2012 IL App (1st) 102880-U

FIRST DIVISION
May 29, 2012

No. 1-10-2880

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RONALD W. KAFKA, Individually and as Agent of Fathers & Sons Contractors, Inc. and FATHERS AND SONS CONTRACTORS, INC., an Illinois corporation, Defendants-Appellees.	) Appeal from the) Circuit Court of) Cook County.))) No. 06 CH 08658))) Honorable William O. Maki,) Judge Presiding.)

JUSTICE HALL delivered the judgment of the court.

Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court's finding that the defendants violated the Consumer Fraud and Deceptive Practices Act (the CFA) was not against the manifest weight of the evidence; the CFA applied because the defendants' conduct was not merely a breach of contract but implicated consumer concerns; the individual defendant was personally liable for the judgment; the civil penalty imposed was not excessive; and the defendants waived their claim that the judgment was based on inadmissible evidence.

¶ 2 Defendants Ronald Kafka (Mr. Kafka) and Fathers and Sons Contractors, Inc. (FSC) appeal from a judgment and civil penalty of $50,000 entered against them and in favor of plaintiff State of Illinois for their violation of the Consumer Fraud and Deceptive Practices Act (815 ILCS 505/1 *et seq.* (West 2006) (the CFA)). The following issues are raised on appeal: (1) whether the judgment was against the manifest weight of the evidence; (2) whether the CFA applied to the defendants' conduct; (3) whether the trial court erred in piercing the corporate veil; (4) whether the civil penalty was excessive; and (5) whether the judgment was based on inadmissible evidence.

¶ 3 CIRCUIT COURT PROCEEDINGS

¶ 4 Based on consumer complaints to the Office of the Illinois Attorney General, the State filed a two-count complaint against the defendants. Count I alleged numerous violations of the CFA, and count II alleged violations of the Home Repair and Remodeling Act (815 ILCS 513/1 *et seq.* (West 2006)).

¶ 5 The case proceeded to a bench trial. At the close of the State's case, the trial court granted the defendants' motion to dismiss count II. The court also granted the defendants' motion for a directed finding as to 16 of the consumers but denied the motion as to the following consumers: Julian Irianda, Luba Chernov, Maria Giraldo, Jocelyn and Ryan McFadden and Lenore Cruz.

Following the defense case, the trial court found against the defendants on only one allegation of consumer fraud. The evidence pertinent to the court's finding is summarized below.

¶ 6 I. Trial Evidence

¶ 7 A. *The Irianda Complaint*

¶ 8 1. The State's Case

¶ 9 In September 2003, Julian Irianda contacted FSC about a remodeling project. A few days later, he met with Mr. Kafka. They discussed the project, which consisted of adding three bedrooms and two bathrooms. Mr. Kafka gave Mr. Irianda a price of $69,500. Mr. Irianda needed the project completed by Christmas 2003, and Mr. Kafka assured him there would be no problem completing the project by that time. FSC would begin work as soon as they had the permits, which would take about two weeks.

¶ 10 Mr. Irianda signed the contract with FSC on September 11, 2003. The contract provided that the start and completion dates could not be guaranteed. Although Mr. Kafka told Mr. Irianda that the payments on the contract would not be due until after the project was completed, the contract provided a schedule of payments based on the percentage of the work completed.

¶ 11 The required permits were not obtained until October 28, 2003, and FSC did not begin work on the project until November 2003. The project was finally completed in November 2004.

¶ 12 2. The Defendants' Case

¶ 13 According to Mr. Kafka, the Irianda project was delayed because Mr. Irianda did not pay the $10,000 necessary to begin the work. Mr. Kafka denied that he ever discussed a start or completion date or how long the project would take with Mr. Irianda. Mr. Irianda agreed to delay

the project until spring.

