



OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION
GATEWAY PROFESSIONAL CENTER
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701-328-5570 (Telephone)
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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-

**ALDERMAN ROOFING &
CONSTRUCTION, INC.;** and
DAVID ALDERMAN, Individually;

Respondents.

CPAT # 130170.002

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

Alderman Roofing & Construction, Inc.
David Alderman
702 Silver Sage Dr.
Miles City, MT 59301
and
1102 Garland
Miles City, MT 59301
406-853-6622
406-951-0928
aldermandroofing@gmail.com

(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 or are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15, commonly referred to as the "Consumer Fraud Law;" N.D.C.C. ch. 43-07, commonly referred to as the "Contractors Law" and N.D.C.C. ch. 51-04, commonly referred to as the "Transient Merchants 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 Alderman Roofing & Construction, Inc. is a Montana corporation, which was involuntarily dissolved on December 2, 2013. Respondent David Alderman is an owner of Alderman Roofing & Construction, Inc. Respondents have engaged in advertising and soliciting the sale of merchandise, including but not limited to, contracting services repairing homes. Respondents solicited and accepted payments from North Dakota consumers when Respondents did not have a contractor's license as required by N.D.C.C. ch. 43-07. Additionally, Respondents did not have a transient merchant's license as required by N.D.C.C. ch. 51-04.

3. Respondents have engaged in deceptive acts or practices during solicitations to North Dakota consumers. Respondents have made untrue, deceptive and misleading representations, or have engaged in deceptive acts or practices, with the intent that others rely thereon, including, but not necessarily limited to the following:

- 1) Respondents expressly, impliedly, or by omission of a material fact, made misrepresentations to North Dakota consumers regarding when Respondents would begin, complete, or work on the projects paid for by Respondents' customers;
- 2) Respondents expressly, impliedly, or by omission of a material fact, made

misrepresentations to North Dakota consumers including but not limited to, false representations regarding when their projects would be completed; 3) Respondents solicited and accepted pre-payment for services without performing the services as promised to consumers; and 4) Respondents expressly, impliedly, or by omission of a material fact, misrepresented to consumers that they were legally authorized to conduct contracting services in North Dakota when, in fact, Respondents did not have a contractor's license as required by N.D.C.C. ch. 43-07 or a transient merchant's license as required by N.D.C.C. ch. 51-04.

4. The Attorney General's Office has received a complaint and other information alleging that Respondents have solicited advance payments for contracting services without the required contractor or transient merchant's licenses. The Attorney General's Office received a complaint alleging that Respondents solicited and accepted \$6,975 to repair a North Dakota consumer's house. However, Respondents failed to begin working on the project or deliver any materials to the consumer. The consumer attempted to contact Respondents numerous times. However, Respondents would not answer the consumer's telephone calls. Respondent then moved back to Montana, and is now believed to be living somewhere in Glendive, Montana.

5. Respondents have made untrue, deceptive and misleading representations, and/or have made or engaged in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that others rely thereon, in violation of N.D.C.C. ch. 51-15, the Consumer Fraud Law.

6. Respondents have operated as a contractor in the state of North Dakota and have accepted payment for contracting services in excess of \$2,000. Respondents are not licensed as a contractor and it appears that Respondents have engaged in sales

activity in North Dakota without having the required contractor's license pursuant to N.D.C.C. ch. 43-07.

7. Respondents are alleged to be "transient merchants," as defined by N.D.C.C. §51-04-01(2). Respondents have offered and sold to consumers contracting services. Respondents are not licensed as a transient merchants and it appears that Respondents have engaged in sales activity in North Dakota without first obtaining the required transient merchant license pursuant to N.D.C.C. ch. 51-04.

8. 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 N.D.C.C. chs. 51-15, 43-07, and 51-04. In doing so, Respondents have committed acts in pursuit of an agreement and the agreement has proximately caused damage to North Dakota consumers.

9. 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.'").

10. 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

11. Based upon the foregoing information, it appears to the Attorney General that Respondents have engaged in violations of N.D.C.C. chs. 51-15, 43-07, and 51-04; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents and their 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) soliciting, advertising, selling, or providing in North Dakota any contracting services or merchandise, including, but not limited to, building homes or garages, and all other services and/or merchandise as defined in N.D.C.C. § 51-15-01(3); 2) soliciting using untrue, deceptive or misleading representations to consumers or engaging in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that consumers rely thereon, in violation of N.D.C.C. § 51-15-02; 3) soliciting or accepting from consumers advance payments

or consumer deposits in connection with any sale of merchandise, as defined by N.D.C.C. § 51-15-01(3); 4) providing contracting services in North Dakota in violation of N.D.C.C. ch. 43-07; and 5) engaging in any sales or business activities in North Dakota, including soliciting, advertising or selling goods, services and/or merchandise as defined N.D.C.C. § 51-15-01(3), without a Transient Merchants license. Respondents also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for the sale of contracting services or merchandise and **CEASE AND DESIST** from taking any payments from North Dakota consumers including, but not limited to, direct debits or withdrawals from North Dakota consumers' bank accounts, cash, checks, or credit card payments for the sale of contracting services or merchandise or other services and/or merchandise as defined in N.D.C.C. § 51-15-01(3).

12. **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

13. **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. 43-07 may result in additional civil penalties of not more than \$5,000 per violation and is a Class A misdemeanor. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-04 may result in additional

civil penalties of not more than \$5,000 per violation and is a Class B misdemeanor. Such penalties are separate and in addition to any civil penalties, costs, expenses, investigation fees, and attorney fees pursuant to N.D.C.C. chs. 51-15, 43-07, 51-04 or any other applicable statute. 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

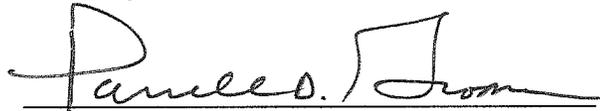
14. **YOU ARE NOTIFIED** that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondents have the right to be represented by legal counsel at the hearing.

Dated this 12th day of February, 2014.

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
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STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

-vs-

**ALDERMAN ROOFING &
CONSTRUCTION, INC.;** and
DAVID ALDERMAN, Individually;

Respondents.

**AFFIDAVIT OF SERVICE
BY CERTIFIED MAIL, FIRST
CLASS MAIL AND EMAIL**

CPAT # 130170.002

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 12th day of February, 2014, I served (1) Civil Investigative Demand and (2) Affidavit of Service by Certified Mail, First Class Mail and by Email upon the following by placing true and correct copies thereof in an envelope addressed as follows:

CERTIFIED MAIL RECEIPT # 7011 2000 0001 3047 8617

DAVID ALDERMAN
ALDERMAN ROOFING
& CONSTRUCTION INC
702 SILVER SAGE DR
MILES CITY MT 59301

FIRST CLASS MAIL

DAVID ALDERMAN
ALDERMAN ROOFING
& CONSTRUCTION INC
702 SILVER SAGE DR
MILES CITY MT 59301

DAVID ALDERMAN
ALDERMAN ROOFING
& CONSTRUCTION INC
1102 GARLAND
MILES CITY MT 59301

DAVID ALDERMAN
ALDERMAN ROOFING
& CONSTRUCTION INC
1102 GARLAND
MILES CITY MT 59301

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

3. Also on the 12th day of February, 2014, I served (1) Civil Investigative Demand and (2) Affidavit of Service by Certified Mail, First Class Mail and by Email upon David Alderman dba Alderman Roofing & Construction Inc by emailing documents to aldermanroofing@gmail.com.



ALEXIS BIEBER

Subscribed and sworn to before me
this 12th day of February, 2014.


NOTARY PUBLIC