§ 773. Violations. 1. 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.

2. Substantial violations. 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, shall 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.

3. Mitigating factors; defenses. In an instance where the contractor has been shown to have committed multiple violations 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 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 owner as a result of the violations, 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 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.