

service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF
RALPH NEWBURGER DOING BUSINESS AS CHICAGO
GOLD SMELTING & REFINING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7750. Complaint, Jan. 18, 1960—Decision, July 15, 1960

Consent order requiring an individual in Chicago to cease representing falsely in advertising in newspapers, magazines, and other matter that he was the largest and oldest direct mail purchaser of precious metals and diamonds, and that he paid \$35 an ounce for gold; that he was a smelter or refiner, through use of "Smelting", "Refining", or similar words in his trade name and otherwise; and that he employed a staff of experts to assay and evaluate precious metals and diamonds from would-be sellers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Ralph Newburger, doing business as Chicago Gold Smelting & Refining Company, hereinafter referred to as respondent, has violated the provisions of said



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Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ralph Newburger is an individual trading and doing business as Chicago Gold Smelting & Refining Company, with his office and principal place of business located at Room 1306, 6 East Monroe Street, Chicago 3, Ill.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the purchasing of gold, silver and other precious metals and diamonds, by mail, in commerce, and at all times mentioned herein has maintained a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the sale of gold, silver and other precious metals, and diamonds, by the public to him, respondent made certain statements and representations in newspapers of interstate circulation, trade papers, journals and magazines having national circulation, and in form letters, circulars, or other advertising material circulated by said respondent. Among and typical, but not all inclusive, of the statements and representations so made are the following:

It is a pleasure to let you know that we are the largest Direct-By-Mail gold purchasing agents in the United States.

When you deal with the Chicago Gold Smelting & Refining Company, you are taking no risk, because you are dealing with the largest and oldest Direct-By-Mail gold and diamond buying institution in the United States, * * *

Highest cash prices paid for Old and New Gold, * * *

\$35.00 per ounce is the standard price for the pure gold content.

Your articles will be carefully examined and weighed for their gold and diamond contents by our staff of gold and diamond experts.

PAR. 4. Through the use of the aforesaid statements and representations, and others similar thereto, and by the use of the words "Smelting" and "Refining" in his trade name, the respondent represents, directly and by implication:

1. That respondent is a smelter and refiner of gold and other precious metals and that he owns or controls the smeltery and refinery where the gold and other precious metals sold to him are smelted and refined.

2. That respondent is the largest and oldest direct mail purchaser of gold and diamonds.

3. That respondent pays \$35.00 an ounce for gold.

4. That respondent employs a staff of experts to assure the sellers of gold and diamonds a completely accurate assay and valuation of such products sent to him for sale.

PAR. 5. The said statements and representations, as hereinbefore set forth, are false, misleading and deceptive. In truth and in fact:

1. Respondent is not a smelter or refiner of gold and other precious metals, nor does respondent own, operate or control a smeltery or refinery.

2. Respondent is neither the largest nor oldest mail purchaser of gold or diamonds.

3. Respondent does not pay \$35.00 an ounce for gold.

4. Respondent does not maintain a staff of experts to assay and evaluate the gold or diamonds sent to him for sale.

PAR. 6. There is a preference on the part of a substantial portion of persons, having gold and other precious metals to sell, to deal direct with a smeltery or refinery, in the belief that by the elimination of middlemen the sellers will receive a higher price and other advantages.

PAR. 7. Respondent, in the course and conduct of his business, is engaged in competition in commerce with other individuals and with firms and corporations who are likewise engaged in the purchasing of gold, other precious metals and diamonds.

PAR. 8. The use by the respondent of the said trade name, statements and representations has had, and now has, the tendency and capacity to mislead a substantial portion of the public into the erroneous and mistaken belief the statements and representations were and are true, and to induce a substantial portion of the public, because of such erroneous and mistaken belief, to sell their gold and other precious metals and diamonds to the respondent. As a result of said practice, as aforesaid, trade in commerce has been, and is being, unfairly diverted to respondent from his competitors, and injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. William A. Somers for the Commission.

Mr. Jack Rosen, of Chicago, Ill., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 18, 1960, issued its complaint herein, charging the above-named respondent with having

violated the provisions of the Federal Trade Commission Act in certain particulars.

On May 17, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondent and counsel for both parties, under date of May 2, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Ralph Newberger (erroneously referred to in the complaint as Ralph Newburger), trading and doing business as Chicago Gold Smelting & Refining Company, has his office and principal place of business located at Room 1306, 6 East Monroe Street, Chicago 3, Ill.

2. The respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. The respondent waives:

- (a) Any further procedural steps before the hearing examiner and the Commission;

- (b) The making of findings of fact or conclusions of law; and

- (c) All the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to the respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside

in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease and Desist," said agreement is hereby approved and accepted and is ordered filed if and when said agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against the respondent, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order, therefore, should be and hereby is entered as follows:

It is ordered, That respondent Ralph Newberger, trading and doing business as Chicago Gold Smelting & Refining Company, or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering to purchase or purchasing of precious metals, diamonds or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Smelting," "Refining," or any other word of similar import, in any trade or corporate name, or representing in any other manner that respondent is a smelter or refiner, or owns or controls a smeltery or refinery;

2. Representing, directly or by implication:

- (a) That respondent is the largest or oldest direct mail purchaser of precious metals or diamonds; or is the largest or oldest direct mail purchaser of any other product, unless such is the fact;

- (b) That respondent pays \$35.00 an ounce for gold; or pays any other amount, unless such is the fact;

- (c) That respondent employs a staff of experts to assay and evaluate the precious metals, diamonds or other products sent to him by persons desiring to sell the same to him.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 15th day of July 1960, become the decision of the Commission; and accordingly:

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It is ordered, That respondent Ralph Newberger (erroneously referred to in the complaint as Ralph Newburger), trading and doing