

ADMINISTRATIVE NOTE

IN

SPMG 14-0019

The Respondent did not exercise the right to file exceptions to the decision of the Secretary of the Department of Labor, Licensing and Regulation in this case pursuant to Code of Maryland Regulations COMAR 09.01.03.07 and stated in section G of the Proposed Order. As a result, the Order was deemed a final order of the Secretary on January 18, 2015.

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

DEPARTMENT OF LABOR,
LICENSING AND REGULATION

* MARYLAND SECONDHAND
* PRECIOUS METAL OBJECT
* DEALERS & PAWNBROKERS

v.

JAMES BUTLER,

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CASE NO.: SPMG-14-0019

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Respondent

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OAH Case No.: DLR-PMG-64-14-19347

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated November 18, 2014, has been received, read and considered and is incorporated by reference, except as may be otherwise indicated, it is, by the Deputy Secretary of the Department of Labor, Licensing and Regulation¹, this 29th day of December 2014, **ORDERED:**

A. That, except as otherwise indicated herein, the Findings of Fact of the Administrative Law Judge (“ALJ”) be, and hereby are, **AFFIRMED** and **ADOPTED**;

B. That, except as otherwise indicated herein, the Conclusions of Law in the Recommended Decision, that James Butler (“Respondent”) violated Bus. Reg. Art., Ann. Code of Md., §§12-201(a) by acting as a dealer without the required license and is subject to sanction under Bus. Reg. Art., Ann. Code of Md., §§12-209(a) is **APPROVED** and **ADOPTED**;

¹ Deputy Secretary, Scott R. Jensen, 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).

C. That as a result of these findings and conclusion, the Respondent, James Butler, be and hereby is **REPRIMANDED**;

D. That, in addition, as a result of these findings and conclusion, a civil statutory penalty in the amount of \$500.00 be imposed on Respondent, James Butler, pursuant to Bus. Reg. Art., Ann. Code of Md., §12-209(a)(3), and that said penalty shall be paid in full to the Department of Labor, Licensing and Regulation within 30 days of the date of this Proposed Order;

E. That all licenses issued to the Respondent, James Butler, by the Department of Labor, Licensing and Regulation, Secondhand Precious Metal Object Dealer and Pawnbroker Licensing Division, including, but not limited to license number: 402, shall be suspended automatically, and the Respondent shall be deemed ineligible for license renewal or reinstatement, until the civil penalty imposed by paragraph D is paid in full;

F. That, pursuant to State Gov't Art., Ann. Code of Md., §10-220(d), the Department of Labor, Licensing and Regulation ("Department") states that the reason for the modification of the recommended sanction, to include a civil monetary penalty, is that the Department concludes that the Respondent's violations warrant a more severe sanction than the mere reprimand recommended by the ALJ. The Department finds, based on the ALJ's factual findings and the record in this case, that the Respondent knew or should have known that he had neglected to renew his license, yet he continued to act as a dealer in complete disregard of the law. Recommended Decision (hereinafter "RD") at 7; *see also* Administrative Hearing Exhibits, Dept. #5-8.

In addition, the Respondent refused to accept responsibility for this violation and continued to blame others throughout the hearing on the merits of the disciplinary charges against him resulting from his failure to maintain a current license while he continued to act as a dealer. *Id.*, RD at 7. The

ALJ concluded, “[d]espite the Respondent’s assertions to the contrary, I do not believe that the Respondent attempted to renew his license before it expired. The Department provided credible evidence...that the Respondent did not access his online account at any point in 2013.” RD at 7.

The ALJ explained that her recommended sanction did not include a civil monetary penalty because although, “[t]he Respondent was clearly negligent in failing to renew his license,”² she believed that he intended no bad faith and his misconduct did not result “significant, tangible” harm. *See* RD at 7-8. However, the Respondent’s stubborn insistence that he had renewed his license when, in fact, he had not even attempted to access the online renewal application to do so, together with his refusal to accept any responsibility, whatsoever, for his failure to comply with the statutory license requirement, throughout this entire proceeding, now causes the Department to doubt the Respondent’s willingness or ability to act ethically as a dealer in the future. The Respondent’s refusal to acknowledge his accountability in failing to renew his license indicates that he does not take seriously the regulatory provisions in place to protect the public and allow law enforcement to recover and return stolen property to Maryland citizens.

