CONSUMER PROTECTION BC

DECISION OF THE DIRECTOR

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

Respondent: Simply Green Home Services (BC) Inc., Crown Crest Capital, & Lawrence Krimker

Case Number: 30128

Adjudicator: Robert Penkala

Date of Decision: June 9, 2020

Note: ***This version of the decision has been redacted to avoid disclosing personal identifying information in publishing the document. Except where already a matter of relevant public record or used in a professional capacity, individual names are abbreviated in a two-letter format, or, where single names are used in the original decision, as one capital letter. Minor stylistic changes have been made for some of the privacy redactions.***

INTRODUCTION

Consumer Protection BC is responsible for the administration and enforcement of the *Business Practices and Consumer Protection Act* and is authorized to impose administrative penalties and issue remedial orders where businesses ("suppliers") violate the Act.

Simply Green Home Services (BC) Inc. (herein Simply Green, or respondent) is a company with operations based in Toronto, Ontario. In 2015 Simply Green registered as a company in British Columbia and it has been active at certain times since then in BC. Simply Green's business as it relates to this matter consists of entering leasing agreements (contracts) with consumers for appliances including furnaces, heat pumps, water heaters, water treatment systems, and air-conditioners. The relevant consumer transactions are initially of a "door to door" nature, also known in the Act as "direct sales". According to the respondent it has not been engaging with BC consumers since April 2018.

On November 11, 2019 a Consumer Protection BC inspector issued a Report based on her investigations of several consumer complaints against Simply Green. The complaints involve allegedly deceptive sales practices and disputes concerning customers' attempts to cancel their direct sales contracts. The Report alleges that Simply Green's use of deficient contracts and its failure to provide refunds upon consumers' exercise of cancellation rights relating to those deficiencies violate the Act.

All of the consumer complaints cited by the Report arose from transactions with Simply Green occurring between June 2017 and March 2018.

The Report also names Crown Crest Capital Corporation (Crown Crest), Lawrence Krimker, BC Environmental Home Services Inc. (BCHES), and "AK" as respondents in the same proceeding. The Report indicates that both Simply Green and Crown are part of a "consortium" of companies known as the "Simply Group." Crown Crest Capital Corp. is an Ontario company also incorporated in 2015. Lawrence Krimker is a director of both companies. (According to the respondents Crown Crest is also known as Crown Crest Capital Management Corp. and Crown Crest Capital Trust.)

This decision makes no findings respecting BCEHS or AK, both of whom are excluded from the proceedings for the following reasons:

- AK was named as Crown Crest's CFO at the time of its registration, however according to the respondent he departed in 2016 and has no evident role in the subject matter of the Report.

- The Report reveals that BCEHS was an elusive target of investigation between December 2018 and February 2019, changing its business locations, personnel, corporate registration information, allowing email addresses and phone numbers to become non-functioning, and being ultimately unresponsive;

- The Report does not substantiate that BCEHS is or was an affiliate or agent of any of the other named respondents (at material times BCEHS, and Simply Green responding in this hearing, denied any connections of this kind); and,

- I was unable to serve notice of the proceedings on the company due to the lack of an email address or valid physical addresses for service (according to Canada Post the address associated with its company registration does not exist).

The exclusion of BCEHS as a respondent in this hearing means that I do not make any findings regarding its alleged contraventions of the Act in relation to four consumer complaint investigations discussed in the Report (itemized therein as #6 to #10). However, I may consider evidence originating in those complaint files to the extent of its relevance to the conduct of the respondent Crown Crest (creditor and assignee of assets in the BCEHS leases).

On June 15, 2016, in an earlier proceeding, Consumer Protection BC issued a compliance order against Simply Green after finding it had engaged in deceptive acts and practices contrary to section 5 (1) of the Act ("Order"). The Order required Simply Green to comply with the Act by:

- ceasing to represent to consumers that rebates are available in relation to the purchase or lease of goods and services when such rebates do not exist; and,

- not misrepresenting consumers' rights of cancellation before, during or after the consumer transaction.

Simply Green's alleged failure to comply with these specific terms of the Order is at issue in these proceedings.

OPPORTUNITY TO BE HEARD

In a letter sent to Simply Green and Crown Crest in December 2019 initiating a hearing of the Report allegations, I requested that the respondents reply to the Report in writing, providing any evidence or submissions by way of rebuttal, defence, or mitigation. Simply Green and Crown Crest responded to the hearing on January 14th in a submission from external counsel, Mr Apps. In that submission counsel requested a further opportunity to respond in the event the adjudication concluded that the respondents violated the Act. Consequently, I gave the respondents a further opportunity to address, prior to adjudication, issues relevant to their potential liability to penalty or other sanction (including a direct sales prohibition order). On February 26th I received a supplementary submission from Mr Apps. On the basis of these interactions respecting notice of the hearing, related disclosures, and the receipt of counsel's submissions, I conclude that the respondents have been duly provided with an opportunity to be heard.

ALLEGATIONS

The Report raises the following allegations against the respondents. Simply Green, it asserts, contravened:

1. Section 189 (5)(c)(ii) of the Act when it failed to comply with a compliance order by engaging in specified deceptive acts in consumer transactions;

2. Section 5 of the Act when it made further deceptive representations in consumer transactions;

3. Section 27 of the Act by not issuing a refund within 15 days to a consumer who cancelled a *direct sales contract* in accordance with the Act;

4. Section 56 of the Act when it failed to cancel future preauthorized payments or charges after the consumer cancelled the contract under Part 4.

Crown Crest is potentially implicated in allegations #3 and #4 above as well. Each of these allegations is explained in more detail later in this decision.

RELEVANT LEGISLATION

The provisions of the Act applicable to the allegations are reproduced below:

> **Section 5**
>
> *(1) A supplier must not commit or engage in a deceptive act or practice in respect of a consumer transaction.*

(2) If it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

Section 17

*"**direct sales contract**" means a contract between a supplier and a consumer for the supply of goods or services that is entered into in person at a place other than the supplier's permanent place of business*

Section 19

A […] *direct sales contract* […] *must contain the following information:*

[(a) through (d) omitted]

(e) a detailed description of the goods or services to be supplied under the contract

(f) […]

(g) *other costs payable by the consumer, including taxes* […]

[(h) to (i) omitted]

(j) *the total price under the contract, including the total cost of credit;*

[(k) to (o) omitted]

Section 20

(1) *In addition to the information required under section 19, a direct sales contract must contain*

(a) the name, in a readable form, of the individual who signs the contract on behalf of the supplier,

(b) the place where the contract is entered into, and

(c) the signatures of

(i) the individual who signs the contract on behalf of the supplier,

(ii) the consumer, and

(iii) if applicable, the guarantor.

(2) Despite section 23 (3), if that section applies, a supplier must give a copy of the direct sales contract to the consumer at the time the contract is entered into.

(3) A direct sales contract is not binding on a consumer if

(a) the supplier does not give to the consumer a copy of the contract at the time the contract is entered into, or

(b) the supplier requires the consumer to make a down payment in excess of the prescribed amount.

Section 22

If credit is extended or arranged by the supplier in respect of a direct sales contract,

(a) the credit agreement, as defined in section 57 [definitions], is conditional on the direct sales contract, whether or not the credit agreement is a part of or attached to the direct sales contract, and

(b) if the direct sales contract is cancelled under section 21, the credit agreement is cancelled.

Section 27

[…] *if a contract is cancelled under this Division, the supplier must refund to the consumer,*

(a) within 15 days after the notice of cancellation has been given, and

(b) without deduction except as provided for in this Division or in the regulations, all money received in respect of the contract, whether received from the consumer or any other person.

Section 28

(1) If a direct sales contract […**]** *contract is cancelled under this Division, the consumer must return any goods received under the contract by delivering the goods to the person named in the contract as the person to whom notice of cancellation may be given or to the business address of the supplier.*

(2) Subject to subsection (3), the return of the goods by the consumer under subsection (1) discharges the consumer from any obligation, in respect of the goods, arising under the contract.

(3) […]

Section 54 (2)

A notice of cancellation is sufficient if it indicates, in any way, the intention of the consumer or supplier to cancel the contract and, except in the case of cancellation under sections 21 (1), 25 (1,) or 26 (3) if it states the reason for cancellation.

Section 56

If a contract is cancelled under this Part, the supplier must cancel any future payments or charges that have been authorized by the consumer.

Section 189 [sub-sections other than (5) omitted]

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

(a) […]

(b) […]

(c) fail to comply with

(i) […]

(ii) a compliance order,

(iii) to (v) […]

SUMMARY OF INSPECTOR'S EVIDENCE

The Report outlines five consumer complaint investigations undertaken by the Inspector. Documentary evidence related to the investigations is exhibited in the Report. Below I summarize the factual allegations in the individual complaint investigations.

1. "GS"

- During a door to door interaction initiated by Simply Green in June 2017, GS entered a direct sales contract for supply of a water treatment system and a heat pump.
- GS reported that the salesperson told him his company was working in conjunction with BC Hydro and that GS would be eligible for a $800 rebate if he installed the water treatment system and heat pump. The equipment was installed the following day.
- GS told the Inspector he entered into a second direct sales contract with Simply Green the following day for the supply of a water heater. GS stated that he told the representative he had been trying to contact Simply Green about the BC Hydro rebate but the phone number was not in service. GS says the salesperson said he would complete the BC Hydro rebate process for him. The Inspector says "there is no indication he ever received the rebate."
- GS states he did not understand the nature of the contracts he signed, as English is not his first language.
- GS hired a contractor to inspect the purchased equipment and was told it had not been installed to code and the "water treatment" was not functional. GS stopped payment on the items, then removed and stored them.
- At a later point Crown Crest filed a notation on title of GS's residential property for non-payment. As GS was in the process of selling his home, he retained a lawyer to resolve the issues. The lawyer contacted Simply Green and Crown Crest in April 2018.
- Consumer Protection BC opened a complaint file in June 2018. The Inspector believes the contracts were not compliant with the requirements of the Act. She says the required information missing from the contracts was:

    1. A detailed description of the goods or services to be supplied, s. 19(e)
    2. Other costs payable by the consumer, including taxes, s. 19(g)
    3. The total price under the contract, including the total cost of credit, s. 19(j)

- In August 2018, GS's lawyer advised the Inspector the consumer had been receiving collection calls from a collection company though he had previously demanded Simply Green rescind the contract (and remove the equipment) due to the deceptive nature of the transaction.
- In October 2018, the Inspector sent notice of the complaint to Simply Green.

