



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-

**FROM OLD TO NEW CONSTRUCTION,  
LLP; and THOMAS J. ZIMMERLE,**  
Individually

Respondents.

CPAT # 120060.004

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

**From Old To New Construction, LLP and  
Thomas J. Zimmerle**  
1001 11st SE  
Mandan, ND 58554-4548  
701-425-7668  
monkies57@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 From Old To New Construction, LLP is a North Dakota limited liability partnership, which was involuntarily terminated on October 6, 2011. Respondent Thomas J. Zimmerle is a partner of From Old To New Construction, LLP. Respondents have engaged in advertising and soliciting the sale of merchandise, including but not limited to, contracting services to build homes and garages. From Old To New Construction, LLP previously had a contractor's license, which expired on March 1, 2012. 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 solicited advance payments for contracting services without the required contractor license. The Attorney General's Office received a complaint alleging that Respondents solicited and accepted approximately \$136,000 during February 2012 through August 2012 to build a home for a North Dakota consumer. However, Respondents failed to begin working on the project or deliver any materials to the consumer. The consumer attempted to contact Respondents numerous times. However, Respondents would either not answer the consumer's telephone calls or provide an excuse for why Respondents failed to begin working on the project. The Attorney General referred the complaint to the Morton County State's Attorney Office, and Thomas Zimmerle has been charged with theft of property and operating without a contractor's license. The Attorney General also has received a complaint from a North Dakota consumer alleging that Respondents solicited and accepted \$2,150 on September 17, 2013 to build a garage. Again, after soliciting the advance payment Respondents failed to begin the project or refund the consumer. Respondents' contractor's license expired on March 1, 2012 and during this time Respondents did not have a contractor's license as required by N.D.C.C. ch. 43-07.

5. Before Respondents' contractor's license expired on March 1, 2012, the Attorney General had received two complaints alleging that Respondents' failed to properly finish North Dakota consumers' projects as agreed upon. In one instance

Respondents accepted \$4,000 to install drywall, and failed to start the project until six months after Respondents agreed to begin the project. The consumer has had numerous problems with the work that was performed. In another instance, Respondents solicited and accepted \$1,500 to remodel a consumer's bathroom. Respondents failed to begin working on the project and the consumer ultimately received a judgment against Respondent From Old to New Construction, LLP.

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 having 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, building homes or garages, 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, 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.

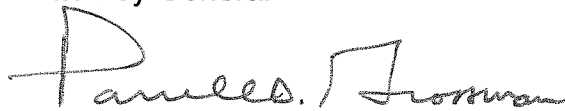
**NOTICE OF RIGHT TO REQUEST HEARING**

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

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

-vs-

**FROM OLD TO NEW CONSTRUCTION,  
LLP; and THOMAS J. ZIMMERLE,  
Individually**

Respondents.

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

CPAT # 120060.004

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*  
THOMAS J ZIMMERLE  
1001 11TH ST SE  
MANDAN ND 58554-4548

*RETURN RECEIPT # 7011 1570 0001 5793 8917*  
THOMAS J ZIMMERLE  
1001 11TH ST SE  
MANDAN ND 58554-4548



FIRST CLASS MAIL

FROM OLD TO NEW  
CONSTRUCTION LLP  
1001 11TH ST SE  
MANDAN ND 58554-4548

RETURN RECEIPT # 7011 1570 0001 5793 8924

FROM OLD TO NEW  
CONSTRUCTION LLP  
1001 11TH ST SE  
MANDAN ND 58554-4548

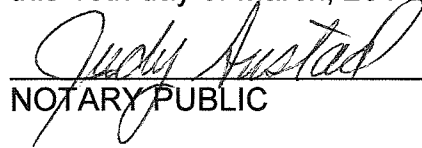
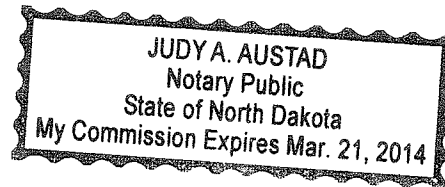
and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

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 Thomas J Zimmerle, by emailing the documents to [monkies57@live.com](mailto:monkies57@live.com).



ALEXIS BIEBER

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

  
NOTARY PUBLIC

G:\CPAT\NODAK\ZIMMERLE, TOM\ASM-C&D 031814.DOCX

News Release