

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street-5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for New Jersey Division of Consumer Affairs

**FILED**

FEB 04 2009

Division of Consumer Affairs

By: Jeffrey Koziar  
Deputy Attorney General  
(973) 648-7819

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

In the Matter of : Administrative Action  
:  
5 POINT FITNESS L.L.C. DBA/ :  
RETRO FITNESS OF BELLMAWR :  
STEVE ERVELLI AND BRIAN : **CONSENT ORDER**  
WIZZA :  
:

**WHEREAS** this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation in order to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), the Health Club Provisions of the CFA, N.J.S.A. 56:8-39 et seq. (“Health Club Provisions”), and the Regulations Governing Seller of Health Club Services, N.J.A.C. 13:45A-25.1 et seq. (“Health Club Regulations”), have been or are being committed by Retro Fitness of Bellmawr, Steve Ervelli and Brian Wizza, as well as the owners, officers, directors, managers, employees, representatives, agents, subsidiaries, successors and assigns of Retro Fitness of Bellmawr (collectively, “Respondents”) (hereinafter referred to as the “Investigation”);

**WHEREAS** the Division and respondent(s) (collectively, "Parties") have reached an amicable agreement thereby resolving the issues in controversy and concluding this matter without the need for further action, and respondent(s) having voluntarily cooperated with the Investigation and consented to the entry of the within order ("Consent Order") and for good cause shown,

IT IS on this 4<sup>th</sup> day of February, 2008 **ORDERED AND AGREED** as follows:

### **1. EFFECTIVE DATE**

1.1 This Consent Order shall be effective on the date that it is filed with the Division ("Effective Date").

### **2. DEFINITIONS**

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.2 "Consumer" shall refer to any Person, defined in accordance with N.J.S.A. 56:8-1(d), who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale, defined in accordance with N.J.S.A. 56:8-1(e) including, but not limited to, Health Club Services and Health Club Services Contracts.

2.3 "Director" shall be defined in accordance with N.J.S.A. 56:8-39(a).

2.4 "Health Club" shall be defined in accordance with N.J.S.A. 56:8-39(b). For purposes of the Health Club Regulations, "Health Club" shall be defined in accordance with N.J.A.C. 13:45A-25.1(a).

2.5 "Health Club Services" shall be defined in accordance with N.J.S.A. 56:8-39(c).

2.6 "Health Club Services Contract" shall be defined in accordance with N.J.S.A. 56:8-39

(d).

2.7 "Person" shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.8 "State" means the State of New Jersey.

2.9 "Retro Fitness of Bellmawr Facility" shall refer to the Health Club Facility owned and/or operated by respondent(s), located at 367 West Browning Rd., Bellmawr, NJ 08031.

### **3. BUSINESS PRACTICES AND INJUNCTIVE RELIEF**

3.1 Respondents shall not engage in any unfair acts or deceptive practices in the conduct of their business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations, as now constituted or as may hereafter be amended, including, but not limited to, the CFA, the Health Club Provisions and the Health Club Regulations.

3.2 Respondents shall not sell or offer for sale Health Club Services in the State without first registering with the Director, in accordance with N.J.S.A. 56:8-40.

3.3 Respondents shall not sell or offer for sale Health Club Services in the State without first paying to the Director the registration fee required by N.J.A.C. 13:45A-25.2(b).

3.4 Respondents shall not sell or offer for sale Health Club Services in excess of three (3) months and require or collect in excess of three (3) months' payment in advance without maintaining a bond, an irrevocable letter of credit or other security acceptable to the Director, as required by N.J.S.A. 56:8-41(a).

3.5 If Respondents obtain a bond for any Health Club, they shall file a copy of the bond as well as a certificate by surety, whereby the surety agrees to notify the Director at least

ten (10) days in advance of any cancellation or material change in the bond, as required by N.J.S.A. 56:8-41(a).

