

IN THE MATTER OF
the *Direct Sellers Act*
R.S.N.B. 2011, c.141, as amended

- and -

IN THE MATTER OF
724682 NB INC operating as ATLANTIC HEALTH AND SAFETY
(Respondent)

REASONS FOR DECISION & ORDER OF THE DIRECTOR OF CONSUMER AFFAIRS

Date of Suitability Notice: 5 April 2023

Date of Opportunity to be Heard: In-person hearing waived as Licensee did not respond

Date of Reasons for Decision: 19 May 2023

Heard Before

Alaina M. Nicholson
Director of Consumer Affairs

INTRODUCTION

- [1] This matter came to the Director of Consumer Affairs ("Director") as a result of a recommendation by staff of the Financial and Consumer Services Commission ("FCNB") that 724682 NB Inc operating as Atlantic Health and Safety ("the Licensee") were not suitable for licensure. The Act provides that the Director may determine continued suitability to hold a direct sellers vendor licence.
- [2] Under subsection 17(1.1) of the *Direct Sellers Act*, R.S.N.B. 2011, c. 141 (the "Act") the Director shall not suspend or cancel a licence without giving the holder of the licence an opportunity to be heard.

COMPLAINTS

- [3] On 16 March 2023, FCNB Staff received a phone call from the Office of the Fire Marshal (the "Fire Marshal"). The Fire Marshal advised that they had significant concerns about a Direct Seller in the province who they believed was targeting consumers through Facebook in the Dieppe region. The Fire Marshal indicated that they had received numerous complaints from individuals in the Dieppe region ("Complainants") regarding code compliant fire systems.
- [4] The Fire Marshal also indicated that the following high-pressure tactics were reported by the Complainants to them:
 - Are you willing to put the lives of your children on the line here by not having this in your home?
 - I don't feel comfortable leaving your home without having our technician complete his installation. Think of your kids.
 - You're already paying ADT close to \$100/mth – Are your kids not worth the extra spend to guarantee their safety?
 - The devices you currently have in your home are garbage and not working properly. They should be removed immediately and replaced.
 - Let me call and get the owner on the line for you; this \$1500 discount won't be available after today.
- [5] On 21 March 2023 the Fire Marshal forwarded the complaints onto FCNB in writing. The Fire Marshal went on to explain that they were deeply concerned about the details of the claims advanced by the Complainants including the fact that it was reported salespeople from the Licensee were:
 - a) engaging in the use of flammable liquids inside the homes of the Complainants;
 - b) encouraging the Complainants to come into close contact with open flames;
 - c) pressuring the Complainants to enter into consumer transactions; and
 - d) were using statements that might reasonably deceive or mislead the Complainants.
- [6] The first complaint concerned a demonstration done by the Licensee in October of 2022 at the under-construction home of Complainant A and Complainant B. Complainant A and B allege as follows:
 - a) Complainant A liked and shared a Facebook post from the Licensee,

- b) A representative from the Licensee then contacted Complainant A to inform them they had won a home safety kit; to receive the kit, Complainant A was told that a salesperson would have to come to their home and the Complainant would have to receive a three-hour presentation on the Licensee's products;
- c) Complainant A agreed and the presentation was given in the garage of Complainant A and Complainant B;
- d) At the presentation the Licensee's salesperson told Complainant A and Complainant B that people never read the fine print on smoke alarms, and that they hardly ever work. They were told that the Kidde brand was the worst kind of smoke alarm, if not placed in the exact right location, as opposed to the Licensee's product which is "guaranteed to work."
- e) At the end of the demonstration, the salesperson placed a frying pan on a table and poured what looked like lighter fluid into the pan, lit it on fire, and asked Complainant A and Complainant B to put out the fire using a "fire blanket" product the Licensee was selling.
- f) When Complainant A and Complainant B declined to purchase the Licensee's products, which were estimated to cost \$5,000, the salesperson was adamant that they were making the wrong decision.

[7] The second complaint concerned a demonstration in December 2022 at the home of Complainant C and Complainant D. Complainant C and D allege as follows:

- a) Complainant C was referred to the Licensee by a friend via Facebook, and a representative from the Licensee then contacted Complainant C to inform him he had won a home safety kit; to receive the kit, Complainant C was told a salesperson would have to come to the home of Complainant C and Complainant D and give a presentation on the Licensee's products;
- b) Complainant C and Complainant D were made to watch a movie clip that "traumatized" them;
- c) Complainant C and Complainant D were told "you're paying \$100 roughly for insurance, well what is another \$100 for the life of your kids";
- d) Complainant C and Complainant D were advised if they did not purchase the Licensee's products immediately they would not be able to avail of \$1,500 in savings on the products;
- e) Complainant C signed the contract and the Licensee booked an installer and advised they would be at the house within an hour;
- f) Complainant C and Complainant D then did some checking on the Licensee and called the Licensee to cancel. A review of the contract indicates the balance owing was over \$11,000.

