BEFORE THE ADMINISTRATOR OF CONSUMER CREDIT
STATE OF OKLAHOMA

FILED
MAY 10 2011
Department of
Consumer Credit

STATE OF OKLAHOMA, ex rel., DEPARTMENT OF CONSUMER CREDIT	)	
Petitioner	)	
v.	)	Case No. 11-0008-DIS
GOLD STREAM, INC.	)	
Respondent	)	

FINAL AGENCY ORDER

1. This matter was heard March 28, 2011 at 1:30 p.m. before Bryan Neal, Assistant Attorney General and Independent Hearing Examiner appointed by the Administrator of Consumer Credit. The Petitioner, State of Oklahoma, ex rel., Department of Consumer Credit, appeared and was represented by its attorney, Roy John Martin. The Respondent, Gold Stream, Inc., 4559 Westgrove Drive, Addison, Texas 75001, appeared pro se through an individual named James Epsein, who identified himself as a representative of the Respondent. Pursuant to the requirements of Article II of the Oklahoma Administrative Procedures Act, 75 O.S. §§ 308a-323, Mr. Epstein, a representative of the Respondent, was served the Notice of Hearing in this case on January 29, 2011 by Senior Consumer Credit Examiner Karen Banks, as Mr. Epstein was physically present for a gold party at 2330 E. Main Street, Cushing, Oklahoma 74023.

2. After reviewing the administrative record of this individual proceeding, reviewing the arguments, testimony and evidence presented at the March 28, 2011 hearing and reviewing the proposed order filed May 9, 2011 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 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. 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 Oklahoma Administrative Procedures Act, 75 O.S. §§ 308a-323.

FINDINGS OF FACT

The Administrator finds the following facts were proven by clear and convincing evidence:

1. It was uncontroverted that the Respondent placed an advertisement in the Show & Tell Times newspaper dated January 26, 2011, in Cushing, Oklahoma, indicating that the Respondent was purchasing scrap gold on January 29, 2011 at Cutters Edge, 2330 E. Main Street in Cushing, Oklahoma 74023, a photocopy of which advertisement was admitted into evidence as Exhibit #1 without objection.

2. According to the uncontroverted testimony of Senior Consumer Credit Examiner Karen Banks, she received a flyer via facsimile on January 27, 2011, regarding the gold purchasing event to be held January 29, 2011 at Cutter's Edge, 2330 E. Main Street in Cushing, Oklahoma. The flyer, a copy of which was admitted into evidence without objection as Exhibit #2, indicated the name of the Respondent and the following information:

"Need Cash Now?" "Behind on car payment or rent? Or just want to take advantage of record high gold prices? Gather broken and unwanted jewelry items and have them tested by a certified gold buyer." "I will appraise your gold and jewelry on the spot and make you the highest offer!" "We're Hosting a Gold Party!!! Date: January 29, 2011, Time: 9 a.m.-5 p.m., Place: Cutters Edge, 2330 E. Main, Cushing, Oklahoma;" Interested in building your own gold buying business?" Call: (Jean: 918-223-6784), (Sue:918-225-0500), (Susan: 918-225-8814).

3. Senior Consumer Credit Examiner Karen Banks testified that on January 29, 2011, she personally attended the Gold Party at Cutters Edge, 2330 E. Main Street, Cushing, Oklahoma 74023, arriving sometime between 10:00 a.m. and 10:30 a.m., at which

time she noticed a banner in front of the business premises at Cutters Edge, 2330 E. Main Street, Cushing, Oklahoma 74023 which read "World's Largest Gold Party." Ms. Banks testified that upon her arrival she stated that she was there for the Gold Party at which time she was led to the back of the business premises. Ms. Banks testified that a table was set up with pads upon which jewelry could be laid and upon which a jewelry cleaning cloth was present. Ms. Banks further testified that she noticed a set of scales located on a shelf behind the table and that Mr. Epstein was present as were two un-named women buyers who appeared to be a mother and daughter and that while she was present, she witnessed no buying or selling activity. Ms. Banks' testimony was not controverted.

4. Senior Consumer Credit Examiner Karen Banks testified that on January 29, 2011, she hand-delivered the Notice of Hearing in this case, No. 11-0008-DIS, personally to James Epstein as a representative of the Respondent while Mr. Epstein was attending the Gold Party at Cutters Edge, 2330 E. Main Street, Cushing, Oklahoma 74023. Ms. Banks' testimony was not controverted.

5. Administrative Assistant, Tracy Anderson, of the Licensing Department of the Department of Consumer Credit, who in such capacity is familiar with the Department's licensing records of precious metal and gem dealers, testified that the Respondent was not then currently licensed and she could not locate any Department records that the Respondent had ever been licensed as a precious metal and gem dealer in the State of Oklahoma nor was there any application for Oklahoma licensing pending as of the date of the hearing. Ms. Anderson's testimony was not controverted.

6. The Respondent's representative James Epstein stated that he agreed with everything the Department presented on behalf of the State of Oklahoma and the Department at the hearing. Furthermore, Mr. Epstein admitted that he was physically present at the gold party held on January 29, 2011, at Cutters Edge, 2330 E. Main Street, Cushing, Oklahoma 74023, that the Respondent does purchase used gold and silver, that the Respondent is not licensed as a precious metal and gem dealer in the State of Oklahoma, that it never has been so licensed and that it is not licensed to do business in the State of Oklahoma by the Oklahoma Secretary of State.

