

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF STUTSMAN

SOUTHEAST JUDICIAL DISTRICT

STATE OF NORTH DAKOTA EX REL.  
DREW H. WRIGLEY,  
ATTORNEY GENERAL,

Civil No. 47-2022-CV-00355

Plaintiff,

-vs-

DAVID ALEX HANSEN, a/k/a DAVE  
HANSEN, doing business as HANSEN  
ELEVATOR SERVICE,

**JUDGMENT**

Defendant.

[¶1] This action came on before the Honorable Daniel D. Narum, 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 Drew H. Wrigley, Attorney General, and served upon Defendants by mail on August 25, 2022. Defendant failed to respond in opposition to the State's 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. Defendant is adjudged in violation of the consumer fraud law and N.D.C.C. § 51-15-02 for engaging in the deceptive acts and practices alleged in the Complaint, including for soliciting advance payments from consumers and then failing to provide the product and service.

and restrained from engaging in sales of contracting and home improvements, repairs, or services, including elevator servicing and repair.

G. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendant in the amount of \$14,010.80 as restitution for the Streeter Farmers Co-Op.

H. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendant in the amount of \$1,207.00 as restitution for City Center Condo.

I. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendant in the amount of \$3,693.47 as restitution for City Center Condo II.

J. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendant in the amount of \$8,583.88 as restitution for Tronson Grain, LLC.

K. Plaintiff shall have Judgment against Defendant in the amount of \$4,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

L. Plaintiff shall have Judgment against Defendant in the amount of \$1,452.00 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.

M. Defendant, 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.

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

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

**CLERK OF DISTRICT COURT**  
Signed: 11/14/2022 8:11:04 AM

Carie Miller, Deputy

STATE OF NORTH DAKOTA

IN DISTRICT COURT

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SOUTHEAST JUDICIAL DISTRICT

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DREW H. WRIGLEY,  
ATTORNEY GENERAL,

Civil No. 47-2022-CV-00355

Plaintiff,

-vs-

DAVID ALEX HANSEN, a/k/a DAVE  
HANSEN, doing business as HANSEN  
ELEVATOR SERVICE,

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

Defendant.

[¶1] This matter came before the Court on the State's Motion for Summary Judgment filed on August 25, 2022. Index ## 23-33. Defendant was served with the State's Motion for Summary Judgment by mail on August 25, 2022. Index # 33. More than 33 days have passed since Defendant was served with the State's Motion for Summary Judgment, and Defendant is now in default and has failed to dispute the facts and allegations set forth therein.

[¶2] WHEREFORE, the Court, having reviewed the State'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 NOT IN GENUINE ISSUE**

[¶3] The State initiated this action by service of the Summons and Complaint on Defendant. Index # 12.

[¶4] Under N.D.R.Civ.P. 12(a)(1)(A), "a defendant must serve an answer within 21 days after being served with the summons and complaint." N.D.R.Civ.P. 12(a)(1)(A). Under

N.D.R.Civ.P. 8(b)(6), an allegation is admitted if it is not denied where a responsive pleading is required. N.D.R.Civ.P. 8(b)(6).

[¶5] Defendant has failed to answer the Complaint.<sup>1</sup>

[¶6] Therefore, Defendant admits the entirety of the State's Complaint, including the following specific facts that are undisputed and therefore not in genuine issue:

On August 30, 2021, the State commenced a consumer fraud enforcement action against Defendant. *State v. Hansen*, No. 09-2021-CV-02807 (Dist. Ct. E. Central Jud. Dist., N.D.).

On November 16, 2021, judgment was entered against Defendant. Ex. 1, J., No. 09-2021-CV-02807 (Nov. 16, 2021).

The court entered judgment after it determined that Defendant had defrauded Prairie Vista Condos, East; Prairie Vista Condos, West; Berthold Farmers Elevator; and Sheraton II Condominium out of a total of approximately \$102,128, and that he had committed consumer fraud in violation of N.D.C.C. § 51-15-02. Ex. 2, Findings ¶¶ 6, 17 – 20, No. 09-2021-CV-02807 (Nov. 16, 2021).

