



Citation: *New Brunswick (Financial and Consumer Services Commission) v. 2639087 Ontario Ltd. (Atlantis Water & Air) and Dino Ferreira, _____*

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *DIRECT SELLERS ACT*, R.S.N.B. 2011, c.141

Docket: MS-002-2022

BETWEEN:

Financial and Consumer Services Commission,

Applicant,

-and-

2639087 Ontario Ltd. (Atlantis Water & Air) and Dino Ferreira,

Respondents.

DECISION AND ORDER

PANEL: Mélanie McGrath, Tribunal Chair

DATE OF HEARING: June 12, 2023

WRITTEN REASONS: June 5, 2024

APPEARANCES: Margaux Savoie-Connolly, for the Financial and Consumer Services Commission
Enrico Scichilone, for the Respondents

I. DECISION

1. I approve the *Settlement Agreement* signed by the parties.

II. OVERVIEW

2. 2638097 Ontario Ltd., which operates under the business name Atlantis Water & Air, was licensed as a Direct Seller in the Province of New Brunswick, with their licence expiring on November 30, 2020. In these reasons, I will refer to 2638097 Ontario Ltd., as Atlantis Water & Air.
3. Dino Ferreira, the owner of Atlantis Water & Air is not a licenced salesperson under the *Direct Sellers Act*.
4. On December 12, 2022, the Financial and Consumer Services Commission (the "Commission") filed a *Statement of Allegations* commencing enforcement proceedings against Atlantis Water & Air and Mr. Ferreira. The allegations against the Respondents concern acting as a salesperson under the Direct Sellers Act without a licence between March of 2020 and January of 2021. On December 2, 2022, prior to filing a Statement of Allegations, the Commission had filed a *Notice of Application for Approval of a Settlement* which was accompanied by a *Settlement Agreement* signed by the parties.
5. In March of 2020, the Commission became aware of a Scratch and Win card circulating through weekly flyers across the province. The Scratch and Win cards were circulated as a means of advertising water purification systems for Atlantis Water & Air. The Commission deemed the Scratch and Win cards were misleading as they led the reader to believe one of several large prizes were available to be won, but the actual prize to be won was not as represented on the card and calling the phone number on the card resulted in a home sales call for a water test required before any prize could be claimed.
6. On March 25, 2020, the Commission advised the Atlantis Water & Air that the Scratch and Win cards were misleading and deceptive and to cease using these materials and any similar materials immediately, including any advertising materials that mislead consumers using a game or lottery.
7. In September of 2020, a different Scratch and Win card bearing Atlantis Water & Air's contact information was twice forwarded to the Commission by a member of the public. The second round of Scratch and Win cards were produced after the Commission ordered Atlantis Water & Air to cease using these materials.
8. In the *Settlement Agreement*, Dino Ferreira admits that he acted as a salesperson without having obtained a licence when he entered into 44 contracts with consumers in the Spring of 2020. The other salespeople of Atlantis Water & Air, none of them being licensed under the Direct Sellers Act, entered into 95 contracts with customers in 2020. Each of these contracts were in violation of the requirements imposed by subsection 4(1) of the Act. Subsection 4(1) of the Act prohibits a person to direct sell goods and services in the Province of New Brunswick unless the person has obtained a licence in accordance with the Act.

9. The parties ask the Tribunal to approve the following agreed upon sanctions:

- a) Dino Ferreira pay an administrative penalty of \$5,000.00;
- b) Atlantis Water & Air pay an administrative penalty of \$17,500.00;
- c) Atlantis Water & Air pay investigative costs of \$2,500.00;
- d) Atlantis Water & Air and all directors and employees of Atlantis Water & Air and Dino Ferreira will cease to contravene the Direct Sellers Act;
- e) Dino Ferreira will have his licence cancelled and that he be banned from being licenced under the Direct Sellers Act for life;
- f) All requests for cancellation of Direct Sales Contracts entered into by Atlantis Water & Air and Dino Ferreira that met the requirements of section 22 of the Direct Sellers Act are hereby honored and failure to do so will result in further violation under section 24.6(1) of the Direct Sellers Act.

