

**MINH (JIMMY) HUYNH**

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**

**MINH (JIMMY) HUYNH**

**Background and Issues**

It has been confirmed with Service Alberta, Consumer Services, Investigation Services South that Minh (Jimmy) Huynh is conducting business as a prepaid contractor.

On or about July 19, 2013 Mr. Huynh attended a consumer's home in Alberta and negotiated and concluded a verbal contract to remove five trees and to construct two decks in the consumer's yard. The total price quoted was \$4,900 and a deposit of \$400 was requested and provided prior to the work commencing. The consumer and Mr. Huynh entered into a verbal contract that did not comply with section 35 of the *Fair Trading Act* (FTA), subsequent to section 10(2) of the *Prepaid Contracting Business Licensing Regulation* (PCBLR).

The activity of soliciting, negotiating or concluding a contract in a location other than their normal place of business and accepting a deposit or prepayment prior to completion of the project constitutes a "**Prepaid Contracting Business**". This requires Mr. Huynh to be licensed as required under section 104(1) of the FTA.

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 be paid before all of the goods or services called for in the contract are provided.

A "Construction or Maintenance Contract" in part means a contract for the purposes of constructing, altering, maintaining, repairing, adding to or improving a person's own private dwelling or a structure/building located on the same property, used in conjunction with the person's own private dwelling or improving real estate property to be used in connection with the person's own private dwelling/building/structure.

Mr. Huynh entered into this prepaid contract without holding a license under section 104(1) of the FTA. Mr. Huynh was informed of the prepaid contracting license requirements. To this date, Mr. Huynh, has not obtained the required license.

Within 15 days after a direct sales contract is cancelled, the supplier must refund to the consumer all money paid by the consumer and return to the consumer's premises any trade-in or an amount equal to the trade-in allowance. This requires Mr. Huynh to return the deposit as a responsibility of a cancelled agreement under section 31(2) of the FTA. Mr. Huynh failed to return the deposit when the consumer contacted him via telephone to cancel their agreement. To this date, Mr. Huynh, has not returned the deposit to the consumer.

It is an unfair practice for a supplier to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services. This requires Mr. Huynh to know or ought to have known that he was unable to provide the goods or services to the consumer under section 6(3)(a) of the FTA.

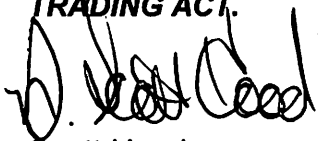
Mr. Huynh engaged in a consumer transaction with the consumer, negotiating and finalizing an agreement for landscaping and construction services in which Mr. Huynh accepted a deposit toward the contract. Mr. Huynh knew or ought to have known that under section 6(3)(a) of the FTA that he was unable to provide any reasonable benefit for the goods and services agreed to in the contract.

### **ORDER**

- Minh (Jimmy) Huynh individually or through any employee, representative, agent, or associate must immediately stop engaging in the activities of a "Prepaid Contracting Business" by soliciting, negotiating, or concluding in person, at any place other than the seller's place of business, a prepaid contract.
- Minh (Jimmy) Huynh individually or through any employee, representative, agent, or associate must immediately cease taking down payments, progress payments, deposits or any other monies prior to completion of the project in its totality unless the licensing requirements have been met.

### **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*.**



Scott Hood  
Director of Fair Trading (as delegated)  
October 30, 2013