- Simply Green later agreed to cancel the contracts and in December 2018 refunded GS the money he had paid to date.

2. "AR"

- During a door to door solicitation at his residence initiated by Simply Green on November 22, 2017, AR entered into a direct sales contract for what he thought was the purchase of a furnace.
- AR alleges that during the sales transaction the salesperson told him:

    - he should replace his old furnace as Fortis BC was going to penalize households without high efficiency furnaces;
    - Fortis BC offered a rebate he could use toward the cost of installation;
    - the contract was a purchase agreement in the amount of $6,750 with payments of $99.99 per month for five years and option to purchase outright at any time.
- According to AR, he called Simply Green in February 2018 to exercise his option to purchase outright. During the call, the respondent informed him the contract was actually a lease. He was not provided a buyout price.
- AR told the Inspector his lawyer looked over the contract and said the ending the lease would cost over $12,000 and he would not own the furnace until paying an additional buyout.
- In April 2018, AR gave a notice of cancellation to Simply Green under section 21 (2) of the Act.
- Consumer Protection BC opened a complaint file in May 2018. The Inspector believes the direct sales contract executed by the parties does not comply with the Act. The required information missing from the contract is:

    1. A detailed description of the goods or services to be supplied, s. 19(e)
    2. Other costs payable by the consumer, including taxes, s. 19(g)
    3. The total price under the contract, including the total cost of credit, s. 19(j)
- Later in May 2018, AR advised the Inspector that Simply Green had not replied to his cancellation and continued to take monthly payments from his bank account.
- In July 2018, the Inspector attended Simply Green's office address in Vancouver and found that Simply Green was no longer at the location. An "HVAC" business called BC Home Environmental Services (BCHES), was operating at the same address. The Inspector spoke to the President of BCEHS, who advised it had no connection to Simply Green.
- Later in the month the Inspector was able to contact Simply Green and provide details of the complaint. A representative of Simply Green then called AR to discuss a purchase price.
- AR also told the Inspector he was receiving collection calls from Crown Crest. Around that time the Inspector was copied on emails between Crown Crest and Simply Green confirming they had been attempting to settle the matter with the consumer on terms other than his demand for contract cancellation and removal of the furnace.

- In August 2018, Simply Green informed the Inspector that Crown Crest had opted to cancel the contract and leave the furnace with AR and he would be refunded his payments upon completion of a mutual release. Several months after the Consumer Protection BC file had been closed the Inspector learned that AR had not been refunded any money related to the attempted cancellation. The amount of money at issue in fulfilment of the refund is not disclosed (monthly payments of $111 are mentioned).

3. MB & NB

- During a door to door sales call initiated by a Simply Green employee in January 2018, MB entered into a direct sales contract for a furnace, air conditioner and water treatment system.
- MB alleges that at the time of the consumer transaction, the salesperson told her he was affiliated with BC Hydro and Fortis BC.
- MB alleges Simply Green completed "assessments" of the existing appliances that "failed" everything in the "heating", "cooling" and "water quality" sections but "passed" the existing water heater.
- MB states she believed the contract she signed was a purchase agreement with a 3-year term. She claims the salesperson did not provide her with a copy of the contract at the time of the transaction but left a copy of the "assessment forms".
- MB says that on the day Simply Green installed the furnace, air conditioner and water treatment system, the salesperson told her the water heater was leaking, contrary to the assessment just done that found no leaks.
- In March 2018, she contacted Simply Green to return to the house to assess the water heater. The assessment form subsequently completed indicates the water heater received a "fail" after receiving a "pass" two months earlier. According to the new assessment the water heater was "over ten years old": two months earlier it was "assessed" as being "under five years old".
- On the day of the above "assessment", NB entered into a contract with Simply Green for the supply and installation of a water heater.
- In June 2018, MB and NB's daughter intervened on her parents' behalf and requested a copy of the direct sales contracts from Simply Green. She received them the next day.
- About one week later she sent Simply Green notices of contract cancellation under section 21 (1) of the Act ("cancellation within 10 days"). She says the respondent phoned her to say the cancellation was not a valid "10 day cancellation", as her parents had previously been given copies of each contract.
- In July 2018, Consumer Protection BC opened a complaint file. In October 2018, the Inspector sent the respondent written notice of the complaint.
- The Inspector believes the direct sales contracts executed with MB and NB were not compliant with requirements for direct sales contracts set out in the Act, in that the following contents were missing:

    1. A detailed description of the goods or services to be supplied, s. 19(e);
    2. Other costs payable by the consumer, including taxes, s. 19(g)

3. The total price under the contract, including the total cost of credit, s. 19(j);

- On October 30, 2018, an executive for the "Simply Group of Companies" emailed the Inspector advising, "*We've expired all assets registered at the property*", effectively cancelling the contracts and agreeing to refund the MB and NB (as did later materialize).

4. "FL"

- During a door to door interaction initiated by Simply Green in March 2018, FL entered into a direct sales contract with for the supply of a furnace, air conditioner and water heater.
- FL says he granted a salesperson access to the home when he claimed to be inspecting furnaces. FL alleges that the salesperson told him he could purchase the three appliances by making payments over eighteen months and he would receive a $500 rebate from Fortis BC within ten days of installation. FL says Simply Green did not provide a copy of the contract but the salesperson told him the head office would send it.
- FL alleges he did not receive the promised rebate. He contacted Fortis BC who told him no such rebate existed.
- FL contacted Simply Green in May 2018 and requested a copy of the direct sales contract he entered. Upon reviewing the contract, FL says, he realized he had been misled about the contract in that it was a lease (not purchase) and for a greater amount than he believed he would be paying.
- FL phoned Simply Green to complain but was unable to get to a manager. He says a promised call back never came.
- FL cancelled his pre-authorized payments for the leased equipment. Then he received an invoice from Crown Crest stating a buyout price of about $25,327.
- In July 2018, FL sent the respondent a notice of cancellation under section 23 (5) of the Act (cancellation within one year of receiving the contract if the contract does not comply with requirements).
- On August 22, 2018, Consumer Protection BC opened a complaint file. The Inspector concluded the direct sales contract executed by FL and Simply Green was not compliant with Act's requirements. She alleges that the contract did not contain:

    1. A detailed description of the goods or services to be supplied, s. 19(e);
    2. Other costs payable by the consumer, including taxes, s. 19(g)
    3. The total price under the contract, including the total cost of credit, s. 19(j);

- In September 2018, FL received a collection notice from Crown Crest and two calls from a third-party debt collector.
- In November 2018, the Inspector sent the respondent notice of the complaint. A representative of "the Simply Group" replied, agreeing to terminate the contract and to "*refund the customer the money they have paid us*…". (In fact due to an absence of payments no refund was required.)

- The Inspector was also informed that Simply Green allowed the consumer to keep the three appliances.

5. "NT"

- During a door to door interaction initiated by Simply Green in March 2018, NT entered into a direct sales contract with for the supply of a furnace. NT says he granted a salesperson access to the home when he claimed to be inspecting furnaces.
- NT alleges that the salesperson performed an "assessment" of his furnace. He was advised the furnace was very old and if he purchased a new one, he would receive a Fortis BC rebate of $500 within 10 days of installation. A Simply Green document with a hand-written notation on it indicating "10 days" and $500 rebate" is included in the evidence.
- NT states Simply Green represented that he believed the term of the contract for financing purchase of the new furnace was eighteen months (the same Simply Green document referenced above also has a hand-written notation of "18 months"). NT says the salesperson did not give him a copy of the contract.
- NT also says he then signed a form described by the salesperson as a Fortis BC rebate application.
- The new furnace was installed the following day.
- NT states he did not receive the promised rebate and contacted Fortis BC. He says Fortis told him its furnace rebate program had ended about one year earlier.
- NT says he called Simply Green, who told him the contract was a lease with a term of 120 months (the contract actually states the term as the "useful life of the equipment").
- NT claims he called Simply Green again and stated his intent to cancel the contract.
- In May 2018, Crown Crest advised NT that a buyout price of $11,951 was required to end the contract and have a security notice discharged. NT states he then canceled the pre-authorized monthly payments for the lease.
- In July 2018, NT sent Simply Green a notice of cancellation under section 21 (2) of the Act (cancellation of direct sales contract within one year) but received no response.
- NT says Simply Green sent him a copy of the contract in October 2018 at his request. NT stated that Crown Crest sent an invoice in November 2018 and, following that, he started receiving collection calls from Crown Crest.
- In January 2019, Consumer Protection BC opened a complaint file. The Inspector concluded the direct sales contract executed with NT did not comply with requirements in the Act. Allegedly the contract is missing the following information:

    1. A detailed description of the goods or services to be supplied, s. 19(e);
    2. Other costs payable by the consumer, including taxes, s. 19(g)
    3. The total price under the contract, including the total cost of credit, s. 19(j);

- The Inspector sent the respondent written notice of the complaint in January 2019. Subsequently the respondent and NT agreed to a one-time payment of $3,000 to resolve the dispute and release the parties.

