



Written Testimony Submitted by Jordan Fogal
To
The Subcommittee on Commercial and Administrative Law
"Mandatory Binding Arbitration Agreements: Are They Fair For Consumers?"
Tuesday, June 12, 2007, 10:30 a.m.

I would like to humbly thank you for your invitation to speak on the subject of defective housing and arbitration clauses. Those two terms have become tantamount.

There are a lot of people depending on me today, because I am a writer, to find the right words and to speak for them. I am charged with communicating their frustration, hopelessness, and the abandonment that they feel. They are not here; but I am, for all of them. There are hundreds of thousands of us, and we are in every state. We realize that everyone thinks their issue is the most important; but when an issue, that affects hundreds of thousands, maybe millions of Americans, goes unmentioned, we feel like subjects instead of citizens.

Since your invitation, I have realized something about you and myself. I could not do your job. The responsibility I feel just being here is overwhelming. To handle the mental anguish of people's pain and suffering, and have to live and work under the constant stress of trying to figure out how to make things right is an unimaginable burden. I would not make a good politician. I have only been doing this for four years and sometimes I become absolutely ill listening to peoples' stories day after day. However, I have not felt responsible for them, other than being someone to talk to who understood, someone who would listen, and tell them they were not alone. By your invitation, you have make me feel that now, I am also personally charged with that responsibility of making things right. My words must convey the feelings of so many families – families living in motel rooms (some in only one room) with children and sick elderly parents, even their pets.

Veterans, even those totally disabled, living in deplorable conditions in new houses; young married couples suffering in shock; senior citizens... all have lost their homes, their savings, their credit, and their lives as they have know them (or ever dreamed they would be). Their futures are ruined, and their families are destroyed. Most will never recover. Some are at the end of their ropes and have even said they wanted to die. It is one thing to be made homeless by an act of God, like Katrina; but it is totally different when it is caused by an unconscionable act of greed.

I listened to Hispanics and African Americans saying they were being targeted at the State Affairs Committee in Texas, where hundreds of us testified for over twelve hours... Different ethic groups are not being targeted. These builders only see one color, green. We have houses that cost over a million dollars, compliments of my builder with \$300,000 dollars in foundation damage; and we have patio homes starting at \$120,000 with numerous defects. These are equal-opportunity crooks. They have awakened a sleeping lion called arbitration. They figured out a way to use it to build homes that are shameful and will never make the historical register. Arbitration is their get-out-of-jail free card; greedy builders play it every time they build a substandard, defective house. As Thomas Jefferson said, he will cheat without scruples, who can cheat without fear.

The pain that builders create for American families goes beyond the obvious. Foreclosure rates escalate, and no one mentions the two reasons that we know: bad builders and arbitration clauses. In Texas, we have had over 156,876 foreclosures, and these figures are not accurate. They do not count those who lost their homes but chose to make deals with scumbag investors. Investors, for the price of your power of attorney, will save your credit. Many have accepted these offers, since they have been posted for foreclosure and are going to lose their home and money. These investors then go our mortgage companies and negotiate deals to buy these defective houses (deals that the mortgage companies will not make with us). These investors then cover up defects and dump them on other consumers. They do not have to disclose defects on foreclosed properties. My builder says he does not have to disclose defects on new properties. When he was asked - he said, "Why would I?"

Only the sub-primes are ever mentioned. If the figures are correct, over 2.4 million more people will lose their homes this year. In 2005, there were 1.2 million. The states with the highest foreclosure rates were: Georgia, Colorado, Florida, California, Michigan, Indiana, Ohio, Utah, Tennessee, and Nevada.

Foreclosure rates are in the news almost every day, but bad builders and arbitration clauses don't make the news. The majority of us have no voice. We are threatened with arbitration, and most are confused and afraid. Some homeowners patch up their new houses and dump them on the next unsuspecting buyer. Some houses in my neighborhood have had as many as five owners. Previous owners are being sued by new owners. We can sue each other for non-disclosure, but the builders are above the law.

Arbitration is an atrocity; and until you experience it or see the aftermath of its devastation, you cannot even imagine. Yet, some people still believe the "spin" that arbitration is as fair, cheaper, and faster than

going to court. Arbitration is not fair; it is not cheaper; but sometimes, it is a whole lot faster. I have known people who were filed on by their builder, shoved through "fast track" arbitration; and came out the other side in less than 90 days owing the builder money!

