

IN THE MATTER OF AN APPEAL BY SHANE GUILTNER PURSUANT TO SECTION
179(1) OF THE *CONSUMER PROTECTION ACT* RSA 2000 c. C-26.3

AND

IN THE MATTER OF THE JUNE 1, 2021 ORDER OF THE DIRECTOR OF FAIR
TRADING (as delegated) ISSUED PURSUANT TO SECTION 157 OF THE *CPA* and THE
JUNE 1, 2021 NOTICE OF ADMINISTRATIVE PENALTY ISSUED BY THE DIRECTOR
OF FAIR TRADING (as delegated) PURSUANT TO SECTION 158.1(1) OF THE *CPA* and
PURSUANT TO THE *ADMINISTRATIVE PENALTIES (CONSUMER PROTECTION ACT)*
REGULATION, A/R 135/2013

Decision of the Appeal Board

APPEAL BOARD: Louise Redmond (Chair)

HEARING: Virtual Hearing via Zoom on November 23, 2021

PARTIES: The Director of Fair Trading (the “Director”) (represented by
Mr. Joseph O’Kurley, Statute Administrator, Consumer
Programs, Service Alberta)

Mr. Shane Guiltner (Appellant - Self- represented)

Preliminary Matters:

1. Due to the COVID-19 Pandemic, and in order to proceed with this appeal in a timely manner while at the same time ensuring the health and safety of the parties, the witnesses, and the Appeal Board during the COVID-19 Pandemic, and having the consent of the parties, this Appeal Hearing was conducted virtually by the Zoom video platform on November 23, 2021.
2. A Notice of Hearing was issued to the parties on November 1, 2021.
3. A Pre-Hearing Meeting was conducted via Zoom on November 9, 2021 attended by the Appeal Board Chair and the parties in order to discuss preliminary matters. A memorandum of the Pre-Hearing meeting was provided to the parties on November 17, 2021.
4. At the start of the November 23, 2021 appeal hearing the parties confirmed the following:

- (a) The Zoom virtual hearing room was satisfactory;
 - (b) The Appeal Board had jurisdiction to hear the appeal;
 - (c) No issue was taken with the composition of the Appeal Board; and
 - (d) The proceedings would not be recorded.
5. The parties were each requested to alert the Chair during the hearing if they encountered any technical difficulties in hearing or seeing the proceedings. Neither party indicated at any point in the hearing that they were having any technical difficulties.
6. All witnesses were affirmed as per the agreement of the parties.
7. At the request of the Chair, both parties submitted written closing submissions to the Chair and to each other on November 26, 2021 (the Director) and on December 6, 2021 (the Appellant).

Introduction

8. The parties are in agreement that the contract in issue in this appeal is a June 29, 2018 agreement for the home renovation of a kitchen (primarily) and family room (the "Contract") and that the renovations were to be at the home of Sheri Rowell and Kirk Hygard (the "Complainants").
9. The governing act in this matter is the *Consumer Protection Act*, RSA 2000 c. C26.3 (the "*CPA*")
10. The Director alleges that the Appellant Shane Guiltner, on behalf of Inspire Renovations Inc. ("Inspire"):
- (a) negotiated a project at the Complainants' home and that the Contract was not compliant with s. 35 of the *CPA* because it failed to include the information required under s. 35((d)(f) (g) (i) (j) and (k) of the *CPA*; and
 - (b) upon cancellation of the Contract only a portion of the Complainants' monies were returned, despite Section 31(2) of the *CPA* requiring that all monies be returned within 15 days.
11. The Director also alleges that there have been several previous complaints against the Appellant, and various companies he represents, alleging contraventions of the *CPA*, and that investigations resulted in warnings followed by recommendations for administrative action and the issuance of administrative penalties, which remain unpaid.

12. A June 1, 2021 Director's Order was issued pursuant to s. 157 of the *CPA* to Shane Guiltner and any employee, representative or agent (the "Director's Order") which states that Shane Guiltner, and any employee representative or agent thereof, must:

1. If licensing requirements are met, ensure that all prepaid contracts are in writing and include the terms required by section 10(2) of the *Prepaid Contracting Business Licensing Regulation* and section 35 of the *Consumer Protection Act*.
2. Ensure that section 31(2) of the *Consumer Protection Act* is complied with and therefore, within 15 days after a direct sales contract is cancelled, refund all money paid by the consumer.

13. A June 1, 2021 Notice of Administrative Penalty was issued to Shane Guiltner, Inspire Renovations Inc., imposing an administrative penalty totalling \$2,000,00, assessed as follows:

s. 31(2) <i>CPA</i> (failure to return funds after cancellation)	\$ 500.00
s. 35 <i>CPA</i> (contract does not meet requirements)	\$1,500.00

14. The Appellant's June 28, 2021 Notice of Appeal letter denies that there was any form of direct selling involved because all contracts involved in the Complainants' renovation were negotiated and signed at the place of business of Inspire Renovations Inc., which was a full service showroom, boardroom, office and shop, or alternatively, were negotiated via email or over the phone. The Notice of Appeal states that the only purpose that the Appellant went to the Complainants' home was to physically see the project site, take measurements, and inspect for potential issues that could arise during the renovation.

15. The Notice of Appeal letter denies that the contract did not meet Service Alberta standards because the contract used by Inspire Renovations used the contract sample submitted to Service Alberta to obtain Inspire's Prepaid Contractor's Licence.

16. The Notice of Appeal letter states that products and services were provided that, upon contract cancellation, could not be returned. These are said to be demo, frame, plumbing and electrical rough-ins, as well as all the design and administrative work, and that it was unreasonable for the Complainants to not pay for any products or services rendered up to the point of cancellation.

17. The Notice of Appeal letter states that large box stores such as Home Depot and Rona competed directly with Inspire but operated without Prepaid Contractor licences to provide contract work to renovate kitchens for their clients and that the common practice is for these companies to send representatives to clients' homes to inspect, take measurements, assess progress and meet with clients to discuss aspects of the renovation/installation all without being required to operate as a Prepaid Contractor.
18. The Notice of Appeal letter also states that the statute of limitations for Director's liability is two years and that the Appellant resigned and ceased the operations of Inspire in December 2018. Reference is made to a letter from the Director of Fair Trading received on May 10, 2021, which is said to be beyond the two-year time limit for the Appellant to be named in association with Inspire Renovations Inc. The Notice of Appeal states that any action against Inspire Renovations would be solely against Inspire Renovations and not the Appellant as either an employee, director, or representative of Inspire Renovations Inc. after December 2020. Any decision or reporting should not include Shane Guiltner in the decision or action.

Issues to be addressed in this Appeal

- A. Was the Contract a Prepaid Contract and/or Direct Sales Contact?
- B. If so:
- (i) did the Contract comply with s. 35 of the *CPA*?
 - (ii) upon cancelation of the Contract did the Appellant comply with s. 31(2) of the *CPA*?
- C. Is there a limitation period issue?

Exhibits:

19. The following documents were entered as Exhibits at the Appeal Hearing:

<u>Exhibit No.</u>	<u>Description</u>
1	Consumer Services Appointment Document for Ms. Shaun Brinton under the <i>CPA</i> .
2	Spreadsheet – Activity Notes from the Internal Service Alberta Consumer Affairs Tracking System (“CATS”) (320 row Excel spreadsheet).

