

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*

R.S.B.C. 1996, c. 141, AS AMENDED

- AND -

SPRING FINANCIAL INC. and

1077819 B.C. LTD.

ORDERS UNDER SECTIONS 244(2) and 238, AND

NOTICE OF RIGHT OF HEARING OR APPEAL

UNDER SECTIONS 238(2) and 242

UPON REVIEWING THE SUBMISSIONS AND EXHIBITS OF STAFF, I make the following findings and orders:

Background

1. This order relates to complaints against Spring Financial Inc. (“Spring”) and 1077819 B.C. Ltd. (the “Numbered Company”) and their provision of a savings loan product (the “Savings Loan”) in British Columbia.
2. The Savings Loan is marketed as a product designed to build a consumer’s credit. Features of the Savings Loan are as follows:
 - (a) Borrowers complete a verbal application for the Savings Loan over the phone with a Spring employee;
 - (b) The borrower signs a loan agreement (the “Spring Loan Agreement”);
 - (c) The loan funds (the “Funds”) are advanced into a trust account (“Spring Trust”) on behalf of the borrower. The borrower does not receive any of the Funds upfront;
 - (d) The borrower makes bi-weekly payments to Spring to pay down the principal amount of the Funds in addition to interest and fees (collectively, the “Loan”), for a term of three years; and
 - (e) Once the Loan is paid in full, the Funds are released to the borrower from Spring Trust.

3. The Numbered Company is the trustee of Spring Trust.
4. Spring was incorporated in British Columbia on August 29, 2014 under incorporation number BC1012241. The head office is reported as 1700 – 1055 West Hastings Street, Vancouver, BC V6E 2E9. On December 31, 2015, Spring registered a name change from 1012241 B.C. Ltd. to Spring Financial Inc. Cody Green (“Green”) is the sole director of record.
5. The Numbered Company was incorporated in British Columbia on June 2, 2016 under incorporation number BC1077819. The head office is reported as 1700 – 1055 West Hastings Street, Vancouver, BC V6E 2E9. The directors of record are Green and Michael Galpin (“Galpin”).
6. Canada Drives Ltd. (“Canada Drives”) was incorporated in British Columbia on March 10, 2017 under incorporation number BC1110608. The head office is reported as 1700 – 1055 West Hastings Street, Vancouver, BC V6E 2E9. On March 18, 2017 Canada Drives registered a name change from 1110608 B.C. Ltd. to Canada Drives Ltd. Green is the sole director of record.
7. Fresh Start Finance (“Fresh Start”) was registered as a sole proprietorship in British Columbia on January 16, 2017 under registration number FM0707530. The head office is reported as 600 – 555 Burrard Street, Vancouver, BC V7X 1M8.
8. As at February 23, 2021, a search of the BC Registry Services confirmed that Spring Trust is not a registered entity in British Columbia.
9. As at February 23, 2021, a search of the BCFSAs Central Registry confirmed Spring is not authorized to conduct trust business in British Columbia.
10. As at February 23, 2021, a search of the BCFSAs Central Registry confirmed the Numbered Company is not authorized to conduct trust business in British Columbia.
11. As at February 23, 2021, a search of the BCFSAs Central Registry confirmed Canada Drives is not authorized to conduct trust business in British Columbia.
12. As at February 23, 2021, a search of the BCFSAs Central Registry confirmed Fresh Start is not authorized to conduct trust business in British Columbia.
13. As at February 23, 2021, a search of the BCFSAs Central Registry confirmed Spring Trust is not authorized to conduct trust business in British Columbia.
14. From 2017 through 2020, the British Columbia Financial Services Authority (the “BCFSA”, formerly the Financial Institutions Commission), Better Business Bureau (“BBB”) and Consumer Protection BC (“CPBC”) received numerous complaints from consumers regarding the Savings Loan.
15. As a result of the complaints, and a referral from the Financial Services Regulatory Authority of Ontario (the “FSRA”), the BCFSA conducted an investigation into the activities of Spring and the Numbered Company.

