

IN THE MATTER OF
THOMAS L. BAKER

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3096. Complaint, Sept. 28, 1982—Decision, Sept. 28, 1982*

This consent order requires a San Diego, Calif. corporate officer to cease, among other things, misrepresenting or failing to disclose material facts regarding the purchase of gemstones as investments, or their liquidity. The respondent is prohibited from misrepresenting the source of graphs or charts used in promotional literature; failing to disclose the limitations associated with the certificates issued by the firms to accompany their gemstones; or representing that their price increases reflect general market increases. Respondent is required to disclose both orally and in writing, before the execution of any contract for the sale of gemstones, among other things, that gemstones are not as easy to sell as other investments; that there are risks involved in the purchase of colored gemstones; and that diamonds .04 to .60 carats may be difficult to resell. Further, respondent is required to comply with the FTC's Mail Order Merchandise Rule and ensure that all personnel receive a synopsis of the order.

Appearances

For the Commission: *Curtis Yee, David C. Fix and Robert D. Friedman.*

For the respondent: *Jeffrey L. Davidson, Davidson, Holmes and Anderson, Los Angeles, Calif.*

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent Thomas L. Baker [hereinafter referred to as respondent], and the respondent having been furnished with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, his attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of the complaint, a statement that the

* Complaint previously published at 100 F.T.C. 461 (1982).

signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered any comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules; and

The Commission having determined to issue separate orders against respondent Thomas L. Baker and the corporate respondents Thomas L. Baker, Inc. and American Diamond Company named in the caption hereof and having revised the language of this order to make clear its applicability to the individual respondent alone; and

Now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Thomas L. Baker is an officer and director of the following corporations. As such, he formulates, directs and controls the acts and practices of said corporations, and his principal office and place of business is located at the same address as that of said corporations.

Thomas L. Baker, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4455 Morena Boulevard, San Diego, California.

American Diamond Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 4455 Morena Boulevard, San Diego, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent Thomas L. Baker individually and

as an officer of Thomas L. Baker, Inc., a corporation, and American Diamond Company, a corporation, and respondent's agents, representatives, brokers, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the purchasing, advertising, offering for sale, sale or distribution of any diamond, ruby, or any other precious or semi-precious stone, [hereinafter gemstones] or other merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) A diamond or ruby or other gemstone is an investment which can be easily or quickly sold by an individual investor for a price substantially the same as what an individual would have to pay to purchase such gemstone from the respondent or another commercial source.

(b) A person can sell a diamond or ruby or other gemstone through the respondent as easily as he or she could sell a stock or bond through a stock broker.

(c) There is at any time an established, generally recognized market price for a diamond or other gemstone at which an individual could easily sell or exchange his or her gemstone(s).

2. Misrepresenting in any manner, directly or by implication, the ease with which an individual can resell a diamond, ruby or other gemstone or the price an individual is likely to receive upon such resale.

3. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any gemstone(s), the following information:

(a) Gemstones are not as easy to sell as many other investments. If you seek a quick sale of a gemstone you will in many instances only be able to get a price substantially lower than the current selling price of the gemstone.

(b) If you resell your gemstones through [name company] you will be required to pay liquidation/consignment fees of [insert fees].

(c) If you try to resell your gemstones through [name company] you may in some instances have to wait a substantial period of time before the gemstones are sold. In addition, a sale on consignment is not completed until thirty (30) days after the gemstones have been delivered to the new purchaser. This allows the new purchaser the right to inspect and return the gemstones.

(d) There are substantial differences in the past appreciation of gemstones of different weight, color, cut and clarity. Also, the fact that particular gemstones may have appreciated in the past is no guarantee that they will appreciate in the future.

4. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any diamond(s), ranging in size from .04 to .60 carats, the following information:

(a) [Name company] is the principal place for you to resell these diamonds. Resale for profit to other outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

(b) Resale through outlets other than [name company] may be made more difficult by the lack of certification by a recognized independent gemological laboratory.

(c) The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to enable a purchaser to resell through anyone other than [name company].

5. Misrepresenting in any manner, directly or by implication, the past appreciation in value of any diamond(s) or other gemstone(s).

6. Making any representation, directly or by implication, concerning the past appreciation of any diamond(s), or other gemstone(s) without:

(a) Disclosing, clearly and conspicuously, the type of diamond or other gemstone, in terms of size, color, cut, clarity, or other relevant characteristic, to which the past appreciation representation relates; and

(b) Having a reasonable basis upon which to make the claim.

7. Misrepresenting in any manner, directly or by implication, the source of any graph or chart or of any information depicted in any promotional material or other presentation relating to the sale of any gemstone(s).

8. Making any representation, directly or by implication, in any advertising or sales promotional material or orally during the course of any sales presentation, concerning the future appreciation of any

diamond(s) or other gemstone(s) unless at the time of such representation respondent possesses and relies upon a reasonable basis for the representation.