Consequently, the Respondent’s violation was done willfully, with knowledge of the requirements and, therefore, constituted a violation of Bus. Reg. Art., Ann. Code of Md., §12-209(a)(viii). *Id.* at 11, 12.

The Department lacks confidence that a reprimand, as the sole sanction imposed for the Respondent’s violation will persuade the Respondent to acknowledge the crucial nature of a dealer’s continuing responsibility to adhere to the requirements of law. The Respondent’s “vague,” yet persistent, claims to have to have renewed his license notwithstanding any evidence that he had even

²RD at 8.

attempted to do so do not excuse him from compliance with the law, particularly requirements that are crucial to authorities in recovering the stolen property of the public. *Id.* at 7.

The imposition of a reprimand, as the sole sanction for a licensee's misconduct is appropriate when the individual acknowledges his or her culpability, demonstrates remorse, if not regret, for the infraction and vows not to repeat the behavior. The imposition of a monetary sanction together with a reprimand in a proceeding, in which the licensee refuses to accept his responsibility for the circumstances creating the violation, is wholly appropriate. To conclude otherwise undermines the purpose of such sanctions and deprive them of their intended purpose to serve as a deterrent against future misconduct.

For these reasons, the Department finds that the facts of this case merit a sanction greater than that recommended by the ALJ, to include a civil monetary penalty together with a reprimand. The Department acknowledges its authority, in accordance with Bus. Reg. Art., Ann. Code of Md., §12-209, to impose a monetary penalty of \$5,000 per violation, which, in this proceeding, includes at least 32 individual transactions³ while the Respondent was unlicensed, together with a reprimand. The Department views the Respondent's proven violations in this case to be very serious and to involve the very misconduct the secondhand precious metals laws are designed to prevent. The Department further believes its initial recommendation to the ALJ of a penalty in the amount of \$2,000 to have been warranted. *Id.* at 6. However, the Department will embrace the ALJ's reasoning as it pertains to the harm caused by the Respondent's violation in this proceeding by adopting a nominal penalty in a reduced amount together with the recommended reprimand.

³ *Id.* at 3, para.3.

G. That pursuant to COMAR 09.01.03.07, those parties adversely affected by this Proposed Order shall have 20 days after receipt of the Order to file exceptions and to request to present argument on the decision before Leonard J. Howie, III, Deputy Secretary, Department of Labor, Licensing and Regulation. Exceptions should be sent to Dennis Gring, Executive Director, Secondhand Precious Metal Object Dealers and Pawnbroker Licensing, 3rd Floor, 500 North Calvert Street, Baltimore, Maryland 21202. Unless written exceptions are filed within 20 days of the receipt of this Order, this Order shall be deemed to be the final decision of the Secretary of the Department of Labor, Licensing and Regulation; and

H. That the records and files of the Department of Labor, Licensing and Regulation reflect this Order.

MARYLAND SECONDHAND PRECIOUS
METAL OBJECT DEALERS & PAWNBROKERS

DEPUTY SECRETARY'S SIGNATURE
ON ORIGINAL DOCUMENT

Scott Jensen, Deputy Secretary

Department of Labor, Licensing and Regulation

MARYLAND DEPARTMENT OF
LABOR, LICENSING AND
REGULATION

v.

