



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-

NORTHSHORE PUBLISHERS,
NORTHSHORE PUBLISHING,
NORTH SHORE MARKETING,
JOHN GALLI, Individually

Respondents.

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

CPAT 130365.002

To each of the individuals and entities identified below (hereinafter collectively "Respondents"):

Northshore Publishers
30 Eastern Ave
Malden MA 02148-5000

Northshore Publishing
30 Eastern Ave
Malden, MA 02148-5000

North Shore Marketing
30 Eastern Ave
Malden, MA 02148-5000

John Galli
30 Eastern Ave
Malden, MA 02148-5000

(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 reason 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;" ch. 51-28, commonly referred to as the "Do Not Call Law," or N.D.C.C. ch. 51-18, commonly referred to as the "Home Solicitation Sales Statute." Respondents have refused or failed to respond to the Attorney General's Civil Investigative Demand, issued to Respondents pursuant to N.D.C.C. § 51-15-04. 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 Northshore Publishers is a company located in Massachusetts with the principal place of business located at 30 Eastern Ave, Malden, Massachusetts. Respondent Northshore Publishers is also doing business under the names Northshore Publishing and North Shore Marketing. Respondent John Galli is believed to be an owner and manager of Northshore Publishers aka Northshore Publishing aka North Shore Marketing. Mr. Galli uses the address at 30 Eastern Ave, Malden, Massachusetts as his business address. Northshore Publishers aka Northshore Publishing aka North Shore Marketing, and its owner John Galli ("Respondents") are engaged in the solicitation and sale of magazine subscriptions.

3. The Attorney General received a consumer complaint and other information indicating that Respondents are marketing, soliciting and selling merchandise to North Dakota consumers, without complying with the requirements of

the North Dakota Home Solicitation statute, N.D.C.C. ch. 51-18. N.D.C.C. ch. 51-18 regulates home solicitation sales and, among other things, prohibits Respondents from soliciting or accepting any payment from a North Dakota consumer until Respondents have received an original copy of the sales contract signed by the consumer. Violations of N.D.C.C. ch. 51-18 are violations of N.D.C.C. ch. 51-15. The consumer complaint alleges Respondents attempted to solicit payment from a consumer over the phone by asking for credit card information and checking account information, in violation of N.D.C.C. § 51-18-04.2.

4. The consumer complaint further indicates that Respondents may be engaged in telephone solicitations in violation of N.D.C.C. ch. 51-28, the Do Not Call law, by placing telephone solicitations to telephone lines of subscribers in North Dakota who, for at least 31 days before the date the call is made, have been on the North Dakota or Federal Trade Commission do-not-call list. The consumer complaint alleges Respondents placed a solicitation call to a consumer who had been registered on the do-not-call list for at least 31 days before the call was made.

5. After receiving the consumer complaint, the Attorney General's Consumer Protection Division forwarded the complaint to Respondents for a response. A response to the complaint was received on December 16, 2013. However, the response did not provide sufficient information to determine whether Respondents are in compliance with North Dakota law. Based on the information indicating that Respondents may be engaged in violation of North Dakota law, a call was placed to Respondents on December 17, 2013, requesting additional information regarding Respondent's business practices in the State of North Dakota. Respondents would not provide the requested information and ended the call.

6. Based on Respondents' failure to provide the information requested relating to the consumer complaint and their business activities in North Dakota, the Attorney General's Consumer Protection Division issued a Civil Investigative Demand on December 18, 2013, pursuant to the Attorney General's authority under N.D.C.C. § 51-15-04. The Civil Investigative Demand was issued to Northshore Publishers dba Northshore Publishing, and was sent to Northshore Publishers dba Northshore Publishing and to John Galli via first class mail and via certified mail on December 18, 2013. The certified mail was signed for on December 26, 2013. The Civil Investigative Demand required Respondents to provide to the Attorney General certain information and documentation requested by January 31, 2014. No response was received to the Civil Investigative Demand.

7. A letter was mailed to Respondents on February 4, 2014, requesting a response to the Civil Investigative Demand. Respondents were requested to respond no later than February 14, 2014. However, the Attorney General has not received any communication from Respondents in response to the Civil Investigative Demand.

8. Respondents did not comply with the Attorney General's Civil Investigative Demand and, pursuant to N.D.C.C. § 51-15-07, the Attorney General may issue a cease and desist order for the Respondents' failure or refusal to file a statement or report under N.D.C.C. ch. 51-15.

9. Respondents who are officers or agents of a company are responsible for responding to a Civil Investigative Demand lawfully issued to the company. "[A] lawful judicial command to a corporation is in effect a command to its officers...." *Child v. Washed Sand & Gravel Co.*, 233 N.W. 586, 562 (Minn. 1930); See also *Fargo Women's Health Organization, Inc. v. Larson*, 391 N.W.2d 627, 633 (N.D. 1986)(an officer or

agent of a corporation may be found in contempt of court if that officer or agent was responsible for the acts or inaction of the corporation that constituted the contempt).

10. 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. ch. 51-15. In doing so, Respondents have committed acts in pursuit of an agreement and the agreement has proximately caused damage to North Dakota consumers.

11. 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.'").

12. 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 failed or refused to respond to the Civil Investigative Demand as required by N.D.C.C. § 51-15-04, and that Respondents have engaged in violations of N.D.C.C. chs. 51-15, 51-18 and 51-28, and; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents, individually, and where applicable their officers, directors, owners, 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) advertising, soliciting or selling merchandise to North Dakota consumers, including magazine subscriptions; 2) advertising, soliciting, or selling merchandise to a North Dakota consumer without providing the consumer the written and verbal notice of rights to cancel as required by N.D.C.C. ch. 51-18; 3) soliciting or accepting any payment from a North Dakota consumer without first receiving an original copy of a signed sales contract from the consumer, that complies with the requirements of N.D.C.C. ch. 51-18; 4) engaging in telephone solicitations to the telephone line of any subscriber in North Dakota who, for at least 31 days before the date the call is made, has been on the North Dakota or Federal Trade Commission do-not-call list. Respondents also shall immediately **CEASE AND DESIST**

from issuing any invoices or bills to North Dakota consumers for the sale of merchandise and **CEASE AND DESIST** from soliciting, taking, collecting or accepting 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 merchandise or other services related to the sale of merchandise.

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. 51-18 may result in additional civil penalties of not more than \$5,000 per violation and is a Class B misdemeanor. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-28 may result in additional civil penalties of not more than \$2,000 per violation. 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 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.

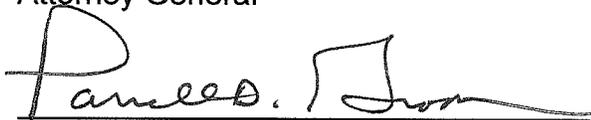
Dated this 28th day of February, 2014

STATE OF NORTH DAKOTA

Wayne Stenehjem

Attorney General

BY:



Parrell D. Grossman, ID No. 04684

Assistant Attorney General

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