Defendant was adjudged in violation of N.D.C.C. ch. 51-15 for his deceptive conduct:

[Hansen] is adjudged in violation of the consumer fraud law and N.D.C.C. § 51-15-02 for engaging in the deceptive acts and practices by soliciting large advance payments from consumers and using those funds for personal expenses, falsely representing his status as a limited liability company, and falsely representing that he holds liability insurance.

Id. at ¶ 25(A).

Defendant was permanently enjoined from: “the advertising or sale of contracting and home improvements, repairs, or services, including elevator servicing and repair.” Ex. 1 at ¶ 2(E).

The permanent injunction would be lifted only if Defendant applied to the Attorney General and the Court and showed he had satisfied the following conditions: (1) five or more years had elapsed; (2) Defendant had paid all restitution ordered by the court, including the \$102,128 owed to Prairie Vista Condos, East; Prairie Vista Condos, West; Berthold Farmers Elevator; and

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<sup>1</sup> Defendant's appearances have been limited to the State's request for punitive contempt sanctions for Defendant's alleged violations of injunctive relief obtained by the State in *State v. Hansen*, 09-2021-CV-02807 (Dist. C. E. Central Jud. Dist., N.D.).

Sheraton II Condominium; and (3) Defendant had paid all amounts owed to the State. *Id.* at ¶ 2(F)(1) – (3).

Because Defendant has not satisfied the above conditions, *id.*, he is permanently enjoined from contracting in the State, including elevator servicing and repair.

**In violation of the November 16, 2021 Judgment, Defendant contracted with Streeter Farmer’s Elevator.**

Despite the consumer fraud determination and injunction ordered by the Cass County District Court on November 16, 2021, Ex. 1, Defendant continues his elevator servicing and repair scam in North Dakota.

In or around March 2022, Hansen visited the Streeter Farmers Co-op (“the Co-op”) in Streeter, ND. Affidavit of Andrew Heflin (“Aff. Heflin”), ¶ 4.

Hansen represented to an employee of the Co-op that he needed to inspect the Co-op’s manlift elevator for “OSHA compliance.” *Id.* at ¶ 5.

After Hansen “inspected” the manlift elevator, he represented that the manlift elevator needed repairs to comply with OSHA requirements. *Id.* at ¶ 6.

On March 8, 2022, Hansen issued an invoice wherein he solicited an initial payment of \$1,590.33 from the Co-op for work performed that the Co-op paid to Hansen by check. *Id.* at ¶ 7.

On March 17, 2022, Hansen issued a second invoice wherein he solicited a payment of \$5,168.08 from the Co-op for work performed that the Co-op paid to Hansen by check. *Id.* at ¶ 8.

On March 28, 2022, Hansen issued a third invoice wherein he solicited a payment of \$1,853.39 from the Co-op for work performed that the Co-op paid to Hansen by check. *Id.* at ¶ 9.

On April 19, 2022, Hansen issued a fourth invoice wherein he solicited a payment of \$5,399.00 for work performed from the Co-op that the Co-op paid to Hansen by check. *Id.* at ¶ 10.

On the April 19, 2022 invoice, Hansen wrote that it encapsulated the labor purportedly performed by him and that had not been charged on a prior invoice. *Id.* at ¶ 11.

Hansen claimed to have performed 20 hours labor that he charged at a rate of \$269.95. *Id.* at ¶ 12.

In total, Hansen solicited and accepted payment of approximately \$14,000 from the Co-op to complete repairs to the manlift elevator. *Id.* at ¶ 13.

However, contrary to Hansen's representations, he did not complete the work he promised to perform and that he represented on his invoices. *Id.* at ¶ 14.

The Co-op attempted to reach Hansen regarding the outstanding work, but Hansen did not answer or return the Co-op's calls. *Id.* at ¶ 15.

Contrary to his representation, Hansen did not complete 20 hours of work, but only approximately two hours of work. *Id.* at ¶ 16.

