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**DIRECTOR'S ORDER UNDER SECTION 157**  
**OF THE *CONSUMER PROTECTION ACT* (formerly the *Fair Trading Act*)**  
**TO**  
**DARREN HERD**  
**AND**  
**ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF DARREN HERD**

This Director's Order was issued under s. 157(1) of the *Fair Trading Act* in response to, in the opinion of the Director, contraventions of the Act. As mandated by s. 157.1(1) of the *Fair Trading Act*, this Director's Order is part of the public record.

Albertans who have questions or concerns about this business are encouraged to contact the Service Alberta Consumer Contact Centre at 1-877-427-4088.

For more information on the *Fair Trading Act*, business licensing in Alberta or to search for a licensed business, please click here:

[Search for a Licensed Business, Charity or Fundraiser](#)

To view a tipsheet on this business licence category, please click here:

[Tipsheets](#)

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**ISSUE**

On or about April 2016, Darren Herd attended the home of an Albertan consumer in Edmonton, Alberta. At that time, a verbal contract for the renovation of the consumer's deck was discussed and agreed to.

On July 7, 2016 an e-transfer of \$207.62 was sent from the consumer to Darren Herd as a payment on the verbal construction and maintenance contract entered into between the parties. Two additional e-transfers occurred, one on July 20, 2016 in the amount of \$2,500 and July 21, 2016 in the amount of \$1,250 from the consumer to Darren Herd. A handwritten note showing an additional \$500 was paid in cash by the consumer to Darren Herd over this time as well. Each of the payments, except the last one, occurred prior to the completion of the work.

Darren Herd was not licensed under section 104(1) of the *Consumer Protection Act*, (formerly the *Fair Trading Act*) as a Prepaid Contracting Business at the time the contract was entered into or when the deposit / progress payments were taken.

As there was no written contract between parties, the legislated requirements under s. 10(2) of the Prepaid Contracting Business Licensing Regulation were not complied with.

**LEGISLATION**

The activity of soliciting, negotiating or concluding a contract in person, at a location other than their normal place of business, for a construction or maintenance contract and accepting a deposit or prepayment prior to the completion of the project constitutes a "Prepaid Contracting Business".

A "Prepaid Contracting Business" means the activities of soliciting, negotiating or concluding in person, at any place other than the seller's place of business, a prepaid contract.

A "Prepaid Contract" means a construction or maintenance contract in which all or part of the contract price is to be paid before all of the goods or services called for in the contract are provided.

A "Construction and Maintenance Contract" in part means a contract for the purposes of constructing, altering, maintaining, repairing, adding to or improving a person's own private dwelling.

Section 35 of the *Consumer Protection Act* states "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.

Section 10(2) (a) of the Prepaid Contracting Business Licensing Regulation states that "A person who is engaged in the prepaid contracting business must ensure that every prepaid contract that the person enters into complies with the requirements of section 35 of the Act."

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

## **ORDER**

Darren Herd and any employee, representative, agent or associate of Darren Herd must immediately:

- Cease entering into prepaid contracts (accepting down payments, deposits or progress payments before the work is fully completed on contracts solicited, negotiated or concluded in person away from the company's place of business) with residential consumers until the licensing requirements under section 104(1) of the *Consumer Protection Act* have been met; and,
- Ensure that all prepaid contracts comply with s. 35 of the *Consumer Protection Act* as per section 10(2) of the Prepaid Business Contracting Licensing Regulation.

## **NON COMPLIANCE WITH ORDER**

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



Deborah Wagar  
Director of Fair Trading (as delegated)  
August 22, 2018

