

APPENDIX

APPENDIX A

CODICIL TO
LAST WILL AND TESTAMENT
OF
ALBERT P. HERSCHLER

I, Albert P. Herschler, a resident of the County of Washington, State of Minnesota, being of sound mind and disposing memory, do hereby make, publish and declare this as and for a Codicil to my Last Will and Testament, which was executed by me on April 5, 1960.

FIRST. I do hereby revoke that portion of my said Last Will and Testament which is described as Subparagraph (d) in Paragraph SIXTH the following:

“(d) This trust shall terminate upon the death of the last survivor of my said wife and her sisters, at which time the entire trust estate shall be distributed by the Trustee to Saint Paul’s Church in the City of St. Paul, a corporation, 1524 Summit Avenue, St. Paul, Minnesota. The Trustee may make such distribution in kind or partly in kind and partly in money. Such proceeds shall become the property of the aforesaid beneficiary without any restrictions whatsoever on its use. However, I desire and request of said beneficiary that said proceedings received by it be thereafter known as the Albert P. and Helen A. Herschler Memorial Fund.”

IN WITNESS WHEREOF, I have hereunto set
my hand this 16th day of January 1961.

/s/ Albert P. Herschler

APPENDIX B

LAST WILL AND TESTAMENT
OF
ALBERT P. HERSCHLER

FOURTH. All of the rest, residue, and remainder of my estate, after the payment of all lawful charges and payments or distributions required by the preceding paragraphs, of whatsoever nature and wheresoever located, whether now owned or hereafter acquired, including any property over which I have power of appointment, I give, devise, bequeath and appoint to First Trust Company of Saint Paul, a corporation organized and existing under the laws of the State of Minnesota, not for its own use, however, but as Trustee of separate trusts to be known as "Trust A" and "Trust B."

FIFTH. The Trustee of "Trust A" shall administer the trust estate upon the following terms and conditions:

(f) This trust estate which my said wife disclaims or any portion of the trust estate remaining on the death of my said wife, which my said wife shall have failed to dispose of in an exercise of the power of appointment hereinbefore conferred upon her, shall be added to and become part of "Trust B."

IN WITNESS WHEREOF, I have hereunto set
my hand to this, my Last Will and Testament, this 5th,
day of April 1960.

/s/ Albert P. Herschler

APPENDIX C

FILED
Court Administrator
JUN 27 1995

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL
 DIVISION

Court File No. CX-67-355788

In The Matter of Trust B Under
the Will of Albert P. Herschler,

Deceased. FINDING OF FACT AND
ORDER ALLOWING ACCOUNTS
TERMINATING TRUST AND
DISCHARGING TRUSTEE

NOW THEREFORE, IT IS ORDERED,
ADJUGED AND DECREED BY THIS COURT AS
FOLLOWS:

1. That the Petition is hereby granted.
2. That the accounts of said Trustee for the period

November 16, 1992, to March 28, 1995, inclusive, all acts and doings of said Trustee as herein set forth be and the same hereby are approved and confirmed.

3. That Trust B under the Will of Albert P. Herschler is hereby terminated and the residue of the trust corpus as of March 28, 1995, plus any income accrued from that date shall be distributed after payment of all costs, expenses, claims and fees, to Saint Paul's Church, 1524 Summit Avenue, St. Paul, Minnesota.

4. That payment of the Trustee's fees, as indicated in the accounts filed herein, constitute fair and reasonable fees and payment hereof is hereby confirmed.

5. That Meier, Kennedy & Quinn, attorneys for Trustee, are hereby allowed a fee of Seven Hundred Fifty and no/100 Dollars (\$750.00).

6. That upon filing of a proper receipt showing the Distribution of the remainder of the Trust B property to Saint Paul's Church, First Trust Company, Inc. be discharged as Trustee of Trust B under the Will of Albert P. Herschler, without further order from the Court.

