



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)
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STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

-vs-

MIDWEST DISASTER RESPONSE, INC.;
MIDWESTDISASTERRESPONSE.ORG;
and **TIMOTHY P. ANDERSON**, Individually

Respondents.

**CEASE AND DESIST ORDER,
NOTICE OF CIVIL PENALTY
AND NOTICE OF RIGHT
TO REQUEST A HEARING**

CPAT #110210.001

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

Midwest Disaster Response, Inc
320 9th Ave. SW
Aberdeen, SD 57401-5930

Timothy P. Anderson
320 9th Ave. SW
Aberdeen, SD 57401-5930

Midwestdisasterresponse.org
320 9th Ave. SW
Aberdeen, SD 57401-5930
(605) 290-6619
info@midwestdisasterresponse.org

(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 and 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. Respondents, individually and by and through their agents, are either doing business under some or all of the names identified above or, in the alternative, are 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, Contractors Law, and Transient Merchants Law. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

3. On August 26, 2011 the Attorney General received information that Respondents were contracting to repair homes in Oakes, North Dakota. Respondents have provided bids for home repairs to North Dakota consumers and have represented to them that they will submit their bids to the consumers' insurance companies. Respondents represented to the public that Respondent Midwest Disaster Response, Inc. (hereinafter "MDR") is a licensed contractor. Respondents MDR and Timothy P. Anderson (hereinafter "Anderson") are not licensed contractors, according to the North

Dakota Secretary of State. The Attorney General's investigation discovered that Respondent Midwest Disaster Response, Inc. is registered with the South Dakota Secretary of State as a domestic non-profit corporation. MDR's address is 320 9th Avenue Southwest, Aberdeen South Dakota. Timothy P. Anderson is a director and registered agent of MDR. Respondents are doing business as and operate the website www.midwestdisasterresponse.org.

4. Respondents are in the business of providing contracting services, including, but not limited to, water removal, remodeling basements, and roofing. Respondents have solicited North Dakota consumers for home repairs, but do 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.

5. 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 first obtaining the required contractor's license pursuant to N.D.C.C. ch. 43-07.

6. Respondents are alleged to be a "transient merchant," as defined by N.D.C.C. §51-04-01(2). Respondents have offered and sold to North Dakota consumers home repair services and materials. Respondents are not licensed as a transient merchant 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. Based on information the Attorney General has received, it is believed that Respondents have engaged in deceptive acts or practices during solicitations to North

Dakota consumers in violation of N.D.C.C. ch. 51-15. Respondents have made untrue, deceptive and misleading representations, and/or have engaged in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations 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, misrepresented to North Dakota consumers that they were legally authorized to conduct contracting services in North Dakota when, in fact, Respondents did not have a contractor's license required by N.D.C.C. ch. 43-07. Moreover, Respondent Anderson falsely stated publicly that Respondent MDR was a Licensed contractor; and 2) Respondents expressly, impliedly, or by omission of a material fact, misrepresented to North Dakota consumers that they were legally authorized to conduct business in North Dakota when, in fact, Respondents failed to be licensed as a transient merchant pursuant to N.D.C.C. ch. 51-04;

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 North Dakota's Consumer Fraud Law at ch. 51-15, Contractor's Law at ch. 43-07, and Transient Merchants Law at ch. 51-04.

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

NOW, THEREFORE, IT IS ORDERED pursuant to N.D.C.C. § 51-15-07 that Respondents, their 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 them, whether directly or indirectly, immediately **CEASE AND DESIST** from: 1) soliciting, advertising, selling, or providing in North Dakota home repairs and services, including, but not limited to, water removal, remodeling basements, roofing, and all other services and/or merchandise as defined in N.D.C.C. § 51-15-01(3), unless Respondents are licensed as contractors pursuant to N.D.C.C.

ch. 43-07; 2) 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; 3) 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; 4) 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 5) engaging in any business activities in violation of N.D.C.C. ch. 51-15. Respondents also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for the sale of contracting and home 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 repair services, or other services and/or merchandise as defined in N.D.C.C. § 51-15-01(3), until such time as Respondents are in compliance with North Dakota laws as specified in this Cease and Desist Order.

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. 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. ch. 51-15, 43-07, and 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

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 2nd day of September, 2011.

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 East Interstate Avenue Ste. 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-

MIDWEST DISASTER RESPONSE, INC.;
MIDWESTDISASTERRESPONSE.ORG;
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Respondents.

**AFFIDAVIT OF SERVICE
BY MAIL AND CERTIFIED MAIL**

CPAT 110210.001

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

Corinne Small 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 2nd day of September, 2011, I served the CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING upon the following by placing true and correct copy thereof in an envelope addressed as follows:

FIRST CLASS MAIL

MIDWEST DISASTER RESPONSE INC
320 9TH AVE SW
ABERDEEN SD 57401-5930

FIRST CLASS MAIL

TIMOTHY P ANDERSON
320 9TH AVE SW
ABERDEEN SD 57401-5930

CERTIFIED RECEIPT NO. 7009 2820 0002 9227 2673

MIDWEST DISASTER RESPONSE INC
320 9TH AVE SW
ABERDEEN SD 58401-5930

CERTIFIED RECEIPT NO. 7009 2820 0002 9227 2680

TIMOTHY P ANDERSON
320 9TH AVE SW
ABERDEEN SD 57401-5930

FIRST CLASS MAIL

CERTIFIED RECEIPT NO. 7010 0290 0003 6685 5624

MIDWESTDISASTERRESPONSE.ORG
320 9TH AVE SW
ABERDEEN SD 57401-5930

MIDWESTDISASTERRESPONSE.ORG
320 9TH AVE SW
ABERDEEN SD 57401-5930

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota, as certified mail or first class mail, as indicated.

Corinne Small

CORINNE SMALL

Subscribed and sworn to before me
this 2nd day of September, 2011.

Judy A. Austad
NOTARY PUBLIC

