



Court Awards \$4.6 Million for Violation of Prompt Pay Act

PA project owner must pay its contractor \$4.6 million due to its failure to timely explain the reasons for its non-payment. This recent ruling by a Massachusetts Superior Court judge underscores the importance of strictly complying with the Massachusetts Prompt Payment Act, G.L. c. 149, § 29E (the “Act”).

Recognizing the need for a prompt review and payment of a contractor’s requests for payment, the Act imposes mandatory obligations on the owner of a private commercial construction project or residential project of more than 4 dwelling units, when the general contract amount exceeds \$3 million. The owner must approve or reject a contractor’s request for payment within 15 days and make any payment within 45 days of its approval, subject to a limited exception where the payment depends on payment from a third party. Although similar timelines are typical in most general contracts, the Act also imposes an affirmative obligation on an owner who denies a payment request to explain both the factual and contractual basis for the rejection in writing and certify that the rejection has been made in good faith, all within that 60-day time period required for payment. Failure to do so results in automatic approval of the contractor’s payment request.

The consequence of failing to comply with this affirmative explanation obligation was on full display in the recent case of *Tocci Building Corp. v. IRIV Partners, LLC*, No. 19-00405. The owner in *Tocci* timely rejected in writing a number of payment applications and at least vaguely disagreed with the amount sought in some of the requisitions. The owner, however, failed to provide a written explanation specifying the factual and legal basis for its rejections or a certification that the rejection was made in good faith. In finding that the contractor was entitled to summary judgment on its claims for payment, the Superior Court rejected the owner’s argument that the written explanation and certification procedures were merely “technical” requirements that could either be waived by the contractor or subject to the owner’s subsequently-asserted defenses. The Court held that these requirements were an integral feature of the policy underlying the Act and need to be enforced as written to give teeth to the Act’s written explanation requirements.

The *Tocci* decision serves as an important reminder that a project owner must expressly and timely inform its contractor why it is denying a request for payment. Owners should be wary of withholding money without a clear written explanation for the decision or risk waiving any defense it may have. It could end up being a multi-million dollar mistake.

About OCM

OCM is boutique litigation firm based in Burlington, Massachusetts, whose clients include Fortune 500 companies as well as closely held businesses and astute individuals. OCM's attorneys help their clients not only resolve disputes but also avoid them altogether. Whether you are facing a courtroom battle, arbitration, mediation, or negotiation, OCM can help.



[Connect with us on LinkedIn](#)



OCM Law 1 Van De Graaff Dr. Burlington, Massachusetts 01803 United States (781) 359-9000