

RECEIVED
W325

2008 SEP 18 AM 11:53

KING COUNTY
SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

NORTHWEST TERRITORIAL MINT,
a Washington Limited Liability
Company; and BERNARD ROSS
HANSEN, also known as ROSS B.
HANSEN, as Member, President, Chief
Executive Officer and Owner of
Northwest Territorial Mint,

Defendants.

NO. 08-2-05487-0 KNT
CONSENT DECREE

I. JUDGMENT SUMMARY

- 1.1. Judgment Creditor: State of Washington
- 1.2. Judgment Debtors: Northwest Territorial Mint;
and Bernard Ross Hansen, also
known as Ross B. Hansen
- 1.3. Principal Judgment Amount:
 - a. Civil Penalties: \$20,000.00
 - b. Costs and Attorneys' Fees: \$38,763.49
- 1.4. Total Judgment: \$58,763.49
- 1.5. Attorney for Judgment Creditor: Paula Selis, Senior Counsel
- 1.6. Attorney for Judgment Debtors: John Young

COPY

1 Plaintiff, State of Washington, having commenced this action on February 6, 2008,
2 pursuant to the Unfair Business Practices—Consumer Protection Act (“Consumer Protection
3 Act”), chapter 19.86 RCW.

4 Defendants Northwest Territorial Mint and Bernard Ross Hansen, also known as Ross
5 B. Hansen (together, “Defendants”), having been served with a Summons and Complaint on
6 February 6, 2008; and

7 Plaintiff appearing by and through its attorneys, Robert M. McKenna, Attorney General;
8 and Paula Selis, Senior Council and Defendants appearing through their attorney, John Young;
9 and

10 Plaintiff and Defendants having agreed on a basis for the settlement of the matters alleged
11 in the Complaint, and to the entry of this Consent Decree against Defendants without the need for
12 trial or adjudication of any issue of law or fact; and

13 Plaintiff and Defendants having agreed that this Consent Decree does not constitute
14 evidence or an admission regarding the existence or non-existence of any issue, fact, or violation
15 of any law alleged by Plaintiff; and

16 Plaintiff and Defendants agree that Defendants have cooperated with the Attorney
17 General’s Office in resolving the matters alleged in the Complaint and that this Consent Decree
18 should not reflect adversely on Defendants’ business practices; and

19 Defendants recognize and state that this Consent Decree is entered into voluntarily and
20 that no promises or threats have been made by the Attorney General’s Office or any member,
21 officer, agent or representative thereof to induce them to enter into this Consent Decree, except as
22 provided herein; and

23 Defendants waive any right they may have to appeal from this Consent Decree; and
24
25
26

1 Defendants further agree that they will not oppose the entry of this Consent Decree on the
2 grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of Civil Procedure, and
3 hereby waive any objections based thereon; and

4 Defendants further agree that this Court shall retain jurisdiction of this action for the
5 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for all
6 other purposes; and

7 The Court finding no just reason for delay;

8 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
9 follows:

10 **II. GENERAL**

11 2.1. Jurisdiction. This Court has jurisdiction of the subject matter of this action and of
12 the parties. Plaintiff's Complaint in this matter states claims upon which relief may be granted
13 under the provisions of the Consumer Protection Act, Chapter 19.86 RCW.

14 2.2. Defendants. For purposes of this Consent Decree, the term "Defendants" where
15 not otherwise specified shall mean Northwest Territorial Mint; and Bernard Ross Hansen, also
16 known as Ross B. Hansen.

17 **III. INJUNCTIONS**

18 3.1. Application of Injunctions. The injunctive provisions of this Consent Decree shall
19 apply to Defendants, Defendants' successors, assigns, officers, agents, servants, employees,
20 representatives, and all other persons or entities in active concert or participation with Defendants.

21 3.2. Notice. Defendants shall immediately inform all successors, assigns, transferees,
22 officers, agents, servants, employees, representatives, attorneys, and all other persons or entities in
23 active concert or participation with Defendants in the Complaint of the terms and conditions of
24 this Consent Decree.