Arbitration companies will tell you don't need to have a lawyer, but the builders have a stable of them. In our case, our builder's law firm has an arbitrator as a partner. Would you like to have the partner of my builder's henchman arbitrate your case?

Builders already have a contractual agreement with the arbitration company. Our builder has chosen AAA, the American Arbitration Association. This is a conflict of interest because they have already established a partnership, a symbiotic relationship. Arbitrators' salaries depend on pleasing their repeat customers - the builders. Homeowners who go through arbitration will probably never be able to own another home. Many of them end up in foreclosure, bankruptcy, homeless, and living with family members. Why does no one mention this crisis? Why aren't we all outraged? Homeowners are trapped by arbitration. They cannot afford the astronomical repairs to their new homes. Even more distressing is, they cannot afford arbitration either.

Arms interest rates are expected to reach at least 10 %. Peoples' house payments are going to grow out of their reach. Many times, you have big builders with ties to their own mortgage companies. Imagine what effect this is going to have on the US economy.

Only the FBI has addressed one of the growing problems in Houston - Mortgage fraud. It is so rampant, they have had to set up a special task force.

On April 15, 2002, we moved into what was to be our final home. It had all of the eye candy, even an elevator. The grandchildren told everybody at school their grandmother's house had an elevator. They were all so excited, we took them over before we moved in to give them a ride.

We are senior citizens; we had an elevator, in case our knees went; we were near the medical center and three blocks from a funeral home. We had a 30-year mortgage, 6% interest rate, and could afford our payments. We thought we had all our bases covered. We were not a sub-prime. Nevertheless, we were forced to let our house go into foreclosure. The foreclosure rate in our neighborhood of 44 homes is nearing 25%. Our house has been empty for almost three years.

The first night in our new home, my husband decided to try out his new Jacuzzi tub on the third floor. When he pulled the plug, one hundred gallons of water crashed through our dining room ceiling. My husband tried to calm me by saying, connecting the plumbing drains was probably just one slipup the builder had overlooked. We sopped up water that ran down the columns and through the hardwood floors, even into the garage below; water pooled in the chandelier. Our builder's salesman, not a licensed realtor, laughingly commented later... "that was just new construction; it happened all the time."

Well, this was not **one** overlooked plumbing connection, as my husband so desperately wanted to believe. It was a preview of coming attractions. Rainwater, from outside, sprayed us at the kitchen table. - The windows were installed upside down (our builder finally admitted this after three years). Our floors buckled and black spider-webs of mold crawled up our walls; the smell grew worse; then shower wall fell out and little puffballs grew out of the carpet. All the while, we had begged our builder to please fix our house.

We had the mold tested by an accredited laboratory, and they said they had never seen toxic readings that high in an inhabited dwelling. Prior to this, we had not mentioned the nosebleeds, headaches, the swollen eyes, and the sinus infections because we had seen how people were treated. Their defects were dismissed because the homebuyers were crazy hypochondriacs. My builder said everyone has mold and it doesn't bother anybody. Yet, he takes allergy shots. People have told me, and I have heard testimony, of children's eardrums bursting, babies vomiting up blood, and even the family cat suddenly dying. Stachybotrys and Chaetomium will make you deathly ill. We took the reports to our family doctor. She told us to move out of the house immediately. We sent the report to our builder. He lied under oath, said he never received it, yet he sent it to his engineer the same day; and the engineer was sitting right there in the room with our emails. Some were hand written, and I noticed them. He was asked by our attorney to read them and to read where he had gotten them and the date. We swore to tell the truth in arbitration. Are only homebuyers bound by this oath?

When does lying become perjury? When does the civil become criminal?

We moved out of our home. We had gotten estimates for repairs, and they were all \$150,000 or more. Our builder kept telling the media it would only cost about 2 to 5 thousand dollars to fix our house, and that was all they wanted to do.

In the article in Mother Jones magazine, the builder's lawyer, Mr. Chesney, tells the reporter we are the only ones in the neighborhood with problems. Yet, when we referred this reporter to the lawyer handling some of our neighbor's lawsuits, my neighbors' lawyer called him a liar; and showed the reporter the papers signed by the same Mr. Chesney.

