

ALBERTA CONSUMER SERVICES APPEAL BOARD

**IN THE MATTER OF AN APPEAL BY
BRIAN MCDERMOTT AND SERVICE KING HOME SERVICES INC. AND PRO STAR PLUMBING
HEATING & DRAINS INC. PURSUANT TO SECTION 179 (1) OF THE CONSUMER PROTECTION
ACT RSA 2000 c. C-26.3**

AND

**IN THE MATTER OF THE DECISION BY CONSUMER SERVICES, SERVICE ALBERTA AND RED TAPE
REDUCTION, TO ISSUE A DIRECTOR’S ORDER TO BRIAN MCDERMOTT AND SERVICE KING
HOME SERVICES INC. AND PRO STAR PLUMBING HEATING & DRAINS INC. FOR
CONTRAVENING SECTION 6(2)(d) OF THE CONSUMER PROTECTION ACT BY CHARGING A PRICE
FOR GOODS OR SERVICES THAT GROSSLY EXCEEDS THE PRICE AT WHICH SIMILAR GOODS OR
SERVICES ARE READILY AVAILABLE WITHOUT INFORMING THE CONSUMER OF THE
DIFFERENCE IN PRICE AND THE REASON FOR THE DIFFERENCE ON FEBRUARY 22, 2023.**

DECISION of the APPEAL BOARD

APPEAL BOARD

Michael Swanson, KC. (Chair)
Joanne Pawluk (Member)
James Lees (Member)
("the Panel")

LEGAL COUNSEL

- Hardeep S. Sangha, legal counsel for the Appellants: Brian McDermott, Service King Home Services Inc. ("Service King") and Pro Star Plumbing & Drains Inc. ("Pro Star") (collectively "the Appellants")
- Joseph O’Kurley legal counsel for the Respondent: Director of Fair Trading ("the Director")

DATE DECISION PRONOUNCED

January 5, 2024

NATURE OF APPEAL

[1] On February 22, 2023, the Director of Fair Trading issued an Order (“Director’s Order”) pursuant to Section 157 of the *Consumer Protection Act*, RSA 2000 c. C-26.3 (“CPA”) compelling the Appellants (“and any employee, representative, or agent”) to immediately comply with Section 6(2)(d) of the CPA¹.

[2] The Director’s Order specifically provided that the Appellants “must immediately: In accordance with Section 6(2)(d) of the CPA, cease charging a price for goods or services that grossly exceeds the price at which similar goods or service are readily available without informing the consumer of the difference in price and the reason for the difference.”

[3] By a letter dated March 21, 2023, the Appellants filed a notice of appeal of the Director’s Order in accordance with s. 179(1) of the CPA and s. 4 of the *Appeal Board Regulation*.²

[4] Specific grounds recited in the notice of appeal include:

- i. The facts relied upon in making the decision and subsequent order are incomplete and inaccurate.
- ii. The prices which the Appellants’ prices are being compared to are for a different scope of work, as Service King has already commenced work on the complainant’s property.
- iii. The Appellants’ price for the services quoted to the complainant is in line according to a flat rate pricing system which is standard amount all established and qualified service companies operating in the City of Calgary.
- iv. The Appellants’ prices do not grossly exceed the price at which similar goods or services are readily available.
- v. The Decision and Director’s Order, dated February 22, 2023, establish unfair constraints on the Appellants, who must now seek out other, competing business prices for each service transaction and show a potential customer that their prices are in line with similar goods and services and then further explain if the extra services or specific services being provided result in the Appellants charging a difference in price from the competitor and other service providers and the reason for the difference;
- vi. Such other rational (rationale) for the appeal which may be relied upon and relevant at the hearing of this Notice of Appeal.

[5] The Appellants did not apply for or request a stay of the Director’s Order pending the outcome of this appeal under s. 180(2) of the CPA.³

[6] The Panel acknowledges receipt of the Appeal Briefs and Written Submissions from both parties. A Rebuttal Brief was not filed by the Appellants.

¹ *Consumer Protection Act* (“CPA”), R.S.A. 2000, c. C-26.3 s. 157.

² *Appeal Board Regulation*, Alta Reg 195/1999 s. 4.

³ CPA, s. 180(2).

[7] As a matter of housekeeping, the Panel directs that the Appeal Briefs and Written Submissions together with attachments, as filed herein will be entered as Exhibits and marked accordingly.

[8] The Appellants are asking this Panel to quash the Director's Order.

[9] The Respondent is asking this Panel to confirm the Director's Order.

ISSUE(S)

[10] The issue to be determined in this Appeal is:

- i) whether to confirm, vary, or quash the Director's Order.

