

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

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

Civil No. 09-2017-CV-03028

Plaintiff,

JUDGMENT

-vs-

ANTHONY "TONY" RONALD CLINE,

Defendant.

CPAT 170151.005

[¶1] This action came on before the Honorable Frank L. Racek, Judge of the Cass County District Court, South Central Judicial District, on a Motion for Summary Judgment, filed by Plaintiff, the State of North Dakota, on the relation of Wayne Stenehjem, Attorney General, and served upon Defendant by mail on January 26, 2018. Defendant failed to respond in opposition to the Motion for Summary Judgment.

[¶2] The Court, having reviewed its file and records herein, including the Motion for Summary Judgment with supporting documents, and being fully advised in the premises, having made and entered its Findings of Fact, Conclusions of Law and Order for Summary Judgment; IT IS NOW ORDERED, ADJUDGED AND DECREED:

- A. Plaintiff's Motion for Summary Judgment is granted.
- B. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the contractor law, N.D.C.C. § 43-07-02, for engaging in the business or acting in the capacity of a contractor in North Dakota without first having a license when the cost, value, or price per job exceeded the sum of four thousand dollars.

C. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for abandoning contracts without legal excuse after a deposit of money or other consideration has been provided in violation of N.D.C.C. § 43-07-14(1)(a).

D. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for diverting funds or property received under express agreement for the prosecution or completion of a specified contract, or for a specified purpose in the prosecution or completion of any contract, and applying or using funds and property for another contract obligation or to defraud or deceive credits or the owner in violation of N.D.C.C. § 43-07-14(1)(b).

E. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in fraudulent or deceptive acts or practices or misrepresentations as a contractor in consequence of which one or more persons is injured in excess of three thousand dollars in violation of N.D.C.C. § 43-07-14(1)(c).

F. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for failing to refund fully a contracting party's advance payment where a rebuttable presumption of abandonment has arisen and a contracting party has made a request for a refund in violation of N.D.C.C. § 43-07-14(1)(f).

G. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others

rely thereon in connection with the sale or advertisement of merchandise in the State of North Dakota.

H. That Defendant Anthony "Tony" Ronald Cline, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, pursuant to N.D.C.C. § 51-15-07, be permanently enjoined and restrained from directly or indirectly making false statements, false promises, or misrepresentations and the act, use and employment of any deceptive acts or practices in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), within the State of North Dakota.

I. That Defendant Anthony "Tony" Ronald Cline, his agents, employees, representatives, assigns and all other persons in active concert or participation with him, pursuant to N.D.C.C. § 51-15-07, be enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services in accordance with paragraph J.

J. That, pursuant to N.D.C.C. § 51-15-07, Defendant Anthony "Tony" Ronald Cline, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services, including construction work. Notwithstanding the permanent injunction, Defendant may engage in future contracting services if Defendant applies to the Attorney General and the Court to lift the permanent injunction and the Court finds Defendant has fully complied with the following terms and conditions and otherwise is rehabilitated:

1. Three (3) or more years have expired since the entry of judgment herein;

2. Defendant has paid in full all restitution to consumers pursuant to the judgment herein;
3. Defendant has paid in full restitution to all consumers that have paid Defendant advance payments for services not performed or merchandise not delivered in the state of North Dakota;
4. Defendant has paid all amounts owed to the Attorney General pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendant, or after a hearing, that Defendant is sufficiently rehabilitated pursuant to the terms and conditions herein, Defendant, upon order of the Court, may engage in contracting provided he has obtained a contractor's license pursuant to N.D.C.C. ch. 43-07 and has complied with all contractor licensing requirements appropriate and necessary for the work to be undertaken by him.

"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.

K. That in the event Defendant Anthony "Tony" Ronald Cline, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is lawfully engaged in contracting pursuant to the terms in this judgment, said Defendant, pursuant to N.D.C.C. § 51-15-07 and for a period of three (3) years after becoming lawfully engaged in contracting, is enjoined and restrained from soliciting or accepting from consumers advance payments or consumer deposits in

excess of ten percent of the total contract price in connection with any sale of merchandise, as defined by N.D.C.C. § 51-15-01(3).

