ADMINSTRATIVE NOTE

IN

SPMG 08-0004

The Respondent did not exercise the right to 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 E. of the Proposed Order. As a result, the Order was deemed a final decision of the Secretary on July 2, 2009.

BEFORE THE MARYLAND DEPARTMENT OF
LABOR, LICENSING AND REGULATION

DEPARTMENT OF LABOR, LICENSING AND REGULATION	*	MARYLAND SECONDHAND PRECIOUS METAL OBJECT DEALERS & PAWNBROKERS
v.	*	
ZAKHAR TRUTSTSI,	*	Case No. SPMG-08-0004
Respondent	*	OAH Case No.: DLR-PMG-64A-08-43206

* * * * * * *

PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge dated April 1, 2009, having been received, read and considered, it is, by the Secretary of the Department of Labor, Licensing and Regulation this 2nd day of June 2009, **ORDERED:**

A. That the Findings of Fact of the Administrative Law Judge ("ALJ") be, and hereby are, **AFFIRMED** and **ADOPTED**;

B. That the Conclusion of Law in the Recommended Decision, that Zakhar Trutstsi ("Respondent") violated Bus. Reg. Art., Ann. Code of Md., §12-201(a) and Code of Maryland Regulations ("COMAR") 09.25.01.01A by operating as a precious metal object dealer and pawnbroker between June 2007 and October 2008 after the June 28, 2007 expiration of the license required to do so is **APPROVED** and **ADOPTED**[1].

The charges in this case stem from the actions of Respondent who continued to operate as a precious metal object dealer and pawnbroker for well over a year despite the expiration of his license on June 28, 2007. Recommended Decision ("RD") at 6, paras.9 and 10. In fact, the Respondent

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[1] Previously, the Respondent failed to renew his license upon expiration on June 28, 2001 until August 2, 2007. However, this period of time is not a basis for the charge constituting a violation of Bus. Reg. Art., Ann. Code of Md., §12-201(a) and COMAR 09.25.01.01A.

failed to apply for license renewal until October 23, 2008. RD at 6-7, para.11. Moreover, the Respondent only sought renewal of his dealer's license after Baltimore County law enforcement confronted the Respondent about his failure to maintain a current license. RD at 12.

In this proceeding, the Respondent was also charged with violations of Bus. Reg. Art., Ann. Code of Md., §12-209(a)(2)(vii) for the alleged willful failure to provide or willful misrepresentation of required information in Transaction No. 66586 on April 14, 2008, and §12-209(a)(2)(i) for allegedly fraudulently or deceptively obtaining a license by having falsely answered an application question about prior disciplinary action.[2] The ALJ concluded that the Respondent's conduct did not sustain violations of Bus. Reg. Art., Ann. Code of Md., §§12-201(a)(vii) or 12-209(a)(2)(i), which the Secretary has adopted by this Order.

However, the Secretary wishes to point out a discrepancy in the record evidence pertaining to the Respondent's alleged violation of Bus. Reg. Art., Ann. Code of Md., §12-201(a)(2)(vii). At the hearing, as a defense to this charge, the Respondent maintained that the erroneous information recorded on Transaction No. 66586 was the result of simultaneous transactions involving Transactions Nos. 66584 and 66586, which the ALJ found persuasive. *See, e.g.*, RD at 8, para.20; RD at 10-11. However, Transaction Nos. 66584 and 66586 do not necessarily support the Respondent's claim of "stress" and "confusion" resulting from simultaneous transactions. The electronic time stamp on the receipt attached to Transaction No. 66584 is 1:35 p.m. App. Exhibit #1. The electronic time stamp on the receipt attached to Transaction No. 66586 is 2:23 p.m., almost a full hour later. App. Exhibit #2. Further, on Transaction No. 66584, the handwritten time appears to

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[2] Despite being asked, the Respondent failed to disclose on his license renewal application that his license had been suspended in 1994 for a violation of Bus. Reg. Art., Ann. Code of Md., Title 12. RD at 7, paras.13-15.

be 1:45, while the handwritten time on Transaction No. 66586 appears to be either 10:45 or 12:45. App. Exhibits #1 and #2. Neither the handwritten time of the transactions on the Daily Return nor the electronic time stamp on the transaction receipts offered by the Respondent support his claim of simultaneous transactions. The Secretary suspects that the more likely explanation for the errors in Transaction Nos. 66584 and 6586 is because the Respondent completed the precious metal transactions and, a considerable time later, completed the required paperwork. However, the Secretary defers to the ALJ who had the opportunity to observe the witnesses' demeanor and make credibility determinations. Further, the Secretary acknowledges that the Respondent did, ultimately, try to record the transaction information, albeit in a sloppy and inaccurate manner. Accordingly, the Secretary will not amend the ALJ's legal conclusion with regard to the Respondent's alleged violation of Bus. Reg. Art., Ann. Code of Md., §12-201(a)(2)(vii);