3.6 If Respondents maintain a bond or other acceptable security in accordance with N.J.S.A. 56:8-41(a), they shall set forth in each and every Health Club Services Contract that a bond or other acceptable security is filed or deposited with the Director to protect a Consumer purchasing such contracts, as required by N.J.S.A. 56:8-42(c).

#### **4. SETTLEMENT PAYMENT**

4.1. On or before the Effective Date, Respondents agree to make a payment in the amount of Five Thousand One Hundred Fourteen and 37/100 Dollars (\$5,114.37) (the "Settlement Payment"). The Settlement Payment comprises Five Thousand and 00/100 Dollars (\$5,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13 and One Hundred Fourteen and 37/100 Dollars (\$114.37) for reimbursement of investigative costs pursuant to N.J.S.A. 56:8-11.

4.2 All payments in satisfaction of the Settlement Payment shall be made by certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

State of New Jersey  
Department of Law and Public Safety  
CMT  
124 Halsey Street- 7<sup>th</sup> Floor  
Newark, New Jersey 07101

4.3 Upon paying the Settlement Amount, Respondents shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

## **5. GENERAL PROVISIONS**

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order contains the entire agreement between the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing in this Consent Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

5.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon the respondent(s) as well as their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct their business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondents; and (b) an admission by Respondents that any of their acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, the Health Club Provisions and/or the Health Club Regulations. Neither the existence of, nor the terms of this Consent Order, shall be deemed to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) any action or proceeding involving a Released Claim (as defined in Section 6) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 The Parties represent and warrant an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

5.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

## **6. RELEASE**

6.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on and paying the Settlement Amount as specified in Section 4, the Division hereby agrees to release Respondents from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondents for violations of the CFA, the Health Club Provisions and the Health Club Regulations, as well as the matters specifically addressed in this Consent Order (the "Released Claims").

6.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondents by any other agency or subdivision of the State.

## **7. PENALTIES FOR FAILURE TO COMPLY**

7.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

7.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order, the CFA, the Health Club Services Provisions and/or the Health Club Regulations shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondents may be liable for enhanced civil penalties.

## **8. COMPLIANCE WITH ALL LAWS**

8.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- (a) Relieving Respondents of their obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from respondent(s) pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondents may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

## **9. NOTICES UNDER THIS CONSENT ORDER**

9.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondents pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

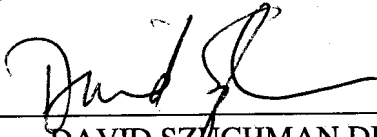
Executive Director  
Officer of Consumer Protection  
New Jersey Division of Consumer Affairs  
124 Halsey Street - 7<sup>th</sup> Floor  
P.O. Box 45025  
Newark, New Jersey 07101

For the Respondents:

Domenic Simeone, Esq.  
Simeone & Bonfrisco  
1522 Rt 38  
Cherry Hill, NJ 08002

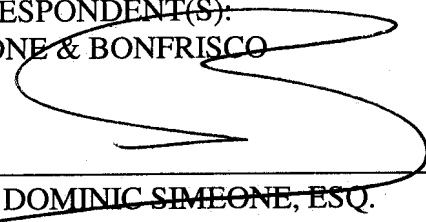
**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS  
CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.**

FOR THE DIVISION:

By:   
\_\_\_\_\_  
DAVID SZUCHMAN DIRECTOR  
DIVISION OF CONSUMER AFFAIRS


Dated: 2/4/09, 2008

FOR RESPONDENT(S):  
SIMEONE & BONFRISCO


By:   
\_\_\_\_\_  
DOMINIC SIMEONE, ESQ.

Dated: 1/23/09, 2008

RETRO FITNESS OF BELLMAWR

By:   
\_\_\_\_\_  
STEVE ERVELLI (CO-OWNER)

Dated: 1-21-09, 2008

By:   
\_\_\_\_\_  
BRIAN WIZZA (CO-OWNER)

Dated: 1-21-09, 2008