9. Failing to maintain accurate records, which may be inspected by Commission staff members upon reasonable notice, which:

(a) Consist of documentation in support of any representation concerning the past or future appreciation of any diamond or other gemstone included in any advertising or sales promotional material disseminated by the respondent, insofar as the text of such representation is prepared, or is authorized and approved, by any person who is an officer or employee of the respondent or by any advertising agency engaged for such purpose by the respondent; and

(b) Provide the basis upon which the respondent relied as of the time the representation was made.

10. Misrepresenting in any manner, directly or by implication, that the respondent's own price increases reflect general market price increases.

11. Representing, directly or by implication, that:

(a) Respondent is a "sight" buyer of diamonds from DeBeers Central Selling Organization.

(b) Respondent is a wholesale rough broker of diamonds or other gemstones.

(c) Respondent maintains an inventory of the gemstones he sells unless at the time such representation was made the respondent actually had in his possession or on consignment the exact gemstones about which the representation was made.

12. Misrepresenting in any manner, directly or by implication, the business activities engaged in by the respondent, including how respondent's pricing compares to price levels at various positions on the gemstone distribution chain such as cutter or wholesale levels.

13. Failing to disclose, clearly and conspicuously, in writing and orally, prior to the execution of any contract for sale of any colored gemstone, the following information:

(a) If your gemstone is re-certified, it may receive a different grade. This may affect its value. There are two reasons for this. First, colored gemstone grading is, in part, subjective. Second, procedures used for grading colored gemstones may change.

(b) A colored gemstone which receives a higher grade on a certificate is not necessarily more valuable than one receiving a

lower grade. Dealers in colored gemstones may differ significantly in their assessment of the value of particular gemstones and will often rely on personal inspection in setting a value for a gemstone instead of relying only on a certificate.

(c) The above characteristics of colored gemstone grading and valuation are a risk you should consider before investing in colored gemstones.

14. Failing to comply with Federal Trade Commission Rule concerning Mail Order Merchandise, 16 C.F.R. 435.

15. Failing to answer, and to answer promptly, inquiries by or on behalf of any customer regarding any purchase made from the respondent.

16. Failing to deliver a gemstone with the specific characteristics ordered unless a customer has agreed in writing to a substitution.

17. Failing to deliver the proceeds of a gemstone sale which the respondent has made on behalf of a previous customer or other party to such customer or party within 10 working days of completion of sale.

II.

It is further ordered, That the written affirmative disclosures required by Paragraphs 3, 4, and 13 of this order shall be made in the manner described below:

RISK FACTORS YOU SHOULD CONSIDER BEFORE INVESTING IN GEMSTONES

1. Gemstones are not as easy to sell as many other investments. If you seek a quick sale of a gemstone you will in many instances only be able to get a price substantially lower than the current selling price of the gemstone.

2. If you resell gemstones through [name company] you will be required to pay liquidation/consignment fees of [insert fees].

3. If you try to resell your gemstones through [name company] you may in some instances have to wait a substantial period of time before the gemstones are sold. In addition, a sale on consignment is not completed until thirty (30) days after the gemstones have been delivered to the new purchaser. This allows the new purchaser the right to inspect and return the gemstones.

4. There are substantial differences in the past appreciation of gemstones of different weight, color, cut and clarity. Also, the fact

that particular gemstones may have appreciated in the past is no guarantee that they will appreciate in the future.

FOR PURCHASERS OF DIAMONDS .04-.60 CARATS IN SIZE

5A. [Name company] is the principal place for you to resell these diamonds. Resale for profit to other outlets such as retail jewelers may be difficult. Many jewelers will not buy diamonds from an individual. Those that do generally pay substantially less than what they pay their customary suppliers.

5B. Resale through outlets other than [name company] may be made more difficult by the lack of certification by a recognized independent gemological laboratory.

5C. The grading on [name company] certificates accompanying these diamonds is for identification purposes only and not for purposes of valuation. More specific grading may be necessary to enable a purchaser to resell through anyone other than [name company].

FOR PURCHASERS OF COLORED GEMSTONES

6A. If your gemstone is re-certified, it may receive a different grade. This may affect its value. There are two reasons for this. First, colored gemstone grading is, in part, subjective. Second, procedures used for grading colored gemstones may change.

6B. A colored gemstone which receives a higher grade on a certificate is not necessarily more valuable than one receiving a lower grade. Dealers in colored gemstones may differ significantly in their assessment of the value of particular gemstones and will often rely on personal inspection in setting a value for a gemstone instead of relying only on a certificate.

6C. The above characteristics of colored gemstone grading and valuation are a risk you should consider before investing in colored gemstones.

