

FILED
Sep 21, 2016
Court of Appeals
Division I
State of Washington

NO. 738283-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

ERIC ROOTVIK,

Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

**BRIEF OF RESPONDENT
DEPARTMENT OF LABOR AND INDUSTRIES**

ROBERT W. FERGUSON
Attorney General

Paul Weideman
Assistant Attorney General
WSBA No. 42254
Office Id. No. 91018
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 389-3820

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ISSUES.....2

III. STATEMENT OF THE CASE2

 A. The Legislature Requires Contractors to Register with the Department and to Obtain a Bond and Insurance to Protect Consumers, Which Mr. Rootvik Has Done in the Past2

 B. In October 2013, Eric Rootvik Advertised His Closet Installation Services on Craigslist and His Website Even Though He Had Not Registered as a Contractor4

 C. Because Mr. Rootvik Was Not a Registered Contractor When He Advertised His Closet Installation Services, the Department Issued An Infraction and \$1,000 Penalty7

 D. At Hearing, Mr. Rootvik Testified That He Secured His Closets to Wall Studs, Hung Closet Partitions Up to 7 Feet Tall, and Customized Closets By Adding Drawers and Doors8

 E. The Administrative Law Judge and Superior Court Affirmed the Department’s Infraction and \$1,000 Penalty Because Mr. Rootvik Failed to Register as a Contractor.....10

IV. STANDARD OF REVIEW.....11

V. ARGUMENT13

 A. Because Mr. Rootvik’s Custom Closet Installations Fall Under RCW 18.27.010(1)’s Definition of “Contractor” and WAC 296-200A-016(7)’s Definition of the Closet Specialty, He Must Register as a Contractor to Advertise These Services13

1.	The Legislature intends that contractors who add to or improve any building register as contractors, and Mr. Rootvik’s closets are additions and improvements	14
2.	The Legislature does not limit contractor registration to contractors who install fixtures	19
3.	Contractors who install, repair, and maintain closets, like Mr. Rootvik, must register as contractors	21
B.	Mr. Rootvik Is Not Exempt From Registration Under RCW 18.27.090(5) Because That Exemption Applies Only to the Sale, Not the Installation, of Finished Products.....	25
C.	This Court Should Decline to Consider Other Arguments That Mr. Rootvik Raises for the First Time on Appeal or Fails to Support with Legal Authority	28
VI.	CONCLUSION	34

TABLE OF AUTHORITIES

Cases

<i>A.W.R. Constr., Inc. v. Dep't of Labor & Indus.</i> , 152 Wn. App. 479, P.3d 349 (2009).....	11, 14, 15, 16
<i>Bremmeyer v. Peter Kiewit Sons Co.</i> , 90 Wn.2d 78, 7P.2d 1174 (1978).....	3
Case C-173/11, <i>Football Dataco Ltd. v. Sportradar GmbH</i> , 2012 E.C.R. 642.....	32
<i>City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</i> , 136 Wn.2d 38, P.2d 1091 (1998).....	12
<i>Coronado v. Orona</i> , 137 Wn. App. 308, P.3d 217 (2007).....	14, 16
<i>Cowiche Canyon Conservancy v. Bosley</i> , 118 Wn.2d 801, P.2d 549 (1992).....	32
<i>DeHeer v. Seattle Post-Intelligencer</i> , 60 Wn.2d 122, P.2d 193 (1962).....	32
<i>Dep't of Ecology v. Campbell & Gwinn, LLC</i> , 146 Wn.2d 1, P.3d 4 (2002).....	15
<i>Dep't of Labor & Indus. v. Davison</i> , 126 Wn. App. 730, P.3d 479 (2005).....	26, 27
<i>Dep't of Revenue v. Boeing Co.</i> , 85 Wn.2d 663, P.2d 505 (1975).....	19
<i>Gorden v. Lloyd Ward & Assocs., P.C.</i> , 180 Wn. App. 552, P.3d 1074 (2014).....	33
<i>Havens v. C & D Plastics, Inc.</i> , 124 Wn.2d 158, P.2d 435 (1994).....	30

<i>In re Martin</i> , 154 Wn. App. 252, 265, 223 P.3d 1221 (2009).....	32
<i>In re Rosier</i> , 105 Wn.2d 606, P.2d 1353 (1986).....	30-31
<i>Joy v. Dep't of Labor & Indus.</i> , 170 Wn. App. 614, P.3d 187 (2012).....	32
<i>Mader v. Health Care Auth.</i> , 149 Wn.2d 458, P.3d 931 (2003).....	23
<i>Odyssey Healthcare Operating BLP v. Dep't of Health</i> , 145 Wn. App. 131, P.3d 652 (2008).....	23
<i>Sch. Dists' Alliance for Adequate Funding of Special Educ. v. State</i> , 170 Wn.2d 599, P.3d 1 (2010).....	30
<i>State v. Delgado</i> , 148 Wn.2d 723, P.3d 792 (2003).....	20
<i>State v. Kirkman</i> , 159 Wn.2d 918, P.3d 125 (2007).....	29
<i>State v. McFarland</i> , 127 Wn.2d 322, P.2d 1251 (1995).....	29
<i>State v. O'Hara</i> , 167 Wn.2d 91, P.3d 756 (2009).....	29
<i>State v. Ross</i> , 188 Wn. App. 768, P.3d 306 (2015).....	24
<i>State v. W.R., Jr.</i> , 181 Wn.2d 757, P.3d 1134 (2014).....	30
<i>Tapper v. Emp't Sec. Dep't</i> , 122 Wn.2d 397, P.2d 494 (1993).....	13
<i>Thomas v. Dep't of Emp't Sec.</i> , 176 Wn. App. 809, P.3d 761 (2013).....	12

<i>United States v. Phillips</i> , 433 F.2d 1364 (8th Cir. 1970)	30
---	----

Statutes

Former RCW 18.27.010(1) (2007)	2
Former RCW 18.27.090(5) (2003)	26
Laws of 2003, ch. 399, § 401	26
Laws of 2007, ch. 436, § 1	27
Laws of 2007, ch. 436, § 6	26, 27
Laws of 2015, ch. 52, § 1	2
RCW 18.27	10, 14, 15, 16
RCW 18.27.005	14
RCW 18.27.010	10, 15, 22, 27
RCW 18.27.010(1)	passim
RCW 18.27.010(5)	14
RCW 18.27.010(12)	14
RCW 18.27.020(1)	14
RCW 18.27.030(3)(a)(i)	10
RCW 18.27.040(1)	2, 3, 16
RCW 18.27.040(3)	3
RCW 18.27.050(1)	2, 16, 25
RCW 18.27.060(1)	3

RCW 18.27.090(5).....	passim
RCW 18.27.125	14
RCW 18.27.140	2, 20, 23
RCW 18.27.200	33
RCW 18.27.200(1)(a)	2, 13, 22
RCW 18.27.230	33
RCW 18.27.310(1).....	11
RCW 18.27.310(2).....	28, 29, 30
RCW 18.27.310(4).....	11
RCW 18.27.340(3).....	14
RCW 34.05	11, 12
RCW 34.05.554	11
RCW 34.05.558	11
RCW 34.05.570(1)(a)	11
RCW 34.05.570(3)(d)	12

