

38455/AHG

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

State of Minnesota
Dept of Commerce

NOV 15 2016

Rec'd \$ 30,000

In the Matter of Asset Marketing Services, LLC
Bullion Coin Dealer license #40385245

CONSENT ORDER

DBA's: Aber & Levine; AMS, LLC; First Federal; First Federal Coin Corp; First Federal Mint; Gold Shield International; GovMint; GovMint.com; New York Mint; Preferred Customer Club (PCC)

TO: Asset Marketing Services, LLC
1401 Southcross Dr. W.
Burnsville, MN 55337

Commissioner of Commerce Mike Rothman ("Commissioner") has advised Asset Marketing Services, LLC ("Respondent") that he is prepared to commence formal action against Respondent's bullion coin dealer license pursuant to Minn. Stat. § 45.027 (2014), Chapter 80G, and other applicable law, based on the following allegations:

1. Respondent has been a licensed bullion coin dealer since June 3, 2014.
2. Respondent employed senior account manager David Davenport ("Davenport"), who was licensed as a bullion coin dealer representative and associated with Respondent's bullion coin dealer registration from June 23, 2014 to October 1, 2015.
3. Minnesota consumer C.S. Initiated a relationship with Respondent in January 2014, when she ordered bullion coins from Respondent's catalogs. Thereafter, Representative Davenport became C.S.'s account manager and sold bullion coins to C.S. totaling \$536,361.32 during the time period February 2014 to December 2014. Respondent called or received calls from C.S. on over 600 occasions from February 2014 to January 2015.
4. C.S. died in January 2015. She was 66 years old.
5. The personal representative for C.S.'s estate filed a complaint against Respondent based upon concerns C.S. may have been taken advantage of due to the high volume of coin purchases during the course of less than one year.

DAVENPORT'S ACTIONS

6. In February 2014, Representative Davenport sold C.S. a \$25 gold eagle proof 70 deep cameo with former U.S. Mint director Edmund Moy's signature. During the call, Davenport told C.S., "down the road, it would be like having a baseball that has Babe Ruth's signature on it." The comparison made by Davenport was not written or approved by Respondent for the sale of that coin, and implied investment value without being accompanied by a disclaimer. The statement misrepresented a material aspect of the bullion coin, in violation of Minn. Stat. § 80G.07 subd. 1(6).

7. In April 2014, when soliciting C.S. for the sale of a Pope John Paul II canonization coin, Representative Davenport told C.S. there were only 300 of that coin "in the whole world" and they were exclusive to Respondent. According to Respondent's highlights sheet and script, there were 500 coins and Respondent had the distribution rights to the first 300. Per a quality assurance evaluation form regarding a call to a different customer, Davenport made these misstatements on at least one other occasion while selling the canonization coin. Davenport's statements were misrepresentations of a material aspect of a bullion coin in violation of Minn. Stat. § 80G.07 subd. 1(6).

8. In June 2014, C.S. told Representative Davenport she needed to cancel an order because she learned she had \$45,000 in hospital bills and therefore couldn't afford the order. Davenport pressed C.S. to see the coins before deciding whether to cancel, and to "work with the hospital" regarding the medical bills. C.S. stated "you know what a sucker I am." Davenport told C.S. to "trust in my judgment." Davenport's actions in pressing C.S. to "work with the hospital" and not cancel an order when the consumer stated she could not afford the coins due to major medical bills demonstrate untrustworthiness under Minn. Stat. § 45.027 subd. 7(a)(4).

9. In July 2014, Representative Davenport talked to C.S. on six occasions in one day, trying to sell a Prince George coin during certain of those calls. C.S. repeatedly told him she was not interested in coins depicting the royal family. She also repeatedly told him she wasn't feeling well,

was dizzy, discombobulated, and confused, and couldn't think. Davenport told her "I know, I'm, I'm trying to do the thinking for you." C.S. agreed to buy the coin on the fourth call. On the sixth call, when Davenport mentioned C.S. bought the Prince George coin, C.S. was surprised to learn she had purchased the coin, saying, "no, I didn't want those," "I thought I said no to that one," and "I must have been really dizzy because I thought I didn't want that." Davenport encouraged C.S. to see the coin before deciding whether to return it. Davenport's actions in selling products to a consumer under the circumstances described by C.S. related to her then-current medical condition are acts by a licensee demonstrating untrustworthiness per Minn. Stat. § 45.027 subd. 7(a)(4).

10. Later In July 2014, Representative Davenport marketed a George Morgan one-ounce gold union gem proof to C.S. When C.S. was uncertain whether to purchase the coin, he told her there were only nine left and said, "I'm looking out for what's best for you." When C.S. pointed out he was also looking out for his commission, Davenport replied, "I'm basically giving that away every time with the \$200 discount." C.S. then agreed to buy the coin. Respondent's records show Davenport made a \$103.60 commission on that sale after accounting for the \$200 discount. Davenport's total commission from sales to C.S., after accounting for returns and discounts, was \$21,619.80. Davenport's statements regarding his commission were misrepresentations of the terms of the sale of bullion coins to a consumer, in violation of Minn. Stat. § 80G.07 subd. 14 (2014).

