

GORDON WAYNE KIRKPATRICK

AND TO

ANY EMPLOYEE, REPRESENTATIVE, AGENT OR ASSOCIATE OF

GORDON WAYNE KIRKPATRICK

This Director's Order was issued under s. 157 of the *Fair Trading Act* in response to, in the opinion of the Director, contraventions of the Act. As mandated by s. 157 of the *Fair Trading Act*, this Director's Order is part of the public record.

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DIRECTOR'S ORDER UNDER SECTION 157

OF THE FAIR TRADING ACT

TO

GORDON WAYNE KIRKPATRICK

AND TO

**ANY EMPLOYEE REPRESENTATIVE, AGENT OR ASSOCIATE OF
GORDON WAYNE KIRKPATRICK**

Background and Issues

In 2008 as a result of two separate investigations, this department determined that Mr. Gordon Wayne Kirkpatrick was operating a prepaid contracting business in absence of a prepaid contracting business licence. As a result of the determinations made by this department, Mr. Kirkpatrick received information on the legislative responsibilities of a prepaid contracting business and a formal warning was placed on file.

It has come to this department's attention that on or about January 7, 2012 and again on March 7, 2013 Mr. Kirkpatrick, engaged in the activities of a prepaid contracting business with two separate consumers. In both circumstances Mr. Kirkpatrick, solicited, negotiated or concluded a construction or maintenance contract away from his normal place of business. In relation to the stated contracts, Mr. Kirkpatrick accepted a prepayment prior to the full completion of the contract. In both circumstances Mr. Kirkpatrick accepted a prepayment and failed to complete the work required under the contract. Within a one year period of the contract dates, the consumers affected by the January 7, 2013 and March 7, 2013 prepaid contracts, sent a notice of cancellation to Mr. Kirkpatrick. Mr. Kirkpatrick did not refund either consumer.

The stated activity constitutes a "Prepaid Contracting Business" requiring Gordon Wayne Kirkpatrick to be licensed as a Prepaid Contracting Business, as required

under section 104(1) of the *Fair Trading Act*. At the time of entering in the prepaid contracts, Mr. Kirkpatrick was not licensed as required under section 104(1) of the *Fair Trading Act*.

When a contractor enters into a prepaid contract without the proper licence, the consumer may cancel the contract up to one year from the date the contract was entered into. If the consumer cancels, the contractor must refund to the consumer all money paid by the consumer. The consumers cancelled the contracts. Mr. Kirkpatrick did not return the deposit to either consumer after cancellation.

When a contractor enters into a prepaid contract, the contract must include all of the information in section 35 of the *Fair Trading Act*. The prepaid contract used by Mr. Kirkpatrick did not include all of the information required by section 35 of the *Fair Trading Act*. If a prepaid contract does not include all the information required by section 35 of the *Fair Trading Act*, the consumer may cancel the contract up to one year from the date the contract was entered into. The consumers cancelled the contract. Mr. Kirkpatrick did not return the deposit to either consumer after cancellation.

A “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.

A “prepaid contract” means a construction or maintenance contract in which all or part of the contract price is to paid before all the goods or services called for in the contract are provided.

A “construction or maintenance contract” in part means a contract for the purpose of, construction, altering, maintaining, repairing, adding to or improving a person’s own private dwelling or structure/building located on the same property, used in connection with a person’s own private dwelling/building/structure.

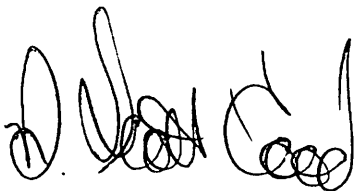
Order

- Gordon Wayne Kirkpatrick must immediately cease entering into prepaid contracts (taking down payments, deposits or progress payments before the work is fully completed) with consumers until the licensing requirements have been met, and must ensure refunds are provided to consumers who cancel when allowed to by the *Fair Trading Act*.

- Any employee, representative, or agent of Gordon Wayne Kirkpatrick, must immediately cease entering into prepaid contracts (taking down payments, deposits or progress payments before the work is fully completed) with consumers until the licensing requirements have been met, and must ensure refunds are provided to consumers who cancel when allowed to by the *Fair Trading Act*.

NON COMPLIANCE WITH ORDER

ANY PERSON WHO FAILS TO COMPLY WITH AN ORDER OF THE DIRECTOR UNDER SECTION 157 OF THE *FAIR TRADING ACT* CONTRAVENES THIS ACT AND IS GUILTY OF AN OFFENCE AND MAY BE PROSECUTED PURSUANT TO SECTION 163 OF THE *FAIR TRADING ACT*.

A handwritten signature in black ink, appearing to read 'S. Hood', with a stylized flourish at the end.

Scott Hood
Director of Fair Trading (as delegated)
August 22, 2013