JAMES BUTLER,
RESPONDENT

* BEFORE TARA K. LEHNER,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* CASE NO.: DLR-PMG-64-14-19347
* COMPLAINT NO.: SPMG-14-0019

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RECOMMENDED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On May 29, 2014, the Maryland Department of Labor, Licensing and Regulation (Department or DLLR) ordered James Butler (Respondent) to appear for an administrative hearing to respond to charges that he violated various statutory provisions under the Maryland Secondhand Precious Metal Object Dealers and Pawnbrokers (SPMO) Act (Act). Md. Code Ann., Bus. Reg. §§ 12-101 through 12-601 (2010 & Supp. 2014).¹ The Statement of Charges and Order for Hearing advised the Respondent that the hearing could result in a reprimand, suspension or revocation of his license as an SPMO Dealer, or civil penalties up to \$5,000.00 per violation of the Act.

¹ All statutory references in this recommended decision are to the version of the relevant section or sections of the Act in effect as of the date of the Respondent's alleged violations.

On June 16, 2014, the Office of Administrative Hearings (OAH) sent a notice of hearing (Notice) to the Respondent advising him that the hearing would be held on October 9, 2014 at the Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland. On October 9, 2014, I held the ordered hearing pursuant to section 12-210 of the Act. Assistant Attorney General Peter Martin represented the Department. The Respondent represented himself.

Procedure in this case is governed by the provisions of the Act, section 12-210; the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2014); the Department's hearing regulations, Code of Maryland Regulations (COMAR) 09.01.02 and 09.01.03; and the OAH's Rules of Procedure, COMAR 28.02.01.

ISSUES

1. Did the Respondent violate Section 12-201 of the Act?
2. If so, what is the appropriate penalty?

SUMMARY OF THE EVIDENCE

Exhibits

The Department submitted the following exhibits, which I admitted into evidence:

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| Dept. #1 | Notice of Hearing, June 16, 2014 |
| Dept. #2 | ID Registration for Secondhand Precious Metal Object Dealers, Ritchie Hiway Rare Coins |
| Dept. #3 | ID Registration, Arundel Cards & Coins |
| Dept. #4 | License Renewal & Confirmation (test document) |
| Dept. #5 | Email, September 24, 2014 |
| Dept. #6 | Email, September 24, 2014 |
| Dept. #7 | Email, September 24, 2014 |
| Dept. #8 | Login History |
| Dept. #9 | Notes about Arundel Cards and Coin, February 28, 2014 |
| Dept. #10 | RPDSS – Advanced Search |
| Dept. #11 | Law Enforcement Complaint Referral Form, March 13, 2014, with attachments |

The Respondent did not submit any documents into evidence.

Testimony

The Department presented the following witnesses:

1. Laura Dohoney, Administrative Support, Anne Arundel County Police Department (AACPD)
2. Detective Jennifer Lang, Pawn & Precious Metals Squad, AACPD
3. Dennis Gring, Executive Director, SPMO Program, DLLR
4. Tanya Minion, Investigator
5. Joseph Petrosino, Data Processing Programmer/Analyst, DLLR

The Respondent testified on his own behalf. He called no additional witnesses.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Respondent was issued a renewal of his SPMO dealer's license on June 16, 2011. It expired on August 15, 2013. Between August 15, 2013 and February 28, 2014, the Respondent was unlicensed.
2. Between August 15, 2013 and February 28, 2014, the Respondent conducted thirty-two SPMO transactions.
3. The Respondent entered each of the thirty-two transactions into the RAPID² system.
4. The Respondent believed he had renewed his license before it expired.
5. The Respondent does not have any previous violations of the Act.

DISCUSSION

The Department charged the Respondent with violating several provisions of the Act. Because the Department is asserting that the Respondent committed the alleged violations, it bears the burden of proof. *See Schaffer v. Weast*, 546 U. S. 49, 56 (2005). It must prove its allegations by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2009).

² The Regional Automated Property Information Data-Sharing (RAPID) system.

The Act regulates, among other things, the purchase and sale of secondhand precious metal objects. Md. Code Ann., Bus. Reg. §§ 12-101 to 12-601. The Respondent is charged with violating Md. Code Ann., Bus. Reg. §§ 12-201 and 12-209. Section 12-201 states that:

(a) Except as otherwise provided in this title, an individual shall have a license before the individual does business as a dealer in the State.

