

REC'D SEP 10 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLO.

SEP 2 1999

JAMES R. MANSPEAKER
CLERK

Civil Action No. 97-WY-1296-WD

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
vs.)
)
ROCKY MOUNTAIN INTERNATIONAL SILVER)
AND GOLD, INC., also known as RMI, Inc.,)
a Colorado corporation,)
STEVE LUCAS, individually, and)
JANSEY LYNN LUCAS, individually,)
)
Defendants.)

STIPULATED FINAL JUDGMENT AND ORDER

Plaintiff, the Federal Trade Commission ("Commission"), filed a complaint for a permanent injunction and other relief in this matter on June 23, 1997, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), against defendants Rocky Mountain International Silver and Gold, Inc., also known as RMI, Inc., Steve Lucas and Jansey Lynn Lucas. Plaintiff alleged in its complaint that defendants violated Section 5(a) of the FTC Act, 15 U.S. C. §

45(a), by engaging in a fraudulent pyramid scheme whereby they misrepresented members' earnings potential and defendants' ability to offer refunds.

Plaintiff and defendants, by and through their respective counsel, have agreed to entry of this Stipulated Final Judgment and Order ("Order") by this Court, without trial or adjudication of any issue of fact or law, in order to resolve all matters of dispute between them in this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

I. FINDINGS

- A. This Court has jurisdiction over the subject matter of this case and of the parties hereto and venue is proper in this Court. The complaint states a claim against defendants upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
- B. The Commission has authority under Section 13(b) of the FTC Act to seek the relief it has requested.
- C. Defendants' activities as alleged in the Commission's complaint were and are in or affecting commerce, as defined in 15 U.S.C. § 44.
- D. This Final Judgment does not constitute and shall not be interpreted to constitute an admission by defendants or a finding by the Court that defendants have engaged in violations of the FTC Act; provided, however, that in the event plaintiff must institute proceedings to enforce any provision of this Order, defendants agree that the facts as alleged in plaintiff's complaint shall be deemed admitted for purposes of the instituted proceedings.
- E. Entry of this Order is in the public interest.

II. DEFINITIONS

For purposes of this Order:

- A. "Defendants" means Rocky Mountain International Silver and Gold, Inc., also known as RMI, Inc., and formerly known as Rocky Mountain International Silver and Gold or RMI, a sole proprietorship, (hereinafter referred to jointly as "RMI"); Steve Lucas; Jansey Lynn Lucas; and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device.
- B. "Defendants' businesses" means businesses operated by the individual defendants and/or by the defendant RMI, and its affiliates and subsidiaries, including but not limited to the businesses known as "Rocky Mountain International Silver and Gold," "SOLID GOLD," "THE RMI EXPRESS," and "The Ride."
- C. "Assisting" means providing the means and instrumentalities for, or otherwise facilitating, any conduct that a defendant knows or should know violates any provision of Paragraph III of this Order. "Assisting" includes, but is not limited to, formulating or providing or arranging for the formulation or provision of written or electronic promotional materials that violate any provision of Paragraph III of this Order.
- D. "Chain or pyramid marketing program" is a sales device whereby a person, under a condition that he or she make a payment, directly or indirectly, even if a good or service is received in return for the payment, is granted a license or right to recruit for consideration one or more additional

persons who are also granted a license or right upon condition of making a payment, directly or indirectly, even if a good or service is received in return for the payment, and may further perpetuate the chain or pyramid of persons who are granted a license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility of the above license or right to recruit or the receipt of profits therefrom, does not change the identity of the program as a chain or pyramid marketing program. Further, the existence of goods or services provided as benefits of membership in such a program does not change the identity of the program as a chain or pyramid marketing program, where the receipt of profits is derived from obtaining recruits rather than from the sale of the goods or services provided.

III. PROHIBITED BUSINESS PRACTICES

IT IS THEREFORE ORDERED that defendants are permanently restrained and enjoined from engaging, participating, or assisting in any manner or capacity whatsoever, directly, in concert with others, or through any business entity or other device, in the advertising, promoting, offering for sale, or sale of any chain or pyramid marketing program.

