

May 17, 1988

Stephen W. Cooper, Commissioner
Department of Human Rights
Fifth Floor Bremer Tower
Seventh Place & Minnesota Street
St. Paul, MN 55101

Helen Rubenstein
Special Assistant Attorney General
Second Floor Ford Building
117 University Avenue
St. Paul, MN 55155

James A. Barnum
Leonard, Street & Deinard
Suite 1500, 100 South Fifth Street
Minneapolis, MN 55402

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, MN 55317

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, MN 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, MN 55344

Forest Larson
5005 Richmond Drive
Edina, MN 55436

Re: State of Minnesota, by Stephen W. Cooper, Commissioner, Minnesota Department of Human Rights, Complainant v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents (Class Action Case of Judy Kent); OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Parties and Counsel:

Enclosed and served upon you by mail, please find the Findings of Fact, Conclusions of Law and Order of the Administrative Law Judge (Class Action Judy Kent) in the above-entitled matter.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge
Telephone: 612/341-7610

RCL/lr
Enclosures

Service List

Stephen W. Cooper, Commissioner
Department of Human Rights
Fifth Floor Bremer Tower
Seventh Place & Minnesota Street
St. Paul, MN 55101

James A. Barnum
Leonard, Street & Deinard
Suite 1500, 100 South Fifth Street
Minneapolis, MN 55402

Sports and Health Club, Inc.
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Chanhassen, MN 55317

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Jayne B.
Khalifa, Commissioner, Minnesota
Department of Human Rights, and
her Predecessors,

NOTICE OF AND
ORDER FOR CLASS
ACTION HEARING

Complainant,

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

IT IS HEREBY ORDERED AND NOTICE IS GIVEN, that, pursuant to Minn. Stat. §§ 14.57 - 14.69 and 363.06, subd. 4(6) (1986), a hearing will be conducted (day), (date), commencing at (time) in (Courtroom No.), Minnesota Office of Administrative Hearings, Third Floor, Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota. The purpose of the hearing is to determine whether (name) qualifies as a Class Member entitled to relief for acts of discrimination committed by the Respondents. You are hereby urged to attend. Failure to do so may prejudice your rights in this and any subsequent proceedings in this matter, and may result in the matters alleged by the opposing party being taken as true.

The Administrative Law Judge presiding in this matter is (name, address telephone number).

Minn. Stat. § 363.06, subd. 4(6) allows the Commissioner of the Department of Human Rights to seek relief for classes of individuals affected by unfair discriminatory practices. On April 27, 1984, and in subsequent Orders, Administrative Law Judge Richard C. Luis determined that the Respondents engaged in such practices against five different classes of persons, which classes were certified for appropriate relief. (Name of potential class member) alleges that (s)he qualifies for relief as a member of one of more of those classes.

You are hereby NOTIFIED that you have the right to be represented by an attorney, by yourselves, or by person(s) of your choice if not otherwise prohibited as the unauthorized practice of law. The procedures governing conduct of the hearing are found in Minn. Stat. §§ 14.57 - 14.69 (1986) and Minn. Rules 1400.5100 - 1400.8300 (1985). Copies may be obtained from the Department of Administration, Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, telephone: (612) 297-3000.

At the hearing, the parties will be given the opportunity to be heard orally, to present witnesses, to cross-examine witnesses, and to submit evidence, written data, statements, or arguments in this matter. Please bring to the hearing all documents, records and witnesses needed to support your position. Subpoenas may be available from the Chief Administrative Law Judge of the Office of Administrative Hearings to compel the attendance of witnesses or the production of documents. Requests for subpoenas must be made in accordance with Minn. Rule 1400.7000 (1985).

Please be advised that if not public data is admitted into evidence, it become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (1986).

Persons desiring to explore informal disposition of this matter pursuant to Minn. Rule 1400.5900 or discovery possibilities pursuant to Parts 1400.6700 - 1400.7000 (1985) should contact Elizabeth V. Cutter, Special Assistant Attorney General, 1100 Bremer Tower, St. Paul, Minnesota 55101, telephone: (612) 297-2921.

A Notice of Appearance form, a copy of which is attached, must be filed with the Administrative Law Judge identified above within twenty (20) days following receipt of this Notice by any party intending to appear at the hearing. If the hearing date is less than twenty (20) days from the issuance of the Notice of and Order for Hearing, filing of the Notice of Appearance is not necessary.

Failure to appear at the hearing may result in the matters alleged by the opposing party being taken as true. As a result, liability may be found and damages assessed, if the Respondents fail to attend or are not represented. If the Commissioner of Human Rights is not represented, such non-participation could result in a dismissal of the charges.

Dated this _____ day of April, 1987.

RICHARD C. LUIS

Administrative Law Judge
Minnesota Office of
Administrative Hearings
400 Summit Bank Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415
Telephone: 612/341-7610

April 17, 1987

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Re: State of Minnesota, by Jayne B. Khalifa, Commissioner, Minnesota Department of Human Rights, and her Predecessors, Complainant v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents; OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Gentlemen:

On April 9, 1987, Special Assistant Attorney General Elizabeth V. Cutter engaged in a conference telephone conversation with Administrative Law Judge Janice K. Frankman and myself regarding the scheduling of class-action hearings in the above-entitled matter and other procedural issues. The purpose of this letter is to relate to you the contents of that conversation, and to solicit your opinions regarding the matters discussed.

It was established that Judge Frankman is available to hear the claim of Julie Stangl on Thursday, April 30, 1987. Ms. Cutter suggested that Judge Frankman hear the cases of all persons formerly employed at the Midway and Apache Clubs who testified in the hearing held during the summer and early fall of 1983. Judge Frankman and I stated that we have no problems with that. In addition, the matter of Tami (Gilbertson) Kampa has been set for Monday, May 11, to be heard by myself.

We also agreed that, in the future, this Office would issue Notices of Hearing for the individual class-action hearings. Accordingly, Notices regarding the Stangl and (Gilbertson) Kampa cases are being issued in conjunction with this letter. The dates set for these three hearings were based, in part, on information we had about when Mr. Owens would be in the area and available for such hearings. If you are unable to proceed on the

To All Parties
Page Two
April 17, 1987

dates scheduled, please notify Judge Frankman (telephone: 931-9274 or 333-5747) or myself immediately.

A general concern was raised regarding scheduling of the balance of the hearings. Ms. Cutter reminded us that she will be coordinating who will handle such files on behalf of the Human Rights Department--as among herself and others on the Attorney General's staff, the Briggs & Morgan and Leonard, Stone & Deinard law firms, and the Civil Practice Clinic of the University of Minnesota Law School. Any suggestions you may have, about which cases should be heard when, are invited. Please contact Ms. Cutter directly with any scheduling proposals (and she is free to contact you) prior to contacting me or Judge Frankman to see if our schedule can accommodate your proposals. For your information, I am totally open on or after June 15, 1987 (except for August and September 12, if the cases are still being heard as of that time). Up until June 15, I may be able to hear cases (such as Tami Gilbertson's) on a given day, but I am, for the most part, booked with other hearing and writing obligations. Judge Frankman is available through June 12 and any time after July 13, 1987.

The question of when decisions should be issued was also raised. It is my present intention to wait until all the class-action cases are heard before I issue rulings on any of them. In this connection, Ms. Cutter volunteered to research the question of whether there was any legal precedent on when judgments had to be issued for individual class members.

I also initiated a discussion regarding an article that appeared in the Minneapolis Star & Tribune on April 7, 1987 announcing the closing of the Midway and Apache Clubs by the new owners. The article alleged that a refund of membership dues, to be paid by the "old owners", was one option available to Midway and Apache members who joined under the "previous management". The story also stated that the Attorney General's Office would "attempt to assure that settlements with members of the closed clubs would meet state laws". I asked Ms. Cutter what, if anything, she knew about this situation. She stated that the Attorney General staff members assigned to "Consumer Protection" were probably involved, and that she would check on what was happening. The purpose of the inquiry was to ascertain whether the class-action cases would be affected by the closing of the Midway and Apache locations.

The details of the April 9 conversation are being disclosed to you because I see it as a fundamental courtesy to reveal with candor all elements of the conversation.

Please be in touch at your earliest convenience with myself, Judge Frankman or Ms. Cutter (as appropriate) concerning the issues raised above. Thank you for your cooperation.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge
Telephone: 612/341-7610

RCL/lr

cc: Administrative Law Judge Janice K. Frankman
Elizabeth V. Cutter

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Jayne B.
Khalifa, Commissioner, Minnesota
Department of Human Rights, and
her Predecessors,

Complainant,

NOTICE OF AND
ORDER FOR CLASS
ACTION HEARING
(JULIE STANGL)

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

IT IS HEREBY ORDERED AND NOTICE IS GIVEN, that, pursuant to Minn. Stat. §§ 14.57 - 14.69 and 363.06, subd. 4(6) (1986), a hearing will be conducted Thursday, April 30, 1987, commencing at 9:30 a.m. at the Minnesota Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota. The purpose of the hearing is to determine whether Julie Stangl qualifies as a Class Member entitled to relief (including monetary damages) for acts of discrimination committed by the Respondents. You are hereby urged to attend. Failure to do so may prejudice your rights in this any subsequent proceedings in this matter, and may result in the matters alleged by the opposing party being taken as true.

The Administrative Law Judge presiding in this matter is Janice K. Frankman, 4021 Merriam Road, Minnetonka, Minnesota 55343, telephone: (612) 9274 or (612) 333-5747.

Minn. Stat. § 363.06, subd. 4(6) allows the Commissioner of the Department of Human Rights to seek relief for classes of individuals affected by unfair discriminatory practices. On April 27, 1984, and in subsequent Orders, Administrative Law Judge Richard C. Luis determined that the Respondents engaged in such practices against five different classes of persons, which classes were certified for appropriate relief. Julie Stangl alleges that she qualifies for relief as a member of one or more of those classes.

You are hereby NOTIFIED that you have the right to be represented by an attorney, by yourselves, or by person(s) of your choice if not otherwise prohibited as the unauthorized practice of law. The procedures governing conduct of the hearing are found in Minn. Stat. §§ 14.57 - 14.69 (1986) and Minn. Rules 1400.5100 - 1400.8300 (1985) and 5000.0200 - 5000.2400 (1985). Copies may be obtained from the Department of Administration, Public Document Division, 117 University Avenue, St. Paul, Minnesota 55155, telephone: (612) 297-3000.

At the hearing, the parties will be given the opportunity to be heard oral to present witnesses, to cross-examine witnesses, and to submit evidence, written data, statements, or arguments in this matter. Please bring to the hearing all documents, records and witnesses needed to support your position. Subpoenas may be available from the Chief Administrative Law Judge of the Office of Administrative Hearings to compel the attendance of witnesses or the production of documents. Requests for subpoenas must be made in accordance with Minn. Rule 1400.7000 (1985).

Please be advised that if not public data is admitted into evidence, it become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (1986).

Persons desiring to explore informal disposition of this matter pursuant to Minn. Rule 1400.5900 (1985) or discovery possibilities pursuant to Minn. Rule 1400.6700 - 1400.7000 (1985) should contact Elizabeth V. Cutter, Special Assistant Attorney General, 1100 Bremer Tower, St. Paul, Minnesota 55101, telephone: (612) 296-2921.

A Notice of Appearance form, a copy of which is attached, must be filed with the Administrative Law Judge identified above within twenty (20) days following receipt of this Notice by any party intending to appear at the hearing. If the hearing date is less than twenty (20) days from the issuance of the Notice of and Order for Hearing, filing of the Notice of Appearance is not necessary.

Failure to appear at the hearing may result in the matters alleged by the opposing party being taken as true. As a result, liability may be found and damages assessed, if the Respondents fail to attend or are not represented. If the Commissioner of Human Rights is not represented, such non-participation could result in a dismissal of the charges.

Dated this _____ day of April, 1987.

RICHARD C. LUIS
Administrative Law Judge
Minnesota Office of
Administrative Hearings
400 Summit Bank Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415
Telephone: 612/341-7610

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Jayne B.
Khalifa, Commissioner, Minnesota
Department of Human Rights, and
her Predecessors,

Complainant,

NOTICE OF AND
ORDER FOR CLASS
ACTION HEARING
LOIS WIEBERSCH

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

IT IS HEREBY ORDERED AND NOTICE IS GIVEN, that, pursuant to Minn. Stat. §§ 14.57 - 14.69 and 363.06, subd. 4(6) (1986), a hearing will be conducted Wednesday, May 6, 1987, commencing at 9:30 a.m. at the Minnesota Office of Administrative Hearings, Third Floor, Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota. The purpose of the hearing is to determine whether Lois Wiebersch qualifies as a Class Member entitled to relief (including monetary damages) for acts of discrimination committed by the Respondents. You are hereby urged to attend. Failure to do so may prejudice your rights in this and any subsequent proceedings in this matter, and may result in the matters alleged by the opposing party being taken as true.

The Administrative Law Judge presiding in this matter is Janice K. Frankman, address, phone .

Minn. Stat. § 363.06, subd. 4(6) allows the Commissioner of the Department of Human Rights to seek relief for classes of individuals affected by unfair discriminatory practices. On April 27, 1984, and in subsequent Orders, Administrative Law Judge Richard C. Luis determined that the Respondents engaged in such practices against five different classes of persons, which classes were certified for appropriate relief. Lois Wiebersch alleges that she qualifies for relief as a member of one or more of those classes.

You are hereby NOTIFIED that you have the right to be represented by an attorney, by yourselves, or by person(s) of your choice if not otherwise prohibited as the unauthorized practice of law. The procedures governing conduct of the hearing are found in Minn. Stat. §§ 14.57 - 14.69 (1986) and Minn. Rules 1400.5100 - 1400.8300 (1985) and 5000.0200 - 5000.2400 (1985). Copies may be obtained from the Department of Administration, Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, telephone: (612) 297-3000.

At the hearing, the parties will be given the opportunity to be heard orally, to present witnesses, to cross-examine witnesses, and to submit evidence, written data, statements, or arguments in this matter. Please bring to the hearing all documents, records and witnesses needed to support your position. Subpoenas may be available from the Chief Administrative Law Judge of the Office of Administrative Hearings to compel the attendance of witnesses or the production of documents. Requests for subpoenas must be made in accordance with Minn. Rule 1400.7000 (1985).

Please be advised that if not public data is admitted into evidence, it become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (1986).

Persons desiring to explore informal disposition of this matter pursuant to Minn. Rule 1400.5900 (1985) or discovery possibilities pursuant to Minn. Rules 1400.6700 - 1400.7000 (1985) should contact Elizabeth V. Cutter, Special Assistant Attorney General, 1100 Bremer Tower, St. Paul, Minnesota 55101, telephone: (612) 296-2921.

A Notice of Appearance form, a copy of which is attached, must be filed with the Administrative Law Judge identified above within twenty (20) days following receipt of this Notice by any party intending to appear at the hearing. If the hearing date is less than twenty (20) days from the issuance of the Notice of and Order for Hearing, filing of the Notice of Appearance is not necessary.

Failure to appear at the hearing may result in the matters alleged by the opposing party being taken as true. As a result, liability may be found and damages assessed, if the Respondents fail to attend or are not represented. If the Commissioner of Human Rights is not represented, such non-participation could result in a dismissal of the charges.

Dated this _____ day of April, 1987.

RICHARD C. LUIS

Administrative Law Judge
Minnesota Office of
Administrative Hearings
400 Summit Bank Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415
Telephone: 612/341-7610

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Jayne B.
Khalifa, Commissioner, Minnesota
Department of Human Rights, and
her Predecessors,

Complainant,

NOTICE OF AND
ORDER FOR CLASS
ACTION HEARING
(TAMARA (GILBERTSON) KAMPA)

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

IT IS HEREBY ORDERED AND NOTICE IS GIVEN, that, pursuant to Minn. Stat. §§ 14.57 - 14.69 and 363.06, subd. 4(6) (1986), a hearing will be conducted Monday, May 11, 1987, commencing at 9:30 a.m. at the Minnesota Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota. The purpose of the hearing is to determine whether Tamara (Gilbertson) Kampa qualifies as a Class Member entitled to relief (including monetary damages) for acts of discrimination committed by the Respondents. You are hereby urged to attend. Failure to do so may prejudice your rights in this and any subsequent proceedings in this matter, and may result in the matters alleged by the opposing party being taken as true.

The Administrative Law Judge presiding in this matter is Richard C. Luis, Office of Administrative Hearings, 400 Summit Bank Building, 310 - 4th Avenue South, Minneapolis, Minnesota 55415, telephone: (612) 341-7610.

Minn. Stat. § 363.06, subd. 4(6) allows the Commissioner of the Department of Human Rights to seek relief for classes of individuals affected by unfair discriminatory practices. On April 27, 1984, and in subsequent Orders, Administrative Law Judge Richard C. Luis determined that the Respondents engaged in such practices against five different classes of persons, which classes were certified for appropriate relief. Tamara (Gilbertson) Kampa

alleges that she qualifies for relief as a member of one or more of those classes.

You are hereby NOTIFIED that you have the right to be represented by an attorney, by yourselves, or by person(s) of your choice if not otherwise prohibited as the unauthorized practice of law. The procedures governing conduct of the hearing are found in Minn. Stat. §§ 14.57 - 14.69 (1986) and Minn. Rules 1400.5100 - 1400.8300 (1985) and 5000.0200 - 5000.2400 (1985). Copies may be obtained from the Department of Administration, Public Document Division, 117 University Avenue, St. Paul, Minnesota 55155, telephone: (612) 297-3000.

