



Articles - Sheehan

The Home Improvement Act: Broader Than You Might Think

It is well established that the Home Improvement Act, Massachusetts General Laws c. 142A, covers those who provide construction services on home improvement projects to pre-existing, owner-occupied one to four family dwellings. In *Mark Bombara Interior Design v. Bowler*, an interior designer discovered that even those who do not actually perform the construction work may be covered by the Act.

Bombara was an interior designer who contracted to decorate and renovate a condominium unit. The parties executed a written contract, though not one which complied with the Act. In the contract, Bombara agreed to create a design for the owner and to "place all orders on the Client's behalf for merchandise, materials and labor. All effort will be made to achieve a timely delivery and installation."

The project required significant construction to implement Bombara's design. The owner emphasized that he did not want to deal with contractors or subcontractors and, as a service to his client, Bombara, assumed the responsibility for hiring, scheduling and supervising laborers. Though he coordinated it, Bombara himself did not perform any of the construction work.

The parties had a falling out due to project delays, increased costs and the like. The owner refused to pay Bombara's invoice. Bombara initiated a lawsuit to recover his fees. The owner counterclaimed alleging that Bombara violated the Act by failing to disclose that he was not a registered contractor, failing to submit a proper c. 142A contract and failing to complete the job.

At the trial level, Bombara won. The trial court awarded him damages for the owner's breach of contract. As to the counterclaim alleging violation of the Act, the trial court held that because Bombara neither identified himself as a contractor nor fit the definition of a contractor in the statute, he could not be liable under that statute. The owner appealed the trial court's decision.

The Supreme Judicial Court reversed the trial court with respect to whether Bombara was covered by the Act. The SJC noted that the Act covers not only those who do the work themselves, but one who "through himself or others, undertakes...residential contracting work." Even though Bombara himself did no construction work and identified himself as an interior designer only, by hiring and supervising the project subcontractors who did the actual work, he engaged in residential construction services "through others." Therefore, the Court said, Bombara's services fell within the reach of the Act. The Court rejected Bombara's argument that he was only an interior designer, a profession which Bombara claimed was not covered. The Court looked at earlier drafts of the Act and noted that the Legislature had considered expressly exempting interior designers from the Act's purview, but ultimately decided against such an express exemption. Thus, because Bombara was not a member of an exempt profession and conducted residential contracting services "through others," even if only incidental to the design services, the Act applied.

Although the Court upheld the finding that the owner had breached the contract and affirmed the trial court's award of damages to Bombara, it remanded the case back to the trial court for further proceedings given its



ruling that Bombara was, in fact, covered by the Act. Thus, the owner received another bite at the apple to prove that Bombara's violation of the Act caused him damage. Although Bombara won the battle (the owner did breach the contract and did owe him damages), he may have lost the war. If successful, the owner's damages could offset any monies otherwise owed to Bombara.

So, where did Bombara go wrong and what might he have done differently?

The Act covers a wide variety of projects. "Residential contracting" is broadly defined as: "the reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, or demolition, or the construction of an addition to any pre-existing owner occupied building containing at least one but not more than four dwelling units, which building or portion thereof is used or designed to be used as a residence or dwelling unit, or to structures which are adjacent to such residence or building."

A "contractor" is defined as "any person who owns or operates a contracting business who, through himself or others, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for, residential contracting work." Only limited trades are expressly exempted from the Act including electricians, plumbers, architects or "any other persons who are required by law to attain standards of competency or experience as a prerequisite to licensure."

Do not assume that simply because you sub out all the work, do not consider yourself a "contractor," and are not performing any construction yourself, that you are not covered by the Act. As soon as you take on oversight of any aspect of a residential construction project which would otherwise fall under the Act, you may be subject to the Act's long reach. Bombara learned the hard way. Had he limited his services to designing and ordering materials, he probably would have been fine. His mistake was taking on general contractor type obligations.

When working on an owner occupied residential project, carefully review your scope of work. If any portion of your work, or the work of others who you engage, falls within the definition of residential contracting, assume that you need to comply with the Act. The Act is very pro-consumer, and the ramifications of a violation could be severe.