Dated: June 26, 1995

BY THE COURT:

JUDGE OF DISTRICT COURT

APPENDIX D

WASHINGTON COUNTY
DISTRICT COURT
JUL 21 1997
MARIE SUNLITIS
COURT ADMINISTRATOR

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF WASHINGTON TENTH JUDICIAL
DISTRICT
PROBATE DIVISION

Court File No. PX-95-400308

Estate of Helen A. Herschler, SETTLEMENT
Deceased. AGREEMENT AND
MUTUAL RELEASES

4. First Trust, as trustee of Trust A, will distribute to The Church all of the assets in Trust A, less court approved fees and expenses of First Trust. First Trust will make said distribution, to which each of the parties hereto agree not to interpose any objections, to The Church within five business days after the Ramsey County District Court approves the Final Accounting and disbursement of Trust A assets to The Church.

First Trust National Association

By: /s/ Lisa A. Hiniker

Its: Vice President

APPENDIX E

Filed
Court Administrator
SEP 3 1997

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL
DIVISION

Court File No. C8-67-355787

In The Matter of Trust
A Under the Will of Albert FINDINGS OF FACT
P. Herschler, ORDER ALLOWING
Deceased. ACCOUNTS
TERMINATING TRUST
AND DISCHARGING
TRUSTEE

NOW THEREFORE, IT IS ORDERED, ADJUDGED
AND DECREED BY THIS COURT AS FOLLOWS:

1. That the Petition is hereby granted.
2. That the accounts of said Trustee for the period November 16, 1992 through July 22, 1997, inclusive, and all acts and doings of said Trustee as herein set forth be and the same hereby are approved and confirmed.
3. That Trust A under the Will of Albert P.

Herschler is hereby terminated and the residue of the trust corpus as of July 22, 1997, plus any income accrued from that date shall be distributed after payment of all costs, expenses, claims and fees, to Saint Paul's Church, 1524 Summit Avenue, St. Paul, Minnesota.

4. That payment of the Trustee's fees, as indicated in amounts filed herein, constitute fair and reasonable fees and payment hereof is hereby confirmed.

5. That Meier, Kennedy & Quinn, attorneys for the Trustee, are hereby allowed a fee of Eight Hundred Fifty and no/100 Dollars (\$850.00) for this matter.

6. That upon filing of a proper receipt showing the Distribution of the remainder of the Trust A property to Saint Paul's Church, First Trust Company, Inc. be discharged as Trustee of Trust A under the Will of Albert P. Herschler, without further order from the Court.

Dated: Sept. 3, 1997

BY THE COURT:

/s/ Michael T. DeCourcy

JUDGE OF DISTRICT COURT

APPENDIX F

WASHINGTON COUNTY
DISTRICT COURT
FEB 10 1998
MARIE SUNLITIS
COURT ADMINISTRATOR

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF WASHINGTON TENTH JUDICIAL
 DISTRICT
 PROBATE DIVISION

Court File No. PX-95-400308

Estate of Helen A. Herschler, PETITION TO ALLOW
 FINAL ACCOUNT,
Deceased. DISTRIBUTE ASSETS
 AND DISCHARGE
 SPECIAL ADMINISTRATOR

7. The names of Decedent's spouse, children,
heirs/devisees and other persons interested in
this proceeding so far as known or ascertainable
with reasonable diligence by the Petitioner are:

Name and Mailing Address	Relationship and Interest
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See Attached

Audrey Heriot 6849 South Juniper Tempe, AZ 85283	Niece, Heir
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Kenneth R. Kunzer 2764 Chisholm Ave. E. North St. Paul, MN 55109	Nephew/Heir
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Gary C. Kunzer 999 Oakridge Avenue Shoreview, MN 55126	Nephew/Heir
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Richard A. Kunzer 7918 Fourth Avenue Circle Pines, MN 55014	Nephew/Heir
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William P. Kunzer 775 Orton Ave. NW Buffalo, MN 55313	Nephew/Heir
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12. This Court's Order dated July 11, 1997
determined that:

Decedent died testate.

Decedent's Will is comprised of the Will signed and
dated June 1, 1993.

The Order approved the Settlement Agreement
which is filed with the Court and is made a part of
this Petition. The Order provides that the terms of

the Settlement Agreement shall govern the disposition of the available assets in this estate.