L. That Plaintiff shall have Judgment against Defendant Anthony "Tony" Ronald Cline for civil penalties in the amount of \$500.00, pursuant to N.D.C.C. § 51-15-11.

M. That Plaintiff shall have Judgment against Defendant Anthony "Tony" Ronald Cline in the amount of \$1,650.00 for costs, expenses, and attorney's fees pursuant to N.D.C.C. § 51-15-10, incurred by the Attorney General in the investigation and prosecution of this action.

N. That Defendant Anthony "Tony" Ronald Cline, pursuant to N.D.C.C. § 51-15-07, shall pay restitution to all North Dakota consumers, which have suffered any ascertainable loss, and to restore to any person in interest any moneys or property, real or personal, which has been acquired by Defendant by means of any practice declared to be unlawful under N.D.C.C. § 51-15-02.

O. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$1,150.00, together with interest accruing thereon, as restitution for Robert Arusell.

P. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$1,090.00, together with interest accruing thereon, as restitution for Madonna Sweeney.

Q. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$729.00, together with interest accruing thereon, as restitution for Judith Tangen.

R. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$1,111.00, together with interest accruing thereon, as restitution for Ronald Nelson.

S. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$689.00, together with interest accruing thereon, as restitution for Barbara Thompson.

T. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$100.00, together with interest accruing thereon, as restitution for Donald Roehrich.

U. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$2,550.00, together with interest accruing thereon, as restitution for Kevin Tranby.

V. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$4,700.00, together with interest accruing thereon, as restitution for Mel and Mary Beth Hieb.

W. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$1,034.00, together with interest accruing thereon, as restitution for Lois Fuchs.

X. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$934.00, together with interest accruing thereon, as restitution for Michael Schulstad.

Y. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$560.00, together with interest accruing thereon, as restitution for Clayton Anderson.

Z. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$5,331.20, together with interest accruing thereon, as restitution for Steve Krebsbach.

AA. The Judgment entered shall be a Judgment for which execution may issue.

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

Dated this _____ day of _____, 2018.

Signed: 3/12/2018 3:43:43 PM

CLERK OF DISTRICT COURT

Nicole Lunska, Deputy

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

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

Civil No. 09-2017-CV-03028

Plaintiff,

-vs-

ANTHONY "TONY" RONALD CLINE,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT**

Defendant.

CPAT 170151.005

[¶1] This matter came before the Court on Plaintiff's Motion for Summary Judgment, dated January 26, 2018 and filed on January 26, 2018. Defendant Anthony "Tony" Ronald Cline was served with the Motion for Summary Judgment by mail on January 26, 2018. More than 33 days have passed since the Defendant was served with the Motion, and Defendant is now in default and has failed to dispute the facts and allegations set forth in Plaintiff's Motion for Summary Judgment.

[¶2] WHEREFORE, the Court, having reviewed Plaintiff's Motion for Summary Judgment together with all supporting documents filed therewith and all other documents filed in this matter, and the Court being duly advised on the premises of this action, makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

[¶3] Defendant has never held a North Dakota contractor's license and is not licensed as a contractor in North Dakota.

[¶4] While unlicensed Defendant engaged in the business and acted in the capacity of a contractor in North Dakota when the cost, value, or price per job exceeded the sum of four thousand dollars.

[¶5] Defendant advertised his services in the Fargo Forum and West Fargo Pioneer using various business names, including Handyman on Duty, A-Z Handyman Services, Jack and Trades, and Handyman, Inc., none of which exist as business entities in North Dakota managed by Defendant or are registered trade names owned by Defendant. In his advertisements, Defendant advertised being licensed and bonded when he was not licensed and bonded.

[¶6] Anthony "Tony" Ronald Cline is a citizen of Minnesota and was doing business in North Dakota.

