

[Action Against Landlord Under The Unfair Competition Statute Cannot Support Attorney Fee Award](#)

Posted on July 22, 2010 by [David J. McMahon](#)

In *City of Santa Monica v. Gabriel*, 2010 DJDAR 11005 (2010), the [Second Appellate District](#) of the California Court of Appeal ruled that in an action brought pursuant to [Business and Professions Code section 17200](#) (the “UCL”), the trial court improperly granted a fee award. The appellate court reversed the award of attorney fees by the lower court, holding that the UCL does not in and of itself authorize the award of attorney fees.

The City of Santa Monica (“City”) filed a lawsuit against a landlord, who owned and leased units in the City. The complaint alleged that the landlord sexually harassed a tenant, improperly entered tenants’ units without notice and rented an uninhabitable space to a tenant as living quarters. The plaintiff asserted one cause of action under § 17200. Each of the alleged violations was premised on acts not in compliance with the Santa Monica Municipal Code (“SMMC”). The trial court ruled against the landlord, imposed a \$7,500 civil penalty, enjoined him from contact with tenants, and ordered him to pay the plaintiff’s attorney fees. On appeal, the landlord argued that the UCL did not support an attorney fee award.

The court of appeal agreed with the landlord and reversed the fee award.

The court reiterated the American rule, that in the absence of an express agreement or statute, each party involved in litigation must pay its own attorney fees. The court also noted that the UCL does not, by itself, authorize a court to award attorney fees.

Plaintiff argued that attorney fees are recoverable when a borrowed statute, upon which a UCL claim is based, allows such recovery. Because the action was based on the municipal code, which provides that persons who violate the code are liable for attorney fees, the plaintiff argued that the fee award was proper. The court disagreed, noting that although the UCL borrows violations from other laws by making them actionable, there is no authority supporting the conclusion that the UCL borrows remedies from other statutes.

The action was solely brought under the UCL, thus the fee award could not stand.