13. The available assets are as set forth in the Final Account.

16. No Personal Representative of the Decedent has been appointed in Minnesota or elsewhere.

17. The Estate has been fully administered and all expenses, debts, valid charges and claims allowed have been fully paid, except:

Payment to the Charities and the Church pursuant to the Settlement Agreement filed with the Court and Order of this Court dated July 11, 1997.

18. A Final Account is filed and presented for consideration and approval.

19. The property on hand for distribution is as reflected in the Final Account.

Under penalties for perjury, I declare or affirm that I have read this document and I know or believe its representations are true and complete.

/s/ Lisa A. Hiniker

By: Lisa A. Hiniker, Vice
President Date Petitioner

APPENDIX G

**WASHINGTON COUNTY
DISTRICT COURT
MAY 8 1998
MARIE SUNLITIS
COURT ADMINISTRATOR**

**STATE OF MINNESOTA DISTRICT COURT
COUNTY OF WASHINGTON TENTH JUDICIAL
 DISTRICT
 PROBATE DIVISION**

Court File No. PX-95-400308

**Estate of Helen A. Herschler, ORDER ALLOWING
 AMENDED FINAL
 ACCOUNT AND
 Deceased. SETTLING ESTATE
 AND ORDER OF
 DISTRIBUTION**

**The Petition for an Order Allowing Final
Account and Settling Estate and Order of
Distribution, signed by Lisa A. Hiniker, as Vice
President of U.S. Bank Trust, f/k/a First Trust
National Association, came before this Court on May
8, 1998. The Court having heard and considered the
Petition, determines the following:**

7. This Estate has been in all respects fully administered, and all expenses, debts, valid charges and all claims allowed against this Estate have been paid or allowed for, except:

Payment to the Charities and the Church pursuant to the Settlement Agreement filed with the Court and Order of this Court dated July 11, 1997.

IT IS ORDERED:

1. The Petition is granted.
2. The acts of the Special Administrator as shown by the Amended Final Account and the Petition are confirmed.
3. The property of the Decedent available for distribution is as stated above.
4. The Amended Final Account of the Special Administrator is allowed.

/s/ David Doyscher
Judge

Date: May 8, 1998

APPENDIX H
FILED
OCT 13 2003
RAMSEY DISTRICT COURT

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL
 DIVISION
 Court File No. C8-67-355787

In the Matter of Trust A Under ORDER
The Will of Albert P. Herschler

Deceased.

Findings of Fact

5. U.S. Bank Trust has distributed all assets of Trust A as ordered by this Court.

Order

1. The Motion of U.S. Bank Trust for Ex Parte Relief is hereby granted.
2. Kenneth R. Kunzer's Petition by Heir of Testator Seeking Declaration of Resulting Trust on Failure of Express Testamentary Trust is hereby dismissed with prejudice.
3. Kenneth R. Kunzer's Motion to Compel Answers to

Interrogatories is hereby dismissed with prejudice.

LET JUDGMENT BE ENTERED ACCORDINNGLY

DATED: 10 October 2003 BY THE COURT

/s/ Margaret M. Marrinan
Judge of the District Court

In the Matter of:
Trust A Under the Will of
Albert P. Herschler,
Deceased.

FINDINGS OF FACT,
CONCLUSIONS OF
LAW, AND ORDER

15. U.S. Bank Trust has distributed all assets of Trust A as ordered by this Court. *In the Matter of Trust A Under The Will of Albert P. Herschler*, Order, at *2 (Oct. 10, 2013).

19. The Petition fails to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e). As previously adjudicated by this Court, pursuant to Court order, “U.S. Bank Trust has distributed all assets of Trust A.” *In the Matter of Trust A Under The*

Will of Albert P. Herschler, Deceased, C.A. No. C8-67-355787 (Ramsey County), Order, at *2 (Oct. 10, 2013).

Order

Kathryn Ann Parenteau's Petition To Compel Compliance with a Statutory Trust Accounting Demand is hereby dismissed, in its entirety, with prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated: December 27, 2017 BY THE COURT

/s/ Robyn Millenacker

Honorable Robyn Millenacker
Judge of District Court

Judgment

I hereby certify the foregoing order
Constitutes the Judgment of the Court.

