

Articles - Sheehan

Criminal Sanctions for Violations of the Home Improvement Act

Massachusetts General Laws c. 142A (the Home Improvement Act) governs renovations to pre-existing, owner occupied, one to four family residences. It mandates written contracts with certain statutory protections for homeowners, registration by contractors with the State, and exposes contractors and their principals to potential civil and criminal sanctions for non-compliance. While criminal sanctions are infrequent, the recent case of *Commonwealth v. Brien* provides a rare discussion of what the Commonwealth must show for a successful criminal prosecution of a contractor's principal for violating the Act.

Section 19 of the Act generally allows for criminal sanctions against two categories of contractors or subcontractors:

Contractors who violate the Act in this manner can be punished by a fine of up to \$5,000, imprisonment not to exceed two years, or both. Persons who knowingly and willfully violate any other provision of the Act, can be punished by a fine up to \$2,000 or imprisonment up to one year, or both. These are in addition to possible civil sanctions, such as revocation of license, damages, and violation of M.G.L. c. 93A (the Consumer Protection Act).

Because criminal sanctions for violation of the Home Improvement Act are sought infrequently, many contractors overlook the fact that the potential for fines, or even incarceration, is real. In *Commonwealth v. Brien*, a recent appeals court case, we see one of the rare appellate decisions discussing the criminal aspects of c. 142A.

Brien was the principal of a corporation named American Sunroom. The corporation filed for bankruptcy after collecting deposits on two jobs for sunroom construction, one of which the company started but did not complete, the other which was never started. It is likely that Brien assumed that he had no personal exposure to the homeowners once the corporation filed for bankruptcy. However, he was mistaken.

Though the decision does not say so, the customers obviously complained to the District Attorneys' office and, in response, the Commonwealth filed two criminal complaints (one for each customer) against Brien personally. In essence, both complaints alleged that Brien collected the deposits but never completed the work. Section 17 of the Act prohibits a contractor from "abandoning or failing to perform, without justification, any contract." Thus, by collecting the deposits without completing the work, the Commonwealth alleged that Brien violated the Act. The court found Brien guilty on both counts (the decision does not state whether a fine, imprisonment, or both was imposed).

Brien appealed, with one of his arguments being that the Commonwealth failed to prove that his alleged violation of the Home Improvement Act was "willful and knowing." Rather, the Commonwealth proceeded on the theory that if a violation of the Home Improvement Act is proven, it does not need to prove intent. The Commonwealth appeared to have reasoned that because Section 17 of the Act lists prohibited conduct and references that criminal sanctions under Section 19 are available for such violations, once a violation of Section 17 is established, a guilty finding must necessarily follow (in other words, strict criminal liability).



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The appeals court reversed the guilty finding. It looked at Section 19 and noted the specific statutory requirement that for criminal sanctions to apply, the violation of the statute must be willful and knowing. Because the Commonwealth proved the statutory violation but not the intent, the lower court should not have entered a guilty finding. Therefore, Brien avoided criminal liability, though likely spent much more than the deposits defending the case and prosecuting the appeal, to say nothing of the emotional toll that the criminal prosecution must have taken on him.

This case presents a stark reminder that criminal sanctions are available for failure to comply with the Home Improvement Act and the "corporate shield" will not protect the principal from either criminal or civil liability. While criminal prosecutions are rare, they do happen. Compliance with the Act, though it may be cumbersome, is still much cheaper than defending an alleged violation in court and risking fines, incarceration or both.