Statements of the former Simply Green salesperson

- In May 2019, the Inspector interviewed a former Simply Green salesperson named "MR" (identified in the Report, name redacted here). MR had been present at one of the MB and NB direct sales transactions in early 2018. He shared the following observations and experiences with the Inspector:

    - Simply Green provided him with laminated information sheets for salespersons to show customers, suggesting they were working with Fortis BC or BC Hydro;
    - he and other salespersons "always talked to consumers about rebates but nothing too specific as there may not be a rebate available at that time";
    - during training he was instructed by a representative of Simply Green that gaining access to homes was the "first job". Rebate representations were a tactic to gain permission to enter the home;
    - they always presented the consumer with the cash price of the equipment which would be much lower than the total cost of the leasing agreement;
    - most consumers did not understand they were entering a lease agreement but thought they were paying installments toward the "cash price";
    - some consumers were able to figure out "they were being deceived" but many believed what they were told by the salespersons;
    - "English as a second language" was a factor in some consumers being unaware of the real nature of the contracts.
- In July 2019 the Inspector obtained a written and signed copy of the statements MR made during the interview, attesting to their accuracy.
- Being "uncomfortable with the deceptive sales tactics he was […] trained to use", MR left Simply Green's employment after two months.

Fortis BC Rebates

- Four complaints cited in the Report allege that Simply Green suggested or promised that rebates were available if the consumer accepted the contract.
- Two of the complainants reported to the Inspector they were told by the same Simply Green salesperson that they would receive the rebate within 10 days of the equipment being installed or within 10 days of the "paperwork" being mailed.
- Fortis BC advises that after the rebate application is received, the customer normally receives the rebate within 90 days.

- In May 2019, Consumer Protection BC requested copies from Fortis BC of any rebate applications submitted by Simply Green or consumers in the four complaint file contracts. Fortis BC was unable to locate any rebate applications.
- Fortis BC reported that it had offered a furnace rebate for up to $700 and a boiler rebate for $500 after July 10, 2018, after the transactions in the four Simply Green complaints.

Allegation of deception related to "Energy Star" certification

- Several contracts in the Report executed by Simply Green bear the "ENERGY STAR" logo.
- The ENERGY STAR name and symbol are trademarks registered in Canada and are administered by the Office of Energy Efficiency, Natural Resources Canada (NRC). They are used for products meeting an energy efficiency standard. Display of the logo on a contract requires permission from the Office of Energy Efficiency.
- In July 2019, The Inspector contacted NRC after noting Simply Green does not appear in its online public database of ENERGY STAR participants. The Inspector found that Simply Green had never been in the program and the NRC had asked Simply Green to stop using the logo on its contracts. (The website links to information warning consumers about door to door sellers promoting non-existent rebates and falsely claiming affiliation with the ENERGY STAR program.)

The BCEHS complaints

6. "GT"

- In January 18, 2019, GT received written notice from Crown Crest that it had taken over from BCEHS a direct sales contract originally entered in April 2018. GT discovered In February 2019 the contract was a lease when he contacted the Simply Group to report a problem with the equipment.
- On March 12, 2019, GT sent a notice of cancellation under section 21 (2) of the Act and received a response from the Simply Group advising there would be buyout costs for terminating the agreement. Two months later Crown Crest invoiced GT, citing a balance due of $25,967.
- On March 28, 2019, Consumer Protection BC opened a complaint file. The Inspector concluded the direct sales contract BCEHS executed with GT did not comply with the Act. The required information allegedly missing from the contract was:

    1. A detailed description of the goods or services to be supplied, s. 19(e);
    2. Other costs payable by the consumer, including taxes, s. 19(g)
    3. The total price under the contract, including the total cost of credit, s. 19(j);

- In April 2019, the Inspector sent Crown Crest written notice of the complaint. Crown Crest responded, stating it found no basis for the complaint allegations after reviewing the contract and a "third-party verification call".

- In May 2019 Crown Crest offered to cancel the contract and allow GT to keep the boiler with no further payment. In June the parties reached an agreement.

7. "SK"

- During a door to door interaction initiated by BCEHS on May 8, 2018, SK entered a direct sales contract for the supply of a boiler.
- In January 2019, Crown Crest notified SK that it had purchased the "rental assets" of BCEHS.
- On February 20, 2019, SK sent Crown Crest notice of cancellation under section 21 (2) of the Act. SK advised the Inspector Crown Crest did not respond to the cancellation and refund demand and continued to deduct monthly payments from his account until May 2019.
- On April 24, 2019, Consumer Protection BC opened a complaint file. The Inspector concluded the direct sales contract executed with SK did not comply with the Act. The required information missing from the contract was:

    1. A detailed description of the goods or services to be supplied, s. 19(e);
    2. Other costs payable by the consumer, including taxes, s. 19(g)
    3. The total price under the contract, including the total cost of credit, s. 19(j);

- On April 29, 2019, the Inspector sent Crown Crest notice of the complaint.
- Though SK initially wanted to return the boiler, he later opted to keep it. Crown Crest offered to release him from the contract with no further payments and in June 2019 the parties agreed to a settlement.

8. "MW"

- In June 2018, MW entered a direct sales contract with BCEHS for the supply of a heat pump. MW tried contacting BCEHS in January 2019 to request disclosure of the full cost of the contract. The number was no longer in service.
- He contacted Crown Crest, who said the contract was a lease. When he asked about cancelling the contract, he was told Crown Crest's lawyer would call him back. He says the lawyer did not call him.
- On April 22, 2019, MW sent BCEHS a written notice of cancellation citing his rights under section 21 (2) of the Act. BCEHS did not respond.
- Crown Crest continued to take monthly payments from his bank account.
- In May 2019, Consumer Protection BC opened a complaint file. The Inspector concluded the direct sales contract does not comply with the Act. The required information missing from the contract was:

1. A detailed description of the goods or services to be supplied, s. 19(e);
2. Other costs payable by the consumer, including taxes, s. 19(g)
3. The total price under the contract, including the total cost of credit, s. 19(j);

- In June 2019, the Inspector sent Crown Crest (or the Simply Group) notice of the complaint.
- In July counsel for the respondents contacted the Inspector to say he was assisting Simply Green with complaints received from Consumer Protection BC. Counsel advised that BCEHS is not a Simply Green company, though Crown Crest had financed its consumer contracts. He also said that a person involved in BCEHS had worked for Simply Green about two years earlier but was no longer an employee.
- This Consumer Protection BC complaint remains open and unresolved.

9. "KG"

- During a door to door interaction initiated by BCEHS in August 2018, KG entered into a direct sales contract for the supply of a heat pump and furnace. The following day the furnace and heat pump were installed.
- KG says she did not understand the nature of the contract or that the heat pump was included in the transaction.
- In December 2018, Crown Crest issued KG an invoice for $25,450. Soon thereafter she received a collection notice from Crown Crest and further notice from a third-party collector.
- Consumer Protection BC opened a complaint file in January 2019. The Inspector sent BCEHS notice of the complaint and requested a copy of the contract. After being unable to contact BCEHS, the Inspector notified Crown Crest, who responded and provided a copy of the contract.
- A representative of Crown Crest said a sales verification call that included KG showed the consumer had been fully informed of the terms of the contract.
- The Inspector concluded the direct sales contract BCEHS executed with KG does not comply with the Act. The required information missing from the contract was:

1. A detailed description of the goods or services to be supplied, s. 19(e);
2. Other costs payable by the consumer, including taxes, s. 19(g)
3. The total price under the contract, including the total cost of credit, s. 19(j);

- On March 6, 2019, KG sent Crown Crest a notice of cancellation.
- Crown Crest later agreed that KG would buy the furnace for an amount quoted by a local contractor and keep the heat pump at no further cost. In July 2019, Crown Crest provided the consumer with an invoice and "release" in order to transfer the furnace and heat pump. Crown Crest also confirmed it was not pursuing the consumer's debt for non-payment.

SUMMARY OF SIMPLY GREEN'S EVIDENCE (RESPONSE)

Counsel for the respondents in the January response (initial submission) stated that:

- Between November 2017 and April 2018 Simply Green operated in BC by using the services of Merkabah Marketing as an independent contractor performing sales on behalf of Simply Green.
- The Simply Group recognizes that persons associated with Merkabah "may have conducted themselves improperly" when engaged with consumers and acting directly as agents on its behalf.
- Around April 2018 certain persons associated with Merkabah became principals in BCEHS.
- The Simply Group (through Crown Crest) only acted as an "arm's length financing party" in relation to the BCEHS contracts.
- Crown Crest acquired consumer contracts from an "entity […] in which it had no stake, involvement or interest."
- Concerned about consumer complaints originating in BC, the Simply Group terminated its relationship with BCEHS in November 2018 and has carried on no "new business" in BC since then.
- With one exception, the respondents have resolved all issues in the five complaints in the Report to the satisfaction of the consumers. The exception (complaint #2 in the Report) is a matter that the Simply Group is following up on, based on it not having received the complainant's signed "mutual release" previously agreed to. The mutual release entailed full refund to the consumer as well as "retention of the leased equipment by the consumer at no charge".
- The respondents acknowledge the Inspector's allegations concerning deficiencies of the "standard form" contracts as set out in each of the consumer complaints. They the contracts were drafted by a "major BC law firm" and are unaware of any "legal decision" that upholds the Inspector's views as to their non-compliance.
- The respondents have instructed counsel to update the contract so as to be "responsive to the concerns and viewpoint" expressed by the Inspector. The Simply Group will not re-commence business activities in BC unless the revised contract is acceptable from the perspective of Consume Protection BC.
- If there are any other outstanding consumer complaints regarding the Simply Group and alleged infractions of sections 5, 27, or 56 of the Act the respondents wish to know of them and will immediately move to resolve them, including responding to cancellations and issuing refunds.
- Notwithstanding that the Simply Group has not carried out business in BC in 14 months, it is focussed on "righting any wrong" it is "legitimately perceived to have committed."

