

IN THE MATTER OF AN APPEAL BY
EVAN M. RUTHERFORD

Appellant

AND

THE DIRECTOR OF FAIR TRADING (AS DELEGATED)

Respondent

DECISION OF THE APPEAL BOARD

APPEAL BOARD: VIRGINIA MAY, CHAIR

ORDER APPEALED: NOTICE OF ADMINISTRATIVE PENALTY DATED 17TH
MARCH 2017, RESULTING FROM A DECISION OF THE
DIRECTOR OF FAIR TRADING (AS DELEGATED).

APPEAL: PROCEEDED WITHOUT A HEARING WITH THE
CONSENT OF ALL PARTIES PURSUANT TO S13(1) OF
ABR, AR 195/99

WRITTEN SUBMISSIONS:

PROVIDED BY THE APPELLANT AND ASSISTED BY
TRACY HILDEBRAND

WRITTEN SUBMISSIONS AND DISCLOSURE FOR THE DIRECTOR:

PROVIDED BY MIKE ARESHENKO

DECISION OF THE APPEAL BOARD

THE DECISION OF THE DIRECTOR TO ISSUE A NOTICE OF ADMINISTRATIVE
PENALTY ON MARCH 17, 2017 IS VARIED PURSUANT TO SECTION 179(6) OF THE
FTA AS FOLLOWS:

1. AN ADMINISTRATIVE PENALTY IS NOT APPROPRIATE WITH REFERENCE
TO CONTRAVENTIONS OF S 35 OF THE FTA.
2. AN ADMINISTRATIVE PENALTY IS APPROPRIATE WITH REFERENCE TO
UNFAIR PRACTICE PURSUANT TO S 6(2)(a) AND S. 6(4)(a) OF THE FTA
BUT THE APPROPRIATE AMOUNT OF PENALTY SHOULD BE THE AMOUNT
OF \$250 WHICH HAS ALREADY BEEN PAID BY THE APPELLANT.

AWARD DATE: OCTOBER 18, 2017.

INDEX

INTRODUCTION..... 3
JURISDICTION 4
PROCEDURAL GUIDELINES PROVIDED TO THE PARTIES FOR THE WRITTEN
APPEAL 6
ISSUES TO BE DECIDED 7
NOTICE OF ADMINISTRATIVE PENALTY 8
DECISION OF THE APPEAL BOARD 10
FINDINGS OF FACT 11
REASONS FOR THE DECISION..... 16
APPENDIX WITH LIST OF EXHIBITS 21

INTRODUCTION

1. The Appellant, Mr. Evan Rutherford was a sales representative for a company called Consumer Choice Comfort Services Inc. (CCCS) operating in Lethbridge, Alberta.
2. On July 9th, 2016 the Appellant, on behalf of CCCS, went to the door of a consumer Donna Takeda (Takeda), and signed her up on a furnace leasing contract lasting for ten years. Takeda was a 75-year-old resident of Lethbridge, living in her home.
3. On July 9th, 2016 the Appellant arranged for the removal of Takeda's current furnace and the installation of a new furnace. This took place on July 10th, 2016.
4. On July 13th Donna Takeda cancelled the contract and complained to Alberta Consumer Affairs on July 21st, 2016.
5. The matter was investigated by Alberta Investigator, Ms. Plomp, for the Consumer Investigation Unit in Calgary.
6. Ms. Plomp wrote a report to Mr. Areshenko on August 31st, 2016 recommending the issuance of an Administrative Penalty to Mr. Rutherford.
7. A Notice of an Administrative Penalty from the Director of Fair trading (as delegated) was served on the Appellant on March 17th, 2017.
8. The Appellant appealed the Notice on the 13th of April 2017 and paid the \$250 dollars required to accompany an Appeal on May 18th, 2017.
9. On June 5th, 2017 Virginia May was appointed Chair of a one person Appeal Board to hear the Appellant's Appeal.
10. Mr. Areshenko of the Consumer Investigation Unit in Calgary represented the Director of Fair trading (as delegated) in the Appeal process.
11. Ms Tracy Hildebrand of Calgary represented the Appellant in handling the Appeal process.
12. Mr. Areshenko and Ms. Hildebrand agreed that the Appeal could be conducted without a hearing.

