



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-

WESTERN STEEL STRUCTURES, INC.
doing business as
STEELSTRUCTURESUSA.COM and
JONATHAN LEE OLIVER, also known as
JON WALKER, JOHN WALKER, JON
OLIVER, and **J.L. OLIVER**, Individually

Respondents.

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

CPAT 110308.001

To the individual and entity identified below (hereinafter "Respondents"):

Western Steel Structures, Inc.
steelstructuresusa.com
6680 US Highway 10 W
Missoula, MT 59808-9011
and
111 N. Higgins Ave. Ste 402
Missoula, MT 59802
and
4676 Commercial Street SE, PMB #511,
Salem, Oregon 97302

Jonathan Lee Oliver also known as
Jon Walker, John Walker, Jon Oliver, J.L. Oliver
6680 US Highway 10 W
Missoula, MT 59808-9011
and
111 N. Higgins Ave. Ste 402
Missoula, MT 59802
and
4676 Commercial Street SE, PMB #511,
Salem, Oregon 97302

(including all of those entities' officers, directors, owners, agents, servants, employees and representatives as well as all other persons in active concert or participation with them, extending to all "doing business as" names, formal corporate names, fictitious names of any kind or any variations of the same)

BACKGROUND

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15, commonly referred to as the "Consumer Fraud Law;" N.D.C.C. ch. 43-07, commonly referred to as the "Contractors Law;" and N.D.C.C. ch. 51-04, commonly referred to as the "Transient Merchants Law." It is necessary and appropriate in the public interest and for the protection of consumers to restrain Respondents' unlawful acts or practices.

2. Respondents are either doing business under some or all of the names identified above or, in the alternative, are engaged with those persons in a combination of two or more persons who have agreed to act together to inflict a wrong or an injury upon another, or who have agreed to act together to commit a lawful act using unlawful means to inflict a wrong or injury upon another, namely violation of North Dakota's Consumer Fraud Law. In doing so, Respondents have committed acts in pursuit of the

agreement and the agreement has proximately caused damage to North Dakota consumers.

3. Western Steel Structures, Inc. (hereinafter "Western Steel") is a Nevada Corporation. Jonathan Lee Oliver also known as Jon Walker, John Walker, Jon Oliver, and J.L. Oliver (hereinafter "Oliver") is the President of Western Steel Structures, Inc. Respondents' mailing address on file with the Nevada Secretary of State is 4676 Commercial Street SE, PMB #511, Salem, Oregon 97302. Respondents are registered with the North Dakota Secretary of State as a foreign business corporation and have used the mailing addresses of 6680 US Highway 10 W, Missoula, MT 59808 and 111 N. Higgins Ave., Suite 402, Missoula, MT 59802. Respondents are doing business as and operate a website named www.steelstructuresusa.com.

4. Respondents are in the business of providing contracting services, including, but not limited to erecting steel buildings. Respondents applied for a contractor's license using false information. Respondents failed to disclose Oliver's criminal history as required by the contractor license application and North Dakota law. By providing false information to the Secretary of State, Respondents have illegally obtained a contractor's license. Additionally, Respondents do not have a transient merchant license as required by N.D.C.C. ch. 51-04.

5. Based upon information and belief, Respondent Jonathan Lee Oliver has used the alias of Jon Walker in North Dakota in order to conceal his prior criminal history in Oregon, and legal action by the New Hampshire Attorney General against him. Jonathan Lee Oliver is wanted in the State of Oregon for absconding from probation and failing to appear on fraud charges. In a legal action by New Hampshire Attorney General's Consumer Protection Bureau, a New Hampshire court found that

Oliver owed \$625,414 to 1,370 former customers. Oliver had solicited and accepted advance payments for heating oil, and failed to deliver the heating oil to his customers.

6. Respondents have made untrue, deceptive and misleading representations, and/or have made or engaged in deceptive acts or practices, fraud, false pretenses, false promises or misrepresentations with the intent that others rely thereon, in violation of N.D.C.C. ch. 51-15, the Consumer Fraud Law.