Referral and investigation

16. On May 3, 2019, [REDACTED] of the FSRA contacted BCFSa staff ("Staff") to inquire about Spring's business practices and to inquire as to whether the BCFSa had received any complaints about Spring. [REDACTED] advised that Spring's head office is registered in Vancouver and Spring is a subsidiary of Canada Drives.
17. On May 3, 2019, Staff contacted BBB and spoke with [REDACTED]. who shared the following information regarding Spring:
 - (a) BBB had received 291 complaints to date against Spring, 48 of which were open files as of the date of their conversation, and 122 complaints against Spring's parent company, Canada Drives.
 - (b) Common themes for complaints were provided as:
 - i. Spring employees speak quickly and do not give the consumer an opportunity to ask questions. Employees speak over the borrower at times.
 - ii. The borrower does not understand what they are signing up for when they agree to the terms and conditions.
 - (c) As a result of the number of complaints, BBB published alerts on their website in 2018 for both Spring and Canada Drives to advise consumers of the aforementioned complaint patterns.
18. On May 6, 2019, Staff contacted [REDACTED] of CPBC to discuss complaints received by BCFSa and CPBC regarding Spring.
19. On July 23, 2019, BCFSa, BBB, and CPBC representatives met to discuss complaints received by each regulatory body regarding Spring as well as associated entities Canada Drives and Fresh Start (the "Associated Entities"). The following was discussed:
 - (a) To date in 2019, CPBC had received approximately 9 complaints against Spring and Associated Entities.
 - (b) To date in 2019, BBB had received 51 complaints.
 - (c) Since 2017, BCFSa had received 19 complaints.
 - (d) Common themes of the complaints are:
 - i. The borrower does not know the details of the product they are signing up for;
 - ii. The borrower feels pressured to sign the contract; and
 - iii. Once the borrower receives the terms and conditions outlining the details of the product, they cannot cancel the Loan without financial loss.

20. Subsequent to the July 23, 2019 meeting, the BCFSa received an additional 3 complaints in 2020.
21. On May 12, 2020, Staff contacted Spring requesting information, including the following:
 - (a) Copies of all application forms and contracts, including the terms and conditions, for the Savings Loan;
 - (b) An outline as to how a borrower's payments are held and processed prior to disbursing the Funds; and
 - (c) Any additional information regarding Spring's business to assist Staff in their review.
22. On June 3, 2020, [REDACTED] Chief Compliance Officer with Spring and Canada Drives ([REDACTED]), responded to Staff with the following information:
 - (a) An example of the Spring Loan Agreement which includes the terms and conditions of the Savings Loan.
 - (b) An outline for the Savings Loan process from application to termination as follows:
 - i. The borrower completes a verbal application over the phone with a Spring employee;
 - ii. The borrower signs the Spring Loan Agreement;
 - iii. The Funds are advanced into a trust account on behalf of the borrower where they remain until the Loan is paid off or terminated;
 - iv. The borrower makes payments as required; and
 - v. Once the Loan is paid off, the Funds held in trust are released to the borrower.
23. A review of the Spring Loan Agreement identified the following:
 - (a) In the Terms and Conditions (Article "B") for the Savings Loan, section 2(a) states the Funds will be advanced and deposited to an account controlled by Spring Trust.
 - (b) In the Terms and Conditions (Article "B") for the Savings Loan, section 2(b) states the Funds held in trust by Spring Trust can be pooled for deposit at another Financial Institution.
 - (c) In the Terms and Conditions (Article "B") for the Savings Loan, section 4 states the interest accrued on the Funds held in trust is payable to Spring, not the borrower.

