



OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION
GATEWAY PROFESSIONAL CENTER
1050 E INTERSTATE AVENUE, STE 200
BISMARCK, NORTH DAKOTA 58503-5574



701-328-5570 (Telephone)
701-328-5568 (Facsimile)

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Petitioner,

**CEASE AND DESIST ORDER,
NOTICE OF CIVIL PENALTY
AND NOTICE OF RIGHT
TO REQUEST A HEARING**

-vs-

**BUSINESS RECOVERY SERVICES, LLC, an
Arizona Limited Liability Company; and
BRIAN S HESSLER, Individually**

Respondents.

CPAT 100063.002

To the individual and entity identified below hereinafter "Respondents"):

Business Recovery Services, LLC
1551 W Crescent Ave
Mesa AZ 85202-2053

340 West University Drive, Suite 2
Mesa, AZ 85201-5824

2753 East Broadway Road, Suite 101-147
Mesa, AZ 85204-1579

AND

Brian S. Hessler
1551 W Crescent Ave

Mesa AZ 85202-2053

340 West University Drive, Suite 2
Mesa, AZ 85201-5824

2753 East Broadway Road, Suite 101-147
Mesa, AZ 85204-1579

(including all of those entities' officers, directors, owners, agents, servants, employees and representatives as well as all other persons in active concert or participation with them, extending to all "doing business as" names, formal corporate names, fictitious names of any kind or any variations of the same)

BACKGROUND

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-18, commonly referred to as the "Home Solicitation Sales Statute," ch. 51-15, commonly referred to as the "Consumer Fraud Law," and N.D.C.C. ch. 51-28, commonly referred to as the "Do Not Call Law." It is necessary and appropriate in the public interest and for the protection of consumers to restrain the Respondents' unlawful acts or practices.

2. Respondent. Business Recovery Services, LLC is an Arizona Limited Liability Company engaged in advertising and direct marketing solicitation and sale of merchandise, including a series of "Do-It-Yourself" business recovery kits to any person who feels they were misled or defrauded by a work at home based business or business opportunity. The business recovery kits range between \$89.95 and \$499.95, and include packets of forms, at least some of which can be obtained elsewhere free of charge.

3. Respondent, Brian S. Hessler, is a Arizona resident, and is the owner, member, manager and registered agent of Business Recovery Services, LLC. Mr. Hessler operates multiple other businesses, including Home-based Business Consulting Services, LLC, Greatest Business Opportunities, LLC, and Best Business Bureau, LLC.

4. Respondents have been the subject of a North Dakota consumer complaint alleging refusal to cancel and refund, together with other deceptive advertisement and sales practices.

5. N.D.C.C. ch. 51-18 regulates home solicitation sales and requires, among other things, that sellers, in a home solicitation sale, provide North Dakota consumers with both oral and written notice of cancellation rights. N.D.C.C. ch. 51-18 also prohibits Respondent from soliciting or accepting any payment from a North Dakota consumer until Respondent has received an original copy of the sales contract signed by the consumer. N.D.C.C. ch. 51-15 prohibits a person from engaging in any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise. A violation of N.D.C.C. ch. 51-18 constitutes a violation of N.D.C.C. ch. 51-15.

6. Respondents allegedly have made phone calls to consumers in violation of the Do Not Call Law. N.D.C.C. ch. 51-28 prohibits telephone solicitations to the telephone line of any subscriber in North Dakota who, for at least 31 days before the date the call is made, has been on the North Dakota or Federal Trade Commission do-not-call list. A violation of N.D.C.C. ch. 51-18 constitutes a violation of N.D.C.C. ch. 51-15.

7. Brian S. Hessler is a former employee of The Greatest Vitamin in the World, which is one of the companies that Respondents are offering recovery kits for.

8. Respondents operate a website at www.businessrecoveryervices.net.

9. Consumers, nationwide, have alleged that they are contacted by Respondents by telephone and told that they can recover substantial amounts of money that they have lost to various business opportunities by purchasing and using Respondents recovery kits. It is believed that Respondents charge the consumer's credit card without first obtaining a signed agreement. Respondents operate with a "No Refunds" policy.

