

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 11-61072-civ-RNS

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMERICAN PRECIOUS METALS, LLC,
a Florida limited liability company,

HARRY R. TANNER, JR., individually and as
an owner, officer, and managing member of
AMERICAN PRECIOUS METALS, LLC,

ANDREA TANNER, individually and as an
owner, officer, and managing member of
AMERICAN PRECIOUS METALS, LLC, and

SAM J. GOLDMAN, a/k/a **SAMMY JOE
GOLDMAN,** individually and as an owner or
manager of **AMERICAN PRECIOUS METALS,
LLC,**

Defendants.

**STIPULATED FINAL JUDGMENT AND PERMANENT INJUNCTION AS TO
DEFENDANT SAM J. GOLDMAN, ONLY**

On October 11, 2011, Plaintiff Federal Trade Commission (“FTC” or “Commission”) filed its First Amended Complaint for Permanent Injunction and Other Equitable Relief. (Dkt. 155.) The complaint charges Defendants American Precious Metals, LLC, Harry R. Tanner, Jr., Andrea Tanner, and Sam J. Goldman, with violating Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), and multiple provisions of the Telemarketing

Sales Rule ("TSR"), 16 C.F.R. Part 310, by engaging in deceptive and abusive practices in connection with the telemarketing and sale of precious metals investments.

Plaintiff and Defendant Sam J. Goldman, by and through their respective attorneys, have agreed to entry of this Stipulated Final Judgment and Permanent Injunction As to Defendant Sam J. Goldman, Only ("Final Order") by this court in order to resolve all claims against them in this action. Plaintiff and Defendant Goldman have consented to entry of this Final order without trial or adjudication of any issue of law or fact herein and without Defendant Goldman admitting liability for any of the violations alleged in the First Amended Complaint.

Being fully advised in the premises and acting upon the joint motion of the parties to enter this Final Order, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310. Pursuant to these statutes and regulations, the Commission has the authority to seek the relief it has requested.

2. The Commission's First Amended Complaint states a claim upon which relief may be granted against Defendant under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310.

3. This court has jurisdiction over the subject matter of this case and personal jurisdiction over the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

4. Venue in the Southern District of Florida is proper, pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

5. The activities alleged in the First Amended Complaint are or were "in or affecting commerce," as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendant Goldman enters into this Final Order freely and without coercion and acknowledges that he has read, understood, and is prepared to abide by the provisions contained herein.

7. Defendant Goldman waives all rights to seek judicial review or otherwise challenge or contest the validity of this Final Order.

8. Defendant Goldman further waives all rights to seek judicial review or otherwise challenge or contest the validity of this Final Order and any claim that they may have against the Commission, its employees, representatives, or agents, including any claim under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863- 64 (1996). The Commission and Defendant Goldman shall each bear their own costs and attorney's fees incurred in this action.

9. This Final Order, and the relief awarded herein, is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

10. Entry of this Final Order is in the public interest.

DEFINITIONS

1. "Asset" or "assets" means any legal or equitable interest in, right to, or claim to any item of economic value in whole or in part, whether tangible or intangible, and including but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes," (as these terms are defined in the Uniform Commercial Code), and all accounts, accounts receivables, cash, certificates of deposit, chattels, contracts, consumer lists, credits, currency, funds, income, investments, leaseholds, personal property, real property, revenues, securities, shares of stock, trusts, or any interest therein, whether located within or outside the United States.

2. "Assisting others" includes, but is not limited to: (a) performing customer service functions, including receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any marketing material, plan, or program; (c) providing names of, or assisting in the generation of, potential customers; or (d)

performing marketing or billing services of any kind.

3. **“Corporate Defendant”** means American Precious Metals, LLC, and its successors and assigns.

4. **“Defendants”** means all of the “Individual Defendants” and the “Corporate Defendant,” individually, collectively, or in any combination.

5. **“Individual Defendants”** means Harry R. Tanner, Jr., Andrea Tanner, and Sam J. Goldman.

6. **“Investment Opportunity”** means anything tangible or intangible that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

7. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

8. **“Net Proceeds”** means any sum remaining after satisfaction of senior recorded liens and after payment to third parties reasonable and customary fees, commissions or closing costs.

9. **“Person”** means an individual, organization, or other legal entity, including but not limited to an association, cooperative, corporation, limited liability company, organization, partnership, proprietorship, trust, or any other group or combination thereof.

10. **“Receiver”** means David Chase and any deputy receivers, agents, or counsel as may be named by the Receiver.

11. **“Receivership Defendant”** means the “Corporate Defendant.”

12. **“Telemarketing”** means any plan, program or campaign that is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones and which involves more than one interstate telephone call.

ORDER

I. PERMANENT BAN

A. **IT IS HEREBY ORDERED** that Defendant Goldman, whether acting directly or through any person or representative, is permanently restrained and enjoined from marketing, promoting, telemarketing, offering for sale or sale of any investment opportunity or assisting others in marketing, promoting, telemarketing, offering for sale or sale of any investment opportunity.

