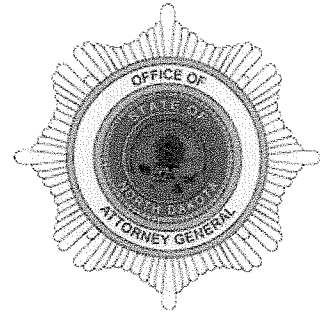




OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION
GATEWAY PROFESSIONAL CENTER
1050 E INTERSTATE AVENUE, STE 200
BISMARCK, NORTH DAKOTA 58503-5574



701-328-5570 (Telephone)
701-328-5568 (Facsimile)

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

-vs-

DEANNA PERRY, doing business as
PROTECTIVE COATINGS,

Respondent.

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

CPAT 160158.002

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

DEANNA PERRY
PROTECTIVE COATINGS
107 OAK STREET
PO BOX 108
NISLAND, SD 57762-0108

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. 51-04, commonly referred to as the "Transient Merchants Law," N.D.C.C. ch. 51-15, commonly referred to as the "Consumer Fraud Law," and N.D.C.C. ch. 51-18, commonly known as the "Home Solicitation Sales 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 her agents, is doing business under some or all of the names identified above, and has engaged in violations of North Dakota law by: 1) engaging in, doing, or transacting temporary or transient business in the State of North Dakota without applying for and receiving a transient merchant license, in violation of N.D.C.C. § 51-04-02; 2) engaging in home solicitations sales without providing both oral and written notice of cancellation rights in compliance with N.D.C.C. § 51-18-04; and 3) engaging in violations of N.D.C.C. chs. 51-04 and 51-18 and thereby violating N.D.C.C. § 51-15-02.

3. Deanna Perry's last known address is 107 Oak Street, PO Box 108, Nisland, SD 57762-0108. Deanna Perry operates Protective Coatings as a sole proprietorship from the same address.

4. Deanna Perry, doing business as Protective Coatings, is in the business of soliciting and selling merchandise, including services to seal and repair asphalt. Respondent, or Respondent's agents on Respondent's behalf, solicited North Dakota customers.

5. Respondent engaged in, did, or transacted temporary or transient business in the State of North Dakota without applying for and receiving a transient merchants license, in violation of N.D.C.C. § 51-04-02, and engaged in home solicitations sales without providing both oral and written notice of cancellation rights in compliance with N.D.C.C. § 51-18-04.

6. On July 19, 2016, The Attorney General received information that, on July 1, 2016, Respondent solicited a consumer at her home to fill cracks and seal her driveway. The consumer alleged that the Protective Coatings workers did not properly perform the work, damaging the consumer's driveway. Respondent did not provide notice of the required three-day and fifteen-day cancellation rights and did not have a transient merchant license.

7. Based on the consumer complaint and other information received, it appeared to the Attorney General that Respondent engaged in violations of North Dakota law, and the Attorney General commenced an investigation into Respondent's business practices. On November 15, 2016, the Attorney General offered an Assurance of Voluntary Compliance ("AVC") to Respondent in order to settle the licensing and cancellation rights issues without further litigation, investigation, or adjudication. The Attorney General requested return of the AVC on or before November 29, 2016. Respondent did not respond.

8. On November 30, 2016, the Attorney General sent a letter to Respondent requesting that Respondent complete and return the AVC on or before December 14, 2016. Respondent did not respond.

9. On January 4, 2017, the Attorney General issued a Civil Investigative Demand ("CID") to Respondent pursuant to the Attorney General's authority under N.D.C.C. § 51-15-04. The CID was sent to Respondent at her last known address. The CID requested response by January 18, 2016. The certified mail copy of the CID was received by Johnny Caruso at 107 Oak Street, PO Box 108, Nisland, SD 57762-0108. In lieu of responding to the CID, the Attorney General offered Respondent another

opportunity to return the AVC, this time by January 13, 2017. Respondent did return the AVC, and did not respond to the CID.

10. On January 30, 2017, the Attorney General sent Respondent a letter requesting that Respondent comply with the AVC on or before February 10, 2017. Respondent never responded to the Assurance of Voluntary Compliance and, during a telephone conversation with the Consumer Protection Division on February 16, 2016, stated a refusal to comply with the Civil Investigative Demand. Pursuant to N.D.C.C. § 51-15-07, the Attorney General may issue a cease and desist order for Respondent's failure to respond to the Civil Investigative Demand.

11. It appears to the Attorney General that Respondent, or Respondent's agents on Respondent's behalf, is engaged in violations of N.D.C.C. chs. 51-04 and 51-18 by transacting business in North Dakota without applying for and receiving a transient merchant license and is not providing notice of the required three- and fifteen-day cancellation rights. Further, it appears that Respondent has engaged in violations of ch. 51-15 by engaging in violations of N.D.C.C. chs. 51-04 and 51-18.

ORDER

Based upon the foregoing information, it appears to the Attorney General that Respondent has engaged in violations of N.D.C.C. chs. 51-04, 51-18, and 51-15 and Respondent has failed or refused to respond to the Civil Investigative Demand as required by N.D.C.C. § 51-15-04; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondent, individually, immediately **CEASE AND DESIST** from: 1) soliciting or selling services and/or merchandise as defined in N.D.C.C. § 51-15-01(3), including asphalt sealing and repair, to North Dakota consumers; and 2)

soliciting consumers using untrue, deceptive or misleading representations 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. Respondent also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for any 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 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 \$1,000.00 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 \$5,000.00 per violation. 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 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 at the Respondent's expense.

Dated this 21st day of February, 2017.

STATE OF NORTH DAKOTA

Wayne Stenehjem

Attorney General

BY: 

Parrell D. Grossman, NDBID 04684

Assistant Attorney General

Director

Consumer Protection and

Antitrust Division

Office of Attorney General

Gateway Professional Center

1050 E. Interstate Ave., Suite 200

Bismarck, ND 58503-5574

(701) 328-5570

STATE OF NORTH DAKOTA
BURLEIGH COUNTY

BEFORE THE
ATTORNEY GENERAL

IN THE MATTER OF:

DEANNA PERRY, doing business as
PROTECTIVE COATINGS

Respondent

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

CPAT 160158.002

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

[¶1] Alexis Bieber states under oath as follows: 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 21st day of February, 2017 I served the 1) CIVIL INVESTIGATIVE DEMAND AND 2) AFFIDAVIT OF SERVICE BY MAIL AND CERTIFIED MAIL upon the following by placing true and correct copies thereof in an envelope addressed as follows:

FIRST CLASS MAIL

CERTIFIED MAIL RECEIPT # 7013 1090 0000 5841 2209

DEANNA PERRY
PROTECTIVE COATINGS
107 OAK STREET
PO BOX 108
NISLAND SD 57762-0108

DEANNA PERRY
PROTECTIVE COATINGS
107 OAK STREET
PO BOX 108
NISLAND SD 57762-0108

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota, as first class mail and as CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

Alexis Bieber

Alexis Bieber

Subscribed and sworn to before me
this 21st day of February, 2017.

Jessica Juma

NOTARY PUBLIC

