



# Healthy Homes IAQ™

**BUILDING INSPECTION SERVICES**



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The take away with this successful legal action is that dutiful repairs, some casual understanding of fungi, and regular assessments by building maintainers and owners will put the lawyers out of business.

Craig Hostland P. Eng. Healthy Homes IAQ

## Family wins \$780,000 for mold in apartment

### Verdict is apparently a record

By Alan Cooper

A Richmond Circuit Court jury has awarded \$780,000 to a family who contended that they were injured by toxic mold in a Norfolk apartment.

Thomas and Rose Odaris first complained to Morton G. Thalhimer Inc., the manager of Riverpoint Apartments, in October 2002 when they saw water stains and small growths of mold on their ceiling, according to their attorney, David S. Bailey of Richmond.

Bailey said he believes the award is the largest in the state for exposure to toxic mold.

A maintenance worker attempted to remove the mold, but it came back by early November.

Maintenance workers re-moved the mold and installed a dehumidifier, but the mold came back twice more because, Bailey alleged, they made no effort to find and cure the source of moisture that caused the mold.

Finally, in December, the Odarises called the local health department, which advised them to get a lawyer and to move out as soon as possible.

When they left the apartment, they placed their belongings in a basement storage area and moved to Florida for a job opportunity.

The Odarises and their small daughter became ill while they were at the apartment. They had headaches, coughing, runny noses, respiratory problems and fatigue.

Over the next two years, "they got better, but they never got well," Bailey said. The respiratory problems, coughing and fatigue continued until they were treated by a physician in Maryland, who prescribed cholestyramine, a drug more typically used to treat high cholesterol levels.

The treatment was so effective that there was no claim for future medicals, Bailey said. Use of the drug for treatment of exposure to mold has not been approved by the Food and Drug Administration to treat exposure to mycotoxins from mold, but it is permitted on an experimental basis, Bailey said.

He said a key to winning the case was an examination of the apartment shortly after the Odarises left by Chris Chapman, a certified industrial hygienist.

A toxicologist from Florida, Richard Lipsey, testified that the symptoms of the Odarises were consistent with exposure to mycotoxins from mold.

Bailey sued Thalhimer, the Richmond-based manager of the apartment complex, for negligence and the owner for a violation of the Virginia Landlord-Tenant Act.

The jury awarded Rose Odaris \$400,000, her daughter \$300,000 and Thomas Odaris \$60,000. The panel also awarded \$20,000 to the Odarises on their claim that the defendants had improperly destroyed their belongings from the apartment.

During the four-day trial last month, the defendants contended that there was no scientific evidence that the mold in the apartment produced mycotoxins or medical testimony that the symptoms were a result of such exposure. They also asserted that they responded appropriately to the problem and that the Odarises had abandoned their belongings.

Bailey said he relied on photos of the mold in the apartment and the testimony of his clients, the hygienist and the toxicologist to rebut those contentions.

He said the case went to trial after the defendants offered \$35,000 to settle the case and he demanded \$535,000. Judge Melvin R. Hughes Jr. has post-trial motions under advisement.

Bailey said mold cases now account for more than half his practice. He estimates that he gets a call a day from a potential client but declines most of the requests for representation.

Some prospective clients have remained in the dwellings long enough that they are subject to defenses of contributory negligence or assumption of the risk, and many have moved out of the apartments without photos or any scientific evidence to support their claims, he said.

The Landlord-Tenant Act is a powerful weapon for plaintiffs, Bailey said, because it requires landlords to do whatever is necessary to make an apartment safe, not just what is reasonable under the circumstances.

**Few owners or management companies appear to understand mold or train their maintenance workers how to respond to it, Bailey said.**

**"If apartment managers would simply get on these water leaks, I'd be out of business and people wouldn't get sick," he said.**