



OFFICE OF ATTORNEY GENERAL
 CONSUMER PROTECTION AND ANTITRUST DIVISION
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STATE OF NORTH DAKOTA
 OFFICE OF ATTORNEY GENERAL

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

Petitioner,

-vs-

JOSHUA MCKENNA, doing business as
 MCKENNA'S ROOFING,

Respondent.

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

CPAT 190129.002

To the individuals identified below ("Respondent" or "McKenna"):

JOSHUA MCKENNA
 MCKENNA'S ROOFING
 965 1ST AVE. NE # 22
 LONG PRAIRIE, MN 56347
 mckennasroofing@gmail.com

BACKGROUND

[¶1] The Attorney General of North Dakota has a reasonable basis to believe Respondent has engaged in, or is engaging in, acts or practices declared unlawful by N.D.C.C. ch. 43-07, commonly referred to as the "Contractors Law" and N.D.C.C. ch. 51-15, commonly referred to as the "Consumer Fraud Law." It is necessary and

appropriate in the public interest and for the protection of consumers to restrain Respondent's unlawful acts or practices.

[¶2] Respondent, individually and by and through his agents, is doing business under some or all of the names identified above, and has engaged in violations of North Dakota law by: 1) in violation of N.D.C.C. § 43-07-02, engaging in the business of or acting in the capacity of a contractor within North Dakota when the cost, value, or price per job exceeds the sum of four thousand dollars without first having a license; 2) in violation of N.D.C.C. § 51-15-02, contracting to perform work as a contractor, within the meaning of N.D.C.C. § 43-07-01(1), and then failing to perform the contracted work; and 3) abandoning a consumer project, diverting consumer funds, harming a consumer in an amount greater than three thousand dollars, and failing to issue a refund after the presumption of abandonment has arisen.

[¶3] Respondent's last known addresses are 965 1st Ave. NE # 22, Long Prairie, MN 56347 and 209 University Ave., Brampton, ND 58017-5009. Respondent operates or operated as a sole proprietor in North Dakota using the trade name "McKenna's Roofing."

[¶4] Respondent is in the business of soliciting and selling merchandise, including in the capacity of a contractor within the meaning of N.D.C.C. § 43-07-01(1). Respondent, or Respondent's agents on Respondent's behalf, solicited North Dakota customers.

[¶5] Respondent engaged in the business or acted in the capacity of a contractor, within the meaning of N.D.C.C. § 43-07-01(1), within North Dakota when the cost, value, or price per job exceeded the sum of four thousand dollars without first having a

license. Under N.D.C.C. § 43-07-14(3), any person engaging in the business or acting in the capacity of a contractor in violation of N.D.C.C. § 43-07-02 subjects the unlicensed person to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.

[¶6] On August 8, 2019, the Attorney General received a Complaint Against Contractor (SFN 16999) from the Licensing Head of the Secretary of State's Office filed by a consumer in Fort Ransom, North Dakota. According to the consumer, he contracted with Joshua McKenna, doing business as McKenna's Roofing, on August 8, 2018 to tear off and replace shingles. The consumer paid McKenna an advance payment of \$5,209.00, the total amount of Respondent's bid on the job. The contract executed by McKenna reflected that he received payment in full from the consumer. According to the consumer, McKenna promised to complete the work before the winter of 2018.

[¶7] On September 1, 2018, McKenna sent a text message to the consumer stating that he planned to start the consumer's roofing job within the next week or two. On September 18, the consumer contacted McKenna to determine when McKenna would begin work on his roof. McKenna responded a week later, on September 25, 2018, and asked to delay the project to the spring of 2019 due to the weather. The consumer agreed.

[¶8] On April 9, 2019, the consumer contacted McKenna requesting a date for completion of his roofing project. McKenna told the consumer that he would start the job in 2 – 3 weeks.

[¶9] On May 7, 2019, after McKenna failed to begin the project, the consumer contacted McKenna again requesting a date for completion of his roofing project. The next day, McKenna responded that he was driving a semi-truck and needed another 2 – 3 weeks.

