

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

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

Civil No. 30-2017-CV-00279

Plaintiff,

JUDGMENT

-vs-

PREFAB PLUS, LLC, CODY
FLECKENSTEIN, and individually,

Defendants.

CPAT 160211.001

[¶1] This action came on before the Honorable Bruce B. Haskell, Judge of the Morton County District Court, South Central Judicial District, on a Motion for Summary Judgment, filed by Plaintiff, the State of North Dakota, on the relation of Wayne Stenehjem, Attorney General, and served upon Defendant by mail on August 22, 2017. Defendants failed to respond in opposition to the Motion for Summary Judgment.

[¶2] The Court, having reviewed its file and records herein, including the Motion for Summary Judgment with supporting documents, and being fully advised in the premises, having made and entered its Findings of Fact, Conclusions of Law and Order for Summary Judgment; IT IS NOW ORDERED, ADJUDGED AND DECREED:

A. Plaintiff's Motion for Summary Judgment is granted.

B. That Defendants Cody Fleckenstein and Prefab Plus, LLC be adjudged in violation of the contractor law, N.D.C.C. § 43-07-02, for engaging in the business or acting in the capacity of a contractor in North Dakota without first having a license when the cost, value, or price per job exceeded the sum of four thousand dollars.

C. That Defendants Cody Fleckenstein and Prefab Plus, LLC be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for abandoning contracts without legal excuse after a deposit of money or other consideration has been provided in violation of N.D.C.C. § 43-07-14(1)(a).

D. That Defendants Cody Fleckenstein and Prefab Plus, LLC be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for diverting funds or property received under express agreement for the prosecution or completion of a specified contract, or for a specified purpose in the prosecution or completion of any contract, and applying or using funds and property for another contract obligation or to defraud or deceive credits or the owner in violation of N.D.C.C. § 43-07-14(1)(b).

E. That Defendants Cody Fleckenstein and Prefab Plus, LLC be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in fraudulent or deceptive acts or practices or misrepresentations as a contractor in consequence of which one or more persons is injured in excess of three thousand dollars in violation of N.D.C.C. § 43-07-14(1)(c).

F. That Defendants Cody Fleckenstein and Prefab Plus, LLC be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for failing to refund fully a contracting party's advance payment where a rebuttable presumption of abandonment has arisen and a contracting party has made a request for a refund in violation of N.D.C.C. § 43-07-14(1)(f).

G. That Defendants Cody Fleckenstein and Prefab Plus, LLC be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the

intent that others rely thereon in connection with the sale or advertisement of merchandise in the State of North Dakota.

H. That Defendants Cody Fleckenstein and Prefab Plus, LLC, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, be permanently enjoined and restrained from directly or indirectly making false statements, false promises, or misrepresentations and the act, use and employment of any deceptive acts or practices in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), within the State of North Dakota.

I. That Defendants Cody Fleckenstein and Prefab Plus, LLC, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, be permanently enjoined and restrained from engaging in deceptive acts or practices and from directly or indirectly making false statements, false promises, or misrepresentations in connection with the advertisement or sale of contracting and home improvements, repairs, or services, or any other merchandise, as defined by N.D.C.C. § 51-15-01(3).

J. That Defendants Cody Fleckenstein and Prefab Plus, LLC, their agents, employees, representatives, assigns and all other persons in active concert or participation with them, pursuant to N.D.C.C. § 51-15-07, be enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services in accordance with paragraph K.

K. That, pursuant to N.D.C.C. § 51-15-07, Defendants Cody Fleckenstein and Prefab Plus, LLC, their agents, employees, representatives, assigns, and all other persons

in active concert or participation with them, are permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services, including construction work. Notwithstanding the permanent injunction, the Defendants may engage in future contracting services if the Defendants apply to the Attorney General and the Court to lift the permanent injunction and the Court finds the Defendants have fully complied with the following terms and conditions and otherwise are rehabilitated:

1. Five or more years have expired since the entry of judgment herein;
2. Defendants have paid in full all restitution to consumers pursuant to the judgment herein;
3. Defendants have paid in full restitution to all consumers that have paid Defendants advance payments for services not performed or merchandise not delivered in the state of North Dakota;
4. Defendants have paid all amounts owed to the Attorney General pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendants, or after a hearing, that the Defendants are sufficiently rehabilitated pursuant to the terms and conditions herein, the Defendants, upon order of the Court, may engage in contracting provided they have obtained a Contractor License pursuant to N.D.C.C. ch. 43-07 and have complied with all contractor licensing requirements appropriate and necessary for the work to be undertaken by them.

“Pay in full” or “paid in full” mean that all amounts must be paid, and does not include any settlement, forgiveness, compromise, reduction, or discharge of any of the debts or refund obligations.

L. That in the event Cody Fleckenstein and Prefab Plus, LLC, their agents, employees, representatives, assigns, and all other persons in active concert or participation with them, are lawfully engaged in contracting pursuant to the terms in this judgment, said Defendants, pursuant to N.D.C.C. § 51-15-07 and for a period of three years after becoming, lawfully engaged in contracting, are enjoined and restrained from soliciting or accepting from consumers advance payments or consumer deposits in excess of ten percent of the total contract price in connection with any sale of merchandise, as defined by N.D.C.C. § 51-15-01(3).

M. That Plaintiff shall have Judgment against Defendants Cody Fleckenstein and Prefab Plus, LLC, jointly and severally, in the amount of \$3,500.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

N. That Plaintiff shall have Judgment against Defendants Cody Fleckenstein and Prefab Plus, LLC, jointly and severally, in the amount of \$2,301.00 for costs, expenses, and attorney's fees pursuant to N.D.C.C. § 51-15-10, incurred by the Attorney General in the investigation and prosecution of this action.

O. That Defendants Cody Fleckenstein and Prefab Plus, LLC, jointly and severally, pursuant to N.D.C.C. § 51-15-07, shall pay restitution to all North Dakota consumers, which have suffered any ascertainable loss, and to restore to any person in interest any moneys or property, real or personal, which has been acquired by Defendants by means of any practice declared to be unlawful under N.D.C.C. § 51-15-02.

P. That Defendants Cody Fleckenstein and Prefab Plus, LLC, jointly and severally, shall pay to Plaintiff the sum of \$35,985.07, together with interest accruing thereon, as restitution for John Ronsberg.

Q. That Defendants Cody Fleckenstein and Prefab Plus, LLC, jointly and severally, shall pay Plaintiff the sum of \$30,720.00, together with interest accruing thereon, as restitution for Curt Pierce.

R. That Defendants Cody Fleckenstein and Prefab Plus, LLC, jointly and severally, shall pay Plaintiff the sum of \$18,494.44, together with interest accruing thereon, as restitution for Mike and Maria Grimm.

S. That Defendants Cody Fleckenstein and Prefab Plus, LLC, jointly and severally, shall pay Plaintiff the sum of \$1,400.00, together with interest accruing thereon, as restitution for Ryan Rayda.

T. The Judgment entered shall be a Judgment for which execution may issue.

U. Interest shall accrue on this Judgment in accordance with the interest rate on judgment as provided by N.D.C.C. § 28-20-34.

Dated this _____ day of _____, 2017.

Signed: 9/27/2017 3:29:19 PM

CLERK OF DISTRICT COURT

Trin Scharnhorst

By: _____