

LEGAL-EASE



Contractor Worked for Free By Being Unlicensed When Work Commenced

If you think not having the proper C-10 license when installing a fire system, or doing low voltage (non-security system) work without the proper C-7 license, isn't that big a deal, think again! Outside of the potentially horrendous liability issues, you may end up working for free. In a recent decision of the California Supreme Court, a contractor forfeited almost \$1 million in compensation because it did not hold the proper license before it commenced work on a project.

In the case of *MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Company, Inc.*, decided mid-last year, the Court emphasized that it was the expressed intent of the California legislature, by requiring contractors to be properly licensed "at all times" during performance of a contract, to provide a strong deterrent against companies from doing unlicensed work. So even if it causes a "harsh result," and means the owner gets "free" work performed (or, in this case, the general contractor who had already been paid for the work by the owner, got the windfall), the contractor is **completely barred** from recovering compensation for the unlicensed work performed.

In the *MW Erectors* case, the contractor had won a bid for steel work on the construction of Disney's Grand California Hotel. It did not hold a license for either the structural steel or ornamental steel components of the job at the time it executed the contract with the general contractor. It obtained the license for the ornamental steel work before construction started, however, and obtained the license for the structural steel work only 18 days into the job.

The Court refused to allow the subcontractor to recover for *any portion* of the structural steel work (almost \$1 million), even though it obtained the license only a couple of weeks into the job, because it was not licensed "at all times" during the job. The Court did allow it to seek recovery for the ornamental steel work (at about \$350,000, the far lesser amount), because even though it did not have the proper license when it executed the contract, it did obtain the license before commencing work.

Thus, the Court recognized two exceptions where the lack of a license will **not** bar a contractor from suing for and recovering compensation if it did not have a license. The first is, as in the *MW Erectors* case, if the contractor did not have a license when it **entered into**

the contract, but obtained the proper license **before** commencing the work. The Court did make clear, however, that the contractor may not escape *any* sanction, because although the contract will be enforced, the contractor may still subject itself to a fine or other administrative discipline under the Contractors' State License Law for doing business (i.e., bidding for the job and executing the contract) without a license.

The other exception noted by the Court comes under the judicial doctrine of "substantial compliance," which had also been recognized by the legislature. Thus, the Court indicated the same harsh result faced by *MW Erectors* could be avoided if the contractor had been properly licensed **prior to** the time the contract work was commenced but sometime later its license expired or was suspended. If the contractor (1) acted "reasonably and in good faith" to maintain the proper licensure, (2) did not know or reasonably should not have known that it was not duly licensed when performance of the contract commenced, and (3) the contractor, upon learning of the lapse, acted promptly and in good faith to reinstate the license, then recovery would be allowed.

In short, it is **NEVER** appropriate to work without the proper licensing. It is easy to be "in denial" about the California requirement (now several years old) to hold a C-10 license to install **even one smoke detector** (as that makes it a "fire system" – so even though you "know what you are doing," or "have been doing this work for years," your ACO is **no longer sufficient**). That non-compliance could cost you not only a fine, not only possible administrative sanctions, and even possible liability for a loss many years down the line (where your insurance may not cover you, if you worked without a license). Now you also face the loss of any compensation for the job whatsoever.

If that isn't sufficient incentive to go out and get the proper C-10 to do fire, then I don't know what is!!

Mr. Gottlieb is a legal specialist in the security and fire protection industry. He provides contracts and other legal forms, and advises on business transactions and legal compliance matters.

LAW OFFICES OF
Glenn M. Gottlieb
BUSINESS & CORPORATE LAW

*Serving the Security and Fire Protection Industry
Representing the Southern California Security Association
Since 1993*

Tel: 310.645.8824 ■ Fax: 310.670.7542

E-Mail: gmgottlieb@att.net
www.glenngottlieb.com