

BEFORE THE ADMINISTRATOR OF CONSUMER CREDIT
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
ex rel, DEPARTMENT OF)
CONSUMER CREDIT)
)
Petitioner)
)
v.) Case No. 12-0083-DIS
)
TAN & TONE AMERICA)
)
Respondent)



CEASE AND DESIST INSTANTER

The State of Oklahoma, ex rel., Oklahoma Department of Consumer Credit, alleges and states as follows:

JURISDICTION, AUTHORITY AND REQUIREMENTS

1. The Administrator of Consumer Credit (Administrator) is charged with the administration and enforcement of the Oklahoma Health Spa Act, 59 O.S. §§ 2000 et seq.

2. No health spa shall offer or advertise health spa services without first being registered with the Administrator. 59 O.S. § 2002(A).

3. If the public health, safety, and welfare imperatively requires emergency action, such action, including the suspension of a license instanter or a cease and desist instanter, may be ordered pending the final outcome of proceedings instituted by the Administrator. 75 O.S. §§ 314 (C)(2) and 314.1, OKLA. ADMIN. CODE § 160:50-15-1.5.

Penalties

1. 1. The Administrator may, after notice and hearing, decline to renew a registration, or suspend or revoke any registration issued pursuant to the Oklahoma Health Spa Act or any rules promulgated by the Administrator, or in lieu of or in addition to such denial, suspension or revocation, order the refund of any unlawful charges, or enter a cease and desist order. 59 O.S. § 2009(E).

2. Any entity or individual offering to engage or engaged as a health spa without a registration in the State of Oklahoma shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00). 59 O.S. § 2009(F).

Appointment of independent hearing examiner

1. The Administrator shall appoint an independent hearing examiner to conduct all administrative hearings involving alleged violations of the Oklahoma Health Spa Act. The independent hearing examiner shall have authority to exercise all powers granted by Article II of the Administrative Procedures Act in conducting hearings. 59 O.S. § 2009(D).

2. The independent hearing examiner shall have authority to recommend penalties authorized by the Oklahoma Health Spa Act and issue proposed orders, with proposed findings of fact and proposed conclusions of law, to the Administrator pursuant to Article II of the Administrative Procedures Act. The Administrator shall review the proposed order and issue a final agency order in accordance with Article II of the Administrative Procedures Act. 59 O.S. § 2009(D).

Hearing costs

The costs of the hearing examiner may be assessed by the hearing examiner against the Respondent, unless the Respondent is the prevailing party. 59 O.S. § 2009(D).

Appeals

A final agency order issued by the Administrator shall be appealable by all parties to the district court as provided in Article II of the Administrative Procedures Act. 59 O.S. § 2009(D).

Requirements for individual proceedings at the Department of Consumer Credit

The Respondent is responsible for reviewing the administrative rules regarding procedures and requirements for references of parties, entries of appearances, continuances, subpoenas and Consent Orders for individual proceedings at the Department of Consumer Credit. The administrative rules regarding individual proceedings are located at OKLA. ADMIN. CODE

§ 160:3-1-4. A copy of the individual proceeding rules has been attached to this Notice of Hearing for reference.

Enforcement of final agency order or settlement agreement

Any administrative order or settlement agreement imposing a civil penalty pursuant to the Oklahoma Health Spa Act may be enforced in the same manner as civil judgments in the State of Oklahoma. The Administrator may file an application to enforce an administrative order or settlement agreement imposing a civil penalty in the district court of Oklahoma County. 59 O.S. § 2009(G).

Representation by licensed attorney

1. A corporation is required by Oklahoma law to be represented by a licensed attorney in this matter. *Massongill v. McDevitt*, 1989 OK CIV APP 82; 828 P.2d 438.

ALLEGATIONS OF FACT

1. The Respondent is doing business at 235 W. Main, Stillwater, Oklahoma 74074.

2. A sign on the exterior of the Respondent's business location at 235 W. Main, Stillwater, Oklahoma 74704, lists the Respondent's hours of operation to the public as follows:

"Effective July 30th,

Monday 6AM-10PM;

Tuesday 6AM-10PM;

Wednesday 6AM-10PM;

Thursday 6AM-10PM;

Friday 6AM-10PM;

Saturday 6AM-10PM;

Sunday 1PM-6PM"

3. On July 26, 2012, Consumer Credit Examiners Fred Britt and Brad Custard visited the business location of the Respondent

at 235 W. Main, Stillwater, Oklahoma 74074235 W. Main, Stillwater, Oklahoma 74074.

4. On July 26, 2012, Consumer Credit Examiners Fred Britt and Brad Custard observed two treadmills and an exercise bike available for use by customers at the Respondent's business location at 235 W. Main, Stillwater, Oklahoma 74074235 W. Main, Stillwater, Oklahoma 74074.

5. As of July 27, 2012, the Petitioner's licensing records indicate that the Respondent is not registered as a health spa in the State of Oklahoma at 235 W. Main, Stillwater, Oklahoma 74074.

6. Since the Respondent is not registered as a health spa in the State of Oklahoma, the public health, safety, and welfare imperatively requires emergency action ordering the Respondent to cease and desist from engaging or offering to engage as a health spa in the State of Oklahoma.

ALLEGED VIOLATIONS OF LAW

1. The Respondent has violated 59 O.S. § 2002(A) by offering or advertising health spa services without first being registered with the Administrator.

2. The Respondent has violated 59 O.S. § 2009(F) by offering to engage or engaging as a health spa without a registration.

TIME, PLACE AND NATURE OF HEARING

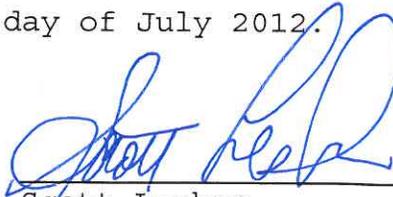
1. The Respondent shall cease and desist from engaging and/or offering to engage as a health spa at 235 W. Main Street, Stillwater, Oklahoma 74074 pending the final outcome of proceedings instituted by the Petitioner.

2. Unless postponed by written agreement between the Respondent and the Petitioner, a hearing shall be held August 7, 2012 at 1:30 p.m. before an independent hearing examiner at the office of the Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112. The purpose of the hearing is to address the allegations contained in this order and to determine if any penalties authorized by law shall

be imposed against the Respondent.

3. Correspondence regarding this matter shall be directed to Ruben Tornini, Deputy Administrator, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112, telephone number 405-522-3290, email: rtornini@okdocc.ok.gov.

So ordered on this 27th day of July 2012.



Scott Lesher
Administrator of Consumer Credit
State of Oklahoma

