

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.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER (CLASS ACTION)  
VALERY BUTKOWSKI)

The above entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on at the Office of Administrative Hearings in Minneapolis on March 3, 1988. The record in this matter closed on February 1989.

John A. Cooney, Dorsey & Whitney, 2200 First Bank Place East, Minneapolis, Minnesota 55402, appeared on behalf of the Complainant. Arthur W. Owens, 61 Peaceful Lane, Chanhassen, Minnesota 55317, appeared on behalf of Sports and Health Club, Inc., as its President, and on behalf of himself as an individual respondent. Marc Crevier, 10965 Fieldcrest, Eden Prairie, Minnesota 55344, 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 Valery Butkowski qualifies for relief as a member of Class (persons not hired for employment because of religion) or Class 5 (persons required to furnish information pertaining to religion) in this matter?

2. If Valery Butkowski is a member of Classes 4 or 5, whether she is entitled to monetary relief in the form of compensatory damages for lost wages or compensatory damages for mental anguish and suffering, or punitive damages.

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

## FINDINGS OF FACT

1. Sometime in February of 1986, Valery Butkowski saw a newspaper advertisement for a position as an Associate Membership Director at Sports and Health Club. She had been informed by friends, who were Club members, that the Club was hiring such persons. Later that month, she appeared for a job interview at the Sports and Health Club in St. Cloud, Minnesota.

2. Ms. Butkowski was at the Sports and Health Club for approximately one hour. She never filled out a job application. After waiting a few minutes she was interviewed alone by Ray Miller, the Respondents' St. Cloud Club Manager.

3. The job duties of an Associate Membership Director involve primarily membership sales and "programming" - advice to members on diet and nutrition and the setting up and supervision of exercise programs for Club members. At the time of the interview, Butkowski was 33 years old and in good physical condition. She ran, lifted weights, and exercised regularly. Her prior work experience involved a variety of sales positions. She considered herself a good motivator of people and was excited about taking the job opening at Sports and Health.

4. During the interview, Miller explained some of the job duties to Butkowski but never asked her about whether she had related experience or was otherwise qualified. She never explained her qualifications, as listed in the preceding Finding, to Miller.

5. Most of the interview time Valery Butkowski spent with Club Manager Ray Miller consisted of an intense, humiliating question and answer session designed to probe the Applicant's religious beliefs, religious practices and lifestyle. The first question asked was, if she were to die now, would Butkowski go to heaven? She was disarmed and made uncomfortable by that question.

Miller asked many questions about Butkowski's religious background (she is a Roman Catholic). She was asked to defend her views by citing Bible passages. Miller turned to Bible passages to ask for her interpretation and to illustrate his views and those of the Club.

6. During the course of the interview, Miller explained to Butkowski that the Club did not hire persons who smoked, drank, danced or fornicated. He asked her if she engaged in any such activities. When the Applicant admitted she was a smoker and an occasional drinker, Miller told her that the Club would not be able to hire her because such habits were "un-Christian". Miller made a vague offer of "treatment" for Butkowski to battle such habits, and, were the "treatment" successful, said the Club would consider hiring her again.

7. The intense, religious-oriented nature of the interview greatly affected Valery Butkowski. She left the Club in tears. She was shaking physically. She called her husband and cried to him over the phone about her experience and also called her parents and told them of the interview. The experience with Miller made Butkowski feel like a "moral degenerate".

8. Valery Butkowski's income for the last eleven months of 1986 was \$2,593.18. The St. Cloud Sports and Health Club closed on May 31, 1986. Apportioning Ms. Butkowski's income of \$2,593.18 for eleven months over the period from February 14 to May 31, 1986, yields an estimated income of \$826.00. Had Butkowski been employed for that period as a full-time Association Membership Director at Sports and Health, she would have earned approximately \$3,500.00 (see Stipulated Joint Exhibit A).

Based upon the foregoing 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 an 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.2d 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 and marital status.

6. The Complainant has not made a prima facie case showing that Valery Butkowski was rejected from employment because of religion. The policy against hiring smokers is secular, not religious. Therefore, she is not a potential member of Class 4 in this action.

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

8. Minn. Stat. § 363.071, subd. 2, authorizes payment to an aggrieved party who has suffered discrimination, such as Valery Butkowski, of compensatory damages, including damages for mental anguish and suffering, and punitive damages.

9. Valery Butkowski is entitled to compensatory damages of \$3,000.00 for mental anguish and suffering due to being required to furnish information pertaining to religion and marital status.

10. Ms. Butkowski is entitled to an award of punitive damages against Respondents in the amount of \$3,000.00.

11. Minn. Stat. § 363.071, subd. 2 (1983 Supp.), requires the award of civil penalty to the State where a violation of Chapter 363 is found, "taking into account the seriousness and extent of the violation, the public harm occasioned by the violation, whether the violation was intentional, and the financial resources of the respondent". The State is entitled to payment of civil penalty in the amount of \$1,000.00.