- 3 April 29, 2021 Memorandum from Shaun Brinton to Derek Curtis CIU South Investigations Manager, Service Alberta with recommendation for administrative action.
- 4 Supporting Documents referred to in the April 29, 2021 Memo (Exhibit 3) from Shaun Brinton to Derek Curtis (261 pages).
- 5 Series of 13 photographs of the exterior and interior of the Inspire Renovations Inc. showroom including products therein (taken by Shane Guiltner).

Issue A: Was the Contract a Prepaid Contract and/or a Direct Sales Contract?

20. The relevant legislative provisions are as follows:

Designation of Trades and Businesses Regulation Alta Reg 178/1999 (the "DOTABR"):

Prepaid contracting business

5(1) Part 10 of the *Consumer Protection 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.

Consumer Protection Act RSA 2000 c. C-26.3:

Part 3

Cancellation of Direct Sales Contracts and Time Share Contracts

Definitions

24 In this Part,

- (a) “commencement date” means the date a supplier of a prepaid or direct sales contract begins tangible or identifiable service at the location specified in the contract;
- (a.1) “direct sales contract” means a consumer transaction that is a contract, other than a time share contract, in which
 - (i) the consideration for the goods or services exceeds an amount specified in the regulations, and
 - (ii) the contract is negotiated or concluded in person at a place other than the supplier’s place of business or at a place other than a market place, auction, trade fair, agricultural fair or exhibition,
 and includes an offer to buy goods or services or to enter into a contract mentioned in subclause (i) or (ii);

...

Issue A: Evidence of the Director

21. The Contract was introduced into evidence as part of Exhibit 4 and is found at pages 36-37 of that Exhibit. At all material times Inspire was licensed by Service Alberta as a Prepaid Contracting business (Exhibit 4, page 4), which licence was for the period May 5, 2017 to May 31, 2019.
22. The Director called one witness – Shaun Brinton, who was the Consumer Investigations Unit Inspector/Investigator for Service Alberta in this matter. Ms. Brinton holds an appointment as an inspector under the *Consumer Protection Act*. Ms. Brinton testified that she has experience in investigating businesses where prepaid contracting requirements are an issue.
23. Neither of the Complainants testified at the Appeal Hearing. In terms of her dealings with the Complainants, Ms. Brinton testified that she had no reason to question their authenticity.
24. This matter was referred to Ms. Brinton for investigation in February of 2019. The Complainants had initially been in contact with Service Alberta to submit a bond claim against Inspire’s bond. They provided information and documents to Service Alberta during the process of that claim. It was during

the process of completing the bond claim file that possible legislative contraventions were identified and an investigation file was opened by Ms. Brinton on February 5, 2019. The course of Ms. Brinton's investigation is outlined in her April 29, 2021 11-page memorandum to Derek Curtis, CIU ("Consumer Investigations Unit") South Investigations Manager, Service Alberta (the "Investigation Memo") entered as Exhibit 3. Attached to the Investigation Memo is a list of 15 supporting documents totaling 261 pages, which were entered as Exhibit 4. The Exhibit 4 documents include correspondence from the Complainants to Service Alberta during the bond claim process as well as other documents that outlined, from the Complainants' perspective, the events that had transpired. Included in the bond claim documents at Exhibit 4 are emails, texts and letters between the Appellant and the Complainants.

25. As a result of her investigation, Ms. Brinton concluded in her Investigation Memo that the Contract did not comply with section 35 of the *CPA* in contravention of s. 10(2) of the *Prepaid Contracting Business Licensing Regulation* (the "*PCBLR*") and that there was sufficient information that Inspire and Mr. Guiltner, in contravention of s. 31(2) of the *CPA* had not refunded monies to the Complainants within 15 days of the Complainants cancelling the Contract. Ms. Brinton recommended that her investigation be forwarded to the Director of Fair Trading to determine what, if any, administrative action might be appropriate.

26. The Complainants met the Appellant Shane Guiltner on January 14, 2018 at the Calgary Renovation Show. They spoke with Mr. Guiltner and scheduled a meeting at their home for January 31, 2018 (Exhibit 3, page 2). The Investigation Memo and certain documents found in Exhibit 4 show that the chronology of the course of the subsequent relevant communications between the Complainants and Mr. Guiltner was as follows:
 - (a) **January 31, 2018** – Mr. Guiltner attended at the Complainants' home. The October 15, 2018 Bond Claim Assessment document (Exhibit 4, page 14-19) (the "Bond Claim Assessment") asks the Complainants to describe what occurred at that meeting with the response at p. 14 being:

Discussed the kitchen renovation and what options might be for reconfiguring the kitchen. On Feb 2, 2018 Shane provided a drawing of what the kitchen could potentially look like. We have a string of emails with discussion on the project and on February 28, 2018 we received two quotes with different options.

(b) **February 2, 2018** – Email from Mr. Guiltner to the Complainants (Exhibit 4, page 115) in which he states:

Hi Kirk & Sheri (my apologies if I have Sheri wrong as it was a late night and I didn't make a note), thanks for allowing me the opportunity to be considered as your contractor for your renovation. I appreciate the time you spent with me on Wednesday so that I can better understand your project and to be able to provide some unique ideas based on your needs and desires for your home.

Please find the attached images and drawings based on our conversation on Wednesday. The new layout (layout 2) definitely does open up the space considerably and would be quite a shift in the layout and look of your home. I will be working on a quote for you and will send that to you both as soon as I have it ready to send.

I hope these ideas get you excited about the possibilities of your home renovation. I do my best to try and inject something new into the space and I believe we really achieved that in Layout 2. We are always hopeful this has a big factor in choosing your contractor.

Regards,
Shane

As per Exhibit 4 at pages 115-122, seven kitchen images/drawings were attached to this email.

(c) **February 14, 2018** – Email sent from Complainant Kirk Hygard to Mr. Guiltner (Exhibit 4, p. 104-105) that states:

Hi Shane,

Thank you for your time, coming to our home and providing some really good ideas. We have gone to some show homes since receiving your images and actually found a show home with the design where the sink is replaced by double wall ovens and the corner pantry is removed.

Thank you,

Kirk and Sheri

(d) **February 28, 2018** – Two quotes were emailed from Mr. Guiltner to the Complainants (Exhibit 4, page 106).

(e) **June 7, 2018** – email from Mr. Gultner to the Complainants (Exhibit 4, p. 84-85). The first paragraph of this email is not material. The last two paragraphs read as follows:

Are you still planning on doing some reno work this summer or is it on hold for awhile longer?
Let me know if there is anything I can do to help. I could always come back over and have a look and see what we can do to cut some costs to make your budget work.

Regards,
Shane

(f) **June 10, 2018** – email from the Complainants to Mr. Gultner (Exhibit 4, p. 84-85) which reads as follows:

Hi Shane,
As per your note, would you be able to meet with us at our house Friday June 15? We both have Friday off. We would like to discuss options moving forward.
Kirk and Sheri

(g) **June 16, 2018** – Mr. Gultner attended at the Complainants home. The Bond Claim Assessment (Ex. 4, p. 14) asked the Complainants to explain what was discussed at the June 16, 2018 meeting. The Complainants indicated:

Further discussion for kitchen design and working to finalize what services Inspire Renovations would provide. On June 18, 2018 Inspire provided a revised quote outlining the work to be done for our review.

