

In The Circuit Court for Baltimore City

CIVIL

CASE NO. 90058044

Part _____ of _____ Parts

In the Matter of

DUMBBELLS ASSOCIATES, INC., ET AL
VS
CONSUMER PROTECTION DIVISION

109816

CL

X

DATE	DOCKET ENTRIES	NO.
5/16/90	Def't's memorandum in opposition to Appeal.	9
6/15/90	Plff's answer to summary judgment.	10
6/15/90	Plff's answer to amended Counterclaim	11
6/15/90	Plff's answer to motion for summary judgment.	12
7-13-90	Order of Court that Appellant's Motion to Stay withdrawn as to injunctive relief and "Granted" as to balance of Appellee's order and Appellee's Motion for Summary Judgment is "Denied", without prejudice. (Rosa J.)	13
7-13-90	Order of Court (Rosa J.)	14
2/14/91	Copy submitted to the Court for determination without aid of a jury. (Hollander)	
2/14/91	Held sub curam (Hollander)	
7-18-91	The decision of the Consumer Protection Division is hereby "affirmed". Further ordered that judgment on counterclaim is entered in favor of the Division. Appellants to pay cost. (Hollander J.)	
7-18-91	Memorandum opinion and order. (Hollander J.)	
9-10-91	Order of Court that Appellants, Dumbbells Associates, Inc., et al, pay \$2,200.00 in attorney's fees to the appellee, Consumer Protection Division. (Hollander J.)	15
11/13/91	Plff's opposition to motion to enter monetary judgment. (no motion filed)	16
2-10-92	Final Order of Consent (Hollander J.)	17

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA

CASE NO. 90059044/CL109816

PAGE 1 of

PARTIES	ATTORNEY(S)
DUMBBELLS ASSOCIATES, INC. t/a GREENSPRING FITNESS CENTER AND JORDAN BINETTI AND SCOTT SCALA VS CONSUMER PROTECTION DIVISION OFFICE OF THE ATTORNEY GENERAL	MELVIN J. KODENSKI 421 254 912528 <i>Steven M. Sakamoto</i> <i>Wenxue</i>

DATE	DOCKET ENTRIES	NO.
2-28-90	ORDER FOR APPEAL FROM THE DECISION OF THE CHIEF OF THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE	1
3/12/90	<i>Defts petition for stay (trig IAW 3-31-90)</i>	2
3/15/90	<i>App'n Steven M. Sakamoto - Vinyl with Defts for any opposition to Defts for stay & request for summary judgment (S.M.)</i>	3
3/21/90	<i>Receipt of Record for Pet (CF) & notice first accordance to Rule B-12</i>	4
	(Exhibits) Brown folder in storage area	
3/27/90	<i>Defts Answer to petition & Counter-claim</i>	5
4/30/90	<i>Defts memorandum of decision</i>	6
5/15/90	<i>Defts answer to petition & counter-claim</i>	7
5/16/90	<i>Deft's motion for summary judgment & request for hearing, affid. & memo.</i>	8

17

DUMBELLS ASSOCIATES, INC.,
et. al.

Appellants

v.

CONSUMER PROTECTION DIVISION

Appellee

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IN THE CIRCUIT COURT

FOR BALTIMORE CITY

Case No: 90059044/CL109816

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FINAL ORDER BY CONSENT

WHEREAS: On July 18, 1991, this Court issued a Memorandum Opinion and Order in the above-captioned matter affirming a Final Order of the Appellee dated October 26, 1989, along with a Supplemental Order dated January 31, 1990, and ordering the Appellants to pay attorneys fees to the Appellees of an amount to be determined;

WHEREAS: On September 10, 1991, this Court issued an Order which affirmed an agreement by the parties that the amount of the attorneys' fees would be \$2200;

WHEREAS: The Appellants have not appealed this Court's Orders;

WHEREAAS: The Appellee's Orders which were affirmed by this Court required the Appellants to pay restitution to consumers who had contracted with the Appellants to obtain health club services pursuant to an illegal promotion conducted by the Appellants;

WHEREAS: The Appellee has in its possession \$10,000 which the

Appellants provided to the Appellee as a bond for use in providing restitution to consumers;

WHEREAS: The Appellants and the Appellee have agreed that the Appellants will pay the Appellee a total of \$9000 to fulfill all their monetary obligations under this Court's Orders; and

WHEREAS: The Appellants have paid to the Appellee \$3000 in partial fulfillment of their monetary obligations under this Court's Orders. *This agreement is contingent upon check no. 20490982, written on Point Bruce Credit Union dated February 7, 1992, being*
IT IS HEREBY ORDERED AS FOLLOWS: *paid. JH [signature] (100)*

1. The Appellants shall pay to the Appellee \$6000 payable in monthly installments of \$200 to be paid on the first day of each month beginning on ^{April 10th} March 1, 1992.

2. If the Appellants are more than five days late in making any of the payments described in Paragraph 1, they shall pay an additional \$100 for every day they continue to be late in making the payment.

3. If, by October 31, 1994, the Appellants have failed to pay the Appellee the full amount which they are required by this Final Order to pay the Appellee, then Judgment shall be entered against the Appellants and in favor of the Appellee for the amount of \$26,986.95, which is the amount the Appellee sought

in its Motion To Enter Monetary Judgment, plus any late fees imposed upon the Respondents pursuant to Paragraph 2 of this Order.

All open court costs shall be paid by Appellants within 7 days hereof. erH

AGREED as to form and substance

Vincent DeMarco 2/10/92
Date
Assistant Attorney General
Consumer Protection Division

Jordan Lee Binetti 2-6-92
Date
Individually and on behalf of
Dumbells Associate, Inc.

Scott A. Scala 2-6-92
Date
Individually and on behalf of
Dumbells Associates, Inc.

SO ORDERED

Ellen L. Hollander 4/10/92
Date
Judge Ellen L. Hollander

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EGB

FILED

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DUMBBELLS ASSOCIATES, INC.,
et al.

Appellants

vs.

CONSUMER PROTECTION DIVISION

Appellee

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IN THE
CIRCUIT COURT FOR
CIRCUIT COURT BALTIMORE CITY
FOR
BALTIMORE CITY
Case No.: 90059044/
CL109816

OPPOSITION TO MOTION TO ENTER MONETARY JUDGMENT

The Appellants, Dumbbells Associates, Inc., by their counsel, Melvin J. Kodenski and Kodenski and Canaras, files an Opposition to Motion to Enter Monetary Judgment and for reasons, states as follows:

1. That they admit the allegations contained in Paragraph No. 1.
2. That they admit the allegations contained in Paragraph No. 2.
3. That they admit the allegations contained in Paragraph No. 3.
4. That they contest the allegations contained in Paragraph No. 4, and would further state that the Order did not provide for full restitution to each and every one of the individuals involved, but only those to whom notice would have been given and who would have rescinded the contract.
5. That the Appellants have not been provided with a record of any of the individuals who have rescinded the contract and have requested restitution.

EW

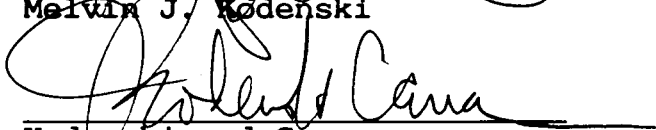
6. That they admit the allegations contained in Paragraph No. 6.

7. That Paragraph No. 7 requires no admission or denial.

8. That the amount must be determined precisely and the Appellants would object to the formula as proposed without a full hearing on this matter and without the Appellees providing to the Appellants a basis for their request.

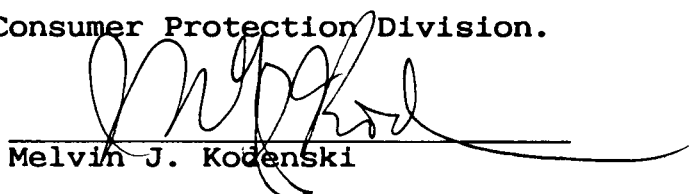
WHEREFORE, having answered the Motion to Enter Monetary Judgment, the Appellants would request that same be denied until a hearing on this matter.


Melvin J. Kodenski


Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(301) 685-5100
Attorneys for the Appellants,
Dumbbells Associates, Inc.

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 11th day of November, 1991, a copy of the foregoing Opposition to Motion to Enter Monetary Judgment was mailed to Vincent DeMarco, Assistant Attorney General, Office of the Attorney General, 200 St. Paul Place, Baltimore, Maryland 21202-2022, attorney for the Appellee, Consumer Protection Division.


Melvin J. Kodenski

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DUMBBELLS ASSOCIATES, INC.
et al.

Appellants

v.

CONSUMER PROTECTION
DIVISION

Appellee

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No.: 70059044/CL109816

* * * * *

ORDER

Upon the agreement, without prejudice, of all parties, it
is this 10th day of September, 1991,

ORDERED that Appellants Dumbbells Associates, Inc., et al.
pay \$2200.00 in attorneys' fees to the Appellee, Consumer Protection
Division. All other issues were addressed in the Court's Opinion
and Order of July 18, 1991.


Ellen L. Hollander, Judge

cc: Melvin Kodenski, Esquire
Attorney for Appellants
Steven M. Sakamoto-Wengel, Esquire
Assistant Attorney General



DUMBBELLS ASSOCIATES, INC.	*	IN THE
et al.	*	CIRCUIT COURT
Appellants	*	FOR
v.	*	BALTIMORE CITY
CONSUMER PROTECTION	*	
DIVISION	*	
Appellee	*	Case No. 90059044/CL109816
* * * * *		

MEMORANDUM OPINION AND ORDER

Hollander, J.

Introduction

Dumbbells Associates, Inc. and its sole officers, directors and shareholders, Scott Scala and Jordan Binetti, (collectively, "Dumbbells" or "Appellants") operated the Greenspring Fitness Center (the "Club"), a health club located in Lutherville, Maryland. Stipulations Regarding Facts and Documents ("Stipulations"), paragraphs 1,3. The Maryland Attorney General's Consumer Protection Division (the "Division") charged that Dumbbells was in violation of various provisions of the Health Club Law, Md. Com. Law Code Ann.,¹ Sections 14-12B-01 through 14-12B-08 and the Consumer Protection Act, Md. Com. Law Code Ann., Sections 13-101 through 13-501, and issued a Cease and Desist Order on August 29, 1989. After an evidentiary hearing held before the Division, Dumbbells was found in violation of the Health Club Law.

1. Unless otherwise indicated, all Code references are to Md. Com. Law. Code Ann.

See, Decision and Order (the "Decision") and Supplemental Order (collectively referred to as the "Opinion"). R.4, Attachment 1.²

According to the Opinion, Dumbbells sold two year paid-in-full Club memberships to some 800 consumers, and collected more than \$100,000.00 but failed to post the required bond needed to protect those advance payments. Additionally, the Opinion determined that Dumbbells failed to disclose material information to consumers, as required by the Health Club law.

It is from the Opinion that Dumbbells' appeal is taken. Under the label of a "Counterclaim", the Division seeks to enforce the Opinion. It also asks for costs and reasonable attorneys' fees incurred with respect to its pursuit of the Counterclaim.

Factual Summary

From May, 1989 to August, 1989, Appellants sold two year promotional Club memberships to consumers. The members were supposedly charged an "initiation fee" of \$137.76 and "monthly dues" of a penny a month for 24 months. Stipulations, paragraphs 12-16,22. On many occasions, Appellants collected the entire \$138.00 at the time the consumer joined. Even when the entire cost was not collected initially, Appellants made no effort to collect the one cent monthly dues. T.44,48-49,

2. "R" refers to numbered items in the court file.

70-71.³ Moreover, the actual membership agreement represented the sum of \$138.00 as membership dues for a two year term.⁴

The Opinion concluded that Appellants were collecting more than three months of payments in advance, and were therefore subject to the bonding requirement of Section 14-12B-02(e). However, Appellants did not post a bond.

In reaching its conclusion, the Opinion relied upon the testimony of several witnesses offered at an administrative hearing in October, 1989. Stacy Van Houton ("Van Houton"), who joined the Club on August 3, 1989, testified that when she entered into the contract for a two year membership, a representative of Dumbbells made clear to her that she would be charged an initiation fee of \$137.76, and that the remaining 24 cents would be paid at the rate of a penny a month for 24 months. T.6. But Van Houton testified that her Visa credit card was charged the entire \$138.00 when she joined. T.8. Van Houton also testified that Dumbbells made no arrangement to collect the penny a month in separate monthly payments. T.8,9.

Kathy Cranford ("Cranford"), Assistant Administrator of the Division's Health Club Registration Program, testified that she telephoned the Club on August 24, 1989 and was told by a salesperson named Joe that the full \$138.00 fee must be paid initially. T.22. This salesperson, who refused to divulge his last name, also referred to the \$138.00 as a membership price. T.23.

3. "T" refers to the transcript of the hearing held before the Consumer Protection Division on October 3, 1989.

4. The agreement does, however, allocate 24 cents to dues for 24 months.

John Shipley ("Shipley"), who handled the promotional campaign for Dumbbells, testified that on various occasions salespersons collected the entire \$138.00 fee rather than the sum of \$137.76. T.33. Shipley added that Dumbbells' employees were instructed many times to collect only \$137.76 at the time members joined, but that did not occur in all cases. T.45. Promotional information provided by Appellants informed prospective members that the membership was valued at over \$600.00 and was offered, subject to maintenance dues of \$69 per year, on a two year basis. Stipulations, paragraphs 10,12,13.

Although the Opinion recognized the legitimacy of initiation fees in general, it stated: "An initiation fee, even one less than \$200.00, has to be a real initiation fee." Decision at 6. The Decision determined that the so-called initiation fee was, essentially, a "dodge" employed to avoid the bonding requirement. Decision at 4-8; Supplemental Order at 2-3. Because Appellants' own employees failed to collect the final 24 cent payment, the Division believed this evidenced the sham. Decision at 8. The Division thus ordered Dumbbells to post the necessary bond, discontinue collecting advance payments until the security required by the Health Club law was posted, and refund payments attributable to the period in which no bond was posted. Decision and Order at 10, 12.

Additionally, the Decision found that Appellants did not disclose in their form contract whether the Club was registered

with the Division and whether a bond was posted. Decision at 4. Thus, the Decision concluded that consumers were denied information that the General Assembly deemed material to a consumer's decision to join a particular health club. Decision at 8-9. Consequently, Appellants were ordered to offer each consumer who was not given the required disclosures the opportunity to rescind the membership agreement and receive a full refund. Decision at 10-11.

Scope of Review

Review of the Opinion is governed by Code, State Government, Section 10-215(g) (Supp. 1990). It provides in pertinent part:

Decision - In a proceeding under this section, the court may:

- (1) remand the case for further proceedings;
- (2) affirm the decision of the agency; or
- (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision of the agency:
 - (i) is unconstitutional;...
 - (iv) is affected by...error of law;
 - (v) is unsupported by competent, material and substantial evidence in light of the entire record as submitted; or
 - (vi) is arbitrary or capricious.

The standard of review is quite restricted. Case law interpreting Section 10-215 makes clear that the Opinion must be reviewed in the light most favorable to the agency, because decisions of administrative agencies are presumptively correct.

See, Fromberg v. Insurance Comm'r., 87 Md. App. 236 (1991). See also, Courtney v. Board of Trustees, 285 Md. 356 (1979); Bulluck v. Pelham Wood Apts., 283 Md. 505 (1978). Accordingly, "the reviewing court should not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken." Board of Educ. Mont. Co. v. Paynter, 303 Md. 22, 35 (1985) (emphasis in original).

A reviewing court must examine the facts found by an agency, to see if there was evidence to support the factual findings. If there was evidence of the facts in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, this court has no power to substitute its assessment of credibility for that made by the agency. Comm'r. Baltimore City Police Dept. v. Cason, 34 Md. App. 487, cert. denied, 280 Md. 728 (1977).

It is the province of the agency to resolve conflicting evidence. Where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences. Bulluck, supra.

Discussion

At the heart of this controversy is Appellants' purported initiation fee. Appellants vigorously dispute the Division's conclusion that the \$137.76 which was charged was not an initiation fee but rather payment for future services. Appellants contend that the \$137.76 payment constituted a legitimate initiation fee, so that a bond was not required.

Maryland's Health Club law attempts to protect financially those consumers who, at the time of joining a health club, make more than three months of payments for future services.⁵ Section 14-12B-02(e) requires a health club which collects more than three months of payment "up front" to post a bond with the Division.⁶ Every club is required to register with the Division and to disclose in a membership agreement whether the club has registered and posted a bond. Section 14-12B-06(3)(ii).

Section 14-12B-02(i) establishes a rebuttable presumption that if any fee of more than \$200.00 is collected for an unspecified time period, even one dubbed an "initiation fee," the money shall be deemed to be payment for the initial two years of membership.⁷ Ordinarily, an initiation fee of \$200.00 or less is not considered to be a payment for any future portion of the consumer's membership term. In this case, the Opinion determined that the Division successfully rebutted the presumption applicable to sums less than \$200.

5. Experience has shown that consumers have suffered substantial losses when health clubs unexpectedly close. Often, no assets are available to reimburse club members for services paid for but not received.

6. A health club can avoid the bond requirement if it does not collect more than three months of payments in advance.

7. Section 14-12B-02(i) provides, in pertinent part: "[A]ny initiation fee. . . that exceeds \$200 and that is not identified as a payment for specific future services will be deemed to be a payment for services to be delivered during the initial years of the buyer's membership term." The section implies that an initiation fee of \$200 or less, not tied to specific future services, does not constitute advance monthly payments subject to the bonding requirement.

In support of its contention that the initiation fee was legitimate, Appellants argue that the law does not look to the adequacy of consideration in determining the validity of a contract. Therefore, they claim that what they call an "initiation fee" and "monthly dues" must be accepted as such.

It is true that, ordinarily, the court will not inquire into the adequacy of consideration. Hercules Powder Co. v. Harry T. Campbell & Sons Co., 156 Md. 346 (1929). But the general view, as adopted by Restatement (Second) of Contracts Section 79, Comment d (1981), is that a de minimus consideration constitutes a "pretended exchange" and is not adequate consideration. What is said in Comment d is pertinent here:

Pretended exchange. Disparity in value, with or without other circumstances, sometimes indicates that the purported consideration was not in fact bargained for but was a mere formality or pretense. Such a sham or "nominal" consideration does not satisfy the requirement of Section 71 (Requirement of Exchange).

The Restatement also recognizes that inadequacy of consideration, "such as shocks the conscience", is often said to be a "badge of fraud," justifying a denial of specific performance. Id., Comment e. Consistent with these principles, the Opinion appropriately dismissed Appellants' proposition that \$137.76 represented the initiation fee and that the monthly dues were only one penny.

Applying the appropriate standard of review and the applicable law, there is substantial evidence in the record which supports the finding that the \$138.00 was not an actual initiation fee. Rather, it represented advance payment for future services, i.e., a Club membership for a term of two years. The purported monthly dues of one cent were hardly genuine, and cannot be deemed valid consideration. Accordingly, the Opinion justifiably concluded that the initiation fee was so labelled in order to avoid the bonding requirement.

In United States v. Bailey, 383 F.2d 9 (5th Cir. 1967), the Court applied a dictionary definition of "initiation fee" and described it as a fee that is paid in order to gain "formal admission into a club." Id. at 12. The language of the Club's promotional flyers, along with the testimony of Van Houten and Cranford, buttress the conclusion that the \$137.76 fee was not assessed to gain admission to the Club. Rather, it was the cost of the membership. Effectively, it constituted payment for future services.

As the Court in Bulluck, supra, made clear, where inconsistent inferences may be drawn from the evidence, it is the province of the agency to draw the inference. Accordingly, this court will not disturb the Division's conclusion on the issue of the initiation fee.

Appellants also contend that the Division erred in finding that disclosure was not made pursuant to Section 14-12B-06. They argue that a fair reading of the membership agreement

provides the sum and substance of what is statutorily required. But Appellants have overlooked the obligatory language of the applicable law.

Section 14-12B-06(3) provides as follows:

Each contract for health club services shall conspicuously disclose under the heading "Notice of Consumer Rights":

(i) The seller's health club registration number with the Division;

(ii) A description of whether the seller is bonded and the amount of the bond or, if not bonded, an explanation of the basis for the seller's exemption from the bonding requirements;

(iii) The buyer's right to cancel as defined in this section; and

(iv) The buyer's rights in the event of a disability or temporary closing under 14-12B-04 of this subtitle.

Emphasis added.

It is a well recognized principle of statutory construction that the word "shall" denotes a mandatory rather than a permissive obligation. As the court found in Robinson v. Pleet, 76 Md. App. 173, cert. denied, 313 Md. 689 (1988), the word "shall" in a statute is mandatory, imposing an imperative obligation inconsistent with the exercise of discretion. See also, Tranen v. Azia, 59 Md. App. 528, aff'd. 304 Md. 605 (1984); State v. One 1979 Pontiac Firebird, 55 Md. App. 394 (1983).

A review of the membership agreement plainly reveals that the contract has no section labelled "Notice of Consumer Rights." Moreover, the membership contract fails to provide the Club's registration number or a statement as to whether

or not the Club is bonded, as required by Section 14-12B-06(3). Thus, the Opinion correctly notes that Appellants' contract "contains neither the legislatively mandated heading nor any of the required information." Decision at 4. This court can find no fault with that conclusion, as it is amply supported by the evidence in the record.

Appellants' third assertion is that the Division improperly pursued enforcement of Section 14-12B-06. They argue that since no consumer filed a complaint, the Division should not go "out on their own to create problems in a situation where none existed prior to their action and none has existed since." Appellant's Memorandum at 6. The argument is specious.

This court cannot accept Appellants' argument that merely because no private consumer has complained, the Division charged with the enforcement of consumer protection laws should not pursue clear violations of the laws. In Devine Seafood, Inc. v. Attorney General, 37 Md. App. 439, cert. denied, 282 Md. 482 (1978), the Court noted that consumer complaints are but one means by which Division action may be initiated. What the Court said in Devine is apposite here.

The Consumer Protection Division itself may be the moving party. It may, moreover, act upon its own initiative, from whatever stimulus, to investigate individual instances or broader patterns of unfair or deceptive practices.

Id. at 447. Accordingly, the action of the Division in enforcing Section 14-12B-06 is proper as a matter of law.

Appellants' final contention of error is that it was improper for William Leibovici ("Leibovici"), the chief of the

agency charged with investigation and enforcement of consumer protection laws, to also hear the matter in an adjudicative function. In this regard, the Supreme Court's comments in Withrow v. Larkin, 421 U.S. 35 (1975) are instructive.

Concededly, a 'fair trial in a fair tribunal is a basic requirement of due process.' In re Murchison, 349 U.S. 133, 136 (1955)....The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.

Id. at 46, 47.

Appellants have failed to demonstrate, beyond the bald allegation of bias, any actual or perceived prejudice on the part of Leibovici which would give this court cause for concern. Like the other arguments before it, Dumbbells' assertion here is without merit.

Counterclaim

The Division has filed a Counterclaim in this action, pursuant to Section 13-403(c)(2), in which it seeks enforcement of the Opinion. In its Counterclaim, the Division also requests the assessment of civil penalties against Appellants pursuant to Section 13-410, and the award of attorneys' fees and costs, pursuant to Sections 13-408 and 13-409, respectively.

Janet Zaremba ("Zaremba"), the Division's Assistant Health Club Administrator, testified at the appellate hearing. Her job is to ensure compliance with the Division's orders. She testified that Appellants failed to comply with paragraphs 1 through 5 of the Order in the following ways: (1) by failing to obtain the requisite bond to cover the aggregate value of the outstanding memberships; (2) by failing to notify members of their right to rescind their contracts and obtain a refund; and (3) by failing to comply with various administrative directives of the Division.

It is undisputed that the Division issued valid orders, pursuant to Section 13-403, on October 26, 1989 and January 31, 1990, and that Appellants have failed to comply. Section 13-403(c)(2) provides that the Division may institute a civil action to obtain compliance with its orders, which it has done through this Counterclaim. Accordingly, this court shall enter judgment on the Counterclaim in favor of the Division, and also award the costs and reasonable attorneys' fees associated with the Counterclaim. A hearing will be held to determine the costs and attorneys' fees.

The assessment of civil penalties lies in the discretion of the court. State v. Action T.V. Rentals, Inc., 297 Md. 531 (1983). In the instant case, this court does not consider the imposition of fines to be appropriate.

It is without question that Appellants' promotional offer was undertaken in an effort to attract business without the

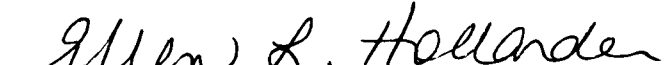
necessity of satisfying the bonding requirement of Section 14-12B-02(e). But there is no indication in the record that Appellants acted maliciously. Rather, Appellants appear to have been ill-advised by their promoter as to the legality of this marketing strategy. Coupled with the absence of any proof by the Division of actual injury to any consumer, and testimony that the Club is not presently in business,⁸ this court declines to impose any fine.

Based on the foregoing, it is this 18th day of July, 1991, by the Circuit Court for Baltimore City;

ORDERED, that the Decision of the Consumer Protection Division be, and the same hereby is, AFFIRMED.

IT IS FURTHER ORDERED that judgment on the Counterclaim be entered in favor of the Division, and that Appellants shall pay all costs and reasonable attorneys' fees associated with the Counterclaim. A hearing on the amount of attorneys' fees will be scheduled.

Costs of the appeal shall be paid by Appellants.


Ellen L. Hollander, Judge

cc: Melvin Kodenski, Esquire
Attorney for Appellants
Steven M. Sakamoto-Wengel, Esquire
Assistant Attorney General

8. Zaremba testified before this court on February 14, 1991 with respect to the issues generated by the Counterclaim. She stated that the Club closed around July 1, 1990 and she conceded that no complaints were ever received by the Division from consumers.

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

JUDSON P. GARRETT, JR.
DENNIS M. SWEENEY
DEPUTY ATTORNEYS GENERAL



WILLIAM LEIBOVICI
CHIEF, CONSUMER PROTECTION DIVISION
ADMINISTRATIVE OFFICE
(301) 576-6550
CONSUMER INQUIRIES
AND COMPLAINTS
(301) 528-8662
HEALTH ADVOCACY UNIT
(301) 528-1840

OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

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TTY for Deaf Balto. Area 576-6372 D.C. Metro 565-0451

All other areas 1-800-492-2114 tone 870892

Telecopier No. (301) 576-6404

July 25, 1990

WRITER'S DIRECT DIAL NO.

576-6350

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Melvin J. Kodenski
Kodenski and Canaras
19 E. Fayette Street
Baltimore, Maryland 21202

Re: Greenspring Fitness Center

Dear Mr. Kodenski:

Pursuant to Md. Com. Law Code Ann., §14-12B-07, Dumbbells Associates, Inc. is required to submit to the Division within 15 days from the date of closing:

- (1) the name and address of each consumer who purchased a membership at Greenspring Fitness Center;
 - (2) a copy of the membership agreement for each consumer;
- and (3) records showing the amount of payment collected from each consumer.

Please note that failure to provide the above information is a violation of the Maryland Health Club law and Consumer Protection Act. Your expected cooperation is appreciated. If you have questions regarding this matter, please feel free to contact me at (301) 576-6350.

Sincerely,

A handwritten signature in cursive script that reads "Steven Sakamoto-Wengel".

Steven M. Sakamoto Wengel
Health Club Program Administrator

SSW:amd
E:HSU:CLOSING

STATE'S
EXHIBIT

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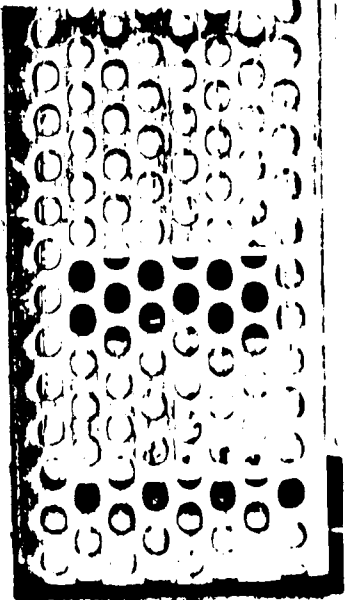
Postmark or Date	
TOTAL Postage and Fees	S
Return Receipt showing to whom, Date, and Address of Delivery	
Return Receipt showing to whom and Date Delivered	
Restricted Delivery Fee	
Special Delivery Fee	
Certified Fee	
Postage	S
P.O. State and ZIP Code	Baltimore, MD. 21202
Street and No.	19 E. Fayette Street
Sent to	Melvin J. Kodenski

PS Form 3800, June 1985

US G.P.O. 1988-224-558

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

P 494 573 158



SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. (Extra charge)
2. Restricted Delivery (Extra charge)

3. Article Addressed to:
*Melvin J. Kodenski
Kodenski + Canara
19 E. Fayette Street
Baltimore, MD. 21202*

4. Article Number
P494573158

Type of Service:
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee
X

6. Signature - Agent
X Miss Walter

7. Date of Delivery
JUL 27 1988

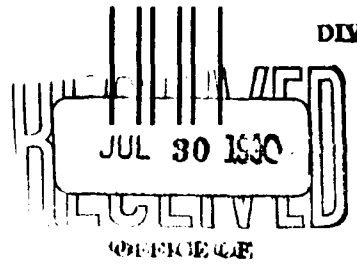
8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Apr. 1989

DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS
Print your name, address and ZIP Code in the space below.
• Complete Items 1, 2, 3, and 4 on the reverse.
• Attach to front of article if space permits, otherwise affix to back of article.
• Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE USE, \$300

RETURN TO →

Print Sender's name, address, and ZIP Code in the space below.

*Steven M. Sakamoto-Wengel
200 Saint Paul Place 16th Floor
Baltimore MD. 21202*

DUMBBELLS ASSOCIATES, INC.,
et al.

Petitioners,

v.

CONSUMER PROTECTION DIVISION

Respondent

• IN THE
• CIRCUIT COURT
• FOR
• BALTIMORE CITY

• Case No. 90059044/
• CL109816

• APPEAL FROM THE
• CONSUMER PROTECTION
• DIVISION
• OFFICE OF THE
• ATTORNEY GENERAL
• OF MARYLAND

* * * * *
AFFIDAVIT OF KATHLEEN CRANFORD

I, Kathleen Cranford, hereby declare and state as follows:

1. I am employed as the Assistant Administrator of the Health Club Registration Program in the Consumer Protection Division of the Office of the Attorney General of Maryland. In my capacity as Assistant Administrator, I am responsible for maintaining files pertaining to the health club registration of businesses subject to the Maryland Health Club Services law.

2. The file pertaining to Greenspring Fitness Center shows that a \$10,000 letter of credit was provided to the Division for liabilities to consumers from memberships sold before Dumbbells Associates, Inc. purchased the fitness center. However, Dumbbells Associates, Inc. t/a Greenspring Fitness Center has failed to file a report prepared by a certified public accountant documenting total outstanding liabilities to all members, including promotional members, or provide the Division with a

EXHIBIT #

STATE'S EXHIBIT
1
1D only

MEMBERSHIP INFORMATION

X 13 Dumbbells PA

21192

bond, letter of credit or cash deposit in an amount sufficient to protect promotional members. Dumbbells Associates has also failed to provide the Division with any evidence that the advance payments collected from promotional members have been refunded, other than payment of 25¢ to some of the promotional members. Additionally, the Division has received notice that the \$10,000 letter of credit has been cancelled effective June 13, 1990.

3. On February 27, 1990, I telephoned the Greenspring Fitness Center and spoke to a salesperson named Jerry. I told Jerry that I had received a copy of the promotion for Greenspring appended hereto and wanted to know about the membership. He advised me that Greenspring collected \$102 of the membership at the time I join. He said that I would be billed for the remainder at \$1 per month for 9 months or at \$3 per quarter for 3 quarters.

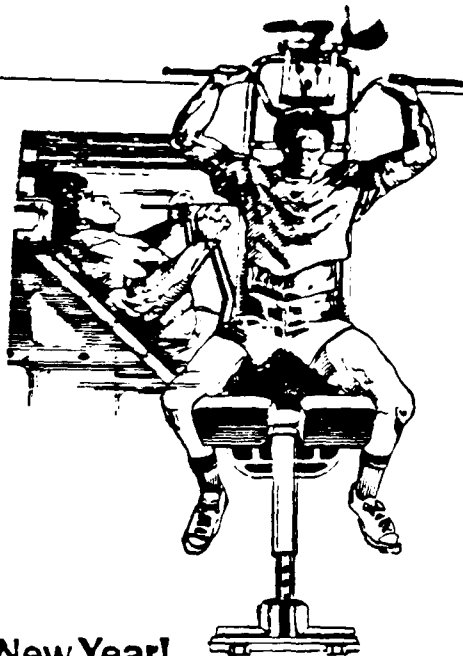
I do solemnly affirm under penalty of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Date: 5/19/90

Kathleen Cranford
Kathleen Cranford

X
13 Dumbbells (H)
MEMBERSHIP INFORMATION

CIN Timor 44 210 21093



GREENSPRING
Greenspring Fitness Center
at the Greenspring Station
828-5328



Happy New Year!

