

STATE OF NORTH DAKOTA
COUNTY OF STUTSMAN

IN DISTRICT COURT
SOUTHEAST JUDICIAL DISTRICT

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

Civil No. 47-2019-CV-00247

Plaintiff,

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

-vs-

WAYNE PRIGGE, doing business as O.K.
HOMES CONSTRUCTION,

Defendant.

CPAT 180235.002

[¶1] This matter came before the Court on Plaintiff's Motion for Summary Judgment, dated September 18, 2019 and filed on September 18, 2019. Defendant Wayne Prigge was served with the Motion for Summary Judgment by mail on September 18, 2019. 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] On April 18, 2019, the State initiated this action by service of the Summons and Complaint. Index # 3.

[¶4] On May 6, 2019, Defendant responded to the Complaint. Index # 4.

[¶5] Reading Defendant's response liberally, Defendant denies that he abandoned a consumer contract without a legal excuse. Index # 4. Defendant contends that he suffered a back injury and that this constitutes a legal excuse. Id.

[¶6] Defendant also denies that he tried to defraud or deceive his client. Id. He says that he always intended to complete the consumer contract. Id.

[¶7] Defendant does not deny the remaining allegations of the Complaint. Id.

[¶8] By Order of the Court, following Defendant's failure to respond to the State's discovery request, the following facts were deemed admitted and are undisputed:

- a. Defendant has never held a North Dakota contractor's license;
- b. Defendant did not hold a North Dakota contractor's license when he contracted with Dale and Rebecca Van Erem on or about June 26, 2018;
- c. Defendant entered into a \$19,300.00 contract with Dale and Rebecca Van Erem to install steel panels on the roof and side walls of the Van Erem's barn;
- d. Defendant contracted with Dale and Rebecca Van Erem, and solicited and accepted an advance payment from them, while engaged in or acting in the capacity of a contractor within the meaning of N.D.C.C. § 43-07-01(1);
- e. On or about June 26, 2018, Defendant solicited and accepted an advance payment of \$10,000.00 from Dale and Rebecca Van Erem;

- f. Defendant used some or all of Dale and Rebecca Van Erem's advance payment for personal expenses;
- g. Defendant has not refunded Dale and Rebecca Van Erem the amount of \$3,066.37 and that he owes this amount;
- h. Defendant pleaded guilty to operating without a contractor's license, in violation of N.D.C.C. § 43-07-02(2), in connection with his contract with Dale and Rebecca Van Erem;
- i. Defendant did not complete Dale and Rebecca Van Erem's job within 180 days of the contract date, June 28, 2018;
- j. Defendant solicited and accepted an advance payment from Dale and Rebecca Van Erem and this was in the course of trade or commerce;
- k. Defendant intended Dale and Rebecca Van Erem to rely on the June 26, 2018 contract he entered into with them;
- l. Defendant intended Dale and Rebecca Van Erem to rely on the June 26, 2018 contract he entered into with them when he solicited and accepted from them an advance payment of \$10,000.00; and
- m. That another contractor could have completed performance under his contract with Dale and Rebecca Van Erem.

Index # 32.

II. CONCLUSIONS OF LAW

[¶9] 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.

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

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

[¶12] Under N.D.C.C. §§ 51-15-07, 51-15-10, and 51-15-11 this Court has jurisdiction to enter appropriate orders.

[¶13] The venue of this action in Stutsman 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 Stutsman County.

[¶14] The standard for summary judgment is well-established. "The judgment sought shall be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." N.D.R.Civ.P. 56(c).

[¶15] A party opposing a motion for summary judgment must present competent admissible evidence to raise a genuine issue of material fact. Soentgen v. Quain & Ramstad Clinic, P.C., 467 N.W.2d 73, 81 (N.D. 1991). Even if factual disputes exist, they are not material issues unless resolution would alter the ultimate outcome. Olson v. City of Garrison, 539 N.W.2d 663, 664 (N.D. 1995).

[¶16] When a reasonable person can draw but one conclusion from the evidence, a question of fact becomes a matter of law for the court to decide. Stockman Bank of Montana v. AGSCO, Inc., 2007 ND 26, ¶ 9. See also, Grinnel Mut. Reinsurance Co. v. Center Mut. Ins. Co., 2003 ND 50, ¶ 9. "Although actions involving state of mind, such as fraud, are not usually suited for disposition by summary judgment, if a ... [party] fails to

support his opposition to a summary judgment motion with sufficient facts to show that there is a genuine issue for trial, then, even in these cases, summary judgment is appropriate.” Kary v. Prudential Ins. Co., 541 N.W.2d 703, 706 (N.D. 1996); see also, Dahl v. Messmer, 2006 ND 166, ¶ 8 (N.D. 1996).