[8] The third complaint is about a demonstration in January 2023 at the home of Complainant E. Complainant E alleges as follows:

- a) Complainant E's friend signed them up for a free home safety kit, but in order to receive the kit, they were told a representative from the Licensee would have to come to their home and give a "fire safety talk";
- b) During the fire safety talk, the salesperson told Complainant E that their fire detectors "are no good", that they needed to purchase the Licensee's product "to be safe."
- c) They were told by the Licensee that "people don't read the fine print" on Kidde smoke alarms, implying they didn't work, and that the Licensee's product is "guaranteed to work";
- d) The salesperson retrieved a frying pan and told Complainant E they were going to light a fire in the pan and have Complainant E put it out; Complainant E voiced concerns about having a fire set in their home, but the salesperson said "it's OK, we do this all the time, don't worry";

- e) The salesperson put the frying pan on Complainant E's stove, poured what looked like lighter fluid in the frying pan, lit it on fire with a lighter, and asked Complainant E to put out the fire using the Licensee's "fire blanket";
- f) The salesperson conducted a second demonstration which involved the salesperson holding a thermometer and having Complainant E light a lighter underneath it for a period of time, placing the thermometer in the Licensee's "special gel for burns" to see the temperature drop; the Complainant voiced concerns about the second demonstration and a fire being lit inside her home, but was reassured by the salesperson that everything was going to be fine;
- g) Complainant E did not want to commit to purchasing products and told the salesperson that she would think it over as the estimate of \$8,000 was a lot of money. The salesperson then contacted their supervisor who was placed on speakerphone and told Complainant E that they did not feel comfortable letting the salesperson leave without installing the system because if Complainant E's house burned down, the Licensee would feel responsible and that Complainant E's life was in danger;
- h) Complainant E felt as though a threat had been made towards them.

[9] The fourth complaint concerns a demonstration in November 2022 at the home of Complainant F and Complainant G. Complainant F and G allege as follows:

- a) Complainant F received a call from the Licensee by referral, telling them they had won a home safety kit, but in order to receive the kit, a salesperson would have to come to their home and give a 45-minute presentation on the licensee's products; the actual presentation lasted 2.5 hours;
- b) During the presentation, the salesperson informed Complainant F and Complainant G that people never read the fine print on smoke alarms, they hardly ever work, that Kidde brand are the worst kind of smoke alarm if not placed in the exact right location, and that the Licensee's product is guaranteed to work;
- c) The salesperson retrieved a metal pan, placed it on the stove of Complainant F and Complainant G, poured what looked like lighter fluid in the pan, and asked Complainant F to put the fire out with a "fire blanket";
- d) a demonstration using "special burn gel" was also performed;
- e) Complainant F and Complainant G declined the offer of the Licensee's products, which had an estimate of \$7,000. Upon refusal, the salesperson contacted their supervisor and put them on speakerphone. The supervisor asked Complainant F and Complainant G if the lives of their kids were worth \$1 a day, stated they didn't care enough for their kids to get this system, and that they were putting their children at risk by not having the system installed right away.

BACKGROUND

[10] After receiving the multiple complaints from the Complainants, the Fire Marshal reached out to FCNB, as licensee of direct sellers. They also reached out to all the fire chiefs and fire prevention officers in the province issuing a memo warning of the practices of this Licensee. The memorandum reads as follows:

In January 2023, the Office of the Fire Marshal was made aware of an enterprise in the greater Moncton area, which may be providing homeowners with misleading or incorrect information regarding smoke alarms or other life safety devices. Complaints received to date included;

- **Conducting unsafe product demonstrations using flammable liquids during home demonstrations;**
- **Representatives suggesting that existing smoke alarm or life safety systems are insufficient;**
- **High pressure sales tactics;**
- **False or misleading statements regarding code complaint [sic] systems;**
- **High price point system(s) \$5,000-15,000.**

[11] On 5 April 2023, FCNB Staff, emailed the Licensee at the address provided by them on their application, to advise of the Fire Marshal's contact with our office, and that FCNB had concerns regarding suitability. The letter advised of the complaints against the Licensee ranging from the use of high-pressure sales tactics to potentially unsafe product demonstrations.

[12] The letter went on to inform the Licensee that based on these complaints, that FCNB did not believe them to be suitable to hold a direct sellers vendor licence. The basis of the concern was the lack of judgment demonstrated by the potential risk the salespersons were putting New Brunswick consumers in, namely the risk of serious bodily injury. Additionally, based on the complaints, it appeared that the salespeople are leading consumers to believe that without purchasing their products, their family is at great risk.

[13] The letter was advising that a recommendation was being made to the Director that their licence be cancelled.

[14] The Licensee was also advised the following in relation to the opportunity to be heard:

- a) that it was an opportunity for them to provide any additional information or rationale to aid the Director in reviewing suitability for licensure;
- b) that they had a right to bring legal counsel to the opportunity to be heard; and,
- c) that they had a right to disclosure of all information considered by FCNB Staff in determining they were unsuitable for licensure and all information put before the Director of Consumer Affairs for consideration at the opportunity to be heard.