A. This notice shall appear in all written advertising and promotional material used to sell any gemstone(s) except newspaper and magazine advertisements and one-page promotional material whose sole purpose is to solicit a prospective customer to request further information. The title "RISK FACTORS YOU SHOULD CONSIDER BEFORE INVESTING IN GEMSTONES" shall be printed in no smaller than ten (10) point boldface type. The remainder of the notice shall be printed in type no smaller than the

smallest type otherwise in the advertising or no smaller than eight (8) point type, whichever is larger. The capitalization, punctuation and wording of the text and headings must be exactly as shown above.

B. This notice must also appear on the front page of all sales agreements or on a separate sheet of paper given to customers before they sign the sales agreement. The separate sheet may not contain any other writing. The notice required in this subparagraph shall be in the form set forth as follows:

1. At the bottom of the notice shall be the language "I have read this notice and understand what it says" and a place for the buyer's signature.

2. The text of the notice must be printed in no smaller than 9-point type and the heading "RISK FACTORS YOU SHOULD CONSIDER BEFORE INVESTING IN GEMSTONES" must be 2 type points larger and boldface. The capitalization, punctuation and wording of the text and headings must be exactly as shown above.

3. The whole notice, from the word "RISK" to the words "what it says," must be printed in gothic, astro, avant garde, eras, frutiger, gill sans, grotesque, heldustry, helvetica, kabel, antique, optima, univers, vogue, americana, american typewriter, newtext, or quorum type in blue, blue-black, or black ink on white or buff background. If the notice is printed on the front page of a sales agreement on which other information is emphasized by the use of colored type, the notice must then be printed in the most conspicuous colored type used.

4. The whole notice from the word "RISK" to the space for the customer's signature, must be boxed with lines 2 points thick if the notice appears on the front page of a sales agreement.

The disclosures in Paragraph 4 only have to be made if the promotional material or contract relates to the sale of diamonds of .04 carats to .60 carats in size. The disclosures in Paragraph 13 only have to be made if the promotional material or contract relates to the sale of colored gemstones.

It is further ordered, That each customer be given at the time of sale a fully filled-in and legible copy of the sales agreement. Respondent shall keep a fully filled-in and legible copy of each sales agreement for three years after signing.

III.

It is further ordered, That the respondent herein shall notify the

Commission at least 30 days prior to any change in the structure of Thomas L. Baker, Inc. or American Diamond Company involving dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary, or any other change in the respective corporation which may affect compliance obligations arising out of this order.

IV.

It is further ordered, That the respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment if the business or employment is similar in nature to respondent's present employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

V.

It is further ordered, That respondent distribute a synopsis of this order to all operating divisions of said corporations, and to present or future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondent secure from each such person a signed statement acknowledging receipt of said order.

VI.

It is further ordered, That the respondent herein shall, within ninety (90) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Decision and Order

100 F.T.C.

IN THE MATTER OF
AMREP CORPORATION

DECISION AND ORDER REGARDING GENERAL DEVELOPMENT
CORPORATION

Docket 9018. Decision and Order, Sept. 30, 1982

This agreement contains an order as to General Development Corporation and was entered into by General Development and FTC Complaint Counsel in the Matter of AMREP Corporation, Docket 9018. The AMREP complaint alleges that AMREP and its subsidiary, Silver Springs Shores, Inc. have used unfair and deceptive practices in the sale of undeveloped land. General Development Corporation, a Miami, Fla. company which is not affiliated with AMREP and is not a party to Docket 9018, has agreed to purchase all remaining Silver Springs Shores properties conditioned upon the Federal Trade Commission's assurance that it will not be considered as a successor or assign of AMREP within the meaning of the Federal Trade Commission Act, or subject to any order or judgment stemming from Docket 9018. The agreement offers such assurance in exchange for General Development's good faith and performance of duties set forth in the accompanying order. The order requires, among other things, that General Development offer to buy back or exchange certain Silver Springs Shores lots in accordance with terms specified in the order, and emphasize in its sales representations and promotional materials that lots in Silver Springs Shores should be purchased for use by the buyer rather than as an investment. The order further requires the company to undertake a continuing surveillance program designed to ensure that unauthorized sales representations are not made in land sales presentations.

Appearances

For the Commission: *Jon R. Calhoun* and *George E. Schulman*.

For the respondent: *Wayne Allen*, in-house counsel, General Development Corp., Miami, Fla.

DECISION AND ORDER REGARDING GENERAL DEVELOPMENT
CORPORATION

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and after trial of the matter, and the Initial Decision of the Administrative Law Judge having been issued, and General Development Corporation having sought to purchase Silver Springs Shores, one of the land developments that are the subject of this matter; and

General Development Corporation, its attorney, and counsel for the Los Angeles Regional Office of the Federal Trade Commission