Regulations

WAC 296-200A-015.....	10
WAC 296-200A-016.....	14, 21, 24
WAC 296-200A-016(7).....	passim
WAC 296-200A-300.....	33
WAC 296-200A-300(3)(a).....	14

Rules

RAP 2.3..... 11, 12

RAP 2.3(b)..... 12

RAP 2.5..... 29

RAP 2.5(a)(3)..... 29

RAP 10.3(a)(6)..... 25, 30

RAP 10.3(h)..... 12

Other Authorities

Webster's Third New Int'l Dictionary 24 (2002)..... 16, 18

Wash. St. Reg. 08-13-078 (proposed June 17, 2008) 24

Appendices

Appendix A: Advertisement on craigslist for "Eric the Closet Guy"

Appendix B: Website for "Eric the Closet Guy"

I. INTRODUCTION

Eric Rootvik elected not to register as a contractor with the Department of Labor and Industries before he advertised his custom closet installation services on the Seattle area craigslist page and his business website. The Legislature requires contractors to register to ensure that a contractor has a bond and insurance to protect consumers from unreliable, incompetent, fraudulent, or financially irresponsible contractors.

Because Mr. Rootvik's custom closet installation activities fall squarely within both the broad definition of "contractor" under RCW 18.27.010(1) and the closet specialty under WAC 296-200A-016(7), he cannot advertise his custom closet installation business without being registered. The administrative law judge and superior court correctly affirmed the Department's infraction for unlawful advertising and a \$1,000 penalty.

None of Mr. Rootvik's arguments has merit. The Legislature does not narrowly limit the registration requirement to contractors who install fixtures, as he believes. Nor does RCW 18.27.090(5) exempt contractors who install finished products, like Mr. Rootvik, from mandatory registration. This Court should reject Mr. Rootvik's other arguments because they are raised for the first time on appeal or are not supported by legal authority. This Court should affirm.

II. ISSUES

1. Under RCW 18.27.200(1)(a), a contractor must register with the Department before advertising any work as a contractor. Did Mr. Rootvik violate this statute where the installation activities that he advertised on craigslist and his business website involved activities that added to or improved a building under RCW 18.27.010(1),¹ and where these activities involved the installation, repair, and maintenance of shelving systems, racks, rails, or drawers involved in a closet system under WAC 296-200A-016(7)?
2. Under RCW 18.27.090(5), the sale of certain finished products does not require an individual or company to register with the Department. Does this exemption apply to Mr. Rootvik where it is undisputed that he does not merely sell closet systems, but actually installs them in customers' homes, and where he advertised his installation services on craigslist and his business website?

III. STATEMENT OF THE CASE

A. **The Legislature Requires Contractors to Register with the Department and to Obtain a Bond and Insurance to Protect Consumers, Which Mr. Rootvik Has Done in the Past**

The Legislature enacted the contractor registrations laws to protect the public and those who furnish labor, materials, or equipment to a contractor from “unreliable, fraudulent, financially irresponsible, or incompetent contractors.” RCW 18.27.140. In order to register, the contractor must file a surety bond and furnish a specified amount of insurance to protect consumers from property damage and personal injuries that the contractor might cause. *See* RCW 18.27.040(1), .050(1).

¹ All citations in this brief to the definition of “contractor” in RCW 18.27.010(1) are to the statute in effect in 2013 when Mr. Rootvik advertised his services. *See* former RCW 18.27.010(1) (2007). In 2015, the Legislature amended the definition of “contractor” in a manner that does not affect this case. *See* Laws of 2015, ch. 52, § 1.

A certificate of registration must be renewed every two years. RCW 18.27.060(1).

The bond primarily protects consumers in case of faulty workmanship or contractual problems. AR 100-01; *see also* RCW 18.27.040(3). General contractors must file a surety bond of \$12,000, and specialty contractors must file a surety bond of \$6,000. RCW 18.27.040(1). Insurance protects against damages that exceed the amount of the surety bond. AR 101. If an unregistered contractor harms a consumer, because there is no bond to recover, the consumer's only recourse is a civil action to try to recover damages. AR 101. Thus, the required bond and insurance "provide some protection albeit minimal for customers in today's market place against the financially irresponsible contractor." *Bremmeyer v. Peter Kiewit Sons Co.*, 90 Wn.2d 787, 792, 585 P.2d 1174 (1978) (internal quotation marks omitted).

In the past, Mr. Rootvik has registered three companies as contractors with the Department. AR 130, 206-08, 452. His most recent registration for EGR Fabricators, Inc., expired in 2004. AR 130-32, 206-07, 211, 452. That company specialized in flooring, carpentry framing, and countertops, and Mr. Rootvik was the president and sole stockholder. AR 130-32, 207-08, 211, 219. In approximately 2007 and 2008, the Department issued two infractions and \$4,000 in penalties to EGR

Fabricators, Inc. AR 218-19, 452. To Mr. Rootvik's knowledge, those penalties have never been paid. AR 219; *see also* AR 452.

B. In October 2013, Eric Rootvik Advertised His Closet Installation Services on Craigslist and His Website Even Though He Had Not Registered as a Contractor

In October 2013, the Department received a consumer complaint that Mr. Rootvik was advertising on craigslist and on other websites under the business name "Eric the Closet Guy" without having registered as a contractor. AR 103-05, 452. It is undisputed that Mr. Rootvik designed and posted the craigslist advertisement that is attached to this brief as Appendix A in order to find customers. AR 187-88. He wanted his closet business to be profitable. AR 188.

Mr. Rootvik's craigslist advertisement stated that he had been "building customer closet[s] for homes all over the Seattle area from [M]ercer Island, Medina, Kirkland, and Mill Creek for the last three years." AR 443; Appendix A. He distinguished his skills from that of his competitors, detailing his unique abilities in creating one-of-a-kind closet systems:

Unlike most of my competitors, I actually have the skill and resources to create a one of a kind closet organization system for you. Equally important and often overlooked would be the engineering of your cabinetry. After all, I would think the second most important thing would be never having the need to call me unless you are looking for more closet work in other areas. In other words, you will

never need to call me back on warranty . . . cannot wait to hear from you.

AR 443-44; Appendix A. Mr. Rootvik's advertisement on craigslist further emphasized that he was not simply a sales clerk "dabbling in cabinetry":

To My competitors.

[I] realize you are desperate to know what I am doing and how. It is extremely simple; I am actually qualified to do this work. I am not just a sales clerk dabbling in cabinetry and craftsmanship. So stop bothering me with your little games. I am never going to educate you on how to do these things. Just go back to work selling your own stuff and stop worrying about me.