[¶10] On July 13, 2019, the consumer contacted McKenna and again requested a date for completion of his roofing project. Two days later, after McKenna failed to respond, the consumer requested a refund so that he could hire someone else to complete his project.

[¶11] The next day, on July 16, 2019, McKenna responded that he was busy, but that he would have his friend “JR” complete the consumer’s roof. The consumer offered to have McKenna perform the work on a weekend, if that would work better for his schedule. After McKenna did not respond, on July 17, 2019, the consumer told McKenna he wanted a date for completion of the project within two days, by Friday July 19, 2019.

[¶12] On July 20, 2019, after McKenna did not respond to him, the consumer contacted McKenna and requested that McKenna complete his project by July 31, 2019 or that McKenna return his advance payment. The consumer said he would pursue legal action if the work was not completed or he was not issued a refund.

[¶13] On July 30, McKenna finally responded to the consumer to tell him that “his roofer” would complete the work the week of September 9, 2019. After the consumer reminded McKenna of the numerous delays he faced to that point, McKenna did not respond.

[¶14] McKenna has never done the work and never issued a refund to the consumer.

[¶15] According to the Secretary of State, McKenna's contractor license expired on March 1, 2018, six months before he contracted with the consumer to complete his roofing project for a total price of \$5,209.00. McKenna does not currently hold a contractor license. It appears to the Attorney General that McKenna, in violation of N.D.C.C. § 43-07-02(1), was engaged in the business or acting in the capacity of a contractor within North Dakota where the cost, value, or price of the job exceeded the sum of four thousand dollars while unlicensed. Under N.D.C.C. § 43-07-02(2), it is a criminal offense to engage in the business or act in the capacity of a contractor without a license.

[¶16] Under N.D.C.C. § 43-07-14(1)(a), the presumption of abandonment arises where a contractor, having received a deposit of money, fails substantially to commence any work within ninety days of the contract date if no starting date is agreed upon in writing. The presumption of abandonment also arises if a contractor fails to complete work within one hundred and eighty days of the contract date. Because McKenna failed substantially to commence the consumer's project within ninety days of the contract date, and failed to complete the contract within one hundred and eighty days, it appears to the Attorney General that McKenna abandoned the consumer project.

[¶17] A contractor violates N.D.C.C. § 43-07-14(1)(b), and improperly diverts consumer funds or property, when he receives funds or property from a person for completion of a project and then uses those funds or property for another contract obligation or purpose to defraud or deceive creditors or the owner. It appears to the

Attorney General that McKenna, having received \$5,209.00 in full from the consumer, diverted the consumer's advance payment for a purpose other than completion of the consumer's roofing project.

[¶18] A contractor violates N.D.C.C. § 43-07-14(1)(c) when he injures one or more persons in a total amount exceeding three thousand dollars while engaged in fraudulent or deceptive acts or practices or misrepresentations. It appears to the Attorney General that McKenna, having diverted the consumer's advance payment of \$5,209.00 without issuing refund, and while operating as a contractor without a license, injured the consumer in an amount of three thousand dollars while engaged in deceptive acts or practices or misrepresentations.

[¶19] A contractor violates N.D.C.C. § 43-07-14(1)(f) when he fails to fully refund a consumer's advance payment where the presumption of abandonment has arisen and the consumer requested a refund. It appears to the Attorney General that McKenna, having presumptively abandoned the consumer project where the consumer requested a refund, failed to fully refund the consumer his advance payment of \$5,209.00. McKenna has refunded nothing to the consumer.

[¶20] Under N.D.C.C. § 43-07-14(3), violations of N.D.C.C. §§ 43-07-02 and 43-07-14 constitute violations of N.D.C.C. ch. 51-15. Therefore, it appears to the Attorney General that McKenna is or was engaged in violations of N.D.C.C. ch. 51-15.