IT IS FURTHER ORDERED that defendants and their officers, agents, servants, employees, and all other persons or entities in active concert or participation with them in connection with the promotion, advertising, offering for sale, sale, or distribution of any product or service, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or by implication, orally or in writing (including electronically), any statement or representation of material fact that is false or misleading, including but not limited to, any false or misleading representation about:

- A. The earnings any person actually made, is making, or potentially can make;
- B. The amount of sales any person actually made, is making or potentially can make;
- C. The benefits any person actually received, is receiving or potentially can receive;
- D. The value, profitability or investment potential of any tangible assets, including but not limited to coins; and
- E. The ability of defendants to make refunds and the availability thereof.

IV. BOND REQUIREMENTS

IT IS FURTHER ORDERED that defendants are permanently restrained and enjoined from engaging, participating, or assisting in any manner or capacity whatsoever, directly, in concert with others, or through any business entity or other device, in the advertising, promoting, offering for sale, or sale of any investment, multi-level marketing, network marketing or work at home opportunity program or plan (collectively, "Bond Covered Activities"), unless defendants first obtain a surety bond in the principal sum of \$100,000.00. This bond shall be conditioned upon compliance with Section 5(a) of the FTC Act, 15 U.S.C. §45(a) and with the provisions of this Order. The bond shall be continuous and remain in full force and effect as long as defendants continue engaging in the Bond Covered Activity, and for at least three (3) years after defendants have ceased to engage in Bond Covered Activities.

The bond shall cite this Order as the basis of the bond, and shall provide surety thereunder to consumers against financial loss resulting from any violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) or the provisions of this Order.

The surety bond required by this section shall be an insurance agreement providing surety for financial loss issued by a surety company that: is admitted to do business in each of the states in which defendants conduct business; and holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. The surety bond shall be in favor of both the Commission for the benefit of any consumer injured as a result of any false or misleading representation made by defendants, their agents or any other persons acting in concert with them or under their authority, supervision or control, while engaging in the Bond Covered Activity, and any consumer so injured.

The bond required pursuant to this Section is in addition to, and not in lieu of, any other bond required by federal, state, or local law. This bond requirement shall not be construed to limit or preempt the regulatory powers of any other federal, state, regional, county, local or other government agency or authority.

At least ten days before commencing the Bond Covered Activity, defendants shall provide a copy of the bond required by this Section to the Associate Director for Marketing Practices at the address specified in Section XII(D) of this Order.

Defendants, directly or through their officers, agents, servants, employees, attorneys, or any other persons acting in concert or participation with them or under their authority, supervision or control shall not disclose the existence of the surety bond to any consumer or prospective customer without simultaneously making the following disclosure: "THE BOND IS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT IN SETTLEMENT OF CHARGES THAT STEVE LUCAS AND JANSEY LYNN LUCAS ENGAGED IN A FRAUDULENT PYRAMID SCHEME AND

MISREPRESENTED MEMBERS' EARNING POTENTIAL AND THE LUCAS' ABILITY TO OFFER REFUNDS." The required written disclosure shall be set forth in a clear and conspicuous manner, separated from all other text, in 100% black ink against a light background, in print at least as large as the main text of the sales material or document, and enclosed in a box containing only the required disclosure.

V. MONETARY RELIEF

IT IS FURTHER ORDERED that defendants are jointly and severally liable to pay to plaintiff the sum of thirty five thousand dollars (\$35,000) as monetary equitable relief. The judgment shall be satisfied as follows:

- A. The judgment, in part, shall come from the funds currently held by the court-appointed receiver;
 1. Upon final payment of the receiver's fees, the receiver shall deliver such monies to Benjamin Gibbons, attorney for defendants,
 2. Mr. Gibbons shall retain any monies with numismatic value in escrow until plaintiff receives full payment of thirty five thousand dollars (\$35,000), at which time the property shall be returned to defendants,
 - a. If, after seven months from the date this Order is entered, full payment of \$35,000 has not been received, Mr. Gibbons shall deliver any monies in escrow to the plaintiff,
 3. Mr. Gibbons shall deliver all monies without numismatic value to the plaintiff within three (3) business days of receipt of the monies,

B. The balance shall be paid by the defendants within six months from the date defendants sign this Order. The balance shall come from the proceeds of the sale of property located at 845 San Juan Avenue, Saguache, CO ("San Juan property");

1. Defendants shall immediately make any reasonable and necessary repairs and/or improvements on the San Juan property,

2. No later than one month from the date defendants sign this Order, defendants shall place the San Juan property on a multiple listing,

3. Defendants shall not encumber the San Juan property,

4. Defendants shall notify counsel for the Commission of the amount of any offer to purchase the San Juan property immediately upon receiving each such offer and the name(s) and address(es) of any person(s) or entity(ies) making such offer,

