

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)
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STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

-vs-

**PJD CONSTRUCTION, LLC, and
PATRICK J. DELARE, individually;**

Respondents.

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

CPAT # 120329.003

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

PJD Construction, LLC
1167 37th Ave SE
Becker, MN 55308
320-250-1715

Patrick J. Delare
1167 37th Ave SE
Becker, MN 55308
320-250-1715

(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. 51-15, 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 PJD Construction, LLC (hereinafter "PJD") is a Minnesota limited liability company. Respondent Patrick J. Delare (hereinafter "Delare") is the owner of PJD. Respondents have engaged in advertising and soliciting the sale of merchandise, including but not limited to, contracting services to construct houses and pole barns. Respondents have operated as a contractor 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 license as required by N.D.C.C. ch. 51-04. PJD Construction, LLC is not registered as a foreign limited liability company with the North Dakota Secretary of State's Office nor does it have a certificate of authority as required by N.D.C.C. ch. 10-32.

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 materials would be delivered; 3) Respondents solicited and accepted pre-payment for materials and services without performing the services or failing to deliver the materials as promised to consumers; 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; and 5) Respondents expressly, impliedly, or by omission of a material fact, misrepresented to consumers that they were legally authorized to conduct business in North Dakota when, in fact, Respondents failed to be licensed as a transient merchant pursuant to N.D.C.C. ch. 51-04.

4. The Attorney General's Office has received complaints and other information alleging that Respondents have accepted down payments to build homes and pole barns, but have failed to finish the projects or provide refunds. The Attorney General's Office received a complaint alleging that Respondents solicited and accepted approximately \$184,000 to build a home. Respondents failed to build the home to the specifications agreed to in the contract. Respondents did not purchase all of the consumer's materials, and the consumer had to repurchase them. Respondents wrote the consumer a refund check, but then stopped payment on it. The consumer has had to hire additional contractors to finish the project. The Attorney General's Office also has received information that two separate consumers have paid Respondents \$63,000

and \$60,000 to erect their pole barns. However, Respondents have failed to finish erecting their buildings.

5. The Attorney General, pursuant to N.D.C.C. § 51-15-06.1, entered into an Assurance of Voluntary Compliance on November 5, 2012 with PJD Construction, LLC for operating without a contractor's license as required by N.D.C.C. ch. 43-07. The Assurance of Voluntary Compliance was based upon information that the Respondents had performed work for another contractor as a subcontractor. Respondents, including Delare, paid a total \$1,000 fee at that time in settlement of that violation. Delare, at that time, did not disclose to the Attorney General that he had solicited and accepted advance payments for the three construction projects identified in paragraph 4, prior to the execution of the Assurance of Voluntary Compliance. The Attorney General later discovered this information through an investigation and consumer complaints. The Attorney General's investigation and related consumer complaints revealed that Delare had solicited and accepted total payment from a consumer in the amount of approximately \$184,000 for the construction of a home, as referenced in paragraph 4. Delare, however, failed to complete the construction of the home. The Attorney General's investigation and related consumer complaints further revealed that Delare also had solicited and accepted advance deposits from two additional consumers in the total amount of \$123,000 for the erection of two pole barns, as referenced in paragraph 4. Delare, however, failed to completely erect the two pole barns. At the times Delare solicited and accepted the advance payments, and partially erected the home and two pole barns, he did not hold a North Dakota contractor's license and engaged in violations of N.D.C.C. ch. 43-07, and he did not hold a North Dakota transient merchant's license and engaged in violations of N.D.C.C. ch. 51-04. Furthermore, the Attorney General alleges that Delare continued to

operate PJD Construction, LLC, in violation of the Assurance of Voluntary Compliance and in violation of N.D.C.C. chs. 43-07 and 51-04, without obtaining a contractor's license and a transient merchant's license, by visiting the premises of one of the two consumers discussed herein to negotiate with the consumer and a potential subcontractor for the erection of the building.

6. 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.

7. 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 obtaining the required contractor's license pursuant to N.D.C.C. ch. 43-07.

8. 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 merchandise and services, including, but not limited to, merchandise and services to erect pole barns and build houses. Respondents are not licensed as a transient merchant 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. Therefore, said sales transactions are invalid.

9. 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.

10. 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.'").

11. 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

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, erecting pole barns or constructing houses, 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 as required pursuant to N.D.C.C. ch. 51-04. 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).

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. 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.

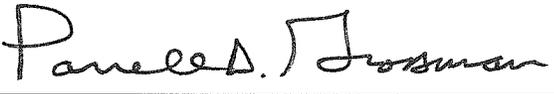
NOTICE OF RIGHT TO REQUEST HEARING

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 9th day of April, 2013.

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 E. Interstate Ave., Suite 200
Bismarck, ND 58503-5574
(701) 328-3404

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

-vs-

**PJD CONSTRUCTION, LLC, and
PATRICK J. DELARE, individually;**

Respondents.

**AFFIDVIT OF SERVICE BY
CERTIFIED MAIL AND FIRST
CLASS MAIL**

CPAT # 120329.003

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 9th day of April, 2013, I served (1) Cease and Desist Order, Notice of Civil Penalty and Notice of Right to Request a Hearing and (2) Affidavit of Service by Certified Mail and First Class Mail upon the following by placing a true and correct copies thereof in an envelope addressed as follows:

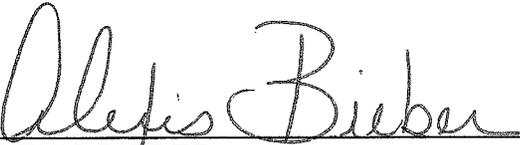
FIRST CLASS MAIL
PJD CONSTRUCTION LLC
1167 37TH AVE SE
BECKER MN 55308

RETURN RECEIPT # 7003 2260 0001 3517 1996
PJD CONSTRUCTION LLC
1167 37TH AVE SE
BECKER MN 55308

FIRST CLASS MAIL
PATRICK J DELARE
1167 37TH AVE SE
BECKER MN 55308

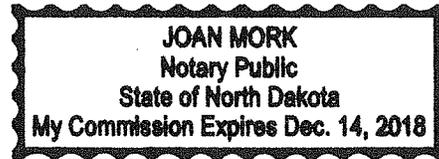
RETURN RECEIPT # 7003 2260 0001 3517 1989
PATRICK J DELARE
1167 37TH AVE SE
BECKER MN 55308

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


ALEXIS BIEBER

Subscribed and sworn to before me
this 9th day of April, 2013.


NOTARY PUBLIC



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