This builder had built our home incorrectly in the first place. They had attempted to repair it before we ever saw it, and they said they fixed it twice while we lived there. They would seal up the windows on the inside so the water wouldn't come in, and then they would seal up the cracks in the outside stucco so the water wouldn't run out. So, the walls just filled up with water.

The final insult came when we discovered the builder had filed suit on his own roofer and used not only my letters, but our house as their example of the most defective. Their sworn testimony said that our house was leaking so badly they had to remove the insulation in the attic and the shower, and redo the walls.

They had committed fraud, and we could prove they were guilty with their own sworn statements; but we could not go to court. The other houses did not have arbitration clauses. Many of my neighbors were able to sue the builder. Our builder knew how defective our house was, so they took out some insurance. They added an arbitration clause to our earnest money contract.

We did not file on our builder in arbitration. Most don't, the builders file on the homeowners. Now that is backwards. The perpetrator files on the victim. If the homeowner misses a deadline or doesn't pay up in arbitration, they are ruled on in absentia. Moreover, there are constant deadlines. AAA arbitration does not give you one comprehensive bill. They nickel and dime you to death, so you don't really know what it is actually going to cost. They will bill you first for filing fees; so you get a check, go to the post office, and mail it certified mail. Then you get a bill for case management fees, and you run to the post office. Then they bill you for the room, and you are back at the post office sending these payments certified because every bill comes with a deadline for payment. AAA will make you crazy running to the post office, trying to meet their deadlines, and keeping up with all their demands. They will not give you a direct or straight answer. They say they are merely the facilitator. Which sounds like, something out of the Godfather to me.

We knew better than to file against our builder. We had heard horror stories about other homeowners, who our builder had disposed of. We read their stories and saw the pictures on the Internet. One person had just spent \$100,000; his house was a wreck; his dog's hair had fallen out; he developed serious lung problems, and finally moved out of the state. His wife let me in, when she was packing, so I could see their house. The deck and front was off the house. She told me, "He can't talk to you." He was under a gag order, or as the arbitration companies prefer to call it, a secrecy agreement. Many of the houses in his subdivision had and have problems.

Our subdivision of 44 units is near downtown Houston ... 37 are severely defective according to my builder's sworn testimony. My builder, Jorge Casimiro said, "project damages includes roofing systems... resulting in water damage penetration to interior of the units. The interior units' damage includes sheet rock, insulation, wall studding, electric wiring and boxes, plumbing, A/C duct work, flooring... both wood and carpet, and interior painting." Knowing all these things, this "Hispanic Man of the Year" and member of the Harris County Housing Authority, sold us our house with no disclosure. He patched it so well that without destructive testing, we could not have known. Can you imagine asking a builder of a new home if you can do a little destructive testing while you check out the house?

Our new home lasted not-even two years. So many new homes will not live out the term of their mortgages.

After we had exhausted all other remedies, I began to protest my builder's new property. He had warned me that his attorneys would take care of me in arbitration. Since all the houses had sold in our neighborhood, it made more sense for me to protest at the new property. His new property of condos had 76 units. The same moisture control company was called in, by my builder, when that property began to leak ... This was the same man we had hired for our reports and testing. [When he drilled a hole in our home, water ran out.] Mr. Risdon, from moisture control, told me our builder's new property already had 49 units leaking and over \$200,000 in damage. Only a handful had been sold. So, I decided to protest there. I felt so foolish and lost, finding out that standing on the corner holding up a sign was the only option left to me. Two weeks after I stepped onto the corner, we received the arbitration papers. The builder had filed on us in "Fast Track" to dispose of us much quicker than regular arbitration.

What good would it have done us, even if by some miracle, we won the entire \$75,000 (the maximum allowed in fast track)? We would have been out the costs for arbitration AND any judgment {if we could ever collect} would still not cover even half of the repairs our house needed. Our house cost \$360,000; the lot was \$87 thousand, so we had a 273 thousand dollar home that needed over \$150,000 worth of repairs. Where would we live while it was being repaired? We would have to pay for our things to be moved out, back in, and for storage.

There was nothing left to do but let the house go. We were never going to be able to sell it, and I would never want anyone else to be tricked into living in it. I told my husband, it made no sense to continue to throw more money into that **money pit**. Our money would be put to better use burned in the fireplace; at least it would put out some heat.