III. ISSUES

10. To determine whether I should approve the *Settlement Agreement*, I must answer the following questions:

- a) Are the sanctions proposed by the settlement within the parameters of what is reasonable?
- b) Is the proposed settlement in the public interest?

IV. ANALYSIS

A. TEST

11. The test for the endorsement of a settlement under the Act was established by the Tribunal in *New Brunswick (Financial and Consumer Services Commission) v. Rhino Ventures Inc. et al.*, 2021 NBFCST 7 ("*Rhino Ventures*"). In that decision, the Tribunal stated the following:

12. This is the first time the Tribunal has been asked to approve a *Settlement Agreement* under the *Mortgage Brokers Act*, the *Cost of Credit Disclosure and Payday Loans Act* and the *Real Estate Agents Act*.

13. Paragraph 79(1)(a) of the *Mortgage Brokers Act* provides that the Tribunal may terminate an enforcement proceeding (or administrative proceeding) by approving a *Settlement Agreement*:

[...]

14. The *Real Estate Agents Act* and the *Cost of Credit Disclosure and Payday Loans Act* have identical provisions: sections 43.81 and 51.81 respectively. All three statutes are silent as to the test to be applied by the Tribunal in deciding whether to approve a *Settlement Agreement*.

15. In *New Brunswick (Financial and Consumer Services Commission) v. Howse*, 2018 NBFCST 2 [Howse] and *New Brunswick (Financial and Consumer Services Commission) v J.B. Côté et Fils Ltée et al.*, 2021 NBFCST 6 [J.B. Côté], this Tribunal considered the approval of settlements under equivalent provisions of the *Securities Act* and the *Pre-arranged Funeral Services Act*. The Tribunal formulated the test to be met for approval of a settlement agreement as follows:

(a) Are the sanctions proposed by the settlement within the parameters of what is reasonable?

(b) Is the proposed settlement in the public interest?

16. The Tribunal also stated in *J.B. Côté*, at paragraph 14, that it would be desirable that this test be applied across “financial and consumer services legislation”, as this term is defined in section 1 of the *Financial and Consumer Services Commission Act*. I agree. Given that the *Mortgage Brokers Act*, the *Real Estate Agents Act* and the *Cost of Credit Disclosure and Payday Loans Act* come within the definition of “financial and consumer services legislation” and that the provisions in these statutes are virtually identical to those in the *Securities Act* and the *Pre-arranged Funeral Services Act*, I find the test set out in *Howse*, and adopted in *J.B. Côté*, should be applied in this matter.

17. As recognized in *Howse* and in *J.B. Côté et Fils Ltée*, the purpose of the legislation is also relevant in determining whether a proposed settlement is in the public interest. Neither the *Mortgage Brokers Act*, the *Real Estate Agents Act* nor the *Cost of Credit Disclosure and Payday Loans Act* enunciate a purpose. However, these statutes should be interpreted in the broader context of financial and consumer services legislation. Section 2 of the *Financial and Consumer Services Commission Act* sets out its dual purpose:

Purposes of Act

2 The purposes of this Act are to

(a) enable the Commission to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors, and

(b) enable the Commission to disseminate knowledge and promote understanding of the regulated sectors and develop and conduct educational programs.