Hansen did not disclose to the Co-op that he does not hold a contractor's license and did not disclose that he is enjoined from contracting and elevator service and repair by order of the Cass County District Court. *Id.* at ¶ 17.

Compl., Index # 2, ¶¶ 12-18; 24-38; also, Index ## 3-9.

[¶7] The State also seeks summary judgment on three additional complainants who alleged they were defrauded by Defendant. Because Defendant failed to present competent admissible evidence that raises an issue of material fact as to those complainants, the following additional facts are not in genuine dispute:

[¶8] On October 10, 2019, Defendant contracted with City Center Condo II to provide parts and labor to service and maintain their elevator. Index # 26 at pp. 1-2. Defendant solicited and accepted \$3,693.47 from City Center Condo II which included \$1,255.85 for parts and labor that Defendant failed to provide. *Id.* at p. 1.

[¶9] On March 3, 2021, Defendant contracted with City Center Condo to provide three elevator doors for a total cost of \$1,207.00. Affidavit of Donovan Kosse, Index # 28, ¶¶ 6-7. On March 3, 2021, Defendant solicited and accepted \$1,207.00 from City Center Condo that Defendant never provided. *Id.* at ¶¶ 7-8.

[¶10] On October 19, 2021, Defendant contracted with Tronson Grain, LLC to provide parts and labor for their manlift elevator. Index # 27 at pp. 1, 4. Defendant solicited and accepted \$8,583.88 from Tronson Grain for parts and labor that Defendant failed to provide. *Id.* at pp. 2, 5.

## II. CONCLUSIONS OF LAW

[¶11] The State of North Dakota brought this action on the relation of Drew H. Wrigley, 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. Drew H. Wrigley, Attorney General, has authority to act in this matter pursuant to N.D.C.C. ch. 51-15.

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

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

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

[¶15] 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.

[¶16] The standard for summary judgment is well-established:

“Summary judgment is appropriate when ‘there is no dispute as to either the material facts or the inferences to be drawn from the undisputed facts, or whenever only a question of law is involved.’ ” Rooks v. Robb, 2015 ND 274, ¶ 10, 871 N.W.2d 468 (quoting First Nat'l Bank v. Clark, 332 N.W.2d 264, 267 (N.D. 1983)). Under Rule 56, N.D.R.Civ.P., the movant bears the burden of showing no genuine issue of material fact exists. Rooks, at ¶ 10. The party resisting the motion for summary judgment is given all favorable inferences which may reasonably be drawn from the evidence. Id. A party resisting summary judgment cannot only rely on the pleadings, but must present competent admissible evidence raising an issue of material fact. Swenson v. Raumin, 1998 ND 150, ¶ 9, 583 N.W.2d 102. A non-moving party cannot rely on speculation. Beckler v. Bismarck Pub. Sch. Dist., 2006 ND 58, ¶ 7, 711 N.W.2d 172.

City of Glen Ullin v. Schirado, 2021 ND 72, ¶ 10.

[¶17] 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, 728 N.W.2d 142, 147; also, Grinnell Mut. Reinsurance Co. v. Ctr. Mut. Ins. Co., 2003 ND 50, ¶ 9, 658 N.W.2d 363, 369. “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.” Dahl v. Messmer, 2006 ND 166, ¶ 8, 719 N.W.2d 341, 344 (quoting Kary v. Prudential Ins. Co. of Am., 541 N.W.2d 703, 706 (N.D. 1996)).

[¶18] 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 (6<sup>th</sup> ed. 1990); also, Rooks v. N. Dakota Workers' Comp. Bureau, 506 N.W.2d 78, 80 (N.D. 1993).

[¶19] 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).

[¶20] There is no material issue of fact preventing an entry of summary judgment as a matter of law because the material facts of the Complaint are undisputed, and Defendant failed to present competent admissible evidence to raise a genuine issue of material fact. Schirado, 2021 ND at ¶ 10.

[¶21] 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).

