

# THE LEGAL CORNER: UNLICENSED PRACTICE

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The Idaho Supreme Court decided the case of Farrell v. Whiteman 200 P.3d 1153 in January of this year, once again reminding practitioners to use the services of NCARB to become registered in a state before starting a project in that state.

Farrell, an architect registered and living in Michigan, and Whiteman, a developer living in Michigan, decided to collaborate on a condominium project in Idaho. Despite the lack of any written agreement, Farrell started the project in the spring of 2003, performed some work in Michigan, hired a CAD shop in Idaho (not having a registered architect) to assist with construction documents, and finished the project in July 2004. However, Farrell only became registered in Idaho in February 2004, which the court described as about halfway through the work.

The parties had a falling out. Whiteman wouldn't pay Farrell or give him a stake in the project supposedly discussed. Farrell sued Whiteman in Idaho to recover the value of his services, and Whiteman defended by citing Idaho's common law rule that a party cannot

seek the aid of Idaho's courts to recover on an illegal contract, and that Farrell's performing some architectural services in Idaho without being registered meant that Farrell was seeking to recover on an illegal contract and thus could recover nothing for his services in Idaho.

Many states follow similar rules and often deny recovery to unlicensed brokers, engineers, architects, and others who should have been licensed in their state but were not. Farrell had an outcome as fortunate as he could expect under the circumstances. The court noted that "[t]o refuse to award Farrell some damages would create a perverse incentive for developers to hire unlicensed architects in order to get buildings designed at no cost" and, in effect, split the difference. It held that while he performed some services in Idaho illegally, the services he performed after becoming registered were legal. As to the legal portion of the services, the court ruled that Farrell could recover the reasonable value of those services, a standard often applied when an architect has no written agreement, but

nevertheless provides valuable services that are willingly accepted and used by the client. As to the illegal portion of the services, or those performed before he was registered in Idaho, the court ruled that Farrell could recover the value he could show by which Whiteman was unjustly enriched through his services.

The two standards are different. The first only requires Farrell to show the value of his services in the marketplace. The second requires him to show the extent to which Whiteman was enriched by his services. The Idaho Supreme Court sent the case back to the trial court to decide the amount of damages to be awarded. **DC**