

**ARSEN HOVHANNISSIAN &  
ROMEO VERSACE, DIRECTORS  
TO  
XPRESS KITCHENS LTD.  
AND TO  
ANY EMPLOYEE, REPRESENTATIVE, AGENT OR  
ASSOCIATE OF XPRESS KITCHENS LTD.**

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**

**ARSEN HOVHANNISSIAN & ROMEO VERSACE, DIRECTORS**

**TO**

**XPRESS KITCHENS LTD.**

**AND TO**

**ANY EMPLOYEE, REPRESENTATIVE, AGENT OR ASSOCIATE OF XPRESS KITCHENS LTD.**

Xpress Kitchens Ltd. operates as a registered business with a corporate registration. The Directors of Xpress Kitchens Ltd. are Arsen Hovhannissian (30% voting shares) and Romeo Versace (70% voting shares).

**ISSUES**

Service Alberta has investigated allegations related to prepaid contracting activities engaged in by Xpress Kitchens Ltd. and has found evidence that:

1. Xpress Kitchens Ltd. acted as a prepaid contracting business by taking money as a deposit from a consumer on a home renovation when Xpress Kitchens Ltd. was not licensed as a prepaid contractor with Service Alberta as required by section 104(1) *Fair Trading Act*.
2. Xpress Kitchens Ltd. did not use a contract which meets the requirements of Section 35 of the *Fair Trading Act* as required by Section 10(2)(a) of the Prepaid Contracting Business Licensing Regulation.
3. Xpress Kitchens Ltd. did not refund any of the deposit amounts within 15 days after the consumer cancelled the direct sales contract as required by section 31(2) *Fair Trading Act*.

4. Xpress Kitchens Ltd. did increase the cost of a contract by more than 10% or \$100 of the contracted amount in a home renovation contract contrary to section 6(2)(e) *Fair Trading Act*.
5. Xpress Kitchens Ltd. did mislead and deceive a consumer by signing a contract to do renovations to a residence and then fail to complete the renovations as stated in the contract which is contrary to section 6(4)(a) *Fair Trading Act*.
6. Xpress Kitchens Ltd. took money as a deposit and then did not provide a good or service so that the consumer could receive a reasonable benefit from the money paid contrary to section 6(3)(a) *Fair Trading Act*.

Based on the evidence the Director has formed the opinion Xpress Kitchens Ltd. have breached the *Fair Trading Act* and the Prepaid Contracting Business Licensing Regulation.

## **LEGISLATION**

The *Fair Trading Act* states that:

- 6(1)** In this section, “material fact” means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.
- (e) to charge a price for goods or services that is more than 10%, to a maximum of \$100, higher than the estimate given for those goods or services unless
    - (i) the consumer has expressly consented to the higher price before the goods or services are supplied, or
    - (ii) if the consumer requires additional or different goods and services, the consumer and the supplier agree to amend the estimate in a consumer agreement;
- (3)** It is an unfair practice for a supplier
- (a) 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;
- (4)** Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more potential consumers:
- (a) a supplier’s doing or saying anything that might reasonably deceive or mislead a consumer;
- 7(1)** A consumer may cancel at no cost or penalty to the consumer a consumer transaction, whether written or oral, that was entered into by the consumer and a supplier who engaged in an unfair practice regarding the consumer transaction, whether the unfair practice occurred before, during or after the time when the consumer transaction was entered into, and in addition the consumer is entitled to any remedy that is available at law, including damages.

**(2)** Where a supplier has been found to have engaged in an unfair practice, any consumer who entered into a consumer transaction that was subject to the unfair practice with the supplier who engaged in the unfair practice may cancel the consumer transaction at no cost or penalty to the consumer.

**(3)** A consumer is entitled to recover the amount by which the consumer's payment under the consumer transaction exceeds the value of the goods or services to the consumer, or to recover damages, or both, if cancellation of the consumer transaction under subsection (1) or (2) is not possible because

(a) the return or restitution of the goods or cancellation of the services is no longer possible, or

(b) cancellation would deprive a third party of a right in the subject-matter of the consumer transaction that the third party has acquired in good faith and for value.

**(4)** When a consumer cancels a consumer transaction under subsection (1) or (2), the cancellation operates to cancel, as if they never existed,

(a) the consumer transaction,

(b) all related consumer transactions,

(c) all guarantees given in respect of money payable under the consumer transaction,

(d) all security given by the consumer or a guarantor in respect of money payable under the consumer transaction, and

(e) all credit agreements and other payment instruments, including promissory notes,

(i) extended, arranged or facilitated by the supplier with whom the consumer made the consumer transaction, or

(ii) otherwise related to the consumer transaction.

**7.1(1)** A consumer must give notice within one year of a supplier having been found to have engaged in an unfair practice related to a consumer transaction if

(a) the consumer wishes to cancel the consumer transaction under section 7(1) or (2), or

(b) the consumer seeks recovery under section 7(3), if cancellation is not possible.

**(2)** A consumer may give notice in any manner as long as the notice indicates

(a) the consumer's intention

(i) to cancel the consumer transaction, or

(ii) to seek recovery if cancellation is not possible,  
and

(b) the consumer's reasons for taking the actions set out in clause (a),  
and meets any requirements that may be prescribed.

