



OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION
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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-

BARTHOLOMEW J. DALEY also known as
BUD DALEY doing business as
B.D. SEALCOATING

Respondent.

CPAT 090322.004

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

Bartholomew J. Daley also known as
Bud Daley doing business as
B.D. Sealcoating
415 Cherry Lane
Fort Worth, TX 76108
and
PO Box 150522
Fort Worth, TX 76108
and
547 S. 7th St. # 274
Bismarck, ND 58504-5859
866-608-3632
678-458-9544

(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;" N.D.C.C. ch. 51-04, commonly referred to as the "Transient Merchants 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 Respondent's unlawful acts or practices.

2. Respondent, individually and by and through his agents, is either doing business under some or all of the names identified above or, in the alternative, is engaged with those persons 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 North Dakota's Consumer Fraud Law. In doing so, Respondent has committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

3. Bartholomew Jude Daley also known as Bud Daley ("hereinafter Daley") has previously used the mailing address of 547 S. 7th St. #274, Bismarck, North Dakota 58504-4859. Daley's residence is at 415 Cherry Lane, Forth Worth, Texas 76108. Daley is the owner of the trade name B.D. Sealcoating. Respondent is in the business of providing asphalt maintenance, including, but not limited to, applying asphalt seal coating, cleaning, and striping. Respondent has also provided home improvement repairs and services. Respondent does not have a transient merchant license as

required by N.D.C.C. ch. 51-04. Respondent does not have a contractor's license as required by N.D.C.C. ch. 43-07.

4. Respondent has engaged in deceptive acts or practices during solicitations to North Dakota consumers. Respondent has made untrue, deceptive and misleading representations, or has engaged in deceptive acts or practices, with the intent that others rely thereon, including, but not necessarily limited to the following: 1) Respondent expressly, impliedly, or by omission of a material fact, misrepresented to the consumers that he was legally authorized to conduct business in North Dakota when, in fact, Respondent failed to be licensed as a transient merchant pursuant to N.D.C.C. ch. 51-04; 2) Respondent expressly, impliedly, or by omission of a material fact, misrepresented to the consumers that he was legally authorized to conduct contracting services in North Dakota when, in fact, Respondent did not have a contractor's license required by N.D.C.C. ch. 43-07; 3) Respondent expressly, impliedly, or by omission of a material fact, made misrepresentations to North Dakota consumers including but not limited to, false representations regarding the existence, possession, price, location, delivery, quality, and transportation of materials paid for by Respondent's customers; 4) Respondent expressly, impliedly, or by omission of a material fact, made misrepresentations to North Dakota consumers regarding when Respondent would begin, complete, or work on the projects paid for by Respondent's customers; 5) Respondent solicited and accepted pre-payment for materials and services without performing the services or failing to deliver the materials as promised to consumers.

5. On October 28, 2009 a consumer filed a complaint with the Attorney General alleging that: 1) Respondent agreed to paint the consumer's windows and

repair her balcony for \$3,000; 2) Respondent accepted \$1,500 as a down payment for the home improvement services; 3) Respondent represented to the consumer that his work had a lifetime guarantee; 4) the consumer made repeated requests that Respondent work on her home improvement repairs; 5) Respondent did not do any work on the consumer's home improvement project.

6. On February 2, 2009 a consumer filed a complaint with the Attorney General alleging that: 1) the consumer paid Respondent \$950.00 to apply a seal coating to his driveway and to repair the cracks in his driveway; 2) Respondent applied a seal coating on the consumer's driveway, and represented to the consumer that he had repaired the cracks; 3) the consumer later discovered that the cracks in his driveway were not properly filled; 4) the consumer requested that Respondent repair the cracks; 5) Respondent represented to the consumer that he would repair the cracks at a later date; 6) Respondent has not repaired the cracks in the consumer's driveway.

7. On March 16, 2010 a consumer filed a complaint with the Attorney General alleging that: 1) the consumer paid Respondent \$7,300.00 to repair the roof of her quonset; 2) two weeks after Respondent had supposedly repaired her quonset the roof was irreparably damaged by a wind storm and the consumer's insurance company condemned the building; 3) the consumer inspected the quonset and discovered that Respondent had not purchased or used the appropriate materials for the project.

8. Respondent has made untrue, deceptive and misleading representations, and/or has 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.

9. Respondent is alleged to be a "transient merchant," as defined by N.D.C.C. §51-04-01(2). Respondent has offered and sold to consumers asphalt maintenance products and services and home improvement services. Respondent is not licensed as a transient merchant and it appears that Respondent has engaged in sales activity in North Dakota without first obtaining the required transient merchant license pursuant to N.D.C.C. ch. 51-04.

10. Respondent has operated as a contractor in the state of North Dakota and has accepted payment for contracting services in excess of \$2,000. Respondent is not licensed as a contractor and it appears that Respondent has engaged in sales activity in North Dakota without first obtaining the required contractor's license pursuant to N.D.C.C. ch. 43-07.

11. 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.'").

ORDER

NOW, THEREFORE, IT IS ORDERED pursuant to N.D.C.C. § 51-15-07 that Respondent, individually, and his 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 him, whether directly or indirectly, immediately **CEASE AND DESIST** from: 1) soliciting, advertising, selling, or providing in North Dakota home improvement repairs and services, asphalt maintenance, including, but not limited to, applying asphalt seal coating, cleaning, and striping, 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. Respondent also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for the sale of contracting and home improvements, repairs, or services 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, home improvement services, and asphalt maintenance, repairs, or 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. 51-04 may result in additional civil penalties of not more than \$5,000 per violation and is a Class B misdemeanor. 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. ch. 51-15, 51-04, 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

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.

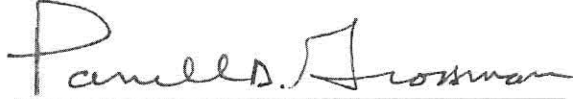
Dated this 18th day of June, 2010.

STATE OF NORTH DAKOTA

Wayne Stenehjem

Attorney General

BY:



Parrell D. Grossman, ID No. 04684

Assistant Attorney General

Director

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