JURISDICTION

13. The Jurisdictional documents as provided by the Director can all be found in **Exhibit D1** as listed in the Appendix.
14. The Jurisdiction for the hearing and for the Director of Fair Trading (as delegated) to issue the Notice of Administrative Penalty to the Appellant comes from the Fair Trading Act RSA - 2000 CF-2 and its Regulations, Prepaid Contracting Business Licensing Regulation (PCBLR) AR 185/1999, Administrative Penalties (Fair Trading Act) Regulation (APR) AR 135/2013 and Appeal Board Regulation (ABR) 195/1999.
15. The authority of the Director of Fair Trading (as delegated) to issue a Notice of Administrative Penalty arises from Section 158.1(1) of the FTA.
16. Pursuant to S. 158.2 of the FTA the Director must give an advisement in writing that he plans to send such a notice to the intended person and give the person a chance to make representations to him.
17. "S.158.2 Before imposing an administrative penalty in an amount of \$500 or more, the Director shall:
 - (a) Advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it; and
 - (b) Provide the person with an opportunity to make representations to the Director. "
18. Scott Hood on behalf of the Director sent correspondence to Evan Rutherford on September 21st, 2016. (See Appendix. Directors disclosure of documents.) **Exhibit D2)**
19. Evan Rutherford responded on October 20th, 2016 as he was entitled to do. (Appendix Ex A to the Notice of Appeal in Document Binder D1)
20. The authority for the Appellant to Appeal the Notice of Administrative Penalty comes from Section 179 of the FTA.
21. The requirement for the Appeal Application fee to be paid by the Appellant comes from the Administrative Penalties (Fair trading Act) Regulation. (APR) AR 135/2013.

22. Under s.4 of the APR:
“the fee for an appeal made pursuant to s.179 of the Act is the lesser of
 - (a) \$1000, or
 - (b) Half of the amount of the administrative penalty set out in the notice of administrative penalty. “
23. S. 2(3) of the APR sets the minimum administrative penalty under the Act as \$250.
24. Under S .158.5 of the FTA the Minister may make Regulations with reference to administrative penalties, when and how and in what amounts they can be made.
25. The APR is the regulation that deals with those matters and under S. 2(1) the amount is set according to that Section.
26. Section 2(2) of the APR sets out the matters that the Director must consider in setting the amount of the penalty.
27. The APR in section 5 also provides the authority for an appeal board of an administrative penalty under the Act to consist of one to three members as an exception to the Appeal Board Regulation AR 195/1999 (ABR) S. 2(2).
28. S. 179(1)(e) of the FTA allows for an Appeal of an administrative penalty.
29. The appeal of the Appellant falls under S.13 of the ABR which allows for appeals to be conducted without a hearing where both the Director and the Appellant agree.
30. There was no jurisdictional challenge to the Appeal Board Chair.

PROCEDURAL GUIDELINES PROVIDED TO THE PARTIES FOR THE WRITTEN APPEAL

31. The Appeal board chair provided an email to the parties setting out a process and time frame for the written appeal on August 15th, 2017.
32. The Appeal document filed by the Appellant with some exhibits attached was accepted as the Appellants submission received April 13th, 2017.
33. The Director was to provide his documentary disclosure by September 8th and he did.
34. The Director was to provide his written submissions by September 22nd and he did.
35. The Appellant was to provide his rebuttal submission to the Directors documents and the Directors submission by October 5th, 2017 and he did.
36. The Director provided a brief one-page response rebuttal on October 12th, 2017.
37. The Appeal Board chair was to provide a decision by November 5th, 2017 and she did.
38. Both the submissions, the jurisdictional documents and the evidentiary documents are all listed in the Appendix as the documents considered in this Appeal.
39. None of the evidence provided was provided under oath.

ISSUES TO BE DECIDED

40. Has the Director proved that on July 9th, 2016, a contravention of Section 35 (c) and (h) of the FTA Contents of Sales Contracts occurred by the Appellant for contravening the following sections?

