

IN THE COURT OF COMMON PLEAS
OF LANCASTER COUNTY PENNSYLVANIA

COMMONWEALTH OF
PENNSYLVANIA
BY ATTORNEY GENERAL JOSH
SHAPIRO,

Petitioner

v.

FIGURE FIRM SPA, INC.
1400 Elm Avenue
Lancaster, Pennsylvania 17603

Respondent

CIVIL ACTION

No. 18-10947

PROthonary
LANCASTER, PA

2018 DEC 21 PM 1:07

ENTERED AND FILED

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro, through the Bureau of Consumer Protection (hereinafter "Commonwealth" or "Petitioner"), which has caused an investigation to be made into the business practices of Figure Firm Spa, Inc. (hereinafter "Respondent Figure Firm"), pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.* (hereinafter "Consumer Protection Law"), and states the following:

WHEREAS, the Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro, through the Bureau of Consumer Protection, with offices located at 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120;

WHEREAS, Respondent Figure Firm is registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section (hereinafter "Corporations Bureau") as a Pennsylvania corporation with a registered and principal place of business address and conducting business out of 1400 Elm Avenue, Lancaster, PA 17603.

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BACKGROUND

WHEREAS, from 1985 through the present, Respondent Figure Firm operated a “Health Club” as defined by Section 2162 of the Health Club Act, 73 P.S. §§ 2161, *et seq.* (hereinafter “HCA”), § 2162;

WHEREAS, Respondent Figure Firm sold “Health Club Contract(s),” as defined by Section 2162 of the HCA, 73 P.S. § 2162;

WHEREAS, in May of 2014, Respondent Figure Firm was registered with the Director of the Bureau of Consumer Protection (hereinafter “Bureau”) as exempt from financial security and certified that it complied with the exemption requirements;

WHEREAS, Respondent Figure Firm assessed an annual facility fee, in violation of Section 2173(3), 73 P.S. § 2173(3);

WHEREAS, Respondent Figure Firm’s Health Club Contracts represented that it held a letter of credit, when it did not;

WHEREAS, Respondent Figure Firm entered into Health Club Contracts with consumers that failed to include, or properly include, all the provisions required by Section 2163 and Section 2173 of the HCA, including, but not limited to, the following:

- a) Temporary closure provision, 73 P.S. § 2163(a)(3);
- b) Ten-mile comparable facility upon permanent closure provision, 73 P.S. § 2163(a)(4);
- c) The proper cancellation upon death or permanent disability provision, 73 P.S. § 2163(a)(6);
- d) Cancellation upon relocation provision, 73 P.S. § 2163(a)(7);
- e) The proper contract cancellation procedure provision, 73 P.S. § 2163(a)(8);

- f) Notice of member receiving a copy of the contract, 73 P.S. § 2163(a)(11);
- g) The proper font and language for the Right to Cancel Notice, 73 P.S. § 2163(b)(1);
- h) Notice of claims and defenses provision, 73 P.S. § 2163(b)(2); and
- i) Provision regarding no further payments, 73 P.S. § 2173(1);

WHEREAS, based upon its investigation, the Commonwealth believes Respondent Figure Firm engaged in conduct which violated the Consumer Protection Law and the HCA, as more fully set forth below:

1. Respondent Figure Firm violated the HCA by failing to maintain proper registration status with the Director of the Bureau, in violation of Section 2177 of the HCA, 73 P.S. § 2177;
2. Respondent Figure Firm violated the HCA by failing to post financial security with the Bureau before entering into Health Club Contracts, in violation of Section 2171 of the HCA, 73 P.S. § 2171;
3. Respondent Figure Firm violated the HCA by failing to include all necessary provisions in their Health Club Contracts, in violation of Sections 2163 and 2173 of the HCA, 73 P.S. §§ 2163, 2173;
4. Section 2175(a) of the HCA states that a violation of the HCA constitutes a violation of the Consumer Protection Law, 73 P.S. § 2175(a);
5. As a result of the violations of the HCA, set forth above, Respondent Figure Firm has engaged in “unfair methods of competition” or “unfair or deceptive acts or practices” which violated Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4)(ii), (iii), and (xxi), as follows:

- (a) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services; 73 P.S. § 201-2(4)(ii);
- (b) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, 73 P.S. § 201-2(4)(iii); and
- (c) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi).

