

**IN THE MATTER OF
THE FAIR TRADING ACT**

THIS UNDERTAKING is made pursuant to Section 152 of the *Fair Trading Act*.

BY:

**Melecio Batalla
Mels Flooring and Renovation
74 Dovercliffe Way SE
Calgary, Alberta T2B 2C6**

(hereinafter called the "**Supplier**")

TO:

The **DIRECTOR OF FAIR TRADING** (as delegated),

(hereinafter called the "**Director**")

WHEREAS:

- (A) The Supplier is not licensed to operate a prepaid contracting business in the Province of Alberta.
- (B) The Supplier did enter into a prepaid contract with a consumer, who resides in Calgary, Alberta.
- (C) The Supplier did solicit, negotiate, or conclude in person a construction, renovation, or maintenance contract **and** did take a deposit from a consumer at a place other than the Suppliers' normal place of business.
- (D) The Supplier acknowledges that in the ordinary course of his business, while unlicensed, he did enter into a contract with Maria Concepcion Bautista, a resident of Alberta. The contract was concluded in May of 2008, and a deposit was requested. The Supplier accepted a deposit in the amount of \$800 on May 19, 2008 from Maria Concepcion Bautista, before the work was completed.
- (E) The Supplier acknowledges that in the ordinary course of his business, while unlicensed, he did enter into a prepaid contract with Maria Concepcion Bautista without complying with the contract requirements as set out in Section 10 of the Prepaid Contracting Business Licensing Regulation being AR 185/99, contrary to Section 162(1) of the *Fair Trading Act*.
- (F) The Director asserts the he has reason to believe that the acts or practices of the Supplier described in recitals (C), (D) and (E) hereof constitute breaches of the *Fair Trading Act*.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

1. The Supplier acknowledges and admits that it has failed to comply with the licensing and referred provisions of the *Fair Trading Act* and undertakes to the Director that this Supplier will not, at any time hereafter, engage in acts or practices similar to those described in recitals (C), (D) and (E).
2. The Supplier will ensure that in all capacities, either in his name, a trade name, corporation, or a partnership, or in his capacities as an employee, declarants of the trade names, directors shareholders of a corporation or as agents for another, or parents or subsidiaries of another corporation they will not take deposits or progress payments on construction, renovation, or maintenance contracts in Alberta unless licensed as a prepaid contracting business under the *Fair Trading Act*.
3. The Supplier will not permit any representative, employee, agent, or partner to carry on or engage in the taking of deposits or progress payments on construction, renovation, or maintenance contracts in the Province of Alberta unless they are licensed as a prepaid contracting business under the *Fair Trading Act*.
4. The Supplier will, to the best of its ability, ensure that all of its officers, partners, employees, representatives and agents are forthwith acquainted with the requirements of the *Fair Trading Act*, especially as it pertains to prepaid licensing and contract requirements and unfair practices.
5. The Supplier ensures that qualified trades are used when conducting renovations, should specific certifications be required for the work.
6. It is understood that the Supplier has:
 - a. ceased taking deposits or progress payments on construction, renovation, or maintenance contracts from Albertans prior to completing the work;
 - b. commenced action to apply and obtain a subsisting prepaid contracting business license;
 - c. instructed his representatives, employees, or partners not to take deposits or progress payments on construction, renovation, or maintenance contracts from Albertans prior to completing the work;
 - d. acquainted himself and any of his representatives, employees, or partners regarding the prepaid contracting business licensing and contract requirements and unfair practices outlined in the *Fair Trading Act*.
7. This Undertaking will be binding upon the Supplier and its successors and assigns unless:
 - a. termination by the Director or varied with the consent of the Supplier;
 - b. varied by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the
 - c. terminated by an Order of a Judge of the Court of Undertaking; or Queen's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was not unfair;


However, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.
8. The Supplier acknowledges that the Director may, upon breach by the Supplier of any term of the Undertaking, institute such proceedings and take such action under the *Fair Trading Act* as he may consider necessary.
9. The Supplier acknowledges that they were advised by Service Alberta, and is aware that they are entitled to seek independent professional advice regarding the signing of this Undertaking, and the Supplier acknowledges that they are entering into this Undertaking voluntarily.

10. The Supplier will pay to Maria Concepcion Bautista, the sum of \$800; to be distributed on a monthly basis in the amount of \$100 per month commencing June 30, 2009.

11. It is understood that the terms of this Undertaking shall be maintained as a public record pursuant to Section 152(3) of the *Fair Trading Act*.

IN WITNESS WHEREOF the Supplier, has on the 17 day of September, 2009 caused its common seal to be hereunto affixed and attested by the signatures of its proper officers duly authorized in that behalf.

**Melecio Batalla
Mels Flooring and Renovation
74 Dovercliffe Way SE
Calgary, Alberta T2B 2C6**

PER: 

Melecio Batalla

ACCEPTED by the Director of Fair Trading this 29th day of September, 2009.



DIRECTOR OF FAIR TRADING (as delegated)
Scott Hood