In the respondents' supplemental (February) submission in the hearing, counsel states:

- That the respondents formally enquire as to why the "principals" of BCEHS (four of whom specifically) are not named as respondents in the Report despite involvement in various allegedly deceptive acts.
- Simply Green "emphatically denies" ever having employed certain persons identified in the Report for having committed alleged deceptive acts or having been "trained" to do so by

Simply Green. The respondents say "R", "A", "F", and "J" were not engaged by Simply Green either as agents or employees.

- Simply Green asserts "it is entirely the conduct of Merkabeh [Merkabah Marketing], its employees, principals and agents which is at issue".

DISCUSSION & ANALYSIS (1) - The Simply Green complaints

The GS complaint

The Report does not provide any direct evidence establishing that Simply Green's alleged representations regarding an $800 BC Hydro rebate were false in the sense that the rebate did not exist. The Inspector wrote to Simply Green in October 2018 ("Inspector's letter"), and, in referring to the rebate matter, stated that the rebate "did not appear to exist". The Report also asserts that GS never received the rebate. However for the purpose of proving the breach, that is not precisely equivalent. The non-existence of the BC Hydro refund relative to Simply Green's representations is not clearly made out. Finally, I am unable to assess the Report's claim that GS "reported" that the salesperson represented his working "in conjunction with BC Hydro". The Report provides no context for the "reporting" or any form of corroboration (e.g., GS's statements as a first-person participant). Consisting of no more than the Inspector's characterization of GS's complaint, the evidence lacks sufficient weight to support a factual finding.

The Report does not provide direct evidence of Simply Green's (or Crown Crest's) misrepresentations of the consumer's statutory cancellation rights. However, it appears the complainant, through his lawyer, attempted to resolve "issues" with the respondents that may pertain to cancellation rights. The Inspector paraphrases GS's lawyer's letter to Simply Green allegedly terminating the contracts on the basis of misrepresentations made in the direct sale transactions. According to the Inspector, the lawyer demanded that Simply Green remove the equipment and reimburse GS. However, the case for a statutory cancellation under the Act under section 27 (i.e., under division 2 of Part 4) having occurred is not articulated.

Although the Inspector's letter notifies Simply Green of the potential basis, in her view, for a "Part 4" cancellation, the Report does not exhibit the consumer's notice of cancellation. GS's original dispute and self-help remedy based on alleged deception do not fall within the statutory remedies found in Division 2 of Part 4 of the Act. I am not convinced that the evidence supports either the allegation that Simply Green misrepresented GS's rights of cancellation so as to constitute a prohibited act of deception, or that Simply Green violated section 27 by failing to provide a full refund within 15 days of statutory cancellation. In any event, around two months after the Inspector's letter Simply Green settled the outstanding issue of GS's demand for reimbursement.

None of the above should be taken as my finding that Simply Green did not actually engage in a deceptive act in the original transactions with GS. I simply do not find, on the evidence and as a matter of probability sufficient certainty to conclude the violation occurred.

The AR complaint

While the Report relates that AR filed a formal complaint around May 2018, and further provides an email sent by the Inspector to Simply Green evidently stating or paraphrasing the complaint, there is no direct evidence of AR as the first-person witness or, alternatively, any form of corroboration. Lastly, Simply Green did not admit to the specific alleged facts. Where a Simply Green internal complaint-handling email is disclosed in the Report, it shows that Simply Green engaged with the consumer and found that he was "adamant" about his cancellation on the basis of the contract "not showing the information [the Act] requires".

One can surmise that the complainant recorded the relevant factual allegations in some fashion and relayed them to the Inspector. Additionally, the Report indicates that AR told the Inspector about the circumstances of the complaint, though how exactly the information was obtained, scrutinized, or verified is not evident. In other words, it is not possible for me to independently assess the evidence as to its likely veracity or its credibility. Thus, the weight of the evidence in support of the allegations concerning deceptive claims about rebates or about the consumer's rights is insufficient to find such violations occurred.

Similarly, I find critical evidence lacking regarding Simply Green's alleged failure to recognize a statutory cancellation and refund demand per section 27 of the Act. That is, the Report asserts that AR delivered a notice of cancellation to Simply Green in April 2018, who then failed to respond to it, without indicating how the notice meets the criterion of delivery in a "provable" form as required by section 54 of the Act. It is evident that by July 2018, after the Inspector's involvement, Simply Green took steps to engage with AR concerning his intended cancellation. However there is no evidence that the April cancellation notice was successfully delivered to Simply Green but ignored.

The Inspector notified Simply Green of the complaint in mid-July 2018 and the parties came to a resolution in early August (at some point in between Simply Green spoke with the complainant about his wish to cancel), but it is not possible to say whether the resolution (settlement) was delinquent relative to section 27. Finally, the final settlement and "release" involving Simply Green and AR may have a bearing on any allegedly outstanding refund, however I am not able to see that it is so (the Report has no direct evidence of payments made by AR or of the refund amount allegedly outstanding).

The MB and NB complaints

The MB [and] NB complaint involves two transactions, one in January 2018 and one in March 20018. MB and NB's daughter, "JB", intervened on her parents' behalf in June 2018. Though the Report does

not document statements made by [MB or NB], it reproduces communication between JB and Simply Green in which Jenifer demanded cancellation of the contracts, citing several bases, including: a delayed "10 day" cancellation (no reason required) triggered by late provision of the contract by Simply Green, and misleading representations made in the course of the January sales transaction.

Critically, JB states in her communication to Simply Green that she was present at the January sale. In her email of June 11th, she states: "I was there when [your] agent gave us false information and [deceived] us regarding your products." The cancellation letter she sent to Simply Green states that "your company" misrepresented its affiliation with BC Hydro and Fortis BC. It also accuses Simply Green of withholding "vital information like the items are for rent and not for sale, that it's not three years to pay but a lifetime rental, and that payments increase annually."

This appears to be first-person complainant evidence of an original and contemporaneous kind. It was created prior to the opening of the complaint and reflects directly the basis of the complainants' dispute with Simply Green. In this case the complaint does not expressly state the reason for cancellation as contractual deficiency per section 21 (2)(a), however it does provide "the reason" for cancellation (per section 54 of the Act). In my view, providing reasons for cancellation relating to deceptive sales practices does not impair the consumer's ability to cancel the contract when it is objectively deficient according to the section 19 and 20 requirements. In the latter connection, I have scrutinized the two contracts and agree, as put forward in the Report, [MB and NB's] direct sales contracts fail to meet the section 19 criteria of a detailed description of goods and services, the amount of tax applicable to the consumer's cost of the contract, and the total cost of the contracts including the cost of credit.

On the whole, I find the Report persuasive in respect of the MB and NB complaint as it demonstrates Simply Green's agent's probable deceptive practices with respect to its "affiliation" with BC utilities and in failing to adequately disclose the material fact that the contract does not entail a three-year purchase but a much longer and more costly equipment lease (I note that the deceptive practices discussed above do not align precisely with the alleged breach of the Order's narrowly prescriptive language).

I find also that the MB and NB cancellation in June 2018 is verifiable and effective, and consequently Simply Green's delay until October in reaching a satisfactory resolution including payment of a refund (acknowledged by the parties) is well outside the "15 day" refund requirement in section 27 and is therefore [in] violation [of] that provision.

The FL complaint

As mentioned previously, the absence of original first-person accounts as well as corroborative documentary evidence limit an adjudicator's ability to assess the likelihood that certain alleged violations occurred. That is largely also the case in the Report's presentation of the FL complaint, which relies on the Inspector's narrative summation of events without exhibiting further supporting evidence. I decline to rely on the Inspector's summation of events, and little else, in arriving at an

adverse conclusion in an administrative hearing. Moreover, though Simply Green's participation in a consumer transaction with FL is substantiated, and FL's complaint bears remarkable similarity to other complaint allegations in terms of deceptive acts, in this case FL's motivation to cancel the contract was not to reverse a monetary loss (as there was none), but presumably be free of unwanted future contractual obligations. After a period of about four months from cancellation, FL's complaint was resolved by Simply Green on terms evidently quite favourable to FL. Irrespective of the outcome in this particular dispute, the factual allegations are clearly relevant to the larger case against Simply Green. If not up to the standard of proof needed to support findings of contravention, the evidence has weight in considering whether "reasonable grounds" exist to believe that a pattern of Simply Green's conduct is inimical to the public interest, and in that relation whether a direct sales prohibition is merited.

The NT complaint

The Report relies again primarily on the Inspector's summation of information gathered from the complainant. Though many of the narrative aspects of the complaint as related in the Report are not further supported by corroborative evidence or details of the investigative process, certain documents in evidence *are* probative of the allegations. I believe that NT provided a document to the Inspector that indicates the likelihood that Simply Green made representations regarding "rebates" and an 18 month term for purchase during the original direct sales transaction. It would be unduly skeptical of me not to accept the likelihood that NT conveyed an account of deception to the Inspector closely related to the notations "10 day" / "rebate" / and "18 month" on the Simply Green document. It is unlikely that NT would be in possession of a document with those notations unless it came to him via a Simply Green sales agent. Considering also the Inspector's queries regarding Fortis BC's record of rebate applications and its statement concerning rebates being unavailable at the material time, I accept that Simply Green's contracting with NT for supply of a furnace (not an electrical appliance) involved a representation about a non-existent Fortis BC rebate.

