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APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - HUDSON COUNTY  
DOCKET NO. HUD L- 5473 - 12

OPINION



to prevent or cure homosexuality.

See *JONAH'S History*, JONAH,

available at <https://www.jonahweb.org/sections.php?secl=11>

(last visited June 2, 2014). In addition to offering counseling

on homo

pornography, sexual abuse, pedophilia or pederasty, compulsive

masturbation, fetishes, transvestitism, incest, prostitution,

emotional dependency

bid.

According to Plaintiffs, conversion therapy required them to engage in various individual and group

activities. For instance, during a private session, defendant

instructed

thing about himself, remove an article of clothing, then repeat

instructions until he was naked,

also nude. Id. ¶ 46. As with Unger, Downing instructed

Ôæã&|b~^Á\~Á|^ääæbbÁ↔^Á àã~^Á~àÁ áÁ↑↔ää~ãÁ á^ää<sup>1</sup>ãæ\*æá\æä→]Á|ã&æäÁ  
Yâ↔↑ÿÁ\~Áãæ↑~{æÁ áää↔\↔~^á→Á´→~\á↔^&Ê<sup>a</sup>Áâ|\ÁÔæã&|b~^Áãæà|bæäÈÁÁ

Ibid.

Other one-on-one

purportedly expressed anger and struggled to break through the human chain to seize the two oranges. Ibid.

A different group exercise entailed blindfolding participants while counselors dribbled basketballs and made anti - gay slurs. Ibid. Downing also conducted group cuddling sessions with counselors and their younger clients in an effort to reduce or eliminate same - sex attraction. Id. ¶ 60.

As part of its conversion therapy counseling, JONAH advised Plaintiffs that being homosexual is loathsome and that homosexuals are more susceptible to loneliness, suicidal thoughts, and contracting HIV/AIDS. Id. ¶ 61.

JONAH typically charged Plaintiffs \$100 for each individual session, and \$60 for each group session. Id. ¶ 43. The cost of

Plaintiffs maintain that conversion therapy has been discredited and rejected by mainstream health organizations.

Id. ¶ 5. They cite to the American Psychiatric Association for

therapy are great, including depression, anxiety and self

destructive behavior, since therapist alignment with societal

prejudices against homosexuality may reinforce self

- hatred

Id. (quoting *Therapies*

*Focused on Attempts to Change Sexual Orientation (Reparative or*

*Conversion Therapies)*: *COPP Position Statement*

post - JONAH therapy should be calculated as ascertainable loss under the CFA.

On March 26, 2014, JONAH moved for partial summary judgment, arguing that money expended to treat mental or emotional damages does not constitute an ascertainable loss under the CFA. Following oral arguments on the motion on May 9,

2014, the parties were asked to brief whether Enb {E} Maldonado, 216 N.J. 168 (2013), permits recovery for post - JONAH

### Discussion

I.

Rule 4:46 - 2(c) provides that a court shall render summary

↓ | ä&↑æ^ \Ä ~^→]Ä } äæ^Ä 1 \äæÄ \*→æää&^&bÊÄ äæpositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to

any material fact challenged and that the moving party is

æ^ \& \→æääÄ \~Ä áÄ ↓ | ä&↑æ^ \Ä ~ää ~ääæääÄ ábÄ áÄ ↑á \ \æääÄ ~ää →á } ÈªÄ Ä Ú~ determine whether there is a genuine issue as to a material

fact, the court views the facts in the light most favorable to

the nonmoving party. Brill v. Guardian Life Ins. Co. of Am., 142

N.J. 520, 523 (1995); see also Anderson v. Liberty Lobby, Inc.,

477 U.S. 242, 248 (1986).

Generally, summary judgment is inappropriate before the completion of discovery, and a litigant should have the opportunity for full exposure of its case. See Velantzas v. Colgate - Palmolive Co., 109 N.J. 189, 193 (1988); Mohamed v. Iglesia Evangelica Oasis De Salvacion, 424 N.J. Super. 489, 498 (App. Div. 2012). However, summary judgment may be granted if further discovery will not alter the result. Minoia v. Kushner, 365 N.J. Super. 304, 307 (App. Div.), cert. denied, 180 N.J. 354 (2004).