DECISION

[11] For reasons that follow, the Appeal Board confirms the Director's Order and the findings made therein.

JURISDICTION AND STANDARD OF REVIEW

[12] On April 11, 2023, this Appeal Board was appointed pursuant to Section 179 of the *CPA*.

[13] On April 19, 2023, the Appeal Board provided a Notice of Hearing to the parties pursuant to Section 6 of the *ABR*.

[14] This appeal is a new trial of the issue (*trial de novo*). The burden of proof is on the Director. Accordingly, the Director must prove each of the allegations against the Appellants. In arriving at a decision, the Appeal Board must consider the totality of the evidence and determine whether the Director's Order was properly issued.

[15] The Appeal Board may confirm, vary or quash the Director's Order in accordance with s. 179 (6) of the *CPA*.

THE PROCEEDINGS

[16] On May 9, 2023, a prehearing conference ("PHC") was held via Microsoft Teams to address any preliminary issues including procedural matters. Hardeep S. Sangha Esq. appeared as legal counsel on behalf of the Appellants, Joseph O'Kurley Esq. appeared as legal counsel on behalf of the Respondent. Michael Swanson KC. presided as Chair of the Appeal Board.

[17] During the PHC no objections were raised concerning the Appeal Board's jurisdiction to decide the appeal.

[18] At the PHC, it was agreed that an in-person hearing would be held in Calgary on Friday September 8, 2023, beginning at 9 am.

[19] At the PHC, the parties agreed to provide Appeal Briefs prior the hearing as follows:

- Appellants to file on or before August 10, 2023
- Respondent to file on or before August 25, 2023
- Appellants were invited to file a Rebuttal Brief on or before September 1, 2023

[20] By email dated August 28, 2023, legal counsel for both parties were canvassed in terms of whether either party had any further concerns that should be addressed in advance of the hearing. No concerns were raised.

[21] Neither Brian McDermott nor the homeowner Ivy Davidson testified at the hearing.

[22] At the conclusion of the hearing, written Submissions were requested from both parties and were agreed to be filed on or before September 29, 2023.

[23] The Appeal Board acknowledges receipt of the Appeal Briefs and the Written Submissions. A Rebuttal Brief was not filed by the Appellants.

[24] Section 179(6) of the *CPA* provides that the Appeal Board may confirm, vary or quash the decision that is being appealed⁴.

THE HEARING

Ryan Lincoln

[25] Ryan Lincoln (“Mr. Lincoln”) was affirmed and testified on behalf of the Director.

[26] Mr. Lincoln’s evidence included that:

- i) He obtained a Degree in criminal justice from Mount Royal University in Calgary,
- ii) He has completed Alberta Peace Officer training,
- iii) He has served as a member of the Service Alberta Consumer Investigation Unit (“CIU”), since he was originally hired in 2017,
- iv) His position requires a thorough understanding of business licence regulations,
- v) As a member of the CIU his primary role is to consider the evidence and determine whether on a balance of probabilities an offence was committed, and then to recommend suitable action to the Director of Fair Trading,
- vi) He has an extensive knowledge of consumer behavior in the marketplace and marketplace activity,
- vii) If an investigation results in a complaint, he determines whether an offence has occurred and whether there is a public interest to be served by enforcement,

⁴ *CPA* s. 179(6).

- viii) He was the investigator concerning the Ivy Davidson complaint regarding Service King and Pro Star. On July 16, 2021, a Service King employee responded to a service call and attended at 44 Hamlet Road, SW., Calgary, Alberta (“the site”) to discuss a sewer repair with Ivy Davidson (“the homeowner”),
- ix) The Ivy Davidson matter involved issues concerning a prepaid contract and excessive prices,
- x) He reviewed the corporate history of Service King and Pro Star, and found that Brian McDermott was the registered director of both,
- xi) Although separate legal entities, Brian McDermott, Service King, and Pro Star shared the same business address and operated as a single business,
- xii) Upon further reviewing the corporate history of Service King and Pro Star, he learned that there had been 10 prior complaints filed against Pro Star together with prior warnings issued under s. 6 (2)(d) of the CPA,
- xiii) At the time of the service call to Ivy Davidson on this matter, neither Service King nor Pro Star had a pre-paid contracting licence. As of August 24, 2022, it became evident that appropriate steps were being taken on their behalf by Brian McDermott to comply with the CPA licensing requirements,
- xiv) In most cases, consumer-related matters come to his attention by way of a complaint,
- xv) After meeting with the homeowner, an Invoice was produced by the serviceman in the total amount of \$4,402.47 (the “contract”) which included a deposit in the sum of \$2000.00 (“the deposit”), which was paid by Ivy Davidson,
- xvi) The contract provided for the cleaning of pipes and installation of a back water valve in her basement (“valve installation”). The valve installation also required the removal of concrete from her basement as well as the flushing of sewer pipes,
- xvii) The contract was missing components required for a prepaid contract as outlined in Section 35 of the CPA, which stipulates that a direct sales contract must be in writing and must also include:
- The salesperson’s name
 - The date and place where the agreement was made
 - A statement of cancellation rights that complies with the requirements under the regulations
 - The delivery date of the goods or commencement date of the services
 - The completion date for providing the services or the goods and services
 - Signatures of both the consumer and the supplier
- xviii) On July 20, 2021, the homeowner consulted Day & Knight Plumbing (“Day & Knight”) and Price-Rite Plumbing (“Price-Rite”) and requested an estimated cost for a valve installation,
- xix) Work completed by the Appellants at this time included some, but not all of the concrete removal,
- xx) On July 21, 2021, the homeowner spoke with a Service King representative and, on this occasion, she was told that the work would cost more. Upon learning this she cancelled the contract on the telephone,
- xxi) The homeowner subsequently confirmed cancellation of the contract by a letter which

