted to join the motion of Woodmont to dismiss the case based upon a contract clause calling for arbitration. On the date of oral argument, the motion was granted dismissing the case and sending it to arbitration as to Woodmont. Weichert's request to join in the motion was denied.

Upon information and belief, counsel for Weichert had discussions with prior counsel from this office that the parties agreed that Weichert would also be a party to arbitration pursuant

to the contract as opposed to this litigation. On that same date, January 10, 2003 an order was entered dismissing plaintiff's complaint for failure to answer interrogatories against Weichert.

Discovery was slowed in this matter based upon several factors. First the discussion between counsel that Weichert would be a party to the arbitration which was applicable to the developer, Woodmont Properties. Also, Woodmont Properties was insured by Legion Insurance which had a stay of all litigation and arbitration imposed by the court in Pennsylvania, made applicable to actions in the State of New Jersey. In addition, the attorney in this firm handling the case for plaintiff left the firm, causing a disruption regarding this matter. Thereafter the case against Weichert Company was reinstated.

On December 29, 2003 an expert report was served upon Weichert Company from Matthew Nolan of Park West Property Appraisals, Inc. (See copy of report of Matthew Nolan, along with cover letter, attached as Exhibit "B".)

This case is scheduled for trial on February 23, 2004.

RESPONSE TO UNDISPUTED FACTS

Plaintiff responds to the statement of undisputed facts set forth by defendant Weichert as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.

COUNTER STATEMENT OF UNDISPUTED FACTS

1. On December 29, 2003 the expert report of Matthew Nolan of Park West Property Appraisals, Inc., was forwarded to counsel for Weichert Company. (See Exhibit "B".)

2. The report of Matthew Nolan sets forth a differential in prices of homes comparable to plaintiff's home in Towaco as selling for \$90,000.00 less than comparable homes in Montville. (See Page 9 of report of Matthew Nolan attached as Exhibit "B".)

EXHIBIT A

238a

EXHIBIT B

239a

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW

ERIC L. GROGAN

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December 29, 2003

Alan J. Baldwin, Esq.
Weichert Company
Broderick, Newark & Grather
20 South Street
Morristown,, New Jersey 07960

Re: **Vagias, Theodore v. Woodmont Court at Montville, LLC**
Docket No. **MRS-L-2245-02**
Our File No. **244.14899**

Dear Mr. Baldwin:

Enclosed please find the report of Matthew Nolan of Park West Property Appraisals Inc., which we have just received in the above matter. Plaintiffs amend answers to interrogatories to identify Mr. Nolan as an expert witnesses and to include Mr. Nolan's report. Mr. Nolan may be called to testify at the time of trial.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

BRAFF, HARRIS & SUKONECK


ERIC L. GROGAN

ELG/ep
Enclosure

2400

Limited Appraisal Restricted Report

241a

Signature W. Smith
Name Matthew Smith
Date Report Signed 10/08/2003

FannieMae
Desktop Underwriter Quantitative Analysis Appraisal Report File No. 030926 001

THIS SUMMARY APPRAISAL REPORT IS INTENDED FOR USE BY THE LENDER/CLIENT FOR A MORTGAGE FINANCE TRANSACTION ONLY.

Property Address: 23 Bonhomme Lane, City: Towaco, State: NJ, Zip Code: 07082
 Legal Description: bk 21 01 lot 42 12 Trusting Municipality is Montville Twp. with a Towaco mailing address. County: Morris
 Assessor's Parcel No.: Limited Appraisal Restricted Report Tax Year: 2003 H.E. Taxes: \$ 8,555 Special Assessments: \$ n/a
 Borrower: Vagdas Current Owner: Vagdas Occupant: Owner Tenant Vacant
 Neighborhood or Project Name: Woodmont Court Project Type: PUD Condominium HOA \$ n/a VACANT
 Sales Price: \$ n/a Date of Sale: n/a Description / \$ amount of loan charges/concessions to be paid by seller: n/a
 Property rights appraised: Fee Simple Leasehold Map Reference: In Books Current Eas: n/a

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Location: Urban Suburban Rural Increasing Stable Declining Single family housing Condominium housing
 Built up: Over 75% 75-75% Under 75% Demand/supply In balance Over supply (FICO) \$ (2000) (FICO) \$ (1000) (FICO) \$ (500) Low < 1 n/a Low
 Growth rate: Rapid Stable Slow Marketing time: Under 3 mos 3-6 mos Over 6 mos

Neighborhood boundaries: subject neighborhood boundaries are bordered by Jacksonville Rd north, Rt 287 900 High 50 n/a High
 Immediate east: Rt 511 west and Rt 202 south. The subject is located in a younger development known as Woodmont Court. The area is comprised of upscale larger colonial style homes which are in good condition. Predominant: 800 1 n/a
 Dimensions: 1.230 ac +/- (per assessors office & tax map) Site area: 1.23 ac +/- Shape: slightly irregular

Specific zoning classification and description: R 80 (ex 80000) of min
 Zoning compliance: legal Legal nonconforming (Grandfathered use) Illegal, attach description: No zoning Other use, attach description
 Highest and best use of subject property as improved (or as proposed per plans and specifications): Present use Other use, attach description

Utilities: Public Other Public Other Bell-site improvements: Type: Public Private
 Electricity: Gas Water: Sewer: Street: Asphalt Alley: none

Are there any apparent adverse site conditions (retainers, encroachments, special assessments, slide area, etc.): Yes No. If yes, attach description
 Sources used for physical characteristics of property: Interior and exterior inspection Exterior inspection from street Previous appraisal files
 MLS Assessment and tax records Photo inspection Property name Other (Describe): tax assessors office

No. of Stories: 2 Type (Det/Att): detached Exterior Walls: vinyl/sbk Roof Surface: asphalt Manufactured housing: Yes No
 Does the property generally conform to the neighborhood in terms of style, condition, and construction materials? Yes No. If no, attach description
 Are there any apparent physical defects or conditions that would affect the soundness or structural integrity of the improvements or the liability of the property?
 Yes No. If yes, attach description

Are there any apparent adverse environmental conditions (hazardous wastes, toxic substances, etc.) present in the improvements, on the site, or in the immediate vicinity of the subject property? Yes No. If yes, attach description

I researched the subject market area for comparable listings and sales that are the most similar and proximate to the subject property
 My research revealed a total of 4-6 sales ranging in sales price from \$ n/a to \$ n/a
 My research revealed a total of 3 listings ranging in list price from \$ 924990 to \$ 1129990
 The analysis of the comparable sales below reflects market reaction to significant variations between the sales and the subject property

ITEM	SUBJECT	SALE 1	SALE 2	SALE 3
Address	23 Bonhomme Lane Towaco, NJ 07082	25 Mary Drive Towaco, NJ 07082	5 Oakwood Cir Towaco, NJ 1 84 Ms SSE	15 Turner Lane Towaco, NJ 07082 0 46 Ms SW
Proximity to Subject		0.00 Ms S		
Sales Price	\$ n/a	\$ 800,000	\$ 841,000	\$ 795,000
Price/Gross Liv Area	\$	\$ 180.26	\$ 191.14	\$ 233.82
Date/Market Area		mls# 1525380 chd	mls# 1539298 chd	mls# 1540318 chd
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Sales or Financing Concessions	crw dom 177+ 9/2002	crw dom 244+ 6000/12003	crw dom 92+ 8/2002	crw dom 92+ 8/2002
Date of Sale/Time				7950
Location	Average: 1.23 ac +/-	Superior: 1.19 ac +/-	Average: 20.000 ac +/-	Average: No adj
Site	Average	Average	No adj	1.16 ac +/-
Vetw	Average	Average	Average	Average
Design (Style)	Colon/ave	Colon/ave	Colon/ave	Colon/ave
Actual Age (Yrs)	2 yrs (eff 1)	8 yrs (eff 1)	15+ (eff 5)	21025 yrs (eff 1)
Condition	Good	Good	Good	Good
Above Grade	Total Bdrms Baths 10 5 3 50	Total Bdrms Baths 10 5 3 50	Total Bdrms Baths 11 5 3 000	Total Bdrms Baths 11 5 3 000
Room Count			+2500	+2500
Gross Living Area	3,382 Sq Ft	4438 Sq Ft	-40720	3,400 Sq Ft
Basement & Finished Rooms Below Grade	Full/unt	Full/unt	Full/unt	Full/furnished
Garage/Carport	3-Garage	3-Garage	1-Garage	+5000 3-Garage

Net Adj. (total) + - \$ -56240 + - \$ -12195 + - \$ 450
 Adjusted Sales Price of Comparables
 G: 8.53% G: 8.23% G: 2.57%
 N: 7.03% N: 743760 N: 87880 N: 0.06% \$ 795450
 Date of Prior Sale: Subj sold in 11/2001 Not sold w/in 12 months. Not sold w/in 12 months. Not sold w/in 12 months.
 Price of Prior Sale: \$ for \$731642

Analysis of any current agreement of sale, option, or listing of the subject property and analysis of the prior sales of subject and comparables not currently "on the market". No signs were observed such as "For Sale" or "MLS listings" at the time of inspection. Per the homeowner, the subject is
 Summary of sales comparison and value conclusion: See Attached Addendum...

The appraisal is made "as is" subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, or subject to the following repairs, alterations or conditions.
BASED ON AN EXTERIOR INSPECTION FROM THE STREET OR AN INTERIOR AND EXTERIOR INSPECTION, I ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF THIS REPORT TO BE \$
 AS OF 10/08/2003

2422

Desktop Underwriter Quantitative Analysis Appraisal Report

File No. 030924 001

Project Information for PUDs (if applicable): Is the developer/builders in control of the Home Owners' Association (HOA)? Yes No

Provide the following information for PUDs only. If the developer/builders is in control of the HOA and the subject property is an attached dwelling unit

Total number of phases _____ Total number of units _____ Total number of units sold _____

Total number of units rented _____ Total number of units for sale _____ Data Sources _____

Was the project created by the conversion of existing buildings into a PUD? Yes No If yes, date of conversion _____

Does the project contain any multi-dwelling units? Yes No Data Source _____

Are the common elements completed? Yes No If No, describe status of completion _____

Are any common elements leased to or by the Home Owners' Association? Yes No If yes, attach addendum describing rental terms and options _____

Describe common elements and recreational facilities _____

Project Information for Condominiums (if applicable): Is the developer/builders in control of the Home Owners' Association (HOA)? Yes No

Provide the following information for all Condominium Projects

Total number of phases _____ Total number of units _____ Total number of units sold _____

Total number of units rented _____ Total number of units for sale _____ Data Sources _____

Was the project created by the conversion of existing buildings into a condominium? Yes No If yes, date of conversion _____

Project type Primary Residence Second Home or Recreational Row or Townhouse Garden Midrise Highrise _____

Condition of the project, quality of construction, unit mix, etc _____

Are the common elements completed? Yes No If No, describe status of completion _____

Are any common elements leased to or by the Home Owners' Association? Yes No If yes, attach addendum describing rental terms and options _____

Describe common elements and recreational facilities _____

PURPOSE OF APPRAISAL: The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report based on a quantitative sales comparison analysis for use in a mortgage finance transaction

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby (1) buyer and seller are typically motivated, (2) both parties are well informed or well advised, and each acting in what he considers his own best interest, (3) a reasonable time is allowed for exposure in the open market, (4) payment is made in terms of cash or in terms of financial arrangements comparable thereto, and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area, these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

CONTINGENT AND LIMITING CONDITIONS: The appraiser's certification that appears in the appraisal report is subject to the following conditions

- The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of being under responsible ownership.
- The appraiser has provided any required sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
- The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
- The appraiser has noted in the appraisal report any adverse conditions (such as, but not limited to, needed repairs, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, expressed or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
- The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- The appraiser will not disclose contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
- The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower, the mortgagee or its successors and assigns, the mortgage insurer, consultants, professional appraisal organizations, any state or federally approved financial institution, or any department, agency, or instrumentality of the United States or any state or the District of Columbia, except that the lender/client may distribute the report to data collection or reporting services(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.
- The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed.
- The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.

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Desktop Underwriter Quantitative Analysis Appraisal Report

File No.

030922.001

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that

1. I performed this appraisal by (1) personally inspecting from the street the subject property and neighborhood and each of the comparable sales (unless I have otherwise indicated in this report that I also inspected the interior of the subject property), (2) collecting, confirming, and analyzing data from reliable public and/or private sources, and (3) reporting the results of my inspection and analysis in this summary appraisal report. I further certify that I have adequate information about the physical characteristics of the subject property and the comparable sales to develop this appraisal.
2. I have researched and analyzed the comparable sales and offerings/listings in the subject market area and have reported the comparable sales in this report that are the best available for the subject property. I further certify that adequate comparable market data exists in the general market area to develop a reliable sales comparison analysis for the subject property.
3. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware, have considered these adverse conditions in my analysis of the property value to the extent that I had material evidence to support them, and have commented about the effect of the adverse conditions on the marketability of the subject property. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
4. I stated in the appraisal report only my own personal unbiased and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
5. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
6. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
7. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or my compensation for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
8. I estimated the market value of the real property that is the subject of this report based on the sales comparison approach to value. I further certify that I considered the cost and income approaches to value, but, through mutual agreement with the client, did not develop them, unless I have noted otherwise in this report.
9. I performed this appraisal as a limited appraisal, subject to the Departure Provision of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of the appraisal (unless I have otherwise indicated in this report that the appraisal is a complete appraisal, in which case, the Departure Provision does not apply).
10. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value. The exposure time associated with the estimate of market value for the subject property is consistent with the marketing time noted in the Neighborhood section of this report. The marketing period concluded for the subject property at the estimated market value is also consistent with the marketing time noted in the Neighborhood section.
11. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. I further certify that no one provided significant professional assistance to me in the development of this appraisal.

SUPERVISORY APPRAISER'S CERTIFICATION: If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that I directly supervise the appraiser who prepared the appraisal report, have examined the appraisal report for compliance with the Uniform Standards of Professional Appraisal Practice, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 5 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

APPRAISER:

Signature [Handwritten Signature]
 Name Matthew N. Harris
 Company Name Parkwest Property Appraisals
 Company Address 119 Taylor Avenue, Ste B1
Manasquan, NJ 08736-2041
 Date of Report/Signature 10/08/2003
 State Certification # 42R00025600
 or State License # _____
 State NJ
 Expiration Date of Certification or License 12-31-2003

SUPERVISORY APPRAISER (ONLY IF REQUIRED):

Signature _____
 Name _____
 Company Name _____
 Company Address _____
 Date of Report/Signature _____
 State Certification # _____
 or State License # _____
 State _____
 Expiration Date of Certification or License _____

ADDRESS OF PROPERTY APPRAISED:

23 Bonnewick Lane
Towaco, NJ 07082

SUPERVISORY APPRAISER:

- SUBJECT PROPERTY**
- Did not inspect subject property
 - Did inspect exterior of subject property from street
 - Did inspect interior and exterior of subject property

APPRAISED VALUE OF SUBJECT PROPERTY \$ n/a
EFFECTIVE DATE OF APPRAISAL/INSPECTION 10/08/2003

COMPARABLE SALES

- Did not inspect exterior of comparable sales from street
- Did inspect exterior of comparable sales from street

LENDER/CLIENT:
 Name Eric Grogan, Esq.
 Company Name Bruff, Harris & Suboneck
 Company Address 570 West Mt Pleasant Ave./Livingston, NJ

2442

FORM 1071

Loan

Quantitative Analysis Appraisal Report

File No. 030926.001

SUBJECT		SALE 4		SALE 3		SALE 6	
23 Bonnevive Lane Address: Tomaco, NJ 07082		9 Oakwood Ct. Tomaco, NJ 07082					
Presumably to Subject		1.11 Ac SE					
Sales Price		\$ 680,000					
Price/Gross Liv. Area		\$ 196.00					
Data/Vendor Source		MIA's chd					
VALUE ADJUSTMENTS		DESCRIPTION	DESCRIPTION	(+) (\$400/mo)	DESCRIPTION	(-) (\$400/mo)	DESCRIPTION
Sales or Financing		n/a					
Concessions		n/a					
Date of Sale/Term		6/2003					
Location		Average					
Site		1.23 ac+		No ad			
View		Average					
Design (Style)		Colon/ave					
Actual Age (Yrs)		2 yrs (eff 1)		6 yrs (eff 1)			
Condition		Good		Good			
Above Grade		Total	Bdrms	Baths	Total	Bdrms	Baths
Room Count		10	5	3.50	11	5	3.50
Gross Living Area		3,782 Sq Ft		4,688 Sq Ft		-44240	
Basement & Finished		Full/unt		Full/unt		Sq Ft	
Rooms Below Grade							
Garage/Carport		3-Garage					
Net Adj. (total)		-44240					
Adjusted Sales Price of Comparables		G: 5.80%		M: 5.80%		835760	
Date of Prior Sale		Subj sold on 11/2001		Not sold within 12 months.			
Price of Prior Sale		\$ for \$731642					
Analysis of any current agreement of sale, option, or listing of the subject property and analysis of the prior sales of subject and comparables							
Summary of sales comparison and value conclusion							

QUANTITATIVE SALES COMPARISON ANALYSIS

245a

FORM

Logo

Quantitative Analysis Appraisal Report

File No. 030926-001

SUBJECT		SALE 7		SALE 8		SALE 9	
23 Bonnevieve Lane Address: Tomoka, NJ 07082		9 Harbeson Morristown, NJ 07082		12 Renshaw Morristown, NJ 07082		7 Renshaw Morristown, NJ 07082	
Proximity to Subject		0.41 Mi SW		1.74 Mi S		1.82 Mi SW	
Sales Price		\$ n/a		\$ 989,000		\$ 910,000	
Price/Gross Liv. Area		\$ 228.67		\$ 261.49		\$ 226.89	
Date/Annexation Survey		mms#1530079 chd		orla's chd		mms#1564768 chd	
VALUE ADJUSTMENTS		DESCRIPTION		DESCRIPTION		DESCRIPTION	
Sales of Financing		crw		n/a		crw	
Concessions		347+		n/a		room 157+	
Date of Sale/Time		1/2003		6/2003		2/2003	
Location		Average		Average		Average	
Site		1.23 ac+		24000.75 ac+		24000.46 ac+	
View		average		average		average	
Design (Style)		Colon/ave		Colon/ave		Colon/ave	
Actual Age (Yrs.)		2 yrs (eff 1)		4 yrs (eff 1)		6 yrs (eff 1)	
Condition		Good		Good		Good	
Above Grade		Total Bdrms Batts		Total Bdrms Batts		Total Bdrms Batts	
Room Count		10 5 3 50		11 4 3 500		10 4 2 50	
Gross Living Area		3,382 Sq Ft		4,375 Sq Ft		3,570 Sq Ft	
Basement & Finished Rooms Below Grade		Full/Unf		Full/Unf		Full/Unf	
Garage/Carport		3-Garage		3-Garage		2-Garage	
Net Adj. (total)		+ - X - \$ -13720		+ - - \$ 20080		+ - - \$ 53520	
Adjusted Sales Price of Comparables		G: 6.24% N: 1.39% \$ 975280		G: 3.07% N: 2.21% \$ 930080		G: 6.61% N: 6.61% \$ 863520	
Date of Prior Sale		Subj sold on 11/2001		Not sold w/in 12 months		Not sold w/in 12 months	
Price of Prior Sale		\$ for \$731642		\$		\$	
Analysis of any current agreement of sale, option, or listing of the subject property and analysis of the prior sales of subject and comparables							
Summary of sales comparison and value conclusion							

QUANTITATIVE SALES COMPARISON ANALYSIS

246a

Loan

Quantitative Analysis Appraisal Report

File No. 030926-001

ITEM	SUBJECT	SALE 10			SALE 11			SALE 12		
23 Berninevine Lane Address: Towaco, NJ 07082	8 Ashland Dr Montville, NJ 07082									
Priority to Subject	1.86 Mc Sw									
Sales Price	\$ n/a	\$ 800,000		\$	\$		\$	\$		
Photo/Gross Liv. Area	\$ 225.73			\$			\$			
Data/Vendor Sources	mlr 1521619 chd									
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	(+) Adjustment	DESCRIPTION	(-) Adjustment	DESCRIPTION	(+) Adjustment	DESCRIPTION	(-) Adjustment	
Sales or Financing Concessions		777 dom 179+-								
Date of Sale/Time		8/2002	8000							
Location	Average-									
Site	1.23 ac+-	1.37 ac+-	-7000							
Vice	average									
Design (Style)	Colon/ave	Colon/ave								
Actual Age (Yrs)	2 yrs (eff 1)	3 yrs (eff 1)								
Condition	Good	Good								
Above Grade										
Room Count	Total Bdrms Baths	Total Bdrms Baths		Total Bdrms Baths		Total Bdrms Baths		Total Bdrms Baths		
Gross Living Area	10 5 2 50	11 5 3 50								
Basement & Finished	3,382 Sq Ft	3544 Sq Ft	-6480	Sq Ft		Sq Ft		Sq Ft		
Basement & Finished	Full/unt	Full/unt								
Basement Below Grade										
Garage/Carport	3-Garage	3-Garage								
Net Adj. (total)			\$ -5480	\$		\$		\$		
Adjusted Sales Price of Comparables		G: 2.69%								
		M: 0.89%	\$ 794520	\$		\$		\$		
Date of Prior Sale	Subj sold on 11/2001	Most sold within 12 months.								
Price of Prior Sale	\$ for \$731642	\$		\$		\$		\$		
Analysis of any current agreement of sale, option, or listing of the subject property and analysis of the prior sales of subject and comparables										
Summary of sales comparison and value conclusion										

QUANTITATIVE SALES COMPARISON ANALYSIS

247a

TEXT ADDENDUM

Borrower/Client <u>Vegas</u>		Unit No.	
Address <u>23 Bonneville Lane</u>			
City <u>Towaco</u>	County <u>Morris</u>	State <u>NJ</u>	Zip Code <u>07082</u>
Lender/Client <u>Bright, Harris & Subanart</u>			

COMMENTS ON NEIGHBORHOOD

The subject is located in a younger development known as Woodmont Court. It is a cul-de-sac development that consists of larger scale homes of about 3000-4000 square feet. Homes are well maintained and professionally landscaped. Schools, shopping and major highways are convenient. The development is very close to the busy Rt 287. (See enclosed map) There is constant traffic. Traffic can be seen and heard throughout the day. This will have a negative impact on value. Future marketability is average.