18. In *J.B. Côté*, the Tribunal further stated that a hearing panel should also consider the following in analyzing whether to approve a *Settlement Agreement*:

- whether the allegations in the *Settlement Agreement* fall within the Tribunal's jurisdiction;
- that the only evidence that can be considered by the Tribunal is that contained in the *Settlement Agreement*;
- whether sufficient evidence has been provided in the *Settlement Agreement* to allow the Tribunal to determine whether the proposed sanctions come within reasonable parameters;
- whether the sanctions contemplated in the *Settlement Agreement* fall within the Tribunal's jurisdiction;
- whether the proposed sanctions are preventive and prospective in nature and not remedial or punitive;
- that a *Settlement Agreement* arises out of negotiations between Commission staff and the Respondent and therefore significant weight should be given to the agreement reached between parties, given that a balancing of factors and interests has already taken place in reaching that agreement; and
- that settlements serve the public interest by resolving enforcement proceedings quickly, efficiently and with certainty and by avoiding the significant resources that would be committed to a contested proceeding.

B. PROPOSED SANCTIONS

12. I find that the sanctions proposed in the *Settlement Agreement* fall within the parameters of what is reasonable.

13. I now turn to the analysis of the factors identified by the Tribunal to assess the reasonableness of the sanctions.

(i) Seriousness of the Allegations

14. The allegations against the Respondents are serious. The Respondents were attempting to mislead their prospective clients with Scratch and Win cards that resembled lottery tickets when they were in fact a home sales call for a water test which was required before any prize could be claimed.

15. The fact that Atlantis Water & Air re-issued similar misleading Scratch and Win cards several months after a written order from the Commission was sent to them is a serious cause for concern.

16. Additionally, there is evidence that at least one client was unable to cancel their contract which led to a complaint to the regulator. Also, the Respondents were fully aware of the need for a salesperson to be licensed and Dino Ferreira waited over 7 months to file a licencing application with the Commission while continuing to contravene the Direct Sellers Act.

(ii) Past Conduct

17. There are no past violations of financial and consumer services legislation by the Respondents.

(iii) Experience and Level of Activity in the Sectors

18. The Respondent *Atlantis Water & Air* was licenced as a Direct Seller but not its salespersons while Dino Ferreira was not a licensed salesperson under the Act. It is unclear how long Atlantis Water & Air operated in New Brunswick prior to these incidents.

(iv) Recognition of the Seriousness of the Improper Activity

19. The Respondents have admitted to serious breaches of the Act. They have accepted responsibility for their conduct by signing the *Settlement Agreement* and agreed to the proposed sanctions against them.

20. In addition to having admitted to serious breaches of the Act, Dino Ferreira also accepts to have his licence cancelled and be banned from being licensed under the Act for life.

(v) Benefit Received as a Result of the Improper Activity

21. The specifics of the earnings by the Respondents are not detailed in the Statement of Facts, though in 2020 the Respondents entered into at least 139 contracts with various private citizens while unlicensed.

(vi) Risk to Customers in the Regulated Sectors

22. Dino Ferreira will be banned from being licensed under the Direct Sellers Act for life which will considerably reduce the risk to customers. Atlantis Water & Air undertakes to have all directors and employees cease to contravene to the Direct Sellers Act.

(vii) Damage Caused to the Integrity of the Regulated Sectors

23. Whenever unauthorized entities or individuals carry out activities regulated by financial and consumer services legislation, this undermines the integrity of the sector whose activities are regulated. However, these damages will be mitigated by the proposed administrative sanctions and bans set out in the Settlement Agreement.

(viii) Deterrence and Education

24. In considering the sanctions in the *Settlement Agreement*, I must determine whether they fulfill the goals of general and specific deterrence (see *Rhino Ventures*, para 33). In my opinion, the proposed sanctions will accomplish both goals of specific and general deterrence.
25. The maximum administrative penalties under the Act are \$15,000 for an individual and \$75,000 for a person other than an individual. Each of the Respondent have agreed to pay a significant administrative penalty commensurate with their obligations that they failed to discharge. Furthermore, Dino Ferreira has agreed to pay an administrative penalty and to a permanent ban of all regulated activities under the Act. These sanctions should deter the Respondents from breaching financial and consumer services legislation in the future.
26. In *Rhino Ventures* the Tribunal explained that the purpose of general deterrence is to deter other industry participants from breaching financial and consumer services legislation (para 38). In this matter, I find that the proposed sanctions convey the message to industry participants that conducting direct selling to consumers in New Brunswick without a proper licence will not be tolerated. I therefore conclude that the general deterrence purpose is met.

