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Division of Law
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FILED

DEC 14 2016

Division of Consumer Affairs

By: David M. Reap
Deputy Attorney General
Consumer Fraud Prosecution Section
(973) 648-7819

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

In the Matter of

FERTILITY BRIDGES, INC.,

Respondent.

Administrative Action

CONSENT ORDER

WHEREAS this matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to determine whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), have been or are being committed by Fertility Bridges, Inc., with a principal place of business at One Embarcadero Center, Suite 500, San Francisco, California 9411 (“Fertility Bridges” or “Respondent”) (hereinafter referred to as the “Investigation”);

WHEREAS the Investigation concerned Fertility Bridges’s inclusion in its agreements with New Jersey Consumers a clause that purported to restrict the Consumers’ ability to post reviews on the internet concerning its services, and subsequent attempt to enforce such clause against a New Jersey Consumer; and

WHEREAS the Division and Respondent (collectively, “Parties”) having reached an amicable agreement resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent having voluntarily cooperated with the Investigation and consented to the entry of the within order (“Consent Order”) without having admitted any violation of law in connection with the Investigation or its agreements with New Jersey Consumers, and for good cause shown:

IT IS 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 “1/14-9/15 Services Agreement” shall refer to the Services Agreement used by Fertility Bridges from at least January 2014 to September 2015.

2.2 “1/14-12/15 Terms of Use” shall refer to the Terms of Use used by Fertility Bridges from at least January 2014 to December 28, 2015.

2.3 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a). This definition applies to other forms of the word “Advertisement,” including “Advertise.”

2.4 “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.

2.5 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

2.6 “Mediation-Arbitration Clause” shall refer to the clause titled “Q. SETTLEMENT OF DISPUTES” within the Services Agreement.

2.7 “Egg Donor Database” refers to Fertility Bridges’s database that includes profiles of potential egg donors.

2.8 “Fertility Bridges Website” shall refer to the website located at www.fertilitybridges.com, as well as any other website owned and/or controlled by Fertility Bridges.

2.9 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c), and includes fertility consulting services.

2.10 “New Jersey” and “State” shall refer to the State of New Jersey.

2.11 “New Jersey Consumer” shall refer to any Person residing and/or located in New Jersey.

2.12 “Online Reviews Clause” shall refer to the clause titled “M. ONLINE REVIEWS” within the Services Agreement.

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

2.14 “Present Services Agreement” shall refer to the revised Services Agreement used by Fertility Bridges as of September 15, 2015.

2.15 “Present Terms of Use” shall refer to the revised Terms of Use used by Fertility Bridges as of December 28, 2015.

2.16 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

2.17 “Services Agreement” shall refer to the Fertility Bridges document titled “Services Agreement Between Fertility Bridges and Recipients.”

2.18 “Terms of Use” shall refer to the Fertility Bridges document titled “Fertility Bridges Terms, Processes, and Conditions for Egg Donation.”

3. FACTUAL BACKGROUND

Fertility Bridges’s Services:

3.1 Fertility Bridges Advertises, offers for Sale and Sells fertility consulting services through the Fertility Bridges Website to Consumers throughout the country, including to New Jersey Consumers.

3.2 The fertility consulting services Advertised, offered for Sale and sold by Fertility Bridges include egg donation consulting services.

3.3 In connection with egg donation consulting services, Fertility Bridges offers Consumers access to the Egg Donor Database.

3.4 After a Consumer selects an egg donor from the Egg Donor Database to be matched with, Fertility Bridges enters into an agreement with the Consumer for egg donation consulting services, which includes completing the match and coordinating the egg donor cycle with an independent fertility clinic.

Egg Donation Database Terms of Use:

3.5 Prior to granting Consumers access to the Egg Donor Database, Fertility Bridges requires Consumers to agree to Terms of Use.

3.6 The 1/14-12/15 Terms of Use included the following concerning a Consumer’s ability to post reviews on the internet concerning Fertility Bridges’s services:

Online Reviews

Because of the extremely private and emotionally delicate nature of our business you agree that you will NOT post any online reviews anywhere on the Internet without first presenting it to our legal department. Often reviews do not take into consideration all the relevant facts of the situation and can be severely damaging to

the business being reviewed, which could subject the writer to libel and unnecessary legal fees. Even good reviews can be misconstrued and hurt potential business. There are truly no anonymous reviews because web sites that post them, if they receive a complaint, will be required to show the real identity of the poster and with a court order will be forced to remove the post until the facts are revealed. Even anonymous emails addresses aren't anonymous because they point to a unique computer in someone's home or office that can be tracked.