S. 35 (c) where applicable, the salespersons name.

(h) the total amount of the direct sales contract

41. If so, does the contravention merit Notice of an Administrative penalty and if so how much?
42. Has the Director proved that the Appellant engaged in unfair practice on July 9th, 2017 with Takeda leading her to enter into a direct sales contract with CCCS, all pursuant to S. 6(2)(a) of the FTA?
- (a) "It is an unfair practice for a supplier to engage in an unfair practice.
(b) to exert undue pressure or influence on the consumer to enter into the consumer transaction"
43. If so, does the unfair practice merit an administrative penalty and if so how much?
44. Has the Director proved that the Appellant engaged in unfair practice on July 9th, 2017 contrary to S. 6(4)(a) by saying and doing things that might reasonably have deceived and misled Takeda?
45. If so, does the unfair practice merit a Notice of administrative penalty and if so how much?

NOTICE OF ADMINISTRATIVE PENALTY

Government of the Province of Alberta
Department of Service Alberta

Notice of Administrative Penalty

To: Evan M. Rutherford
Calgary, Alberta

After reviewing the information available to me, I have concluded that Evan M. Rutherford has contravened sections 6(2)(a), 6(4)(a), and 35 of the Fair Trading Act in respect of which an administrative penalty may be imposed. Particulars of the contravention are as follows:

Dates of Contravention:

July 9, 2016

Location of Contravention:

Lethbridge, Alberta

Details:

Service Alberta, Consumer Investigations Unit, has received and investigated a complaint against you, Evan Rutherford, sales representative of Consumer Choice Comfort Services Inc. The complainant is a resident of Lethbridge, Alberta.

Despite numerous attempts by the investigator to have you address the consumer's allegations, no response was received.

Based on the complaint received and subsequent investigation, the following issues have been identified:

1. Evan Rutherford has done things and said things which have reasonably misled and deceived the consumer into entering into a direct sales contract, contrary to section 6(4)(a) of the Fair Trading Act. Mr. Rutherford misrepresented to the consumer that her furnace was not "by code" and that if she did not replace her furnace, she would receive a "carbon tax" bill by the end of the month in the amount of \$2000-\$3000 from the government.

2. Evan Rutherford exerted undue pressure or influence on the consumer to enter into the direct sales contract, contrary to section 6{2}(a) of the Fair Trading Act.
3. The written direct sales contract provided to the consumer by Mr. Rutherford failed to contain the information required by section 35 of the Fair Trading Act including:
 - where applicable, the salesperson's name;
 - the total amount of the direct sales contract.

I have assessed an administrative penalty of \$500.00 and served a notice of administrative penalty on Evan Rutherford pursuant to section 158.1(1) of the Fair Trading Act and the Administrative Penalties (Fair Trading Act) Regulation, AR135/2013, as noted in the Reasons for Decision

You are required to submit payment for the administrative penalty within thirty days of the date of service of this Notice. If payment has not been received in this time period, the Notice may be filed in the Court of Queen's Bench and enforced as a judgement of that court pursuant to section 158.4 of the Fair Trading Act.

Dated this 17th day of March, 2017

Scott Hood
Director of Fair Trading (as delegated)
Service Alberta

DECISION OF THE APPEAL BOARD

45. The Decision of the Director to issue a Notice of Administrative Penalty on March 17th, 2017 is VARIED pursuant to Section 179 (6) of the FTA as follows:
- (a) An Administrative Penalty is not appropriate with reference to contraventions of S.35 of the FTA.
 - (b) An Administrative Penalty is appropriate with reference to unfair practice and breaches of S. 6(2)(a) and 6(4)(a) of the FTA, but the appropriate amount of the penalty is \$250, which amount has already been paid by the Appellant.

FINDINGS OF FACT

46. On July 9th, 2016 the Appellant was a sales representative of Consumer Choice Comfort Services Inc. (CCCS) when he attended at the home of Donna Takeda (Takeda) a consumer.
47. Takeda was a 75-year-old widow living alone in her own house in Lethbridge Alberta.
48. The Appellant was a 19-year-old young man undertaking his first job. He had been hired and trained as a direct sales representative for CCCS to sell prepaid lease contracts for the installation of new furnaces by going door to door in Lethbridge.
49. He hoped to earn a pay cheque, as was promised by CCCS by signing consumers up to ten-year leasing furnace contracts through door to door contact. He lasted five months in the job and left after he found it was not a good company to work for because the information they had given him while training was not true.
50. The new furnace contracted for with Takeda was to be immediately installed in the consumer's home and the old furnace removed.
51. The Appellant was trained by CCCS as to what to say in his selling pitch and was provided with their materials.
52. The Appellant did not question anything that he was told to him by CCCS whilst employed by them.
53. There is no evidence to suggest that the Appellant knew from his bosses or anyone that the Prepaid Contracting Business License Regulation AR 185/99 Section 8.1(1)(a), made it an offence under S162(1) of the FTA to sell furnaces in a consumer's home.
54. There is no evidence to suggest the Appellant obtained signatures on any other contracts in the 5 months that he worked for the company.
55. The Appellant says that he made no money or very little from CCCS.
56. The Appellant states that all the information he provided to potential customers was provided to him by CCCS and at the time he believed it all to be true.
57. CCCS was issued a direct seller license on the 24 March 2016 in Alberta. It is an extra provincially licensed company.