You have been issued this temporary **One (1) Year Nautilus, Fitness, Spa, and Club Membership "Gold Card"** to the Greenspring Fitness Center, one of Maryland's finest recreational facilities located in Lutherville. That's correct, a **One (1) Year Nautilus, Fitness, Spa, and Club Membership "Gold Card"** to Greenspring Fitness Center.

Your **"Gold Card"** Membership gives you unlimited use of the following facilities and benefits:

- Nautilus! (2 full circuits)
- Free Weights!
- State-of-the-Art Instruction!
- Aerobic Exercise Classes* by Marilyn Picks — Fitness Dimensions!
- Lifecycles!
- Whirlpool!
- Steam Room!
- Sauna! (separate for men & women)
- Spacious Locker Rooms & Shower Facilities!
- Affiliated With Over 2500 Clubs Nationwide!
- Snack Bar & Lounge!
- Open 7 Days A Week!
- Much, Much More!

*As an added bonus your membership includes a free Aerobics package.

This **"Gold Card"** Membership is valued at over **\$400.00** and is being offered to you for only the one time initiation fee of **\$99**, and **\$1.00** per month.

HOW DO I CLAIM MY MEMBERSHIP?

Bring this letter to the **GREENSPRING FITNESS CENTER** within the next 24 hours between 10:00 a.m. and 9:00 p.m. Monday through Friday, or between 10:00 a.m. and 4:00 p.m. on Saturday.

As an added bonus, this offer may also be extended to your friends and relatives. Simply bring your workout partners with you when you visit the club!

Current members of the GREENSPRING FITNESS CENTER are not eligible for this promotional membership. However, you may give your letter to a friend or relative. See reverse side for directions to GREENSPRING FITNESS CENTER.

EXIT 23A FALLS & VALLEY ROADS 828-5328

MEMBERSHIP INFORMATION

DUMBBELLS ASSOCIATES, INC.,
et al.
Respondent/Appellants,
v.
CONSUMER PROTECTION DIVISION
Proponent/Appellee.

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 90059044/
CL109816

APPEAL FROM THE
CONSUMER PROTECTION
DIVISION
OFFICE OF THE
ATTORNEY GENERAL
OF MARYLAND

* * * * *

ORDER GRANTING CONSUMER PROTECTION DIVISION'S
MOTION FOR INTERLOCUTORY INJUNCTION

Upon agreement of the parties

~~Having considered the Consumer Protection Division's motion~~
for interlocutory injunction and memorandum in support thereof,
and finding that (1) the Division is likely to succeed on the
merits of its counterclaim; (2) the Appellants' failure to comply
with the Division's Order and Supplemental Order places more than
800 consumers at risk of losing substantial advance payments made
to the Appellants; (3) the public interest will be served by
requiring Appellants to comply with the Division's Order and
Supplemental Order; and (4) the "balance of convenience" favors
requiring Appellants to comply with the Order pending the outcome
~~of this appeal;~~ pursuant to Md. Com. Law Code Ann., § 13-
403(c)(2) and Md. Rules BB70, et seq., it is this 13 day
of July, 1990, ORDERED:

1. that Appellants Dumbbells Associates, Inc., Scott Scala and Jordan Binetti ("Appellants") are enjoined and restrained from selling health club services agreements to consumers until such time as they have complied with the Consumer Protection Division's Decision and Order issued October 26, 1989 and Supplemental Order issued January 31, 1990 and the requirements of the Maryland Health Club Services law by posting a bond, letter of credit or cash deposit with the Division in accordance with Md. Com. Law Code Ann., § 14-12B-02(e); and

~~2. that Appellants shall either:~~

~~(a) immediately post a bond, letter of credit or cash deposit with the Division in an amount not less than their total outstanding liabilities to members as required by paragraph 2 of the Division's Order and by Md. Com. Law Code Ann., § 14-12B-02(e);~~

~~or, in the alternative, (b) refund immediately to each member who purchased an unbonded promotional membership or other unbonded membership in which more than three months' advance payment was collected, all payments that exceed payment for more than three months' services;~~

IT IS FURTHER ORDERED that the requirement for filing an

injunction bond be waived pursuant to Md. Rule BB75(b)(2).

David Ross
JUDGE

[Handwritten mark]

PRESIDING JUDGE

COURTROOM CLERK

STENOGRAPHER

13

ASSIGNMENT FOR FRIDAY JULY 13, 1990 P19

11 30

CASE NUMBER - 90059044
CASE TITLE - DUMBELLS ASSCS, ETAL V CONSUMER PROTECTION CL109816 CL
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY
PROCEEDING - MOTION HEARING - GENERAL

SAKAMOTO-WENGEL, STEVEN M
KODENSKI, MELVIN

DEFENSE ATTORNEY
PLAINTIFF ATTORNEY 685-5100

- ① Appellants' motion to stay withdrawn as to injunctive relief and granted as to balance of appellee's order.
- ② parties agree to enter voluntary injunctive see separate order.
- ③ appellee's motion S.F. denied w/o prejudice

TYPE OF PROCEEDING: () JURY () NON-JURY () OTHER

DISPOSITION (CHECK ONE)

- () SETTLED () CANNOT SETTLE () NEXT COURT DATE
- () VERDICT () REMANDED () NON PROS/DISMISSED
- () JUDGEMENT NISI () ORDER/DECREE SIGNED () OTHER PLEASE EXPLAIN:
- () JUDGEMENT ABSOLUTE () ORDER/DECREE TO BE SIGNED
- () POSTPONED () MOTION GRANTED
- () SUB CURIA () MOTION DENIED

JUDGE SIGNATURE _____ DATE 7/13/90

DAVID ROSS
JUDGE

AB

FILED

DUMB BELLS ASSOCIATES, JUN 15 1990
et al.

CIRCUIT COURT FOR
Petitioners BALTIMORE CITY

vs.

CONSUMER PROTECTION DIVISION

Respondent

IN THE
CIRCUIT COURT
FOR

BALTIMORE CITY

Case No.: 90059044/
CL109816

12
[Signature]

ANSWER TO MOTION FOR INTERLOCUTORY INJUNCTION

Dumbbells Associates, Inc., et al., by their attorneys,
Melvin J. Kodenski and Kodenski and Canaras, in answer to the
Motion for Interlocutory Injunction, states:

1. That they request the Court deny the Motion for
Interlocutory Injunction on the grounds that this matter is
presently under Appeal and the Appellant's have the right to have
their case tried and disposed of at an appropriate Court hearing
and that an Order to do otherwise would defeat the purpose of an
Appeal and that as of the present time, the particular location
is open and operating and to this date, there have been no
complaints from any of the consumers for whom the particular law
was designed to protect.

WHEREFORE, for these reasons the Appellants would request
that the Motion for Interlocutory Injunction be denied.

[Signature]

Melvin J. Kodenski

[Signature]

Kodenski and Canaras

19 E. Fayette Street

Suite 301

Baltimore, Maryland 21202

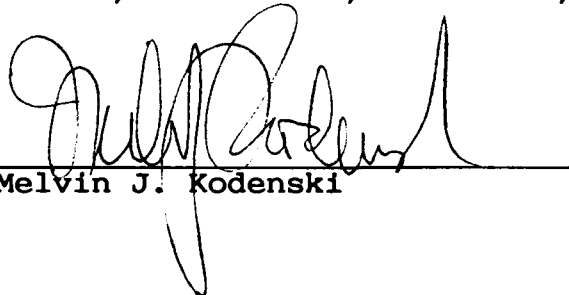
(301) 685-5100

Attorneys for the Petitioners

LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 15th day of June, 1990, a copy of the foregoing Answer to Motion for Interlocutory Injunction of Dumbbells Associates, Inc., Jordan Binetti and Scott Scala, Petitioners was mailed to Vince DeMarco, Health Club Program Administrator, Office of the Attorney General, Consumer Protection Division, 200 St. Paul Place, 16th Floor, Baltimore, Maryland 21202-2022.



Melvin J. Kodenski

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DUMBBELLS ASSOCIATES, INC.,
et al.

FILED

JUN 15 1990

Petitioners

vs.

CIRCUIT COURT FOR
BALTIMORE CITY

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

11
[Signature]

CONSUMER PROTECTION DIVISION

Respondent

Case No.: 90059044/
CL109816

ANSWER TO AMENDED COUNTER-CLAIM

Dumbbells Associates, Inc., et al., by their attorneys,
Melvin J. Kodenski and Kodenski and Canaras, in answer to the
Amended Counter-Claim, states:


1. That the Order mentioned in paragraph number one is under Appeal in this case.
2. That they admit the allegations contained in paragraph number two of the Amended Counter-Claim.
3. That they admit the allegations contained in paragraph number three of the Amended Counter-Claim.
4. That they admit the allegations contained in paragraph number four of the Amended Counter-Claim.
5. That they would further state that the particular Decision, Order and Supplemental Order are under Appeal in this case are to be decided at a later date.
6. That they would further state that it is inappropriate for an Amended Counter-Claim to be filed in the Appellant's Appeal Administrative Hearing and it is without legal foundation or affect.

LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

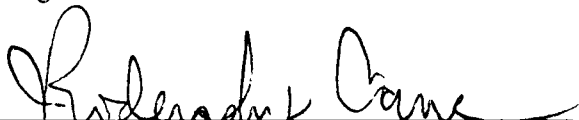
WHEREFORE, the Appellant's Dumbbells Associates, Inc.,
et al., pray:

A. That the Amended Counter-Claim be dismissed; and

B. For such other and further relief as the nature of
their cause is proper, correct and necessary in this matter.



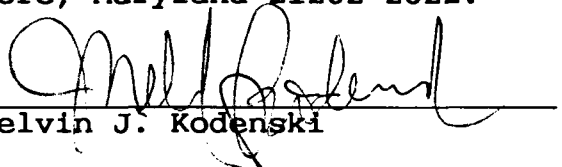
Melvin J. Kodenski



Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(301) 685-5100
Attorneys for the Petitioners

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 15th day of June, 1990,
a copy of the foregoing Answer to Counter-Claim of Dumbbells
Associates, Inc., Jordan Binetti and Scott Scala, Petitioners was
mailed to Vince DeMarco, Health Club Program Administrator,
Office of the Attorney General, Consumer Protection Division, 200
St. Paul Place, 16th Floor, Baltimore, Maryland 21202-2022.



Melvin J. Kodenski

G:\MJK\879

FILED

JUN 15 1990

DUMBBELLS ASSOCIATES, INC.,
et al.

CIRCUIT COURT FOR
BALTIMORE CITY

IN THE
CIRCUIT COURT

10
[Handwritten signature]

Petitioners

FOR

vs.

BALTIMORE CITY

CONSUMER PROTECTION DIVISION

Case No.: 90059044/
CL109816

Respondent

ANSWER TO MOTION FOR SUMMARY JUDGMENT

Dumbbells Associates, Inc., et al., by their attorneys,
Melvin J. Kodenski and Kodenski and Canaras, in answer to the
Motion for Summary Judgment, state:

1. That there is a genuine dispute on issue of material
fact due to the Decision of the Consumer Protection Division of
the Attorney General's Office as set out in the Petition for
Appeal which was answered by the Appellees.

2. That the Consumer Protection Division is not
entitled to a Judgment as a matter of law until after the
determination of the case.

3. That there have been Memorandums submitted and
arguments will be heard shortly in this case.

WHEREFORE, the Appellants request that the Motion for
Summary Judgment be denied.


[Handwritten signature]
Melvin J. Kodenski

[Handwritten signature]
Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(301) 685-5100
Attorneys for the Petitioners

LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 15th day of June, 1990, a copy of the foregoing Answer to Motion for Summary Judgment of Dumbbells Associates, Inc., Jordan Binetti and Scott Scala, Petitioners was mailed to Vince DeMarco, Health Club Program Administrator, Office of the Attorney General, Consumer Protection Division, 200 St. Paul Place, 16th Floor, Baltimore, Maryland 21202-2022.



Melvin J. Kodenski

G:\MJK\881

DUMB BELLS ASSOCIATES, INC.,
et al.
Respondent/Appellants,
v.
CONSUMER PROTECTION DIVISION
Proponent/Appellee.

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 90059044/
CL109816

9
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FILED
MAY 16 1990
CIRCUIT COURT FOR
BALTIMORE CITY

APPEAL FROM THE
CONSUMER PROTECTION
DIVISION
OFFICE OF THE
ATTORNEY GENERAL
OF MARYLAND

APPELLEE'S MEMORANDUM
IN OPPOSITION TO APPEAL

I. Introduction

The Consumer Protection Division issued a Decision and Order finding that Dumbbells Associates, Inc., Scott Scala and Jordan Binetti ("Appellants") sold two-year, paid-in-full health club memberships to nearly 800 consumers without posting the bond required by Maryland's Health Club law. The Division also found that the membership contracts used by Appellants did not contain disclosures regarding registration and bonding required by the Health Club law. As a remedy for its failure to post the required bond, the Division ordered Appellants to (1) post the bond required by the Health Club law; (2) stop collecting advance payments from consumers until the required security has been posted; and (3) refund payments collected for the portion of the membership that was not protected by a bond. As a remedy for its failure to make material disclosures to consumers, the Division

ordered Appellants to notify members that they may rescind the agreement and receive a full refund of all moneys paid.

The Division's findings that Appellants failed to post the required bond and make the required disclosures are supported by substantial evidence in the record. The remedies ordered by the Division are appropriate in light of the violations found. Accordingly, this Court should affirm the Division's Order and dismiss Appellants' appeal.

II. Statement of Facts

A. Appellants sold two-year paid-in-full memberships

Appellant Dumbbells Associates, Inc. owns and operates a health club known as Greenspring Fitness Center located at Falls and Valley Roads in Lutherville, Maryland. Stipulations Regarding Facts and Documents ("Stipulations") ¶ 1, adopted in Decision and Order of the Consumer Protection Division, Case No. 89-020, October 26, 1989 ("Decision") at 2, ¶1. Appellants Scott Scala and Jordan Binetti are the sole officers, directors and shareholders of Dumbbells. Stipulations ¶ 3. On or about May 1, 1989, Appellants entered into an agreement with John Shipley t/a Universal Promotions to conduct a promotion at the Greenspring Fitness Center. Stipulations ¶10. The promotion, Proponent's Exhibit 5, offered a two-year membership for "maintenance dues" of \$69 per year and was mailed to approximately 15,000 consumers in May, 1989. Stipulations ¶¶ 12 and 13. A second, identical

promotion, Proponent's Exhibit 10, was sent to consumers in July and August of 1989. Stipulations ¶ 22.

Appellants sold these two-year promotional memberships to almost 800 consumers and charged an "initiation fee" of \$137.76 and "monthly dues" of a penny per month. Stipulations ¶¶ 12-16 and 22. Although Appellants had not posted a bond with the Division, in many cases Appellants collected the entire \$138 membership cost up front and, even where Appellants collected \$137.76, they made no effort to collect the "monthly dues." Transcript, Hearing of October 3, 1989 ("Transcript") at 44 (Testimony of J. Shipley) and 70-71 (Testimony of S. Scala"). In fact, Appellants' own witness, Stacy Van Houten, paid the full \$138 for a membership sold by Jordan Binetti, one of the Appellants. Transcript, Hearing of October 3, 1989 ("Transcript") at 8 and 48-49; Respondents' Exhibit 1.

The promotions mailed to consumers concerning the membership represented the \$138 payment as "maintenance dues." Proponent's Exhibits 5 and 10. The actual membership agreement signed by the consumer represented the \$138 payment to be "membership dues." Proponent's Exhibit 6. John Shipley, who designed the promotion for the Appellants, testified that the breakdown between the initiation fee and monthly dues bore no relation to any costs incurred in servicing the members but was merely designed "to comply with the law." Transcript at 42-43. In fact, Appellant Scott Scala testified that the membership regularly offered by Appellants was \$75.00 dues every three months with no initiation fee. Transcript at 70. The membership sold by Appellants made

no provision for renewal upon expiration of the initial two-year membership, leaving open the possibility that a consumer would have to pay a second "initiation fee" to continue as a member. Transcript at 14 (Testimony of S. Van Houten).

The Decision concluded that the \$138 was, in fact, payment for future services and that the Appellants labelled the payment an "initiation fee" to evade the bonding requirement of the Health Club law. Decision at 4-8; Supplemental Order, January 31, 1990 ("Supplemental Order") at 2-3, 5. The Division ordered Appellants to post the security required under the Health Club law and to refund payments attributable to the period in which no bond was posted. Decision and Order at 10, ¶2 and 12, ¶4.

B. Appellants' membership agreements fail to contain legally required disclosures

Appellants provided copies of the form membership agreement used at the Greenspring Fitness Center and actual agreements sold during the promotions. Stipulations ¶¶ 16 and 18; Proponent's Exhibits 6 and 7. Those membership agreements do not contain a separate section headed "Notice of Consumer Rights," nor do they disclose to the consumer whether Greenspring Fitness Center is registered with the Division and bonded. Id.; Transcript at 21 (Testimony of K. Cranford).

The Decision found that Appellants' membership agreements failed to disclose under the heading "Notice of Consumer Rights" as required by § 14-12B-06 of the Health Club law, whether Appellants were registered with the Division (they were not) and

whether they had posted the required bond (they had not). Decision at 4. The Decision concluded that, by failing to make the required disclosures, consumers were denied information that the General Assembly deemed material to a consumer's decision to join the club. Decision at 8-9. Accordingly, Appellants were ordered to offer each consumer who was not given the required disclosures the opportunity to rescind the agreement and receive a full refund. Decision at 9 and at 10-11, ¶3.

III. Argument

A. Appellants have failed to comply with the Health Club law

Maryland's Health Club law, Md. Com. Law Code Ann., § 14-12B-01 through 14-12B-08, was enacted to protect consumers who made advance payments to health clubs and then suffered substantial losses when the club closed and no assets remained to pay refunds. The General Assembly addressed the problem by requiring any health club that collects more than three months' payment in advance from members to give the Division a bond to protect the advance payments should the club go out of business. Md. Com. Law Code Ann., § 14-12B-02(e). The General Assembly considered the collection of advance payments without posting a bond so serious that it authorized the Division to issue a cease and desist order without first conducting a hearing. Md. Com. Law Code Ann., § 14-12B-08(a).

When it determined that Appellants were selling two-year memberships and collecting the entire payment at the time the member joined without having the required bond, the Division issued a Cease and Desist Order pursuant to § 14-12B-08(a) dated August 29, 1989. Following hearings on the Order requested by Appellants and conducted pursuant to Md. Com. Law Code Ann., § 13-403, the Division issued the October 26, 1989 Decision and Order and January 31, 1990 Supplemental Order now before this Court.

In reviewing the Division's Decision and Order and Supplemental Order, this Court should:

review the agency's decision in the light most favorable to the agency, since "decisions of agencies are prima facie correct," . . . [Citation omitted] . . ., and "carry with them the presumption of validity." [Citations omitted]. Furthermore, not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.

Bulluck v. Pelham Wood Apartments, 283 Md. 505, 390 A.2d 1119, 1124 (1978) The Division's Order should be upheld if supported by substantial evidence in the record as a whole, i.e., if a "reasoning mind reasonably could have reached the factual conclusion" reached by the Division. Id., 390 A.2d at 1123.

The Division's determination that payment collected by Appellants was payment for future services rather than an "initiation fee" and requires bonding under the Health Club law is supported by substantial evidence. First, while the Appellants now claim the payment to be an "initiation fee," the

promotions mailed to consumers state otherwise. The Appellants' promotion represented the fee for the two-year membership as "maintenance dues" and "membership dues." Second, the membership sold by Appellants before the promotion suggests the initiation fee is not a true initiation fee. Prior to the promotion, the Appellants only collected payment for services and no initiation fee but now considered 99.87% of the total payment collected an "initiation fee."

Third, the Appellants' failure to make any effort to collect the "monthly dues" also suggests that the initiation fee was a sham. The only time that Appellants made any effort to collect the "monthly dues" was if the consumer paid the full \$138.00 upon joining. Fourth, an "initiation fee" should be a one-time only fee paid to join the club. However, the membership sold by Appellants did not provide the member with any renewal rights upon expiration of the initial two years, so a member could be required to pay a second "initiation fee" to continue as a member.

Substantial evidence also supports the Division's determination that Appellants' membership agreements did not contain the disclosures required by § 14-12B-06 of the Health Club law. Appellants provided a copy of the form membership agreement used and acknowledged that the form agreement is the one regularly used at Greenspring Fitness Center. That form membership agreement does not contain the heading "Notice of Consumer Rights" as required § 14-12B-06(b)(3); does not disclose the seller's health club registration number with the Consumer

Protection Division as required by § 14-12B-06(b)(3)(i); and does not disclose whether the seller is bonded and the amount of the bond or, if not bonded, an explanation of the basis for the seller's exemption from the bonding requirement as required by § 14-12B-06(b)(3)(ii).

B. Action by the Division does not require consumer complaints

Appellants argument that the Division should act only if it has received consumer complaints is wrong as a matter of law. Enforcement of the Health Club Services law and Consumer Protection Act by the Division does not require consumer complaints. More than a decade ago in Devine Seafood, Inc. v. Attorney General, 37 Md. App. 439, 377 A.2d 1194, 1198-99 (1977), cert. dismissed, 282 Md. 482, 385 A.2d 85 (1978), the Court of Special Appeals stated that consumer complaints are but one means by which Division action may be initiated. "[The Division] may, moreover, act upon its own initiative, from whatever stimulus, to investigate individual instances or broader patterns of unfair or deceptive practices." Id., 377 A.2d at 1199.

The Health Club law was enacted as a preventive measure to protect consumers who make advance payments to health clubs for future services. The Division was given authority to administer and enforce that law. Md. Com. Law Code Ann., §§ 14-12B-02, 14-12B-03, and 14-12B-08. Consumers cannot know in all cases that an unfair or deceptive practice has been committed. In this case, consumers may not become aware of the violation unless the fitness center closes and they are denied refunds because

Appellants have not posted the legally-required bond. Accordingly, where the Division determines that violations of the law are occurring, it may act to protect consumers even if no consumer has filed a complaint against the particular club.

IV. Conclusion

For the reasons set forth, the Consumer Protection Division asks that this Court dismiss Appellants' appeal and find in favor of the Division on all counts of the appeal and the Division's Counterclaim.

Respectfully submitted,

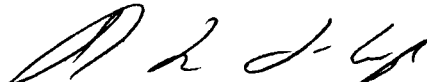
J. JOSEPH CURRAN, JR.
Attorney General of Maryland

By:

[Handwritten signature: S M Sakamoto-Wengel] 5/16/90
STEVEN M. SAKAMOTO-WENGEL
Assistant Attorney General
Consumer Protection Division
Sixteenth floor
200 St. Paul Place
Baltimore, Maryland 21202
Telephone: (301) 576-6350

CERTIFICATE OF MAILING

I hereby certify that, on this 16th day of May, 1990, a copy of the Consumer Protection Division's Memorandum in Opposition to Appeal was mailed, first class postage prepaid, to Appellants' attorney, Melvin J. Kodenski, Kodenski and Canaras, 19 E. Fayette Street, Suite 301, Baltimore, Maryland 21202.



Steven M. Sakamoto-Wengel

DUMBBELLS ASSOCIATES, INC.,
et al.
Respondent/Appellants,
v.
CONSUMER PROTECTION DIVISION
Proponent/Appellee.

LP
[Handwritten signature]

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 90059044/
CL109816

FILED
MAY 15 1990
CIRCUIT COURT FOR
BALTIMORE CITY

APPEAL FROM THE
CONSUMER PROTECTION
DIVISION
OFFICE OF THE
ATTORNEY GENERAL
OF MARYLAND

* * * * *

MOTION FOR SUMMARY JUDGMENT
AND REQUEST FOR HEARING

Appellee/Counterclaimant, Consumer Protection Division, Office of the Attorney General, State of Maryland ("Division") moves, pursuant to Md. Rule 2-501 for summary judgment on its amended counterclaim. In support of its motion, the Division states:

1. There is no dispute as to any genuine issue of material fact; and
2. The Division is entitled to judgment as a matter of law. The Division further relies upon the memorandum of law and exhibits filed herewith. A proposed Order is attached.

WHEREFORE, the Division requests that this Court enter summary judgment on the Division's counterclaim in its favor.

[Handwritten mark]


REQUEST FOR HEARING

The Consumer Protection Division requests a hearing on its motion for summary judgment.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

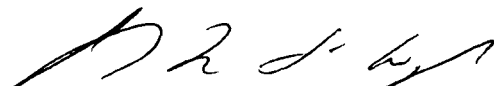
By:

 5/15/90

STEVEN M. SAKAMOTO-WENGEL
Assistant Attorney General
Consumer Protection Division
Sixteenth floor
200 St. Paul Place
Baltimore, Maryland 21202
Telephone: (301) 576-6350

CERTIFICATE OF MAILING

I hereby certify that, on this 15th day of May, 1990, a copy of the Consumer Protection Division's Motion for Summary Judgment, Memorandum in Support thereof and Proposed Order was mailed, first class postage prepaid, to Appellants' attorney, Melvin J. Kodenski, Kodenski and Canaras, 19 E. Fayette Street, Suite 301, Baltimore, Maryland 21202.



Steven M. Sakamoto-Wengel

DUMB BELLS ASSOCIATES, INC.,
et al.

Petitioners,

v.

CONSUMER PROTECTION DIVISION

Respondent

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE CITY
*
* Case No. 90059044/
* CL109816
*
*
*
* APPEAL FROM THE
* CONSUMER PROTECTION
* DIVISION
* OFFICE OF THE
* ATTORNEY GENERAL
* OF MARYLAND

* * * * *

AFFIDAVIT OF KATHLEEN CRANFORD

I, Kathleen Cranford, hereby declare and state as follows:

1. I am employed as the Assistant Administrator of the Health Club Registration Program in the Consumer Protection Division of the Office of the Attorney General of Maryland. In my capacity as Assistant Administrator, I am responsible for maintaining files pertaining to the health club registration of businesses subject to the Maryland Health Club Services law.

2. The file pertaining to Greenspring Fitness Center shows that a \$10,000 letter of credit was provided to the Division for liabilities to consumers from memberships sold before Dumbbells Associates, Inc. purchased the fitness center. However, Dumbbells Associates, Inc. t/a Greenspring Fitness Center has failed to file a report prepared by a certified public accountant documenting total outstanding liabilities to all members, including promotional members, or provide the Division with a

EXHIBIT # 2

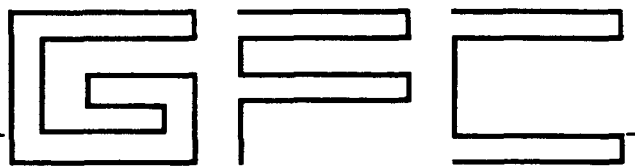
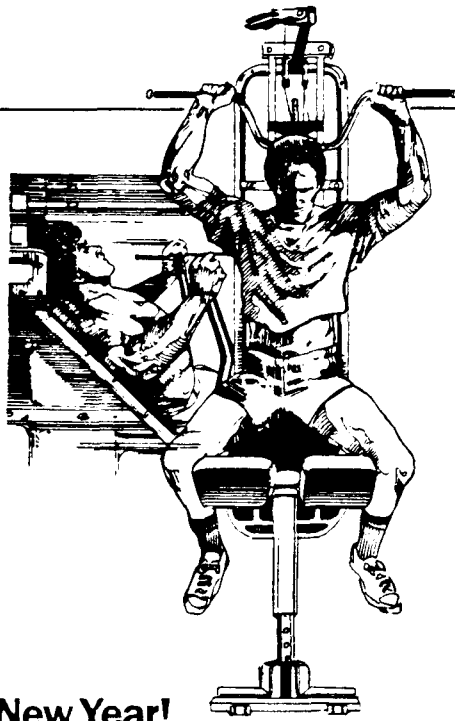
bond, letter of credit or cash deposit in an amount sufficient to protect promotional members. Dumbbells Associates has also failed to provide the Division with any evidence that the advance payments collected from promotional members have been refunded, other than payment of 25¢ to some of the promotional members. Additionally, the Division has received notice that the \$10,000 letter of credit has been cancelled effective June 13, 1990.

3. On February 27, 1990, I telephoned the Greenspring Fitness Center and spoke to a salesperson named Jerry. I told Jerry that I had received a copy of the promotion for Greenspring appended hereto and wanted to know about the membership. He advised me that Greenspring collected \$102 of the membership at the time I join. He said that I would be billed for the remainder at \$1 per month for 9 months or at \$3 per quarter for 3 quarters.

I do solemnly affirm under penalty of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Date: 5/9/90

Kathleen Cranford
Kathleen Cranford



Greenspring Fitness Center
at the Greenspring Station
828-5328



Happy New Year!

You have been issued this temporary **One (1) Year Nautilus, Fitness, Spa, and Club Membership "Gold Card"** to the Greenspring Fitness Center, one of Maryland's finest recreational facilities located in Lutherville. That's correct, a **One (1) Year Nautilus, Fitness, Spa, and Club Membership "Gold Card"** to Greenspring Fitness Center.

Your **"Gold Card"** Membership gives you unlimited use of the following facilities and benefits:

- Nautilus! (2 full circuits)
- Free Weights!
- State-of-the-Art Instruction!
- Aerobic Exercise Classes* by Marilyn Picks — Fitness Dimensions!
- Lifecycles!
- Whirlpool!
- Steam Room!
- Sauna! (separate for men & women)
- Spacious Locker Rooms & Shower Facilities!
- Affiliated With Over 2500 Clubs Nationwide!
- Snack Bar & Lounge!
- Open 7 Days A Week!
- Much, Much More!

*As an added bonus your membership includes a free Aerobics package.

This **"Gold Card"** Membership is valued at over **\$400.00** and is being offered to you for only the one time initiation fee of **\$99**, and **\$1.00** per month.

HOW DO I CLAIM MY MEMBERSHIP?

Bring this letter to the **GREENSPRING FITNESS CENTER** within the next 24 hours between 10:00 a.m. and 9:00 p.m. Monday through Friday, or between 10:00 a.m. and 4:00 p.m. on Saturday.

As an added bonus, this offer may also be extended to your friends and relatives. Simply bring your workout partners with you when you visit the club!

Current members of the GREENSPRING FITNESS CENTER are not eligible for this promotional membership. However, you may give your letter to a friend or relative. See reverse side for directions to GREENSPRING FITNESS CENTER.

EXIT 23A FALLS & VALLEY ROADS 828-5328

DUMBBELLS ASSOCIATES, INC.,
et al.
Respondent/Appellants,
v.
CONSUMER PROTECTION DIVISION
Proponent/Appellee.

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 90059044/
CL109816

APPEAL FROM THE
CONSUMER PROTECTION
DIVISION
OFFICE OF THE
ATTORNEY GENERAL
OF MARYLAND

FILED
MAY 15 1990
CIRCUIT COURT FOR
BALTIMORE CITY

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

I. Introduction

The Consumer Protection Division issued a Decision and Order finding that Dumbbells Associates, Inc., Scott Scala and Jordan Binetti ("Appellants") sold two-year, paid-in-full health club memberships to nearly 800 consumers without posting the bond required by Maryland's Health Club law. The Division's Order required Appellants, among other things, to post the required bond to protect the more than \$100,000 in advance payments collected and to cease and desist from collecting advance payments until the bond had been posted. Appellants have done neither and the consumers' substantial advance payments remain at risk. Accordingly, the Division filed a counterclaim in this action seeking enforcement of the Division's Order. Since there is no dispute as to any material fact, the Division is entitled

to summary judgment requiring Appellants to comply with the Division's Order.

II. Statement of Facts

Appellants sold two-year promotional memberships to almost 800 consumers between May and August of 1989 and charged an "initiation fee" of \$137.76 and "monthly dues" of a penny per month. Stipulations Regarding Facts and Documents, adopted in Decision and Order of the Consumer Protection Division, Case No. 89-020, October 26, 1989 ("Decision") at 2, ¶1. Although Appellants had not posted a bond with the Division, in many cases Appellants collected the entire \$138 membership cost up front and, even where Appellants collected \$137.76, they made no effort to collect the "monthly dues." Decision at 2-3, ¶¶ 4 and 6. The Decision concluded that the \$138 was, in fact, payment for future services and that the Appellants labelled the payment an "initiation fee" to evade the bonding requirement of the Health Club law. Decision at 4-8; Supplemental Order, January 31, 1990 ("Supplemental Order") at 2-3, 5. The Division ordered Appellants to post the security required under the Health Club law and to refund payments attributable to the period in which no bond was posted. Decision and Order at 10, ¶2 and 12, ¶4.

