

CONSTRUCTION LAW NEWSLETTER

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TRENDS IN CONSTRUCTION LAW

The Prompt Payment Law of the State of New York is codified in General Business Law Article 35E. It applies to private commercial projects with an aggregate cost of \$150,000 or more. It is important to note that this threshold applies to the total cost of the project, not just one trade's scope of work.

The Prompt Payment Law contains many important provisions, such as time periods within which payment must be made by owners and general contractors; 1% per month interest on

overdue amounts; voiding contractual provisions which set venue of disputes in other states and apply the law of other states to disputes, among others.

Perhaps the most important right conferred by the Prompt Payment Law is the right to demand expedited arbitration of disputes. This right may not be waived by contract.

In order to utilize the expedited arbitration provisions of the Prompt Payment Law, the aggrieved party serves a notice of violations of the PPL on the offending party. The parties are then obliged to attempt to resolve the mat



ter. If the matter is not resolved within 15 days, an expedited arbitration proceeding may be filed.

Recent case law has upheld the enforceability of the expedited arbitration provision.

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CASE LAW UPDATE

On April 14, 2016, the Third Department Appellate Division decided the case of *Matter of Capital Siding & Constr., LLC (Alltek Energy Sys., Inc.)*.

The case centered on a general contractor who withheld funds from a subcontractor. The subcontractor filed for expedited arbitration per the Prompt Payment Law. In response, the GC filed a

petition in the Supreme Court to permanently stay the arbitration based on a provision in the subcontract which provided that disputes would be resolved by litigation. The Appellate Division held that the subcontractor was entitled to arbitration despite the language in the subcontract because the statute voided any contractual provision limiting the right to arbitration under the statute.

Subsequently, on June 9, 2016, Justice Richard M. Platkin of the Albany County Supreme Court issued a decision in the case of *Capital Siding & Constr., LLC v. Alltek Energy Sys., Inc.* which denied the GC's petition to permanently stay the arbitration commenced pursuant to the Prompt Payment Law.

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