(h) **June 18, 2018** – Email from Mr. Gultner to Kirk Hygard (Exhibit 4, page 38 and 55-63) which reads as follows:

Hi Kirk & Sheri, please find the attached revised drawings and quote for your kitchen and family room project. There is a list in the Schedule of some of the work that can be taken out to reduce the budget. I have taken out the painting already as I know you are both capable of doing that work. I have added in 9 more pot lights in the family room on 2 switches as well as changed out the pendants to pot lights over the island as well.

There is probably a few more things we can do if necessary to reduce budget this is a nice high quality renovation based on your amazing lot that demands quality finishes.

Let me know your thoughts and if you want me to change anything prior to us meeting up on Thursday. Our payment structure is 10% deposit at signing, 30% at sign off on all selections, 30% at completion of all rough-ins and their city approvals (electrical, plumbing), 20% delivery of cabinets, 10% final less any holdbacks or deficiencies.

(i) **June 21, 2018** – the Bond Claim Assessment indicates that on this date the Complainants met with Mr. Guiltner at Inspire’s showroom at 5, 4404 – 12 St. NE, Calgary where they discussed budget and what would be in the scope of work – a revised quote followed on June 25 (Ex. 4, p.15 and 64-69).

(j) **June 25, 2018** – Mr. Guiltner emailed the Complainants with a revised quote as follows (Exhibit 4, page 72):

Hi Kirk & Sheri, I am attaching a revised quote that includes the things we talked about last and I worked to keep it under the \$50k

Let me know if this is possible so we can get working on selection signoffs right away this week. I would like to have the kitchen built in July.

(k) **June 27, 2018** – email exchange between Sheri Rowell and Shane Guiltner regarding arrangements for Ms. Rowell to come to the Inspire showroom to pick up samples that had been chosen the prior week (Exhibit 4, page 73).

(l) **June 29, 2018** – the Contract is signed (Exhibit 4, pages 36-37). The price was \$50,600.00 plus GST of \$2,530.00 for a total of \$53,130.00. Ms. Brinton testified that Sheri Rowell made certain handwritten notations under the Complainants’ signatures. These state:

\$5,313.00	10% on signing
\$15,939.00	30% on selection sign off
\$15,939.00	30% on completion of rough ins
\$10,626.00	20% on delivery of cabinets
\$5,313.00	10% on hold back

Under the heading of “Kitchen Renovation” the Contract specifies that the work included framing, electrical, plumbing and window installation and supply, as well as the supply and installation of cabinets and granite, and the supply of backsplash and hardwood flooring.

(m) **July 3, 2018** – the Complainant Rowell dropped off two cheques at Inspire’s showroom in the amounts of \$5,313.00 and \$15,939.00 both of which were cashed (Exhibit 4, pages 39, 42, 74 and 129).

(n) **September 18, 2018** – Between July 3 and September 18, 2018 there were phone calls, email and text exchanges between the Complainants including the discussion of timelines for the work, decisions on products, a cabinet upgrade, and requests by the Complainants for updates on the status of the renovation project. On September 18, 2018, at the request of the Complainants, Mr. Guiltner met with the Complainants. In a September 27, 2018 letter to Mr. Guiltner (see below at (o)), the Complainants outlined concerns about the renovation. The September 27 letter states that at the September 18 meeting Mr. Guiltner told the Complainants that he was having money issues and that he had not used any of the Complainants’ funds as agreed for any of the materials, trades and deposits required for their renovation. The letter states that Mr. Guiltner admitted he had dropped the ball and had not run the project well. Mr. Guiltner also told the Complainants he required more funds in order to start the cabinet build process. The Complainants were not willing to provide him with any additional funds (Exhibit 4, page 20-22).

(o) **September 27, 2018** – the Complainants email a letter to Mr. Guiltner referencing a meeting with him on September 26, 2018 at the Inspire office. The letter summarizes where things were at with the renovation (Exhibit 4, pages 20-23). The letter outlines the Complainants’ many concerns about the renovation project and requests a letter from Inspire releasing the Complainants from the Contract .

27. On the matter of where the Contract was negotiated, upon questioning by the Appeal Board Ms. Brinton testified that she felt that negotiation had occurred at the January 31 and June 16, 2018 meetings between the Appellant and the Complainants at the Complainants’ home. Based on the information conveyed to her by the Complainants Ms. Brinton felt the project was discussed at these meetings and that at these meetings the parties were coming together to have a meeting of the minds for the potential renovation.

Upon questioning by Mr. Guiltner, Ms. Brinton testified that if what occurred at the Complainants' home was limited to taking measurements of the space that this would not constitute negotiation but if the renovator talks to the customers about the project and what they can potentially do with the space then Ms. Brinton's felt this would constitute negotiation.

Issue A: Evidence of the Appellant

28. Mr. Guiltner did not deny that he attended at the Complainants' home on January 31 and June 16, 2018. He testified that his dispute with the Director's Order and Administrative Penalty is over the characterization of the Contract as one where there was negotiation of the Contract away from Inspire's place of business. He testified that there was no solicitation or negotiation at the Complainants' home. Any solicitations, negotiations and the conclusion of business were all done at the Inspire showroom.
29. Mr. Guiltner testified that his only purpose in going to the Complainants' home was to measure and to confirm measurements for the project that had been discussed. New cabinetry was going to be installed and a window needed to be moved to accommodate the new layout. Site measurements had to be done in order to confirm there would be no issues. Measurements had to be taken at the Complainants' home so that there were accurate measurements to prepare the drawing and scope of work, both of which were prepared at Inspire's place of business. No drawings or scope of work were prepared at the Complainants' home. Mr. Guiltner's evidence was that any negotiations with the Complainants were done either at the Inspire showroom or via email communications and were concluded with a cheque delivered to the showroom made payable to Inspire.
30. After the measurements were take at the Complainants' home they were required to attend at the Inspire showroom because everything quoted is based on the products in the showroom. This follows the procedure for the fixed pricing model used by Inspire. Mr. Guiltner learned this model while consulting for other renovation companies. Inspire operated as a storefront with sales made from the Inspire business premises. He asserted that this model is the same model used by Home Depot and that Home Depot does not operate using a prepaid contractor's licence.
31. In terms of the fixed pricing model, Mr. Guiltner testified that he did not provide a quote to a customer without first going to the residence because