COMMENTS ON SALES COMPARISON

Appraiser was asked to gather market research for the Montville Twp areas. Essentially to perform a Limited Restricted Appraisal assignment for 23 Bonneville Lane in Towaco, NJ. The owner's name is Vegas. The scope of the assignment is as follows: The client would like the appraiser to evaluate properties similar to the subject that have a mailing address of Towaco and compare them with similar properties that have a mailing address of Montville Twp. The Towaco property homeowners pay their taxes to Montville Twp, as do all Montville homeowners. The Towaco homeowners have a different grammar school system and have a Towaco mailing address. If all else is equal, or close to equal, could we determine what would the price differentiation be between homes in Towaco versus homes in Montville Twp. The following data has been presented for review. Please note that a complete and thorough search of the entire real estate market was conducted and these were the best available sales found at the time of inspection. All sales chosen have similar tax assessments and are, therefore, deemed comparable, in the appraiser's eyes. After reviewing relevant square footage, location, style, age and amenities, it was determined by the appraiser that the sales chosen are good indicators of value for our job uses. Sales #1-4 are comparable sales chosen that have a Towaco mailing address. Sales #7-10 are comparable sales chosen that have a Montville mailing address. As indicated, the subject suffers from external obsolescence, in that, Rt 287 is in close proximity. To even the scale, the appraiser tried to choose sales that suffer from some kind of external obsolescence. The following adjustments were warranted when compared to the subject. Sales #1, #3 & #10 are dated sales. To account for positive appreciation throughout the calendar year 2002, a 2.5% time adjustment was given through 12 /2002. Sale #1 is away from most external obsolescence and was given a 5% location adjustment. Sale #2 was given a 5% age adjustment for an older home. So it adjustments were given at \$40/sf. Acreage adjustments were given at \$50000/ac. Remaining adjustments given for common amenity differences.

FINAL RECONCILIATION

After adjustments were made to all sales when compared to the subject, the appraiser determined that the Towaco sales averaged a net adjusted sales price of \$800000+ and the Montville sales averaged a net adjusted sales price of \$490000. The difference of about 10%. To conclude, an assumption could be made that although all homeowners pay taxes to Montville Twp, the home with a Towaco mailing address sells for about 10% less than homes that have a Montville Twp mailing address.

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SUBJECT PHOTOGRAPH ADDENDUM

Borrower/Client	Vagas	Unit No.	N/A
Address	23 Bonnewick Lane	State	NJ
City	Towaco	County	Morris
Lender/Client	Bruff, Harris & Sukoneck	Zip Code	07062



Front View



Development Entrance



Street View

249a

COMPARABLE PHOTOGRAPH ADDENDUM

Contract No. 15241	Unit No. N/A
Address 23 Bittersweet Lane	Zip Code 07092
City/Town/Loc. Larkspur, N.J.	
Prepared by: Bill Hanks & Associates	



Sales Comparable 1

Front View

Address 25 Mary Drive
 Price to Subject 0.00 M S
 Sales Price \$ 800000
 Gross Living Area 4418
 Total Rooms 10
 Total Bedrooms 5
 Total Bathrooms 3.50
 Location Superior
 20 yrs. est 15



Sales Comparable 2

Front View

Address 5 Oakwood Crt
 Price to Subject 1.84 M. SSE
 Sales Price \$ 841000
 Gross Living Area 4400
 Total Rooms 11
 Total Bedrooms 5
 Total Bathrooms 3.00
 Location Average



Sales Comparable 3

Front View

Address 15 Turner Lane
 Price to Subject 0.46 M. SW
 Sales Price \$ 795000
 Gross Living Area 3400
 Total Rooms 10.00
 Total Bedrooms 4
 Total Bathrooms 3.00
 Location Average
 25 yrs. est 15

250a

COMPARABLE PHOTOGRAPH ADDENDUM

Borrower/Client	Vegas		
Address	23 Borrowview Lane		
City	Tomboro	County	Harris
Lender/Client	Bruff, Harris & Gulonack		
	Unit No.	State	Zip Code
		NJ	07092



Sales Comparable 4

Front View

Address 9 Oakwood Crt
 Prox to Subject 1.11 Mi SE
 Sales Price \$ 800000
 Gross Living Area 4488
 Total Rooms 11
 Total Bedrooms 5
 Total Bathrooms 3.50
 Location Average
 28 yrs off 15

Address
 Prox to Subject
 Sales Price \$
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms

Address
 Prox to Subject
 Sales Price \$
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms

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COMPARABLE PHOTOGRAPH ADDENDUM

BIRMINGHAM, ALA. 35225		Unit No.
Address: 21 Burnside Lane		
City: Towson	County: Adams	State: MD Zip Code: 07082
Location: Bluff Farm & Suburban		



Sales Comparable 7

Front View

Address: 9 Hartless
 Plot to Subject: 0.41 M. SW
 Sales Price: \$ 989000
 Gross Living Area: 4325
 Total Rooms: 10
 Total Bedrooms: 5
 Total Bathrooms: 3.50
 Location: Average



Sales Comparable 8

Front View

Address: 12 Renshaw
 Plot to Subject: 1.74 M. S
 Sales Price: \$ 910000
 Gross Living Area: 3480
 Total Rooms: 11
 Total Bedrooms: 4
 Total Bathrooms: 3.50
 Location: Average



Sales Comparable 9

Front View

Address: 7 Renshaw
 Plot to Subject: 1.82 M. SW
 Sales Price: \$ 810000
 Gross Living Area: 3570
 Total Rooms: 10.00
 Total Bedrooms: 4
 Total Bathrooms: 2.50
 Location: Average

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COMPARABLE PHOTOGRAPH ADDENDUM

Borrower/Client <u>Vargas</u>		Unit No	
Address <u>23 Bonnevillie Lane</u>		State <u>IL</u>	
City <u>Tombaco</u>	County <u>Marion</u>	Zip Code <u>67082</u>	
Lender/Client <u>Braff, Harris & Subonick</u>			



**Sales Comparable 10
Front View**

Address 8 Ashland Dr
 Prox to Subject 1.86 Mi SW
 Sales Price \$ 800000
 Gross Living Area 3544
 Total Rooms 11
 Total Bedrooms 5
 Total Bathrooms 3.50
 Location Average

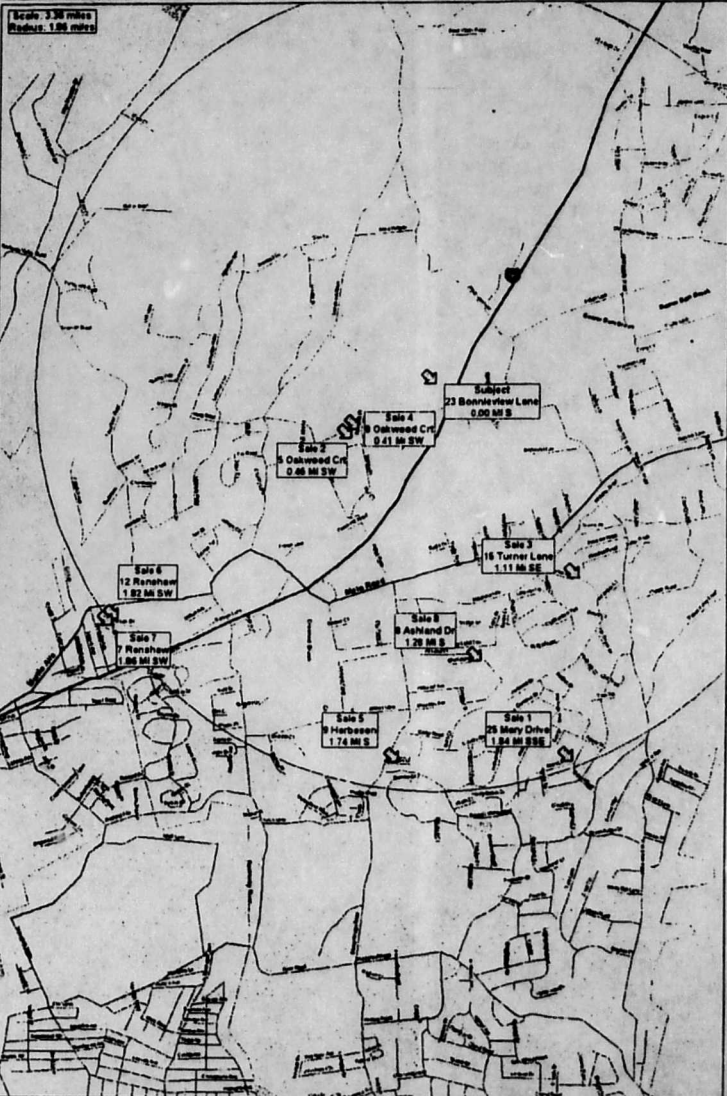
Address
 Prox to Subject
 Sales Price \$
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms

Address
 Prox to Subject
 Sales Price \$
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms

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LOCATION MAP

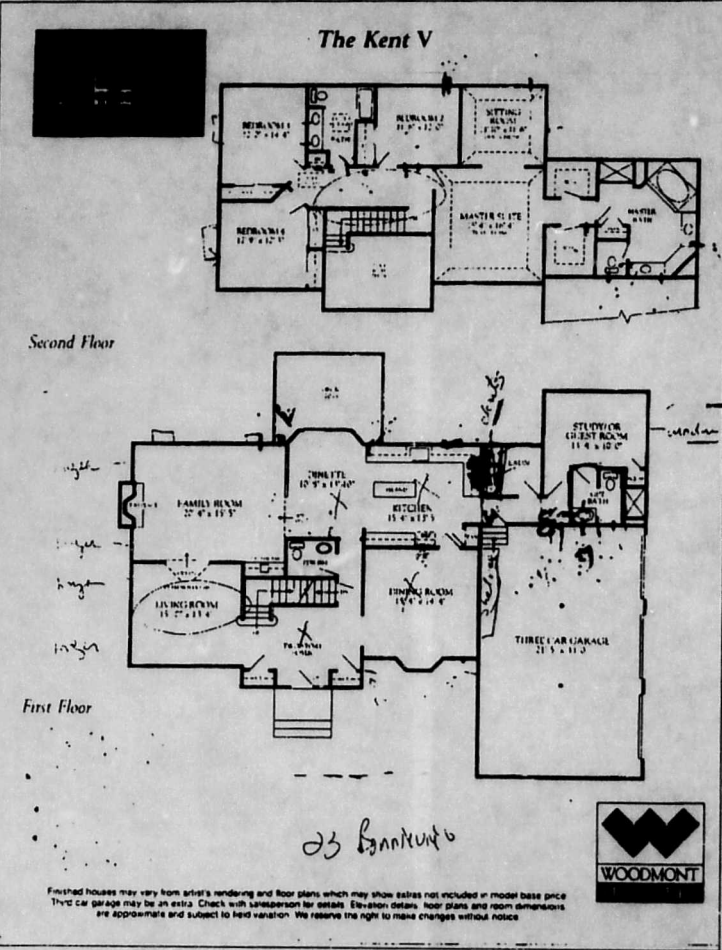
Borrower/Client <u>Vegas</u>		Unit No. <u>N/A</u>
Address <u>23 Bonneview Lane</u>		State <u>NJ</u>
City <u>Tombaco</u>	County <u>Morris</u>	Zip Code <u>07082</u>
Lender/Client <u>Bruff, Harris & Sukonet</u>		



254a

SKETCH

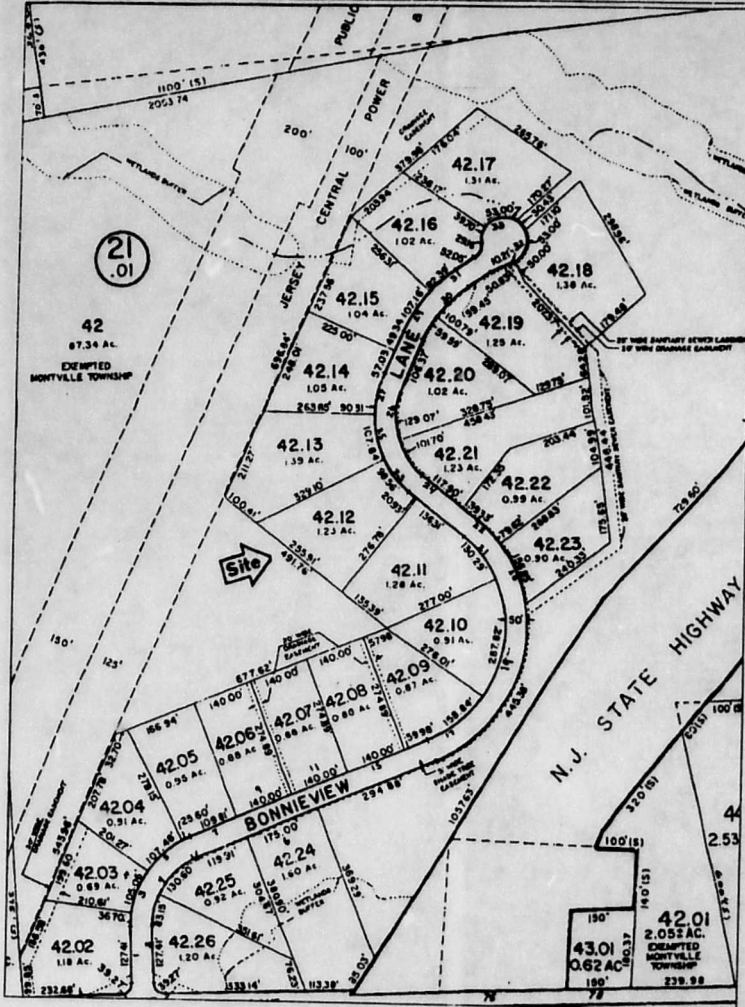
Borrower/Client	Vogas	Unit No.	
Address	21 Bonnaville Lane	County	Morris
City	Towaco	State	NJ
Lender/Client	Braff, Harris & Suboneck	Zip Code	07067



255a

SITE MAP

Borrower/Client	Vegas		
Address	23 Bonnaview Lane		
City	Tomsco	County	Harris
Order/Client	Braff, Harris & Subonick	State	NJ
		Zip Code	07082



256a

HA013100

RESTRICTED USE APPRAISAL REPORT

File No
Loan No

070926 (4)

Borrower/Owner: Veigas Lender/Client: Briff, Harris & Sukonek
 Address: 23 Bonnevive Lane Address: 570 West Mt Pleasant Ave/Livingston
 City: Tombago (Montville mailing) State: NJ Zip: 07082 City: _____ State: NJ Zip: _____
 Census Tract: n/a Property Type: Single Family Condo Townhouse 2-4 Family Mixed Use Vacant Land Other
 Data Source(s) Used: Lender Tax Record Appraiser Files MLS Other
 Property Rights Acquired: Fee Simple

Location: Urban Suburban Rural Predominant occupancy
 Built up: Over 75% 25-75% Under 25%
 Growth rate: Rapid Stable Slow
 Property values: Increasing Stable Declining
 Demand/Supply: Shortage In balance Over supply
 Marketing time: Under 3 mos 3-6 mos Over 6 mos
 Single family housing price (\$1000): Low High Predominant
 Present land use: One family 2-4 family Multi-family Commercial
 Land use change: Not likely Likely In process

FEATURE	SUBJECT	COMPARABLE #1	COMPARABLE #2	COMPARABLE #3
Street Address				
City/State/Zip				
Assessor's Parcel Number				
Priority to Subject				
Sale Price	\$	\$	\$	\$
Price/Gross Living Area	\$	\$	\$	\$
Date and/or Verification Sources				
Date of Sale				
Days on Market				
Location				
Site/View				
Design (Style)				
Year Built				
Condition				
Above Grade	Total Bedrooms Baths	Total Bedrooms Baths	Total Bedrooms Baths	Total Bedrooms Baths
Room Count				
Gross Living Area	sq ft	sq ft	sq ft	sq ft
Basement (Below Grade)				
Heating/Cooling				
Garage/Carport				
Porches/Patio/Pool				
Overall Comparison	<input type="checkbox"/> Sup <input type="checkbox"/> Similar <input type="checkbox"/> Infer	<input type="checkbox"/> Sup <input type="checkbox"/> Similar <input type="checkbox"/> Infer	<input type="checkbox"/> Sup <input type="checkbox"/> Similar <input type="checkbox"/> Infer	<input type="checkbox"/> Sup <input type="checkbox"/> Similar <input type="checkbox"/> Infer

VALUE HAS BEEN ESTIMATED USING PUBLIC RECORD OR MLS DATA ONLY, NO PROPERTY INSPECTION PERFORMED UNLESS NOTED.

- The appraiser has researched the sales and listing history of the subject property for the past three years
- The property has not transferred ownership or been listed for sale during this period
- The subject was sold for \$ _____ on (date) _____
- The subject was listed for \$ _____ on (date) _____

Comments: This page omitted from report following Limiting Conditions Apply for the purposes of enclosed report.

GENERAL COMMENTS

Value based on No exterior inspection Exterior inspection from the street
 Estimated Value for Loan Purposes \$ n/a as of 10/08/2003

PURPOSE OF THE APPRAISAL: The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report based upon a qualitative sales comparison analysis for use in the mortgage financing transaction.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby (1) buyer and seller are typically motivated, (2) both parties are well-informed or well-advised and acting in what they consider their best interests, (3) a reasonable time is allowed for exposure in the open market, (4) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto, and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale.

LIMITED APPRAISAL: This appraisal is a limited appraisal, subject to the Departure Provision of the USPAP that was adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation. This limited appraisal is intended to comply with Standards Rules (SR) 1.1, 1.2 and 1.5, and departures from SR 1.1 and 1.4, as allowed by USPAP.

RESTRICTED USE APPRAISAL REPORT: The Restricted Use Appraisal Report option limits the use of this report to the client. The appraiser's opinions and conclusions set forth in the report cannot be understood properly without additional information in the appraiser's workfile.

INTENDED USE: This appraisal is intended for use only by the lender and/or its subsidiaries. The function of this appraisal is to help the lender analyze the risk associated with making a loan on the subject property.

HIGHEST AND BEST USE: The Highest and Best Use of the subject property as improved is assumed to be its present use.

ZONING: The subject property is assumed to be legal and in compliance with current zoning.

DEFINITION OF LIMITING CONDITIONS

257a

BASIS: 100

RESTRICTED USE APPRAISAL REPORTFile No.
Loan No.

03/07/06 (001)

SCOPE OF THE APPRAISAL: The scope of this appraisal consists of identifying the characteristics of the subject property that are relevant to the purpose and intended use of the appraisal. This may be accomplished by reviewing public record data, or appraisal or other documentation from a disinterested source and which is considered reliable from the appraiser's perspective. Unless otherwise noted in the appraisal, no interior or exterior inspection of the subject property has been made.

In developing this appraisal, the appraiser has incorporated only the Sales Comparison approach. The appraiser has excluded the Cost and Income approaches, in accordance with the Departure Provision. The appraiser has determined that this appraisal process is not so limited that the results of the assignment are no longer credible, and the client agrees that the limited service is appropriate given the intended use. The data sources for the comparable sales may include public record data services, multiple listing services, automated valuation models and/or other data sources that become available. The confirmation of comparable sale data, i.e. closed sale documentation and property characteristics, is via public record sources only. The appraiser has not viewed the sales in the field. The data is collected, verified and analyzed, in accordance with the scope of work, identified and the intended use of the appraisal. The appraiser acknowledges that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value. The subject's marketing time is assumed to be typical for the subject's market area unless otherwise stated.

In the absence of an inspection, the appraiser has made some basic assumptions, including the following:

- 1 The subject property is assumed to be in average overall condition and generally conforms to the neighborhood in terms of style, condition and construction materials.
- 2 There are no adverse environmental conditions (hazardous wastes, toxic substances, etc.) present in the improvements, on the site or in the immediate vicinity of the subject property.
- 3 There are no significant discrepancies between the public record information or other data source and the existing site or improvements.

STATEMENT OF CONTINGENT AND LIMITING CONDITIONS: The Appraiser's Certification that appears in this report is subject to the following conditions:

- 1 The appraiser will not be responsible for matters of a legal nature that affect the subject property.
- 2 The appraiser assumes the title is good and marketable and, therefore, will not render any opinions about this title. The property is appraised on the basis of it being under responsible ownership.
- 3 The appraiser will not give testimony or appear in court because he or she performed this appraisal unless specific arrangements to do so have been made beforehand.
- 4 Except as noted herein, the appraiser has not made an exterior or interior inspection of the subject property. The appraiser assumes that there are no adverse conditions associated with the improvements or the subject site. Unless otherwise stated in the report, the appraiser has no knowledge of any hidden or apparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) present in the improvements, on the site or in the immediate vicinity that would make the property more or less valuable, and has assumed that there are no such conditions. The appraiser makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser assumes that the improvements are in average condition. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report may not be considered an environmental assessment of the property.
- 5 The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- 6 The appraiser will not disclose the content of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.

APPRAISER'S CERTIFICATION: The appraiser certifies, to the best of my knowledge and belief:

- 1 The statements of fact contained in this report are true and correct.
- 2 The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- 3 I have no present or prospective interest in the property that is the subject of the report, and no personal interest with respect to the parties involved.
- 4 I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- 5 My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- 6 My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- 7 My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- 8 I have not unless specifically noted made a personal inspection of the property that is the subject of this report, nor did I make inspections of the comparable sales.
- 9 In no provided significant professional assistance in the person signing this report, unless otherwise noted and acknowledged within this report.

