



## DECISION OF THE DIRECTOR

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**In the Matter of:** *Business Practices and Consumer Protection Act, S.B.C. 2004, c.2*

**Respondent:** CARE Funeral Services (Vancouver Island) Ltd.

**Case Number:** 31065

**Adjudicator:** Shahid Noorani

**Date of Decision:** May 12, 2021

### A. INTRODUCTION

1. Consumer Protection BC oversees compliance with the *Business Practices and Consumer Protection Act* (“BPCPA”) and the *Cremation, Interment and Funeral Services Act* (“CIFSA”).
2. CARE Funeral Services (Vancouver Island) Ltd. (“the respondent”) is a company operating under three funeral provider licenses (“the licenses”) granted by Consumer Protection BC.
3. On November 18, 2020, Consumer Protection BC notified the respondent of a decision reached at the conclusion of a formal hearing that found the respondent contravened section 189(5) of the BPCPA when it failed to comply with the terms of a Compliance Order issued on September 8, 2020. The November 18<sup>th</sup> decision placed conditions on the licenses; imposed an administrative monetary penalty and; issued another Compliance Order requiring reimbursement of inspection costs to Consumer Protection BC.
4. On February 2, 2021, an Inspector for Consumer Protection BC delivered a Report to Director (“Report”) to the Respondent. The Report alleged the respondent had failed to comply with the November 18, 2020 Compliance Order by not paying the inspection costs.
5. The Report initiated a new hearing to address the alleged breach of the Compliance Order and was referred to me to adjudicate. Under the BPCPA, the respondent is entitled to an opportunity to be heard.

6. On February 25, 2021, I sent correspondence to the respondent that provided notice of a hearing on the allegation in the Report. The notice informed the respondent of its right to an opportunity to be heard and advised that should a contravention be confirmed, licensing and/or enforcement measures may be imposed against the respondent. The respondent was invited to send me their written response before March 19, 2021. The hearing notice acknowledged that the respondent had made the \$450.00 payment for inspection costs since the time of receipt of the February 2, 2021 Report and, as such, the focus of the hearing was on the respondent's failure to make the required payment within 21 days of service of the November 21, 2020 (sic) Compliance Order. Note: the November 21, 2020 date should have stated November 18, 2020.
7. On March 7, 2021, the respondent replied to my February 15, 2021 correspondence seeking clarification on the payment for inspection costs made on February 5, 2021. I provided this clarification the same day. In light of this request for clarification, I extend the deadline for the respondent to provide a written response to April 6, 2021.
8. On April 1, 2021, the respondent provided their written reply to the allegation in the Report.

#### **ALLEGED CONTRAVENTIONS**

9. The Report advances the following allegation against the Respondent:
  - i. Section 189(5)(c)(ii) – failing to comply with an Order of the Director dated November 18, 2020 requiring the respondent to pay Consumer Protection BC \$450.00 as reimbursement for inspection costs within 21 days of service of the Compliance Order.

#### **B. LEGISLATION**

10. The legislation relevant to this determination includes portions of the BPCPA as follows:

##### **Section 155 – Compliance Order**

(1) After giving a person an opportunity to be heard, an inspector may order the person to comply with this Act and the regulations if satisfied that the person is contravening, is about to contravene or has contravened this Act or the regulations.

(2) [...]

(3) [...]

- (4) The Director may include one or more of the following orders in a Compliance Order
- (a) [...] (c)
  - (d) that a person reimburse to the director all or a portion of the actual costs of any inspection, including actual legal costs, incurred by the director for the inspection of that person in respect of the contravention referred to in the compliance order.

### **Section 189 – Offences**

- (5) A person must not do any of the following:

- (a) [...] (b)
- (c) fail to comply with
  - (i) [...]
  - (ii) a Compliance Order
  - (iii) [...] (v)
- (d) [...] (f)

### **C. EVIDENCE – THE REPORT**

11. I have reviewed all of the evidence in the Report but will limit my comments to only the parts of the evidence necessary to give context to my decision.
12. On November 18, 2020, the Director made a determination that the respondent had contravened section 189(5) of the BPCPA. The decision placed a condition on the licenses prohibiting the respondent from entering into or providing the sale of preneed funeral services contracts and imposed a \$10,000 administrative monetary penalty. More notable for the purposes of this decision, the November 18<sup>th</sup> decision issued a Compliance Order requiring the respondent to reimburse Consumer Protection BC \$450.00 for inspection costs and that this payment was to be made within 21 days of service of the Compliance Order.
13. Service of the Compliance Order to the respondent occurred by email on November 18, 2020. The email address used to send the Compliance Order was an email address the respondent had recently used to exchange communications with Consumer Protection BC.
14. On February 2, 2021, an Inspector for Consumer Protection BC delivered the Report to the respondent.

