

From: Richards, Leslie

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Count: 1

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[Note 9] The predecessor to G. L. c. 93A, Section 9 (1), provided that: "Any person who purchases or leases goods, services or property, real or personal, primarily for personal, family or household purposes and thereby suffers any loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive act or practice declared unlawful by section two or by any rule or regulation issued under paragraph (c) of said section two may, as hereinafter provided, bring an action in the superior court whether by way of original complaint, counter-claim, cross-claim or third-party action for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper." St. 1970, c. 736, Section 1, as amended by St. 1971, c. 241, and further amended by St. 1978, c. 478, Section 45.

[Note 10] According to G. L. c. 93A, Section 9 (3), as appearing in St. 1979, c. 406, Section 2, "recovery shall be in the amount of actual damages or twenty-five dollars, whichever is greater, or up to three but not less than two times such amount if the court finds that the use or employment of the act or practice was a willful or knowing violation of said section two or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated said section two. In addition, the court shall award such other equitable relief, including an injunction, as it deems to be necessary and proper."

[Note 11] General Laws c. 93A, Section 9 (2), inserted by St. 1969, c. 690, provides that: "Any persons entitled to bring such action may, if the use or employment of the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated persons; the court shall require that notice of such action be given to unnamed petitioners in the most effective practicable manner. Such action shall not be dismissed, settled or compromised without the approval of the court, and notice of any proposed dismissal, settlement or compromise shall be given to all members of the class of petitioners in such manner as the court directs."

[Note 12] The defendants have not squarely raised the issue of the composition of the class which is entitled to damages. See Mass. R. A. P. 16 (a) (4), as amended, 367 Mass. 919 (1975). Nonetheless, we believe that the argument is implicit in their appeal of the judge's multiplication of the statutory award, and we consider it to avoid the injustice which might otherwise result. See, e.g., *McLeod's Case*, 389 Mass. 431, 434 (1983).

[Note 13] Even though we have thus sharply limited the number of those permitted to recover, and have also limited recovery to \$25 for each person, it seems clear from the record that the number of eligible tenants is such that the total amount awarded may be many thousands of dollars.

[Note 14] General Laws c. 93A, Section 9 (3), as appearing in St. 1979, c. 406, Section 2, provides in pertinent part that: "At least thirty days prior to the filing of any such action, a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be mailed or delivered to any prospective respondent. Any person receiving such a demand for relief who, within thirty days of the mailing or delivery of the demand for relief, makes a written tender of settlement which is rejected by the claimant may, in any subsequent action, file the written tender and an affidavit concerning its rejection and thereby limit any recovery to the relief tendered if the court finds that the relief tendered was reasonable in relation to the injury actually suffered by the petitioner."

[Note 15] The judge also found that the plaintiffs were entitled to rescission of the rental contracts "on account of the pervasive illegality inherent in the leases." The defendants have not appealed from this ruling.

[Note 16] The relevant portion of G. L. c. 186, Section 14, as amended through St. 1974, c. 192, Section 1, provides that: "[A]ny lessor or landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant, or who attempts to regain possession of such premises by force without benefit of judicial process, shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment for not more than six months. Any person who commits any act in violation of this section shall also be liable for actual and consequential damages or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee, all of which may be applied in setoff to or in recoupment against any claim for rent owed or owing."

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