CERTIFICATION AND LIMITING CONDITIONS (CONTINUED)

SIGNATURE(S)

APPRAISER:

Signature: Matthew Nolan
 Name: Matthew Nolan
 Company Name: Parkwest Property Appraisals
 Company Address: 119 Taylor Avenue/Suite B/Manassas, VA 08736
 Date of Report/Signature: 10/08/2003
 State Certification #: 42RC00025600 State: NJ
 or State License #: _____ State: _____
 Expiration Date of Certification or License: 12-31-2003

SUPERVISORY APPRAISER (ONLY IF REQUIRED):

Signature: _____
 Name: _____
 Company Name: _____
 Company Address: _____
 Date of Report/Signature: _____
 State Certification #: _____ State: _____
 or State License #: _____ State: _____
 Expiration Date of Certification or License: _____

ADDRESS OF PROPERTY APPRAISED:

23 Bonnevieu Lane
Towaco (Montville mailing), NJ 07082

APPRAISED VALUE OF THE SUBJECT PROPERTY & EFFECTIVE DATE OF APPRAISAL

See Comments
10/08/2003

LENDER/CIENT:

Name: Eric Grogan, Esq.
 Company Name: Plaff, Harris & Sukonec
 Company Address: 570 West Mt Pleasant Ave/Wilmington, NJ

SUBJECT APPRAISER:**SUBJECT PROPERTY**

- Did not inspect subject property
- Did inspect exterior of subject property from street
- Did inspect interior and exterior of subject property

COMPARABLE SALES

- Did not inspect exterior of comparable sales from street
- Did inspect exterior of comparable sales from street

2580

APPRAISAL SUMMARY

SUBJECT INFORMATION	Subject Address	23 Bonnevieu Lane
	Legal Description	blk 21.01 lot 42.12 (Tasing Municipality in Montville Twp. with a Towaco mailing address)
	City	Towaco
	County	Morris
	State	NJ
	Zip Code	07082
	Census Tract	n/a
	Map Reference	In Roads
	Sales Price	\$ n/a
	Date of Sale	n/a
CLIENT	Borrower	Vagas
	Lender/Client	Braff, Harris & Sukoneck
DESCRIPTION OF IMPROVEMENTS	Size (Square feet)	3,382
	Price per Square Foot	\$
	Location	Average
	Age	2 yrs (eff 1)
	Condition	Good
	Total Rooms	10
	Bedrooms	5
	Baths	3.50
	Appraiser	Matthew Nolan
	Date of Appraised Value	10/08/2003
VALUE	Final Estimate of Value	\$ n/a

259a

SUPERIOR COURT OF NEW JERSEY

MORRIS COUNTY - LAW DIVISION

Plaintiffs : Docket No. MRS-L-2245-02
THEODORE AND FRANCES VAGIAS, : Civil Action
vs. :
Defendants :
WOODMONT PROPERTIES, LLC, :
WOODMONT COURT AT MONTVILLE, LLC :
and WEICHERT CO. (Formerly :
WEICHERT, REALTORS), :

BRIEF ON BEHALF OF WEICHERT CO. IN SUPPORT OF
MOTION TO BAR EXPERT TESTIMONY

BRODERICK, NEWMARK & GRATHER
20 SOUTH STREET
MORRISTOWN, NJ 07960
973-538-0084
Attorneys for Defendant,
Weichert Co.

On the Brief: Alan J. Baldwin, Esq.

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INTRODUCTION

Plaintiffs' Complaint was filed on June 3, 2002. Weichert's Answer was filed on August 22, 2002 and was the first Answer filed in this case. This case was assigned to Track I and, therefore, had an initial 150 day discovery period. Discovery would, therefore, have expired on January 19, 2003.

Plaintiffs made a motion returnable on October 10, 2003 to extend discovery. That motion was denied. A copy of Judge Wilson's Order of that date denying an extension of discovery is attached to the enclosed Certification as Exhibit A.

Plaintiffs then filed a motion with the Appellate Division for leave to appeal Judge Wilson's Order. That motion was denied by the Appellate Division on November 17, 2003. A copy of the Appellate Division Order is attached to the enclosed Certification as Exhibit B.

The case was arbitrated on October 9, 2003. Plaintiffs then filed a Request for a Trial de novo and the case is presently scheduled for trial on February 23, 2004.

On August 20, 2002 interrogatories were served on plaintiffs' counsel by counsel for Weichert Co. Interrogatory #11 requested that plaintiffs

Set forth the name, address and areas of expertise of each and every expert who may testify for you at the time of trial. As to each such expert, state the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and provide a summary of the grounds for each opinion. Attach copies of all reports prepared by such experts to your answers.

Plaintiffs answered that interrogatory "To be supplied pursuant to the Rules of Court". A copy of the Interrogatories and Answers are attached to the Certification as Exhibit C.

By letter dated December 29, 2003 plaintiffs' counsel sent to counsel for Weichert Co. an expert report. The report states that it was signed by its author, Matthew Nolan, on October 8, 2003. Copies of the letter of transmittal and report are attached to the enclosed Certification as Exhibit D.

This motion has been brought in order to bar the testimony of Mr. Nolan at the time of trial.

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677

Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

THEODORE and FRANCES VAGIAS,
Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

vs.

Civil Action

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

SUPPORTING CERTIFICATION

Defendants.

Eric L. Grogan, of full age, hereby certifies as follows:

1. I am an Attorney at Law of the State of New Jersey and an associate in the firm of Braff, Harris & Sukoneck, attorneys for plaintiffs, Theodore and Francis Vagias in the above matter. I make this Certification in support of plaintiffs' opposition to defendant, Weichert's Motion to bar plaintiffs from producing expert testimony at trial.

2. This matter regards the sale of a residential home to plaintiffs. Allegations of fraud were made against the developer and realtor.

263a

3. On January 10, 2003 a Motion was heard, filed by Woodmont Properties, LLC to strike the Jury Demand or to Compel Arbitration in this matter. The contract between the developer and the homeowner had a term that a Jury Demand cannot be made and the case must be submitted to arbitration.

4. Defendant Weichert attempted to join the Motion of Woodmont to dismiss the case based on the contract clause calling for arbitration. (Attached as Exhibit A is Weichert's correspondence to the Court, dated January 3, 2003, calling for the enforcement of the arbitration clause and calling for the parties to be compelled to resolve the dispute through binding arbitration.)

5. On the date of oral argument, the motion was granted dismissing the case and sending it to arbitration as to Woodmont. Weichert's request to join in the motion was denied.

6. Upon information and belief, counsel for Weichert had discussions with prior counsel from this office that the parties agreed that Weichert would also be a party to the arbitration pursuant to the contract as opposed to this litigation. (See certification of Francine A. Minervini regarding discussions with counsel and inability to serve an expert report prior to the discovery end date, attached as Exhibit B.)

7. On that same date, January 10, 2003, an Order was entered dismissing plaintiffs' Complaint for failing to answer Interrogatories against Weichert. Upon information and belief, there was no oral argument on this motion. (See Order dated January 10, 2003 dismissing Complaint as to Weichert, attached as Exhibit C.)

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8. The discovery end date of January 25, 2003 passed while the case was dismissed without prejudice after prior counsel had discussions with counsel for Weichert that the matter would be moved to arbitration.

9. Woodmont Properties is insured by Legion Insurance. A stay of all litigation and arbitrations was imposed by the Court in Pennsylvania, and made applicable to actions in the State of New Jersey. Based on this stay, arbitration did not proceed in this matter.

10. A Motion to Dismiss Plaintiffs' Complaint with Prejudice was then filed by defendant Weichert.

11. The attorney handling the case for this firm left the firm, causing a disruption regarding this matter. She advised that counsel for Weichert had made representations that Weichert would participate in the binding arbitration procedure along with Woodmont.

12. Thereafter, this office provided discovery to Weichert, reinstating the Complaint against Weichert on July 25, 2003.

13. This office's understanding was that Weichert would participate in the binding arbitration with Woodmont.

14. A letter was sent to counsel for Weichert to confirm that they would participate in the binding arbitration pursuant to the Contract of Sale. (See letter dated July 9, 2003, attached as Exhibit D.)

15. On July 28, 2003 counsel for Weichert forwarded a letter stating that they would advise this office regarding the

arbitration pursuant to the contract. (See letter dated July 28, 2003 attached as Exhibit E.)

16. On July 28, 2003 Legion Insurance was placed into liquidation. This Order triggered the state guarantee associations to begin defending policy owners.

17. For the first time, on August 22, 2003, this office learned from defendant Weichert that they did not intend to proceed with the binding arbitration pursuant to the Contract of Sale, but would remain in this litigation.

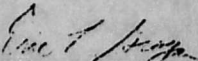
18. Attempts to retain experts were extremely difficult, given the number of experts who had conflicts with defendant, Weichert.

19. On information and belief, plaintiff's expert, Matthew Nolan visited the home of plaintiffs, Theodore and Frances Vagias on October 8, 2003, the date noted on his report.

20. This office received the expert report of Matthew Nolan on December 22, 2003.

21. This report was forwarded to counsel for defendant, Weichert under cover letter dated December 29, 2003. (See report and cover letter dated December 29, 2003 attached as Exhibit F.)

I hereby certify that the foregoing statements made by me are true and correct to the best of my knowledge and belief. I am aware that if any statement made by me is wilfully false, I am subject to punishment.


ERIC L. GROGAN

DATED: January 12, 2004

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EXHIBIT A

267a

EXHIBIT B

268a

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00101 00 0000 10 0000 000000 000000

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07033
Telephone: (773) 994-6677

Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

THEODORE and FRANCIS VAGIAS,

Plaintiff,

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02**

vs.

Civil Action

**WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),**

CERTIFICATION OF FRANCINE A. MINERVINI

Defendants.

Francine A. Minervini, of full age hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and was formerly an associate in the firm of Braff, Harris & Sukoneck, attorneys for plaintiffs, Theodore and Francis Vagias, in the above matter. I previously was the attorney responsible for the handling of this matter. I make this Certification in support of plaintiffs's opposition to defendant, Weichert's motion to bar plaintiffs from producing expert testimony at trial.

2. I personally had discussions with counsel for defendant, Weichert, regarding this case including the claims against Weichert being removed from the trial calendar and being subject to binding arbitration.

3. Counsel for Weichert agreed that the case would be moved to arbitration.

269a

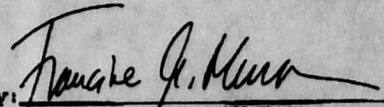
4. The issues of retaining an expert and the criteria regarding experts under the binding arbitration are set forth by the arbitrator and are different than those in the trial court.

5. Based upon representations by counsel for defendant, Weichert, counsel for plaintiff did not serve an expert report prior to the discovery end date.

6. The information in plaintiff's amendment to interrogatory answers, the subsequently served expert report, was not reasonably available or discoverable by the exercise of due diligence prior to the discovery end date.

7. I acknowledge the genuineness of my signature on this facsimile document and will provide an original signature if requested by the court or a party.

I heraby certify that the foregoing statements made by me are true and correct to the best of my knowledge and belief. I am aware that if any statement made by me is wilfully false, I am subject to punishment.

By: 
FRANCINE A. MINERVINI

DATED: January 9, 2004

EXHIBIT C

271a

EXHIBIT D

272a

EXHIBIT E

273a

FILED

JAN 23 2004

DEANNE M. WILSON
JUDGE SUPERIOR COURT

BRODERICK, NEWMARK & GRATHER
A Professional Corporation
20 South Street
Morristown, NJ 07960
973-538-0084
Attorneys for Defendant, Weichert Co.

THEODORE AND FRANCES VAGIAS,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - MORRIS COUNTY
	:	
Plaintiffs,	:	DOCKET NO. MRS-L-2245-02
	:	
vs.	:	Civil Action
	:	
WOODMONT PROPERTIES, LLC,	:	ORDER
WOODMONT COURT AT MONTVILLE, LLC :	:	
and WEICHERT CO. (Formerly	:	
WEICHERT, REALTORS),	:	
	:	
Defendants.	:	

THIS MATTER being brought before the Court by the firm of Broderick, Newmark & Grather, attorneys for defendant, Weichert Co. and good cause appearing,

IT IS on this 23rd day of January, 2004

~~ORDERED that all claims in this case against Weichert Co. are Summary Judgment denied but Weichert is entitled to fees because it incurred expenses in filing summary judgment motion and motion to set aside. Weichert will submit Cert Docs within one week. Plaintiff will have one week to reply. Court will determine matter on the papers, unless within _____ days hereof argument required.~~

Served in Court.

Deanne M. Wilson
DEANNE M. WILSON J.S.C.
JUDGE OF THE SUPERIOR COURT

 Opposed
 Unopposed

FILED

JAN 23 2004

**DEANNE M. WILSON
JUDGE SUPERIOR COURT**

BRODERICK, NEWMARK & GRATHER

A Professional Corporation
20 South Street
Morristown, NJ 07960
973-538-0084

Attorneys for Defendant, Weichert Co.

THEODORE AND FRANCES VAGIAS,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION -MORRIS COUNTY
	:	
Plaintiffs,	:	DOCKET NO. MRS-L-2245-02
	:	
vs.	:	Civil Action
	:	
WOODMONT PROPERTIES, LLC,	:	ORDER
WOODMONT COURT AT MONTVILLE, LLC :	:	
and WEICHERT CO. (Formerly	:	
WEICHERT, REALTORS),	:	
	:	
Defendants.	:	

THIS MATTER being brought before the Court by the firm of Broderick, Newmark & Grather, attorneys for defendant, Weichert Co. and good cause appearing,

IT IS on this 23rd day of January, 2004

ORDERED that the plaintiffs are barred from producing expert testimony at the time of trial, and further **Denied**

ORDERED that a copy of this Order be served on all parties within days hereof **Served in Court -**

Deanne M. Wilson
J.S.C.

Opposed Trial will not take place prior to 4/19/04.
 Unopposed

Weichert will depose plaintiffs expert prior to 2/6/04.
Weichert will submit its expert report prior to 3/19/04.
Plaintiff will depose Weichert's expert prior to 3/30/04.
275a

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039

Telephone: (973) 994-6677

Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

FILED

JAN 31 2005

DAVID E. BARD, J.S.C.
CLERK OF SUPERIOR COURT
COUNTY CLERK'S OFFICE

THEODORE and FRANCES VAGIAS,

Plaintiff,

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: COUNTY
DOCKET NO. MRS-L-2245-02**

Civil Action

vs.

**WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),**
Defendants.

ORDER

This matter having been opened to the Court on the application of Braff, Harris & Sukoneck, attorneys for Plaintiffs, and on notice to attorneys for defendant, and the court having considered the submissions and arguments of counsel; and for other good cause having been shown,

IT IS, on this 31st day of Jan, 2004,

ORDERED that;

1. Defendants, Woodmont Properties, LLC and Woodmont Court at Montville, are hereby barred by using the report of Robert Heffeman at time of trial; and
2. A copy of this Order be served upon all counsel within seven (7) days of receipt of same by attorneys for Plaintiffs, Theodore and Francis Vagias

DATED:

Plausi

DAVID E. BARD, J.S.C.

J.S.C.

opposed

unopposed

The report in question has been filed too late. Also, if it were permitted the entire area of report discovery would likely be opened for additional discovery.

276a

D.B.

BRODERICK, NEWMARK & GRATHER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

20 SOUTH STREET

MORRISTOWN, N.J. 07960

(973) 538-0084

(973) 538-4242

FAX (973) 538-2509

E. F. BRODERICK (1929-1987)
I. EZRA NEWMARK (1925-1979)

EDWARD F. BRODERICK, JR.*
MARTIN NEWMARK
FRANCIS G. GRATHER**
ALAN J. BALDWIN*

* CERTIFIED BY THE SUPREME COURT
OF N.J. AS A CIVIL TRIAL ATTORNEY

* CERTIFIED BY THE SUPREME COURT

OF N.J. AS A MATRIMONIAL LAW ATTORNEY
* FELLOW AMERICAN ACADEMY OF
MATRIMONIAL LAWYERS

February 11, 2004

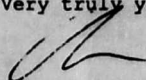
Eric L. Grogan, Esq.
Braff, Harris & Sukonek
570 W. Mt. Pleasant Avenue
Livingston, NJ 07039

Re: Vagias v. Weichert Co.

Dear Mr. Grogan:

Enclosed please find a copy of the Order signed by Judge Wilson
on February 6, 2004.

Very truly yours,


Alan J. Baldwin

AJB:mno
Enclosure

277a

FILED

FEB ' 6 2004

**DEANNE M. WILSON
JUDGE SUPERIOR COURT**

BRODERICK, NEWMARK & GRATHER

A Professional Corporation
20 South Street
Morristown, NJ 07960
973-538-0084

Attorneys for Defendant, Weichert Co.

THEODORE AND FRANCES VAGIAS,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION -MORRIS COUNTY
	:	:
Plaintiffs,	:	DOCKET NO. MRS-L-2245-02
	:	:
vs.	:	Civil Action
	:	:
WOODMONT PROPERTIES, LLC,	:	ORDER
WOODMONT COURT AT MONTVILLE, LLC:	:	
and WEICHERT CO. (Formerly	:	
WEICHERT, REALTORS),	:	
	:	
Defendants.	:	

THIS MATTER being brought before the court initially on a motion for summary judgment filed on behalf of Weichert, Realtors, followed by a motion to bar use of an expert report also filed by Weichert, Realtors and it appearing that the plaintiffs submitted an expert report for the first time after the close of discovery and after the case had been submitted to arbitration and the court having ruled on the merits of the motions on January 23, 2004, plaintiffs being represented by Braff, Harris & Sukonek, Eric L. Grogan, Esq. appearing, and Weichert, Realtors being represented by Broderick, Newmark & Grather, Alan J. Baldwin, Esq. appearing, and the court at that time having ordered plaintiffs to reimburse

defendant for the reasonable attorneys fees associated with the preparation, filing and argument of the motions and counsel having submitted a Certification of Services,

IT IS on this 6th day of February, 2004

ORDERED that plaintiffs reimburse defendants the amount of \$ 1450 as attorneys fees and ~~0~~ as costs; and further

ORDERED that payment be made within 30 days hereof; and further

ORDERED that a copy of this Order be served on all parties within 7 days hereof.

Deanne M. Wilson
DEANNE M. WILSON, J.S.C.

The Court considers 10 hours to be sufficient to prepare papers and argue the matter. Hourly rate of \$145 is reasonable in the community.

Opposition is primarily repetition of arguments made in motion papers, which the Court addressed on the return date.

LADDEY, CLARK & RYAN

ATTORNEYS AT LAW

60 BLUE HERON ROAD
SPARTA, NEW JERSEY 07871-2600
(973) 729-1880
FAX: (973) 729-1224

BRIAN M. LADDEY*
RICHARD L. CLARK**
THOMAS N. RYAN
ANDREW A. FRASER**

ANSELO J. BOLCATO*
MICHAEL S. GAROFALO
LAWRENCE J. BLUFF
JARRID C. COPRANCECRO
DEBORAH L. SHEWARD*

RICHARD A. STEIN
OF COUNSEL

- * NJ & NY BARS
- * NJ & PA BARS
- * NJ, NY & MA BARS
- * RULE 1:10 QUALIFIED MEDIATOR
- * CERTIFIED BY THE SUPREME COURT OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY

E-MAIL: info@ladley.com

www.ladley.com

September 30, 2004

Clerk
MORRIS COUNTY SUPERIOR COURT
LAW DIVISION
Washington and Court Streets
P.O. Box 910
Morristown, New Jersey 07963

Re: *Vagias v. Woodmont Properties, LLC, et al*
Docket No. MRS-L-2245-02
Our File No. 4413-25

Dear Sir or Madam:

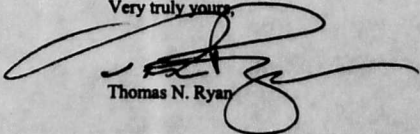
Enclosed please find an original and one copy of the following documents:

1. Waiver of Notice and the Right to be Heard signed by plaintiffs' attorney, Eric L. Grogan, Esq.
2. Waiver of Notice and the Right to be Heard signed by defendants Woodmont Properties, L.L.C. and Woodmont Court at Montville, L.L.C.'s attorney, Sidney J. Bernstein, Esq.
3. Certification of No Delay signed by Weichert's former attorney, Alan J. Baldwin, Esq. and new attorney, Thomas N. Ryan, Esq.
4. Letter from Maria Romani, Esq., Weichert's in-house counsel, addressed to the Honorable David S. Cramp, J.S.C.

Kindly file and return the additional copy marked "filed" in the self-addressed, stamped envelope provided.

Thank you for your courtesy.

Very truly yours,


Thomas N. Ryan

TNR:rm
Enclosures

cc: Eric L. Grogan, Esq.
Sidney J. Bernstein, Esq.

280a

LADDEY, CLARK & RYAN
Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880
Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiff,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

**WAIVER OF NOTICE AND THE RIGHT
TO BE HEARD**

Counsel for all parties to this action hereby waive any right of notice and the right to be heard with regard to the substitution of attorney in this action by Thomas N. Ryan, Esq. of the law firm of Laddey, Clark & Ryan for Alan J. Baldwin, Esq. of Broderick, Newmark & Grather, for defendant, cross-claimant, Weichert Realtors.

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs

By: 

Eric L. Grogan, Esq.

LADDEY, CLARK & RYAN
Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880
Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiff,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

**WAIVER OF NOTICE AND THE RIGHT
TO BE HEARD**

Counsel for all parties to this action hereby waive any right of notice and the right to be heard with regard to the substitution of attorney in this action by Thomas N. Ryan, Esq. of the law firm of Laddey, Clark & Ryan for Alan J. Baldwin, Esq. of Broderick, Newmark & Grather, for defendant, cross-claimant, Weichert Realtors.

