

Finding of N.J.A.C. 13:45A-16.2(a)6v violation upheld; total recovery under the Consumer Fraud Act for compensatory damages in small claims division court may not exceed \$1,000; judgment reduced to limit. *Wisser v. Kaufman Carpet Co., Inc.*, 188 N.J.Super. 574, 458 A.2d 119 (App.Div.1983).

Violation of Consumer Fraud Act. *Swiss v. Williams*, 184 N.J.Super. 243, 445 A.2d 486 (Dist. Ct. of Mercer Co.1982).

SUBCHAPTER 17. HOME IMPROVEMENT CONTRACTOR REGISTRATION

Authority

N.J.S.A. 56:8-1 et seq., specifically N.J.S.A. 56:8-152.

Source and Effective Date

R.2004 d.418, effective November 1, 2004
(operative November 9, 2004).

See: 36 N.J.R. 3506(a), 36 N.J.R. 4984(a).

Public Notice: Implementation of Home Improvement Contractor Registration Regulation, effective December 31, 2005. See: 37 N.J.R. 87(a).

13:45A-17.1 Purpose and scope

(a) The purpose of the rules in this subchapter is to implement the provisions of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. as amended by P.L. 2004, c.16 (N.J.S.A. 56:8-136 et seq.) by providing procedures for the regulation of home improvement contractors and establishing standards to facilitate enforcement of the requirements of the Act. The rules establish the Division's registration procedures for those persons who fall under the requirements of this law.

(b) These rules shall apply to home improvement contractors in this State unless otherwise exempt under N.J.A.C. 13:45A-17.4.

13:45A-17.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Advertise” means to communicate to the public by means of any print, electronic or any other media, including, but not limited to, newspapers, magazines, periodicals, journals, circulars, flyers, business cards, signs, radio, telephone, facsimile machine, television, computer or the Internet. “Advertise” includes having a person's name in a classified advertisement or directory in this State under any classification of home improvement as defined in this section but does not include simple residential alphabetical listings in standard telephone directories.

“Director” means the Director of the Division of Consumer Affairs.

“Division” means the Division of Consumer Affairs in the Department of Law and Public Safety.

“Employee” means employee as defined in N.J.A.C. 18:35-7.1.

“Home improvement” means the remodeling, altering, painting, repairing, renovating, restoring, moving, demolishing, or modernizing of residential or noncommercial property or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, fire protection devices, security protection devices, central heating and air conditioning equipment, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or noncommercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or noncommercial property and includes any of the above activities performed under emergency conditions.

“Home improvement contract” means an oral or written agreement for the performance of a home improvement between a contractor and an owner of residential or noncommercial property, or a contractor and a tenant or lessee of residential or noncommercial property, if the tenant or lessee is to be obligated for the payment of home improvements made in, to, or upon such property, and includes all agreements under which the contractor is to perform labor or render services for home improvements, or furnish materials in connection therewith.

“Home improvement contractor” or “contractor” means a person engaged in the business of making or selling home improvements and includes corporations, partnerships, associations and any other form of business organization or entity, and their officers, representatives, agents and employees.

“Residential or non-commercial property” means a structure used, in whole or in substantial part, as a home or place of residence by any natural person, whether or not a single or multi-unit structure, and that part of the lot or site on which it is situated and which is devoted to the residential use of the structure, and includes all appurtenant structures.

13:45A-17.3 Registration required

(a) On or after December 31, 2005, unless exempt under N.J.A.C. 13:45A-17.4:

1. No person shall engage in the business of making or selling home improvements in this State unless regis-

tered with the Division in accordance with this subchapter; and

2. No person shall advertise indicating that the person is a contractor in this State unless the person is registered with the Division in accordance with this subchapter.

(b) Unless exempt under N.J.A.C. 13:45A-17.4, contractors hired by other contractors to make or sell any home improvements shall register with the Division in accordance with this subchapter.

(c) Officers and employees of a registered home improvement contractor shall not be required to register separately from the registered business entity provided that the officers and employees sell or make home improvements solely within their respective scopes of performance for that registered business entity.

(d) Officers and employees of a home improvement contractor that is exempt under N.J.A.C. 13:45A-17.4 shall not be required to register provided that the officers and employees sell or make home improvements solely within their respective scopes of performance for that exempt business entity.

Administrative change.
See: 37 N.J.R. 2212(a).

13:45A-17.4 Exemptions

(a) The following persons are exempt from the registration requirements of this subchapter:

1. Any person registered pursuant to "the New Home Warranty and Builders' Registration Act," P.L. 1977, c.467 (N.J.S.A. 46:3B-1 et seq.), but only in conjunction with the building of a new home as defined in N.J.A.C. 5:25-1.3;

2. Any person performing a home improvement upon a residential or non-commercial property owned by that person, or by the person's family;

3. Any person performing a home improvement upon a residential or non-commercial property owned by a bona fide charity or other non-profit organization;

4. Any person regulated by the State as an architect, professional engineer, landscape architect, land surveyor, electrical contractor, master plumber, locksmith, burglar alarm business, fire alarm business, or any other person in any other related profession requiring registration, certification, or licensure by the State, who is acting within the scope of practice of that profession;

5. Any person employed by a community association or cooperative corporation who is making home improvements within the person's scope of employment at the residential or non-commercial property that is owned or leased by the community association or cooperative corporation;

6. Any public utility as defined under N.J.S.A. 48:2-13;

7. Any person licensed as a home financing agency, a home repair contractor or a home repair salesman pursuant to N.J.S.A. 17:16C-77, provided that the person is acting within the scope of such license; and

8. Any home improvement retailer with a net worth of more than \$50,000,000 or any employee of such home improvement retailer who is making or selling such home improvements within the person's scope of employment of the home improvement retailer.

13:45A-17.5 Initial and renewal applications

(a) Each home improvement contractor required to be registered under this subchapter shall initially register with the Division by submitting the following on forms provided by the Director:

1. The name and street address of each place of business of the home improvement contractor and any fictitious or trade name to be used by the home improvement contractor;

2. The type of business organization;

3. The name, residence and business street address of each officer, director, principal and person with an ownership interest of 10 percent or more in the home improvement contractor business, including the percentage of ownership held;

4. The name and number of any professional or occupational license, certificate or registration issued by this State or any other governmental entity to any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business;

5. Whether the entity, any officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business has been adjudged liable in an administrative or civil action involving any of the situations in (a)5i through vi below. For the purposes of this paragraph, a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the entity, officer, director, principal or person with an ownership interest of 10 percent or more in the home improvement contractor business engaged in an unlawful practice or practices related to any of the named situations in (a)5i through vi below regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of a license, certification or registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any State or Federal agency. As described above, this paragraph covers the following situations:

i. Obtained any registration, certification or license by fraud, deception or misrepresentation;