(b) Except those pawnbrokers who are exempt from State licensing under § 12-102(c) of this title, all pawnbrokers must be licensed as dealers.

Section 12-209(a)(2)(viii) states that:

(a)...

(2) Subject to the hearing provisions of § 12-210 of this subtitle, the Secretary may deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee or an agent, employee, manager, or partner of the applicant or licensee:

...

(viii) violates this title[.]

Under Section 12-209(a)(3), the Secretary may:

(3)(i) Instead of or in addition to reprimanding a licensee or suspending or revoking a license under this subsection, the Secretary may impose a penalty not exceeding \$5,000 for each violation.

(ii) To determine the amount of the penalty imposed under this subsection, the Secretary shall consider:

1. the seriousness of the violation;
2. the harm caused by the violation;
3. the good faith of the licensee; and
4. any history of previous violations by the licensee.

There is no dispute as to the facts in this case: for many years the Respondent has been a licensed SPMO dealer at Arundel Cards and Coins in Anne Arundel County, Maryland; the Respondent's SPMO dealer's license expired on August 15, 2013; on February 28, 2014, Ms. Dohoney of the AACPD informed the Respondent that his SPMO's dealer's license had expired;

the Respondent renewed his license on March 4, 2014; and the Respondent conducted thirty-two transactions that required a SPMO dealer's license in the period he was unlicensed between August 15, 2013 and February 28, 2014.

The Department argued that the Respondent knew, or should have known, that his license had expired when he conducted these thirty-two transactions. The Respondent admitted that he received the notice in the mail from the Department informing him that his license would soon expire and providing him information regarding the processes for renewal. The Department also provided evidence that it emailed the Respondent at least twice at the email address he provided to the Department with reminders to renew his license, and once again just after his license expired. The Department further asserted that the Respondent clearly knew he was operating without a SPMO dealer's license because he was not displaying a current license in the store as required by Md. Code Ann., Bus. Reg. section 12-208.

The Respondent testified that he would not have operated as a licensed dealer if he knew he was unlicensed. He explained that he renewed his license on the Department's website before the license expired, but that the website must have failed to record the renewal. He testified that he "didn't notice" that his license hanging on the wall of the store near the cash register had expired because it has become a fixture of the store and is not something he notices anymore; and had he noticed, he would have ensured its renewal. He stated that he no longer uses the email address that he provided to the Department, and candidly admitted that he failed to update his email address with the Department even though he knew it was his responsibility to do so. He explained that he was shocked to hear that he was unlicensed, and that once he found out from Ms. Dohoney, he did not perform any transactions until he renewed his license.

The Respondent asserted that he clearly was not attempting to do anything illegal. He pointed to the fact that he entered each of the thirty-two transactions into the RAPID³ system. He argued that if he was trying to operate illegally he would not have “reported” himself to the police through this system. He was surprised that he was able to access the RAPID system if he was not a licensed dealer.

The Department argued that, despite the Respondent’s assertions to the contrary, there is no credible evidence that the Respondent tried to renew his license online. The Department’s computer system documents that the Respondent did not log into his account with the Department via the internet at any point in 2012 or 2013, and not until March of 2014. The Respondent successfully renewed his license through the internet at least five times in the past, and so was familiar with the online renewal process. Mr. Petrosino testified that the Department’s online renewal system had “not changed in years.”⁴

The Department agreed that the Respondent did report all of the transactions he conducted after his license had expired into RAPID. However, Detective Long explained that the Respondent’s ability to access the RAPID system is not a basis for him to believe he was licensed; the RAPID system is separate from the Department’s licensing system. The Department recommended that the Respondent receive a Reprimand, as well as a \$2,000 civil penalty. It argued that this is necessary to protect the integrity of the SPMO licensing program.

