

The Saiber Construction Law Column: March 2023

March 20, 2023

Source: MetroBuilder's Onsite Magazine

Enacted in 2004, the Contractors' Registration Act (the "Act") requires all contractors in New Jersey to register annually with the Division of Consumer Affairs ("DCA") if they are "engaged in the business of making or selling home improvements."

In *Vascos Excavation Group LLC v. Gold*, a case decided by the Court of Appeal of California in December 2022, a contractor paid a hefty price for failing to be licensed properly in California. In this case, a dispute arose between the contractor and property owner regarding the amount due under their contract, which contained an arbitration provision. An arbitrator awarded the contractor damages and penalties totaling \$111,440.29. The owner filed a court action to vacate the award, arguing that the contractor failed to show it was duly licensed in California when it performed its construction services.

The Court of Appeal held that the arbitrator could only determine the rights of the parties if they had a valid contract and, because the contractor was unlicensed, the court deemed the contract with the owner to be illegal. California law also provided that contractors could not maintain legal or equitable actions unless the contractor was licensed when it performed under the contract at issue. Consequently, the arbitration award in favor of the contractor was found to have been issued pursuant to an illegal or unenforceable contract and had to be vacated.

New Jersey's Contractors' Registration Act is not as harsh as the California law, but the Act still sets forth consequences if a contractor violates the Act. Specifically, a violation of the Act is considered an unlawful practice and also a violation of the Consumer Fraud Act (which provides for the recovery of treble damages and attorneys' fees to a prevailing party). In addition, a person who "knowingly violates" the Act is guilty of a crime of the fourth degree (which is punishable with up to 18 months in prison and a fine of up to \$10,000).

New Jersey contractors subject to the Contractors' Registration Act should therefore make certain that they register annually with the DCA.