

BEFORE THE ADMINISTRATOR OF CONSUMER CREDIT  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, )  
ex rel, DEPARTMENT OF )  
CONSUMER CREDIT )  
 )  
Petitioner )  
 )  
v. )  
 )  
NAUTILUS FITNESS )  
 )  
Respondent )

Case No. 12-0018-DIS



NOTICE OF HEARING

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. §§ 2000-2011 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 provisions of Title 14A of the Oklahoma Statutes apply to health spas registered pursuant to the Oklahoma Health Spa Act. 59 O.S. § 2009(B).

**Penalties**

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).

3. Any entity or individual offering to engage or engaged in making consumer credit sales, consumer leases, or consumer loans in this state without a notification filing shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00). 14A O.S. § 6-113(3).

#### **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 and his or her attorney, if applicable, are 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.

### **Consent Order**

1. The Respondent may waive the right to a hearing and enter into a Consent Order with the Department. If the Respondent wishes to waive the right to a hearing, the Respondent shall sign and notarize the enclosed Consent Order and submit 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.

2. The signed and notarized Consent Order and any applicable penalty indicated in the Consent Order shall be received by the Petitioner on or before August 22, 2012.

### **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).

### **ALLEGATIONS OF FACT**

1. On April 4, 2012, Consumer Credit Examiners, Vanessa Todd, Fred Britt, and Alicia Gregg visited Nautilus Fitness located at 703 N. Main St., Durant, OK 74701.

2. On April 4, 2012, Josh Mullins provided a business card to Consumer Credit Examiner Vanessa Todd, which included the following information:

"Nautilus Sport & Fitness Centers, Josh Mullins Manager, Ten Great Clubs, One low price 703 E. Main Street, Durant, Oklahoma 74701, 580-920-0073, www.texomafit.com."

3. Consumer Credit Examiners Vanessa Todd confirmed that the Respondent's prices ranged from \$19.95 to \$57.95 a month for individual memberships, and additions for family members were \$15.00 extra.

4. Consumer Credit Examiners Vanessa Todd confirmed that the Respondent has membership contracts with terms of monthly, 3 months, 6 months, and 12 month memberships.

5. On April 4, 2012, an exterior sign at the Respondent's business location at 703 N. Main Street, Durant, Oklahoma 74701 depicted the following information:

"Nautilus Sport & Fitness Center Now Open"

6. On April 4, 2012, the interior of the Respondent's business location at 703 N. Main Street, Durant, Oklahoma 74701 included exercise equipment and machines.

7. The Respondent's Internet website at <http://www.texomafit.com/promo/mainplay.html>, dated March 13, provides the following information:

"Nautilus Durant 703 W. Main, Durant, OK 74701, 580-920-0073 Open 7 days 24 hour access (at some locations) Nautilus Durant Business Hours: Monday-Sunday 24 Hour Key Card Access Monday-Friday 8:00 a.m.-8:00 p.m., Saturday 8:00 a.m.-2:00 p.m., Sunday no staff, Monday-Friday 8:00 a.m.-12:00 p.m., 4:00 p.m.-8:00 p.m., Saturday 8:00 a.m.-12:00 p.m., Sunday closed.

8. As of June 19, 2012, the Respondent is not registered as a health spa at 703 N. Main Street, Durant, Oklahoma 74701.

#### **ALLEGED VIOLATIONS OF LAW**

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

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

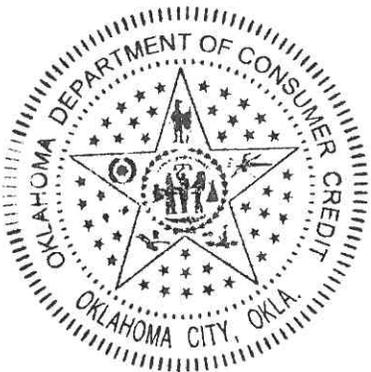
3. The Respondent has violated 59 O.S. § 2009 (F) by offering to engage or engaging as a health spa without a license.

TIME, PLACE AND NATURE OF HEARING

1. A hearing will be held before an independent hearing examiner on August 27, 2012 at 1:30 p.m. at the office of the Administrator of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112.

2. The purpose of the hearing is to address the allegations contained in this Notice and to determine if any penalties authorized by the Oklahoma Health Spa Act and the Uniform Consumer Credit Code shall be imposed against the Respondent.

3. Correspondence regarding this matter shall be directed to Roy John Martin, General Counsel, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112, telephone number 405-522-4665, email: [rmartin@okdocc.ok.gov](mailto:rmartin@okdocc.ok.gov).



*Roy John Martin*

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