58. Donna Takeda the complainant (Takeda) said that the Appellant knocked on her door on July 9th, 2016 and that she allowed him to check her furnace.
59. Takeda states that the Appellant told her that the furnace was not “by code,” because it was 28 years old and that because of safety concerns it should be replaced.
60. Takeda stated that the Appellant asked for her utility bills and told her it would not cost her anything out of pocket because she would not be eligible for “rent to own” program but there would be a decrease in future billings for energy.
61. Takeda says the Appellant told her she would be getting a “carbon tax” bill from the government at the end of the month for \$2000-\$3000 and that changing her furnace would prevent this. These possible high bills scared her as a pensioner on fixed income.
62. Takeda says the Appellant told her she was only 60% efficient with her current furnace and that with a new one furnace she would be 90% efficient.
63. Takeda was told the cost to her would be \$ 89.99 for 120 months with no out of pocket expenses required.
64. On July 9th, 2016 Takeda entered into a Direct Sales Contract with the Appellant of CCCS for a new furnace. (see **Exhibit B** to the Appellants Appeal and **Exhibit 3** to the report of Ms. Plomp.)
65. The contract describes itself as an HVAC rental agreement.
66. Rental payment is listed as \$89.99 per month for 120 months.
67. There is a box ticked by Takeda acknowledging that CCCS waives installation costs and other charges.
68. The consumer has signed her name D Takeda.
69. The Appellant has signed his name “Evan Rutherford “in the signature box but only written Evan in the consultant name box. He also has provided his consultant number.
70. The Appellant also wrote his name Evan and his cell number on the front of the signed contract.
71. The contract consists of three tightly typed columns of detail.
72. The Appellant arranged for a new furnace to be installed the next day, the 10th day of July 2016. July 10th was a Sunday.

73. The Appellant had no further dealings with the complainant, Ms. Takeda after July 9th, 2017.
74. Takeda states she was scared by being told that her furnace was not code or “banned” the term Takeda says the furnace installer used.
75. Takeda thought the contract she signed was a rent to own contract and that she would have savings on her gas bill.
76. Takeda, as a pensioner she feared increasing bills of \$2000 to \$3000 mentioned by the Appellant. as resulting from carbon taxes in Alberta.
77. Takeda was scared by the comments made to her by the Appellant that she might not be currently safe in her house.
78. On July 10th, 2017 Installers came and took out the old furnace. These installers suggested danger of a flood from the water heater, also 28 years old and suggested installing a new water heater because of Takeda’s s fear of flooding after talking to the installer. The water heater would cost \$15.99 plus GST for 120 months.
79. These installers introduced a second contract to scare Takeda.
80. On July 11th, 2016, Takeda checked with the Nord-bridge seniors helping seniors program to see if she was eligible for any government assistance for this purchase. She was advised the contract did not seem quite” right “and to come back the next day.
81. On July 12th Social worker Lorri suggested to Takeda the contract could be a scam. Takeda learned that it was not a “rent to own” scheme. At the end of 10 years Takeda learned she would have to resign or purchase the equipment.
82. On July 13th Takeda told CCCS she wanted to cancel the contract and have the replaced furnace removed. She put a stop payment on her cheques.
83. On July 13th Takeda cancelled the contract.
84. On July 21st a CCCS member called Takeda suggesting costs of 3400 would be incurred for cancellation and uninstalling. He also said Takeda her original furnace was “banned.”
85. Takeda believed from the Appellant’s visit that she would be able to stay alone in her house safely with a new furnace, would own the furnace at the end of ten years and would be avoiding receiving a “huge” bill for the carbon tax each month.

