

*Monthly Memo*

FREE LANDSCAPE WORK FOR YOUR BUSINESS UNDER  
CALIFORNIA'S BUSINESS & PROFESSIONS CODE

Mr. Alatraste sought out a landscape contractor to do work at his newly built home. He subsequently hired Cesar's Exterior Designs, Inc. to do the work. The two principals knew each other for more than 12 years prior to the start of the project. Having a trusting friendship, the parties agreed upon and drafted a written contract which described the duties and obligations of both parties.

After approximately five months from the time Cesar's Exterior Designs began undertaking the project, Mr. Alatraste decided that **not only should he have not paid \$57,500** to Cesar's Exterior Designs, Inc. for his services but that he, Mr. Alatraste, should be reimbursed the entire amount of \$57,500.00. The reason was that Cesar's Exterior Designs, Inc. was not a licensed contractor per California Business and Professions Code Section 7031(b). A lawsuit was undertaken by Mr. Alatraste to obtain a refund. The pertinent Business and Professions Code provides not only for civil penalties but also criminal penalties.

In the matter of *Esaul Alatraste v. Cesar's Exterior Designs, Inc.*, a California Appellate Court determined that Mr. Alatraste was entitled to a refund.

Per California's Business and Professions Code Section 7031(b), a business or an individual must be a licensed contractor to earn income and to be paid for services rendered. Although both parties concede they both knew at the outset of the working relationship that Cesar's Exterior Design, Inc. was not a licenced contractor, although Cesar's was incorporated, it was not licensed to do work as a contractor in California. Mr. Hernandez, the owner of Cesar's Exterior Design, Inc., had his son, then studying, preparing to take the licencing test. "Between September and November 2006, Mr. Hernandez informed Mr. Alatraste on three occasions that his son was scheduled to take the California contractor's license exam at the end of 2006 or early 2007."

The Court of Appeals determined that Mr. Alatraste was entitled to a total refund of the \$57,500.00. Mr. Hernandez argued that although he was not originally licensed, he was subsequently licensed and money paid by the homeowner should be excluded. The Court of Appeal, referring to previous court decision, wrote that a contractor is ineligible to "... compensation under the terms of the statute if at any time during the performance of an agreement for contractor services, he or she was not duly licensed." The Court of Appeals also decided that all compensation, even if earned after the contractor was duly licensed, must be returned to Mr. Alatraste.