¶ 14 B. *The Chernov Complaint*

¶ 15 1. The State's Case

¶ 16 In November 2003, Luba Chernov contacted FSC regarding a remodeling project, consisting of adding a dining room, a room addition to the kitchen and a wall built in the basement. She had contacted other contractors who told her the project would cost at least $28,000. Mr. Kafka came to her residence in Plainfield, Will County. After Ms. Chernov showed him the architectural plans, Mr. Kafka told her it was a very simple project that could be done in three weeks. He gave her a price of $23,400 and told her FSC could start immediately. Ms. Chernov signed the contract on November 25, 2003. The contract provided that start and completion dates were available only if the customer made a written request, and the contractor's acceptance was in writing.

¶ 17 Ms. Chernov applied for the building permit on December 1, 2003, but it was not issued until February 5, 2004, because FSC was not yet licensed to work in Will County. When she contacted FSC about a start date, she was told the work could not start due to weather-related problems. In March 2004, FSC began work by pouring the foundation. The work then stopped. On March 27, 2004, she made a payment and was given a letter stating the work would start again in 3 weeks. When FSC did not start work in three weeks, Ms. Chernov called every other day to find out when FSC was coming back. Finally, on May 6, 2004, FSC started work again on the project. As of June 23, 2004, FSC promised to complete the work within 30 days. The project was finally completed in August 2004.

¶ 18 2. The Defendants' Case

¶ 19 Mr. Kafka denied that the project was held up because FSC was not licensed to work in Will County. FSC did not become licensed in Will County until after Ms. Chernov paid her deposit on January 9, 2004. After the permit was issued, he had no further contact with the Chernov project.

¶ 20 C. The Giraldo Complaint

¶ 21 1. The State's Case

¶ 22 In April 2004, Maria Giraldo met with Mr. Kafka at her residence in Berwyn to discuss a remodeling project. The project consisted of adding a second floor with three bedrooms and a bathroom. Ms. Giraldo was expecting a baby in June 2004, and needed to have the project completed or close to completion by the time the baby was born. Mr. Kafka assured her there would be no problem to complete the project within that time frame. Ms. Giraldo signed the contract on April 12, 2004. The contract provided that FSC could not guarantee starting and completion dates. Ms. Giraldo did not yet have financing for the project, but Mr. Kafka told her that if she paid him $1, he would apply for the permits and begin the project, which she did.

¶ 23 On May15, 2004, Ms. Giraldo paid FSC $7,900. When the work was not started, she tried repeatedly to contact Mr. Kafka. Ms. Giraldo contacted the City of Berwyn and was told that the permit had not been applied for yet. When she finally reached Mr. Kafka, he told her they were waiting for her to pay for the permit. While she understood that she would be paying for the permit, Mr. Kafka told her that FSC would apply for the permit. FSC did not receive a permit until July 6, 2004, after the birth of Ms. Giraldo's baby. It was only after Ms. Giraldo

filed a complaint with the Attorney General in September 2004, that FSC began the remodeling project.

¶ 24 2. The Defendants' Case

¶ 25 Mr. Kafka denied discussing a start date for Ms. Giraldo's remodeling project. He did not put start or finish dates in contracts because there were too many variables. Ms. Giraldo never told him she was pregnant. Ms. Giraldo paid the deposit on May 15, 2004; the building permit was applied for on June 4, 2004, and issued on July 6, 2004. Based on Mr. Kafka's experience, the permit process took a month in the suburbs and two months in the City of Chicago. Ms. Giraldo did not return his calls. He did not meet with Ms. Giraldo again until September 15, 2004, at which time she wanted some changes to the project. Mr. Kafka was not aware on that date that Ms. Giraldo had filed a complaint with the Attorney General.

¶ 26 D. *The McFadden Complaint*

¶ 27 1. The State's Case

¶ 28 In the fall of 2004, Jocelyn and Ryan McFadden met with Mr. Kafka to discuss a bathroom remodeling project. Mr. Kafka told them their project would take about five days. The McFaddens explained to Mr. Kafka that they needed to have the remodeling project finished by Christmas 2004. Mr. Kafka told them he had several crews and that the job could be started the Monday after Thanksgiving, which was November 29, 2004. Since other contractors they contacted could not complete the project by Christmas, the McFaddens decided to use FSC. The contract was signed on November 16, 2004, and the McFaddens paid a deposit of $1,500. Contrary to the McFaddens' discussion with Mr. Kafka, the contract provided that the start and

completion dates could not be guaranteed.