C. That as a result of these findings and conclusions, the Secretary's initial denial of the Respondent's license renewal application is deemed to have been appropriate;

D. That as a result of these findings and conclusions, "absent any other aggravating factors," the Respondent will be permitted to reapply for a precious metal object and dealer license at which time, if the Secretary determines that the Respondent, "meets all other eligibility criteria,"[3] the Respondent's application will be **GRANTED**;

E. 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,

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RD at 15.

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

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

MARYLAND SECONDHAND PRECIOUS
METAL OBJECT DEALERS & PAWNBROKERS

Leonard J. Howie, III, Deputy Secretary
Department of Labor, Licensing and Regulation

THE MARYLAND DEPARTMENT OF	* BEFORE GEORGIA BRADY,
LABOR, LICENSING AND	* AN ADMINISTRATIVE LAW JUDGE
REGULATION	* OF THE MARYLAND OFFICE
v.	* OF ADMINISTRATIVE HEARINGS
ZAKHAR TRUTSTSI,[1]	* CASE NO.: DLR-PMG-64A-08-43206
RESPONDENT	* AGENCY NO. SPMG-08-0004

* * * * * * * * * * * * *

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 October 27, 2008, the Maryland Department of Labor, Licensing and Regulation (DLLR) notified Zakhar Trutstsi (Respondent) that it had denied his October 23, 2008 application for renewal of a secondhand precious metal object dealer and pawnbroker license (dealer license). DLLR asserted the following grounds for this decision: (1) The Respondent continued to operate as a dealer for several months after his dealer license expired on June 28, 2007, in violation of Maryland Business Regulation Article section 12-201;[2] (2) The Respondent failed to require sellers of precious metal objects to provide him with two pieces of identification as required by Maryland Business Regulation Article section 12-302; and (3) The Respondent's

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[1] The Department of Labor, Licensing and Regulation identified the Respondent's last name as "Trutstsi," but at the hearing, the Respondent clarified that his last name is spelled Trutsi. In the interest of consistency, and to reduce the risk of future confusion in the records, I will continue to refer to the Respondent and to his wife, Nona Trutstsi, by the last name of Trutstsi because all of the licensing records submitted by the parties identify the Respondent's last name in this manner. I encourage the Respondent to ask the Department of Labor, Licensing and Regulation to amend his records to reflect the correct spelling of his name.

[2] Unless otherwise noted, all references to the Business Regulation Article are to the version printed in the 2004 Replacement Volume.

records failed to comply with the requirements of Maryland Business Regulation Article section 12-301.

The Respondent requested an administrative hearing to challenge this decision on October 29, 2008. Pursuant to his request, DLLR transferred this matter to the Office of Administrative Hearings (OAH) on November 24, 2008. On December 22, 2008, DLLR supplemented its notice of denial by asserting an additional ground for its denial of the Respondent's dealer license renewal application. DLLR charged that the Respondent had fraudulently or deceptively attempted to obtain a license for himself, in violation of Maryland Business Regulation Article section 12-209(a)(2)(i), when he failed to truthfully answer on his license renewal application that his dealer license had been suspended on two prior occasions.

I convened this hearing on January 7, 2009 at the OAH office in Hunt Valley, Maryland, pursuant to section 12-210 of the Maryland Business Regulation Article. Peter Martin, Assistant Attorney General, represented DLLR. The Respondent and his attorney, Mark Van Bavel, Esq., were present. Procedure in this case is governed by the provisions of the Administrative Procedure Act, the DLLR hearing procedures and the OAH Rules of Procedure. Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2004 & Supp. 2008); Code of Maryland Regulations (COMAR) 09.01.02 and 09.01.03; COMAR 28.02.01.

During the hearing, DLLR withdrew its allegation from the original October 27, 2009 denial notice that the Respondent had violated Maryland Business Regulation Article section 12-302. DLLR also noted an error in its December 22, 2008 supplemental notice of denial. In that notice, DLLR claimed that the Respondent's license had been suspended twice in the past – once for twenty-one days and once for two days. DLLR clarified that the Respondent's license had been suspended only once for a period of two days.