At the hearing, the parties will be given the opportunity to be heard oral to present witnesses, to cross-examine witnesses, and to submit evidence, written data, statements, or arguments in this matter. Please bring to the hearing all documents, records and witnesses needed to support your position. Subpoenas may be available from the Chief Administrative Law Judge of the Office of Administrative Hearings to compel the attendance of witnesses or the production of documents. Requests for subpoenas must be made in accordance with Minn. Rule 1400.7000 (1985).

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Persons desiring to explore informal disposition of this matter pursuant to Minn. Rule 1400.5900 (1985) or discovery possibilities pursuant to Minn. Rule 1400.6700 - 1400.7000 (1985) should contact Elizabeth V. Cutter, Special Assistant Attorney General, 1100 Bremer Tower, St. Paul, Minnesota 55101, telephone: (612) 296-2921 or Jane Legler, University of Minnesota Civil Practice Clinic, 229 - 19th Avenue South, Minneapolis, Minnesota 55455, telephone: (612) 625-5515.

A Notice of Appearance form, a copy of which is attached, must be filed with the Administrative Law Judge identified above within twenty (20) days following receipt of this Notice by any party intending to appear at the hearing. If the hearing date is less than twenty (20) days from the issuance of the Notice of and Order for Hearing, filing of the Notice of Appearance is not necessary.

Failure to appear at the hearing may result in the matters alleged by the opposing party being taken as true. As a result, liability may be found and damages assessed, if the Respondents fail to attend or are not represented. If the Commissioner of Human Rights is not represented, such non-participation could result in a dismissal of the charges.

Dated this _____ day of April, 1987.

RICHARD C. LUIS
Administrative Law Judge
Minnesota Office of
Administrative Hearings
400 Summit Bank Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415
Telephone: 612/341-7610

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Jayne B.
Khalifa, Commissioner, Minnesota
Department of Human Rights, and
her Predecessors,
Complainant,

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,
Respondents.

NOTICE OF APPEARANCE
(CASE OF JULIE STANGL)

Date of Hearing: April 30, 1987

Time: 9:30 a.m.

Name, Address and Telephone Number of Administrative Law Judge:

Janice K. Frankman
4021 Merriam Road
Minnetonka, Minnesota 55343
Telephone: (612) 931-9274 or 333-5747

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above-referenced hearing:

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

Office Address: _____

Telephone Number: _____

Signature of Party or Attorney: _____

Date: _____

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Jayne B.
Khalifa, Commissioner, Minnesota
Department of Human Rights, and
her Predecessors,
Complainant,

v.

NOTICE OF APPEARANCE
(CASE OF TAMARA (GILBERTSON) KAMPA

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,
Respondents.

Date of Hearing: May 11, 1987

Time: 9:30 a.m.

Name, Address and Telephone Number of Administrative Law Judge:

Richard C. Luis
Office of Administrative Hearings
400 Summit Bank Building
310 - 4th Avenue South
Minneapolis, Minnesota 55415
Telephone: (612) 341-7610

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above-referenced hearing:

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

Office Address: _____

Telephone Number: _____

Signature of Party or Attorney: _____

Date: _____

February 24, 1987

Elizabeth V. Cutter, Esq.
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Re: State of Minnesota, by Jayne B. Khalifa, Commissioner, Minnesota Department of Human Rights, Complainant v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents
OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Parties and Counsel:

Please be advised of the following developments in the above-captioned matter:

1. The Department of Human Rights has published notice in the Minneapolis Star & Tribune, St. Paul Dispatch Pioneer Press and St. Cloud Times of the pendency of the Class Action in the above-entitled matter. This is the second such publication, but the first involving notices to potential class members.

who were required to furnish information pertaining to religion, marital status and/or sex. Approximately 44 persons, in addition to the 86 persons previously enrolled for the Class Action, have declared their intentions, in writing, to take part in this Action.

2. Administrative Law Judge Janice Frankman has been retained to preside in the Class Action hearing process. She will share those duties with me.

Parties and Counsel
Page Two
February 24, 1987

addition, Judge Frankman may preside all or some of the damage hearings involving Charging Parties for whom liability has already been determined in this case--Robin Carnahan, Beverly Larsen (Matha), Steven Bruhjell, Robert Severin, Marilyn Crosby, Katherine Lamannsky, Linda Perkins and Joseph Williams.

3. The Department of Human Rights, in addition to Special Assistant Attorney General Cutter and other members of the Attorney General's staff, has retained the services of the University of Minnesota Law School Civil Practice Clinic, and the law firms of Briggs & Morgan and Leonard, Street & Deinard to assist in representation of the Complainant. It is my understanding that representatives of the various Counsel will soon be in contact with myself and Judge Frankman and the Respondents to schedule specific hearings. Ms. Cutter will coordinate the activities of all of Complainant's Counsel and keep records regarding the status of each potential class member's case.

4. I am in receipt of correspondence (two letters, dated July 26 and September 8, 1983) from Ms. Cutter to Clyde F. Anderson, Esq., who represents the Respondents at the evidentiary hearing held in 1983, which correspondence refers to an oral agreement between Counsel to "calculate and submit" damages in this case, relative to the Charging Parties, "if and when there is a determination of liability on Respondents' part". The first letter states the proposition, and asks Mr. Anderson to contact Counsel if his recollection differs. In her September 8, 1983 letter, Ms. Cutter makes specific proposals on how to calculate the damages. She invites Anderson to contact her with suggestions after he has had a chance to consider the issue. There is no record of Anderson's replying to either letter. His silence thus indicates that he agreed to "calculate and submit" damages, but that, in fact, this process was never undertaken.

It is my recollection that the parties agreed to stipulate to compensatory damages amounts for any Charging Parties for whom liability was found. However, my review of the Hearing Transcripts, and my notes taken during the hearing, prehearing and post-hearing conferences, reveal no "record" of such agreement.

I believe that Anderson's not replying to Cutter's letter constitutes an acceptance by and on behalf of the Respondents (all of whom Anderson represented at the hearing) to "calculate and submit" damages for the above listed Charging Parties. The Respondents' contrary argument at the post-hearing conference--that Clyde Anderson's representation of them at the hearing was incompetent or inadequate, is without support. Mr. Anderson, or his firm

continued to represent the Respondents through appeals of this case as far as the United States Supreme Court. He convinced two Minnesota Supreme Court Justices that the liability decisions should be reversed. In addition, I observed and evaluated Counsel's conduct and ability during the prehearing conference, a fourteen-day hearing, at least one post-hearing conference and the submission of briefs. I ruled in Sports and Health's favor on some of the contested issues, partly because Counsel succeeded in persuading me. I can state without equivocation that Mr. Anderson represented the Respondents competently and adequately.

Parties and Counsel
Page Three
February 24, 1987

There is a presumption in the law that an attorney is, in general, duly authorized to act for the client he represents. That presumption is rebuttable, but, absent evidence to the contrary, the presumption becomes conclusive. See 7A C.J.S., Attorney and Client, § 171, et seq. Knowledge or notice to, an attorney for a litigant or party to an action, concerning matters involved in the litigation or action, is in general imputable to such litigant or party. 7A C.J.S., Attorney and Client, § 185. Section 205 of the same text states that an attorney employed for purposes of litigation has the general implied or apparent authority to enter into such stipulations or agreements, in connection with the conduct of litigation, as appear to be necessary or expedient for the advancement of his client's interests or for the accomplishment of the purposes for which the attorney was employed. Certainly it is in the Respondents' interests to shorten up litigation time and expense by stipulating to damages where liability has been finally determined.

Finally, it is clear that Complainant's counsel relied upon the agreement made by Mr. Anderson to enter into a damages stipulation by refraining from asking questions related to compensatory damages when the Charging Parties testified.

While the "black letter" law appears to bind the Respondents to an agreement to stipulate to the damage amounts, the fact that no such stipulations have been made leaves a situation demanding a practical solution. Since five of the eight Charging Parties still involved (Severin, Crosby, Lamannsky, Perkins and Williams) are still in the Twin Cities area, Ms. Cutler has agreed to summon those people for additional testimony to prove up the appropriate level of damages, if she and the Respondents cannot arrive at Stipulation(s) of damage amounts on any of them. With respect to Cameron, Larsen (Matha) and Bruhjell, however, the Complainant is unwilling to undertake such a process because the witnesses live out of state and bringing them back to Minneapolis for testimony would involve undue expense. The Administrative Law Judge agrees, and hereby ORDERS the Respondents and the Complainant to arrive at an AGREEMENT as to COMPENSATORY DAMAGES in this matter for Robin Carnahan, Beverly Larsen (Matha), Steven Bruhjell, Robert Severin, Marilyn Crosby, Katherine Lamannsky, Linda Perkins and Joseph Williams on or before March 6, 1987. If no such agreement is reached, the Complainant is authorized to obtain relevant income and employment information from Charging Parties Carnahan, Larsen (Matha) and Bruhjell by AFFIDAVIT, in lieu of a personal appearance, and IT IS ORDERED that the information sworn to on the Charging Parties' Affidavits, absent a showing of fraud, shall be admissible evidence in this proceeding.

5. It is my understanding that the Complainant will be represented in above-referenced damage hearings by Special Assistant Attorney General Cutter, Special Assistant Attorney General Richard L. Varco, Jr. and Deputy Attorney General Steven Kilgriff. Ms. Cutter informs me that, upon a determination of which of these Counsel will be assigned which damage

Parties and Counsel
Page Four
February 24, 1987

hearings, myself or Judge Frankman and the Respondents will be contacted for scheduling of those hearings. It appears that those hearings can begin sometime after March 9, 1987.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

RCL:lr

cc: Administrative Law Judge Janice Frankman

Service List
HR-82-005-RL
7-1700-108-2
February 24, 1987

Elizabeth V. Cutter, Esq.
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

June 10, 1987

Elizabeth V. Cutter, Esq.
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Re: State of Minnesota, by Jayne B. Khalifa, Commissioner, Minnesota Department of Human Rights, Complainant v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents
OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Parties and Counsel:

Please allow this letter to confirm the setting of a telephone conference call regarding scheduling of future hearings in the above-entitled matter. The telephone conference will take place at 10:00 a.m. on Friday, June 12, 1987. Ms. Cutter has agreed to handle the arrangements. I look forward to talking with all of you on Friday.

Thank you for your cooperation.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge
Telephone: 612/341-7610

RCL/lr

cc: Administrative Law Judge Janice K. Frankman

June 15, 1987

Elizabeth V. Cutter, Esq.
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Re: State of Minnesota, by Jayne B. Khalifa, Commissioner, Minnesota Department of Human Rights, Complainant v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents
OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Parties and Counsel:

Please be advised that a telephone conference call among the parties and myself in the above-entitled matter has been scheduled for 10:00 a.m. on Wednesday, June 17, 1987. Ms. Cutter has agreed to make the conference call arrangements. The purpose of the conference will be to discuss the scheduling of future class action hearings and the Respondents' Motion to Quash or Modify the subpoena issued by this Office requesting that Sports and Health produce certain business records.

Thank you for your cooperation. I look forward to speaking with you on Wednesday.

Very truly yours,

RCL/lr

RICHARD C. LUIS
Administrative Law Judge
Telephone: 612/341-7610

cc: Administrative Law Judge Janice K. Frankman

June 19, 1987

Elizabeth V. Cutter, Esq.
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Re: State v. Sports and Health, Inc., and Owens, Crevier and Larson--
Respondents' Motion to Quash or Modify Subpoena and Future Hearing
Schedule (Telephone Conference of June 17, 1987); OAH Docket No. HI
82-005-RL, 7-1700-108-2.

Dear Parties and Counsel:

Please allow this letter to confirm the discussions and rulings arrived during the telephone conference held on Wednesday, June 17, 1987, in the above entitled matter between myself, Ms. Cutter, Mr. Owens and Mr. Larson.

The parties agreed to hold the Class Action hearing for Julie Stangl on Wednesday and Thursday, July 1 and 2 (if necessary), 1987, commencing at 9:30 a.m. each day at the Office of Administrative Hearings, 400 Summit Bank

Building, 310 Fourth Avenue South, in Minneapolis. I will conduct that hearing.

The continued hearing on Renae (Urista) Haugen will be conducted in front of Judge Janice K. Frankman on Monday, July 6, 1987. The time and place are the same as for the Stangl case. During the conference, I emphasized to the Parties that Judge Frankman and I expected them to be prepared to proceed with their witnesses on the dates and times scheduled, and reminded all that the discovery procedures of our Office's Rules are available to them.

Elizabeth V. Cutter
Arthur W. Owens
Marc Crevier
Forest Larson

As for future hearings, Mr. Owens stated that he and the other Respondents were available for hearings between July 20 and August 4, 1987 and continuously on or after August 10, 1987. The specific scheduling of additional hearings will be up to the Respondents and the attorneys designated to represent potential Class Members, with Ms. Cutter coordinating the scheduling on behalf of the State. I have enclosed the assignments made within the Briggs & Morgan law firm showing who will represent 20 of the potential Class Members.

As to the Motion to Quash or Modify Subpoena (a copy of the Subpoena is enclosed), ruling was deferred until Ms. Cutter and Mr. Larson meet, along with Lee McNamara, to attempt to ascertain what portion(s) of the information sought can be accessed and/or how much effort, on whose part, will be required to assemble the data. I did rule that the information was relevant and, if reasonably accessible, should be provided to the State by the Respondents or their successor (All Health, Inc.).

Thank you for your cooperation.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

RCL:lr

Enclosures

cc: Administrative Law Judge Janice K. Frankman

June 19, 1987

Dear Jan --

The only date I could get for continuation of the Renae Haugen case was July 6, the Monday after your return. Sorry, but it was the best I could do. I'm taking the Julie Stangl hearing. Is it possible for me to get back the transcripts so I can prepare for that case (it's scheduled for July 1 and 2). I'll be out of the Office June 22-24, but will call in for messages. You can leave a message at my home number, as well (612-483-2583).

Enjoy your trip.

Thanks,

RICK LUIS

RL/lr

September 1, 1987

Elizabeth V. Cutter, Esq.
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Helen G. Rubenstein
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Re: State, by McClure, et al., Commissioner of Human Rights v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson
OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Representatives of the Parties:

Please allow this letter to confirm that I have authorized Mr. Owens (on behalf of himself and Sports and Health Club, Inc.) and Ms. Rubenstein to proceed with informal negotiations leading to a possible settlement of the remaining litigation in the above-entitled matter. I want to confirm that understanding in writing because I will be out of the Office until September 14, 1987.

Please be advised that the Briefs regarding the class-action proceeding pertaining to Julie Stangl are due on Friday, September 4, 1987, pursuant to Ms. Cutter's letter of August 17.

Representatives of
the Parties
Page Two
September 1, 1987

I wish you well in settlement negotiations. Please keep Judge Frankman apprised of any developments in my absence. Thank you for your cooperation

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge
Telephone: 612/341-7610

RCL/lr

cc: Administrative Law Judge Janice K. Frankman

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W.
Cooper, Commissioner, Minnesota
Department of Human Rights, and
his Predecessors,

Complainant,

NOTICE OF AND
ORDER FOR CLASS
ACTION HEARING
(CORRINE BREHM)

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

IT IS HEREBY ORDERED AND NOTICE IS GIVEN, that, pursuant to Minn. Stat. §§ 14.57 - 14.69 and 363.06, subd. 4(6) (1986), a hearing will be conducted Friday, October 30, 1987, commencing at 9:00 a.m. at the Minnesota Office of Administrative Hearings, Fifth Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota. The purpose of the hearing is to determine whether Corrine Brehm qualifies as a Class Member entitled to relief (including monetary damages) for acts of discrimination committed by the Respondents. You are hereby urged to attend. Failure to do so may prejudice your rights in this and any subsequent proceedings in this matter, and may result in the matters alleged by the opposing party being taken as true.

The Administrative Law Judge presiding in this matter is Janice K. Frankman, 420 Sexton Building, 529 So. Seventh St., Minneapolis, Minnesota 55415, telephone: (612) 333-5747.

Minn. Stat. § 363.06, subd. 4(6) allows the Commissioner of the Department of Human Rights to seek relief for classes of individuals affected by unfair discriminatory practices. On April 27, 1984, and in subsequent Orders, Administrative Law Judge Richard C. Luis determined that the Respondents engaged in such practices against five different classes of persons, which classes were certified for appropriate relief. Corrine Brehm alleges that she qualifies for relief as a member of one or more of those classes.

You are hereby NOTIFIED that you have the right to be represented by an attorney, by yourselves, or by person(s) of your choice if not otherwise prohibited as the unauthorized practice of law. The procedures governing conduct of the hearing are found in Minn. Stat. §§ 14.57 - 14.69 (1986) and Minn. Rules 1400.5100 - 1400.8300 (1985) and 5000.0200 - 5000.2400 (1985). Copies may be obtained from the Department of Administration, Public Document Division, 117 University Avenue, St. Paul, Minnesota 55155, telephone: (612) 297-3000.

At the hearing, the parties will be given the opportunity to be heard orally, to present witnesses, to cross-examine witnesses, and to submit evidence, written data, statements, or arguments in this matter. Please bring to the hearing all documents, records and witnesses needed to support your position. Subpoenas may be available from the Chief Administrative Law Judge of the Office of Administrative Hearings to compel the attendance of witnesses or the production of documents. Requests for subpoenas must be made in accordance with Minn. Rule 1400.7000 (1985).