12. In accordance with the Minnesota Supreme Court decision herein, the Respondents are jointly and severally liable for all damages and penalties 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:

ORDERS

IT IS HEREBY ORDERED that the Respondents shall pay to Valery Butkowski \$6,000.00 (\$3,000.00 in compensatory damages for mental anguish and suffering and \$3,000.00 in punitive damages) plus interest on the compensatory damages for mental anguish and suffering at a rate of six percent from February 14, 1988, in accordance with Minn. Stat. § 334.01.

IT IS FURTHER ORDERED that the Respondents shall pay a civil penalty to the State of Minnesota in the amount of \$1,000.00. Payment of the civil penalty shall be made to the Chief Administrative Law Judge of the Office of Administrative Hearings for remittance to the General Fund of the State of Minnesota.

Dated this \_\_\_\_\_ day of March, 1989.

\_\_\_\_\_  
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 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 that a non-born-again-Christian job applicant who is qualified for entry-level employment as an Associate Membership Director for the Respondents unsuccessfully applied for such an entry-level position, and once the Complainant establishes that such a job applicant was required to furnish information pertaining to marital status and religion prior to beginning

employment, the burden then shifts to the Respondents to prove that a potential Class Member was not hired for legitimate, non-discriminatory reasons and that the questioning was non-discriminatory. In this case, it has been held that the Complainant has not made a prima facie showing that Ms. Butkowski was a qualified job applicant. However, it has been held that the Complainant has made a prima facie showing that she was asked questions that required her to furnish information pertaining to marital status and religion.

Ms. Butkowski was not hired because she was a smoker. The fact that Miller, in rejecting her for employment for that reason, commented that such habit was "un-Christian" does not convert this case into one of religious discrimination. In deciding this matter, the Judge is persuaded by Mr. Owen's argument that the Club made a decision to ban all smoking from its facilities and not to hire smokers as Associate Membership Directors in the mid-1970s. This secular policy, although considered by the Respondents to ban persons from employment for "un-Christian" habits, has not been shown to be applied unequally or in a discriminatory manner. The Administrative Law Judge is not persuaded by the Complainant's argument that barring smokers from employment is religious discrimination because the bar against smoking is a tenet of the Respondents' beliefs. The record shows that the bar on employing smokers is secular, legitimate and non-discriminatory.

The evidence is clear that Ms. Butkowski qualifies for relief as a member of Class 5 in this action. She was subjected to a long, humiliating barrage of religious-based questions that required her to furnish information pertaining to her religious beliefs and practices. This is illegal under the Minnesota Human Rights Act.

During her direct examination at the hearing, Ms. Butkowski was unable to identify St. Cloud Club Manager Ray Miller by name as the person who interviewed her. Miller was identified by Respondents' witnesses Owens and Crevier when they testified, however, and the mention of his name refreshed Ms. Butkowski's recollection as to her interviewer's name. Independent of the refreshing of her recollection, however, the Administrative Law Judge is convinced that the Applicant was subjected to the interview to which she testified. Her testimony about the substance of the interview rang true, and she was able to recall the physical layout of the Respondents' work place. These are sufficient indicators of reliability to establish, in the mind of a fact-finder, that she actually interviewed for a position at Sports and Health.

Damages have been awarded for mental anguish and suffering because the questioning was lengthy, humiliating, and traumatized Ms. Butkowski. The \$3,000.00 sought in damages by the Complainant in this case is a reasonable measure of the damages suffered.

Punitive damages have been awarded to Ms. Butkowski because: (1) the Respondents' actions in requiring her to furnish information regarding her

religious beliefs and practices show by clear and convincing evidence "a willful indifference to the rights...of others", and (2) the discriminatory action, even if taken by an agent of the Respondents, was authorized by the Respondents, within the scope of the agent's employment, and was done with the Respondents' approval. See, Minn. Stat. § 549.20, subds. 1 and 2.