¶ 29 On November 29, 2004, Mrs. McFadden contacted FSC to ask why the work had not been started. She was told that the necessary permit had not been obtained and that Mr. Kafka's mother had passed away. Mrs. McFadden pressed for a start date with no success. She finally spoke with Mr. Kafka, who informed her that, per their contract, two-thirds of the total payment was required before work would be started. The McFaddens made a second deposit to FSC on December 8, 2004. On that date, Mr. McFadden contacted FSC and was told the crew was picking up materials, and the job would be started that day. However, when Mr. McFadden spoke to "Ziggy," his contact with FSC for the project, he was told that the work would not start for a week. Mr. McFadden then stopped payment on the check. Following litigation, the parties settled their dispute.

¶ 30 2. The Defendants' Case

¶ 31 Mr. Kafka denied discussing with the McFaddens when their remodeling project would start. They did tell him they wanted the project completed by the holiday season, but they were not more specific. He told them it could be done if everything worked out and that a building permit was required before any work could be done. There was no discussion regarding the start date when the contract was signed. The permit was obtained two weeks after the contract was signed. Mr. McFadden called on December 5, 2004; Mr. Kafka explained to him that his mother had just died and the office was closed for a few days. According to Mr. Kafka, the McFaddens' project could have been completed by Christmas, but when his crew arrived to start work, they were turned away.

¶ 32 E. *The Cruz Complaint*

¶ 33 1. The State's Case

¶ 34 In May 2005, Lenore Cruz lived with her brother and sister-in-law in Merrionette Park. Ms. Cruz contacted FSC about adding a bedroom to her residence. Paul Marsala from FSC came to her residence and looked at the area where the bedroom was to be built. He gave Ms. Cruz a price of $14,000 to do the project. About a week later, Mr. Kafka stopped by and told Ms. Cruz that he had fired Mr. Marsala for giving her the wrong quote. He presented her with a contract dated May 21, 2005, with a price of $21,900 for the project. He told her the project would take two to six weeks. She told Mr. Kafka that she needed the project finished by August 1, 2004, and signed the contract. However, nothing in the contract guaranteed when the project would be completed.

¶ 35 When Ms. Cruz asked when the work would start, Mr. Kafka told her he would start right after receiving the building permit, which would take about one to two days. Ms. Cruz gave Mr. Kafka $4,000, which he told her he needed to obtain the permit. On July 15, 2005, Mary Beth Ingberg, Ms. Cruz sister-in-law, contacted Mr. Kafka to find out why the work had not begun. While Mr. Kafka told her the Village of Merrionette Park had held up the permit process, she learned that FSC did not apply for the permit until July 14, 2005. FSC did not obtain the permits until sometime in August 2005.

¶ 36 2. The Defendants' Case

¶ 37 At the first meeting with Ms. Cruz, Mr. Kafka took measurements and gave Ms. Cruz a price of $23,900. When Mr. Kafka brought the contract to her residence for her to sign, Ms.

Cruz tried to negotiate a lower price. Mr. Kafka finally agreed to give her a $2,000 discount. He denied that he ever discussed with her a price of $14,000 or any other price for the project. Ms. Cruz never told him she wanted the project completed by August 1, 2005. Ms. Cruz insisted on giving him the $4,000; he never asked for deposits. Mr. Kafka denied telling Ms. Cruz that the $4,000 deposit was for the permit. The permit for the project was issued on August 3, 2005. He never told Ms. Cruz that it would take two days to get a building permit or that the Village of Merrionette Park was holding up the permit; he had nothing to do with obtaining permits.