We could not afford a lawyer anymore. At that time, we were paying not only for our new house; but we were paying: moving costs, deposits for an apartment, and storage rooms for our things. We had to keep insurance and lights and water on in our new house even if we didn't live there, or the builders would say we were the cause of the damage. After some serious soul-searching, we realized our builder would never be able to be trusted (or have the competency) to fix our house, if it indeed was repairable. We also knew that he was not going to buy it back. He said he sold houses; he didn't buy them. So, we called the mortgage company and sent them the reports; and after never being late with a payment, we allowed our home to go into foreclosure. We felt ashamed. At the same time, we were also having to pay for engineers' reports, moisture reports, infrared water testing, mold testing, and air-quality index testing. All the while, our builder knew this testing was unnecessary. He knew exactly what was wrong with our house. Our house had a terribly defective roof, and flashings were installed improperly. This caused the water to be diverted into the walls and not off the roof. Yet, he said nothing.

All the burden of proof is on the homeowner. The builder lets you do all the work and pay for it. He just sits there smugly, knowing all the while that you will run out of money, give up, shut up, go away, or he will win in arbitration. They were going to prepare an eviction notice, and we told them that was not necessary. We posted, in the front window of our home, a statement that we had vacated, the date; and that our possessions had been removed. The mortgage company was accustomed to having to evict people who tried to stay in their homes while not paying, but we had already moved out. They waited to foreclose on us for 6 months because they saw all the paper work we sent them; and at the time, the builder had also signed with the Better Business Bureau that he would go to arbitration with them. So for a while, I was doing the paper work for both arbitration at the BBB as well as AAA. The Better Business Bureau finally threw out our builder when they discovered that they had been using shadow companies under one registration and denying that they had built the houses that complaints had been filed on for years.

While this was all going on... since Texas is one of the 31 "Right-to-Cure" states... you cannot file an arbitration proceeding or a court proceeding without first going through the Texas Residential Construction Commission (TRCC), which is mockingly referred to as tricky. I wrote them and filed my paperwork as instructed. I was informed that I had to send all the reports on my house and the complaint, by certified mail, to the builder. I went to the Post Office as directed and mailed the information. It was received by our builder, signed for, then placed unopened in an envelope and mailed back to me. They were proceeding with conference calls, and bills were pouring in from AAA. I asked how they could be allowed to circumvent state law. I asked for help from the TRCC. My file is over 3-inches thick trying to get them to help us. They called our builder in to investigate; but did not notify us. The builder's lawyer told the commission they had notified our lawyers, but we had failed to respond. The builder's word is golden; the homeowner has to prove everything.

At first, our own family did not understand. Friends would look at our pictures and say, "I bet you sued the hell out of those creeps." We could only say, "No, we can't sue them." Our friends would look at us as if we were demented and say, "Of course you can; you can sue anybody." Other people said, "Oh you should have used a licensed realtor." Well, we did. Or they would say, "You should have had your house inspected; I would just never have bought a house without an inspection"... And, we would tell them, we did. Some of our friends asked us why we didn't sue our realtor and our inspector. We politely told them, "Why should we? They did not build or knowingly sell us a defective property. We went to our insurance company. We paid \$3400 a year to make sure we had coverage for everything. But, we didn't. We were not in good hands with Allstate. Substandard construction and builder defects are not covered by Homeowner's insurance. Our learning curve continued. How could this happen to us? We are good people. Now we have paid good money for an uninhabitable house, and we have no recourse.

Then we find out our Homebuyer's warranty does not cover habitability. While all this is going on, we are being tormented by the American Arbitration Association. We found out that the only way to get out of fast track was to file a counter claim. So, I decided to file a counter claim, to pay off the note on the house, our medical bills, the upgrades we had done, and the amount of appreciation our home should have had. Then I found out it would cost 6,000 dollars to file a counter claim, and the résumés they were sending me for arbitrators were between 300 and 475 dollars per hour. We would have to pay a case service fee of \$2500, for room rent and expert testimony, and even pay for subpoenas to be served.