5. If, after six months from the date this Order is entered, all interests in the San Juan property have not been sold, defendants shall immediately retain an auction company and direct it to sell all interests in the San Juan property at a public auction,

6. Within seven business days after receipt of the net proceeds of the sale or auction of the San Juan property, defendants shall turn over to the Federal Trade Commission, in the form of a wire transfer, the balance of the judgment,

C. In the event that the net proceeds of the sale or auction of the San Juan property do not satisfy the remaining balance of the judgment, defendants shall immediately list the property described as 560 acres of brush pasture bordered by a County Road and with one adjudicated artesian well in

Saguache, CO on a multiple listing for sale and/or auction and transfer the remaining balance of the judgment to the Federal Trade Commission as described in Section V(B)(1) - (5).

Any and all funds received from the receiver and the defendants may be used to provide consumer redress and pay attendant administrative expenses. If the Commission determines, in its sole discretion, that redress is wholly or partially impracticable, any funds not so used shall be deposited into the United States Treasury. Defendants shall be notified as to how funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

VI. RIGHT TO REOPEN

IT IS FURTHER ORDERED that, within three (3) business days after the date of entry of this Order, defendants Steve Lucas and Jansey Lynn Lucas shall submit to the Commission a sworn statement, in the form shown in Attachment A to this Order, that shall reaffirm and attest to the truthfulness, accuracy, and completeness of defendants' Financial Statements that were executed on July 7, 1997, and August 6, 1997, respectively, and submitted to the Commission pursuant to this Court's Temporary Restraining Order dated June 23, 1997; and of the property valuations dated December 4, 1998 from Thomas J. Cain and dated December 9, 1998 from Nielson Real Estate. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of defendants' financial condition as represented in the Financial Statements and land

valuations referenced above, which contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Order, including the amount of monetary redress and the terms of the consumer redress payment stated in this Order, *provided, however*, that this Paragraph shall not apply to assets acquired by defendants after the date of entry of this Order.

A. If, upon motion by the Commission, this Court finds that any defendant failed to file the sworn statement required by this Paragraph, or filed a Financial Statement that failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the Financial Statement, the judgment herein shall be reopened for the purpose of modifying the amount and/or terms of the redress payment; *provided, however*, that in all other respects this Judgment shall remain in full force and effect unless otherwise ordered by the Court, and *provided further*, that proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order. Solely for purposes of this Paragraph, each defendant waives any right to contest any of the allegations in the Commission's complaint; and

B. If the Court finds that any defendant failed to disclose any material asset, materially misrepresented the value of an asset, or made any other material misrepresentation or omission in the above-referenced Financial Statements, the Court shall enter judgment against that defendant, in favor of the Commission, in the amount of eight hundred and fifty thousand dollars (\$850,000), less the amount the defendants have already paid to the Commission under Paragraph IV of this Order.

VII. CUSTOMER LIST

IT IS FURTHER ORDERED that defendants are hereby permanently restrained and enjoined from providing to any person, except agents of the Commission or other law enforcement authorities, the name, address, telephone number, fax number, e-mail address, or credit card or bank account number, of any person who purchased a membership in RMI or any chain or pyramid marketing program or any investment, multi-level marketing, network marketing or work-at-home opportunity program or plan promoted, offered or sold by defendants.

VIII. MAIL FROM CUSTOMERS

IT IS FURTHER ORDERED that defendants will return to sender, with a copy of this Order, all mail received from RMI customers that pertains to membership in defendants' businesses, including but not limited to membership applications, monthly dues or other payments, and requests for information, that is or has been delivered to defendants or to P.O. Boxes 418, 445, 717 or 745, Saguache, Colorado 81149 or to any mailbox located at 845 San Juan Avenue, Saguache, Colorado 81149.

IX. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that within five (5) business days after receipt of this Order as entered by the Court, each defendant shall submit to the Commission a truthful, sworn statement, in the form shown on Attachment B, that shall acknowledge receipt of this Final Order.

X. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, each defendant shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from (as applicable), each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such person, for any business where the defendant is the majority owner of the business or directly or indirectly manages or controls the business; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipts of copies of this Order, as required in Subsection A of this Paragraph.