- was delivered to Service King by registered mail on December 3, 2021,
- xxii) Following cancellation of the contract the homeowner was not offered or given a refund of her deposit,
 - xxiii) The written quote from Price-Rite was approximately \$2,200 or about half of the cost quoted by Service King. The final invoice from Price-Rite for the work completed was \$1837.50 and specified that the work included finish breaking the concrete.
 - xxiv) The Day & Knight quote was \$1200.00 - \$1500.00 and provided for the general installation of a back water valve,
 - xxv) Given that the homeowner was able to obtain quotes from two competing suppliers and to have the work completed at a lower cost, it was clear to him that similar goods and services for a valve installation were readily available,
 - xxvi) He did not have any direct contact with the homeowner, nor did he visit the site,
 - xxvii) The Director's Order was issued to Brian McDermott, Service King and Pro Star. This was apparently due to the fact that the homeowner's initial telephone inquiry was directed to Pro Star but was responded to by a Service King employee. The final Invoice given to the homeowner referenced both Service King and Pro Star,
 - xxviii) In his opinion, the Director's Order is valid and reasonable, in the public interest, and complies with both the CPA and with the principles of administrative fairness.

[27] In cross-examination, Mr. Lincoln was asked about the industry standard when it comes to the cost of installing a back water valve. In reply, Mr. Lincoln estimated the cost is about \$2,000.00 based upon the two quotes obtained by the homeowner as well as the Price-Rite invoice. He added that this is sufficient to demonstrate the industry standard.

[28] Again in cross-examination, when asked whether the two quotes took into account the amount of concrete already removed by Pro Star or Service King, Mr. Lincoln replied that he believed that they were sufficient given that quotes in many cases, serve to "provide a vague cost break down and don't always reflect all of the work needed". The witness added that the Price-Rite invoice indicated that some concrete removal remained when Price-Rite began to work at the site.

Ian McDermott

[29] Mr. Sangha advised the Panel that Brian McDermott was unable to attend the hearing and that he would not be called as a witness.

[30] Mr. Sangha further advised the Panel that Ian McDermott (Brian McDermott's father) would testify on behalf of the Appellants.

[31] Ian McDermott ("Mr. McDermott") was sworn and testified.

[32] Mr. McDermott has practiced as a certified plumber since 1975 and he has acquired extensive experience in terms of both technical knowledge and pricing of services in the plumbing repair business.

[33] He understood that the homeowner's problem in this matter involved a valve installation.

[34] He was not sure if he had any direct communication with the homeowner, given that occasionally answers intake calls. He did not visit or do any work at the site.

[35] The valve installation would in most cases include concrete removal work.

[36] The scope of work provided to the homeowner by Service King included auguring and flushing of the kitchen line as well as valve installation.

[37] Service King and Pro Star would routinely charge \$3,000.00-\$3,500.00 for a valve installation, but the final cost would vary depending on the amount of concrete to be removed, the type of ground underneath, and other site-specific factors.

[38] The prepaid contracting licence(s) for the company had expired apparently on account of staffing interruption issues in the office.