We finally got an arbitrator who said she would graciously give one day's arbitration. She was assigned. My builder's lawyer had never turned in anything, even though deadlines are given by AAA for everything... not an arbitrator's list, not a witness list, nothing. Yet, I was jumping through hoops answering every email, taking each threat from AAA, and the builder's lawyers seriously. I also knew when they called each other by their first names on the conference calls (Bill and Becky, and I was referred to as Ms. Fogal) that I was in deep trouble. After the pro bono arbitrator, Marcy Higbee, was assigned by AAA; and the deadline for any more discussion of arbitrators had passed, my builder's lawyer changed his mind. When he had me in fast track he said he could dispose of me in one day. But now, that we were out of fast track; and I had a pro bono arbitrator, he said that he would hold us hostage in arbitration for at least 5 days. He also wanted three arbitrators. We had already run through the retainer that we had for our first attorney, and had to let him go. We could see that the builder's attorneys had the game down pat. They would just write letters and do things that required your lawyers' time and eat up your retainer. As my builder said, they had much deeper pockets. So we were trapped. We could not pay all the money AAA was demanding, so we offered to make payments of 200.00 a month, until we paid it. AAA said they might accept that ... if we qualified for hardship. Then I had the indignity of turning over all our bills, W2's, tax information, everything but our firstborn child to qualify for hardship. Afterward, they would not tell us if we had been granted hardship or not. They just kept sending me blank credit card authorizations for us to fill out our credit card information, so they could just charge arbitration costs to us as they accrued. When questioned, they refused to give me an answer as to how much it would cost. They don't even know; they don't know how many hours an arbitrator will bill for pre and post study. If you stay in the room after a certain time, they charge more rent; it just keeps adding up. I would write; and they would say they had made a determination on our hardship, but they wouldn't tell me what it was. Over and over, they demanded money and sent bills by mail and email, and sent blank credit card authorizations like some kind of a demented collections agency. This went on for months. Finally, after much harangue, they said I had qualified for hardship. At last, we thought we had crossed one hurdle.

After all that... what their hardship plan got us was a payment of \$750.00 before arbitration, and a balloon note for the **exact, entire amount** at the close of arbitration. Where were we supposed to get that kind of money, that fast? No one cared. We'd just better have it. When we saw in one of the arbitrator's disclosures that my builder had three other cases going on at that time (one he had managed to take from arbitration, back to the courts), we knew it was hopeless. These were big-time players. We wrote a letter

and said we could not commit to choosing an arbitrator, that we could not pay. During a conference call with the builders' lawyer, William S. Chesney III, Esquire, and Ms. Becky Bays, I was threatened by Mr. Chesney. He said that, I would chose an arbitrator or **he** would go to the courts and have one appointed outside of AAA. He said he had done it many times before, and it most certainly would not be pro bono. I finally chose an arbitrator because I felt I had no choice, but wrote to AAA. I told them that I would not have the money to pay the arbitrator, as I had told them many times. Again, I got the credit card authorization form. All this time, every Saturday and Sunday, I stood on the corner in front of the builder's new property. I was harassed by the employees and taunted. They called the police on me six times, but the police were always nice. Once when the builder tried to tow my car, I was so glad they had also called the police, because the police stopped them from towing my car from city property. I could not stop them; I was just one person. They were a big builder.

In the meantime, one of the vice presidents of AAA, Mr. Richard Naimark was in Houston. I managed to go to a meeting with him with two members of HADD, Homeowners Against Defective Dwellings. I showed him all the correspondence, the pictures, and expert testing that had been done on my house. I told him AAA was being used by the builders as "an out" for unethical and despicable behavior. I also gave him other cases where the rulings were horrible injustices and asked him to read them on his way back to New York City. Two days later, I received a dismissal from arbitration. Neither Mr. Chesney nor I had paid the arbitrator, so he simply said, "Case dismissed due to failure to pay arbitration fees by both parties."

I was so happy. After nearly 8 months of torment, I thought that I had my rights back. Now I could go to court. But, it was not to be. We filed in court, charging the builder with fraud. His attorneys dragged us through 10 hearings before the judge ordered us to return to arbitration and said that we must file a counter claim {which is much more expensive than a regular claim}. The judge said no matter what his personal feelings, the legislature favored arbitration; and he could not rule from the bench.