[15] The letter stated that if the Licensee did not reply within 10 days of the letter that the Director would render a decision based on the information on file.

[16] On 13 April 2023, after not receiving a response to the 5 April 2023 email, FCNB Staff re-sent the letter advising of the recommendation to suspend their licence.

[17] By 18 April 2023, there was still no response from the Licensee. Although the email notification was acceptable under the *Electronic Transactions Act*, after the second email received no response, FCNB staff decided to exercise caution and send the letter *via* registered mail.

[18] On 20 April 2023, the registered letter was successfully delivered to the address for service provided by the Licensee, pursuant to subsection 8(1) of the Act:

8(1) An application under subsection 7(1) shall state the applicant's address for service in the Province, and any notice given under this Act is deemed for all purposes to be served if delivered or sent by registered mail to the licensee at that address, unless the licensee has notified the Director in writing of a change of address for service under section 15.

THE COMMISSION'S MANDATE

- [19] The *Financial and Consumer Services Act*, in subsection 2(a), provides that the purpose of the Act is to “*enable the Commission to provide regulatory services that protect public interest and enhance public confidence in the regulated sectors...*”.
- [20] The *Financial and Consumer Services Act*, in paragraph 12(2)(b), provides that “*the Commission shall ... administer financial and consumer services legislation*”, which as per subsection 1(i) includes the *Direct Sellers Act*.
- [21] Consumer protection is a fundamental consideration and a key purpose of the Commission’s mandate. It is a key responsibility of the Director, as the gatekeeper to the industry, to determine suitability of an applicant or a licensee to operate in the sector.

THE PROCESS OF DETERMINING SUITABILITY

- [22] Protecting the public and enhancing public confidence, in the financial marketplaces which it regulates, includes ensuring that those carrying on business in the industry are competent and trustworthy. It also includes ensuring that when a licence is granted and/or held, any potential risks to consumers are minimized.
- [23] Trustworthiness is an essential character trait in door-to-door sales licensing. It provides consumers with confidence in the industry. Consumers need to feel and be assured that a licensed salesperson/vendor will be honest and act with integrity when being solicited in their home.
- [24] Competence is another essential character trait in licensing. For a consumer to have confidence in the industry, those operating in this industry should be able to demonstrate their expertise in the product or service that they are selling.
- [25] Section 17 of the Act provides grounds for which the Director may suspend or cancel a licence:
- 17(1) *The Director may suspend or cancel a licence held under this Act if the person who holds the licence*
[...]
(d) *in the opinion of the Director, has demonstrated the person’s incompetency or untrustworthiness to carry on the business in respect of which the licence of that person was granted.*

- [26] The determination under paragraph 17(1)(d) is that the licensee has demonstrated incompetency or untrustworthiness to carry on business in respect of the licence, such that the Licensee is not suitable for licensure. The question being asked is, if a licensee is continued to be licensed does it leave consumers exposed to potential harm or exploitation?

ANALYSIS

- [27] A licence approved by FCNB provides reassurance to New Brunswick consumers that the licensee is reputable and may be trusted in their given profession.

- [28] Companies and individuals working in the direct sales industry (who are asking people to open their doors so they may sell products or services to them within the safety of their homes) need to behave in both a safe and ethical manner.
- [29] The Licensee has not displayed a willingness to discuss or provide a response to the complaints and FCNB Staff's recommendation to cancel their licence.
- [30] The complaints FCNB received *via* the Fire Marshal raise significant concerns in relation to the direct sales industry. They include allegations of details of high-pressure sales tactics, including fear inducing actions, allegations, and statements. The Fire Marshal indicates in his memorandum that they have made false or misleading statements regarding code compliant systems, and I believe his assessment given his experience, and knowledge of the fire prevention industry. Further, the complaints indicate a complete lack of competence, given the dangerous nature the salespeople undertook in their product demonstrations. They not only put the individuals at risk of personal harm and injury but put the safety and security of their home at great risk.

DECISION

- [31] I find the level of seriousness of the complaints directly relate to the legislative suitability parameters of incompetence and untrustworthiness. I find the complaints demonstrate the Licensee is not competent or trustworthy.
- [32] After careful consideration of the particular facts of this matter, I have concluded that a Direct Sellers licence continuation would reduce public confidence. The conduct of the Licensee has demonstrated that the Licensee is not suitable to carry on business under the *Direct Sellers Act*. In that regard, in the public interest, I am revoking licensure in this industry for the reasons detailed above and in accordance with paragraph 17(1)(d) of the *Act*.
- [33] Pursuant to subsection 17(2), where the licence of the vendor is cancelled, the licences of all salespersons of the vendor are also cancelled.

DATED at Fredericton, New Brunswick this 19 day of May 2023.



Alaina M. Nicholson
Director, Consumer Affairs Division
Financial and Consumer Services Commission