3.7 On December 28, 2015, Fertility Bridges began using the Present Terms of Use.

3.8 The Present Terms of Use includes the following concerning a Consumer's ability to post reviews on the internet concerning Fertility Bridges's services:

Online Reviews

Due to medical privacy laws, and the extremely private and emotionally delicate nature of the egg donation business you agree that you will NOT post any online reviews anywhere on the Internet without first presenting it to our legal department. Often reviews do not take into consideration all the relevant facts of the situation and can be severely damaging to the business being reviewed, which could subject the writer to libel and unnecessary legal fees. Even good reviews can be misconstrued and hurt potential business. There are truly no anonymous reviews because web sites that post them, if they receive a complaint, will be required to show the real identity of the poster and with a court order will be forced to remove the post until the facts are revealed. Even anonymous emails addresses aren't anonymous because they point to a unique computer in someone's home or office that can be tracked. Fertility Bridges is based in Illinois, a State that currently allows us to block online reviews entirely. However, that is not our intent and we have never blocked someone from writing a review that was 100% truthful. We aim only to prevent the post of non-factual data or information that violates medical privacy laws. As long as your review is cleared as completely factual and does not violate the terms of your agreement with your donor, or medical privacy laws, then you may post it wherever you like.

Agreements for Egg Donation Consulting Services:

3.9 Fertility Bridges entered into Services Agreements with Consumers to provide egg donation consulting services.

3.10 The 1/14-9/15 Services Agreement included the following concerning a Consumer's ability to post reviews on the internet about Fertility Bridges's services:

M. ONLINE REVIEWS

Because of the extremely private and emotionally delicate nature of the egg donation business Recipients agree NOT to post any online reviews anywhere on the Internet without first presenting it to Fertility Bridges for legal review. Often reviews do not take into consideration all the relevant facts of the situation and can be severely damaging to the business being reviewed, which could subject the writer to libel and unnecessary damages. Even good reviews can be misconstrued and hurt potential business. There are truly no anonymous reviews because web sites that post them, if they receive a complaint, will be required to show the real identity of the poster and with a court order will be forced to remove the post until the facts are revealed. Even anonymous emails addresses aren't anonymous because they point to a unique computer in someone's home or office that can be tracked.

3.11 The 1/14-9/15 Services Agreement also included the following concerning resolution of disputes through mediation or, if necessary, arbitration:

Q. SETTLEMENT OF DISPUTES

Recipients agree to mediation to resolve any disputes. If mediation does not resolve the issues then Recipients agree to binding arbitration to settle disputes. Any claim or controversy arising out of this Agreement shall be settled in California Jurisdiction. Either Party hereto may pursue the remedy of specific performance in the event of failure to comply with the terms and provisions of this agreement. All disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of The American Arbitration Association by one or more arbitrators in San Francisco, California and appointed in accordance with said Rules, if mediation does not resolve the issues first.

3.12 On September 15, 2015, Fertility Bridges began using the Present Agreement.

3.13 The Present Agreement includes a section in which a Consumer is required to initial certain statements to provide his/her assent to certain terms, which includes the following statement:

I agree not to post any reviews of Fertility Bridges online or with any reviewing agency, negative or positive, unless they are cleared by a neutral legal mediator who will determine if they are correct and accurate. If I post false information online or to a reviewing agency about Fertility Bridges, I agree to a \$10,000 a day libel fine until the false post or false complaint is removed. Fertility Bridges will also fine any website listing such libel a \$10,000 a day fine.

3.14 The Present Agreement also includes the following concerning a Consumer's ability to post reviews on the internet about Fertility Bridges's services:

M. ONLINE REVIEWS

Because of the extremely private and emotionally delicate nature of the egg donation business Recipients agree NOT to post any online reviews anywhere on the Internet without first presenting it to Fertility Bridges for legal review. Often reviews do not take into consideration all the relevant facts of the situation and can be severely damaging to the business being reviewed, which could subject the writer to libel and unnecessary damages. Even good reviews can be misconstrued and hurt potential business. There are truly no anonymous reviews because web sites that post them, if they receive a complaint, will be required to show the real identity of the poster and with a court order will be forced to remove the post until the facts are revealed. Even anonymous emails addresses aren't anonymous because they point to a unique computer in someone's home or office that can be tracked.

