S T A T E O F N E W Y O R K

105

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. CAHILL, PHEFFER -- read once and referred to the Committee on Judiciary

AN ACT to amend the general business law, in relation to home improvement contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 7 of section 770 of the general business law, as added by chapter 32 of the laws of 1989, is amended to read as follows:

7. "Custom home" means a new single family residence OR A RESIDENCE DESIGNED SOLELY FOR OCCUPANCY OF NOT MORE THAN TWO FAMILIES LIVING SEPARATELY, to be constructed on premises owned of record by the purchaser at the time of contract[,]; provided that such residence is intended for residential occupancy by such purchaser [and the contract of sale is entered into on or after the first day of March, nineteen hundred ninety].

S 2. Subdivision 1 of section 772 of the general business law, as added by chapter 421 of the laws of 1987, is amended to read as follows:

1. Any owner who is induced to contract for a home improvement, in reliance on false or fraudulent written representations or false written statements, may sue and recover from such contractor a penalty of [five hundred] UP TO TWO THOUSAND dollars plus reasonable attorney's fees, in addition to any damages sustained by the owner by reason of such statements or representations. ANY OWNER WHO IS AGGRIEVED BY A SUBSTANTIAL VIOLATION, AS DEFINED IN SECTION SEVEN HUNDRED SEVENTY-THREE OF THIS ARTICLE, MAY SUE AND RECOVER FROM SUCH CONTRACTOR A PENALTY OF UP TO FIVE THOUSAND DOLLARS PLUS REASONABLE ATTORNEY'S FEES, IN ADDITION TO ANY DAMAGES SUSTAINED BY THE OWNER BY REASON OF SUCH SUBSTANTIAL VIOLATION. In addition, if the court finds that the suit by the owner

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

was without arguable legal merit, it may award reasonable attorney's fees to the contractor.

S 3. Section 773 of the general business law, as amended by chapter 587 of the laws of 1990, is amended to read as follows:

S 773. Violations. 1. (A) Technical violations. Every home improvement contractor who violates any of the provisions of this article shall be subject to a civil penalty not to exceed one hundred dollars IN THE CASE OF A FIRST VIOLATION.

(B) FOR A SECOND VIOLATION WITHIN A PERIOD OF THREE YEARS, A HOME IMPROVEMENT CONTRACTOR SHALL BE GUILTY OF A VIOLATION AND SHALL BE FINED TWO HUNDRED FIFTY DOLLARS.

(C) FOR A THIRD OR SUBSEQUENT VIOLATION WITHIN A PERIOD OF THREE YEARS, A HOME IMPROVEMENT CONTRACTOR SHALL BE GUILTY OF A CLASS B MISDEMEANOR AND SHALL BE SENTENCED TO A MANDATORY, DEFINITE TERM OF IMPRISONMENT OF THREE MONTHS AND MAY ALSO BE FINED AS PROVIDED IN THE PENAL LAW.

2. Substantial violations. (A) Every home improvement contractor who fails to deposit funds in an escrow account or provide a bond or contract of indemnity or irrevocable letter of credit in compliance with the requirements of section seventy-one-a of the lien law, [or] who fails to provide a written contract substantially in compliance with the requirements of this article, OR WHO VIOLATES THE PROVISIONS OF SECTION SEVEN HUNDRED SEVENTY-ONE-A OF THIS ARTICLE shall, IN THE CASE OF A FIRST VIOLATION, be subject to a civil penalty not to exceed the greater of two hundred fifty dollars [for each violation] or five percent of the aggregate contract price specified in the home improvement contract[; provided, however, that in no event shall the total penalty exceed twenty-five hundred dollars for each contract].

(B) FOR A SECOND VIOLATION WITHIN A PERIOD OF THREE YEARS, A HOME IMPROVEMENT CONTRACTOR SHALL BE GUILTY OF A CLASS A MISDEMEANOR AND SHALL BE SENTENCED TO A MANDATORY, DEFINITE TERM OF IMPRISONMENT OF SIX MONTHS AND MAY ALSO BE FINED AS PROVIDED IN THE PENAL LAW.

(C) FOR A THIRD OR SUBSEQUENT VIOLATION WITHIN A PERIOD OF THREE YEARS, A HOME IMPROVEMENT CONTRACTOR SHALL BE GUILTY OF A CLASS E FELONY AND SHALL BE SENTENCED TO A MANDATORY, DEFINITE TERM OF IMPRISONMENT OF ONE YEAR AND MAY ALSO BE FINED AS PROVIDED IN THE PENAL LAW.

3. Mitigating factors; defenses. In an instance where the contractor has been shown to have committed [multiple violations] A FIRST VIOLATION of this article or the provisions of section seventy-one-a of the lien law, the court shall consider the following factors in assessing a civil penalty pursuant to PARAGRAPH (A) OF SUBDIVISION ONE OR PARAGRAPH (A) OF subdivision two of this section: the volume of business which the home improvement contractor performs on an annual basis, [the number of contracts in violation,] the actual financial loss or exposure to financial loss suffered by [any] THE owner as a result of the [violations] VIOLATION, and whether the home improvement contractor acted in good faith or willfully with respect to such violations. No home improvement contractor shall be subject to the increased penalties provided by PARAGRAPH (A) OF subdivision two of this section if such contractor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the maintenance of procedures reasonably adopted to avoid such a violation.

S 4. Subdivision 2 of section 774 of the general business law, as added by chapter 421 of the laws of 1987, is amended and a new subdivision 3 is added to read as follows:

2. The CIVIL provisions of this article may be enforced concurrently by the director of a municipal consumer affairs office, or by the town

attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government.

3. THE ATTORNEY GENERAL IS HEREBY AUTHORIZED TO PROSECUTE ANY CRIME DEFINED IN SECTION SEVEN HUNDRED SEVENTY-THREE OF THIS ARTICLE.

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.