- (d) The Spring Trust Deed of Settlement (Article “G”) identifies the Trustee as 1078819 B.C. Ltd. This entity name is mistyped in the Deed of Settlement. As per the letter of October 21, 2020 (the “Spring Response”) from legal counsel for Spring and the Numbered Company the correct entity is 1077819 B.C. Ltd. (defined above as the “Numbered Company”).
23. A review of the Spring website (the “Spring Website”) identified the following:
- (a) The Spring Website is publicly accessible.
 - (b) The trustee services of the Numbered Company are advertised as a component of the Savings Loan on the Spring Website.
24. On September 30, 2020, Staff sent [REDACTED] a letter with the following information:
- (a) Excerpts of the *Financial Institutions Act*, R.S.B.C. 1996, c. 141 (the “Act”) outlining the legislative requirements for conducting trust business in British Columbia.
 - (b) Staff’s findings from the review of the Spring Loan Agreement, including where the trust activity is outlined.
 - (c) Staff’s confirmation that Spring and Associated Entities are not authorized to conduct trust business in British Columbia.
 - (d) Request for a plan and timeline for Spring to become compliant with the Act.
25. On October 21, 2020, [REDACTED] emailed Staff and attached the Spring Response with the following information and assertions:
- (a) Spring does not hold the loan funds in trust; the Numbered Company does.
 - (b) The Numbered Company is not conducting unauthorized trust business as per the commonly used definition of ‘business’ because:
 - i. it does not generate a profit from its provision of trustee services;
 - ii. it does not solicit, promote, advertise, market or sell its trustee services;
 - iii. it does not have a resident agent or maintain an office or place of business; and
 - iv. it does not hold itself out as carrying on business.
 - (c) The Numbered Company does not provide trust services to ‘the public’; the trust business is only provided to Spring’s existing clients.
 - (d) Based on these reasons, the Numbered Company’s activities cannot be characterized as ‘trust business’ as the term is defined in the Act.

26. Upon review of the Spring Response, Staff are of the opinion that the arguments presented do not demonstrate that Spring and the Numbered Company are not conducting trust business under the Act. Staff are of the opinion that the restrictive interpretation of “trust business” (the “Restrictive Interpretation”) set out in the Spring Response is not applicable in the context of the administration of the Act:
- (a) The Act does not require that an entity profit from its trust activities in order for its activities to be considered “trust business” as that definition is set out in the Act.
 - (b) The Act does not require that an entity solicit, promote, advertise, market or sell its trustee services in order for its activities to be considered “trust business” as that definition is set out in the Act.
 - (c) The Act does not require that an entity have a resident agent or maintain an office or place of business in order for its activities to be considered “trust business” as that definition is set out in the Act.
 - (d) The Act does not require that an entity hold itself out as carrying on business in order for its activities to be considered “trust business” as that definition is set out in the Act.
27. Staff are of the opinion that the activities of Spring and the Numbered Company are so closely related as to be considered a single enterprise:
- (a) Spring advertises, markets and sells the trustee services of the Numbered Company;
 - (b) The Numbered Company’s provision of trustee services generates profits for Spring;
 - (c) It appears that the Numbered Company exists solely for the purpose of providing trustee services in relation to Spring’s Savings Loan; and
 - (d) Spring controls the Numbered Company:
 - i. The Spring Response states “Spring Trustee [the Numbered Company] is administered by and at the sole expense of the Company [Spring].”
 - ii. Galpin, Green, and Brown are Officers of both Spring and the Numbered Company.
 - iii. Galpin and Green are the Directors of the Numbered Company, while Green is the sole Director of Spring.

Relevant Legislation

28. Section 1(1) of the Act defines “business authorization” as follows:

“**business authorization**” means an authorization to carry on

- (a) trust business,
- (b) deposit business,
- (c) insurance business, or
- (d) both trust business and deposit business,

issued under Division 1 of Part 3 to a financial institution, under Division 1 of Part 6 to an extra provincial corporation or under Division 5 of Part 6 to a society described in section 191;

29. Section 1(1) of the Act sets out the definition of “trust business”:

“**trust business**” means the business of providing or offering to provide services to the public as

- (a) trustee, executor or administrator,
[...]

whether or not the person undertaking an activity or activities set out in paragraphs (a) to (e) can or does distribute any gain, profit or dividend, or otherwise dispose of the person’s assets, to a member or shareholder of the person other than during the winding up or on dissolution;

30. Section 1(1) of the Act defines “trust company” as follows:

“**trust company**” means

- (a) a company incorporated under the *Business Corporations Act* for the purpose of carrying on trust business and includes
 - i. an extraprovincial trust company that has been continued into British Columbia as a company under section 303 of the *Business Corporations Act*, and
 - ii. a company that results from an amalgamation referred to in section 20(1).
- (b) a corporation incorporated as a trust company under another Act, or
- (c) a pre-existing trust company,

but does not include a corporation continued under the laws of another jurisdiction

31. Section 70 of the Act prohibits unauthorized trust business:

A corporation must not carry on trust business in British Columbia unless the corporation is

- (a) a trust company, an extraprovincial trust corporation or a credit union that has a business authorization to carry on trust business,
- (b) a law corporation as defined in section 1(1) of the *Legal Profession Act*,
- (c) [Repealed 1998-9-100.],
- (d) a corporation that is carrying on the business of a trustee in bankruptcy, receiver, receiver manager or liquidator and that is licensed as a trustee in bankruptcy under the *Bankruptcy and Insolvency Act* (Canada), or
- (e) a corporation that is carrying on a prescribed trust business or class of trust business or a prescribed corporation or class of corporations that is carrying on a prescribed trust business or class of trust business.