86. **Exhibit 6** of the investigator's report also includes a CCCS brochure provided to the consumer by the Appellant with his first name and phone number on it.
87. It is called, "Affordable Solutions for a better home." The sales pitch is greater efficiency with no upfront costs and reduced energy costs.
88. On July 21st, 2016 Takeda submitted a complaint to Service Alberta, Consumer Investigations Unit.
89. Her complaint, written 10 days or so after the event is very detailed in what she says she was told by the Appellant and how she felt about it. She clearly states that she was told she would be getting a carbon tax bill of \$2000 to \$3000 every month from the government and that it would double in January 2017. She was told by the Appellant that the furnace was not "by code" because it was 28 years old and not safe. It was only 60% efficient. The new one would be 90% efficient. She explained her fear that she might not be able to continue living in her house as long as she wanted if the furnace was not safe and her gas bills too high.
90. On July 26th, 2016 an investigation was established and Ms. Plomp appointed to run it.
91. The investigator, Ms. Plomp had tried to contact the Appellant during her investigation on August 9,10 and 17th, 2016. She says he did not respond to her. The Appellant says he did try to call her but she was away. Ms. Plomp acknowledges she was away at that time.
92. On August 17th, 2016 Ms. Plomp wrote to the Appellant and advised him that she was investigating the contract and asked him to reply by August 26th. The Appellant gave the letter to his boss, who said CCCS would reply.
93. On August 22nd representatives of CCCS removed the furnace from Takeda's house.
94. On August 31st Ms. Plomp recommended the Director provide a Notice of Administrative Penalty
95. On September 21st, 2016 Scott Hood (Director of Fair trading (as delegated) wrote to the Appellant advising him that he would be issuing a Notice of Administrative penalty and asking for the Appellant's position.
96. The Appellant responded to Scot Hood's letter of September 21st, 2016 in an email dated October 20th, 2016, some three months later than the complaint of Takeda.

97. In his email of October 20th, 2016, the Appellant denies that he said the numbers of \$2000-\$3000 for carbon tax bills, but acknowledges saying there was a “hefty “carbon tax coming around January 2017 and that as a result the carbon tax on her bill was expected to double.
98. The Director states that the Appellant did not assist them in their investigation into CCCS. The Appellant did provide a copy of the contract to the investigator.
99. On October 20th in response to the Appellant’s email Mr. Hood advises the Appellant that there is no carbon tax.
100. The Appellant responds on the 26th October and argues with him saying, there is carbon tax and “it is due to double in January 2017, which is what I would have told her.”
101. ON October 27th Mr. Hood corrects him again about the carbon tax, explaining he is in the government of Alberta.
102. The Appellant made some inquiries on his own behalf as to furnace prices and finds out the usual prices are much less than the price on the contract he signed.
103. On December 4th, 2016, the Appellant finally responds to Mr. Hood as to where his information came from and seems to realize it was wrong.
104. The Appellant states that he was told by management of CCCS that if he stuck to the process he would get paid.

REASONS FOR THE DECISION

104. Pursuant to Section 179(8) of the FTA, this Appeal is a trial de novo, and the Appeal Board, may as a result find differently from the Director.
105. The Director has followed the appropriate procedural steps at all stages before sending out his Notice of Administrative Penalty.
106. This is a very sad case where young and old have both been duped by a company, CCCS, trying to make money off both of them.
107. I can find no reason why the nineteen-year-old Appellant, with no apparent experience in the working world should have doubted his boss's facts as provided to him in his training with the statement that he should follow the process given to him exactly if he wants to make money.
108. The Appellant had no reason to disbelieve his first ever boss who had trained him for the job. He was offered an avenue to work and to make money and he took it unquestioningly. There was no obvious reason for him to doubt what they told him to say. Every tool he used in his job, including the facts they gave him were his work materials.
109. We older folk with more experience and cynicism in looking at the world, especially if that has come from being involved on a regular basis in investigating scams, can immediately recognize the warning signs. Companies like CCCS choose unemployed youth and inexperienced people like the Appellant to do their door to door selling for the very reason they can exploit their innocence. The Appellant lasted five months and appears to have quit when he found out the truth about the facts he had been given.
110. The complainant, Takeda was also an automatic target, a 75-year woman alone, older, on a fixed income and with fears of safety and lack of money always at the top of her thinking as she planned her later years.
111. Luckily, she had much more reason to try and find out more about any possible entitlement to some government relief money at her local seniors centre and quickly found out she had been scammed. Until this was suggested to her, however, she appears to have not doubted anything. There is no suggestion she initially went to the seniors centre because she had doubted the contract she had signed.
112. There are two sets of events said to warrant an administrative penalty on this Appeal. One set involves two alleged contraventions of Section 35, dealing with required terms of a direct sales contract in the statute and the second set dealing with alleged unfair practices, undue influence, deception and misleading.