¶ 38 FSC sent an independent architect to meet with Ms. Cruz to draw up the plans for the addition. When Mr. Kafka noticed that the plans called for larger room sizes than called for by the contract, he sent Mr. Marsala to clarify what Ms. Cruz wanted and to have her sign the necessary change order. She did not sign the change order and demanded that FSC build the larger rooms for the price in the contract. When Mr. Kafka told her it could not be done for the same price, she wrote letters to the Better Business Bureau and the Attorney General complaining about the defendants.

¶ 39 II. Trial Court Findings

¶ 40 The trial court found that the defendants had successfully rebutted all but one of the allegations of violations. The court stated as follows:

> "But the testimony that is common to the factual rendition of misrepresentation does demonstrate a continued pattern of misrepresentation by the Defendant Ronald Kafka, as it relates to false time frame and false problems over the time frame for permits.
>
> The evidence as relayed by the witnesses does clearly demonstrate the continuing

pattern of Mr. Kafka promising a false time frame or an unrealistic time frame and false promises over the time frame for the ability to obtain building permits.

These are important issues for the consumer, when a project starts and when a project will be completed. The explanation offered by Mr. Kafka is simply not consistent with his years of experience in the construction industry.

His years in the construction industry strongly suggests that he knows how long it takes to get a building permit. He knows how long it takes to get architectural blueprints. He knows how long construction takes. When consumers specifically asked him questions about certain time frames, he's misrepresented the reality of whether or not that could be achieved. This has caused harm to these consumers. "

¶ 41 The trial court determined that the defendants violated section 2 of the CFA. The court found Mr. Irianda, Ms. Chernov, Ms. Giraldo, the McFaddens and Ms. Cruz to be credible witnesses. The trial court further found that Mr. Kafka's conduct constituted a deceptive practice in that it had the tendency or capacity to deceive the consumers and involved a material fact upon which the consumers could be expected to rely. In this case, the consumers relied on the start/completion dates when they decided to hire FSC.

¶ 42 Pursuant to section 7(b) of the CFA, the trial court imposed a civil penalty in the amount of $50,000 against the defendants. 815 ILCS 505/7(b) (West 2006). Based on its finding that the evidence showed such a "unity of interest and ownership" that FSC had no separate corporate existence apart from Mr. Kafka, the court "pierced the corporate veil" to impose the civil penalty against Mr. Kafka, as well as FSC.

¶ 43 The defendants appeal.

¶ 44 ANALYSIS

¶ 45 I. Manifest Weight of the Evidence

¶ 46 A. *Standard of Review*

¶ 47 A reviewing court will not set aside a judgment following a bench trial unless the judgment is against the manifest weight of the evidence. *Brynwood Co. v. Schweisberger*, 393 Ill. App. 3d 339, 351 (2009). For a decision to be against the manifest weight of the evidence, the opposite conclusion must be clearly evident, or the finding is unreasonable, arbitrary or not based on the evidence presented. *Brynwood Co.*, 393 Ill. App. 3d at 351. Reversal of the trial court's decision is warranted only if the appealing party presents evidence strong and convincing enough to overcome completely the evidence and any presumptions existing in the other party's favor. *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 599 (2000).

¶ 48 In conducting our review, we are mindful that "the trial judge, as the trier of fact, is in a superior position to the reviewing court to observe the conduct of the witnesses while testifying, to determine their credibility, and to weigh and determine the preponderance of the evidence." *People v. A Parcel of Property Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 510 (2005). We may not overturn a judgment merely because we disagree with it, or, as the trier of fact, we might have come to a different conclusion. *A Parcel of Property Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d at 510.

¶ 49 B. *Discussion*

¶ 50 The defendants were found to be in violation of section 2 of the CFA, which provides in pertinent part as follows:

> "Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in section 2 of the 'Uniform Deceptive Trade Practices Act' *** in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2 (West 2006).

¶ 51 The intent of the CFA is to curb fraudulent abuses and to provide a remedy to persons injured by those abuses. *People ex rel. Hartigan v. Lann*, 225 Ill. App. 3d 236, 240 (1992). The CFA must be liberally construed to effect its purpose. 815 ILCS 505/11a (2006). Section 7 of the CFA authorizes the State to bring an action against a person who has, is or is about to be engaging in a practice that violates the CFA. An action filed by the State under the CFA is essentially a law enforcement action designed to protect the public, not to benefit private parties. *Lann*, 225 Ill. App. 3d at 240.