The Decision also found that Appellants' membership agreements failed to disclose under the heading "Notice of Consumer Rights" as required by § 14-12B-06 of the Health Club law, whether Appellants were registered with the Division (they

were not) and whether they had posted the required bond (they had not). Decision at 4. The Decision concluded that, by failing to make the required disclosures, consumers were denied information that the General Assembly deemed material to a consumer's decision to join the club. Decision at 8-9. Accordingly, Appellants were ordered to offer each consumer who was not given the required disclosures the opportunity to rescind the agreement and receive a full refund. Decision at 9 and at 10-11, ¶3.

The more than \$100,000 in advance payments made by the 800 consumers to the Appellants remain at risk. Appellants have not provided the Division with any security to protect the advance payments collected. Affidavit of Kathleen Cranford, appended hereto as Exhibit 1. Nor have Appellants refunded any of the advance payments collected or offered consumers the opportunity to rescind their agreements. Id. Not only have the Appellants failed to comply with the Division's Order, Appellants are placing even more consumers at risk by selling yet another promotional membership like the one found by the Division to require bonding. Id. Further, the Division has received notice that a \$10,000 letter of credit posted by Appellants to protect previous advance payments collected has been cancelled. Id.

The undisputed facts show that the Appellants have failed to comply with the Division's Order, and that the Division is entitled to summary judgment enforcing that Order.

III. Argument

A. Appellants have failed to comply with the Division's Order

Maryland's Health Club law, Md. Com. Law Code Ann., § 14-12B-01 through 14-12B-08, was enacted to protect consumers who made advance payments to health clubs and then suffered substantial losses when the club closed and no assets remained to pay refunds. The General Assembly addressed the problem by requiring any health club that collects more than three months' payment in advance from members to give the Division a bond to protect the advance payments should the club go out of business. Md. Com. Law Code Ann., § 14-12B-02(e). The General Assembly considered the collection of advance payments without posting a bond so serious that it authorized the Division to issue a cease and desist order without first conducting a hearing. Md. Com. Law Code Ann., § 14-12B-08(a).

When it determined that Appellants were selling two-year memberships and collecting the entire payment at the time the member joined without having the required bond, the Division issued a Cease and Desist Order pursuant to § 14-12B-08(a) dated August 29, 1989. A copy of the Division's Order is appended hereto as Exhibit 2. Following hearings on the Order requested by Appellants and conducted pursuant to Md. Com. Law Code Ann., § 13-403, the Division issued the October 26, 1989 Decision and Order and January 31, 1990 Supplemental Order now before this Court.

In reviewing the Division's Decision and Order and Supplemental Order, this Court should:

review the agency's decision in the light most favorable to the agency, since "decisions of agencies are prima facie correct," . . . [Citation omitted] . . ., and "carry with them the presumption of validity." [Citations omitted]. Furthermore, not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.

Bulluck v. Pelham Wood Apartments, 283 Md. 505, 390 A.2d 1119, 1124 (1978) The Division's Order should be upheld if supported by substantial evidence in the record as a whole, i.e., if a "reasoning mind reasonably could have reached the factual conclusion" reached by the Division. Id., 390 A.2d at 1123.

The Division's determination that payment collected by Appellants was payment for future services rather than an "initiation fee" and requires bonding under the Health Club law is supported by substantial evidence. The Appellants' promotion represented the fee for the two-year membership as "maintenance dues" and "membership dues." Decision at 6. Prior to the promotion, the Appellants only collected payment for services and no initiation fee but now considered 99.87% of the total payment collected an "initiation fee." Decision at 3, 5 and 7. The only time that Appellants made any effort to collect the "monthly dues" was if the consumer paid the full \$138.00 upon joining. Decision at 3, 8. The membership sold by Appellants did not provide the member with any renewal rights upon expiration of the

initial two years, so a member could be required to pay a second "initiation fee" to continue as a member. Decision at 3, 7.

Substantial evidence also supports the Division's determination that Appellants' membership agreements did not contain the disclosures required by § 14-12B-06 of the Health Club law. Appellants provided a copy of the form membership agreement used and acknowledged that the form agreement is the one regularly used at Greenspring Fitness Center. Decision at 4. That form membership agreement does not contain the heading "Notice of Consumer Rights" as required § 14-12B-06(b)(3); does not disclose the seller's health club registration number with the Consumer Protection Division as required by § 14-12B-06(b)(3)(i); and does not disclose whether the seller is bonded and the amount of the bond or, if not bonded, an explanation of the basis for the seller's exemption from the bonding requirement as required by § 14-12B-06(b)(3)(ii).

Additionally, it is the function of the Division to decide the appropriate remedy where it has determined that violations have occurred. Consumer Protection Division v. Consumer Publishing Co., 304 Md. 731, 501 A.2d 48, 56-57 (1985). Here, the Division determined that appropriate remedies for selling memberships in violation of the bonding requirement of the Health Club law are to (1) require Appellants to post the required bond and (2) refund to consumers payment representing that portion of the membership that should have been covered by a bond but were not. Appellants should not be allowed to retain those moneys collected in violation of the Health Club law and Consumer

Protection Act. Golt v. Phillips, 308 Md. 1, 12, 517 A.2d 328, 334. This principle clearly applies to advance payment of more than three months collected without posting the bond required by § 14-12B-02(e) of the Health Club law.

The Golt v. Phillips principle also applies to memberships sold to consumers without providing those consumers with the disclosures required by § 14-12B-06 of the Health Club law. The General Assembly determined that disclosing to the consumer whether a health club is registered with the Division and whether the health club is bonded is information material to a consumer's decision whether to join a health club. Further, the legislature determined that, rather than being buried in the fine print of the contract, these disclosures should be listed under a separate heading labelled "Notice of Consumer Rights." If a consumer was aware that the health club was not registered with the Division as required by the Health Club law, they might not join that club. If a consumer were aware that the club was not bonded, a consumer might think twice before making payment in full for a two-year membership to that club.

Since the required disclosures were not made to the members of Greenspring Fitness Center, the Division ordered Appellants to notify each of its members who did not receive the disclosures that the member may rescind his or her agreement and receive a full refund of all moneys paid, even if the services have been used. Even though the refunds may result in unjust enrichment to members who have received services from the facility, under Golt v. Phillips, allowing recovery to Appellants in quantum meruit

would defeat the General Assembly's intent in mandating that the material information be disclosed.

B. This Court should order Appellants to comply with the Division's Order

Summary judgment should be granted where, as here, the "pleadings, depositions, admissions and affidavits (if any) show that there is no dispute as to any material fact and that the movant is entitled to judgment as a matter of law[.]" Lynx, Inc. v. Ordnance Products, Inc., 273 Md. 1, 7, 327 A.2d 502 (1974).

The undisputed facts show that the Division issued a valid Order pursuant to Md. Com. Law Code Ann., § 13-403 and that the Appellants have failed to comply with that Order. Section 13-403(c)(2) provides that the Division may institute a civil action to obtain compliance with its Order, which it has done by filing its counterclaim in this action. This Court should grant summary judgment in favor of the Division on its counterclaim and order the Appellants to comply with the Division's Order and Supplemental Order. This Court should also dismiss the Appellants' appeal or, in the alternative, find against Appellants and in favor of the Division on each ground raised.

Additionally, each day that Appellants have failed to comply with the Division's Order should be considered a separate violation of the Consumer Protection Act and civil penalties should be assessed against each Appellant for each violation. Md. Com. Law Code Ann., § 13-410. This Court should also assess costs against the Appellants, including reasonable attorneys'

fees incurred by the Division in bringing this action to enforce the Division's Order. Md. Com. Law Code Ann., § 13-409.


IV. Conclusion

For the reasons set forth, the Consumer Protection Division asks that this Court issue summary judgment in its favor.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

By:



STEVEN M. SAKAMOTO-WENGEL
Assistant Attorney General
Consumer Protection Division
Sixteenth floor
200 St. Paul Place
Baltimore, Maryland 21202
Telephone: (301) 576-6350

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION
7 North Calvert Street
Third Floor
Baltimore, Maryland 21202

Proponent

v.

DUMBELLS ASSOCIATES, INC.
T/A GREENSPRING FITNESS CENTER
Falls and Valley Roads
Lutherville, Maryland 21093
SERVE ON: JORDAN BINETTI
Resident Agent

JORDAN BINETTI
8327 Analee Avenue
Baltimore, Maryland 21237

and

SCOTT SCALA
144 E. Orange Court
Baltimore, Maryland 21234

Respondents

* * * * *

IN THE
CONSUMER PROTECTION
DIVISION
OFFICE OF THE
ATTORNEY GENERAL
OF MARYLAND

Case No.: 89-020

CEASE AND DESIST ORDER

WHEREAS, the Consumer Protection Division ("Division") is responsible for administering the provisions of the Maryland Health Club Services law, Md. Com. Law Code Ann., §§ 14-12B-01 through 14-12B-08 ("Health Club law");

WHEREAS, § 14-12B-02(e) of the Health Club law requires persons who sell health club services agreements to register with the Division and post a bond, letter of credit or cash in an amount not less than the the aggregate value of outstanding liabilities to members, not to exceed \$200,000 per facility;

EXHIBIT # 2

WHEREAS, § 14-12B-02(e) requires that the amount of the bond, letter of credit or cash be based upon a report prepared by an independent certified public accountant documenting the seller's outstanding liabilities to members;

WHEREAS, Respondents have registered with the Division as a seller of health club services (a copy of Respondents' registration form is appended hereto as Exhibit 1);

WHEREAS, Respondents' registration application discloses that Greenspring Fitness Center is owned and operated by Dumbbells, Inc., and that Scott Scala and Jordan Binetti are the sole officers of Dumbbells;

WHEREAS, Respondents have posted a letter of credit with the Division in the amount of \$10,000 but have failed to file a report prepared by an independent certified public accountant documenting that the amount of the letter of credit is not less than Respondents' total liabilities to consumers in accordance with Md. Com. Law Code Ann., § 14-12B-02(e) (see Affidavit of Kathleen Cranford, appended hereto as Exhibit 2);

WHEREAS, Respondents filed a registration renewal form with the Consumer Protection Division on October 19, 1988 in which Respondents represented that they were exempt from the bonding requirement of Md. Com. Law Code Ann., § 14-12B-02(e) since Respondents do not collect more than three months' payment in advance from consumers;

WHEREAS, Respondents offered memberships to consumers in which Respondents collected payment of \$138.00 in advance from consumers for health club services to be provided over a period of two years (see Affidavit of Kathleen Cranford);

WHEREAS, the membership agreements used by Respondents for the promotional memberships fail to include the disclosures required by Md. Com. Law Code Ann., § 14-12B-06;

WHEREAS, the Division has determined that Respondents are selling health club services agreements in violation of § 14-12B-02(e) of the Health Club law, pursuant to § 14-12B-08(a) of the Health Club law, IT IS HEREBY ORDERED:

(1) Respondents shall immediately cease and desist from selling any health club services agreements until further order of the Consumer Protection Division, or until such time as Respondent delivers to the Division the security required by the Health Club law.

(2) Respondents shall, within seven days of the date of this Order, provide the Division with a report prepared by an independent certified public accountant documenting Respondents' outstanding liabilities to consumers in accordance with Md. Com. Law Code Ann., § 14-12B-02(e) and increase the amount of the bond, letter of credit or cash posted with the Division to an amount not less than Respondents' total outstanding liabilities. For purposes of the report, the payment of

\$138.00 collected pursuant to the promotional membership shall be deemed payment for services to be rendered over a period of two years from the date of the contract.

(3) In the alternative, if Respondents do not post an increased bond, letter of credit or cash, Respondents shall within seven days of the date of this Order, restore to all consumers all payments held that exceed payment for three months' services until Respondents' liabilities have been reduced to \$10,000 or less. The payment of \$138.00 collected pursuant to the promotional membership shall be deemed payment for services to be rendered over a period of two years from the date of the contract. Respondents shall provide the Division with a report prepared by an independent certified public accountant documenting all such payments in excess of three months and evidence that all payments in excess of three months' payment in advance have been refunded to consumers.

(4) Respondents shall, within seven days of the date of this Order, provide the Division with copies of all membership agreements sold pursuant to the promotion and documentation of all payments received from consumers pursuant to the promotion.

(5) Respondents shall, within 14 days of the date of this Order, pay to the Division the costs of this proceeding of \$500.

NOTICE OF RIGHT TO A HEARING

Under the provisions of Md. Com. Law Code Ann., § 14-12B-08(a), the Respondent has a right to request a hearing. A request for hearing must be directed in writing to William Leibovici, Chief, Consumer Protection Division, 7 North Calvert Street, Third Floor, Baltimore, Maryland 21202 and must be received no later than 30 days from the date of issuance of this Order. If no hearing is requested, this Order will become final upon expiration of the 30 day period. If a hearing is requested, the hearing will be scheduled to be conducted no later than seven (7) days after receipt of the hearing request by the Consumer Protection Division.

NOTE: THIS CEASE AND DESIST ORDER IS EFFECTIVE IMMEDIATELY. FILING OF A REQUEST FOR A HEARING DOES NOT NEGATE THIS ORDER.

SO ORDERED,

Dated:

August 27, 1989

William Leibovici
William Leibovici
Assistant Attorney General
and Chief



CHECK ONE

Consumer Protection Division
Office of the Attorney General
Munsey Building - Third Floor
7 North Calvert Street
Baltimore, Maryland 21202
(301) 576-6550

_____ New Registration

_____ Renewal Registration

HEALTH CLUB REGISTRATION FORM

1. List the name, address and telephone number of the corporation or unincorporated business selling Health Club Services:

Dumbbells Associates, Inc.
Falls Road and Valley Road
Lutherville, Maryland 21093
(301) 828-5328

Dumbbell Associates, Inc. operates Greenspring Fitness Center under an agreement with Lawrence Blumberg International, Inc., a Maryland corporation, Falls Road and Valley Road, Lutherville, Maryland 21093.

2. List the name(s), address(es), and telephone number(s) of each and every facility, owned and/or operated by the entity listed in paragraph 1, at which Health Club services are, or will be provided:

Greenspring Fitness Center
Falls Road and Valley Road
Lutherville, Maryland 21093

(301) 828-5328

attach additional sheets if needed

Note: If any of the facilities listed above is a separate business entity (e.g. a corporation, partnership or sole proprietorship distinct from the entity listed in paragraph 1) each such facility is required to file a separate registration form and must independently satisfy the Financial Accountability requirement.

3. In the case of each business entity listed in paragraph 1, specify:

a) Whether the entity listed is a corporation, partnership, sole proprietorship or other business entity: _____

Corporation

b) The state in which the corporation, partnership, sole proprietorship or other business entity was formed, and the date of formation: _____

Maryland, March 20, 1987

c) The date on which the corporation, partnership, sole proprietorship or other business entity commenced transacting business in Maryland: _____

March 20, 1987

d) In the case of a corporation incorporated in a State other than Maryland, the date on which the corporation first registered or qualified to do business in Maryland as required by Maryland Corporations and Associations Code, §7-101 et seq.

N/A

e) The business entity's IRS employer identification number: 52-1503502

4. In the case of a corporation, listed in paragraph 1, above, specify:

a) the name(s), address(es) and telephone number(s) of the resident agents of the corporation _____

Jordan Binetti

8327 Analee Avenue

Baltimore, Maryland 21237

(301) 866-3365

attach additional sheets if needed

- b) the name(s), residential address(es) and telephone number(s) of each and every member of the Board of Directors of the corporation _____

Dumbbells Associates, Inc. is a Maryland close corporation
and does not have a Board of Directors

attach additional sheets if needed

- c) the name(s), address(es) and telephone number(s) of each and every officer of the corporation _____

Scott Scala President/Secretary
144 E. Orange Ct.
Baltimore, Maryland 21234
256-7063

Jordon Binetti Vice President, Treasurer
8327 Analee
Baltimore, Maryland 21237
866-3365

attach additional sheets if needed

- d) the name(s), address(es) and telephone number(s) of each and every shareholder of the corporation holding greater than 10% of the outstanding share of any class of stock of the corporation. _____

Scott Scala
Jordon Binetti

existence). Also, specify whether such business entity or facility is currently transacting business in the State of Maryland or, if not, the date the business entity or facility ceased operations. _____

NO

8. Specify whether any of the business entities or individuals listed in paragraph 5 has, or ever had, an ownership interest in any business entity or facility which sells, or ever sold, health club services in the State of Maryland other than those entities or facilities listed in paragraph 2. If so, list the name, address and telephone number for each such facility (including the last known business address of business entities or facilities that are no longer in existence). Also, specify whether such business entity or facility is currently transacting business in the State of Maryland or, if not, the date the business entity or facility ceased operations.

N/A

9. Specify whether any of the persons listed in paragraphs 4(b) or 4(c), above, has, or ever had, an ownership interest in any business entity or facility which sells, or ever sold, health club services in the State of Maryland other than those entities or facilities listed in paragraph 2. If so, list the name, address and telephone number for each such facility (including the last known business address of business entities or facilities that are no longer in existence). Also, specify whether such business entity or facility is currently transacting business in the State of Maryland or, if not, the date the business entity or facility ceased operations.

N/A

10. Attach copies of any form Health Club Services Agreement, subscription agreement or contract used by each of the facilities listed in paragraph 2 in the regular course of transacting business with consumers in the State of Maryland. Please refer to the instructions to assure that the contract contains all required disclosures.
11. Enclose a check made payable to the State of Maryland, in the amount of \$250.00.

CERTIFICATION

I, Scott A. Scala,
Name
President/Secretary, hereby certify
Title

under pain and penalty of perjury, that the information contained in this Health Club Registration Form is true and correct. I further certify that I am authorized to submit this Registration Form on behalf of Dumbbell Associates, Inc.

I also understand that I am under a continuing obligation to notify the Consumer Protection Division of any change in the information provided in this form.

Dated: 5/18/87 *Scott A. Scala*
Signature Scott A. Scala

Witness my hand and Notarial seal this 18th day
of May, 1987.
[Signature]
Notary

My Commission expires: 7/1/90

To be completed by Consumer Protection Division:

Dated Received: May 21, 1987

Reviewed By : Steve Sakonch-Wengel

Financial Accountability
Compliance checked: _____

Approved: : _____

Registration Number: _____

MARYLAND NATIONAL BANK
International Operations

ISSUER'S COPY

1802
P.O. Box 987
Baltimore, Maryland 21203

Cable Address: "BALTOBANK"
Telex Number: 87-705
S.W.I.F.T. TID:
MNBBU533

Date June 13, 1968
of Issuing Bank CREDIT No. of Advising Bank

IRREVOCABLE DOCUMENTARY CREDIT	
Advising Bank	MNB Pr618200 Applicant
Beneficiary	J & S Associates, Inc. 3327 Anales Avenue Baltimore, Maryland 21237
State of Maryland Office of Attorney General Consumer Protection Division Munsey Bldg., 3rd Floor North Calvert Street Baltimore, Maryland 21202	Amount Ten thousand and 00/100 Dollars (\$10,000.00)
	Expiry Date June 13, 1969 at the counters of Maryland National Bank For Negotiation International Operations 225 N. Calvert Street, 19th Floor Baltimore, Maryland 21202

Dear Sir(s)
We hereby issue in your favor this documentary credit which is available by negotiation of your draft at sight drawn on Maryland National Bank, Baltimore, Maryland

bearing the clause: "Drawn under documentary credit No MNB Pr618200 of Maryland National Bank" accompanied by the following documents ~~to accompany documents specified~~

1. beneficiary's statement, purportedly signed by an authorized official and certifying either of the following:

"1. The amount of the drawing represents the claim or claims filed with the beneficiary against the Applicant by any consumer who suffers or sustains any loss or damage by reason of breach of contract, closing, or bankruptcy of the Applicant."

"2. The beneficiary has received notice that the Letter of Credit is due to expire and will not be renewed, and the Applicant has not replaced the Letter with other security acceptable to the beneficiary."

2. Original of this Letter of Credit

Special Conditions:

This Letter of Credit is deemed automatically extended without amendment for one year from the present or any future expiration date unless at least 45 days prior to expiration date the Consumer Protection Division, Office of the Attorney General, receives notice that Maryland National Bank elects not to consider this Letter of Credit renewed. Notice shall be by registered letter addressed to Consumer Protection Division, Office of the Attorney General, Munsey Building, 3rd Floor, 7 N. Calvert Street, Baltimore, Maryland 21202.

This Letter of Credit sets forth in full the terms of our undertaking to you. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred or related to herein and any such reference shall not be deemed to incorporate herein by reference any such document or instrument.

The original of this Letter of Credit must be presented to us with any drawings hereunder for our endorsement of any payments effected by us.

If cancellation of this Letter of Credit is required before the expiry date stated herein, the original of this Letter of Credit must be returned to us with the beneficiary's letter requesting cancellation.

We hereby engage with ~~drawings~~ that drafts drawn and negotiated in conformity with the terms of this credit will be duly honored on presentation ~~subject to the terms of this credit~~

The amount of each draft must be endorsed on the reverse of this credit by the negotiating bank

The advising bank is requested to notify the beneficiary WITHOUT adding their confirmation

Yours faithfully
MARYLAND NATIONAL BANK

NON - NEGOTIABLE

Authorized Signature

Advising Bank's Notification

Date, name and signature of the advising bank

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 1963 Edition, published by International Chamber of Commerce (Publication No. 325)

A



MARYLAND NATIONAL BANK
 International Operations
 P.O. Box 987
 Baltimore, Maryland 21203

Cable Address: "BALTOBANK"
 Telex Number: 87 - 705
 S.W.I.F.T. TID: MNBBUS33

AMENDMENT

DATE: June 13, 1989

MAIL

STATE OF MARYLAND
 OFFICE OF ATTORNEY GENERAL
 CONSUMER PROTECTION DIVISION
 MUNSEY BLDG 3RD FLOOR 7 N CALVERT
 BALTIMORE, MD 21202

All drafts drawn must be marked:
 ILQC-00618288
 Opener Reference No: 618288

Dear Sirs:

We are instructed by :

J AND S ASSOCIATES
 8327 ANALEE AVE
 BALTIMORE, MD 21237

to amend our credit 00618288 as issued in your favor.

This amendment is an integral part of the original credit.

Amended terms :

Expiration date: June 13, 1990

All other terms and conditions of the original credit instrument remain unchanged.

THIS NOTICE RESCINDS OUR NOTICE OF NON-RENEWAL DATED APRIL 10, 1989. THE ORIGINAL TERMS OF THIS CREDIT REMAIN IN EFFECT.

This letter is to accompany all draft(s) and documents. When presenting your draft(s) and documents or when communicating with us please make reference to our reference number shown above.

Yours very truly,

Kimberly H. Hendrix

 Authorized Official



Form HS-R5

Consumer Protection Division
Office of the Attorney General
Munsey Building - Third Floor
7 North Calvert Street
Baltimore, MD 21202-1961

Registration year
September 1, 1988

HEALTH CLUB REGISTRATION RENEWAL FORM

1. Registration information

a. Name and address of business offering health club (301)828-5328 services Dumbbells Associates, Inc., Falls Road & Valley Road Lutherville, Maryland 21093. Dumbbell Associates, Inc. operates Greenspring Fitness Center under an agreement with Lawrence Blumberg International, Inc., a Maryland corporation, Falls Road & Valley Road, Lutherville, Maryland 21093

b. Registration number _____

c. Name(s) and address(es) of facilities at which services offered _____

Greenspring Fitness Center
Falls Road & Valley Road
Lutherville, Maryland 21093
(301)828-5328

d. List any changes as to owners, officers, directors, or resident agents of the business since the most recent registration. NO CHANGE

2. Financial Accountability Requirement

a. Exempt facilities. Do you continue to claim an exemption from the financial accountability requirement of the Maryland Health Club Services law because no more than three months advance payment is collected from any consumer?
Yes X No _____

If you do not claim to be exempt, see instructions below for bonded facilities.

b. Bonded facilities. A report prepared by an independent Certified Public Account describing the current outstanding liabilities to members must be filed with this renewal form.

Also, the amount of the bond or letter of credit on file with the Consumer Protection Division must be adjusted so that it is sufficient to cover the liabilities described in the accountant's report.

Amount of bond, letter of credit or cash posted with the Consumer Protection Division \$10,000

Date amount of bond, letter of credit or cash last adjusted _____

3. Membership Information

a. Total number of members 708

b. Type of memberships sold. Please provide information as to each type of membership plan sold to consumers:

<u>Membership Plan</u> (Please check each type sold)	<u>Cost</u>	<u>No. of Members</u> <u>Per plan</u>
(1) <input type="checkbox"/> Payment Collected Per Session	_____	_____
(2) <input type="checkbox"/> Payment Collected Monthly:		
<input checked="" type="checkbox"/> Open ended	<u>35.00</u>	<u>99</u>
<input checked="" type="checkbox"/> Three month	<u>\$74.00</u>	_____
<input checked="" type="checkbox"/> One year	<u>199.00</u>	<u>191</u>
_____ Two year	_____	_____
_____ Three year	_____	_____
_____ Other term (please describe)	_____	_____
<u>6 months (collected) in 2 3 month payments</u>		
<u>\$115.00 1st payment to 3 mo \$55 2nd 3 mo \$57</u>		
(3) <input type="checkbox"/> Paid in Advance:		
<input checked="" type="checkbox"/> Three month	<u>\$179.00</u>	<u>163</u>
_____ One year	_____	_____
_____ Two year	_____	_____
_____ Three year	_____	_____
_____ Other term (please describe)	_____	_____
<u>One year membership</u>		
<u>quarterly payment 199 255</u>		

4. Renewal Fee A renewal registration check made payable to the State of Maryland in the amount of \$250.00 is enclosed with this form.

CERTIFICATION

I, Scott A. Scala, President,
Name

_____, hereby certify
Title

under pain and penalty of perjury, that the information contained
in this Health Club Registration Renewal Form is true and
correct. I further certify that I am authorized to submit this
Registration Renewal Form on behalf of _____.

I also understand that I am under a continuing obligation to
notify the Consumer Protection Division of any change in the
information provided in this form.

Dated: 10/10/88

Scott A. Scala
Signature

Witness my hand and Notarial seal this 10th day Oct
of Oct, 1988

Marks A.
Notary

My Commission
expires: 7/1/90

To be completed by Consumer Protection Division:

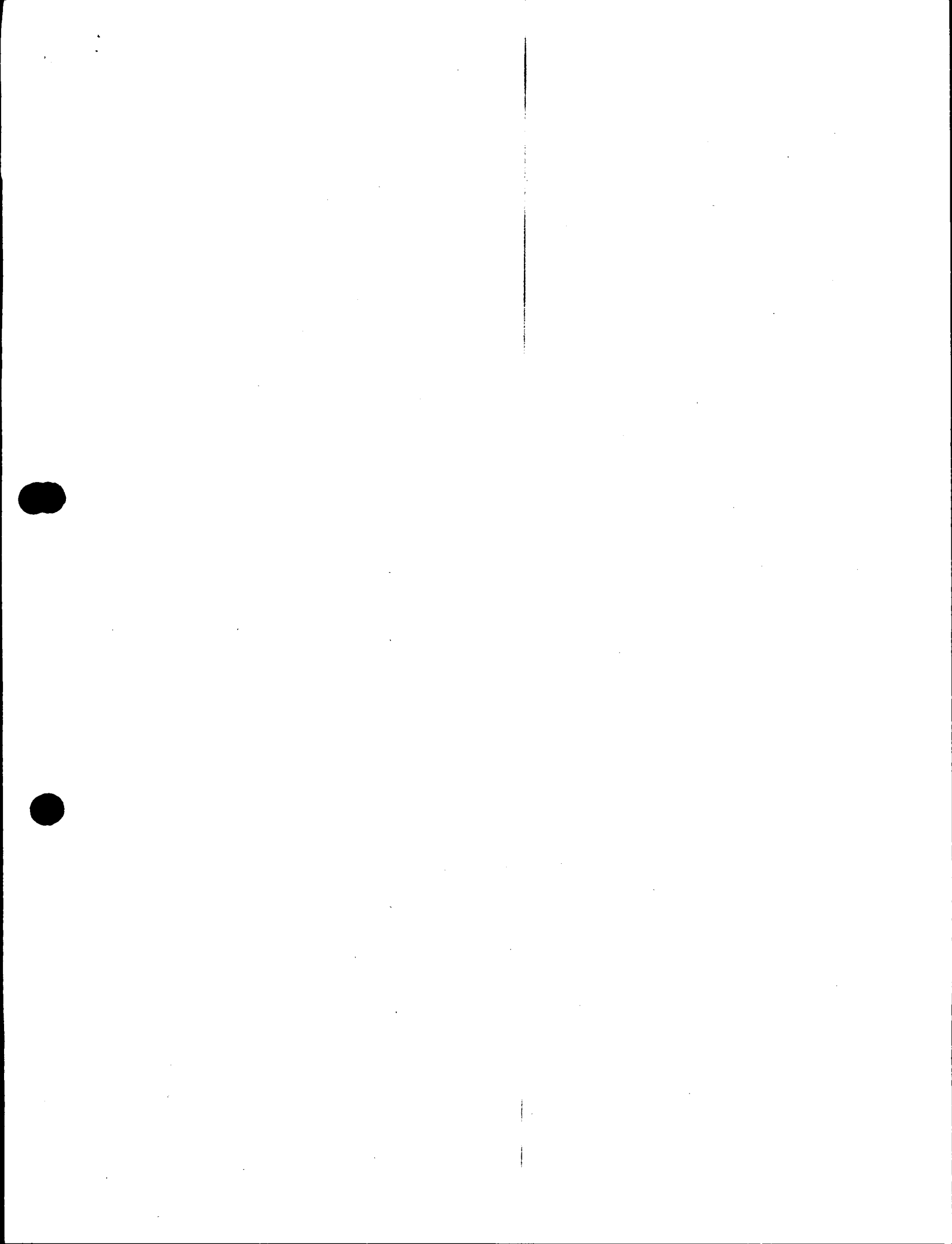
Dated Received: Oct. 19, 1988

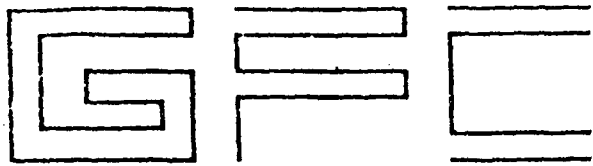
Reviewed By : Kathleen Crantford

Financial Accountability
Compliance checked: _____

Approved: _____

Registration Number: _____





Greenspring Fitness Center Celebrates 5 Year Anniversary

A limited number of special promotional memberships awarded.

By **GERALD MORREALE**

Greenspring Fitness Center
At the Greenspring Racquet Club

The Greenspring Fitness Center in the Greenspring Station is celebrating its 5 year anniversary this month.

More firming, shaping, and toning will take place as local residents of all ages help celebrate. "We have become a part of many peoples lives," said owner Jordy Binetti. "We want all our friends to join in the excitement."

Greenspring Fitness Center provides supervised Nautilus training, computerized car-

diovascular conditioning and relaxing sauna and steam areas to the northern Baltimore County area. State of the art with that personal touch is the specialty at this service oriented club.

As part of the gala event, a limited number of promotional memberships will be awarded. These memberships will be selected at random, and presented to a few lucky individuals.

May 20th will be the kick-off date of this month long event.

GREAT NEWS!

You've been selected by Universal Promotions in conjunction with the Greenspring Fitness Center as one of the recipients of a 2 Year Health Club Membership to Baltimore's premier Fitness Center. That's correct, as seen in the Baltimore Sun, Greenspring Fitness Center is celebrating its 5-year anniversary by awarding these promotional memberships.

Your membership gives you unlimited use of the following:

- Nautilus—2 complete lines of circuit training
- Olympic Free Weights
- Lifecycles—computerized aerobic training
- Individualized state-of-the-art instruction
- Whirlpool
- Sauna—separate for men and women
- Steam Room
- Individual Locker, Shower and Vanity areas
- Membership honored at over 2,500 clubs nationwide
- Pro-shop
- Snack bar and lounge
- Open 7 days a week
- Much, much more

This membership is valued at over \$600.⁰⁰ and is being given to you, subject to maintenance dues of **\$69 per year** on a two year basis.