ISSUES

The issues are:

1. Did the Respondent continue to operate as a dealer after the expiration of his license on June 28, 2007, in violation of Maryland Business Regulation Article sections 12-201 and 12-209(a)(2)(viii), (a)(2)(ix), and COMAR 09.25.01.01A?

2. Did the Respondent willfully fail to provide or willfully misrepresent any information required to be provided under Business Regulation Article section 12-301 in transaction number 66586 on April 14, 2008, in violation of Maryland Business Regulation Article section 12-209(a)(2)(vii)?

3. Did the Respondent fraudulently or deceptively attempt to obtain a license for himself in violation of Maryland Business Regulation Article section 12-209(a)(2)(i)?

4. If so, was DLLR's decision to deny the Respondent's application for renewal of his license arbitrary or capricious, or otherwise a violation of law?

SUMMARY OF THE EVIDENCE

Exhibits

The Respondent offered and I admitted the following exhibits:

Resp. # 1 - Transaction No. 66584, dated April 14, 2008, with attached receipt

Resp. # 2 - Transaction No. 66586, dated April 13, 2008, with attached receipt

DLLR offered and I admitted the following exhibits:

DLLR # 1 - Notice of Denial of Application, dated October 27, 2008, with attached signed certified mail receipt

DLLR # 2 - Certification of Dennis L. Gring, dated January 5, 2009, with attached Application for Renewal of License, signed by Respondent and dated October 23, 2008

DLLR # 3 - Certification of Dennis L. Gring, dated January 5, 2009, with attached State of Maryland Secondhand Precious Metals and Gem Dealers Daily Return forms, identified as follows:

- Transaction No. 66586, dated April 14, 2008, date-stamped April 16, 2008
- Transaction No. 66686, dated April 29, 2008, date-stamped May 1, 2008
- Transaction No. 66687, dated April 29, 2008, date-stamped May 1, 2008
- Transaction No. 66689, dated April 29, 2008, date-stamped May 1, 2008
- Transaction No. 66691, dated April 29, 2008, date-stamped May 1, 2008
- Transaction No. 66693, dated April 30, 2008, date-stamped May 2, 2008
- Transaction No. 66694, dated April 30, 2008, date-stamped May 2, 2008
- Transaction No. 66696, dated April 30, 2008, date-stamped May 2, 2008
- Transaction No. 66870, dated May 29, 2008, date-stamped June 2, 2008
- Transaction No. 66876, dated May 30, 2008, date-stamped June 2, 2008
- Transaction No. 66878, dated May 30, 2008, date-stamped June 2, 2008
- Transaction No. 66884, dated May 31, 2008, date-stamped June 9, 2008
- Transaction No. 66885, dated May 31, 2008, date-stamped June 9, 2008
- Transaction No. 66887, dated May 31, 2008, date-stamped June 9, 2008
- Transaction No. 66888, dated May 31, 2008, date-stamped June 9, 2008
- Transaction No. 67095, dated June 30, 2008, date-stamped July 2, 2008
- Transaction No. 67097, dated June 30, 3008, date-stamped July 2, 2008
- Transaction No. 67098, dated June 30, 3008, date-stamped July 2, 2008
- Transaction No. 67100, dated June 30, 2008, date-stamped July 2, 2008
- Transaction No. 67104, dated June 30, 2008, date-stamped July 2, 2008
- Transaction No. 67369, dated July 30, 2008, date-stamped August 1, 2008
- Transaction No. 67370, dated July 30, 2008, date-stamped August 1, 2008
- Transaction No. 67372, dated July 30, 2008, date-stamped August 1, 2008
- Transaction No. 67376, dated July 30, 2008, date-stamped August 1, 2008
- Transaction No. 67378, dated July 30, 2008, date-stamped August 1, 2008
- Transaction No. 67379, dated July 31, 2008 date-stamped August 4, 2008
- Transaction No. 67614, dated August 29, 2008, date-stamped September 3, 2008
- Transaction No. 67614, dated August 29, 2008, date-stamped September 3, 2008[3]
- Transaction No. 67616, dated August 29, 2008, date-stamped September 3, 2008
- Transaction No. 67618, dated August 30, 2008, date-stamped September 8, 2008
- Transaction No. 67619, dated August 30, 2008, date-stamped September 8, 2008
- Transaction No. 67621, dated August 30, 2008, date-stamped September 8, 2008
- Transaction No. 67865, dated September 29, 2008, date-stamped October 2, 2008
- Transaction No. 67866, dated September 29, 2008, date-stamped October 2, 2008
- Transaction No. 67868, dated September 30, 2008, date-stamped October 3, 2008
- Transaction No. 67870, dated September 30, 2008, date-stamped October 3, 2008