¶ 52 To establish a violation of section 2 of the CFA, the State must allege and prove two elements: (1) the defendant is engaged in a trade or commerce, and (2) the defendant is engaged in unfair or deceptive acts or practices in the conduct of that trade or commerce. *People ex rel.*

Hartigan v. All American Aluminum Co., 171 Ill. App. 3d 27, 34 (1988). Only the second element is at issue in this case. Owing to the fact that such terms as "trade or commerce," "unfair and deceptive" acts or practices are incapable of precise definition, the courts determine on a case-by-case basis whether a given practice is unfair or deceptive. *All American Aluminum Co.*, 171 Ill. App. 3d at 34.

¶ 53 The parties present extensive arguments on whether the defendants' practice violated the CFA because it was unfair. In this case, the trial court found the defendants' practice of promising false or unrealistic time frames for the start and completion of remodeling projects and for obtaining building permits constituted a deceptive practice. Therefore, our analysis addresses whether the defendants' practice was deceptive.

¶ 54 A person engages in a deceptive trade practice when, in the course of his business, the person engages in any conduct which creates a likelihood of confusion or misunderstanding. A party does not have to prove actual confusion or misunderstanding. 815 ILCS 510/2(a)(12),(b) (West 2006). To establish a deceptive practice claim, a plaintiff must establish: (1) a deceptive act or practice, (2) an intent by the defendant that the consumer rely on the deception, and (3) the deception occurred in the course of conduct involving a trade or commerce. *People ex rel. Hartigan v. Knecht Services, Inc.*, 216 Ill. App. 3d 843, 856 (1991).

¶ 55 Under the CFA, a statement is deceptive if it creates a likelihood of deception or has the capacity to deceive. *Bober v. Glaxo Wellcome PLC*, 246 F.3d 934, 938 (7th Cir. 2001) (citing *Knecht Services, Inc.* 216 Ill. App. 3d at 857). In this case, Mr. Kafka met with the five consumers to discuss hiring FCS to perform remodeling work. The State's evidence established

that Mr. Kafka represented to the consumers that their remodeling projects would be started and completed within the time frames required by the consumers. At the same time, Mr. Kafka was aware that a provision of the contract he presented to the consumers conflicted with the representations he made to the consumers about the start and completion dates for their projects. Based on his experience, he was also aware of how much time it took to obtain a building permit. Mr. Kafka's statements to the consumers as to the start and completion dates of their projects and the time necessary for obtaining a building permit were likely to deceive the consumers as to the contractual obligations of FSC to start and complete their projects within the consumers' time frames.

¶ 56 The trial court found the consumers to be credible witnesses. Their testimony established that in deciding to hire FSC, they relied on Mr. Kafka's statements that the work could be completed within their specified time frames and that FSC was chosen over other contractors based on his representations. See *Knecht Services, Inc.*, 216 Ill. App. 3d at 857. Their testimony further established that Mr. Kafka made these statements to the consumers while attempting to secure their remodeling projects for FSC. Therefore, these deceptive statements were made in the course of conduct involving trade or commerce.

¶ 57 The defendants maintain that the conduct of the consumer must be considered in determining whether a violation of the CFA occurred. They assert that in each case, it was the action of the consumer that prevented the remodeling projects from being started and/or completed on time. The defendants point out that the McFaddens and Ms. Chernov admitted not reading the contract before they signed it. The defendants cite no authority requiring the court to

consider the consumer's conduct in determining whether a violation of the CFA occurred.

¶ 58 Moreover, whether a party reviewed a contract prior to signing may be relevant to a breach of contract action. However, this case is not a breach of contract action, and whether the projects could actually have been started or completed on time is not the issue. The conduct violating the CFA occurred when the consumers signed the contracts in reliance on statements as to start and completion dates of their projects made by Mr. Kafka, even though he was fully aware that the terms of the contract contradicted his statements to the consumers.

