



OFFICE OF ATTORNEY GENERAL  
CONSUMER PROTECTION AND ANTITRUST DIVISION  
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STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

-vs-

**DENIS J. LEE** doing business as **ASHLEY  
HOME EXTERIORS**

Respondent.

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

CPAT 110189.002

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

**Denis Lee**  
**Ashley Home Exteriors**  
8601 Highway 2 E  
Minot, ND 58701-2603

and

PO Box 385  
Ashley, ND 58413-0385  
701-509-3389  
701-852-2012

(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 Respondent has engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15, commonly referred to as the "Consumer Fraud Law;" and N.D.C.C. ch. 43-07, commonly referred to as the "Contractors Law." It is necessary and appropriate in the public interest and for the protection of consumers to restrain the Respondent's unlawful acts or practices.

2. Respondent Denis Lee, doing business as Ashley Home Exteriors, has engaged in advertising and soliciting the sale of merchandise, including contracting services to repair roofs and install windows and siding. Respondent has solicited and accepted payments from North Dakota consumers when Respondent did not have a contractor's license and was not in compliance with N.D.C.C. ch. 43-07.

3. North Dakota consumers have filed complaints against Respondent with the North Dakota Attorney General's Office alleging that Respondent has accepted down payments to repair their homes, but has failed to finish the projects or provide refunds. The complaints allege that Respondent has made untrue, deceptive, and misleading representations and has engaged in deceptive acts or practices, including, but not limited to the following: 1) Respondent expressly, impliedly, or by omission of a material fact, made misrepresentations to North Dakota consumers including but not limited to, false representations regarding the existence, possession, location, delivery, and transportation of materials paid for by Respondent's customers; 2) Respondent expressly, impliedly, or by omission of a material fact, made misrepresentations to North Dakota consumers regarding when Respondent would begin, complete, or work on the projects paid for by Respondent's customers; 3) Respondent solicited and accepted

pre-payment for materials and services and then failed to perform all of the services and deliver all of the materials as promised to his customers; 4) Respondent expressly, impliedly, or by omission of a material fact, misrepresented to his customers that he was legally authorized to conduct contracting services in North Dakota when, in fact, Respondent's contractor's license was expired and he was not in compliance with N.D.C.C. ch. 43-07.

4. The Attorney General received a complaint from a consumer who paid Respondent \$2,915 to replace his roof. Respondent solicited the money to purchase shingles and represented to the consumer that he was purchasing a certain brand of shingles. However, after receiving the payment Respondent failed to begin the project, and repeatedly told the consumer that he would begin working on it. After Respondent failed to commence the project, the consumer hired another contractor to replace his roof. The consumer then discovered that the brand of shingles that Respondent represented he had purchased, were not available at the alleged supplier. Eventually, five months after soliciting and accepting the \$2,915 advance payment, Respondent provided a refund.

5. The Attorney General received a complaint from a consumer who had paid Respondent \$2,400 to replace his windows and \$1,600 to replace his siding. After accepting the advance payments, Respondent began working on the projects. However, Respondent failed to properly install the windows, and failed to completely install the siding. Respondent has not provided a refund or finished the projects. When Respondent solicited and accepted the consumer's advance payment his contractor's license was expired and he was not in compliance with N.D.C.C. ch. 43-07.

6. After receiving consumer complaints and other information regarding Respondent's business activities, the Attorney General commenced an investigation into Respondent's business practices and discovered he was operating without a contractor's license and was not in compliance with N.D.C.C. ch. 43-07.

7. Respondent has operated as a contractor in the state of North Dakota and has accepted payment for contracting services in excess of \$2,000. Respondent is not currently licensed as a contractor and it appears that Respondent has engaged in sales activity in North Dakota without being properly licensed pursuant to N.D.C.C. ch. 43-07.

8. Respondent has made untrue, deceptive and misleading representations, and/or has 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.

9. Respondent is liable for his 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.'").

#### ORDER

Based upon the foregoing information, it appears to the Attorney General that Respondent has engaged in violations of N.D.C.C. chs. 51-15 and 43-07; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondent and

his 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 him, whether directly or indirectly, immediately **CEASE AND DESIST** from: 1) soliciting, advertising, selling, or providing in North Dakota home improvement repairs and services, including, but not limited to, repairing roofs and installing windows and siding, 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); and 4) providing contracting services in North Dakota in violation of N.D.C.C. ch. 43-07. Respondent also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for the sale of contracting and home improvements, repairs, or services 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).

**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. 43-07 may result in additional civil penalties of not more than \$5,000 per violation and is a Class A 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. ch. 51-15, 43-07 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**

**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. Respondent has the right to be represented by legal counsel at the hearing.

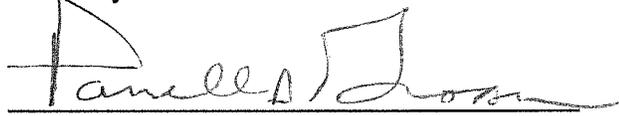
Dated this 26th day of October, 2012.

**STATE OF NORTH DAKOTA**

Wayne Stenehjem

Attorney General

BY:



Parrell D. Grossman, ID No. 04684

Assistant Attorney General

Director

Consumer Protection and

Antitrust Division

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