

## [Fee Award is Overturned in Alleged Housing Discrimination Matter](#)

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In [Department of Fair Employment and Housing v. Mayr](#), 2011 DJDAR 2265 (2011), the [California Court of Appeal for the Sixth Appellate District](#) decided a unique attorney fee case in an alleged housing discrimination context.

The case involved the interplay between [California Code of Civil Procedure Section 1028.5](#) (a statute which authorizes an attorney fee award in cases arising between small businesses and state regulatory agencies) and [Government Code Section 12989.2\(a\)](#) which allows attorney fees in housing discrimination cases but not for or against a government agency.

In June 2006, the Mendoza plaintiffs filed a complaint against the owner of their apartment and the property manager for alleged housing discrimination. The [Department of Fair Employment and Housing](#) (DFEH) joined the litigation as a plaintiff. The plaintiffs alleged that the defendants had discriminated against them based on their national origin.

At the conclusion of testimony before the jury, the Judge granted a directed verdict in favor of the defendants. The court then ruled that attorney fees and costs were permissible under Code of Civil Procedure Section 1028.5. The court ordered DFEH to pay \$19,200 in fees to the defendants and the plaintiffs appealed.

The Court of Appeal reversed the attorney fee award. The court ruled that under Government Code Section 12989.2, an award of attorney fees and litigation costs to or against the state is prohibited in a housing discrimination action.

The court did note that pursuant to Section 1028.5, that statute provides for a fee award, in an action between a small business and a state regulatory agency, which involves the agency's regulatory functions. A fee award is appropriate if the agency brings an action without substantial justification. Here, the defendants argued that Section 12989.2 applies only if the case is for housing discrimination, the state is a party and fees are not available under a separate statute.

The Court of Appeal disagreed with the defendants' arguments. The court held that Section 12989.2 applied, and costs and attorney fees were unavailable to the defendants against the state. The fee award was reversed.