[illegible]

- Transaction No. 67871, dated September 30, 2008, date-stamped October 3, 2008
- Transaction No. 67873, dated September 30, 2008, date-stamped October 3, 2008

DLLR # 4 - Final Order of the Deputy Secretary, Department of Licensing and Regulation, *In the Matter of Vladimir Leytush and Zakhar Trutstsi, t/a Gold Trading Center*, Case No. 94-PM-14, dated October 21, 1994, with attached Proposed Decision of Administrative Law Judge A. Michael Nolan, dated June 20, 1994

DLLR # 5 - Respondent's request for hearing, dated October 29, 2008

DLLR # 6 - OAH Notice of Hearing, dated December 3, 2008

DLLR # 7 - OAH Corrected Notice of Hearing, dated December 15, 2008

DLLR # 8 - Supplemental Notice of Denial of Application, dated December 22, 2008, signed by Dennis L. Gring

DLLR # 9 - Certification of Dennis L. Gring regarding Respondent's license history, dated January 5, 2009

DLLR # 10 - License Card reflecting Respondent's license, with expiration date of June 28, 2007

Testimony

The Respondent testified on his own behalf and also called his wife, Nona Trutstsi, as a witness.

DLLR presented the testimony of Dennis Gring, Executive Director, Precious Metals and Gems, and Corporal Christine Sisk, Baltimore County Police Department.

FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Respondent operates an establishment known as the Gold Trading Center, located in Baltimore County at 7106 Liberty Road, Baltimore, Maryland 21207. He has been the proprietor of the business at all times relevant to this proceeding.

2. On August 13, 1996, DLLR issued to the Respondent, t/a Gold Trading Center, 7106 Liberty Road, Baltimore, Maryland 21207, a dealer license, identified as License No. 727-01.

3. DLLR typically issued dealer licenses for a two-year term. The Respondent could apply to renew the dealer license prior to its expiration.

4. DLLR has a practice of sending dealer license renewal packets prior to the expiration of dealer licenses.

5. Upon the initial issuance and upon granting renewal of the dealer license, DLLR issues to a license-holder a wallet-sized copy of the dealer license and a display copy, which is to be maintained in a visible location at the licensed site. Both the wallet-sized and display copies of the dealer license identify the expiration date of the license.

6. The Respondent timely renewed his dealer license on April 14, 1998 and again on April 27, 2000.

7. The Respondent failed to timely renew his dealer license prior to its expiration on June 28, 2001, but DLLR granted a late application for renewal and the Respondent became licensed again on August 7, 2001.

8. The Respondent timely renewed his dealer license on June 9, 2003 and again on June 7, 2005.

9. The Respondent failed to timely renew his dealer license prior to its next expiration date of June 28, 2007.

10. The Respondent continued to operate as a secondhand precious metal object dealer pawnbroker after his dealer license expired on June 28, 2007.

11. The Respondent applied to have his dealer license renewed on October 23, 2008.

12. The DLLR denied the Respondent's application for renewal on October 27, 2008.

13. The Respondent has held a dealer license with his partner, Vladimir Leytush. The DLLR suspended this dealer license for two days in November 1994 after the Respondent and his partner were found to have willfully failed to submit a transaction report required by Maryland Business Regulation Article section 12-304, in violation of Maryland Business Regulation Article section 12-209(a)(vi).

14. On his October 23, 2008 application for license renewal, the Respondent was asked the following question: "Have you ever had this type of license denied, suspended, or Revoked [sic] by Maryland or any other State?"

15. The Respondent checked the "No" box in response to this question.

16. Dealers are required to document all transactions on Daily Report transaction forms.

17. Dealers are required to ensure that the Daily Report transaction forms contain the following information: items received; identity of the seller; and seller's signature. The employee who receives the items on behalf of the dealer is also required to sign the Daily Report transaction form.

18. The Respondent or his employees type all information into the store's computer for each transaction. Once all the necessary information is entered into the computer, the computer prints the Daily Report transaction form with a pre-printed transaction number. The parties to the transaction, namely the buyer (the Respondent or an employee on his behalf) and the seller (the customer), then sign the form.

19. On April 14, 2008, because the Respondent's computer was not functioning, he and his wife had to complete Daily Report transaction forms by hand, including assigning transaction numbers.