LAW OFFICE OF SIDNEY J. BERNSTEIN
Attorney for Defendants, Woodmont
Properties, LLC and Woodmont Court
at Montville, LLC

By: 

Sidney J. Bernstein, Esq.

LADDEY, CLARK & RYAN
Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880
Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiffs,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

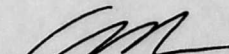
CERTIFICATION OF NO DELAY

The withdrawing attorney, Alan J. Baldwin, Esq. of the law firm of Broderick, Newmark & Grather, and the substituted attorney, Thomas N. Ryan, Esq., of the law firm of Laddey, Clark & Ryan, hereby certify that the substitution of counsel shall not cause or result in delay.

This Certification is hereby submitted pursuant to Rule 1:11-2(a)(2).

BRODERICK, NEWMARK & GRATHER
Withdrawing Attorney for Weichert Realtors

LADDEY, CLARK & RYAN
Superseding Attorney for Weichert
Realtors

By: 
Alan J. Baldwin, Esq.

By: 
Thomas N. Ryan, Esq.

Weichert, Realtors

Legal Department
1625 State Route 10
Morris Plains, New Jersey 07950-2933
Telephone 973.397.8520
Facsimile 973.539.1249

Maria M. Romani
Associate Counsel

September 23, 2004

Honorable David S. Cramp, J.S.C.
MORRIS COUNTY SUPERIOR COURT
Washington and Court Streets
P.O. Box 910
Morristown, New Jersey 07963-0910

Re: *Yaglas v. Woodmont, et al*
Docket No. MRS-L-2245-02

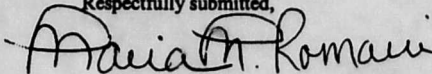
Dear Judge Cramp:

Weichert Realtors is a defendant and cross-claimant in the above-referenced litigation. Up until this time, Weichert has been represented by Alan Baldwin, Esq., of the law firm of Broderick, Newmark & Grather.

Due to an appearance of a conflict of interest that was recently identified, Mr. Baldwin is withdrawing as legal counsel for Weichert. Weichert has retained Thomas N. Ryan, Esq., of the law firm of Laddey, Clark & Ryan to substitute as attorney for Weichert in this action.

Weichert consents to the substitution of Mr. Ryan for Mr. Baldwin as attorney for Weichert Realtors.

Respectfully submitted,



Maria Romani

cc: Eric L. Grogan, Esq.
Sidney Bernstein, Esq.
Alan Baldwin, Esq.

284a

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW

ERIC L. GROGAN

570 W. MT. PLEASANT AVENUE
P. O. BOX 657
LIVINGSTON, NEW JERSEY 07039-0657
(973) 994-6677
Facsimile (973) 994-1296

Writer's
E-Mail Address
elgrogan@bhs-law.com

305 Broadway, Seventh Floor
New York, New York 10007
(212) 599-2885
Facsimile (212) 822-1479

November 5, 2004

Alan J. Baldwin, Esq.
Weichert Company
Broderick, Newmark & Grather
20 South Street
Morristown,, New Jersey 07960

Re: Vagias, Theodore v. Woodmont Court at
Montville, LLC
Docket No.: MRS-L-2245-02
Our File No. 244.14899

Dear Mr. Baldwin:

Enclosed please find a copy of an Order stamped "filed" by the Court on October 29, 2004 executed by the Honorable Deanne M. Wilson, J.S.C.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

BRAFF, HARRIS & SUKONECK


ERIC L. GROGAN

ELG/emp

Enclosure

cc: Thomas Ryan, Esq.
Sidney Bernstein, Esq.

285a

36
FILED

OCT 29 2004

DEBRAH M. NELSON
JUDGE SUPERIOR COURT

BRAFF, HARRIS & SUKONECK

COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677

Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

THEODORE and FRANCES VAGIAS,
Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: COUNTY
DOCKET NO. MRS-L-2245-02

vs.

Civil Action

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

ORDER

Defendants.

This matter having been opened to the Court on the application of Braff, Harris & Sukoneck, attorneys for Plaintiffs, after counsel appeared for trial on July 14, and July 15, 2004, and thereafter learned of a conflict from counsel for defendant Weichert Co.,

IT IS, on this 29th day of October, 2004,

ORDERED that;

1. Counsel for defendant Weichert reimburse plaintiffs'

counsel the amount of \$525 as fees and costs for appearing at trial. Weichert should have disclosed conflict earlier. Other expenses and fees would have to be incurred at trial time. in any event.

286a

2. Counsel for defendant Weichert reimburse plaintiff Frances Vagias the amount of _____ as wages lost, and ~~Denial~~.
~~No legal precedent.~~
ORDERED that;

3. Payment be made 30 days of this Order; and
FURTHER ORDERED that;

4. A copy of this Order be served upon all counsel within seven (7) days of receipt of same by attorneys for Plaintiffs, Theodore and Francis Vagias.

Deanne M. Wilson
J.S.C.

DATED: 29 October 04

X opposed
_____ unopposed

DEANNE M. WILSON
J.S.C.

SIDNEY J. BERNSTEIN

**ATTORNEY AT LAW
554 SO. LIVINGSTON AVENUE
LIVINGSTON, N. J. 07039**

(73) 894-9315

**FACSIMILE
(73) 894-7348**

August 11, 2004

244.14899
EB

Motion Clerk, Morris County
Superior Court of New Jersey
Morris County Courthouse
Washington and Court Streets
Morristown, New Jersey 07963

RE: Theodore and Frances Vagias
v. Woodmont Properties, L.L.C.,
Woodmont Court at Montville, L.L.C.
and Weichert Co. (formerly Weichert
Realtors)
Docket No. MRS-L-2245-02

Dear Sir/Madam:

Please list the enclosed motion for oral argument on September 10, 2004.

I am enclosing an original Notice of Motion to Compel Arbitration, Certification of Sidney J. Bernstein, Brief Supporting Notice of Motion to Compel Arbitration and an original and two copies of a proposed Order Dismissing Complaint and Compelling Arbitration.

My check in the sum of \$30 is enclosed for your filing fee.

Thank you for your courtesies.

Very truly yours,

Sid. Bernstein
SIDNEY J. BERNSTEIN

SJB:ak
Encls.

cc: Brian Harris, Esq. (w/encls.)
Alan J. Baldwin, Esq. (w/encls.)

287a

LAW OFFICES
SIDNEY J. BERSTEIN
554 SOUTH LIVINGSTON AVENUE
LIVINGSTON, NEW JERSEY 07039
(973) 994-9315
(973) 994-7348 – Fax

Attorney for Defendants, Woodmont Properties, L.L.C. and
Woodmont Court At Montville, L.L.C.

THEODORE and FRANCES VAGIAS, :

Plaintiffs, :

v. :

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS), :

Defendants. :

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

Civil Action

NOTICE OF MOTION TO COMPEL
ARBITRATION

TO: Brian Harris, Esq.
Braff, Harris & Sukoneck, Esqs.
570 W. Mt. Pleasant Avenue
P. O. Box 657
Livingston, New Jersey 07039
Attorneys for Plaintiffs



SIR:

PLEASE TAKE NOTICE that on the 10th day of September, 2004, at 9:00 o'clock, or as soon thereafter as counsel may be heard, the undersigned, counsel for defendants, Woodmont Properties, L.L.C. and Woodmont Court At Montville, L.L.C. shall move before the Superior Court of New Jersey, Law Division, Morris County Courthouse, Washington and Court Streets, Morristown, New Jersey, for an Order Dismissing the Complaint and Compelling Arbitration of all disputes between the parties.

288a

PLEASE TAKE FURTHER NOTICE that in support of the within application, defendants will rely upon the Brief filed in support of the Motion and Certification of Sidney J. Bernstein, Esq. and exhibits annexed thereto, which Certification is submitted herewith.

A proposed form of Order is also submitted herewith.

Defendants request oral argument.

Law Offices
SIDNEY J. BERNSTEIN

DATED: August 11, 2004

BY: Sidney J. Bernstein
SIDNEY J. BERNSTEIN

TRIAL DATE: October 4, 2004

Counsel for the movant hereby certifies the following:

- (a) This case is listed for trial on October 4, 2004.
- (b) An original and two copies of the Motion, Brief and supporting Certification as well as an original and three copies of a proposed form of Order, have been forwarded for filing to the Morris County Clerk, Morris County Courthouse, Washington and Court Streets, Morristown, New Jersey.

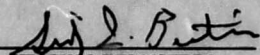
(c) True copies have been forwarded to the following parties:

Brian Harris, Esq.
Braff, Harris & Sukoneck, Esqs.
570 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039
Attorneys for Plaintiffs

Alan J. Baldwin, Esq.
Broderick, Newmark & Grather, Esqs.
20 South Street
Morristown, New Jersey 07960
Attorneys for Defendant, Weichert Co.

Law Offices
SIDNEY J. BERNSTEIN

DATED: August 11, 2004

BY: 
SIDNEY J. BERNSTEIN

SIDNEY J. BERNSTEIN
ATTORNEY AT LAW
884 SO. LIVINGSTON AVENUE
LIVINGSTON, N. J. 07039
873 984-9318
FACSIMILE
873 984-7348

EA

October 6, 2004

Motion Clerk, Morris County
Superior Court of New Jersey
Morris County Courthouse
Washington and Court Streets
Morristown, New Jersey 07963

244-14899

RE: Theodore and Frances Vagias
v. Woodmont Properties, L.L.C.,
Woodmont Court at Montville, L.L.C.
and Weichert Co. (formerly Weichert
Realtors)
Docket No. MRS-L-2245-02

Dear Sir/Madam:

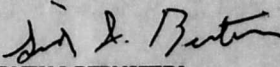
Please list the enclosed motion for oral argument on November 5, 2004.

I am enclosing an original Notice of Motion, Certification of Sidney J. Bernstein, Statement of Undisputed Material Facts under R. 4:46-2, Brief Supporting Notice of Motion and an original and two copies of a proposed Order.

My check in the sum of \$30 is enclosed for your filing fee.

Thank you for your courtesies.

Very truly yours,


SIDNEY J. BERNSTEIN

SJB:ak
Encls.

cc: Thomas N. Ryan, Esq. (w/encls.)
Eric L. Grogan, Esq. (w/encls.)
Jack Burke, Esq. (w/encls.)

291a

LAW OFFICES
SIDNEY J. BERSTEIN
554 SOUTH LIVINGSTON AVENUE
LIVINGSTON, NEW JERSEY 07039
(973) 994-9315
(973) 994-7348 - Fax

Attorney for Defendants, Woodmont Properties, L.L.C. and
Woodmont Court At Montville, L.L.C.

THEODORE and FRANCES VAGIAS, :

Plaintiffs, :

v. :

WOODMONT PROPERTIES, L.L.C., :
WOODMONT COURT AT MONTVILLE, :
L.L.C. and WEICHERT CO. (formerly :
WEICHERT REALTORS), :

Defendants. :

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

Civil Action

NOTICE OF MOTION TO DISMISS
CROSS CLAIM OF DEFENDANT
WEICHERT FOR INDEMNIFICATION

TO: Thomas N. Ryan, Esq.
Laddey, Clark & Ryan
60 Blue Heron Road
Sparta, New Jersey 07871-2600
Attorney for Defendant Weichert

SIR:

PLEASE TAKE NOTICE that on the 5th day of November, 2004, at 9:00 o'clock, or as soon thereafter as counsel may be heard, the undersigned, counsel for Woodmont Properties, L.L.C. and Woodmont Court At Montville, L.L.C. shall move before the Superior Court of New Jersey, Law Division, Morris County Courthouse, Washington and Court Streets, Morristown, New Jersey, for an Order Dismissing the Cross Claim of Defendant Weichert for Indemnification.

PLEASE TAKE FURTHER NOTICE that in support of the within application, defendants will rely upon the Brief filed in support of the Motion and Certification of Sidney J. Bernstein, Esq. and exhibits annexed thereto, which Certification is submitted herewith.

A proposed form of Order is also submitted herewith.

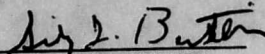
292a

Defendants request oral argument.

Law Offices
SIDNEY J. BERNSTEIN

DATED: October 6, 2004

BY:


SIDNEY J. BERNSTEIN

TRIAL DATE: November 8, 2004

Counsel for the movant hereby certifies the following:

- (a) This case is listed for trial on November 8, 2004.
- (b) An original and two copies of the Motion, Brief and supporting Certification as well as an original and three copies of a proposed form of Order, have been forwarded for filing to the Morris County Clerk, Morris County Courthouse, Washington and Court Streets, Morristown, New Jersey.
- (c) True copies have been forwarded to the following parties:

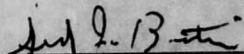
Thomas N. Ryan, Esq.
Laddey, Clark & Ryan
60 Blue Heron Road
Sparta, New Jersey 07871-2600
Attorney for Defendant Weichert

Eric L. Grogan, Esq.
Braff, Harris & Sukoneck, Esqs.
570 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039-0657
Attorney for Plaintiffs

Law Offices
SIDNEY J. BERNSTEIN

DATED: October 6, 2004

BY:


SIDNEY J. BERNSTEIN

293a

A-5029-04T5

**RECEIVED
APPELLATE DIVISION**

SEP 22 2005

**SUPERIOR COURT
OF NEW JERSEY**

THEODORE AND FRANCIS
VAGIAS,

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-005029-04-T5

Plaintiffs,

vs.

WOODMONT PROPERTIES,
LLC., WOODMONT COURT AT
MONTVILLE, LLC, AND
WEICHERT CO. (FORMERLY
WEICHERT REALTORS),

ON APPEAL FROM ORDERS GRANTING
SUMMARY JUDGMENT, DENYING
RECONSIDERATION AND AWARDING
COUNSEL FEES AND EXPERT WITNESS
COSTS PURSUANT TO RULE 4:21a-6(c) BY
THE SUPERIOR COURT OF NEW JERSEY,
LAW DIVISION, MORRIS COUNTY

DOCKET NO.: MRS-L-2245-02

Defendants.

SAT BELOW:
Hon. Catherine Langlois, J.S.C.
Hon. David B. Rand, J.S.C.

**PLAINTIFFS/APPELLANTS' SUPPLEMENTAL BRIEF
AND
SUPPLEMENTAL APPENDIX**

**FILED
APPELLATE DIVISION**

SEP 22 2005

John J. Thomas
ACTING CLERK

BRAFF, HARRIS & SUKONECK
570 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039
973-994-6677
Attorneys for Plaintiffs
Theodore and Frances Vagias
Our File No. 244.14899

ON THE BRIEF:
Gloria B. Cherry, Esq.

Original

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PROCEDURAL HISTORY

The Notice of Appeal from the Orders of the Honorable Catherine Langlois, J.S.C. granting summary judgment to Defendant/Respondent Weichert Co. and denying Plaintiffs/Appellants' motion for reconsideration was filed on or about May 24, 2005 (Pa 5, Appendix Vol. I)¹

On or about July 8, 2005, Weichert Co. filed a Notice of Motion for a Stay and Remand to Trial Level to Hear Motion for Counsel Fees (Pa 296). The Counsel Fee Motion sought Counsel Fees and Costs pursuant to Rule 1:4-8 and N.J.S.A. 2A:15-59 et. seq. (frivolous litigation) and Counsel Fees and Compensation for Expert Witness Costs under Rule 4:21A-6(c)(3) and (4) (*Trial de Novo*).

The motion for a stay and remand was granted by Order filed on August 11, 2005 and the case remanded to the trial court for a ruling on the counsel fee issue (Pa 300).

A hearing on the counsel fee issue was conducted on September 2, 2005 before the Honorable David B. Rand, J.S.C. Judge Rand entered an Order on September 12, 2005 denying Weichert Co.'s application for fees under the frivolous litigation rule and statute but granting it under the *Trial de Novo* rule. Thus, Weichert Co. was awarded counsel fees in the

¹ References are to the Supplemental Appendix, unless otherwise noted.

amount of \$750.00 under Rule 4:21A-6(c)(3) and compensation for expert witness costs in the amount of \$500.00 under Rule 4:21A-6(c)(4) (Pa 294).

Plaintiffs/Appellants have filed an Amended Notice of Appeal (Pa 301) so as to include an appeal from the portion of Judge Rand's Order dated September 12, 2005 awarding counsel fees and expert witness costs to Weichert Co. pursuant to the Trial de Novo rule, Rule 4:21A-6(c)(3) and (4). The within Supplemental Brief and Appendix is in support of Plaintiffs/Appellants' appeal on the fee issue related to the Trial de Novo rule.

STATEMENT OF FACTS

On October 9, 2003, a court-ordered arbitration was conducted in the Morris County Superior Court action. The developer/builder, Woodmont Properties, LLC and Woodmont Court at Montville, LLC ("Woodmont") participated in the arbitration along with Weichert Co. ("Weichert")².

The arbitration resulted in a finding of 80% liability against Woodmont and 20% against Weichert. The arbitrator stated that Plaintiffs/Appellants' purchased a home that they had been led to believe was located on a different section of the Township of Montville than it actually was and in a different school district; that the builder misrepresented the address and Weichert confirmed the error (Pa 149, Appendix Vol. II).

The arbitrator did not award damages, however, and stated as follows (Pa 149, Appendix Vol. II):

Damages not proven, expert testimony is required to prove diminution of value.

The arbitrator further stated that Plaintiffs/Appellants' emotional damages are understandable but not recoverable in a property damage action.

² Woodmont's motion to dismiss the Complaint and compel binding arbitration had been granted by Order dated January 10, 2003 (Pa 195, Appendix Vol. II). Apparently it was anticipated that Weichert would participate in the binding arbitration (Pa 269, Appendix Vol. II).

Plaintiffs/Appellants' then filed a *Trial de Novo* and discovery continued in the Superior Court action. On October 10, 2003, an Order was entered by the Honorable Deanne M. Wilson denying plaintiffs' motion to extend the discovery period (Pa 219, Appendix Vol. II). Plaintiffs filed a motion for leave to appeal, which was denied by the Honorable Howard H. Kestin by Order entered on November 20, 2003 (Pa 221, Appendix Vol. II).

The case was scheduled for trial on February 23, 2004. Weichert's counsel filed a motion for summary judgment on December 16, 2003 arguing that Plaintiff/Appellants' had not provided any expert report to establish their damages (Pa 223, Appendix Vol. II). Plaintiffs/Appellants' expert report was served on December 29, 2003. The report set forth a differential in prices of homes comparable to plaintiffs home in Towaco as selling for \$90,000.00 less than comparable homes in Montville (Pa 239, Appendix Vol. II).

Weichert then filed a motion seeking to bar the testimony of Plaintiffs/Appellants' expert (Pa 260, Appendix Vol. II). By Orders entered on January 23, 2004, Judge Wilson denied Weichert's motions for summary judgment and to bar plaintiffs' expert from testifying at trial but permitted Weichert to submit a certification for the fees incurred in said motions. The Orders also established a schedule for the submission of

Weichert's expert report and expert depositions and adjourned the trial date, stating that trial would not take place before April 9, 2004. Judge Wilson granted Weichert's fee application by Order filed on February 6, 2004 (Pa 274-275, 277-279, Appendix Vol. II).

The trial was subsequently scheduled for July 14, 2004. On the following morning Weichert's attorneys notified Plaintiffs/Appellants' attorneys that they had a conflict of interest with regard to the cross-claims against Woodmont since they had represented Woodmont in another matter. A new trial date of October 4, 2004 was assigned to permit new counsel to appear on behalf of Weichert; this date was adjourned to November 8, 2004 and then to March 21, 2005. A Substitution of Attorney was filed on or about September 30, 2004 (Pa 280, Appendix Vol. II).

On August 9, 2004, Plaintiffs/Appellants filed a motion for fees involved in preparation for the July 14, 2004 trial date and this motion was granted by Judge Wilson by Order dated October 29, 2004 (Pa 286, Appendix Vol. II).

Woodmont filed a motion on August 11, 2004 to compel arbitration of the entire dispute between the parties, including the claim and cross-claim against Weichert and another motion on October 6, 2004 seeking to dismiss Weichert's claim against

it for indemnification, which motions were denied. Woodmont then served an expert report and Plaintiffs/Appellants filed a motion to bar the report, which was granted by Order of Honorable David B. Rand on January 31, 2005 (Pa 276, 287-293. Appendix Vol. II).

On February 2, 2005, over a year following the arbitration, Weichert served the motion for summary judgment that is the subject of this appeal (Pa 16, Appendix, Vol. I).

The foregoing Orders clearly permit Plaintiffs/Appellants to file an expert report so as to correct the problem that precipitated the arbitrator's conclusion as to damages, i.e. that there was no expert report indicating diminution in value. The attorneys representing Weichert at that time sought summary judgment on the ground that no expert report had been provided. Plaintiffs/Appellants expert report was served and the Weichert motion was denied.

The summary judgment motion that was ultimately granted in this case and that is the subject of the pending appeal had nothing to do with the arbitrator's decision as to the fact that there was no expert report substantiating Plaintiff/Appellants' damages. Indeed, the arbitrator's decision is contrary to the decision on the ultimate summary judgment motion.

The court below, in granting Weichert's motion with respect to the Trial de Novo rule, Rule 4:21A-6(c) (3) and (4), stated as follows (T9/2/05 42-96 to 43-23):

On the - the de novo application, however, under Rule 4:21a-6e, which apparently relies on Ghazouly versus Benjamin or there's an argument that Ghazouly versus Benjamin somehow precludes the liability of the plaintiffs for that obligation. 251 N.J. Super. 1, (App. Div. 1991), which is an auto case arising under N.J.S.A. 39:6a-34, which is a different - entirely different context.

I find that there is liability. The whole purpose of the de novo process is to create a mechanism for the Court to impose limited fees in circumstances where there is an ultimate determination adverse to the arbitrator's award. Here the arbitrator's award was zero.

