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Ober|Kaler Attorneys Obtain Significant Jury Award, Including Substantial Attorney’s Fees, for Homeowner Construction Defect Claim

By: [Raymond Daniel Burke](#)

Ober|Kaler Construction Group principal [Raymond Burke](#) and associate [Kelly Preteroti](#) recently secured a significant jury award on behalf of the owners of a townhome in Montgomery County in a claim involving faulty construction and unfair and deceptive trade practices under the Maryland Consumer Protection Act. They represented Subhash and Rita Dhawan in a suit against the builder of their home, Churchill Group at Maxwell Square, Inc. The suit alleged construction defects discovered several years after the purchase, and was based on claims of negligence, breach of contract, and violations of the Maryland Consumer Protection Act (CPA).

In 1999, the Dhawans contracted for the construction of a new townhome in the King Farm community along the I-270 corridor in Montgomery County, which they had built to their requirements, including a finished basement level. They moved into the completed home in April 2000. In August 2006, the Dhawans noticed a musty odor from behind a cabinet in the finished basement level of their home. After removing the cabinet system they discovered that a section of wall had been severely damaged by water intrusion. Subsequent investigations revealed water damage in other areas of the basement, and further demonstrated that the moisture intrusion had resulted in extensive microbial growth and mold contamination. It was ultimately discovered that one of the exterior walls had been improperly constructed with the use of untreated wood framing below grade, and that interior grade drywall had been used as exterior sheathing. Additionally, it was learned that the patio slab outside of the basement entrance had been improperly installed below the level of the floor slab.



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Evidence as to code violations and deviations from industry standards was presented on the Dhawans' behalf through a structural engineer, who also provided a repair specification. Evidence of microbial contamination was presented through an environmental engineer, who established a protocol for the mold remediation component of the repair. A contractor provided pricing for both the structural repairs and environmental remediation. After a four day jury trial before The Honorable Ronald B. Rubin in the Circuit Court for Montgomery County in Rockville, a six member jury found for the Dhawans on all three counts, and awarded compensatory damages of \$104,429.59, and, under the CPA, \$121,143.39 in legal fees, for a total jury award of \$225,572.98. In addition to the legal fees, the award included compensation for (1) loss of use of a portion of the home; (2) the cost of temporary repairs already undertaken; (3) the cost of interim mold remediation; (4) the cost of a permanent repair; (5) the cost of a final mold remediation and validation; and (5) the costs of the structural and environmental engineering investigations. The last item was based on a finding that the Dhawans were entitled to recover, as consequential damages, their expert expenses relating to the engineering investigation, the identification of the defects, and development of repair specifications and remediation protocol.

As to the CPA, the jury found that Churchill had knowledge of code violations, deviations from industry standards, and deviations from the project drawings prior to the sale of the home, and that the failure to disclose those facts constituted unfair and deceptive trade practices within the meaning of the Act. The jury was also charged with finding when the CPA claim had accrued for limitations purposes. The CPA claim was not part of the original claim, but was added by amendment after additional defects were discovered. In particular, while a contractor was determining how much exterior siding needed to be removed for purposes of establishing the cost of repair, it was revealed that the improper interior grade drywall was used as an exterior sheathing for the entire height of one wall of the house, and was not limited to only the basement level. The Defendant was compelled to acknowledge that it would have been aware of those conditions during construction, but moved for summary judgment as to the CPA claim on the ground that the Plaintiffs should have investigated and discovered the additional defects after the original defects appeared. The jury found that the CPA had not

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accrued as to those conditions until they were discovered by the Dhawans' contractor.

The CPA provides that reasonable attorney's fees may be awarded for a private cause of action under the Act. The jury awarded all legal fees that had been billed by Ober for the case. It further advised that it wished to award legal fees for services that had not yet been billed, including the time involved in the trial. As a result, it was determined that Ober could submit to the Court additional invoices, following the trial, for services rendered since the last invoice presented to the jury. Judge Rubin considered these supplemental invoices, and at a hearing on December 16, 2010, entered an order awarding additional legal fees in the amount of \$182,176.02, for a total legal fee award of \$303,319.41, bringing the total judgment award to \$407,749.00.

The case was originally filed in 2007, but was the subject of an appeal after the Circuit Court granted the Defendant's motion to stay the case in favor of arbitration under a warranty policy that had been issued in connection with the sale of the house, despite the fact that the warranty company had already determined that there was no coverage under the policy for the claimed defects. The Court of Special Appeals ruled that the warranty policy offered no coverage for and was inapplicable to the defects alleged by the Dhawans, held that the parties were not required to arbitrate under the policy, and remanded the case to the Circuit Court. The motion and appeal process consumed more than two years of the litigation process.