I find that in the matter of this complaint NT did effect cancellation of the contract with Simply Green. He did so in July 2018 by fax (transmission to the respondent is confirmed). I also agree with the Inspector's analysis of the contract for the purpose of establishing grounds for cancellation per section 21 (2)(a). That is, the contract does not have a detailed description of goods and services, does not disclose tax payable by the consumer, and does not state the total cost of the contract inclusive of the cost of credit. If follows then, that after a valid cancellation and in keeping with section 27, Simply Green ought to have responded and offered a refund and stopped any preauthorized payments, as applicable. In fact, there was no "refund" issue or matter of post-cancellation payments since NT had made no payment and had cancelled his pre-authorization of future payments. The parties came to a resolution / settlement involving a buyout for the furnace and nullification of the contract, but not until January 2019.

DISCUSSION & ANALYSIS (2) – The BCEHS complaints

Below I set out, to the extent of their relevance to the case against the respondents, what I believe to be the salient facts and findings in the BCEHS complaints.

The GT complaint

I find that GT entered a direct sales contract for a "boiler" with BCEHS in April 2018 and about eight months later received notice from Crown Crest that it had purchased the rental assets in the equipment lease from BCEHS. The Report substantiates GT's cancellation, with notice to Crown Crest, in March 2019. Representatives of the Simply Group did not accept the statutory cancellation, insisting the agreement was valid and citing costs for terminating the agreement. Two months later Crown Crest invoiced GT for a total balance of $25,967.

The Inspector concluded the BCEHS direct sales contract with GT did not comply with the Act. She communicated to Crown Crest her view that GT's cancellation was a valid statutory cancellation. Upon review of the contract, I agree that the required information allegedly missing from the contract and providing a basis in Act for cancellation within one year included;

> 1. A detailed description of the goods or services to be supplied (the boiler is referred to only as "COMBI", without further specifications or description).
> 2. Other costs payable by the consumer, including taxes (no taxes are calculated);
> 3. The total price under the contract, including the total cost of credit (while the contract includes an amount circled in pen on the back page for "cash value", I find the "total cost" and "total cost of credit" are nowhere indicated clearly).

With the Inspector's involvement, on May 30th, 2019 Crown Crest agreed to allow GT to cancel the contract and keep the boiler with no further payment. The period between cancellation and resolution is therefore about two and one-half months.

The SK complaint

I find that SK entered a direct sales contract with BCEHS for the supply of a boiler in May 2018, and in January 2019, Crown Crest notified SK that it had purchased the "rental assets".

The Report demonstrates that on February 20, 2019 SK sent Crown Crest notice of cancellation under section 21 (2) of the Act. In April 2019 the Inspector notified Crown Crest of the complaint citing the attempted cancellation. She stated that the cancellation was made on the basis of section 21 of the Act for alleged contractual deficiencies but did not further identify these and stated that SK had not received a reply to the notice from Crown Crest. SK and Crown Crest agreed to a settlement and "mutual release' dated May 31, 2019. The settlement involves the transfer of the equipment to SK at no further cost.

The Report does not include evidence of payments made by SK to Crown Crest that may have been subsequently subject of refund demand. Nor does it document any post-cancellation withdrawal of pre-authorized payments by Crown Crest. I therefore cannot conclude that a breach of section 56 occurred in the absence of such documentation. I am also unable to conclude that a failure to *refund* a specific amount is material to the allegation of a section 27 violation. It is possible the complainant's intention in cancelling the contract was to end any pending or future financial obligations under the contract rather than to obtain restitution.

The MW complaint

It is apparent that in June 2018, MW entered a direct sales contract with BCEHS for the supply of a heat pump. The Report contains a copy of a cancellation form evidently filled and signed by MW. Proof of delivery is not provided (the Inspector says MW sent it to BCEHS). In June the Inspector contacted the Simply Group in June to follow up on MW's complaint and attempted cancellation, allegedly delivered in April. Counsel for the respondents replied, pointing out that the Inspector's version of the complaint cited conduct by BCEHS but did not describe the alleged contractual deficiencies ostensibly being relied upon for the exercise of the right to cancel. He said that the Simply Group had no part in BCEHS's conduct and that the contract appeared not to be deficient.

The Report itemizes contractual deficiencies the Inspector believed supported the contention that MW's cancellation was in accordance with the Act (i.e., the contract is missing information required by section 19). However, neither MW's cancellation form nor the Inspector's letter name those specific deficiencies. Counsel advised that absent that information, "we reject the basis for the Notice upon which the Complainant has relied". He also requested that the Inspector provide details in support of her opinion regarding the contractual deficiencies and said the respondent would immediately attempt to come to a resolution with the complainant. The Report states the complaint remains unresolved. (I have checked the complaint file and it appears that discussions toward a mutually acceptable resolution and "release" were indeed ongoing at the time the Report was issued, concluding in early April this year. The file is in fact closed.)

I find the Report lacks evidence verifying effective notice of cancellation to Crown Crest and establishing quantum of the refund in dispute (or ongoing post-cancellation payment withdrawals). It also does not demonstrate that the respondents' request for specifics regarding the basis for cancellation was fulfilled. For these reasons, I do not find the Report proves Crown Crest contravened the Act in this instance.

The JG and KG complaints

Evidence in both of the above complaints is not sufficient to support, for adjudicative purposes, any of the Report's allegations as they apply potentially to Crown Crest. There is no specific evidence as to when Crown Crest received the cancellation notices or when it reached the resolutions that appear to have been satisfactory to the complainants. The KG complaint does not disclose specifically what

refund amount or continuing post-cancellation payment withdrawals may have been at issue. The Report includes a copy of a cancellation letter purportedly delivered to the Simply Group by mail and email in March 2019, however it demands removal of the equipment by Simply Green and does not include a refund demand or refer to monthly payments. In the case of the J-G complaint, there is similarly no evidence of effective notice of cancellation to Crown Crest, or evidence of refund amounts or post-cancellation payment withdrawals being at issue.

Did Simply Green breach the Order by engaging in specified deceptive acts, contrary to sec. 189 (5)?

I preface this part of my analysis by referring to a fundamental theme in the respondents' submission. According to the Simply Group respondents, the Report presents a flawed picture of the relationships between the various entities the Inspector named originally as the respondents. The respondents say the Report does two things in error: it misidentifies persons associated with Merkabah Marketing as "employees" of Simply Green, and it attempts to associate the conduct of the Simply Group companies with the actions of BCEHS.

I agree that the Report asserts repeatedly that persons acting as sales agents (presumably hired by Merkabah as an "independent contractor") were Simply Green "employees". However, the Report does not contain evidence of this relationship. It is also true that the Report does not formally name as respondents Merkabah or any of the individuals believed to have been the "principals" operating it or the related entity BCEHS. The Report consistently suggests that the respondents are responsible for the same conduct complained of in relation to BCEHS: it refers to the conduct of the respondent *and* BCEH ("the Respondent, BCEHS, and their employees") and in formalizing the allegations outlines them in a manner suggesting that liability for the breaches of sections 5, 27, and 56 is interchangeable, rather than particularizing them for each entity.

It appears to be common ground that Merkabah played a key role in recruiting sales agents and executing consumer contracts in BC on behalf of Simply Green. I do not find that Simply Green acted in the matters of the consumer complaints through its employees, at least in regard specifically to the alleged breach of the Order or to other deceptive practices Simply Green is accused of carrying out through its sales agents' conduct in the consumer transactions. It should be obvious that I have not proceeded either against BCEHS (for procedural reasons relating to notice), nor do I accept that the conduct of BCEHS as alleged in the Report is attributable to Simply Green. I agree that the Report could have made specific allegations against the persons directly associated with the sales that are the subject of the Simply Green complaints (and perhaps some of the BCEHS "principals" in connection to the BCEHS complaints). However, I believe that notwithstanding these issues of attributing responsibility with precision, the case against Simply Green can also be made by considering its implied "permission" or acquiescence in the conduct of its agents and sub-agents. Or, put in another way, Simply Green can be found liable for breaches of the Act in the absence of proof that its employees did the things complained of. Though the respondents' submissions question the accuracy of the Report's allegations regarding its *employees* as contrasted with its agents or others in turn hired

by its agent to conduct sales on behalf of Simply Green, counsel does not identify a legal basis to find Simply Green not responsible for the conduct of agents entering into contracts on its behalf. I believe, instead, that Simply Green can be liable for failing to supervise its agent with respect to obligations under the Act, even if it did not authorize or direct its agent in regard to every specific violation. The failure of the Report to establish the status of individuals implicated in deceptive sales practices as "employees" of Simply Green is not the end of the matter.

The Order required the respondent to cease representing to consumers that they will be given rebates to purchase or lease goods or services when the rebates do not exist. Four transactions cited in the Report allegedly involve Simply Green's sales agents telling consumers about the existence of rebates and suggesting consumers' eligibility.

According to the Inspector, among the Simply Green complainants NT and FL each stated they called Fortis BC about rebates sales agents had represented as being available and were told no rebate existed for their purchases or leases. I have accepted that certain documents in the NT complaint originated in the transaction and corroborate that a representation about rebates was made by the sales agent. However, according to Fortis BC, it did not receive rebate applications in relation to any of the Simply Green consumers listed in the Report. In any case, the four Simply Green contracts would not have been eligible for a Fortis BC rebate for installations prior to July 10, 2018. Thus, evidently none of the consumer-complainants *could* have received a rebate.