#### **D. EVIDENCE – THE RESPONDENT**

15. Following receipt of the February 25, 2021 hearing notice, the respondent wrote to me on March 7<sup>th</sup> to advise payment of the inspection costs was “processed three days after the Report was dated.” In wanting to ensure my February 25<sup>th</sup> communication was not an administrative error, the respondent stated they believed the \$450.00 had been completed. The respondent requested I provide clarification on this and noted that this communication was not to be considered as the respondent’s reply to the Report, should one still need to be made.
16. On March 23, 2021, I provided clarification back to the respondent, referring to the hearing notice that acknowledged payment took place after receipt of the Report and that the purpose of the hearing was to address the respondent’s failure to pay the \$450.00 by the due date. An extension for the respondent to provide a written reply to the Report was given.
17. On April 1, 2021, the respondent provided a written response that I summarize as follows:
  - It took some time as options were being explored to handle the “fine”
  - The concept of funds being held in escrow was considered
  - It was ultimately decided to “just pay and then fight”
  - When looking to the Order for direction on how to make payment, there was nothing stated
  - A phone call needed to be placed to Consumer Protection BC. “An immediate answer was not forthcoming but in the fullness of time was offered.”
  - All of this led to the “tardy payment”
18. When requested by me to provide details to when the phone call to Consumer Protection BC was made, and with whom the respondent spoke with and what was discussed, the respondent replied, “Having a life to live and a business to run in an attempt (sic) to satisfy all and sundry including CPBC and not wanting to spend copious hours tracking dates and times I can tell you I spoke to Mr. Sean Sisett. Maybe he has a better record keeping system than I.”
19. I wrote back to the respondent on April 1, 2021 explaining again this was a hearing process and that the respondent needed to decide what and how much information they wanted me to consider in my review of the allegation. I proceeded to advise that I had been informed by Mr. Sisett that he spoke with the respondent on February 3, 2021. My communication then reproduced emails exchanges between Mr. Sisett and the respondent dated February 3<sup>rd</sup> summarizing their conversation of the same date. I invited the respondent to check their own records for the emails. The respondent was reminded they had until April 6<sup>th</sup> to provide me with any further information.

20. The respondent's reply to the information presented by me about the February 3<sup>rd</sup> conversation and the follow up emails was not substantive or meaningful to the allegation.

#### **E. ANALYSIS**

21. Section 155(5) of the BPCPA says a Compliance Order must be served on the person named in the Order. The November 18, 2020 Compliance Order named the respondent as the subject of the Order and was served on the respondent by email.

22. Section 183(2)(c)(iii) of the BPCPA says documents permitted to be served may be sent by electronic email to the address provided by that person. The email address used was one that the respondent had recently used to exchange email communications with Consumer Protection BC. In reviewing Consumer Protection BC licensing records kept in the ordinary course of business, I note the email address used to serve the Compliance Order was the same one provided by the respondent when renewing the licenses. Read together with section 155(5), a Compliance Order is a document that is to be served. Therefore, it can be sent by email.

23. Section 184(b) says if a document is served by electronic email, it is deemed received on the third day after it is sent. The Compliance Order was emailed to the respondent on November 18, 2020. Applying the provisions for the calculation of time from the *Interpretation Act*, the Compliance Order is deemed to have been received, at the latest, on November 23, 2020. As such, after the service and consideration of the 21 day-period in the Compliance Order, payment for the inspection costs was due by December 14, 2020.