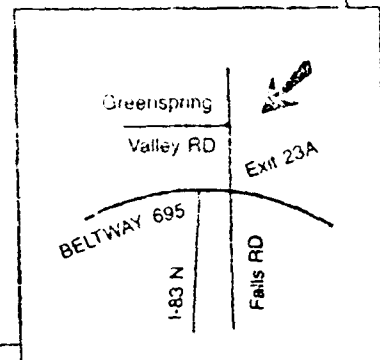
- TO CLAIM YOUR MEMBERSHIP -

Bring this notice to the Greenspring Fitness Center within 24 hours. Please claim only between 10 a.m. and 9 p.m. Monday thru Friday, 10 a.m.-4 p.m. Saturday. In the event this notice is not claimed another name will be selected.

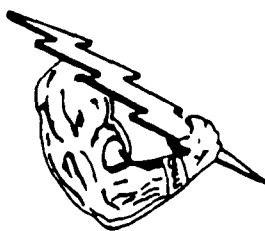
BONUS

This offer may also be used by a friend or relative. Simply give them this letter or bring them with you when you visit the club. Current members not eligible.

Falls & Valley Roads (At the Greenspring Racquet Club)
Lutherville, MD 21093 • (301) 828-5328







828-3328
John [Signature]

- Employee
- Adv
- Member

Source _____

New Membership No _____

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is made between

Skip Sauerwald ("Member") and GREENSPRING FITNESS CENTER ("FITNESS CENTER") located at Falls & Valley Roads

MEMBERSHIP DUES are \$ 138.00 for this 2 year membership, which shall be for a term of 137.76 Init Fee / id per month for 24 months commencing June 7 19 89 and ending on June 7 19 91

PAYMENT OF MEMBERSHIP DUES. Member agrees to pay membership dues upon execution of this agreement as follows:
CASH 138 CHARGE (TYPE) _____ CHECK _____

MEMBERSHIP PRIVILEGES. Membership in good standing shall entitle Member to instruction in and use of the complete line of Nautilus exercise equipment, together with the available lockers, showers, saunas and whirlpool, subject to the rules and regulations of Fitness Center. This membership is personal to Member and may not be assigned, transferred or cancelled except as otherwise provided herein or by applicable law. Failure to pay any membership dues as agreed shall result in the immediate suspension of membership privileges

MEMBERSHIP RULES. Member agrees to abide by all club rules and workout regulations of the Fitness Center in effect from time to time. All training equipment will be used only in the method and manner directed by Fitness Center personnel. Workout methods may change from time to time as Nautilus research indicates

HOURS. Fitness Center will be open for workouts during hours that are deemed reasonable by Fitness Center. These hours may change within reason at the discretion of Fitness Center. At its sole discretion, Fitness Center may be closed on any recognized state, federal or religious holiday and for reasonable vacation periods, provided that the term of this agreement shall include an extension of the term of this agreement for any time in excess of two consecutive days that the Fitness Center is closed

RELEASE. Member agrees that all exercises shall be undertaken at Member's sole risk and Fitness Center, its officers, agents or employees shall not be liable for, and are hereby released from any claim, demands, actions or courses of action whatsoever for injuries or damages to Member's person or property arising out of or in connection with the use by Member of the services and facilities of Fitness Center or the premises where the same are located

ENTIRE AGREEMENT. This written agreement represents the entire membership agreement, either direct or implied and there are no other binding agreements either written or oral

CANCELLATION. MEMBER MAY CANCEL THIS AGREEMENT AT ANY TIME WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF ANY EXECUTED COPY OF THIS AGREEMENT BY NOTIFYING FITNESS CENTER IN WRITING. ANY SUCH WRITTEN NOTIFICATION SHALL BE DELIVERED IN PERSON OR BY CERTIFIED OR REGISTERED MAIL AND IF MAILED SHALL BE POSTMARKED BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF AN EXECUTED COPY OF THIS AGREEMENT. IF MEMBER CANCELS THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS, FITNESS CENTER SHALL REFUND TO MEMBER ANY PAYMENTS MADE HEREUNDER

NO OTHER FORM OF CANCELLATION OF THIS AGREEMENT BY MEMBER IS POSSIBLE AND THE MEMBER IS BOUND TO PAY ALL MONIES AS AGREED EVEN IF THE MEMBER CHOOSES NOT TO USE THE FACILITIES OF FITNESS CENTER

IF A CONSUMER BECOMES DISABLED FOR AT LEAST 3 MONTHS DURING THE MEMBERSHIP TERMS AND THAT DISABILITY IS CONFIRMED IN WRITING BY A PHYSICIAN, THE CONSUMER HAS A RIGHT TO AN EXTENSION OF THE CONTRACT. ID. S14-12B-03(A) and (B)

IF THE FACILITY IS CLOSED FOR A MONTH OR MORE, THE CONSUMER ALSO IS ENTITLED TO HIS CHOICE OF EITHER AN EXTENSION OF THE CONTRACT OR PRORATED REFUND, EXCEPT IF THE CLOSING IS NOT THE FAULT OF THE FACILITY, IN WHICH CASE THE CHOICE OF REMEDY IS THE SELLERS. ID. S14-12B-04(A)

MEMBERSHIP INFORMATION

X Address 3 Durdwith Ct City Turkey Zip 21093

Married _____ Single Spouse's Name _____ Age _____

Home Phone 561-0205 Business Phone 578-7711

Employer Wyandale Corp Type of Business Hotel - Restaurant

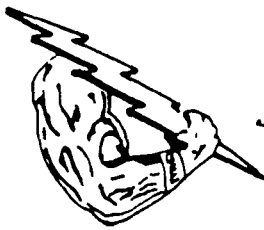
Present Position Franchise Director Group _____

Signature of Purchaser [Signature] Date 6-7-89

Signature of Parent or Guardian (if under 18 years of age)

Signature of Agent for Greenspring Fitness Center

0



Transfer From David Schwartz

- Employee
- Adv
- Member

Source _____

New Membership No _____

MEMBERSHIP AGREEMENT

6/6/89

THIS MEMBERSHIP AGREEMENT is made between

Barbara Schwartz ("Member") and GREENSPRING FITNESS CENTER

("FITNESS CENTER") located at Falls & Valley Roads

MEMBERSHIP DUES are \$ 139.00 for this 2 year

membership, which shall be for a term of 137.76 Init Fee / 14 per month for 24 months commencing 6/6 19 89 and ending on 6/6 19 91

PAYMENT OF MEMBERSHIP DUES. Member agrees to pay membership dues upon execution of this agreement as follows:

CASH 40 down 98 due 6/9/89 CHARGE (TYPE) _____ CHECK _____

MEMBERSHIP PRIVILEGES. Membership in good standing shall entitle Member to instruction in and use of the complete line of Nautilus exercise equipment, together with the available lockers, showers, saunas and whirlpool, subject to the rules and regulations of Fitness Center. This membership is personal to Member and may not be assigned, transferred or cancelled except as otherwise provided herein or by applicable law. Failure to pay any membership dues as agreed shall result in the immediate suspension of membership privileges.

MEMBERSHIP RULES. Member agrees to abide by all club rules and workout regulations of the Fitness Center in effect from time to time. All training equipment will be used only in the method and manner directed by Fitness Center personnel. Workout methods may change from time to time as Nautilus research indicates.

HOURS. Fitness Center will be open for workouts during hours that are deemed reasonable by Fitness Center. These hours may change within reason at the discretion of Fitness Center. At its sole discretion, Fitness Center may be closed on any recognized state, federal or religious holiday and for reasonable vacation periods, provided that the term of this agreement shall include an extension of the term of this agreement for any time in excess of two consecutive days that the Fitness Center is closed.

RELEASE. Member agrees that all exercises shall be undertaken at Member's sole risk and Fitness Center, its officers, agents or employees shall not be liable for, and are hereby released from any claim, demands, actions or courses of action whatsoever for injuries or damages to Member's person or property arising out of or in connection with the use by Member of the services and facilities of Fitness Center or the premises where the same are located.

ENTIRE AGREEMENT. This written agreement represents the entire membership agreement, either direct or implied and there are no other binding agreements either written or oral.

CANCELLATION. MEMBER MAY CANCEL THIS AGREEMENT AT ANY TIME WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF ANY EXECUTED COPY OF THIS AGREEMENT BY NOTIFYING FITNESS CENTER IN WRITING. ANY SUCH WRITTEN NOTIFICATION SHALL BE DELIVERED IN PERSON OR BY CERTIFIED OR REGISTERED MAIL AND IF MAILED SHALL BE POSTMARKED BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF AN EXECUTED COPY OF THIS AGREEMENT. IF MEMBER CANCELS THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS, FITNESS CENTER SHALL REFUND TO MEMBER ANY PAYMENTS MADE HEREUNDER.

NO OTHER FORM OF CANCELLATION OF THIS AGREEMENT BY MEMBER IS POSSIBLE AND THE MEMBER IS BOUND TO PAY ALL MONIES AS AGREED EVEN IF THE MEMBER CHOOSES NOT TO USE THE FACILITIES OF FITNESS CENTER.

IF A CONSUMER BECOMES DISABLED FOR AT LEAST 3 MONTHS DURING THE MEMBERSHIP TERMS AND THAT DISABILITY IS CONFIRMED IN WRITING BY A PHYSICIAN, THE CONSUMER HAS A RIGHT TO AN EXTENSION OF THE CONTRACT. ID. S14-12B-03(A) and (B).

IF THE FACILITY IS CLOSED FOR A MONTH OR MORE, THE CONSUMER ALSO IS ENTITLED TO HIS CHOICE OF EITHER AN EXTENSION OF THE CONTRACT OR PRORATED REFUND, EXCEPT IF THE CLOSING IS NOT THE FAULT OF THE FACILITY, IN WHICH CASE THE CHOICE OF REMEDY IS THE SELLER'S. ID., S14-12B-04(A).

MEMBERSHIP INFORMATION

Address Same as City _____ Zip _____

Married _____ Single _____ Spouse's Name David Schwartz Age _____

Home Phone _____ Business Phone _____

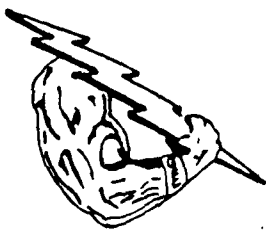
Employer _____ Type of Business _____

Present Position _____ Group _____

Signature of Purchaser [Signature] Date 6/6/89

Signature of Parent or Guardian (if under 18 years of age)

Signature of Agent for Greenspring Fitness Center [Signature]



6/12/89

- Employee
- Adv
- Member

Source

New Membership No

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is made between

Kenneth Moore ("Member") and GREENSPRING FITNESS CENTER

("FITNESS CENTER") located at Falls & Vale, Roads

MEMBERSHIP DUES are \$ 138.00 for this 2 year membership membership, which shall be for a term of 137.76 initiation fee 1\$ per month for 24 mos. commencing 6/12/89 19 89 and ending on 6/12/91 19 91

PAYMENT OF MEMBERSHIP DUES. Member agrees to pay membership dues upon execution of this agreement as follows:

CASH _____ CHARGE (TYPE) 69 via 69 Post dated 6/28/89 CHECK _____

MEMBERSHIP PRIVILEGES. Membership in good standing shall entitle Member to instruction in and use of the complete line of Nautilus exercise equipment, together with the available lockers, showers, saunas and whirlpool, subject to the rules and regulations of Fitness Center. This membership is personal to Member and may not be assigned, transferred or cancelled except as otherwise provided herein or by applicable law. Failure to pay any membership dues as agreed will result in the immediate suspension of membership privileges.

MEMBERSHIP RULES. Member agrees to abide by all club rules and workout regulations of the Fitness Center in effect from time to time. All training equipment will be used only in the method and manner directed by Fitness Center personnel. Workout methods may change from time to time as Nautilus research indicates.

HOURS. Fitness Center will be open for workouts during hours that are deemed reasonable by Fitness Center. These hours may change within reason at the discretion of Fitness Center. At its sole discretion, Fitness Center may be closed on any recognized state, federal or religious holiday and for reasonable vacation periods, provided that the term of this agreement shall include an extension of the term of this agreement for any time in excess of two consecutive days that the Fitness Center is closed.

RELEASE. Member agrees that all exercises shall be undertaken at Member's sole risk and Fitness Center, its officers, agents or employees shall not be liable for, and are hereby released from any claim, demands, actions or courses of action whatsoever for injuries or damages to Member's person or property arising out of or in connection with the use by Member of the services and facilities of Fitness Center or the premises where the same are located.

ENTIRE AGREEMENT. This written agreement represents the entire membership agreement, either direct or implied and there are no other binding agreements either written or oral.

CANCELLATION. MEMBER MAY CANCEL THIS AGREEMENT AT ANY TIME WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF ANY EXECUTED COPY OF THIS AGREEMENT BY NOTIFYING FITNESS CENTER IN WRITING. ANY SUCH WRITTEN NOTIFICATION SHALL BE DELIVERED IN PERSON OR BY CERTIFIED OR REGISTERED MAIL AND IF MAILED SHALL BE POSTMARKED BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF AN EXECUTED COPY OF THIS AGREEMENT. IF MEMBER CANCELS THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS, FITNESS CENTER SHALL REFUND TO MEMBER ANY PAYMENTS MADE HEREUNDER.

NO OTHER FORM OF CANCELLATION OF THIS AGREEMENT BY MEMBER IS POSSIBLE AND THE MEMBER IS BOUND TO PAY ALL MONIES AS AGREED EVEN IF THE MEMBER CHOCSES NOT TO USE THE FACILITIES OF FITNESS CENTER.

IF A CONSUMER BECOMES DISABLED FOR AT LEAST 3 MONTHS DURING THE MEMBERSHIP TERMS AND THAT DISABILITY IS CONFIRMED IN WRITING BY A PHYSICIAN, THE CONSUMER HAS A RIGHT TO AN EXTENSION OF THE CONTRACT. ID. S14-12B-03(A) and (B).

IF THE FACILITY IS CLOSED FOR A MONTH OR MORE, THE CONSUMER ALSO IS ENTITLED TO HIS CHOICE OF EITHER AN EXTENSION OF THE CONTRACT OR PRORATED REFUND, EXCEPT IF THE CLOSING IS NOT THE FAULT OF THE FACILITY, IN WHICH CASE THE CHOICE OF REMEDY IS THE SELLERS ID., S14-12B-04(A).

MEMBERSHIP INFORMATION

Address 17433 Big Falls Rd Box 21 City Monkton Zip 21111

Married Single _____ Spouse's Name _____ Age _____

Home Phone 448-9380 Business Phone 333-6694

Employer State of Maryland Type of Business Dept. Human Resources

Present Position Management Specialist II Group _____

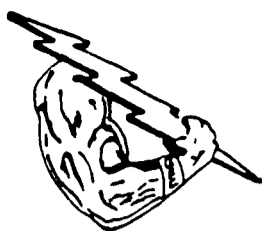
Signature of Purchaser Kenneth Moore Date 6-12-89

Signature of Parent or Guardian (if under 18 years of age)

Signature of Agent for Greenspring Fitness Center

- Employee
- Adv
- Member

Source _____



\$64 PAID
 \$69 due
 6-17-89

New Membership No _____

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is made between:

Phil Shank ("Member") and GREENSPRING FITNESS CENTER

("FITNESS CENTER") located at Falls & Valley Roads

MEMBERSHIP DUES are \$ 138.00 for this 2 year membership membership which shall be for a term of 137.76 initiation fee 1 \$ per month for 27 mos commencing June 3 1989 and ending on June 3 1991

PAYMENT OF MEMBERSHIP DUES. Member agrees to pay membership dues upon execution of this agreement as follows:

CASH _____ CHARGE (TYPE) CHECK

MEMBERSHIP PRIVILEGES. Membership in good standing shall entitle Member to instruction in and use of the complete line of Nautilus exercise equipment, together with the available lockers, showers, saunas and whirlpool, subject to the rules and regulations of Fitness Center. This membership is personal to Member and may not be assigned, transferred or cancelled except as otherwise provided herein or by applicable law. Failure to pay any membership dues as agreed shall result in the immediate suspension of membership privileges.

MEMBERSHIP RULES. Member agrees to abide by all club rules and workout regulations of the Fitness Center in effect from time to time. All training equipment will be used only in the method and manner directed by Fitness Center personnel. Workout methods may change from time to time as Nautilus research indicates.

HOURS. Fitness Center will be open for workouts during hours that are deemed reasonable by Fitness Center. These hours may change within reason at the discretion of Fitness Center. At its sole discretion, Fitness Center may be closed on any recognized state, federal or religious holiday and for reasonable vacation periods, provided that the term of this agreement shall include an extension of the term of this agreement for any time in excess of two consecutive days that the Fitness Center is closed.

RELEASE. Member agrees that all exercises shall be undertaken at Member's sole risk and Fitness Center, its officers, agents or employees shall not be liable for, and are hereby released from any claim, demands, actions or courses of action whatsoever for injuries or damages to Member's person or property arising out of or in connection with the use by Member of the services and facilities of Fitness Center or the premises where the same are located.

ENTIRE AGREEMENT. This written agreement represents the entire membership agreement, either direct or implied and there are no other binding agreements either written or oral.

CANCELLATION. MEMBER MAY CANCEL THIS AGREEMENT AT ANY TIME WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF ANY EXECUTED COPY OF THIS AGREEMENT BY NOTIFYING FITNESS CENTER IN WRITING. ANY SUCH WRITTEN NOTIFICATION SHALL BE DELIVERED IN PERSON OR BY CERTIFIED OR REGISTERED MAIL AND IF MAILED SHALL BE POSTMARKED BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF AN EXECUTED COPY OF THIS AGREEMENT. IF MEMBER CANCELS THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS, FITNESS CENTER SHALL REFUND TO MEMBER ANY PAYMENTS MADE HEREUNDER.

NO OTHER FORM OF CANCELLATION OF THIS AGREEMENT BY MEMBER IS POSSIBLE AND THE MEMBER IS BOUND TO PAY ALL MONIES AS AGREED EVEN IF THE MEMBER CHOOSES NOT TO USE THE FACILITIES OF FITNESS CENTER.

IF A CONSUMER BECOMES DISABLED FOR AT LEAST 3 MONTHS DURING THE MEMBERSHIP TERMS AND THAT DISABILITY IS CONFIRMED IN WRITING BY A PHYSICIAN, THE CONSUMER HAS A RIGHT TO AN EXTENSION OF THE CONTRACT. ID S14-12B-03(A) and (B).

IF THE FACILITY IS CLOSED FOR A MONTH OR MORE, THE CONSUMER ALSO IS ENTITLED TO HIS CHOICE OF EITHER AN EXTENSION OF THE CONTRACT OR PRORATED REFUND, EXCEPT IF THE CLOSING IS NOT THE FAULT OF THE FACILITY, IN WHICH CASE THE CHOICE OF REMEDY IS THE SELLERS. ID. S14-12B-04(A).

MEMBERSHIP INFORMATION

Address 20105 YORK RD City PARKTON Zip 21120

Married Single _____ Spouse's Name SHARON M SHANK Age 32

Home Phone 301-357-5015 Business Phone 301-338-4918

Employer DIGITAL EQU Type of Business COMPUTER S

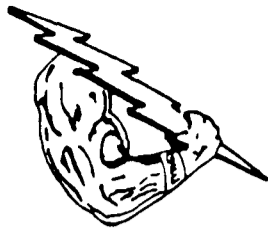
Present Position FIELD SERVICE ENGR Group _____

Signature of Purchaser Phil C. Shank Date 6-3-89

Signature of Parent or Guardian
(if under 18 years of age)

Signature of Agent for
Greenspring Fitness Center

- Employee
- Adv
- Member



Source _____

New Membership No _____

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is made between:

Ira D. Papel ("Member") and GREENSPRING FITNESS CENTER

("FITNESS CENTER") located at Fair & Valley Roads

MEMBERSHIP DUES are \$ 138.00 for this 2 year membership membership, which shall be for a term of 137.76 initiation fee 18 per month for 24 months commencing May 31 1989 and ending on May 31 1991

PAYMENT OF MEMBERSHIP DUES. Member agrees to pay membership dues upon execution of this agreement as follows:

CASH _____ CHARGE (TYPE) USA P.C.I. CHECK _____

MEMBERSHIP PRIVILEGES. Membership in good standing shall entitle Member to instruction in and use of the complete line of Nautilus exercise equipment, together with the available lockers, showers, saunas and whirlpool, subject to the rules and regulations of Fitness Center. This membership is personal to Member and may not be assigned, transferred or cancelled except as otherwise provided herein or by applicable law. Failure to pay any membership dues as agreed shall result in the immediate suspension of membership privileges.

MEMBERSHIP RULES. Member agrees to abide by all club rules and workout regulations of the Fitness Center in effect from time to time. All training equipment will be used only in the method and manner directed by Fitness Center personnel. Workout methods may change from time to time as Nautilus research indicates.

HOURS. Fitness Center will be open for workouts during hours that are deemed reasonable by Fitness Center. These hours may change within reason at the discretion of Fitness Center. At its sole discretion, Fitness Center may be closed on any recognized state, federal or religious holiday and for reasonable vacation periods, provided that the term of this agreement shall include an extension of the term of this agreement for any time in excess of two consecutive days that the Fitness Center is closed.

RELEASE. Member agrees that all exercises shall be undertaken at Member's sole risk and Fitness Center, its officers, agents or employees shall not be liable for, and are hereby released from any claim, demands, actions or courses of action whatsoever for injuries or damages to Member's person or property arising out of or in connection with the use by Member of the services and facilities of Fitness Center or the premises where the same are located.

ENTIRE AGREEMENT. This written agreement represents the entire membership agreement, either direct or implied and there are no other binding agreements either written or oral.

CANCELLATION. MEMBER MAY CANCEL THIS AGREEMENT AT ANY TIME WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF ANY EXECUTED COPY OF THIS AGREEMENT BY NOTIFYING FITNESS CENTER IN WRITING. ANY SUCH WRITTEN NOTIFICATION SHALL BE DELIVERED IN PERSON OR BY CERTIFIED OR REGISTERED MAIL AND IF MAILED SHALL BE POSTMARKED BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF AN EXECUTED COPY OF THIS AGREEMENT. IF MEMBER CANCELS THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS, FITNESS CENTER SHALL REFUND TO MEMBER ANY PAYMENTS MADE HEREUNDER.

NO OTHER FORM OF CANCELLATION OF THIS AGREEMENT BY MEMBER IS POSSIBLE AND THE MEMBER IS BOUND TO PAY ALL MONIES AS AGREED EVEN IF THE MEMBER CHOOSES NOT TO USE THE FACILITIES OF FITNESS CENTER.

IF A CONSUMER BECOMES DISABLED FOR AT LEAST 3 MONTHS DURING THE MEMBERSHIP TERMS AND THAT DISABILITY IS CONFIRMED IN WRITING BY A PHYSICIAN, THE CONSUMER HAS A RIGHT TO AN EXTENSION OF THE CONTRACT. ID. S14-12B-03(A) and (B).

IF THE FACILITY IS CLOSED FOR A MONTH OR MORE, THE CONSUMER ALSO IS ENTITLED TO HIS CHOICE OF EITHER AN EXTENSION OF THE CONTRACT OR PRORATED REFUND, EXCEPT IF THE CLOSING IS NOT THE FAULT OF THE FACILITY, IN WHICH CASE THE CHOICE OF REMEDY IS THE SELLERS. ID. S14-12B-04(A).

MEMBERSHIP INFORMATION

x Address Ira D. Papel 48 Tudor Court City Lutherville Zip 21093

Married Single _____ Spouse's Name Leslie Age 34

Home Phone 561-0487 Business Phone 578-5175

Employer _____ Type of Business physician

Present Position _____ Group _____

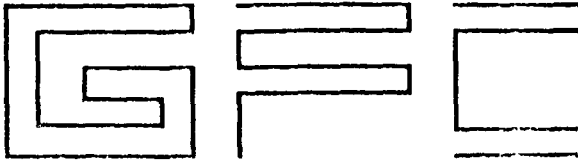
Signature of Purchaser Ira Papel Date 5/31/89

Signature of Parent or Guardian
(if under 18 years of age)

Signature of Agent for
Greenspring Fitness Center







Greenspring Fitness Center
At the Greenspring Racquet Club

Greenspring Fitness Center Celebrates 10 Year Anniversary

A limited number of special promotional memberships available

By GERALD MORREALE

The Greenspring Fitness Center in the Greenspring Station is celebrating its 10 year anniversary this month.

More firming, shaping, and toning will take place as local residents of all ages help celebrate. "We have become a part of many peoples lives," said owner Jordy Binetti. "We want all our friends to join in the excitement."

Greenspring Fitness Center provides supervised Nautilus training, computerized car-

diovascular conditioning and relaxing sauna and steam areas to the northern Baltimore County area. State of the art with that personal touch is the specialty at this service oriented club.

As part of the gala event, a limited number of promotional memberships will be awarded. These memberships will be selected at random, and presented to a few lucky individuals.

August 14th will be the kick-off date of this month long event.

GREAT NEWS!

You've been selected by Universal Promotions in conjunction with the Greenspring Fitness Center as one of the recipients of a **2 Year Health Club Membership** to Baltimore's premier Fitness Center. That's correct, as seen in the Baltimore Sun, Greenspring Fitness Center is celebrating its 10 year anniversary by honoring these promotional memberships.

Your membership gives you unlimited use of the following:

- Nautilus—2 complete lines of circuit training
- Olympic Free Weights
- Lifecycles—computerized aerobic training
- Individualized state-of-the-art instruction
- Whirlpool
- Sauna—separate for men and women
- Steam Room
- Individual Locker, Shower and Vanity areas
- Membership honored at over 2,500 clubs nationwide
- Pro-shop
- Snack bar and lounge
- Open 7 days a week
- Much, much more

This membership is valued at over \$600.⁰⁰ and is being offered to you, subject to maintenance dues of \$69 per year on a two year basis.

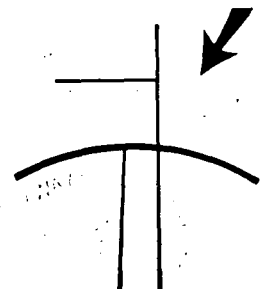
—TO CLAIM YOUR MEMBERSHIP—

Bring this notice to the Greenspring Fitness Center, 11111 Falls & Valley Roads, Baltimore, MD 21093, between 10 a.m. and 9 p.m. Monday thru Friday, 10 a.m. - 4 p.m. Saturday. If this notice is not claimed another name will be selected.

BONUS

This offer may also be used by a friend or relative. Simply give them this letter or bring them with you when you visit the club. Current members not eligible.

Falls & Valley Roads (At the Greenspring Racquet Club)
Lutherville, MD 21093 • (301) 828-5328



DUMBBELLS ASSOCIATES, INC.,
et al.
Respondent/Appellants,
v.
CONSUMER PROTECTION DIVISION
Proponent/Appellee.

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No. 90059044/
* CL109816

*
* APPEAL FROM THE
* CONSUMER PROTECTION
* DIVISION
* OFFICE OF THE
* ATTORNEY GENERAL
* OF MARYLAND

* * * * *
ORDER GRANTING CONSUMER PROTECTION DIVISION'S
MOTION FOR SUMMARY JUDGMENT

Having considered the Consumer Protection Division's motion for summary judgment and memorandum in support thereof, and finding that there is no dispute as to any material fact and that the Division is entitled to judgment as a matter of law on its counterclaim, it is this _____ day of _____, 1990, ORDERED that judgment be, and hereby is, GRANTED in favor of the Consumer Protection Division.

IT IS FURTHER ORDERED that:

1. the Appeal filed by Dumbbells Associates, Inc., Scott Scala and Jordan Binetti is dismissed;
2. the Decision and Order of the Consumer Protection Division dated October 26, 1989 as modified by the Supplemental Order dated January 31, 1990 is affirmed;
3. Dumbbells Associates, Inc., Scott Scala and Jordan Binetti comply with each and every provision of the Decision and

Order of the Consumer Protection Division dated October 26, 1989 as modified by the Supplemental Order dated January 31, 1990, except that the dates for compliance with paragraphs 3 and 4 of the Decision and Order and Supplemental Order shall begin running from the date of this Order;

4. each day that Appellants have failed to comply with the Division's Order constitutes a violation of the Consumer Protection Act, and that Dumbbells Associates, Inc., Scott Scala and Jordan Binetti shall each pay to the State of Maryland civil penalties of \$_____ pursuant to § 13-410 of the Consumer Protection Act;

5. Dumbbells Associates, Inc., Scott Scala and Jordan Binetti shall be jointly and severally liable for payment of the Division's arising from this appeal and counterclaim, including reasonable attorneys' fees. The Division shall submit a listing of all such costs to this Court within 15 days with notice to Appellants.

JUDGE

DUMB BELLS ASSOCIATES, INC.,
et al.
Respondent/Appellants,
v.
CONSUMER PROTECTION DIVISION
Proponent/Appellee.

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No. 90059044/
* CL109816
*
*
* APPEAL FROM THE
* CONSUMER PROTECTION
* DIVISION
* OFFICE OF THE
* ATTORNEY GENERAL
* OF MARYLAND

* * * * *
CONSUMER PROTECTION DIVISION'S
MOTION FOR INTERLOCUTORY INJUNCTION
AND REQUEST FOR HEARING

Pursuant to Md. Com. Law Code Ann., § 13-403(c)(2) and pursuant to Md. Rules BB70, et seq., Appellee/Counterclaimant Consumer Protection Division ("Division") moves that this Court enter an interlocutory order providing:

1. that Appellants Dumbbells Associates, Inc., Scott Scala and Jordan Binetti ("Appellants") be enjoined and restrained from selling health club services agreements to consumers until such time as they have complied with the Consumer Protection Division's Decision and Order issued October 26, 1989 and Supplemental Order issued January 31, 1990 and the requirements of the Maryland Health Club Services law by posting a bond, letter of credit or cash deposit with the Division in accordance with Md. Com. Law Code Ann., § 14-12B-02(e); and

2. that Appellants be ordered either:

(a) to post immediately a bond, letter of credit or cash deposit with the Division in an amount not less than their total outstanding liabilities to members as required by paragraph 2 of the Division's Order and by Md. Com. Law Code Ann., § 14-12B-02(e);

or, in the alternative, (b) to refund immediately to each member who purchased an unbonded promotional membership or other unbonded membership in which more than three months' advance payment was collected, all payments that exceed payment for more than three months' services;

3. that, if Appellants demonstrate to this Court that they lack the financial resources to post security or refund advance payments held, the Consumer Protection Division be appointed receiver of Dumbbells Associates, Inc. t/a the Greenspring Fitness Center pursuant to Md. Com. Law Code Ann., § 13-406(c)(3). Appellants shall be enjoined from making expenditures outside the ordinary course of business. The Appellants shall be allowed to continue operating the Greenspring Fitness Center subject to review by the Division and Appellants shall be ordered to provide to the Division:

(a) documentation of all assets of Dumbbells Associates, Inc., Scott Scala, and Jordan Binetti, whether held

individually or jointly with another, including but not limited to: bank accounts; real and personal property; stocks; bonds; certificates of deposit; accounts receivable; and all sums received or held for the account of Greenspring Fitness Center by any business entity or person other than Appellants;

(b) an accounting of all receipts and expenditures in relation to Greenspring Fitness Center since January 1, 1989;

(c) copies of 1989 tax returns filed by each of the Appellants;

(d) each and every week, a report of all moneys collected by Appellants, including the source of the funds and, if from the sale of health club services, copies of the membership agreements; copies of checks, credit card slips, or cash receipts; and copies of deposit tickets.

(e) each and every week, an accounting of all moneys expended by Appellants including a description of the transaction, the date of the transaction, the amount of the payment and a copy of the check, or, if paid in cash, copies of receipts.

(f) upon receipt, copies of all bank statements.

(g) upon receipt, copies of all statements received from factoring, billing, finance or other companies to whom members of Greenspring Fitness Center make payment.

(h) upon request, all books, records or other documentation of the information reported to the Division.

The Division further requests that the requirement for filing an injunction bond be waived pursuant to Md. Rule BB75(b)(2).

As grounds for this motion, the Division states that (1) the Division is likely to succeed on the merits of its counterclaim; (2) the Appellants' failure to comply with the Division's Order and Supplemental Order places more than 800 consumers at risk of losing substantial advance payments made to the Appellants; (3) the public interest will be served by requiring Appellants to comply with the Division's Order and Supplemental Order; and (4) the "balance of convenience" favors requiring Appellants to comply with the Order pending the outcome of this appeal. The Division further relies upon the additional grounds set forth in the accompanying memorandum.

