

STATE OF NORTH DAKOTA
COUNTY OF CASS

IN DISTRICT COURT
EAST CENTRAL JUDICIAL DISTRICT

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

Plaintiff,

-vs-

TIMOTHY ROSENE, individually, and
STUDS TO RUGS, INC.,

Defendants.

Civil No. 09-2018-CV-00948

JUDGMENT

CPAT 170207.001

[¶1] This matter having come before this Court on a stipulation entered between the Parties in the form of a Consent to Entry of Order and Judgment, which Plaintiff, the Attorney General of the State of North Dakota, by and through Assistant Attorney General Brian M. Card, Consumer Protection and Antitrust Division of the Office of the Attorney General, and Defendants Timothy Rosene and Studs to Rugs, Inc., have agreed to the entry of a Consent Order and Judgment by the Court. The Court, having reviewed the Consent Order and Judgment and being fully advised of the premises, **NOW**, upon the consent of the parties hereto, **HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

[¶2]The State of North Dakota ex rel. Wayne Stenehjem, Attorney General, has authority to act in this matter pursuant to N.D.C.C. ch. 51-15.

[¶3]This Court has personal jurisdiction over Defendants Rosene and Studs to Rugs, and this Court has subject matter jurisdiction pursuant to N.D.C.C. § 51-15-07.

[¶4]The venue of this action in Cass County is proper under N.D.C.C. §§ 28-04-03 and 28-04-05 because Defendants Rosene and Studs to Rugs had a principal place of business in Cass County, have transacted business in Cass County, and all or part of the cause of action arose in Cass County.

[¶5]Defendants Rosene and Studs to Rugs hereby accept and expressly waive any defect in connection with service of process issued by the Plaintiff on Defendants, and agree to a tolling of the statute of limitations in connection with their conduct in violation of N.D.C.C. ch. 51-15.

[¶6]Defendants admit that, with the intent that others rely, they engaged in deceptive acts or practices, fraud, false pretense, false promise, or misrepresentations, constituting violations of the consumer fraud law, N.D.C.C. § 51-15-02, by abandoning consumer projects after receiving advance deposits, diverting consumer funds toward other contractual obligations, and by failing to disclose financial difficulties and when they knew or should have known that they would be unable to complete consumer projects for which they received consumer advance deposits while engaged in the business of, or acting in the capacity, of contractors, within the meaning of N.D.C.C. § 43-07-01(1), in the State of North Dakota.

[¶7] Defendants are adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in deceptive acts or practices, fraud, false pretense, false promise, or misrepresentations by abandoning consumer projects after receiving advance deposits, diverting consumer funds toward other contractual obligations, and by failing to disclose financial difficulties when they knew or should have known that they would be unable to complete consumer projects for which they received consumer advance deposits while engaged in the business or, or acting in the capacity of, contractors, within the meaning of N.D.C.C. § 43-07-01(1), in the State of North Dakota.

[¶8] Pursuant to N.D.C.C. § 51-15-07, Defendants are permanently enjoined and restrained from directly or indirectly engaging in acts or practices in violation of N.D.C.C. § 51-15-02 in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), including while engaged in the business or acting in the capacity of a contractor, within the meaning of N.D.C.C. § 43-07-01(1), in the State of North Dakota.

[¶9] Pursuant to N.D.C.C. § 51-15-07, Defendants are restrained and enjoined from engaging in the business or acting in the capacity of a contractor, within the meaning of N.D.C.C. § 43-07-01(1), in North Dakota for a period of five (5) years, unless or until: 1) Defendants have paid in full all restitution owed to consumers pursuant to the entry of Judgment herein; 2) Defendants have paid in full restitution to all aggrieved consumers, whether subject to this Consent Agreement or other consumer judgments independently obtained; and 3) Defendants have paid in full all amounts owed to the Attorney General pursuant to the entry of Judgment. "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. Subject to the terms of this Paragraph, Defendants may not engage in the business of, or act in the capacity of, a contractor, within the meaning of N.D.C.C. § 43-07-01(1), without written consent of the Attorney General or approval of the Court.

[¶10]Notwithstanding the injunctive relief provided in Paragraph 9, *supra*, Rosene may be employed by a contractor business that is not owned, operated, or managed by a family member.

[¶11]Defendants, pursuant to N.D.C.C. § 51-15-07, are permanently enjoined from violating N.D.C.C. chs. 43-07 and 51-15.

[¶12]Defendants shall indemnify and hold harmless consumers to whom they sold services or merchandise, including while engaged in the business or acting in the capacity of a contractor, and failed to provide services or merchandise.