24. The respondent offers a number of explanations for its "tardy payment" of the inspection costs. To say it was because "options" were being considered is not acceptable. It was always open for the respondent to have paid the inspection costs on time and to have requested a reconsideration. This would have allowed the respondent to take its "just pay and then fight" approach in a way that did not offend the timelines under the Compliance Order. Alternatively, the respondent could have stayed payment of the inspection costs by making a request for reconsideration. In the end, the respondent did not exercise this right to request a reconsideration, something that was clearly communicated in the November 18, 2020 decision and the accompanying Compliance Order.

25. The respondent also says the delay was caused by the Compliance Order lacking direction on how payment was to be made. I have looked over the email correspondence sent to the respondent on November 18, 2020 that attached the Compliance Order. The communication explicitly mentions payment options and provides contact information for the person at Consumer Protection BC that can assist.

26. The respondent was given ample opportunity to present evidence of the efforts it took to make payment before the passing of the 21-day period detailed under the Compliance Order. The attempts to reference communications with Mr. Sissett clearly show this happened well past the deadline for payment.

27. The respondent has not provided an acceptable explanation for its failure to comply with the Compliance Order. As such, I find the respondent to have contravened section 189(5)(c)(ii) of the BPCPA.

#### **F. DUE DILIGENCE**

28. The respondent is entitled to the complete defence of due diligence against the allegation if it shows that all reasonable steps were taken to prevent the contravention. The onus is on the respondent to establish this defence. The evidence presented by the respondent does not show due diligence to have been exercised by the respondent.

#### **G. CONCLUSION**

29. I conclude the respondent contravened section 189(5)(c)(ii) of the BPCPA by failing to comply with the requirements of the November 18, 2020 Compliance Order requiring reimbursement of inspection costs to Consumer Protection BC within 21 days of service of the Compliance Order.

#### **H. ENFORCEMENT ACTION**

30. The Report advances recommendations that I suspend the licenses; impose a significant administrative monetary penalty and; issue a Compliance Order prohibiting the respondent from entering into preneed funeral contracts. I am not bound to these recommendations. I have complete discretion to decide what, if any, licensing and/or enforcement action to take for a contravention.

31. As an adjudicator determining that a contravention has occurred, I may take one or more of the following actions:

1. Issue a compliance order (under section 155 of the Act), directing the respondent to:
  - stop a specified act or practice and take actions to correct the issue;
  - pay Consumer Protection BC the costs of the relevant inspection, including creation of the Report.
  
2. Impose a penalty of up to \$5,000 on an individual, or up to \$50,000 on a corporation, pursuant to section 164 of the Act. A contravention to section 189(5) is prescribed for the purpose of administrative penalty under the *Business Practices and Consumer Protection Regulation*.

3. Enter into an Undertaking with the respondent on terms that I consider appropriate.
  4. Suspend, cancel, or place conditions on the licenses.
32. Any licensing and/or enforcement action taken should correlate to the contravention. With this in mind, I do not believe a license suspension to be warranted in these circumstances. Similarly, I cannot make a link to a Compliance Order, as recommended in the Report, prohibiting the respondent from entering into or providing the sale of preneed contracts. I pause here to note the November 18, 2020 decision placed a condition on the licenses prohibiting the respondent from entering into or providing the sale of preneed funeral services contracts. This license condition remains in effect. I am convinced that an administrative monetary penalty to be appropriate.

#### **Administrative Monetary Penalty**

33. A contravention to section 189 (5)(c)(ii) is prescribed for the purpose of an administrative penalty (“AMP”) under the Business Practices and Consumer Protection Regulation. The BPCPA authorizes imposition of a penalty of up to \$5,000 on an individual, or up to \$50,000 on a corporation (under section 164).
34. In the context of the factors under section 164 (2) of the BPCPA (below), I have decided that an AMP is warranted for the contravention. The purpose is to effect deterrence and to promote the respondent’s compliance into the future, a matter that is growing in concern and importance given the respondent’s history of non-compliance.
35. BPCPA section 164 (2) sets out the following factors that must be considered before imposing an AMP:
- (a) previous enforcement actions for contraventions of a similar nature by the respondent
  - (b) the gravity and magnitude of the contravention
  - (c) the extent of the harm to others resulting from the contravention
  - (d) whether the contravention was repeated or continuous
  - (e) whether the contravention was deliberate
  - (f) any economic benefit derived by the person from the contravention
  - (g) the person's efforts to correct the contravention
36. For the contravention at issue, I consider all these factors to decide whether an AMP should be imposed. If imposing an AMP, to determine the *amount* that should be imposed, I consider the BPCPA section 164(2) factors together with the Consumer Protection BC policy, “Calculation of Administrative Monetary Penalties Policy and Procedures” (the “Policy”). The Policy model and rationale are discussed below.