32. Section 244 of the Act provides for the Authority to order a person to cease doing an act or engaging in a course of conduct that does not comply with the Act:

(1) In this section, “**committing an act or pursuing a course of conduct**” includes failing or neglecting to perform an act or failing to perform an act or failing or neglecting to pursue a course of conduct.

(2) If, in the opinion of the Authority, a person is committing an act or pursuing a course of conduct that

- (a) does not comply with this Act, the regulations or the rules made by the Authority,
[...]
- (b) does not comply with a condition of
 - (i) a business authorization, consent or order under this Act,
 - (ii) a licence under Division 2 of Part 6, or
 - (iii) a permit issued under section 187,
- (c) might reasonably be expected to result in a state of affairs not in compliance with
 - (i) this Act, the regulations or the rules made by the Authority,
[...]
- (d) does not comply with a written undertaking given under this Act, or
- (e) might reasonably be expected to harm
 - (i) in the case of a trust company or credit union, the interests of depositors or persons for whom the trust company or credit union acts in a fiduciary capacity, or
 - (ii) in the case of an insurance company, the interests of insureds,

then, the Authority may

- (f) order the person to
 - (i) cease doing the act,
 - (ii) cease pursuing the course of conduct, or
 - (iii) do anything that the Authority considers to be necessary to remedy the situation, or

- (g) if the person is a financial institution and the Authority considers it appropriate to do so, give the financial institution an opportunity to make a written voluntary compliance agreement with the Authority, by which the financial institution undertakes to rectify the act or course of conduct.

(3) Despite a voluntary compliance agreement, the Authority may make an order under subsection (2) (f) in respect of the financial institution or another person that is the subject of an order under subsection (2)

- (a) on matters not covered by the agreement,
- (b) if the agreement is not complied with, on matters covered in the agreement,
- (c) if in the opinion of the Authority there has been a deterioration in the financial condition of the financial institution, or
- (d) on matters provided for in the agreement if all the facts related to the matter provided for in the agreement were not known by the Authority at the time of the agreement.

(4) On the application of a financial institution that has made voluntary compliance agreement with the Authority, the Authority may approve the alteration of the agreement.

(5) If a person has been

- (a) convicted of an offence in Canada or another jurisdiction arising from a transaction, business or course of conduct related to financial services, or
- (b) found by a regulator or a court in Canada or another jurisdiction to have contravened the laws of that jurisdiction respecting financial services, the Authority may order the person to
- (c) cease doing any act or pursuing any course of conduct that is the same or similar to the act or course of conduct that resulted in the conviction or finding described in paragraph (a) or (b), or
- (d) carry out specified action that the Authority considers necessary to remedy the situation.

33. Section 238 of the Act provides a summary procedure for issuing immediate orders:

238 (1) If the superintendent acting in accordance with a delegation by the Authority, or the council, depending on which of them has the power to make the order,

- (a) intends to make an order under section 48 (2), 93 (1) or (2), 99 (2), 144 (3), 231 (1) (g), (h), (i), or (j), 244 (2) or (5), 245 (1), 275 or 277 (d) to (f), and
- (b) considers that the length of time that would be required to hold a hearing would be detrimental to the due administration of this Act,

then, despite section 237, the superintendent or council, as applicable, may make the intended order without giving a person directly affected by it an opportunity to be heard, but the superintendent or council, as soon as practicable after making the order, must deliver to that person

- (c) a copy of the order and written reasons for it, and

(d) written notice of the person's right under subsection (2).

(2) A person directly affected by an order made under subsection (1) may, within 14 days of receiving a copy of the order,

(e) require a hearing before the superintendent or council, as applicable, by delivering written notice to the superintendent or council, or

(f) appeal the order to the tribunal.