113. With reference to the contraventions alleged under s 35, although there may arguably be a technical breach, I find nothing worth pursuing with a penalty.
114. I am entitled to assume that the requirement of a full name being present on a contract is there because most signatures are illegible and a salesman might not otherwise be identifiable.
115. I am also entitled to believe that the Appellant never read or knew of such a requirement in the statute regime as he states. It is not normal to read such statutory terms before taking such a job. His company had not told him nor provided a copy to him.
116. In the document signed by the Appellant as consultant in the signature box both of his names are very clear with no attempt to conceal. In the next box he does only write Evan, but his full name in signature is right beside it.
117. He also gives his consultant number in the next box and on a brochure produced in the Directors disclosure, his name Evan with his cell number is given to the consumer in **Exhibit 6**.
118. None of this suggests to me any effort to hide his identity from the consumer.
119. To someone doing their first job with no office kind of background, "name" does not necessarily imply "full name."
120. With reference to the second alleged contravention of Section 35, that the full value of the contract was not shown on the contract, the number of months, 120, and the monthly payments, 89.99, are shown clearly.
121. No calculation of the total is shown that is true. Takeda in her report certainly understood the length of time that the payments were to run for in her complaint. She does not complain in her report of not knowing the full value.
122. There was no complaint from her that she failed to understand the total amount due.
123. Also, there is no space on the contract for such a calculation to be entered, intentional maybe, but not the fault in that instance of the Appellant.
124. I find these are technical contraventions of S 35 at their very worst and do not warrant an administrative penalty being applied in the circumstances of this Appeal.
125. Neither did the Appellant know anything about how the FTA requires contracts to be completed. The Appellant states, he had only been provided with his company's materials.

126. On the other hand, I do find the unfair practices under s 6(4)(a) and 6(2) of the FTA occurred and the offences have been made out.
127. There is a definite requirement for an administrative penalty to be applied.
128. As in all situations of alleged coercion and undue influence, it is not open to the alleged coercer or influencer to suggest that the receiver of their efforts was not coerced or influenced. Only Takeda can say how she felt and it is clear from her complaint she felt scared.
129. The real culprit is not, however, in front of this Appeal Board unfortunately. CCCS management appears to be the producer of false information and the trainer of sales representatives lacking the background to know whether what they were asked to say was actually true. The Appellant did say misleading and untrue statements to Takeda.
130. Whether he said a dollar figure for the increase in carbon tax or not is disputed. He acknowledges that he said "hefty" and discussed that topic, and appears to have believed that information himself. Hefty suggests a large number and the result for Takeda would be the same in terms of her fear.
131. The Appellant's only involvement with the complainant, Takeda was on July 9th, 2016 a Saturday. The contract was signed that day. He arranged for the new furnace to be delivered and installed the next day, Sunday July 10th, 2016.
132. That is by any standards a very fast turn around between signing a contract, and having the item delivered and installed the next day, especially on a Sunday in the middle of the summer. That suggests pressure.
133. That sequence of events suggests to me an unfair practice in a consumer transaction and exertion of undue pressure or influence on the consumer, as set out in S6(2)(a) of the FTA.
134. I do believe that the Appellant told the complainant that the furnace was old, not safe and needed to be replaced.
135. Whether the Appellant used the words "by code", old or unsafe or "banned" is irrelevant. The Appellant acknowledge in an email that he said the furnace was old and that there were carbon taxes coming.
136. In so telling the complainant was misled and deceived. It might not have been intentional on the part of the Appellant, but that is the result. Proof of intent is not required in this Appeal.