¶ 59 The defendants then argue that Mr. Kafka's estimate of the time needed to complete the Cruz project did not constitute fraud because it referred to a future event. However, unlike common law fraud, a misrepresentation relating to a future fact is actionable under the CFA. *Smith v. Prime Cable of Chicago*, 276 Ill. App. 3d 843, 856 (1995).

¶ 60 The defendants point out that in a suit between the defendants and Ms. Giraldo, Cook County Circuit Court Judge Quinn entered summary judgment for the defendants on the consumer fraud count of Ms. Giraldo's counterclaim.[1] The defendants acknowledge that the trial court rejected their *res judicata* and collateral estoppel claims in this case. On appeal, they now claim that the ruling renders the trial court's decision in this case fundamentally unfair. Since the defendants failed to support their claim with argument or citation to authority, the argument is waived. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 61 Moreover, the defendants fail to consider the differences between a private action brought

[1]Father & Sons Contractors, Inc. v. Maria Giraldo and Sagragio Ramirez, No. 05 CH 09508.

by a consumer and an action brought by the Attorney General. As previously noted, an Attorney General's action under the CFA is an enforcement action for the protection of the public rather than to benefit private parties. *Lann*, 225 Ill. App. 3d at 240. Unlike a private individual, the Attorney General may prosecute a violation of the CFA without showing that any person has been damaged. *Mulligan v. QVC, Inc.*, 382 Ill. App. 3d 620, 626-27 (2008). In any event, the credible testimony of the other consumers supported the trial court's decision.

¶ 62 After considering the defendants' arguments relative to the evidence presented, we do not find the opposite conclusion clearly evident or the trial court's findings to be unreasonable or arbitrary, and they are clearly based on the evidence presented. We conclude that the trial court's determination that the defendants violated section 2 of the CFA was not against the manifest weight of the evidence.

¶ 63 II. The Applicability of the CFA

¶ 64 The defendants contend that the CFA does not apply in this case because their conduct amounted to a breach of contract. Our courts recognize that not every breach of contract is actionable under the CFA. *Zankle v. Queen Anne Landscaping*, 311 Ill. App. 3d 308, 312 (2000). As the court observed in *Zankle*, "a 'deceptive act or practice' involves more than the mere fact that a defendant promised something and then failed to do it. That type of 'misrepresentation' occurs every time a defendant breaches a contract." *Zankle*, 311 Ill. App. 3d at 312.

¶ 65 In *Demitro v. General Motors Acceptance Corp.*, 388 Ill. App. 3d 15, 21 (2009), this court rejected the defendant's argument that its breach of a loan extension agreement did not rise

to the level of a violation of the CFA. Even though the defendant was aware that the plaintiff's vehicle had been wrongfully repossessed and agreed to the loan extension, it then prevented the plaintiff bringing his account current and insisted that he pay the entire loan balance before the vehicle would be returned to him. This court concluded that the defendant's conduct sufficiently implicated consumer protection concerns and therefore violated the CFA. *Demitro*, 388 Ill. App. 3d at 21.

¶ 66 This case involved more than the defendants' failure to fulfill the representations made to the consumers as to the start and completion dates of their projects. The trial court found that the start and completion dates of construction projects were important to the consumer. The court determined that Mr. Kafka's conduct showed a pattern of promising false or unrealistic time frames for obtaining building permits and completing the projects. He also made these representations knowing that the contract the consumers signed did not obligate FSC to fulfill those representations. The defendants' conduct in this case was not a mere breach of contract but clearly implicated consumer protection concerns. Therefore, the CFA applied to this case.

¶ 67 III. Personal Liability of Mr. Kafka

¶ 68 The defendants contend that the trial court erred when it held Mr. Kafka personally liable for the $50,000 civil penalty. They maintain that there was insufficient evidence supporting the trial court's decision to pierce FSC's corporate veil in order to impose personal liability on Mr. Kafka. However, imposing personal liability on Mr. Kafka did not require the trial court to pierce FSC's corporate veil.