Exhibits

[39] The following Exhibits were entered at the hearing:

Exhibit #1: Notice of Appeal dated March 21, 2023

Exhibit #2: Notice of Hearing issued July 19, 2023

Exhibit #3: Recommendation Memo dated April 7, 2022 from Ryan Lincoln (CIU Investigator)

Exhibit #4: Supporting documents for April 7, 2022 Recommendation Memo

Exhibit #5: Consumer Affairs activity notes from Internal Consumer Affairs Tracking System documenting the steps taken from the time of the consumer complaint to the issuance of the Order

Exhibit #6: Appeal Brief of the Appellants (including a copy of the Director's Order)

Exhibit #7: Appeal Brief of the Respondent

Exhibit #8: Written Submissions of the Appellants

Exhibit #9: Written Submissions of the Respondent

[40] By virtue of Exhibit #6, the Appeal Board acknowledges the following additional facts:

- i) Brian McDermott is the registered director of both Service King and Pro Star,
- ii) Service King did not possess a prepaid contracting licence when the work was performed, however, the licence application process had been started on behalf of Service King at the time that the Director's Order was issued,
- iii) Pro Star did not possess a prepaid contracting licence when the work was performed, but a licence was subsequently issued,

- iv) The total price quoted by Service King was \$4,402.47, which included \$3,500.00 for "floor break and install back water valve," \$332.78 to clear a 2" or smaller drain with a small Rooter, \$350.10 for use of a "Jetter", and \$9.95 for a Pro Star Plumbing Membership.
- v) The contract included a deposit in the amount of \$2,000.00,
- vi) The valve installation work began immediately and included "breaking up the floor",
- vii) On July 20, the homeowner obtained additional estimates from two competing businesses and claims that she was told by both that "the cost would be significantly less" than the price estimate provided by Service King,

THE APPELLANTS SUBMIT THAT:

[41] The agreement entered into with the homeowner on July 16, 2021, amounted to a binding contract that provided for a total payment of \$4402.47 including a pre-paid deposit of \$2000.00.

[42] Service King and Pro Star would normally charge \$3,000.00 - \$3,500.00 for a valve installation and related concrete work.

[43] It was only after the floor break up work had been largely completed, that the homeowner sought estimates from other plumbing businesses.

[44] The estimates received by the homeowner were significantly less in terms of cost because the work was already in progress and the floor breakup portion of the work had been completed.

[45] On July 21, 2021, the homeowner called Service King and cancelled the contract verbally during the call, notwithstanding that some of the work was complete.

[46] The homeowner subsequently confirmed cancellation of the contract by way of a letter addressed to Service King which was delivered by registered mail on December 3, 2021.

[47] The deposit was not refunded to the homeowner.

[48] The Director of Fair Trading "did not rely upon an entire and complete set of facts and consequently the relevant facts were not considered when issuing the Director's Order."

[49] Price-Rite did not do any work that involved floor break-up because that portion of the work was previously completed by Service King.

[50] The cost of the work completed by Price-Rite was approximately the same without taking into consideration the cost of the floor break-up and concrete removal.

[51] The Director's Order placed an "unfair burden" on the Appellants and required them to determine prices being charged by their competitors and subsequently share that price with their customer.

[52] As a result, the consumer is completely released from having to seek out different competitors on their own and at their own cost, because essentially, contractors are required to obtain and disclose this to the consumers.

[53] The Director's Order would also have the effect of rendering the "competition aspect" of providing affordable services to consumers difficult, if not impossible, because this requires the contractor to provide an explanation of the price being charged, as opposed to the price that competitors charge for the same product or service.

[54] Their price has been labelled by the Director as "grossly" exceeding the price at which similar goods or services are readily being charged and that this is unfair, especially given that they must then prove that their prices do not grossly exceed the price at which similar goods or services are available.

[55] The services quoted by the Appellants in this matter "is in line according to the flat rate providing system which is standard amongst all establish and qualified service companies".

[56] Mr. Lincoln's own conclusions rely exclusively upon only the two estimates or quotes obtained by the homeowner.

[57] Further evidence in the form of additional quotes would provide a stronger and more reliable basis for the recommendations proposed by Mr. Lincoln and because of this the quotes relied upon do not adequately support the Director's Order.

[58] The Price-Rite e-mail quote of "about half" of the \$4,400.00 quoted by Service King and Pro Star is "inadequate" given that it was not based upon an actual visit and inspection of the work site, and it does not include a determination or description of the amount of concrete removal work that remained to be completed.

[59] The Day & Knight quote is also "inadequate" because like the Price-Rite quote, it was not based upon an actual visit and inspection of the work site, and it does not reflect anything more than "a range of possible pricing".

[60] The scope of work increased on account of issues related to physically accessing the back water valve, as well as additional concrete removal, and in any event the likelihood of a resulting price increase was communicated to the homeowner.

[61] The term “grossly excessive” is not defined in the statute and that the use of the term “grossly excessive” by the Director in this matter is “meritless, improper and without a proper evidentiary background”.