In addition, former Simply Green sales agent MR stated that he was trained to tell consumers "about rebates" without being "too specific". The statement of MR says that he witnessed the sales practices of "A", another Simply Green sales agent, and refers to MR's discomfort "with deceptive tactics". The statement does not strictly speaking include an admission of MR that he made deceptive representations about non-existent rebates or that he observed "A" make such representations in relation to any of the complaints. MR says he did not keep any training documents and thus they are not put into evidence. However, given the overall pattern in the complaints, as reported by the Inspector, I find it plausible that some "training" of salespersons by Simply Green's agent occurred that involved assurances about rebates irrespective of their actual availability.

I find the evidence in its totality, suggests it is more likely than not that Simply Green's agents made representations regarding rebates that were not in fact offered at the time by Fortis BC. Though the complainant's evidence is not in the best or strongest possible form, I take it that the Inspector's review and summation of the complaints and interviews with the complainants provide a sufficient guarantee of their reliability on the whole. While denying Simply Green's direct involvement in the deceptive sales representations, the respondents have not undermined or rebutted the essential thrust of the alleged facts. I find it difficult to conceive of a pattern of complaints (involving five transactions with four different consumers) with the recurring theme of "rebates" without the existence of the alleged misleading representations.

Did Simply Green contravene section 5 (1) of the Act by engaging in deceptive acts in consumer transactions?

Bearing in mind my view that Simply Green may be found responsible for "permitting" or acquiescing in the violations of agents representing it in consumer transactions (including Simply Green failing to supervise its agent adequately in relation to its sales practices), I now turn to allegations in the Report concerning deceptive acts apart from those specifically prescribed by the Order.

Section 4(a) and 4(b) of the Act provide that any representation or conduct by a supplier that has the capability or effect of misleading or deceiving consumers is a deceptive act or practice. The Report cites six potentially applicable discrete instances of deceptive representations occurring in the consumer transactions that are the subject of the complaints.

As per section 4(3)(b) of the Act, the following are deceptive acts or practices:

representations by a supplier that,

- *it has a sponsorship, approval, status, affiliation or connection that the supplier does not have;*
- *a service, part, replacement or repair is needed if it is not;*
- *the purpose or intent of a solicitation of, or a communication with, a consumer by a supplier is for a purpose or intent that differs from the fact;*
- *uses exaggeration, innuendo, or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading*

Further, as per section 4 (3)(c) of the Act, the following is also a deceptive act:

> *a representation by a supplier about the total price of goods or services if* […]
>
> *(ii) the price of a unit or instalment is given in the representation, and the total price of the goods or services is not given at least the same prominence, or*
>
> *(iii) the supplier's estimate of the price is materially less than the price subsequently determined or demanded by the supplier unless the consumer has expressly consented to the high price before the goods or services are supplied.*

Supplier's misrepresentation of sponsorship, approval, status, affiliation, or connection

With respect to one of the prohibited deceptive acts apart from those identified in the Order, the Report alleges that the use of the "Energy Star" logo on Simply Green contracts represented an official certification or "program" that the Office of Energy Efficiency stated Simply Green had never been a

part of. The Office of Energy Efficiency stated it had warned Simply Green to stop using the logo on its contracts.

I find that the evidence in the Report demonstrates convincingly that Simply Green represented an affiliation with the Energy Star certification or program when that was inaccurate and capable of misleading consumers. In this case I hold Simply Green responsible, directly, for the deceptive misrepresentations. While its agent may have initiated consumer transactions involving the false Energy Star affiliation or approval, the design and distribution of the contracts embedding the misrepresentations lies squarely with Simply Green operating as the supplier in the transaction.

A second example of an allegedly misleading representation of Simply Green's affiliation relates to its agents stating or suggesting an affiliation or "partnership" with Fortis BC or BC Hydro.

I find an apparently first-hand complainant observation (in the MB and NB matter) to the effect that a consumer recalled Simply Green's sales agents representing an association with Fortis BC or BC Hydro. In other cases there are allegations concerning "rebates" that could relate to consumers' perception or recollection of an additional implied association, however precise witness observations on the latter point are not set out. I find MB and NB's complaint relevant to the alleged deceptive representation, and I accept the statements of JB in her communication of cancellation to Simply Green as supporting some likelihood that the violation occurred. However, this is the only case in the Report with evidence of an original, direct assertion by a consumer in the transaction.

I also consider the statement of the former Simply Green sales agent MR, noting that it does not specifically say that he or "A" *made* the misrepresentation of being associated with Fortis BC or BC Hydro in transactions related to the complaints in the Report. MR also claims Simply Green's agent provided him with "laminated sheets" to represent to consumers an association with Fortis BC or BC Hydro. However, the evidence of the complainants does not refer to salespersons showing the "laminated sheets" and, as the respondents point out, no such physical evidence has been disclosed in the investigation or Report. On the whole, I find the evidence of misrepresentations regarding affiliation or so-called partnership with either Fortis BC or BC Hydro to be rather insubstantial. It is not sufficiently clear to prove the misrepresentation occurred in several transactions, as has been alleged.

Supplier's representation that a service, part, replacement, or repair is needed if it is not / misrepresentation regarding purpose or intent of solicitation or communication with a consumer

The complainants described and to some extent document Simply Green's agents calling on the consumers at their homes to "inspect" or "assess" their existing equipment. The Inspector believes Simply Green persuaded consumers to enter contracts for the supply of goods represented to be "needed" when that was not the case. Inconsistencies in the content of several "assessments" are cited to this end. Thus, the Report alleges that the purpose of the direct sales calls was not in fact to inspect

or assess the appliances, but rather to induce consumers to enter long-term lease obligations not initially disclosed by the sales agents when they sought access to the consumers' homes.

The evidence regarding allegedly deceptive representations in the "assessments" of consumers' existing furnaces, water heaters, or other appliances does indeed feature several inconsistencies, as pointed out by the Inspector. However, without a more complete record of how the sales agents characterized the "inspections" or "assessments" (including their qualifications to do so) or knowing the condition of the appliances objectively, I am not able to make the factual determinations to support these sub-allegations of deception. In other words, it is difficult to determine whether the "inspections" or "assessments" were so divorced from the true purpose of soliciting consumers to agree to replacement of their appliances to rise to the level of material deception. For example, it is not clear that Simply Green agents represented their *only purpose* was to give advice or information about the condition of the appliances. Similarly, despite inconsistent "assessments", in which an appliance is once deemed in need of replacement and once deemed not to be, determining whether an appliance "needed" replacement, based on such limited evidence, invites conjecture. In respect of these two sub-allegations, then, I make no specific finding of fact.

Supplier's use of ambiguity about a material fact or failing to state a material fact, if the effect is misleading (outright purchase vs long-term lease obligations)

The actions of all the consumers disputing the terms of the contract or cancelling their agreements with Simply Green seem to relate to their belated recognition of the extent of the financial obligations the agreements entailed. Such an evident pattern gives rise to the allegation that Simply Green failed to disclose material facts about the nature of the contracts and the supply of goods and services (i.e., about long-term leases as compared to outright purchase, and as to their total cost). However, further to my mention earlier of the limitations of evidence in several instances, the Report's evidence on the issue is limited to the Inspector's summation of the complaint record or accounts of what complainants apparently "told the Inspector". Though the contracts are in fact titled "agreements for lease and service", refer to the "lease term", and are said, in the first item of "terms and conditions" to "form a lease", the Report attempts to demonstrate that the AR, MB and NB, FL, and NT complaints all involve the consumers believing the transaction with Simply Green was for the purpose of purchasing the equipment on terms variously of 18 months, three years, or five years. *How* the consumers came to their understanding of the transactions as purchases in the face of the language of the lease agreement is not detailed, and in no case except the MB and NB complaint is there any documentary record of the complainants' assertion in this respect specifically as it relates to attempted cancellations and disputes with Simply Green. (The MB and NB case includes an email from the complainant to Simply Green asserting that the terms of the agreement had been misrepresented.) Though the Inspector also writes that three of the complaints allegedly involve the same sales agent, identified as "A", who did not leave the a copy of the contracts with the consumers in those cases, it is not obvious to me that this outline of a pattern in the Report makes the occurrence of the contravention more likely. On the whole, however, the evidence on this point is more in the nature of bare assertion and hearsay rather than an account of first-hand witness observations. Though the complainants may not have reviewed the

agreements before entering them, and while conceivably sales agents could have mischaracterized the agreements, it is difficult to properly assess and come to a firm conclusion on the matter, as is required to resolve a central conflict in the evidence. For this reason, the evidence does not adequately support a finding that the alleged misrepresentations occurred in relation to the purchase vs lease nature of the agreements.

Supplier's representation of the total price of the goods or services is not given the same prominence as the price of a unit or instalment in the transaction / supplier's estimate of the price is materially less than the price subsequently determined by the supplier unless consumer has expressly consented to the higher price before supply occurs

I have found that the contracts in evidence do not reflect the "total costs" of the leases. In principle, this, alongside other contractual deficiencies under section 19 of the Act, supports the consumers' statutory rights of cancellation found in section 21(2)(a). Though the mechanisms of cancellation are not always demonstrated in a technical sense (e.g., in accordance with section 54 of the Act), it is clear that Simply Green engaged with the complainants and resolved the matters on the basis of cancellations or attempted cancellations. My review of the agreements exhibited in the Report leads me to conclude that in no case did Simply Green's agents calculate and disclose the aggregate cost of the leases for their entire duration inclusive of cost of credit (inclusive of future increases in interest charges) and taxes. They did, however, enter on the first page of the contract a monthly charge for the lease term. Although this deficiency on one hand simply violates a disclosure requirement for direct sales contracts under section 19, given the recurring pattern of non-disclosure and the fundamental nature of the omission, the failure to reveal the true costs of the agreements is also a form of deception in the consumer transactions. This evidence is unambiguous and nothing Simply Green provides in its response demonstrates that total costs for the agreements were given *at least equal prominence* in the contracts or in the transactions as a whole. There is evidence the respondents disclosed total "buy out" costs for consumers to terminate the agreements, but this occurred long after the original transaction and then in relation to complaints or attempted cancellations. For these reasons, I find that Simply Green's consistent failure to disclose "total costs" is well-captured by the language of section 4 (3)(c)(ii), describing a particular type of deception prohibited by section 5 of the Act.