II. PROHIBITED BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that Defendant Goldman, his officers, agents, servants, employees, attorneys, and independent contractors, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, whether acting directly or through any person, corporation, partnership, division, agent, or other device, are permanently restrained and enjoined from:

A. Falsely representing, expressly or by implication, any material fact in connection with the advertising, marketing, promoting, telemarketing, offering for sale, or sale of any good or service, including but not limited to misrepresenting profit or risk;

B. Failing to adequately disclose to consumers, truthfully, in a clear and conspicuous manner and before a consumer agrees to pay, material information concerning the sale of any good or service, including but not limited to the total fees, commissions, interest charges, or balances that consumers are required to pay; and

C. Assisting others who violate any provisions of Paragraphs A or B of this Section.

III. ORDER PROVISIONS REGARDING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant Goldman, his officers, agents, servants, employees, attorneys, and independent contractors, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, whether acting directly or through any person, corporation, partnership, division, agent, or other device, are permanently restrained and enjoined from:

A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which was obtained by any Defendant prior to entry of this Final Order in connection with the marketing and sale of precious metals investments; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Final Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission and against Defendant Goldman, jointly and severally with Defendants, in the amount of \$24,372,491.00 (Twenty Four Million Three Hundred Seventy-Two Thousand Four Hundred and Ninety-One Dollars), for the payment of equitable monetary relief, including but not limited to consumer redress and disgorgement, and for paying any attendant expenses of administration of any redress fund.

B. In partial satisfaction of the monetary judgment set forth above, within ten (10) days of entry of this Final Order the following transfers shall occur:

1. PNC Bank shall transfer to the Commission all assets held on account for RJG Group, Inc., at PNC Bank, including but not limited to PNC Bank accounts ending *7832 and *6077;
2. Defendant Goldman shall surrender all right, title, and possession of real property, located at 881 Marina Del Ray Lane, Unit4 , West Palm Beach,

Florida, by quit claiming the property to the mortgagee. Defendant shall execute all documents necessary to effect the transfer, foreclosure, or liquidation of the property without unreasonable delay. Any proceeds that Defendant shall receive relating to the property, including but not limited to rental income or payment arising from the transfer, foreclosure, or liquidation of said property, shall be paid to the Commission within five (5) days of receipt.

C. All funds paid to the Commission pursuant to this Final Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for administration of such equitable relief fund. Defendant Goldman will cooperate fully to assist the Commission in identifying consumers who may be entitled to relief pursuant to this Final Order. If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable, or funds remain after consumer redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) that it determines to be reasonably related to the practices alleged in the First Amended Complaint. Any funds not used for this equitable relief shall be deposited into the U.S. Treasury as disgorgement. Defendant Goldman shall have no right to contest the choice of remedies or the manner of distribution chosen by the Commission.

D. Defendant Goldman acknowledges and agrees that the judgment entered pursuant to this Section is equitable monetary relief, solely remedial in nature, and is not a fine, penalty, punitive assessment or forfeiture.

E. Interest, computed pursuant to 28 U.S.C. § 1961, as amended, shall immediately accrue on the difference between the judgment set forth at Section IV.A. and the amount turned over pursuant to Section IV.B.

F. Defendant Goldman is hereby required, in accordance with 31 U.S.C. § 7701, to furnish the Commission with their taxpayer identifying numbers (social security or employer identification numbers), which shall be used for purposes of collecting and reporting on any

delinquent amount arising out of Defendant Goldman's relationships with the government.

V. BANKRUPTCY PROVISIONS FOR MONETARY RELIEF SECTIONS OF ORDER

IT IS FURTHER ORDERED that:

A. Defendant Goldman relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant Goldman shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

B. Defendant Goldman agrees that the facts as alleged in the First Amended Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Final Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendant Goldman further stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Final Order shall have collateral estoppel effect for such purposes.

VI. DISSOLUTION OF ASSET FREEZE

IT IS FURTHER ORDERED that, upon entry of this Final Order and payment of the amounts set forth in Section IV.B., the freeze of Defendant Goldman's assets shall be dissolved.

VII. RECEIVERSHIP

IT IS FURTHER ORDERED that:

A. Except as modified by this Section of the Final Order, the receivership imposed by this court shall continue in the manner set forth in the preliminary injunction orders entered in this matter. (Dkts. 54 and 215).

B. The Receiver shall take all necessary steps to wind down the affairs of the Receivership Defendant.

C. The Receiver shall forthwith take all steps necessary to liquidate the receivership assets and those assets that are surrendered pursuant to Section IV of this Final Order and, after such liquidation, shall promptly remit the net proceeds to the Plaintiff as payment toward the monetary judgment entered against Defendant Goldman.