Well, here we are again in arbitration. I wonder how many times they can force us to go there, against our will. One good thing has happened; I have met two wonderful young lawyers, the age of my sons; and they still believe if they keep on trying, they will eventually find justice. We have an agreement. We pay the expenses and they get 40% of whatever we get. This last year, arbitration cost us over \$30,000 dollars. Three years have passed. We have not had a Christmas tree; we have not grilled out; we have no garage; we have not planted a flower; we have not had company. Our grandchildren have no place to stay with us; we live in a small third-story apartment. It was to be a temporary situation because, **surely justice would come soon.**

We have now completed our second stint in arbitration; it was again a nightmare. Our lawyers had 187 documents, pictures, a PowerPoint presentation, expert witnesses, and a witness who lived in my neighborhood before I bought my house. She had thought her house was the only defective one, and they were living in one room that wasn't flooded on the first floor. She, therefore, had gone to the other few houses that were still available, including my unit, to see if maybe the builder would just swap houses with her. She took pictures of my house before I ever saw it, with mold, the walls torn out, and the back of the house ripped off. She had pictures of the defects to my house, which were irrefutable proof of fraud.

The builders and their lawyers walked in, joking with one witness and holding a little white binder of thirty-seven pages.

As I said, we are once again free of arbitration process. We have our award. Why do they call it that? It is just a piece of paper that means nothing. Award - like a surprise or something wonderful. It is just a piece of paper. It says that our builder committed common fraud, but we are supposed to pay their attorneys' fees for trying to get into court because we knew they committed fraud. It says we were in breach of contract by filing a lawsuit so we have to pay \$14, 597.50 in attorney fees and \$146.10 in expenses to the builder.

Arbitrator's Determination:

- Residential Construction Litigation Act (RCLA): Stature / Tremont's offers of repair were unreasonable and even admitted by the builder
- Fogals were not granted statutory fraud, only common fraud.
- Deceptive Trade Practices Act (DTPA): **Fogals' claim is denied.**
- Fogals' request for attorney's fees under the Texas Residential Construction and Liability Act (RCLA): **is denied** as there was a prior order in the first arbitration that stated expenses... would be incurred by each party.
- **Claim of alter-ego is denied** (even though proven by the Better Business Bureau) Stature Construction Company dba Tremont Homes.

Fogals are awarded \$40,832.00; the net result is that Stature shall pay to the Fogals \$26,088.40.

It is so ordered on this thirtieth day of October 2006, by the most Honorable Vickie L. Pinak.

This amount will not even cover the cost of arbitration; this amount will not cover the down payment on my house; this amount is an insult after this arbitrator admitted they committed fraud.

We also were billed (and had to pay) \$1687.50 for post study after arbitration was over, before the arbitrator would issue her award. Arbitrators do not have to face you when they render their verdict. They don't have to look you in the eye. Our arbitrator had 30 days to issue her "award"; she took every one of them, while we waited. After all this time, we have this absurd "award". This was neither a gift nor was it a surprise. This is what happens everyday in this land of pay and play, called arbitration. In a way, I guess we should consider ourselves lucky; so many people come out of arbitration owing their builders. I will never understand that.

We should quit, get on with our lives, and salvage what we can. We should forget what was done to us. We should forget all the other people who have lived through this nightmare; but we cannot! When someone does this to you, it is as if they have robbed you, which they have; and shamed and ridiculed you, which they do. It is something you never forget, and you never get over. Most days you can't even believe it could happen in this county. You just want to wake up in your beautiful new home and have this all just to have been a terribly bad dream.

These builders have wounded the American public in a sinister way; they have destroyed the American Dream. These builders should have to wear a sign on their backs, like a Surgeon General's warning on a pack of cigarettes, saying **Buyer Beware**. We have been treated worse than dogs and forced to chase our tails in a circuitous route to nowhere. Arbitration is the most disheartening, disgusting, and disillusioning thing we have ever been through; and we were forced to participate in this farce, not once but twice. Arbitration is like a metastasizing cancer, spreading throughout this county, infecting our lives and our families.

I have received two phone calls while I worked on this testimony - one from Mississippi and the other from Marietta, Ga. How can so many people be affected, and there is no central number they can **all** call? They call Homeowners Against Defective Dwellings (HADD) and HomeOwners for Better Building (HOBB). These two grassroots organizations, each with one woman at the helm, are overwhelmed by the numbers of people being preyed upon, reaching out to them in desperation; but these two courageous women still keep trying to do the impossible. Why can't our government just have a toll free number, with no red tape, no convoluted paperwork, just a place that people could call, and at least be counted? I once thought that there were hundreds of us, then hundreds of thousands, and now I am afraid there are more than I ever imagined.

