**CONSUMER FRAUD**

Pellegrino Muller v. Fred Allen Builders, Docket No. A-0554-18T1 (N.J. App. Div. May 5, 2020) (per curiam)

Unpublished decision reversing the judgment in favor of plaintiff and award for treble damages and attorneys’ fees under the Consumer Fraud Act (“CFA”), N.J.S.A. 56:8-1 to -20. Plaintiff’s decided to add a bedroom to the rear of their home and contacted Stanley’s Home Improvement, LLC. Plaintiff’s met with Stanley’s vice president, Sands. Sands observed the area, took notes, discussed financing, and explained that someone else would provide an estimate. Sands also gave a "sales pitch," stating Stanley's had been in business for "many years," stood "by their work," and maintained "a terrific reputation." Plaintiffs later met with Stanley's foreman. Soon thereafter, an initial written estimate was provided but it was not signed by either plaintiff or Sands. As time passed, plaintiffs became concerned with the quality of work and timeframe. Plaintiff’s emailed Sands on several occasions expressing their concerns and received no response until they referenced Sands position as the vice president with the Better Business Bureau. Sands responded that he had been out of business for over a year and Stanley’s was no longer in business. Plaintiff’s filed suit including against Sands individually.

The trial court conducted a one day bench trial on plaintiff’s CFA claim against Sands and found a CFA violation. The Appellate Division held that the evidence did not support the trial court's determination that Sands violated the CFA by personally engaging in an unconscionable business practice. While Sands conducted himself as an agent of Stanley’s, the Appellate Division noted that being an agent or officer, without more, did not establish an unlawful business practice under the CFA. Plaintiffs were required to prove–but failed to prove–that Sands engaged in an affirmative act; a knowing omission; or violated an administrative regulation. Additionally, Stanley’s was a limited liability company and absent certain limited circumstances, an employee, member, or officer was not personally responsible for the debts, obligations, liabilities, negligence, or intentional torts of such an entity. Other than engaging in puffery, plaintiffs did not show that Sands personally made actionable fraudulent statements that would render him personally liable under the CFA. The Appellate Division concluded that as plaintiffs did not meet their burden of proving that Sands violated the CFA, they are not entitled to an award of damages, let alone treble damages, attorney’s fees, or costs of suit.