

November 2010 - The Rental Housing Association of Greater Springfield (RHAGS) with over 180 landlord members is filing a bill sponsored by Dennis Rosa and Jennifer Flanagan to clarify 93A law as follows:

Section 1. Section 2 of chapter 93A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following paragraph:

(d) All legal claims including but not limited to double and triple damages and attorney fees under this chapter shall come with a right to a jury trial.

Section 2. Paragraph (a) of section 9 of chapter 93A of the General Laws as so appearing, is hereby amended by adding the following sentence:

A technical violation of a legally protected interest alone without an actual and not future or perceived injury would be insufficient to bring an action under this section.

Problem:

1. Many landlords are incurring significant judgments for attorney's fees and costs under 93A where no actual injury of the consumer has occurred.
2. Judges are disregarding a jury or its verdict in allowing damages under 93A.

Solution:

1. Clarify 93A law to require actual injury of the plaintiffs to recover damages
2. Clarify 93A law that damages, if any, can be decided by a jury and their verdict shall be honored by the court. Currently as a matter of law the judges have discretion to allow jury or not.

Rationale:

1. Actual Injury Requirement Under 93A For It To Be Actionable. In *Virgilio Property Management v. Bodon* 07-SP-2421 the Court allowed 93A to most of the claims without any actual injuries. The landlord was forced to settle after about 4 years of litigation at enormous financial and emotional cost. Neither the landlord nor the tenant attempted to enforce any of these clauses.

The recent case law requires actual injury as a prerequisite to 93A claims. "In the context of a Massachusetts consumer protection statute, the term "injury" has two components. In the first instance, it denotes "an invasion of a legally protected interest." *Leardi v. Brown*, 394 Mass. 151, 474 N.E.2d 1094, 1101 (1985); see *Aspinall v. Philip Morris Cos.*, 442 Mass. 381, 813 N.E.2d 476, 490-91 (2004). To be actionable, however, that invasion must cause a loss (either economic or noneconomic) to the holder of the legally protected interest. See *Hershenow v. Enter. Rent-a-Car Co.*, 445 Mass. 790, 840 N.E.2d 526, 532-35 (2006)." Also see a very recent federal case applying MA law - *Rule v. Fort Dodge Animal Health and Wyeth Corp.*, US Court of Appeals for 1st Circuit, #09-1364, 06-02-2010, requiring at the very least an ongoing risk of injury.

Housing Court appears to be singling out landlords as the only business in MA for which *Leardi* still supposedly applies while all the other businesses follow *Hershenow*. We believe that *Leardi* which is currently silently overruled should also be explicitly overruled.

They ignore the causation requirement and award the \$25 under 93A even without any actual injury. They cite the 1978 Attorney General Regulation 3.17 without taking it in conjunction with recent case law on 93A. The problem with the \$25 is that it comes in most cases with tens of thousands in attorney fees. In *Virgilio Property Management v. Miguel Bodon* the judge goes even further and certifies a whole class of over 700 tenants without the hint of any actual injury for the majority of their claims.

2. **93A Should Come With a Right To a Jury Under Our Constitution.** In *Simov v. Durand* 08-CV-2153 the Judge, by using 93A, partially discards a jury verdict which was in favor of the landlord. The judge states that they did not reverse the jury verdict yet they de facto reverse it using 93A. The explanation seems to be that 93A, as a matter of law, gives the judge the right to simply disagree with the jury for purposes of 93A on any claim that 93A can attach to without meeting the high standard for reversing a jury verdict which requires that the evidence in our favor is taken into account while the evidence against us is put aside. Simply "disagreeing" with a jury for purposes of 93A is very dangerous because 93A rarely stands on its own two feet. It usually attaches to other claims like Habitability, Quiet Enjoyment, Retaliation, Negligence, Discrimination, and Emotional Distress. If a judge is able to brush away a jury verdict on these claims using 93A derived and directly coming out of one or more of those claims simply because they "disagree" with the jury, then for all practical purposes we have lost our constitutional right to a jury on all those other claims.

We believe *Nei v. Burley* 388 Mass. 307, 311-12 (1983) is very problematic and needs to be addressed by SJC. A recent case says that it is against the US Constitution not to give 93A to a jury when the plaintiff is asking for double and triple damages and attorney fees i.e. so called "legal claims" (*MA Eye and Ear Infirmary v. QLT, inc*, US District Court for the District of MA, # 00-10783-WGY, July 10, 2007, Judge Young, D.J.) and we believe this needs to be adopted by the SJC as well with respect to the MA Constitution. It doesn't make sense that the MA Constitution would be more restrictive when it comes to rights than the US Constitution.