137. It is only Takeda who can say how she responded and felt when she was told her furnace was unsafe and that carbon taxes would be hefty and going up. She says she felt scared and worried over safety and money. I quite believe she did.
138. It is not open to the Appellant to decide how she felt. He cannot know. I quite believe the Appellant had no real understanding of the impact of his words and actions on Takeda.
139. The Appellant also denies saying a tax of \$2000 to \$3000 was ever mentioned by him.
140. I cannot determine because no evidence was under oath and I have not seen the people to assess them. I tend to believe the complainant that he did use those words because she has nothing to gain by using them and she gave her written summary of events only a few days after the event.
141. It makes no difference to me in my decision since the Appellant says in his email of October 20th, 2016. "I said there was a hefty tax coming around January 1st, 2017."
142. To me the word "hefty" is no better than a dollar figure. "Hefty" means large.
143. There was a strong motivating force on the Appellant to stick to the script given him by CCCS, true or false, because as he said he had been told that was the only way he would ever get a pay cheque.
144. That gave him little incentive to challenge any of the facts he gave out. Neither did he have any obvious reason to challenge his boss.
145. From this Appeal it appears as though CCCS believed in indoctrination of youth and picking on the vulnerable senior population to sell its product.
146. The fact that the Appellant appears to have had no understanding of how he was misused at the time does not change the fact that the Appellant said and did things to the complainant that deceived her and misled her.
147. Furthermore, he exerted undue pressure and influence upon her. He came on a Saturday. he arranged for the furnace to be installed the next day, a Sunday.
148. Takeda was so misled she thought the contract was a rent to own and it was not.
149. I therefore find the two unfair practice allegations made out.
150. An administrative penalty is therefore warranted.

151. I have decided however, in all the circumstances of this Appeal, that a penalty of \$250 is appropriate for these facts. The Appellant has already paid that amount.
152. In that regard I have consulted the Administrative Penalties Regulation of the FTA, AR 135/2013. Section 2(2).
153. This section deals with the appropriate amount to levy and the factors to take into account.
154. Section 2(2) lists seven factors (a) to (g) to consider in assessing a penalty.
- (a) discusses the seriousness of the contravention.
 - In our instance, it could have been serious but the result is not.
 - (b) talks of willfulness or negligence.
 - I see no negligence or willfulness, just a complete lack of knowledge as to the kind of business people he was working for.
 - (c) talks of the impact on the person affected. In this instance.
 - Thanks to good sense and intervention, the impact was short lived and reversed.
 - (d) talks of a history of non-compliance.
 - There is none here.
 - (e) asks for any mitigating factors.
 - I have talked about them above.
 - (f) any economic benefit to the non-complier.
 - None here.
 - (g) any other factors.
 - I have talked at length about the other factors.
155. As a result, I think the minimum penalty under the statute of \$250 is appropriate.
156. It has been paid.



Virginia May, Chair

APPENDIX WITH LIST OF EXHIBITS

LIST OF DOCUMENTS ACCEPTED AS EXHIBITS BY APPEAL BOARD CHAIR

**A. DIRECTORS DOCUMENT BINDER D1 PROVIDED TO APPELLANT AND CHAIR,
CONTAINING JURISDICTIONAL DOCUMENTS AS FOLLOWS:**

Item #	Item Description	Date	Pages
1	APPEAL DOCUMENT OF THE APPELLANT WITH ATTACHED EXHIBITS A TO D	APRIL 13, 2017	
2	CORRESPONDENCE ACKNOWLEDGING PAYMENT BY THE APPELLANT OF \$250 TO ACCOMPANY APPEAL	MAY 18, 2017	
3	NOTICE OF ADMINISTRATIVE PENALTY TO EVAN RUTHERFORD FROM SCOTT HOOD, DIRECTOR OF FAIR TRADING (AS DELEGATED)	MARCH 17, 2017	
4	APPOINTMENT OF VIRGINIA MAY TO CONSTITUTE AN APPEAL BOARD TO HEAR THE APPEAL OF EVAN RUTHERFORD BY DAVID MORHART, DEPUTY MINISTER OF FAIR TRADING	JUNE 5, 2017	
5	COPY OF THE FAIR TRADING ACT RSA 2000 CH F-2		
6	PREPAID CONTRACTING BUSINESS LICENSE REGULATION AR 185/1999		
7	ADMINISTRATIVE PENALTIES (FAIR TRADING ACT) REGULATION AR 135/2013		
8	APPEAL BOARD REGULATION AR 195/1999		