Now the rationale that the arbitrator gave may have been different than the ultimate rationale used by the Court in its determination of no cause for action, but the determination of no cause for action is a final judgment. How you got there, as far as this trial judge is concerned, doesn't make any difference. Whether it was a trial by jury, whether it was a motion for summary judgment, the ultimate result was no cause for action.

(TAPE CHANGED)

THE COURT: Okay? Thanks, Charles. We're back on the record. We have a new tape.

The - as I was saying, the liability under the statute's clear. It appears to be, whatever it is, \$1250, the max?

MR. SUPP: Yes.

THE COURT: Well whatever that liability is, Counsel can work it out. There's a formula under the - under the rule. That liability is imposed by the Court. However, I will stay the obligation pending the outcome of the appeal. I will stay the - stay that pending the outcome of the appeal, so that that - that obligation will be obviously addressed. Likely my ruling under the frivolous statute will also be addressed on appeal, but I'm going to stay the second prong of my opinion pending outcome of the appeal.

It is submitted that the case at bar was not the type of situation that Rule 4:2.A-6(c) was intended to cover. No trial has taken place, the arbitrator's award as to liability was in Plaintiffs/Appellants favor and the trial court specifically permitted the filing of an expert report on the damages issue. Thus, the decision below is contrary to the applicable court rule and case law and should be reversed.

POINT I

THE COURT BELOW WAS IN ERROR IN RULING
THAT COUNSEL FEES AND EXPERT WITNESS
COSTS ARE AWARDABLE TO WEICHERT UNDER
RULE 4:21A-6(c)(3) and (4)

In Ghazouly v. Benjamin, 251 N.J. Super. 1, 596 A.2d 138 (App. Div. 1991) the court held that counsel fees and costs were to be awarded only out of the amount of damages awarded at trial and that if the jury returned a verdict of no cause of action, no costs or fees were to be awarded. The court stated as follows (596 A.2d at 139):

It is clear from the statute that attorney's fees and expenses for an expert "shall be ... offset against any damages awarded to that party by the court, and only to that extent." In other words, if no award is made, then no attorney's fees and expert's costs may be assessed against that party on a trial *de novo*. This intent is confirmed by the Assembly introductory statement to the act providing for arbitration of certain automobile accident claims:

... the party asking for a trial *de novo* shall pay the arbitrators' fees. That party shall also be assessed court costs and the reasonable costs of the trial to the other parties, including reasonable attorneys' fees, not to exceed the amount of damages awarded that party, if that party is the one to which the award is made; the court may reduce or eliminate the assessment to the extent that the court decision is more favorable to the filing party.

Introductory statement to Assembly, No. 3822, reprinted in Helstoski v. Hickey, 225 N.J. Super. 142, 148, 541 A.2d 1114 (App.

Div. 1988) (emphasis supplied). The automobile arbitration statute was implemented by the Supreme Court under R. 4:21A. R.4:21A-6(c) provides:

(c) Trial De Novo. An action in which a trial de novo has been demanded by any party shall be returned, as to all parties, to the trial calendar for disposition. A party demanding a trial de novo shall be required to pay \$150 towards the arbitrator's fee and may be liable to pay the reasonable costs, including attorney's fees, incurred after rejection of the award by those parties not demanding a trial de novo.

Reasonable costs shall be awarded on motion supported by detailed certification subject to the following limitations:

(1) If a monetary award has been rejected, no costs shall be awarded if the party demanding the trial de novo has obtained a verdict at least 20 percent more favorable than the award.

(2) If the rejected arbitration award denied money damages, no costs shall be awarded if the party demanding the trial de novo has obtained a verdict of at least \$250.

(3) The award of attorney's fees shall not exceed \$750 in total nor \$250 per day.

(4) Compensation for witness costs, including expert witnesses, shall not exceed \$500.

It is thus apparent that the rule, consistent with the statute, is designed to award reasonable costs and counsel fees only out of the amount of the award. Here, there was no verdict in favor of plaintiffs. Therefore, there was no fund out of which an award may have been made. (Emphasis added)

Thus, the Trial de Novo rule requires a trial to occur, specifically within 90 days of the filing of the request for a trial. The rule clearly contemplates a trial and verdict.

Rule 4:21A-6(c)(1) states as follows:

- (1) If a monetary award has been rejected, no costs shall be awarded if the party demanding the Trial de Novo has obtained a verdict at least 20 percent more favorable than the award. (Emphasis added.)

Rule 4:21A-6(c)(2) states as follows:

- (2) If the rejected arbitration award denied money damages, no costs shall be awarded if the party demanding the Trial de Novo has obtained a verdict of at least \$250.00

There has been no trial in this case and no verdict upon which an award of counsel fees and expert witness costs is required to be based. Plaintiffs/Appellants were previously assessed counsel fees in the amount of \$1,450.00 related to the motion filed by Weichert following, and based on, the arbitrator's decision as to damages and the court specifically provided for the filing of expert reports and depositions on the damages issue (Pa 274-279, Appendix Vol. II).

The arbitrator ruled in favor of Plaintiffs/Appellants on the issue of liability. The trial court permitted Plaintiffs/Appellants to submit the expert report that was lacking at the time of the arbitration. It was the lack of this expert report that formed the basis of the arbitrator's decision

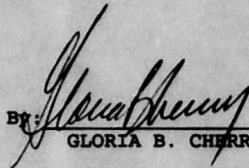
as to damages. Thus, there is no basis for applying Rule 4:21(A-6(c)(3) and (4) in this case and the award of counsel fees and expert witness costs should be reversed.

CONCLUSION

In view of the foregoing, the decision granting Weichert's motion for counsel fees and expert witness costs under Rule 4:21A-6(c) should be reversed.

Respectfully submitted,

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs
Theodore and Francis Vagias

By: 

GLORIA B. CHERRY

DATED: September 20, 2005

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW
570 WT. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: 973-994-6677
Attorneys for Plaintiffs Theodore and Francis Vagias
Our File No. 244.14899

FILED
SEP 12, 2005
DAVID B. SAND, J.L.C.
JUDGE'S CHAMBER
MORRIS COUNTY COURTHOUSE

THEODORE AND FRANCIS VAGIAS,

Plaintiffs,

vs.

WOODMONT PROPERTIES, LLC.,
WOODMONT COURT AT
MONTVILLE, LLC, AND WEICHERT
CO. (FORMERLY WEICHERT
REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO.: MRS-L-2245-02

Civil Action

ORDER

THIS MATTER having been opened to the Court on the application of Laddy, Clark & Ryan, attorneys for Weichert Co. with notice to Braff, Harris & Sukoneck, attorneys for plaintiffs, Theodore and Francis Vagias, upon a Notice of Motion for Counsel Fees and Costs under Rule 1:4-8 and N.J.S.A. 2A:15-59.1 et seq. and under Rule 4:21A-6(c) and the court having considered the papers, heard the arguments of counsel, and for good cause shown

IT IS on this 12th day of *Sept* 2005,

ORDERED that the motion for Counsel Fees and Costs under Rule 1:4-8 and N.J.S.A. 21A:15-59 et seq. is **DENIED**; and it is

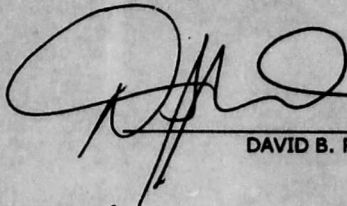
FURTHER ORDERED that the Motion for Counsel Fees under Rule 4:21A-6(c)(3) is granted and such fees are awarded in the amount of \$750.00; and it is

294a

FURTHER ORDERED that the Motion for Compensation for expert witness costs under Rule 4:21A-6(c)(4) is \$500.-
and it is

FURTHER ORDERED that the enforcement of and collection of any amounts awarded under the Order is stayed pending the resolution of the appeal in this matter; and it is

FURTHER ORDERED that a conformed copy of this Order be served upon all counsel within seven days of receipt of same by attorneys for plaintiffs, Theodore and Francis Vagias.



DAVID B. RAND, J.S.C.

*Reason for this order were placed
on the record orally by the Court
on Sept 2, 2005.*



LADDEY, CLARK & RYAN

Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880

Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiffs,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. -5029-04T5

CIVIL ACTION

**NOTICE OF MOTION FOR A STAY
AND REMAND TO TRIAL LEVEL TO
HEAR MOTION FOR COUNSEL FEES**

On Appeal From a Summary
Judgment of the Superior Court
of New Jersey Law Division,
Morris County

Sat Below:
Hon. Catherine M. Langlois,
J.S.C.

LAW DIVISION DOCKET NO.:
MRS-L-2245-02

TO: Gloria B. Cherry, Esq.
BRAFF HARRIS & SUKONECK
570 West Mount Pleasant Way
P.O. Box 657
Livingston, NJ 07039
Attorneys for Plaintiffs Theodore and Frances Vagias

Sidney J. Bernstein, Esq.
KRAMER BURNS MYTELKA LOVELL & KULKA, PA
675 Morris Avenue
Springfield, NJ 07081
Attorneys for Defendants Woodmont Properties, L.L.C.
and Woodmont Court at Montville L.L.C.

Hon. David B. Rand, J.S.C.
SUPERIOR COURT OF NEW JERSEY
Morris County Court House
Washington and Court Streets
P.O. Box 910
Morristown, NJ 07963-0910

PLACE: Superior Court of New Jersey, Appellate Division, Richard J. Hughes Justice Complex, Trenton, New Jersey.

RELIEF SOUGHT: A stay of proceeding in the Appellate Division and a remand to the trial level for the limited purpose of hearing and deciding a motion for counsel fees that was pending with the Trial court when the plaintiff filed this appeal.

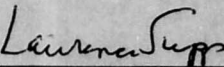
SUPPORTING DOCUMENTS: (1) Brief and Appendix

ORAL ARGUMENT: None requested.

LADDEY, CLARK & RYAN
Attorneys for Plaintiff/Appellant

Dated: July 8, 2005

By:


Lawrence J. Supp

LADDEY, CLARK & RYAN

Attorneys-at-Law

60 Blue Heron Road

Sparta, New Jersey 07871-2600

(973) 729-1880

Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiffs/Appellants,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

Defendants/Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-5029-04T5

CIVIL ACTION

PROOF OF SERVICE

On Appeal From a Decision of
the Superior Court of New
Jersey Law Division, Morris
County

Sat Below:

Hon. Catherine M. Langlois,
J.S.C.

LAW DIVISION DOCKET NO.:
MRS-L-2245-02

MICHELE A. LANDTAU, of full age, certifies as follows:

1. I am employed by Laddey, Clark & Ryan, attorneys for Defendant/Respondent Weichert Realtors in the above-captioned action, am over 18 years of age, and am not a party to this action.

2. I certify that on July 8, 2005, an original and five copies of the within Brief and Appendix in Support of Motion for a Remand and Stay of Proceedings, was sent for filing by first class mail to the Clerk, Superior Court of New Jersey, Appellate Division.
3. I further certify that on July 8, 2005 two copies of Defendants'/Respondents' Brief and Appendix in Support of Motion for a Remand and Stay of Proceedings were sent to by first class mail to the
Following:

Gloria B. Cherry, Esq.
BRAFF HARRIS & SUKONECK
570 West Mount Pleasant Way
P.O. Box 657
Livingston, NJ 07039
Attorneys for Plaintiffs Theodore and Frances Vagias

Sidney J. Bernstein, Esq.
KRAEMER BURNS MYTELKA LOVELL & KULKA, PA
675 Morris Avenue
Springfield, NJ 07081
**Attorneys for Defendants Woodmont Properties, L.L.C.
and Woodmont Court at Montville L.L.C.**

Hon. David B. Rand, J.S.C.
SUPERIOR COURT OF NEW JERSEY
Morris County Court House
Washington and Court Streets
P.O. Box 910
Morristown, NJ 07963-0910


Michele A. Landtau

Dated: July 8, 2005

A-5029-04T5

ORDER ON MOTION

THEODORE AND FRANCIS VAGIAS
VS
WOODMONT PROPERTIES LLC
WOODMONT COURT AT MONTVILLE
WEICHERT CO

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
CKET NO. A -005029-04T5
TION NO. M -006029-04
BEFORE PART: T
JUDGE(S): FISHER
REISNER

RECEIVED
APPELLATE DIVISION

AUG 11 2005

SUPERIOR COURT
OF NEW JERSEY

MOTION FILED: JULY 11, 2005 BY: WEICHERT CO
ANSWER(S) FILED: JULY 20, 2005 BY: THEODORE VAGIAS

FILED
APPELLATE DIVISION

AUG 11 2005

SUBMITTED TO COURT: AUGUST 08, 2005

ORDER

Jeffrey S. Fisher
ACTING CLERK

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS

9th DAY OF August, 2005, HEREBY ORDERED AS FOLLOWS:

GRANTED DENIED OTHER
(X) () ()

MOTION BY RESPONDENT
- FOR TEMPORARY REMAND

SUPPLEMENTAL:

The matter is remanded for a ruling on the counsel fee issue within 30 days. Any party dissatisfied with the counsel fee ruling may file an amended notice of appeal or cross-appeal no later than 10 days after the trial judge's ruling order is entered. If plaintiff files an amended notice of appeal, their supplemental brief must accompany the notice of appeal. Respondent's brief on all issues is due 40 days after the decision on the remand.

MRS L-2245-02

FOR THE COURT

Clarkson S. Fisher, Jr.

JUBJD1

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLARKSON S. FISHER, JR. J.A.D.

Jeffrey S. Fisher
ACTING CLERK OF THE APPELLATE DIVISION

3002

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW
570 WT. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: 973-994-6677
Attorneys for Plaintiffs Theodore and Francis Vagias
Our File No. 244.14899

THEODORE AND FRANCIS VAGIAS,
Plaintiffs,

vs.

WOODMONT PROPERTIES, LLC.,
WOODMONT COURT AT
MONTVILLE, LLC, AND WEICHERT
CO. (FORMERLY WEICHERT
REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-005029-04-T5
ON APPEAL FROM SUPERIOR
COURT OF NEW JERSEY

LAW DIVISION: MORRIS COUNTY
ORDER OF THE HONORABLE
CATHERINE M. LANGLOIS DATED
APRIL 20, 2005 DENYING MOTION
FOR RECONSIDERATION OF
ORDER DATED MARCH 4, 2005
GRANTING SUMMARY JUDGMENT
IN FAVOR OF WEICHERT CO.;
ORDER OF THE HONORABLE
DAVID B. RAND DATED
SEPTEMBER 12, 2005

Civil Action

AMENDED NOTICE OF APPEAL

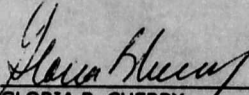
TO: James M. Flynn, Clerk
Superior Court of New Jersey
Appellate Division
Hughes Justice Complex
Trenton, New Jersey 08625

ON NOTICE TO: Lawrence J. Supp, Esq.
Laddy, Clark & Ryan
60 Blue Heron Road
Sparta, New Jersey 07841

PLEASE TAKE NOTICE that the undersigned, on behalf of plaintiffs
Theodore and Francis Vagias, hereby appeal to the Superior Court of New Jersey,
Appellate Division, from the Order of the Honorable Catherine Langlois dated April

20, 2005 denying the plaintiff's Motion for Reconsideration of the Order dated March 4, 2005 granting summary judgment in favor of Weichert Co. and the portion of the Order of the Honorable David B. Rand dated September 12, 2005 granting the Weichert Co. motion for counsel fees and expert witness costs under Rule 4:21A-6(c)(3) and (4). Copies of said Orders are attached, as well as the Order of the Honorable Barbara Zucker-Zarett dated January 10, 2003 dismissing the Complaint against Woodmont Properties, L.L.C. and Woodmont Court at Montville, L.L.C.

BRAFF, HARRIS & SUKONECK
Attorneys for Plaintiffs
Theodore and Francis Vagias



GLORIA B. CHERRY

DATED: September 22, 2005

62
BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW
570 W. MT. PLEASANT AVENUE
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LIVINGSTON, NEW JERSEY 07039
Telephone: (973) 994-6677
Attorneys for Plaintiffs, Theodore and Francis Vagias
Our File No. 244.14899

COPY

FILED

APR 20 2005

CATHERINE LANGLOIS, J.L.C.
JUDGE'S CHAMBERS
MORRIS COUNTY COURTHOUSE

THEODORE AND FRANCIS VAGIAS

Plaintiff,

v.

**WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C., AND WEICHERT CO.
(FORMERLY WEICHERT REALTORS),**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY**

DOCKET NO. MRS-L-2245-02

Civil Action

ORDER

*Denying Motion for
Reconsideration*

This matter having been opened to the Court on the application of Braff Harris & Sukoneck, attorneys for Plaintiffs, Theodore and Francis Vagias, upon a Notice of Motion for Reconsideration, and the Court having considered the papers, heard the arguments of counsel, and for good cause shown

IT IS, on this *20* day of *April*, 2005,

ORDERED that

1. The Court's prior order dated *March 4*, 2005 granting summary judgment as to defendant Weichert Company is hereby reversed; and it is *Dismissed*
2. FURTHER ORDERED that plaintiff's complaint against defendant Weichert Company is hereby reinstated; and it is

303a

3. FURTHER ORDERED that a conformed copy of this Order be served upon all counsel within seven (7) days of receipt of same by attorneys for Plaintiffs, Theodore and Francis Vagias.

DATED:

_____ opposed

_____ unopposed


J.S.C.

Catherine M. Langlois, Judge
Superior Court of New Jersey

Reasons - The court's findings were placed on the record 3/4/05. Motion merely reflects plaintiff's same argument that the statements (accepting, made in plaintiff's perspective) were affirmative misrepresentations, not omissions, as within meaning of Consumer Fraud Act. The Court concluded otherwise, reasons placed on record. Nothing plaintiff has argued - again - compels this court to vacate decision. (Noting that Court was not given benefit of transcript of motion) However analyzed - and Court reviewed statements from both perspectives - comments made by Weichert realtor did not rise to level of "unconscionable commercial practices." There is no affirmative representation that plaintiff would have Morville (section) mailing address. At the most an omission, with no proof of knowledge.

P.S. Can't plaintiff just get a mailbox (P.O.) for Morville?

3042

LADDEY, CLARK & RYAN
ATTORNEYS AT LAW

BRIAN M. LADDEY**
RICHARD I. CLARK**
THOMAS N. RYAN
ANDREW A. FRASER*

ANGELO J. BOLCATO*
MICHAEL S. GAROFALO
LAWRENCE J. SUPP**
JAIROD C. COFRANCESCO
DEBORAH L. SHEWARD*
LAUREN D. McFADDEN

RICHARD A. STEIN
OF COUNSEL

60 BLUE HERON ROAD
SPARTA, NEW JERSEY 07871-2600
(973) 729-1880
FAX: (973) 729-1224

- * NJ & NY BARS
- * NJ & PA BARS
- * NJ, NY & MA BARS
- * RULE 1:40 QUALIFIED MEDIATOR
- * CERTIFIED BY THE SUPREME COURT OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY

E-MAIL: lor@ladclry.com

www.ladclry.com

March 9, 2005

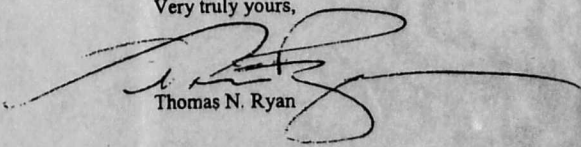
Eric L. Grogan, Esq.
BRAFF, HARRIS & SUKONECK
570 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039-0657

Re: *Vagias v. Woodmont Properties, LLC, et al*
Docket No. MRS-L-2245-02
Our File No. 4413-25

Dear Mr. Grogan:

Enclosed please find a copy of the *Order Granting Summary Judgment In Favor of Weichert Co.* which was signed and filed by the Honorable Catherine Langlois, J.S.C. on March 4, 2005.

Very truly yours,


Thomas N. Ryan

TNR:m
Enclosure

305a

COPY

FILED

MAR 4 - 2005

**CATHERINE LANGLOIS, J.S.C.
JUDGE'S CHAMBERS
MORRIS COUNTY COURTHOUSE**

LADDEY, CLARK & RYAN
Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880
Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiffs,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF WEICHERT
CO.**

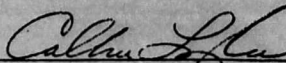
THIS MATTER having been opened to the Court by Laddey, Clark & Ryan, attorneys for Defendant, Weichert Realtors, Lawrence J. Supp, Esq., appearing, on a motion for Summary Judgment; and Eric L. Grogan, Esq., of the law firm of Braff, Harris & Sukonek, attorneys for Plaintiffs, appearing in opposition to the motion; the Court having considered the papers submitted in support of and in opposition to the motion;

IT IS on this 4 day of March, 2005, **ORDERED:**

1. Defendant Weichert Co. (Weichert Realtors) be and is hereby granted Summary Judgment dismissing all claims and cross-claims filed against it, with prejudice;

2. A copy of this Order shall be served upon all parties within seven (7) days of its receipt by counsel.

FOR THE REASONS STATED ON THE RECORD 3/4/05



Catherine M. Langstaff, Judge
Superior Court of New Jersey, J.S.C.

Opposed
 Unopposed

MAL
N:\USERS\Clients\4413-25 - Weichert ads Vagias\Summary Judgment Order.doc
02/02/05

BRAFF, HARRIS & SUKONECK
COUNSELLORS AT LAW
570 WT. MT. PLEASANT AVENUE
P.O. BOX 657
LIVINGSTON, NEW JERSEY 07039
Telephone: 973-994-6677
Attorneys for Plaintiffs Theodore and Francis Vagias
Our File No. 244.14899

FILED
SEP 12, 2005
DAVID B. BARD, J.L.C.
JUDICIAL CHIEF
MORRIS COUNTY COURTHOUSE

THEODORE AND FRANCIS VAGIAS,

Plaintiffs,

vs.