[¶7] On or about June 22, 2017, Defendant contracted with North Dakota consumer Robert Arusell, 2857 Lilac Lane, Fargo, ND 58102, who is sixty-five (65) years or older, to repair trim on garage doors and perform painting work. Mr. Arusell contacted Defendant after seeing Defendant's advertisement in the Fargo Forum. On June 22, 2017, Defendant solicited and accepted an advance payment of \$1,150.00 ostensibly for the purchase of materials for the project. Mr. Arusell paid Defendant by check (#2901). Defendant cashed or deposited the check. Approximately a week later, Defendant delivered some lumber for the project, and began tearing off existing trim. Thereafter, Defendant did not return to perform work under the contract for which he

had received payment. Defendant did not complete the project, and has not provided a refund. Instead, Defendant used Mr. Arusell's advance payment for personal expenses. Defendant represented himself as licensed and bonded to Mr. Arusell though Defendant is not licensed and bonded.

[¶8] On or about June 24, 2017, Defendant contracted with North Dakota consumer Madonna Sweeney, 2706 27th Street South, Fargo, ND 58103, to perform "light plumbing work," including replacing a valve stopper, installing a sink, installing floor tile, and replacing a second sink and related hardware. Ms. Sweeney contacted Defendant after seeing Defendant's advertisement in the Fargo Forum. On June 24, 2017, Defendant solicited and accepted an advance payment of \$707.00 ostensibly for the purchase of materials for the project. Ms. Sweeney paid Defendant by check (#3949). Defendant cashed or deposited the check. On June 25, 2017, Defendant solicited and accepted a second advance payment of \$383.00. Defendant was paid in advance for the value of the entire project. Defendant did not complete the project, and has not provided a refund. Instead, Defendant used Ms. Sweeney's advance payment for personal expenses. Defendant ignored Ms. Sweeney's repeated telephone calls and voice mails. On one occasion, Ms. Sweeney's son reached Defendant, during which Defendant represented that he would perform the work under the contract, but failed to do so. Thereafter, Defendant ignored Ms. Sweeney's son's attempts to reach him. Defendant represented himself as licensed and bonded, specifically identifying his license number as 661312, a license number not registered with the Secretary of State's Office.

[¶9] On or about July 11, 2017, Defendant contracted with North Dakota consumer Judith Tangen, 401 12th Ave. E., West Fargo, ND 58078, who is sixty-five (65) years or older, to perform work including pressure washing and staining Ms. Tangen's deck, and replacing deck boards and hand railing. Ms. Tangen contacted Defendant after seeing Defendant's advertisement in the Fargo Forum. On July 11, 2017, Defendant solicited and accepted an advance payment of \$363.00. Ms. Tangen paid Defendant by check (#18624). Id. Defendant cashed or deposited the check. On July 18, 2017, Defendant solicited and accepted a second advance payment for \$366.00. Thereafter, Defendant performed minimal work that, to Ms. Tangen, appeared to be the work of a "sixth grader." Defendant did not complete the project, and has not provided a refund. Instead, Defendant used Ms. Tangen's advance payment for personal expenses. Defendant represented himself as licensed and bonded to Ms. Tangen, including by writing license number "661312" on the top of his contract with Ms. Tangen and writing "Lic & Bonded" below that. Defendant is not licensed and bonded.

[¶10] On or about July 8, 2017, Defendant contracted with North Dakota consumer Ronald Nelson, 3005 10th Ave. N., Fargo, ND 58102, who is sixty-five (65) years or older, to perform work including window replacement and "redoing" Mr. Nelson's deck. On July 8, 2017, Defendant solicited and accepted an advance payment of \$1,111.00 ostensibly for the purchase of materials for the project, including materials for the deck and new windows. Mr. Nelson paid Defendant by check (#3001). Defendant cashed or deposited the check. Defendant performed no work, and did not provide materials for which Mr. Nelson's advance payment was intended. Defendant did not complete the project, and has not provided a refund. Instead, Defendant used Mr.

Nelson's advance payment for personal expenses, specifically stating that "unfortunately I have spent some of the money and I will get back to you." Defendant did not "get back to" Mr. Nelson by issuing the refund Mr. Nelson requested.

