

IN THE MATTER OF

THE DIRECT SELLERS ACT, SS 1978, c D-28

AND

Fix Building Products 2000 Ltd.

DECISION AND DEMAND FOR FORFEITURE OF FINANCIAL SECURITY

Introduction

1. The within Demand for Forfeiture of Financial Security (“Demand”) is made in respect of the financial security filed by Fix Building Products 2000 Ltd. (“Fix Building Products”) pursuant to section 19 of *The Direct Sellers Act, SS 1978, c D-28* (“Act”).

2. Section 19 of the Act provides authority to the Registrar to demand that the bond be forfeited in certain situations, including if the person with respect to whose conduct the bond is conditioned has violated any provision of the Act, has failed to comply with any of the terms, conditions or restrictions to which his license is subject or is in breach of contract and has been struck from the register of companies.

3. Section 23.1 of the Act provides that the Minister may appoint a Registrar and Deputy Registrar to administer the Act and Regulation.

4. In my capacity as the Deputy Registrar, under the Act, I may demand forfeiture of the bond because Fix Building Products is in breach of contract and has been struck from the corporate registry.

5. In this decision, I am not deciding how money realized from the bond will be paid. Instead, my decision concerns whether to demand forfeiture of the bond.

6. I provided the bond issuer, Western Surety Company (“Western Surety”), B [REDACTED] F [REDACTED] of Fix Building Products and McKercher LLP, who is listed as Fix Building Products registered office with the Notice of Proposed Demand for Forfeiture of Financial Security (“Proposed Notice of Forfeiture”), disclosure materials and the Registrar’s proposed statement of expenses. As part of the Proposed Notice of Forfeiture these parties were provided with an opportunity to provided written submissions

whether I should demand forfeiture of the financial security or if I should consider other information, evidence or law, or if any of the grounds were mistaken or I had misinterpreted the applicable law. The parties were provided until March 31, 2023, to make these submissions.

7. Mr. Jordan F. Richards, Western Surety's General Counsel and Chief Compliance Officer, indicated, on behalf of Western Surety, that Western Surety did not have any written comments or additional information with respect to my proposed action.

8. I received no response from representatives of Fix Building Products or McKercher LLP.

9. For the reasons below, which are based on the Proposed Notice of Forfeiture, the disclosure materials, and the written responses, I am satisfied that Fix Building Products is in breach of contract and has been struck from the register of companies. Accordingly, I will demand forfeiture of financial security in the form of a bond filed by Fix Building Products.

Background

10. Fix Building Products was a Direct Seller under subsection 2(e) of the Act that carried on the business of direct selling by going from house to house selling or offering for sale, or soliciting orders for the future delivery of, goods or services; or by telephone offers for sale or solicits orders for the future delivery of goods or services.

11. Subsection 2 (e) of the Act defines "house" includes

- (i) any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto; and
- (ii) (ii) any building on a farm and any land appurtenant to the farm;

12. Subsection 2 (g) of the Act defines purchaser as the purchaser under a direct sales contract

13. Fix Building Products held a licence as a Direct Seller under the Act and the regulations until January 4, 2021.

14. Pursuant to section 19 of the Act, the Registrar required, and Fix Building Products filed, a bond dated June 12, 2018, in the amount of \$25,000.00 as a requirement to carry on business under its licence as a Direct Seller.

15. According to the terms of the penal bond, the surety's obligation continues in force and effect for 27 calendar months after the Registrar receives notice of intention to cancel.

16. The surety's representative issued a Notice of Cancellation of Fix Building Products' Direct Sellers Bond 101,499 dated July 2, 2021. The Notice of Cancellation was received by Consumer Protection Division ("CPD") of the Financial and Consumer Affairs Authority on August 4, 2021.

17. Fix Building Products is inactive and has been struck from the Saskatchewan Corporate Registry.

18. Investigations were conducted with respect to Fix Building Products by virtue of complaints made to CPD by [REDACTED] and [REDACTED]

Issue

19. I will address whether I have the authority under the Act to demand forfeiture of the bond filed by Fix Building Products with respect to its dealings with [REDACTED] and [REDACTED]

[REDACTED]

Facts

[REDACTED]

20. [REDACTED] filed a claim and a request for compensation with CPD describing her concerns regarding her interactions with Fix Building Products.