[62] They have not at any point charged a price which is grossly excessive and that “if they are forced to inform customers of what their competition is charging, this is unfair in an open competitive business market.”

[63] There is “no definition in the Statue or otherwise for what amount would be considered to be grossly excessive” and that the label itself is “meritless and improper and without a proper evidentiary background.”

[64] They add that “price for the services quoted to the complainant is in line according to a flat rate pricing system which is standard amount all established and qualified service companies operating in the City of Calgary.”

[65] They did comply with s. 6(2)(d) of the *CPA*, by informing the complainant when the scope of work was expanded.

[66] They further add that they “took the proper steps to keep the client informed of pricing at all material times of the matter.”

[67] They emphasize that they did not charge a “grossly excessive or excessive price as alleged or at all for services compared to the industry standard for the services readily available.”

THE RESPONDENT SUBMITS THAT:

[68] On January 18, 2022, Service King and Pro Star were notified by Mr. Lincoln that a complaint had been received concerning potential *CPA* violations committed during completion of the job for the homeowner (“the complaint”).

[69] On March 2, 2022, Mr. Lincoln contacted Pro Star by telephone, and again the same day by email to advise of the investigation into the complaint.

[70] The Appellants did not respond to either the telephone call or email regarding the complaint or when given the opportunity, to the investigation undertaken by Mr. Lincoln.

[71] The Appellants did not possess a business licence or a prepaid contracting licence when the contract was entered into with the homeowner on July 16, 2021. The Appellants have since taken steps to comply with this and other licensing requirements of the *CPA*.

[72] The Appellants were given an opportunity to respond to the Director’s concerns before the Director’s Order was issued under s. 157 of the CPA⁵. The Appellants also chose not to follow-up regarding the Director’s written proposal dated July 27, 2022.

[73] Several previous complaints have been filed by other consumers against the Appellants including a complaint which concerned overcharging customers without providing an explanation contrary to s. 6(2)(d) of the CPA⁶. In addition, warning letters were issued to the Appellants on two other matters. No enforcement action however was undertaken regarding these matters.

[74] The contract was both a prepaid and a direct sales contract under the CPA for the following reasons:

- On July 16, 2021, the Appellants negotiated and concluded the terms of the contract at the homeowner’s residence, instead of at the Appellant’s normal place of business;
- The work agreed to in the contract included concrete demolition and removal, preparation, flushing, and installing a new sewer valve in the homeowner’s residence, altering, maintaining, repairing, adding to and improving the homeowners’ private dwelling.
- It was agreed that part of the purchase price would be paid in advance of provision of the goods or services which included a deposit paid in accordance with the terms of the contract. For this reason, the resulting contract meets the definition of “prepaid contract” under s. 5(2)(b) of *the Designation of Trades and Businesses Regulation*.⁷
- Under the CPA s. 24(a.1), a direct sales contract means “a consumer transaction that is a contract, other than a time share contract”;
- The contract was a consumer transaction that was “concluded in person at a place other than the supplier’s place of business” (at the homeowner’s residence) and included an offer to purchase plumbing repair goods and services for more than \$25, meeting the definition of “direct sales contract” under s. 24 of the CPA.

[75] The contract negotiated by the parties was a “prepaid contract” as defined under s. 10(2)(a) of the *Prepaid Contracting Business Licencing Regulation, Alta Reg 191/1999 (“PCBLR”)*⁸.

⁵ CPA s. 157.

⁶ CPA s, 6(2)(d).

⁷ *Designation of Trades and Businesses Regulation, Alta Reg 178/1999.*

⁸ *Prepaid Contracting Business Licencing Regulation (“PCBLR”), Alta Reg 191/1999 s.10(2)(a).*

[76] Accordingly, the Appellants were required to comply with s. 35 of the *CPA*⁹. Because the contract did not comply with the provisions mandated under s. 35 of the *CPA*, the Appellants are in violation of s. 35 of the *CPA* and also in violation of s. 10(2)(a) of the *PCBLR*¹⁰.

[77] In accordance with s. 28 of the *CPA* the homeowner was entitled to cancellation rights (for up to one year) after the contract was entered into because the Appellants did not possess a prepaid contracting licence and also because of their failure to comply with s. 35 of the *CPA*.

[78] Furthermore, because the homeowner cancelled the contract within one year, the Appellants were required under s. 31(2) to refund the full amount paid by the homeowner within 15 days¹¹. Failure on the part of the Appellants to pay any refund is in violation of s. 31(2)¹². There is no provision in the *CPA* to make deductions from a s. 31(2) refund even where a supplier is entitled to recover expenses from the consumer after the full refund is provided¹³.