XI. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, each defendant and each defendant's agents, employees, officers, and servants, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with any business where the defendant is the majority owner of the business or directly or indirectly manages or controls the business, are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;

C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased for all consumers to whom such business has sold, invoiced or shipped any goods or services;

D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:

1. the consumer's name, address, telephone number and the dollar amount paid by the consumer;
2. the written complaint or refund request, if any, and the date of the complaint or refund request;
3. the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
4. each response and the date of the response;
5. any final resolution and the date of the resolution; and

- 6. in the event of a denial of a refund request, the reason for the denial; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; *provided* that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

XII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Final Judgment, each defendant shall notify the Commission of the following:
 - 1. any changes in the defendant's residence, mailing address, and telephone number, within ten (10) days of the date of such change;
 - 2. any changes in the defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that the defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of the defendant's duties and responsibilities in connection with the business or employment; and
 - 3. any proposed change in the structure of the corporate defendant or in the structure of any business entity owned or controlled by any defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries,

proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change; *provided*, however, that, with respect to any proposed change in the corporation about which defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, each defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which the defendant has complied and is complying with this Order. This report shall include but not be limited to:

1. the defendant's then current residence address and telephone number;
2. the defendant's then current employment, business address and telephone number, a description of the business activities of each employer, and the defendant's title and responsibilities for each employer;
3. a copy of each acknowledgment of receipt of this Order obtained by the defendant pursuant to Paragraph VIII; and
4. a statement describing the manner in which the defendant has complied and is complying with:
 - a. the prohibitions contained in Paragraph III of this Order; and

b. the requirement to pay consumer redress contained in Paragraph IV of this Order;

C. Upon written request by a representative of the Commission, each defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days notice with respect to any conduct subject to this Order;

D. For the purposes of this Order, the defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Marketing Practices
Room H-238
Federal Trade Commission
Washington, D.C. 20580
Re: FTC v. Rocky Mountain International, Inc.;

E. For the purposes of this Paragraph, the term "employment" includes the performance of services as an employee, consultant, or independent contractor; and the term "employers" includes any individual or entity for whom the defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with the defendants.

XIII. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor each defendant's compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers and suppliers to the defendants, the defendants' employees, or any other entity managed or controlled in whole or in part by the defendants, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit 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, to investigate whether the defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

XIV. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, each defendant shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business where the defendant is the majority owner of the business or directly or indirectly manages or controls the business. In providing such access, the defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order

for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present.

Provided that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to the defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

XV. ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of defendants' assets ordered in Paragraph II of the Preliminary Injunction entered in this matter on July 18, 1997, to the extent not previously released by any separate Order of this Court, shall be lifted upon entry of this Order and upon defendants' payment to the Commission of the amount and in the manner set forth in Paragraph IV of this Order.

XVI. RECEIVERSHIP

IT IS FURTHER ORDERED that the appointment by this court of Andrew C. Snyder as Receiver of the corporate defendant is vacated upon (A) defendants' payment to the Commission pursuant to Paragraph IV of this Order; (B) payment of all Court-approved fees and expenses of the

Receiver; (C) the preparation of the Receiver's final report, which shall be filed with the Court; and (D) the Receiver having received an exoneration of the Receiver's bond and a discharge from the Court.

XVII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes, including construction, modification, and enforcement of this Order.

XVIII. WAIVER OF CLAIMS

Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), concerning prosecution of this action to the date of this Order.

XVIII. ATTORNEY'S FEES


Each party to this Judgment shall bear its own costs and attorney fees incurred in connection with this action.

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XIX. ENTRY OF THIS JUDGMENT

The parties, directly or by their respective counsel, have read, understand and hereby consent to the terms and conditions of the Stipulated Final Judgment and Order as set forth above and consent to the entry of this Order.

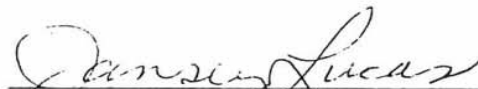
Dated: 9-8-99


Benjamin F. Gibbons
Attorney for the defendants

Dated: 9-8-99


Steve Lucas, individually and on behalf of
Rocky Mountain International Silver and Gold,
Inc.

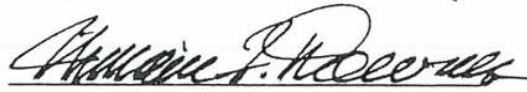
Dated: 9-8-99


Jansey Lucas, individually

Dated: 9/9/99


Julie Abbate
Attorney for plaintiff

SO ORDERED, this 20th day of September, 1999 at 4:05 clock p.m. (MST)


William F. Downes
United States District Judge