[¶17] Consumer fraud must be proved by a preponderance of the evidence. State ex rel. Spaeth v. Eddy Furniture Co., 386 N.W.2d 901, 902-03 (N.D. 1986). In civil actions, “preponderance of the evidence” is the “greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability.” Black’s Law Dictionary 1182 (6th ed. 1990). Rooks v. Workers’ Comp. Bur., 506 N.W.2d 78, 80-81 (N.D. 1993).

[¶18] Under N.D.R.Ct. 3.2(c), because Defendant failed to submit a response to the State’s motion for summary judgment, the Court may deem his failure an admission that the State’s motion is meritorious. N.D.R.Ct. 3.2(c).

[¶19] There is no material issue of fact preventing an entry of summary judgment as a matter of law because the material facts are undisputed and Defendant failed to present competent admissible evidence to raise a genuine issue of material fact. Soentgen, 467 N.W.2d at 81.

[¶20] 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(1).

[¶21] N.D.C.C. § 43-07-02(1) prohibits a person from engaging in the business or acting in the capacity of a contractor where the job exceeds the sum of four thousand

dollars if that person does not have a contractor's license granted by the North Dakota Secretary of State. N.D.C.C. § 43-07-02(1). In violation of N.D.C.C. § 43-07-02(1), on or about June 26, 2018, Defendant, without a contractor's license, entered into a \$19,300.00 contract with the Van Eremes to install steel panels on the roof and side walls of their barn. Index # 41, p. 7. Defendant solicited an advance payment of \$10,000.00 from the Van Eremes pursuant to his contract with them. Id. at pp. 3, 7, 10.

[¶22] Defendant's violation of N.D.C.C. § 43-07-02(1) also constitutes a violation of N.D.C.C. ch. 51-15, because, under N.D.C.C. § 43-07-14(3), it is a violation of N.D.C.C. ch. 51-15 for a person to engage "in the business or [act] in the capacity of a contractor in violation of section 43-07-02." N.D.C.C. § 43-07-14(3).

[¶23] N.D.C.C. § 43-07-14(1)(a) prohibits a contractor or unlicensed person from abandoning a contract without a legal excuse after receiving a deposit of money or other consideration. N.D.C.C. § 43-07-14(1)(a). A rebuttable presumption of abandonment arises where a contractor fails to complete work within one hundred and eighty days of a contract date if the contract does not specify a completion date. N.D.C.C. § 43-07-14(1)(a)(2). In violation of N.D.C.C. § 43-07-14(1)(a), Defendant abandoned the Van Eremes' project because he did not complete the Van Eremes' project within 180 days of the contract date, June 26, 2018, after receiving a \$10,000.00 deposit. Index # 19, p. 14; Index # 41 at p. 10.

[¶24] In his Answer to the Complaint, Defendant contends that his back injury constitutes a legal excuse for his abandonment of his contract with the Van Eremes. Index # 4. However, to establish impossibility, Defendant must establish that he "cannot perform and that performance could not be completed by anyone." Tallackson Potato

Co. v. MTK Potato Co., 278 N.W.2d 417, 424 n.6 (N.D. 1979). Defendant's back injury does not establish impossibility because it is undisputed that another contractor could have completed performance under his contract with the Van Eremes. Therefore, Defendant fails to establish that his failure was due to circumstances beyond his control. N.D.C.C. § 43-07-14(1)(a)(1).

[¶25] N.D.C.C. § 43-07-14(1)(b) prohibits a person from diverting funds received under a contract to other contractual obligations. N.D.C.C. § 43-07-14(1)(b). According to the Van Eremes' consumer complaint, their \$10,000.00 advance payment was paid to Defendant so that he could purchase materials for their project. Index # 41 at p. 3. In violation of N.D.C.C. § 43-07-14(1)(b), Defendant used some or all of the Van Eremes' advance payment for personal expenses. Index # 19 at p. 14.

[¶26] N.D.C.C. § 43-07-14(1)(c) prohibits a person from engaging in deceptive acts or practices or misrepresentations as a contractor which results in harm to a person in an amount above three thousand dollars. In violation of N.D.C.C. § 43-07-14(1)(c), Defendant deceptively solicited \$10,000.00 from the Van Eremes pursuant to a contract wherein he promised to install steel panels on the roof and side walls of the Van Eremes' barn, but then subsequently abandoned his contract with them and use some or all of their payment for personal expenses. Id. Defendants' conduct resulted in harm to the Van Eremes in the amount of \$3,066.37, an above three thousand dollars. Id.

