

**BEFORE THE ADMINISTRATOR OF CONSUMER CREDIT
STATE OF OKLAHOMA**



STATE OF OKLAHOMA,)
ex rel., DEPARTMENT OF)
CONSUMER CREDIT)
)
Petitioner)
)
v.)
)
MIDWEST GOLD BUYERS,)
)
Respondent)

Case No. 13-0074-DIS

FINAL AGENCY ORDER

This matter was heard on the 8th day of April, 2013, at 1:02 p.m., before Bryan Neal, Assistant Attorney General and Independent Hearing Examiner appointed by the Administrator of Consumer Credit at the Office of the Oklahoma Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112. The State of Oklahoma, ex rel. Oklahoma Department of Consumer Credit (the “Department”) was represented by the Department’s General Counsel Roy John Martin and the Respondent Midwest Gold Buyers located at 509 Henley Avenue, Miami, Oklahoma 74354 (the “Respondent”), did not appear in person or through an attorney.

Pursuant to the requirements of Article II of the Administrative Procedures Act, 75 O.S. §§ 308a-323, a copy of the Cease and Desist Instant and Order of Hearing filed in this matter on March 27, 2013, was served upon the Respondent at 509 Henley Avenue, Miami, Oklahoma 74354 in person by Senior Department Examiner Brad Custard, to the Respondent at 509 Henley Avenue, Miami, Oklahoma 74354, and was accepted by Jim Wegman, a representative of the

Respondent who accepted personal service of the Cease and Desist Instanter and Order of Hearing on March 28, 2013, as evidenced by the sworn Affidavit of Service by Brad Custard to this effect signed and sworn to on April 1, 2013, a copy of which Affidavit was attached to the Cease and Desist Instanter and Order of Hearing that was filed in this matter and presented by the Department in the cease and desist instanter hearing and as evidenced additionally through the sworn testimony of Senior Department Examiner Brad Custard, to the Independent Hearing Examiner as part of the Department's case in chief.

The Department's General Counsel Roy John Martin presented three witnesses to testify. The first was Department Examiner Rich Kellogg who, upon being duly sworn, testified that the Department received anonymous faxes of advertisements on March 26, 2013, that the Respondent was having a "gold buying event" from March 28 to 30, 2013, at Holiday Inn Express, 509 Henley Avenue, Miami, Oklahoma 74354. Mr. Kellogg identified a document labeled as "Exhibit 1" as one of the faxes received by the Department advertising the "gold buying event". There being no objection, Exhibit 1 was admitted into evidence. Mr. Kellogg next identified a document marked as Exhibit 2 which was also a fax of an advertisement that included a telephone number to call for directions to the event. Mr. Kellogg testified that the phone number in the second advertisement was for hotel's front desk and when he dialed the number on March 27, 2013, an employee of the Holiday Inn named "Kellie" answered and confirmed that the Respondent's "gold buying event" was still scheduled and that the Respondent would be located in one of their meeting rooms. Mr. Kellogg testified that he did not personally attend the event.

The Department's second witness was Senior Department Examiner Brad Custard. Upon

being duly sworn, Mr. Custard testified that among his duties was investigating unlicensed precious metals dealers, that he visited the location of the Respondent's "gold buying event" at the Holiday Inn Express, 509 Henley Avenue, Miami, Oklahoma 74354 on March 28, 2013, that he noticed a sign posted outside the hotel advertising the event, that he went inside the hotel to a small conference room without any event signage between 10:30 am and 11:30 am during the hours scheduled for the event in which room the event was being held, that once he entered the room he noticed a woman behind a table and that he had contact with a representative of the Respondent who identified himself as such named Jim Wegman who stated that he was buying scrap gold. Mr. Custard further testified that at the time he visited the location of the Respondent's event that he observed that no customers were present, that there was a set of scales present as was a cleaning cloth, a lamp with a magnifying glass attached, a pad for notes, a gold-testing acid kit or "testing kit". Mr. Custard did not observe the presence of any purchase records.

In his conversation with the Respondent's Mr. Wegman, Mr. Custard noted that Mr. Wegman claimed to have secured a city permit, that once he received the Cease and Desist Instant and Order of Hearing from Mr. Custard to cease operations without being properly licensed, that Mr. Wegman said that he would not come back to Oklahoma from Missouri, and that he verbally instructed the hotel's personnel that the Respondent was not to continue the "gold buying event".

Mr. Custard identified a copy of a photograph he had taken of the front yard of the hotel with the signage marked as Exhibit 3, to which there was no objection. There was a second photograph marked as Exhibit 4 identified by Mr. Custard that he stated to be an accurate

depiction taken by Department Examiner Angie Gober of the unidentified woman located behind the table during the event depicting the presence of a note pad, a calculator and a lighted magnifying glass, a copy of which photo was admitted without objection.

The third witness for the Department was the Department's Administrative Programs Officer Lindsie Lundy. Upon being duly sworn, Ms. Lundy testified that as part of her duties she reviews license applications for precious metal and gem dealers and is familiar with the Department's records for Oklahoma-licensed precious metal and gem dealers. According to Ms. Lundy, the Respondent was not licensed by the Department as a precious metal and gem dealer as of March 28, 2013 (the date the gold-buying event began), at 509 Henley Avenue, Miami, OK 74354 or anywhere else in the State. Ms. Lundy testified that the Respondent was not licensed by the Department as a precious metal and gem dealer at 509 Henley Avenue, Miami, OK 74354 as of the date of the hearing on April 8, 2013. Ms. Lundy further testified that no application for licensure as a precious metal and gem dealer at 509 Henley Avenue, Miami, OK 74354 had been filed by the Respondent as of the date of the hearing on April 8, 2013.

