

**BEFORE THE MARYLAND DEPARTMENT OF
LABOR, LICENSING AND REGULATION**

DEPARTMENT OF LABOR,
LICENSING AND REGULATION

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MARYLAND SECONDHAND
PRECIOUS METAL OBJECT
DEALERS & PAWNBROKERS

*

v.

*

VLADIMIR LEYTUSH, t/a GOLD
TRADING CENTER III,

*

Case No: SPMG-08-0001

Respondent

*

OAH Case No.: DLR-PMG-64-09-14671

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FINAL DECISION AND ORDER

A hearing on the exceptions filed in the captioned matter was held before Leonard J. Howie, III, Deputy Secretary, Department of Labor, Licensing and Regulation¹, on March 15, 2010. Vladimir Leytush, Respondent, was represented by Mark Van Bavel, Esquire. Peter Martin, Assistant Attorney General, appeared to present evidence on behalf of the Division of Secondhand Precious Metal Object Dealers and Pawnbrokers Licensing, Department of Labor, Licensing and Regulation ("Department").

The matter was adjudicated at the Office of Administrative Hearings on July 29, 2009. Following the evidentiary hearing, the Administrative Law Judge ("ALJ") issued a Recommended Decision on October 27, 2009, concluding that Respondent, Vladimir Leytush ("Leytush"), had

¹ Deputy Secretary, Leonard J. Howie, III, serves as the designee of the Secretary of the Department of Labor, Licensing and Regulation to handle secondhand precious metals administrative matters, pursuant to Bus. Reg. Art., Ann. Code of Md., §2-103(a)(2)(iii).

violated Business Regulation Article, Annotated Code of Maryland, §§12-209(a)(2)(vii) and (viii), 12-301(b)(2) and (c), 12-302(a), 12-302(a)(6), 12-302(b)(3), as a result of a September 12, 2007 transaction and the Respondent's failure to adequately complete a daily return form for the transaction. Exhibit 1, Recommended Decision ("RD") at 13. The ALJ recommend that the Department impose a civil monetary penalty of \$1,000 against Leytush. *Id.*, RD at 14.

In a Proposed Order ("PO") dated December 21, 2009, the Department affirmed and adopted the factual findings and approved and adopted the legal conclusions of the ALJ that Leytush had violated Business Regulation Article, Annotated Code of Maryland, §§12-209(a)(2)(vii) and (viii), 12-301(b)(2) and (c), 12-302(a), 12-302(a)(6), 12-302(b)(3). *Id.*, PO at 1-2. The Department modified the sanction recommended by the ALJ to include a 30-day license suspension together with the fine recommended by the ALJ. *Id.*, PO at 2, paragraph E, *see also, Id.*, PO at 3-6. The ALJ's Recommended Decision and the Department's Proposed Order were mailed to Leytush and his attorney December 22, 2009. *Id.*, Letter to Spencer Gordon, Esquire.

By letter dated January 2, 2010, Mr. Van Bavel requested an exceptions hearing on behalf of Leytush. Exhibit 2. An Amendment to Proposed Order was issued and mailed to Mr. Van Bavel on January 11, 2010, to correct two typographical errors in the Department's Proposed Order. Exhibit 3. The parties and the Department mutually agreed to the scheduling of the exceptions hearing; by letter dated January 27, 2010, the Department confirmed that the hearing on Leytush's exceptions had been scheduled for March 15, 1020. Exhibit 4.

At the start of the hearing, Mr. Martin offered preliminary exhibits consisting of the ALJ's Recommended Decision, the Department's Proposed Order and documents reflecting the request for

and scheduling of the exceptions hearing. Mr. Van Bavel offered no exhibits on behalf of Leytush, nor had he submitted a copy of the transcript of the evidentiary hearing before the ALJ.

At the exceptions hearing, Leytush did not dispute the ALJ's factual findings or legal conclusions. Mr. Van Bavel argued, on Leytush's behalf, that the sanction recommended by the ALJ was reasonable and appropriate for the violations committed by Leytush and urged that the \$1,000 civil monetary penalty recommended by the ALJ should be the sanction imposed for Leytush's violations in this proceeding.

As indicated by the facts set forth in record, Leytush failed to accurately complete the Daily Return Form for the transaction at issue, from which information about the acquired property was missing and which also contained errors, and he failed to verify the signature and identity of the seller of the acquired property on the form. *See, e.g.*, Exhibit 1, PO at 4; Exhibit 1, RD at 4, paras.9-13; *see also* Exhibit 1, RD at 12. At the hearing before the ALJ, Leytush conceded that he was aware of his obligation to report detailed information about acquired property on the transaction form and that he was responsible to verify the signature and identity of the seller of such property at the time of the transaction, though he failed to do so. *See, e.g., Id.*, RD at 10, 11, 12. Leytush claimed that the seller of the property he acquired in the transaction at issue told Leytush that he was acting on behalf of Patty Lawrence, a person with whom Leytush had previously done business, and that Ms. Lawrence was unable to personally come into Leytush's shop. Based on this claim, Leytush failed to verify the seller's identity or the signature on the transaction report. *Id.*, RD at 4, paras.9, 11 and 12. The individual from whom Leytush acquired the property had actually stolen it. *Id.*, RD, paras.7-9.