¶ 69 Section 7 of the CFA provides that "the Attorney General *** may request and the Court

may impose a civil penalty in a sum not to exceed $50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act." 815 ILCS 505/7(b) (West 2006). The complaint named Mr. Kafka, individually, as a defendant, as well as FSC. The trial court entered judgment against the defendants for violating the CFA. In their reply brief in this appeal, the defendants concede that Mr. Kafka is a person as defined under the CFA. 815 ILCS 505/1(c) (West 2006). Albeit for a different reason, the trial court correctly imposed personal liability for the civil penalty on Mr. Kafka. See *Canada Life Insurance Co. v. Salwan*, 353 Ill. App. 3d 74, 79 (2004) (the reviewing court can sustain the trial court's decision on any basis in the record).

¶ 70 The defendants contend that this court should address the trial court's piercing of the corporate veil because such a ruling impacts the use of the doctrine of estoppel by other potential claimants. The defendants provide no argument or citation to authority to support their contention. Therefore, it is waived. Ill. S. Ct. Rule 341(h)(7) (eff. July 1, 2008).

¶ 71 IV. Civil Penalty

¶ 72 A. *Standard of Review*

¶ 73 Pursuant to section 7(b) of the CFA, the State "may request and the Court may impose" a civil penalty. 815 ILCS 505/7(b) (West 2006). The use of the term "may" denotes discretion. See *Maddux v. Blagojevich*, 233 Ill. 2d 508, 523 (2009). We determine that for a trial court's award or denial of a civil penalty under section 7(b), abuse of discretion is the appropriate standard of review. See *Szkoda v. Human Rights Comm'n*, 302 Ill. App. 3d 532, 546 (1998) (Commission's assessment of a civil penalty is reviewed for an abuse of discretion). A court will

find an abuse of discretion only where no reasonable person would take the view adopted by the trial court. *Keefe-Shea Joint Venture v. City of Evanston*, 364 Ill. App. 3d 48, 61 (2005).

¶ 74 B. *Discussion*

¶ 75 The defendants contend that the $50,000 penalty, the maximum amount of a civil penalty under section 7(b) of the CFA, should be vacated or, in the alternative, reduced. We disagree.

¶ 76 The defendants argue that the State failed to establish that the consumers were injured. The defendants point out that the trial court did not order restitution and that the consumers in this case either received their money back, agreed to a settlement or their construction projects were completed. However, unlike a private individual, the Attorney General may prosecute a violation of the CFA without showing that any person has been damaged. *Mulligan*, 382 Ill. App. 3d at 626-27; see 815 ILCS 505/7(a) (West 2006) (Attorney General may bring an action where a person "is about to use any method, act or practice" that violates the CFA).

¶ 77 Nonetheless, our courts have recognized that the imposition of a fine should not be arbitrary; there should be some fact in the record reasonably supporting the imposition of the fine. *CPC International, Inc. v. Illinois Pollution Control Board*, 24 Ill. App. 3d 203, 207 (1974). The fine should be proportionate to the seriousness of the conduct. See *Szkoda*, 302 Ill. App. 3d at 547 & n.2.

¶ 78 In *Szkoda*, the court found that the imposition of the maximum civil penalty of $50,000 was an abuse of discretion where the petitioner's conduct, while indefensible, was not ongoing or repeated over a long period of time, and it was the petitioner's first violation. The court remanded for a re-computation of the penalty. *Szkoda*, 302 Ill. App. 3d at 548. The appellate

court has reversed the imposition of a civil fine where the cause of the pollution was accidental, and the situation was remedied prior to the hearing on the violation. *CPC International, Inc.*, 24 Ill. App. 3d at 207; see *Bresler Ice Cream Co. v. Illinois Pollution Control Board*, 21 Ill. App. 3d 560, 562-63 (1974) (the court reversed the imposition of a fine, where the violations were *de minimis*, and the petitioner had already taken remedial action).