**(3)** Notice may be delivered by any means, but if notice is delivered other than by personal service it is deemed to have been given when sent.

**(4)** The consumer may send or deliver the notice to the supplier with whom the consumer entered into the consumer transaction at the address set out in an agreement under the consumer transaction or, if the consumer did not receive a written copy of the agreement or if the address of the supplier was not set out in the agreement, the consumer may send or deliver the notice

(a) to any address of the supplier on record with the Government of Alberta,  
or

(b) to an address of the supplier known to the consumer.

**(5)** If a consumer has delivered notice and has not received a satisfactory response within the prescribed period, the consumer may commence an action in the Court of Queen's Bench.

**28(1)** In addition to the right of cancellation under section 27, a consumer may cancel a direct sales contract in the circumstances set out in this section.

**(2)** A consumer may cancel a direct sales contract within one year from the date the direct sales contract is entered into,

(a) if the supplier was required to be licensed under Part 10 and was not licensed at the time the direct sales contract was concluded, or

(b) if the direct sales contract does not include all the information required under section 35.

**(3)** A consumer may cancel a direct sales contract within one year from the date the direct sales contract is entered into if the supplier

(a) does not deliver the goods within 30 days from the delivery date specified in the direct sales contract or an amended delivery date agreed on in writing by the consumer and the supplier, or

(b) does not begin the services within 30 days from the commencement date specified in the direct sales contract or an amended commencement date agreed on in writing by the consumer and the supplier.

**(4)** If, after the period mentioned in subsection (3) has expired, the consumer accepts delivery of the goods or the consumer authorizes the services to begin, the consumer may not cancel the direct sales contract pursuant to subsection (3).

**(5)** Subject to subsection (6), a consumer may cancel a direct sales contract in which the goods purchased are a voucher if, within one year from the date that the direct sales contract is entered into or within the date specified in the voucher for exercising the rights granted by the voucher, whichever occurs first, the supplier that is to provide the goods or services under the voucher or is to provide goods or services at a discounted or reduced price under the voucher

(a) refuses to do so for a reason that is not specified in the voucher, or

(b) no longer exists.

**(6)** Subsection (5) does not apply to a direct sales contract in which the goods purchased are a voucher if the consumer has received

(a) goods or services under the voucher having a value that is at least the price paid for the voucher,

(b) discounts or price reductions under the voucher having a value that is at least the price paid for the voucher, or

(c) a combination of the values referred to in clauses (a) and (b) that is at least the price paid for the voucher.

**30(1)** A cancellation of a direct sales contract in accordance with this Division operates

(a) to cancel the direct sales contract, or

(b) when the direct sales contract is an offer to buy, to withdraw the offer, as if the direct sales contract never existed.

**31(1)** In this section,

- (a) “authorized person” means
  - (i) the supplier,
  - (ii) the person for the time being entitled to possession of the goods, or
  - (iii) a person specified in the direct sales contract as a person to whom a notice of cancellation may be given;
- (b) “consumer’s premises” means the place specified in the sales contract as the consumer’s address or, if the address shown does not specifically identify that place by a municipal address, land description or other description sufficient to distinguish that place from any other, the place where the consumer actually resided at the time the sales contract was made.

**(2)** 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.

**35** A written direct sales contract must include

- (a) the consumer’s name and address;
- (b) the supplier’s name, business address, telephone number and, where applicable, fax number;
- (c) where applicable, the salesperson’s name;
- (d) the date and place at which the direct sales contract is entered into;
- (e) a description of the goods or services, sufficient to identify them;
- (f) a statement of cancellation rights that conforms with the requirements set out in the regulations;
- (g) the itemized price of the goods or services, or both;
- (h) the total amount of the direct sales contract;
- (i) the terms of payment;
- (j) in the case of a sales contract for the future delivery of goods, future provision of services or future delivery of goods together with services, the delivery date for the goods or commencement date for the services, or both;
- (k) in the case of a sales contract for the future provision of services or the delivery of goods together with services, the completion date for providing the services or the goods together with services;
- (l) where credit is extended,
  - (i) a statement of any security taken for payment, and
  - (ii) the disclosure statement required under Part 9;
- (m) where there is a trade-in arrangement, a description of and the value of the trade-in;
- (n) the signatures of the consumer and the supplier.

**104(1)** No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

**(2)** If required to do so by the applicable regulation, a person who engages in a designated business at more than one location must hold a separate licence issued under this Act for each location that authorizes the person to engage in that business.

**157(1)** If, in the opinion of the Director

- (a) a person is contravening or has contravened this Act or the regulations,
- (b) a regulated person is using any form, agreement, letter or other document that is misleading or contains a term that misrepresents this Act or the regulations, or
- (c) a print, broadcast or electronic publisher, including but not limited to a publisher of telephone directories and Internet listings, is publishing or has published an advertisement that is misleading or contains a term that contravenes this Act or the regulations,

the Director may issue an order directed to the person or publisher.