Please be advised that if not public data is admitted into evidence, it become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (1986).

Persons desiring to explore informal disposition of this matter pursuant to Minn. Rule 1400.5900 (1985) or discovery possibilities pursuant to Minn. Rule 1400.6700 - 1400.7000 (1985) should contact Helen G. Rubenstein, Special Assistant Attorney General, 1100 Bremer Tower, St. Paul, Minnesota 55101, telephone: (612) 296-9412. Susan Robiner, Esq., Leonard, Street and Deinar, 100 S. 5th St., Suite 1500, Minneapolis, Minnesota 55402, telephone: (612) 337-1500, will appear as counsel for the Commissioner of Human Rights.

Failure to appear at the hearing may result in the matters alleged by the opposing party being taken as true. As a result, liability may be found and damages assessed, if the Respondents fail to attend or are not represented. If the Commissioner of Human Rights is not represented, such non-participation could result in a dismissal of the charges.

Dated this _____ day of October, 1987.

RICHARD C. LUIS
Administrative Law Judge
Minnesota Office of
Administrative Hearings
Fifth Floor, Flour Exchange Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415
Telephone: 612/341-7610

Service List
HR-82-005-RL
7-1700-108-2
October 28, 1987

Helen G. Rubenstein
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Susan Robiner, Esq.
Leonard, Street and Deinard
Suite 1500
100 South 5th Street
Minneapolis, Minnesota 55402

October 28, 1987

TO : ALL COUNSEL AND PARTIES

Re: State of Minnesota, by Stephen W. Cooper, Commissioner, Minnesota Department of Human Rights, and his Predecessors, Complainant v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents. OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Enclosed herewith and served upon you is the Notice of and Order for Class Action Hearing (Corrine Brehm) in the above-referenced matter.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

sh
Enc.

cc: Helen G. Rubenstein, Special Assistant Attorney General
Arthur W. Owens
Marc Crevier
Forest Larson
Sports and Health Club, Inc., Arthur W. Owens, President
Susan Robiner, Esq.

HR-82-005-RL
7-1700-108-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W.
Cooper, Commissioner, Minnesota
Department of Human Rights, and
his Predecessors,

Complainant,

NOTICE OF AND
ORDER FOR CLASS
ACTION HEARING
(LAUREL MCNEE)

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

IT IS HEREBY ORDERED AND NOTICE IS GIVEN, that, pursuant to Minn. Stat. §§ 14.57 - 14.69 and 363.06, subd. 4(6) (1986), a hearing will be conducted Friday, November 6, 1987, commencing at 9:00 a.m. at the Minnesota Office of Administrative Hearings, Fifth Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota. The purpose of the hearing is to determine whether Laurel McNee qualifies as a Class Member entitled to relief (including monetary damages) for acts of discrimination committed by the Respondents. You are hereby urged to attend. Failure to do so may prejudice your rights in this and any subsequent proceedings in this matter, and may result in the matters alleged by the opposing party being taken as true.

The Administrative Law Judge presiding in this matter is Janice K. Frankman, 420 Sexton Building, 529 So. Seventh St., Minneapolis, Minnesota 55415, telephone: (612) 333-5747.

Minn. Stat. § 363.06, subd. 4(6) allows the Commissioner of the Department of Human Rights to seek relief for classes of individuals affected by unfair discriminatory practices. On April 27, 1984, and in subsequent Orders, Administrative Law Judge Richard C. Luis determined that the Respondents engaged in such practices against five different classes of persons, which

classes were certified for appropriate relief. Laurel McNee alleges that she qualifies for relief as a member of one or more of those classes.

You are hereby NOTIFIED that you have the right to be represented by an attorney, by yourselves, or by person(s) of your choice if not otherwise prohibited as the unauthorized practice of law. The procedures governing conduct of the hearing are found in Minn. Stat. §§ 14.57 - 14.69 (1986) and Minn. Rules 1400.5100 - 1400.8300 (1985) and 5000.0200 - 5000.2400 (1985). Copies may be obtained from the Department of Administration, Public Document Division, 117 University Avenue, St. Paul, Minnesota 55155, telephone: (612) 297-3000.

At the hearing, the parties will be given the opportunity to be heard orally, to present witnesses, to cross-examine witnesses, and to submit evidence, written data, statements, or arguments in this matter. Please bring to the hearing all documents, records and witnesses needed to support your position. Subpoenas may be available from the Chief Administrative Law Judge of the Office of Administrative Hearings to compel the attendance of witnesses or the production of documents. Requests for subpoenas must be made in accordance with Minn. Rule 1400.7000 (1985).

Please be advised that if not public data is admitted into evidence, it become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (1986).

Persons desiring to explore informal disposition of this matter pursuant to Minn. Rule 1400.5900 (1985) or discovery possibilities pursuant to Minn. Rule 1400.6700 - 1400.7000 (1985) should contact Helen G. Rubenstein, Special Assistant Attorney General, 1100 Bremer Tower, St. Paul, Minnesota 55101, telephone: (612) 296-9412. Byron Starns, Esq., Leonard, Street and Deinaro, 100 S. 5th Street, Suite 1500, Minneapolis, Minnesota 55402, telephone: (612) 337-1516, will appear as counsel for the Commissioner of Human Rights.

Failure to appear at the hearing may result in the matters alleged by the opposing party being taken as true. As a result, liability may be found and damages assessed, if the Respondents fail to attend or are not represented. If the Commissioner of Human Rights is not represented, such non-participation could result in a dismissal of the charges.

Dated this _____ day of November, 1987.

RICHARD C. LUIS
Administrative Law Judge
Minnesota Office of
Administrative Hearings
Fifth Floor, Flour Exchange Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415
Telephone: 612/341-7610

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W.
Cooper, Commissioner, Minnesota
Department of Human Rights, and
his Predecessors,

Complainant,

NOTICE OF AND
ORDER FOR CLASS
ACTION HEARING
(ROBERT JOHNSON)

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

IT IS HEREBY ORDERED AND NOTICE IS GIVEN, that, pursuant to Minn. Stat. §§ 14.57 - 14.69 and 363.06, subd. 4(6) (1986), a hearing will be conducted Friday, November 13, 1987, commencing at 9:00 a.m. at the Minnesota Office of Administrative Hearings, Fifth Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota. The purpose of the hearing is to determine whether Robert Johnson qualifies as a Class Member entitled to relief (including monetary damages) for acts of discrimination committed by the Respondents. You are hereby urged to attend. Failure to do so may prejudice your rights in this and any subsequent proceedings in this matter, and may result in the matters alleged by the opposing party being taken as true.

The Administrative Law Judge presiding in this matter is Janice K. Frankman, 420 Sexton Building, 529 So. Seventh St., Minneapolis, Minnesota 55415, telephone: (612) 333-5747.

Minn. Stat. § 363.06, subd. 4(6) allows the Commissioner of the Department of Human Rights to seek relief for classes of individuals affected by unfair discriminatory practices. On April 27, 1984, and in subsequent Orders, Administrative Law Judge Richard C. Luis determined that the Respondents engaged in such practices against five different classes of persons, which classes were certified for appropriate relief. Robert Johnson alleges that he qualifies for relief as a member of one or more of those classes.

You are hereby NOTIFIED that you have the right to be represented by an attorney, by yourselves, or by person(s) of your choice if not otherwise prohibited as the unauthorized practice of law. The procedures governing conduct of the hearing are found in Minn. Stat. §§ 14.57 - 14.69 (1986) and Minn. Rules 1400.5100 - 1400.8300 (1985) and 5000.0200 - 5000.2400 (1985). Copies may be obtained from the Department of Administration, Public Document Division, 117 University Avenue, St. Paul, Minnesota 55155, telephone: (612) 297-3000.

At the hearing, the parties will be given the opportunity to be heard orally, to present witnesses, to cross-examine witnesses, and to submit evidence, written data, statements, or arguments in this matter. Please bring to the hearing all documents, records and witnesses needed to support your position. Subpoenas may be available from the Chief Administrative Law Judge of the Office of Administrative Hearings to compel the attendance of witnesses or the production of documents. Requests for subpoenas must be made in accordance with Minn. Rule 1400.7000 (1985).

Please be advised that if not public data is admitted into evidence, it become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (1986).

Persons desiring to explore informal disposition of this matter pursuant to Minn. Rule 1400.5900 (1985) or discovery possibilities pursuant to Minn. Rule 1400.6700 - 1400.7000 (1985) should contact Helen G. Rubenstein, Special Assistant Attorney General, 1100 Bremer Tower, St. Paul, Minnesota 55101, telephone: (612) 296-9412. Andrea M. Kircher, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, telephone: (612) 296-7860, will appear as counsel for the Commissioner of Human Rights.

Failure to appear at the hearing may result in the matters alleged by the opposing party being taken as true. As a result, liability may be found and damages assessed, if the Respondents fail to attend or are not represented. If the Commissioner of Human Rights is not represented, such non-participation could result in a dismissal of the charges.

Dated this _____ day of November, 1987.

RICHARD C. LUIS
Administrative Law Judge
Minnesota Office of
Administrative Hearings
Fifth Floor, Flour Exchange Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415
Telephone: 612/341-7610

Service List
HR-82-005-RL
7-1700-108-2
(Laurel McNee)
November 2, 1987

Helen G. Rubenstein
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Byron Starns, Esq.
Leonard, Street and Deinard
Suite 1500
100 South 5th Street
Minneapolis, Minnesota 55402

Service List
HR-82-005-RL
7-1700-108-2
(Robert Johnson)
November 2, 1987

Helen G. Rubenstein
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Andrea M. Kircher
Special Assistant Attorney General
1100 Bremer Tower
7th Place and Minnesota Street
St. Paul, Minnesota 55101

November 2, 1987

TO: COUNSEL AND PARTIES

Re: State of Minnesota, by Stephen W. Cooper, Commissioner, Minnesota Department of Human Rights, and his Predecessors, Complainant, v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents.
OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Counsel and Parties:

Enclosed herewith and served upon you is the Notice of and Order for Class Action Hearing (Laurel McNee).

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

sh

Enc.

cc: Helen G. Rubenstein, Special Assistant Attorney General
Sports and Health Club, Inc., Arthur W. Owens, President
Arthur W. Owens
Marc Crevier
Forest Larson
Byron Starns, Esq.

November 2, 1987

TO: COUNSEL AND PARTIES

Re: State of Minnesota, by Stephen W. Cooper, Commissioner, Minnesota Department of Human Rights, and his Predecessors, Complainant, v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents.
OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Counsel and Parties:

Enclosed herewith and served upon you is the Notice of and Order for Class Action Hearing (Robert Johnson).

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

sh

Enc.

cc: Helen G. Rubenstein, Special Assistant Attorney General
Sports and Health Club, Inc., Arthur W. Owens, President
Arthur W. Owens
Marc Crevier
Forest Larson
Andrea M. Kircher, Special Assistant Attorney General

November 2, 1987

Helen G. Rubenstein
Special Assistant Attorney General
1100 Bremer Tower
7th Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Re: State of Minnesota, by Stephen W. Cooper, Commissioner of Human Rights, v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson; OAH Docket Nos. HR-82-005-RL, 7-1700-108-2.

Dear Counsel and Parties to the Above-Captioned Matter:

Please allow this letter to summarize the matters discussed and agreements reached at a Scheduling Conference held at the Office of Administrative Hearings on the evening of Friday, October 9, 1987. Ms. Rubenstein, Mr. Owens, Mr. Crevier, Judge Frankman and myself were in attendance. I thank you all for your cooperation.

In her letter notifying all concerned of the scheduling of the conference, Ms. Rubenstein proposed the following issues for discussion at the conference:

1. Establishment of a centralized scheduling system for the remaining hearings.
2. Determination of whether orders resulting from individual class members' hearings will be issued individually or all at once.
3. Request for a standing order for exchange of witness lists, exhibits, and a short summary of each witness's proposed testimony prior to each individual hearing.
4. An offer of general damage exhibits into evidence.

All of the above-listed matters were discussed. The remainder of this letter will highlight the discussion in each area.

Regarding the establishment of a centralized scheduling system for the remaining hearings, Ms. Rubenstein (telephone: 296-1408) has agreed to coordinate the scheduling of hearings for all potential class members in this matter. Complainant's attorneys in the various cases will come from five different offices - the Attorney General's Office; Leonard, Street and Deane; Briggs and Morgan; Dorsey and Whitney; and the University of Minnesota Legal Clinic. Ms. Rubenstein will coordinate assignments of attorneys to represent the Complainant and the scheduling of the cases. It is generally contemplated that the hearings (which resumed Friday, October 30, 1987) will be conducted on all non-holiday Fridays between the present time and January 21, 1988, after which time hearings will be conducted on Thursday and Friday of each week. Judge Frankman will preside at the hearings through January 15, and I will begin to participate in hearings not conducted by Judge Frankman on January 16, 1988. I hope to be able to preside for three days every two weeks, alternating a single day in one week with both Thursday and Friday in the following week.

It was agreed by all the parties that, two weeks prior to each scheduled hearing, the Complainant will provide to the Respondents a list of witnesses, copies of exhibits, and a statement of the case. The statement of the case supplied to the Respondents would indicate which class the potential class member feels (s)he qualifies for, why they believe they are entitled for such class membership, who among the Respondents' personnel they were in contact with in connection with alleged discriminatory action, and the time and place of alleged discriminatory acts. The thought was also expressed of the possibility of drafting a form asking for such information.

One week before each scheduled hearing, the Respondents would provide the Complainant with their own statement of the case, list of witnesses and exhibits they intend to offer.

Other ideas discussed with a view to expediting the processing of the claims included the preparation of a master list so that parties and counsel could possibly coordinate the scheduling of certain hearings that had witnesses and/or incidents in common, and the taking of photographs (if the potential class members comply) which could be supplied to the Respondents in order for them to attempt to remember the individual potential class members.

It was suggested by myself that the intake process in the office of each attorney representing any particular class member(s) include the taking of basic information, which information would be submitted to the Respondents as soon as it could be reduced to writing, regarding the general information contained in the prehearing statements due two weeks prior to each hearing. The thought is to expedite the receipt of information on as many potential class members as possible so that the Respondents can determine in advance whether or not they will be able to respond at all to the charges brought by potential class member.

With respect to the question of whether orders resulting from individual class members' hearings will be issued individually or all at once, I restate my position that such orders would issue at one time, after all potential class members have been heard. I wish to emphasize that I am still taking the question under advisement.

Finally, the parties jointly offered general damage exhibits into evidence and it is ORDERED that those exhibits be made a part of the record of each class action hearing to follow, if material. The documents so admitted are Exhibits A - H (with the explanations therefor) and Exhibits 1 - 13 which were submitted to the Administrative Law Judge prior to the Scheduling Conference.

I wish to thank all participants in the conference for their cooperation with the proceeding and I am encouraged by their demonstrated willingness to proceed with this hearing process.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

RCL:sh

cc: Janice K. Frankman
Administrative Law Judge

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W.
Cooper, Commissioner, Minnesota
Department of Human Rights, and
his Predecessors,

Complainant,

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

ORDERS DENYING MOTION TO DISMISS
AN INDIVIDUAL RESPONDENT FROM
PERSONAL LIABILITY ON CLAIMS NOT
MADE DURING HIS OWNERSHIP AND
CLAIMS NOT CHARGED AGAINST HIS
INDIVIDUAL ACTIONS.

On September 17, 1987, Respondents Owens, Crevier and Larson filed a Motion with the Administrative Law Judge in the above-entitled matter, which Motion was styled "Motion to Dismiss an Individual Respondent from Personal Liability on Claims Not Made During His Ownership and Claims Not Charged Against His Individual Actions". They are not represented by counsel in connection with this Motion.

The Complainant, represented by Helen G. Rubenstein, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, filed a Response to the Motion on October 2, 1987.

After taking the Motion and Response thereto under advisement, and based upon all of the proceedings herein, the Administrative Law Judge makes the following:

ORDERS

1. That the Motion to Dismiss an Individual Respondent from Personal Liability on Claims Not Made During His Ownership and Claims Not Charged Against His Individual Actions filed by Respondents Owens Crevier and Larson on September 17, 1987, be and hereby is DENIED.

2. That the Respondents forthwith CEASE AND DESIST from filing any additional Motions with regard to the issue of individual liability.

Dated this _____ day of October, 1987.

RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

The Motion filed by Owens, Crevier and Larson is, in essence, a repeat of the Motion to Reaffirm Dismissal filed on June 30, 1987, on behalf of the individual Respondents by attorneys Charles Carmichael and Charles Nail. The June 30, 1987, Motion was denied by the Administrative Law Judge on August 17, 1987. In his Order and accompanying Memorandum, the Judge denied the Motion for reasons which will not be repeated here. The Administrative Law Judge's Order Denying Motion of August 17, 1987, is hereby incorporated by reference herein in its entirety. The present Motion is denied for the same reasons as for the reasons stated in the remainder of this Memorandum.

The Motion of September 17, 1987, presents different, more detailed arguments designed to persuade the Judge that to hold Owens, Crevier and Larson potentially liable individually for all charged actions against Sports and Health Club, Inc., is illogical and contrary to fact. The problem with the well-reasoned argument presented in this latest Motion is that it comes too late. Arthur Owens, Marc Crevier and Forest Larson have been separate, Respondent parties to this action from the time the Original Complaint was issued in 1981. During the course of prehearing motions and discovery, through the conduct of the hearing that ended late in 1983, no motion was made to dismiss any original Respondent as a party from any portion of the action. The facts alleged in this Motion were never used to support an effort to limit the potential liability of any Respondent.