AR 444; Appendix A. The advertisement had a reply button at the top of the page that allowed consumers to respond directly to him. AR 159-60, 443; Appendix A.

Terri Zenker, a Department inspector, investigated the consumer complaint. *See* AR 97, 106-42. In the craigslist advertisement, she clicked on the link stating "Visit Eric the Closet Guy," which led her to erictheclosetguy.com, Mr. Rootvik's business website.² AR 109-10, 444; Appendix A. The website's homepage showed a photograph of a large walk-in closet with tall shelving units, cabinets, and a central island with drawers. *See* AR 109-10, 113-14, 445, 452, 456; Appendix B. Mr. Rootvik

² Appendix B contains a color copy of the pages from Mr. Rootvik's website that were admitted as an exhibit. *See* AR 111-13, 445-46, 456-57.

testified at hearing that erictheclosetguy.com was his website; that his phone number appeared on the homepage; and that the photograph was an artist's rendition intended to attract customers. AR 192-93, 199, 200, 210, 413, 456.

Mr. Rootvik's homepage stated, "If you are considering California Closets you should call me first." AR 445, 456. It described the scope of his work and its quality: "Custom Closets, Closet Shelving, Home Office, Pantry Shelving. Everything I do is one of a kind, which means you, the customer, get everything you want without compromise." AR 113, 445, 452, 456; Appendix B. The "About Us" tab on the homepage further detailed Mr. Rootvik's installation abilities and the quality of his work:

I have many years of remodeling and remodeling related business experience starting in 1980. I'm a self-taught nitpicker who loves the idea of building things that last, and what is absolutely possible "when you simply decide to do it."

I specialize in custom one of a kind closet systems, office spaces, pantries, storage shelves, and garage systems for a very competitive price. No one beats my quality. Additionally, my many years of experience in the remodeling industry has taught me a great many lessons about the correct way to install things.

AR 447; *see also* AR 114-117, 149-50, 452; Appendix B. A customer testimonial on that page stated the customer had found Mr. Rootvik's

information on craigslist. AR 447. Mr. Rootvik agrees that all the information on the “About Us” page is correct. AR 210-11, 413.

Zenker investigated “Eric the Closet Guy” on the Internet. AR 117. Because the website’s homepage stated “featured on houzz” (AR 456), she visited Mr. Rootvik’s profile on houzz.com, a business promotional website. AR 117-18. The profile stated that the majority of Mr. Rootvik’s business was of the California closet variety but that “more and more I’m being asked to put my custom carpentry and artisan design abilities to work in closets that are more elaborate. As a result, I am inspired by many styles from French design to contemporary, utilizing green materials and LED lighting.” AR 120-21. Mr. Rootvik testified that he intended for customers to see the “featured on houzz” button on his website’s homepage to obtain more information about him. AR 200.

Zenker also viewed Mr. Rootvik’s LinkedIn profile, which stated that he designed, engineered, and installed custom closet systems similar to California closets. AR 127-28, 205. His profile also stated that he had “greatly reduc[ed] call-backs compared to his competitors.” AR 129.

C. Because Mr. Rootvik Was Not a Registered Contractor When He Advertised His Closet Installation Services, the Department Issued An Infraction and \$1,000 Penalty

Zenker called Mr. Rootvik to inform him that he needed to register as a contractor to advertise his services. *See* AR 135-36, 453. He told her

that he was exempt from registration under RCW 18.27.090(5), which exempts from registration the sale of finished products, materials, or articles that are not fabricated into a structure:

The registration provisions of this chapter do not apply to:

(5) The sale of any finished products, materials, or articles of merchandise that are not fabricated into and do not become a part of a structure under the common law of fixtures;

RCW 18.27.090(5). Zenker determined the exemption did not apply to the installation activities that Mr. Rootvik advertised. AR 137.

The Department issued an infraction and \$1,000 penalty to Mr. Rootvik for advertising the installation of custom closet systems without being registered as contractor. AR 129-30, 133-34, 137-38, 192, 451. Mr. Rootvik appealed the infraction. *See* AR 329-39.

D. At Hearing, Mr. Rootvik Testified That He Secured His Closets to Wall Studs, Hung Closet Partitions Up to 7 Feet Tall, and Customized Closets By Adding Drawers and Doors

At the administrative hearing, Mr. Rootvik described his closet installation business in detail. *See* AR 184-219. He began installing California-type closets in 2009 or 2010. AR 208. He customizes closets based on a customer's needs. *See* AR 194-196. Customers can ask to include doors and drawers in the installation, but "it's usually just open shelves in a shelving unit." AR 179, 186, 195, 424. This involves "some

combination of shelving units and hanging units, depending on the needs” with the longest hanging or vertical partition being 84 inches (or 7 feet) tall; he also uses 48-inch-long (4 feet) vertical partitions. AR 195-97. He uses a combination of vertical and horizontal panels of different widths and lengths to accomplish the customer’s purpose, and he fits shelves to length. *See* AR 176, 186, 195-96. A single 84-inch vertical partition can weigh between 12 and 30 pounds. AR 198.

To install closets, Mr. Rootvik draws a level line approximately 80 inches high on the wall. AR 185. He locates the wall studs, places the hang rail against the wall, and secures the hang rail to the studs with drywall screws. AR 185. He then hangs the closet panels on the rail and installs the shelves, which are fit to length, in the closet panels. AR 185-86, 196.

Mr. Rootvik warrants his work and would repair his closet installations if requested. AR 201, 413. The closet systems must be installed properly. AR 203. A closet can “come off the wall” if a contractor hangs too much weight or uses an incorrect drywall anchor. AR 203. He explained that an incorrect installation can cause damage: “Being cheaper is more expensive. And the reason in this particular case is that if something falls off the wall . . . one, you’ve got a disappointed customer.

Two, this is particle board. It destroys whatever was there because of these cams.”³ AR 203.

Mr. Rootvik charges for labor and materials. AR 188. The average price he charges for closet installation is \$1,500 with a range from \$400 to \$6,000. AR 191, 413. A customer can call Mr. Rootvik for additional closet pieces. AR 199.

Mr. Rootvik agreed that one of the reasons he did not register as a contractor before he began to install closets was because he did not believe he would be eligible. *See* AR 213. The Legislature requires the Department to deny an application for contractor registration if the applicant has previously performed contractor work as a sole proprietor, partnership, or corporation, and the applicant owes penalties assessed under RCW 18.27 as a result of a final judgment. RCW 18.27.030(3)(a)(i); *see also* WAC 296-200A-015 (defining “final judgment”).

E. The Administrative Law Judge and Superior Court Affirmed the Department’s Infraction and \$1,000 Penalty Because Mr. Rootvik Failed to Register as a Contractor

The administrative law judge issued a final order affirming the infraction and \$1,000 penalty. AR 411-23. The judge concluded that the work Mr. Rootvik offers to perform comes within the definition of contractor in RCW 18.27.010 and the specialty contractor classification

³ A cam is a piece of hardware that is rotated to catch pins on the panels. *See* AR 171.

for closets under WAC 296-200A-016(7). AR 417-18 (FF 6.11). He further concluded that the exemption for sales in RCW 18.27.090(5) does not apply to Mr. Rootvik's installation activities. AR 418 (FF 6.12).