7. The Attorney General has received information alleging that Respondents have solicited and accepted advance payments to erect steel buildings in North Dakota, and have failed to provide all of the services and/or merchandise agreed to under the terms of the contracts. In many instances, Respondents, after soliciting and receiving almost the entire cost of the building, have only provided a minimal amount of the materials ordered by the consumers.

8. The Attorney General has received information alleging that Respondents solicited and accepted an advance payment of approximately \$90,000 from a Zeeland, North Dakota consumer for a steel building. Respondents have failed to provide the consumer's materials, and have failed to erect the building.

9. The Attorney General has received information alleging that Respondents solicited and accepted an advance payment of approximately \$247,000 from a Arnegard, North Dakota consumer for a steel building. Respondents have failed to provide the consumer's materials, and have failed to erect the building.

10. The Attorney General has received information alleging that Respondents solicited and accepted an advance payment of approximately \$355,000 from a Williston, North Dakota consumer for a steel building. Respondents have failed to provide the consumer's materials, and have failed to erect the building.

11. The Attorney General has received information alleging that Respondents solicited and accepted an advance payment of approximately \$592,000 from a Texas consumer for a steel building in Williston, North Dakota. Respondents have failed to provide the consumer's materials, and have failed to erect the building.

12. The Attorney General has received information alleging that Respondents solicited and accepted an advance payment of approximately \$250,000 from a Carrington, North Dakota consumer for a steel building. Respondents have failed to provide all of the consumer's materials, and have failed to completely erect the building.

13. The Attorney General has received information alleging that Respondents solicited and accepted advance payments from consumers in Harvey, Leeds, Osnebrook, Tioga, and Munich, North Dakota and have provided some of the materials and services paid for by the consumers. However, since the buildings were not completed, the consumers at significant personal expense either had to hire their own contractors and/or purchase additional materials in order to complete the buildings.

14. Upon information and belief, there are other North Dakota consumers who have paid Respondents thousands of dollars in advance payments for contracting services and/or merchandise and Respondents have not completed their buildings.

15. Respondents have engaged in deceptive acts or practices during solicitations to North Dakota consumers. Respondents have made untrue, deceptive and misleading representations, or have engaged in deceptive acts or practices, with the intent that others rely thereon, including, but not necessarily limited to the following:

- 1) Respondents expressly, impliedly, or by omission of a material fact, made misrepresentations to North Dakota consumers including but not limited to, false representations regarding the existence, possession, price, location, delivery, quality,

and transportation of materials paid for by Respondents' customers; 2) Respondents engaged in said conduct at such times when Respondents had falsely obtained a North Dakota contractor's license without disclosing criminal offenses and/or convictions to the North Dakota Secretary of State; 3) Respondents expressly, impliedly, or by omission of a material fact, made misrepresentations to North Dakota consumers regarding when Respondents would begin, complete, or work on the projects paid for by Respondents' customers; 4) Respondents solicited and accepted pre-payment for materials and services without performing the services or failing to deliver the materials as promised to consumers; 5) Respondent Jonathan Oliver has misrepresented his true identity by using aliases to prevent customers from discovering his prior criminal history or violations of state laws in Oregon and New Hampshire; 6) Respondents expressly, impliedly, or by omission of a material fact, misrepresented to consumers that they were legally authorized to conduct contracting services in North Dakota when, in fact, Respondents had illegally obtained a contractor's license, which is required under N.D.C.C. 43-07, by providing false information to the North Dakota Secretary of State; 7) Respondents expressly, impliedly, or by omission of a material fact, misrepresented to consumers that they were legally authorized to conduct business in North Dakota when, in fact, Respondents failed to be licensed as a transient merchant pursuant to N.D.C.C. ch. 51-04.

16. Respondents have operated as a contractor in the state of North Dakota and have solicited and accepted payment for contracting services in excess of \$2,000. Respondents provided false information to the North Dakota Secretary of State in their contractor's license application. Respondents' contractor's license is subject to

revocation pursuant to N.D.C.C. § 43-07-14 and Respondents actions further constitute violations of N.D.C.C. ch. 51-15, pursuant to N.D.C.C. 43-07-14.