1 3.3. Defendants and all successors, assigns, transferees, officers, agents, servants,
2 employees, representatives, attorneys, and all other persons or entities in active concert or
3 participation with Defendants are hereby permanently enjoined and restrained from directly or
4 indirectly engaging in the following acts or practices:

- 5 a. If Defendants explicitly represent that they will ship within a specified
6 number of days, Defendants are restrained from failing to ship
7 purchased goods after the time represented, unless they timely notify the
8 customer, and clearly and conspicuously offer the customer the option of
9 buying back the order and receiving the spot market price of the item on
10 the date of buy-back or continuing to await shipment of the goods.
11 Timely notice shall be within a reasonable time of when Defendants
12 learn of their inability to timely ship the goods, but in no case after the
13 customer's expected shipping date, and shall be made by phone or
14 email. For purposes of this injunction, a "specified number of days"
15 shall mean the average number of days it has taken for Defendants to
16 delivery similar goods in the past as calculated by the prior year's
17 history of delivery information, provided that if market conditions have
18 substantially changed from the prior year, Defendants shall base the
19 projected delivery date on then prevailing market conditions for the
20 items purchased, and further provided that the period shall be calculated
21 from the date payment of good funds is received by Defendants. For
22 purposes of this Consent Decree, the "spot market price" shall mean the
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

bid price received under any sales transaction when planned or actual deliveries span a short period of time and are based on commonly used and publicly available pricing information derived from regularly fluctuating prices for the subject commodities such as gold, silver, platinum and palladium bullion. Such spot market price information, as referred to herein, shall be obtainable from a bona fide independent source, such as the New York Mercantile Exchange (NYMEX) and must be available for independent verification by consumers through access to such resources as print media and the Internet.

b. If Defendants do not make any explicit representations as to the number of days by which they will ship, or impliedly warrant that they will ship by a certain date or within a specified number of days, Defendants are restrained from shipping goods more than thirty (30) days after receipt of the customer's good funds, unless they timely notify the customer, and clearly and conspicuously offer the customer the option of buying back the order and receiving the spot market price of the item on the date of buy-back or continuing to await shipment of his goods. Timely notice shall be within a reasonable time of when Defendants learn of their inability to timely ship the goods, but in no case after the customer's expected shipping date, and shall be made by phone or email.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- c. Failing to honor a customer's decision under paragraph 3.3(a) or 3.3(b) to either accept payment of the spot market price or to continue to await shipment of the goods. Defendants are also restrained from failing to honor a customer's request to accept payment of the spot market price after initially opting to await shipment, if this request is made before Defendants ship the goods.

- d. Under the procedures provided in paragraphs 3.3(a) through (c), which address circumstances in which Defendants are unable to timely ship goods, if the consumer chooses to continue to await shipment of his or her goods, Defendants are restrained from failing to represent that the goods will be shipped within a specified number of additional days, which period shall not exceed 30 days. Defendants are further restrained from failing to clearly and conspicuously disclose to the customer at the time he or she chooses to continue to await shipment of his goods for an additional period, the option of a full refund of the spot market price of the goods should he or she decide to cancel within the additional period of shipment.

- e. Under the procedures provided in paragraphs 3.3(a) through (d), which address circumstances in which Defendants are unable to timely ship goods, Defendants are restrained from failing to provide anything less than the full spot market price refund.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

f. If the consumer chooses to await shipment of goods for the additional period of shipment referenced in paragraph 3.3(d), and the goods are not shipped during the period, Defendants are restrained from failing to pay to the consumer, immediately after the expiration of the period, either the full spot market price on the day the period expired or the price the consumer originally paid for the goods, whichever is greater, in addition to all shipping and other charges.

g. If Defendants fail to provide the option of receiving a spot market price payment or waiting for an additional period of time as described in paragraphs 3.3(a) and (b), failing to provide to the consumer upon expiration of the original period of delivery, either the full spot market price on the day the period expired or the price the consumer originally paid for the goods, whichever is greater, in addition to all shipping and other charges.

h. Failing to modify their shipping policy, as contained on their website and in any other distributed form, to include the following language:

Order Liquidation Policy

When you place your telephone order, you enter into a binding contractual agreement with Northwest Territorial Mint to remit payment in full based on the prevailing market purchase price agreed upon at the time your order was placed. Should you choose to buy-back your order prior to the date of delivery, Northwest Territorial Mint will liquidate your position based on the prevailing market purchase price at the time of

1 buy-back. You will be liable for any difference in
2 the event of a market loss. If the prevailing
3 market price of the items has gone up since your
4 order, Northwest Territorial Mint will pay you the
5 higher prevailing market price for your items.
6 However, in the event we are unable to ship your
7 order by the date promised, we will contact you
8 and give you the option of buying back your
9 order based on the spot market price at that time
10 or agreeing to wait an addition period of time for
11 your order, which shall not be more than 30 days.
12 If we are unable to deliver after the additional
13 period of time has elapsed, we will pay to you the
14 full purchase price or the prevailing spot market
15 price, whichever is higher.