21. According to [REDACTED], on March 4, 2020, Kirk Finell on behalf of Fix Building Products attended [REDACTED] residence, uninvited, at [REDACTED], Swift Current and knocked on her door.

22. During this visit, [REDACTED] entered into a contract with Fix Building Products. The contract provided that Fix Building Products would perform the following repairs:

- a. Supply and install 22 feet of countertops;
- b. Supply and install sink and taps;
- c. Supply and install shelf for microwave;
- d. Supply and install back splash tile; and
- e. Supply and install eleven knobs and twenty-two handles.

23. A deposit of \$3,000.00 was provided to Fix Building Products, paid by cheque # 603 dated March 4, 2020, with a remaining balance due on completion of \$5,794.00.

24. The contract states that the repairs were to be completed by April 21, 2020, subject to scheduling and weather concerns and were to be completed one month thereafter.

25. [REDACTED] provided a copy of cancelled cheque #603 dated March 4, 2020, in the amount of \$3,000 made out to Fix Building Products.

26. [REDACTED] attempted to get in contact with Fix Building Products on several occasions with no success and has not received a response from Fix Building Products despite her efforts.

27. The Consumer Protection Division sent a letter addressed to Fix Building Products to the attention of B [REDACTED] F [REDACTED], a contact for Fix Building Products, on September 15, 2020, which summarized [REDACTED] dispute and the relevant legislation. The letter is seeking a response from Fix Building Products by no later than September 23, 2020. On September 16, 2020, a response was received by email from B [REDACTED] F [REDACTED] stating, "We are in the process of refunding monies due." No further response was received from Fix Building Products after this email, despite a number of attempts by CPD and [REDACTED].

28. I am satisfied based on the forgoing, that Fix Building Products entered into a direct sales contract with [REDACTED] as purchaser in her home and subsequently breached its contract with her.

[REDACTED]

29. [REDACTED] filed a complaint and a request for compensation on behalf of [REDACTED]. [REDACTED] [REDACTED] described his concerns regarding his interactions with Fix Building Products.

30. [REDACTED] states that on July 10, 2019, Kirk Finell on behalf of Fix Building Products came to the farmyard uninvited looking for work. [REDACTED] agreed to hire him and his company to put new tin

on the roof of a wooden quonset and put new tin on the ends of another quonset. Fix Building Products was also hired to replace the windows and flashing around the new windows.

31. CPD Investigators confirmed that the contract was signed by [REDACTED] on behalf of [REDACTED] [REDACTED] on July 10, 2019, which states a total value of \$13,320. A deposit of \$4,500.00 was provided to Fix Building Products, by cheque dated July 10, 2019, with the remaining balance of \$8,820 due on completion.

32. According to the contract, the repairs were scheduled to start on September 20, 2019, subject to scheduling and weather concerns and were to be completed within one month.

33. According to [REDACTED] claim for financial compensation and attached statement, the work was never completed and when he contacted the office of Fix Building Products they stated: "that they hadn't received the tin yet but would be down when it arrived". [REDACTED] states that he has phoned many times throughout the winter and spring. In the early fall of 2020, he contacted Jahmil Fayad, owner of the company who stated that he is coming to Saskatchewan to get the crews all working again because Kirk Finell was [REDACTED], and someone would be contacting them about the work. [REDACTED] states that he was never contacted again by the company or their representatives after that.

34. [REDACTED] has provided a copy of a [REDACTED] bank statement for the period of July 1, 2019 – July 31, 2019, as well as cancelled cheque #489 in the amount of \$4,500 made out to Fix Building Products 2000 LTD which substantiate the deposit made per the above-noted contract.

35. I am satisfied Fix Building Products contracted with [REDACTED] as purchaser and then Fix Building Products breached the contract.