10. After receiving a consumer complaint and other information regarding Respondents' business activities, the Attorney General commenced an investigation into Respondents' business practices. Numerous requests were made to Respondents for copies of the taped verification of the sale made to a North Dakota consumer. Respondents did not comply with the requests. On November 4, 2010, the Attorney General issued a Civil Investigative Demand to Business Recovery Services, LLC, pursuant to the Attorney General's authority under N.D.C.C. § 51-15-04. Respondents have refused to provide responses and produce documents as requested in the Civil Investigative Demand. Repeated requests have been made to Respondents for compliance with the Civil Investigative Demand; However, Respondents continuously have refused to comply. Pursuant to N.D.C.C. § 51-15-07, the Attorney General may issue a cease and desist order for the Respondents' failure or refusal to file a response to the Civil Investigative Demand.

11. Respondents have continued to harass the consumer who filed the consumer complaint with the Attorney General's Consumer Protection Division.

12. Each of the Respondents is engaged in a combination of two or more persons who have agreed to act together to inflict a wrong or an injury upon another, or

who have agreed to act together to commit a lawful act using unlawful means to inflict a wrong or injury upon another, namely violation of Home Solicitation Sales Statute and North Dakota's Consumer Fraud Law. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

13. The Civil Investigative Demand requests documents from the company and its officers, directors, agents, employees and all other persons acting or purporting to act for or on behalf of the company. Brian S. Hessler is believed to be the sole owner and member of Business Recovery Services, LLC. He holds all officer positions in the corporation and is responsible for the operation and management of the business. Mr. Hessler is the person ultimately responsible for making final decisions for Business Recovery Services, LLC. Mr. Hessler has refused to take such actions necessary to comply with the Civil Investigative Demand, and has refused to comply with the law.

14. Respondents are liable for their own misconduct and/or for directing others to engage in misconduct. See *e.g. Zimprich v. North Dakota Harvestore Sys., Inc.*, 419 N.W.2d 912, 914 (N.D. 1988); *Rickbeil v. Grafton Deaconess Hosp.*, 23 N.W.2d 247, 257 (N.D. 1946)("The general rule with reference to this feature is considered and set out in the great series of volumes of jurisprudence familiar to the courts. In 52 Am. Jur. 440, this rule is stated, 'It is a conceded general rule that all persons or entities are liable for torts committed by them, or by their agents while acting within the scope of their duties.'").

15. Respondents who are natural persons will additionally be subject to personal liability for corporate misconduct. *Hilzendager v. Skwarok*, 335 N.W.2d 768 (N.D. 1983)(quoting *Schriock v. Schriock*, 128 N.W.2d 852, 866 (N.D. 1964)("... but,

when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.' Fletcher, Private Corporations Sec. 41 (1963 rev. vol.).") The crime/fraud exception to the protections of corporate form has long been recognized in North Dakota, "neither law nor equity will ever recognize the right of a corporate entity to become the receptacle or cover for fraud or wrong based on deception for the purpose of defeating the right of innocent parties." *McFadden v. Jenkins*, 169 N.W. 151, 163 (N.D. 1918). See also *Danks v. Holland*, 246 N.W.2d 86 (N.D. 1976); *Family Center Drug v. North Dakota St. Bd. of Pharm.*, 181 N.W.2d 738, 745 (N.D. 1970).

ORDER

Respondents having failed or refused to respond to a Civil Investigative Demand as required by N.D.C.C. §51-15-04; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents, individually, and where applicable their officers, directors, owners, agents, servants, employees, contractors, representatives (extending to all "doing business as" names, formal corporate names, aliases, fictitious names of any kind or any variations of the same) as well as all other persons in active concert or participation with them, whether directly or indirectly, immediately **CEASE AND DESIST** from: 1) advertising, soliciting or selling merchandise to North Dakota consumers; 2) advertising, soliciting or selling merchandise to North Dakota through a home solicitation sale; 3) advertising, soliciting, or selling to North Dakota consumers merchandise without complying with N.D.C.C. chs. 51-18 and 51-28; and 4) engaging in any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, in violation of N.D.C.C. ch. 51-15. Respondents also shall

immediately **CEASE AND DESIST** from taking, collecting, charging, billing or accepting any payment from any North Dakota consumers, including, but not limited to, cash, check, direct credit, debits or withdrawals from North Dakota consumers' credit cards, debit cards or bank accounts for any past or future sale of merchandise or other services related to the sale of merchandise.

