

## N O R T H E R N

of avoiding additional claims.

In 2005, Grosvenor Bus Lines made voluntary payments exceeding \$54,000 to selected class members in an effort to settle the case with them alone. Finally, in 2006, the remaining defendants, including Grosvenor, settled the entire action for an additional \$3,100,000 with continuing jurisdiction by the Court to ensure compliance with the settlement agreement. The agreement with the remaining defendants contains neither confidentiality provision nor any admission of wrongdoing.

**PLAINTIFF****EXPERT(S)**

Douglas F. Greer, economics,  
San Jose, CA  
Clifford Kupperberg, C.P.A., accounting,  
San Francisco, CA

**DEFENSE****EXPERT(S)**

None reported

—Michael Rehak

## SANTA CLARA COUNTY

**REAL PROPERTY****Misrepresentation — Non-disclosure**

## Sellers accused of not disclosing history of floods

**ARBITRATION**      **\$134,500**

**CASE**                Victor Kasik, Teresa Saldivar  
v. David Neubauer, Darryll Neubauer,  
No. JAMS: 111-000-9373

**COURT**                JAMS, San Jose, CA  
**NEUTRAL(S)**        Read Thomas Ambler (arbitrator)  
**DATE**                 9/28/2006

**PLAINTIFF**  
**ATTORNEY(S)**        Peter N. Brewer, Law Office of  
Peter N. Brewer, Palo Alto, CA

**DEFENSE**  
**ATTORNEY(S)**        James N. Ono, Law Office of  
James N. Ono, Saratoga, CA

**FACTS & ALLEGATIONS** In November 2003, plaintiff couple Victor Kasik, 40s, a real estate investor, and Teresa Saldivar, 50s, a mortgage broker, bought a Saratoga residence from David Neubauer and Darryll Neubauer. Before the purchase, the Neubauers denied that the property had any flooding and drainage problems.

In the first three months after the transaction, the patio and

back yard flooded twice, bringing large amounts of mud and silt from a neighboring orchard into the swimming pool and spa area.

Claiming economic damages, Kasik and Saldivar sued the Neubauers for constructive fraud and negligent misrepresentation.

Plaintiffs' counsel claimed that the Neubauers were aware that heavy rains brought flooding onto the property, and that they failed to disclose that fact during the negotiations.

The Neubauers disputed the allegations, contending that they properly disclosed that they only had two floods during the 20 years they lived on the property. They opined that this disclosure of minor flooding was sufficient and honest.

Defense counsel also claimed that the two floods that Kasik and Saldivar experienced resulted from two major, unprecedented storms.

**INJURIES/DAMAGES** Kasik and Saldivar claimed \$59,500 for installation of a drainage system that would divert mud and silt from their property.

The plaintiffs also claimed \$100,000 in diminution of the property's value.

**RESULT** The parties stipulated to binding arbitration in the purchase agreement. Arbitrator Read Thomas Ambler found for Kasik and Saldivar, awarding \$134,500.

**VICTOR KASIK**        \$59,500 cost of repair  
                              \$75,000 diminution in value  
                              \$134,500

**TERESA SALDIVAR** \$59,500 cost of repair  
                              \$75,000 diminution in value  
                              \$134,500

**DEMAND**             \$45,000  
**OFFER**                \$10,000

**PLAINTIFF**  
**EXPERT(S)**         George H. Miller, appraisal, Saratoga, CA  
J. Robert Taylor, transactions,  
Palo Alto, CA

**DEFENSE**  
**EXPERT(S)**         None reported

**POST-TRIAL** Defense counsel filed a motion to lessen the award. It was denied. Plaintiff's counsel was awarded attorney fees and costs.

**EDITOR'S NOTE** Defense counsel did not respond to a sent draft of this report or a phone call.

—Rob MacKay