In any civil action, a Defendant-Respondent can file a cross-claim against any other respondent or defendant to protect himself from eventual liability for all of the acts of all of the respondents. Such filings, if any, must occur before the case is heard. The individual facts establishing any cross-claim must be in evidence at the trial or hearing. In this case, no such procedure were undertaken by any Respondent. After the matter was heard and liability determined, each Respondent to this case therefore became jointly and severally liable.

R.C.L.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W.
Cooper, Commissioner, Minnesota
Department of Human Rights, and
his Predecessors,

Complainant,

ORDERS DENYING MOTION
TO QUASH SUBPOENAS

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

On October 2, 1987, Respondent Owens, Crevier and Larson filed a Motion Quash Subpoenas in the above-captioned matter. The text of that filing also contained a Motion for an Order Denying the State's Request for the Taking of Additional Depositions of Respondents Owens, Crevier and Larson. The Respondents are not represented by counsel in connection with this Motion. On October 27, 1987, the Complainant, represented by Special Assistant Attorney General Helen G. Rubenstein, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, filed a Memorandum in Response to the Motion.

After taking the Motion and Response thereto under advisement, and based upon all of the proceedings herein, the Administrative Law Judge makes the following:

ORDERS

1. That the October 2, 1987, Motion to Quash Subpoenas issued to Arthur W. Owens, Marc Crevier and Forest Larson by the Office of Administrative Hearings on September 25, 1987, be and hereby is DENIED.

2. That the Respondents' October 2, 1987, Motion for an Order Denying the State's Request for Taking of Additional Depositions from Respondents Owens, Crevier and Larson be and hereby is DENIED.

Dated this _____ day of October, 1987.

RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

The instant Motions are denied for the reasons laid out by counsel for Respondent in her Memorandum in response to Respondents' Motion to Quash Subpoena, filed on October 27, 1987. Those reasons will not be repeated here. The referenced Memorandum is hereby incorporated by reference into this Memorandum and made a part thereof.

As to the depositions noted on September 24, 1987, for the taking of statements from the individual Respondents to this case, the Administrative Judge has decided not to interfere with that process for the reasons advanced in counsel's Memorandum in response to Respondents' Motion to Quash Subpoena, which Memorandum was filed on October 27, 1987.

A supplementary memorandum will follow during the week of November 9, 1987, to explain further the Administrative Law Judge's reasons for denial of these Motions.

R.C.L.

Service List
HR-82-005-RL
7-1700-108-2
October 30, 1987

Helen G. Rubenstein
Special Assistant Attorney General
1100 Bremer Tower
7th Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

October 30, 1987

TO : COUNSEL AND PARTIES

Re: State of Minnesota, by Stephen W. Cooper, Commissioner, Minnesota Department of Human Rights, and his Predecessors v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson; OAH Docket Nos. HR-82-RL, 7-1700-108-2.

Dear Counsel and Parties:

Enclosed herewith and served upon you are Orders Denying Motion to Dismiss an Individual Respondent from Personal Liability on Claims Not Made During Ownership and Claims Not Charged Against His Individual Actions.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

sh

Enc.

cc: Helen G. Rubenstein, Special Assistant Attorney General
Sports and Health Club, Inc., Arthur W. Owens, President
Arthur W. Owens
Marc Crevier
Forest Larson

October 30, 1987

TO : COUNSEL AND PARTIES

Re: State of Minnesota, by Stephen W. Cooper, Commissioner, Minnesota Department of Human Rights, and his Predecessors v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson; OAH Docket Nos. HR-82-005-RL, 7-1700-108-2.

Dear Counsel and Parties:

Enclosed herewith and served upon you are Orders Denying Motion to Quash Subpoenas.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

sh

Enc.

cc: Helen G. Rubenstein, Special Assistant Attorney General
Sports and Health Club, Inc., Arthur W. Owens, President
Arthur W. Owens
Marc Crevier
Forest Larson

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W.
Cooper, Commissioner, Minnesota
Department of Human Rights, and
his Predecessors,

Complainant,

NOTICE OF AND
ORDER FOR CLASS
ACTION HEARING
(BETHANY L. GANZ)

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

IT IS HEREBY ORDERED AND NOTICE IS GIVEN, that, pursuant to Minn. Stat. §§ 14.57 - 14.69 and 363.06, subd. 4(6) (1986), a hearing will be conducted Friday, November 20, 1987, commencing at 9:00 a.m. at the Minnesota Office of Administrative Hearings, Fifth Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota. The purpose of the hearing is to determine whether Bethany L. Ganz qualifies as a Class Member entitled to relief (including monetary damages) for acts of discrimination committed by Respondents. You are hereby urged to attend. Failure to do so may prejudice your rights in this and any subsequent proceedings in this matter, and may result in the matters alleged by the opposing party being taken as true.

The Administrative Law Judge presiding in this matter is Janice K. Frankman, 420 Sexton Building, 529 So. Seventh St., Minneapolis, Minnesota 55415, telephone: (612) 333-5747.

Minn. Stat. § 363.06, subd. 4(6) allows the Commissioner of the Department of Human Rights to seek relief for classes of individuals affected by unfair discriminatory practices. On April 27, 1984, and in subsequent Orders, Administrative Law Judge Richard C. Luis determined that the Respondents engaged in such practices against five different classes of persons, which classes were certified for appropriate relief. Bethany L. Ganz alleges that she qualifies for relief as a member of one or more of those classes.

You are hereby NOTIFIED that you have the right to be represented by an attorney, by yourselves, or by person(s) of your choice if not otherwise prohibited as the unauthorized practice of law. The procedures governing conduct of the hearing are found in Minn. Stat. §§ 14.57 - 14.69 (1986) and Minn. Rules 1400.5100 - 1400.8300 (1985) and 5000.0200 - 5000.2400 (1985). Copies may be obtained from the Department of Administration, Public Document Division, 117 University Avenue, St. Paul, Minnesota 55155, telephone: (612) 297-3000.

At the hearing, the parties will be given the opportunity to be heard orally, to present witnesses, to cross-examine witnesses, and to submit evidence, written data, statements, or arguments in this matter. Please bring to the hearing all documents, records and witnesses needed to support your position. Subpoenas may be available from the Chief Administrative Law Judge of the Office of Administrative Hearings to compel the attendance of witnesses or the production of documents. Requests for subpoenas must be made in accordance with Minn. Rule 1400.7000 (1985).

Please be advised that if not public data is admitted into evidence, it become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2 (1986).

Persons desiring to explore informal disposition of this matter pursuant to Minn. Rule 1400.5900 (1985) or discovery possibilities pursuant to Minn. Rule 1400.6700 - 1400.7000 (1985) should contact Helen G. Rubenstein, Special Assistant Attorney General, 1100 Bremer Tower, St. Paul, Minnesota 55101, telephone: (612) 296-9412. Patrick Williams, Civil Practice Clinic, University of Minnesota Law School, 190 Law Center, 229 - 19th Avenue South Minneapolis, Minnesota 55455, telephone: (612) 625-5515, will appear as counsel for the Commissioner of Human Rights.

Failure to appear at the hearing may result in the matters alleged by the opposing party being taken as true. As a result, liability may be found and damages assessed, if the Respondents fail to attend or are not represented. If the Commissioner of Human Rights is not represented, such non-participation could result in a dismissal of the charges.

Dated this _____ day of November, 1987.

RICHARD C. LUIS
Administrative Law Judge
Minnesota Office of
Administrative Hearings
Fifth Floor, Flour Exchange Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415
Telephone: 612/341-7610

Service List
HR-82-005-RL
7-1700-108-2
(Bethany L. Ganz)
November 13, 1987

Helen G. Rubenstein
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Patrick Williams
Civil Practice Clinic
University of Minnesota Law School
190 Law Center, 229-19th Avenue S.
Minneapolis, Minnesota 55455

November 13, 1987

TO: COUNSEL AND PARTIES

Re: State of Minnesota, by Stephen W. Cooper, Commissioner, Minnesota Department of Human Rights, and his Predecessors, Complainant, v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents.
OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Counsel and Parties:

Enclosed herewith and served upon you is the Notice of and Order for Class Action Hearing (Bethany L. Ganz).

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

sh

Enc.

cc: Helen G. Rubenstein, Special Assistant Attorney General
Sports and Health Club, Inc., Arthur W. Owens, President
Arthur W. Owens
Marc Crevier
Forest Larson
Patrick Williams

November 18, 1987

Elizabeth V. Cutter, Esq.
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
St. Paul, Minnesota 55101

Helen G. Rubenstein, Esq.
Special Assistant Attorney General
Second Floor, Ford Building
117 University Avenue
St. Paul, Minnesota 55155

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Re: State of Minnesota, by Stephen W. Cooper, Commissioner of Human Rights, and His Predecessors v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson; OAH Docket No. HR 005-RL, 7-1700-108-2.

Dear Counsel and Parties:

Please be advised that Administrative Law Judge Janice K. Frankman and myself have reached a decision regarding the question of whether we will issue Orders in the Class Action portion of these proceedings after hearing each individual case of a proposed Class Member or wait until all proposed Class Members have been heard before deciding on any of the cases.

It has been DECIDED that Judge Frankman and myself will issue Orders regarding individual proposed Class Members upon taking each matter under advisement after the record closes in each case. The record in any such cases now pending, in which the Briefs (if any) have been filed, is deemed closed.

Elizabeth V. Cutter, Esq.
Helen G. Rubenstein, Esq.
Sports and Health Club, Inc.
Arthur W. Owens
Marc Crevier
Forest Larson
Page Two
November 18, 1987

with the issuance of this letter. The only such case on my docket is that of Julie Stangl. The cases on Judge Frankman's docket which are deemed closed with the issuance of this letter are those of Renae (Urista) Haugen and Cora Brehm.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

RCL:lr

cc: Administrative Law Judge Janice K. Frankman

December 14, 1987

Helen G. Rubenstein, Esq.
Special Assistant Attorney General
Second Floor, Ford Building
117 University Avenue
St. Paul, Minnesota 55155

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Re: State, by Stephen W. Cooper, Commissioner, Department of Human Rights v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson; OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Parties and Counsel:

The purpose of this letter is to respond to Ms. Rubenstein's request, expressed in a letter to Judge Frankman and myself on November 24, 1987, that an Order be issued requiring all damages (if any) awarded to class members in the above-captioned matter be paid into a fund established by and under the control of the Office of the Attorney General. The request contains certain other specifics, but I will not repeat them here because you all received copies of the letter.

I am unable to take any action on Ms. Rubenstein's request at this time. First, no damages have yet been found (in fact, no liability has been determined with respect to any individual class member). However, the question of how payments will be administered, if damages are awarded, is relevant and timely. The problem is that I am unaware of any statutes or case law that give the Administrative Law Judge the authority to mandate the handling of damages or monies paid in satisfaction of awards under the Human Rights Act. If Ms. Rubenstein is able to bring to my attention any authority

Parties and Counsel
Page Two
December 14, 1987

that gives an administrative law judge the power to fashion the Orders she suggests, I request that she bring such authority to my attention, in writing with copies to all parties.

Thank you.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

RCL:lr

cc: Administrative Law Judge Janice Frankman

Service List
HR-82-005-RL
7-1700-108-2
December 29, 1987

Elizabeth V. Cutter
Special Assistant Attorney General
1100 Bremer Tower
Seventh Place & Minnesota Street
St. Paul, Minnesota 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Stephen W. Cooper, Commissioner
Department of Human Rights
Fifth Floor Bremer Tower
Seventh Place & Minnesota Street
St. Paul, MN 55101

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Helen G. Rubenstein
Special Assistant Attorney General
Second Floor Ford Building
117 University Avenue
St. Paul, MN 55155

Janice K. Frankman
Suite 420, Sexton Building
529 South Seventh Street
Minneapolis, MN 55415

December 29, 1987

Stephen W. Cooper, Commissioner
Department of Human Rights
Fifth Floor Bremer Tower
Seventh Place & Minnesota Street
St. Paul, MN 55101

Re: State of Minnesota, by Stephen W. Cooper, Commissioner, Minnesota Department of Human Rights, and his Predecessors, Complainant v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents.
OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Commissioner Cooper:

Enclosed and served upon you by mail please find the Findings of Fact, Conclusions of Law, and Order of the Administrative Law Judge with respect to Julie Stangl in the Class Action portion of this proceeding.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

RCL:lr

Enclosure

cc: Janice K. Frankman
Elizabeth V. Cutter
Helen G. Rubenstein
Sports and Health Club, Inc.
Arthur W. Owens
Marc Crevier
Forest Larson

Service List
HR-82-005-RL
7-1700-108-2
April 1, 1988

Stephen W. Cooper, Commissioner
Department of Human Rights
Fifth Floor Bremer Tower
Seventh Place & Minnesota Street
St. Paul, MN 55101

Helen Rubenstein
Special Assistant Attorney General
Second Floor Ford Building
117 University Avenue
St. Paul, MN 55155

Larry Schaefer
Certified Student Attorney
U of M Law School Civil Practice Center
190 Law Center, 229-19th Avenue South
Minneapolis, MN 55455

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, Minnesota 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, Minnesota 55344

Forest Larson
5005 Richmond Drive
Edina, Minnesota 55436

Kathryn J. Sedo
Attorney at Law & Clinical Professor
U of M Law School Civil Practice Center
190 Law Center, 229-19th Avenue South
Minneapolis, MN 55455

July 15, 1988

Leslie J. Anderson
Dorsey & Whitney
2200 First Bank Place West
Minneapolis, MN 55402

Forest Larson
5005 Richmond Drive
Edina, MN 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, MN 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, MN 55344

Re: State, by Cooper, et al. v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson (Class Action -- Tammy S. Anderson); OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Counsel and Parties:

After a review of the record in the above-captioned matter, I conclude that it is necessary to further supplement the record in order for me to issue a decision in this particular case.

Ms. Leslie Anderson should submit a calculation of prejudgment interest payable to Tammy Anderson. Please understand that I have not yet determined liability on the part of the Respondents in this case. For purposes of the submission, however, I would like Leslie Anderson to assume that the award of damages for back pay, mental anguish and suffering totals \$1,000 and is awarded August 1, 1988. I would like an explanation of each component of the calculations, as well as the total.

During the hearing, I sustained an objection to Mr. Owens's attempt to question Tammy Anderson on the contents of the "Impact of Clashing Values Systems" Letter-Memorandum (pages 3 and 4 of Complainant's Exhibit 1) sent to Sports and Health Club members by Mr. Owens, concerning the Respondents' decision to abandon their LaSalle Court location. In order to complete the record, I am offering the Respondent the opportunity to present a written offer of proof, laying out what the cross-examination of Tammy Anderson on this document would have established, had such examination been allowed to

Leslie J. Anderson
Arthur W. Owens
Marc Crevier
Forest Larson

-2-

July 15, 1988

proceed. It was my understanding at the hearing that Mr. Owens intended to examine Tammy on the factual and intellectual propositions contained in the Letter-Memorandum. Was his intent to establish that no reasonable person should have been upset by the statements made in the document? If so, why would they not be upset? The offer of proof should also state how the evidence the Respondents sought to establish would affect the outcome of this case, should it be allowed.

I am allowing Leslie Anderson and the Respondents until Monday, July 25 (mailing date) to respond in writing to the concerns raised in this letter. Please mail copies to the other side at the same time you file them by mail with me.

Thank you for your cooperation.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

RCL/lr

Telephone: 612/341-7610

July 15, 1988

Susan M. Robiner, Esq.
Leonard, Street & Deinard
Suite 1500, 100 South Fifth Street
Minneapolis, MN 55402

Re: State, by Cooper, et al. v. Sports and Health Club, Inc., Arthur W
Owens, Marc Crevier and Forest Larson (Class Action -- John Senior
OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Ms. Robiner:

After a review of the record in the above-captioned matter, I have concluded that I will require a calculation of interest payable to Mr. Senior if any is applicable, before the record can close. See Transcript, p. 270. Please understand that I have not yet determined liability on the part of the Respondents in this case. For purposes of this submission, however, please assume that the amount of compensatory damages totals \$1,000 and is awarded August 1, 1988. I would like an explanation of each component of the calculations, as well as the total.

Please submit your calculations on or before July 22, 1988 (mailing date) and mail copies of your submission to each Respondent.

Thank you for your cooperation.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

RCL/lr

cc: Marc Crevier
Forest Larson
Arthur Owens

July 27, 1988

Leslie J. Anderson
Dorsey & Whitney
2200 First Bank Place West
Minneapolis, MN 55402

Forest Larson
5005 Richmond Drive
Edina, MN 55436

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, MN 55317

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, MN 55344

Re: State, by Cooper, et al. v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson (Class Action -- Tammy S. Anderson); OAH Docket No. HR-82-005-RL, 7-1700-108-2.

Dear Counsel and Parties:

On July 18, 1988, I granted an extension, through July 29, 1988, for Leslie J. Anderson to file her response to my letter (copy enclosed) to the parties on July 15, 1988. Ms. Anderson's secretary confirmed that extension by letter to myself and the parties on the same date.

The purpose of this letter is to announce that Mr. Owens, Mr. Larson and Mr. Crevier are granted the same privilege. Their responses to my July 15, 1988 letter are due on or before July 29, 1988 (mailing date).