Acknowledging that deficiency, ÖŠSNÖÁ´~^´æäæbÁ¹\áá\Á\*æãää\*bÁ\áæÁ  
motion should have been designat ed a motion for partial  
ä↔b↑↔bbá→ªÁ | ^äæãÁ Rule 4:6 - 2(e), given that it is moving to  
strike a particular claim based solely on the allegations of  
§→á↔^↔↔ààbøÁ O~↑\*→á↔^↔ÈÁ Á Drb3. Notwithstanding these  
deficiencies, and because JONAH ultimately submitted a stat ement  
of material f acts with its reply brief in an effort to cure its  
error, the substance of ÖŠSNÖøb motion will be addressed .

II.

The CFA was enacted ↔^Á FÏIJEÁ¹º\~Á´~↑âá\Á\áæÁ↔^´ãæáb↔^&→]Á  
{↔äæb\*ãæääÁ\*ãá´\↔´æÁ~àÁ äæääá|ä↔^&Á\áæÁ´~^b|↑æãÈøªÁÁ Weinberg v.  
Sprint Corp., 173 N.J. 233, 247 (2002) (quoting Cox v. Sears  
Roebuck & Co., 138 N.J. 2, 14 (1994)). Originally, the power to  
enforce the CFA was vested exclusively with the Attorney General  
but , in a 1971 amendment, the Legislature supplemented the  
statute wi th a private cause of action. See id. at 248;  
ÆØN&~b\↔^~Á{ÈÁRá→ä~^ää~, 216 N.J. 168, 183 (2013).

TáæÁ\*ã↔{á\æÁ´á|bæÁ~àÁá´\↔~^Á~\*æãá\æbÁ\~Á¹ÇFDÁ´~↑\*æ^bá\æÁ\áæÁ  
victim for his or her actual loss; (2) punish the wrongdoer  
through the award of treble damages; and (3) attract competent  
´~|^bæ→Á\~Á´~|^æãá´\Á\áæÁº~↑↑|^↔]Áb´~|ã&æøÁ~àÁ àää|ää á]Á  
providing an inc entive for an attorney to take a case involving  
áÁ↑↔^~ãÁ→~bbÁ\~Á\áæÁ↔^ä↔{↔ä|á→ÈªÁÁÆØN&~b\↔^~, supra, 216 N.J. at

183- 84 (quoting Weinberg , supra , 173 N.J. at 249). The CFA specifically provides that -



~àÁ →~bbÁ \á\Á ↔bÁ ^~\Á á ]\*~\áæ\↔'á→Á ~ãÁ ↔→|b~ã ]È<sup>a</sup>Á Á Thiedemann ,  
supra , 183 N.J. at 248.

This is not to say, however, that an ascertainable loss

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↓ | ä&↑æ^ \È<sup>a</sup>ÁÁ ibid . Nor is ascertainable loss exclusively limited

to an <sup>1</sup>~|\- of - \*~'←æ\Á →~bbÁ \~Á \áæÁ \*→á↔^ \↔ààÈ<sup>a</sup>Á Á Ibid.



medication.      Id.

constitute an ascertainable loss cognizable under the CFA.

Their reasoning is based on Cox holding .

This Court agrees. It concludes that a categorical denial for recovery of JONAH treatment costs is inappropriate. Gupta and Billings are distinguishable because the alleged unlawful conduct in respect of the merchandise offered in those cases were unrelated to mental or emotional counseling. This distinction also renders irrelevant the other cases where the emotional distress alleged by plaintiffs in each of these cases was a step removed from the product or services rendered. See Gennari v. Weichert Co. Realtors, 148 N.J. 582, 611 (1997) (holding emotional damages arising out of purchase of a defective home are not recoverable under CFA); Cole v. Laughery Funeral Home, 376 N.J. Super. 135, 144-45 (App. Div. 2005) (treating emotional injuries arising from misrepresentations by a funeral home to be non-economic).