Having made the finding above, I dispense with analysis of the sub-allegation relating to the supplier's higher estimation of the price of goods and services relative to the original statement or estimate. There is no need to also consider the potential disparities between earlier and later prices as represented by the supplier after determining the primary relevance of its misrepresentations concerning total costs.

In light of the above, I find the preponderance of evidence and the very nature of the complaints are such that Simply Green or its agents must be seen to have engaged in misleading or deceptive acts in two respects, apart from the continuance of deceptive acts breaching the Order. To summarize, Simply Green or its agents violated section 5 of the Act when it, or they:

1. falsely represented an affiliation or approval it did not have by its use of the Energy Star logo or mark;
2. misled consumers in regard to, or failed to disclose as a material fact, the total costs of long-term leases, while failing to give at least equal prominence to the total costs of goods and services relative to the monthly payment instalments stated in the lease agreements.

Did Simply Green or Crown Crest contravene section 27 of the Act by failing to refund all money received under direct sales contracts within 15 days of receiving cancellation notices from consumers?

The Report alleges that:

- in all cases the complainants were unable to successfully exercise their cancellation rights under the Act and receive refunds or settlements without the involvement of Consumer Protection BC;
- Simply Green made no refund payments to MB and NB within 15 days after the direct sales contracts were cancelled. It did so several months later.

I find that Simply Green violated section 27 as alleged in the case of the MB and NB complaint, by failing to respond to the consumers' notices of cancellation and demands for refunds (on grounds set out in the Act), within 15 days. Although I do not find the precise quantum of the refund for the June 2018 cancellation stated in the Report, I find that the materials demonstrate that Simply Green acknowledged the refund issue and resolved it several months later. In its response Simply Green takes no exception or issue with the assertion that the MB and NB complaint in fact concerned cancellation and a demand for refund of the payments it received from the consumers. All parties appear to have agreed that the return of payments was relevant to the cancellation demand.

Simply Green's approximately six-month delay in dealing with NT's cancellation would have been well wide of the mark with respect to compliance with section 27, had there been a refund amount in dispute. However, in the absence of an actual refund dispute Simply Green cannot have contravened sections 27 of the Act.

Crown Crest is implicated in alleged section 27 allegations in the BCEHS complaints, in that it became the "owner" of the contracts at a material time. In the matter of the GT complaint, I find that Crown Crest became a party to the contract and to the statutory obligations that inhered in it. Though it was not the direct seller, it effectively became a substituted supplier when it "took over" the contract and therefore became potentially liable for failure to accept valid cancellations within one year, based on section 19 or 20 deficiencies. Alternatively, if the contracts had not been assigned or purchased and Crown Crest had remained purely a lender to the transaction, under section 22 of the Act valid direct sales cancellations are deemed also to cancel the related consumer financing agreement. However, if not satisfied that Crown Crest had been notified of the cancellations, I can not hold Crown Crest liable

for failing to recognize and respond to a cancellation within 15 days in the matter of refunds or failing to immediately cancel pre-authorized payments.

In the GT complaint I do not find the failure to give refunds substantiated. However, in a technical matter aside from the undocumented refund, Crown Crest did breach the intent of section 27 when it insisted on invoicing GT, post-cancellation, for $25,000 and insisted on GT's requirement to pay "buyout" costs to terminate the contract. Those matters would constitute a "deduction" from any refund amount which is not permitted by the Act in direct sales contract cancellations. Due to the fact that the eventual resolution and "mutual release" in GT's complaint indicates that the previously invoiced and buyout amounts were *not* applied, I do not find Crown Crest liable for breach of section 27 for imposing an impermissible deduction from a refund.

For reasons already given above, I find that in order to prove a breach of section 27 certain evidentiary requirements must be met:

1. Consumer contractual cancellation made in a provable form on a particular date, based on a cancellation right in Part 4 of the Act; and,
2. An ascertainable refund of consumer's payments owed and not returned by the supplier within 15 days of cancellation.

I have found in the foregoing review that in the balance of the cases not already mentioned in this part of the decision, either the consumer complaints did not require a refund or the allegations involving section 27 do not include documentary or other verification of:

- the original payments made by consumers being disputed or demanded by way of refund in the cancellation;
- delivery of the cancellation notices to Simply Green or Crown Crest on a particular date (per sec. 54 of the Act).

Did Simply Green or Crown Crest contravene section 56 of the Act when they failed to cancel future payments and charges authorized by the consumer after the direct sales contracts were cancelled under Part 4 of the Act?

The Report states that consumers accuse Simply Green or Crown Crest of continuing to deduct scheduled payments from their bank accounts or credit cards after having been notified of a valid cancellation under the Act. Section 22 of the Act states that credit arranged by the supplier in respect of a direct sales contract is cancelled if the direct sales contract is cancelled under section 21. If the direct sales contracts investigated by Consumer Protection BC were subject to a right of cancellation under section 21, the credit agreements should have been cancelled upon the consumers' contract cancellation.

Similar to my discussion of the requirements inherent in proving the section 27 allegations, the absence of clear evidence regarding the withdrawal of pre-authorized payments is equally critical in establishing breach of section 56. The Report focuses its conclusions in respect of section 56 in the following way: it says Simply Green continued to withdraw payments from AR's bank account after his valid cancellation; and, it says Crown Crest continued to make scheduled withdrawals from SK and MW's bank accounts after their cancellations.

In the case of AR the Report simply states that in May 2018 the complainant told the Inspector that Simply Green had not responded to his earlier cancellation notice and continued to withdraw $111 in monthly payments. A copy of AR's cancellation notice is exhibited, which is dated April 5th but does not indicate how or when it was delivered to Simply Green, or if at all. It is unclear if the alleged post-cancellation withdrawal of $111 is meant to refer to April and May payments, or only one or the other. No banking or other records relating to the payments are cited. This is not evidence substantial enough to support a finding of contravention.

The section 56 allegations against Crown Crest also do not include any specific details of SK's pre-authorized payments in respect of the contract, or of Crown Crest's alleged continued taking of the payments after SK's cancellation. The same is true in the MW matter: in my review I have not seen direct evidence of effective cancellation, a refund amount demanded or in dispute, or the ongoing taking of pre-authorized payments after cancellation. In both the latter cases, in the absence of the expected documentation I do not conclude that a breach of section 56 occurred.

DUE DILIGENCE

The respondent is entitled to a "defence of due diligence" if it shows that it took all reasonable steps to prevent the contraventions, and these occurred despite such efforts. There is some evidence in the Report of Simply Green meaningfully engaging in the complaint resolution process. In fact, very little in the way of monetary disputes or the consumers' concerns about contractual cancellation remains unresolved. However, on the particular aspects of the contravening conduct, I am not satisfied that it has satisfied the standard of due diligence. Simply Green has merely stood on its view that its contracts are invariably correct in all respects with regard to requirements of the Act. It has not demonstrated that it has in any way modified its practices with respect to the contractual deficiencies underpinning consumers' attempted statutory cancellations. Given the specific terms of the Order, neither did Simply Green sufficiently supervise its agents and prevent the recurrence of certain deceptive acts in consumer transactions, or the occurrence of additional misleading representations. Aside from denying any association with the impugned acts of its agents, it did not divulge what steps it took to ensure compliance with the Order and prevent the occurrence of fresh breaches of section 5 in 2017 and 2018.

CONCLUSION

Simply Green contravened section 5 (1) of the Act by engaging in deceptive acts and practices in respect of certain consumer transactions (cited in the Report, referenced above) when it:

1. stated that rebates were applicable to consumer transactions when they were not, continuing deceptive acts established in a previous proceeding, thereby breaching the Order, contrary to section 189 (5);
2. falsely represented an affiliation or approval it did not have by its use of the Energy Star logo or mark;
3. misled consumers in regard to long-term leases, by failing to give at least equal prominence to the total costs of goods and services relative to the monthly payment instalments stated in the agreements.

ENFORCEMENT ACTIONS

As an adjudicator determining that the violations occurred as alleged, I may take one or more of the following actions:

- Prohibit Simply Green from engaging in direct sales transactions;
- Issue a compliance order (under section 155 of the Act), which may include orders:
  - to take specified action to correct the issue;
  - to reimburse a consumer or provide suitable compensation (restitution); and,
  - to repay Consumer Protection BC the costs of this inspection.
- Impose an administrative penalty of up to $5,000 on an individual, or up to $50,000 on a corporation (under section 164 of the Act).

I have considered each of these possible enforcement actions and determined that the circumstances merit, as applicable, a monetary penalty, and a compliance order against the respondent to reimburse Consumer Protection its costs of the inspection (investigation) in connection with the Report. I will also make a conditional direct sales prohibition order to prevent Simply Green from repeating the business practices that are the subject of the contraventions detailed in the Report and confirmed in this decision. This entails remediation of the underlying direct sales contractual requirements, by requiring Simply Green to ensure its contracts include adequate description of goods and services and proper disclosure of the total costs including cost of credit. These enforcement measures are implemented with a view to both specific and general deterrence of a pattern of behaviour that can obviously harm consumers.