17. Respondents are alleged to be a "transient merchant," as defined by N.D.C.C. §51-04-01(2). Respondents have offered and sold to consumers contracting merchandise and services, including, but not limited, merchandise and services to erect steel buildings. Respondents are not licensed as a transient merchant and it appears that Respondents have engaged in sales activity in North Dakota without first obtaining the required transient merchant license pursuant to N.D.C.C. ch. 51-04. Therefore, said sales transactions are invalid.

18. Each of the Respondents are engaged in a combination of two or more persons who have agreed to act together to inflict a wrong or an injury upon another, or who have agreed to act together to commit a lawful act using unlawful means to inflict a wrong or injury upon another, namely violation of North Dakota's Consumer Fraud Law. In doing so, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

19. Respondents are liable for their own misconduct and/or for directing others to engage in misconduct. See *e.g. Zimprich v. North Dakota Harvestore Sys., Inc.*, 419 N.W.2d 912, 914 (N.D. 1988); *Rickbeil v. Grafton Deaconess Hosp.*, 23 N.W.2d 247, 257 (N.D. 1946)("The general rule with reference to this feature is considered and set out in the great series of volumes of jurisprudence familiar to the courts. In 52 Am. Jur., 440, this rule is stated, 'It is a conceded general rule that all persons or entities are liable for torts committed by them, or by their agents while acting within the scope of their duties.'").

20. Respondents who are natural persons will additionally be subject to personal liability for corporate misconduct. *Hilzendager v. Skwarok*, 335 N.W.2d 768 (N.D. 1983)(quoting *Schriock v. Schriock*, 128 N.W.2d 852, 866 (N.D. 1964)("... but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.' Fletcher, Private Corporations Sec. 41 (1963 rev. vol.)."). The crime/fraud exception to the protections of corporate form has long been recognized in North Dakota, "neither law nor equity will ever recognize the right of a corporate entity to become the receptacle or cover for fraud or wrong based on deception for the purpose of defeating the right of innocent parties." *McFadden v. Jenkins*, 169 N.W. 151, 163 (N.D. 1918). See also *Danks v. Holland*, 246 N.W.2d 86 (N.D. 1976); *Family Center Drug v. North Dakota St. Bd. of Pharm.*, 181 N.W.2d 738, 745 (N.D. 1970).

ORDER

NOW, THEREFORE, IT IS ORDERED pursuant to N.D.C.C. § 51-15-07 that Respondents and their agents, servants, employees, contractors, representatives (extending to all "doing business as" names, formal corporate names, aliases, fictitious names of any kind or any variations of the same) as well as all other persons in active concert or participation with them, whether directly or indirectly, immediately **CEASE AND DESIST** from: 1) soliciting, advertising, selling, or providing in North Dakota any contracting services or merchandise, including, but not limited to, erecting steel buildings, and all other services and/or merchandise as defined in N.D.C.C. § 51-15-01(3); 2) soliciting using untrue, deceptive or misleading representations to consumers 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; 3) soliciting or accepting from consumers any advance payments or consumer deposits in connection with any sale of merchandise, as defined by N.D.C.C. § 51-15-01(3); 4) providing contracting services in North Dakota in violation of N.D.C.C. ch. 43-07; and 5) engaging in any sales or business activities in North Dakota, including soliciting, advertising or selling goods, services and/or merchandise as defined N.D.C.C. § 51-15-01(3), without a Transient Merchants license as required pursuant to N.D.C.C. ch. 51-04. Respondents also shall immediately **CEASE AND DESIST** from issuing any invoices or bills to North Dakota consumers for the sale of contracting 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 contracting services or merchandise or other services and/or 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 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 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 43-07 may result in additional civil

penalties of not more than \$5,000 per violation and is a Class A misdemeanor. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-04 may result in additional civil penalties of not more than \$5,000 per violation and is a Class B misdemeanor. 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, 51-04, 43-07 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.

Dated this 22nd day of December, 2011.

STATE OF NORTH DAKOTA
Wayne Stenehjem
Attorney General

BY:



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