Court Administrator
Linda Graske, Deputy Clerk

Graske, Linda
Feb 2 2018 9:08 AM

In the Matter of:
Trust A Under the Will of
Albert P. Herschler,
Deceased.

12. The Court also found that Petitioner failed to State a claim upon which relief could be granted. Minn.R. Civ. P. 12.02(e). As previously adjudicated by the Court, pursuant to Court order “U.S. Bank Trust has distributed all assets of Trust A.” *See In the Matter of Trust A Under the Will of Albert P. Herschler, Deceased*, C.A. No. C8-67-355787 (Ramsey County), Order, at *2 (October 10, 2013). Additionally, the statute of limitations and appeal rights for Petitioner’s claims have long expired.

Based on the foregoing findings of fact and conclusions of law, the Court now **ORDERS**:

1. The January 22, 2018 request for permission to file a motion for reconsideration of the Court Order dated December 27, 2017 is DENIED.
2. The request for Amended Findings is DENIED.
3. The request for a NEW TRIAL is DENIED.
4. Unless otherwise ordered, all other orders of the court shall remain in full force and effect.
5. A copy of this Order shall be served upon all parties.

Dated: April 17, 2018 BY THE COURT:

/s/ Robyn A. Millenacker
Robyn A. Millenacker
Judge of District Court

APPENDIX K

CASE 0:20-cv-00882-JRT-KMM Document 16
Filed 06/03/20 Page 1 of 6

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Kenneth R. Kunzer, Case No. 20-CV-0882
Plaintiff, (JRT/KMM)

v. REPORT AND RECOMMENDATION

Lisa A. Hiniker, et al.,
Defendants.

Helen Herschler passed away in 1994. She had been the principal beneficiary of a trust created under her husband's will. The trust granted Ms. Herschler the power to appoint the entire corpus of the trust upon her death. Plaintiff Kenneth R. Kunzer argued during the course of Ms. Herschler's probate proceedings that she had exercised that power in her will and had appointed the corpus of the trust to him. The probate court found otherwise, determining that Ms. Herschler had not properly exercised her power of appointment. Defendant U.S. Bank, as trustee, distributed all assets of the trust. *See In the Matter of*

Trust A Under the Will of Albert P. Herschler, No. 62-TR-CV-17-60 (Minn. Dist. Ct. Apr. 17, 2018).

RECOMMENDATION

Based on the forgoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED THAT:

1. This matter is DISMISSED as follows:
 - a. The claims arising under federal law be DISMISSED WITH PREJUDICE as frivolous.
 - b. The claims arising under state law be DISMISSED WITHOUT PREJUDICE for lack of subject-matter jurisdiction.
2. Plaintiff Kenneth R. Kunzer's motion to vacate the state-court order [ECF No. 10] be DENIED AS MOOT.
3. Mr. Kunzer be restricted from filing any new litigation against any of the defendants to this matter, or litigation that is otherwise related to the Herschler estate, without the prior approval of a judicial officer of this District.

Date: June 3, 2020

/s/ Katherine Menendez
Katherine Menendez
United States Magistrate
Judge

APPENDIX L

CASE 0:20-cv-00882-JRT-KMM Document 18
Filed 06/17/20

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

KENNETH R. KUNZER, for Civil No. 20-0882
himself and all others similarly (JRT/KMM)
Situating,

Plaintiff,

ORDER

v.

LISA A. HINIKER, et al.,
Defendants.

Plaintiff Kenneth R. Kunzer filed an objection to the June 3, 2020 Report and Recommendation of Magistrate Judge Katherine M. Menendez. *See* ECF No. 16. After a *de novo* review of Kunzer's objection, this Court adopts the Report and Recommendation of the Magistrate Judge.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. The June 3, 2020 Report and Recommendation of Magistrate Judge Katherine M. Menendez [ECF No. 16] is ADOPTED and the objection of plaintiff Kenneth R. Kunzer [ECF No. 17] is OVERRULED.
2. This matter is DISMISSED as follows:
 - a. The claims arising under federal law are DISMISSED WITH PREJUDICE as frivolous.
 - b. The claims arising under state law are DISMISSED WITHOUT PREJUDICE for lack of subject-matter jurisdiction.
3. Kunzer's motion to vacate the state-court order [ECF No. 10] is DENIED AS MOOT.
4. Kunzer is restricted from filing any new litigation against any of the defendants to this matter, or litigation that is otherwise related to the Herschler estate, without the prior approval of a judicial officer of this District.

