

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID SMITH,

Appellant,

vs.

BARRY HUFFMAN AND SHERRIE HUFFMAN,

Respondents.

No. 34842

**FILED**

APR 06 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment entered by the district court against appellant concerning a real estate transaction.

Appellant summarizes his three-fold argument in support of reversal of the district court's award of damages, as follows: (1) "[r]espondents' damages should have been limited to out[-]of[-]pocket losses since the theory of recovery was based on negligence"; (2) "[r]espondents suffered no out[-]of[-]pocket loss nor any other kind of loss"; and (3) "[t]he damages that were awarded also failed to take into account offsets for profit and other reasonable opportunities to mitigate."

The district court's wide discretion in calculating an award of compensatory damages will not be disturbed on appeal absent a showing of abuse of discretion.<sup>1</sup> "Generally, this court will affirm an award of compensatory damages unless the award is so excessive that it appears to have been 'given under the influence of passion or prejudice.'"<sup>2</sup> "Compensatory

<sup>1</sup>See *Frantz v. Johnson*, 116 Nev. \_\_\_, \_\_\_, 999 P.2d 351, 360 (2000).


<sup>2</sup>*Guaranty Nat'l Ins. Co. v. Potter*, 112 Nev. 199, 206, 912 P.2d 267, 272 (1996) (quoting NRCP 59(a)(6)).


damages are awarded to make the aggrieved party whole."<sup>3</sup> Where contracts are involved in a suit for compensatory damages, "these damages should place the plaintiff in the position he would have been in had the contract not been breached."<sup>4</sup>


We affirm because appellant has failed to demonstrate that the district court abused its discretion in awarding damages. There is no evidence in the record demonstrating that the compensatory damage award was given under the influence of passion or prejudice, nor any evidence that the award did anything other than make the respondents whole -- by putting them in the position they would have been in had appellant sold them the property he told them he was selling. We need not decide the issue of whether out-of-pocket loss should have been the only measure of damages, since the district court expressly found in respondents' favor on all the causes of action, not just the negligence cause of action, and therefore the damage award is justified even if the negligence basis is erroneous.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

<sup>3</sup>Hornwood v. Smith's Food King No. 1, 107 Nev. 80, 84, 807 P.2d 208, 211 (1991) (citation omitted).

<sup>4</sup>Id.

cc: Hon. Stephen L. Huffaker, District Judge  
Darrell Lincoln Clark  
Gerrard & Cox  
Clark County Clerk