(ix) Mitigating Factors

27. There are no mitigating factors in this case.

(x) Previous Decisions Made in Similar Circumstances

28. The Tribunal has considered a settlement agreement concerning infringements of the Direct Sellers Act, in the matter of *Financial and Consumer Services Commission v. 9206-4880 Québec Inc. and Raynald Huet*. In that case, the Respondents entered into 203 contracts with various private citizens while being unlicensed. The Tribunal ordered the Respondent, Raynald Huet to pay an administrative penalty of \$7,000.00 and the Respondent, 9206-4880 Québec Inc. to pay an administrative penalty of \$35,000.00. Both Respondents were also ordered to cease all their activities for a period of one year.
29. In this matter, the Respondent, Dino Ferreira admits that he acted as a salesperson without having obtained a licence when he entered into 44 contracts with consumers in the Spring of 2020. The other salespeople of Atlantis Water & Air, none of them being licensed under the Direct Sellers Act, entered into 95 contracts with customers in 2020.
30. The fact that the Respondent, Dino Ferreira, accepts to have his license cancelled and that he be banned from being licensed under the *Direct Sellers Act* for life will affect his livelihood. Therefore, the Tribunal concludes that an administrative penalty of \$5,000.00 to be paid by the Respondent, Dino Ferreira and an administrative penalty of \$17,500.00 to be paid by the Respondent, Atlantis Water & Air is reasonable in the circumstances.

C. PUBLIC INTEREST

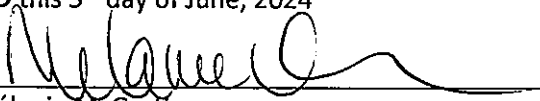
31. The *Settlement Agreement* holds the Respondents accountable for their actions and furthers the objectives of financial and consumer services legislation. The *Settlement Agreement* also serves to demonstrate that individual Respondents will be held accountable in a manner that corresponds to the gravity of their conduct which serves the public interest.

V. ORDER

32. I hereby order that:

- i. Pursuant to section 24.71(1) of the *Direct Sellers Act*, the Respondent Dino Ferreira shall pay to the Financial and Consumer Services Commission an administrative penalty in the amount of \$5,000.00.
- ii. Pursuant to section 24.71(1)(a) of the *Direct Sellers Act*, the Respondent Atlantis Water & Air shall pay to the Financial and Consumer Services Commission an administrative penalty in the amount of \$17,500.00.
- iii. Pursuant to section 44(1)(a)(b) of the *Financial and Consumer Services Commission Act*, the Respondent Atlantis Water & Air shall pay to the Financial and Consumer Services Commission investigative costs of 2,500.00\$.
- iv. Pursuant to section 24.7 (1)(h) of the *Direct Sellers Act*, the Respondent, Atlantis Water & Air, and all directors and employees of Atlantis Water & Air, and Dino Ferreira will cease to contravene the *Direct Sellers Act*.
- v. Pursuant to section 24.7 (1) (a) of the *Direct Sellers Act*, the Respondent, Dino Ferreira, will, in the interest of the public, have his license cancelled and that Dino Ferreira be banned from being licensed under the *Direct Sellers Act* for life.
- vi. Pursuant to section 22(2) of the *Direct Sellers Act*, that all requests for cancellation of Direct Sales Contracts entered into by Atlantis Water & Air and Dino Ferreira that met the requirements of section 22 of the *Direct Sellers Act* are hereby honored and failure to do so will result in further violation under section 24.6(1) of the *Direct Sellers Act*.

DATED this 5th day of June, 2024



Mélanie McGrath
Tribunal Chair