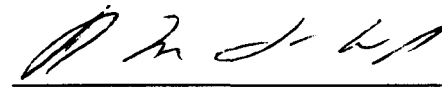
REQUEST FOR HEARING

The Consumer Protection Division requests that a hearing be scheduled on its motion for interlocutory injunction.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

By:

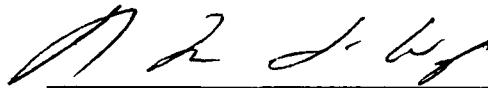


STEVEN M. SAKAMOTO-WENGEL
Assistant Attorney General
Consumer Protection Division
Sixteenth floor
200 St. Paul Place
Baltimore, Maryland 21202
Telephone: (301) 576-6350

Dated: May 15, 1990

CERTIFICATE OF MAILING

I hereby certify that, on this 15th day of May, 1990, a copy of the Consumer Protection Division's Motion for Interlocutory Injunction, Memorandum in Support thereof and Proposed Order was mailed, first class postage prepaid, to Appellants' attorney, Melvin J. Kodenski, Kodenski and Canaras, 19 E. Fayette Street, Suite 301, Baltimore, Maryland 21202.



Steven M. Sakamoto-Wengel

DUMBBELLS ASSOCIATES, INC.,
et al.
Respondent/Appellants,
v.

CONSUMER PROTECTION DIVISION
Proposed Appellee.

FILED
MAY 15 1990
CIRCUIT COURT FOR
BALTIMORE CITY

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 90059044/
CL109816

APPEAL FROM THE
CONSUMER PROTECTION
DIVISION
OFFICE OF THE
ATTORNEY GENERAL
OF MARYLAND

* * * * *

MEMORANDUM IN SUPPORT OF
MOTION FOR INTERLOCUTORY INJUNCTION

I. Introduction

The Consumer Protection Division issued a Decision and Order finding that Dumbbells Associates, Inc., Scott Scala and Jordan Binetti ("Appellants") sold two-year, paid-in-full memberships to nearly 800 consumers without posting the bond required by Maryland's Health Club law. The Division's Order required Appellants, among other things, to post the required bond to protect the more than \$100,000 in advance payments collected and to cease and desist from collecting further advance payments until the bond had been posted. Appellants have done neither and the consumers' substantial advance payments remain at risk. Accordingly, the Division is seeking an interlocutory injunction to protect the consumers by requiring Appellants to comply with the Division's Order.

II. Statement of Facts

Appellants sold two-year promotional memberships to almost 800 consumers between May and August of 1989 and charged an "initiation fee" of \$137.76 and "monthly dues" of a penny per month. Stipulations Regarding Facts and Documents, adopted in Decision and Order of the Consumer Protection Division, Case No. 89-020, October 26, 1989 ("Decision") at 2, ¶1. Although Appellants had not posted a bond with the Division, in many cases Appellants collected the entire \$138 membership cost up front and, even where Appellants collected \$137.76, they made no effort to collect the "monthly dues." Decision at 2-3, ¶¶ 4 and 6. The Decision concluded that the \$138 was, in fact, payment for future services and that the Appellants labelled the payment an "initiation fee" to evade the bonding requirement of the Health Club law. Decision at 4-8; Supplemental Order, January 31, 1990 ("Supplemental Order") at 2-3, 5. The Division ordered Appellants to post the security required under the Health Club law and to refund payments attributable to the period in which no bond was posted. Decision and Order at 10, ¶2 and 12, ¶4.

The more than \$100,000 in advance payments made by the 800 consumers to the Appellants remain at risk. Appellants have not provided the Division with any security to protect the advance payments collected. Affidavit of Kathleen Cranford, appended hereto as Exhibit 1. Nor have Appellants refunded any of the advance payments collected to consumers. Id. Not only have the Appellants failed to comply with the Division's Order, Appellants

are placing even more consumers at risk by selling yet another promotional membership like the one found by the Division to require bonding. Id. Further, the Division has received notice that a \$10,000 letter of credit posted by Appellants to protect previous advance payments collected has been cancelled. Id.

Appellants have moved for, but have not obtained, any stay of any provision of the Division's Order, and the Division has strongly opposed Appellants' motion. Interlocutory relief requiring compliance with the Division's Order is necessary to protect the consumers whose payments are already at risk and to prevent the Appellants from continuing to place additional consumers at risk.

III. Argument

A. Appellants are violating a valid cease and desist order

Maryland's Health Club law, Md. Com. Law Code Ann., § 14-12B-01 through 14-12B-08, was enacted to protect consumers who made advance payments to health clubs and then suffered substantial losses when the club closed and no assets remained to pay refunds. The General Assembly addressed the problem by requiring any health club that collects more than three months' payment in advance from members to give the Division a bond to protect the advance payments should the club go out of business. Md. Com. Law Code Ann., § 14-12B-02(e). The General Assembly considered the collection of advance payments without

having a bond posted so serious that it authorized the Division to issue a cease and desist order without first conducting a hearing. Md. Com. Law Code Ann., § 14-12B-08(a).

When it determined that Appellants were selling two-year memberships and collecting the entire payment at the time the member joined without having the required bond, the Division issued a Cease and Desist Order pursuant to § 14-12B-08(a) dated August 29, 1989. A copy of the Division's Order is appended hereto as Exhibit 2. Following hearings on the Order requested by Appellants and conducted pursuant to Md. Com. Law Code Ann., § 13-403, the Division issued the October 26, 1989 Decision and Order and January 31, 1990 Supplemental Order now before this Court.

Appellants should be ordered to post a bond or other security to protect the more than \$100,000 collected from consumers pending the outcome of this case. Appellants should also be ordered to cease and desist from placing additional consumers at risk until they have posted the required security. Maryland Rule B6 provides that an appeal of an administrative Order such as the one issued by the Division does not act as a stay of that Order. Despite Rule B6, the Appellants have failed to comply with the Division's Order, and instead, engaged in another promotion in violation of that Order. They have not provided any appeal bond or other security to this Court that would guarantee the payment of refunds to members should the health club close. The Appellants continue to deny consumers the protections that the Health Club law was enacted to provide.

Should Appellants demonstrate to the satisfaction of this Court that they cannot obtain a bond or letter of credit in the full amount and do not have assets from which advance payments may be refunded to consumers, appointment of the Division as receiver is necessary to ensure that consumers are protected. By running a third promotion even after the Division had issued a Decision and Order finding two previous promotions in violation of the Health Club law and Consumer Protection Act, Appellants have demonstrated that they cannot be trusted to operate the business in a manner guaranteed to protect consumers.

Section 13-406(c)(3) of the Consumer Protection Act, Md. Com. Law Code Ann., § 13-406(c)(3) authorizes this Court to appoint a receiver in cases of willful violations of the Act. The Division proposes that a receivership be established in which Appellants continue to operate the business subject to review by the Consumer Protection Division. In the absence of the security required by the Health Club law, this Court, the Division, and the consumers the Division is charged with protecting can be ensured that Appellants will not continue to place consumers at risk only if such a receivership is established.

B. The Division is entitled to interlocutory relief

The Division has met the four factors necessary to obtain interlocutory injunctive relief: (1) likelihood of success on the merits; (2) whether consumers will suffer irreparable injury if the injunction is not granted; (3) the public interest; and

(4) the "balance of convenience" determined by whether greater harm will result to consumers from refusal of the injunction than would occur to the Appellants by granting of the injunction. Dept. of Health and Mental Hygiene v. Baltimore County, 281 Md. 548, 554, 383 A.2d 51 (1977).

There is a substantial likelihood of success on the merits. In reviewing the decision of an administrative agency like the Division, the Court should:

review the agency's decision in the light most favorable to the agency, since "decisions of agencies are prima facie correct," . . . [Citation omitted] . . ., and "carry with them the presumption of validity." [Citations omitted]. Furthermore, not only is it the province of the agency to resolve conflicting evidence, but where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.

Bulluck v. Pelham Wood Apartments, 283 Md. 505, 390 A.2d 1119, 1124 (1978).

Substantial evidence in the record supports the Division's determination that the payment collected by Appellants was not an initiation fee but was, in fact, payment for future services. See, supra, pp. 1-2. Since a "reasoning mind reasonably could have reached the factual conclusion" reached by the Division, Bulluck, 390 A.2d at 1123, there is a substantial likelihood that this Court will affirm the Division's conclusions that Appellants violated the Health Club law and Consumer Protection Act. Additionally, it is the function of the Division to determine the appropriate remedy where it determines violations have occurred. Consumer Protection Division v. Consumer Publishing

Co., 304 Md. 731, 501 A.2d 48, 56-57 (1985). The Division determined that, among other things, the appropriate remedy is to require Appellants to post the bond required by the Health Club law to protect the payments made by 800 members and to prohibit Appellants from collecting additional advance payments.

The injunction is necessary to prevent irreparable injury to consumers. If the Appellants were to close their doors, consumers would receive little or no refund of the advance payments they have made for services to be provided by the Appellants, since there is no guarantee that Appellants have assets from which consumer claims could be satisfied. This is the exact harm that the Health Club law was enacted to prevent. Requiring Appellants to stop placing additional consumers at risk and provide security to protect consumers they have already placed at risk will serve to prevent that harm from occurring.

The requested injunctive relief will also serve the public interest by protecting consumers in the manner contemplated by the General Assembly when it enacted the Health Club law and Consumer Protection Act. The Appellants have not only ignored those laws, but have ignored the Cease and Desist Order issued by the Division pursuant to Md. Com. Law Code Ann., § 14-12B-08(a) and the Decision and Order and Supplemental Order of the Division issued pursuant to Md. Com. Law Code Ann., § 13-403. The public interest will be served by requiring Appellants to comply with their legal obligations.

Finally, the "balance of convenience" clearly weighs in favor of granting the Division's request for interlocutory relief. The burden on Appellants of complying with the law is clearly outweighed by the harm consumers will suffer if the health spa closes and is unable to pay refunds to nearly 800 consumers. The Appellants should be ordered to stop placing additional consumers at risk and to protect the consumers they have already placed at risk.

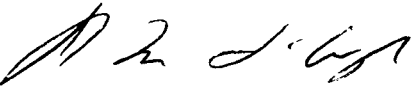
IV. Conclusion

The requested interlocutory injunctive relief will help provide consumers with the protection contemplated by the Health Club law. For the reasons set forth above, the Division requests that this Court grant its motion.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

By:



STEVEN M. SAKAMOTO-WENGEL
Assistant Attorney General
Consumer Protection Division
Sixteenth floor
200 St. Paul Place
Baltimore, Maryland 21202
Telephone: (301) 576-6350

DUMBBELLS ASSOCIATES, INC.,
et al.

Petitioners,

v.

CONSUMER PROTECTION DIVISION

Respondent

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE CITY
*
* Case No. 90059044/
* CL109816
*
*
*
* APPEAL FROM THE
* CONSUMER PROTECTION
* DIVISION
* OFFICE OF THE
* ATTORNEY GENERAL
* OF MARYLAND

* * * * *

AFFIDAVIT OF KATHLEEN CRANFORD

I, Kathleen Cranford, hereby declare and state as follows:

1. I am employed as the Assistant Administrator of the Health Club Registration Program in the Consumer Protection Division of the Office of the Attorney General of Maryland. In my capacity as Assistant Administrator, I am responsible for maintaining files pertaining to the health club registration of businesses subject to the Maryland Health Club Services law.

2. The file pertaining to Greenspring Fitness Center shows that a \$10,000 letter of credit was provided to the Division for liabilities to consumers from memberships sold before Dumbbells Associates, Inc. purchased the fitness center. However, Dumbbells Associates, Inc. t/a Greenspring Fitness Center has failed to file a report prepared by a certified public accountant documenting total outstanding liabilities to all members, including promotional members, or provide the Division with a

bond, letter of credit or cash deposit in an amount sufficient to protect promotional members. Dumbbells Associates has also failed to provide the Division with any evidence that the advance payments collected from promotional members have been refunded, other than payment of 25¢ to some of the promotional members. Additionally, the Division has received notice that the \$10,000 letter of credit has been cancelled effective June 13, 1990.

3. On February 27, 1990, I telephoned the Greenspring Fitness Center and spoke to a salesperson named Jerry. I told Jerry that I had received a copy of the promotion for Greenspring appended hereto and wanted to know about the membership. He advised me that Greenspring collected \$102 of the membership at the time I join. He said that I would be billed for the remainder at \$1 per month for 9 months or at \$3 per quarter for 3 quarters.

I do solemnly affirm under penalty of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Date: 5/9/90

Kathleen Cranford
Kathleen Cranford

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION
7 North Calvert Street
Third Floor
Baltimore, Maryland 21202

Proponent

v.

DUMBELLS ASSOCIATES, INC.
T/A GREENSPRING FITNESS CENTER
Falls and Valley Roads
Lutherville, Maryland 21093
SERVE ON: JORDAN BINETTI
Resident Agent

JORDAN BINETTI
8327 Analee Avenue
Baltimore, Maryland 21237

and

SCOTT SCALA
144 E. Orange Court
Baltimore, Maryland 21234

Respondents

* * * * *

IN THE
CONSUMER PROTECTION
DIVISION
OFFICE OF THE
ATTORNEY GENERAL
OF MARYLAND

Case No.: 89-020

CEASE AND DESIST ORDER

WHEREAS, the Consumer Protection Division ("Division") is responsible for administering the provisions of the Maryland Health Club Services law, Md. Com. Law Code Ann., §§ 14-12B-01 through 14-12B-08 ("Health Club law");

WHEREAS, § 14-12B-02(e) of the Health Club law requires persons who sell health club services agreements to register with the Division and post a bond, letter of credit or cash in an amount not less than the the aggregate value of outstanding liabilities to members, not to exceed \$200,000 per facility;

EXHIBIT # 2

WHEREAS, § 14-12B-02(e) requires that the amount of the bond, letter of credit or cash be based upon a report prepared by an independent certified public accountant documenting the seller's outstanding liabilities to members;

WHEREAS, Respondents have registered with the Division as a seller of health club services (a copy of Respondents' registration form is appended hereto as Exhibit 1);

WHEREAS, Respondents' registration application discloses that Greenspring Fitness Center is owned and operated by Dumbbells, Inc., and that Scott Scala and Jordan Binetti are the sole officers of Dumbbells;

WHEREAS, Respondents have posted a letter of credit with the Division in the amount of \$10,000 but have failed to file a report prepared by an independent certified public accountant documenting that the amount of the letter of credit is not less than Respondents' total liabilities to consumers in accordance with Md. Com. Law Code Ann., § 14-12B-02(e) (see Affidavit of Kathleen Cranford, appended hereto as Exhibit 2);

WHEREAS, Respondents filed a registration renewal form with the Consumer Protection Division on October 19, 1988 in which Respondents represented that they were exempt from the bonding requirement of Md. Com. Law Code Ann., § 14-12B-02(e) since Respondents do not collect more than three months' payment in advance from consumers;

WHEREAS, Respondents offered memberships to consumers in which Respondents collected payment of \$138.00 in advance from consumers for health club services to be provided over a period of two years (see Affidavit of Kathleen Cranford);

WHEREAS, the membership agreements used by Respondents for the promotional memberships fail to include the disclosures required by Md. Com. Law Code Ann., § 14-12B-06;

WHEREAS, the Division has determined that Respondents are selling health club services agreements in violation of § 14-12B-02(e) of the Health Club law, pursuant to § 14-12B-08(a) of the Health Club law, IT IS HEREBY ORDERED:

(1) Respondents shall immediately cease and desist from selling any health club services agreements until further order of the Consumer Protection Division, or until such time as Respondent delivers to the Division the security required by the Health Club law.

(2) Respondents shall, within seven days of the date of this Order, provide the Division with a report prepared by an independent certified public accountant documenting Respondents' outstanding liabilities to consumers in accordance with Md. Com. Law Code Ann., § 14-12B-02(e) and increase the amount of the bond, letter of credit or cash posted with the Division to an amount not less than Respondents' total outstanding liabilities. For purposes of the report, the payment of

\$138.00 collected pursuant to the promotional membership shall be deemed payment for services to be rendered over a period of two years from the date of the contract.

(3) In the alternative, if Respondents do not post an increased bond, letter of credit or cash, Respondents shall within seven days of the date of this Order, restore to all consumers all payments held that exceed payment for three months' services until Respondents' liabilities have been reduced to \$10,000 or less. The payment of \$138.00 collected pursuant to the promotional membership shall be deemed payment for services to be rendered over a period of two years from the date of the contract. Respondents shall provide the Division with a report prepared by an independent certified public accountant documenting all such payments in excess of three months and evidence that all payments in excess of three months' payment in advance have been refunded to consumers.

(4) Respondents shall, within seven days of the date of this Order, provide the Division with copies of all membership agreements sold pursuant to the promotion and documentation of all payments received from consumers pursuant to the promotion.

(5) Respondents shall, within 14 days of the date of this Order, pay to the Division the costs of this proceeding of \$500.

NOTICE OF RIGHT TO A HEARING

Under the provisions of Md. Com. Law Code Ann., § 14-12B-08(a), the Respondent has a right to request a hearing. A request for hearing must be directed in writing to William Leibovici, Chief, Consumer Protection Division, 7 North Calvert Street, Third Floor, Baltimore, Maryland 21202 and must be received no later than 30 days from the date of issuance of this Order. If no hearing is requested, this Order will become final upon expiration of the 30 day period. If a hearing is requested, the hearing will be scheduled to be conducted no later than seven (7) days after receipt of the hearing request by the Consumer Protection Division.

NOTE: THIS CEASE AND DESIST ORDER IS EFFECTIVE IMMEDIATELY. FILING OF A REQUEST FOR A HEARING DOES NOT NEGATE THIS ORDER.

SO ORDERED,

Dated: August 27, 1989

William Leibovici
William Leibovici
Assistant Attorney General
and Chief



CHECK ONE

Consumer Protection Division
Office of the Attorney General
Munsey Building - Third Floor
7 North Calvert Street
Baltimore, Maryland 21202
(301) 576-6550

New Registration

Renewal Registration

HEALTH CLUB REGISTRATION FORM

1. List the name, address and telephone number of the corporation or unincorporated business selling Health Club Services:

Dumbbells Associates, Inc.
Falls Road and Valley Road
Lutherville, Maryland 21093
(301) 828-5328

Dumbbell Associates, Inc. operates Greenspring Fitness Center under an agreement with Lawrence Blumberg International, Inc., a Maryland corporation, Falls Road and Valley Road, Lutherville, Maryland 21093.

2. List the name(s), address(es), and telephone number(s) of each and every facility, owned and/or operated by the entity listed in paragraph 1, at which Health Club services are, or will be provided:

Greenspring Fitness Center
Falls Road and Valley Road
Lutherville, Maryland 21093

(301) 828-5328

attach additional sheets if needed

Note: If any of the facilities listed above is a separate business entity (e.g. a corporation, partnership or sole proprietorship distinct from the entity listed in paragraph 1) each such facility is required to file a separate registration form and must independently satisfy the Financial Accountability requirement.

3. In the case of each business entity listed in paragraph 1, specify:

a) Whether the entity listed is a corporation, partnership, sole proprietorship or other business entity:

Corporation

b) The state in which the corporation, partnership, sole proprietorship or other business entity was formed, and the date of formation:

Maryland, March 20, 1987

c) The date on which the corporation, partnership, sole proprietorship or other business entity commenced transacting business in Maryland:

March 20, 1987

d) In the case of a corporation incorporated in a State other than Maryland, the date on which the corporation first registered or qualified to do business in Maryland as required by Maryland Corporations and Associations Code, §7-101 et seq.

N/A

e) The business entity's IRS employer identification number: 52-1503502

4. In the case of a corporation, listed in paragraph 1, above, specify:

a) the name(s), address(es) and telephone number(s) of the resident agents of the corporation

Jordan Binetti

8327 Analee Avenue

Baltimore, Maryland 21237

(301) 866-3365

attach additional sheets if needed

- b) the name(s), residential address(es) and telephone number(s) of each and every member of the Board of Directors of the corporation _____

Dumbbells Associates, Inc. is a Maryland close corporation
and does not have a Board of Directors

attach additional sheets if needed

- c) the name(s), address(es) and telephone number(s) of each and every officer of the corporation _____

Scott Scala President/Secretary
144 E. Orange Ct.
Baltimore, Maryland 21234
256-7063

Jordon Binetti Vice President, Treasurer
8327 Analee
Baltimore, Maryland 21237
866-3365

attach additional sheets if needed

- d) the name(s), address(es) and telephone number(s) of each and every shareholder of the corporation holding greater than 10% of the outstanding share of any class of stock of the corporation. _____

Scott Scala
Jordon Binetti

existence). Also, specify whether such business entity or facility is currently transacting business in the State of Maryland or, if not, the date the business entity or facility ceased operations. _____

NO

8. Specify whether any of the business entities or individuals listed in paragraph 5 has, or ever had, an ownership interest in any business entity or facility which sells, or ever sold, health club services in the State of Maryland other than those entities or facilities listed in paragraph 2. If so, list the name, address and telephone number for each such facility (including the last known business address of business entities or facilities that are no longer in existence). Also, specify whether such business entity or facility is currently transacting business in the State of Maryland or, if not, the date the business entity or facility ceased operations.

N/A

9. Specify whether any of the persons listed in paragraphs 4(b) or 4(c), above, has, or ever had, an ownership interest in any business entity or facility which sells, or ever sold, health club services in the State of Maryland other than those entities or facilities listed in paragraph 2. If so, list the name, address and telephone number for each such facility (including the last known business address of business entities or facilities that are no longer in existence). Also, specify whether such business entity or facility is currently transacting business in the State of Maryland or, if not, the date the business entity or facility ceased operations.

N/A

10. Attach copies of any form Health Club Services Agreement, subscription agreement or contract used by each of the facilities listed in paragraph 2 in the regular course of transacting business with consumers in the State of Maryland. Please refer to the instructions to assure that the contract contains all required disclosures.
11. Enclose a check made payable to the State of Maryland, in the amount of \$250.00.

CERTIFICATION

I, Scott A. Scala,
Name
President/Secretary, hereby certify
Title

under pain and penalty of perjury, that the information contained in this Health Club Registration Form is true and correct. I further certify that I am authorized to submit this Registration Form on behalf of Dumbbell Associates, Inc.

I also understand that I am under a continuing obligation to notify the Consumer Protection Division of any change in the information provided in this form.

Dated: 5/14/87 *Scott A. Scala*
Signature Scott A. Scala

Witness my hand and Notarial seal this 18th day
of May, 1987.
Steve Sakowitz
Notary

My Commission expires: 7/1/90

To be completed by Consumer Protection Division:

Dated Received: May 21, 1987

Reviewed By : Steve Sakowitz - Wengel

Financial Accountability
Compliance checked: _____

Approved: : _____

Registration Number: _____



ISSUER'S COPY

MARYLAND NATIONAL BANK
International Operations

Cable Address "BALTOBANK"
Telex Number 87-705
S.W.I.F.T. TID
MNBBU533

1802
P.O. Box 987
Baltimore, Maryland 21203

Date June 13, 1964

IRREVOCABLE DOCUMENTARY CREDIT	of Issuing Bank CREDIT No. of Advising Bank
Advising Bank	MNB #F01200 Applicant
Beneficiary	J & S Associates, Inc. 3327 Annapolis Avenue Baltimore, Maryland 21237
State of Maryland Office of Attorney General Consumer Protection Division Munsey Bldg., 3rd Floor North Calvert Street Baltimore, Maryland 21202	Amount Ten Thousand and 00/100 Dollars (\$10,000.00)
	Date <u>June 13, 1964</u> at the counters of <u>Maryland National Bank</u> For Negotiation

Dear Sirs:

We hereby issue in your favor this documentary credit which is available by negotiation of your draft at sight drawn on Maryland National Bank, Baltimore, Maryland

bearing the clause: "Drawn under documentary credit No. MNB #F01200 of Maryland National Bank" accompanied by the following documents ~~to be presented to the beneficiary~~

1. beneficiary's statement, purportedly signed by an authorized official and certifying either of the following:

"1. The amount of the drawing represents the claim or claims filed with the beneficiary against the Applicant by any consumer who suffers or sustains any loss or damage by reason of breach of contract, closing, or bankruptcy of the Applicant."

"2. The beneficiary has received notice that the Letter of Credit is due to expire and will not be renewed, and the Applicant has not replaced the Letter with other security acceptable to the beneficiary."

2. Original of this Letter of Credit

Special Conditions:

This Letter of Credit is deemed automatically extended without agreement for one year from the present or any future expiration date unless at least 45 days prior to expiration date the Consumer Protection Division, Office of the Attorney General, receives notice that Maryland National Bank elects not to consider this Letter of Credit renewed. Notice shall be by registered letter addressed to Consumer Protection Division, Office of the Attorney General, Munsey building, 3rd Floor, 7 N. Calvert Street, Baltimore, Maryland 21202.

This Letter of Credit sets forth in full the terms of our undertaking to you. Such undertaking shall not in any way be modified, amended or qualified by reference to any document or instrument referred or related to herein and any such reference shall not be deemed to incorporate herein by reference any such document or instrument.

The original of this Letter of Credit must be presented to us with any drawings hereunder for our endorsement of any payments effected by us.

If cancellation of this Letter of Credit is required before the expiry date stated herein, the original of this Letter of Credit must be returned to us with the beneficiary's letter requesting cancellation.

We hereby engage with you that drafts drawn and negotiated in conformity with the terms of this credit will be duly honored on presentation ~~by the beneficiary~~

The amount of each draft must be endorsed on the reverse of this credit by the negotiating bank.

The advising bank is requested to notify the beneficiary WITHOUT adding their confirmation.

Yours faithfully
MARYLAND NATIONAL BANK

NON-NEGOTIABLE

Authorized Signature

Advising Bank's Notification

Date, name and signature of the advising bank

A

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, Inc. (International Chamber of Commerce) (Public, 1963, 2nd ed.)



MARYLAND NATIONAL BANK

International Operations
P.O. Box 987
Baltimore, Maryland 21203

Cable Address: "BALTOBANK"
Telex Number: 87 - 705
S.W.I.F.T. TID: MNBBUS33

AMENDMENT

DATE: June 13, 1989

MAIL

STATE OF MARYLAND
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION
MUNSEY BLDG 3RD FLOOR 7 N CALVERT
BALTIMORE, MD 21202

All drafts drawn must be marked:
JLOC-00618288
Drawer Reference No: 618288

Dear Sirs:

We are instructed by :

J AND S ASSOCIATES
8327 ANAHEE AVE
BALTIMORE, MD 21237

to amend our credit 00618288 as issued in your favor.

This amendment is an integral part of the original credit.

Amended terms :

Expiration date: June 13, 1990

All other terms and conditions of the original credit instrument remain unchanged.

THIS NOTICE RECEIVES OUR NOTICE OF NON-RENEWAL DATED APRIL 10, 1989.
THE ORIGINAL TERMS OF THIS CREDIT REMAIN IN EFFECT.

This letter is to accompany all draft(s) and documents. When presenting your draft(s) and documents or when communicating with us please make reference to our reference number shown above.

Yours very truly,

Kimberly H. Hendrix

Authorized Official



Form HS-R5

Consumer Protection Division
Office of the Attorney General
Munsey Building - Third Floor
7 North Calvert Street
Baltimore, MD 21202-1961

Registration year
September 1, 1988

HEALTH CLUB REGISTRATION RENEWAL FORM

1. Registration information

a. Name and address of business offering health club (301)828-5328 services Dumbbells Associates, Inc., Falls Road & Valley Road Lutherville, Maryland 21093. Dumbbell Associates, Inc. operates Greenspring Fitness Center under an agreement with Lawrence Blumberg International, Inc., a Maryland corporation, Falls Road & Valley Road, Lutherville, Maryland 21093

b. Registration number _____

c. Name(s) and address(es) of facilities at which services offered _____

Greenspring Fitness Center
Falls Road & Valley Road
Lutherville, Maryland 21093
(301)828-5323

d. List any changes as to owners, officers, directors, or resident agents of the business since the most recent registration. NO CHANGE

2. Financial Accountability Requirement

a. Exempt facilities. Do you continue to claim an exemption from the financial accountability requirement of the Maryland Health Club Services law because no more than three months advance payment is collected from any consumer?
Yes X No _____

If you do not claim to be exempt, see instructions below for bonded facilities.

b. Bonded facilities. A report prepared by an independent Certified Public Account describing the current outstanding liabilities to members must be filed with this renewal form.

Also, the amount of the bond or letter of credit on file with the Consumer Protection Division must be adjusted so that it is sufficient to cover the liabilities described in the accountant's report.

Amount of bond, letter of credit or cash posted with the Consumer Protection Division \$10,000

Date amount of bond, letter of credit or cash last adjusted _____

3. Membership Information

a. Total number of members 708

b. Type of memberships sold. Please provide information as to each type of membership plan sold to consumers:

<u>Membership Plan</u> (Please check each type sold)	<u>Cost</u>	<u>No. of Members Per plan</u>
(1) <input type="checkbox"/> Payment Collected Per Session	_____	_____
(2) <input type="checkbox"/> Payment Collected Monthly:		
<input checked="" type="checkbox"/> Open ended	<u>35.00</u>	<u>99</u>
<input checked="" type="checkbox"/> Three month	<u>\$74.00</u>	_____
<input checked="" type="checkbox"/> One year	<u>199.00</u>	<u>191</u>
_____ Two year	_____	_____
_____ Three year	_____	_____
_____ Other term (please describe)	_____	_____
<u>6 months (collected) in 2 3 month payments</u>		
<u>\$115.00 1st payment to 3 mo \$55 2nd 3 mo \$57</u>		
(3) <input type="checkbox"/> Paid in Advance:		
<input checked="" type="checkbox"/> Three month	<u>\$79.00</u>	<u>163</u>
_____ One year	_____	_____
_____ Two year	_____	_____
_____ Three year	_____	_____
_____ Other term (please describe)	_____	_____
<u>One year membership</u>		
<u>quarterly payment 199 255</u>		

4. Renewal Fee A renewal registration check made payable to the State of Maryland in the amount of \$250.00 is enclosed with this form.

CERTIFICATION

I, Scott A. Scala, President,
Name

_____, hereby certify
Title

under pain and penalty of perjury, that the information contained
in this Health Club Registration Renewal Form is true and
correct. I further certify that I am authorized to submit this
Registration Renewal Form on behalf of _____.

I also understand that I am under a continuing obligation to
notify the Consumer Protection Division of any change in the
information provided in this form.

Dated: 10/10/88

Scott A. Scala
Signature

Witness my hand and Notarial seal this 10th day Oct
of Oct, 1988

Marks A.
Notary

My Commission
expires: 7/1/90

To be completed by Consumer Protection Division:

Dated Received: Oct. 19, 1988

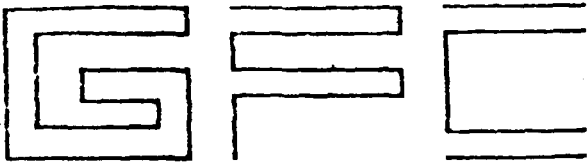
Reviewed By : Barbara Crawford

Financial Accountability
Compliance checked: _____

Approved: _____

Registration Number: _____





Greenspring Fitness Center Celebrates 5 Year Anniversary

A limited number of special promotional memberships awarded.

By **GERALD MORREALE**

Greenspring Fitness Center
At the Greenspring Racquet Club

The Greenspring Fitness Center in the Greenspring Station is celebrating its 5 year anniversary this month.

More firming, shaping, and toning will take place as local residents of all ages help celebrate. "We have become a part of many peoples lives," said owner Jordy Binetti. "We want all our friends to join in the excitement."

Greenspring Fitness Center provides supervised Nautilus training, computerized car-

diovascular conditioning and relaxing sauna and steam areas to the northern Baltimore County area. State of the art with that personal touch is the specialty at this service oriented club.

As part of the gala event, a limited number of promotional memberships will be awarded. These memberships will be selected at random, and presented to a few lucky individuals.

May 20th will be the kick-off date of this month long event.

GREAT NEWS!

You've been selected by Universal Promotions in conjunction with the Greenspring Fitness Center as one of the recipients of a 2 Year Health Club Membership to Baltimore's premier Fitness Center. That's correct, as seen in the Baltimore Sun. Greenspring Fitness Center is celebrating its 5 year anniversary by awarding these promotional memberships.

Your membership gives you unlimited use of the following:

- Nautilus—2 complete lines of circuit training
- Olympic Free Weights
- Lifecycles—computerized aerobic training
- Individualized state-of-the-art instruction
- Whirlpool
- Sauna—separate for men and women
- Steam Room
- Individual Locker, Shower and Vanity areas
- Membership honored at over 2,500 clubs nationwide
- Pro-shop
- Snack bar and lounge
- Open 7 days a week
- Much, much more

This membership is valued at over \$600.⁰⁰ and is being given to you, subject to maintenance dues of \$69 per year on a two year basis.