20. On April 14, 2008, the Respondent and his wife were working side by side behind the counter simultaneously trying to help two different customers with two different transactions. Due to the confusion caused by operating outside their normal routine with the computer and having multiple customers at the counter, the Respondent and his wife misunderstood which of them was helping which customer. This confusion resulted in each of them filling out a separate Daily Report transaction form for the same customer, but having different customers sign the two forms, identified as Daily Report transactions 66584 and 66586. To each Daily Report transaction form, the Respondent and his wife attached the correct cash register receipt reflecting the accurate transaction for each customer.

21. Both forms containing the errors were timely and properly submitted to the Baltimore County Police Department along with the daily submission of Daily Report transaction forms.

DISCUSSION

A. Did the Respondent continue to operate as a dealer after the expiration of his license on June 28, 2007?

Persons doing business as secondhand precious metal object dealers/pawnbrokers are required to be licensed. Md. Code Ann., Bus. Reg. § 12-201(a); COMAR 09.25.01.01A. Such licenses are issued for a two-year term, and pursuant to statute and regulation, the license expires on the first April 30th after the effective date of the license in an even-numbered year. Md. Code Ann., Bus. Reg. § 12-207(a); COMAR 09.25.01.04A. In an effort to ease the agency's workload, the Secretary of DLLR implemented a policy in the year 2000 to stagger license renewals.[4] Accordingly, in that year, dealer licenses were renewed for a one-year period.

[4] Neither the governing statute nor the applicable regulation was amended to reflect this change.

Dealers were given notice of the varying expiration dates of their licenses at the time of renewal and this expiration date was also present on the wallet-sized and display copies of their dealer licenses. In addition, DLLR had a practice of mailing out license renewal packets to the dealers in advance of the relevant expiration date.

There is no dispute that the Respondent's dealer license expired on June 28, 2007 and that despite this expiration, the Respondent continued to operate as a dealer. DLLR has submitted almost forty Daily Report transaction forms verifying the operation of the Respondent's business after June 28, 2007 and the Respondent does not deny that he continued to operate his business after his license had expired. The Respondent explained this conduct by saying that he forgot about the expiration date. He tried to excuse his continuing operation by contending that DLLR did not send him a license renewal packet. DLLR did not substantiate that it had mailed the renewal packet to the Respondent, as was its practice, but it pointed out that even if the packet was not sent out, the Respondent continued to be responsible for ensuring that he had a valid license. DLLR further argued that the Respondent had notice of the license expiration date because this date was plainly set out on the wallet-sized and display copies of his license.

The Respondent's excuses for failing to timely renew his license and for continuing to operate after it had expired are not persuasive. The Respondent clearly violated Maryland Business Regulation Article section 12-201(a) and COMAR 09.25.01.01A, and thus has given grounds to DLLR to deny his license under Maryland Business Regulation Article section 12-209(a)(2)(viii) and (a)(2)(ix).

B. Did the Respondent willfully fail to provide or willfully misrepresent any required information in transaction number 66586 on April 14, 2008?

Dealers are required to make written records of each business transaction that involves the acquisition of a secondhand precious metal object. Md. Code Ann., Bus. Reg. § 12-501(a)

Section 12-302 describes the required content of these records:

> **§ 12-302. Contents of record.**
>
> (a) In addition to any other information required by the Secretary, the records of a dealer shall include:
>
> (1) the date, place, and time of each transaction that involves the acquisition of a precious metal object;
>
> (2) the name and address of the principal if the transaction is by an agent;
>
> (3) a description of the precious metal object . . . ;
>
> (4) for each individual from whom the dealer acquires a precious metal object:
>
> (i) the name, date of birth, and driver's license number of the individual; or
>
> (ii) identification information about the individual that:
>
> 1. positively identifies the individual from at least 2 forms of identification, which may include an age of majority card, military identification, or passport; and
>
> 2. provides a physical description of the individual, including the sex, race, any distinguishing features and approximate age, height and weight of the individual.
>
> (5) a statement indicating whether or not the person making the transaction is personally known to the dealer; and
>
> **(6) the signature of the person from whom the precious metal object or personal property is acquired and the dealer or employee who accepted the precious metal object.**

(emphasis added). Willful failure to provide this information or willful misrepresentation of this information puts a dealer at risk of sanction under Maryland Business Regulation Article section 12-209(a)(2)(vii).

DLLR argues that the Respondent violated this provision when he conducted a transaction on April 14, 2008 during which the Daily Report transaction form (No. 66586) was signed by someone other than the seller. The Respondent admitted that transaction form number 66586 was signed by someone other than the actual seller of the item in question; but, he and his wife testified that this was the result of an error occurring on a stressful busy day when the computer was down and he and his wife mistakenly passed the wrong transaction form to the

wrong customer. To support this argument, the Respondent produced transaction form number 66584 and asked me to compare it with transaction form number 66586. Appellant's Ex. 1 and 2.

