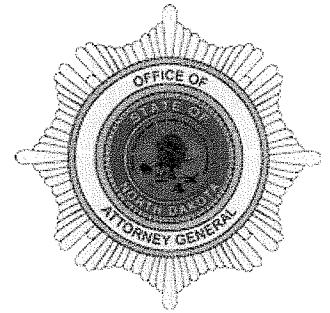




OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION
GATEWAY PROFESSIONAL CENTER
1050 E INTERSTATE AVENUE, STE 200
BISMARCK, NORTH DAKOTA 58503-5574



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-

FRANK CARRASCO doing business as
HYPER-PHONEBANK,
THE POLITICAL GROUP,
HYPERPHONEBANK.COM, and
THEPOLITICALGROUP.COM

Respondent.

CPAT # 140280.002

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

Frank Carrasco
5804 Babcock Rd.
San Antonio, TX 78240

Hyper-Phonebank
5804 Babcock Rd.
San Antonio, TX 78240
210-209-9225

The Political Group
5804 Babcock Rd.
San Antonio, TX 78240
210-209-9225
202-470-0150
info@thepoliticalgroup.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 and 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. 51-28, commonly referred to as the "Do Not Call 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 is in the business of advertising, soliciting and selling merchandise, including telemarketing services. Respondent has solicited North Dakota subscribers through telemarketing.

3. The Attorney General has received a complaint from a North Dakota subscriber registered on the Do Not Call list who alleged that Respondent had solicited her to purchase Respondent's telemarketing services by calling her and delivering a prerecorded message. In addition to soliciting a subscriber on the Do Not Call list in violation of N.D.C.C. § 51-28-06, it appears that Respondent also has violated N.D.C.C.C. § 51-28-02 by conducting the solicitation using a prerecorded message. During these telephone solicitations subscribers were instructed to visit hyperphonebank.com, which links to thepoliticalgroup.com.

4. After receiving the consumer complaint the Attorney General initiated an investigation into the telephone solicitation. As a result of the investigation, it appears

that Frank Carrasco is the individual operating hyperphonebank.com and thepolicitalgroup.com. The Attorney General issued a Civil Investigative Demand to Respondent, pursuant to the Attorney General's authority under N.D.C.C. § 51-15-04, requesting that Respondent answer questions and provide documents relating to his business activities in North Dakota. However, Respondent failed to respond to the Civil Investigative Demand. Respondent did not provide any of the documents requested or answer any of the questions asked in the Civil Investigative Demand. Pursuant to N.D.C.C. § 51-15-07, the Attorney General may issue a cease and desist order for Respondent's failure to respond to the Civil Investigative Demand.

5. It appears that Respondent is engaged in 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 and has engaged in the use of prerecorded messages in violation of N.D.C.C. ch. 51-28.

6. Violations of N.D.C.C. ch. 51-28 are violations of N.D.C.C. ch. 51-15.

7. 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.'").

8. Respondent who is a natural person will additionally be subject to personal liability for any 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 Respondent has engaged in violations of N.D.C.C. chs. 51-28 and 51-15 and has failed or refused to respond to the Civil Investigative Demand as required by N.D.C.C. § 51-15-04; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondent, and where applicable his 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) soliciting or selling to North Dakota consumers telemarketing services, and all other services and/or merchandise as defined in N.D.C.C. § 51-15-01(3); 2) 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; and 3) engaging in the use of prerecorded messages in violation of N.D.C.C. ch. 51-28. Respondent also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for any 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 medical alert devices and monitoring services, 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. 51-28 may result in additional civil penalties of not more than \$2,000 per violation and additional civil penalties of not more than \$5,000 per violation as a separate violation of N.D.C.C. ch. 51-15. 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. Respondent has the right to be represented by legal counsel at the hearing at the Respondent's expense.

Dated this 24th day of November, 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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