[¶27] N.D.C.C. § 43-07-14(1)(f) prohibits a person from failing to provide a refund, where a refund has been requested, after the presumption of abandonment has arisen. Because Defendant abandoned his contract with the Van Eremes, and failed to provide a

refund after they requested a refund, (*Index # 40 at ¶ 11*), Defendant is in violation of N.D.C.C. § 43-07-14(1)(f).

[¶28] Defendant's violations of N.D.C.C. § 43-07-14(1)(a), (1)(b), (1)(c), and (1)(f) also constitute violations of N.D.C.C. ch. 51-15, because, under N.D.C.C. § 43-07-14(3), "any act or omission under [43-07-14] may also constitute grounds for the attorney general to bring an action under chapter 51-15 against the licensee or any unlicensed person engaging in the business or acting in the capacity of a contractor in violation of section 43-07-02 and subjects the licensee or any such unlicensed person to all provisions, procedures, remedies, and penalties provided for in chapter 51-15."

[¶29] N.D.C.C. § 51-15-02 provides as follows:

51-15-02. Unlawful practices – Fraud – Misrepresentation. The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

N.D.C.C. § 51-15-02.

[¶30] Other courts have determined, under their states' respective consumer protection statutes, that it is a deceptive practice for a contractor to take an advance payment pursuant to a contract and fail to complete work, or fail or refuse to provide a refund. Com. v. Burns, 663 A.2d 308, 311-12 (Pa. Commw. Ct. 1995); Ybarra v. Saldana, 624 S.W.2d 948, 951 (Tex. App. 1981); R.S. Assocs. Gen. Bldg. Contractors, Inc. v. Devona, 610 S.W.2d 190, 192 (Tex. Civ. App. 1980).

[¶31] In violation of N.D.C.C. § 51-15-02, Defendant expressly, impliedly, or by omission falsely represented to the Van Eremes that he was a licensed contractor by soliciting and accepting a \$10,000.00 deposit for materials while operating his sole

proprietorship, O.K. Homes Construction. While intending reliance by the Van Erems, Defendant acted, used, or employed deceptive acts and practices, fraud, false pretenses, false promises, or misrepresentations by entering into a contract with the Van Erems in excess of four thousand dollars and soliciting and accepting an advance payment pursuant to that contract. Index # 19 at p. 15.

[¶32] In violation of N.D.C.C. § 51-15-02, Defendant misrepresented to the Van Erems that he would perform services as a contractor for them and solicited and accepted an advance payment that he represented was necessary for materials. Index # 41 at pp. 3, 7, 10. Defendant misrepresented his intent or ability to perform services for the Van Erems, and, instead of purchasing materials or performing labor with the advance deposit he solicited, Defendant used the Van Erems' advance deposit for personal expenses and failed to provide a refund after abandoning the Van Erems' project. See supra, ¶¶ 23, 25, 27.

[¶33] Under N.D.C.C. § 51-15-07, the Attorney General may seek and obtain "an injunction prohibiting [a] person from continuing [an] unlawful practice or engaging in the [an] unlawful practice or doing any act in furtherance of the unlawful practice," and the Court "may make an order or judgment as may be necessary to prevent the use or employment by a person of any unlawful practices ..." N.D.C.C. § 51-15-07. Pursuant to N.D.C.C. § 51-15-07, 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.

[¶34] Under N.D.C.C. § 51-15-07, the Court "may make an order or judgment ... to restore to any person in interest any money, or property that may have been acquired

by means of any practice” unlawful under N.D.C.C. ch. 51-15. N.D.C.C. § 51-15-07. 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.

[¶35] Under N.D.C.C. § 51-15-10, the Court “shall award to the attorney general reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought” under N.D.C.C. ch. 51-15. N.D.C.C. § 51-15-10. 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.

[¶36] Under N.D.C.C. § 51-15-11, the Court “may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation” of N.D.C.C. ch. 51-15. Civil penalties are appropriate in this case based on Defendant's conduct. N.D.C.C. § 51-15-11.

[¶37] Pursuant to N.D.C.C. §§ 47-25-07(3) and 51-15-07, it is appropriate to order cancellation of Defendant's trade name, “O.K. Homes Construction,” for Defendant's use of the trade name to perpetrate consumer fraud.

ORDER FOR JUDGMENT

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

- A. Plaintiff's Motion for Summary Judgment is granted.
- B. That Defendant Wayne Prigge is adjudged in violation of the contractor law, N.D.C.C. § 43-07-02(1), 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 Wayne Prigge is 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 Wayne Prigge is 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 in violation of N.D.C.C. § 43-07-14(1)(b).

E. That Defendant Wayne Prigge is adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in any fraudulent or deceptive acts or practices or misrepresentations as a contractor in consequence of which one or more persons is injured in a total amount exceeding three thousand dollars in violation of N.D.C.C. § 43-07-14(1)(c).