[79] Similar goods and services offered by other businesses at significantly lower prices were readily available to the homeowner triggering the requirement under s. 6(2)(d) of the *CPA* for the Appellants to inform the homeowner “of the difference in price as well as the reason for the difference”¹⁴.

[80] Section 6(2)(d) does not require that the goods or services be identical, only that they be “similar goods or services”¹⁵.

[81] No evidence was presented that confirmed that the homeowner sought quotes that excluded work that had already been commenced. Contrary to the assertion at paragraph 30 of the Appellants’ Brief, the homeowner’s request for a quote from Price-Rite included an explicit reference to “removing concrete”, indicating that the quote was for the same job (the valve installation) that the Appellants had originally agreed to provide.

DECISION OF THE PANEL

[82] Neither Brian McDermott nor Ivy Davidson testified at the hearing.

[83] Given the evidence that telephone calls to Pro Star were responded to by Service King and the fact of their otherwise close relationship including shared business premises, the Panel finds

⁹ *CPA* s. 35.

¹⁰ *PCBLR* s. 10(2)

¹¹ *CPA* s.31(2)

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.* s. 6 (2)(d)

¹⁵ *Ibid.*

that they operate as one business and it is therefore appropriate for the Director's Order to be directed to each of the three entities.

[84] The Panel also finds that the contract concluded with the homeowner was a prepaid contract and a direct sales contract. Given that the contract did not contain each of the provisions mandated under s. 35 of the *CPA*¹⁶, the Appellants were in violation of both s. 35 of the *CPA* and s. 10(2)(a) of the *PCBLR*¹⁷.

[85] The Panel also finds that because the Appellants did not possess the required prepaid contracting licence, and because the contract did not include the information stipulated in s. 35 of the *CPA*, the homeowner was entitled under s. 28(2) of the *CPA* to cancellation rights for up to one year after the contract was entered into. The homeowner confirmed cancellation of the contract on December 3, 2021, which falls within one year after July 16, 2021, being the date that the contract was negotiated.

[86] Also, because the contract was cancelled by the homeowner within one year, the Appellants were required by s. 31(2) of the *CPA* to refund all money paid by the homeowner within 15 days. Given that a full refund was not provided to the homeowner as required, the Appellants violated s. 31(2) of the *CPA*¹⁸.

[87] The Preamble of a statute is "intended to assist in explaining an enactment."¹⁹ The Preamble of the *CPA* is clear that the primary purpose of the statute is to protect consumers from unfair business practices and to provide consumers with the right to be properly informed about products and transactions. This includes specific provisions that discourage businesses from exploiting a consumer's unfamiliarity with the marketplace and inability to understand a consumer transaction.

[88] The public interest is also served by ensuring compliance with the *CPA* including the provisions under s. 6 that deter unfair practices²⁰. Given the evidence that the Appellants have a history of other complaints related to overcharging, it is therefore both reasonable and appropriate that the Director's Order was issued.

[89] In light of the evidence that Service King and Pro Star routinely charged up to \$3,500.00 for valve installation and related concrete work, the Panel finds that the cost significantly exceeded both quotes obtained by the homeowner and is almost double the final price charged by Price-Rite, even considering that some of the work to remove the concrete had been completed.

¹⁶ *Ibid.* s. 35.

¹⁷ *PCBLR* s. 10(2)(a)

¹⁸ *CPA* s. 31(2).

¹⁹ See *Interpretation Act*, R.S.A. 2000, C-1.8 s. 12(1).

²⁰ *CPA* s. 6 (2), s. 6(3) & s. 6(4).

[90] Section 6 of the *CPA* invites this Panel to consider some circumstances which may render a transaction unfair. One of those, set out s. 6(2)(d), is whether the price of goods or services grossly exceeds the price at which similar goods or services are readily available to consumers²¹.

[91] Section 6(2)(d) is clearly intended to discourage unfair practices regarding prices or “price gouging” and to protect consumers by creating a duty on the part of a supplier of goods or services to inform a consumer of the difference in price as well as the reason for the higher price where the goods and services are similar.²²

[92] The section does not require suppliers to refrain from charging a price for goods or services that grossly exceeds the price at which similar goods or services are readily available. Nor does it prevent suppliers from charging a flat rate price, as argued by the Appellants at the hearing and in their Appeal Brief.

[93] The section does however require suppliers to inform the consumer of “the difference in price and the reason for the difference” where a price for goods or services grossly exceeds the price at which similar goods or services are readily available²³.