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 12.1-09-03 a person is guilty of a criminal offense if he or she intentionally "alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability" in an official proceeding. As such, intentional destruction of any documents related to this matter may result in criminal prosecution.

NOTICE OF CIVIL PENALTIES

YOU ARE FURTHER NOTIFIED that pursuant to N.D.C.C. § 51-15-07 any violation of this Cease and Desist Order is subject to civil penalties not to exceed \$1,000 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-15 may result in additional civil penalties of not more than \$5,000 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-18 may result in additional civil penalties of not more than \$5,000 per violation and is a Class B misdemeanor. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-28 may result in additional civil penalties of not more than \$2,000 per violation and additional civil penalties of not more than \$5,000 per violation as a separate violation of N.D.C.C. ch. 51-15. Nothing in this Order is intended to limit or waive any rights and remedies available to the State of North Dakota or consumers.

NOTICE OF RIGHT TO REQUEST HEARING

YOU ARE NOTIFIED that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondents have the right to be represented by legal counsel at the hearing.

Dated this 11th day of January, 2011.

STATE OF NORTH DAKOTA

Wayne Stenehjem
Attorney General

BY:



Parrell D. Grossman, ID No. 04684
Assistant Attorney General
Director, Consumer Protection and
Antitrust Division
Office of Attorney General
Gateway Professional Center
1050 East Interstate Avenue Ste. 200
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(701) 328-3404

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Petitioner,

**AFFIDAVIT OF SERVICE BY
MAIL, CERTIFIED MAIL AND
FACSIMILE**

-vs-

**BUSINESS RECOVERY SERVICES, LLC, an
Arizona Limited Liability Company; and
BRIAN S HESSLER, Individually**

Respondents.

CPAT 100063.002

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

Alexis Bieber states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct and made upon personal knowledge.

2. I am of legal age and on the 11th day of January, 2011, I served the CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING upon the following by placing true and correct copies thereof in an envelope addressed as follows:

FIRST CLASS MAIL

CERTIFIED MAIL RECEIPT # 7009 2820 0002 9227 2796

BRIAN HESSLER
BUSINESS RECOVERY SERVICES LLC
2753 E BROADWAY RD STE 101-147
MESA AZ 85204-1579

BRIAN HESSLER
BUSINESS RECOVERY SERVICES LLC
2753 E BROADWAY RD STE 101-147
MESA AZ 85204-1579

FIRST CLASS MAIL

BRIAN HESSLER
BUSINESS RECOVERY SERVICES LLC
1551 W CRESCENT AVE
MESA AZ 85202-2053

CERTIFIED MAIL RECEIPT # 7009 2820 0002 9227 2789

BRIAN HESSLER
BUSINESS RECOVERY SERVICES LLC
1551 W CRESCENT AVE
MESA AZ 85202-2053

FIRST CLASS MAIL

BRIAN HESSLER
BUSINESS RECOVERY SERVICES LLC
340 WEST UNIVERSITY DRIVE, SUITE 2
MESA AZ 85201-5824

CERTIFIED MAIL RECEIPT # 7009 2820 0002 9227 2772

BRIAN HESSLER
BUSINESS RECOVERY SERVICES LLC
340 WEST UNIVERSITY DRIVE, SUITE 2
MESA AZ 85201-5824

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota, as first class mail and as CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

3. Also on the 11th day of January, 2011, I served CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING upon Business Recovery Services, LLC by faxing the documents to Facsimile No. 480-636-5998 attention Brian Hessler, Business Recovery Services, LLC.



Alexis Bieber

Subscribed and sworn to before me
this 11th day of January, 2011



NOTARY PUBLIC

