

# Mediation sought in contracting dispute

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**OAKLAND** - Borough officials last week filed a lawsuit against Anthony Garofalo, owner of Vintage Contracting of NJ Inc. for fraud in connection with construction of the borough's public library.

In the suit, the borough claims that Garofalo knowingly submitted false payment statements and change orders, ultimately resulting in payment for services not rendered.

Richard Malagiere, an attorney representing the Oakland Public Library, said the suit can be brought against Garofalo as an individual because case law states that an individual can be held accountable for something done on behalf of a company.

The fraud is also being forwarded to the state attorney general.

"It's a violation of the New Jersey False Claims Act," Malagiere said. "The attorney general will examine and determine whether to prosecute Garofalo under the statute. They might decide to bring action themselves or have the borough do it."

Malagiere said if the attorney general decided to try the case under the New Jersey Claims Act,

the borough may be reimbursed for attorney fees and be entitled to three times the amount of punitive damages.

The borough, while pursuing the case against Garofalo, is still in litigation with Vintage and the architecture firm Beatty, Harvey & Associates LLP over their faulty and incomplete work at the library.

The case is progressing slowly and currently, all parties are still in the discovery phase - compiling facts and expert reports and deposing experts.

Malagiere said Vintage recently requested that all three parties attend a mediation session, raising the possibility that a settlement could be reached, short-circuiting court proceedings.

However, Garofalo said that the architect and borough wanted the mediation.

"We're not really interested in mediation," he said. "We are going on the advice of counsel. It's non-binding, so we all can get together and discuss settlement, but we don't have to do it."

All parties have agreed upon the mediator: retired Superior Court Judge John Boyle.

"A mediation request usually means a settlement will be made," Malagiere said. "We made it clear

[to them] that money will be coming into the borough and none will be going out."

Concurrently, L & C Design Consultants, who has been engaged in the borough's litigation, is working on a completion plan for the library's renovations by looking at the work that has been done and what remains to for completion.

Among the damages cited are the improper installations of the roof, doors and windows, a defective granite desk top, and operational deficiencies with the the heating, ventilating and air conditioning system

"Their claims are ludicrous," Garofalo said of the borough. "Their architect and two municipal employees were at the site every day and approved all the work that was performed. I'm not sure where they are getting their claims from."

There is no available estimate at how much it will cost to finish the library; the completion plan and expert report provided by the architect will provide that information once completed.

Malagiere said the issues with the library dates back to 2002, when public bids were sought for the library construction.

"On public bids, companies are

supposed to provide a list of other public jobs they've worked on," he said. "Vintage listed jobs that they, in fact, did not work on. They also listed subcontractors that they did not use."

Garofalo denied those accusations.

"They came to our office and interviewed us prior to accepting our bid," he said. "They accepted our qualifications."

The original contract awarded to Vintage Contracting of NJ Inc. was for \$2.9 million. During the beginning of work in 2004, the amount was increased to \$3.2 million.

However, the work did not progress as fast as the company claimed it was.

"They provided payment applications for work that was not completed," Malagiere said. "Our claim was confirmed once our architect looked at the construction and the payment applications.

"At one point, Vintage stopped working altogether because they were not being paid," Malagiere said.

The borough gave notice and defaulted on its contract with Vintage because the work was not being completed.

"The borough settled with a

surety bond of \$100,000," Malagiere said.

"Typically when bond companies take over projects, they retain the same contractor," Mayor John Szabo Jr. said. "This was unacceptable to the borough, so we took the cash settlement so we could sever all ties to Vintage."

The surety bond coupled with the \$188,000 left over from the project left the borough with \$288,000 to complete the library project. At the time, the borough had plans to hire a new contractor and put the remaining contract up for bid; however, bidding won't occur until L & C Design Consultants finishes their plan for the library.

Vintage Contracting is currently suing the borough and Beatty, Harvey & Associates for default on the contract, lack of payment, delay costs and damages.

Garofalo estimated that his company is seeking the upwards of \$2 million in damages from both parties.

"We'll win," he said. "We're just not sure for how much"

No trial date has been set in Vintage's suits.

Malagiere said if mediation with Vintage fails, the matter could go to trail by mid-2009.