- there are too many unknowns, including plumbing and electrical issues when new layouts are going into a home. He needs to do a home visit to assess if there are going to be any issues with the renovation. He described this as a site visit that can last ½ hour to 1 hour.
32. Mr. Guiltner testified that in this case after the measurements were taken at the Complainants' home they were required to visit the Inspire showroom where they selected from the products in the showroom including cabinets, doors and backsplash. The products can all be seen and touched. Selections made from the showroom ensure that the pricing complied with the quote provided. It is possible for customers to use products from another supplier but this changes the quote. Discussion regarding changes takes place at the showroom.
33. A series of 13 photographs taken by Mr. Guiltner of the exterior and interior of the Inspire showroom, including product samples therein, was entered as Exhibit 5.
34. Mr. Guiltner testified that visits to a client's home could also be for visualization purposes because clients can have difficulty understanding what a renovation will actually look like in their home. On cross-examination Mr. Guiltner testified that he maybe discussed some details about the project at the Complainants' home that had not been provided to him "the first time" but that he did not discuss options or possibilities as to what would go into their home. He measured to make sure the cabinets would fit. He testified that possibly the size of the new window was discussed with the Complainants but could not say for sure.
35. With respect to the June 16, 2018 meeting at the Complainants' home, Mr. Guiltner testified that he was not there to discuss services in kitchen design. He had already provided a quote and drawings and everything had been reviewed with the Complainants at the showroom. His evidence was that the June 16, 2018 visit to the Complainants home was to review the drawings and to double measure and to show the Complainants where the sink would be and to make sure exactly where the placement of items would be. He described this visit as being for illustrative and confirmation purposes only.
36. Mr. Guiltner confirmed that Inspire did hold a Prepaid Contractor's License at the time of the contract with the Complainants but this was purely on the

basis that this licence would permit Inspire to expand and operate without the showroom, particularly if Inspire wanted to operate outside Calgary. Under cross-examination he testified that he was not sure if he had ever used the Inspire prepaid contractor's license for a project but that his intent was to never use it. His intent at Inspire was to always be a showroom project seller doing installation and renovation work. He acknowledged that as a result of Inspire's application for the Prepaid Contractor's Licence he was aware that there were regulations in place regarding prepaid contractors.

Issue A: Oral and Written Closing Submissions

The Director

37. It was submitted that the Contract was both a prepaid contract under s. 5(2) of the *DOTABR* and a direct sales contract under s. 24(a.1) of the *CPA*.
38. In terms of being a prepaid contract under s. 5(2) of the *DOTABR*, the Director submitted that the evidence established that the Contract was a prepaid contract. Renovations under the Contract included demolition, preparation, installation and framing, which constituted altering, maintaining, repairing, adding to or improving the Complainants' private dwelling. In addition the Contract also required part of the price to be paid prior to a goods or services being provided.
39. In terms of being a direct sales contract under s. 24(a.1) of the *CPA*, the Director submitted that the Contract constituted a consumer transaction that was negotiated at the Complainants' home, and included an offer to buy renovation goods and services for more than \$25.00 (as per s. 2 of the *Direct Sales Cancellation and Exemption Regulation*, Alta Reg 191/99) and therefore met the statutory definition of a direct sales contract.
40. On the issue of contract negotiation, in both oral and written argument the Director argued that negotiation is not limited to the discussion of price but includes discussion between parties of contract terms, including project scope and services and/or goods to be provided. It was submitted that all negotiation of a contract does not need to take place away from a supplier's place of business. It is sufficient that some of the negotiation occurs away from the supplier's place of business. The Director submitted that the evidence supported that on January 31 and June 16, 2018 there was a discussion at the Complainants' home of project scope, i.e. the specific work

to be done. This would constitute negotiation away from Inspire's place of business.

41. In terms of the issue asserted by the Appellant's that big box stores including Home Depot were operating on the same model as Inspire but did not have to be licensed as a prepaid contracting business, the Director argues that the Appellant provided no evidence demonstrating that the Director either does not enforce prepaid contracting requirements on other prepaid contracting businesses, or does so arbitrarily.

The Appellant

42. In his written closing argument Mr. Guiltner cited the Legal Information Institute as defining negotiation as: "The process of parties bargaining in an attempt to reach an agreement". He submits that he did no such bargaining during his visit to the Complainants' home and that any attempts by the Complainants to negotiate scope or price, both of which the Appellant says have to be present in order to reach an agreement, would have been quashed by him immediately because this process takes place at another time when drawings have been created based on the onsite measurements. He argued that there was no discussion at the Complainants' home of: (a) the scope of the Contract; (b) the materials to be used in the renovation; or (c) the price, and that at least one, if not all three of these elements must be present to constitute negotiation towards an agreement.
43. In his written closing submissions Mr. Guiltner re-iterated that Inspire Renovations was a fixed price contractor and the process by which contracts were negotiated was very specific. Providing fixed price quotes, meaning the money paid at the end of the project would match the quote exactly, required a very specific quoting and negotiation process, which process ensured that all negotiations and signing of contracts would take place at the place of business, which was the Inspire Renovations Showroom. He does not provide estimates or details when he is on-site to do measurements. It was crucial for customers to come to Inspire's showroom to review the products there. The customer reviews the products and the drawings he has prepared and then a quote is provided either at the showroom or by email.
44. In his written closing submission, Mr. Guiltner argued that the Inspire Renovation process required that discussion of the initial scope be conducted prior to visiting homes for site measurements. In both his oral and written

submissions Mr. Guiltner stated that before going to the Complainants' home to measure, the scope of the project was discussed to understand what work they wanted completed. He understood what work they wanted completed, with it being understood that the Complainants wanted new cabinetry, countertops, backsplash, plumbing fixtures and that some of their appliances might move depending on the new layout. It was at that point he suggested the Complainants come to the showroom to see Inspire's products and how Inspire was different from other renovation companies by supplying fixed priced quotes based on the standard products in the showroom. He did suggest that he could come to their home to do a full measure of their kitchen so that he could then prepare proper kitchen drawings with exact cabinetry measurements so that the parties could review the project in detail and discuss it when they were at the showroom to discuss the scope and cost of the renovation based on the products they could choose from the showroom.

45. Mr. Guiltner submitted in his oral closing argument that if kitchen design is discussed on site his practice is to limit the discussion to a demonstration of where items, such as the sink and cabinets will be placed. When he attended at the Complainants' home to measure and take pictures not a lot was discussed.

Issue A: Decision of the Appeal Board - Was the Contract a Prepaid Contract and/or a Direct Sales Contract

Prepaid Contract

46. The Appeal Board finds that the Contract was a construction or maintenance contract in that it was for constructing, altering, maintaining, adding to or improving a building that was used by the Complainants as their private dwelling. The Appeal Board also finds that all of part of the Contract price was to be paid before all of the goods or services called for in the Contract were provided. The Appeal Board finds that there was a payment schedule that required partial payment from the Complainants to Inspire on signing, followed by various payments at certain stages of the renovation, with the majority of payment due prior to all goods or services being provided. The Complainants made two payments in the form of two cheques in the total amount of \$26,652.24 before all of the goods or services in the Contract were provided.

47. The Appeal Board therefore finds that the Contract meets the definition of a prepaid contract under s. 5(2) of the *DOTABR*.

Direct Sales Contract

48. The Appeal Board finds that the Contract was for goods and services that were to be provided by Inspire to the Complainants. In terms of the threshold requirement in *CPA* s. 24(a.1)(i) the Appeal Board also finds that the consideration for the goods and services in the Contract, being \$53,130.00 exceeded the amount of \$25 set out in the *Direct Sales Cancellation and Exemption Regulation*, Alta Reg 191/1999.

49. The Appeal Board finds that Inspire's place of business was the showroom and offices located at 5, 4404 – 12 Street NE in Calgary.

50. The Appeal Board finds that Mr. Guiltner met with the Complainants at their home on January 31 and June 16, 2018 and that the Complainants and Mr. Guiltner exchanged email communications both before and after these meetings, as described in the above chronology.