Mr. Rootvik appealed to superior court. CP 3-16. The superior court affirmed. CP 65-67. He now appeals.⁴

IV. STANDARD OF REVIEW

The Administrative Procedure Act, RCW 34.05, governs judicial review of an administrative law judge's decision about infractions issued to contractors. *A.W.R. Constr., Inc. v. Dep't of Labor & Indus.*, 152 Wn. App. 479, 484, 217 P.3d 349 (2009) (citing RCW 18.27.310(1)). Mr. Rootvik has the burden to show that the final order was incorrect. *See* RCW 34.05.570(1)(a). Review is confined to the agency record and new issues may generally not be raised on appeal. RCW 34.05.554, .558.

The superior court's decision in this case is subject to this Court's discretionary review under RAP 2.3. RCW 18.27.310(4). This Court accepts discretionary review only when the superior court has committed an obvious error that would render future proceedings useless; when it has committed a probable error that substantially alters the status quo or substantially limits a party's freedom to act; when it has so far departed or

⁴ The Department has filed a supplemental designation of clerk's papers, which designated the notice of appeal, the superior court's order denying motion for reconsideration, and the superior court's order denying a stay.

sanctioned such a departure from the accepted and usual course of judicial proceedings that this Court should act; or when it has certified, or the parties have stipulated, that this Court should resolve a controlling question of law. RAP 2.3(b).

Mr. Rootvik cannot meet any of the RAP 2.3 criteria in this case. Nonetheless, if this Court engages in its discretionary review, it grants relief from an agency order in limited circumstances, including if the agency erroneously interpreted or applied the law (RCW 34.05.570(3)(d)). Review under RCW 34.05.570(3)(d) is de novo, but the court accords deference to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues; however, the court is not bound by an agency's interpretation of a statute. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998).

Because Mr. Rootvik has not assigned error to any of the administrative law judge's findings, these are verities on appeal. *See Thomas v. Dep't of Emp't Sec.*, 176 Wn. App. 809, 813, 309 P.3d 761 (2013); *see also* RAP 10.3(h) (requiring separate assignments of error for administrative orders under RCW 34.05).⁵

⁵ Mr. Rootvik challenges the superior court's oral ruling in this case but this Court reviews the administrative law judge's final order, not the superior court's

V. ARGUMENT

A. **Because Mr. Rootvik's Custom Closet Installations Fall Under RCW 18.27.010(1)'s Definition of "Contractor" and WAC 296-200A-016(7)'s Definition of the Closet Specialty, He Must Register as a Contractor to Advertise These Services**

Mr. Rootvik must register as a contractor and file proof of the necessary bond and insurance with the Department in order to advertise his custom closet installations to Washington consumers. The Legislature requires all contractors who add to or improve a building, including by performing cabinet or similar installations, to register with the Department before they can advertise their business. RCW 18.27.010(1), .020(1), .200(1)(a). Mr. Rootvik's closet installations meet these criteria—he installs intricate closet systems that involve hanging vertical panels up to 7 feet tall and 30 pounds from a wall rail, which he customizes by adding shelves, drawers, and doors to meet the customer's needs. His installations also meet the criteria of the closet specialty in WAC 296-200A-016(7) because they require the installation of lateral or horizontal shelving systems, racks, rails, or drawers. Because Mr. Rootvik declined to register his business before advertising to Washington consumers, the Department correctly issued him an infraction.

decision. App. Br. 6; RP 22-23; see *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 402, 404, 858 P.2d 494 (1993).

The Legislature has directed the Department to strictly enforce RCW 18.27, the Contractor Registration Act, and to adopt rules that effectuate the Act's purposes. RCW 18.27.005, .125. "Contractors" are either "general contractors," meaning that their operations require more than one building trade or craft, or "specialty contractors," which are contractors whose operations do not meet the definition of "general contractor." RCW 18.27.010(5), (12); *see also Coronado v. Orona*, 137 Wn. App. 308, 314, 153 P.3d 217 (2007); WAC 296-200A-016 (listing specialties). All general and specialty contractors "shall register" with the Department. *See* RCW 18.27.010(5), (12); RCW 18.27.020(1).

1. The Legislature intends that contractors who add to or improve any building register as contractors, and Mr. Rootvik's closets are additions and improvements

A contractor violates the Act when he or she advertises or offers to do "any work as a contractor" without being registered. RCW 18.27.200(1)(a). The Department must issue a notice of infraction and a minimum penalty of \$1,000 to unregistered contractors who violate this statute. RCW 18.27.340(3); WAC 296-200A-300(3)(a).

The Legislature has enacted a broad definition of "contractor" under RCW 18.27.010(1) that includes any person in the pursuit of an independent business who engages in certain defined activities. *See A.W.R. Constr., Inc.*, 152 Wn. App. at 488. A person who undertakes or

offers to undertake to add to or improve any building, including by installing cabinets or a similar installation, while in pursuit of an independent business falls under this broad definition:

“Contractor” includes any person, firm, corporation, or other entity who or which, in the pursuit of an independent business undertakes to, or *offers to undertake*, or submits a bid to, construct, alter, repair, *add to*, subtract from, *improve*, develop, move, wreck, or demolish *any building*, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith, the installation or repair of roofing or siding, performing tree removal services, *or cabinet or similar installation*; or, who, to do similar work upon his or her own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided in this chapter.

RCW 18.27.010(1) (emphases added). The Legislature has stated this definition of “contractor” applies throughout RCW 18.27 “unless the context clearly requires otherwise.” RCW 18.27.010.

This Court applies a statute’s plain meaning to give effect to the Legislature’s intent. *A.W.R. Constr., Inc.*, 152 Wn. App. at 484. It derives the statute’s plain meaning from the ordinary meaning of the language in question, the statute’s context and related provisions, and the statutory scheme as a whole. *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002). This Court refers to regular

dictionaries for the well-accepted and ordinary meanings of words.

A.W.R. Constr., Inc., 152 Wn. App. at 485. This Court construes statutes to effectuate their purpose and avoid unlikely or absurd results. *A.W.R. Constr., Inc.*, 152 Wn. App. at 485. And it gives “great weight” to the Department’s interpretation of RCW 18.27 as the agency charged with the statute’s administration. *See Coronado*, 137 Wn. App. at 315-16.

The plain language of RCW 18.27.010(1) reveals the Legislature’s intent that it apply broadly. The Legislature intends that any activity that “add[s] to” or “improve[s]” a building to be an activity that requires a contractor to obtain a bond and insurance. RCW 18.27.010(1), .040(1), .050(1). “Add” means “to join, annex, or unite (as one thing to another) so as to bring about an increase (as in number, size, or importance)” *Webster’s Third New Int’l Dictionary* 24 (2002) (also defining “addition” as “a part added to or joined with a building to increase available space.”). “Improve” means “to enhance in value or quality: make more profitable, excellent, or desirable” *Id.* at 1138.