[¶11] On or about September 16, 2017, Defendant contracted with North Dakota consumer Barbara Thompson, 1609 14 ½ Street South, Fargo, ND 58102, to replace a door and paint the side of her home. Ms. Thompson contacted Defendant after seeing Defendant's "Handyman on Duty" advertisement in the Fargo Forum. On September 16, 2017, Defendant solicited and accepted an advance payment of \$340.00 ostensibly for the purchase of materials for the project. The following day, Defendant returned and performed some work before asking that Ms. Thompson pay Defendant more money. Defendant solicited and accepted two additional payments of \$279.00 and \$70.00. Defendant performed the work so poorly that Ms. Thompson, after Defendant failed to perform the work as contracted despite repeated requests, contacted the police and a social worker. Even after telling a police officer that he would fix the sham work he did, Defendant failed to complete the work as contracted. Defendant did not complete the project, and has not provided a refund.

[¶12] On or about July 6, 2017, Defendant contracted with North Dakota consumer Donald Roehrich, 1643 6th St. E., West Fargo, ND 58078, to repair a patio door. Mr. Roehrich contacted Defendant after seeing Defendant's "Get-R-Done" advertisement in the Fargo Forum. On July 6, 2017, Defendant solicited and accepted an advance payment of \$100.00 for the materials necessary to replace the panel of the patio door. On his own, Mr. Roehrich learned that the entire door would need to be replaced because the individual panels were no longer available. Mr. Roehrich

contacted Defendant seeking a return of his advance payment. Though Defendant told Mr. Roehrich that he would return his advance payment, Defendant did not do so.

[¶13] On or about June 18, 2017, Defendant contracted with North Dakota consumer Kevin Tranby, 2007 3rd Ave. E., West Fargo, ND 58078, to repair Mr. Tranby's deck. Mr. Tranby contacted Defendant after seeing Defendant's "Handyman on Duty" advertisement in the West Fargo Pioneer. Defendant's advertisement falsely represented that he was licensed and bonded. On his contract with Mr. Tranby, Defendant indicated in two places that he held license number "661312," though he possess no license. Defendant also indicated he held an "ID" with the number "2641." On June 18, 2017, Defendant solicited and accepted an advance cash payment of \$2,550.00 ostensibly for materials to complete the project. On June 29, 2017, Defendant delivered a "small amount" of lumber and jacks that he retrieved the next day. On July 2, 2017, Defendant, after having performed no work, attempted to solicit an additional advance payment from Mr. Tranby so that he could hire additional labor. Despite multiple requests by Mr. Tranby, Defendant failed to provide a refund. Instead of providing all of the materials for which Mr. Tranby's advance payment was intended, Defendant used Mr. Tranby's funds for personal expenses.

[¶14] On or about June 1, 2017, Defendant contracted with North Dakota consumers Mel and Mary Beth Hieb to paint several rooms in their home. The Hiebs contacted Defendant after seeing his advertisement in the Fargo Forum. On his contract with the Hiebs, Defendant indicated he was licensed and bonded. Defendant indicated on his contract with the Hiebs that he would begin work on their painting project on June 7, 2017. Defendant solicited and accepted an advance payment of \$4,700.00 that he

cash at Gate City Bank the next day, on June 2, 2017. Despite intervention by law enforcement, Defendant did not perform under his June 1, 2017 contract with the Hiebs, did not provide materials, and did not provide a refund. Instead of providing a refund or materials, Defendant used the Hiebs' advance payment for personal expenses.

[¶15] On or about September 17, 2017, Defendant entered into a contract with North Dakota consumer Steve Krebsbach to perform work on his home, including installation of ceramic tile floor. According to a complaint file with the Attorney General, Mr. Krebsbach paid Defendant a total of \$5,331.20 in a series of payments. Defendant was not licensed when he entered into his agreement with, and accepted payments totaling \$5,331.20 from, Mr. Krebsbach. Mr. Krebsbach released Defendant after hearing about Defendant on the news, and after a laborer performed work poorly.

[¶16] Defendant contracted with consumers Clayton Anderson (on August 21, 2017), Michael Schulstad (on September 18, 2017), and Lois Fuchs (on July 19, 2017), accepted advance payments from them, and then did no or minimal work.

