

In The Matter of the Fair Trading Act, RSA 2000, c. F-2

And In The Matter of an Appeal from the Order
of the Director of Fair Trading (as Delegated) on February 28, 2017
Pursuant to s.157 of the Fair Trading Act

Between:

Gregory Ranger, Owen Kenney,
and MGO Panel Solutions Inc. operating as
Westwind Custom Builders
("Westwind")

Appellants

-and-

The Director of Fair Trading (as Delegated)
(the "Director")

Respondent

DECISION

Appeal Board: John Welbourn (chair)
Lyle Berge
Al Briggs

Hearing: 3rd Floor Boardroom, 7015 Macleod Trail SW, Calgary, Alberta, on
December 5, 2017.

Appearing for the Appellants:

No appearance

Agent for the Respondent:

Mike Areshenko

Witnesses for the Appellants:

None

Witnesses for the Respondent:

Darren David Still
John Doyle
Suzanne Nicole Grant

Preliminary Matters:

1. A preliminary meeting was held with Gregory Ranger and Mr. Areshenko by conference call on August 30, 2017. They agreed on the following:
 - a. The date, time and place of the appeal hearing;
 - b. The deadline for disclosure of the Director's records;
 - c. The evidence of all witnesses would be given under oath or affirmation but not formally recorded;
 - d. The evidence of out-of-town witnesses could be given via Skype or other videoconference facility.

Mr. Ranger and Mr. Areshenko were advised and they understood that the appeal would proceed as a *de novo* hearing.

2. On the hearing date, the Appellants failed to appear at the agreed time of 9:00 a.m. None of the Appellants appeared by 9:30 a.m. and the Appeal Board directed the appeal should proceed. Mr. Areshenko presented his opening statement, conducted his direct examination of the Respondent's 3 witnesses via videoconference, and delivered his closing submission.
3. That afternoon, Mr. Welbourn received an email from Mr. Ranger sent at 9:46 a.m. stating that the Appellants had, "decided to withdraw from the appeal process".

Exhibits:

4. The following documents were entered as exhibits during the hearing:

<u>Exhibit #</u>	<u>Description</u>
1.	Westwind Custom Builders Quote dated October 19, 2016;
2.	Westwind Custom Builders Quote dated September 22, 2016;
3.	Norkota Builders Residential Construction Contract dated October 26, 2016;
4.	Westwind Custom Builders Residential Construction Contract dated October 27, 2016;
5.	CIBC letter dated November 16, 2016;
6.	Alberta Corporate Registry dated February 27, 2017;
7.	Director's Order dated February 28, 2017;
8.	Director's Certificate dated February 27, 2017.

Issues:

5. Whether any or all of the Appellants engaged in a prepaid contracting business while unlicensed, contrary to s.104(1) of the Fair Trading Act (the "Act")?
6. Whether the Appellants' contract included all the information required by s.35 of the Act?

Evidence:

7. John Doyle's home was destroyed in the 2016 Fort McMurray wildfires.
8. In August, 2016 Mr. Doyle attended a trade show in Fort McMurray. The exhibitors included contractors and businesses offering homeowners assistance in rebuilding homes destroyed in the disaster. Mr. Doyle met Gregory Ranger at the show who explained his company's construction process. Speed of construction was important to Mr. Doyle because his wife and children wouldn't return to Fort McMurray until the home was rebuilt. Mr. Ranger advised Mr. Doyle that construction of the home could be completed in 90 days, by Christmas, 2016.
9. Suzanne Grant ("Ms. Grant") is an investigator employed with the Consumer Investigation Unit of Service Alberta. Immediately following the wildfire, Ms. Grant was transferred to Fort McMurray to monitor an expected influx of contractors. She also met Mr. Ranger at the August, 2016 trade show. Ms. Grant's role at the show was to educate all exhibiting contractors on the license and permit requirements. Each exhibitor received a Service Alberta letter detailing the licenses and permits required and new home warranty obligations of all home builders and contractors. Mr. Ranger was given the letter.
10. MGO Panel Solutions Inc. was incorporated under the Alberta Business Corporations Act on October 21, 2016. An Alberta Corporate Registry search confirms that Westwind Custom Builders ("Westwind") is a registered trade name of the corporation. Owen Bradford Kenney and Greg Ranger were the directors appointed on incorporation and as at the date of the Registry search, February 27, 2017.
11. In mid-September, 2016, Mr. Doyle met Mr. Kenney at the site of the destroyed home. They discussed the new home that Westwind proposed to build.
12. Mr. Doyle signed a 1 page Westwind quote dated September 22, 2016. The quote is for \$449,000.00 plus GST to rebuild Mr. Doyle's home and is essentially a progress draw schedule for payments required during construction. The document specifies, "Make all checks payable Norkota Buuilders" (sic). The

