



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-

**BCS FENCE & SERVICES, LLC;**  
**KENNY HUFFSTUTLER**, individually; and  
**JESSICA HUFFSTUTLER**, individually;

Respondents.

CPAT # 130262.003

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

**BCS Fence & Services, LLC**  
**Kenny Huffstutler**  
 165 6<sup>th</sup> St W.  
 Dickinson, ND 58601  
 701-590-8890

and

**BCS Fence & Services, LLC**  
**Jessica Huffstutler**  
 280 7th St West  
 Dickinson, ND 58601-4339  
 701-483-3823  
 Email: bcs@live.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," 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 Respondents' unlawful acts or practices.

2. Respondent BCS Fence & Services, LLC is a North Dakota limited liability company. Respondent Jessica Huffstutler is the president and Kenny Huffstutler is the vice president of BCS Fence & Services, LLC. Respondents have engaged in advertising and soliciting the sale of merchandise, including but not limited to, contracting services to erect fences in North Dakota. 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.

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.

4. The Attorney General's Office has received complaints and other information alleging that Respondents have performed work in North Dakota without a contractor license as required by N.D.C.C. ch. 43-07. The Attorney General's Office received a complaint alleging that Respondents provided a bid for approximately \$3,875 to erect a fence for a North Dakota consumer. After Respondents solicited and accepted an advance deposit in the amount of \$1,937.50 from the consumer, Respondents failed to begin the project or deliver any of the materials. The Attorney General also has received a complaint alleging that Respondents solicited and accepted an advance payment of \$1,907.50 from another North Dakota consumer after agreeing to erect his fence for \$3,815. However, Respondents failed to begin the project and only provided a refund after the Attorney General's Office begin mediating the consumer's complaint.

5. Before issuing this Cease and Desist Order the Attorney General attempted to resolve this matter with an Assurance of Voluntary Compliance in which Respondents would be required to discontinue all business in North Dakota and provide restitution to their customers. However, Respondents stopped communicating with the Attorney General, and a formal agreement was never executed.

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 on projects that have exceeded \$2,000. Respondents are not licensed as contractors 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. 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, and 43-07. 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 and 43-07; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents immediately **CEASE AND DESIST** from: 1) soliciting, advertising, selling, or providing in North Dakota any contracting services or merchandise, including, but not limited to, fencing, 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. 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. 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, and 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**

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 18th day of March, 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

Gateway Professional Center

1050 E. Interstate Ave., Suite 200

Bismarck, ND 58503-5574

(701) 328-3404

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OFFICE OF ATTORNEY GENERAL

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CPAT # 130262.003

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 18th day of March, 2014, I served **CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING AND AFFIDAVIT OF SERVICE BY CERTIFIED MAIL, FIRST CLASS MAIL, AND EMAIL** upon the following by placing a true and correct copies thereof in an envelope addressed as follows:

*FIRST CLASS MAIL*  
KENNY HUFFSTUTLER  
165 6TH ST W  
DICKINSON ND 58601

*RETURN RECEIPT # 7011 1570 0001 5793 9051*  
KENNY HUFFSTUTLER  
165 6TH ST W  
DICKINSON ND 58601

FIRST CLASS MAIL

BCS FENCE & SERVICES LLC  
165 6TH ST W  
DICKINSON ND 58601

RETURN RECEIPT # 7011 1570 0001 5793 9044

BCS FENCE & SERVICES LLC  
165 6TH ST W  
DICKINSON ND 58601

FIRST CLASS MAIL

JESSICA HUFFSTUTLER  
280 7TH ST WEST  
DICKINSON ND 58601-4339

RETURN RECEIPT # 7011 1570 0001 5793 9037

JESSICA HUFFSTUTLER  
280 7TH ST WEST  
DICKINSON ND 58601-4339

FIRST CLASS MAIL

BCS FENCE & SERVICES LLC  
280 7TH ST WEST  
DICKINSON ND 58601-4339

RETURN RECEIPT # 7011 1570 0001 5793 9020

BCS FENCE & SERVICES LLC  
280 7TH ST WEST  
DICKINSON ND 58601-4339

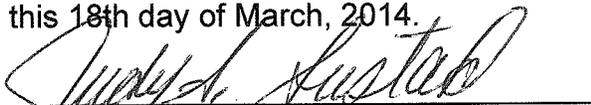
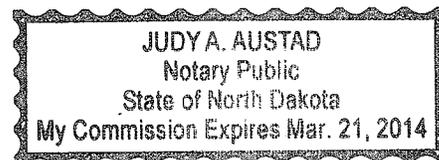
and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

3. Also on the 18th day of March, 2014, I served **CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING AND AFFIDAVIT OF SERVICE BY CERTIFIED MAIL, FIRST CLASS MAIL, AND EMAIL** upon Jessica Huffstutler, by emailing the documents to [bcslive.com](mailto:bcslive.com).



ALEXIS BIEBER

Subscribed and sworn to before me  
this 18th day of March, 2014.

  
NOTARY PUBLIC

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News Release