51. Case law where the Court has considered the meaning of “negotiation” in the context of consumer protection legislation is instructive. In *R. v. Kovic*, 2016 APBC 256, the issues were whether the accused had entered into a contract without holding a prepaid contractor's licence and whether the contract complied with s. 10(2)(a) of the *Prepaid Contracting Licensing Regulation*. Part of Fraser, J.'s analysis turned on where the contract had been negotiated. Referencing the decision of Jacobson, J. in *R. v. Schultz*, 2003 ABPC 13, Fraser J. held at para. 12 as follows:

[12] To determine the definition of “negotiation”, Judge Jacobson turned to Webster's New World Dictionary and Black's Law Dictionary. The definitions include confer, bargain or discuss with a view to reaching an agreement or conclude a business transaction. Black's definition is merely to transact business or bargain or conduct communications with a view to reaching an agreement or the making of a contract by arranging its terms.

52. The definition of negotiation in *R. v. Schultz*, *supra*, has also been referenced to include: “To meet with another so as to arrive through discussion at some kind of an agreement or compromise about something ...” (*Schultz*, *supra*, para. 22, as per *Black's Law Dictionary*, 6th Edition).

53. Case law is also instructive on the overall approach to be taken to interpreting provisions of the *CPA* in general. In *Young v. Dollar Financial Group Inc.*, 2012 ABQB 601, aff'd 2013 ABCA 264, application for leave to appeal dismissed 2014 CanLII 3513 (S.C.C.), MacLeod J., in the course of interpreting s. 13 and 16 of the *Fair Trading Act* (repealed and replaced by the *CTA*) held at paragraph 34:

... The Fair Trading Act is consumer protection legislation and its provisions are to be given a large and liberal construction with that objective in mind. ...

See also *Johnson v. World Health Club*, 2008 APC 184 at para. 11 and *Young v. National Money Mart*, 2013 ABCA 264 at para. 19.

54. The definition of negotiation proposed by Mr. Guiltner as being “the process of parties bargaining in an attempt to reach an agreement” constitutes a definition that is too narrow, at least in accordance with the interpretation to be followed for consumer protection legislation. Negotiation is not limited to “bargaining”. It can include “conferring” or “discussing” with a view to reaching an agreement.

55. In terms of the January 31, 2018 meeting, Mr. Guiltner’s February 2, 2018 email indicates that the result of the February 2, 2018 meeting was that he was better able to understand the project, which permitted him to provide some unique ideas based on the Complainants’ needs and desires for their home. Mr. Guiltner’s February 2, 2018 email goes on to say: “Please find the attached images and drawings **based on our conversation on Wednesday**” (emphasis added - the Appeal Board takes notice of the fact that January 31, 2018 was a Wednesday).

56. In terms of the January 31, 2018 meeting the Appeal Board finds that something more than measuring or a discussion of a limited nature took place at the meeting. Mr. Guiltner’s February 2, 2018 email is not consistent with him restricting his time at the January 31, 2018 meeting to taking measurements. Based on Mr. Guiltner’s February 2, 2018 email the Appeal Board accepts the evidence in the Complainants’ Bond Claim Assessment that at the January 31, 2018 meeting they discussed with Mr. Guiltner the kitchen renovation and what the options might be for reconfiguring their kitchen.

57. While the Appeal Board recognizes that this evidence in the Complainants' Bond Claim Assessment is hearsay, the Appeal Board is not bound by the rules of evidence in judicial proceedings and evidence may be given before the Appeal Board in any manner that the Appeal Board considers appropriate (*Appeal Board Regulation, Alta Reg 195/1999, s. 14*). In this case the Complainants' evidence aligns with the information in Mr. Guiltner's February 2, 2018 email, which he sent shortly after the January 31, 2018 meeting. Both reflect that there was discussion of the kitchen renovation with Mr. Guiltner's email reflecting that the time spent with the Complainants at their home had given him a better understanding of the project. Both also reflect that there was a discussion of renovation options for reconfiguring the kitchen. Mr. Guiltner's February 2, 2018 email indicates that it attaches images and drawings (i.e options) for the kitchen renovation, based on the conversation at the January 31, 2018 meeting.
58. The Appeal Board finds that at the January 31, 2018 when the parties discussed the kitchen renovation and what the options might be for reconfiguring the Complainants' kitchen that this constituted discussion with a view to the parties reaching an agreement. Within 2 days of the meeting Mr. Guiltner provided images and drawings based on the January 31 discussion. His February 2, 2018 email concludes by indicating that he was hopeful that injecting something new into the Complainants' space via layout 2 would be a big factor in the Complainants choosing their contractor. The Appeal Board therefore finds that there was negotiation at the January 31 2018 meeting for the purposes of s. 24(a.1)(ii) of the *CPA*.
59. According to Mr. Guiltner, before going to the Complainants' home on January 31, 2018 the scope of the project had already been discussed with the Complainants and that he understood that the Complainants wanted new cabinetry, countertop, backsplash, plumbing fixtures and that some of their appliances might move depending on the new layout. However, at no point did Mr. Guiltner give any evidence as where and when any prior meeting took place. The evidence indicates that the only contact the Complainants had with Mr. Guiltner prior to the January 31, 2018 meeting was on January 14, 2018 when they first encountered him at the Calgary Renovation Show. It is possible that the information described by Mr. Guiltner was provided by the Complainants to Mr. Guiltner at the Calgary Renovation Show. However, even if that was the case, this does not change the conclusion of the Appeal Board that the evidence supports that negotiation took place at the Complainants' home on January 31, 2018.

60. In terms of the June 16, 2008 meeting and the reason for that meeting, Mr. Guiltner in his June 7, 2018 email offered to come “back over” to see what could be done to cut costs to make the Complainants’ budget work. The June 10, 2018 email from the Complainants to Mr. Guiltner requests a meeting because they wanted to “discuss options moving forward”. That email indicates the Complainants’ expectation for what was to occur at the meeting. There is no evidence that Mr. Guiltner did anything to “quash” these expectations.
61. The Complainants say in their Bond Claim Assessment that the June 16, 2018 meeting consisted of “further discussion for kitchen design and working to finalize what services Inspire Renovations would provide”.
62. The Appeal Board accepts the evidence in the Complainants’ Bond Claim Assessment that at the June 16, 2018 meeting there was further discussion for the kitchen design and working to finalize what services Inspire Renovations would provide. While the Appeal Board again recognizes that this evidence was hearsay, looking at the context of the June 7, 10 and 18 2018 emails, this evidence in the Bond Claim Assessment as to what was discussed makes the most sense.
63. The evidence is the Bond Claim Assessment also makes sense because it aligns with Mr. Guiltner’s conduct after the meeting. On June 18, 2018, two days after the meeting, Mr. Guiltner emailed the Complainants a revised quote and drawings, which email is found at page 38 and page 55-63 of Exhibit 4. That email indicates that Mr. Guiltner had included a list in the Schedule of some of the work that could be taken out to reduce the budget and that he had already taken the painting out because he knew the Complainants could do that work. The Schedule attached to the June 18, 2018 email contains a list of “Possible Savings through homeowners doing their own work”. This email therefore supports that on June 16, 2018 the parties had some form of discussion about what services Inspire Renovations would or would not provide in the renovation. The June 18, 2018 email also indicates that Mr. Guiltner had added in 9 more pot lights in the family room and had changed out the pendants to pot lights in the kitchen. This would support that on June 16, 2018 the parties discussed kitchen design.
64. The Appeal Board finds that at the June 16, 2018 meeting there was a discussion with a view to the parties reaching an agreement. As a result,

there was negotiation at that meeting for the purposes of s. 24(a.1)(ii) of the *CPA*.