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

RCL:lr

August 2, 1988

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, MN 55317

Forest Larson
5005 Richmond Drive
Edina, MN 55436

Marc Crevier
10965 Fieldcrest Road
Eden Prairie, MN 55344

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, MN 55317

Re:State, by Cooper, et al. v. Sports and Health Club, Inc., Arthur W. Owens,
Marc Crevier and Forest Larson; OAH Docket No. HR-82-005-RL, 7-1700-108

Gentlemen:

You will recall that I issued an Order on June 20, 1988, directing that you respond directly to the dates proposed by Special Assistant Attorney General Jean Boler for the ceasing of operations at the Apache, Midway, Normandale, Northland Park and St. Cloud Sports and Health Clubs. I asked that, if your view differs as to the dates proposed by Ms. Boler for the closing of any of such clubs, you support your view with appropriate documentation.

In addition, I also ordered you to support with documentation the dates you propose for the ceasing of operations at the Tonka and St. Louis Park Clubs.

I have received no response to the June 20, 1988 Order. It is important that dates be set so that appropriate compensatory and other damages can be computed in cases where liability is found in the Class Action matter. If you do not cooperate, a date will be imposed. Please respond to the Order of

June 20, 1988, and copy the Assistant Attorney General who is now representing the Department of Human Rights in this case, Richard L. Varco, Jr. Mr. Varco's address is 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101.

Thank you for your cooperation.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge
Telephone: 612/341-7610

RCL/lr

cc: Richard L. Varco, Jr.
Robert Nicklaus, Esq.

August 31, 1988

Julia E. Anderson
Special Assistant Attorney General
340 Bremer Tower
Seventh Place & Minnesota Street
St. Paul, MN 55101

Sports and Health Club, Inc.
Arthur W. Owens, President
6535 Peaceful Lane
Chanhassen, MN 55317

Arthur W. Owens
6535 Peaceful Lane
Chanhassen, MN 55317

Forest Larson
5005 Richmond Drive
Edina, MN 55436

Marc Crevier
10965 Fieldcrest Drive
Eden Prairie, MN 55344

Re: State, by Cooper, et al. v. Sports and Health Club, Inc., Arthur W. Owens,
Marc Crevier and Forest Larson; OAH Docket No. HR-82-005-RL, 7-1700-108
(Class Action Hearing -- David Gross).

Dear Counsel and Parties:

The above-captioned class action hearing has been rescheduled from Thursday, August 25, 1988, to Friday, September 16, 1988. The time and place originally scheduled for hearing (Office of Administrative Hearings, Fifth Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota, commencing at 9:00 a.m.) remain the same.

Please take notice that, due to a conflict in my schedule, Administrative Law Judge Janice K. Frankman will preside at this hearing instead of myself. Judge Frankman's address is Suite 420, 529 South Seventh Street, Minneapolis.

Minnesota 55415, telephone: 612/333-5747. Please contact Judge Frankman if you have any questions in connection with this reassignment of Judges.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge
Telephone: 612/341-7610

RCL/lr

cc: Janice K. Frankman, Administrative Law Judge

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

In the Matter of the State of Minnesota,
by Marilyn E. McClure, Commissioner, Minnesota
Department of Human Rights, and Her Successors,

Complainant,

v.

ORDER DENYING
MOTION TO REAFFIRM DISMISSAL

Sports and Health Club, Inc., d/b/a St. Louis Park
Sports and Health Club, Apache Sports and Health
Club, Midway Sports and Health Club, Normandale
Sports and Health Club, LaSalle Sports and Health
Club, Northland Park Sports and Health Club, Tonka
Sports and Health Club, and St. Cloud Sports and
Health Club and Arthur W. Owens, Marc Crevier and
Forest Larson,

Respondents.

On July 1, 1987, Respondents Arthur W. Owens, Marc Crevier and Forest Larson, the individual Respondents in the above-captioned matter, filed a Motion to "Reaffirm Dismissal" with the undersigned Administrative Law Judge seeking an Order dismissing them as parties to this proceeding.

On July 13, 1987, counsel for the Complainant filed a Memorandum in Opposition to the Motion. Replies were made by each side, with the final Reply being filed by the Complainant on July 20, 1987.

Charles L. Nail, Jr., Esquire, Arnold and McDowell, 5881 Cedar Lake Road, Minneapolis, Minnesota 55416, represented Respondents Arthur W. Owens, Marc Crevier and Forest Larson. Elizabeth V. Cutter, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, represented the Complainant.

The Administrative Law Judge, having taken the matter under advisement and after a review of all the filings, records and proceedings herein, hereby issues the following:

ORDER

The Motion to "Reaffirm Dismissal", seeking the dismissal as individual Respondents in this matter of Arthur W. Owens, Marc Crevier and Forest Lars is hereby DENIED.

Dated this 17th day of August, 1987.

RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

The Motion under consideration asked that the Administrative Law Judge "reaffirm" his dismissal of the individual Respondents from this case. The very premise of the Motion is flawed, in that it incorrectly presumes that the Administrative Law Judge has dismissed these individuals as Respondents.

The Order of April 26, 1984, in covering this aspect of the case, dismissed all counts against the Respondents for alleged violations of Minn. Stat. § 363.03, subd. 6 (1980), a statute that makes it an unfair discriminatory practice for any person to intentionally "aid, abet, (or attempt to aid or abet) a person to engage in...practices forbidden" under the Minnesota Human Rights Act.

In dismissing the portion of the Complaint charging Owens, Crevier and Larson with aiding and abetting Sports and Health Club, Inc. in committing unfair discriminatory practices, the Order made it clear that they were dismissed from violating Minn. Stat. § 363.03, subd. 6, because it was inappropriate for them to be held liable separately under that statute when the Complainant had already proved liability against Sports and Health Club, Inc. the corporate entity they owned and controlled. In order to arrive at that result, the Order "pierced the corporate veil" of Sports and Health Club, Inc. It was proven on the record that the individual Respondents owned (collectively) 100% of the corporation's stock and all of its assets, so it was held that they were individually liable for the illegal actions of Sports and Health Club, Inc. See Memorandum to the Order of April 26, 1984, p. 70, as Amended on May 9, 1984.

On May 17, 1985 (rehearing denied June 28, 1985), the Minnesota Supreme Court, hearing the case on direct appeal from the Order, upheld that portion of the Order regarding aiding and abetting. See State by McClure v. Sports and Health Club, 370 N.W.2d 844, 853-54 (Minn. 1985), where it states:

In her appeal the Commissioner contends the hearing examiner erred in dismissing Owens, Crevier and Larson, the sole owners of Sports and Health from the action. Originally, these three were named parties to this action on the theory that they aided and abetted Sports and Health in engaging in the discriminatory practices. See e.g. Minn. Stat. § 363.03, subd. 6 (1984). Although the hearing examiner did give as one reason for the dismissal what might be called a "good faith" exception based upon the sincerity of the beliefs of these three individuals, a ruling which is questionable, he also based the dismissal on the ground that the Commissioner had proved that the three individuals were, in fact, the corporation. He then pierced the "corporate

veil", to hold them liable for the illegal actions of Sports and Health. Having done that, he held it was inappropriate to hold these individuals separately liable under the aiding and abetting subdivision of the Human Rights Act for actions which the corporation and they had already been held liable. By his act of piercing the "corporate veil" the legal basis for an aiding and abetting claim is non-existent. Cf. State v. Strimling, 265 N.W.2d 423, 430 (Minn. 1978). With that conclusion, we agree.

It seems clear from the above language that the Minnesota Supreme Court not only endorsed the Order but also rejected the Commissioner's argument that the Respondents had been dismissed from the action. The Order dismissed them only from that portion of the action alleging liability for aiding and abetting. In another portion of the opinion, at 370 N.W.2d 844, 850-51, the Supreme Court states that the hearing examiner (Administrative Law Judge) pierced the corporate veil "to make the Respondents (Owens, Crevier and Larson), who own all the stock and assets of the corporation, liable for the illegal actions of it". To the extent that the Respondents seek clarification by filing this Motion, it was the Administrative Law Judge's intention to do exactly what the Supreme Court said was intended, and that remains the Administrative Law Judge's intention.

It is interesting to note that, on appeal to the Minnesota Supreme Court and throughout the conduct of this entire matter, the individual Respondents have sought to defend the corporate entity against liability for any violation of the Human Rights Act on the grounds that the corporation is a vehicle through which they exercise their religion. This reality was recognized and the corporate veil pierced to allow Sports and Health Club, Inc. to assert the first amendment as a defense to claims of discrimination. This action was accepted by the Supreme Court, 370 N.W.2d 844, at 850-51, and made it unnecessary for them to rule on the border question of whether a corporation has a constitutional right to free exercise of religion.

The piercing of the corporate veil allowed the corporate entity to interpose first amendment defenses, over the Complainant's objections. This ruling, at the time it was made, was favorable to the individual Respondents. The fact that the ruling has another side, liability against those individuals if the corporation is held liable, is a consequence of the "piercing" doctrine which, in order to be applied, requires the conclusion that the corporation and the shareholders are one and the same. State by McClure v. Sports and Health Club, supra at footnote 12, pp. 850-51. That result is compelled from the record at trial (see Finding 5, p. 3 and Amended Memorandum p. 70, issued May 9, 1984) and, as pointed out by Complainant's counsel in his final Reply letter, it has also become the law of the case. The individual Respondents, as well as Sports and Health Club, Inc., remain jointly and severally liable for any and all discriminatory practices already found in this proceeding, and for all (if any) discriminatory practices found in the class action portion thereof.

R.C.L.

August 17, 1987

Charles L. Nail, Jr.
Attorney at Law
Arnold and McDowell
5881 Cedar Lake Road
Minneapolis, Minnesota 55416

Elizabeth V. Cutter
Special Assistant Attorney General
1100 Bremer Tower
7th Place and Minnesota Street
St. Paul, Minnesota 55101

Re: State v. Sports and Health Club, Inc.;
OAH Docket Nos.: HR-82-005-RL, 7-1700-108-2.

Dear Counsel:

Enclosed herewith and served upon you is the Order Denying Motion to Reaffirm Dismissal.

Very truly yours,

RICHARD C. LUIS
Administrative Law Judge

Telephone: 612/341-7610

RCL:sh
Enc.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W.
Cooper, Commissioner, Minnesota
Department of Human Rights, and
his Predecessors,

Complainant,

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER (CLASS
ACTION - JULIE STANGI

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on July 1 and 2, 1987, and before Administrative Law Judge Janice K. Frankman on July 28, 1987, at the Office of Administrative Hearings in Minneapolis. The record closed on November 18, 1987, with the Administrative Law Judge's decision to proceed with the issuance of Orders regarding individual class members.

Elizabeth V. Cutter, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Complainant. Respondent Sports and Health Club, Inc. was represented in this matter by Arthur W. Owens, its President, 6535 Peaceful Lane, Chanhassen, Minnesota 55317, and by Vice-Presidents Marc Crevier, 10965 Fieldcrest, Eden Prairie, Minnesota 55344, and Forest Larson, 5005 Richmond Drive, Edina, Minnesota 55436. Owens, Crevier and Larson are also individual Respondents in this matter, and they appeared without counsel to represent themselves. Leave was granted by the Administrative Law Judge examination of each Respondent to be directed by any other Respondent.

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2, this Order is the final decision in this case and under Minn. Stat. § 363.072, the Commissioner of t

Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

STATEMENT OF ISSUES

Whether Julie Stangl qualifies for relief in this matter due to her membership in Class 1 (persons discharged from employment because of religious

marital status and/or sex), Class 2 (persons discriminated against with respect to the terms, conditions or upgrading of their employment because of religious marital status and/or sex) or Class 3 (persons subject to acts of reprisal affecting the terms and conditions of their employment, including discharge from employment, for opposing practices violating the Minnesota Human Rights Act).

Based upon all the files, records and proceedings, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Julie Stangl was employed as a receptionist and associate membership director (or "programmer") by the Respondents at their Midway and Apache Clubs from July 6, 1976 through March 18, 1982. During that period, the Respondents also owned and operated Clubs in Bloomington, St. Louis Park, Minneapolis and Brooklyn Park.

2. Ms. Stangl's basic job duties at the Respondents' Clubs consisted of membership sales and "servicing" or "programming" (weighing, measuring, exercise supervision, nutritional counseling) of female patrons (members, guests and non-member customers).

3. Prior to January 1982, Ms. Stangl's supervisor was Jim Chapman, who managed both the Apache and Midway Clubs. He was also in the process of purchasing the two Clubs from Arthur Owens. Chapman transferred Stangl's place of employment from the Midway to the Apache location after about two and one-half years of employment because he thought Julie would have greater opportunity to earn sales commissions at the new location.

4. Ms. Stangl's starting wage at Sports and Health was \$2.30 per hour. By the end of her employment with the Respondents, Stangl was earning over \$1,000 per month in salary and commissions.

5. Julie Stangl has an outgoing personality and projected a certain level of enthusiastic energy or "spark" which made her popular among her regular customers at Sports and Health. She won Company service awards for two quarters in 1979.

6. Stangl originally came to work at Sports and Health in order to have a place to work out regularly and because the Company offered to waive the initial membership fee (approximately \$450) to any employee who stayed on for five years. After starting her employment at Sports and Health, Julie became interested in body-building and eventually became a champion amateur bodybuilder. She captured the Miss Twin Cities Bodybuilding Championship and on two occasions, the Miss Minnesota Bodybuilding Championship.

7. Most of Ms. Stangl's sales-commission income came from referrals by regular customers she had served who were pleased with Julie and told their friends about her. Many of the customers "followed" Ms. Stangl to Apache at her transfer.

8. The "traditional" methods utilized by the Sports and Health Clubs in selling membership were less successful for Stangl than sales made through referrals. These methods consisted of "cold calls" (telephone solicitation

and attempts to sell memberships directly to non-members who came in the Club as members' guests or "walk-ins".

9. At the beginning of 1982, management of the Midway and Apache Clubs was transferred from Jim Chapman to Company Vice-Presidents Crevier and Larson who were then in the process of buying all Sports and Health locations from Arthur Owens. Crevier and Larson installed Kevin Reilly as manager of the Apache Club. As a consequence, Reilly became Julie Stangl's direct supervisor.

10. Under Jim Chapman, the Midway and Apache Clubs had been autonomous with respect to many of the operating methods. At or about the same time that they began purchasing the Clubs from Owens, Crevier and Larson began to impose a "strict accountability book system" of sales and member servicing methods upon all associate membership directors. These methods had not been imposed at Apache and Midway during the time Jim Chapman was manager. Some of the features of the "book" system imposed by Crevier and Larson (or through the Club managers) were a required minimum number of "cold calls" to solicit potential members, a requirement to obtain a certain number of "referral" appointments (for prospective members) each week, requirements for the recording of "cold calls" and "referral" appointments, that each service of a member be recorded, that lists of clients and prospects be updated, that the members' programs be periodically updated, and recording of the periodic weighing and measuring of the patrons. After the "book" methods were imposed, Club managers were held strictly accountable for a daily update of all required entries by their associate membership directors.

11. Julie Stangl had a difficult time adjusting her work routine to conform with the "book" methods of operation outlined in the preceding Findings while still keeping up with providing regular service to members. She proved to be a slow learner and was slower than others in like positions in adjusting to making written notations regarding job performance at the same time as the job duties were being performed. She also failed a written test requiring identification of muscle groups three times. All other sales personnel passed the test the first time.

12. Imposition of the "book" system at Apache included daily checking by Kevin Reilly of each programmer's books to see if the recordings were being made properly and to check on what the programmer was doing to increase business at the Club. Spot checks by Reilly and Marc Crevier of Julie Stangl's books revealed instances where records were inaccurate, not properly updated, and, on occasion, possibly falsified. On at least three occasions, Stangl was reluctant to show Crevier or Reilly her books at the time they asked because she was not willing to interrupt the programming of a member.

When confronted regarding such problems or discrepancies, Stangl would sometimes react in an emotional fashion. Julie felt she was simply slow in

adjusting to the changes imposed by the new system. Company management perceived her as unruly and defiant.

13. With the encouragement of Mr. Owens, Bible studies were instituted at the Sports and Health Clubs in 1976, initially at the home of the Company's head receptionist and at the Normandale Club located in Bloomington. In approximately 1980, after Crevier and Larson began to purchase the Clubs from the Owens family and get more involved in management decisions throughout the

system, the two Vice-Presidents began to institute Bible studies for employees at all the Clubs they ran. None were conducted at Midway and Apache until Chapman resigned, and after that Bible studies were instituted by the new owners at the above locations. Club managers at each location eventually took over the leading of these study sessions.

14. After Kevin Reilly became manager of the Apache Club, he led Bible study sessions during the shift change on Thursdays between 3:30 and 4:00 p.m. Attendance was voluntary, but encouraged. Julie Stangl, who was raised as a Roman Catholic and had remained a practitioner of that religion, initially welcomed the studies and was an enthusiastic participant. However, after one such session, conducted in late February or early March of 1982, that left her emotionally troubled and less confident, she stopped attending Bible studies at the Club. Julie's attempt to have the Bible study group consider inspirational literature interpreting Bible passages (as opposed to consideration of the literal passages) had been rebuked by Crevier.

15. On several occasions during the course of her employment at Sports Health, including her initial interview for employment with Arthur Owens, Julie Stangl was encouraged by members of management to reaffirm her commitment to Jesus Christ and become "Born Again". Stangl refused these invitations for about five years, until sometime in 1981, when she orally reaffirmed her commitment to Christ, in private, in the presence of Mr. Owens. Stangl allowed this to occur not because she truly was making the requisite commitment, but because she wanted Owens and other persons with like beliefs in the Club to stop attempting to proselytize her. She allowed Owens to think that her commitment was sincere.