WOODMONT PROPERTIES, LLC.,
WOODMONT COURT AT
MONTVILLE, LLC, AND WEICHERT
CO. (FORMERLY WEICHERT
REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO.: MRS-L-2245-02

Civil Action

ORDER

THIS MATTER having been opened to the Court on the application of Laddy, Clark & Ryan, attorneys for Weichert Co. with notice to Braff, Harris & Sukoneck, attorneys for plaintiffs, Theodore and Francis Vagias, upon a Notice of Motion for Counsel Fees and Costs under Rule 1:4-8 and N.J.S.A. 2A:15-59.1 et seq. and under Rule 4:21A-6(c) and the court having considered the papers, heard the arguments of counsel, and for good cause shown

IT IS on this 12th day of *Sept* 2005,

ORDERED that the motion for Counsel Fees and Costs under Rule 1:4-8 and N.J.S.A. 21A:15-59 et seq. is **DENIED**; and it is

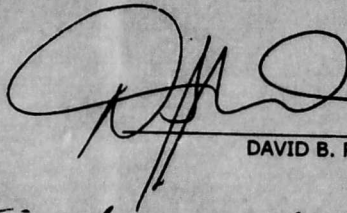
FURTHER ORDERED that the Motion for Counsel Fees under Rule 4:21A-6(c)(3) is granted and such fees are awarded in the amount of \$750.00; and it is

308a

FURTHER ORDERED that the Motion for Compensation for expert witness costs under Rule 4:21A-6(c)(4) is \$500.-
and it is

FURTHER ORDERED that the enforcement of and collection of any amounts awarded under the Order is stayed pending the resolution of the appeal in this matter; and it is

FURTHER ORDERED that a conformed copy of this Order be served upon all counsel within seven days of receipt of same by attorneys for plaintiffs, Theodore and Francis Vagias.



DAVID B. RAND, J.S.C.

*Reason for this order were placed
on the record orally by the Court
on Sept 7, 2005.*



FILED

LOVELL & KULKA, P.A.

JAN 10 2003

MORRIS COUNTY
CLERK OF SUPERIOR COURT

Woodmont Court At Montville, L.L.C. and
Woodmont Properties, L.L.C.

THEODORE and FRANCES VAGIAS,
Plaintiffs.

vs.

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO: MRSL-2245-02

Civil Action

ORDER
DISMISSING COMPLAINT AND
COMPELLING ARBITRATION

This matter having been heard on the return date of a Notice of Motion of the Woodmont defendants to compel arbitration and strike jury demand; and this Court having heard oral argument on January 10, 2003, this Court having read the Brief and Certifications submitted on behalf of the Woodmont defendants, and having read the opposing papers submitted on behalf of plaintiffs, and for good cause being shown;

IT IS, on this 10 day of January, 2003

AS THE 2 WOODMONT DEFENDANTS

ORDERED, that the Complaint of plaintiffs be and hereby is dismissed, and the plaintiffs shall be compelled to submit their claims to arbitration, pursuant to the Contract of Sale.

AGAINST THE 2 WOODMONT DEFENDANTS

Barbara Zucker-Zarett

Barbara Zucker-Zarett, Judge
Superior Court of New Jersey J.S.C.

APPELLATE DIVISION AMENDED CIVIL CASE INFORMATION STATEMENT

TITLE IN FULL:

Vagias, Theodore v. Weichert & Co.

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO.: A-005029-04-T5

APPELLANT'S ATTORNEY(S):

NAME	ADDRESS	TELEPHONE	CLIENT
Gloria B. Cherry	570 West Mount Pleasant Avenue Livingston, NJ 07039	973-994-6677	Theodore and Francis Vagias

RESPONDENT'S ATTORNEY(S)*:	NAME		
	Lawrence J. Supp, Esq. Laddy, Clark & Ryan 60 Blue Heron Road Sparta, NJ 07841	973-729-1880	Weichert Co.

(* INDICATE WHICH PARTIES, IF ANY, DID NOT PARTICIPATE BELOW OR WHO WERE NO LONGER PARTY TO THE ACTION AT THE TIME OF ENTRY OF THE ORDER/JUDGMENT BEING APPEALED.)
GIVE DATE AND SUMMARY OF JUDGMENT OR DECISION BEING APPEALED AND ATTACH A COPY:

An Order was entered on January 10, 2003 by the Honorable Barbara Zucker-Zarett dismissing the Complaint against Woodmont Properties L.L.C. and Woodmont Court at Montville, L.L.C. and compelling arbitration. The attorney for the said defendants, Sidney J. Bernstein, was therefore not a party to the action at the time of entry of the Orders being appealed

GIVE DATE AND SUMMARY OF JUDGMENT OR DECISION BEING APPEALED AND ATTACH A COPY:
Order of the Honorable Catherine Langlois dated April 20, 2005 denying Motion for Reconsideration of Order dated March 4, 2005 granting summary judgment to Weichert Co. and portion of Order of the Honorable David B. Rand dated September 12, 2005 granting the Weichert Co. motion for counsel fees and expert witness costs under Rule 4:21A-6(c)(3) and (4).

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third party claims and applications for fees? **NO**

If so, has the order been certified as final pursuant to R.4:42-2?

(If the order has not been, certified leave to appeal must be sought. R.2:2-4, 2:5-6.)

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this state being questioned? (R. 2:5-1(h)). **NO**

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

Plaintiffs Theodore and Frances Vagias purchased a home in a development known as Woodmont Court at Montville. Gabrielle Dingle of defendant Weichert Co. was the buyers agent for this sale. Prior to this purchase, the plaintiffs had discussions with Ms. Dingle that they were looking in specific areas for a new home. This included the Montville section of Montville Township, and not the Towaco or Pine Brook sections of Montville Township.

Prior to the purchase, plaintiffs met with Ms. Dingle at the site and spoke about the home. In a conversation at the site, Ms. Dingle stated that the home was located within "Montville". Thereafter, plaintiffs purchased the home. After moving in, the plaintiffs learned that the home was not located in the Montville section of the Township, but rather in the Towaco section of the Township.

Plaintiffs brought a lawsuit, alleging violations of the Consumer Fraud Act, N.J.S.A. 56:8-2. After discovery, defendant Weichert Co. brought a motion for summary judgment, which was heard on March 4, 2005. The court granted defendant's motion for summary judgment, which was heard on March 4, 2005. The court granted defendant's motion, ruling, as a matter of law, that the statements made by Ms. Dingle at the site were not affirmative misrepresentations, but rather omissions. Appellants contend that this was error. The court also ruled that, even if the statements were to be considered an affirmative statement, they were not so material as to be an unconscionable practice. Appellants contend that this was also error.

A motion for reconsideration and rehearing of the court's order granting summary judgment in favor of defendant Weichert Co. was filed on March 21, 2005, returnable April 15, 2005. This motion was denied on April 20, 2005. Weichert Co. then filed a motion seeking counsel fees and costs under Rule 1:4-8 and N.J.S.A. 21A:15.59 et seq. (frivolous litigation rule and statute) and under Rule 4:21A-6(c)(3) and (4) *Trial de Novo* rule. The portion of the motion seeking counsel fees and costs under the frivolous litigation rule and statute was denied but the portion of the motion seeking counsel fees and expert witness costs under the *Trial de Novo* rule was granted and counsel fees were awarded in the amount of \$750.00 and expert witness costs were awarded in the amount of \$500.00

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THIS APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.)

1. The court below erred in ruling that the statements of Gabrielle Dingle, agent for Weichert Company, were omissions rather than affirmative misrepresentations and that there were no genuine issues of material fact.
2. The court below erred in ruling that even if the statements of Gabrielle Dingle were affirmative misrepresentations, they did not rise to the level of unconscionable practice under the New Jersey Consumer Fraud Act.
3. The court below erred on ruling that counsel fees and expert witness costs were awardable on this case under the *Trial de Novo* Rule 4:21-6(c)(3) and (4).

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue a oral findings or opinion? Yes (on the record 3/4/05 and 9/2/05)
2. Did the trial judge issue written findings or opinion? Yes (4/20/05 Order)

Caution: Before you indicate that there was neither an opinion nor findings, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

Date of your inquiry:

Will the trial judge be filing a statement or opinion pursuant to R. 2:5-1 (b)?

Civil appeals are screened under the Civil Appeals Settlement Program to determine their potential for settlement or, in the alternative, a simplification of issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a conference. **No**

Explain your answer:

1. IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (A) Arises from substantially the same case or controversy as this appeal? **NO**
(B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? **NO**

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? **NO**

In the event there is any change with respect to any entry on the Case Information Statement, appellant shall have a continuing obligation to file an amended Case Information Statement on the prescribed form.

Theodore and Francis Vazias

Name of Appellant

Gloria B. Cherry

Name of Counsel of Record

Sept. 20, 2005
Date

[Signature]
Signature of Counsel of Record

A-5029-04T5

THEODORE and FRANCES VAGIAS,

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Plaintiff(s),

Docket No. A-005029-04-T5

-vs-

ON APPEAL FROM THE SUPERIOR
COURT OF NEW JERSEY, LAW DIV.,
MORRIS COUNTY

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO.
(formerly WEICHERT REALTORS),

Docket No. MRS-L-2245-02

SAT BELOW:

Hon. David B. Rand, JSC

Hon. Catherine Langlois, JSC

Defendant(s).

FILED
APPELLATE DIVISION

OCT 12 2005

Jeffrey W. Thomas
ACTING CLERK

RECEIVED
APPELLATE DIVISION

OCT 12 2005

SUPERIOR COURT
OF NEW JERSEY

DEFENDANT/RESPONDENT'S BRIEF AND APPENDIX

LADDEY, CLARK & RYAN

60 Blue Heron Road

Sparta, New Jersey 07871-2600

(973) 729-1880

Attorneys for Defendant,

Weichert Co.

Thomas N. Ryan, Esq.

Lawrence J. Supp, Esq.

On the Brief

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ALL-STATE BOND
DOCT
PROCEDURAL HISTORY

The procedural history set forth in the Brief and Supplemental Brief of the plaintiffs is accurate, except as follows:

1. Weichert's Co. [hereafter referred to as Weichert] filed its Answer on August 20, 2002, rather than August 20, 2001 [Pa161].

2. Present counsel has no knowledge of discussions that may have taken place with Weichert's former counsel regarding ADR arbitration [referred to at Pb3-4].

3. On November 5, 2004, the court denied Woodmont's application to dismiss Weichert's cross-claim for indemnification [Da1], so the Woodmont defendants remained as parties in the civil case defending that cross-claim.

4. Weichert's motion for counsel fees was filed on May 10, 2005 [Da2], and therefore it was already pending when plaintiffs filed their Notice of Appeal [Pa5].

5. Weichert's motion for counsel fees annexed among other Exhibits those identified as such and reproduced in this Appendix, including an itemized summary of counsel fees [Da5, Da7, Da11].

COUNTER-STATEMENT OF FACTS

The plaintiffs purchased a new home located in a development known as Woodmont Court at Montville. It is undisputed that the property is located in Montville Township. After the plaintiffs purchased the home, they learned that it had a Towaco mailing address [Pa31-32 at 8-19 to 9-2 and 12-2 to 12-18].

There are three post offices in Montville Township. One is called the Montville post-office. The others are the Towaco post-office and the Pine Brook post office. Some residences in Montville Township are also serviced by the Boonton Post Office. Therefore, the mailing address of any given residence in the Township of Montville may be either Montville, Towaco, Pine Brook or Boonton, depending on which post-office services the mail route [Pa31-32 at 9-18 to 12-18].

The name of the development, "Woodmont Court at Montville," obviously connotes a location in Montville Township. However, Woodmont, the developer of the property, went further and placed a display advertisement in the newspaper which stated that this development has a "great Montville address." The plaintiffs saw the advertisement and went to see the property on their own, without a realtor. They subsequently invited the Weichert agent who had shown them other properties to view this property, [Pa42 at 50-2 to 50-17]. They claim that the builder's on-site

representative, Ed Tombeck, made a verbal statement to them in the presence of their invited Weichert agent that the property was in Montville [Pa43 at 54-2 to 54-22].

In this case, the claims against Weichert are limited to one legal theory, a violation of the Consumer Fraud Act (*N.J.S.A.* 56:8-1, et seq.). The plaintiffs' factual basis is set forth in their complaint and in their interrogatory answers, where the plaintiffs claim that Weichert is liable for failing to correct the impression given by the builder that the property would have a Montville mailing address and for, allegedly, repeating that the property was "in Montville" rather than the "Township of Montville" or "section of Towaco." [Complaint, Pa107-108 at ¶4, ¶8; Answers to Interrogatories, Pa114 at Questions 5, 6, 7].

In this appeal, what is in dispute is whether the Weichert agent misled them concerning the location of the property in a manner that violated the Consumer Fraud Act, *N.J.S.A.* 56:8-1, et seq.

LEGAL ARGUMENT

POINT ONE

**THE COURT BELOW PROPERLY GRANTED SUMMARY
JUDGMENT BECAUSE WEICHERT'S AGENT MADE ONLY
AN UNKNOWNING OMISSION WHICH DID NOT RISE TO
THE LEVEL OF AN AFFIRMATIVE
MISREPRESENTATION UNDER THE CONSUMER FRAUD
ACT**

The plaintiffs allege that Weichert violated the Consumer Fraud Act, N.J.S.A. 56:8-1, et seq., [hereafter referred to as the "CFA" or the "Act"], by engaging in the conduct described in the Complaint. Paragraphs 4 and 8 of Count Three [Pa107-108], contain the pertinent allegations, and they read as follows:

4. The plaintiffs met and viewed various homes in the Woodmont Court at Montville development with Gabrielle Dingle of Weichert Co. (formerly Weichert Realtors). Defendant Gabrielle Dingle, at no point during their viewings of various homes in the development, nor during any telephone conversations, nor during any discussions, nor during any exchanges of correspondence [sic], did any representative of Weichert Co. (formerly Weichert Realtors) advise the plaintiffs that the development was located in the Section of Towaco rather than in the Town of Montville.

* * *

8. In the sale of the home purchased by the plaintiffs defendant Weichert Co. (formerly Weichert Realtors) made several affirmative representations that the home was located in Montville rather than the Township of Montville or the section of Towaco. Defendant affirmatively misrepresented a material fact to the transaction at issue.

Plaintiffs' interrogatory answers make similar allegations [Pa114]:

5. Set forth the substance of all conversations between Plaintiffs and the agents, servants, or representatives of Weichert Realtors indicating (a) the name of the parties to each such conversation; (b) when such conversations took

place; (c) where such conversation took place; (d) who witnessed such conversation; and (e) what was said by each party to the conversation (in substance).

ANSWER: Plaintiffs had conversations with Gabrielle Dingler [sic] of Weichert Realtors regarding the property. Plaintiffs do not have a specific recollection of each of these conversations, nor do they recall the specific dates and place. During none of these conversations did the Weichert realtor disclose that the location of the home was in Towaco, rather than Montville. Also, see deposition testimony of plaintiffs regarding conversations with Weichert Realtors.

6. Describe in detail each and every act performed by Weichert Realtors or its servants, agents or representatives which Plaintiffs claims should not have been performed and set forth how such acts caused Plaintiffs to suffer and loss.

ANSWER: Defendant, Weichert, made representations that the home was located in Montville, rather than in the Township of Montville or the section of Towaco.

7. Describe in detail each and every act Plaintiff claim Weichert Realtors or its agents, servants or representatives failed to perform which Plaintiffs claim should have been performed and set forth how the failure to perform such act caused the Plaintiffs to suffer any loss.

ANSWER: Defendant, Weichert, failed to advise plaintiffs that the home was located in the section of Towaco in the Township of Montville, rather than being located in Montville.

8. Describe in detail the conduct of Weichert Realtors or its agents, servants or representatives which Plaintiffs claim to have been wrongful.

ANSWER: See answers to #6 and #7.

The person referred to in the interrogatory answers, Gabrielle Irlinger-Dingle, is a Weichert sales associate who had

minimal interaction with the plaintiffs regarding this property. She saw this property for the first time after the plaintiffs found it. Mr. Vagias testified that he and his wife invited her to accompany them on a second visit [Pa42-43 at 50-2 to 50-17]. When the plaintiffs purchased the property, Ms. Dingle became the buyer's agent in this transaction. Weichert did not list the property and was not the seller's realtor. The seller's realtor and on-site representative was Associated Sales, Inc., a real estate brokerage company allied with the builder [Pa92, 94].

In his deposition testimony, Mr. Vagias faulted Weichert for nothing more than the same conduct described in the Complaint and interrogatory answers. Mr. Vagias testified that he and his wife found this property on their own through advertisements [Pa42-43 at 50-2 to 50-17 and 53-17 to 54-1]. They made three visits to the property, the first and third time without Ms. Dingle. On the second visit, they invited Ms. Dingle to accompany them. The plaintiffs returned to the property a third time, without Ms. Dingle, when they signed the contract of sale. [Pa40-42 at 45-20 to 47-13 and 50-2 to 50-17].

Mr. Vagias testified about Ms. Dingle's involvement. According to him, she said "This is Montville," repeating, he alleges, a statement made by the builder's representative [Pa43-

44 at 54-23 to 55-10 and 59-9 to 59-14]. In addition, he states that Ms. Dingle was present when the builder's representatives Ed Tomback of Associates Sales said "you're going to have a Montville address," [Pa43 at 57-4 to 57-25], and that she "...didn't tell us that we were going to live in Towaco" [Pa44 at 58-1 to 58-7].

Mrs. Vagias testified in similar fashion to that of her husband. When asked to recall and recite any affirmative statements made by Ms. Dingle, Mrs. Vagias testified only that the realtor repeated that the property was "in Montville." [Pa80 at 110-1 to 112-15 and Pa82-84 at 119-15 to 126-24].

Assuming, *arguendo*, that plaintiffs' allegations against Ms. Dingle were true, her conduct would be insufficient to establish a cause of action under the CFA. The claims against Ms. Dingle amount to nothing more than "omissions" that fall short of "affirmative misrepresentations." Unlike affirmative misrepresentations, omissions do not violate the CFA unless the defendant had actual knowledge of the undisclosed facts. As discussed below, the evidence shows that Ms. Dingle had no such knowledge.

Our Supreme Court recognizes that the CFA treats omissions and affirmative misrepresentations differently. In Gennari v. Weichert Realtors, 148 N.J. 582 (1997), a case which involved Consumer Fraud claims against the broker, the Court stated:

In 1975, the Legislature amended the Act to include unlawful practices in the sale or advertisement of real estate. L.1975, c. 294 §2, codified as N.J.S.A. 56:8-2; Strawn v. Canuso, 140 N.J. 43, 60, 657 A.2d 420 (1995) (citing Arroyo v. Arnold-Baker & Assocs., Inc., 206 N.J.Super. 294, 297, 502 A.2d 106 (Law Div.1985)). Throughout its history, the Act has protected consumers from deception and fraud, even when committed in good faith. Cox v. Sears Roebuck & Co., 138 N.J. 2, 16, 647 A.2d 454 (1994); Fenwick v. Kay American Jeep, Inc., 72 N.J. 372, 376-77, 371 A.2d 13 (1977).

N.J.S.A. 56:8-2 contains the operative language:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

An offense arises under the Act from an affirmative act, an omission, or a violation of an administrative regulation. Strawn, supra, 140 N.J. at 60, 657 A.2d 420; Cox, supra, 138 N.J. at 19, 647 A.2d 454. One who makes an affirmative misrepresentation is liable even in the absence of knowledge of the falsity of the misrepresentation, negligence, or the intent to deceive. Strawn, supra, 140 N.J. at 60, 657 A.2d 420; Cox, supra, 138 N.J. at 17- 18, 647 A.2d 454; Chattin v. Cape May Greene, Inc., 124 N.J. 520, 522, 591 A.2d 943 (1991) (Stein, J., concurring). For liability to attach to an omission or failure to disclose, however, the plaintiff must show that the defendant acted with knowledge. Cox, supra, 138 N.J. at 18, 647 A.2d 454; Chattin v. Cape May Greene, Inc. 243 N.J.Super. 590, 603, 581 A.2d 91 (App.Div.1990), aff'd o.b., 124 N.J. 520, 591 A.2d 943 (1991). [emphasis added]. Id., at 604-605

The distinction between a misrepresentation and an omission was a central issue in Chattin v. Cape May Green, Inc., 243 N.J.

Super. 590 (App. Div. 1989), aff'd o.b., 124 N.J. 520 (1991).

In Chattin, the Court explained:

N.J.S.A. 56:8-2 thus creates two categories of prohibited acts. The first category (unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation) consists of affirmative acts, and the second category (concealment, suppression or omission of any material fact) consists of acts of omission. The Supreme Court indicated in Fenwick v. Kay American Jeep, Inc., 72 N.J. 372, 378, 371 A.2d 13 (1977) that those kinds of consumer fraud consisting of affirmative acts do not require a showing of "intent":

The capacity to mislead is the prime ingredient of deception or an unconscionable commercial practice. Intent is not an essential element.

See also D'Ercole Sales, Inc. v. Fruehauf Corp., 206 N.J. Super. 11, 22, 501 A.2d 990 (App.Div.1985). However, by the express terms of N.J.S.A. 56:8-2, an essential element of a consumer fraud consisting of an act of omission is that a defendant's act be "knowing." See Fenwick v. Kay American Jeep, Inc., *Supra.* 72 N.J. at 377, 371 A.2d 13 ("[T]he requirement that knowledge and intent be shown is limited to the concealment, suppression or omission of any material fact"). Id., at 598.

The plaintiffs cite Chattin as an example of a fact pattern similar to the case at bar. There, a builder claimed that his homes utilized "insulated windows." As it turned out, however, only the panes of glass were insulated, while the aluminum window frames caused problems for the homeowners because they were not insulated. In Chattin, the issue remanded to a jury was whether the phrase "insulated windows" in common parlance, to the "average consumer," was an affirmative misrepresentation or an omission. Id., at 602. In contrast, in the case at bar, what the plaintiffs question is not the common parlance or the meaning to the average

consumer, but rather the subjective and personal meaning given by the plaintiffs to the phrase "in Montville." Therefore, the facts in Chattin are not comparable to the instant case.