My review of these two documents corroborates the Respondent's recitation of the events on April 14, 2008. Both documents are hand-written – in contrast to the remaining Daily Report Transaction forms in evidence – and were clearly completed by different people. Both documents identify the seller as Thomas Vance, Jr. and the item sold as the same 32" television. The buyer's signature line on each document contains a similar illegible scrawl, but the customer's signature on transaction form # 66584 reads "Thomas Vance," while the customer's signature on transaction form # 66586 reads "Lorraine Garner." A full explanation of the events can be seen in the printed receipts attached to each of these daily transaction forms. The receipt attached to transaction form #66584 details that it represents the sale of a 32" television set to the Gold Trading Center by Thomas Vance, Jr. The receipt attached to transaction form # 66586 details that it represents the sale of a yellow gold men's chain to the Gold Trading Center by Lorraine Garner.

These documents are sufficient illustration of the confusing scene at the Respondent's counter on April 14, 2008 and reflect mistakes made on a bad day rather than willful failure to provide information or willful misrepresentation. I find these documents and the Respondent's and his wife's testimony sufficient to establish a technical violation of Maryland Business Regulation Article section 12-301(a)(6); but the evidence, when viewed in its entirety, does not support a finding that the Respondent violated Maryland Business Regulation Article section 12-209(a)(2)(vii).

C. Did the Respondent fraudulently or deceptively attempt to obtain a license for himself in violation of Maryland Business Regulation Article section 12-209(a)(2)(i)?

Maryland Business Regulation Article section 12-209(a)(2)(i) provides that DLLR may deny a license to an applicant if the applicant or licensee "fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee." DLLR alleges that the Respondent was fraudulently or deceptively attempting to obtain a license when he checked the "No" box on the dealer license renewal application in response to the question of whether he had ever had "this type of license denied, suspended, or revoked by Maryland or any other State," when, in fact, his license had been suspended for two days in 1994.

The Respondent denies the allegation. He admits that he checked the "No" box when answering this question and he admits that his license was suspended for a brief period in 1994; but, he claims, this was not fraud or deception but a simple error in completing the form. The Respondent testified that he was just moving too quickly to complete the form and get it turned in. He contends that he was unaware that his license had expired until a Baltimore County police officer pointed this fact out to him, at which point he "almost had a heart attack" and immediately raced down to DLLR to complete the renewal application. The Respondent said that in his haste, fear, and turmoil he made a mistake. The Respondent pointed out that the two-day suspension at issue occurred nearly fourteen years earlier and that at the time he was filling out the renewal application it just slipped his mind. The Respondent also argues that as DLLR was the entity which suspended his license in 1994, it would have been both absurd and futile to try to hide this suspension in an attempt to obtain a renewal.

I find the Respondent's arguments persuasive. While checking this "No" box could be construed as evidence of an intention to hide this old brief suspension, the Respondent's

explanation of how the box got checked – namely an error occurring during a rush to complete a form – is a far more reasonable explanation. There is no evidence that the Respondent intentionally tried to hide this suspension from the same entity which effected the suspension and I can find no motive for such an action. The Respondent's license had been renewed many times since this 1994 suspension and he had no reason to believe that truthfully revealing this suspension on yet another renewal application in October 2008 would have been grounds for denying the renewal he sought. The Respondent has successfully refuted DLLR's allegation that he acted fraudulently or deceptively by checking the "No" box to this question.

D. Was DLLR's decision to deny the Respondent's application for renewal of his license arbitrary or capricious, or otherwise a violation of law?

Business Regulation Article section 12-209(a)(2)(viii), (ix) provides that DLLR has the authority to "deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee . . . violates this title; or . . . violates a regulation adopted under this title." The statute also gives the Secretary the authority to impose a monetary penalty in addition to or instead of reprimanding, suspending, or revoking a license. Md. Code Ann., Bus. Reg. § 12-209(a)(3). In determining the amount of a penalty, the Secretary is to consider four issues:

(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.

