



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,

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

-VS-

SERVICE PRO PLUMBING, INC; and
GRANT NELSON, Individually

Respondents.

CPAT # 120117.002

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

**Service Pro Plumbing, Inc., and
 Grant Nelson**
 31007 NE Mystic Dr.
 Yacolt, WA 98675-3823
 and
 PO Box 415
 Yacolt, WA 98675-0599
 and
 PO Box 2003
 Battle Ground, WA 98604-2003
 and
 416 12th St
 Battle Ground, WA 98604-8181
 and
 317 3rd Ave NE
 Watford City, ND 58854
 and
 PO Box 813
 Watford City, ND 58854-0813

306-903-0655
spplumbinginc@yahoo.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;" N.D.C.C. ch. 43-07, commonly referred to as the "Contractors Law;" and N.D.C.C. ch. 43-18, commonly referred to as the "Plumbers 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 Service Pro Plumbing, Inc. is a North Dakota corporation. Respondent Grant Nelson is the president of Service Pro Plumbing, Inc. Respondents have engaged in advertising and soliciting the sale of merchandise, including but not limited to, contracting services for plumbing, excavating, and installing heating and cooling appliances. 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. Additionally, Respondents did not have a plumber's license as required by N.D.C.C. ch. 43-18 for the work Respondents performed.

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 or fixed; 3) Respondents solicited and accepted pre-payment for services without performing the services 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 properly licensed as a plumber pursuant to N.D.C.C. ch. 43-18.

4. The Attorney General's Office has received complaints and other information alleging that Respondents have performed work in North Dakota without the required contractor and plumbing licenses and have failed to correctly install sewer lines and heating and cooling appliances, which has caused significant damage to North Dakota consumers' property. The Attorney General's Office received a complaint alleging that Respondents solicited and accepted approximately \$16,000 to install a furnace and air conditioner. The complainant alleged that the air conditioner never worked and the furnace only worked for a month. Respondents misrepresented to the consumer that they would fix the installation, but ultimately moved to Washington and

never correctly installed the appliances. The consumer had to pay another contractor \$8,500 to properly install the appliances. The Attorney General also has received complaints alleging that Respondents accepted \$13,250 to repair a sewer line, and failed to finish the project. During this time Respondents did not have a contractor's license as required by N.D.C.C. ch. 43-07 or a plumber's license as required by N.D.C.C. ch. 43-18. Respondent Grant Nelson has been charged in McKenzie County with nineteen counts of engaging in the business of a plumber at a location with a public waterworks system without a license. However, it appears that Respondent Grant Nelson no longer lives in North Dakota and bench warrants were issued for his arrest after he failed to appear in court.

5. Before issuing this Cease and Desist Order the Attorney General attempted to contact Respondents' numerous times regarding resolving this matter with an Assurance of Voluntary Compliance in which Respondents would be required to discontinue all business in North Dakota. 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 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. It is alleged that Respondents have engaged in the business of a master plumber, journeyman plumber, or plumber's apprentice in McKenzie County, which has a public system of waterworks or sewerage, without being registered and licensed to do so by the North Dakota state board of plumbing as required by N.D.C.C. § 43-18-11.

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 43-18. 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

12. 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 43-18; **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, plumbing, excavating, and installing heating and cooling appliances, 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 business of a master plumber,

journeyman plumber, or plumber's apprentice in any location in North Dakota which has a public system of waterworks or sewerage without being registered and licensed to do so by the North Dakota state board of plumbing as required by N.D.C.C. ch. 43-18. 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).

13. **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

14. **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. 43-18 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, 43-18 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

15. **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 31st day of October, 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 EX REL.
WAYNE STENEHJEM,
ATTORNEY GENERAL,

Petitioner,

-vs-

SERVICE PRO PLUMBING, INC; and
GRANT NELSON, Individually

Respondents.

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

CPAT # 120117.002

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

1. Alexis Bieber states under oath as follows:

2. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct and made upon personal knowledge.

3. I am of legal age and on the 31st day of October, 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, 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
GRANT NELSON
SERVICE PRO PLUMBING INC
31007 NE MYSTIC DR
YACOLT WA 98675-3823

CERTIFIED RETURN RECEIPT # 7011 2000 0001 3047 8556
GRANT NELSON
SERVICE PRO PLUMBING INC
31007 NE MYSTIC DR
YACOLT WA 98675-3823

FIRST CLASS MAIL
GRANT NELSON
SERVICE PRO PLUMBING INC
PO BOX 415
YACOLT WA 98675-0599

CERTIFIED RETURN RECEIPT # 7011 2000 0001 3047 8549
GRANT NELSON
SERVICE PRO PLUMBING INC
PO BOX 415
YACOLT WA 98675-0599

FIRST CLASS MAIL
GRANT NELSON
SERVICE PRO PLUMBING INC
PO BOX 2003
BATTLE GROUND WA 98604-2003

CERTIFIED RETURN RECEIPT # 7011 2000 0001 3047 8532
GRANT NELSON
SERVICE PRO PLUMBING INC
PO BOX 2003
BATTLE GROUND WA 98604-2003

FIRST CLASS MAIL
GRANT NELSON
SERVICE PRO PLUMBING INC
416 12TH ST
BATTLE GROUND WA 98604-8181

CERTIFIED RETURN RECEIPT # 7011 2000 0001 3047 8525
GRANT NELSON
SERVICE PRO PLUMBING INC
416 12TH ST
BATTLE GROUND WA 98604-8181

FIRST CLASS MAIL
GRANT NELSON
SERVICE PRO PLUMBING INC
317 3RD AVE NE
WATFORD CITY ND 58854

CERTIFIED RETURN RECEIPT # 7011 2000 0001 3047 8518
GRANT NELSON
SERVICE PRO PLUMBING INC
317 3RD AVE NE
WATFORD CITY ND 58854

FIRST CLASS MAIL
GRANT NELSON
SERVICE PRO PLUMBING INC
PO BOX 813
WATFORD CITY ND 58854-0813

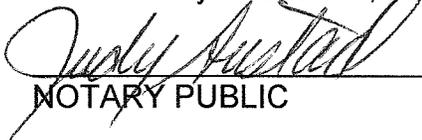
CERTIFIED RETURN RECEIPT # 7011 2000 0001 3047 8501
GRANT NELSON
SERVICE PRO PLUMBING INC
PO BOX 813
WATFORD CITY ND 58854-0813

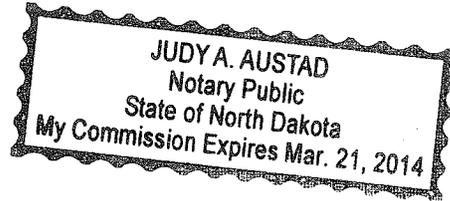
and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

4. Also on the 31st day of October, 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, FIRST CLASS MAIL AND EMAIL upon Grant Nelson, Service Pro Plumbing Inc.; by emailing the documents to spplumbinginc@yahoo.com.


ALEXIS BIEBER

Subscribed and sworn to before me
this 31st day of October, 2013.


NOTARY PUBLIC



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News Release