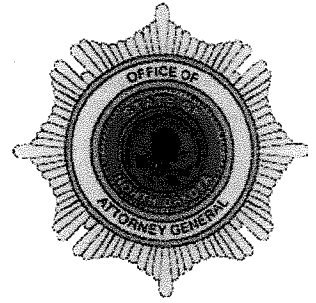




OFFICE OF ATTORNEY GENERAL
 CONSUMER PROTECTION AND ANTITRUST DIVISION
 GATEWAY PROFESSIONAL CENTER
 1050 E INTERSTATE AVENUE, STE 200
 BISMARCK, NORTH DAKOTA 58503-5574



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-

KEVIN IMLAY and KODY FRANKLIN,

Respondents.

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

CPAT 170076.001
 CPAT 170081.001

To the individuals identified below ("Respondents"):

KEVIN IMLAY
 KODY FRANKLIN
 PO BOX 763
 CROSBY, ND 58730-0763
 kodyfranklin8514@gmail.com

BACKGROUND

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have 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 the Respondents' unlawful acts or practices.

2. Respondents, individually and by and through their agents, are doing business under some or all of the names identified above, and have engaged in violations of North Dakota law by: 1) 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 provided in accordance with N.D.C.C. ch. 43-07; and 2) engaging in violations of N.D.C.C. ch. 43-07 and thereby violating N.D.C.C. § 51-15-02.

3. Respondents' last known address is PO Box 763, Crosby, ND 58730-0763. Respondents operated as sole proprietors in North Dakota.

4. Respondents are in the business of soliciting and selling merchandise, including performing building construction work. Respondents, or Respondents' agents on Respondents' behalf, solicited North Dakota customers.

5. Respondents engaged in the business or acted in the capacity of contractors 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 April 19, 2017, the Attorney General learned that Respondents were constructing a pole barn in Crosby, North Dakota for the Crosby Historical Society. Respondents advised the Attorney General that they estimated the total value of the job to be approximately \$20,000.00, and were being paid on an hourly basis. Respondents were, and remain, unlicensed as contractors in North Dakota.

7. Based on information received, it appeared to the Attorney General that Respondents were engaged in violations of North Dakota law. Pursuant to N.D.C.C. § 51-15-06.1, on April 21, 2017, the Attorney General offered an Assurance of Voluntary Compliance (“AVC”) to Respondents in order to settle violation of N.D.C.C. §§ 43-07-02 and 51-15-02 without investigation and litigation. The Attorney General requested return of the AVC on or before May 5, 2017. Respondents did not respond.

8. On May 16, 2017, the Attorney General sent a letter to Respondents requesting that Respondents complete and return the AVC on or before May 30, 2017. Respondents did not respond.

9. On June 5, 2017, the Attorney General issued a Civil Investigative Demand (“CID”) to Respondents pursuant to the Attorney General’s authority under N.D.C.C. § 51-15-04. The CID was sent to Respondents at their last known address and e-mail address kodyfranklin8514@gmail.com. The CID required response by June 19, 2017. In lieu of responding to the CID, the Attorney General offered Respondents another opportunity to return the AVC, this time by June 19, 2017. Respondents did execute and return the AVC, and did not respond to the CID.

10. On June 22, 2017, the Attorney General sent Respondents a letter requesting that Respondents comply with the CID on or before July 6, 2017. Respondents did not 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 Respondents’ failure to respond to the Civil Investigative Demand.

11. It appears to the Attorney General that Respondents, or Respondents’ agents on Respondents’ behalf, engaged in violations of N.D.C.C. chs. 43-07 and 51-15

by 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.

ORDER

Based upon the foregoing information, it appears to the Attorney General that Respondents have engaged in violations of N.D.C.C. chs. 43-07 and 51-15 and Respondents have 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 Respondents, 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 building construction services, to North Dakota consumers in violation of North Dakota chs. 43-07 and 51-15; 2) engaging in the business or acting in the capacity of contractors 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. Respondents 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. Respondents have the right to be represented by legal counsel at the hearing at the Respondents' expense.

Dated this 15th day of August, 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
OFFICE OF ATTORNEY GENERAL

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

Petitioner,

-vs-

KEVIN IMLAY and KODY FRANKLIN,

Respondents.

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

CPAT 170076.001
CPAT 170081.001

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 15th day of August, 2017 I served the (1) CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING, AND (2) AFFIDAVIT OF SERVICE BY MAIL, CERTIFIED MAIL, AND EMAIL upon the following by placing true and correct copies thereof in an envelope addressed as follows:

FIRST CLASS MAIL

KODY FRANKLIN
PO BOX 763
CROSBY ND 58730-0763

CERTIFIED MAIL RECEIPT # 7014 1820 0000 9090 9530

KODY FRANKLIN
PO BOX 763
CROSBY ND 58730-0763

FIRST CLASS MAIL


KEVIN IMLAY
PO BOX 763
CROSBY ND 58730-0763

CERTIFIED MAIL RECEIPT # 7014 1820 0000 9090 9547

KEVIN IMLAY
PO BOX 763
CROSBY ND 58730-0763

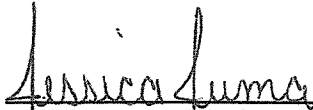
and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota, as first class mail and as CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

[¶3] Also on the 15th day of August, 2017 I served the (1) CEASE AND DESIST ORDER, NOTICE OF CIVIL PENALTY AND NOTICE OF RIGHT TO REQUEST A HEARING, AND (2) AFFIDAVIT OF SERVICE BY MAIL, CERTIFIED MAIL, AND EMAIL upon Respondents via electronic mail by e-mailing the document to kodyfranklin8514@gmail.com.



Alexis Bieber

Subscribed and sworn to before me
this 15th day of August, 2017.



NOTARY PUBLIC