7. Mr. Epstein testified that the Respondent is a network of individuals that people can join to learn how to become an analyzer of used gold and silver in order to become a referral person to the Respondent and known as an "Independent Prospector"

in order to earn a commission on purchases of used gold and silver which they have personally analyzed as an "Independent Prospector" and upon which they have provided an estimated value to an interested party as a potential seller.

Mr. Epstein also testified that should the potential seller express an interest in selling their used gold or silver to the Respondent for the value or price estimated by the referral person or "Independent Prospector," they send or have someone else send the used gold or silver so analyzed and valued via FedEx for purchase by the Respondent, to the Respondent in a prepaid self-mailer plastic bag for processing at their office in Addison, Texas, a sample of which bag was admitted into evidence as Respondent's Exhibit #1, together with a sample copy of the Respondent's printed Gold Stream Form (in blank) as part 2 and a FedEx US Air bill self-addressed to James Epstein of Gold Stream, Inc., in Addison, Texas, as part 3 of the Respondent's Exhibit #1. There was no objection to the admission of any of the three parts of the Respondent's Exhibit #1 into evidence.

8. In essence, the Respondent is using its referral person(s) or "Independent Prospector(s)" in Oklahoma as its agent(s) to make an offer to purchase used gold or silver already analyzed and value estimated in Oklahoma, but not paid for until it is delivered via FedEx to the Respondent's office in Addison, Texas. In this case, the acceptance of the offer occurs in Oklahoma once anyone places their used gold or silver in the prepaid self-mailer bag, seals it and hands it to FedEx for delivery to the Respondent at its office in Addison, Texas.

9. Mr. Epstein testified that the Respondent does not buy used gold and silver on the spot, that none of the referral persons or "Independent Prospectors" are employees of the Respondent but rather are independent contractors and that the Respondent does not buy used gold or silver in Oklahoma due to the use of their "network" of individual referral persons to purchase used gold and silver thought their use of the delivery services of FedEx.

10. Notwithstanding Mr. Epstein's testimony, an examination of the Respondent's printed Gold Stream Form (in blank) as part 2 of Respondent's Exhibit #1 discloses in its printed "Terms & Conditions" section on the back of said form, that such terms and conditions contained therein "shall be binding on each and every customer of GoldStream, Inc." In essence, anyone in Oklahoma who places their Respondent referral person valued used gold and silver into the Respondent's bag (Respondent's Exhibit #1) and ships it to the Respondent via FedEx is the Respondent's customer immediately upon sealing the bag in Oklahoma.

11. Mr. Epstein testified that seven (7) Oklahomans responded to the January 29, 2011 estimates of value or price given to potential sellers at Cutters Edge Gold Party in Cushing, Oklahoma.

12. Mr. Epstein further testified that seven (7) Oklahomans sold used gold to the Respondent due to the gold party at Cutters Edge in Cushing, Oklahoma

CONCLUSIONS OF LAW

The Administrator concludes that based upon 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 the capacity of a precious metal and gem dealer as that term is defined in 59 O.S. § 1522.

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

3. The Respondent has violated 59 O.S. § 1528 (F) by engaging or offering to engage as a precious metal and gem dealer in the State of Oklahoma without a precious metal and gem dealer license by placing an advertisement to that effect in the Show 'N Tell Times Newspaper of Cushing, Oklahoma.

4. It is expressly noted that the Respondent, by its advertising of and involvement in so-called "gold parties" in Oklahoma at which the value of used gold or silver is analyzed and its value or price is estimated by its referral person or "Independent Prospector," who asks if the value or price so quoted is something that a customer would be interested in and who then instructs the customer to send their used gold and silver to the Respondent, at its offices in Addison, Texas via FedEx, for processing and sale of used gold and silver, is operating as a precious metal and gem dealer or employee thereof without first obtaining a license from the Administrator as required under 59 O.S. § 1523 to act in such capacity.

5. It is expressly noted that the Respondent is attempting to do indirectly what it cannot do directly, in violation of the legal principle expressed by the Oklahoma Supreme Court in Reherman v.Oklahoma Water Resources Board, 679 P.2d 1296, 1301

(Okla. 1984), that "what may not be done directly should not be allowed to be done indirectly."

ORDER

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

1. A $5,000.00 civil penalty is assessed against the Respondent. Payment of the $5,000.00 civil penalty is due upon receipt of this order. Payment shall be made to the Oklahoma Department of Consumer Credit and shall indicate the payment is for case number 11-0008-DIS and shall be submitted to the attention of Roy John Martin, General Counsel, Department of Consumer Credit at 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, Oklahoma 73105.

2. The Respondent shall permanently cease and desist from operating as a precious metal and gem dealer or employee thereof in the State of Oklahoma until such time as the Respondent becomes licensed as a precious metal and gem dealer at every location in the State of Oklahoma in which the Respondent desires to operate as a precious metal and gem dealer.

3. The Respondent shall reimburse the Department of Consumer Credit in the amount of $975.00 for the costs of the independent hearing examiner in this matter. The costs of the independent hearing examiner shall be payable separately from the $5,000.00 civil penalty payment and shall indicate case number 11-0008-DIS and shall be submitted to the attention of Roy John Martin, General Counsel, Department of Consumer Credit at 4545 N. Lincoln Boulevard, Suite 164, Oklahoma City, Oklahoma 73105.

So ordered this 10th day of May 2011.

SCOTT LESHER
ADMINISTRATOR OF CONSUMER CREDIT
STATE OF OKLAHOMA