Direct Sales Prohibition

In accordance with the Act, a direct sales prohibition may be imposed on a direct seller on the basis of reasonable belief in a pattern of behaviour harmful to the public interest or for proven contraventions of the Act.

Section 156

(1) In this section:

"direct seller" means

(a) a supplier who enters into direct sales contracts, solicits consumers to enter into direct sales contracts, or both, or a salesperson of that supplier, and

(b) a person, including an officer and a director, who performs services related to the management of the business of a supplier referred to in paragraph (a).

(2) After giving a direct seller an opportunity to be heard, the director may order the direct seller to stop entering into direct sales contracts or soliciting consumers to enter into direct sales contracts, for a period of time specified in the order or until the director rescinds the order, if there are reasonable grounds to believe that

(a) based on the past conduct of the direct seller, it is contrary to the public interest for the person to carry on the business of a direct seller, or

(b) the direct seller has contravened this Act or the regulations.

(3) A direct sales prohibition order may be reconsidered in accordance with Division 1 of Part 12.

Simply Green submits that it has not been active in engaging in new consumer transactions in BC since 2018. Further, it states it intends, before resuming any consumer transactions, to comply with the requirements of direct sales contracts according to the Act, and to adhere to Consumer Protection BC's expectations with respect to those statutory requirements. In view of both the "public interest" rationale and the existence of proven contraventions, stated in sub-sections (2) (a) and (b) above), I will issue a direct sales prohibition against Simply Green, attached to these reasons, subject to these conditions:

1. It will not engage in any direct sales with BC consumers for a period of 12 months from the effective date of the prohibition;
2. its direct sales contracts will comply in form and content with the Act's requirements for,
    i. *detailed descriptions* of goods and services; and,
    ii. *total costs* to consumers, *applicable taxes*, and *total cost of credit;*
3. it must assume responsibility with respect to the prevention of misrepresentations and deceptive sales practices, for training and supervising any employees, agents, or persons entering direct sales contracts on its behalf; and,
    a. all training and sales materials will be provided to and approved by Consumer Protection BC before being used;
    b. the identities of any agents hired or retained by Simply Green to conduct consumer sales must be disclosed to Consumer Protection BC, and Consumer Protection BC may refuse to remove this prohibition in the absence of such disclosure or if it deems the removal of the prohibition to be contrary to the public interest;
    c. internal policies must be developed that expressly prohibit any conduct by employees, agents, or other persons dealing with consumers on behalf of the respondent representing the respondent's

endorsement by or affiliation with utilities-providers or official bodies (including reference to rebate programs, unless factually based); and,

d. such policies must be provided to Consumer Protection BC, which may refuse to remove this prohibition if the policies are not provided or are deemed inadequate;
e. Consumer Protection BC must first be satisfied that the respondent will disclose clearly the intended terms of agreement for the supply of goods and services so as to not mislead consumers about costs, obligations, and duration of lease agreements, including any materially relevant terms pertaining to outright purchase, rent to own, "buyouts", or similar terms.

Administrative penalty

As per section 164 (1) of the Act, an administrative monetary penalty ("AMP" or "penalty") may be imposed where a person contravenes a prescribed provision of the Act. Sections 5, 27, and 189 (5) of the Act are prescribed for the purpose of imposing an AMP. After considering the factors under section 164 (2) of the Act (below), I determine that an AMP is warranted. I am, however, limited in applying AMPs due to the two-year limitation stipulated by the Act. For this reason I cannot consider the application of AMPs for any violations occurring on the dates of execution of the seven separate consumer contracts listed in Table 1 of the Report. This includes the breach of the Order per section 189 (5), and the making of additional deceptive representations per section 5. The violation of section 27 that I confirm in connection with the failure to issue a refund within 15 days of cancellation in the case of the MB and NB complaint is within the two-year limitation and I proceed with imposing an AMP in respect of it.

Section 164 (2) of the Act 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 supplier
(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

For the violation 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 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.

The Policy, normally applied by Consumer Protection BC, sets out how the AMP amount is calculated, starting with a base penalty amount. The Policy helps to ensure that calculations of AMP amounts are consistent, transparent, flexible, and proportionate to the contraventions at issue, and that suppliers subject to AMPs know how Consumer Protection BC interprets the Act 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 Act in the public interest.

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.

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.

When applying the Policy, the decision maker is considering all the factors under section 164 (2) in his or her calculation or analysis of the AMP amount that should be imposed. The decision maker continues by then deciding in his or her discretion whether the amounts in the Policy should be imposed or different amounts imposed based on consideration of the factors under section 164 (2) (and one additional related criterion) and any other relevant circumstances.

In the respondents' notice of this hearing, I identify the Policy and advise that it will be applied as part of any decision that may impose an AMP. This notice further states that the Policy can be viewed on our website and would be provided to the respondents in paper form upon request. Therefore, the respondents have had an opportunity to respond to the Policy by making submissions on the appropriateness of its application or its consistency with the criteria under the Act.

Calculation of AMP

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 section 164 (2) and one additional criterion, and any other relevant circumstances.

Violation of section 27 of the Act is a "Type C" contraventions under the Policy**.** I agree with the categorization of the contravention in the present circumstances at a relatively high level of inherent severity and potential harm as contemplated by the Policy.

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**

1. Previous enforcement actions for contraventions of a similar nature	**+3**	In a hearing (case #29277) concluded in June 2016, Simply Green was alleged to have violated section 27 of the Act. However, the adjudicator found in once instance that Simply Green had not violated this provision, and in another instance he did not rule on the issue. (Simply Green was found to have engaged in deceptive acts and failed to provide information to an inspector, but those violations are not directly germane to my assessment of AMP for the cancellation and refund issues in this decision.) The "adjustment" permits me to consider *similar* previous contraventions. The 2016 decision found Simply Green had twice failed to recognize the effect of consumers' cancellation on their pre-authorized payments. For this "adjustment" analysis, I find the conduct to be similar to the failure to respond to a valid cancellation in the manner required by section 27. The previous decision has a bearing on this matter due to the respondent's having express prior notice regarding suppliers' obligations in respect of cancellations and either refunds or "stop payment" situations. The previous enforcement action therefore is moderately aggravating relative to the AMP in this case.
2. Gravity and magnitude of the contravention	**+1**	Any matter involving obligations to consumers exercising a right of cancellation, including the refund remedy, is inherently serious. Delay in delivering post-cancellation refunds may be aggravating. In this case the refund component of the consumer's complaint was not finalized until several months post-cancellation. It is not a small deviation from the "15 day" rule, and therefore somewhat aggravating.
3. Extent of the harm to others resulting from the contravention	**0**	This matter relates to monetary disputes and potentially significant consumer losses where the consumer's right of cancellation is not recognized. As captured in the Policy, some degree of harm is entailed. I find based on the limited information in the Report concerning the nature of financial harm to the complainants in the refund matter it is appropriate to see this factor as neutral rather than aggravating.
4. Whether the contravention was repeated or continuous	**0**	Within the scope of the Report the respondent was allegedly implicated in several such contraventions. Due to the constraints of evidence in this hearing the violation is limited to one instance. Therefore there is no basis to find repetition or continuity as an aggravating factor.

5. Whether the contravention was deliberate	**+2**	After having been the subject of several complaint investigations and a previous hearing involving similar disputes, the respondent deliberately chose initially not to respond to the demand for return of the consumers' payment. This conduct is aggravating.
6. Economic benefit derived by the person from the contravention	**0**	I believe Simply Green likely derived economic benefit from the contravention of section 27, though not in a quantifiable or enduring sense. This factor is therefore neutral.
7. Whether the person made reasonable efforts to mitigate or reverse the contraventions' effects	**-1**	The respondent has mitigated or reversed the contravention by making the consumer whole, in terms of returning the payments by way of refund several months after cancellation. There is a modest mitigation of the total penalty under this factor.

Final Calculation of AMP

The Policy determines violation of section 27 is a Type C contravention with a base penalty amount of $5,000. For this violation, application of the AMP "Matrix" involves two contributing aggravating factors, and one factor mitigating penalty. Thus, the adjustment to "gravity level" of the contravention, overall, is plus five (+5), and I apply a penalty of **$8,000** per Part 4.3 of the Policy (penalty matrix). Attached to these reasons is the required Notice of Administrative Penalty.

Compliance order

Having found Simply Green responsible for contraventions of sections 5, 27, and 189 (5) of the Act, I have authority under the Act to order reimbursement of Consumer Protection BC's costs for the relevant inspection, including preparation of the Report for this hearing. An order pursuant to section 155 of the Act is an appropriate action against Simply Green to compel it to reimburse Consumer Protection BC for its conduct of investigations involving multiple complaints and preparation of a relatively complex Report. Therefore, I order Simply Green to pay to Consumer Protection BC partial costs for the inspection of this matter in the amount of **$2,500** to be paid within **30 days** of delivery of the Order to the respondent. In calculating these costs, I take into account that in several respects the Report deals with matters unrelated to Simply Green's liability under the Act as found in this decision.

CONCLUSION

The respondent Simply Green has been found to have contravened sections 5, 27, and 189 (5) of the Act and are subject to a monetary penalty, compliance order (for costs only), and a direct sales prohibition. The respondent may apply to Consumer Protection BC to request reconsideration in

respect of these actions within 30 days of receiving these reasons, in accordance with sections 181 and 182 of the Act:

- by fax to 604-320-1663;
- by electronic mail to shahid.noorani@consumerprotectionbc.ca;
- or by mail or courier to the address below:

Consumer Protection BC
Attention: Shahid Noorani, VP of Regulatory Services
200 – 4946 Canada Way
Burnaby, BC V5G 4H7

Decision issued June 15, 2020 in Vancouver, BC

original signed

Robert Penkala, Manager, Enforcement Hearings