**(2)** An order may direct the person or publisher

- (a) to stop engaging in anything that is described in the order, subject to any terms or conditions set out in the order, and
- (b) to take any measures specified in the order, within the time specified in the order, to ensure that this Act and the regulations are complied with.

**(3)** A person or publisher who is subject to an order under this section may appeal under section 179.

**157.1(1)** The Director must maintain a public record of undertakings, Director's orders, court orders and injunctions and any other prescribed document or information.

**(2)** The Director may prescribe the form of the public record referred to in subsection (1) and which documents must or may be included.

**158(1)** If the Director is of the opinion that a person is not complying or has not complied with an order of the Director under section 157, the Director may apply by originating notice to the Court of Queen's Bench for an order directing that person to comply with the order.

**(2)** The Director may not bring an application under this section

- (a) until the time for appealing the Director's order has passed without an appeal's being made, or
- (b) if an appeal has been made, the Director's order has been confirmed by the appeal board.

**(3)** After receiving an application under subsection (1), the Court of Queen's Bench may, if it considers it necessary in the circumstances, make an interim order granting the relief that the Court considers appropriate pending the determination of the application.

**(4)** An interim order under subsection (3) may be made ex parte if the Court of Queen's Bench considers it appropriate in the circumstances.

**(5)** On hearing an application, the Court of Queen's Bench may,

- (a) if it is of the opinion that there were insufficient grounds for the Director to have issued an order under section 157, quash the order;
- (b) if it is of the opinion that the Director had sufficient grounds for issuing the order and that the person is not complying or has not complied with the Director's order, grant an order, subject to any terms and conditions the Court considers appropriate in the circumstances, doing one or more of the following:
  - (i) directing the person to comply with the order of the Director;

- (ii) giving directions that the Court considers necessary in order to ensure that the order of the Director will be complied with;
- (iii) awarding costs in respect of the matter.

**161** Any person who contravenes any of the following provisions is guilty of an offence:

- (a) in Part 2, sections 6, 9, 10, 11, 23;
- (b) in Part 3, sections 31(2), 39(1);

**The Prepaid Contracting Business Licensing Regulation (185/99) states that:**

**1** In this Regulation,

- (a) "Act" means the *Fair Trading Act*;
- (b) "licence" means a prepaid contracting business licence established by this Regulation;
- (c) "prepaid contract" means a prepaid contract as defined in section 5 of the *Designation of Trades and Businesses Regulation*;
- (d) "prepaid contracting business" means the business designated as the prepaid contracting business under the *Designation of Trades and Businesses Regulation*.

#### **Licences**

**2(1)** The class of licence to be known as the prepaid contracting business licence is established.

**(2)** A person who holds a prepaid contracting business licence is authorized to engage in the prepaid contracting business.

**(3)** The Director may specify in a licence the class of goods or services that may be sold under the licence.

**(4)** No licensee may engage in the prepaid contracting business in respect of a class of goods or services unless that class is specified in the licensee's licence.

**10(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.

**(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 the requirements of section 35 of the Act, and
- (b) sets out quality or types of materials to be used under the contract and the services and work to be carried out under the contract.

**11** A contravention of section 2(4), 9 or 10 is, for the purposes of section 162 of the Act, an offence.

**Designation of Trades and Businesses Regulation (178/99) states that:**

**5(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 is 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, or
- (B) a structure that is to be used in connection with a building referred to in paragraph (A) and that is located on the same parcel as that building,  
or
- (ii) altering, maintaining or improving real property to be used in connection with a building or structure referred to in subclause (i),  
but does not include a contract referred to in subsection (3);
- (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.

## **ORDER**

- Arsen Hovhannissian, Romeo Versace and/or Xpress Kitchens Ltd. individually or through any employee, representative, agent or associate, must immediately stop taking monetary deposits from consumers where the contract to complete renovation work on private residences is solicited, negotiated or concluded away from the businesses normal place of business.
- Arsen Hovhannissian, Romeo Versace and/or Xpress Kitchens Ltd. individually or through any employee, representative, agent or associate, must immediately stop acting as a prepaid contracting business until they are licensed as a prepaid contracting business as required under the Prepaid Contracting legislation if any soliciting, negotiating or concluding of a prepaid contract takes place away from the businesses normal place of business.
- Arsen Hovhannissian, Romeo Versace and/or Xpress Kitchens Ltd. individually or through any employee, representative, agent or associate, must immediately stop increasing the total cost of the contract by more than 10% or \$100 whichever is less when no changes are made to the original contract with the consumer's consent.
- Arsen Hovhannissian, Romeo Versace and/or Xpress Kitchens Ltd. individually or through any employee, representative, agent or associate, must immediately refund to the consumer the deposits amount within 15 days of the contract cancellation if the company has acted as a prepaid contracting business and where the prepaid contract is cancelled by the consumer.
- Arsen Hovhannissian, Romeo Versace and/or Xpress Kitchens Ltd. individually or through any employee, representative, agent or associate must not enter into any contract with a consumer for goods or services unless Xpress Kitchens Ltd. has the

ability and is prepared to provide to the consumer a reasonable benefit for the money paid for those contracted goods or services.

**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)  
January 30, 2014