Chattin teaches us, however, the criteria for determining whether a misleading statement is a "misrepresentation" or an "omission." The test is whether the statement was "misleading because it contained an affirmative misstatement or because it omitted a material fact." Chattin, at 602.

With this distinction in mind, a re-examination of the allegations reveals that Ms. Dingle is accused only of an "omission" type violation, and a very limited one at that.

The Third Count of the Complaint specifies in paragraph #4 that Weichert failed to advise the plaintiffs that the home was in the Towaco section. If proved, however, this would be a failure to disclose, which is an omission.

Moving on to paragraph #8, it contains two claims against Weichert. Although couched in terms of "affirmative representation," the allegations are also claims of omission. The first of the two claims in that paragraph alleges that Weichert stated that the home was located in "Montville" as opposed to "Montville Township." Under the Chattin test, it is not an affirmative misstatement to say the home is located in Montville, because that statement is literally true. In fact, the plaintiffs do not claim that statement was false. According

to the Complaint, it is the omission of the word "Township" from that utterance that the plaintiffs find faulty. Therefore, the claim that Weichert stated that the home was in "Montville," rather than "Montville Township" is a claim of omission. In the second of the two claims in paragraph #8 the plaintiffs allege that Weichert should have communicated that the home was located in the "section of Towaco" rather than referring to the location as "Montville." Here, the plaintiffs again find fault in Weichert's failure to inform them of the mailing address of the property, which is a claim of omission.

The plaintiffs' interrogatory answers repeat the exact same claims that are contained in the Complaint and the foregoing analysis applies in a like manner. Accordingly, all of the plaintiffs' interrogatory answers taken together with the Complaint allege nothing more than claims of omission against Weichert.

These omissions do not violate the CFA because Ms. Dingle did not have knowledge that the property would have a Towaco mailing address. Absent from both the Complaint and the plaintiffs' interrogatory answers, quoted above, is any claim that Ms. Dingle had such knowledge.

Deposition testimony reveals that both plaintiffs stated their belief that Ms. Dingle was unaware of the Towaco mailing address. After the closing, in fact, the Ms. Dingle sent mail

to the plaintiffs using a Montville mailing address. She called the plaintiffs, thereafter, and informed them that the mail was being returned to her. In his deposition, Mr. Vagias acknowledged that, after the purchase, he learned that Ms. Dingle had addressed mail to them at their new home using a Montville address, but the mail was returned to her by the post-office [Pa45-46 at 65-14 to 68-21]. Concerning the mailing address, he thought Ms. Dingle was "as confused as we were" [Pa46 at 68-15].

Likewise, Ms. Vagias was also convinced that Ms. Dingle did not have any knowledge that the home was in the Towaco section. She testified that both she and Ms. Dingle were "under the assumption" that the home would have a Montville address and that both she and Ms. Dingle were "fooled" by the builder's misrepresentations [Pa80 at 110-1 to 110-13 and 111-12 to 111-18]. Mrs. Vagias summed it up when she stated "we were all thinking that we were buying a house in Montville." [Pa 80 at 110-12 to 110-13].

Omissions of context or syntax can result in vague or ambiguous communications. The statement allegedly made by Ms. Dingle, if ever uttered at all, describing the house as "in Montville" is an innocent expression of its location that might have been, at worst, ambiguous to the ears of the plaintiffs, but it was not misleading. In passing the CFA, our Legislature

could not have intended that such an innocent remark should be judged by the same strict standard that applies to frank misrepresentations. Instead, our Legislature reserved the harsh penalties of the CFA only for circumstances where the proclaimed innocence of equivocal statements is belied by state of mind evidence revealing the deceptive intentions of the speaker.

Justice Stein, in his concurring opinion in Chattin v. Cape May Greene, Inc., 124 N.J. 520 (1991), grappled with the distinction between omissions and misrepresentations and their differential treatment under the CFA. He quoted and gave weight to an observation made several years earlier in D'Ercole Sales, Inc. v. Fruehauf Corp., 206 N.J. Super. 11, 31 (App. Div. 1985), in which the Court stated that since the CFA calls for treble damages, "the legislature must have intended that substantial aggravating circumstances be present." Justice Stein pointed out that "[w]hether denominated an affirmative statement or an omission, the distinguishing characteristic of a misstatement not requiring proof of scienter under the Act is that its inherent falsity is so manifest that its thoroughly unredeemable nature is itself the "substantial aggravating circumstance" that merits the Act's formidable penalties." Chattin, 124 N.J. at 527.

The remark allegedly made by Ms. Dingle that the house is "in Montville" has no inherent falsity and it conveys no

aggravating circumstances. The plaintiffs have not even advanced any such arguments. Accordingly, the remark must be deemed an "omission," requiring the plaintiffs to prove that Weichert's sales associate had knowledge of the Towaco mailing address, or scienter, in order to show a violation of the CFA. Since the element of scienter is absent from the case at bar, the facts alleged cannot establish a violation of the CFA.

The plaintiffs argue, in Point II of their brief, that it was error for the trial court to have ruled that "even if" Ms. Dingle's statement were deemed an affirmative misrepresentation, there was no CFA violation. What the court below stated was conditional or alternative reasoning, since the court had already ruled that the statement was an omission. Nevertheless, it bears examination. The court stated:

"...it's certainly not in my mind an unconscionable commercial practice that you have - - not to tell them that your envelope has to say Towaco on it. And at the most I would find that even if they were affirmative statements they were merely imprecise or vague, they were not of such material fact that it could be considered an unconscionable commercial practice at least as related to Weichert Realtors." [T at 26-13 to 26-21].

The criticism directed at the trial court's reasoning quoted above is misplaced. The court was merely pointing out that whether you call this particular statement a misrepresentation or an omission, it doesn't matter. It still does not rise to the level of a violation.

The trial court's expression is in accord with the law. As discussed earlier, if a statement can be characterized either as an affirmative misrepresentation or as an omission, it must have "inherent falsity" and "substantial aggravating circumstances" before it will be deemed a violation of the CFA. Chattin v. Cape May Greene, Inc., 124 N.J. 520, supra at 527 (1991), (Justice Stein, concurring opinion). The excerpt from the judge's ruling quoted above is not inconsistent with this view.

For the foregoing reasons, the trial court's grant of summary judgment should be affirmed.

POINT TWO

**THE TRIAL COURT DID NOT ERR IN AWARDING
COUNSEL FEES AND WITNESS FEES TO WEICHERT
BASED ON THE TRIAL DE NOVO RULE, R. 4:21A-6**

The arguments of the plaintiffs with respect to this issue are somewhat convoluted. They address the circumstances where the arbitrator denies money damages, and the losing party files for trial de novo, as in the case at bar. The plaintiffs argue that, in that event, R. 4:21A-6 does not permit an award of sanctions unless there has been a trial and the party who filed for trial de novo has also obtained a monetary verdict in its favor. Then, according to the plaintiffs, the verdict serves as a cap on the award and a fund for its payment.

There are several problems with the logic of the plaintiffs' assertions. First, it would make little sense for our court rule to immunize from sanctions a party whose case did not survive summary judgment, while exposing to those penalties a party whose case was good enough to present a jury question that results in a monetary verdict. Second, a party would be sanctioned only if they recovered between \$1 and \$249 from a jury, since R. 4:21A-6(c)(2) clearly prohibits an award "...if the party demanding the trial de novo has obtained a verdict of at least \$250." Third, if the rule operated in this manner, sanctions could not exceed \$250, even though the rule recites that the maximum counsel fees and witness fees are \$750 and

\$500, respectively.

The plaintiffs' mistake is in not realizing that the rule exposes to sanctions every party who files for trial de novo, subject only to certain exclusions. The plaintiffs have wrongly assumed that the exclusions also define general conditions for imposition of sanctions. They do not. For example, the phrase "no costs shall be awarded if a party has obtained a verdict of at least \$250" defines two conditions for immunity from the rule's sanctions: (1) a party has received a verdict, and (2) the verdict is at least \$250. The exclusion merely states that a verdict is a pre-requisite to a particular immunity; it does not also state that a verdict is a pre-requisite to sanctions.

The case cited by plaintiffs is Ghazouly v. Benjamin, 251 N.J. Super. 1 (App. Div. 1991), a case in which the court was construing the automobile arbitration statute, N.J.S.A. 39:6A-34, together with the court rule, R. 4:21A-6. The Court in that case was attempting to reconcile the rule with a restriction found automobile arbitration statute. Accordingly, the Statute controlled and it was unnecessary to restrict the rule in a like manner, as the court seemed to do, in order to reach the result in that case. Since Ghazouly was decided in the context of an automobile arbitration statute that does not apply here, it is not controlling.

A case more on point is Debrango v. Summit Bancorp., 328

UNION STATE-11A

N.J. Super. 219 (App. Div. 2000). Procedurally, with regard to the R. 4:21A-6, it resembles the case at bar. Debrango involved several defendants. The plaintiff alleged that one defendant, their son-in-law, defrauded them of \$90,000. They also claimed that Summit Bank was liable as their son-in-law's employer. Discovery soon proved that plaintiffs had no case against Summit Bank but they refused to consent to a voluntary dismissal. In court-mandated arbitration, Summit Bank received a "no cause," but plaintiff filed for trial *de novo*. Summit Bank then filed a motion for summary judgment that was successful and sought counsel fees and costs on several grounds, including R. 4:21A-6. Pursuant to that rule, they were awarded counsel fees of \$750 and their entitlement was affirmed on appeal. The actual assessment of the award was disallowed, but only because it duplicated an award of counsel fees in a more substantial amount that was assessed at the same time under the frivolous litigation statute, N.J.S.A. 2A:15-59.1.

As to the amount of the witness fee award in this case, \$500, it is based on charges incurred in excess of that figure for a real estate appraisal conducted after the arbitration date. Such costs are normally included in an award as "reasonable costs." Fagas v. Scott, 251 N.J. Super. 169, 198 (Law Div. 1991) (construing the term in the context of frivolous pleading).

For the foregoing reasons, the trial court's award to Weichert in the amount of \$750 for counsel fees and \$500 for witness fees should not be disturbed.

CONCLUSION

For all of the foregoing reasons, the trial court's grant of summary judgment in favor of Weichert and its award of counsel fees and costs against the plaintiffs should be affirmed.

Respectfully submitted,
LADDEY, CLARK & RYAN

Dated: October 11, 2005

By: 

Thomas N. Ryan

DEFENDANT'S APPENDIX

ORDER DENYING WOODMONT'S MOTION TO DISMISS WEICHERT'S
CROSS-CLAIMS FOR INDEMNIFICATION

LAW OFFICES

SIDNEY J. BERSTEIN
554 SOUTH LIVINGSTON AVENUE
LIVINGSTON, NEW JERSEY 07039
(973) 994-9315

(973) 994-7348 - Fax

Attorney for Defendants, Woodmont Properties, L.L.C. and
Woodmont Court At Montville, L.L.C.

THEODORE and FRANCES VAGIAS,

Plaintiffs,

v.

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY
DOCKET NO. MRS-L-2245-02

Civil Action

Dismissed
ORDER DISMISSING DEFENDANT
WEICHERT'S CROSS CLAIM FOR
INDEMNIFICATION

This matter having been heard on the return date of a Notice of Motion of the Woodmont defendants to dismiss the cross claim for indemnification and this Court having heard oral argument on November 5, 2004, this Court having read the Brief and Certification submitted on behalf of plaintiffs, and for good causing being shown;

IT IS, on this 5th day of November, 2004

~~ORDERED, that Weichert's cross claim for indemnification be and hereby is dismissed.~~

*Woodmont's motion
to dismiss Weichert's
cross claim for
indemnification is
denied for reasons
on record 11/5/2004.*

David B. Rand, J.E.C.
DAVID B. RAND, J.E.C. J.S.C.

WEICHERT'S MOTION FOR COUNSEL FEES
FILED MAY 10, 2005

LADDEY, CLARK & RYAN
Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880
Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiffs,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

**NOTICE OF MOTION FOR COUNSEL
FEES AND COSTS**

TO: Eric L. Grogan Esq.
MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN
425 Eagle Rock Avenue
Suite 302
Roseland, New Jersey 07068
Former Attorney for Plaintiffs

David Harris, Esq.
BRAFF, HARRIS & SUKONECK
570 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039-0657
Attorneys for Plaintiffs

Sidney J. Bernstein Esq.
554 So. Livingston Avenue
Livingston, New Jersey 07039
Attorney for Woodmont Defendants

PLEASE TAKE NOTICE that the undersigned attorney for Defendant, Weichert Co., will move before the Superior Court of New Jersey, Law Division, Morris County on **Friday, May 29, 2005**, at nine o'clock in the forenoon, or as soon thereafter as counsel

may be heard, for an Order awarding counsel fees and costs in accordance with the Frivolous Pleading provisions of Rule 1:4-8 and N.J.S.A. 2A:15-59.1, or alternatively, Rule 4:21A-6(c), against Plaintiffs, Theodore and Francis Vagias.

We shall rely upon the enclosed Letter Brief and Exhibits and Certification of Counsel in support hereof.

This matter has no trial date because the matter was disposed in its entirety by Summary Judgment.

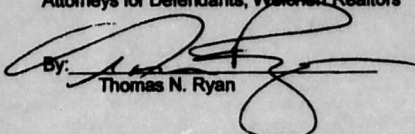
Pursuant to Rule 1:6-2(a), a copy of the proposed Order is annexed hereto and the motion shall be deemed uncontested unless responsive papers are timely filed and served stating with particularity the basis of the opposition to the relief sought.

LADDEY, CLARK & RYAN
Attorneys for Defendants, Weichert Realtors

Dated:

5/9/05

By:


Thomas N. Ryan

ALL-STATE BOND
COTTON CONTENT

CERTIFICATION OF MAILING

The undersigned hereby certifies that the within Notice of Motion was filed and served on the following counsel within the time prescribed by Rule 1:8-3.

Eric L. Grogan Esq.
MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN
425 Eagle Rock Avenue
Suite 302
Roseland, New Jersey 07068
Former Attorney for Plaintiffs

BRAFF, HARRIS & SUKONECK
570 W. Mt. Pleasant Avenue
P.O. Box 857
Livingston, New Jersey 07039-0657
Attorneys for Plaintiffs

Sidney J. Bernstein Esq.
554 So. Livingston Avenue
Livingston, New Jersey 07039
Attorney for Woodmont Defendants

LADDEY, CLARK & RYAN
Attorneys for Defendants, Weichert Realtors

Dated: 5/19/05

By: 

Thomas N. Ryan

ALL-STATE BOND
COTTON CONTENT

LADDEY, CLARK & RYAN
ATTORNEYS AT LAW

BRIAN M. LADDEY
RICHARD I. CLARK
THOMAS H. RYAN
ANDREW A. FRASER

ANGELO J. BOLCATO
MICHAEL S. GAROFALO
LAWRENCE J. SUPP
JANFRO C. COFRANCESCO
DEBORAH L. SHAWARD
LAUREN D. MCFADDEN

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OF COUNSEL

60 BLUE HERON ROAD
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(973) 729-1880
FAX: (973) 729-1224

- NJ & NY BARS
- NJ & PA BARS
- NJ, NY & MA BARS
- RULE 1:40 QUALIFIED MEDIATOR
- CERTIFIED BY THE SUPREME COURT OF NEW JERSEY AS A CIVIL TRIAL ATTORNEY

E-MAIL: laddey@laddey.com

www.laddey.com

January 7, 2005

Eric L. Grogan, Esq.
BRAFF, HARRIS & SUKONECK
570 W. Mt. Pleasant Avenue
P.O. Box 657
Livingston, New Jersey 07039-0657

Re: *Vagias v. Woodmont Properties, LLC, et al*
Docket No. MRS-L-2245-02
Our File No. 4413-25

Dear Mr. Grogan:

As you are aware, we represent Weichert Realtors with regard to the above-referenced matter. Trial of this matter was recently adjourned from November 8, 2004 to March 21, 2005.

In preparing this matter for trial, and after carefully considering the depositions and the documentary evidence, it has become clear that there is no viable or reasonable claim against Weichert Realtors in this action.

A review of the deposition testimony of the parties, as well as the documentation that has been produced on behalf of the parties, offers no evidence whatsoever establishing that Weichert knew that the property was located in the Towaco section of Montville, nor ever represented that the property was located in the Montville section of Montville Twp. The claim of the plaintiffs is against the Woodmont companies. As you should be aware, it was a Woodmont associated company that acted as the listing real estate broker in this transaction, not Weichert. The Woodmont company handled all of the advertising and marketing of this property. Further, as you must be aware, the Weichert Sales Associate involved in this transaction did not locate this property for the plaintiffs, but was asked to escort the plaintiffs to their second meeting with the real estate broker for Woodmont.

Based upon the foregoing, we are hereby serving notice upon the plaintiffs that defendant Weichert will seek all relief which is available to it pursuant to *Rule 1:4-8* and *Rule 4:21A-7(c)* should the plaintiffs fail to withdraw its claims against Weichert. Weichert intends to pursue all costs which have accrued to them in this litigation, including reimbursement of their attorneys' fees.

In this regard, we hereby give you notice, pursuant to *Rule 1:4-8* of the following:

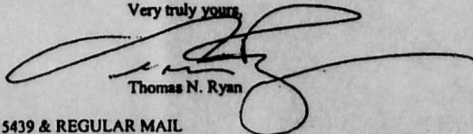
- (1) Plaintiffs have filed a Complaint in this cause that the undersigned believes is frivolous under *Rule 1:4-8* and under *N.J.S.A. 2A:15-59.1*.
- (2) The Complaint was filed on July 2, 2002.
- (3) The Complaint is frivolous under *Rule 1:4-8* and under *N.J.S.A. 2A:15-59.1* because there is no evidence whatsoever establishing that Weichert knew that the property was located in the Towaco section of Montville, nor ever represented that the property was located in the Montville section of Montville Township.
- (4) The undersigned hereby demands that the Complaint be withdrawn.
- (5) You are hereby notified that the undersigned shall make a motion within a reasonable time thereafter, except as may be set forth in the Rule, for sanctions under *Rule 1:4-8* if the objectionable pleading is not withdrawn within 28 days after your receipt of this notice.
- (6) In addition to the foregoing, the undersigned reserves the right to apply for costs and counsel fees under *N.J.S.A. 2A:15-59.1* upon a determination that the undersigned represents a prevailing party in this action or with regard to the objectionable pleading.

Further, as you are aware, pursuant to the Rules of Court, this matter was presented for non-binding arbitration which resulted in a finding of no cause against Weichert. Despite that finding, a Demand for Trial *De Novo* was filed on behalf of the plaintiffs.

Pursuant to the applicable Court Rules and Statutory provisions, defendant Weichert Realtors shall be seeking to recover all costs, including attorneys' fees, which have been incurred by them in defending this action. Pursuant to the applicable Rules and Statutory provisions, demand is hereby made that plaintiffs' complaint be immediately withdrawn by plaintiffs. Pursuant to *Rule 4:21A-6(c)*, the parties requesting a Trial *De Novo* may be subject to payment of counsel fees and costs. Should the plaintiffs fail to dismiss their complaint against Weichert, we will seek reimbursement as provided under *Rule 4:21A-6(c)*.

Your immediate attention to the foregoing is required. I do hope that we will have the cooperation of plaintiffs in this regard. Of course, they will have the opportunity to pursue their claims against the Woodmont defendants through arbitration.

Very truly yours,



Thomas N. Ryan

TNR:m

VIA CMRRR #7003 3110 0006 3889 5439 & REGULAR MAIL

cc: Sidney J. Bernstein, Esq.

ALL-STATE BOND
COTTIN COLENT

LADDEY, CLARK & RYAN
Attorneys-at-Law
60 Blue Heron Road
Sparta, New Jersey 07871-2600
(973) 729-1880
Attorneys for Defendant, Weichert Realtors

THEODORE and FRANCES VAGIAS,

Plaintiff,

-vs-

WOODMONT PROPERTIES, L.L.C.,
WOODMONT COURT AT MONTVILLE,
L.L.C. and WEICHERT CO. (formerly
WEICHERT REALTORS),

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. MRS-L-2245-02

CIVIL ACTION

**CERTIFICATION OF COUNSEL IN
SUPPORT OF AWARD FOR
COUNSEL FEES AND COSTS**

LAWRENCE J. SUPP, of full age, certifies as follows:

1. I am a duly licensed and practicing attorney at law and am fully familiar with the facts set forth in this certification. This Certification is submitted in support on Weichert's application for an award of costs and counsel fees under the Frivolous Litigation Statute.

2. Weichert vigorously defended this action, in which they were accused of violating the Consumer Fraud Act. Following the completion of all discovery, Weichert moved for Summary Judgment. Weichert's motion was granted by the Hon. Catherine M. Langlois on March 4, 2005. A motion for rehearing was denied on April 20, 2005.

3. In this matter, from August of 2002 to August of 2004, Weichert was defended by the law firm of Broderick, Newmark & Grather. From August 2004 to the present, Weichert has been defended by the law firm of Laddey, Clark & Ryan.

3. The undersigned is personally familiar with the billing of Laddey, Clark & Ryan, which is outlined below. This summary accurately reflects the charges billed to the client and the amounts paid by the client on account. The undersigned has reviewed, and has summarized below, the billings prepared by the law firm of Broderick, Newmark & Grather. The rates charged by both law firms and the expenses incurred are fair and reasonable for the type of legal service rendered in this matter.

