

DISCLOSUREWATCH

Platinum Newsletter - The Latest In Real Estate Disclosure News

Natural Hazard Disclosure Case Settles Bankruptcy Court Finds Buyer is Damaged in the sum of \$259,803.67 and Buyer is Entitled to Judgment of Nondischargeability

by Mailana Mavromatis, Esq.

*Bandalin (buyer) v. Sohaei (seller), the seller's agent, and the real estate company.
Superior Court of the State of California.*

In October 2004 Ms. Sohaei purchased a property in California for \$950,000. Her agent was *Ms. Victoria* (identity protected).

Ms. Sohaei received a Property I.D. Report in 2004 which disclosed that according to the county, the Property is in an area underlain by Bay Mud and in High Liquefaction.

In early 2006, Ms. Sohaei met with *Ms. Victoria* (the agent that represented Ms. Sohaei when she bought the property in 2004) to sell the property. *Ms. Victoria* told Seller Sohaei that she must disclose all the information she had on the home and must provide all the 2004 disclosures she received when purchasing the home. *Ms. Victoria* brought copies of all the 2004 disclosures for Seller Sohaei because she believed that Seller Sohaei would list the property with *Ms. Victoria*. Despite having a long working relationship with *Ms. Victoria*, Seller Sohaei chose not to list her home with *Ms. Victoria*.

Instead, Seller Sohaei listed the property for \$1,850,000 with *Agent Paul* (identity protected) and *ABC real estate company* (identity of real estate brokerage protected).

The 2004 disclosures, including the Property I.D. Report (with Bay Mud and High Liquefaction disclosures) were withheld from *Agent Paul*, Selling Agent, and Buyer Bandalin.

Escrow closed on October 13, 2006 with a different NHD Report with an affiliation to a Title company. On July 5, 2007, Buyer sued Seller, Seller's Agent, and Agent's Brokerage for failing to disclose that the property was built on fill and semi-fluid Bay Mud, among other nondisclosures.

Seller filed for Bankruptcy but on January 17, 2013 the Bankruptcy Court ruled that Seller withheld the disclosures she received when she bought the house with intent to deceive Buyer. The Court found that Buyer was damaged by Seller in the amount of \$259,803.67 and that she is entitled to judgment of nondischargeability under 11 U.S.C. §523(a)(2)(A). Had Seller and Listing Agent ordered a Property I.D. Report in 2006 (as Seller received in 2004) the Bay Mud and High Liquefaction would have been revealed to Buyer, and litigation may have been avoided.

But Seller's alleged efforts to withhold this information, and/or the possibility of saving a few dollars on a cheaper NHD report ended up costing Seller \$259,803.67 of which the Bankruptcy Court refused to discharge. The Bankruptcy Court ruled that Buyer has been damaged in the sum of \$259,803.67 by **Seller - we do not know how much money the Listing Agent and/or the Brokerage paid the Buyer to settle this case.** Pursuant to California Civil Code §1103 et seq., Sellers and Agents must exercise good faith in their selection of the NHD provider and since the NHD industry is unregulated, all NHD reports are different.

Learning the differences between NHD reports through litigation is a price that you might not want to pay. Save your client and yourself from the pain of spending time and money in court by ordering a Property I.D. Report when you represent sellers or buyers.

All NHD reports are different and no other NHD is as complete as Property I.D.

(Note: The true names of real estate agents and the listing brokerage have been changed/omitted.)

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