16 Shipping Time

17 Our policy is to ship orders promptly.
18 However, reductions in inventory resulting
19 from an increased demand for certain
20 bullion products and other reasons may
21 delay shipping. If we cannot ship your order
22 within the delivery time represented to you
23 at the time of purchase, we will inform you
24 prior to the expiration of that period of time
25 that we are unable to meet the delivery date,
26 and you may buy-back your order and
obtain a full payment of the prevailing
market price at the time of liquidation.

- i. Representing to customers that they have the ability to ship goods by a specific date, unless Defendants have a reasonable basis for making the representation.

3.4 Failing to make the following disclosures clearly and conspicuously, orally in the context of telephonic sales to customers, and also on their web site the following statement:
“When you place your order, you enter into a binding contract with us to pay in full at today’s market price. If you decide to terminate your order before it’s delivered, we’ll buy it back based on the market price at the time you decide to terminate. If the market has gone down,

1 you will absorb the loss. If the price has gone up, then we will pay you the higher prevailing
2 market price. If we can't ship your goods by the date we've promised, we'll contact you and
3 give you the option of continuing to wait up to an additional 30 days for your order. If we
4 can't deliver after that period, then we'll buy back your order at either the price you paid or the
5 prevailing market price, whichever is higher."
6

7 3.5 Failing to respond within 48 hours by telephone or email to all communications
8 by customers. Such contact shall include Defendants' reasonable attempt to answer
9 substantially all of the customer's inquiries.

10 3.6 Failing to ensure that agents communicating with customers are sufficiently
11 informed and authorized to assist customers.

12 3.7 Making any misrepresentations in the context of their business activities,
13 including but not limited to misrepresentations about delivery dates, delivery status, refunds
14 and availability of goods.

15 IV. CIVIL PENALTIES

16 4.1. Pursuant to RCW 19.86.140, Plaintiff shall have and recover and Defendants shall
17 be liable for and shall pay civil penalties in the amount of \$20,000.00.

18 4.2. Payment owing under this provision shall be in the form of a valid check paid to
19 the order of the "Attorney General—State of Washington" upon entry of the Decree. Payment
20 shall be sent to the Office of the Attorney General, Attention: Cynthia Lockridge,
21 Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle, Washington, 98104-
22 3188.
23
24
25
26

1
2 6.5. Representatives of the Office of the Attorney General may be permitted to
3 question Defendants, or any officer, director, agent, or employee of any business organization
4 affiliated with Defendants, in the form of a deposition, pursuant to the provisions and notice
5 requirements of CR 30, and to issue interrogatories and requests for production of documents,
6 pursuant to the provisions and notice requirements of CR 33 and CR 34, in order to monitor
7 compliance with this Consent Decree.

8 6.6. Nothing in this Consent Decree shall be construed as to limit or bar any other
9 governmental entity or consumer from pursuing other available remedies against Defendants.

10 6.7. Nothing in this Consent Decree shall be construed as authority for non-compliance
11 with all federal and state laws, including but not limited to those regulating the sale and trading of
12 commodities or securities.

13 6.8. Under no circumstances shall this Consent Decree or the name of the State of
14 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their
15 employees or representatives be used by Defendants in connection with any selling, advertising,
16 or promotion of products or services, or as an endorsement or approval of Defendants' acts,
17 practices or conduct of business.

18 6.9. This Consent Decree resolves all issues raised by the Attorney General under the
19 Consumer Protection Act pertaining to the acts or omissions addressed in the Complaint filed in
20 this matter.

21 VII. DISMISSAL AND WAIVER OF CLAIMS

22 7.1. Upon entry of this Consent Decree, all claims in this matter not otherwise
23 addressed by this Consent Decree are dismissed.

24 DONE IN OPEN COURT this _____ day of _____, 2008.

25 **SEP 18 2008**

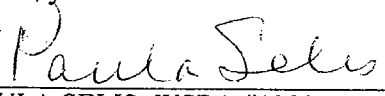
Commissioner Carlos Velazquez

JUDGE/COURT COMMISSIONER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Approved for entry and presented by:

ROBERT M. MCKENNA
Attorney General

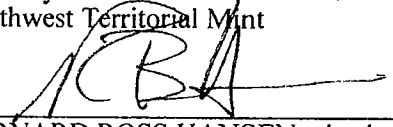


PAULA SELIS, WSBA #12823
Senior Counsel
Attorneys for Plaintiff
State of Washington

Approved for Entry, Notice of
Presentation Waived:



JOHN YOUNG, WSBA # 12890
Attorney for Bernard Ross Hansen and
Northwest Territorial Mint



BERNARD ROSS HANSEN, also known
as ROSS HANSEN, Individually and on
behalf of NORTHWEST TERRITORIAL
MINT, as its Member, President, Chief
Executive Officer and Owner