[¶13]Pursuant to N.D.C.C. § 51-15-07, Defendants agree and consent to the entry of a monetary judgment against Defendants, for the benefit of Bridget and Ross Bowden, 4778 Arbor Ct. S., Fargo, ND 58104, in the amount of \$8,307.57 as restitution for work performed at the Bowdens' home by Elite Plumbing and Drain Cleaning, LLC and Rainbow International Restoration & Cleaning, while working as subcontractors for Defendant Studs to Rugs, and not paid by Defendants. The \$8,307.57 restitution amount reflects a small claims judgment amount (\$1,924.18) entered against the Bowdens on April 12, 2018 in favor of Elite Plumbing and Drain Cleaning. The Bowdens satisfied the small claims judgment amount on April 26, 2018. The \$8,307.57 also reflects an amount (\$6,393.39) paid by the Bowdens to Defendants but not paid by Defendants to Rainbow International Restoration & Cleaning.

[¶14] Pursuant to N.D.C.C. § 51-15-07, Defendants agree and consent to the entry of a monetary judgment against Defendant Rosene, for the benefit of Brian Richter, 5630 Bishops Blvd. S., Fargo, ND 58104, in the amount of \$5,987.15 as restitution for work not completed or performed. Pursuant to this Consent Agreement, the parties agree that a monetary judgment will not be entered against Defendant Studs to Rugs in favor of Brian Richter because Brian Richter obtained a \$5,987.15 judgment against Studs to Rugs in Case No. 09-2017-SC-00828. Defendants agree that Defendant Studs to Rugs owes restitution, pursuant to N.D.C.C. § 51-15-07, to Brian Richter in the amount of \$5,987.15.

[¶15] Pursuant to this Consent Agreement, the parties agree that a monetary judgment will not be entered against Defendants in favor of Brian and Jana Bruhschwein because Brian and Jana Bruhschwein obtained a \$54,000.00 judgment against Defendants in Case No. 09-2017-CV-03644. Defendants agree that Defendants owe restitution, pursuant to N.D.C.C. § 51-15-07, to Brian and Jana Bruhschwein in the amount of \$54,000.00.

[¶16] Pursuant to N.D.C.C. § 51-15-07, Defendants agree and consent to the entry of a monetary judgment against Defendants, for the benefit of Betty Walicski, 510 Maple Lane, Moorhead, MN 56560, in the amount of \$6,900.00 as restitution for work not completed or performed.

[¶17] Pursuant to this Consent Agreement, the parties agree that a monetary judgment will not be entered against Defendants in favor of Kjersten Neslon and Ryan Nagle because Kjersten Nelson and Ryan Nagle agreed to dismiss Case No. 09-2017-CV-03195.

[¶18] Pursuant to N.D.C.C. § 51-15-07, Defendants agree and consent to the entry of a monetary judgment against Defendants, for the benefit of Bryan and Sandy Howard, 3213 Longfellow Rd. N., Fargo, ND 58102, in the amount of \$14,086.28 as restitution for work not completed or performed.

[¶19] Pursuant to N.D.C.C. § 51-15-07, Defendants agree and consent to the entry of a monetary judgment against Defendants, for the benefit of Dave and Jean Lux, 800 36th St. S., Moorhead, MN 56560, in the amount of \$7,677.16 as restitution for work not completed or performed.

[¶20] Pursuant to N.D.C.C. § 51-15-07, Defendants agree and consent to the entry of a monetary judgment against Defendants, for the benefit of Ryan Bosch, 714 8th Ave. E., West Fargo, ND 58078, in the amount of \$25,000.00 as restitution for work not completed or performed.

[¶21] Pursuant to N.D.C.C. § 51-15-11, Defendants agree that the Attorney General shall have judgment against them, jointly and severally, in the amount of Ten Thousand and No/100 Dollars (\$10,000.00) for civil penalties, attorney's fees, investigation costs, and expenses.

[¶22] Pursuant to the Court's Order, Index # 115, Defendants agree that the Attorney General shall have judgment against them, jointly and severally, in the amount of Two Thousand Two Hundred Fifty and No/100 Dollars (\$2,250.00).

[¶23] Defendants agree violation of this Consent Agreement is a violation of N.D.C.C. § 51-15-02, for which the Attorney General may seek civil penalties, attorney's fees, investigation costs, and any other additional relief allowed by law. Further, any violation of this Consent Agreement is also punishable as a contempt of court pursuant to

N.D.C.C. ch. 27-10 and Defendants are subject to all other civil penalties and sanctions provided by law, including attorney's fees, investigation costs, and expenses.

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

[¶25]The Judgment entered shall be a Judgment for which execution may issue.

CLERK OF DISTRICT COURT

Signed: 4/18/2019 10:17:58 AM

Jana Roberge, Deputy