¶ 79 In contrast to the petitioners in the above cases, this is not the first time Mr. Kafka's practices in the construction industry have come to the attention of the Attorney General. The record contains a copy of a January 25, 1989, consent decree entered into between Mr. Kafka, individually, and as president of Kafka & Sons Building and Supply Company, Inc., and the State of Illinois. Pursuant to the decree, Mr. Kafka was permanently enjoined from multiple enumerated practices in his dealings with consumers and, pursuant to section 7(b) of the CFA, he agreed to pay the maximum penalty of $50,000.

¶ 80 The evidence showed the defendants engaged in the conduct that violated the CFA in 2003, 2004 and 2005. The evidence further showed that the consumers had to file suit against the defendants, complain to the Attorney General or both, before the defendants attempted to resolve their complaints. A lesser penalty in this case would not have been in keeping with the intent of the CFA.

¶ 81 The defendants argue that the $50,000 penalty should be reduced because lesser amounts have been imposed for far more serious violations. They point out that in *People ex rel. Hartigan v. Gaby's Apparel, Ltd.*, 133 Ill. App. 3d 343 (1985), which involved 31 consumer complaints, the court imposed only a $10,000 civil penalty, and in *People ex rel. Fahner v.*

Walsh, 122 Ill. App. 3d 481 (1984), which involved a pyramid scheme, only a $5,000 civil penalty was imposed. These cases are not persuasive because the amount of the penalty imposed was not at issue in either case. See *Gaby's Apparel, Ltd.*, 133 Ill. App. 3d at 344 (the sole issue was whether the execution of a security agreement was a fraudulent conveyance); *Walsh*, 122 Ill. App. 3d at 483 (at issue was whether the trial court could impose a civil penalty, not the amount); but see *Bresler Ice Cream Co.*, 21 Ill. App. 3d at 563-64 (comparing the amount of the fine for more serious conduct in *Ford v. Environmental Protection Agency*, 9 Ill. App. 3d 711 (1973), even though the amount was not at issue in *Ford*).

¶ 82 We conclude that the trial court did not abuse its discretion when it imposed the $50,000 civil penalty on the defendants.

¶ 83 V. Inadmissible Evidence

¶ 84 A. *Standard of Review*

¶ 85 A trial court's evidentiary rulings are reviewed for an abuse of discretion. *Jones v. DHR Cambridge Homes, Inc.*, 381 Ill. App. 3d 18, 34 (2008). An abuse of discretion occurs only where no reasonable person would agree with the trial court's conclusion. *Jones*, 381 Ill. App. 3d at 32.

¶ 86 B. *Discussion*

¶ 87 The defendants contend that the trial court abused its discretion when it allowed the State to introduce inadmissible evidence during the testimony of the witnesses. They further contend that the court's decision in this case is erroneous because it was based on that evidence. The defendants fail to provide argument or citation to authority to support their conclusion that the

testimony was inadmissible. Therefore, the issue is waived. Ill. S. Ct. Rule 341(h)(7) (eff. July 1, 2008).

¶ 88 Even if we were to consider the issue, the defendants' argument that the trial court's decision was based on inadmissible evidence is predicated on the fact that the trial court overruled many of their objections. There is a strong presumption in a bench trial that the trier of fact relied only on proper evidence in reaching its decision on the merits. *Dobbs v. Wiggins*, 401 Ill. App. 3d 367, 381 (2010). Moreover, reversal on the basis of an erroneous evidentiary ruling is not required unless the error was prejudicial or the result of the trial was materially affected. *Cretton v. Protestant Memorial Medical Center, Inc.*, 371 Ill. App. 3d 841, 854 (2007).

¶ 89 We conclude that the defendants have waived review of this issue, Waiver aside, we find no indication in the record that the trial court's decision was based solely on evidence that the defendants claim was inadmissible. There was a sufficient amount of credible and admissible evidence in the record that any error in the trial court's evidentiary rulings did not materially affect the outcome of the trial and did not result in prejudice to the defendants.

¶ 90 CONCLUSION

¶ 91 The judgment of the circuit court is affirmed.