The undisputed facts in this case demonstrate that the business activities that Mr. Rootvik undertakes fall within the Legislature’s broad definition of “contractor.” He secures hang rails to wall studs, hangs vertical panels weighing up to 30 pounds and measuring up to 7 feet long from these rails, installs fitted shelves, and customizes the closets with

drawers and cabinet doors, if the customer requests these. AR 172-77, 179, 185-86, 195-97, 200, 283. This installation work adds to a customer's home because it joins the custom closets to the customer's wall, and these closets increase available storage space. This meets the ordinary definition of "add" and "addition." Further, the closets improve the customer's home by enhancing the quality of the closet storage space, making it more desirable. This meets the ordinary definition of "improve."

Further, in addition to the installation work Mr. Rootvik actually performs, in his advertisements to obtain customers on craigslist and his business website, he offered to undertake additions and improvements to customers' homes. For example, his website shows a photograph of an elaborate walk-in closet with cabinets, drawers, and a center island. AR 192-94, 445, 456. Although he testified that the closet is not realistic and just something that his web developer found, he approved the content on his website, and he agreed that this photograph was designed to entice customers to use his services "insomuch as it is an image that people might find attractive" AR 193, 200, 209, 413. This photograph, in addition to the photograph on his craigslist advertisement (AR 443) and another photograph of a walk-in closet on his website (AR 446), advertise "additions" and "improvements" under those meaning's plain terms.

Finally, because Mr. Rootvik's advertisements and custom closet installations are similar to cabinets, he also meets the "cabinet or similar installation" portion of the "contractor" definition. RCW 18.27.010(1). A "cabinet" is "a box for storing chiefly small articles usu. closed by a hinged or sliding door, fitted with shelves or drawers, and suitably finished as an item of home, office, or laboratory furniture." *Webster's* at 309. Mr. Rootvik advertised to potential customers that he was "not just a sales clerk dabbling in cabinetry," and he emphasized the importance of cabinetry engineering, implying to potential customers that he was skilled in this area so they would "never need to call [him] back on warranty." AR 444. His friend testified at hearing that Mr. Rootvik's installation in his house involved "cabinets [that] were about 18 inches," and that Mr. Rootvik had been installing cabinet systems for about a year and a half. AR 167, 178.⁶ His custom closet installations can include doors and drawers, if the customer requests; he noted that he is supplied with cabinet doors; and he fits shelves in the hanging units to length. AR 178, 185-86, 195-96, 200, 424. These facts demonstrate that his installations are cabinets or similar to cabinet installations, warranting registration.

⁶ In his briefing and declarations, Mr. Rootvik referred to California closets as a "simple cabinet system" and noted that he "marketed the manufacture of custom closet cabinetry only." AR 273, 330, 487, 510.

2. The Legislature does not limit contractor registration to contractors who install fixtures

Mr. Rootvik misapprehends the law when he insists that registration is not required unless the contractor installs a fixture that becomes fabricated into the structure. *See* App. Br. 3, 4. The line that the Legislature drew for when a contractor must register is not “at the point where something becomes a fixture to the real-estate.” App. Br. 4. Rather, it is in relevant part when a contractor undertakes or offers to undertake to add to, or improve a building, including by installing a cabinet or similar installation. RCW 18.27.010(1). Mr. Rootvik’s custom closet installations meet this definition and he must register. Thus, Mr. Rootvik is incorrect that the Department had to prove that his closets “became fabricated into” or “bec[ame] a part of the structure under the common law of fixtures” before it could require him to register as a contractor. App. Br. 3.⁷

In essence, Mr. Rootvik asks this Court to read language about fixtures into RCW 18.27.010(1) that is not presently there. But courts do

⁷ The court’s decision in *Department of Revenue v. Boeing Co.*, 85 Wn.2d 663, 665-67, 538 P.2d 505 (1975) has no application here, contrary to Mr. Rootvik’s argument, because the operative statute in that case, unlike here, used the work “fixture,” which the court had to apply to the facts before it. App. Br. 5. That case involved whether “immense tools” that held large aircraft sections in place and that weighed up to 100 tons in Boeing’s Everett plant were fixtures, which would have entitled Boeing to a tax credit. *Boeing Co.*, 85 Wn.2d at 664-66.

not add words to an unambiguous statute when the Legislature has chosen not to include that language. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). The Legislature did not choose to limit the definition of “contractor” to those who install fixtures, and this Court should decline Mr. Rootvik’s invitation to add such language into RCW 18.27.010(1). For the same reason, that Mr. Rootvik’s closet shelving is “removable” has no effect on whether he must register as a contractor. *Contra* App. Br. 4. As the administrative law judge correctly observed, that Mr. Rootvik’s custom closet systems can be removed “does not alter the nature of the work performed to install them in the first place.” AR 417 (FF 6.11). Carpets can also be removed and scaffolding disassembled but the Legislature chose to explicitly include the installation of these items in the definition of “contractor” to protect consumers in case something goes wrong with the installation. *See* RCW 18.27.010(1).

Mr. Rootvik’s interpretation undermines the Act’s core purpose to protect consumers from unreliable, incompetent, fraudulent, or financially irresponsible contractors. RCW 18.27.140. It is not only those contractors who install fixtures who may not complete the work to the customer’s satisfaction, who may install the addition or improvement incorrectly, or who may fail to pay suppliers.

Indeed, it is undisputed that the closet systems involved in this case could “come off the wall” if a contractor hangs too much weight or uses an incorrect drywall anchor. AR 203. That would damage the customer’s home, and could damage other property or injure people, especially where some of the pieces coming off the wall weigh up to 30 pounds. The Legislature made a determination that a bond and insurance are necessary to protect the consumer in a potential situation like this.

3. Contractors who install, repair, and maintain closets, like Mr. Rootvik, must register as contractors

The custom closet work that Mr. Rootvik advertises and performs additionally falls within the “closet” specialty under WAC 296-200A-016(7), which constitutes an independent basis for his need to register. That specialty includes contractors who install, repair, and maintain shelving systems:

What are the definitions of the specialty contractor classifications for the purpose of contractor registration only?

....

(7) ‘Closets’—A contractor in this specialty installs, repairs and maintains the lateral or horizontal shelving systems, racks, rails, or drawers involved in a closet or storage system.

WAC 296-200A-016. By his own admission, Mr. Rootvik installs hang rails, lateral and horizontal shelves that are fitted to length, and drawers

(if requested) in his closet storage systems. AR 185-86, 195-96, 424. He warrants his work and he advertises “reduc[ed] call-backs compared to his competitors.” AR 109, 129, 201. Mr. Rootvik’s warranty and his assurances about reduced call-backs support the administrative law judge’s conclusion that Mr. Rootvik will repair closet installations if requested. AR 413; *see also* AR 129.