In the underlying case, the Administrative Law Judge stated that punitive damages against the Respondents were inappropriate because their discriminatory acts, although indifferent to the rights of others, had not been "willful". That reasoning cannot protect Respondents for actions taken after the Administrative Law Judge issued Orders enjoining them from discriminatory actions (such as requiring persons to furnish information pertaining to religion prior to employment). In fact, the Minnesota Court of Appeals and Hennepin County District Court Judge Franklin Knoll have held that the Respondents' refusal to obey the Orders of April 26, 1984, was contemptuous. See, State, by Johnson vs. Sports and Health Club, 391 N.W.2d 329 (Minn. App. 1986). The Administrative Law Judge's Orders of April 26, 1984, are the final pronouncement that the Respondents' business practices were illegal by a neutral fact-finder and a person empowered to take actions against the Respondents for illegal discrimination. The above-noted decision of the Minnesota Court of Appeals makes it clear that the Administrative Law Judge's Orders were to have been obeyed from the day they were issued. It is clear from the record of this case that the Respondents disregarded those Orders and made no efforts to instruct their interviewing personnel to obey them. After the Orders of April 26, 1984, the Respondents were apprised that their actions, although sincere, were not protected under the Constitution. They were ordered clearly to cease them. Ms. Butkowski's interview took place in February, 1986. The non-cessation of the illegal actions 22 months after the Respondents were Ordered to stop them is a clear demonstration of "willful indifference to the rights of others" within the meaning of Minn. Stat. § 549.20.

Subdivision 3 of § 549.20 mandates measurement of punitive damages awarded by the factors that justly bear on the purpose of punitive damages, including the seriousness of the hazard to the public arising from the defendant's misconduct, the duration of the misconduct, the degree of the defendant's awareness of the hazard and of its excessiveness, the attitude of the defendant upon the discovery of the misconduct, the number and level of employees involved in causing the misconduct, the financial condition of the defendant and the total effect of other punishment likely to be imposed on the defendant as a result of the misconduct, including compensatory and punitive damage awards to the plaintiff and other similarly situated persons, and the severity of any criminal penalty to which the defendant may be subject. After considering all the listed factors, the Administrative Law Judge has decided to assess punitive damages in this case of \$3,000.00.

R.C.L.

Service List

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

John A. Cooney  
Dorsey & Whitney  
2200 First Bank Place East  
Minneapolis, MN 55402

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

Richard L. Varco, Jr.  
Assistant Attorney General  
1100 Bremer Tower  
7th Place and Minnesota Street  
St. Paul, MN 55101

Arthur W. Owens  
6535 Peaceful Lane  
Chanhassen, MN 55317

Marc Crevier  
10965 Fieldcrest Road  
Eden Prairie, MN 55344

Forest Larson  
5005 Richmond Drive  
Edina, MN 55436

March 9, 1989

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, Complainant v. Sports and Health Club, Inc., Arthur W. Owens, Marc Crevier and Forest Larson, Respondents (Class Action Case of Valery Butkowski); OAH Docket No. HR-82-005-7-1700-108-2.

Dear Commissioner Cooper:

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

Very truly yours,

RICHARD C. LUIS  
Administrative Law Judge

Telephone: 612/341-7610

RCL/sh  
Enclosures

cc: Richard L. Varco, Jr.  
John A. Cooney  
Sports and Health Club, Inc.  
Arthur Owens  
Marc Crevier  
Forest Larson  
Administrative Law Judge Janice K. Frankman

December 22, 1988

Richard Varco  
Assistant Attorney General  
1100 Bremer Tower  
Seventh Place & Minnesota Street  
St. Paul, MN 55101

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

Re: Sports and Health Club Case; OAH Docket No. 7-1700-108-2

Dear Counsel:

Please be advised that I will be out of the office until January 3, 1989. After that time, I intend to contact the Respondents and present them with definite, proposed dates for the closings of the individual clubs so that Judge Frankman and I may proceed with Findings of Fact, Conclusions and Decisions on the several matters that depend upon resolution of those closing dates. In addition, I will address the Motions for Reconsideration filed by the State on my return.

Thank you for your cooperation. I wish you both a Happy Holiday season.

Very truly yours,

RICHARD C. LUIS  
Administrative Law Judge

Telephone: 612/341-7610

RCL:lr

July 28, 1989

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

Richard L. Varco, Jr.  
Assistant Attorney General  
1100 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

Forest Larson  
5005 Richmond Drive  
Edina, MN 55436

Arthur 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., et al.  
(Class Action - Julie Stangl); OAH Docket No. HR-82-005-RL, 7-1700  
108-2 - Motion for Reconsideration.

Dear Counsel and Parties:

Please be advised that I am in receipt of the Complainant's Motion for Reconsideration and Memorandum in Support of Motion for Reconsideration in the above-entitled matter. The purpose of this letter is to set a deadline for filing of a Reply, if any, by the Respondents to the Complainant's Motion and Memorandum. I am allowing the Respondents through August 15, 1989 (mailing

date) for filing of any Reply. If no Reply is made, I will close the record on this matter and proceed to rule on the Complainant's Motion. If the Respondents do reply, I will take under advisement whether the Complainant will also be allowed to comment further.

Thank you for your cooperation.