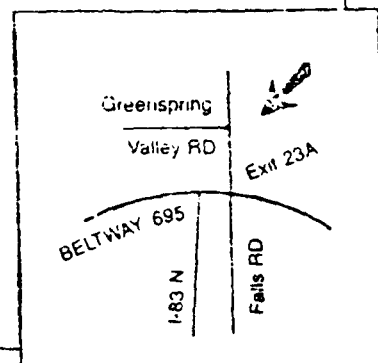
- TO CLAIM YOUR MEMBERSHIP -

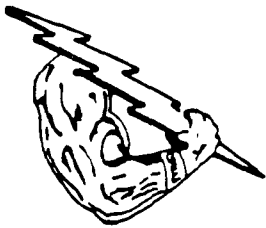
Bring this notice to the Greenspring Fitness Center within 24 hours. Please claim only between 10 a.m. and 9 p.m. Monday thru Friday, 10 a.m.-4 p.m. Saturday. In the event this notice is not claimed another name will be selected.

BONUS

This offer may also be used by a friend or relative. Simply give them this letter or bring them with you when you visit the club. Current members not eligible.

Falls & Valley Roads (At the Greenspring Racquet Club)
Lutherville, MD 21093 • (301) 828-5328





828-5328
John [Signature]

- Employee
- Adv
- Member

Source _____

New Membership No _____

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is made between

Skip Sauerwald ("Member") and GREENSPRING FITNESS CENTER

("FITNESS CENTER") located at Falls & Valley Roads

MEMBERSHIP DUES are \$ 138.00 for this 2 year

membership which shall be for a term of 137.76 Init Fee / id p. with fee 24 months

commencing June 7 19 89 and ending on June 7 19 91

PAYMENT OF MEMBERSHIP DUES. Member agrees to pay membership dues upon execution of this agreement as follows:

CASH 138 CHARGE (TYPE) _____ CHECK _____

MEMBERSHIP PRIVILEGES. Membership in good standing shall entitle Member to instruction in and use of the complete line of Nautilus exercise equipment, together with the available lockers, showers, saunas and whirlpool, subject to the rules and regulations of Fitness Center. This membership is personal to Member and may not be assigned, transferred or cancelled except as otherwise provided herein or by applicable law. Failure to pay any membership dues as agreed shall result in the immediate suspension of membership privileges.

MEMBERSHIP RULES. Member agrees to abide by all club rules and workout regulations of the Fitness Center in effect from time to time. All training equipment will be used only in the method and manner directed by Fitness Center personnel. Workout methods may change from time to time as Nautilus research indicates.

HOURS. Fitness Center will be open for workouts during hours that are deemed reasonable by Fitness Center. These hours may change within reason at the discretion of Fitness Center. At its sole discretion, Fitness Center may be closed on any recognized state, federal or religious holiday and for reasonable vacation periods, provided that the term of this agreement shall include an extension of the term of this agreement for any time in excess of two consecutive days that the Fitness Center is closed.

RELEASE. Member agrees that all exercises shall be undertaken at Member's sole risk and Fitness Center, its officers, agents or employees shall not be liable for, and are hereby released from any claim, demands, actions or courses of action whatsoever for injuries or damages to Member's person or property arising out of or in connection with the use by Member of the services and facilities of Fitness Center or the premises where the same are located.

ENTIRE AGREEMENT. This written agreement represents the entire membership agreement, either direct or implied and there are no other binding agreements, either written or oral.

CANCELLATION. MEMBER MAY CANCEL THIS AGREEMENT AT ANY TIME WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF ANY EXECUTED COPY OF THIS AGREEMENT BY NOTIFYING FITNESS CENTER IN WRITING. ANY SUCH WRITTEN NOTIFICATION SHALL BE DELIVERED IN PERSON OR BY CERTIFIED OR REGISTERED MAIL AND IF MAILED SHALL BE POSTMARKED BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF AN EXECUTED COPY OF THIS AGREEMENT. IF MEMBER CANCELS THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS, FITNESS CENTER SHALL REFUND TO MEMBER ANY PAYMENTS MADE HEREUNDER.

NO OTHER FORM OF CANCELLATION OF THIS AGREEMENT BY MEMBER IS POSSIBLE AND THE MEMBER IS BOUND TO PAY ALL MONIES AS AGREED EVEN IF THE MEMBER CHOOSES NOT TO USE THE FACILITIES OF FITNESS CENTER.

IF A CONSUMER BECOMES DISABLED FOR AT LEAST 3 MONTHS DURING THE MEMBERSHIP TERMS AND THAT DISABILITY IS CONFIRMED IN WRITING BY A PHYSICIAN, THE CONSUMER HAS A RIGHT TO AN EXTENSION OF THE CONTRACT. ID. S14-12B-03(A) and (B).

IF THE FACILITY IS CLOSED FOR A MONTH OR MORE, THE CONSUMER ALSO IS ENTITLED TO HIS CHOICE OF EITHER AN EXTENSION OF THE CONTRACT OR PRORATED REFUND, EXCEPT IF THE CLOSING IS NOT THE FAULT OF THE FACILITY, IN WHICH CASE THE CHOICE OF REMEDY IS THE SELLER'S. ID., S14-12B-04(A).

MEMBERSHIP INFORMATION

X Address 3 Durdwath Ct City Towson Zip 21093

Married _____ Single ✓ Spouse's Name _____ Age _____

Home Phone 561-0205 Business Phone 578-7711

Employer Morganstern Corp Type of Business Hotel - Restaurant

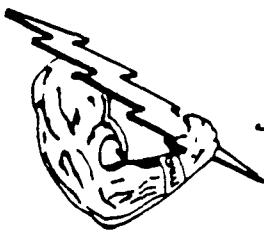
Present Position Gen'l Director Group _____

Signature of Purchaser Richard F. Sauerwald Date 6-7-89

Signature of Parent or Guardian (if under 18 years of age)

Signature of Agent for Greenspring Fitness Center

6



Transfer From David Schwartz

- Employee
- Adv
- Member

Source _____

New Membership No _____

MEMBERSHIP AGREEMENT

6/6/89

THIS MEMBERSHIP AGREEMENT is made between

Barbara Schwartz ("Member") and GREENSPRING FITNESS CENTER

("FITNESS CENTER") located at Falls & Vane, Roads

MEMBERSHIP DUES are \$ 139.00 for this 2 year membership which shall be for a term of 137.76 Int Fee / 14 per month for 24 months commencing 6/6 19 89 and ending on 6/6 19 91

PAYMENT OF MEMBERSHIP DUES. Member agrees to pay membership dues upon execution of this agreement as follows
CASH 40 down 98 due 6/9/89 CHARGE (TYPE) _____ CHECK _____

MEMBERSHIP PRIVILEGES. Membership in good standing shall entitle Member to instruction in and use of the complete line of Nautilus exercise equipment, together with the available lockers, showers, saunas and whirlpool, subject to the rules and regulations of Fitness Center. This membership is personal to Member and may not be assigned, transferred or cancelled except as otherwise provided herein or by applicable law. Failure to pay any membership dues as agreed shall result in the immediate suspension of membership privileges

MEMBERSHIP RULES. Member agrees to abide by all club rules and workout regulations of the Fitness Center in effect from time to time. All training equipment will be used only in the method and manner directed by Fitness Center personnel. Workout methods may change from time to time as Nautilus research indicates

HOURS. Fitness Center will be open for workouts during hours that are deemed reasonable by Fitness Center. These hours may change within reason at the discretion of Fitness Center. At its sole discretion, Fitness Center may be closed on any recognized state, federal or religious holiday, and for reasonable vacation periods, provided that the term of this agreement shall include an extension of the term of this agreement for any time in excess of two consecutive days that the Fitness Center is closed

RELEASE. Member agrees that all exercises shall be undertaken at Member's sole risk and Fitness Center, its officers, agents or employees shall not be liable for, and are hereby released from any claim, demands, actions or courses of action whatsoever for injuries or damages to Member's person or property arising out of or in connection with the use by Member of the services and facilities of Fitness Center or the premises where the same are located

ENTIRE AGREEMENT. This written agreement represents the entire membership agreement, either direct or implied and there are no other binding agreements either written or oral

CANCELLATION. MEMBER MAY CANCEL THIS AGREEMENT AT ANY TIME WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF ANY EXECUTED COPY OF THIS AGREEMENT BY NOTIFYING FITNESS CENTER IN WRITING. ANY SUCH WRITTEN NOTIFICATION SHALL BE DELIVERED IN PERSON OR BY CERTIFIED OR REGISTERED MAIL AND IF MAILED SHALL BE POSTMARKED BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF AN EXECUTED COPY OF THIS AGREEMENT. IF MEMBER CANCELS THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS, FITNESS CENTER SHALL REFUND TO MEMBER ANY PAYMENTS MADE THEREUNDER

NO OTHER FORM OF CANCELLATION OF THIS AGREEMENT BY MEMBER IS POSSIBLE AND THE MEMBER IS BOUND TO PAY ALL MONIES AS AGREED EVEN IF THE MEMBER CHOOSES NOT TO USE THE FACILITIES OF FITNESS CENTER

IF A CONSUMER BECOMES DISABLED FOR AT LEAST 3 MONTHS DURING THE MEMBERSHIP TERMS AND THAT DISABILITY IS CONFIRMED IN WRITING BY A PHYSICIAN, THE CONSUMER HAS A RIGHT TO AN EXTENSION OF THE CONTRACT. ID. S14-12B-03(A) and (B)

IF THE FACILITY IS CLOSED FOR A MONTH OR MORE, THE CONSUMER ALSO IS ENTITLED TO HIS CHOICE OF EITHER AN EXTENSION OF THE CONTRACT OR PRORATED REFUND, EXCEPT IF THE CLOSING IS NOT THE FAULT OF THE FACILITY, IN WHICH CASE THE CHOICE OF REMEDY IS THE SELLERS. ID. S14-12B-04(A).

MEMBERSHIP INFORMATION

Address Same as City _____ Zip _____

Married _____ Single _____ Spouse's Name David Schwartz Age _____

Home Phone _____ Business Phone _____

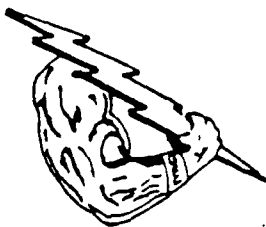
Employer _____ Type of Business _____

Present Position _____ Group _____

Signature of Purchaser [Signature] Date 6/6/89

Signature of Parent or Guardian (if under 18 years of age)

Signature of Agent for Greenspring Fitness Center [Signature]



6/12/89

- Employee
- Adv
- Member

Source

New Membership No

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is made between

Kenneth Moore ("Member") and GREENSPRING FITNESS CENTER

("FITNESS CENTER") located at Falls & Vane, Roads

MEMBERSHIP DUES are \$ 138.00 for this 2 year membership membership which shall be for a term of 137.76 initiation fee 18 per month for 24 mos. commencing 6/12/89 and ending on 6/12/91

PAYMENT OF MEMBERSHIP DUES. Member agrees to pay membership dues upon execution of this agreement as follows:

CASH _____ CHARGE (TYPE) 69 via 69 post dated CHECK _____
6/28/89

MEMBERSHIP PRIVILEGES. Membership in good standing shall entitle Member to instruction in and use of the complete line of Nautilus exercise equipment, together with the available lockers, showers, saunas and whirlpool, subject to the rules and regulations of Fitness Center. This membership is personal to Member and may not be assigned, transferred or cancelled except as otherwise provided herein or by applicable law. Failure to pay any membership dues as agreed shall result in the immediate suspension of membership privileges.

MEMBERSHIP RULES. Member agrees to abide by all club rules and workout regulations of the Fitness Center in effect from time to time. All training equipment will be used only in the method and manner directed by Fitness Center personnel. Workout methods may change from time to time as Nautilus research indicates.

HOURS. Fitness Center will be open for workouts during hours that are deemed reasonable by Fitness Center. These hours may change within reason at the discretion of Fitness Center. At its sole discretion, Fitness Center may be closed on any recognized state, federal or religious holiday and for reasonable vacation periods, provided that the term of this agreement shall include an extension of the term of this agreement for any time in excess of two consecutive days that the Fitness Center is closed.

RELEASE. Member agrees that all exercises shall be undertaken at Member's sole risk and Fitness Center, its officers, agents or employees shall not be liable for, and are hereby released from any claim, demands, actions or courses of action whatsoever for injuries or damages to Member's person or property arising out of or in connection with the use by Member of the services and facilities of Fitness Center or the premises where the same are located.

ENTIRE AGREEMENT. This written agreement represents the entire membership agreement, either direct or implied and there are no other binding agreements either written or oral.

CANCELLATION. MEMBER MAY CANCEL THIS AGREEMENT AT ANY TIME WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF ANY EXECUTED COPY OF THIS AGREEMENT BY NOTIFYING FITNESS CENTER IN WRITING. ANY SUCH WRITTEN NOTIFICATION SHALL BE DELIVERED IN PERSON OR BY CERTIFIED OR REGISTERED MAIL AND IF MAILED SHALL BE POSTMARKED BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF AN EXECUTED COPY OF THIS AGREEMENT. IF MEMBER CANCELS THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS, FITNESS CENTER SHALL REFUND TO MEMBER ANY PAYMENTS MADE HEREUNDER.

NO OTHER FORM OF CANCELLATION OF THIS AGREEMENT BY MEMBER IS POSSIBLE AND THE MEMBER IS BOUND TO PAY ALL MONIES AS AGREED EVEN IF THE MEMBER CHOOSES NOT TO USE THE FACILITIES OF FITNESS CENTER.

IF A CONSUMER BECOMES DISABLED FOR AT LEAST 3 MONTHS DURING THE MEMBERSHIP TERMS AND THAT DISABILITY IS CONFIRMED IN WRITING BY A PHYSICIAN, THE CONSUMER HAS A RIGHT TO AN EXTENSION OF THE CONTRACT. ID. S14-12B-03(A) and (B).

IF THE FACILITY IS CLOSED FOR A MONTH OR MORE, THE CONSUMER ALSO IS ENTITLED TO HIS CHOICE OF EITHER AN EXTENSION OF THE CONTRACT OR PRORATED REFUND, EXCEPT IF THE CLOSING IS NOT THE FAULT OF THE FACILITY, IN WHICH CASE THE CHOICE OF REMEDY IS THE SELLER'S. ID. S14-12B-04(A).

MEMBERSHIP INFORMATION

Address 17433 Big Falls Rd Box 21 City Monkton Zip 21111

Married Single _____ Spouse's Name _____ Age _____

Home Phone 448-9380 Business Phone 333-6694

Employer State of Maryland Type of Business Dept. Human Resources

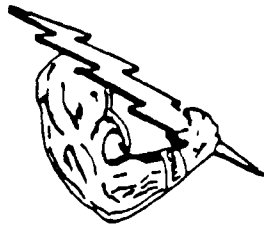
Present Position Management Specialist II Group _____

Signature of Purchaser Kenneth Moore Date 6-12-89

Signature of Parent or Guardian (if under 18 years of age)

Signature of Agent for Greenspring Fitness Center

- Employee
- Adv
- Member



\$64 PAID
 \$69 due
 6-17-89

Source _____

New Membership No _____

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is made between:

Phill Shank ("Member") and GREENSPRING FITNESS CENTER

("FITNESS CENTER") located at Falls & Valley Roads

MEMBERSHIP DUES are \$ 138.00 for this 2 year membership membership, which shall be for a term of 137.76 initiation fee 1 \$ per month for 27 mo commencing JUNE 3 1989 and ending on JUNE 3 1991

PAYMENT OF MEMBERSHIP DUES. Member agrees to pay membership dues upon execution of this agreement as follows:

CASH _____ CHARGE (TYPE) CHECK

MEMBERSHIP PRIVILEGES. Membership in good standing shall entitle Member to instruction in and use of the complete line of Nautilus exercise equipment, together with the available lockers, showers, saunas and whirlpool, subject to the rules and regulations of Fitness Center. This membership is personal to Member and may not be assigned, transferred or cancelled except as otherwise provided herein or by applicable law. Failure to pay any membership dues as agreed shall result in the immediate suspension of membership privileges.

MEMBERSHIP RULES. Member agrees to abide by all club rules and workout regulations of the Fitness Center in effect from time to time. All training equipment will be used only in the method and manner directed by Fitness Center personnel. Workout methods may change from time to time as Nautilus research indicates.

HOURS. Fitness Center will be open for workouts during hours that are deemed reasonable by Fitness Center. These hours may change within reason at the discretion of Fitness Center. At its sole discretion, Fitness Center may be closed on any recognized state, federal or religious holiday and for reasonable vacation periods, provided that the term of this agreement shall include an extension of the term of this agreement for any time in excess of two consecutive days that the Fitness Center is closed.

RELEASE. Member agrees that all exercises shall be undertaken at Member's sole risk and Fitness Center, its officers, agents or employees shall not be liable for, and are hereby released from any claim, demands, actions or courses of action whatsoever for injuries or damages to Member's person or property arising out of or in connection with the use by Member of the services and facilities of Fitness Center or the premises where the same are located.

ENTIRE AGREEMENT. This written agreement represents the entire membership agreement, either direct or implied and there are no other binding agreements either written or oral.

CANCELLATION. MEMBER MAY CANCEL THIS AGREEMENT AT ANY TIME WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF ANY EXECUTED COPY OF THIS AGREEMENT BY NOTIFYING FITNESS CENTER IN WRITING. ANY SUCH WRITTEN NOTIFICATION SHALL BE DELIVERED IN PERSON OR BY CERTIFIED OR REGISTERED MAIL AND IF MAILED SHALL BE POSTMARKED BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF AN EXECUTED COPY OF THIS AGREEMENT. IF MEMBER CANCELS THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS FITNESS CENTER SHALL REFUND TO MEMBER ANY PAYMENTS MADE HEREUNDER.

NO OTHER FORM OF CANCELLATION OF THIS AGREEMENT BY MEMBER IS POSSIBLE AND THE MEMBER IS BOUND TO PAY ALL MONIES AS AGREED EVEN IF THE MEMBER CHOOSES NOT TO USE THE FACILITIES OF FITNESS CENTER.

IF A CONSUMER BECOMES DISABLED FOR AT LEAST 3 MONTHS DURING THE MEMBERSHIP TERMS AND THAT DISABILITY IS CONFIRMED IN WRITING BY A PHYSICIAN, THE CONSUMER HAS A RIGHT TO AN EXTENSION OF THE CONTRACT. ID. S14-12B-03(A) and (B).

IF THE FACILITY IS CLOSED FOR A MONTH OR MORE, THE CONSUMER ALSO IS ENTITLED TO HIS CHOICE OF EITHER AN EXTENSION OF THE CONTRACT OR PRORATED REFUND, EXCEPT IF THE CLOSING IS NOT THE FAULT OF THE FACILITY, IN WHICH CASE THE CHOICE OF REMEDY IS THE SELLERS. ID. S14-12B-04(A).

MEMBERSHIP INFORMATION

Address 20105 YORK RD City PARKTON Zip 21120

Married Single _____ Spouse's Name SHARON M SHANK Age 32

Home Phone 301-357-5015 Business Phone 301-338-4918

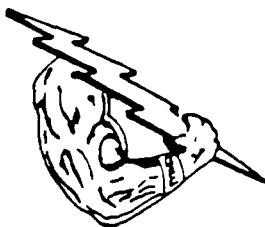
Employer DIGITAL EQU Type of Business COMPUTER S

Present Position FIELD SERVICE ENGR Group _____

Signature of Purchaser Phill C. Shank Date 6-3-89

Signature of Parent or Guardian
(if under 18 years of age)

Judy Burtly
Signature of Agent for
Greenspring Fitness Center



- Employee
- Adv
- Member

Source _____

New Membership No _____

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is made between:

Ira D Papel ("Member") and GREENSPRING FITNESS CENTER

("FITNESS CENTER") located at Falls & Valley Roads

MEMBERSHIP DUES are \$ 138.00 for this 2 year membership membership which shall be for a term of 137.76 initiation fee (1 per month for 24 months) commencing May 31 1997 and ending on May 31 1998

PAYMENT OF MEMBERSHIP DUES. Member agrees to pay membership dues upon execution of this agreement as follows:

CASH _____ CHARGE (TYPE) VISA P.K. CHECK _____

MEMBERSHIP PRIVILEGES. Membership in good standing shall entitle Member to instruction in and use of the complete line of Nautilus exercise equipment, together with the available lockers, showers, saunas and whirlpool, subject to the rules and regulations of Fitness Center. This membership is personal to Member and may not be assigned, transferred or cancelled except as otherwise provided herein or by applicable law. Failure to pay any membership dues as agreed shall result in the immediate suspension of membership privileges.

MEMBERSHIP RULES. Member agrees to abide by all club rules and workout regulations of the Fitness Center in effect from time to time. All training equipment will be used only in the method and manner directed by Fitness Center personnel. Workout methods may change from time to time as Nautilus research indicates.

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RELEASE. Member agrees that all exercises shall be undertaken at Member's sole risk and Fitness Center, its officers, agents or employees shall not be liable for, and are hereby released from any claim, demands, actions or courses of action whatsoever for injuries or damages to Member's person or property arising out of or in connection with the use by Member of the services and facilities of Fitness Center or the premises where the same are located.

ENTIRE AGREEMENT. This written agreement represents the entire membership agreement, either direct or implied and there are no other binding agreements either written or oral.

CANCELLATION. MEMBER MAY CANCEL THIS AGREEMENT AT ANY TIME WITHIN THREE (3) BUSINESS DAYS AFTER RECEIPT OF ANY EXECUTED COPY OF THIS AGREEMENT BY NOTIFYING FITNESS CENTER IN WRITING. ANY SUCH WRITTEN NOTIFICATION SHALL BE DELIVERED IN PERSON OR BY CERTIFIED OR REGISTERED MAIL AND IF MAILED SHALL BE POSTMARKED BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIPT OF AN EXECUTED COPY OF THIS AGREEMENT. IF MEMBER CANCELS THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS, FITNESS CENTER SHALL REFUND TO MEMBER ANY PAYMENTS MADE HEREUNDER.

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MEMBERSHIP INFORMATION

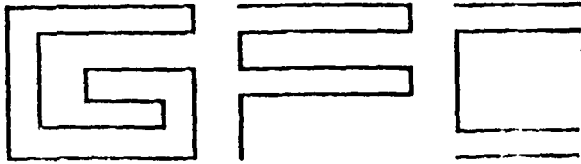
* Address Ira D. Papel 48 Tudor Court City Lutherville Zip 21093
 Married Single _____ Spouse's Name Leslie Age 34
 Home Phone 561-0487 Business Phone 578-5175
 Employer _____ Type of Business physician
 Present Position _____ Group _____
 Signature of Purchaser Ira Papel Date 5/31/89

Signature of Parent or Guardian
(if under 18 years of age)

[Signature]
Signature of Agent for
Greenspring Fitness Center







Greenspring Fitness Center
At the Greenspring Racquet Club

Greenspring Fitness Center Celebrates 10 Year Anniversary

*A limited number of
special promotional memberships available*

By **GERALD MORREALE**

The Greenspring Fitness Center in the Greenspring Station is celebrating its 10 year anniversary this month.

More firming, shaping, and toning will take place as local residents of all ages help celebrate. "We have become a part of many peoples lives," said owner Jordy Binetti. "We want all our friends to join in the excitement."

Greenspring Fitness Center provides supervised Nautilus training, computerized car-

diovascular conditioning and relaxing sauna and steam areas to the northern Baltimore County area. State of the art with that personal touch is the specialty at this service oriented club.

As part of the gala event, a limited number of promotional memberships will be awarded. These memberships will be selected at random, and presented to a few lucky individuals.

August 14th will be the kick-off date of this month long event.

GREAT NEWS!

You've been selected by Universal Promotions in conjunction with the Greenspring Fitness Center as one of the recipients of a 2 Year Health Club Membership to Baltimore's premier Fitness Center. That's correct, as seen in the Baltimore Sun, Greenspring Fitness Center is celebrating its 10 year anniversary by honoring these promotional memberships.

Your membership gives you unlimited use of the following:

- Nautilus—2 complete lines of circuit training
- Olympic Free Weights
- Lifecycles—computerized aerobic training
- Individualized state-of-the-art instruction
- Whirlpool
- Sauna—separate for men and women
- Steam Room
- Individual Locker, Shower and Vanity areas
- Membership honored at over 2,500 clubs nationwide
- Pro-shop
- Snack bar and lounge
- Open 7 days a week
- Much, much more

This membership is valued at over \$600.00 and is being offered to you, subject to maintenance dues of \$69 per year on a two year basis.

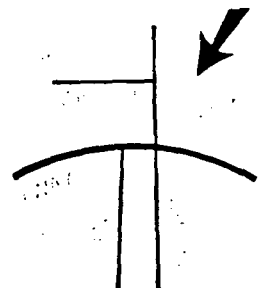
—TO CLAIM YOUR MEMBERSHIP—

Bring this notice to the Greenspring Fitness Center, 11111 Falls & Valley Roads, Baltimore, MD 21093, between 10 a.m. and 9 p.m. Monday thru Friday, 10 a.m. to 9 p.m. Saturday. If this notice is not claimed another name will be selected.

BOUNUS

This offer may also be used by a friend or relative. Simply give them this letter or bring them with you when you visit the club. Current members not eligible.

Falls & Valley Roads (At the Greenspring Racquet Club)
Lutherville, MD 21093 • (301) 828-5328



FILED

MAY 15 1990

**CIRCUIT COURT FOR
BALTIMORE CITY**

DUMBBELLS ASSOCIATES, INC.,
et al.

Respondent/Appellants,

v.

CONSUMER PROTECTION DIVISION

Proponent/Appellee.

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No. 90059044/
CL109816

APPEAL FROM THE
CONSUMER PROTECTION
DIVISION
OFFICE OF THE
ATTORNEY GENERAL
OF MARYLAND

APPELLEE'S ANSWER TO PETITION AND AMENDED COUNTERCLAIM

Preliminary Statement

This is an appeal from the Decision and Order ("Decision") and Supplemental Order of the Consumer Protection Division finding that the appellants, Dumbbells Associates, Inc., Scott Scala and Jordan Binetti, sold two-year paid-in-advance memberships to nearly 800 consumers in violation of Maryland's Health Club law and Consumer Protection Act. Specifically, the Decision found that Appellants (Respondents below) collected more than \$100,000 in advance payments from those consumers without posting a bond to protect those advance payments and without disclosing material information to consumers as required by the Health Club law.

Maryland's Health Club law, Md. Com. Law Code Ann., §§ 14-12B-01 through 14-12B-08, was enacted to protect consumers who made advance payments to health clubs and then suffered

substantial losses when the club closed and no assets remained to pay refunds. The General Assembly addressed the problem by requiring any health club that collects more than three months' payment in advance from members to give the Division a bond to protect the advance payments should the club go out of business. Md. Com. Law Code Ann., § 14-12B-02(e). The Health Club law also required each club to register with the Division and to disclose in every membership agreement whether the club was registered and whether it had posted a bond. Md. Com. Law Code Ann., §§ 14-12B-02(a) and 14-12B-06.

Appellants sold two-year promotional memberships to consumers in May-August 1989 and charged an "initiation fee" of \$137.76 and "monthly dues" of a penny per month. Stipulations Regarding Facts and Documents at ¶¶ 10-16, adopted in Decision at 2, ¶ 1. Although Appellants had not posted a bond with the Division, in many cases Appellants collected the entire \$138 at the time the consumer joined and, even if the full cost was not collected up front, Appellants made no effort to collect the "monthly dues." Decision at 2-3, ¶¶ 4 and 6. The Decision concluded that the \$138 was, in fact, payment for future services and that the Appellants labelled the payment an initiation fee to evade the bonding requirement of the Health Club law. Decision at 4-8; Supplemental Order at 2-3, ¶5. The Division ordered Appellants to post the security required by the Health Club law and to refund payments attributable to the period in which no bond was posted. Decision and Order at 10, ¶2 and 12, ¶ 4.

The Decision also found that Appellants' membership agreements failed to disclose under the heading "Notice of Consumer Rights" as required by § 14-12B-06 of the Health Club law, whether Appellants were registered with the Division (they were not) and whether they had posted the required bond (they had not). Decision at 4. The Decision concluded that, by failing to make the required disclosures, consumers were denied information that the General Assembly deemed material to a consumer's decision to join the club. Decision at 8-9. Accordingly, Appellants were ordered to offer each consumer who was not given the disclosures the opportunity to rescind the agreement and receive a full refund. Decision at 9 and at 10-11, ¶ 3.

The more than \$100,000 in advance payments made by 800 consumers to Appellants remain at risk. Appellants have not provided the Division with any security to protect the advance payments collected. Nor have Appellants refunded any advance payments to consumers or offered consumers the opportunity to rescind their agreements. Not only have the Appellants failed to comply with the Division's Order, Appellants are placing even more consumers at risk by offering yet another promotional membership like the one found by the Division to require bonding. The Appellants continuing failure to protect consumers as required by the General Assembly in the Health Club law cannot be tolerated. This Court should Order Appellants to comply with the Division's Order.

Answer to Petition

Specifically answering Appellants' Petition, Appellee Consumer Protection Division (Proponent below):

1. Admits paragraph 1.
2. Can neither admit or deny paragraph 2, however, to the extent that paragraph 2 implies that the actions of the Division were contrary to law, the Division denies paragraph 2.
3. Denies paragraphs 3A, 3B, 3C, 3D, 3E, and 3F.
4. Paragraph 3G requires no admission or denial. The Division affirmatively asserts that this paragraph of the petition does not "set forth the error committed by the agency" as required by Maryland Rule B2(e) and should be stricken.

Counterclaim

The Consumer Protection Division, pursuant to § 13-403(c)(2) of the Consumer Protection Act, Md. Com. Law Code Ann., §§ 13-101 through 13-501 ("the Act") counterclaims against Appellants for specific performance of the Decision and Order dated October 26, 1989 and the Supplemental Order dated January 31, 1990 of the Division in Case No. 89-020.

1. Pursuant to Md. Com. Law Code Ann., §§ 14-12B-08(a) and 13-403, the Division issued a Cease and Desist Order dated August 29, 1989 against Appellants Dumbbells Associates, Inc., Scott Scala and Jordan Binetti.

2. On September 7, 1989, Appellants filed a request for a hearing on the Division's Order and, on October 3, 1989, a public

hearing pursuant to § 13-403 of the Act was held before William Leibovici, Assistant Attorney General and Chief of the Consumer Protection Division.

3. The Decision and Order of the Consumer Protection Division was issued on October 26, 1989, requiring Appellants to take affirmative action as set forth therein. However, the Division offered the parties the opportunity to request an additional hearing to address the relief set forth in the Division's Order.

4. Both parties requested that a supplemental hearing be scheduled and second hearing was held on November 17, 1989 before William Leibovici. The Division then issued the Supplemental Order dated January 31, 1990, requiring the Appellants to take affirmative action as set forth therein.

5. To date, Appellants have failed to comply with the provisions of the Decision and Order and of the Supplemental Order.

WHEREFORE, Appellee, the Consumer Protection Division prays this Court:

1. Dismiss Appellants' appeal.
2. In the alternative, find against Appellants on each and every error alleged in their Petition.
3. Find in favor of Appellee on each and every issue raised on appeal.
4. Award Appellee judgment on its Counterclaim and order Appellants to comply with each and every provision of the Decision and Order of the Consumer Protection Division issued

October 26, 1989 as modified in the Supplemental Order issued January 31, 1990.

5. Pursuant to Md. Com. Law Code Ann., § 13-410, assess civil penalties against each Appellant for each day that the Appellants have failed to comply with the Decision and Order and Supplemental Order issued by the Consumer Protection Division.

6. Award Appellee attorneys' fees and the cost of this proceeding as well as all costs awarded below.

7. Award the Division any and all further relief as is necessary and proper.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

By:

STEVEN M. SAKAMOTO-WENGEL
Assistant Attorney General
Consumer Protection Division
Sixteenth floor
200 St. Paul Place
Baltimore, Maryland 21202
Telephone: (301) 576-6350

Dated: _____

SSW: DBANSWER

CERTIFICATE OF MAILING

I hereby certify that, on this 14th day of May, 1990, a copy of Appellee's Answer to Petition and Amended Counterclaim was mailed, first class postage prepaid, to Appellants' attorney, Melvin J. Kodenski, Kodenski and Canaras, 19 E. Fayette Street, Suite 301, Baltimore, Maryland 21202.



Steven M. Sakamoto-Wengel

DUMBBELLS ASSOCIATES, INC.,
et al.

Petitioners

vs.