[94] The *CPA* itself provides little guidance in terms of what s.6(2)(d) means and there is virtually no case law that provides an interpretation either of the provision itself or of the term “grossly excessive”²⁴.

[95] The Panel takes notice of the fact that a grossly excessive price is equivalent to price gouging or overcharging. A better understanding of overcharging is gained from a quick study of the Government of Alberta website found at <https://www.alberta.ca/unfair-business-practices>.

[96] According to an example given on the website, overcharging occurs “where a contractor charges a homeowner \$7,500 for roof repairs that would have been done by competitors for \$2,500”.

[97] Another example found on the website includes “charging a price for goods or services that is more than 10%, to a maximum of \$100, higher than the estimate given unless the consumer has specifically agreed to the increase.” This example is further recognized as an unfair practice under s. 6(2)(e) of the *CPA*²⁵.

²¹ *Ibid.*

²² *CPA* s. 6(2)(d).

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid* s. 6(2)(e).

[98] In the case before us, the original price quoted by Service King for installation of the back water valve was \$3,500.00. The job was completed by Price-Rite for \$1,837.50. The difference of \$1,662.50 is significant. The Panel finds that this is grossly excessive and equivalent to overcharging (and price gouging) on the part of the Appellants, even if some of the work to remove the concrete was partially completed.

[99] The Panel also finds that the term “grossly excessive” in the context of both the Statute and the facts before us, can be taken to mean either significant or prominent.

[100] Furthermore, it is apparent to the Panel that the Appellants potentially misunderstand the implications of s. 6 (2)(d) of the *CPA*. The section does not force or even require them to inform customers of what their competition is charging. To the contrary, the section requires them to inform and when possible, provide an explanation to their customer concerning the difference in price(s) and the reason (or reasons) behind the higher price.

[101] This Panel finds that the Appellants failed to inform the homeowner of both the difference between the Appellant’s price and the price at which similar goods and services were readily available from competing suppliers.

[102] The Panel also finds that both the Price-Rite and the Day & Knight quote are adequate, and absent evidence called by the Appellants, are reliable, together with the invoice for similar work completed by Price-Rite

[103] Given the evidence of the two additional quotes and invoice, the Panel finds that similar goods and services were offered by competitors, that they were offered at significantly lower prices, and that they were readily available to the homeowner.

[104] No credible evidence however, expert or otherwise was presented by the Appellants either in support of these claims, or in terms of understanding what is meant by a “flat rate providing system” or “industry standard”.

[105] The Appellants also failed to present any reliable evidence that the homeowner sought quotes which included the completion of work that had already been commenced or partially completed by Service King.

[106] A Director’s Order is issued under s. 157 of the *CPA* where the Director is of the opinion that “a person is contravening or has contravened” the *CPA* or the regulations.

[107] The Director’s Order in this case does not impose any additional regulatory burden on the Appellants beyond compliance with the provisions of s. 6(2)(d) of the *CPA*. Furthermore, the

Appellants were not given an administrative penalty or license prohibition on account of this matter.

[108] Section 127(b)(i) and s. 158 of the *CPA* provide that additional enforcement measures to address future noncompliance with a Director's Order are available²⁶.

[109] The Panel also finds that the Director's Order was valid under the *CPA* in that it was reasonable as well as compatible with the principles of administrative fairness. This was further supported by evidence that:

- The Appellants were informed of, and also provided an opportunity to participate in the investigation conducted by Mr. Lincoln as well as this hearing;
- The Director gave the Appellants an explanation in writing of the Director's proposed action as well as adequate time to respond before the Director's Order was rendered;
- The stated intent of the Appellants as well as steps taken to comply with licencing and contract requirements were considered to be mitigating factors in the Director's decision in terms of determining the content of the Order;
- The Order was accompanied by a letter setting out the Director's opinion that the Appellants had contravened s. 6(2)(d), s. 31(2), s. 35, and s. 104(1) of the *CPA*;
- The Director is authorized to issue an order under s. 157 if the Director is of the opinion that the order concerns a contravention of the *CPA* or its regulations;
- A history of prior complaints relating to noncompliance with s. 6(2)(d) of the *CPA* indicated that further enforcement measures would be appropriate.

[110] The Appellants failed to call any evidence to explain the difference in price.

[111] Given the unfair practices committed by the Appellants collectively, together with licensing and contract violations, the Panel finds that authority for the Director's Order is properly found in s. 157 of the *CPA*²⁷. The Panel also finds that the Director's discretion under s. 157 is not restricted by any preconditions including any requirement to perform a "market analysis" or "proven scale" as argued on behalf of the Appellants.

[112] This Panel finds that the Appellants were not subjected to unfair treatment or punitive measures by the Director's Order in this matter because:

²⁶ *Ibid* s. 127(b)(1) & s. 158.