Md. Code Ann., Bus. Reg. § 12-209(a)(3)(ii). This provision does not apply to decisions regarding renewals of licensure. A separate subsection, Maryland Business Regulation Article section 12-209(c), sets out criteria for the Secretary to consider when deciding whether to grant, deny, or renew dealer licenses, but this provision applies only in cases in which the individual

has been convicted of a crime, a circumstance which does not apply to this case. Nevertheless, even though neither DLLR nor I am required to consider the factors set out in section 12-209(a)(3)(ii) in determining whether to refuse to renew a dealer license, this list of factors sets out reasonable issues to consider in that decision. Accordingly, I use this list as a construct to consider the reasonableness of DLLR's decision.

First, I note that the only basis for nonrenewing the license that has been sustained by the evidence presented in this hearing is the undisputed fact that the Respondent operated as a dealer for over a year (June 28, 2007 – October 23, 2008) after his dealer license had expired.

There is no question that this is a serious violation. There is an important public policy supporting the regulation of pawnbrokers and dealers; because this regulation is based on licensure, operating outside the bounds of a license, as the Respondent did, undermines the entire regulatory system. Nevertheless, there is no evidence that this serious violation resulted in any harm to any person.

I also find no evidence that the Respondent acted in bad faith. With the exception of a short lapse in 2001, shortly after DLLR changed its policy regarding the term of a license, the Respondent has timely renewed his license for several years. While it is appallingly negligent and careless that he could have forgotten to renew his license for over a year, no evidence has been presented to substantiate that this was an intentional action taken to evade licensure. Moreover, the undisputed testimony is that once notified of this lapse in his license, the Respondent immediately filed an application for renewal.

The Respondent has a history of a previous violation under a separate license. In that incident, the Respondent and his partner were found to have willfully failed to provide a single

transaction report to the police when required to do so; this violation resulted in only a two-day suspension, not an administrative order to cease this business entirely. I do not find that such a violation, occurring over fourteen years ago, is sufficient grounds to enhance any subsequent administrative penalty.

Based on this analysis, I must conclude that the Secretary's decision to deny renewal of the license because the Respondent operated on an expired license for over a year was reasonable and within his legal authority. However, based upon the absence of any other aggravating factors, my recommendation will be to permit the Respondent to reapply for a dealer license; and if he meets all other eligibility criteria, to grant him that license.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law, that the Respondent operated as a dealer after the expiration of his dealer license, in violation of Maryland Business Regulation Article section 12-201(a) and COMAR 09.25.01.01A. I further conclude as a matter of law that these violations gave DLLR valid grounds to deny his application for renewal of a dealer license under Maryland Business Regulation Article section 12-209(a)(2)(viii) and (a)(2)(ix).

I further conclude as a matter of law that the Respondent did not willfully fail to provide or willfully misrepresent any required information in transaction number 66586 on April 14, 2008 in violation of Maryland Business Regulation Article section 12-209(a)(2)(vii). I further conclude as a matter of law, that the Respondent did not fraudulently or deceptively obtain or attempt to obtain a license in violation of Maryland Business Regulation Article section 12-209(a)(2)(i).

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact, Discussion, and Conclusions of Law, it is **RECOMMENDED** that the Board of Secondhand Precious Metal Object Dealers and Pawnbrokers, Department of Labor, Licensing and Regulation uphold the October 27, 2008 denial of the Respondent's application for renewal of a secondhand precious metal object dealer and pawnbroker license; and it is further

RECOMMENDED that the records and publications of the Maryland Department of Labor Licensing and Regulation, Board of Secondhand Precious Metal Object Dealers and Pawnbrokers reflect this decision.

April 1, 2009
Date Decision Mailed

Georgia Brady
Administrative Law Judge

GB/ab
#103864

THE MARYLAND DEPARTMENT OF	* BEFORE GEORGIA BRADY,
LABOR, LICENSING AND	* AN ADMINISTRATIVE LAW JUDGE
REGULATION	* OF THE MARYLAND OFFICE
v.	* OF ADMINISTRATIVE HEARINGS
ZAKHAR TRUTSTSI,	* CASE NO.: DLR-PMG-64A-08-43206
RESPONDENT	* AGENCY NO. SPMG-08-0004

* * * * * * * * * * * * *

EXHIBIT LIST

Respondent Exhibits

Resp. # 1 - Transaction No. 66584, dated April 14, 2008, with attached receipt

Resp. # 2 - Transaction No. 66586, dated April 13, 2008, with attached receipt

DLLR Exhibits

DLLR # 1 - Notice of Denial of Application, dated October 27, 2008, with attached signed certified mail receipt

DLLR # 2 - Certification of Dennis L. Gring, dated January 5, 2009, with attached Application for Renewal of License, signed by Respondent and dated October 23, 2008