65. The Appeal Board finds that the evidence also establishes that Contract negotiation also occurred at Inspire's place of business, including on June 21, 2018, but agrees with the Director that not all negotiation needs to occur at a place other than the supplier's place of business for a contract to qualify as a direct sales contract under s. 24(a.1)(ii) of the *CPA*. There is nothing in the wording of *CPA* s. 24(a.1)(ii) that requires that all negotiation must occur away from the place of business. In this case either the January 31 or the June 16, 2018 meeting was sufficient for there to have been negotiation away from Inspire's place of business.
66. In terms of the Appellant's assertion that Inspire faced enforcement regarding contracting requirements under the *CPA* that other entities, including big box stores did not, Mr. Guiltner offered no evidence to support this.
67. The Appeal Board finds that the Contract was a Direct Sales Contract under s. 24(a.1)(ii) of the *CPA*.

Issue B(i): Did the Contract comply with s. 35 of the CPA?

68. Having found that the Contract was a Prepaid Contract and a Direct Sales Contract, it is necessary to address whether the Contract complied with the legislative requirements as to content.
69. The relevant legislation is s. 5 of the *DOTABR* (see paragraph 20 above).
70. The relevant legislation is also the following:

Prepaid Contracting Business Licensing Regulation AR 185/99 (the "PCBLR"):

Requirements for contracts

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.

...

Consumer Protection Act RSA 2000 c. C-26.3:

Contents of sales contract

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.

Issue B (i): Evidence of the Director

71. Referring to her Investigation Memo Ms. Brinton testified that when she reviewed the Contract as part of her investigation she concluded that it did not meet the requirements of s. 35 of the *CPA* in that it did not comply with sections 35(d), (f), (g), (i), (j) or (k).

Issue B (i): Evidence of the Appellant

72. Mr. Guiltner did not testify about the Contract with respect to the specific requirements of *CPA* s. 35.

Issue B (i): Oral and Written Closing Submissions

The Director

73. The Director argued that the Contract did not comply with s. 10(2)(a) of the *PCBLR* and s. 35(d), (f), (g), (j) or (k) of the *CPA*.

The Appellant

74. The Director's arguments were not addressed or contested by the Appellant in his evidence or his oral and written submissions.

75. While not argued by the Appellant at the Appeal Hearing, his Notice of Appeal denies that the Contract did not meet Service Alberta standards because the contract used by Inspire used the contract sample submitted to Service Alberta to obtain Inspire's Prepaid Contractor's Licence.

Issue B (i): Decision of the Appeal Board – Did the Contract comply with s. 35 of the CPA?

76. The Appeal Board has already found that there was negotiation at the January 31 and June 16, 2018 meetings at the Complainants' home. The Appeal Board finds that in Mr. Guiltner's dealings with the Complainants he was engaged in the Prepaid Contracting Business under s 5(2)(c) of the *DOTABR*.

77. As already found by the Appeal Board, the Contract met the definition for a Prepaid Contract under s 5(2)(b) of the *DOTABR*.

78. The Appeal Board finds that the Contract was for a value of \$53,130,00. This exceeds the \$200.00 threshold in s. 10(1) of the *PCBLR*.

79. Mr. Guiltner provided no oral or documentary evidence as to a prior contract sample submitted to Service Alberta by him.

80. Given the above findings, Mr. Guiltner was required pursuant to s. 10(2)(a) of the *PCBLR* to ensure that the Contract complied with s. 35 of the *CPA*.

81. The Contract is a 2 page document (found at Exhibit 4, page 36-37) that states at the top "Schedule A" Scope of work to be performed. The first page lists goods and services to be provided for the family room and kitchen renovation. Cabinetry specifications from an outside supplier are described. The second page has a "General" heading indicating that no major electrical was required. The Contract concludes on the second page by stating the quote is good for 60 days and that the "Schedule A" forms part of the Contract and supersedes any other quotations or verbal agreements. There is no other document. The Contract is signed by the Complainants and by Inspire Renovations Inc. Representative. The Bond Claim Assessment (Exhibit 4, page 16) indicates that this signature is Mr. Guiltner's. No issue was taken with that by Mr. Guiltner at the hearing.

82. The Appeal Board finds that the Contract was deficient in all of the elements submitted by the Director. It was not compliant with s. 10(2)(a) of the *PCBLR* or s. 35 of the *CPA*. Specifically, on its face, the Contract failed to comply with:

- **CPA s. 35(d)**: no indication of the place at which the Contract was entered into;
- **CPA s. 35(f)**: no statement of cancellation rights that conformed to the requirements set out in the legislation (governed by the *Direct Sales Cancellation and Exemption Regulation*, Alta Reg 191/99);
- **CPA s. 35(g)**: no itemization of the price of the goods or services, or both;
- **CPA s. 35(i)**: no terms of payment;
- **CPA s. 35(j)**: no delivery date for the goods or commencement date for the services or both; and
- **CPA s. 35(k)**: no completion date for providing the services or the goods together with services.

83. With respect to s. 35(i), the Appeal Board accepts the evidence of Shaun Brinton that Sheri Rowell handwrote the terms of payment on the Contract. Mr. Guiltner did not challenge that evidence. In its regulation of consumer protection the CPA creates positive duties on businesses (*R. v. Schultz*, 2003 ABPC 13 at para. 58). It was Mr. Guiltner's responsibility to include the terms of payment into the Contract.

Issue B (ii): Upon cancellation of the Contract did the Appellant comply with s. 31(2) of the CPA?

Legislation

84. The relevant legislation is as follows:

Consumer Protection Act RSA 2000 c. C-26.3:

Absolute cancellation right

27 A consumer may, without any reason, cancel a direct sales contract at any time from the date the sales contract is entered into until, subject to the regulations, 10 days after the consumer receives a copy of the written sales contract.

Extended cancellation in certain circumstances

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.

...

Method of cancellation

29(1) A direct sales contract is cancelled on the giving of a notice of cancellation in accordance with this section.

(2) A notice of cancellation may be expressed in any way as long as it indicates the intention of the consumer to cancel the direct sales contract.

(3) The notice of cancellation may be given by any means, including, but not limited to, personal service, registered mail, courier or telecopier or by any other method, including orally, by which the consumer can provide evidence of the date that the consumer cancelled the direct sales contract.

(4) Where the notice is given other than by personal service or orally, the notice of cancellation is deemed to be given when sent.

(5) The notice of cancellation may be sent or delivered to the supplier at the address set out in the direct sales contract ...

Responsibilities on cancellation

31(1) ...

(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.

(3) In the case of a direct sales contract for goods, the consumer must, on receiving the refund and return of the trade-in or an amount equal to the trade-in allowance, return the goods to the supplier.

(4) Where a direct sales contract has been cancelled but the consumer solicited the services of a supplier and requested that the service be provided within 10 days from the date that the direct sales contract was entered into, the supplier is entitled to reasonable compensation for the services performed by the supplier, but the supplier's rights under this subsection do not arise until the supplier complies with subsection (2).

...