Stangl, a single woman, was also counseled on several occasions by Owens with respect to the fact that she lived alone and held a job without her father's specific consent.

16. On March 3, 1982, after reacting to Kevin Reilly's attempt to correct her book work with an emotional outburst, Stangl was advised to take time off (March 4 through 7) before coming back to work. Upon her return, Stangl was informed that her time off was actually a "suspension" and that she had to see Reilly, Crevier and Owens before returning to work. She did so, and returned to work with a renewed commitment to good job performance.

17. At one point during her employment, Stangl had proposed use of a workout tape which was rejected by Company management (Vicki Owens, Mr. Owens' administrative assistant and daughter) because it contained lyrics and a "rock beat" deemed "suggestive". Stangl had prepared the tape because her clients found the management-approved music (instrumentals lacking a rock beat) boring and uninspiring. On approximately March 16, 1982, Stangl was observed by Crevier listening to what he thought was rock music through the earphones of a Club member. Crevier was disturbed by Stangl's apparent defiance (as he

perceived it) and called the situation to Reilly's attention. Reilly then discharged Julie Stangl from employment for insubordination and a "bad attitude".

18. Since leaving the employ of Sports and Health, Julie Stangl has been employed as a fitness instructor at Jim Brunzell's Gym (later called Women's World of Fitness), and has engaged in self-employment as a workout instructor and seller of Shaklee products (nutritional supplements, cosmetics). She has not fared as well financially since leaving the employ of Sports and Health as she would have had she continued as a receptionist-programmer at the Apache

Club. Her training as a bodybuilder was interrupted by pregnancy in 1985, and she has earned no money from that avocation.

19. The trauma of losing her job at Sports and Health Club was emotionally devastating for Ms. Stangl, who experienced a reluctance to apply for work at any larger, "chain" fitness clubs for approximately three years because of a loss of confidence and her self-perceived inability to conform to the bureaucratic requirements of such organizations. She also feared being manipulated by such organizations.

20. The Respondents have denied Julie Stangl the use of their Clubs since her discharge from employment because she has not promised them that she would not be a disruptive influence or "bad mouth" the Clubs while on the premises.

Based upon the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Notice of Hearing was proper and all relevant substantive and procedural requirements of law and rule have been fulfilled.
2. The Administrative Law Judge has jurisdiction herein and authority to take the action Ordered pursuant to Minn. Stat. §§ 14.50 and 363.071, subd. (1987).
3. Under International Brotherhood of Teamsters v. United States, 97 S. Ct. 1843, 431 U.S. 324 (1977), after the Complainant makes a prima facie showing that an individual has been the victim of a discriminatory employment practice, the burden of proof shifts to the employer to establish by a preponderance of the evidence that adverse employment action taken against an employee was for lawful, non-discriminatory reasons.
4. Under State, by McClure v. Sports and Health Club, 370 N.W. 844 (Minn. 1985), Appeal dismissed, 106 S. Ct. 3315, 92 L.Ed.2d 730 (1986), the Respondents engaged in prohibitive employment practices by discharging people because of religion, marital status and/or sex, by discriminating against people with respect to terms and conditions of employment because of religion, marital status and/or sex and by subjecting people to acts of reprisal affecting their terms and conditions of employment, including discharge from employment, for opposing practices by the Respondents which violate the Minnesota Human Rights Act.
5. The Complainant has made a prima facie showing that Julie Stangl was a potential victim of discrimination by showing she was a single woman who resisted management invitations to become "Born Again" and was suspended and later discharged from employment. Under International Brotherhood of

Teamsters, supra, the burden of proof then shifts to the Respondents to demonstrate that Julie Stangl was suspended and discharged from employment on lawful, non-discriminatory reasons. Therefore, she is a potential member of Class 1 in this action.

6. The Complainant has not made a prima facie showing that Julie Stangl had adverse action taken against her with respect to the terms, conditions or upgrading of her employment, except for being suspended or discharged from

employment. Therefore, she is not a potential member of Class 2 in this action.

7. The Complainant has not made a prima facie showing that Julie Stangl was a victim of a reprisal by the Respondents for opposing practices by the Respondents which violated the Minnesota Human Rights Act. Therefore, she is not a qualifying member of Class 3 in this action.

8. The Respondents have demonstrated by a preponderance of the evidence that the suspension and discharge of Julie Stangl was for lawful, non-discriminatory reasons.

9. Because of the foregoing Conclusions, Julie Stangl is not entitled to monetary or other relief in this action.

10. Any of the preceding Findings of Fact more properly termed Conclusions of Law are hereby adopted as such.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that the Petition for entitlement to monetary or other relief filed in this Class Action matter by Julie Stangl BE and hereby IS DISMISSED.

Dated this _____ day of December, 1987.

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped.
Transcribed by Karen Toughill, Court Reporter.

MEMORANDUM

Minn. Stat. § 363.03, subd. 1 prohibits discrimination in employment on account of religion, marital status and sex. It also prohibits pre-employment inquiry pertaining to such subjects. The Minnesota Supreme Court, in determining what sort of actions constitute prohibited discriminatory practices under the Human Rights Act and in dictating how such discrimination must be proven, has followed the approach of the federal courts in interpreting a similar statute, Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e.

et seq., and has decided that court decisions under Title VII are applicable to similar actions under state law. See Danz v. Jones, 263 N.W.2d 395 (Minn. 1978) and Hubbard v. United Press International, Inc., 330 N.W.2d 428 (Minn. 1983).

A three-part analysis was set out by the United States Supreme Court in the case of McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973), describing the shifting burdens of production and proof in discrimination

cases, and this analysis was refined by the Court in the case of Texas Department of Community Services v. Burdine, 450 U.S. 248 (1981). The requirements are: (1) the plaintiff must establish a prima facie case of discrimination; (2) the defendant must rebut the prima facie showing by articulating some legitimate, non-discriminatory reason for the employment action; and (3) the plaintiff must then show, by a preponderance of the evidence, that the reasons stated are a pretext for actual discrimination.

Under the Minnesota Human Rights Act, a member of a protected class who alleges that (s)he was treated differently from other persons because of membership in that protected class carries the initial burden of proof of establishing a prima facie case by showing (1) (s)he is a member of a protected class; (2) (s)he was qualified for the job; (3) that an adverse employment action was taken against him/her; and (4) the employer assigned non-members of the protected class(es) to do the same work. Hubbard v. United Press International, Inc., 330 N.W.2d 428 (Minn. 1983). In this case, the above-noted analytical approach, as modified by Byrd v. Roadway Express, Inc., 687 F.2d 85 (1982), was used by the Administrative Law Judge and the Minnesota Supreme Court in analyzing the claims made by Charging Parties in the "underlying" action that determined general liability for discriminatory actions against the Respondents and authorized the creation of classes of individuals for potential monetary and other relief. See Findings of Fact, Conclusions of Law and Order of the Administrative Law Judge in this matter 4/26/84.

The United States Supreme Court case of International Brotherhood of Teamsters v. United States, 97 S. Ct. 843, 431 U.S. 324 (1977) provides for a different approach to the burden of proof in a class action lawsuit when the government has already proven a system-wide pattern and practice of discrimination on the part of the employer in the liability phase of the action. As the Court stated, at 97 S. Ct. 1868:

The proof of the pattern or practice supports an inference that any particular employment decision, during the period in which the discriminatory policy was in force, was made in pursuit of that policy. The Government need only show that an alleged individual discriminatee unsuccessfully applied for a job and therefore was a potential victim of the proved discrimination. . . . The burden then rests on the employer to demonstrate that the individual applicant was denied an employment opportunity for lawful reasons.

The Teamsters case involved discrimination by trucking companies and the Union against Black and Hispanic employees who were initially hired only as servicemen or local-city drivers, positions less desirable and lower-paying than over-the-road, long-distance driving jobs. Applying the reasoning of the above-quoted paragraph to this case, once the Complainant establishes a single

woman who refused to become a born-again Christian for five of the six years she was employed was fired from her job at Sports and Health after September 24, 1979, the burden of proof shifts to the Respondents to establish that the protected class member was discharged for lawful, non-discriminatory reasons. For reasons stated below, that burden has been met in this case.

The Administrative Law Judge has concluded that Kevin Reilly discharged Stangl from her employment because she was not conforming to certain

required, secular standards of employment regarding record-keeping and accountability. A review of the transcripts in this case and of testimony regarding Julie Stangl taken in the underlying liability matter in 1983 reveals only that it was Julie's impression, and the impression of certain others, that she was fired because of religion. The only corroboration involving alleged statements by anyone in club management of such a notion is in the testimony of Lois Wiebersch, who testified on July 1, 1987 that Julie told her that Reilly had admitted to her (Julie) that she was fired because she was not a "reborn Christian" (T., vol. 1, p. 77). The testimony of Julie Stangl (in 1983 and 1987) and Kevin Reilly (in 1983) fail to confirm that such a statement was made. Standing alone, Wiebersch's testimony is uncorroborated hearsay and is given no weight, even though it was admitted to the record in the absence of objection by the pro se Respondents.

In the absence of any competent direct evidence of discrimination, the Administrative Law Judge has examined the record and concluded that Julie Stangl was discharged for reasons that do not violate the Human Rights Act. It may be that the Employer misinterpreted as defiance or "bad attitude" Julie's inability to successfully adjust to the new conditions of employment requiring contemporaneous bookkeeping, or misconstrued her emotional outbursts on occasions where she felt stress as being intentionally disruptive, but the record does not reveal that the employment was terminated because of Ms. Stangl's religion, marital status or sex.

It is apparent from the record that Ms. Stangl's adjustment to the strict bookkeeping requirements after the departure of Jim Chapman was difficult and stressful. The evidence is undisputed that Ms. Stangl's personality in 1983 was high-strung and outwardly fragile and emotional. The record shows that she experienced gastro-intestinal difficulties during the period of adjustment, that the stresses she felt in conforming to the new system, while adjusting to the supervision of Kevin Reilly and the strong-stern personality of Marc Crevier occasionally manifested themselves as emotional outbursts. While it is possible that Reilly and Crevier misinterpreted these outbursts as outright defiance, adverse employment decisions made because of such mistakes are not actionable, absent a discriminatory intent, under the Human Rights Act.

The case is complicated by Julie Stangl's dropping out of Bible studies (an activity not required, but certainly encouraged by Company management) on or shortly before her suspension and termination, and by evidence that Arthur Owens had approached her over the years to embrace "born-again" Christianity. The Administrative Law Judge is unable, however, to make a causal connection between these religious-related events and the adverse employment action taken against Ms. Stangl. Under a McDonnell-Douglas-type analysis, the reasons for discharging Stangl constitute the articulation of legitimate, non-

discriminatory reasons for the action taken, and the record fails to establish that those reasons are a pretext for actual discrimination.¹ The circumstances of Stangl's dropping out of Bible studies after being criticized

¹As explained above, a McDonnell-Douglas analysis would apply if this proceeding were at the liability stage. In this Class Action, under International Brotherhood of Teamsters, supra, the final burden of proof is on the Respondents. In McDonnell-Douglas parlance, they have to prove that the reasons for discharge of Stangl were not pretextual.

by Crevier, near the time of her termination from employment, is viewed by the Administrative Law Judge as coincidental with, and not a cause of her subsequent suspension and discharge. The Respondents were able to establish this by a preponderance of the evidence so their burden of proof under International Brotherhood of Teamsters has been met.

The "book" system employed by the Respondents after December of 1981 was secular. Ms. Stangl's inability to conform to it had nothing to do with religion. Any manifestations of emotion or performance of her work by Julie Stangl that the Employer saw as "bad attitude" or an unwillingness or inability to work under their system has not been shown to be related to the religious beliefs or practices of Stangl or of the individual Respondents. The records in this matter shows that the Respondents retained persons in their employ who failed to embrace "born-again" Christianity (as they did with Ms. Stangl for approximately five years) and that they fired others, who were "born-again" but were unwilling or unable to conform to the same secular business practices that proved problematical to Julie Stangl. It is inappropriate, therefore, to hold that Ms. Stangl qualifies for membership in Class 1 (persons discharged from employment because of religion, marital status or sex).

Julie Stangl was asked repeatedly by Arthur Owens, both at the initial employment interview in 1976 and over the next five years, whether she was pleasing her father by living out of his house and taking a job instead of continuing her education. This line of inquiry, and the attempts made by Owens to convince Stangl to reaffirm her commitment to Jesus Christ, are examples of the practices which the Administrative Law Judge enjoined the Respondents from committing after April 26, 1984, by his ORDERS issued on that date (as ultimately upheld by the Minnesota Supreme Court and enforced by District Judge Franklin Knoll and the Minnesota Court of Appeals). Such is the law of this case. However, since Ms. Stangl's employment by the Clubs occurred prior to the Administrative Law Judge's Orders, she is eligible for relief as a member of Class 2 only if the evidence shows that she was discriminated against with respect to the terms, conditions or upgrading of her employment because of religion, marital status and/or sex.

It is concluded that Stangl cannot qualify for relief due to violation of Respondent Owens of Minn. Stat. § 363.03, subd. 1(4)(a), because that statute only prohibits requiring a person to furnish information pertaining to religion, marital status or sex before that person is employed. Stangl's employment began in July 1976, over three years prior to the first date that Respondents' actions could have exposed them to liability in this Class Action matter (September 24, 1979). It is also noted that the statute only proscribes requiring the furnishing of information pertinent to religion, marital status or sex prior to employment, not after employment has commenced.

It may be argued (although the Complainant did not raise the question) that Mr. Owens's continued inquiry into Stangl's religious beliefs and status

respecting her father's approval of her living alone constitutes sex and religious discrimination. The problem is that no evidence exists to connect these inquiries to any action taken against Stangl with respect to the terms conditions or upgrading of her employment. Rather, the record shows that Stangl's problems which led to loss of employment began in 1982, whereas she had "reaffirmed" her faith in Owens's presence during the preceding year. She was never demoted, and the evidence shows she was never a candidate for promotion. She was always paid according to her agreed compensation

arrangement. The only adverse action taken against her was a suspension, just prior to her being discharged, and there is no evidence that the suspension was for anything other than problems related to fulfilling the new, secular job description.

The Administrative Law Judge's Orders to cease inquiry by the Respondents into the religious beliefs or practices of employees, and to cease asking young, unmarried women whether they have parental permission to work or live away from home, were effective in this case only after April 26, 1984, over two years after Stangl left the Respondents' employ. Therefore, no action was taken by the Respondents that could qualify Stangl for relief as a member of Class 2.

The only "reprisal" taken against Stangl by the Respondents for her act while in the employ of Sports and Health Clubs was a denial to her of the use of Club facilities after she was terminated. This action has been shown to be motivated by the Employer's belief that Ms. Stangl would be antagonistic to the Clubs if she were allowed to continue working out on the Respondents' premises. As a result, she was not allowed to return without making a pledge not to "bad-mouth" the Clubs to anyone inside the premises. This reason for barring Stangl, right or wrong, is nevertheless secular and has not been shown to relate to opposition by her to policies or practices of the Respondent that violate the Minnesota Human Rights Act. The fact that the Respondents imposed work rules which were rigidly enforced by a person (Crevier) who may have had an uncompromising personality has not been shown to have a relation to the religion of Stangl or the Respondents, nor does it have a relation to her sex or marital status. The facts are that she did not publicly oppose attempts to induce her to make a personal commitment to Christ or to talk about the situation regarding her father. Nor can stopping attendance at Bible studies be viewed as opposition to anything illegal under the Human Rights Act (conduct of the studies is legal, and the Respondents have been enjoined from soliciting or suggesting attendance at them only after April 26, 1984). For these reasons, it is inappropriate to hold Julie Stangl as qualified for relief as a member of Class 3.

Finally, it is noted that the Complainant's objection to representation of Sports and Health Club, Inc. by its President and Vice-Presidents in this matter for alleged violation of Minn. Stat. § 481.02, subd. 2 (part of the statute prohibiting the unauthorized practice of law) has been earlier considered and dismissed by the Administrative Law Judge. It is his opinion that the statute prohibits representation only in a court of law, not in a hearing conducted under the Minnesota Administrative Procedure Act. In addition, the statute is not interpreted by the Administrative Law Judge to prohibit representation of Sports and Health (as a "party litigant") by its principals, even in a court of law.

R.C.L.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W.
Cooper, Commissioner, Minnesota
Department of Human Rights, and
his Predecessors,

Complainant,

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER (CLASS
ACTION - TIMOTHY BR

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on February 18, 1988, at the Office of Administrative Hearings in Minneapolis. The record closed on March 4, 1988.

Larry Schaefer, Certified Student Attorney and Kathryn J. Sedo, Attorney Law and Clinical Professor, University of Minnesota Law School Civil Practice Clinic, 190 Law Center, 229 - 19th Avenue South, Minneapolis, Minnesota 55455, appeared on behalf of the Complainant. Arthur W. Owens, 6535 Peaceful Lane Chanhassen, Minnesota 55317, appeared on behalf of himself and Sports and Health Club, Inc. Marc Crevier, 10965 Fieldcrest, Eden Prairie, Minnesota 55343, appeared on his own behalf.

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2, this Order is the final decision in this case and under Minn. Stat. § 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

STATEMENT OF ISSUES

1. Whether Timothy Braff qualifies for relief in this matter due to his membership in Class 4 (persons who sought employment after September 24, 1979 and who were not hired because of religion, marital status, and/or sex) or Class 5 (persons who sought employment between September 24, 1979 and July 1, 1986, and who were required to furnish information that pertains to religion, marital status, and/or sex).