We believe using 93A as a back door to de facto reverse a jury verdict without technically reversing it to award 93A damages and attorney fees is unjust and not equitable.

SIGNATURES

Date: 11-11-10

Printed Name	Signature	Town where I vote
ROGER W. WILLIAMS JR.	Roger W. Williams	SPRINGFIELD
Maria Martha Williams	Maria Martha Williams	W. Abrahams MA
Norman Lachance	Norman Lachance	
DAVID CARVALHO	David Carvalho	S. Hadley
Nancy Carvalho	Nancy Carvalho	S. Hadley
Maria B. Williams	Maria B. Williams	Springfield MA
Judy Niziolak	Judy Niziolak	Agawam
Agniel Fagenstein	Agniel Fagenstein	Longmeadow
SHERY A. CHASE	Sheri A. Chase	Lebanon
Geoffrey Adams	Geoffrey Adams	Longmeadow, MA
E. David Kyriak	E. David Kyriak	WSPFLD MA
ATTILIO CARDAROPOLI	Attilio Cardaropoli	LONGMEADOW
Russell Sabados, President RHABS	Russell Sabados	E. Longmeadow

November 11, 2010 - I as a member of Rental Housing Association of Greater Springfield (RHAGS) support House bill 4765 which is seeking to amend Section 2 of chapter 93A to:

1. Require actual injury of the plaintiffs to recover damages
2. State that damages, if any, can be decided by a jury and their verdict shall be honored by the court.

Printed Name	Signature	Town where you vote
Russell Sabadosa, President RHAGS	Russell Sabadosa	East Longmeadow
KAY SMALEY	KAY SMALEY	Holyoke
RICHARD W TYMIWSKI	Richard W Tyminski	Chicopee
Stacy Adams	Stacy Adams	Holden
Elmir Simov	Elmir Simov	Leominster
THOMAS P. FOLEY II	Thomas P. Foley II	S. HADLEY
MICHE MARGIORTA	MICHE MARGIORTA	AGRAWAN
GARY SIEDLIK	GARY SIEDLIK	AGRAWAN
Louise Jeffway	Louise Jeffway	Northampton
Robert Jeffway	Robert Jeffway	Northampton
Charonne Masters	Charonne Masters	Haydenville
Tom Masters	Tom Masters	Hyperville
FRANK MECKAY	FRANK MECKAY	South Hadley
BERT PEREIRA	BERT PEREIRA	Hadlow
EUI BALTARAK	EUI BALTARAK	Chicopee
LINDA A. DUKAKIS	LINDA A. DUKAKIS	Hadlow
MARY ANN DIELTCHER	MARY ANN DIELTCHER	Hadlow
TOM DIETSCHER	TOM DIETSCHER	Agrawan
STEVE RODDY	STEVE RODDY	Agrawan
JAMES ALBORICI	JAMES ALBORICI	Westfield
Chris Spagnoli	Chris Spagnoli	William
Shawn Beatty	Shawn Beatty	William
Don Nault	Don Nault	Easthampton
MARK OLSON	MARK OLSON	Holyoke
WILLIAM JOLIVET	WILLIAM JOLIVET	Longmeadow
Jim Kerchel	Jim Kerchel	Agrawan
Anthony Nelson	Anthony Nelson	Hadlow
Peter Houser	Peter Houser	Hadlow
Gerald Ethier	Gerald Ethier	Hadlow
James Linfield	James Linfield	Hadlow
Kevin Knight	Kevin Knight	Hadlow
Daniel Knight	Daniel Knight	Hadlow
Robert MacLaurin	Robert MacLaurin	Hadlow

The Commonwealth of Massachusetts

—
In the Year Two Thousand and Nine
—

An Act Relative to Unfair and Deceptive Practices.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 **Section 1.** Section 2 of chapter 93A of the General Laws, as appearing in the 2008 Official Edition, is
2 hereby amended by adding the following paragraph:-

3 (d) All legal claims including but not limited to double and triple damages and attorney fees under this
4 chapter shall come with a right to a jury trial.

5

6 **Section 2.** Paragraph (a) of section 9 of chapter 93A of the General Laws as so appearing, is hereby
7 amended by adding the following sentence:-

8 A technical violation of a legally protected interest alone without an actual and not future or perceived
9 injury would be insufficient to bring an action under this section.

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Dennis Rosa (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to Unfair and Deceptive Practices.

PETITION OF:

NAME:

Elmir Simov

DISTRICT/ADDRESS:

P. O. Box 485

Leominster, MA 01453