II. CONCLUSIONS OF LAW

[¶17] The State of North Dakota brought this action on the relation of Wayne Stenehjem, Attorney General of the State of North Dakota, in the public interest pursuant to N.D.C.C. ch. 51-15. 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;

[¶18] The Court has subject matter jurisdiction pursuant to N.D.C.C. § 51-15-07;

[¶19] The Court has personal jurisdiction over Defendant.

[¶20] Under N.D.C.C. §§ 51-15-07, 51-15-10, and 51-15-11 the district court has jurisdiction to enter appropriate orders.

¶21]The venue of this action in Cass County is proper under N.D.C.C. § 28-04-05 and § 28-04-03 because all or part of the cause of action arose in Cass County.

¶22]There is no material issue of fact preventing an entry of summary judgment as a matter of law.

¶23]Defendant is or was engaged in the advertisement, solicitation, and sale of merchandise, as that term is defined in N.D.C.C. § 51-15-01, in the State of North Dakota, including services as a contractor within the meaning of N.D.C.C. § 43-07-01.

¶24]In connection with the solicitation and sale of merchandise, Defendant made untrue, deceptive, and misleading representations with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02. Defendant's actions constituted false pretense, false representation, or actual fraud.

¶25]In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, without a contractor license issued by the North Dakota Secretary of State, engaged in the business or acted in the capacity of a contractor within North Dakota when the cost, value, or price per job exceeded the sum of four thousand dollars when he contracted with consumers and solicited and accepted payments from Mel and Mary Beth Hieb and Steve Krebsbach, in violation of N.D.C.C. § 43-07-02.

¶26]In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant abandoned a contract without legal excuse after a deposit of money or other consideration has been provided to him. Defendant abandoned the contracts he entered into with consumers Robert Arusell, Madonna Sweeney, Judith Tangen, Ronald Nelson, Barbara Thompson,

Donald Roehrich, Kevin Tranby, Mel and Mary Beth Hieb, Clayton Anderson, Michael Schulstad, and Lois Fuchs, in violation of N.D.C.C. § 43-07-14(1)(a).

[¶27] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, in violation of N.D.C.C. § 43-07-14(1)(b), diverted funds or property received under express agreement for the prosecution or completion of a specific contract, or for a specified purpose in the prosecution or completion of a contract, and applied or used the funds for another contract obligation or to defraud or deceive the owner when Defendant diverted the advance payments received from consumers Robert Arusell, Madonna Sweeney, Judith Tangen, Ronald Nelson, Barbara Thompson, Donald Roehrich, Kevin Tranby, Mel and Mary Beth Hieb, Clayton Anderson, Michael Schulstad, and Lois Fuchs.

[¶28] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, in violation of N.D.C.C. § 43-07-14(1)(c), engaged in fraudulent or deceptive acts or practices or misrepresentations as a contractor in consequence of which one or more persons was injured in a total amount exceeding three thousand dollars when Defendant abandoned contracts entered into with, and diverted advance payments received from, consumers Mel and Mary Beth Hieb.

[¶29] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant, in violation of N.D.C.C. § 43-07-14(1)(f), failed to refund fully a contracting party's advance payment if a rebuttable presumption of abandonment has arisen and the contracting party has made a request to the licensee for a refund when Defendant abandoned the contracts of, and

did not provide refunds requested by, consumers Robert Arusell, Madonna Sweeney, Judith Tangen, Ronald Nelson, Barbara Thompson, Donald Roehrich, Kevin Tranby, Mel and Mary Beth Hieb, Clayton Anderson, Michael Schulstad, and Lois Fuchs.

[¶30] Under N.D.C.C. § 43-07-14(3), Defendant' violations of N.D.C.C. § 43-07-02, acting in in the capacity of a contractor where the cost, value, or price per job is over four thousand dollars, constitute violations of N.D.C.C. ch. 51-15.

[¶31] Under N.D.C.C. § 43-07-14(3), Defendant' violations of N.D.C.C. § 43-07-14 constitute violations of N.D.C.C. ch. 51-15.

[¶32] In connection with the sale or advertising of contracting services, and with the intent to sell those services, Defendant disseminated an advertisement that contained assertions, representations, or representations of fact which were untrue, deceptive, or misleading, regarding the contracting services he was advertising or offering the public in violation of N.D.C.C. §§ 51-12-01 and 51-12-08.