²⁷ *Ibid*, s. 157.

- Protection of consumers from unfair and unethical practices, including the provision that businesses cannot take advantage of a consumer's unfamiliarity with the marketplace, is a stated purpose in the Preamble of the *CPA*.
- Compliance with the provisions contained in the *CPA*, including unfair practice prohibitions, and licensing and contract requirements, is always required. There are no exceptions provided in the statute. The provisions of the *CPA* apply even when compliance is onerous.
- There was no monetary Administrative Penalty nor a prohibition on obtaining the required business license. The Director's Order mandates nothing more than compliance with the existing legislation and is directly related to the Appellant's recent and prior contraventions of the *CPA*. It does not create any new obligations in terms of compliance with s. 6(2)(d).
- Section 6(2)(d) does not require suppliers or others engaged in specific business activity to prove anything except for the difference in price and the reason for the difference.
- Section 6(2)(d) of the *CPA* does not require the Appellants to absolutely refrain from charging a price for goods or services that grossly exceeds the price at which similar goods or services are readily available. Neither does s. 6(2)(d) prevent suppliers from charging a flat rate for similar goods or services.
- Section 6(2)(d) of the *CPA* does not require a business to use prejudicial or biased language when informing a consumer of price differences.
- Section 6(2)(d) only requires that a supplier inform consumers of the difference in price and the reason behind the higher price, which the Appellants, for whatever reason, failed to do.

[113] The Panel also agrees that the public interest is better served by a Director's Order because:

- The Appellant's have a history of non-compliance with s. 6(2)(d) of the *CPA*.
- The Appellants did not comply with the contract cancellation obligations, which are in place to protect the consumer from businesses operating with the advantage of being more familiar with their line of work.
- One of the main purposes of the contract cancellation, licensing and bond requirements for prepaid contractors is to provide some protection for consumers from prepaid contracting work left unfinished, particularly if a business unexpectedly requests additional payment to complete work that could have been completed for much less in terms of cost as was the case for this homeowner.
- In the event of premature cancellation of a consumer contract under the *CPA*, consumers have the option of pursuing a claim against the bond or security of a licensed business.
- Given the Appellants' history of non-compliance with s. 6(2)(d), a Director's Order may include appropriately increasing consequences for the Appellants if they continue to violate s. 6(2)(d).

- Additional enforcement measures for a Director's Order can also be sought by the Director in the Court of King's bench under s. 158 of the *CPA*.

[114] In conclusion, this Panel responds to the specific grounds of appeal raised by the Appellants as follows:

- i) The facts relied upon in making both the decision and subsequent Order are neither incomplete nor inaccurate. This Panel is satisfied that a complete and accurate scenario in terms of facts were known by the Director at the time of rendering the decision and the Order. Furthermore, given that the hearing was in the form of a trial de novo. the Appellants have been afforded an opportunity to "set the record straight" and call evidence which could serve to be probative of any facts previously thought to be incomplete or inaccurate. Finally, the Appellants were given an opportunity to correct these matters as early as July 27, 2022, when the Director sent a proposal to issue a Director's Order under the *CPA*. Finally, the Appellants have identified the scope of work and the comparison of price as material facts concerning the director's Order,
- ii) The prices quoted and relied upon for comparison are for a similar scope of work (the valve installation) notwithstanding that work (floor break-up and concrete removal) had already commenced on the homeowner's property.
- iii) No evidence was presented either to explain or in support of the claim that the price for the services quoted "is in line according to a flat rate pricing system which is standard amount all established and qualified service companies operating in the City of Calgary."
- iv) The Panel specifically finds that the price charged by the Appellants is grossly excessive and equivalent to overcharging.
- v) The Panel also finds that s. 6(2)(d) does not "force" or even require the Appellants to inform customers of what their competition is charging. To the contrary, the section requires them to inform and to provide an explanation to their customer concerning the difference in prices and the reason (or reasons) behind the higher price.
- vi) No other rational (rationale) for the appeal was relied upon and relevant at the hearing.

[115] Finally, the Panel finds that the Director's Order is valid and reasonable, is in the public interest, and complies with both the *CPA* and with the principles of administrative fairness.

CONCLUSION AND ORDER

[116] In accordance with the reasons provided herein, the Panel confirms the decision of the Director to issue the Director's Order on February 22, 2023.

ISSUED AND DATED in the Province of Alberta this 5th day of January 2024

Michael Swanson

Michael Swanson KC (Chair)

Joanne Pawluk

Joanne Pawluk (Member)

J Lees

James Lees (Member)