[¶21] Appearing to the Attorney General that McKenna is or was engaged in violations of N.D.C.C. chs. 43-07 and 51-15, the Attorney General offered to resolve McKenna's violations of law, pursuant to N.D.C.C. § 51-15-06, by Assurance of Voluntary Compliance. The Assurance of Voluntary Compliance proffered to McKenna

by the Attorney General required McKenna to agree that he owes a full refund to the consumer and that he would obtain a license before engaging in the business or acting in the capacity of a contractor.

[¶22] The Attorney General offered McKenna the opportunity to resolve his violations of law by Assurance of Voluntary Compliance repeatedly, including on August 12, 2019, September 5, 2019, October 8, 2019, and December 12, 2019. Respondent has failed to accept the terms of the Assurance of Voluntary Compliance.

[¶23] On October 9, 2019, McKenna was charged by the State with Theft, No Contractor's License, and Construction fraud in violation of N.D.C.C. §§ 12.1-23-02, 43-07-02(2), and 43-07-02(3) in Case No. 37-2019-CR-00090. McKenna also has an outstanding warrant in Case No. 41-2018-CR-00062 after he failed to appear on an Order to Show Cause.

[¶24] It appears to the Attorney General that Respondent, or Respondent's agents on Respondent's behalf, is or was engaged in violations of N.D.C.C. chs. 43-07 and 51-15 by: 1) engaging in the business or acting in the capacity of a contractor within North Dakota when the cost, value, or price per job exceeded the sum of four thousand dollars without first having a license granted by the Secretary of State; 2) contracting to perform work as a contractor, within the meaning of N.D.C.C. § 43-07-01(1), and then failing to perform the contracted work; and 3) abandoning a consumer project, diverting consumer funds, harming a consumer in an amount greater than three thousand dollars, and failing to issue a refund after the presumption of abandonment has arisen.

[¶25] It appears to the Attorney General that issuance of this Cease and Desist Order is necessary and appropriate in the public interest.

ORDER

[¶26] Based upon the foregoing information, it appears to the Attorney General that Respondent has engaged in, or is engaged in, violations of N.D.C.C. chs. 43-07 and 51-15; **NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondent immediately **CEASE AND DESIST** from: 1) soliciting or selling services and/or merchandise, as defined by N.D.C.C. § 51-15-01(3), to North Dakota consumers, including while engaged in the business of, or acting in the capacity of a contractor within the meaning of N.C.C.C. § 43-07-01(1); 2) engaging in the business or acting in the capacity of a contractor within North Dakota when the cost, value, or price per job exceeds the sum of four thousand dollars without first having a license provided in accordance with N.D.C.C. ch. 43-07; and 3) 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).

[¶27] **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

[¶28] 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 A HEARING

[¶29] 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 RECEIPT OF THIS ORDER. Respondent has the right to be represented by legal counsel at the hearing at Respondent's expense.

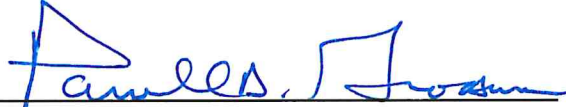
Dated this 25th day of February, 2020.

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

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Bismarck, ND 58503-5574

(701) 328-5570

STATE OF NORTH DAKOTA
BURLEIGH COUNTY

BEFORE THE
ATTORNEY GENERAL

IN THE MATTER OF:

JOSHUA MCKENNA, doing business as
MCKENNA'S ROOFING,

Respondent

**AFFIDAVIT OF SERVICE
BY MAIL AND EMAIL**

CPAT 190129.002

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

1. Kim Missel 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 25th day of February, 2020, 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 copies thereof in an envelope addressed as follows:

FIRST CLASS MAIL

JOSHUA MCKENNA
MCKENNA'S ROOFING
965 1ST AVE. NE # 22
LONG PRAIRIE, MN 56347

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.

3. Also on the 25th day of February, 2020 I served the CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING Upon Respondent via electronic mail by e-mailing the document to mckennasroofing@gmail.com.



Kim Missel

Subscribed and sworn to before me
this 25th day of February, 2020.



NOTARY PUBLIC