3.15 The Present Agreement also includes the following clause concerning resolution of disputes through mediation, or, if necessary, arbitration:

Q. SETTLEMENT OF DISPUTES

Recipients agree to mediation to resolve any disputes by selecting one of the impartial mediators on this list: http://www.californianeutrals.org/san_francisco-mediators.

The party requesting mediation must pay for all up front costs of mediation to start the process. The mediator may decide in their outcome that some or all of these funds must be shared by both parties. If mediation does not resolve the issues then Recipients agree to binding arbitration to settle disputes and both parties agree to be bound to the results and pay any damages if their mediation case is decided against them. Any claim or controversy arising out of this Agreement shall be settled in California Jurisdiction. Either Party may pursue the remedy of specific performance in the event of failure to comply with the terms and provisions of this agreement. All disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of the American Arbitration Association by one or more arbitrators in San Francisco, California and appointed in accordance with said Rules, if mediation does not resolve the issues first.

Services Agreements with New Jersey Consumers:

3.16 On April 22, 2014, Fertility Bridges entered into a Services Agreement with a New Jersey Consumer (“New Jersey Consumer #1”).

3.17 On August 17, 2015, Fertility Bridges entered into a Services Agreement with a second New Jersey Consumer (“New Jersey Consumer #2”).

Attempt to Enforce Services Agreement Against New Jersey Consumer #2:

3.18 On or around September 14, 2015, New Jersey Consumer #2 submitted a complaint to the Better Business Bureau (“BBB Complaint”) concerning services provided to her by Fertility Bridges.

3.19 On or around September 17, 2015, Fertility Bridges’s then President provided a response to the BBB concerning New Jersey Consumer #2’s complaint which included the following statements:

Our legal agreement states . . . that the client will not post any online reviews without a review by [our] attorney as that review being 100% factual.

...

We do not give you [the BBB] authority to post [Consumer #2's] review of us online, list that there is a complaint against us online . . . or provide any information to the public about this situation, until all the facts have been verified by an impartial mediator.

3.20 On or around September 17, 2016, Fertility Bridges's then President also sent an email to New Jersey Consumer #2, which stated:

If there is a problem with our contract, you legally agreed to take it to mediation and not to the public or other organizations that post to the public. . . . What you are legally blocked from is including any kind of review online or to an agency that will post it online about Fertility Bridges until the facts of such complaint are verified by an impartial mediator. Otherwise it is defamation because the facts are not correct.

...

Our lawyer encourages you not to post any online reviews until the mediator provides a determination, otherwise you are in breach of our contract and subject to a serious defamation lawsuit.

3.21 On or around September 18, 2015, Fertility Bridges's then President responded further to the BBB complaint of New Jersey Consumer #2 with the following statements: "Fertility Bridges specifically has written in their [sic] contract with which the client has signed, that they can not [sic] write reviews until they are reviewed by the Fertility Bridges attorney as accurate."

3.22 On or around September 21, 2015, Fertility Bridges's then President responded further to the BBB complaint of New Jersey Consumer #2 with the following statements: "[Consumer # 2 is] barred from providing a review online without approval from the Fertility Bridges attorney (or an impartial mediator) that the facts in the review are correct and not false."

3.23 On or around September 21, 2016, Fertility Bridges's then President also sent an email to New Jersey Consumer #2 with an explanation of the costs of mediation: "You are required to split the costs of mediation and the mediator will expect payment for your half to begin the process. . . . Mediation could cost \$3,000 or more."

Consumers' Presentation of Proposed Online Reviews to Fertility Bridges:

3.24 To date, no Consumers have presented any proposed online reviews to Fertility Bridges for the purpose of undergoing the process for posting an online review under the Services Agreement.

4. DIVISION'S FINDINGS

4.1 Based on the Investigation, the Division found that the Online Reviews Clause, in conjunction with the Mediation-Arbitration Clause, sought to require Consumers to undergo an excessively burdensome process in order to post an online review as to Fertility Bridges's services. Consumers were, at the very least, required to submit the proposed online review to Fertility Bridges for a "legal review," but could have also been required to participate in mediation and/or arbitration concerning the content of the proposed online review and to pay the upfront costs associated with the mediation and/or arbitration, which Fertility Bridges estimated to be thousands of dollars.