B. DIRECTORS DISCLOSURE DOCUMENTS AS FOLLOWS:

Item #	Item Description	Date	Pages
1	NOTICE OF ADMINISTRATIVE PENALTY AND RIGHT OF APPEAL	MARCH 17, 2017	
2	REASONS FOR DECISION BY SCOTT HOOD	MARCH 17, 2017	

3	PROOF OF SERVICE OF NOTICE AND REASONS FOR DECISION ON EVAN RUTHERFORD	SEPTEMBER 30, 2016	
4	FIVE PAGE LETTER FROM SCOTT HOOD TO EVAN RUTHERFOOD, SETTING OUT HIS PROPOSED COURSE OF CONDUCT	SEPTEMBER 21, 2016	
5	<p>MEMO FROM AMANDA PLOMP, INVESTIGATOR TO MIKE ARESHENKO RE RECOMMENDING AN ADMINISTRATIVE PENALTY WITH 9 EXHIBITS ATTACHED</p> <p>EX 1: COPY OF CORES RECORDS FOR CONSUMERS CHOICE COMFORT SERVICES INC.</p> <p>EX 2: COPY OF ALBERTA BUSINESS LICENCE FOR CONSUMER CHOICE COMFORT SERVICES INC</p> <p>EX 3: COPY OF WRITTEN CONTRACT SIGNED BY TAKEDA AND EVAN RUTHERFORD OF CONSUMER CHOICE COMFORT SERVICES INC</p> <p>EX.4.: COPY OF CANCELLATION LETTER SUBMITTED BY TAKEDA TO CONSUMER CHOICE COMFORT SERVICES INC</p> <p>EX. 5: COPY OF REGISTERED MAIL RECORD FOR CANCELLATION LETTER SUBMITTED BY TAKEDA TO CONSUMER CHOICE COMFORT SERVICES INC</p> <p>EX 6: COPY OF COMPLAINT SUBMITTED BY TAKEDA TO SERVICE ALBERTA BY FAX</p> <p>EX 7: MORES RECORD FOR EVAN RUTHERFORD</p> <p>EX 8. COPY OF LETTER SENT TO EVAN RUTHERFORD VIA. REGISTERED MAIL BY INVESTIGATOR AMANDA PLOMP DATED AUGUST 17th, 2016</p> <p>EX 9. COPY OF REGISTERED MAIL RECORD FOR LETTER SENT ON AUGUST 17th, 2016</p>	AUGUST 31, 2016	

C. DIRECTORS SUBMISSION

Item #	Item Description	Date	Pages
1	DIRECTORS SUBMISSION ON THE APPEAL	SEPTEMBER 1 ST , 2017	4

D. DOCUMENTS OF THE APPELLANT

Item #	Item Description	Date	Pages
1	<p>NOTICE OF APPEAL DATED APRIL 13TH, 2017 WITH THE FOLLOWING EXHIBITS:</p> <p>EX A: EMAIL CORRESPONDENCE BETWEEN THE APPELLANT AND SCOTT HOOD FROM OCTOBER 20TH, 2016 TO MARCH 29TH, 2017</p> <p>EX B: FRONT PAGE OF CONTRACT SIGNED BY DONNA TAKEDA AND THE APPELLANT ON JULY 9TH, 2016</p> <p>EX C: ONE PAGE FLIER ABOUT CARBON TAX FROM CALGARY HERALD</p> <p>EX D: EMAIL COPIES BETWEEN SCOTT HOOD AND THE APPELLANT DATED OCTOBER 20TH AND OCTOBER 26TH (ALSO LISTED UNDER EXHIBIT A DIRECTORS DOCUMENT BINDER D1 ABOVE)</p>	VARIOUS DATES CONTAINED THEREON	
2	LETTER ACKNOWLEDGING PAYMENT OF \$250 TO ACCOMPANY APPEAL (ALSO LISTED UNDER EXHIBIT A DIRECTORS DOCUMENT BINDER D1)	MAY 18 TH , 2017	

E. APPELLANT'S RESPONSE SUBMISSION OCTOBER 4TH, 2017 TO DIRECTOR'S SUBMISSION OF SEPTEMBER 1ST, 2017 WITH THE FOLLOWING EXHIBIT:

Item #	Item Description	Date	Pages
1	EMAIL CORRESPONDENCE BETWEEN EVAN RUTHERFORD AND SCOTT HOOD	OCTOBER 20 TH , 2016 TO MARCH 29 TH , 2017	4