2. Whether relief, if any, to which Mr. Braff is entitled properly includes a sum for compensatory damages, mental anguish and suffering or punitive damages.

Based upon all the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Effective June 1, 1983, Respondent Sports and Health Club, Inc. took over the operation of the former Tonka Racquet and Swim Club in Minnetonka, Minnesota, leasing the physical premises with an option to buy. No commitment was made by Sports and Health to retain any of Tonka's employees or to organize the operation of the Club as it had been under its previous management.

2. In connection with taking over the Minnetonka facility, Sports and Health, through President Arthur Owens and Vice-Presidents Marc Crevier and Forest Larson, decided to interview all employees of Tonka Racquet and Swim for possible employment in the new organization. One such employee was potential class member Timothy (Tim) Braff.

3. Tim Braff began employment with Tonka Racquet and Swim as a maintenance person in April, 1980. He received three promotions during his employment at Tonka, all of them granted by the Club's general manager, David Stearns.

4. Braff's first promotion, in 1981, was to head of maintenance, in which position he supervised, scheduled, hired and fired a staff of five to ten employees (equivalent of three full-time employees) and was responsible for general maintenance of the physical facilities.

5. Mr. Braff's next promotion, in 1982, was to head of front desk personnel. In that position he was responsible for opening and closing of the Club, greeting of members and guests and some sales. He supervised 15 to 20 employees (equivalent of seven to nine full-time employees), and continued to be in charge of maintenance.

6. Sometime in late 1982 or early 1983, Mr. Stearns combined the head of maintenance and head of front desk personnel positions into a single position of Assistant Manager-Personnel Director, and he promoted Tim Braff to fill that position.

Stearns considered Braff to be an exceptional employee--responsible, ambitious and hard working. He showed excellent talent in working with the Club's equipment and also displayed a good rapport with people.

7. When it became clear to Stearns that Sports and Health was going to take over the Tonka operation, he orally informed Vice-President Forest Larson of Tim Braff's qualifications and recommended Braff's continued employment.

Larson's suggestion, Stearns wrote a letter of recommendation on behalf of Braff to Owens, Larson and Crevier.

8. Tim Braff was interviewed by Owens, Larson and Carol Wahman (who was to manage the Minnetonka club for Sports and Health) in mid-May, 1983. Prior to the interview, Braff had not been informed that the organizational structure, as it had been at Tonka Racquet and Swim under the previous management, would be changed. He went into the interview with a feeling of

confidence that his job, which paid \$18,000 per year, would be retained and that he would be filling the position. Mr. Braff believed, erroneously, that the interview process was a mere formality.

9. During the interview, Braff sat across a table from his three interviewers. A Bible was placed between them. He told the Sports and Health officials about his work experience at Tonka. The interviewers, who had read Stearns' letter recommending Braff, began their questioning with inquiries regarding Mr. Braff's religion and marital status. Owens asked him whether (Braff) was a Christian. He was asked whether he had been "Born Again". He was asked for his religious denomination, and whether he went to church regularly. Braff was asked whether he was married, and how long he had been married.

Mr. Braff answered these questions, and other inquiries regarding his family and life style. He informed the interviewers that he had been born and raised a Lutheran, that he did not go to church on a regular basis and that he was married.

10. At one point in the interview, Mr. Owens told Braff that all management personnel in the Sports and Health Club organization were born-again Christians. He stated that management personnel were "spiritual leaders who would counsel employees on the road to righteousness". From this statement Mr. Braff inferred that he was disqualified from a management position at Sports and Health because he did not agree with the religious beliefs of Sports and Health's management personnel. He did not articulate this perception to Owens, Larson or Wahman during the interview.

11. During the same interview, Owens informed Mr. Braff that he would not qualify for management in the Sports and Health organization until he had "grown" into the position as a potential manager after experience as an associate membership director (programmer). Braff was informed that he could interview again, on the following day, for such an entry-level position. The interviewers gave no indication to Mr. Braff that they perceived his religious beliefs to be different from theirs.

12. Sports and Health Club, Inc. never employed anyone in a management position without starting out that person's employment as an entry-level associate membership director (programmer) or maintenance person.

The Sports and Health Club operation at Tonka had no position comparable to that Braff had held at Tonka Racquet and Swim. At the Tonka Sports and Health Club, the Respondents began operations with Wahman as Club Manager (at a salary of \$15,000 per year) and no assistant manager. An assistant manager was hired after one year of operation. They also started the operation with no "key person" in charge of maintenance. After approximately six months of operation, a "key person" was hired as a full-time maintenance person.

13. On the day following his interview with Owens, Larson and Wahman, Braff interviewed for a position as an associate membership director with Sports and Health. The interview was with Vice-Presidents Larson and Crevier. At the conclusion of the interview, during which the job specifications were outlined, Braff was told to "think about" whether the job was what he wanted to do. Braff decided to reject the job because he felt he had no future with the Sports and Health organization. He had this feeling because he felt he

could not get into management due to the incompatibility of his religious beliefs and those of Sports and Health's management. He never articulated his belief to the Respondents. In addition, the position paid \$800 per month plus commissions, which would have constituted a significant cut in pay from his \$18,000 salary from Tonka Racquet and Swim.

14. Sometime prior to May 31, 1983, Mr. Braff toured the facility at Minnetonka with Bill Owens, Sports and Health's maintenance manager. Bill Owens was impressed with Braff's knowledge of the equipment. Sports and Health has no assistant manager in the maintenance department, but employs "key persons" at some of its facilities to serve in the maintenance function.

Arthur Owens offered Braff a job as a full-time maintenance person, paying \$6.00 per hour, sometime after Braff had made a favorable impression on Bill Owens. Braff rejected this offer due to the low pay and his perception of his future (due to his religious beliefs) for advancement within the Sports and Health organization. Mr. Braff never told Arthur Owens about his perceived incompatibility in religious beliefs between his and those of Sports and Health management.

15. Mr. Braff was unemployed from June 1, 1983 to December 30, 1983, during which time he drew \$1500 in unemployment benefits. Between January 1, 1984 and March 1, 1984, he worked as a sales person for Color Tile, during which time he earned approximately \$800 less than he would have earned had he been employed as an assistant manager (or received the equivalent pay) at Sports and Health. After March 1, 1984, Mr. Braff secured employment which compensated him equal to or better than he would have received as an assistant manager for Sports and Health. Assistant managers at Sports and Health earned approximately \$1,213 per month in 1983 and \$1,294 in 1984.

Based upon the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Notice of Hearing was proper and all relevant substantive and procedural requirements of law and rule have been fulfilled.

2. The Administrative Law Judge has jurisdiction herein and authority to take the action Ordered pursuant to Minn. Stat. §§ 14.50 and 363.071, subd. 1 (1987).

3. Under International Brotherhood of Teamsters v. United States, 97 S. Ct. 1843, 431 U.S. 324 (1977), after the Complainant makes a prima facie showing that an individual has been the victim of a discriminatory employment practice, the burden of proof shifts to the employer to establish by a

preponderance of the evidence that adverse employment action taken against a
employee was for lawful, non-discriminatory reasons.

4. Any of the preceding Findings of Fact more properly termed Conclusions
of Law are hereby adopted as such.

5. Under State, by McClure v. Sports and Health Club, 370 N.W. 844 (Mn.
1985), appeal dismissed, 106 S. Ct. 3315, 92, L.Ed.2d 730 (1986), the
Respondents engaged in prohibited employment practices by rejecting persons

for employment because of religion and marital status and by requiring persons who sought employment to furnish information pertaining to religion and marital status.

6. The Complainant has not made a prima facie case showing that Timothy Braff was rejected from employment because of religion or marital status. Therefore, he is not a potential member of Class 4 in this action.

7. The Respondents required Timothy Braff to furnish information pertaining to his religion and marital status when he sought employment with them. Under State, by McClure v. Sports and Health Club, supra, he has been aggrieved by the Respondents' discriminatory practice. Therefore, he qualifies for relief as a member of Class 5.

8. Minn. Stat. § 363.071, subd. 2 (1982), the law applicable in May of 1983, authorizes payment to an aggrieved party who has suffered discrimination such as Timothy Braff, of compensatory damages, including damages for mental anguish and suffering, and punitive damages.

9. Timothy Braff is entitled to compensatory damages of \$1,000 for mental anguish and suffering due to being required to furnish information pertaining to religion and marital status.

10. No punitive damages are awarded in this matter in accord with the decision reached in this case on April 26, 1984. State, by McClure v. Sports and Health Club, et al., HR-82-005-RL, at p. 71.

11. In accordance with the Minnesota Supreme Court decision herein, the Respondents are jointly and severally liable for all damages awarded herein State, by McClure v. Sports and Health Club, 370 N.W.2d 844, 853-54 (Minn. 1985).

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that the Respondents shall pay to Timothy Braff \$1 in compensatory damages for mental anguish and suffering.

Dated this _____ day of April, 1988.

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped.

MEMORANDUM

Minn. Stat. § 363.03, subd. 1 prohibits discrimination in employment on account of religion, marital status and sex. It also prohibits pre-employment inquiry pertaining to such subjects. The Minnesota Supreme Court, in determining what sort of actions constitute prohibited discriminatory practices under

the Human Rights Act and in dictating how such discrimination must be proven has followed the approach of the federal courts in interpreting a similar statute, Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e. et seq. and has decided that court decisions under Title VII are applicable to similar actions under state law. See Danz v. Jones, 263 N.W.2d 395 (Minn. 1978) and Hubbard v. United Press International, Inc., 330 N.W.2d 428 (Minn. 1983).

A three-part analysis was set out by the United States Supreme Court in the case of McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973), describing the shifting burdens of production and proof in discrimination cases, and this analysis was refined by the Court in the case of Texas Department of Community Services v. Burdine, 450 U.S. 248 (1981). The requirements are: (1) the plaintiff must establish a prima facie case of discrimination; (2) the defendant must rebut the prima facie showing by articulating some legitimate, non-discriminatory reason for the employment action; and (3) the plaintiff must then show, by a preponderance of the evidence, that the reasons stated are a pretext for actual discrimination.

Under the Minnesota Human Rights Act, a member of a protected class who alleges that (s)he was treated differently from other persons because of membership in that protected class carries the initial burden of proof of establishing a prima facie case by showing (1) (s)he is a member of a protected class; (2) (s)he was qualified for the job; (3) that an adverse employment action was taken against him/her; and (4) the employer assigned non-members of the protected class(es) to do the same work. Hubbard v. United Press International, Inc., 330 N.W.2d 428 (Minn. 1983). In this case, the above-noted analytical approach, as modified by Byrd v. Roadway Express, Inc., 687 F.2d 85 (1982), was used by the Administrative Law Judge and the Minnesota Supreme Court in analyzing the claims made by Charging Parties in the "underlying" action that determined general liability for discriminatory actions against the Respondents and authorized the creation of classes of individuals for potential monetary and other relief. See Findings of Fact, Conclusions of Law and Order of the Administrative Law Judge in this matter 4/26/84.

The United States Supreme Court case of International Brotherhood of Teamsters v. United States, 97 S. Ct. 843, 431 U.S. 324 (1977) provides for a different approach to the burden of proof in a class action lawsuit when the government has already proven a system-wide pattern and practice of discrimination on the part of the employer in the liability phase of the action. As the Court stated, at 97 S. Ct. 1868:

The proof of the pattern or practice supports an inference that any particular employment decision, during the period in which the discriminatory policy was in force, was made in pursuit of that policy. The Government need only show that an alleged individual discriminatee unsuccessfully applied

for a job and therefore was a potential victim of the proved discrimination. . . . The burden then rests on the employer to demonstrate that the individual applicant was denied an employment opportunity for lawful reasons.

In order to establish a prima facie case of discrimination in the context of being rejected for a job, it is a condition precedent that a job opening must exist. It has been ruled that the Complainant failed to make a prima facie case for Tim Braff as a member of Class 4 because (1) there was no job

opening available, under the structure imposed on the Tonka Club by Sports and Health, comparable to the function Braff performed under the previous management, and (2) Braff was not rejected for employment by Sports and Health.

Mr. Braff believes that the Respondents rejected him for employment as an assistant manager because he did not share their religious beliefs. The evidence fails to establish such a fact. Nor does it establish that he could not have advanced beyond an entry-level position as a "programmer" or maintenance man because the Respondents believed his religious beliefs disqualified him from future promotion. The evidence on that issue is that the Respondents believed, as of June 1, 1983, that Mr. Braff's religious beliefs were consistent with theirs.

Mr. Braff had been earning \$18,000 per year as Assistant Manager-Personal Director for Tonka Racquet and Swim. As detailed in the Findings, the Respondents reorganized the Club along different lines, and Mr. Braff's old function was eliminated. There is no evidence that the reorganization of the Club's management structure is a subterfuge to conceal practices forbidden by the Minnesota Human Rights Act.

In addition to the organizational changes, it is an established business practice of the Respondents never to hire anyone in their organization without starting them out at an entry-level position. To continue Mr. Braff as a management person at the Club, when he had not worked previously for the Respondents, would be a departure from such a practice. The practice has not been shown to be violative of the Human Rights Act.

Finally, the evidence shows that no one was in a management position at Tonka Sports and Health Club, except for Carol Wahman (who had been an assistant manager for the Respondents at other clubs), for at least one year after the Respondents began to operate the facility.

Mr. Braff was offered employment by Sports and Health, both as an associate membership director and as a maintenance person. Both were entry-level positions, but the evidence is undisputed that the Respondents start all new employees out at such levels. While the acceptance of either job would have been a pay cut for Mr. Braff, it is noted that not even Carol Wahman, the Club manager, was paid at the level Braff had been earning at Tonka Racquet and Swim. There is no evidence that the salary structure violates the Human Rights Act. The issue of whether Mr. Braff could have begun working for the Respondents on June 1, 1983 as an associate membership director (Braff contends he was never specifically offered the job) has been resolved in favor of the Respondents because Braff admitted that he was not interested in the job anywhere (due to his belief that he could not advance further in the organization), and because he was offered a maintenance position that paid even more to start, which he rejected for the same reason.

The Administrative Law Judge has found that Mr. Braff qualifies for relief as a member of Class 5 because he was, during his initial interview with the Respondents, required to furnish information pertaining to religion and marital status. It is noted that counsel for the Complainant never specifically pleaded or argued that Braff was a potential member of Class 5. Rule 15.02 of the Minnesota Rules of Civil Procedure provides:

Rule 15.02. Amendments to Conform to the Evidence

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be

treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

In this case, no objection was made by the Respondents to evidence regarding questions asked at the initial interview of Mr. Braff. Therefore the fact that Braff's potential membership in Class 5 was never specifically pleaded does not bar him from relief when the evidence shows that he qualified for it. And, the evidence (see Finding 9) is undisputed that Braff was required to furnish information pertaining to religion and marital status.

The only damages question to be decided is the amount of mental anguish suffering which Mr. Braff received by being required to furnish information about his religious background and views and his marital status. After due deliberation, the Administrative Law Judge has concluded that subjection to questions designed to extract the information pertaining to religion and marital status is fairly compensated by an award of \$1,000.

The facts noted at Finding 15 are material to calculating compensatory damages for lost income. They have not been considered in measuring the damages ordered herein because Mr. Braff's loss of employment did not result from any act of unlawful discrimination on the part of the Respondents.

Evidence was proffered by the Complainant regarding Braff's loss of self-esteem after becoming unemployed. The evidence, including his subsequent failure of a class at the University of Minnesota and the total loss of his bodily hair (due to a condition called alopecia totalis) was not considered in measuring compensatory damages for mental anguish and suffering for two reasons. First, the evidence falls short of establishing a causal connection between Mr. Braff's unemployment and his failure of the class or his hair loss. Second, while his general depression may be connected to being out of work and feelings that the Respondents had rejected him, the record fails to establish that the Respondents' actions with respect to Mr. Braff violated the Human Rights Act (except for the questions asked at the first interview, for which damages have been awarded).

