

STATEMENT FROM STUART S. ZISHOLTZ

Once again, the Appellate Division has rendered a decision involving home improvement licenses. The Appellate Division, Second Department, recently held that a contractor could not collect approximately \$150,000 for work performed and materials furnished on a residential house in Westchester County, New York.

The Court correctly found that the Administrative Code of the County of Westchester provides that no person shall maintain, conduct, operate or engage in home improvement work unless such person obtains a home improvement license. A contractor's failure to adhere to this requirement precludes the contractor from collecting fees from a consumer and enables the consumer to move for a dismissal of an action commenced by the contractor against the consumer.

In this case it was undisputed that the contractor was unlicensed. However, the contractor claimed that the same administrative code defines an owner as a homeowner, tenant or any other residential dweller who orders, contracts for or purchases a home. In this particular instance, the contractor argued that the consumer neither owned nor lived in the house at the time the contract was executed.

The Court found that it did not matter that the consumer did not live in the house or own the house at the time that the contract was executed. The Court continued by stating that the consumer intended to reside in the premises in the future and, thus, was an "owner" within the meaning of the Administrative Code. The Court broadly construed the definition of "Owner" in the Administrative Code in order to protect the consumer. The end result was that the contractor lost approximately \$150,000.

It is obvious that the Courts are protecting the interests of the consumer. It is imperative,

therefore, that each and every one of you who performs home improvement work obtain a home improvement license in every county where you are performing your work. Failure to do so may result in your inability to collect the balance due. It does not matter whether the consumer knew of the absence of a license or even if the consumer had planned to take advantage of the absence of a license. The failure to obtain the license is absolute and cannot be revised or overlooked.

Never let your lien time run out!!

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