Issue B (ii) – Evidence of the Director

85. The documents at Exhibit 4 show the following chronology:

- (a) **September 27, 2018** – the Complainants emailed a letter to Mr. Guiltner (same letter as paragraph 26(o) above) outlining the deposits they had paid to date and the events that had transpired. They requested a letter from Inspire releasing them from the contract and stated that upon agreement of the expenses incurred from the completed work: electrical (8 hours plus permit cost), plumbing (approximately 6 hours), and design consultation (approximately 5 hours), that they expected payment of the balance of their money to be refunded by 5:00 on October 15, 2018 (Exhibit 4, page 20-23).
- (b) **September 28, 2018** – the Complainants hand delivered the September 27, 2018 letter to Inspire's showroom and slipped it under the locked front door (Exhibit 3, page 4).
- (c) **October 1, 2018** – Mr. Guiltner sent the Complainants an email attaching a letter that terminated the Contract (Exhibit 4, page 34-35) and which stated:

Please accept this letter from Inspire Renovations Inc. terminating the contract between Kirk Hygard, Sheri Rowell, and Inspire Renovations

Inc., for the construction contract for work to be performed at [address redacted by Appeal Board]. It is unfortunate we were not able to resolve the issues addressed and continue the relationship to move your project to completion.

The project work was started to initiate the contract and costs have been incurred. We will provide a summary of the amount of the deposits paid less the value of products supplied, work performed and cost associated with the work performed to date, along with the monies to be refunded to you no later than October 16, 2018. This complies with the 15 days allowable from the date of the contract termination.

We wish you well on the continuation of your renovation. The vision we provided for the space will look amazing when completed.

(d) **October 16, 2018** – the Complainants receive a letter from Mr. Guiltner holding back the amount of \$15,331.61 (Ex. 4, p. 9-12) from the deposit amounts of \$26,652.44. (Further funds of \$5,400.24 had been paid to Inspire by the Complainants on August 8, 2018 (Ex. 4, p. 51-53)). Mr. Guiltner's letter provided the following explanation:

The contract was cancelled by Inspire Renovations and yourselves on October 1, 2018. As such, we have calculated the amount paid to Inspire less the amount required to complete the project. This also takes into account the value of the work performed up to the cancellation of the contract as they are directly tied together.

(e) **October 16, 2018** – the Complainants write a letter to Service Alberta about the amount refunded to them by Mr. Guiltner, in which they stated that they objected to the calculations used by the Mr. Guiltner to arrive at the refund. They felt that he had taken profits for parts of the renovation that Inspire was not completing. They did not understand the calculations and were worried that because the Appellant had not provided them with information to confirm that the trades had been paid for the limited amount of work that had been completed the trades could come back to the Complainants for payment, meaning they could potentially be out further monies. The Complainants advised that they were working with some of Inspire's trades to have continuity to the project but were paying them their regular rates and not Inspire's rates to complete the work. (Exhibit 4, page 8)

(f) **February 4, 2019** – the Complainants hand delivered a letter under Inspire’s showroom door advising that it had come to their attention that the Contract was in violation of sections 28, 31 and 35 of the *CPA*, and attaching and highlighting *CPA* s. 28(2)(b). The letter requests the full balance of the deposit funds (\$15,333.61) be paid within 15 days of the date of the letter. (Exhibit 4, page 195 and 198-200). The letter states:

That being said, as you were in violation of several of the “contents of the sales contract” regulations, we are requesting the full balance of the monies paid to your firm; as is required by legislation. Once we have received the balance we will in turn pay you what is owned for the work that was actually completed upon you providing copies of the bills from your suppliers.

The Complainants did not receive a response to this letter.

(g) **May 1, 2019** – having had no response from Mr. Guiltner, the Complainants sent a registered letter to Inspire Renovations containing the same cancellation information as the February 4, 2019 letter (Exhibit 4, page 217-219 and Exhibit 3 at page 6). A Canada Post document shows that the letter was received and signed for on May 6, 2019. The Canada Post document lists the signature name as “shane”. (Exhibit 4, page 220-221, Exhibit 3 at page 6). The Complainants received no response to this letter.

(h) **March 24, 2021** – the Complainants’ bond claim process was concluded and they were awarded a prorated portion of Inspire’s bond, being \$12,205.82 (Exhibit 3, page 9). Ms. Brinton testified that the bond payment was pro-rated because of a second successful claim on the same bond. She testified that as such the Complainants had suffered a financial loss because the pro-rated payment they received did not fully compensate them for the deposit funds that were not returned by Mr. Guiltner.

Issue B (ii) - Evidence of the Appellant

86. In terms of how the Complainants’ refund was calculated, Mr. Guiltner testified this was based on the work that had been performed on the project to date, as opposed to work that was outstanding.

87. Mr. Guiltner testified that after the Complainants cancelled the contract he directed all of the contractors who had already been retained for the project

to work directly with the Complainants, which resulted in a benefit to the Complainants through continued costing of the work at the rate Inspire would have been charged.

88. Mr. Guiltner also testified that there was a document in place that provided that upon the Complainants' accepting the bank draft they released Inspire from any further obligations to the Complainants. Mr. Guiltner testified that he no longer had that document.

Issue B (ii) - Oral and Written Closing Submissions

The Director

89. The Director argues that Mr. Guiltner was aware of his obligations under s. 31 of the *CPA* because his October 1, 2018 email references "15 days allowable from the date of the contract termination". The Director argues that there is no provision in the *CPA* permitting a supplier to make deductions from a s. 31(2) refund before paying the refund to the consumer, even if the supplier is entitled to recover expenses from the consumer after the full refund is provided.

The Appellant

90. Mr. Guiltner argued that as a result of the cancellation of the Contract that the Complainants were able to reduce their investment in the renovation substantially. He says he instructed Inspire's contractors and suppliers to continue to work with the Complainants and that because the Complainants continued to use Inspire's contractors and manufacturers they received retail and not wholesale prices. The Complainants also did not have to pay any of Inspire's fees associated with completing the project.
91. Mr. Guiltner believes that he acted fairly and responsibly and with the best intentions to remedy the issues amicably and fairly and that he refunded the Complainants fairly based on the work that had been performed to the point of cancellation and calculating the amount required to complete their project.

Issue B (ii) - Decision of the Appeal Board - Upon Cancellation of the Contract did the Appellant comply with s. 31(2) of the CPA?

92. The Appeal Board has already found that the Contract was a Direct Sales Contract under the *CPA*. The Appeal Board has also already found that the Contract did not include all of the elements required under *CPA* s. 35. As such the Appeal Board finds that the Complainants had extended cancellation rights under *CPA* s. 28(2).
93. The Complanants sent the September 27, 2018 letter to Mr. Guiltner by email and then hand delivered it the next day to Inspire's showroom. The letter was delivered in compliance with s. 29(3) of the *CPA*.
94. The Appeal Board finds that by the wording of the September 27, 2018 letter the Complainants conveyed their intention that they wanted to end the Contract. The intention to cancel was accepted by Mr. Guiltner in his October 1, 2018 letter in which he stated that the Contract was terminated.
95. While the September 27, 2018 letter did not specifically reference *CPA* s. 28(2) (i.e. that the Contract did not comply with *CPA* s.35), the Appeal Board notes that the wording of *CPA* s. 28(2) and s. 29(2) do not require a consumer, in a notice of cancellation, to provide the specific legislative provision the consumer is relying on for extended cancellation rights. The facts establish that at the time of the September 27, 2018 letter the Contract did not comply with *CPA* s. 35. By virtue of Mr. Guiltner's October 1, 2018 letter containing his reference to "15 days allowable from the date of contract termination" and his return of the amount of \$11,320.83 within that period, he accepted that the Contract had been cancelled and he seems to have been operating under the *CPA* provisions that provided for extended cancellation rights. The Appeal Board finds that the September 27, 2018 letter constituted an exercise of the Complainants' extended cancellation rights under s. 28(2)(b).
96. Even if the Appeal Board is wrong in the above conclusion, the Complainants provided subsequent letters to Mr. Guiltner on February 1 and May 4, 2019 that make it clear that they were exercising their extended cancellation rights under *CPA* s. 28(2)(b). *CPA* s. 28(2) permits a consumer to exercise extended cancellation rights within 1 year from the date a direct sales contract was entered into. The Appeal Board finds that the Complainants properly

exercised their right to cancel the Contract within one year of the June 29, 2018 date the Contract was signed.