salesperson is stated to be "O. Kenney".

13. Mr. Doyle signed a second 1 page Westwind quote dated October 19, 2016. The quote is for \$31,908.00 plus GST for exterior work on the lot and specifies, "Make all checks payable - Westwind Custom Builders". The salesperson is again stated to be "O. Kenney".
14. Mr. Doyle then signed a Residential Construction Contract with Norkota Builders dated October 26, 2016. The contract is for \$449,000.00 plus GST and signed by "G. Ranger" as the authorized representative for the builder.
15. Finally, Mr. Doyle signed another Residential Construction Contract with Westwind dated October 27, 2016. The contract is also for \$449,000.00 plus GST and appears to be signed by "G. Ranger" as the authorized representative for the builder.
16. A letter dated November 16, 2016 from CIBC to Mr. Doyle confirmed that he had authorized the bank to issue a bank draft to Westwind for \$112,250.00. The letter is signed by Greg Ranger as the Westwind representative.
17. Mr. Doyle has paid Westwind \$112,250.00. This is the total of the first 2 payments contemplated by the September 22, 2016 quote. Those payments are stated to be for "Reservation fee and plan deposit" and "Material draw at signing contract".
18. As at the date of this hearing, December 5, 2017, Westwind had not commenced construction on Mr. Doyle's home. Mr. Doyle's evidence is that he has searched Fort McMurray municipal records and there isn't any record of any application by any party for any permit for the rebuild of his home.
19. Darren Still was hired by Owen Kenney in September, 2016 as project manager for 7 or 8 construction projects Mr. Kenney had contracted in Fort McMurray. Mr. Doyle stated that various business names Mr. Kenney used were MGO Panel Solutions Inc., Norkota Builders and Westwind Custom Builders.
20. From the start of his employment in early October, 2016 until he left in January, 2017, Mr. Still stated the only home Westwind was building was in Anzac, Alberta.
21. To Mr. Still's knowledge, during that period Westwind did not apply for any building permit for Mr. Doyle's new home.
22. Mr. Still stated that Westwind's new home warranty provider was to be Progressive Home Warranty but that a \$10,000.00 cash deposit or letter of credit required by Progressive was not provided.

23. By January, 2017, Mr. Still was concerned that he and suppliers and contractors had not been paid by Mr. Kenney or his businesses which he believed were on the brink of insolvency. He therefore contacted the RCMP and Service Alberta.
24. Ms. Grant conducted Service Alberta's investigation. During that process, Ms. Grant spoke with Mr. Ranger twice by telephone in February, 2017. Mr. Ranger stated that Mr. Doyle had paid a deposit and on-site construction of the home was expected to begin in March, 2017. He advised that prefabrication of the home had begun in "a factory down south".
25. Mr. Ranger failed to attend for a scheduled meeting with Ms. Grant and declined to schedule another.
26. Ms. Grant stated that she confirmed Westwind's membership with Progressive Home Warranty had been suspended and that no permits had been issued for the construction of Mr. Doyle's new home. Further, none of the Appellants held a Prepaid Contracting Business license at any time during the period October 1, 2016 to February 16, 2017.
27. On February 28, 2017 the Director of Fair Trading (as delegated) issued an Order pursuant to s.157 of the Act directing the Appellants *inter alia* to cease from entering into prepaid contracts until all licensing requirements have been met. The order also directs that the Appellants ensure that all prepaid contracts are in writing and include the terms required by the Prepaid Contracting Business Licensing Regulation (the "Regulation") and the Act.