Very truly yours,

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

RCL/lr

August 4, 1989

James A. Barnum  
Leonard, Street & Deinard  
150 South Fifth Street  
Suite 2300  
Minneapolis, MN 55402

Richard L. Varco, Jr.  
Assistant Attorney General  
1100 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

Forest Larson  
5005 Richmond Drive  
Edina, MN 55436

Arthur 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., et al.  
(Class Action - Judy Kent); OAH Docket No. HR-82-005-RL, 7-1700-10

Dear Counsel and Parties:

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

Very truly yours,

RICHARD C. LUIS  
Administrative Law Judge

RCL/lr

Telephone: 612/341-7610

Enclosure

August 4, 1989

James A. Barnum  
Leonard, Street & Deinard  
150 South Fifth Street  
Minneapolis, MN 55402

Richard L. Varco, Jr.  
Assistant Attorney General  
1100 Bremer Tower  
7th Place & Minnesota Street  
St. Paul, MN 55101

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

Forest Larson  
5005 Richmond Drive  
Edina, MN 55436  
Arthur 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., et al.  
(Class Action - Judy Kent); OAH Docket No. HR-82-005-RL, 7-1700-10

Dear Counsel and Parties:

Enclosed and served upon you by mail, please find Order of the  
Administrative Law Judge Denying Motion for Reconsideration (Class Action -  
Kent) in the above-entitled matter.

Very truly yours,

RICHARD C. LUIS  
Administrative Law Judge

Telephone: 612/341-7610

RCL:lr

Enclosure

Service List

James A. Barnum  
Leonard, Street & Deinard  
150 South Fifth Street  
Suite 2300  
Minneapolis, MN 55402

Richard L. Varco, Jr.  
Assistant Attorney General  
1100 Bremer Tower  
7th Place & Minnesota Street  
St. Paul, MN 55101

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

Forest Larson  
5005 Richmond Drive  
Edina, MN 55436

Arthur Owens  
6535 Peaceful Lane  
Chanhassen, MN 55317

Marc Crevier  
10965 Fieldcrest Road  
Eden Prairie, MN 55344

November 17, 1989

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

Richard L. Varco, Jr.  
Assistant Attorney General  
Suite 500  
525 Park Street  
St. Paul, MN 55103

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

Forest Larson  
5005 Richmond Drive  
Edina, MN 55436

Arthur Owens  
6535 Peaceful Lane  
Chanhassen, MN 55317

Marc Crevier  
10965 Fieldcrest Road  
Eden Prairie, MN 55344

Re: State, by Cooper, et al., Complainant v. Sports and Health Club, et al., Respondents; OAH Docket No. HR-82-005-RL, 7-1700-108-2

Dear Counsel and Parties:

Please allow this letter to update you on the progress of the matters that remain to be resolved in this case.

In addition to my decision on the Complainant's Motion for Reconsideration concerning Julie Stangl, there remain unresolved a Motion by the Complainant for Establishment of a Sports and Health Club Class Action Fund and a Motion to Quash Subpoenas for Production of Documents pertaining to Peaceful Family Products and Todd Owens, d/b/a the Upholstery Shop, and Others.

It was my original intention to issue Orders on the above-noted Motions simultaneously, in order to "wrap up" the remaining matters pending in this case. In connection with discussing a final briefing schedule for the Stangl Motion, I raised with Ms. Rubenstein the issue of whether subsequent intervention events (such as the blocking of Mr. Owens's attempt to sell Baltimore Realty) may have made resolution of those other Motions unnecessary. Ms. Rubenstein's Letter-Brief in the Julie Stangl matter indicated Assistant Attorney General

Helen Rubenstein  
Richard L. Varco, Jr.  
Arthur Owens  
Page Two

Forest Larson  
Marc Crevier  
Sports and Health Club, Inc.  
November 17, 1989

Varco would consider whether the Complainant still desired Orders from the Administrative Law Judge on the Motions to Establish a Fund and to Quash Subpoenas.

Mr. Varco and I discussed the State's position on these questions yesterday (November 16, 1989) by telephone, and it is my understanding from our conversation that the Complainant believes it is not necessary, at this time, to rule on its Motion for Establishment of a Sports and Health Club Class Action Fund. Mr. Varco asked that I reserve resolution of that Motion, and I am honoring that request. As for the Motion to Quash Subpoenas, he will be discussing that matter further with Ms. Rubenstein before deciding whether the Complainant still wants to pursue the subpoenaed documents. We agreed to discuss this matter again prior to the end of November.

Accordingly, I will proceed to take the Julie Stangl matter under further advisement and issue an Order on the Complainant's Motion for Reconsideration when I have completed that portion of the case, rather than issuing Orders on all pending matters simultaneously. I anticipate issuance of an Order regarding Julie Stangl before the end of this month.

Thank you for your consideration.

Very truly yours,

RICHARD C. LUIS  
Administrative Law Judge

RCL/lr

Telephone: 612/341-7610