Without addressing the veracity or science of conversion therapy, the nature of the services JONAH offered was premised on designating homosexuality, and other sexual conflicts, as a mental disorder, and the underlying transaction in this case involved reducing or eliminating same-sex attractions through emotional and mental health counseling. Just as the purchaser of a home is a consumer of a product, the recipient of conversion therapy is a consumer of services. Because, assuming

the facts in the light most favorable to Plaintiffs, ÖŠSNØøbÁ  
conversion therapy damaged the individual s it was meant <sup>1</sup> \~Á  
' |ãæÊª any subsequent cost s of repair ing ſ→á↔^ \↔ààbøÁ ↑æ^\á→Á ~ãÁ  
emotional health áãæÁ \áæÁ ä↔ãæ^\Á á^äÁ \*ã~ [↔↑á \æÁ ãæb |→\Á ~àÁ ÖŠSNØøbÁ  
actions and, hence, should be borne by JONAH , provided of course  
that Plaintiffs tender evidence both competent and sufficient to  
establish such damages . <sup>1</sup> YÜÿåæÁ æ [↔b \æ^' æÁ ~àÁ áb' æã \á↔^ áâ→æÁ →~bbÁ  
resulting from áÁ äæèæ^ äá^\øbÁ OÔNÁ {↔~→á \↔~^Á bã~ |→áÁ âæÁ äæ \æã ↑↔^ æäÁ  
~^Á \áæÁ âáb↔bÁ ~àÁ \áæÁ \*→á↔^ \↔ààøbÁ \*~b↔ \↔~^Á à~→~ }↔^ &Á \áæÁ  
äæèæ^ äá^\øbÁ |^→á }à |→Á ' ~↑↑æã' ↔á→Á \*ãá' \↔' æÊª Á Á ÆØN&~b\↔^~, supra ,  
216 N.J. at 197. Accordingly , th e cost of reparative therapy  
caused by the alleged CFA v iolations may properly constitute an  
ascertainable loss under the CFA .

Even if the cost for reparative therapy does not constitute  
an element of ascertainable loss, t hat does not end the inquiry;  
whether the cost of reparative therapy can be calculated as  
<sup>1</sup> äá↑á&æbÁb |b \á↔^ æäª Á à~ãÁ \* |ã~bæbÁ ~àÁ \áæÁ äæ↑æä ]Á↔↑ \*~bæäÁ |^ äæãÁ \áæÁ  
CFA remains . ÆØN&~b\↔^~ is instructive: it reiterated that  
<sup>1</sup> áb' æã \á↔^ áâ→æÁ →~bbª Á á^äÁ <sup>1</sup> äá↑á&æbÁ b |b \á↔^ æäª Á áá {æÁ bæ\*áãá \æÁ  
functions under the CFA. 216 N.J. Super. at 192.

Ascertainable loss is a prerequisite to determining damages  
sustained under the CFA . <sup>1</sup> ÚåæãæÁ ↔bÁ ^~Á 'á→' |→á \↔~^Á ~àÁ °ää↑á&æbÁ  
b |b \á↔^ æäøÁ |^→æbbÁ \áæÁ áb' æã \á↔^ áâ→æÁ →~bbÁ äæ@ |↔ãæ↑æ^\Á ↔bÁ à↔ãb \Á  
bá \↔bà↔æäÊª Á ibid. (quoting Thiedemann , supra , 183 N.J. at 247).



In respect of whether non-economic damages can be recoverable

Gennari, supra, explains that

[o]ne reading of the Act is that a party who suffers any ascertainable loss has standing to sue and can recover three times all damages. The alternative, and we believe more appropriate, interpretation is that damages are limited to ascertainable loss. At common-law an injured party could recover only for the injuries sustained. Absent a clear expression of legislative intent changing the common law rule, we are reluctant to read the Act to encompass non-economic losses.

[ 148 N.J. at 613.]

To conclude on the basis of this proposition that § 17-28b - JONAH treatment costs are not recoverable under damages sustained necessarily presumes that such costs are non-economic in nature. Because subsequent treatment costs are quantifiable -- based on the amount expended on professional health services -- even if these costs do not qualify as a CFA ascertainable loss,

(citation and internal quotation marks omitted).

Agostino

individualized relief appropriate to the specific case,

As a result, in addition to damages sustained, there was no error by the trial court in incorporating other factors such as

positions<sup>a</sup> in calculating treble damages.

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