11. On October 21, 2014, C.S. told Representative Davenport she had fallen three times and had an emergency call in to her doctor for an appointment and more medication. Davenport put C.S. on hold and called her back a short time later to sell her a Saint Gauden coin for \$5,313.26. C.S. stated "I don't think so right now" because "I don't know what's going on." Davenport advised placing the order and said she could cancel it later. C.S. agreed to buy the coin. Davenport's actions in selling product to a consumer under the circumstances described by C.S. related to her then-current medical condition are acts by a licensee demonstrating untrustworthiness per Minn. Stat. § 45.027 subd. 7(a)(4).

12. C.S. called Representative Davenport later on October 21, 2014 to let him know she was instructed by her doctor to go to the emergency room. The next day, Davenport called C.S., who told him she had just gotten out of the emergency room and had declined the doctor's advice to stay in the hospital for four to five days. Davenport changed the subject to pitch a set of Disney collectible coins. When C.S. said she had to think about it, he told her to "think about it while I grab it" because the coins were selling quickly. C.S. explained her "brain is kind of scrambled from yesterday." Davenport again suggested putting the order in the system, on her Visa. She agreed to think about it, and told him additional details of her emergency room visit, including x-rays and taking medication that "kinda knocked me out." C.S. further stated she'd just taken another dose of the same medication. Davenport told C.S. he would get the coins set aside for her, and said they would talk again later when she feels "more stable." Davenport's actions in selling products to a consumer under the circumstances described by C.S. related to her then-current medical condition are acts by a licensee demonstrating untrustworthiness per Minn. Stat. § 45.027 subd. 7(a)(4).

13. During the same phone call, Representative Davenport stated prices of other Disney collectibles, including a tin wind-up toy for \$80,000 and posters selling for up to \$140,000, as part of his efforts to sell Disney coins. The prices of these Disney collectibles were listed in a highlight sheet created by Respondent for representatives' use in selling the Disney coins to C.S. and other consumers. Although Davenport gave an investment disclaimer prior to stating prices of the collectibles, the value statements for non-coin collectibles worth substantially more than the prices for which Respondent was selling the Disney collectible coins overshadowed the disclaimer and misrepresented the investment value of Disney coins, in violation of Minn. Stat. § 80G.07 subd. 1(6).

14. During the ordinary course of business, Respondent's quality assurance team reviewed a selection of Representative Davenport's phone calls with customers on 158 occasions from August 1, 2013 to October 1, 2015. This review included three calls to/from C.S. Of the 158 evaluations, 35 (including two calls to/from C.S.) noted violations or deviations of Respondent's evaluation criteria. The violations/deviations included the following: failure to tell customers a refund

would be for the purchase price only and would not include shipping/handling; failure to confirm the last four digits of a customer's credit card number; incorrectly stating prices or payment amounts; making value comparisons without giving a disclaimer the coins are not sold for investment purposes; misrepresenting product; and placing orders when a consumer was uncertain whether (s)he wanted to make a purchase ("holding product"). Multiple phone calls to/from C.S. not selected for review by the quality assurance team also include these violations. These actions constituted multiple violations of Minn. Stat. § 80G.07, subd. 1 and Respondent's Internal policies on selling bullion products.

ASSET MARKETING SERVICES LLC'S SUPERVISION

15. Respondent's Quality Assurance Coordinator A.D. testified that, beginning approximately two years ago, only a selection of quality assurance evaluations were forwarded to the Vice President of Operations or Director of Compliance for review. Previously, all quality assurance evaluations were forwarded to the Vice President of Operations. There is no record that any quality assurance evaluations from August 1, 2013 to October 1, 2015 were provided to, or resulted in retraining of or disciplinary action against, Representative Davenport, who testified he does not recall receiving any negative quality assurance evaluations in recent years.

16. Quality Assurance Coordinator A.D., who is responsible for reviewing calls and supervising other quality assurance employees who review calls for compliance with applicable policies, procedures, laws and regulations, testified she had never read Minnesota Statute Chapter 80G and did not know what sales practices requirements and prohibitions were included in the law.

17. Representative M.I., who was Representative Davenport's manager during the majority of Davenport's sales to C.S., testified that Davenport was "a veteran" on M.I.'s team whom he spent very little time supervising. M.I. stated he was aware C.S. was one of Davenport's frequent customers, but was unaware of any concerns related to C.S.'s account.

18. While the actions described in paragraphs 6-14 above violated Respondent's policies and approved practices, the actions described in paragraphs 15-17 above show a lack of adequate supervision of a bullion coin dealer representative, for whose actions Respondent is also responsible under Minn. Stat. § 80G.03 subd. 2.

19. During the course of the Department's investigation, Respondent placed Representative Davenport on indefinite administrative leave. Davenport later resigned and his bullion coin dealer representative association was terminated by Respondent on October 1, 2015.

20. During the course of the Department's investigation, Respondent provided a full refund to C.S.'s estate of all coins located by C.S.'s family.