In accordance with Md. Code Ann., Bus. Reg. § 12-209(a)(2)(viii), I find that a reprimand of the Respondent’s license is appropriate in this case. The Respondent performed thirty-two SPMO transactions between August 15, 2013 and March 4, 2014 without a dealer’s

³ The RAPID system is a program that permits local police departments to monitor transactions of SPMOs. A dealer must enter information, such as the name of the individual selling the item, and a description of the item, for each SPMO transaction.

⁴ Department’s Exhibit 3 demonstrates that the Respondent renewed his license online in years 2000, 2001, 2007, 2009, and 2011.

license. Despite the Respondent's assertions to the contrary, I do not believe that the Respondent attempted to renew his license before it expired. The Department provided credible evidence from the Data Processing unit that the Respondent did not access his online account at any point in 2013. The Respondent did not provide any evidence, besides his vague recollection, to refute this evidence.

However, I do not find that a \$2,000 penalty is appropriate in this case. While section 12-209(a)(3) provides that the Secretary may impose a monetary penalty in addition to a reprimand, the Code does not mandate it. And, I do not find the factors enunciated section 12-209(a)(3)(ii) warrant such a penalty in this case.

First, I do not believe that the Respondent's actions evidenced any bad faith. Md. Code Ann., Bus. Reg. § 12-209(a)(3)(ii)(3). The testimony and evidence from both the Department and the Respondent support my conclusion that, aside from failing to renew his license, the Respondent performed all the duties and responsibilities required of him as a dealer. There is no evidence that the Respondent was attempting to be subversive, or conduct transactions outside the scrutiny of the Department or the police. In fact, the Respondent was quite transparent in his actions. He reported each of the thirty-two transactions into RAPID, and there is no evidence that any of those reports were deficient in any way. I also find that the Respondent's failure to renew his license was simply an oversight on his part. I believe the Respondent's testimony that he thought that he had renewed his license and that he wrote "renewed" on his notice from the Department, especially in light of Ms. Dohoney's testimony that he told her the same thing when she spoke to him on February 28, 2014.

I also find that his violation was not serious in nature, and it did not cause significant harm. Md. Code Ann., Bus. Reg. §§ 12-209(a)(3)(ii)(1), (2). While arguably "the integrity" of

the licensing system was harmed by the Respondent's failure to renew, I do not believe there was any true tangible harm. The purpose of the Act is to allow law enforcement to monitor the sale of potentially stolen property. By reporting all transactions into RAPID, even those occurring while he was unlicensed, the Respondent protected the purpose of the Act by continuing to permit police to monitor the sale of potentially stolen property.

Finally, there is no history of any violations of the Act by the Respondent. Md. Code Ann., Bus. Reg. § 12-209(a)(3)(ii)(4). Detective Long has the responsibility of enforcing the Act, and ensuring that dealers comply with its requirements. She testified that the Respondent does not have any previous violations. In fact, she testified that the Respondent has a history of helping law enforcement recover stolen property; and that he has even assisted the State in the past by testifying as a witness in criminal prosecutions.

Based on my findings regarding the four enumerated factors for assessing a financial penalty, I find that it is appropriate to issue a reprimand, without any financial penalty, in this case. The Respondent was clearly negligent in failing to renew his license. However, because this is a first offense, and because his negligence was simply the result of an oversight that caused no tangible harm to the Department or the police, I find that a financial penalty would be excessive.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent acted as a secondhand precious metal objects dealer without a license. Md. Code Ann., Bus. Reg. § 12-201(a). I also conclude that the appropriate sanction is a reprimand. Md. Code Ann., Bus. Reg. § 12-209(a) (a)(2)(viii).

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact, Discussion, and Conclusions of Law, I
RECOMMEND an ORDER that the Department issue a reprimand to the Respondent's license.

November 18, 2014
Date decision issued

ADMINISTRATIVE LAW JUDGE
SIGNATURE ON
ORIGINAL DOCUMENT
Tara K. Lehner

TKL/tc
Doc. #152366