BEFORE THE ADMINISTRATOR OF CONSUMER CREDIT
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel, DEPARTMENT OF CONSUMER CREDIT	)	
Petitioner	)	
v.	)	Case No. 13-0028-DIS
REEVES FITNESS, LLC d/b/a FITSO,	)	
Respondent	)	

FINAL AGENCY ORDER

This matter was heard on the 25th day of March, 2013, at 1:29 p. m. before Bryan Neal, Assistant Attorney General and Independent Hearing Examiner appointed by the Administrator of Consumer Credit ("Administrator") at the Office of the Oklahoma Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112. The State of Oklahoma, ex rel. Oklahoma Department of Consumer Credit (the "Department" or the "Petitioner"), was represented by the Department's General Counsel Roy John Martin and the Respondent Reeves Fitness, LLC, doing business as Fitso (the "Respondent" or "Respondent Reeves"), did not appear in person or by legal counsel, after such Respondent having been mailed a copy of the Notice of Hearing filed by the Department herein on February 22, 2013, in Case No. 13-0028-DIS, pursuant to the requirements of Article II of the Oklahoma Administrative Procedures Act (the "APA"), 75 O.S. §§ 308a-323, by first class U.S. Mail certified with return receipt requested to the Respondent at its address at 3509 S. Peoria, Suite 300, Tulsa, Oklahoma 74105 and was accepted by an unidentified representative of the Respondent who accepted service by a representative of the U.S. Postal Service of the Notice of Hearing of this matter as evidenced by the Return Receipt signed by such unidentified

representative of the Respondent on an unknown date, which Return Receipt was received by the Petitioner on March 4, 2013, as verified by the Affidavit of Service signed by the Department's General Counsel Roy John Martin on March 5, 2013, and filed herein (See attached Affidavit of Service).

Neither party to these proceedings requested that a court reporter record this matter, relying instead on the Department's tape recording as the record of the proceedings.

The Department's General Counsel presented two (2) witnesses in support of the case against the Respondent: Lindsie Lundy, Department Administrative Programs Officer, Licensing Division and Angela Gober, Department Examiner.

Ms. Gober testified that she conducted an internet search on Google for the Fitso webpage (www.fitso.com) on January 31, 2012, a copy of which she photocopied and identified as Exhibit 2 consisting of three pages. The first page thereof listed the Respondent's business address, telephone number and hours of operation. The second page listed the class schedule Monday through Saturday including CrossFit, Spin (exercise bike), Bootcamp, AB Jam, Zumba dance and H.I.I.T. List. The third page included a photograph of the business premises of the Respondent evidencing the presence of weight machines and weight-lifting equipment. There being no objection, Exhibit 2 was admitted into evidence.

Ms. Gober testified that the document she identified as Exhibit 3 is a copy of the Fitso webpage (www.fitso.com) on March 22, 2013, the first page of which listed the Respondent's business address, telephone number and hours of operation. The second page listed the Respondent's business address, telephone number and the fees charged for membership and special classes such as Zumba dance and Crossfit as well as facility features such as machines, weights, class schedules, lockers and towels. There being no objection, Exhibit 3 was admitted

into evidence.

Ms. Gober testified that she visited the Respondent's Facebook Page on March 22, 2013, with the title on page 1 of "Fitso the Gym Over Brookside" listing the Respondent's business address, telephone number and its hours of operation that day, which exhibit consists of eight pages of photographs and motivational slogans, and which exhibit was marked as Exhibit 4. The Exhibit 4, Facebook page, evidences the fact that the Respondent remains open for business as recently as March 22, 2013. There being no objection, Exhibit 4 was admitted into evidence. Ms. Gober testified that she did not visit the Respondent's business premises.

After reviewing the administrative record of this individual proceeding, reviewing the arguments, testimony and evidence presented at the March 25, 2013 hearing and reviewing the proposed order filed by Independent Hearing Examiner, Bryan Neal, the Administrator of Consumer Credit issues the following findings, conclusions and orders:

JURISDICTION AND AUTHORITY

1. The 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. 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).

4. 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).

5. The proceedings herein were conducted in accordance with the provisions of Article II of the Administrative Procedures Act, 75 O.S. §§ 308a-323.

FINDINGS OF FACT

The Administrator of Consumer Credit finds that the following facts were proven by clear and convincing evidence:

1. The Respondent is an Oklahoma domestic limited liability company transacting business at 3509 S. Peoria, Suite 300, Tulsa, OK 74105, doing business as fitso.

2. The Respondent maintains an internet website at www.fitso.com.

3. While the Respondent was previously registered as a health spa on March 7, 2012 that registration expired on January 3, 2013, and was not renewed.

4. On January 31, 2013 the Respondent's internet website www.fitso.com, included but was not limited to, the Respondent's business address, telephone number, hours of operation, class schedule and membership information.

5. As of January 31, 2013, the Respondent was not registered as a health spa in the State of Oklahoma. Subsequently, as of March 22, 2013, the Respondent was still not registered as a health spa in the State of Oklahoma.

CONCLUSIONS OF LAW

The Administrator of Consumer Credit concludes that based on the evidence and testimony in this individual proceeding that:

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

ORDER

Based upon the findings of fact and conclusions of law in this individual proceeding and based upon the recommendation of the Independent Hearing Examiner, the Administrator of Consumer Credit issues the following orders:

1. The Respondent, having been found to be a "Health Spa" as that word is defined in 59 O.S. § 2001, that was offering or advertising health spa services on January 31, 2013, and continuing thereafter at least until March 22, 2013, without first obtaining or renewing a health spa registration from the Administrator as required under 59 O.S. § 2002 (A) to act in such capacity, shall pay a Five Thousand Dollar ($5,000.00) civil penalty, as authorized in 59 O.S. § 2009(F), and that Respondent shall pay the costs of the Hearing Examiner incurred in this matter as authorized in 59 O.S. § 2009(D) in the amount of $464.50.

2. The Respondent, having been found to be a "Health Spa" as that word is defined in 59 O.S. § 2001, that was continuing to operate as a health spa January 31, 2013, without first obtaining or renewing a health spa registration from the Administrator as required under 59 O.S. § 2002 (A) and continuing to do so through and including March 22, 2013, is issued a permanent Cease and Desist Order to immediately cease and desist from offering or advertising health spa services as a "Health Spa" as that word is defined in 59 O.S. § 2001, and to permanently continue to so cease and desist until such time, if ever, as the Respondent pays all fines, fees and penalties owed to the Department and obtains a registration from the Administrator as required under 59 O.S. § 2002 to act in such capacity as a "Health Spa".

3. The $5,000.00 civil penalty and $464.50 in hearing costs shall be paid by check or

money order, shall indicate that payment is for Case Number 12-0028-DIS, and shall be submitted to the attention of Roy John Martin, General Counsel, Oklahoma Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112, within thirty (30) days from the date of receipt of this order.

So ordered this 23rd day of May 2013.

Scott Lesher
Administrator of Consumer Credit
State of Oklahoma