D. The Receiver shall continue to be entitled to compensation for the performance of his duties pursuant to this Final Order, from the assets of the Receivership Defendant, at the billing rate previously agreed to by the Receiver.

E. The Receiver shall file his Final Report within three hundred and sixty-five (365) days after entry of this Final Order, unless this time is extended by the court for good cause. Upon approval of the Receiver's final report and request for payment, the receivership shall be terminated and all funds remaining after payment of the Receiver's final approved payment shall be remitted immediately to the FTC or its designated representative in partial satisfaction of the judgment pursuant to Section IV of this Final Order.

F. Any and all uncollected judgments obtained for the benefit of the Receivership Defendant shall be assigned to the Commission for further collection efforts.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant Goldman obtain acknowledgments of receipt of this Final Order:

A. Within seven (7) days of entry of this Final Order, Defendant Goldman must submit to the Commission an acknowledgment of receipt of this Final Order sworn under penalty of perjury.

B. For twenty (20) years after entry of this Final Order, Defendant Goldman shall, for any business that he, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, must deliver a copy of this Final Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in telemarketing any good or service; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Final Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant Goldman delivered a copy of this Final Order, he must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Final Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant Goldman make timely submissions to the Commission:

A. Within 180 days after entry of this Final Order, Defendant Goldman must submit a compliance report, sworn under penalty of perjury.

1. Defendant Goldman must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission [and Plaintiff] may use to communicate with him; (b) identify all of his businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Defendant Goldman must describe if he knows or should know due to his involvement); (d) describe in detail whether and how Defendant Goldman is in compliance with each Section of this Final Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Final Order, unless previously submitted to the Commission;
2. Additionally, Defendant Goldman must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For twenty (20) years following entry of this Final Order, Defendant Goldman must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. Defendant Goldman must report any change in: (a) any designated point

of contact; or (b) the structure any Corporate Defendant or any entity that Defendant Goldman has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Final Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Order.

2. Additionally, Defendant Goldman must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in he has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Defendant Goldman must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such him within fourteen (14) days of its filing.

D. Any submission to the Commission required by this Final Order to be sworn under penalty of perjury must be true and accurate and comply with 18 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580.

The subject line must begin: *FTC v. American Precious Metals, LLC, Harry R. Tanner, Jr., Andrea Tanner, and Sam J. Goldman*, Matter No. X110036.

X. RECORD KEEPING

IT IS FURTHER ORDERED that Defendant Goldman must create certain records for twenty (20) years after entry of the Final Order, and to retain each such record for five (5) years. Specifically, Defendant Goldman shall for any business in which he, individually or collectively with any other Defendants, is a majority owner or directly or indirectly controls, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Final Order, including all submissions to the Commission; and
- E. A copy of each advertisement or other marketing material.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Goldman's compliance with this Final Order, including any failure to transfer assets as required by this Final Order:

- A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, Defendant Goldman must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Final Order, the Commission is authorized to communicate directly with Defendant Goldman. Defendant Goldman must permit

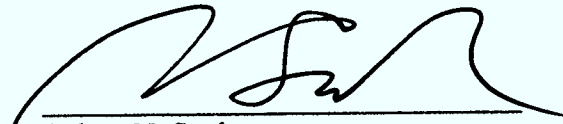
representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant Goldman or any individual or entity affiliated with him, without the necessity of identification or prior notice. Nothing in this Final Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Final Order.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 16 day of November, 2012.



Robert N. Scola
United States District Judge

STIPULATED AND AGREED TO:

For the Plaintiff:



Dama J. Brown
Special Fl. Bar No. A5501135
Email: dbrown1@ftc.gov

225 Peachtree Street, N.E., Suite 1500
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Attorney for Plaintiff
FEDERAL TRADE COMMISSION

Dated 11-06-2012

Facsimile: (404) 656-1379

Attorney for Plaintiff
FEDERAL TRADE COMMISSION

Dated 9-27-12

For the Defendants:



Myles A. Malman
Fl. Bar No.
Email: myles@malman.com

3107 Stirling Road, Suite 101
Fort Lauderdale, FL 33312

Telephone: (954) 322-0065
Facsimile: (954) 322-0064

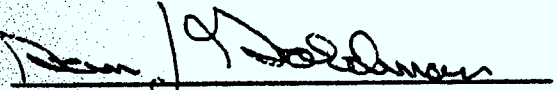

Sam J. Goldman, aka Sammy Joe Goldman

Dated: 9-26-12

Signed and Notarized this 26th day of
September, 2012

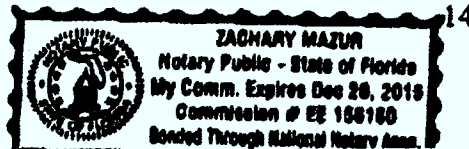

My Commission Expires:




RJG Group, Inc.
By Its: MJR.

Dated: 9-26-12

Signed and Notarized this 26th day of
September, 2012



~~My Commission Expires:~~