DLLR # 3 - Certification of Dennis L. Gring, dated January 5, 2009, with attached State of Maryland Secondhand Precious Metals and Gem Dealers Daily Return forms, identified as follows:

- Transaction No. 66586, dated April 14, 2008, date-stamped April 16, 2008
- Transaction No. 66686, dated April 29, 2008, date-stamped May 1, 2008
- Transaction No. 66687, dated April 29, 2008, date-stamped May 1, 2008
- Transaction No. 66689, dated April 29, 2008, date-stamped May 1, 2008
- Transaction No. 66691, dated April 29, 2008, date-stamped May 1, 2008
- Transaction No. 66693, dated April 30, 2008, date-stamped May 2, 2008
- Transaction No. 66694, dated April 30, 2008, date-stamped May 2, 2008
- Transaction No. 66696, dated April 30, 2008, date-stamped May 2, 2008
- Transaction No. 66870, dated May 29, 2008, date-stamped June 2, 2008
- Transaction No. 66876, dated May 30, 2008, date-stamped June 2, 2008
- Transaction No. 66878, dated May 30, 2008, date-stamped June 2, 2008
- Transaction No. 66884, dated May 31, 2008, date-stamped June 9, 2008
- Transaction No. 66885, dated May 31, 2008, date-stamped June 9, 2008

- Transaction No. 66887, dated May 31, 2008, date-stamped June 9, 2008
- Transaction No. 66888, dated May 31, 2008, date-stamped June 9, 2008
- Transaction No. 67095, dated June 30, 2008, date-stamped July 2, 2008
- Transaction No. 67097, dated June 30, 3008, date-stamped July 2, 2008
- Transaction No. 67098, dated June 30, 3008, date-stamped July 2, 2008
- Transaction No. 67100, dated June 30, 2008, date-stamped July 2, 2008
- Transaction No. 67104, dated June 30, 2008, date-stamped July 2, 2008
- Transaction No. 67369, dated July 30, 2008, date-stamped August 1, 2008
- Transaction No. 67370, dated July 30, 2008, date-stamped August 1, 2008
- Transaction No. 67372, dated July 30, 2008, date-stamped August 1, 2008
- Transaction No. 67376, dated July 30, 2008, date-stamped August 1, 2008
- Transaction No. 67378, dated July 30, 2008, date-stamped August 1, 2008
- Transaction No. 67379, dated July 31, 2008 date-stamped August 4, 2008
- Transaction No. 67614, dated August 29, 2008, date-stamped September 3, 2008
- Transaction No. 67614, dated August 29, 2008, date-stamped September 3, 2008[5]
- Transaction No. 67616, dated August 29, 2008, date-stamped September 3, 2008
- Transaction No. 67618, dated August 30, 2008, date-stamped September 8, 2008
- Transaction No. 67619, dated August 30, 2008, date-stamped September 8, 2008
- Transaction No. 67621, dated August 30, 2008, date-stamped September 8, 2008
- Transaction No. 67865, dated September 29, 2008, date-stamped October 2, 2008
- Transaction No. 67866, dated September 29, 2008, date-stamped October 2, 2008
- Transaction No. 67868, dated September 30, 2008, date-stamped October 3, 2008
- Transaction No. 67870, dated September 30, 2008, date-stamped October 3, 2008
- Transaction No. 67871, dated September 30, 2008, date-stamped October 3, 2008
- Transaction No. 67873, dated September 30, 2008, date-stamped October 3, 2008

DLLR # 4 - Final Order of the Deputy Secretary, Department of Licensing and Regulation, *In the Matter of Vladimir Leytush and Zakhar Trutstsi, t/a Gold Trading Center*, Case No. 94-PM-14, dated October 21, 1994, with attached Proposed Decision of Administrative Law Judge A. Michael Nolan, dated June 20, 1994

DLLR # 5 - Respondent's request for hearing, dated October 29, 2008

DLLR # 6 - OAH Notice of Hearing, dated December 3, 2008

DLLR # 7 - OAH Corrected Notice of Hearing, dated December 15, 2008

[5] [illegible] transactions numbered [illegible] and dated August [illegible] 2008, [illegible] transaction [illegible] 2:40 p.m., the second, contains a time of transaction of 4:30 p.m. Both transactions identify the same person as "seller."

DLLR # 8 - Supplemental Notice of Denial of Application, dated December 22, 2008, signed by Dennis L. Gring

DLLR # 9 - Certification of Dennis L. Gring regarding Respondent's license history, dated January 5, 2009

DLLR # 10 - License Card reflecting Respondent's license, with expiration date of June 28, 2007