(3) Within a reasonable time after receiving written notice referred to in subsection (2) (a), the superintendent or council, as applicable, must hold the required hearing and following the hearing must confirm, revoke or vary the order.

34. By Instrument of Delegation dated April 4, 2018, the Financial Institutions Commission (now the BCFSa) has delegated to the Superintendent the power to issue orders under section 244 of the Act by way of summary procedure under section 238.

Application of legislative scheme to the Savings Loan

35. Based on the relevant legislation, the terms of the Spring Loan Agreement, the Spring Website, the corporate registry searches, the information disclosed in the Spring Response, and other exhibits and submissions of Staff, I find that Spring and the Numbered Company are carrying on trust business in British Columbia for the following reasons:

- (a) The Savings Loan is advertised on the Spring Website to the public and is available to the public;
- (b) The Spring Website and the Spring Loan Agreement describe the trust activity being offered as a component of the Savings Loan by outlining how the Funds are advanced into a trust account and held in trust until the Loan is paid off or terminated;
- (c) The Spring Loan Agreement identifies the Numbered Company as the trustee of the Spring Trust;
- (d) The activities of Spring and the Numbered Company are so closely related as to be considered one and the same enterprise:
 - i. Spring advertises, markets and sells the trustee services of the Numbered Company.
 - ii. The holding of the Funds in trust is an essential component of the Savings Loan.
 - iii. Spring controls the Numbered Company.
 - iv. The Spring Response indicates that the Numbered Company exclusively offers trustee services to Spring's Savings Loan customers. The Numbered Company appears to serve no purpose apart from its role in offering trustee services to Spring's customers so that Spring can sell its Savings Loan.

- (e) By offering the Savings Loan on its Website and through the Loan Agreement, Spring is engaged in the business of offering to provide trustee services to the public.
 - (f) By holding the funds in trust, the Numbered company is engaged in the business of providing trustee services to the public.
 - (g) Together, Spring and the Numbered Company, in their provision of the Savings Loan, offer to provide and do provide trustee services to the public.
36. The Restrictive Interpretation is not applicable in the context of the administration of the Act. Application of the Restrictive Interpretation would allow entities to circumvent the restrictions on carrying on unauthorized trust business by developing enterprises which use multiple related entities to carry out a trust business.
37. The Act is designed to protect the public by imposing authorization, prudential conduct and consumer protection requirements on entities engaged in trust business. Efforts to circumvent the Act by indirectly carrying out trust business must not be permitted.
38. As neither Spring nor the Numbered company are authorized to carry out trust business in British Columbia, in offering and providing the Savings Loan they are conducting trust business without a valid business authorization in breach of section 70 of the Act.
39. Spring and the Numbered Company's carrying out of unauthorized trust business is recent and ongoing. Their trust activities are non-compliant with the Act and pose a risk to the public.
40. I agree with Staff's estimate that approximately 15 witnesses would be required for a hearing and that the ability to schedule witnesses, including some who may be from out of province, counsel and the hearing officer would likely mean that a full oral hearing would take approximately 21 days and likely not take place until at least six months from the date a hearing is requested. I find that the length of time that would be required to hold a hearing would be detrimental to the due administration of the Act.

WHEREAS the Financial Institutions Commission (now the BCFSa) has delegated to the Superintendent certain powers and duties under section 244 of the Act in the Instrument of Delegation dated April 4, 2018;

NOW THEREFORE I order pursuant to section 238 (1), 244 (2) (a) and 244 (2) (f) (i) of the Act that:

1. Spring Financial Inc. and 1077819 B.C. Ltd. immediately cease conducting trust business in the Province of British Columbia, including providing or offering to provide services to the public as trustee in connection with the Savings Loan.

TAKE NOTICE that Spring Financial Inc. and 1077819 B.C. Ltd. may request a hearing before the Superintendent under section 238 (2) (a) of the Act or appeal the Order to the Financial Services Tribunal under section 238 (2) (b) of the Act.

Dated at the City of Vancouver

Province of British Columbia

this 12 day of March, 2021



Blair Morrison

Superintendent of Financial Institutions

Province of British Columbia