

Home Improvement Contractor Liability Under the CFA
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It is important for all business owners to become familiar with the provisions of the New Jersey Consumer Fraud Act (“CFA”), which is one of the strongest consumer protection laws in the United States. It is even more so for home improvement contractors who, in addition to the general provisions of the CFA, are also subject to specific regulations that govern the nature and form of their contracts, as well as the way they carry out those contracts.

In general, the CFA prohibits “false promises”, such as agreeing to complete the project and then failing to do so, “false pretenses” and misleading statements made in the context of the sale of goods or services to the public. An example would be a statement misidentifying the quality or grade of a product used or to be used on a project. Liability is not only reserved for the intentional wrongdoer or the outright liar, but also to the contractor who unintentionally provides wrong information due to his own negligence or mistaken belief. Courts are free to expand the scope of the CFA to include activities not specifically mentioned in the statute.

The CFA applies to contractors and any other “merchant” who provide goods or services to the public. The CFA imposes several mechanisms designed to protect consumers and punish defendant contractors. First, a liable contractor or merchant may be responsible for paying the plaintiff’s attorneys’ fees, plus treble damages, which is three times the amount of losses actually sustained. Fees may even be awarded on an interim basis, which means the defendant may be required to pay the plaintiff’s attorneys’ fees before there is a final judgment. The CFA may also impose personal liability on

individuals within the company who provide misleading or fraudulent information. Finally, a liable contractor may be compelled to refund any amounts he received as payment on the project where there is a CFA violation found.

The CFA does not require the plaintiff to show that the contractor intended to defraud or cheat the home owner, or that the homeowner was actually misled. Instead, just the fact that a statement may be misleading or factually inaccurate is sufficient. There is no requirement that the plaintiff show that he actually was misled or deceived. When in doubt the courts apply the CFA to the benefit of the homeowner and to the detriment of the contractor.

Specific Regulations for Home Improvement Contractors

While the CFA applies to misleading statements, omissions or unconscionable business practices, it also designates certain *per se* violations set forth in the administrative regulations that apply specifically to home improvement contractors. A series of regulations sets forth the requirements for home improvement contracts and contractors, and the failure of a contractor to abide by those regulations translates to *per se* CFA liability. Too frequently, contractors, particularly on smaller projects, fail to comply with these regulations, which results in treble damage liability, attorneys' fees and potential personal liability.

The regulations that arise most commonly concern the information that must be contained in the contract and the method of performance by the contractor. For instance, the regulations require that any contract in excess of \$500 for home improvement (which covers a significant portion of home improvement projects inside and outside the house, other than new construction) must be in writing and must be signed by both parties.

Additionally, any changes in the contract must also be in writing and signed by both parties. An oral contract or oral modification is not enforceable by the contractor.

The written contract must contain specific information concerning the type of products to be used (size, grade, quantity), the cost and payment method of the contract and specific warranty/guarantee information. The contract must also include the start and end date of the contract work. These are only a few of the specific regulations in the administrative code.

The effect of a CFA violation is potentially devastating to a contractor. A liable contractor will owe attorneys' fees, treble damages, and may be forced to refund any amounts already paid by the homeowner for the work performed. Furthermore, the owner of the business may be personally liable for the damages. As a practical matter, CFA cases, particularly those involving per se violations, may be very difficult to settle because attorneys' fees may be awarded early in the case, placing on the contractor the burden to pay for both parties' counsel. In most cases, CFA liability may be avoided by contractors simply by taking the straightforward steps in drafting, executing and performing home improvement contracts and change orders to ensure that their contracts and work is in compliance with the CFA. Armed with knowledge, a contractor can easily avoid the harsh penalties imposed by the CFA.