CONSUMER PROTECTION DIVISION

Respondent

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IN THE
CIRCUIT COURT
FOR

FILED *(Handwritten initials)*

APR 30 1990

CIRCUIT COURT FOR
BALTIMORE CITY

Case No.: 90059044/
CL109816

MEMORANDUM OF DUMBBELLS ASSOCIATES, INC.,
JORDAN BINETTI AND SCOTT SCALA, PETITIONERS

Dumbbells Associates, Inc., Jordan Binetti and Scott Scala, by their attorneys, Melvin J. Kodenski and Kodenski and Canaras, files the following Memorandum in the above-captioned case:

I. Facts.

That this case is an Appeal from the Decision of the Division of the Consumer Protection Division Office of the Attorney General concerning various contracts used by Dumbbells Associates, Inc. in the health club known as Greenspring Fitness Center, Inc. and more particularly, certain promotions that they were offering. The Consumer Protection Division Office of the Attorney General based their Decision on the testimony, exhibits and representations made at a hearing on October 3, 1989, and as further evidenced by a written Decision of October 26, 1989 and January 31, 1990, made a part of this case.

At the actual hearing was testimony given by witnesses on behalf of the Petitioners, Stacey VanHouton, John Shipley and Scott Scala, as well as various exhibits submitted on behalf of

LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

the Petitioners. The testimony presented by the Consumer Protection Division Office of the Attorney General was by Kathleen Cranford and various exhibits submitted by the attorney for the Consumer Protection Division Office of the Attorney General.

The sum total of the hearing was reported in the transcript filed in this case, consisting of less than one hundred (100) pages.

ARGUMENT

There seems to be two basic questions that were discussed and one was whether or not the contract being used violates Md. Comm. Law Code Annotated Sec. 14-12b-06, for making or failing to make required disclosures in the consumer contracts and violation of Md. Comm. Law Code Annotated Sec. 14-12b-02 for failing to post the required bond.

DISCLOSURE

The first argument concerning disclosure is generally dealt with in the exhibits being submitted and the form of the contracts being used and as indicated by Scott Scala on pg. 60 of the transcript, that the contract has been in use for over a period in excess of four to five (4-5) years which is a period prior to Scott Scala and Jordan Binetti and Dumbbells Associates, Inc. acquiring their ownership of the club and it is maintained that in the general reading of the contract it would indicate that the terms and conditions required by the disclosure as indicated in the law are met with in this contract and a general

and simple reading of said contract would indicate same and the contract does not make any attempt to minimize the terms and conditions of said agreement nor to reduce the size or minimize any printed portions and certainly would be clear to anyone reading said contract that no attempt was made to mislead the public nor was there any testimony from anyone in this case that there was any attempt to mislead the public and in fact, anyone that did testify indicated that they were familiar with the terms and conditions and the simple reading of the contract would not confuse anyone.

BONDING

The next issue has to do with whether not there was a required bond for the particular promotion that was in question.

It goes without saying that the particular promotion that was being presented and is in question was one in which there were six to seven hundred (600-700) memberships sold and that on the basis of said promotion there was an initiation payment of One Hundred and Thirty-Seven Dollars and Seventy-Six Cents (\$137.76) with a payment to be made each month over twenty-four (24) months at a penny (\$.01) per month.

It is clear that the agreement provides for One Hundred and Thirty-Seven Dollars and Seventy-Six Cents (\$137.76) initiation and then a penny (\$.01) a month for twenty-four (24) months. This was indicated by those people who had testified, Stacey VonHouton, pgs. 6, 7 & 9 of the transcript. John Shipley also indicated on pg. 32 of the transcript that there was a One

Hundred and Thirty-Seven Dollars and Seventy-Six Cents (\$137.76) initiation fee and a penny (\$.01) a month for twenty-four (24) months which is again reiterated on pg. 42 of the transcript by Mr. Shipley and is also pointed out by Scott Scala on pg. 71 of said transcript.

The position of the Consumer Protection Division Office of the Attorney General is that if more than three (3) months are collected in advance, there must be a bond posted to cover the amount collected.

The problem associated in this case is that the Attorney General's Office wants to take a clear meaning of the contract and the testimony that was given and make the One Hundred and Thirty-Seven Dollars and Seventy-Six Cents (\$137.76) payment something other than what it really is, which was an initiation fee which would clearly exempt these contracts from bonding inasmuch as the law provides for an initiation fee of up to Two Hundred Dollars (\$200.00) which can be collected and in this case, only a payment of One Hundred and Thirty-Seven Dollars and Seventy-Six Cents (\$137.76) was collected for an initiation fee which is well under the allowable amount. There was no attempt to try to push the initiation fee up to the limit and it is clear and without contradiction on its face.

It is really interesting to note that throughout this entire case, there has not been one complaint from one consumer, the very persons for whom this was all enacted.

It would have been a different story if there were complaints made by consumers upon which the Consumer Protection Division Office of the Attorney General acted on.

The one person who testified who took advantage of this promotion, Stacey VonHouton, indicates that it was very clear what she was paying and she is the type of person who thoroughly reads the contracts, takes them seriously, and she realized that the One Hundred and Thirty-Seven Dollars and Seventy-Six Cents (\$137.76) was the initiation fee and that the penny (\$.01) per month was to be paid over a twenty-four (24) months period.

What better testimony could you have than that of the consumer for whom the law was written.

Even the one person who testified for the Attorney General's Office of the Consumer Protection Division, Kathleen Cranford, indicated on pg. 30 that there was indication fee.

It could be argued that in some of the cases approximately one hundred and twenty (120) or so the twenty-four cents (\$.24) was collected in advance and if that is so, then that may be the only proper action taken by the health club.

The Attorney General's Office would like to have everyone of these contracts declared void and all of the money refunded, when in truth there have not been any complaints by consumers nor has anyone made a claim against the health club or requested their money back and at this late date, would create a stampede or panic if everyone knew or thought that they were able to get their money back when in fact, almost a year of their contract

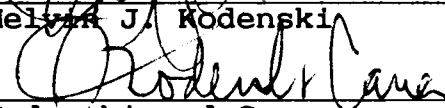
has elapsed without incident.

It goes without saying that the law was written to protect the consumer and in this case, there have been no consumer complaints and the Consumer Protection Division Office of the Attorney General went out on their own to create problems in a situation where none existed prior to their action and none has existed since.

CONCLUSION

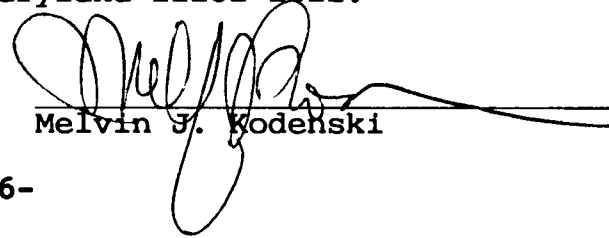
For these reasons and any other reasons to be stated in any Supplemental or additional Memorandums, the Petitioner requests a decision of the Consumer Protection Division Office of the Attorney General to be reversed.


Melvin J. Kodenski


Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(301) 685-5100
Attorneys for the Petitioners

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 30th day of April, 1990, a copy of the foregoing Memorandum of Dumbbells Associates, Inc., Jordan Binetti and Scott Scala, Petitioners was mailed to Steven M. Sakamoto-Wengel, Health Club Program Administrator, Office of the Attorney General, Consumer Protection Division, 200 St. Paul Place, 16th Floor, Baltimore, Maryland 21202-2022.


Melvin J. Kodenski

G:\MJK\802

LAW OFFICES
KODENSKI AND CANARAS

19 E. FAYETTE STREET

SUITE 301

BALTIMORE, MARYLAND 21202

TELEPHONE (301) 685-5100

HIGHLANDTOWN OFFICE

412 S. HIGHLAND AVENUE
BALTIMORE, MARYLAND 21224
PHONE 563-9000

MELVIN J. KODENSKI
BARRY T. CANARAS
VICTORIA A. STEFFEN

April 30, 1990

Clerk
Circuit Court of Maryland
for Baltimore City
Courthouse East
111 North Calvert Street
Baltimore, Maryland 21202

FILED
APR 30 1990
CIRCUIT COURT FOR
BALTIMORE CITY

RE: Dumbbells Associates, Inc., et al. vs.
Consumer Protection Division
Case No.: 90059044/CL109816

Dear Mr. Clerk:

Enclosed herein please find a Memorandum of
Dumbbells Associates, Inc., Jordan Binetti and Scott Scala,
Petitioners with regard to the above-referenced case.
Kindly file accordingly.

Very truly yours,



Melvin J. Kodenski

MJK/sjk
Enclosure

FILED

MAR 27 1990

CIRCUIT COURT FOR BALTIMORE CITY

DUMBBELLS ASSOCIATES, INC.,
et al.
Respondent/Appellants,
v.
CONSUMER PROTECTION DIVISION
Proponent/Appellee.

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 90059044/
CL109816

APPEAL FROM THE
CONSUMER PROTECTION
DIVISION
OFFICE OF THE
ATTORNEY GENERAL
OF MARYLAND

APPELLEE'S ANSWER TO PETITION AND COUNTERCLAIM

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substantial losses when the club closed and no assets remained to pay refunds. The General Assembly addressed the problem by requiring any health club that collects more than three months' payment in advance from members to give the Division a bond to protect the advance payments should the club go out of business. Md. Com. Law Code Ann., § 14-12B-02(e). The Health Club law also required each club to register with the Division and to disclose in every membership agreement whether the club was registered and whether it had posted a bond. Md. Com. Law Code Ann., §§ 14-12B-02(a) and 14-12B-06.

Appellants sold two-year promotional memberships to consumers in May-August 1989 and charged an "initiation fee" of \$137.76 and "monthly dues" of a penny per month. Stipulations Regarding Facts and Documents at ¶¶ 10-16, adopted in Decision at 2, ¶ 1. Although Appellants had not posted a bond with the Division, in many cases Appellants collected the entire \$138 at the time the consumer joined and, even if the full cost was not collected up front, Appellants made no effort to collect the "monthly dues." Decision at 2-3, ¶¶ 4 and 6. The Decision concluded that the \$138 was, in fact, payment for future services and that the Appellants labelled the payment an initiation fee to evade the bonding requirement of the Health Club law. Decision at 4-8; Supplemental Order at 2-3, ¶5. The Division ordered Appellants to post the security required by the Health Club law and to refund payments attributable to the period in which no bond was posted. Decision and Order at 10, ¶2 and 12, ¶ 4.

The Decision also found that Appellants' membership agreements failed to disclose under the heading "Notice of Consumer Rights" as required by § 14-12B-06 of the Health Club law, whether Appellants were registered with the Division (they were not) and whether they had posted the required bond (they had not). Decision at 4. The Decision concluded that, by failing to make the required disclosures, consumers were denied information that the General Assembly deemed material to a consumer's decision to join the club. Decision at 8-9. Accordingly, Appellants were ordered to offer each consumer who was not given the disclosures the opportunity to rescind the agreement and receive a full refund. Decision at 9 and at 10-11, ¶ 3.

The more than \$100,000 in advance payments made by 800 consumers to Appellants remain at risk. Appellants have not provided the Division with any security to protect the advance payments collected. Nor have Appellants refunded any advance payments to consumers or offered consumers the opportunity to rescind their agreements. Not only have the Appellants failed to comply with the Division's Order, Appellants are placing even more consumers at risk by offering yet another promotional membership like the one found by the Division to require bonding. The Appellants continuing failure to protect consumers as required by the General Assembly in the Health Club law cannot be tolerated. This Court should Order Appellants to comply with the Division's Order.

Answer to Petition

Specifically answering Appellants' Petition, Appellee Consumer Protection Division (Proponent below):

1. Admits paragraph 1.
2. Can neither admit or deny paragraph 2, however, to the extent that paragraph 2 implies that the actions of the Division were contrary to law, the Division denies paragraph 2.
3. Denies paragraphs 3A, 3B, 3C, 3D, 3E, and 3F.
4. Paragraph 3G requires no admission or denial. The Division affirmatively asserts that this paragraph of the petition does not "set forth the error committed by the agency" as required by Maryland Rule B2(e) and should be stricken.

Counterclaim

The Consumer Protection Division, pursuant to § 13-403(c)(2) of the Consumer Protection Act, Md. Com. Law Code Ann., §§ 13-101 through 13-501 ("the Act") counterclaims against Appellants for specific performance of the Decision and Order dated October 26, 1989 and the Supplemental Order dated January 31, 1990 of the Division in Case No. 89-020.

1. Pursuant to Md. Com. Law Code Ann., §§ 14-12B-08(a) and 13-403, the Division issued a Cease and Desist Order dated August 29, 1989 against Appellants Dumbbells Associates, Inc., Scott Scala and Jordan Binetti.

2. On September 7, 1989, Appellants filed a request for a hearing on the Division's Order and, on October 3, 1989, a public

hearing pursuant to § 13-403 of the Act was held before William Leibovici, Assistant Attorney General and Chief of the Consumer Protection Division.

3. The Decision and Order of the Consumer Protection Division was issued on October 26, 1989, requiring Appellants to take affirmative action as set forth therein. However, the Division offered the parties the opportunity to request an additional hearing to address the relief set forth in the Division's Order.

4. Both parties requested that a supplemental hearing be scheduled and second hearing was held on November 17, 1989 before William Leibovici. The Division then issued the Supplemental Order dated January 31, 1990, requiring the Appellants to take affirmative action as set forth therein.

5. To date, Appellants have failed to comply with the provisions of the Decision and Order and of the Supplemental Order.

WHEREFORE, Appellee, the Consumer Protection Division prays this Court:

1. Dismiss Appellants' appeal.
2. In the alternative, find against Appellants on each and every error alleged in their Petition.
3. Find in favor of Appellee on each and every issue raised on appeal.
4. Award Appellee judgment on its Counterclaim and order Appellants to comply with each and every provision of the Decision and Order of the Consumer Protection Division issued

October 26, 1989 as modified in the Supplemental Order issued January 31, 1990.

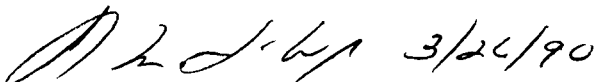
5. Award Appellee attorneys' fees and the cost of this proceeding as well as all costs awarded below.

6. Award the Division any and all further relief as is necessary and proper.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

By:

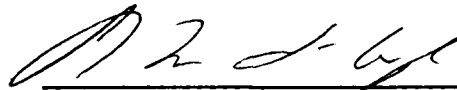
 3/24/90

STEVEN M. SAKAMOTO-WENGEL
Assistant Attorney General
Consumer Protection Division
Sixteenth floor
200 St. Paul Place
Baltimore, Maryland 21202
Telephone: (301) 576-6350

SSW: DBANSWER

CERTIFICATE OF MAILING

I hereby certify that, on this 26th day of March, 1990, a copy of Appellee's Answer to Petition and Counterclaim was mailed, first class postage prepaid, to Appellants' attorney, Melvin J. Kodenski, Kodenski and Canaras, 19 E. Fayette Street, Suite 301, Baltimore, Maryland 21202.



Steven M. Sakamoto-Wengel

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

Dumbbells Associates, Inc., ETAL

vs.

Consumer Protection Division
Office Of The Attorney General

Docket:

Folio:

File: 90059044CL109816

Date of Notice: 3/21/90

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 21st day of MARCH
Nineteen Hundred and ninety, I received from the Administrative
Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk
Circuit Court for Baltimore City

CC-39

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE B-12

Dumbbells Associates, Inc., Etal

vs.

Consumer Protection Division
Office Of The Attorney General

Docket:

Folio:

File: 90059044CL109816

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CC-39

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J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

JUDSON P. GARRETT, JR.
DENNIS M. SWEENEY
DEPUTY ATTORNEYS GENERAL



WILLIAM LEIBOVICI
CHIEF, CONSUMER PROTECTION DIVISION
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OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

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March 21, 1990

WRITER'S DIRECT DIAL NO.
576-6557

Clerk
Circuit Court for Baltimore City
111 North Calvert Street, Room 462
Baltimore, MD 21202

FILED
MAR 21 1990
CIRCUIT COURT FOR
BALTIMORE CITY.

Re: Dumbbells Associates, Inc. v. Consumer Protection
Division

Case No.: 90/059044
CL 109816

Dear Sir/Madam:

Attached is a true copy of the record in Administrative File No. 89-020. The attached files consist of 1 Pleading File; 1 Correspondence File; 1 Transcript File; and 1 Exhibit File. The originals of these files are maintained at the Office of the Attorney General, Consumer Protection Division.

Sincerely,

Mary B. Wiggins

Mary B. Wiggins
Custodian of Records
Administrative Proceedings

MBW:CLERK

Attachments

cc: Melvin J. Kodenski, Esq.
Steven Sakamoto-Wengel, Esq.

I HEREBY CERTIFY on this 21st day of March, 1990 that the attached Pleading File; Correspondence File; Exhibit File; and Transcript File are True Copies of the original papers in the Consumer Protection Division of the Office of the Attorney General, in the administrative proceedings file regarding Dumbbells, Consumer Protection Case No. 89-020.

Mary B. Wiggins

Custodian of Records
Administrative Proceedings

DUMBBELLS ASSOCIATES, INC.,
et al.

Petitioners,

v.

CONSUMER PROTECTION DIVISION

Respondent

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

Case No. 90059044/
CL109816

FILED
MAR 15 1990
CIRCUIT COURT FOR
BALTIMORE CITY

APPEAL FROM THE
CONSUMER PROTECTION
DIVISION
OFFICE OF THE
ATTORNEY GENERAL
OF MARYLAND

* * * * *

RESPONDENT'S OPPOSITION TO
PETITION FOR STAY
AND REQUEST FOR HEARING

The Consumer Protection Division, Office of the Attorney General, State of Maryland ("Division") opposes the petition for stay filed by Dumbbells Associates, Inc., Scott Scala and Jordan Binetti ("Appellants"). More than \$100,000 in advance payments made by almost 800 consumers to the Appellants for services at the Greenspring Fitness Center are at risk because the Appellants have failed to post the bond to protect those payments required by the Health Club law and by the Division's Order. Additionally, the Appellants are placing new consumers at risk by continuing to run promotions similar to the one the Division found to require bonding under the Health Club law.

The Health Club law, Md. Com. Law Code Ann., §§ 14-12B-01 through 14-12B-08, was enacted to protect consumers who make advance payments to health clubs by requiring any club that

2

5

collects more than three months' advance payment from members to post a bond with the Division to protect those payments if the club were to close. The Division found that Appellants violated the Health Club law by collecting payment in full of \$138 for two-year promotional memberships from approximately 800 consumers without posting the required bond to protect the payments collected. See Decision and Order, October 26, 1989, Consumer Protection Division v. Dumbbells Associates, Inc., et al., Case No. 89-020 ("Decision"), appended hereto as Attachment 1; Supplemental Order, January 31, 1990, appended hereto as Attachment 2. The Division ordered the Appellants to post a bond to protect the memberships sold. Decision at 10, ¶2. The Division also ordered the Appellants to refund to each consumer no later than March 2, 1990 all payments covering the time for which Appellants operated without the bond. Decision at 12, ¶4; Supplemental Order at 2, ¶4.1/

Maryland Rule B6 provides that "filing of an appeal shall not act as a stay" but that this Court may grant a stay upon provision by the appellant of a bond or other security. Appellants contend that enforcing the Division's order will cause them "economic and financial hardship." However, staying the

^{1/} The Decision and Supplemental Order also required the Appellants to offer the opportunity to rescind to consumers whose membership agreements did not include disclosures required by the Health Club law that would have put those consumers on notice that Greenspring did not have the required bond. Decision at 10-11, ¶3; Supplemental Order at 1-2, ¶¶1-3. However, if Appellants post the required health club bond, the rights of these consumers to rescind and receive a refund will presumably be protected. Accordingly, staying that portion of the Division's Order will not place consumers at risk if the Appellants post the required health club bond.

Division's Order without requiring Appellants to post a bond may cause "economic and financial hardship" for hundreds of consumers who are denied the protection envisioned by the General Assembly in enacting the Health Club law.^{2/} In fact, the General Assembly considered the Appellants' violations so serious that they authorized the Division to issue a Cease and Desist Order without first conducting a hearing in these circumstances. Md. Com. Law Code Ann., § 14-12B-08(a). While an appeal bond may be reduced in "extraordinary circumstances," O'Donnell v. McGann, 310 Md. 342, 352, 529 A.2d 372 (1987), the circumstances here do not warrant any such reduction.

Not only have Appellants failed to post the bond required by the Order to protect the more than \$100,000 in payments they have already collected, the Appellants have since engaged in yet another promotion of the type found by the Division to require bonding under the Health Club law. Affidavit of Kathleen Cranford, appended hereto as Attachment 3. The Division's Order found that Appellants' promotions sought to evade the health club bonding requirement by collecting all or almost all of the membership payment up front but labelling the payment an "initiation fee." Decision at 4-8; Supplemental Order at 2-3, ¶5. Despite the Division's Order and even though Appellants' have yet to post a health club bond, Appellants' recent promotion charges a \$99 "initiation fee" and "dues" of \$1 per month on a

^{2/} If this Court were to determine that a stay would be appropriate based upon the posting of an appeal bond by Appellants, the amount of the bond should be at least \$200,000, the maximum bond that Appellants could be required to post under § 14-12B-02(e) of the Health Club law.

one-year membership. Appellants collect \$102 of the total \$111 cost up front.

This is not the first time the Appellants have shown total disregard for the law. Having been advised by the Division in a June 5, 1989 letter that the promotional membership offered to consumers in May 1989 violated the bonding requirement, the Appellants, rather than post a bond, engaged in a second identical promotion in July and August 1989. See Stipulations Regarding Facts and Documents ¶¶ 13, 14, 19 and 22, incorporated in the Decision at 2, ¶ 1.

Appellants' actions show that this Court and the consumers who are members of Greenspring Fitness cannot rely upon the Appellants' good faith to protect members' payments. Consumers will only receive the protection they are entitled to under the Health Club law if this Court enforces the Division's Order.

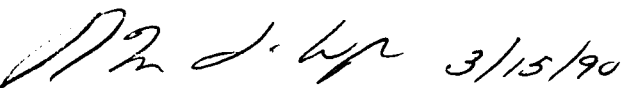
REQUEST FOR HEARING

The Consumer Protection Division requests that an immediate hearing be scheduled on Appellants' Petition for Stay.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

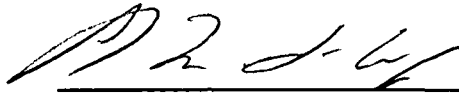
By:

 3/15/90

Steven M. Sakamoto-Wengel
Assistant Attorney General
Consumer Protection Division
200 St. Paul Plaza
Sixteenth Floor
Baltimore, Maryland 21202
(301) 576-6350

CERTIFICATE OF MAILING

I hereby certify that, on this 15th day of March, 1990, a copy of Respondent's Opposition to Petition for Stay and Request for Hearing and Proposed Order was mailed, first class postage prepaid, to Appellants' attorney, Melvin J. Kodenski, Kodenski and Canaras, 19 E. Fayette Street, Suite 301, Baltimore, Maryland 21202.



Steven M. Sakamoto-Wengel

DUMBBELLS ASSOCIATES, INC.,
et al.

Petitioners,

v.

CONSUMER PROTECTION DIVISION

Respondent

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE CITY
*
* Case No. 90059044/
* CL109816
*
*
* APPEAL FROM THE
* CONSUMER PROTECTION
* DIVISION
* OFFICE OF THE
* ATTORNEY GENERAL
* OF MARYLAND

* * * * *

ATTACHMENTS TO
RESPONDENT'S OPPOSITION TO
PETITION FOR STAY

- | | |
|--------------|---|
| Attachment 1 | Decision and Order of the
Consumer Protection Division
October 26, 1989 |
| Attachment 2 | Supplemental Order
January 31, 1990 |
| Attachment 3 | Affidavit of Kathleen Cranford |



CONSUMER PROTECTION DIVISION

Proponent

v.

DUMB BELLS ASSOCIATES, INC., et al.

Respondents

IN THE CONSUMER

PROTECTION DIVISION

OFFICE OF THE

ATTORNEY GENERAL

OF MARYLAND

Case No.: 89-020

DECISION AND ORDER

Preliminary Statement

On August 29, 1989, an ex parte Cease and Desist Order was entered against the respondents pursuant to the provisions of Md. Com. Law Code Ann. §14-12B-08(a) (all subsequent references are to the Commercial Law Article of the code). On September 7, 1989, a request for an immediate hearing was filed by the respondents and a hearing was scheduled for September 8, 1989. That hearing was subsequently rescheduled twice at the respondents' request first to September 12, 1989 and then to September 15, 1989. On September 15, 1989, at a hearing on the record the respondents requested a further continuance of the hearing. It was originally rescheduled to September 22, 1989, but was continued with the consent of both parties due to the threat of Hurricane Hugo. The hearing was rescheduled for October 3, 1989, at which time it took place.

Findings Of Fact

1. The Division adopts as a portion of its findings of fact the Stipulation regarding facts and documents filed by the parties to this action. That Stipulation is attached hereto and incorporated herein. The contracts entered into pursuant to the promotions described in that stipulation shall be referred to as "promotional contracts."

2. Stacy Van Houten, a witness for the respondents, entered into a promotional contract for a two year membership on August 3, 1989. Her Visa credit card company charged her account the full amount of \$138.00.

3. Kathy Cranford, a witness for the proponent, called the respondents' place of business on August 24, 1989 and was told by an individual named Joe that the promotional two year membership would be paid up front. There was no mention in that conversation of an initiation fee.

4. John Shipley, a witness for the respondents, served as the respondents' promoter during the two mailings, one in May and the other in July of 1989. All of the respondents' employees were instructed by Mr. Shipley to collect only \$137.76 from consumers at the time of the sale, although many consumers paid the entire \$138.00 at the time of the contract. Mr. Shipley discussed the Consumer Protection Division's concerns with both of the individual respondents prior to the second mailing being made.

5. The respondents did not collect any initiation fees prior to the use of this promotion. According to Scott Scala, respondent, the entire fee previously collected represented membership dues.

6. The respondents did not make any efforts to collect the \$0.01 monthly fees that may have been due and owing by customers after they signed the promotional contracts. It was left up to the customers to remember to pay this \$0.01 fee. In comparison, collection efforts were made for the larger amounts due and owing under pre-promotional contracts.

7. At the end of the two-year term of a promotional contract, a customer would have to pay a fee in excess of \$0.01 a month in order to renew the contract.

8. The individual respondents, Jordon Binetti and Scott Scala, are actively involved in the day-to-day operation of the health club, each participated in the decision to use their form contract, each participated in the original decision to engage in this promotion and each participated in the decision to make a second mailing of the promotion despite having been notified by the Consumer Protection Division that the promotion was in violation of the Health Club Services Act.

Conclusions Of Law

The facts are basically not in dispute. These facts establish violations of §14-12B-06 for failing to make required disclosures in consumer contracts and violations of §14-12B-02 for failing to post the required bond.

A. Disclosures

§14-12B-06 requires that every contract disclose enumerated information under the heading "Notice of Consumer Rights." The information required to be disclosed includes the seller's health club registration number with the Division, a description of whether the seller is bonded, the amount of the bond or, if not bonded, an explanation of the basis for the seller's exemption from the bonding requirements. The respondents' contract, Proponent's Exhibit 7, contains neither the legislatively mandated heading nor any of the required information listed above.^{1/} Accordingly, each sale with this form contract of a health club service agreement is a deceptive trade practice as defined in §14-12B-08(b) and every use of this form contract in selling health club services is a deceptive trade practice as defined in §§13-301 (3) and (9) of the Consumer Protection Act.

B. Bonding

A health club has to be bonded if it sells agreements for personal, family or household use that obligate the buyers for more than 3 months and require that the buyers pay more than 3 months' payments in advance. §14-12B-01(b)(1). The General Assembly requires this bonding so that if a health club closes for any reason, the purchasers of health club services will be assured of receiving a refund for the services they did not

^{1/}The contract does contain other information required to be disclosed by §14-12B-06, although the absence of punctuation makes those disclosures unnecessarily confusing.

receive. A health club can avoid all bonding requirements if it does not collect more than 3 months payments in advance because the General Assembly concluded that in those instances the purchasers' risk has been minimized and there is less likelihood of a closing immediately after a purchase.

The respondents' contracts are for personal use and obligate the buyer for more than 3 months. However, although the buyers are required to pay 99.87% of the total fees for the two year membership at the time they enter into the contract, the respondents assert they are not collecting more than 3 months' payments in advance because each buyer pays an initiation fee of \$137.76 and is then supposed to pay an additional penny (\$0.01) each month throughout the two year contract.

§14-12B-02(i) establishes the irrebuttable presumption that if any fees, including initiation fees, are collected of more than \$200 for an unspecified time period, the payments shall be deemed to be payment for the initial two years of the buyer's membership term. It also establishes the rebuttable presumption that an initiation fee of \$200 or less is not a payment for any portion of the buyer's membership term.

However, bonding is required if more than 3 months' payment is collected in advance.^{2/} The proponent has submitted clear and

^{2/} There is no question that those people, like Stacy Van Houten, who paid the entire \$138.00 in advance paid for more than 3 months in advance. Regardless of the determination whether the use of the penny-a-month payment plan avoids the requirement for bonding, a bond was required to be posted to cover all of those buyers who paid the entire fee in advance. By failing to post that bond, the respondents violated §14-12B-02.

convincing evidence, although only a preponderance is required, that the actual payment for the two year membership sold was made up of a substantial portion of the claimed "initiation" fee in addition to the penny-a-month fee. To begin with, the promotional material used, Proponent's Exhibit 8, advises prospective buyers, "This membership is valued at over \$600.00 and is being given to you, subject to maintenance dues of \$69 per year on a two year basis." The contract states that the "Membership dues are \$138.00 for this 2 year membership."

Respondents' exhibit 1. Although the contract goes on to break down the membership dues between the claimed initiation fee and the penny-a-month fee, it is clear from the terms of the contract that most if not all of the \$138.00 is dues for the two year membership. This evidence is adequate to establish that the respondents were collecting more than 3 months' payment in advance. The proponent has overcome the presumption established by §14-12B-02(i) that fees of \$200 or less that are not tied to specific future services do not constitute advance monthly payments.

An initiation fee, even one less than \$200.00, has to be a real initiation fee. When initiation fees were subject to excise taxes prior to the Excise Tax Reduction Act of 1965, Section 4242 (b) of the Internal Revenue Code defined an initiation fee as "any payment... required as a condition precedent to membership..." See United States v. Bailey, 383 F.2d 9, 11 (5th Cir. 1967). Applying a dictionary definition, an initiation fee

is one that is paid in order to gain "formal admission into a . . . club" Random House Dictionary of the English Language, Unabridged edition, 1967, definition of "initiation."

After a person has been admitted to a club, he or she then has to pay the required monthly fees or dues for use of the club during the term covered by the membership. These monthly dues can also be collected at the time that the initiation fee is paid or at intervals during the term of the membership. If more than 3 months dues are collected, a bond is required. Upon renewal, the member cannot be required to pay another initiation fee. The contract should be renewed at the monthly rate reflected in the initial contract or a monthly rate consisting of the initial monthly rate plus any increases to monthly membership rates that have been applied to all members' contracts upon renewal.

The respondents' division of the total fee between the initiation fee and the monthly fees bears no resemblance to the actual purpose of the fees. The actual monthly dues are much greater than a penny and the actual initiation fee is much less than claimed.^{3/} The claimed initiation fee was simply an effort

^{3/} In light of the fact that prior to this promotion the respondents did not have an initiation fee, it is not even certain that an initiation fee exists at all. However, once it has been determined that more than 3 months payments have been collected in advance, a bond has to be posted to cover "the aggregate value of outstanding liabilities to members, including all prepaid fees, membership fees, dues, deposits, initiation fees, and fees for health club services." §14-12B-02(e) (emphasis added). Thus, it is not necessary to determine the actual amount of any initiation fee collected by the respondents.

by the respondents to avoid the bonding requirements established by the General Assembly.

The lack of realism of the allocation of the fee in the promotional contract is shown by the fact that the respondents' were never able to get their employees to remember not to collect the final \$0.24 of the payment. Even the respondents' sole consumer witness, Ms. Van Houten, was charged the entire \$138.00 when she purchased her two year membership in August.

The Court of Appeals has noted that "[w]here a statute expressly provides for certain exclusions, others should not be slightly read therein by implication, for if the Legislature intends other exclusions it is so easy to add them to the already-named explicit ones." State Insurance Commissioner v. Nationwide Mutual Insurance Company, 241 Md. 108, 117, 215 A.2d 749, 754-55 (1966). If the General Assembly had intended to allow all health clubs charging less than \$200 for memberships of more than 3 months to collect the full amount in advance and not be bonded, it would have stated that. However, the Health Club Services Act requires a bond when more than 3 months' payment is collected in advance, regardless of the total cost of the membership. The General Assembly did not intend to allow a health club to avoid the mandated bonding requirement simply by calling its prepaid monthly payments an initiation fee.