After reviewing the administrative record of this individual proceeding, reviewing the arguments, testimony and evidence presented at the July 23, 2012 hearing and reviewing the proposed order filed by Independent Hearing Examiner, Bryan Neal, the Administrator of Consumer Credit issues the following findings, conclusions and orders:

JURISDICTION AND AUTHORITY

1. The Administrator of Consumer Credit is charged with the administration and enforcement of the Precious Metal and Gem Dealer Licensing Act. 59 O.S. § 1521 et seq.

2. No person, unless exempt by the Precious Metal and Gem Dealer Licensing Act, 59 O.S. § 1521 et seq., shall operate as a precious metal dealer or employee without first obtaining a license from the Administrator specifically authorizing the person to act in such capacity. 59 O.S. § 1523.

3. Any entity or individual offering to engage or engaged as a precious metal and gem dealer in this state without a license shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00). 59 O.S. § 1528 (F).

4. If the public health, safety, and welfare imperatively requires emergency action, such action, including the suspension of a license instanter or a cease and desist instanter, may be ordered pending the final outcome of proceedings instituted by the Administrator. 75 O.S. §§ 314 (C)(2) and 314.1, OKLA. ADMIN. CODE § 160:60-9-3.

FINDINGS OF FACT

The Administrator of Consumer Credit finds that the following facts were proven by clear and convincing evidence:

1. The proceedings in this matter were conducted in accordance with the provisions of the Precious Metal and Gem Dealer Licensing Act, 59 O.S. § 1521 et seq. and Article II of the Administrative Procedures Act, 75 O.S. §§ 308a-323.

2. The Respondent is not registered with the Oklahoma Secretary of State.

3. The Respondent engaged or offered to engage and/or operated as a precious metal and gem dealer at the Holiday Inn Express located at 509 Henley Avenue, Miami, OK 74354 on March 28, 2013.

4. The Respondent is not licensed as a precious metal and gem dealer at 509 Henley

Avenue, Miami, Oklahoma 74354.

5. The Respondent was not licensed with the State of Oklahoma as a precious metal and gem dealer at 509 Henley Avenue, Miami, OK 74354 as of March 28, 2013, the date upon which the gold buying event began.

6. The Respondent through its representative Jim Wegman was personally served with the Cease and Desist Instant and Order of Hearing on March 28, 2013, by Senior Department Examiner Brad Custard at 509 Henley Avenue, Miami, OK 74354.

7. In connection with engaging or offering to engage and/or operating as a precious metal and gem dealer at 509 Henley Avenue, Miami, OK 74354 on March 28, 2013, the Respondent utilized an advertisement mailing including the following information, attached and incorporated by reference herein:

“GOLD BUYING EVENT! 3 DAYS ONLY! Midwest Gold Buyers Gold Buying Event, March 28-30, Thur.-Sat, Holiday Inn Express, 9am-3pm, PAYING TOP DOLLAR, gold chains and bracelets, Sterling Silver Jewelry, Sterling Silver Flatware, DIAMOND SOLITAIRES, ½ ct-paying up to \$2500.00, Larger Diamonds-For Quote, Why not start your Spring off with a little extra cash!!”

“Bring in this card to receive 20% more for all your unwanted and broken jewelry. Top Dollar! Cash on the Spot!”

8. Since the Respondent is not authorized to engage or offer to engage and/or operate as a precious metal and gem dealer at 509 Henley Avenue, Miami, OK 74354, the public health, safety, and welfare imperatively requires emergency action ordering the Respondent to cease and desist from engaging or offering to engage and/or operating as a precious metal and gem dealer at 509 Henley Avenue, Miami, OK 74354.

CONCLUSIONS OF LAW

The Administrator of Consumer Credit concludes that based on the evidence and testimony in this individual proceeding that:

1. The Respondent has violated 59 O.S. § 1523 by operating as a precious metal and gem dealer or employee thereof without first obtaining a license from the Administrator specifically authorizing the Respondent to act in that capacity.

2. The Respondent has violated 59 O.S. § 1528 (F) by engaging and/or offering to engage as a precious metal and gem dealer in the State of Oklahoma without a precious metal and gem dealer license.

ORDER

Based upon the findings of fact and conclusions of law in this individual proceeding and based upon the recommendation of the Independent Hearing Examiner, the Administrator of Consumer Credit issues the following orders:

1. The Respondent having been found to be an entity or individual operating as a precious metal and gem dealer without first obtaining a license as required under 59 O.S. §1523 and that offered to engage as a precious metal and gem dealer in the State of Oklahoma without a precious metal and gem dealer license in violation of 59 O.S. §1528 (F), shall pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) as authorized in 59 O.S. § 1528 (F), and that the Respondent, not being the prevailing party herein, shall pay the costs of the Hearing Examiner incurred in this matter as authorized in 59 O.S. § 1528 (A) in the amount of \$597.00.

2. The Respondent, having been found to be an entity or individual offering to

engage and/or that operated as a precious metal and gem dealer without a license as required under 59 O.S. §1523 and 59 O.S. § 1528 (F), on March 28, 2013, the Respondent shall be issued a permanent Cease and Desist Order to immediately cease and desist from offering to engage and/or operate as a precious metal and gem dealer without a license as required under 59 O.S. § 1528 (F) and to permanently continue to so cease and desist until such time, if ever, as the Respondent obtains a license as required under 59 O.S. §1523 and 59 O.S. §1528 (F).

So ordered this 23rd day of May 2012.




Scott Leshner
Administrator of Consumer Credit
State of Oklahoma