37. The Policy, normally applied by Consumer Protection BC, sets out how the AMP amount is calculated, starting with a base penalty amount. The Policy is a guidance document that helps to ensure the calculations of AMP amounts are consistent, transparent, flexible, and proportionate to the contraventions at issue. The Policy allows suppliers subject to AMPs to know how Consumer Protection BC interprets the BPCPA, and analyses the criteria determining AMP amounts. Consumer Protection BC has developed the Policy from its experience and expertise in providing consumer protection services, and from its mandate to administer the BPCPA in the public interest.
38. According to the Policy, contraventions for which AMPs are imposed are first categorized into Type A, Type B, or Type C, as set out in the Appendix. Consumer Protection BC makes these assignments based on its purposes and experience in delivering consumer protection services in the public interest, and the consideration of two factors: (1) the inherent severity of harm specific to the contravention, and (2) the probability that a person will experience harm from the contravention.
39. After categorization of the contravention, the decision maker considers a set of “adjustment factors” laid out in the Policy. These “adjustment factors” are based on section 164 (2), plus one additional criterion consistent with the legislation. The Policy requires the decision maker to choose a “gravity” value for each adjustment factor based on consideration of the relevant aggravating or mitigating circumstances.
40. When applying the Policy, the decision maker is considering all the factors under BPCPA section 164 (2) in their calculation or analysis of the AMP amount that should be imposed. The decision maker continues by exercising their discretion on whether the amounts in the Policy should be used or whether different amounts should be imposed based on consideration of the factors under BPCPA section 164 (2) (and one additional related criterion) and any other relevant circumstances.
41. In the respondent’s notice of hearing, I identified the Policy and advised that it will be applied as part of any decision that may impose an AMP. This notice further stated that the Policy can be viewed on our website and would be otherwise provided to the Respondent in paper form upon its request. Therefore, in this hearing the respondent had an opportunity to respond to the Policy by making submissions on the appropriateness of its application or its consistency with criteria in the BPCPA. However, in this hearing I have not received any submissions from the respondent on the Policy.
42. I have determined that an AMP should be imposed for the respondent’s contravention to section 189(5)(c)(ii) of the BPCPA by failing to comply with the terms of the November 18, 2020



Compliance Order requiring reimbursement of the inspection costs within 21 days of service of the Compliance Order. I now will consider the specific AMP to be applied.

**Calculation of the AMP amounts**

43. I first apply the Policy to calculate an AMP amounts. I then decide whether that amount or a different amount should be imposed based on consideration of the factors under BPCPA section 164(2), and one additional criterion, and any other relevant circumstances.

44. A breach to section 189(5)(c)(ii) of the BPCPA is a Type C contravention under the Policy (page 14 Appendix A, line 115). I agree with this categorization given the circumstances of this violation. It represents the appropriate level of severity and potential harm for prescribed contraventions according to the Policy.

45. According to the AMP “Matrix” in part 4.3 (page 5) of the Policy, the “base” amount for penalty is \$5,000.00 for a business.

46. My assessment of the adjustment factors applicable to these contraventions under the Policy’s penalty matrix is set out in the table below.

Adjustment Factor	Effect on Gravity	Analysis
<p>1. <i>Previous enforcement actions for contraventions of a similar nature</i></p>	<p>3</p>	<p>As noted in the Report, the respondent’s compliance history includes two contraventions of the <i>same</i> nature: on July 4, 2014 that resulted in the imposition of a \$2,500 administrative monetary penalty, and; on November 18, 2020 that resulted in the imposition of a \$10,000 administrative monetary penalty, conditions being added to the licenses, and the issuance of a Compliance Order. The respondent was also found to have committed a <i>similar</i> nature contravention on December 9, 2015 [section 189(5)(b)] when it failed to provide information to an inspector for the purposes of an inspection that resulted in a Compliance Order being issued. The respondent’s continued non-compliance with Orders of the Director is growing concern. For the time being, progressive discipline to achieve compliance continues to be my preferred approach; however, it needs to happen at a level that sends a strong message and deterrence to the respondent about on-</p>