C. Relief - Restitution

The purpose of the disclosures required by S14-12B-06 is to provide consumers with material information to aid them in

deciding whether to sign the contract. The respondents' failure to have provided the legislatively mandated disclosures makes those contracts voidable at the consumers' option. The respondents need to make the required disclosures to all of its prior customers who were denied that information and advise each customer that he or she has the option of rescinding the contract and obtaining a full cash refund of all money paid to the respondents. This may result in some unjust enrichment but allowing a recovery under quantum merit would defeat the efficacy of the mandated disclosures. See Golt v. Phillips, 308 Md. 1, 12, 517 A.2d 328, 334 (1986) and cases cited therein. Of course, consumers electing to rescind their contracts and receive full refunds will forfeit their remaining membership rights in the club.

The respondent's failure to obtain the bonds required by a regulatory statute enacted for the protection of the public is no different than the failure of businesses to obtain licenses required by regulatory statutes. The Court of Appeals has long recognized that an unlicensed business cannot retain the benefits from its unlicensed activities. Golt v. Phillips, supra, 308 Md. at 12, 517 A.2d at 334. A health club that collects more than 3 months payments and fails to obtain a bond cannot retain the benefits it has derived from its unbonded activity.

However, since the respondents are selling a future service, they are permitted to retain those monies covering any services that will be provided after they obtain the required bond. That amount will consist of the total amount of money paid by a

customer other than any actual initiation fee, multiplied by the number of days remaining on the two year membership after the date the bond is obtained, and divided by 730. The rest of the money must be refunded to the respondents' customers.^{4/}

Accordingly, it is this 26th day of October, 1989, hereby ORDERED,

1. The respondents shall cease and desist from failing to make all disclosures required by §14-12B-06 in a clear and meaningful manner, including the use of punctuation.

2. The Respondents shall cease and desist from failing to obtain bonds to cover the aggregate value of all outstanding liabilities to members on contracts requiring more than 3 months' payment in advance.

3. The respondents shall take the following affirmative action because of their failure to make the disclosures required by §14-12B-06:

a. by January 15, 1990, they shall notify in writing all individuals who signed contracts violating §14-12B-06 that they are entitled to rescind the contract and obtain a full refund. The written notification shall be approved by the Consumer Protection Division prior to its use. Each customer shall be given thirty days to exercise the option to rescind the contract.

^{4/} Of course, if a customer is entitled to void the contract because of the failure to make the required disclosures, and so elects, a full refund shall be made to that customer regardless of whether a bond is belatedly obtained.

b. by January 30, 1990, but no later than 15 days after the customers have been notified under a. above, the respondents shall file a report with the Consumer Protection Division setting forth the name of each customer who signed one of these contracts, the date of the contract and the date and manner by which the notification described above was communicated to the customer.

c. by February 28, 1990, but no later than 45 days after the customers have been notified under a. above, the respondents shall provide the Consumer Protection Division with a listing of all customers who have elected to rescind their contract and obtain a full refund.

d. by March 15, 1990, but no later than 60 days after the customers have been notified under a. above, the respondents shall deliver by mail or personally to each customer who has elected to rescind the contract a full refund check.

e. by March 30, 1990, but no later than 90 days after the customers have been notified under a. above, the respondents shall file with the Consumer Protection Division a report listing each customer to whom one of these refunds was made, the amount of each refund, the date each refund was made, and the check number or identifying feature of the form of payment.

4. The Respondents shall take the following affirmative action because of their failure to obtain the necessary bonds:

a. they shall refund to all customers who signed unbonded promotional contracts or any other unbonded contracts under which more than 3 months' payments were collected in advance, any initiation fee and the monthly payments covering the period of time during which the contract was not protected by a bond.


b. they shall make all such refunds within 30 days of the date of this Order.

c. they shall file with the Consumer Protection Division within 60 days of the date of this Order, a report listing each customer to whom one of these refunds was made, the amount of each refund, the date each refund was made and the check number or identifying feature of the form of payment.

5. The Respondents shall pay the Division's costs which includes \$500 pre-filing costs, plus the costs of filing this action and participating in the hearing, and the costs of implementing this Order. The Division shall submit a listing of all its costs within 30 days of the final refund having been made pursuant to paragraphs 3 and 4 above. The Respondents shall pay those costs within 30 days of receiving the listing.

6. The three respondents are jointly and severally liable for the payment of all refunds and costs under this order.

7. If the Respondents have not corrected their violations and complied with this order within 30 days following service of it, the Proponent shall proceed with enforcement pursuant to the Consumer Protection Act.



WILLIAM LEIBOVICI
Chief, Consumer Protection
Division

WIL 2

STATE OF MARYLAND

Proponent,

v.

DUMBBELLS ASSOCIATES, INC.,
et al.

Respondents

* IN THE
* CONSUMER PROTECTION
* DIVISION
* OFFICE OF THE
* ATTORNEY GENERAL
* OF MARYLAND
* Case No. 89-020

* * * * *

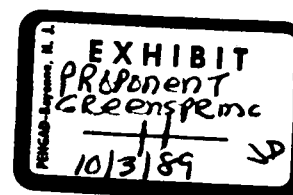
STIPULATIONS REGARDING FACTS AND DOCUMENTS

The State of Maryland, Proponent, and Respondents Dumbbells Associates, Inc ("Dumbbells"), Scott Scala, and Jordan Binetti ("Respondents") agree that the following facts are true and established, and that the documents attached hereto are genuine, authentic and admissible, for purposes of the above-captioned matter:

1. Dumbbells, Inc. sells health club services at a facility known as Greenspring Fitness Center located at Falls and Valley Roads in Lutherville, Maryland.

2. Dumbbells, Inc. filed forms to register with the Consumer Protection Division as a seller of health club services. A copy of the Health Club Registration Form filed by Dumbbells is appended hereto as Exhibit 1.

3. Scott Scala and Jordan Binetti are the sole officers, directors and shareholders of Dumbbells.



4. Dumbbells, Inc. has been operating Greenspring Fitness Center since March 20, 1987. The Consumer Protection Division has never approved the health club registration for Dumbbells, Inc. t/a Greenspring Fitness Center.

5. Dumbbells filed a renewal registration form with the Consumer Protection Division on October 19, 1988 to renew its registration for the registration year beginning September 1, 1988. A copy of the Renewal Registration form is appended hereto as Exhibit 2.

6. The renewal registration form filed by Dumbbells certified that Greenspring Fitness Center is exempt from the bonding requirement of Md. Com. Law Code Ann., § 14-12B-02(e) because Greenspring does not collect more than three months' payment in advance from members.

7. The section of the renewal registration form certifying that the representations made in the form were true was signed by Scott Scala.

8. Dumbbells has posted a \$10,000.00 letter of credit with the Consumer Protection Division. The letter of credit is for purposes of guaranteeing pre-existing memberships in which more than three months' advance payment was collected only. Dumbbells filed a report prepared by a certified public accountant dated July 10, 1988 for purposes of establishing the amount of the pre-existing liabilities. A copy of the CPA report is appended hereto as Exhibit 3.

9. Dumbbells did not file a report prepared by an independent certified public accountant with its 1988 renewal form because Dumbbells claimed an exemption from the financial accountability requirement of the Maryland Health Club Services law.

10. On or about May 1, 1989, Dumbbells entered into an agreement with John Shipley t/a Universal Promotions to conduct a promotion at the Greenspring Fitness Center. Scott Scala signed the agreement on behalf of Greenspring Fitness Center. A copy of the Agreement is appended hereto as Exhibit 4.

11. John Shipley and Universal Promotions were acting as agents for Dumbbells with regard to all activities related to the sale and offer for sale of the promotional memberships.

12. The promotional membership offered to consumers is attached hereto as Exhibit 5.

13. The promotion (Exhibit 5) was sent to approximately 15,000 consumers in Maryland in May, 1989.

14. Approximately 800 promotional memberships were sold to consumers.

15. Dumbbells collected the entire \$138.00 cost of the promotional membership from approximately one hundred of the consumers who purchased memberships pursuant to the promotion.

16. John Shipley provided the Consumer Protection Division with membership agreements for the consumers who paid the entire \$138.00 cost of the membership at the time they joined. Copies of the agreements provided are appended hereto as Exhibit 6.

17. The representative of Greenspring Fitness Center who signed the membership agreement either sold the membership to the consumer or approved the sale of the membership to the consumer.

18. The form membership agreement used by Greenspring Fitness Center is attached as Exhibit 7. Respondents agree that Exhibit 7 is the membership agreement regularly used for the sale of health club services by Greenspring Fitness Center.

19. The Consumer Protection Division notified Greenspring Fitness Center in a letter dated June 5, 1989 that Respondents cannot continue to sell the promotional memberships unless they post a bond, letter of credit or cash in accordance with Md. Com. Law Code Ann. , § 14-12B-02(e). A copy of this letter is appended hereto as Exhibit 8.

20. After meeting with a representative of the Consumer Protection Division concerning the promotional memberships sold, Respondents sent 25¢ to consumers who paid the entire amount of \$138.00 upon joining Greenspring Fitness Center.

21. In a letter dated June 30, 1989, the Consumer Protection Division advised Melvin Kodenski, attorney for Respondents, that enforcement proceedings would be instituted unless Greenspring Fitness Center complied with the bonding requirement of the Maryland Health Club Services law by either posting a bond sufficient to protect the promotional memberships sold or by refunding all payments in excess of \$17.25 collected from consumers who purchased the promotional memberships. A copy of this letter is appended hereto as Exhibit 9.

22. In July of 1989, Greenspring Fitness Center sent a second promotion to Maryland consumers. A copy of this promotion is appended hereto as Exhibit 10.

Respectfully submitted,



MELVIN J. KODENSKI
Attorney for Respondents
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(301) 685-5100



STEVEN M. SAKAMOTO-WENGEL
Attorney for Proponent
Consumer Protection Division
7 N. Calvert Street
Third Floor
Baltimore, Maryland 21202
(301) 576-6350

Dated: August 22, 1989

CONSUMER PROTECTION DIVISION	:	IN THE CONSUMER
Proponent	:	PROTECTION DIVISION
v.	:	OFFICE OF THE
DUMBBELLS ASSOCIATES,	:	ATTORNEY GENERAL
INC., <u>et al.</u>	:	Case No. 89-020
Respondents	:	
:	:	:
:	:	:

SUPPLEMENTAL ORDER

Both parties have presented requests in letter form for alterations to the Decision and Order of October 26, 1989.^{1/} A hearing on those requests was conducted on November 17, 1989. Having considered those requests, it is now hereby Ordered,

1. Paragraph 3 of the Order of October 26, 1989, shall be stayed until February 1, 1991 on the condition that the Respondents fully comply with the bonding requirements of the Health Club Services Act to the satisfaction of the Health Club Administrator within forty-five (45) days of the date of this Supplemental Order.

2. If Paragraph 3 of the October 26th Order becomes stayed through the operation of 1 above:

1. the payment of costs pursuant to Paragraph 5 of the October 26th Order shall take place after the refunds have been made under Paragraph 4 of that Order.

^{1/} Copies of those letters are attached to this Order.

2. the Division will conduct a hearing prior to February 1, 1991 to consider whether Paragraph 3 should be stricken from the October 26th Order.

3. If Paragraph 3 of the October 26th Order does not become stayed through the operation of 1 above, it shall take full force and effect forty-five days from the date of this Supplemental Order. The dates in Paragraph 3 of that Order shall be amended as follows if it takes full force and effect:

3a. "January 15, 1990" shall be replaced by "March 16, 1990"

3b. "January 30, 1990" shall be replaced by "April 2, 1990"

3c. "February 28, 1990" shall be replaced by "April 27, 1990"

3d. "March 15, 1990" shall be replaced by "May 14, 1990"

3e. "March 30, 1990" shall be replaced by "May 28, 1990"

4. The refunds required to be made under Paragraph 4 of the October 26th Order shall be made within 30 days of the date of this Supplemental Order and the required report shall be filed with the Division within 60 days of this Supplemental Order.

5. In order to facilitate the computation of the required bonds, it is necessary to determine whether any of the claimed

initiation fee was, in fact, an initiation fee. In light of the facts that the Respondents never charged an initiation fee before this promotion and that it is admitted the monthly penny dues did not cover the actual monthly cost of membership, it is concluded that all of the money labeled an initiation fee was, in fact, monthly dues collected in advance.


WILLIAM LEIBOVICI
Chief, Consumer Protection
Division

Dated: 1-31-90

Copies to: Melvin Kodenski, Esq.
Steven Sakamoto-Wengel, Special
Assistant Attorney General

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

JUDSON P. GARRETT, JR.
DENNIS M. SWEENEY
DEPUTY ATTORNEYS GENERAL



WILLIAM LEIBOVICI
CHIEF, CONSUMER PROTECTION DIVISION
ADMINISTRATIVE OFFICE
(301) 576-6550
CONSUMER INQUIRIES
AND COMPLAINTS
(301) 528-8662
HEALTH ADVOCACY UNIT
(301) 576-6500

OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

200 SAINT PAUL PLACE
BALTIMORE, MARYLAND 21202-2022

D.C. Metro 470-7534

TTY for Deaf Balto. Area 576-6372 D.C. Metro 565-0451

All other areas 1-800-492-2114 tone 870892

Telecopier No. (301) 576-6404

November 14, 1989

WRITER'S DIRECT DIAL NO.

576-6350

William Leibovici
Assistant Attorney General
and Chief
Consumer Protection Division
200 St. Paul Place
Sixteenth Floor
Baltimore, Maryland 21202

Re: Consumer Protection Division v. Dumbbells
Associates, Inc., et al., Case No. 89-020

Dear Mr. Leibovici:

The Consumer Protection Division, Proponent, intends to address the following issues at the November 17 hearing on relief awarded in the Decision and Order in the above-captioned matter:

(1) Stipulation #4 and testimony at the hearing established that the health club registration of Dumbbells Associates, Inc. t/a Greenspring Fitness Center under the Maryland Health Club Services law has never been approved because of outstanding materials required for registration that the Respondents have never submitted. The Division contends that, in addition to the right of consumers to rescind their membership agreements based upon the absence of required disclosures, consumers should also be entitled to rescind their memberships and receive a full refund based upon the fact that Respondents were selling health club services without having obtained the required registration approval.

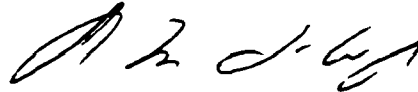
(2) The Division contends that, contrary to the finding in footnote 3 of the Decision and Order, none of the payment of \$138.00 collected by Respondents for the promotional membership should be considered an

William Leibovici
Page Two

initiation fee. Rather, the entire \$138.00 should be deemed to be payment for services to be rendered over the two years of the membership.

Your consideration of this matter is greatly appreciated.

Sincerely,



Steven M. Sakamoto-Wengel

cc: Melvin J. Kodenski, Esq.

LAW OFFICES
KODENSKI AND CANARAS

19 E. FAYETTE STREET

SUITE 301

BALTIMORE, MARYLAND 21202

TELEPHONE (301) 685-5100

HIGHLANDTOWN OFFICE

412 S. HIGHLAND AVENUE
BALTIMORE, MARYLAND 21224
PHONE 563-9000

MELVIN J. KODENSKI
BARRY T. CANARAS
VICTORIA A. STEFFEN

November 8, 1989

William Leibovici
Office of the Attorney General
Consumer Protection Division
200 Saint Paul Place
Baltimore, Maryland 21202-2022

RE: Consumer Protection Division vs.
Dumbbell Associates, Inc., et al.
Case No.: 89-020

Dear Mr. Leibovici:

This will confirm that we will have a hearing on the question of relief on November 17, 1989 at 2:00 p.m.

I think one of the primary issues is whether or not it was fair and reasonable to notify all persons who had signed the Contracts in question that they are entitled to a complete refund when they would have had use of their memberships, which would result in unfair and unjust enrichment.

This is particularly so in light of the fact that to the best of the knowledge of my client, there have not been any complaints and in general, all of the parties which are members under these Contracts have been satisfied and to disturb that situation without complaint certainly would be unreasonable, taking into consideration that the amounts in questions are minimal at best.

Essentially, the prayers for relief with regard to notification and refunds have to be further explored as there is a situation in which it may be impractical, uneconomical and unjust to proceed with the relief as indicated and I think this will have to be heard at the hearing.

If, in the meantime, any other issues should come to mind, I will make sure to notify you of same.

Very truly yours,


Melvin J. Kodenski

MJK/sjk
cc: Steven M. Sakamoto-Wengel
Greenspring Fitness Center

DUMBBELLS ASSOCIATES, INC.,
et al.

Petitioners,

v.

CONSUMER PROTECTION DIVISION

Respondent

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE CITY
*
* Case No. 90059044/
* CL109816
*
*
*
* APPEAL FROM THE
* CONSUMER PROTECTION
* DIVISION
* OFFICE OF THE
* ATTORNEY GENERAL
* OF MARYLAND

* * * * *
AFFIDAVIT OF KATHLEEN CRANFORD

I, Kathleen Cranford, hereby declare and state as follows:

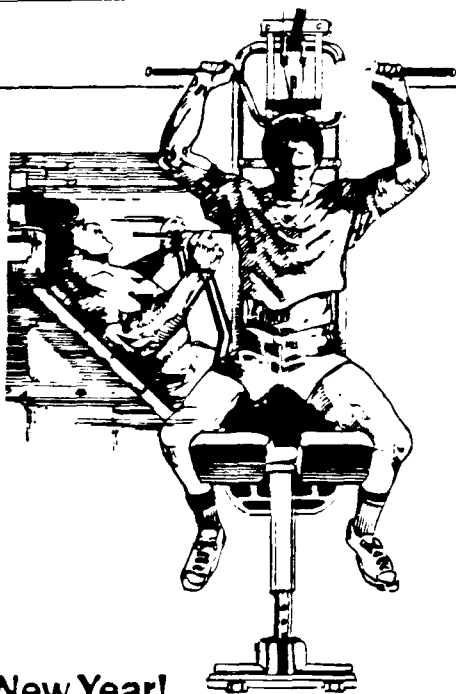
1. I am employed as the Assistant Administrator of the Health Club Registration Program in the Consumer Protection Division of the Office of the Attorney General of Maryland.

2. On February 27, 1990, I telephoned the Greenspring Fitness Center and spoke to a salesperson named Jerry. I told Jerry that I had received a copy of the promotion for Greenspring appended hereto and wanted to know about the membership. He advised me that Greenspring collected \$102 of the membership at the time I join. He said that I would be billed for the remainder at \$1 per month for 9 months or at \$3 per quarter for 3 quarters.

I do solemnly affirm under penalty of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief.

Date: 3/15/90

Kathleen Cranford
Kathleen Cranford



**Greenspring Fitness Center
at the Greenspring Station
828-5328**



Happy New Year!

You have been issued this temporary **One (1) Year Nautilus, Fitness, Spa, and Club Membership "Gold Card"** to the Greenspring Fitness Center, one of Maryland's finest recreational facilities located in Lutherville. That's correct, a **One (1) Year Nautilus, Fitness, Spa, and Club Membership "Gold Card"** to Greenspring Fitness Center.

Your **"Gold Card"** Membership gives you unlimited use of the following facilities and benefits:

- Nautilus! (2 full circuits)
- Free Weights!
- State-of-the-Art Instruction!
- Aerobic Exercise Classes* by Marilyn Picks — Fitness Dimensions!
- Lifecycles!
- Whirlpool!
- Steam Room!
- Sauna! (separate for men & women)
- Spacious Locker Rooms & Shower Facilities!
- Affiliated With Over 2500 Clubs Nationwide!
- Snack Bar & Lounge!
- Open 7 Days A Week!
- Much, Much More!

*As an added bonus your membership includes a free Aerobics package.

This **"Gold Card"** Membership is valued at over **\$400.00** and is being offered to you for only the one time initiation fee of **\$99**, and **\$1.00** per month.

HOW DO I CLAIM MY MEMBERSHIP?

Bring this letter to the **GREENSPRING FITNESS CENTER** within the next 24 hours between 10:00 a.m. and 9:00 p.m. Monday through Friday, or between 10:00 a.m. and 4:00 p.m. on Saturday.

As an added bonus, this offer may also be extended to your friends and relatives. Simply bring your workout partners with you when you visit the club!

Current members of the GREENSPRING FITNESS CENTER are not eligible for this promotional membership. However, you may give your letter to a friend or relative. See reverse side for directions to GREENSPRING FITNESS CENTER.

EXIT 23A FALLS & VALLEY ROADS 828-5328



DUMBBELLS ASSOCIATES, INC.,
et al.

Petitioners,

v.

CONSUMER PROTECTION DIVISION

Respondent

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE CITY
*
* Case No. 90059044/
* CL109816
*
*
*
* APPEAL FROM THE
* CONSUMER PROTECTION
* DIVISION
* OFFICE OF THE
* ATTORNEY GENERAL
* OF MARYLAND

* * * * *

ORDER DENYING PETITION FOR STAY

Having considered Appellants' Petition for Stay and the
Opposition thereto presented by Appellee Consumer Protection
Division and the exhibits in support thereof, it is this

_____ day of _____, 1990,

ORDERED that the Petition for Stay filed by Appellants be,
and hereby is, DENIED.

JUDGE

FILED

MAR 12 1990

CIRCUIT COURT
BALTIMORE C.

DUMBBELLS ASSOCIATES, INC.
t/a Greenspring Fitness Center
Falls and Valley Roads
Lutherville, Maryland 21093
and
JORDAN BINETTI
8327 Analee Avenue
Baltimore, Maryland 21237
and
SCOTT SCALA
144 E. Orange Court
Baltimore, Maryland 21234

Petitioners

vs.

CONSUMER PROTECTION
DIVISION OFFICE OF THE
ATTORNEY GENERAL
200 St. Paul Place
Baltimore, Maryland 21202

Respondent

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
CASE NO.: 90059044/CL109816
APPEAL FROM CONSUMER
PROTECTION DIVISION
OFFICE OF THE ATTORNEY
GENERAL OF MARYLAND

PETITION FOR STAY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of Dumbbells, Inc., Jordan Binetti and Scott Scala, by Melvin J. Kodenski and Kodenski and Canaras, their attorneys, respectfully request this Court that the Decision of the Consumer Protection Division, Office of the Attorney General, be stayed until the hearing for this Appeal, and for reasons, states the following:

1. That the Decision and Supplemental Order of the Consumer Protection Division provides for a refunding of certain monies and memberships for various individuals and additionally, provides for sending out various notices and notifications providing for rescision of contracts which also would result in the possible refunding of monies to various individuals.

LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

2. That since this Decision is presently being appealed by the Petitioners and an Appeal has been filed with this Honorable Court, it would appear logical that a stay would be appropriate in this matter.

3. That to go forward and actually enforce the Decision and Order of the Attorney General's Office would defeat any Appeal in this matter as by the time the Appeal would be heard, the situation may be mute in that it would cause tremendous economic and financial hardship and in all probability, would wind up in bankrupting the Petitioners and at that point, the Appeal would have no effect.

4. That unless this Honorable Court stays the Decision and the Order, the Petitioners will suffer irreversible harm to their business and will never be able to recoup the losses they will have suffered and it is not unreasonable to assume that the Appeal will not be heard for a period of at least three to four months.

5. That the provisions of the Appeal do not contemplate this type of result where the Petitioners will suffer irreversible harm pending an Appeal, in which they may be successful.

6. That in the interest of justice and fair play and to afford the Petitioners an opportunity to exist economically, a stay of the Decision and Order of the Consumer Protection Division, Office of the Attorney General, is warranted and the Petitioners pray that this Court pass an Order staying the Decision and Order in effect thereof until after a hearing of the Appeal in this entire matter.

7. That because of the urgency in time of this matter, an immediate Order is requested.

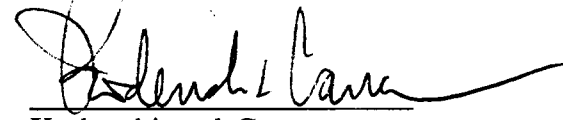
WHEREFORE, Your Petitioners pray:

A. That this Honorable Court stay the ruling of the Consumer Protection


Division, Office of the Attorney General until the hearing of this Appeal.

B. That Your Petitioners may be granted such other and further relief as the nature of their cause may require.


Melvin J. Kodenski


Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(301) 685-5100
Attorneys for the Petitioners

COPY mailed on this 17th day of March, 1990, to William Leibovici, Chief, Consumer Protection Division, Office of the Attorney General, and a COPY also mailed to Steven M. Sakamoto-Wengel, Special Assistant Attorney General, Office of the Attorney General.


Melvin J. Kodenski

FILED

IN THE

FEB 22 1990

CIRCUIT COURT FOR BALTIMORE CITY

90059044

FOR

CL 109816

DUMBBELLS ASSOCIATES, INC.
t/a Greenspring Fitness Center
Falls and Valley Roads
Lutherville, Maryland 21093
and
JORDAN BINETTI
8327 Analee Avenue
Baltimore, Maryland 21237
and
SCOTT SCALA
144 E. Orange Court
Baltimore, Maryland 21234

Petitioners

vs.

CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL
200 St. Paul Place
Baltimore, Maryland 21202

Respondent

BALTIMORE CITY 01570M03/01/90 002#9583 A ***

#0900590

#0000044

CIVIL \$80.00

PETITION NO. \$5.00

FOLIO NO.: \$85.00

CASE NO.: \$85.00

CHNG \$0.00

APPEAL FROM CONSUMER
PROTECTION DIVISION
OFFICE OF THE ATTORNEY
GENERAL OF MARYLAND

CASE NO.: 89-020

ORDER FOR APPEAL

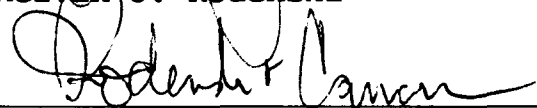
MR. CLERK:

The Plaintiffs, Dumbbells Associates, Inc. trading as Greenspring Fitness Center, Jordan Binetti and Scott Scala, by Melvin J. Kodenski and Kodenski and Canaras, their attorneys, being aggrieved by the Decision of the Chief of the Consumer Protection Division of the Attorney General's Office dated October 26, 1989, and Supplemental Order dated January 31, 1990, hereby request an Appeal from said Decision to be entered to the Circuit Court for Baltimore City.

LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202



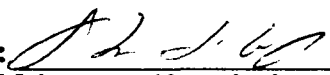
Melvin J. Kodenski



Kodenski and Canaras
19 E. Fayette Street
Suite 301
Baltimore, Maryland 21202
(301) 685-5100
Attorneys for the Petitioners

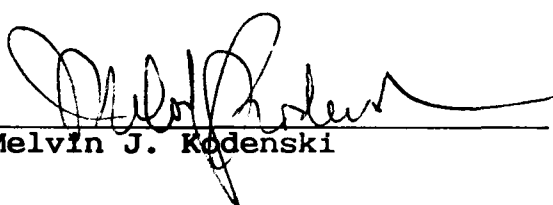
SERVICE of the within Petition is hereby admitted,
this 28th day of February, 1990.

CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL

BY: 

William Leibovici, Chief

COPY hand-delivered on this 28 day of February,
1990, to William Leibovici, Chief, Consumer Protection Division,
Office of the Attorney General, and left with same; and a COPY
also hand-delivered to Steven M. Sakamoto-Wengel, Special
Assistant Attorney General, Office of the Attorney General.



Melvin J. Kodenski

F:\MJK\718

LAW OFFICES
KODENSKI AND CANARAS
19 EAST FAYETTE STREET
SUITE 301
BALTIMORE, MARYLAND 21202

DUMBBELLS ASSOCIATES, INC.
t/a Greenspring Fitness Center
Falls and Valley Roads
Lutherville, Maryland 21093
and
JORDAN BINETTI
8327 Analee Avenue
Baltimore, Maryland 21237
and
SCOTT SCALA
144 E. Orange Court
Baltimore, Maryland 21234

Petitioners

vs.

CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL
200 St. Paul Place
Baltimore, Maryland 21202

Respondent

* IN THE
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* CIRCUIT COURT
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* FOR
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*
* BALTIMORE CITY
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*
* PETITION NO.:
* FOLIO NO.:
* CASE NO.:
*
* APPEAL FROM CONSUMER
* PROTECTION DIVISION
* OFFICE OF THE ATTORNEY
* GENERAL OF MARYLAND
*
* CASE NO.: 89-020

PETITION FOR APPEAL

The Petition of Dumbbells Associates, Inc., Jordan and Scott Scala, by Melvin J. Kodenski and Kodenski and Canaras, their attorneys, respectfully states:

1. That by Decision and Order dated October 26, 1989, the Consumer Protection Division of the Office of the Attorney General, made certain decisions which were held in abeyance until Supplemental Order January 31, 1990, in which the Consumer Protection Division of the Office of the Attorney General, by and through William Leibovici, Chief of the Consumer Protection Division, made certain Orders affecting the Petitioner, providing for various bonding requirements, payment of costs and provided

for certain notification to consumer, all of which were included in the Supplemental Order and Decision and Order, copies of which are herewith attached.

2. That the Petitioners have been aggrieved by the action of the Consumer Protection Division of the Office of the Attorney General as a result of the hearings and Decision.

3. That your Petitioners object to an appeal from the action of the said Consumer Protection Division of the Office of the Attorney General and state that they desire this Honorable Court to review this action because of the following errors of the Decision by William Leibovici, Chief of the Consumer Protection Division:

A. That the Decision was not fairly exercised.

B. That the Decision was not based on any substantial evidence and was unreasonable.

C. That the Decision was arbitrary and capricious.

D. That the Consumer Protection Division improperly and unfairly interpreted phrases of the English language.

E. That the Decision of the Consumer Protection Division of the Office of the Attorney General offends the fundamental and basic principals of fairness and justice.

F. That the Decision was contrary to the facts and evidence in that there were no complaints made to the Consumer Protection Division concerning the Petitioners, nor have there been any requests for any refund.

G. And for such other and further relief as may be

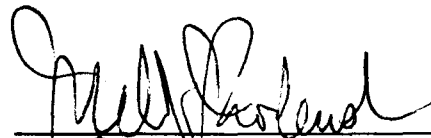
stated at the hearing on this Appeal.

WHEREFORE, your Petitioners pray:

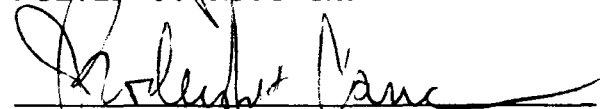
A. That their rights have been prejudiced by the Decision of the Chief of the Consumer Protection Division of the Attorney General's Office.

B. That this Honorable Court reverse the Decision of the Chief of the Consumer Protection Division of the Attorney General's Office.

C. That your Petitioners be granted such other and further relief as the nature of their cause may require which may include a remand of this case for additional testimony to provide additional evidence and/or providing of additional evidence at the hearing of this Appeal.



Melvin J. Kodenski



Kodenski and Canaras
19 E. Fayette Street
Suite 301

Baltimore, Maryland 21202
(301) 685-5100


Attorneys for the Petitioners

SERVICE of the within Petition is hereby admitted,
this 28th day of February, 1990.

CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL

BY: 
William Leibovici, Chief

COPY hand-delivered on this 28 day of February,
1990, to William Leibovici, Chief, Consumer Protection Division,
Office of the Attorney General, and left with same; and a COPY
also hand-delivered to Steven M. Sakamoto-Wengel, Special
Assistant Attorney General, Office of the Attorney General.



Melvin J. Kodenski

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J.L.
2-1-10
214 Images

From: Jennifer Hafner
To: Ray Connor, Doris Byrne, Sheila Simms, Edward Papenfuse
Date: Monday, February 01, 2010 9:55:48 AM
Subject: MSA SC 5458-82-150

I have added five additional cases to this work order which need to be pulled and scanned. They are -

DUMBELLS ASSCS, ETAL V CONSUMER PROTECTION Box 739 Case No. 90059044 [MSA T2691-3376, OR/11/12/24] *J.L. 2-1-10*
File should be named msa_sc5458_82_150_[full case number]-#### *214 Images*

WINTER, ETAL VS PIJANOWSKI, ETAL Box 783 Case No. 90081076 [MSA T2691-3420, OR/11/12/68]
File should be named msa_sc5458_82_150_[full case number]-####

POINDEXTER VS ALEXANDER & ALEXANDER Box 927 Case No. 90164037 [MSA T2691-3564, OR/11/14/44]
File should be named msa_sc5458_82_150_[full case number]-####

LEBSON MD VS BOARD OF MUNICIPAL Box 959 Case No. 90184037 [MSA T2691-3596, OR/11/14/76]
File should be named msa_sc5458_82_150_[full case number]-####

HARRINGTON VS SECRETARY OF PUBLIC SAFETY Box 969 Case No. 90190075 [MSA T2691-3606, OR/11/15/2]
File should be named msa_sc5458_82_150_[full case number]-####