Mr. Rootvik disregards the broad definition of “contractor” in RCW 18.27.010(1) and instead tries to assert that because the definition of the closet specialty in WAC 296-200A-016(7) uses the conjunctive “and” between “installs, repairs, and maintains,” he does not need to register as a contractor because there “was no evidence presented that I repair or maintain.” App. Br. 5. This argument fails for three reasons.

First, it disregards that he must register if he meets the broad definition of contractor in RCW 18.27.010(1), which he does. That he meets this definition means he must register as a contractor because the Legislature has made it a violation of the Act to advertise “any work as a contractor” without being registered (RCW 18.27.200(1)(a)), and this broad definition applies in the context of unlawful advertising. RCW 18.27.010.

Second, the record supports that he “installs, repairs, and maintains the lateral or horizontal shelving systems, racks, rails, or

drawers involved in a closet or storage system.” WAC 296-200A-016(7). He testified that he installs shelves, racks, hang rails, and drawers for his closet systems. AR 185-86, 194-96, 199, 201. That he warrants his work, that he advertises that “you will never need to call me back on warranty” as well as “reduc[ed] call-backs compared to his competitors,” and that he provides additional closet pieces to customers upon request supports the conclusion that he also repairs and maintains customers’ closets within the meaning of WAC 296-200A-016(7). AR 109, 129, 199, 201.

Finally, even assuming for the sake of argument that he does not repair or maintain the closets that he installs, he is still required to register under WAC 296-200A-016(7). This Court must construe agency regulations in “a rational, sensible” manner, giving meaning to the rule’s underlying policy and intent, in order to avoid absurd results. *Odyssey Healthcare Operating BLP v. Dep’t of Health*, 145 Wn. App. 131, 143, 185 P.3d 652 (2008) (quoting *Mader v. Health Care Auth.*, 149 Wn.2d 458, 472, 70 P.3d 931 (2003)). Here, the underlying purpose of the contractor registration regulations is to protect consumers from unreliable, incompetent, fraudulent, or financially irresponsible contractors. RCW 18.27.140. The most reasonable reading of WAC 296-200A-016(7) is that contractors who perform *any* of the activities

included in the regulation—installing, repairing, or maintaining closet shelving systems—fall within the specialty. As the administrative law judge illustrated during extensive questioning on the “installs, repairs, and maintains” language at hearing, it would be absurd to find that a “fly-by-night individual who comes into Seattle for six months [and] installs 45 different closet systems” would be exempt from registration and the requirements to acquire a bond and insurance to protect consumers simply because he did not repair or maintain the closets. *See* AR 246-48. That is an absurd interpretation that would not effectuate the statute’s purpose. *See State v. Ross*, 188 Wn. App. 768, 769, 773, 355 P.3d 306 (2015) (the word “and” should not be read conjunctively when such a reading defeats the Legislature’s intent in enacting the statute). Further, the Department’s interpretation of its own regulation is entitled to deference, especially where the underlying policy at issue here is to protect consumers.⁸

⁸ Mr. Rootvik appears to suggest that WAC 296-200A-016 imposes an additional burden on his business due to the costs associated with obtaining a certificate of registration and bond, and that this additional burden is “evidence of [D]epartment misconduct” because the Department stated in “proposed rules” that WAC 296-200A-016 was “only guidance and would not alter enforcement activities or create an additional burden on the business.” App. Br. 5; *see also* AR 476-77; Wash. St. Reg. 08-13-078 (proposed June 17, 2008). But this argument ignores that he meets the definition of “contractor” under RCW 18.27.010(1) and that the Legislature, not the Department, requires contractors who meet this definition to incur the costs necessary to register and purchase a bond and insurance. The adoption of WAC 296-200A-016 in 2008 did not alter that.

Custom closet installers like Mr. Rootvik must register and obtain a bond and insurance to protect their customers. Mr. Rootvik asserts that he has liability insurance, but contrary to RAP 10.3(a)(6), he does not cite anywhere in the record that supports this fact. App. Br. 5. And, even if he has insurance, because he has not registered as a contractor, there is no evidence in this record that he has furnished proof of insurance in the amount the Legislature requires under the contractor registration laws. RCW 18.27.050(1). Although Mr. Rootvik questions the wisdom of requiring a bond because “that will only pay a lawyer,” that is a consumer remedy that the Legislature requires contractors to provide. *See* App. Br. 5.

B. Mr. Rootvik Is Not Exempt From Registration Under RCW 18.27.090(5) Because That Exemption Applies Only to the Sale, Not the Installation, of Finished Products

Mr. Rootvik is not exempt from registration under RCW 18.27.090(5). Under that statute, the Act’s registration provisions do not apply to “[t]he *sale* of any finished products, materials, or articles of merchandise that are not fabricated into and do not become a part of a structure under the common law of fixtures.” RCW 18.27.090(5) (emphasis added). By its plain terms, this exemption is limited to the *sale* of certain finished products, materials, or articles of merchandise. But Mr. Rootvik does not merely sell closet shelving to homeowners so that they

(or others) can install them. Mr. Rootvik installs the closets himself.

Therefore, RCW 18.27.090(5) does not exempt Mr. Rootvik's custom closet installations from registration.

Indeed, the Legislature's 2007 amendment to RCW 18.27.090(5) demonstrates a clear legislative intent to require contractors who install finished products, like Mr. Rootvik, to register as contractors. Former RCW 18.27.090(5) (2003) exempted both the sale and installation of certain finished products from registration: "The *sale or installation* of any finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure." Laws of 2003, ch. 399, § 401 (emphasis added). But in 2007, the Legislature removed the phrase "or installation" from RCW 18.27.090(5). Laws of 2007, ch. 436, § 6. That amendment signaled the Legislature's clear intent to exempt only the sale (but not the installation) of certain finished products, materials, and articles.

The *Davison* decision that interpreted former RCW 18.27.090(5) supports the Department's position, not Mr. Rootvik's. *Contra* App. Br. 3 (citing *Dep't of Labor & Indus. v. Davison*, 126 Wn. App. 730, 732, 109 P.3d 479 (2005)). *Davison* applied the former version of RCW 18.27.090(5) before the Legislature removed the phrase "or installation" from RCW 18.27.090(5). *Davison*, 126 Wn. App. at 738; *see* Laws of

2007, ch. 436, § 6. In effect, the Legislature repudiated *Davison* when it removed “or installation” from RCW 18.27.090(5)’s finished product exemption. In the same bill that narrowed this exemption, the Legislature also added “cabinet or other similar installation” to RCW 18.27.010’s definition of “contractor,” making it unambiguous that an individual who installs a “cabinet or similar installation,” like the contractor in *Davison*, must register as a contractor. Laws of 2007, ch. 436, § 1.

