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INTENTIONAL TORTS

Intentional Infliction of Emotional Distress

Mistreatment claims false, day-care center alleged

VERDICT **$106,000**

CASE Lurdes Correia and Abel Correia, Individually, and d/b/a Twinkle Stars Family Day Care v. Eduardo Suarez, No. 2039/03

COURT Westchester Supreme, NY

DATE 3/17/2006

PLAINTIFF ATTORNEY(S) **Peter Klose**, Nyack, NY

DEFENSE ATTORNEY(S) **Lee Wiederkehr**, DelBello, Donnellan, Weingarten, Tartaglia, Wise & Wiederkehr, White Plains, NY

FACTS & ALLEGATIONS In 2002, plaintiffs Abel and Lurdes Correia owned and operated the Twinkle Star Family Day Care, a licensed private-home facility that was located at 49 John St., in Tarrytown. On June 13, 2002, the plaintiffs were reported to the New York State Child Abuse and Maltreatment Register. The complaint, filed by next-door neighbor Eduardo Suarez, alleged that the day-care center was negligent in its supervision of the children.

On March 30, 2004, Suarez filed a second complaint with the New York State Office of Children and Family Services, in Yonkers. The complaint alleged that eight to 12 children were in the premises, which included two illegal apartments. The report also alleged the plaintiffs created a dangerous condition by keeping the children in a basement unsupervised and by placing a green plastic wrap around the outdoor play area, presenting a suffocation hazard.

The Correias sued Suarez. They alleged that Suarez intentionally made false claims about them and their business and that his actions constituted negligent infliction of emotional distress.

Plaintiffs' counsel claimed that Suarez engaged in a systematic pattern and practice of activities designed to harm and harass the Correias and their business interests.

The Correias claimed that they were a state-licensed day-

care facility and that they provided a safe environment. Plaintiffs' counsel argued that Suarez attempted to discourage and intimidate current and potential clients from enrolling in Twinkle Star by approaching them on the street and making false claims about the facility and supervision of the children. He contended that Suarez was actively photographing and videotaping the premises without the Correias' consent, in a further attempt to discourage enrollment. The Correias contended that they placed the green plastic around the premises to prevent Suarez from videotaping the children's actions and to provide shade.

Suarez commenced a counterclaim. He claimed that the children and a large parrot created an unreasonable amount of noise and disturbance. He also claimed that the children's parents blocked the sidewalk in front of his home when they dropped off and picked up the children.

INJURIES/DAMAGES *anxiety; emotional distress; headaches; hypervigilance*

The Correias claimed that they were subjected to the intentional infliction of emotional distress. They also claimed that Suarez's false reports about the care and supervision of the children resulted in many current and future clients canceling service contracts. They further claimed that the videotaping and photographing of the premises was a private nuisance.

Ms. Correia claimed to have developed a sleep disorder, anxiety, hypervigilance and headaches as a result of the harassment. She and her husband sought recovery of unspecified damages for their emotional distress. They also sought punitive damages.

RESULT The jury found that Suarez was liable for the Correias' injuries. The Correias were awarded a total of $106,000, which included $70,000 in punitive damages.

ABEL AND LURDES CORREIA

$25,000 private nuisance
$70,000 punitive damages
$8,000 defamation
$3,000 intentional infliction of emotional distress
$106,000

TRIAL DETAILS Trial Length: 8 days
Trial Deliberations: 4 hours

PLAINTIFF EXPERT(S) **Paula Heller**, social work, New York, NY
Elliot Moshman, M.D., internal medicine, Tarrytown, NY

DEFENSE EXPERT(S) None reported

POST-TRIAL Post-trial motions are pending.

–Peter Hayes