Application of the Act

36. The Act clarifies that the Registrar may demand the forfeiture of a bond filed as per section 19, if there is a breach of contract and the corporation's name is struck off the register of companies:

19(3) Every bond filed under subsection (1) shall be forfeited upon the demand of the registrar where:

(d) a decision has been rendered by the registrar stating in effect that after consideration and investigation of a complaint, he is satisfied that the person in respect of whose conduct the bond is conditioned or any representative, agent or salesman of that person:

(i) has violated any provision of this Act or has failed to comply with any of the terms, conditions or restrictions to which his licence is subject or is in breach of contract; and

(ii) has departed from Saskatchewan, or being out of Saskatchewan remains out of Saskatchewan, or departs from his dwelling house or otherwise absents himself, or in the case of a corporation, the name thereof has been struck off the register of companies;

37. As discussed above, [REDACTED] and [REDACTED] on behalf of [REDACTED] entered into separate contracts as purchasers with Fix Building Products for the future delivery of goods and services. Following the investigation of the complaints/claims and after reviewing all included materials in both claims, I found Fix Building Products breached its contract with [REDACTED] and [REDACTED]

38. I am also satisfied, based on the Saskatchewan Corporate Registry Profile Reports set out in the disclosure materials, that Fix Building Supplies has been struck from the corporate registry.

39. Accordingly, I have the authority to demand forfeiture of the bond under section 19 of the Act with respect to Fix Building Products dealings with [REDACTED] and [REDACTED]

Decision

40. I demand forfeiture of the bond filed by Fix Building Products 2000 Ltd pursuant to section 19 of the Act on the basis that Fix Building Products breached its contracts with [REDACTED] and [REDACTED] and has been struck off the corporate registry.

Payment and Calculation of Claims

41. As I mentioned earlier, my decision deals only with forfeiture of the Fix Building Products' bond. The payment of and distribution of bond proceeds will depend on the amount of valid claims.

42. If the total amount of valid claims exceeds the available bond proceeds, pro-rating the claims allows for the bond proceeds to be shared amongst claimants.

43. Claimants understand their claim may be prorated. The claim for payment of financial loss form provides as follows:

"I understand that if there are multiple claims, the amount of compensation ordered by the Director may need to be prorated"

44. A claimant's pro-rated portion would be calculated taking into consideration the following:

- the amount of money received from the bond;
- the loss incurred by the claimant;
- the losses incurred by all valid claimants.

45. The formula used to calculate a portion of the bond money is:

$$(A/ B) \times C = D$$

Where

A= the amount determined as a valid claim for a claimant,

B= the losses incurred by all claimants who filed valid claims,

C= the amount of bond money received (in this case \$25,000),

D= prorated portion.

Appeal Information

46. If you are directly affected by my decision you may appeal to the court. Section 21 of the Act provides as follows:

Appeal

21(1) A person who is dissatisfied with a decision of the registrar under section 14, 15,17 or 19 may, within thirty days from the date of the decision, appeal to a judge of the Court of Queen's Bench who may, upon hearing the appeal, make such order:

- (a) respecting the granting of a license;

(b) respecting the terms, conditions, and restrictions to which the license is to be subject;

(c) setting aside the suspension or cancellation of the licence;

(d) for further inquiry by the registrar into the facts of the case;

(e) respecting costs;

as the judge deems just.

(2) The appeal shall be by notice of motion and a copy thereof shall be served upon the registrar within the said thirty days and not less than ten days before the day on which the motion is returnable.

(3) Upon receipt of the copy of the notice of motion the registrar shall forward to the appropriate local registrar a certified copy of all documents in the possession of the registrar relating to the decision from which the appeal is being taken.

(4) There shall be no further appeal.

47. Please see the Act for further details If you wish to appeal.

Applicable Legislation

48. *The Direct Sellers Act, SS 1978, c D-28, ss 2,3, 19.*

DATED at Regina, Saskatchewan, this 10th day of April 2023.



Denny Huyghebaert
Deputy Registrar
The Direct Sellers Act