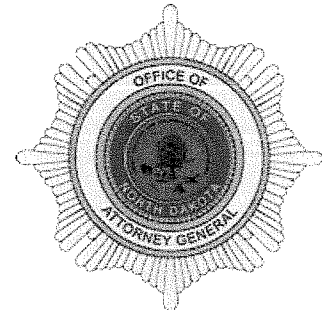




OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION
GATEWAY PROFESSIONAL CENTER
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STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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-

**DALBEC PROPERTY MANAGEMENT,
INC.;** and
RYAN DALBEC, Individually;

Respondents.

CPAT # 130334.001

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

Dalbec Property Management, Inc.
Ryan Dalbec
18590 Greentree Ct
Big Lake, MN 55309
763-222-9854

(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. 51-04, commonly referred to as the “Transient Merchants 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 Dalbec Property Management, Inc. is a Minnesota corporation. Dalbec Property Management, Inc. does not have a certificate of authority to conduct business in North Dakota and is not registered with the North Dakota Secretary of State’s Office as a foreign corporation. Respondent Ryan Dalbec is the CEO of Dalbec Property Management, Inc. Respondents have engaged in the sale of merchandise, including but not limited to, contracting services to repair siding, in North Dakota. Respondents performed contracting work in excess of \$2,000 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 transient merchant’s license as required by N.D.C.C. ch. 51-04.

3. Respondents have made untrue, deceptive and misleading representations, or have engaged in deceptive acts or practices, with the intent that others rely thereon, in violation of N.D.C.C. ch. 51-15, the Consumer Fraud Law. Respondents expressly, impliedly, or by omission of a material fact, made misrepresentations to North Dakota consumers including but not limited to, false representations regarding the quality of the work Respondents would perform. Additionally, 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 or a transient merchant's license as required by N.D.C.C. ch. 51-04.

4. The Attorney General's Office has received complaints and other information alleging that Respondents have engaged in business activities in North Dakota without the required contractor or transient merchant's licenses. The Attorney General's Office received a complaint alleging that Respondents were threatening to file a lien on a consumer's home after repairing the consumer's siding pursuant to a warranty agreement with the siding manufacturer. Respondents were allegedly not paid by the manufacturer's general contractor because Respondents did not properly prime and paint the siding and the siding would require further repairs to fulfill the consumer's warranty. Respondents disagreed with the general contractor, and would not finish or fix a number of North Dakota consumers' warranty repairs. The Attorney General's Office attempted to resolve this matter with Respondents. However, Respondent Ryan Dalbec has returned to Minnesota and his current whereabouts are unknown.

5. Respondents have operated as a contractor in the state of North Dakota and have acted in the capacity of a contractor within North Dakota when the cost, value, or price per job exceeded the sum of two thousand dollars in violation of N.D.C.C ch. 43-07. 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.

6. Respondents are alleged to be "transient merchants," as defined by N.D.C.C. §51-04-01(2). Respondents have performed contracting services for North Dakota consumers. Respondents are not licensed as a transient merchants and it

appears that Respondents have engaged in sales activity in North Dakota without first obtaining the required transient merchant license pursuant to N.D.C.C. ch. 51-04.

7. 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 51-04. In doing so, Respondents have committed acts in pursuit of an agreement and the agreement has proximately caused damage to North Dakota consumers.

8. 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.'").

9. 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

10. 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 51-04; **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, repairing siding, 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 sales or business activities in North Dakota, including soliciting, advertising or selling goods, services and/or merchandise as defined N.D.C.C. § 51-15-01(3), without a Transient Merchants license. 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).

11. **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

12. **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. 51-04 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, 51-04 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

13. **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

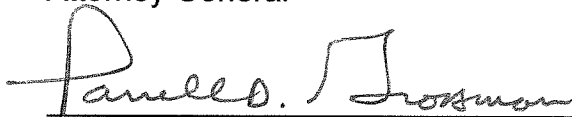
(10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondents have the right to be represented by legal counsel at the hearing.

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

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