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Unfair and deceptive business practices: individual claims - by Michael Brangwynne

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This is the sixth article in a series on the circumstances that can give rise to a civil lawsuit. Earlier articles in the series can be found on Fletcher Tilton's website and on the NEREJ website.

The Mass. Consumer Protection Act: Another common cause of action is for unfair or deceptive business acts or practices in violation of Massachusetts General Laws, Chapter 93A - the Massachusetts Consumer Protection Act. Under Chapter 93A, "unfair or deceptive acts or practices in the conduct of any trade or commerce" are declared unlawful. Chapter 93A enables both the attorney general and private citizens to take legal action against businesses or individuals engaged in such conduct. Chapter 93A permits claims by individual consumers - under Section 9 - and claims between businesses - under Section 11. This article focuses on claims under Section 9.

Unfair and Deceptive Conduct

Chapter 93A does not define any particular conduct as "unfair or deceptive," but some examples of general conduct that have been found to violate Chapter 93A include false or misleading advertising, charging a customer a higher price than the price listed or advertised, failing to fulfill warranty obligations, and failing to inform customers of relevant information regarding a product or service that misleads the customer in any way.

More specifically, certain conduct by particular business owners has been recognized as a violation of Chapter 93A. For example, it is a violation of Chapter 93A for a landlord to lease to a tenant a rental unit that contains a condition that may endanger or materially impair the health, safety, or well-being of the tenant. A landlord who fails to hold tenant security deposits in a separate, interest-bearing account is also subject to a claim for violation of Chapter 93A.

The violation of other Massachusetts statutes has also been held to constitute unfair and deceptive practices under Chapter 93A. For example, a home improvement contractor who fails to execute a written contract with his or her client homeowner for a home improvement project that exceeds \$1,000 - as required by Massachusetts General Laws Chapter 142A - may be subject to a claim for unfair or deceptive business practices under Chapter 93A.

Punitive Damages: A critical aspect to a cause of action under Chapter 93A is that if the plaintiff is successful in proving an unfair or deceptive act or practice by the defendant, the plaintiff may be entitled to punitive damages, or damages meant to punish the defendant for his or her wrongful conduct.

Under appropriate circumstances, the plaintiff may be entitled to recover reasonable attorney's fees in pursuing a claim. If the plaintiff can establish that the defendant has intentionally engaged in the unfair or deceptive conduct, the plaintiff may be entitled to anywhere from double to triple his or her actual damages.

The 93A Demand Letter: For individual consumers making a claim under Section 9, the consumer must first send a demand letter to the alleged wrongdoer at least 30 days prior to filing suit that describes the wrongful conduct, sets forth the injury suffered, and gives notice that a demand is being made under Chapter 93A.

The 93A demand letter presents a potential defendant with an opportunity to avoid the punitive damages described above. If the potential defendant responds within thirty days with an offer of settlement that is “reasonable in relation to the injury actually suffered,” the claimant will not typically be entitled to recover attorney’s fees or multiple damages. On the other hand, failing to respond to a 93A demand letter with a reasonable offer of settlement may constitute a further independent basis for multiple damages and attorney’s fees under certain circumstances.

Considering the foregoing, an individual or business faced with claims of unfair or deceptive business practices must take care to respond appropriately. In the next installment, we will consider Section 11 business-to-business claims, some best practices for avoiding Chapter 93A claims in general, and responding to claims once they have been raised.

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