4.2 The Division found that the overall effect of the process for posting an online review established under the Online Reviews Clause, in conjunction with the Mediation-Arbitration Clause, was to deter Consumers from posting an online review concerning Fertility Bridges's services. Accordingly, the Division found that the Online Reviews Clause operated similarly to a clause that would outright bar Consumers from posting reviews on the internet concerning Fertility Bridges's services (*i.e.*, a "gag order").

5. REQUIRED AND PROHIBITED BUSINESS PRACTICES

5.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its 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.

5.2 Respondent shall not include the Online Reviews Clause in its Services Agreement with New Jersey Consumers.

5.3 Respondent shall not include any restriction on the Consumer's ability to post reviews on the internet concerning Fertility Bridges's services in its Services Agreements with New Jersey Consumers.

6. SETTLEMENT AMOUNT

6.1 On or before the Effective Date, Respondent shall pay One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) ("Settlement Payment").

6.2 The Settlement Payment is comprised of civil penalties, pursuant N.J.S.A. 56:8-13.

6.3 Respondent shall make the Settlement Payment by certified check, cashier's check, money order, credit card or wire transfer payable to the "New Jersey Division of Consumer Affairs" and shall be forwarded to:

David M. Reap, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law
124 Halsey Street – 5th Floor
Newark, New Jersey 07101

6.4 Upon making the Settlement Payment, Respondent 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.

7. GENERAL PROVISIONS

7.1 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.

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

7.3 The Parties have 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.

7.4 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.

7.5 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.

7.6 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.

7.7 This Consent Order shall be binding upon the Respondent as well as its 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 its business.

7.8 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.

7.9 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 Respondent; and (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unlawful or unconscionable or violate the CFA. 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 9) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

7.10 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.

7.11 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

8. REPRESENTATIONS AND WARRANTIES

8.1 The Parties represent and warrant that 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.

8.2 Respondent represents and warrants that it will not include any restriction on the Consumer's ability to post reviews on the internet concerning Fertility Bridges's services in its Services Agreements with Consumers throughout the United States.

9. RELEASE

9.1 In consideration of the undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment as specified in Section 6, the Division hereby agrees to release Respondent 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 Respondent for violations of the CFA arising out of the Investigation, as well as the matters specifically addressed in this Consent Order ("Released Claims").

9.2 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 Respondent by any other agency or subdivision of the State.

10. PENALTIES FOR FAILURE TO COMPLY

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

10.2 The Parties agree that any future violations of Section 5 of this Consent Order and/or the CFA shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

11. COMPLIANCE WITH ALL LAWS

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

- (a) Relieving Respondent of its 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 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 Respondent 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.

12. NOTICES UNDER THIS CONSENT ORDER

12.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent 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:

David M. Reap, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law
124 Halsey Street – 5th Floor
Newark, New Jersey 07101

For Respondent:

Bryan Buffalino, Esq.
Stark & Stark

222 Ridgedale Avenue
Cedar Knolls, New Jersey 07927

IT IS ON THE 14th DAY OF December, 2016 SO
ORDERED.

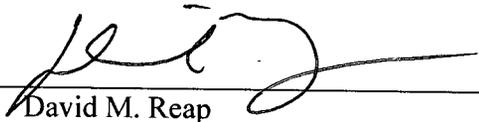
CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: 
STEVE C. LEE, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

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

FOR THE DIVISION:

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By:  _____ Dated: Dec. 13th, 2016
David M. Reap
Deputy Attorney General
Consumer Fraud Prosecution Section

124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

FOR THE RESPONDENT:

STARK & STARK

By: _____ Dated: _____, 2016
Bryan Buffalino, Esq.

222 Ridgedale Avenue
Cedar Knolls, New Jersey 07927

FERTILITY BRIDGES, INC.

By: _____ Dated: _____, 2016
Jenna Bonfield, President

One Embarcadero Center, Suite 500
San Francisco, California 94111

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

FOR THE DIVISION:

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: _____ Dated: _____, 2016

David M. Reap
Deputy Attorney General
Consumer Fraud Prosecution Section

124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

FOR THE RESPONDENT:

STARK & STARK

By:  _____ Dated: 12-7-16, 2016

Bryan Buffalino, Esq.
222 Ridgedale Avenue
Cedar Knolls, New Jersey 07927

FERTILITY BRIDGES, INC.

By:  _____ Dated: December 5th, 2016

Jené Bonfield, President
One Embarcadero Center, Suite 500
San Francisco, California 94111