



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-

ED MCDONALD doing business as
ASPHALT SEAL COATING and
E. MCDONALD ASPHALT SEAL COATING

Respondent.

CPAT # 130265.001

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

Ed McDonald
410 N. Cherry Ln #4
Fort Worth, TX 76108-1927
and
2810 158th ST NE
Menoken, ND 58558-9640
and
800 S 3rd St.
Bismarck 58504-5728
and
20600 AdventureLand Dr.
Altoona, IA 50009
888-586-1104
macsasphalt24@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 Respondent has engaged in or is 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. 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 Respondent's unlawful acts or practices.

2. Respondent Ed McDonald, doing business as Asphalt Seal Coating and E. McDonald Asphalt Seal Coatin, has engaged in advertising and soliciting the sale of merchandise, including but not limited to, contracting services to repair and install asphalt. Respondent solicited and accepted payments from North Dakota consumers when Respondent did not have a transient merchant's license as required by N.D.C.C. ch. 51-04.

3. Respondent Ed McDonald, has been the subject of North Dakota consumer complaints alleging misleading or deceptive advertising and/or fraudulent business practices in connection with the advertisement and sale of merchandise as those terms are defined in N.D.C.C. § 51-15-01. Allegations have been made that Respondent, in connection with the sale of merchandise, has made untrue, deceptive and misleading representations, and/or has made or engaged in deceptive acts or practice, 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 alleged deceptive practices

include misrepresentations regarding how much asphalt would be laid, how the driveway would be graded, and when Respondent would finish or repair the project. Additionally, Respondent expressly, impliedly, or by omission of a material fact, misrepresented to consumers that he was legally authorized to conduct contracting services in North Dakota when, in fact, Respondent did not have a transient merchant's license as required by N.D.C.C. ch. 51-04.

4. The Attorney General has received complaints and other information alleging that Respondent received a total of \$7,500 to lay asphalt on a shared road between two North Dakota consumers' properties. Respondent failed to properly grade the road, as the agreement required, and he misrepresented the thickness of the asphalt. Additionally, Respondent did not have a transient merchant's license as required by N.D.C.C. ch. 51-04.

5. Before issuing this Cease and Desist Order the Attorney General attempted to contact Respondent numerous times regarding resolving this matter with an Assurance of Voluntary Compliance which required Respondent to become properly licensed and to provide a refund to the consumers that filed complaints against him. However, Respondent stopped communicating with the Attorney General, and a formal agreement was never executed.

6. 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.

7. 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.

8. Respondent is alleged to be a "transient merchant," as defined by N.D.C.C. §51-04-01(2). Respondent has offered and sold to consumers asphalt maintenance products and repair services. Respondent is not licensed as a transient merchant and it appears that Respondent has engaged in sales activity in North Dakota without first obtaining the required transient merchant license pursuant to N.D.C.C. ch. 51-04.

9. Respondent 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 51-04. In doing so, Respondent has committed acts in pursuit of an agreement and the agreement has proximately caused damage to North Dakota consumers.

10. 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

11. 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 51-04; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondent immediately **CEASE AND DESIST** from: 1) soliciting, advertising, selling, or providing in North Dakota any contracting services or merchandise, including, but not limited to, repairing or installing asphalt, 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) 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. Respondent 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. 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, 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.

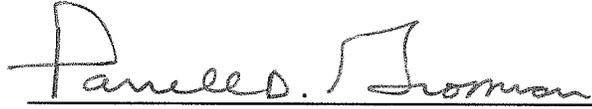
NOTICE OF RIGHT TO REQUEST HEARING

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. Respondent has 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

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

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

-vs-

ED MCDONALD doing business as
ASPHALT SEAL COATING and
E. MCDONALD ASPHALT SEAL COATIN

Respondent.

CPAT # 130265.001

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
ED MCDONALD
410 N CHERRY LN #4
FORT WORTH TX 76108-1927

RETURN RECEIPT # 7011 1570 0001 5793 8986
ED MCDONALD
410 N CHERRY LN #4
FORT WORTH TX 76108-1927

FIRST CLASS MAIL
ED MCDONALD
2810 158TH ST NE
MENOKEN ND 58558-9640

RETURN RECEIPT # 7011 1570 0001 5793 8993
ED MCDONALD
2810 158TH ST NE
MENOKEN ND 58558-9640

FIRST CLASS MAIL
ED MCDONALD
800 S 3RD ST
BISMARCK ND 58504-5728

RETURN RECEIPT # 7011 1570 0001 5793 9006
ED MCDONALD
800 S 3RD ST
BISMARCK ND 58504-5728

FIRST CLASS MAIL
ED MCDONALD
20600 ADVENTURELAND DR
ALTOONA IA 50009

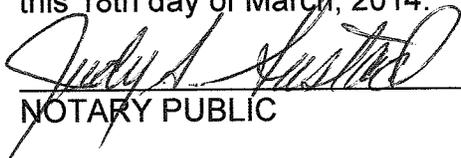
RETURN RECEIPT # 7011 1570 0001 5793 9013
ED MCDONALD
20600 ADVENTURELAND DR
ALTOONA IA 50009

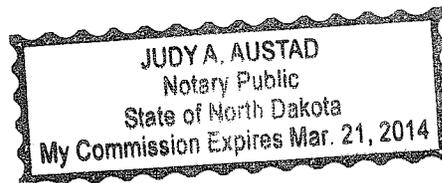
and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

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 Ed McDonald, by emailing the documents to macsasphalt24@gmail.com.


ALEXIS BIEBER

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


NOTARY PUBLIC



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News Release