The current version of RCW 18.27.090(5), which applies to Mr. Rootvik, does not exempt the installation of finished products. Therefore, he is not exempt from registration under RCW 18.27.090(5). Mr. Rootvik admits in his brief that he installs closet systems (App. Br. 3), which is consistent with his extensive testimony about his closet installation activities (AR 185-204), his advertisements informing potential customers that he builds and installs closet systems (AR 443-47), and the unchallenged findings about his closet installation activities (AR 413-14). Thus, he is simply wrong that the Department’s evidence was “based on the notion that any kind of product sold to a homeowner requires a contractor’s license.” App. Br. 3. To the contrary, the very specific evidence about his closet installation activities supports the infraction here.

C. This Court Should Decline to Consider Other Arguments That Mr. Rootvik Raises for the First Time on Appeal or Fails to Support with Legal Authority

This Court should decline to consider Mr. Rootvik’s other passing arguments about the constitutionality of the RCW 18.27.310(2)’s burden of proof provision and the Department’s need to prove that his advertising “occur[ed] within the physical jurisdiction of Washington State.” App. Br. 5. He raises the constitutional argument for the first time on appeal, and he cites no relevant legal authority to support either argument.

For the first time on appeal, Mr. Rootvik states “there is an issue of constitutionality with RCW 18.27.310(2).” App. Br. 3. He never argued below, either in briefing or at oral argument, that this statute violated any constitutional provision.⁹ *See* CP 17-33, 59-64, 68-78; RP 4-12, 19-22. That statute establishes that at the administrative hearing for contractor registration infractions, the Department has the burden of

⁹ At the hearing, Mr. Rootvik moved to dismiss the infraction, and the parties discussed RCW 18.27.310(2)’s burden of proof provision in that context. AR 223. But Mr. Rootvik did not challenge the validity of that provision, either by asserting it was unconstitutional or otherwise. AR 226-230. At superior court, he made only a passing reference to this provision, stating in his trial brief—again without citing any constitutional provision—that, “The state even attempted to argue the burden shifted in Washington because of Appellant status. This view of administration law holds no merit.” CP 21; *see also* CP 71 (motion for reconsideration that mentions burden-shifting provision but does not challenge its constitutionality). The Department also stated at the administrative hearing that, despite RCW 18.27.310(2), “it’s reasonable and by convention in these cases the Department goes first and puts on its case to show that there was a violation.” AR 228. That is what occurred here.

proof “to establish the commission of the infraction by a preponderance of the evidence, unless the infraction is issued against an unregistered contractor in which case the burden of proof is on the contractor.” RCW 18.27.310(2).

The general rule is that appellate courts will not consider issues raised for the first time on appeal. *State v. Kirkman*, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). However, a claim of error may be raised for the first time on appeal if it is a manifest error affecting a constitutional right. RAP 2.5(a)(3). To raise an error for the first time on appeal, the error must be “manifest” and truly of constitutional dimension. *Kirkman*, 159 Wn.2d at 926. The party raising the issue “*must identify a constitutional error* and show how the alleged error actually affected the [party’s] rights at trial.” *Id.* at 926-27 (emphasis added). To demonstrate actual prejudice, the appellant must show that the asserted error had practical and identifiable consequences at trial. *State v. O’Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009). It is this showing of actual prejudice that makes the error “manifest,” allowing appellate review. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

Mr. Rootvik does not meet the RAP 2.5 criteria because he does not identify the nature of the alleged constitutional error or show that it had practical and identifiable consequences at trial. He does not identify a

specific constitutional error but, rather, states only that “[t]here is also an issue of constitutionality with RCW 18.27.310(2).” App. Br. 3. He provides no constitutional support for his argument that RCW 18.27.310(2) is “patently incompatible with our system of laws and sense of justice.” App. Br. 3; *see Sch. Dists’ Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 605, 244 P.3d 1 (2010) (a statute’s “challenger must prove that the statute is unconstitutional beyond a reasonable doubt”). The only legal authority he cites is inapposite as it applies to whether a criminal defendant can be required to prove consent to a charge of rape by forcible compulsion. App. Br. 3 (citing *State v. W.R., Jr.*, 181 Wn.2d 757, 759, 336 P.3d 1134 (2014)). But this has no application to the Legislature’s burden of proof provision in RCW 18.27.310(2).

There is nothing unconstitutional with placing the burden of proof on the party who seeks relief in a civil case, and Rootvik cites no authority to contrary. To adequately present a constitutional argument, a party must cite to authority and present argument. RAP 10.3(a)(6); *Havens v. C & D Plastics, Inc.*, 124 Wn.2d 158, 169, 876 P.2d 435 (1994). “[N]aked castings into the constitutional sea are not sufficient to command judicial consideration[.]” *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970), *quoted in In re Rosier*, 105 Wn.2d 606, 616,

717 P.2d 1353 (1986). Mr. Rootvik has not done so, and this Court should decline to address this argument.

Further, Mr. Rootvik cannot meet his burden to show how this alleged error actually affected his rights at trial. Despite the Legislature's decision to place the burden of proof on unregistered contractors, at the administrative hearing, the Department agreed that it should present its case-in-chief first, stating that "it's reasonable and by convention in these cases the Department goes first and puts on its case to show that there was a violation." AR 228. Mr. Rootvik did not have to "prove a negative." App. Br. 3. Instead, he had the opportunity to examine the State's evidence and cross-examine the State's witnesses before presenting his case. *See* AR 93-150.

This Court should also decline to reach Mr. Rootvik's jurisdictional argument because he concedes he has no case law to support his argument. App. Br. 5-6. The Department does not need to prove the physical location of the computer server that stores an Internet advertisement in order to enforce the contractor registration laws. *Contra* App. Br. 5. Mr. Rootvik concedes that he has no "case law on-point" for his argument that the Department "failed to establish they had jurisdiction over the [alleged] advertising" and, on this basis alone, this Court should

decline to address this argument further.¹⁰ App. Br. 5; *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) (a court may generally assume that where no authority is cited, none is found after a diligent search); *In re Martin*, 154 Wn. App. 252, 265, 223 P.3d 1221 (2009) (pro se litigants are held to the same rules of procedural and substantive law as an attorney). Accepting Mr. Rootvik's argument would severely undermine the Department's power to regulate unlawful Internet advertisements, contrary to the Legislature's intent to protect consumers.

Further, this argument ignores that it is undisputed that Mr. Rootvik reached out to Washington consumers in the Seattle area to obtain business. AR 107, 109, 159, 417, 443-44.¹¹ He advertised on a Seattle area craigslist page in order to find customers. AR 107, 109, 187, 417, 443-44. The advertisement included a reply button to allow Washington consumers to reply to Mr. Rootvik and hire him to install custom closets. AR 159, 443. He advertised the quality of his work to entice customers.