DATED: June 17, 2020
at Minneapolis, Minnesota

/s/John R. Tunheim

JOHN R. TUNHEIM

Chief Judge

United States District Court

APPENDIX M

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 20-2386

Kenneth Raymond Kunzer For himself and all others
similarly situated
Appellant

v.

Lisa A. Hiniker, an individual predicate actor in
schemes violating federal law providing that fraud
and embezzlement are malum in se offenses, and
employee of U.S. Bank and as Trustee of Trust A &
Trust B under the Last Will and Testament of Albert
P. Herschler... et al.

Defendants – Appellees

Appeal from U.S. District Court for the
District of Minnesota (0:20-cv-00882-JRT)

JUDGMENT

Before COLLOTON, SHEPHERD, and KOBES,

Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the decision of the district court is summarily affirmed.

November 24, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX N

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 20-2386

Kenneth Raymond Kunzer For himself and all others
similarly situated
Appellant

v.

Lisa A. Hiniker, an individual predicate actor in
schemes violating federal law providing that fraud
and embezzlement are malum in se offenses, and
employee of U.S. Bank and as Trustee of Trust A &
Trust B under the Last Will and Testament of Albert
P. Herschler, et al.
Appellees

Appeal from U.S. District Court for the District of
Minnesota (0:20-cv-00882-JRT)

ORDER

The petition for rehearing en banc is denied. The
petition for rehearing by the panel is also denied.

Judge Benton and Judge Kelly did not participate in the consideration or decision of this matter.

January 12, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX O

**Constitutional and Statutory
Provisions Involved**

**U.S. Const. amend, I
(Petition the Government for a Redress of
Grievances)**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridge the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for redress of grievances.

**U.S. Const. amend, XIV
(Equal Protection and Due Process Clauses)**

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**18 U.S.C. 242
(Deprivation of rights under color of law)**

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in

any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reasons of his color, or race, than prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both.

RICO 18 U.S.C. 656
(Theft, embezzlement, or misapplication
by bank officer or employee)

Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) [1] of the Federal Reserve Act, or a receiver of a national bank, insured bank, branch, agency, or organization or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank, branch, agency, or organization or holding company or any moneys, funds, assets or securities intrusted to the custody or care of such bank, branch, agency, or organization, or

agent, officer, director, employee or receiver, shall be holding company or to the custody or care of any such fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

RICO 18 U.S.C. 1956

(Laundering of monetary instruments)

(a)

(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity-

(B) knowing that the transaction is designed in whole or in part-

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity;

(b) Penalties.-

(1) In General.-Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of-

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

**RICO 18 U.S.C. 1962
(Prohibited activities)**

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such has participated as a principal within the meaning of section 2, title 18, United Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for

purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

MINN. RICO 609.903
(Racketeering)

Subdivision 1. Crime

A person is guilty of racketeering if the person:

(1) is employed by or associated with an enterprise and participates in the affairs of the enterprise by participating in a pattern of criminal activity;

(3) participates in a pattern of criminal activity and knowingly invest any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise or in real property.

MINN. RICO 609.05
(Liability for Crimes of Another)

Subdivision 1. Aiding, abetting; liability.

A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.

Subd. 2 Expansive liability.

A person liable under subdivision 1 is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended.

MINN. RICO 609.52
(Theft)

Subd. 2. Acts constituting theft.

(a) Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3:

(1) intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property; or

(2) with or without having a legal interest in movable property, intentionally and without consent, takes the property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of the property; or

(3) obtains for the actor or another the possession, custody, or title to property of or performance of services by a third person by intentionally deceiving the third person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes without limitation:

(4) by swindling, whether by artifice, trick, device, or any other means, obtains property or services from another person;