21. Per Minn. Stat. § 80G.03 subd. 2, the Department may take action against a bullion coin dealer for any violations of Minn. Stat. Chapter 80G by the dealer's coin dealer representatives conducting activities on behalf of or at the direction of the bullion coin dealer.

ADDITIONAL ALLEGATIONS

22. Respondent's invoices to C.S. include the following condition: "Customer agrees that any legal action with respect to this purchase is barred unless commenced within one (1) year of the date of this invoice in a state or federal court located in Minneapolis, MN, to whose exclusive jurisdiction and venue Customer consents." This condition was not disclosed to C.S. by Davenport, and the policies and procedures produced by Respondent do not require representatives to disclose this condition. Failure to disclose this condition severely shortening the default statute of limitations related to claims for the sale of bullion coins is a misrepresentation of the terms of an actual or proposed sale of bullion coin to a consumer, in violation of Minn. Stat. § 80G.07, subd. 14 (2014).

23. The terms and conditions currently listed on Respondent's website at www.govmint.com/terms-conditions include the following conditions: "Customer agrees that any legal claim with respect to any transaction with GovMint.com is barred if not commenced within one (1) year of the transaction, and that the exclusive venue for disputes shall be the American Arbitration Association office in Minneapolis, Minnesota. Disputes shall be governed by Minnesota

law, excluding choice of law rules, and Customer may claim against GovMint.com only in an individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding." The policies and procedures produced by Respondent do not require its representatives to disclose these conditions. Failure to disclose these conditions severely shortening the default statute of limitations related to claims for the sale of bullion coins is a misrepresentation of the terms of an actual or proposed sale of bullion coin to a consumer, in violation of Minn. Stat. § 80G.07, subd. 14 (2014).

24. Respondent acknowledges that it has been advised of its rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondent hereby expressly waives those rights. Respondent further acknowledges that it has been represented by legal counsel throughout these proceedings or hereby expressly waives that right.

25. Respondent has agreed to informal disposition of this matter without a hearing as provided in Minn. Stat. § 14.59 (2014) and Minn. R. 1400.5900 (2015).

26. The following Order is in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent shall revise its quality assurance program to require that all quality assurance evaluations with violations, deviations, and/or concerns/questions/notes be forwarded to the manager and employee, and a record be made acknowledging the employee's receipt of the evaluation, and documenting any discipline or retraining associated with the evaluation.

IT IS FURTHER ORDERED that Respondent's quality assurance criteria for evaluating sales calls for compliance purposes shall be updated to include all sales practices requirements and prohibitions included in Minn. Stat. § 80G.07 (2015).

IT IS FURTHER ORDERED that Respondent shall not rely on any of its written terms or conditions of a bullion coin/product sale to a consumer unless: (1) the term or condition upon which Respondent seeks to rely was disclosed to the consumer in accordance with Minn. Stat. § 80G.07

subd. 1, or (2) the consumer and Respondent have a signed written agreement for the purchase of bullion products disclosing such terms.

IT IS FURTHER ORDERED, pursuant to Minn. Stat. § 45.027, subd. 6 (2014), that Respondent shall pay a \$30,000 civil penalty, payable to the State of Minnesota.

IT IS FURTHER ORDERED, pursuant to Minn. Stat. § 45.027, subd. 1(8) (2014), that Respondent shall pay investigative costs.

This Order shall be effective upon signature by or on behalf of the Commissioner.

Dated: 12 - 5 - 2016

Mike Rothman
Commissioner

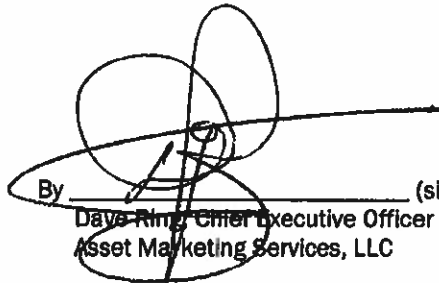
By: 

MARTIN FLEISCHHACKER
Assistant Commissioner-Enforcement
85 Seventh Place East, Suite 500
St. Paul, Minnesota 55101

38455/AHG

CONSENT TO ENTRY OF ORDER

The undersigned, Dave Ring, Chief Executive Officer, acting on behalf of Asset Marketing Services, LLC, ("AMS") states that he has read the foregoing Consent Order; that he knows and fully understands its contents and effect; that he is authorized to execute this Consent to Entry of Order; that he has been advised of AMS' right to a hearing; that he has been represented by legal counsel in this matter, or that he has been advised of AMS' right to be represented by legal counsel and that he has waived this right; and that he consents to entry of this Order by the Commissioner of Commerce. It is further expressly understood that this Order constitutes a settlement agreement between the parties hereto, there being no other promises or agreements, either express or implied.

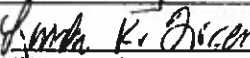
By  (signature)
Dave Ring, Chief Executive Officer
Asset Marketing Services, LLC

STATE OF Minnesota
COUNTY OF Dakota

This instrument was acknowledged before me on 10/19/16 (date) by Dave Ring (name of person)

(stamp)




(Signature of Witness)
Executive Assistant
Title (and Rank)