I wanted to understand. I even went to the university here and met with a professor of ethics. I asked her how these people could live in their own skins. She said, "That is why you see them donating money to charities and worthy causes, to somehow justify their transgressions and make themselves appear to be pillars of the community and good people." – I call it simply trying to buy your way out of hell. These builders have nothing but contempt for the homeowners. This is a clear case of the haves and the have-nots; those who matter and those who do not.

Please don't tell us that houses would cost more money, if they were built correctly and did not have arbitration clauses. I actually heard a man from a homebuilder's association selling this theory that home prices would rise. He gave statistics that an unbelievable number of people who would be robbed of homeownership. – We are already being robbed. All I could think of, was a line from Shakespeare, "the devil can cite Scripture for his purpose."

Conversely, it is our contention that homes could cost much LESS:

- A. We propose that the **time** builders spend in "Kangaroo Courts" could be better used supervising their projects.
- B. The increase in the prices of homes could be nullified if the builders would not expend money on arbitration fees and their gang of high-priced lawyers.

These wealthy builders are into winning, at any cost.

Please don't tell us how arbitrations works so well, not tying up our court system. If things are allowed to continue status quo, soon we will have no need for a court system. In some way, we are all bound by arbitration already. Consumer confidence is already at an all-time low. Arbitration is a contract of adhesion. If you do not give up your rights, you are denied the services. You cannot buy a home, a car, have a credit card, bank account, or even a cell phone. All the big businesses have adopted this cursed clause. The arbitration companies have more power over us than the Supreme Court. How did it come to this? – Spins and incomplete information.

Huge awards, given by juries, have always made the headlines. Unfortunately, the amounts these people actually collect are never mentioned. There is no big headline, following up on the previous 'story'. It is just onto the next story. This is what I call drive-by journalism; it is not good investigative journalism.

Remember the McDonald's lady who spilled coffee on herself (you know that poor woman that everyone's heard about, and refers to as the prime example of frivolous lawsuits)? Do you recall her name? It was Stella Liebeck. This woman suffered third degree burns, was hospitalized for 8 days, had skin grafting and permanent scarring, and was disabled for more than two years. How frivolous does that really sound? No

one reported that McDonald's sold their coffee at 180 to 190 degrees, and had caused over 700 burns since 1982. The jury awarded Ms. Liebeck \$2.7 million, the amount of coffee sales for two days at McDonald's. Some of the arrogance and shocking testimony given at that trial was unbelievable.

The jury system has numerous safeguards to overturn any verdict, including this one, if it is excessive. In arbitration, there are no safeguards. This case was a boon to arbitration. What was wrong with having corporate responsibility? Big companies rarely pay awarded damages. Our builders are not worried for the same reasons. Their lawyers told me, if we to get a judgment, then they would have fun showing us the power of negotiations. These lawyers are arrogant, rude, hateful, and intimidating; and they are paid to be.

We have always voted and taught our children to take this privilege seriously. My husband has served on jury duty and even grand juries. Would you believe, after being denied our right to a trial by jury and being in the middle of arbitration, we both received jury summons. We are good enough to serve on the juries but not good enough to get a trial of our own.

The effects of arbitration clauses are proven to be a failed system. Consumer Reports reported in Jan 2004, 15% of the new homes built each year were defective. Two years later, they raised that percentage to 17% with two or more serious defects. Houses are constantly being built more poorly, because arbitration clauses make it so profitable.

"All truth passes through three phases: **First**, it is ridiculed. **Second**, it is violently opposed; and **third**, it is accepted as self-evident."
Arthur Schopenhauer

Those of us who have lived through arbitration feel as if we have become characters in some sort of a John Gresham novel except – unfortunately for us, this is not fiction.

"Representative government and Trial by Jury are the heart and lungs of liberty. Without them, we have no other fortification against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine."
John Adams

Mr. Adams must have had a premonition of the arbitration atrocity to come. As an American, I believe liberty, freedom, and patriotism still ring in our hearts, but no longer in our laws.