



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

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

Petitioner,

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

-VS-

**BARON BUILDINGS, LLC; doing
 business as BARON BUILDING
 SYSTEMS, and BARON STEEL
 BUILDINGS;
 AG PRO BUILDINGS, LLC; doing
 business as AGPRO BUILDINGS;
 AGPROBUILDINGS.COM;
 BARONBUILDINGS.COM;
 DAKOTAPOLEBARN.COM;
 FACTORYDIRECTMETALS.COM;
 KARLA ANN NELSON, individually;
 GEORGE DONALD NELSON III, individually
 BEN ANDREW NELSON, individually; and
 NICK NELSON, individually;**

Respondents.

CPAT# 120024.003

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

**Baron Buildings LLC
 www.baronbuildings.com
 1400 Market Place Blvd Ste 128
 Cumming, GA 30041-7925
 and
 PO Box 1262
 Pierre, SD 57501-1262
 and**

5835 Aspen Forest Ct
Cumming, GA 30040-9524
888-782-2766
605-224-9888
678-771-8529
605-224-4205

AG Pro Buildings LLC

www.agprobuildings.com

www.dakotapolebarns.com

www.factorydirectmetals.com

1400 Market Place Blvd Ste 128
Cumming, GA 30041-7925
and
4302 13th Ave S Ste 4305
Fargo, ND 58103-3395
855-552-4776

Karla Ann Nelson

4302 13th Ave S Ste 4305
Fargo, ND 58103-3395
and
1400 Market Place Blvd Ste 128
Cumming, GA 30041-7925
and
PO Box 1262
Pierre, SD 57501-1262
and
5835 Aspen Forest Ct
Cumming, GA 30040-9524
218-277-0319

George Donald Nelson III

4302 13th Ave S Ste 4305
Fargo, ND 58103-3395
and
1400 Market Place Blvd Ste 128
Cumming, GA 30041-7925
and
PO Box 1262
Pierre, SD 57501-1262
and
5835 Aspen Forest Ct
Cumming, GA 30040-9524

c/o

Minnesota Correctional Facility-Faribault
1101 Linden Lane
Faribault, MN 55021-6400

Nick Nelson
4302 13th Ave S Ste 4305
Fargo, ND 58103-3395
507-602-2337

Ben Andrew Nelson
4302 13th Ave S Ste 4305
Fargo, ND 58103-3395

c/o

Cass County Jail
450 34th Street South
Fargo, ND 58103

(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 the Respondents' unlawful acts or practices.

2. Baron Buildings, LLC is a Georgia Limited Liability Company with its principal place of business at 1400 Market Place Blvd., Ste. 128, Cumming, GA 30041. AG Pro Buildings, LLC is a Georgia Limited Liability Company with its principal place of business at 1400 Market Place Blvd., Ste. 128, Cumming, GA 30041. Respondents

Karla Ann Nelson and George Donald Nelson III are the principals of Baron Buildings, LLC and AG Pro Buildings, LLC. Nick Nelson and Benjamin Andrew Nelson are Karla and George Nelson's sons, and are involved in facilitating and assisting Karla and George Nelson with Baron Buildings, LLC and AG Pro Buildings, LLC's deceptive business practices in North Dakota. Respondents have used the address 4302 13th Ave S Ste. 4305, Fargo ND 58103 as their business address in North Dakota. However, that address is a mail forwarding facility. Respondents operate and maintain the following websites www.baronbuildings.com, www.agprobuildings.com, www.dakotapolebarns.com, and www.factorydirectmetals.com. Respondents have engaged in advertising and soliciting the sale of merchandise, including contracting services to erect pole barns. Respondents solicited and accepted payments from North Dakota consumers when Respondents did not have a contractor's license as required by N.D.C.C. ch. 43-07. Additionally, Respondents did not have a transient merchant license as required by N.D.C.C. ch. 51-04.

3. 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 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; 3) Respondents solicited and accepted pre-payment for materials and services without performing the services or failing to deliver the materials as promised to consumers; 4) 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 did not have a contractor's license as required by N.D.C.C. ch. 43-07; and 5) 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.

4. The Attorney General received a complaint from a consumer in McLean County who had paid Respondents \$7,708.50 to erect a pole barn. However, after receiving the payment Respondents failed to deliver the materials ordered or erect the building. The consumer attempted to contact Respondents numerous times regarding their building, but Respondents would either not answer their phone or provide an excuse in order to delay finishing the project. Respondents provided some poles for the foundation and excavated some holes, but left the jobsite and never returned to finish erecting the building. At this time Respondents were not licensed with the Secretary of State's Office, pursuant to N.D.C.C. ch. 43-07, to perform contracting services in North Dakota.

5. The Attorney General received a complaint from a consumer in McLean County who had paid Respondents \$8,625.60 to erect a pole barn. However, after receiving the payment Respondents failed to deliver the materials ordered or erect the building. The consumer attempted to contact Respondents numerous times regarding

their building, but Respondents would either not answer their phone or provide an excuse in order to delay finishing the project. Respondents provided some materials and excavated some holes, but left the jobsite and never returned to finish erecting the building. At this time Respondents were not licensed with the Secretary of State's Office, pursuant to N.D.C.C. ch. 43-07, to perform contracting services in North Dakota.