Broderick, Newmark & Grather

2002	3rd Quarter	.40 hours	
2002	4th Quarter	17.3 hours	
2003	1st Quarter	3.7 hours	
2003	2nd Quarter	1.6 hours	
2003	3rd Quarter	6.7 hours	
	...October 9, 2003 Arbitration Proceeding award "zero" damages		
2003	4th Quarter	15.2 hours	
2004	1st Quarter	26.7 hours	
3-30-04 Counsel fee award paid by Braff Harris		(\$1,450)
2004	2nd Quarter	36.0 hours	

Total Broderick, Newmark & Grather 107.6 hours \$15,602

Laddey, Clark & Ryan

2004	3rd - 4th Quarter	116.0 hours
2005	1st Quarter	0.8 hours
	...January 7, 2005 Frivolous Notice Given	
2005	1st Quarter	37.2 hours

Unbilled for April-May 2005 5.6 hours

Total Laddey, Clark & Ryan 159.6 hours \$27,930

Expenses Incurred

8-2002	Filing Fee	\$200
12-16-02	Motion	30
12-17-02	Dep Transcript	789
4-22-03	Copies	6.96
4-24-03	Motion	30
10-31-03	Overnight Mail	15

12-16-03	Motion	30	
12-16-03	Copies	20.27	
1-6-04	Motion	30	
1-6-04	Copies	14.70	
1-6-04	Overnight Mail	30	
1-29-04	Overnight Mail	15	
2-9-04	Dep Transcript	271	
2-11-04	Printing	37.99	
2-11-04	Copies	30.08	
5-12-04	Interest	4.74	
5-17-04	Copies	17.43	
7-19-04	Expert Fees to Appraisal Assoc	1,787.50	(see invoice attached)
10-25-04	Overnight Mail	100	
11-11-04	West Group research	38.96	
1-21-05	Copies	3.70	
2-2-05	Overnight Mail	75	
2-7-05	Motion	30	
3-1-05	Overnight Mail	75	
3-7-05	Transcript of decision J. Langlois	175	
4th Q 2005	Misc	812	
1st Q 2005	Misc	266	

Total Expenses	\$4,917.33
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All payments by Welchert for costs and fees

10-9-02	\$258	
1-15-03	3267.43	
5-2-03	536.50	
7-18-03	268.96	
10-24-03	971.50	
1-28-04	2269.27	
5-21-04	2850.27	
8-25-04	1787.50	(for Appraisal)
8-27-04	5242.17	
12-28-04	21,614.96	

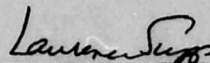
Total Amount Paid by Welchert	\$39,066.56
--------------------------------------	--------------------

(Welchert paid Broderick, Newmark & Grather through their 2nd Quarter billing for 2003, less a credit of \$1,450 given by the firm for a payment received from Braff

Harris. Welchert has paid Laddey, Clark & Ryan \$21,614.96 to date, owes \$7,123.70, with 5.6 hours unbilled at this time.)

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 9, 2005


LAWRENCE J. SUPP



SUPERIOR COURT OF NEW JERSEY
 REPORT AND AWARD OF ARBITRATION

ARBITRATION TYPE (Check one)

- AUTO PERSONAL INJURY
 OTHER CIVIL

VAGIAS
 PLAINTIFF

DOCKET NO. MRS-1-2245-02

Woodmont Properties, LLC
 et al
 DEFENDANT

ARBITRATION NO. _____

TODAY'S DATE OCT. 9, 2003

The undersigned made the following awards for the reasons set forth:
 PLAINTIFF'S PURCHASE HOME THAT HAD BEEN BELIEVED TO BE LOCATED IN A DIFFERENT SECTION OF HORTONVILLE TOWNSHIP THAN IT ACTUALLY WAS, AND IN A DIFFERENT SCHOOL DISTRICT THAN IT ACTUALLY IS. REPAIRS TO HOME MADE BY PLAINTIFF WERE THE ADVICE OF ARCHITECT, NOT THE ARCHITECT'S ERROR. DAMAGES NOT PROVEN

PARTY	IT'S CLAIM	LITIGATION	DAMAGES*
DEF	WOODMONT	(OUT ON ADR 20)	%
DEF	Weichert Co.		%
DEF			%
PL	THEODORE VAGIAS		%
PL	FRANK VAGIAS		%

* Exclusive of prejudgment interest.

0 *

ARBITRATOR'S: (Print and boldface print name under signature)

Kevin F. Colquhoun

* DAMAGES NOT PROVEN, EXPERT TESTIMONY IS REQUIRED TO PROVE DIMINUTION OF VALUE. IT'S EMOTIONAL DAMAGES ARE UNDERSTAND BUT NOT RECOVERABLE IN A PROPERTY DAMAGE ACTION

Parties desiring to reject this award and obtain a trial de novo must file with the division manager a trial de novo request together with a \$200 fee within thirty (30) days of today. Parties requesting a trial de novo may be subject to payment of counsel fees and costs as provided by R. 4:21A-6(a). Note that unless otherwise expressly indicated, this award will be filed today.

Counsel acknowledge receipt of this award by signing below. Please print name under signature.

ERIC GROGAN - IT

ALLAN BALDWIN - Δ

FOR INTERNAL EVALUATION PURPOSES. PLEASE COMPLETE THE FOLLOWING:

Amount of medical expenses claimed at the hearing for each party making a bodily injury claim.

PARTY	AMOUNT
_____	\$ _____
_____	\$ _____

**RESPONDENT'S APPELLATE DIVISION CIVIL CASE INFORMATION STATEMENT
AMENDED**

TITLE IN FULL: Vagias, Theodore & Francis		SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION	
Plaintiffs/Appellants,		DOCKET NO. A-5029-04T5	
v. Weichert Co., Woodmont, et al. MRS-L-2245-02			
Defendants/Respondents			
APPELLANT'S ATTORNEY:	<input checked="" type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant	<input type="checkbox"/> Other (Specify)
NAME	ADDRESS	TELEPHONE	CLIENT
Gloria B. Cherry, Esq.	Bruff, Harris, Sukonek 570 W. Mt. Pleasant Ave. Livingston, NJ 07039	973-994-6677	Theodore & Francis Vagias Plaintiffs/Appellants
RESPONDENT'S ATTORNEYS:			
NAME	ADDRESS	TELEPHONE	CLIENT
Thomas N. Ryan, Esq.	LADDEY, CLARK & RYAN 60 Blue Heron Road Sparta, New Jersey 07871	973-729-1880	Defendants/Respondents Weichert Co.
Sidney J. Bernstein, Esq.	KRAEMER BURNS MYTELKA, et al 675 Morris Avenue Springfield, NJ 07081	(973) 994-9315	Woodmont Properties, L.L.C. and Woodmont Court at Montville L.L.C. (on cross-claim only)
[*Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.]			
GIVE DATE AND SUMMARY OF JUDGMENT OR DECISION BEING APPEALED AND ATTACH A COPY:			
Respondent, Weichert Co., is not cross-appealing.			
Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?			
	Yes <input type="checkbox"/>	No X	
If so, has the order been certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4, 2:5-6.)			
	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Is the validity of a statute, regulation, executive order, franchise or Constitutional provision of this State being questioned? (R. 2:5-1(h))			
	Yes <input type="checkbox"/>	No X	
GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:			
Plaintiffs Vagias sued their realtor Weichert alleging that the Realtor said the house was in Montville. Although the house was admittedly in Montville Township, the Plaintiffs allege that Weichert's Agent violated the Consumer Fraud Act by failing to add that the house would have a Towaco mailing address, which the Realtor was unaware of. On March 4, 2005, Judge Langlois dismissed the Complaint finding that the Realtor's conduct did not violate the Consumer Fraud Act. On April 20, 2005, Judge Langlois denied Plaintiff's Motion for Reconsideration. On May 10, 2005, Weichert filed a motion seeking counsel fees and costs, that was granted in part.			
TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THIS APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADING PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.) The court below properly found that Weichert's agent made only at worst an unknowing "omission" non-violative of the CFA. The Court below properly awarded Weichert \$750 in counsel fees and \$500 in witness fees under the trial de novo rule, R. 4:21A-6(c).			

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral finding or opinion? Yes X No
If so, on what date? Judge Langlois March 4, 2005 "T"
Judge Rand Sept. 2, 2005 "T2"
2. Did the trial judge issue written finding or opinion? Yes X No
If so, on what date? Judge Langlois, Order dated April 20, 2005

Caution: Before you indicate that there was neither an opinion nor findings, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

- Date of your inquiry: _____ Yes No
- Will the trial judge be filing a statement or opinion pursuant to R. 2:5-1(b)? Yes No

Civil appeals are screened under the Civil Appeals Settlement Program to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

- State whether you think this case may benefit from a conference. Yes No X

Explain your answer:

1. IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:
- (A) Arises from substantially the same case or Controversy as this appeal? Yes No X
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? Yes No X
2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? Yes No X

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

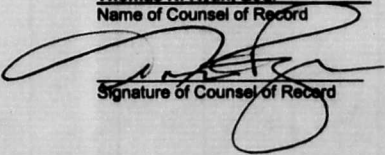
Case Name:

Appellate Division Docket Number:

Weichert Co., Respondent
Name of Appellant or Respondent

Thomas N. Ryan, Esq.
Name of Counsel of Record

October 11, 2005
Date


Signature of Counsel of Record

A-5029-04T5

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J. H. Thomas
ACTING CLERK

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OCT 21 2005

SUPERIOR COURT
OF NEW JERSEY

THEODORE AND FRANCIS
VAGIAS,

Plaintiffs,

vs.

WOODMONT PROPERTIES,
LLC., WOODMONT COURT AT
MONTVILLE, LLC, AND
WEICHERT CO. (FORMERLY
WEICHERT REALTORS),

Defendants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-005029-04-T5

ON APPEAL FROM ORDERS GRANTING
SUMMARY JUDGMENT, DENYING
RECONSIDERATION AND AWARDED
COUNSEL FEES AND EXPERT WITNESS
COSTS PURSUANT TO RULE 4:21a-6(c) BY
THE SUPERIOR COURT OF NEW JERSEY,
LAW DIVISION, MORRIS COUNTY

DOCKET NO.: MRS-L-2245-02

SAT BELOW:
Hon. Catherine Langlois, J.S.C.
Hon. David B. Rand, J.S.C.

PLAINTIFFS/APPELLANTS' REPLY BRIEF

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POINT I

**THE COURT BELOW IMPROPERLY GRANTED
WEICHERT'S MOTION FOR SUMMARY JUDGMENT**

Respondent Weichert misstates Appellants' position at pages 10, 13 and 14 of its brief. The brief states that the real estate broker's statement that the house was located in Montville was literally true and that Appellants do not claim it was false. This is not appellants' position.

There is no doubt in our minds that the Weichert realtor knew that the Township of Montville had three sections, Pine Brook, Montville and Towaco, and knew that the Vagiases wanted to live in the Montville section, not in Pine Brook or Towaco. To argue that the broker was referring to the "Township of Montville" when she told the Vagiases that the Woodmont house was in Montville, and that her failure to say "Township" was a mere omission, is a contention that is not supported by any evidence in this case and is clearly an attempt to circumvent the plain meaning of the Consumer Fraud Act (N.J.S.A. 56:8-1 et seq.).

The Honorable David B. Rand, in ruling against Weichert on its motion for fees under the frivolous litigation statute and rule, stated as follows in discussing the Consumer Fraud Act (T9/2/05, 38-21 to 41-3):

The Statute talks in terms of knowing misrepresentation, concealment or omission of

material fact, and the question becomes one of whether the broker's statement that the house is in Montville, without any further illumination on that, constitutes consumer fraud.

Obviously it does not, at least from the law of the case. The trial court ruled no cause of action, and that's on appeal. And Plaintiff would strongly debate that point, and they'll have an opportunity to do so on appeal.

The question, however, before this Court is whether that set of facts allows the Court to now assess substantial attorneys fees, and I would assume they are substantial, against the plaintiffs under the frivolous litigation statute, which we've previously quoted, N.J.S.A. 2A:15-59.1, through the mechanism of Rule 1:4-8.

Now in looking at this matter, one must look to the underlying, in my judgment, purposes of the Consumer Fraud Act itself, a remedial statute designed to effectuate consumer rights in the State of New Jersey.

The Supreme Court of New Jersey has interpreted this matter on the statute on numerous occasions, in gen - and in general, except for the most recent Supreme Court case involving the Mercedes-Benz situation, the recall of the - there was a cruise control problem. But in most cases, the history of the act has been one of involving liability. The act has been generally characterized - Justice Pollack, I think, in the Einstein-Moomjy case, one of them, characterized the act as one of evolving liability.

This matter raises, I believe, while maybe not meritorious claims, ones which are at least colorable. Now it is not for the Court here to make a determination on the underlying or ultimate merit of these claims, but to assess the standard of the statute, the frivolous litigation statute, which says the nonprevailing party knew or should have known that it - that the claim was made without any reasonable basis in law or

equity, and could not be supported by any or by a reasonable argument to make new law.

I cannot find that on this record, and I do not find it on the record. The arguments here, while they're very interesting and one which raises a number of issues, I do not find that as a matter of the record, the plaintiff is liable for a frivolous litigation obligation as imposed by the statute.

Certainly one is not at issue - the Factor 1 of the bad faith factors is not even an issue. But the reasonable basis factor arguable. Parties rely on brokers. Parties expect more from brokers. Brokers make substantial commissions. They should know their - clients, and the argument could be made that the expansive liberal nature of the statute here would have allowed the plaintiffs to collect. (emphasis added)

And further (T. 9/2/05 in 41-7 to 41-25):

Where is the reasonable basis. Brokers know that our communities, especially in Morris County are complex in nature. School districts are confusing. Attendance areas we -- we hit that a little bit in our argument. Attendance areas are flexible.

Indeed, regional high schools, communities - for example, we're sitting in a community right now, which is surrounded by another community. Morristown is the center of a donut, surrounded by Morris Township 360 degrees. People live in Morris Township with Morristown mailing addresses. There is no Morris Township Post Office.

People who live in Morris Township send their children, of course, to the same school as Morristown. It's the school district of Morris. But the attendant zones are quite significant, and where you live dictates where you send your - your children to school, and it may affect how a -- a school - how a property is valued, at least arguable. Arguably. (emphasis added)

The Weichert broker Gabrielle Dingle, had been working with the Vagiases for six months before they saw the Woodmont home and Weichert received a \$7,500 commission from the Vagiases (Pa 94). The nature of the relationship clearly supported the Vagiases reliance on Ms. Dingle's statement that the house was in Montville and clearly supported their understanding that Ms. Dingle was confirming the builder's representation that the home was in Montville with a Montville address.

In Ji v. Palmer, 333 N.J. Super. 451, 755 A.2d 1221 (App. Div. 2000), the appellate court reversed the trial court's involuntary dismissal of plaintiff's consumer fraud claim and remanded the case to the trial court for further proceedings, stating as follows (755 A.2d at 1226-1277):

On a motion for involuntary dismissal under Rule 4:37-2(b), the judicial function "is quite a mechanical one. The trial court is not concerned with the worth, nature, or extent (beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the party opposing the motion." Dolson v. Anastasia, N.J. 2, 5-6, 258 A.2d 706 (1969). Even where the matter is tried without a jury, as here, the motion must be denied if plaintiff has demonstrated a prima facie case, that is, "any evidence including any favorable inferences to be drawn therefrom which could sustain a judgment in plaintiff's favor." Pressler, Current N.J. Court Rules, comment 2 on R. 4:37-2(b) (2000); Brill v. Guardian Life Ins. Co of Am., 142 N.J. 520, 535, 666 A.2d 146 (1995).

As made clear in Brill, the standard is the same on a summary judgment motion. The deposition testimony and other evidence submitted to the court below was clearly sufficient to support an inference that an affirmative misrepresentation had been made by the Weichert broker.

Whether we consider the ruling below from the point of view of the standard for summary judgment or the policy reasons underlying the Consumer Fraud Act, the conclusion can only be that the court below was in error in granting Weichert's motion for summary judgment.

In Scibek v. Longette, 339 N.J. Super. 72, 770 A.2d 1242 (App. Div. 2001), the court referred to the Consumer Fraud Act's remedial purpose and the legislative concern for the consumer, stating as follows (770 A.2d at 1246):

The Act is to be applied broadly in light of the statute's remedial purpose. Lemelleo v. Beneficial Management Corp. of Am., 150 N.J. 255, 264, 696 A.2d 546 (1997); Blatterfein v. Larken Associates, 323 N.J. Super. 167, 178, 732 A.2d 555 (App. Div. 1999). Moreover, the Act is to be liberally construed in favor of the consumer. Lettenmaier v Lube Connection, Inc., 162 N.J. at 139, 741 A.2d 591. "The legislative concern was the victimized consumer, not the occasionally victimized seller". Channel companies, Inc. v. Britton, 167 N.J. Super. 417, 418, 400 A.2d 1221 (App. Div. 1979). Nonetheless, "[t]he consumer fraud statute is aimed at promoting truth and fair dealing in the market place." Feinberg v. Red Bank Volvo, Inc., 331 N.J. super. 506, 512, 752 A.2d 720 (App. Div. 2000).

It is respectfully submitted that the purpose of the statute is not served by Weichert's argument that its representative's statement that the house was in Montville was true because the house was in the Township of Montville and Ms. Dingle merely omitted the word "Township". Nor is the purpose of the statute served by the contention at page 12 of Weichert's brief that the statement describing the house as "in Montville" was an "innocent expression of its location that might have been, at worst, ambiguous to the ears of the plaintiffs, but it was not misleading".

The statement was clearly misleading, the Vagiases relied on it and the end result was that they did not receive what they wanted, a house in Montville. The Vagiases were deceived and misled as to what to them was a material fact to the purchase of their home and they are entitled to have the fact issues outstanding in this case resolved by a jury at trial.

POINT II

**THE COURT BELOW IMPROPERLY GRANTED
COUNSEL FEES AND EXPERT WITNESS COSTS
TO WEICHERT UNDER THE TRIAL DE NOVO RULE**

Judge Rand, in granting Weichert's application for counsel fees and witness costs under the Trial de Novo rule, R.4:21A-6, stated as follows (T 9/2/05 42-8 to 43-6):

On the - the de novo application, however, under Rule 4:21-6e, which apparently relies on Ghazouly versus Benjamin or there's an argument that Ghazouly versus Benjamin somehow precludes the liability of the plaintiffs for that obligation. 251 N.J. Super. 1, (App. Div. 1991), which is an auto case arising under N.J.S.A., 39:6a-34, which is a different - entirely different context.

I find that there is liability. The whole purpose of the de novo process is to create a mechanism for the court to impose limited fees in circumstances where there is an ultimate determination adverse to the arbitrator's award. Here the arbitrator's award was zero.

Now the rationale that the arbitrator gave may have been different than the ultimate rationale used by the court in its determination of no cause for action, but the determination of no cause for action is a final judgment. How you got there, as far as this trial judge is concerned, doesn't make any difference. Whether it was a trial by jury, whether it was motion for summary judgment, the ultimate result was no cause for action -

The Weichert brief supports this decision at pages 17-18 by arguing that Debrango v. Summit Bancorp, 328 N.J. Super. 219,

745 A.2d 560 (App. Div. 2000) is applicable to the case at bar and is controlling.

In Debrango, the arbitrator concluded that plaintiffs had no cause of action against Summit Bank, the employer of plaintiffs' son-in-law, because the son-in-law, who misappropriated funds plaintiffs had loaned him, had depleted the funds before he became employed by the Bank. This ruling was ultimately upheld by the court.

In the case at bar, the arbitrator entered a finding of 80% liability against Woodmont and 20% against Weichert. The arbitrator found that the Vagiases purchased a home that they had been led to believe was located in a different section of the Township of Montville than it actually was and in a different school district; that the builder misrepresented the address and Weichert confirmed the error (Pa 149, Appendix Vol. II).

The arbitrator did not award damages to the Vagiases, however, because there was no expert testimony submitted at the arbitration to prove diminution of value.

Weichert subsequently filed a summary judgment motion and the Vagiases responded with an expert report on the damages issue. The discovery period was thereafter extended by Court Order and an Order was entered permitting the Vagiases to file the expert report, which stated that the differential in value

between homes comparable to the Vagiases home in Towaco as selling for \$90,000.00 less than comparable homes in Montville (Pa 239, Appendix Vol. II). Weichert's summary judgment motion was denied and Weichert was awarded attorneys fees in the amount of \$1,450.00 (Pa 278-279, Appendix Vol. II).

Thus, Weichert was reimbursed for the summary judgment motion it filed based on the arbitrator's award and the court permitted the Vagiases to correct the problem that precipitated the arbitrator's conclusion as to damages. As the court stated in Debrango, the party seeking fees is not entitled to a double recovery and Weichert was reimbursed for the motion it filed based upon the arbitrator's ruling as to damages.

The summary judgment motion that was ultimately granted in this case had nothing to do with the arbitrator's decision and indeed the arbitrator's decision finding Weichert 20% liable was contrary to the decision on the ultimate summary judgment motion that is the subject of this appeal.

It should be noted that the cases we have cited in our Supplemental Brief (Ghazouly v. Benjamin, 251 N.J. Super. 596 A.2d 138 (App. Div. 1991) and Helstoski v. Hyckey, 225 N.J. Super. 142, 541 A.2d 1114 (App. Div. 1988) are the only cases that we have found dealing with R. 4:21A-6, and that all we can

look to is the language of the rule and the holdings of these cases.

It is submitted that neither the language of the rule nor the cited cases indicate that the trial de novo rule applies to the facts of the case at bar and that the award of counsel fees and expert witness costs should be reversed.

CONCLUSION

In view of the foregoing, (1) the decision granting Weichert's motion for summary judgment should be reversed and the case remanded for trial and (2) the decision granting Weichert's motion for counsel fees and expert witness costs under Rule 4:21A-6 should be reversed.

Respectfully submitted,

BRAFF, HARRIS & SUKOWECK

By: 

GLORIA B. CHERRY

DATED: October 19, 2005

**NEW
FOLDER
BEGINS**