As set forth in the Proposed Order, the Department concluded that Leytush's violations warranted a more severe sanction than the nominal penalty recommended by the ALJ and the Department also imposed a 30-day license suspension. *Id.*, PO at 3-6. The Department reasoned that the ALJ had erroneously considered whether Leytush bore a fraudulent intent to disguise the transaction by his submission of the non-compliant transaction report. *See, e.g., Id.* at 4. As the law requires only a "willful failure to provide," the required information, the Department found that Leytush's misconduct, that constituted a subsequent regulatory violation of laws governing secondhand precious metal object transactions², warranted a more serious sanction than that recommended by the ALJ. *See* Business Regulation Article, Annotated Code of Maryland, §12-209(a)(2)(vii).

Leytush contended that he had had no intent to thwart police efforts to investigate the theft, nor had he attempted to conceal the item he had acquired and that his misconduct had not impaired the police investigation because the perpetrator had been apprehended, prosecuted and convicted.³ Leytush conceded that actual harm was not required for a finding of violation and his violations did warrant some type of penalty. However, he argued that he had cooperated with police, that his actions had not endangered the public, were not intended to deprive the public of any of the protections provided by the governing provisions, and that a monetary sanction together with a 30-day license suspension was excessive. Further, Leytush argued that his previous regulatory violation occurred in 1994⁴ and, in the interim, he had conducted thousands of transactions without regulatory

² *Id.*, PO at 3, 5; *see also, Id.*, Administrative Hearing Exhibits PMG 1 and 3.

³ *Id.*, RD at 9.

⁴ *Id.*, RD at 3, paras.2, 5.

violation, and therefore, his “deviation from procedure,” in the transaction at issue should not be sanctioned with as severe a penalty as the Department had proposed. Leytush urged the Department to adopt the ALJ’s recommendation of a \$1,000 fine.

The Department is persuaded that the sanction recommended by the ALJ, and which Leytush argues is appropriate, is reasonable after consideration of the facts of this case, Leytush’s record of discipline and the parties’ arguments at the hearing on Leytush’s exceptions. In consideration of the reprimand imposed as a result of Leytush’s 1994 violation and his conduct since that offense and during the investigation of the transaction at issue in this proceeding, the Department will adopt the sanction recommended by the ALJ in this matter.

The Department is not convinced that its originally proposed sanction was excessive in consideration of Leytush’s violations. Nor is the Department persuaded by Leytush’s argument that the failure to comply with reporting requirements ought to be excused when a dealer demonstrates that such violations were “well-intentioned.” The Department advises Leytush that he ought to ensure that he and his employees, including his wife, fully comply with requirements for accurately and completely reporting secondhand precious metals transactions in the future. Further, the Department cautions Leytush that an accommodation offered to a repeat customer, as he maintains occurred in this transaction, will not likely exculpate him from responsibility for a future violation.

The Department must further caution Leytush that should he appear before the Department in a subsequent disciplinary proceeding, the Department will consider this matter and may not be able to offer such leniency in the adoption of a schedule of progressive discipline.

Having considered Leytush's arguments, the documentary evidence contained in the record, and the Findings of the Administrative Law Judge, for the reasons set forth above, it is this 7th day of April 2010 **ORDERED**:

A. That, accept as set forth herein, the Findings of Fact and Conclusions of Law of the Administrative Law Judge are **AFFIRMED**;

B. That Finding of Fact included in paragraph 6 in the Recommended Decision of the ALJ, is hereby **AMENDED** to correctly state the trade name of Respondent's business, as follows:

The Respondent now operates a business known as Gold Trading Center III (GTC III) located in Randallstown, Maryland. The Respondent's wife, Tamara, is a GTC III employee;

C. That Respondent, Vladimir Leytush, violated Business Regulation Article, Annotated Code of Maryland, §§12-209(a)(2)(vii) and (viii), 12-301(b)(2) and (c), 12-302(a), 12-302(a)(6), 12-302(b)(3), for which the Respondent is subject to the provisions of §12-209;

D. That as a result of these findings and conclusions, Respondent, Vladimir Leytush, pay a civil statutory penalty in the amount \$1,000 for these violations, pursuant to Business Regulation Article, Annotated Code of Maryland, §12-209(a)(3) and that said penalty shall be paid in full to the Division of Secondhand Precious Metal Object Dealers and Pawnbrokers Licensing, Department of Labor, Licensing and Regulation within 30 days of the date of this Order;

E. That the secondhand precious metal object and gem dealer license of Respondent, Vladimir Leytush, shall be suspended automatically and he will be ineligible for license renewal or reinstatement until such time as he has complied with each of the provisions of this Order and the

civil penalty set forth in paragraph D is paid in full to the Division of Secondhand Precious Metal Object Dealers and Pawnbrokers Licensing, Department of Labor, Licensing and Regulation;

F. That this decision shall take effect 30 days from the date of this Order unless Respondent obtains a judicial stay of enforcement, pursuant to State Government Article, Annotated Code of Maryland, §10-226; and

G. That the records and files of the Division of Secondhand Precious Metal Object Dealers and Pawnbrokers Licensing, Department of Labor, Licensing and Regulation reflect this Order.

MARYLAND SECONDHAND PRECIOUS
METAL OBJECT DEALERS & PAWNBROKERS

DEPUTY SECRETARY'S SIGNATURE
APPEARS ON ORIGINAL ORDER.

Leonard J. Howie, III, Deputy Secretary
Department of Labor, Licensing and Regulation