6. The Attorney General received a complaint from a consumer in Benson County who had paid Respondents \$53,324 to erect a pole barn. However, after receiving the payment Respondents failed to deliver all of the materials ordered or to completely erect the building. Respondents provided some materials, but left the jobsite and never returned to finish erecting the building. The consumer attempted to contact Respondents numerous times regarding their building. However, Respondents would not finish the project. Eventually, Respondents requested that they sign a new contract modifying the terms of the agreement. Respondents have failed to complete the building, and have failed to refund the consumer. At this time Respondents were not licensed with the Secretary of State's Office, pursuant to N.D.C.C. ch. 43-07, to perform contracting services in North Dakota.

7. The Attorney General has received information that Respondents have solicited and accepted \$12,000 from a consumer in Dunn County to erect a pole barn, and represented that they would purchase materials for the project. Although the consumer received some materials, the lumber company informed the consumer that Respondents had not paid for the materials. At this time Respondents were not licensed with the Secretary of State's Office, pursuant to N.D.C.C. ch. 43-07, to perform contracting services in North Dakota.

8. The Attorney General has received information that Respondents agreed to erect a pole barn for a consumer in Steele County, and after the consumer paid approximately \$43,000 for the materials and labor to erect the building, Respondents failed to deliver all of the materials or completely erect the building. At this time Respondents were not licensed with the Secretary of State's Office, pursuant to N.D.C.C. ch. 43-07, to perform contacting services in North Dakota.

9. The Attorney General has received information that Respondents agreed to erect a pole barn for a consumer in Traill County, and after the consumer paid approximately \$47,000 for the materials and labor to erect the building, Respondents failed to deliver all of the materials or completely erect the building. At this time Respondents were not licensed with the Secretary of State's Office, pursuant to N.D.C.C. ch. 43-07, to perform contacting services in North Dakota.

10. The Attorney General has received information that Respondents failed to completely erect a building for a consumer in Ransom County, and that the consumer will have to pay an additional \$50,000 to have their building finished by another contractor. At this time Respondents were not licensed with the Secretary of State's Office, pursuant to N.D.C.C. ch. 43-07, to perform contacting services in North Dakota.

11. The Attorney General has received information that there may be additional consumers in Stutsman, Bowman, and Mountrail Counties who have paid Respondents for pole barns or steel buildings, that Respondents have failed to erect or finish.

12. After receiving consumer complaints and other information regarding Respondents' business activities, the Attorney General commenced an investigation into Respondents' business practices and discovered that Respondents did not have a contractor's license, as required by N.D.C.C. ch 43-07, or a transient merchant's license,

as required by N.D.C.C. ch. 51-04. The Attorney General issued a Civil Investigative Demand to Respondents Baron Buildings, LLC and Karla and George Nelson, individually, pursuant to the Attorney General's authority under N.D.C.C. § 51-15-04. Their attorney, David Siebrasse in Pierre, SD, was also served with the Civil Investigative Demand, and was informed that Baron Buildings, LLC and Karla and George Nelson's did not have contractor licenses as required by N.D.C.C. ch. 43-07. They failed to provide their responses or produce the documents requested in the Civil Investigative Demand. Pursuant to N.D.C.C. § 51-15-07, the Attorney General may issue a cease and desist order for their failure to respond to the Civil Investigative Demand.

13. Respondents are alleged to be "transient merchants," 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 pole barns. Respondents are not licensed as a transient merchant and 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.

14. Respondents have operated as a contractor in the state of North Dakota in at least nine North Dakota counties and have accepted payment for contracting services in excess of \$2,000. Respondents are not licensed as a contractor and Respondents have engaged in sales activity in North Dakota without obtaining the required contractor's license pursuant to N.D.C.C. ch. 43-07. Additionally, Respondents Karla and George Nelson's attorney was told that they did not have the required contractor's license to perform contracting work in North Dakota. Subsequently, Karla and George Nelson started AG Pro Buildings, LLC in order to, among other things, perpetuate their deceptive scheme to defraud North Dakota consumers.

15. 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. Additionally, Respondents violated N.D.C.C. ch. 51-15 by not obtaining a contractor's license before engaging in contracting work in excess of \$2,000 in multiple contracts or transactions with consumers, in violation N.D.C.C. ch. 43-07, and by not obtaining a transient merchant license as required by N.D.C.C. ch. 51-04. All of the actions discussed above, were part of a deceptive scheme to defraud North Dakota consumers in violation of N.D.C.C. ch. 51-15.

16. Each of the Respondents is 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 N.D.C.C. chs. 51-15, 43-07, and 51-04. In doing so, Respondents have committed acts in pursuit of an agreement and the agreement has proximately caused damage to North Dakota consumers.

17. 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.'").

18. 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

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, 51-04, and 51-15 and Respondents Baron Buildings, LLC, Karla Nelson, and George Nelson having 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 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 real property repairs and services, including, but not limited to, erecting pole barns, 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 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) and **CEASE AND DESIST** from operating or maintaining any website, including, but not limited to, www.baronbuildings.com, www.agprobbuildings.com, www.dakotapolebarns.com, and www.factorydirectmetals.com for the advertisement or 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. chs. 43-07, 51-15, 51-04 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.

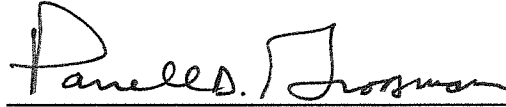
Dated this 24th day of January, 2013.

STATE OF NORTH DAKOTA

Wayne Stenehjem

Attorney General

BY:



Parrell D. Grossman, ID No. 04684

Assistant Attorney General

Director

Consumer Protection and

Antitrust Division

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