



Business owners and employees now subject to personal liability for violation of New Jersey's Consumer Fraud Act. *By Brian A. Mills, Esq.*

A recent decision by the New Jersey Superior Court, Appellate Division, has extended the reach of New Jersey's Consumer Fraud Act, (the "CFA") through the corporate shield and into the pockets of the individual owners and employees of the company with whom a consumer has a contract. In the wake of this important decision, the corporate or LLC structure alone is insufficient to protect business owners and employees from personal exposure for business liabilities arising under the CFA.

The case, *Allen v. V and A Brothers, Inc.*, 414 N.J. Super. 152 (App. Div. 2010), was brought by homeowners against a landscape contracting corporation, its sole individual shareholder and two of its employees alleging breach of contract and consumer fraud in connection with the construction of a retaining wall on their Princeton home. In holding the three individuals liable for damages in excess of \$600,000, the Court interpreted the Consumer Fraud Act to permit the imposition of damages against the individual owner and employees of a company even though the contract was with a corporation and even though no individual was deemed to have committed

an "affirmative act" in violation of the CFA. The individuals were deemed personally liable for the damages by virtue of the company's failure to adhere to certain "technical requirements" under the CFA. The Court went on to say that it is not necessary to pierce the corporate veil in order to impose personal liability.

The CFA was adopted in 1960 and thereafter amended to punish "unconscionable commercial practices." As such, Courts have established that the CFA is remedial legislation to be liberally construed in favor of consumers. In short, the consumer is entitled to the benefit of every doubt whenever a potential claim or issue arises under the CFA. An expressed intent of the legislation was to "increase the attractiveness of consumer actions to attorneys" by allowing an aggrieved consumer to recover damages equal to 300% of the consumer's actual losses plus attorney fees in prosecuting the case. In essence, the legislation removes the cost prohibitive barrier to bringing a lawsuit against a business where the damages are trivial. Therefore, lawyers for consumers are likely to bring small cases knowing the Court will force the defendant goods

or service provider to foot the bill for the plaintiff's lawsuit. Moreover, damages awarded under the CFA are not covered by insurance.

In furtherance of the CFA's objectives, the New Jersey Division of Consumer Affairs has enacted a number of regulations which elaborate on the CFA obligations of providers of certain types of goods and services. Taken together, the CFA statutes and regulations bring almost any business that does business with consumers within the sights of the CFA and its remedial objectives designed to punish businesses for actions deemed unconscionable.

Most significantly, what is deemed an unconscionable business practice under the CFA and its regulations may not be obvious to the layperson. For instance, the regulations enacted pursuant to the CFA make special provision and impose specific obligations on the following types of businesses-mail order businesses, retailers of meats, furniture and household furnishing retailers, internet dating services, prepaid calling cards, home appliance repair services, sellers of animals, home improvement contractors, food and dining establishments,

automobile and watercraft dealers and repair facilities, tire retailers, toy stores, health clubs, towing companies, Realtors, ticket sales, and sellers of motorized wheelchairs. Seemingly benign things such as failing to provide a starting and ending date for a construction project, certain disclosures or insurance information on a construction contract are “technical violations” of the CFA and deemed unconscionable business practices.

In addition, duties are imposed on all retailers with respect to refund policy, marketing by facsimile, disclosure of unit pricing and advertising generally. Benjamin Franklin may have been speaking directly to consumer businesses in New Jersey when he said “an ounce of protection is worth a pound of cure.” Preventative measures are the key to avoiding liability and exposing a business to significant liability under the CFA regardless of the value of the underlying “unconscionable”

consumer transaction. Under the Court’s decision in *Allen v. V and A Brothers, Inc*, this exposure now extends to the owners and employees of the business as well.

Accordingly, it is now more important than ever for businesses that transact with consumers take steps to ensure it does not run afoul of the CFA. Business owners and managers should consult with an attorney familiar with the requirements of the CFA to conduct a CFA audit and review contracts, advertising and business practices for potential areas of exposure.

And CFA considerations aside, regular review of a business’ terms and conditions is an essential exercise. What could be more important than defining the scope and parameters of the relationship between a business and its customers? Ensuring the customer’s expectations are consistent with the business’ offer is one of the most

important keys of business and is also a way to avoid CFA claims. Take note of customer issues and address them at your CFA audit.

Maselli Warren, P.C. has taken the *Allen v. V and A Brothers, Inc*, case to the New Jersey Supreme Court on behalf of the individuals deemed liable for the company’s CFA violations. A successful appeal would be a tremendous and important victory for business in New Jersey.

Brian Mills, Esq. focuses his practice on the representation of business entities in the buying and selling of businesses and real estate, corporate and partnership structuring and financing. He also assists business owners in planning for the future by implementing succession plans for their businesses and by assisting them to establish their legal rights and responsibilities with respect to the operation of their business. Brian also has substantial experience drafting and negotiating office and retail leases. To schedule an appointment with Brian call 609-452-8411 ext. 109

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