		going non-compliance. I see the respondent's history of non-compliance as an aggravating factor.
<b>2. Gravity and magnitude of the contravention</b>	<b>1</b>	The Director has a responsibility to supervise the conduct of licensees. Frequently this is done through the issuance of Compliance Orders. The failure to follow one of these Orders is a serious contravention that deserves strong sanctioning to correct the non-compliance and to protect the integrity of the Director's regulatory function. I have taken into consideration the impact of the contravention, specifically failing to pay inspection costs, to be of lesser gravity and magnitude to other Compliance Order contraventions committed by the respondent. Still, I believe this factor should be treated as aggravating for the purpose of deciding penalty.
<b>3. Extent of the harm to others resulting from the contravention</b>	<b>0</b>	There is no evidence or basis to infer harm to others resulting from the contraventions. I maintain the gravity level at neutral.
<b>4. Whether the contravention was repeated or continuous</b>	<b>1</b>	Payment of the inspection costs was to have happened by December 14, 2020. It did not occur until February 5, 2021. The seven-week delay makes the contravention continuous and aggravating for the purpose of penalty.
<b>5. Whether the contravention was deliberate</b>	<b>1</b>	I am convinced the failure to comply with the Compliance Order was a conscious and deliberate decision by the respondent. The respondent did not indicate any uncertainty about the terms of the Compliance Order. For the reasons already discussed, I reject the respondent's submission about there being no clarity on how to make payment. I believe this factor should be treated as aggravating for the purpose of deciding penalty.
<b>6. Economic benefit derived by the person</b>	<b>0</b>	I have no reason to believe the respondent derived any economic benefit from the contravention. I maintain the gravity level at neutral.

<i>from the contraventions</i>		
<b>7. Whether the person made reasonable efforts to mitigate or reverse the effects of the contravention</b>	-1	Although seven weeks late, the respondent did make payment for the inspection costs. I have taken this into account as mitigating to the assessment of a penalty.
<b>8. The person's efforts to correct the contraventions &amp; prevent recurrence</b>	0	I have not been given evidence on measures that will be taken into the future to comply with the Orders and other determinations issued by the Director. I maintain the gravity level at neutral.

**Final Calculation of AMP**

47. According to my application of the Policy and its AMP Matrix, the overall adjustment for the BPCPA section 189(5)(c)(ii) contravention involves an overall score of "five."

48. The Policy determines that a violation of section 189(5)(c)(ii) of the BPCPA to be a Type A contravention with a base penalty amount of \$5,000.00 for a business. In this case, having found a gravity level of "five," the Matrix calls for an administrative monetary penalty of \$8,000.00. In this hearing no additional relevant circumstances have been brought to bear on my analysis and calculation of penalty as to vary it from the Policy amount

49. I have considered the \$8,000.00 administrative monetary penalty calculated under the Matrix and the guidance provided under the Policy. Exercising my discretion to apply a penalty amount of up to \$50,000, I believe \$8,000.00 to be an appropriate amount given the reasons I have discussed above. Attached to these reasons is a Notice of Administrative Penalty in the amount of **\$8,000.00.**

**I. RECONSIDERATION**

50. An administrative monetary penalty may be reconsidered in accordance with Division 1 of Part 12 of the BPCPA, subject to the provisions outlined in sections 181 and 182 (2). A request for reconsideration must be submitted within 30 days of delivery of the order to the respondent.

The request must be in writing, identify the error the person believes was made or other grounds for reconsideration, and be accompanied by a \$252 application fee. A request for reconsideration should be addressed to:

Consumer Protection BC  
Attention: Shahid Noorani, Vice President  
200 – 4946 Canada Way, Burnaby, BC V5G 4H7  
[shahid.noorani@consumerprotectionbc.ca](mailto:shahid.noorani@consumerprotectionbc.ca)

Decided on May 12, 2021 in Burnaby, BC.



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Shahid Noorani, Vice President