R.C.L.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W.
Cooper, Commissioner, Minnesota
Department of Human Rights, and
his Predecessors,

ORDERS CREATING
SPORTS AND HEALTH
CLASS ACTION FUND

Complainant,

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

WHEREAS, on January 8, 1988, Counsel for the Complainant, Special Assistant Attorney General Helen G. Rubenstein, filed a Motion with the Administrative Law Judge for an Order directing that all damages awarded with respect to individual Class Members be paid into a fund established by and under the control of the Office of the Attorney General; and

WHEREAS, the Respondents have not replied to the Motion noted in the preceding paragraph; and

WHEREAS, subsequent to the filing of the Motion, the undersigned Administrative Law Judge and Administrative Law Judge Janice K. Frankman have issued Orders awarding damages, penalties and costs in the amount of \$60,560 to Class Members in the above-entitled matter; and

WHEREAS, the claims of over 100 potential Class Members in this action have yet to be adjudicated, which claims have the potential of aggregating awards of damages, penalties and costs against the Respondents of over \$1 million; and

WHEREAS, Respondent Sports and Health Club, Inc. has filed a petition for bankruptcy, and discovery is ongoing in an attempt to ascertain the individual Respondents' ability to pay potential awards of damages, penalties and costs; and

WHEREAS, it is reasonable to conclude that the Respondents may not be able to pay all of the potential damages, penalties and costs awarded in this action; and

Based upon all of the proceedings herein, the Administrative Law Judge issues the following:

ORDERS

IT IS ORDERED that all damages, penalties and costs awarded with respect to individual Class Members in this matter be paid into a Fund, nominated as the Sports and Health Class Action Fund, established by and under control of the Office of the Attorney General, to be distributed by the Attorney General at the issuance of the final Order in this matter pertaining to potential Class Members, in the following manner:

- a. If the full amount of damages awarded are collected or paid into the Fund, each Class Member will receive the amount awarded.
- b. After all Class Members have received the full amount of damages awarded, the remaining funds will be paid into the General Fund of the State of Minnesota up to the amount of any penalties and costs awarded to the Complainant. Any remaining funds will be paid to Class Members and Complainant as interest accrued from the time the individual Class Member's damage award or amount awarded to the Complainant is deposited in the Fund.
- c. If, after the Complainant undertakes all reasonable efforts to collect the damages awarded, an inadequate amount is available to pay each Class Member the full amount awarded, each Class Member will receive a pro rata share of the damages awarded to him or her. No funds will be distributed to the Complainant in satisfaction of penalties and costs awarded to the Complainant until each Class Member has received his or her full damage award.
- d. Distribution of available funds will be made no later than one year after final conclusion of the action, including all appeals. amounts collected after the initial distribution will be distributed as sufficient funds are collected to make subsequent distributions reasonable.
- e. The Complainant will submit to the Administrative Law Judge reports regarding its collection efforts and the distribution of funds no less than one month before each distribution.

IT IS FURTHER ORDERED that all monies previously awarded as damages, penalties and costs in the cases of Class Members Renae (Urista) Haugen, Corinne Brehm, Timothy Braff and Laurel McNee be paid to the Sports and Health Class Action Fund.

Dated this _____ day of April, 1988.

RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

The Administrative Law Judge was initially reluctant to order establishment of a fund to be administered for payment of damage awards in this action for two reasons--(1) at the time of filing this Motion, no Orders awarding damages, penalties and costs had been issued, and (2) He was not persuaded that he possessed such authority. Counsel for the Complainant was directed to file with the Administrative Law Judge a Memorandum demonstrating that, in fact, he had the authority to direct the establishment of such a fund.

Minn. Rule 5000.1100, subp. 4 provides:

In the conduct of class actions, the administrative law judge may make appropriate orders: determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; requiring a specific type of notice or other protections for the members of the class or for the fair conduct of the action; dealing with other procedural matters. The orders may be altered or amended as may be desirable from time to time, and they are not final decisions of the department. (Emphasis supplied.)

This rule is analagous to the portions of Minnesota Rule of Civil Procedure 23.04 and Federal Rule of Civil Procedure 23(d), which provide, in relevant part:

In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct

of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders . . . may be altered or amended as may be desirable from time to time. (Emphasis supplied.)

These rules provide the Court with great latitude in controlling class actions, and ensuring that actions taken by class representatives benefit all class members. See 1 Herr & Haydock, Minnesota Practice, § 23.17 at 462 (2d Ed., 1985).

In the case of In re Agent Orange Product Liability Litigation, 818 F.2d 179, 183 (2d Cir. 1987), the Court held:

The district judge . . . had discretion to adopt whatever distribution plan he determined to be in the best interests of the class as a whole.

See also, Beecher v. Able, 575 F.2d 1010, 1016 (2d Cir. 1978) and Zients v. LaMorte, 259 F.2d 628, 630 (2d Cir. 1972).

In a case such as this, where it appears that there may be insufficient funds to pay all of the damages, penalties and costs that could be awarded (should the Complainant prevail with respect to all potential Class Members) the Federal Courts have authorized the creation of funds for collection of available monies, which were to be allocated among eligible claimants at the Courts' discretion. Curtiss-Wright Corp. v. Helfand, 687 F.2d 171, 174 (7th Cir. 1982). In Bush v. Rewald, Fed. Sec. L. Rep., ¶ 92,999 (D. Ha. 1986), the Court explicitly approved as fair, adequate and reasonable a settlement which provided for a pro rata division of the available settlement fund among claimants based upon their respective unrecovered entitlements.

It is evident to the Administrative Law Judge, based on the above-noted authorities, that he is granted power (under Minn. Rule 5100.1100, subp. 4) in this case analagous to that possessed by trial judges to order the creation of a fund such as that proposed by the Office of Attorney General and Ordered herein. The Judge is mindful of his remarks to the parties at a Prehearing Conference early in this Class Action proceeding that it should not be his

objective to act as "paymaster" for all the qualifying Class Members, and Respondent Owens has properly called that statement to his attention. However, the Judge's duty to do all in his power to assure fair treatment for all Class Members is paramount. The Judge is persuaded that the Sports and Health Class Action Fund, to be administered by the Office of Attorney General on behalf of all qualifying Class Members, will serve to effectively discharge his duty while avoiding involvement in the mechanics of distribution of money.

R.C.L.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Stephen W.
Cooper, Commissioner, Minnesota
Department of Human Rights, and
his Predecessors,

Complainant,

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER (CLASS
ACTION - TARA LEA FOR

v.

Sports and Health Club, Inc.,
Arthur W. Owens, Marc Crevier
and Forest Larson,

Respondents.

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on February 25, 1988, at the Office of Administrative Hearings in Minneapolis. The record closed on April 22, 1988.

Amy Klobuchar, Dorsey & Whitney, 2200 First Bank Place East, Minneapolis, Minnesota 55402, appeared on behalf of the Complainant. Arthur W. Owens, 6535 Peaceful Lane, Chanhassen, Minnesota 55317, appeared on behalf of himself and Sports and Health Club, Inc. Marc Crevier, 10965 Fieldcrest, Eden Prairie, Minnesota 55343, appeared on his own behalf.

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2, this Order is the final decision in this case and under Minn. Stat. § 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

STATEMENT OF ISSUES

Whether Tara Lea (Karen)¹ Ford qualifies for relief in this matter due to her membership in Class 4 (persons who sought employment after September 24

1979, and who were not hired because of religion, marital status and/or sex Class 5 (persons who sought employment between September 24, 1979, and July 1986, and who were required to furnish information that pertains to religion marital status and/or sex).

Based upon all the files, records and proceedings herein, the Administrative Law Judge makes the following:

¹Subsequent to May 14, 1984, Karen D. Ford had her legal name changed to Tara Lea Ford. The balance of this Order refers to her current legal name.

FINDINGS OF FACT

1. On May 14, 1984, Tara Lea Ford entered the LaSalle Sports and Health Club, one of the establishments owned and operated at the time by the Respondents. Ford had seen a newspaper ad soliciting applications for employment by the Respondents as an Associate Membership Director, and she intended to apply for such employment.

2. Ms. Ford had recently moved to the Twin Cities from San Francisco. Her prior employment background included sales of art supplies, restaurant waiting, choreography for theatrical productions, assistant to a ballet teacher and yoga instruction at a San Francisco health club. She was also a registered massage therapist and was in good physical condition.

3. Ms. Ford was given an application for employment at the LaSalle Sports and Health Club, went to a nearby chair in the reception area, and began filling it out. She noticed that Respondent Crevier was in the process of interviewing another applicant for employment in the same room.

4. Prior to her completing the application form, Ms. Ford was approached by Marc Crevier, who introduced himself and began the job interview.

Ms. Ford began to relate her previous job experience to Crevier. As the discussion continued, Crevier said: "You realize that we have certain Biblical philosophies here." Ms. Ford was shocked by the statement, which she interpreted as an inquiry into her religious beliefs. She had not replied when Crevier said: "Well, that means we don't hire homosexuals." She interpreted this statement as an inquiry into her sexual orientation.

5. Ms. Ford is a bisexual female. At the hearing, the Administrative Judge took judicial notice of the fact that bisexuals are physically attracted to persons of both sexes.

6. After Marc Crevier made the statements quoted in the preceding Finding, Tara Lea Ford asked him: "What on earth does that have to do with working here?". Crevier replied with a religious-type narration, and Ms. Ford said: "I can't believe you can ask me about this in the 20th Century and I'm going to complain!". She put her uncompleted application on the counter and walked out of the Club. Crevier followed her out, attempting without success to persuade her to continue the discussion.

7. On May 24, 1984, Ms. Ford filed a charge with the Minnesota Department of Human Rights concerning her interview at the LaSalle Sports and Health Club.

8. The Respondents did not hire persons they knew to be homosexual for two reasons, the first general and other particular to the LaSalle location: (1) they consider homosexuality to be immoral, based on their religious beliefs.

(I Corinthians 6:9-10) and on the state statute making sodomy a crime (Minn. Stat. § 609.293); and (2) the LaSalle Club had a large number of homosexual members, some of whom engaged in public sex acts, whose presence was perceived by management to have deterred "straights" from joining the Club. After taking over management of the LaSalle Location, Crevier expelled over 25 members from the Club for engaging in sexual activities such as masturbation, fondling of genital areas and "making out", on the premises. It is because of these beliefs and experiences that Crevier made the statements that prompted Ms. Ford to terminate the job interview and leave the Club's premises.

9. Marc Crevier does not remember interviewing Tara Lea Ford.

10. Subsequent to May 14, 1984, Tara Lea Ford has been employed in sales (of art supplies and video equipment) and as a waitperson at various restaurants in the Twin Cities. Her income for the balance of 1984 was \$1,011.30. She earned income of \$5,093.21 in 1985 and \$6,373.84 in 1986. Her average income (wages and commission) for an Associate Membership Director at Sports and Health Club, Inc. for comparable periods was \$8,951 for the balance of 1984, \$13,104 in 1985 and \$12,030 in 1986.

Based upon the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Any of the preceding Findings of Fact more properly termed Conclusions of Law are hereby adopted as such.

2. The Notice of Hearing was proper and all relevant substantive and procedural requirements of law and rule have been fulfilled.

3. The Administrative Law Judge has jurisdiction herein and authority to take the action ordered pursuant to Minn. Stat. §§ 14.50 and 363.071, subd. 1 (1987).

4. Under International Brotherhood of Teamsters v. United States, 97 S. Ct. 1843, 431 U.S. 324 (1977), after the Complainant makes a prima facie showing that an individual has been the victim of a discriminatory employment practice, the burden of proof shifts to the employer to establish by a preponderance of the evidence that adverse employment action taken against an employee was for lawful, non-discriminatory reasons.

5. Under State, by McClure v. Sports and Health Club, 370 N.W. 844 (Minn. 1985), appeal dismissed, 106 S. Ct. 3315, 92 L. Ed. 2d 730 (1986), the Respondents engaged in prohibited employment practices by rejecting persons from employment because of religion and by requiring persons who sought employment to furnish information pertaining to religion.

6. The Complainant has not made a prima facie case showing that Tara Lea Ford was rejected from employment because of religion. Therefore, she is not a potential member of Class 4 in this action.

7. The Complainant has not made a prima facie case showing that Tara Lea Ford was required to furnish information pertaining to religion before being employed by the Respondents. Therefore, she is not a potential member of Class 5 in this action.

8. Because of the foregoing Conclusions of Law, Tara Lea Ford is not entitled to monetary or other relief in this action.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that the Petition for entitlement to monetary or other relief filed in this Class Action matter by Tara Lea Ford BE and hereby IS DISMISSED.

Dated this _____ day of April, 1988.

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped.

MEMORANDUM

Minn. Stat. § 363.03, subd. 1 prohibits discrimination in employment on account of religion, marital status and sex. It also prohibits pre-employment inquiry pertaining to such subjects. The Minnesota Supreme Court, in determining what sort of actions constitute prohibited discriminatory practices under the Human Rights Act and in dictating how such discrimination must be proven, has followed the approach of the federal courts in interpreting a similar statute, Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e. et seq. and has decided that court decisions under Title VII are applicable to similar actions under state law. See Danz v. Jones, 263 N.W.2d 395 (Minn. 1978) and Hubbard v. United Press International, Inc., 330 N.W.2d 428 (Minn. 1983).

A three-part analysis was set out by the United States Supreme Court in the case of McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973), describing the shifting burdens of production and proof in discrimination cases, and this analysis was refined by the Court in the case of Texas Department of Community Services v. Burdine, 450 U.S. 248 (1981). The requirements are: (1) the plaintiff must establish a prima facie case of discrimination; (2) the defendant must rebut the prima facie showing by articulating some legitimate, non-discriminatory reason for the employment action; and (3) the plaintiff must then show, by a preponderance of the evidence, that the reasons stated are a pretext for actual discrimination.

Under the Minnesota Human Rights Act, a member of a protected class who alleges that (s)he was treated differently from other persons because of membership in that protected class carries the initial burden of proof of establishing a prima facie case by showing (1) (s)he is a member of a protected class; (2) (s)he was qualified for the job; (3) that an adverse employment action was taken against him/her; and (4) the employer assigned non-members of the protected class(es) to do the same work. Hubbard v. United Press International, Inc., 330 N.W.2d 428 (Minn. 1983). In this case, the above-noted analytical approach, as modified by Byrd v. Roadway Express, Inc., 688 F.2d 85 (1982), was used by the Administrative Law Judge and the Minnesota Supreme Court in analyzing the claims made by Charging Parties in the "under

lying" action that determined general liability for discriminatory actions against the Respondents and authorized the creation of classes of individuals for potential monetary and other relief. See Findings of Fact, Conclusions Law and Order of the Administrative Law Judge in this matter, 4/26/84.

The United States Supreme Court case of International Brotherhood of Teamsters v. United States, 97 S. Ct. 843, 431 U.S. 324 (1977) provides for a different approach to the burden of proof in a class action lawsuit when the government has already proven a system-wide pattern and practice of discrimination on the part of the employer in the liability phase of the action. As the Court stated, at 97 S. Ct. 1868:

The proof of the pattern or practice supports an inference that any particular employment decision, during the period in which the discriminatory policy was in force, was made in pursuit of that policy. The Government need only show that an alleged individual discriminatee unsuccessfully applied for a job and therefore was a potential victim of the proved discrimination. . . . The burden then rests on the employer to demonstrate that the individual applicant was denied an employment opportunity for lawful reasons.

The Teamsters case involved discrimination by trucking companies and the Union against Black and Hispanic employees who were initially hired only as servicemen or local-city drivers, positions less desirable and lower-paying than over-the-road, long-distance driving jobs. In order to shift the burden of proof to the Respondents of demonstrating that Tara Lea Ford was not hired by them for lawful, non-discriminatory reasons, under the above analytical approach, the record must show that Tara Lee Ford (1) is a member of a protected class, and (2) unsuccessfully applied for a job with Respondents. That showing has not been made.

Although the evidence shows that Ms. Ford was potentially a member of a protected class (persons who object to the religious beliefs or practices of the Respondents' management--see pp. 20-21 of Findings of Fact, Conclusions Law and Orders issued in this matter on April 26, 1984) of persons discriminated against based on religion in this Action, her claim to membership in Class 4 (persons not hired because of religion) is dismissed because there is no evidentiary showing that she was refused employment by the Respondents. Rather, she cut short the job interview and walked out. While it is possible that the Respondents would have refused to hire Ms. Ford because she had an objection to the Respondents' religious beliefs or practices, the interview simply never got to the point where Crevier stated, or implied, that she would not be hired or that she could not be hired because of any objection she might have to the Respondents' religious beliefs or practices.

The issue of whether Ms. Ford was required by the Respondents to furnish information pertaining to religion has been resolved in favor of the Respondents for largely the same reasons. The evidence simply fails to show that she was required to disclose her beliefs or her opinion regarding the Respondents' religious-based intolerance of homosexuals. The only statement in the record shows as being made by Crevier ("You realize that we have certain Biblical philosophies here" and "Well, that means we don't hire homosexuals" did not ask Ms. Ford to furnish information pertaining to religion. On cross-examination, she was unable to recall whether Crevier asked her directly about her religious beliefs. The remainder of Ms. Ford's testimony regarding her conversation with Crevier is too vague to serve as a basis for concluding that the quoted statements required her to declare her religious beliefs. It is clear from her testimony that Ms. Ford thought she was being asked to declare

her religious beliefs, but the Judge is unable to agree that the interview, memorialized on the record, made that requirement.

A person confronted by statements such as that made by Crevier can have of three internal reactions--they can agree with them, be indifferent to them or disagree. They are also free to respond or not to respond--the statements do not, in themselves, require an open declaration of the interviewee's opinion on the topic of whether the Respondents should discriminate on religious grounds against homosexuals. The statements more obviously are designed to find out if the interviewee is homosexual. But that is not the

issue in this case--the Complainant has alleged discrimination based on religion, not on sex or affectional preference. The issue of whether a person who states an opinion on the Respondents' religious-based policy against hiring homosexuals has then furnished information pertaining to religion was not reached under the facts of this case.

In the underlying action in this matter, the Administrative Law Judge held that the Respondents had discriminated against Joe Williams by requiring him to furnish information pertaining to religion. Like Ms. Ford, Williams never completed the application process. Like Ms. Ford, Williams was never told directly that he would not be hired. However, Williams was told that, in order to be hired at Sports and Health, he had to be a "re-born Christian". To the Administrative Law Judge, that declaration was sufficient to cross the threshold into requiring the job applicant to furnish information pertaining to religion. In this case, where the applicant was never told she would not be hired if she had a "wrong" opinion on the Respondents' anti-homosexual beliefs, the threshold of requiring a furnishing of information in violation of the Human Rights Act has not been crossed. That the subject of the interview thought it was is not sufficient.

R.C.L.