[¶22] **Defendant violated N.D.C.C. § 43-07-02(1).** N.D.C.C. § 43-07-02(1) prohibits “engaging in the business or acting in the capacity of a contractor ... when the cost, value, or price

per job exceeds the sum of four thousand dollars.” The Supreme Court recognizes that the purpose of the contractor licensing statute “is to protect consumers from fraudulent practices and to protect the public from unqualified or uninsured contractors,” and to “protect the public by ensuring a contractor has liability insurance and has secured workforce safety and insurance coverage.” Snider v. Dickinson Elks Bldg., LLC, 2018 ND 55, ¶ 13, 907 N.W.2d 397, 401.

[¶23] By failing to answer the Complaint and oppose the State’s Motion for Summary Judgment, Defendant admits and does not contest he violated N.D.C.C. § 43-07-02(1) by contracting with North Dakota consumers above the statutory amount of four thousand dollars while unlicensed, including with consumers Streeter Farmer’s Elevator and Tronson Grain. Supra, ¶¶ 6, 8-10; also, Index ## 5-9, 26-30.

[¶24] **Defendant violated N.D.C.C. § 51-15-02.** N.D.C.C. § 51-15-02 provides:

**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.

[¶25] “It is well established that the Unlawful Sales Practices Act is remedial in nature and must be liberally construed to effectuate its purpose.” Staal v. Scherping Enterprises, Inc., 466 F. Supp. 3d 1030, 1034 (D.N.D. 2020) (citing State ex rel. Spaeth v. Eddy Furniture Co., 386 N.W.2d 901, 903 (N.D. 1986)).

[¶26] By failing to answer the Complaint and oppose the State’s motion for summary judgment, Defendant admits that he violated N.D.C.C. § 51-15-02 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 exceeds the sum of four thousand dollars without first having a contractor license issued by the

Secretary of State; and (2) making false or misleading statements to customers, including implied or express false representations regarding Defendant's ability to engage in the business or act in the capacity of contractor. Supra, ¶¶ 6, 8 – 10.

[¶27] Specifically, Defendant admits and does not dispute that he (1) contracted with Streeter Farmer's Elevator, City Center Condo, City Center Condo II, and Tronson Grain; (2) solicited advance deposits from each of them; and (3) performed no work, provided no materials, and/or provided no refunds. Id. Instead of performing as promised, Defendant made excuses and ignored efforts to communicate with him. Id.

[¶28] 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 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.

[¶29] 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 because of his deceptive acts or practices, pursuant to N.D.C.C. § 51-15-07.

[¶30] 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 to the Attorney General its fees and costs incurred in investigating and prosecuting this matter, pursuant to N.D.C.C. § 51-15-10.

[¶31] 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.

### **ORDER FOR JUDGMENT**

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

A. Defendant is adjudged in violation of the consumer fraud law and N.D.C.C. § 51-15-02 for engaging in the deceptive acts and practices alleged in the Complaint, including for soliciting advance payments from consumers and then failing to provide the product and service.

B. Defendant 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.

C. Defendant, 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.

D. Defendant, 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).

E. Defendant, 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, including elevator servicing and repair, in accordance with Paragraph 32(F), *infra*.

F. Pursuant to N.D.C.C. § 51-15-07, Defendant, 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 elevator servicing and repair.

G. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendant in the amount of \$14,010.80 as restitution for the Streeter Farmers Co-Op.

H. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendant in the amount of \$1,207.00 as restitution for City Center Condo.

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J. Plaintiff, pursuant to N.D.C.C. § 51-15-07, shall have judgment against Defendant in the amount of \$8,583.88 as restitution for Tronson Grain, LLC.

K. Plaintiff shall have Judgment against Defendant in the amount of \$4,000.00 for civil penalties, pursuant to N.D.C.C. § 51-15-11.

L. Plaintiff shall have Judgment against Defendant in the amount of \$1,452.00 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.

M. Defendant, 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.

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

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

Signed: 11/9/2022 11:27:16 AM  
**BY THE COURT:**

  
\_\_\_\_\_  
District Court Judge