[¶33] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant through written and oral representations made by Defendant, his agents, employees, or representatives, made untrue, deceptive, and misleading representations, or engaged in deceptive acts or practices, with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02, when Defendant expressly, impliedly, or by omission falsely represented to consumers Mel and Mary Beth Hieb and Steve Krebsbach that he was a licensed contractor by soliciting and accepting business above the North Dakota statutory amount of four thousand dollars.

¶34] In connection with the sale or advertisement of contracting services, or other merchandise as defined by N.D.C.C. § 51-15-01(3), Defendant through written and oral representations made by Defendant, his agents, employees, or representatives, made untrue, deceptive, and misleading representations, or engaged in deceptive acts or practices, with the intent that others rely thereon, in violation of N.D.C.C. § 51-15-02, when Defendant misrepresented his intent or ability to perform services as contractors for consumers Robert Arusell, Madonna Sweeney, Judith Tangen, Ronald Nelson, Barbara Thompson, Donald Roehrich, Kevin Tranby, Mel and Mary Beth Hieb, Clayton Anderson, Michael Schulstad, and Lois Fuchs, and, instead of purchasing materials or rendering services with their advance deposits, used consumer advance deposits for personal expenses.

¶35] Injunctive relief is necessary and appropriate in this case in order to prohibit Defendant from engaging in continued or future violations of N.D.C.C. § 51-15-02, and injunctive relief is justifiable under the circumstances of this case.

¶36] Defendant is liable to pay such restitution necessary to restore any loss suffered by persons as a result of his deceptive acts or practices, pursuant to N.D.C.C. § 51-15-07.

¶37] Defendant is liable to pay the Attorney General for the fees and costs incurred in investigating and prosecuting this matter, pursuant to N.D.C.C. § 51-15-10.

¶38] Civil penalties are appropriate in this case based on Defendant's conduct.

ORDER FOR SUMMARY JUDGMENT

¶39] THEREFORE, IT IS HEREBY ORDERED pursuant to N.D.C.C. § 51-15-02 et seq., that:

- A. Plaintiff's Motion for Summary Judgment is granted.

B. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the contractor law, N.D.C.C. § 43-07-02, for engaging in the business or acting in the capacity of a contractor in North Dakota without first having a license when the cost, value, or price per job exceeded the sum of four thousand dollars.

C. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for abandoning contracts without legal excuse after a deposit of money or other consideration has been provided in violation of N.D.C.C. § 43-07-14(1)(a).

D. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for diverting funds or property received under express agreement for the prosecution or completion of a specified contract, or for a specified purpose in the prosecution or completion of any contract, and applying or using funds and property for another contract obligation or to defraud or deceive credits or the owner in violation of N.D.C.C. § 43-07-14(1)(b).

E. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in fraudulent or deceptive acts or practices or misrepresentations as a contractor in consequence of which one or more persons is injured in excess of three thousand dollars in violation of N.D.C.C. § 43-07-14(1)(c).

F. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for failing to refund fully a contracting party's advance payment where a rebuttable presumption of abandonment has arisen and a contracting party has made a request for a refund in violation of N.D.C.C. § 43-07-14(1)(f).

G. That Defendant Anthony "Tony" Ronald Cline be adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in deceptive acts or practices, fraud, false pretenses, false promises, or misrepresentations, with the intent that others rely thereon in connection with the sale or advertisement of merchandise in the State of North Dakota.

H. That Defendant Anthony "Tony" Ronald Cline, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, pursuant to N.D.C.C. § 51-15-07, be permanently enjoined and restrained from directly or indirectly making false statements, false promises, or misrepresentations and the act, use and employment of any deceptive acts or practices in connection with the advertisement or sale of merchandise, as defined by N.D.C.C. § 51-15-01(3), within the State of North Dakota.

I. That Defendant Anthony "Tony" Ronald Cline, his agents, employees, representatives, assigns and all other persons in active concert or participation with him, pursuant to N.D.C.C. § 51-15-07, be enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services in accordance with paragraph J.