97. The s. 28(2) cancellation triggered the requirement that the monies paid under the Contract be returned within 15 days. The Director argues that s. 31(2) required Mr. Guiltner to refund all of the deposit monies paid to him by the Complainants within 15 days of the Contract cancellation with no set-off. The facts establish that Mr. Guiltner did not do so.
98. Even if s. 31(4) applied to permit Mr. Guiltner to claim reasonable compensation for the services performed, he was still required to first comply with s. 31(2) and refund the deposit monies in their entirety. The *CPA* contains no provision permitting set-off by a supplier when a Direct Sales Contract is cancelled under s. 28(2)(b) and Mr. Guiltner had no set-off remedy against the Complainants in the course of their cancellation of the Contract under the provisions of the *CPA*.
99. The Appellant's argument that the Complainants received a financial benefit from continuing to utilize Inspire's sub-contractors after the Contract was cancelled is disputed by the Complainants. In any event, that argument, as well as the argument that Complainants did not have to pay Inspire's fees as they moved forward with the renovation project is of no relevance to the determination by the Appeal Board of the Appellant's legislated responsibilities upon cancellation of the Contract.
100. In terms of the release document that the Appellant says he put in place, there is no document in evidence to support any form of release by the Complainants. The Appeal Board notes that s. 2(1) of the *CPA* reads:
- Act prevails**
2(1) Any waiver or release by a person of the person's rights, benefits or protections under this Act or the regulations is void.
- (2)** Subsection (1) does not apply to a release made by a person in the settlement of a dispute.
101. The Appeal Board finds that upon cancellation of the Contract the Appellant failed to comply with s. 31(2) of the *CPA* in that he failed to refund the entirety of the Complainants' deposit monies .

Issue C: Is there a Limitation Period issue?

102. This issue was raised in Mr. Guiltner's Notice of Appeal letter. Mr. Guiltner did not provide any evidence or submissions (oral or written) on this issue.

Issue C: Evidence and Submissions of the Director

103. The Director did address this issue.

104. The Director submitted that s. 157 and 158.1 of the *CPA* authorizes the Director to issue an order or penalty to any person who, in the opinion of the Director, is contravening or has contravened the *CPA* or its regulations.

105. The Director submitted that administrative actions under the *CPA* are not civil actions and limitation periods for civil actions do not apply. The Director pointed out that there is no limitation period on the issuance of a Director's Order under s. 157 of the *CPA*. In terms of the time frame to issue the June 1, 2021 Notice of Administrative Penalty it was submitted that s. 158.1(5) of the *CPA* permits a notice of administrative penalty to be issued up to 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance. Ms. Brinton's oral evidence was that she informed the Complainants in January of 2019 that the Contract did not comply with s. 35 of the *CPA* and that they then sent the February 4, 2019 cancellation letter to Mr. Guiltner. The Director submitted that as per Ms. Brinton's Investigation Memo, the time period for the running of the 3 years started on January 25, 2019.

106. The Director argued that Inspire Renovations was solely under Shane Guiltner's direction and control. A Corporate Search of Inspire was entered as part of Exhibit 4 at p. 228 - 229 showing that prior to being struck on March 2, 2020, Mr. Guiltner was the sole director of Inspire. The voting shareholder was 1993313 Alberta Inc. A Corporate Search of 1993313 Alberta Inc. (Exhibit 4, p. 231-232) shows that prior to being struck on March 2, 2020 Mr. Guiltner was the sole director and shareholder of that company.

Issue C: Decision of the Appeal Board - Is there a Limitation Period issue?

107. The Appeal Board agrees with the Director that limitations for civil actions do not apply to administrative actions under the *CPA* (*Limitations Act*,

RSA 2000, c. L-12). There is no applicable 2-year limitation period that applies in this case.

108. Section 157 of the *CPA* specifically provides that the Director may issue an order directed to a **person** who has contravened the Act or the regulations. Section 158.1 of the *CPA* specifically provides that the Director may issue a Notice of Administrative Penalty to a **person** who, in the opinion of the Director, has contravened a provision of the *CPA* or the regulations. The *CPA* is therefore clear that the Director's jurisdiction is not limited to corporate entities.
109. In terms of the time frame to issue the Notice of Administrative Penalty, the Appeal Board finds that the date of January 25, 2019, as stated in the Investigation Memo at page 5, was the date when the Complainants first became aware that the Contract did not comply with *CPA* s. 35. The 3-year time period started to run from that date. The Appeal Board therefore finds that the June 1, 2021 Notice of Administrative Penalty was issued in time.
110. Both the Director's Order and the Notice of Administrative Penalty were issued to Mr. Guiltner in compliance with the provisions of the *CPA*. There is no limitations issue.

Past Conduct

111. Ms. Brinton testified to the following:
- (a) four complaints against Inspire (with Mr. Guiltner named as the person complained of) to the CIU in 2018 and 2019, two of which did not proceed past the assessment stage due to complainants failing to supply requested documents and two of which were bond claims, which included the Complainants' bond claim. Both bond claims were successful and were awarded a prorated portion of the bond.
 - (b) Administrative Penalty of \$2,500.00 issued July 9, 2015 (Exhibit 4, page 260-261) to Shane Guiltner, Skywest Renovations. Investigation had identified that Skywest did not hold a Prepaid Contractors Licence and had used a contract on 2 occasions that did not comply with s. 35 of the *CPA*. The Administrative Penalty was filed in the Court of Queen's Bench and has not been paid.

(c) 2013 – Two warning letters issued to Intex Builders, of which Shane Guiltner was a director regarding *Fair Trading Act* sections 104, 31(2) and *PCBLR* section 10(2).

112. In his written submissions Mr. Guiltner challenged that the previous Service Alberta files demonstrated any repeat behavior and that he learned from these files about proper licensing and contracting. He also submitted that he had left the home renovation business and is now working in a business he enjoys more.

113. Ms. Brinton was a credible witness and the Appeal Board accepts her evidence on the Appellant's history with Service Alberta. The Appeal Board notes that Mr. Guiltner has operated in a number of different renovation/building companies in the past. The Director argued that it is in the public interest to apply enforcement measures in this case to ensure future compliance with the CPA. The Appeal Board agrees.

Decision of the Appeal Board – Director's Order and Administrative Penalty

114. Pursuant to s. 179(6) of the *CPA* the Appeal Board confirms the June 1, 2021 Director's Order and the June 1, 2021 Administrative Penalty in the total amount of \$2,000.00, which is payable within 45 days of the date of this decision.

DECISION DATED January 6, 2022.

Signed by:



Louise Redmond, Appeal Board Chair