Findings:

28. Section 104(1) of Part 10 of the Act states:

No person may engage in a designated business unless the person holds a license under this Act that authorizes the person to engage in that business.

29. Section 5 of the Regulation states in part:

- (1) Part 10 of the Fair Trading Act applies to the prepaid contracting business.
- (2) In this section,

(a) "construction or maintenance contract" means a contract for the purpose of

(i) constructing, altering, maintaining, repairing, adding, to or improving

(A) a building that is used or to be used by the owner, occupier or person in control of it as the owner's, occupier's, or person's own private dwelling...;

(b) "prepaid contract" means a construction or maintenance contract in which all or part of the contract price is to be paid before all the goods or services called for in the contract are provided;

(c) "prepaid contracting business" means the activities of soliciting, negotiating, or concluding in person, at any place other than the seller's place of business, a prepaid contract.

30. Mr. Ranger and Mr. Kenney were directors of MGO Panel Solutions Inc. which carried on business as "Westwind Custom Builders". Mr. Ranger attended the August, 2016 trade show to solicit new home construction business. He signed the 2 Residential Construction Contracts as the builder's agent, its authorized representative.

31. Mr. Kenney met Mr. Doyle at the building lot to discuss the new home that Westwind could build and he is the salesperson stated on both Westwind quotes.

32. Mr. Doyle paid Westwind \$112,250.00 of the contract price before any of the construction called for in the contract had been provided.

33. At all material times, Mr. Ranger, Mr. Kenney and MGO Panel Solutions Inc. were engaged in the prepaid contracting business while none of them was licensed under the Act to engage in that business.

34. Section 10 of the Regulation states in part:

(1) This section applies to prepaid contracts in which the value of the goods or services to be provided under the contract is more than \$200.00.

(2) A person who is engaged in the prepaid contracting business must ensure that every prepaid contract that the person enters into

(a) complies with section 35 of the Act,....

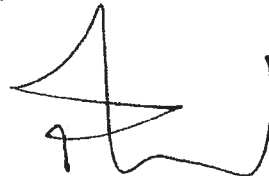
35. Section 35 of the Act states the information that must be included in every prepaid contract. Neither of the 2 Residential Construction Contracts Mr. Doyle signed provide all required information, including but not limited to:

- a. The builder's phone number;
- b. The salesperson's name;
- c. The place at which the contract was entered into;
- d. A description of the goods and services to be provided;
- e. A statement of cancellation rights that conforms with the Regulation;
- f. The total amount of the contract;
- g. The terms of payment;
- h. The construction commencement and completion dates.

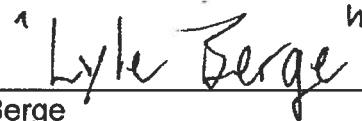
Decision:

36. The Appeal Board confirms the Director's Order dated February 28, 2017.

Signed at Calgary, Alberta on December 22, 2017.



John H. Welbourn



Lyle Berge



Al Briggs

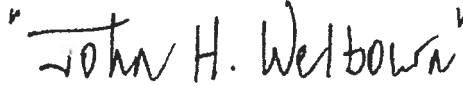
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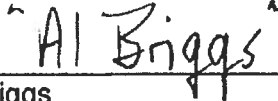
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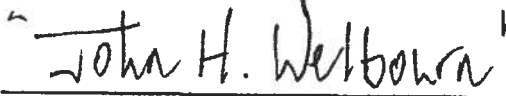
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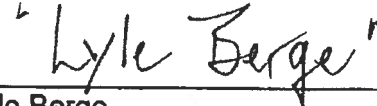
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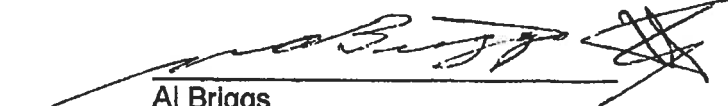
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