J. That, pursuant to N.D.C.C. § 51-15-07, Defendant Anthony "Tony" Ronald Cline, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is permanently enjoined and restrained from engaging in sales of contracting and home improvements, repairs, or services, including construction work. Notwithstanding the permanent injunction, Defendant may engage in future contracting services if Defendant applies to the Attorney General and the Court to lift the

permanent injunction and the Court finds Defendant has fully complied with the following terms and conditions and otherwise is rehabilitated:

1. Three (3) or more years have expired since the entry of judgment herein;
2. Defendant has paid in full all restitution to consumers pursuant to the judgment herein;
3. Defendant has paid in full restitution to all consumers that have paid Defendant advance payments for services not performed or merchandise not delivered in the state of North Dakota;
4. Defendant has paid all amounts owed to the Attorney General pursuant to entry of judgment herein;

If the Court thereafter finds, pursuant to an agreement between the Attorney General and Defendant, or after a hearing, that Defendant is sufficiently rehabilitated pursuant to the terms and conditions herein, Defendant, upon order of the Court, may engage in contracting provided he has obtained a contractor's license pursuant to N.D.C.C. ch. 43-07 and has complied with all contractor licensing requirements appropriate and necessary for the work to be undertaken by him.

"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.

K. That in the event Defendant Anthony "Tony" Ronald Cline, his agents, employees, representatives, assigns, and all other persons in active concert or participation with him, is lawfully engaged in contracting pursuant to the terms in this judgment, said Defendant, pursuant to N.D.C.C. § 51-15-07 and for a period of three (3)

years after becoming lawfully engaged in contracting, is enjoined and restrained from soliciting or accepting from consumers advance payments or consumer deposits in excess of ten percent of the total contract price in connection with any sale of merchandise, as defined by N.D.C.C. § 51-15-01(3).

L. That Plaintiff shall have Judgment against Defendant Anthony "Tony" Ronald Cline for civil penalties in the amount of \$500, pursuant to N.D.C.C. § 51-15-11.

M. That Plaintiff shall have Judgment against Defendant Anthony "Tony" Ronald Cline in the amount of \$1,650.00 for costs, expenses, and attorney's fees pursuant to N.D.C.C. § 51-15-10, incurred by the Attorney General in the investigation and prosecution of this action.

N. That Defendant Anthony "Tony" Ronald Cline, pursuant to N.D.C.C. § 51-15-07, shall pay restitution to all North Dakota consumers, which have suffered any ascertainable loss, and to restore to any person in interest any moneys or property, real or personal, which has been acquired by Defendant by means of any practice declared to be unlawful under N.D.C.C. § 51-15-02.

O. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$1,150.00, together with interest accruing thereon, as restitution for Robert Arusell.

P. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$1,090.00, together with interest accruing thereon, as restitution for Madonna Sweeney.

Q. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$729.00, together with interest accruing thereon, as restitution for Judith Tangen.

R. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$1,111.00, together with interest accruing thereon, as restitution for Ronald Nelson.

S. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$689.00, together with interest accruing thereon, as restitution for Barbara Thompson.

T. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$100.00, together with interest accruing thereon, as restitution for Donald Roehrich.

U. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$2,550.00, together with interest accruing thereon, as restitution for Kevin Tranby.

V. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$4,700.00, together with interest accruing thereon, as restitution for Mel and Mary Beth Hieb.

W. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$1,034.00, together with interest accruing thereon, as restitution for Lois Fuchs.

X. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$934.00, together with interest accruing thereon, as restitution for Michael Schulstad.

Y. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$560.00, together with interest accruing thereon, as restitution for Clayton Anderson.

Z. That Defendant Anthony "Tony" Ronald Cline shall pay to Plaintiff the sum of \$5,331.20, together with interest accruing thereon, as restitution for Steve Krebsbach.

AA. The Judgment entered shall be a Judgment for which execution may issue.

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

Dated this _____ day of _____, 2018

BY THE COURT: Signed: 3/7/2018 2:33:32 PM

Frank L. Racek

Honorable Frank L. Racek
District Court Judge