F. That Defendant Wayne Prigge is 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 Wayne Prigge is 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 Wayne Prigge, 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, is 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 Wayne Prigge, 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, is permanently enjoined and restrained from engaging in deceptive acts or practices and from directly or indirectly making false statements, false promises, or misrepresentations in connection with the advertisement or sale of contracting and home improvements, repairs, or services, or any other merchandise, as defined by N.D.C.C. § 51-15-01(3).

J. That Defendant Wayne Prigge, 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, is enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services in accordance with paragraph K.

K. That, pursuant to N.D.C.C. § 51-15-07, Defendant Wayne Prigge, 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, the Defendant may engage in future contracting

services if the 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 are rehabilitated:

1. Two 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 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.

L. That in the event Wayne Prigge 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 five years after becoming, lawfully engaged in contracting, are 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).

M. That Defendant, pursuant to N.D.C.C. § 51-15-07, owes restitution to Dale and Rebecca Van Erem, 9435 31st St. SE, Spiritwood, ND 58481, in the amount of \$3,066.37 (less any amount paid by Defendant pursuant to judgment in Case No. 47-2018-CR-00709).

N. That Plaintiff shall have Judgment against Defendant Wayne Prigge in the amount of \$1,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

O. That Plaintiff shall have Judgment against Defendant Wayne Prigge in the amount of \$2,030.00 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.

P. That Defendant Wayne Prigge, 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.

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

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

S. That, pursuant to N.D.C.C. §§ 47-25-07(3) and 51-15-07, Defendant's trade name, "O.K. Homes Construction," is ordered cancelled for Defendant's use of the trade name to perpetrate consumer fraud.

BY THE COURT:

Signed: 12/9/2019 8:43:11 AM



District Court Judge

STATE OF NORTH DAKOTA
COUNTY OF STUTSMAN

IN DISTRICT COURT
SOUTHEAST JUDICIAL DISTRICT

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

Civil No. 47-2019-CV-00247

Plaintiff,

JUDGMENT

-vs-

WAYNE PRIGGE, doing business as O.K.
HOMES CONSTRUCTION,

Defendant.

CPAT 180235.002

[¶1] This action came on before the Honorable Cherie L. Clark, Judge of the Stutsman County District Court, Southeast 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 September 18, 2019. 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 Wayne Prigge is adjudged in violation of the contractor law, N.D.C.C. § 43-07-02(1), 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 Wayne Prigge is 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 Wayne Prigge is 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 in violation of N.D.C.C. § 43-07-14(1)(b).

E. That Defendant Wayne Prigge is adjudged in violation of the consumer fraud law, N.D.C.C. § 51-15-02, for engaging in any fraudulent or deceptive acts or practices or misrepresentations as a contractor in consequence of which one or more persons is injured in a total amount exceeding three thousand dollars in violation of N.D.C.C. § 43-07-14(1)(c).

F. That Defendant Wayne Prigge is 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 Wayne Prigge is 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 Wayne Prigge, 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, is 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 Wayne Prigge, 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, is permanently enjoined and restrained from engaging in deceptive acts or practices and from directly or indirectly making false statements, false promises, or misrepresentations in connection with the advertisement or sale of contracting and home improvements, repairs, or services, or any other merchandise, as defined by N.D.C.C. § 51-15-01(3).

J. That Defendant Wayne Prigge, 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, is enjoined and restrained from the advertising or sale of contracting and home improvements, repairs, or services in accordance with paragraph K.

K. That, pursuant to N.D.C.C. § 51-15-07, Defendant Wayne Prigge, 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, the Defendant may engage in future contracting

services if the 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 are rehabilitated:

1. Two 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 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.

L. That in the event Wayne Prigge 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 five years after becoming, lawfully engaged in contracting, are 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).

M. That Defendant, pursuant to N.D.C.C. § 51-15-07, owes restitution to Dale and Rebecca Van Erem, 9435 31st St. SE, Spiritwood, ND 58481, in the amount of \$3,066.37 (less any amount paid by Defendant pursuant to judgment in Case No. 47-2018-CR-00709).

N. That Plaintiff shall have Judgment against Defendant Wayne Prigge in the amount of \$1,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

O. That Plaintiff shall have Judgment against Defendant Wayne Prigge in the amount of \$2,030.00 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.

P. That Defendant Wayne Prigge, 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.

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

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

S. That, pursuant to N.D.C.C. §§ 47-25-07(3) and 51-15-07, Defendant's trade name, "O.K. Homes Construction," is ordered cancelled for Defendant's use of the trade name to perpetrate consumer fraud.

CLERK OF DISTRICT COURT

Date: December 12, 2019

By: Irene Williams, deputy
Case No. 47-2019-CV-247 / Prigge