¹⁰ Conceding that he has no case law to support his argument, Mr. Rootvik appears to cite a discussion of a case from the European Court of Justice in his brief. See App. Br. 5-6; Case C-173/11, *Football Dataco Ltd. v. Sportradar GmbH*, 2012 E.C.R. 642. But that case interprets a specific directive of the European Parliament about the rights of database makers in the member states of the European Union, the resolution of which has no application here. See *id.*

¹¹ Mr. Rootvik has raised other issues in the course of this case that he does not raise in his appellant's brief. This Court should not consider any arguments raised and argued for the first time in the reply brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *Joy v. Dep't of Labor & Indus.*, 170 Wn. App. 614, 629-30, 285 P.3d 187 (2012).

See AR 443-46. Thus, to the extent he is making an argument about personal jurisdiction, his arguments fail in light of his purposeful advertisement to Washington consumers and the operation of his closet installation business in the state. *See, e.g., Gorden v. Lloyd Ward & Assocs., P.C.*, 180 Wn. App. 552, 568, 323 P.3d 1074 (2014).

The Department also had authority to issue the infraction to Mr. Rootvik for advertising to Washington consumers and advertising without being registered as a contractor. The Legislature has given the Department specific legislative authority to issue an infraction if it reasonably believes that a contractor has violated the Act, including by advertising any work as a contractor. RCW 18.27.200, .230; *see also* WAC 296-200A-300.

//

//

//

VI. CONCLUSION

Mr. Rootvik's custom closet installations fall squarely within the definitions of "contractor" under RCW 18.27.010(1) and of the closet specialty under WAC 296-200A-016(7). Because this is the case, he cannot advertise to Washington consumers without registering as a contractor and purchasing the requisite bond and insurance. This Court should affirm the Department's infraction and penalty for unlawful advertising.

RESPECTFULLY SUBMITTED this 21st day of September,
2016.

ROBERT W. FERGUSON
Attorney General



PAUL WEIDEMAN
Assistant Attorney General
WSBA No. 42254
Office Id. No. 91018
800 Fifth Ave., Suite 2000
Seattle, WA 98104
(206) 389-3820

APPENDIX A

Custom Closet systems 1

Page 1 of 2

✓

^

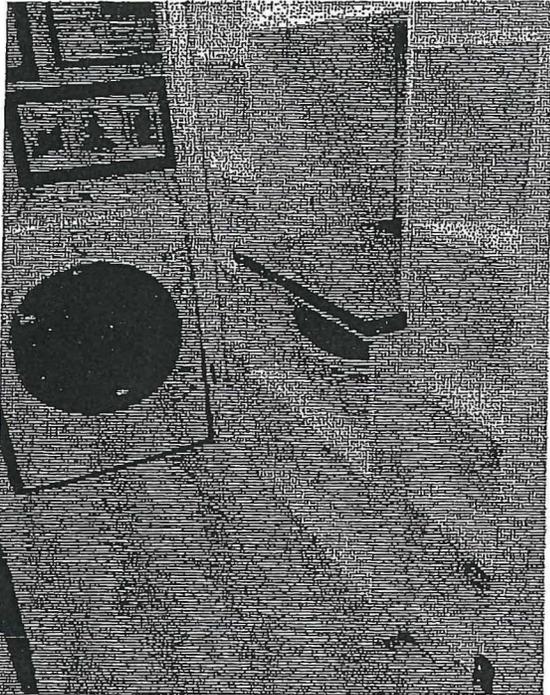


seattle eastside all services offered skilled trade services

Reply g4pfk-4116467513@serv.craigslist.org ⁽²⁾ flag ⁽²⁾ : miscategorized prohibited spam best of

Posted: 2013-10-07, 11:30PM PDT

Custom Closet systems 1 (Bellevue Kirkland Mill creek)



eric
THE CLOSET GUY
Everything we do is one of a kind, without compromise.

Hello Everyone

I have been building customer closet for homes all over the Seattle area from mercer Island, Medina, Kirkland, and Mill Creek for the last three years.

Unlike most of my competitors, I actually have the skill and resources to create a one of a kind closet organization

<http://seattle.craigslist.org/est/sks/4116467513.html>

10/8/2013

Custom Closet systems 1

Page 2 of 2

system for you. Equally important and often overlooked would be the engineering of your cabinetry. After all, I would think the second most important thing would be never having the need to call me unless you are looking for more closet work in other areas. In other words, you will never need to call me back on warranty.

cannot wait to hear from you.

Eric

[Visit Eric The Closet Guy](#)

x>

To My competitors.

realize you are desperate to know what I am doing and how. It is extremely simple; I am actually qualified to do this work. I am not just a sales clerk dabbling in cabinetry and craftsmanship.

So stop bothering me with your little games. I am never going to educate you on how to do these things. Just go back to work selling your own stuff and stop worrying about me.

APPENDIX B

[HOME](#) [CONTACT](#) [ABOUT US](#) [GALLERY](#) [ACCESSORIES](#) [STYLES](#)

ERIC THE CLOSET GUY

If you are considering California Closets you should call me first.

See My reviews on [Yelp](#)

425-260-7777

See My reviews on [Merchant Circle](#)



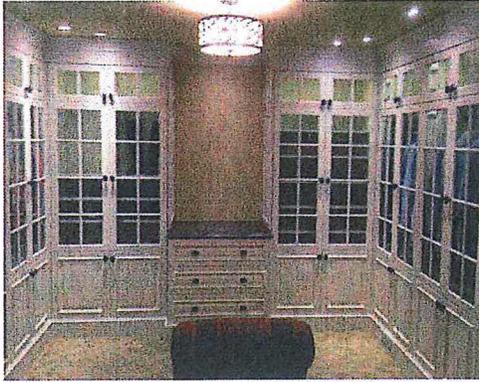
[Seattle Architects & Designers](#)



Custom Closets, Closet Shelving, Home Office, Pantry Shelving. Everything I do is one of a kind, which means you, the customer, get everything you want without compromise.



[Eric The Closet Guy Featured on Houzz](#)



Eric The Closet Guy

[Kitchen designs](#), [bathroom designs](#), and more v

[HOME](#) [CONTACT](#) [ABOUT US](#) [GALLERY](#) [ACCESSORIES](#) [STYLES](#)

© 1995-2014 Eric The Closet Guy, All Rights Reserved.

Serving Bothell, Bellevue, Redmond, Kirkland, Woodinville, Seattle, and Mill Creek.

NO. 73828-3-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

ERIC ROOTVIK,

Appellant,

v.

DEPARTMENT OF LABOR AND
INDUSTRIES,

Respondent.

CERTIFICATE OF
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, certifies that on September 21, 2016, she caused to be served the Brief of Respondent Department of Labor and Industries and this Certificate of Service in the below-described manner:

Via E-filing to:

Richard D. Johnson
Court Administrator/Clerk
Court of Appeals, Division I
One Union Square
600 University Street
Seattle, WA 98101-1176

Via Email and US Mail, properly addressed and postage

prepaid:

Eric Rootvik
15917 Waynita Way NE, Apt. #E-302
Bothell, WA 98011
eric@tenringsports.com

Signed this 21st day of September, 2016, in Seattle, Washington by:



EILEEN T. WEST
Legal Assistant
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7740