6. Respondent Figure Firm violated the Consumer Protection Law by misrepresenting to consumers that it held a letter of credit when it did not, in violation of Section 201-3 of the Consumer Protection Law, as defined by Sections 201-2(4)(ii), (iii), and (xxi), as follows:

- (a) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, 73 P.S. § 201-2(4)(ii);
- (b) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, 73 P.S. § 201-2(4)(iii); and
- (c) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi).

WHEREAS, Respondent Figure Firm desires to comply with the civil laws of the Commonwealth and agrees to cease and desist from the aforementioned conduct;

WHEREAS, this Assurance of Voluntary Compliance (hereinafter "Assurance") is accepted by the Commonwealth pursuant to Section 201-5 of the Consumer Protection Law, in lieu of commencing statutory proceedings under Section 201-4;

WHEREAS, this Assurance shall not be considered an admission of violation for any purpose, 73 P.S. § 201-5.

SETTLEMENT TERMS

NOW THEREFORE, effective from the date of the signing of this Assurance, Respondent Figure Firm agrees for itself, its successors, assigns, officers, directors, agents,

employees, and any and all other persons acting on its behalf through this or any other corporate or business device as follows:

I. The Recitals are incorporated herein and made part hereof.

II. Injunctive & Affirmative Relief

A. Respondent Figure Firm shall comply with any and all provisions of the Consumer Protection Law and any amendments thereto; and, is permanently enjoined from any violation thereof, specifically including, but not limited to misrepresenting that it holds a letter of credit when it does not;

B. Respondent Figure Firm shall comply with any and all provisions of the HCA and any amendments thereto; and is permanently enjoined from any violation thereof, specifically including, but not limited to the following:

1. Failing to maintain proper registration status with the Director of the Bureau of Consumer Protection, as prohibited by Section 2177 of the HCA, 73 P.S. § 2177;

2. Failing to include in their Health Club Contracts all necessary provisions, as prohibited by Section 2163 and Section 2173 of the HCA, 73 P.S. §§ 2163, 2173; and

3. Accepting annual facility fees, as prohibited by Section 2173(3) of the HCA, 73 P.S. § 2173(3);

C. Respondent Figure Firm shall enter into new contracts with existing health club members, if required to do so:

1. In order to ensure that they are covered by the financial security posted and maintained with the Bureau; or

2. In order to ensure they fall within the requirements for Health Club Contracts issued by health clubs which are exempt from the financial security requirements under Section 2173 of the HCA, 73 P.S. § 2173.

D. Respondent Figure Firm shall conform their Health Club Contracts to meet the requirements of Sections 2163 and 2173(3) of the HCA and any other applicable section of the HCA. 73 P.S. §§ 2163, 2173(3).

E. Respondent Figure Firm shall amend its registration with the Bureau and shall file and maintain financial security with the Bureau, as long as required to do so and if applicable under the HCA.

III. Monetary Relief

A. Upon signing this Assurance, Respondent Figure Firm shall be liable for payment of the sum of Four Hundred Twenty-Three and 25/100 Dollars (\$423.25), (hereinafter "Required Payment"), which shall be allocated as follows:

1. **Civil Penalties** – in the amount of Two Hundred Fifty and 00/100 Dollars (\$250.00), (hereinafter "Civil Penalties") which shall be distributed to the Commonwealth of Pennsylvania, Treasury Department; and

2. **Public Protection and Education Purposes** – in the amount of One Hundred Seventy-Three and 25/100 Dollars (\$173.25), (hereinafter "Costs") which shall be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to reimburse the costs incurred in pursuing this enforcement action, and shall be deposited in an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

B. Payment Terms

1. Upon signing this Assurance, Respondent Figure Firm agrees to pay the Required Payment amount due under Paragraph III(A), above, by certified check, cashier's check, or money order, made payable to the "Commonwealth of Pennsylvania, Office of Attorney General," and forwarded to the Office of Attorney General, Bureau of Consumer Protection, 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120.

IV. Miscellaneous Terms

A. The Court of Common Pleas of Lancaster County, Pennsylvania shall maintain jurisdiction over the subject matter of this Assurance and over Respondent Figure Firm for the purpose of enforcing this Assurance.

B. Time shall be of the essence with regards to Respondent Figure Firm's obligations hereunder.

C. Nothing in this Assurance shall be construed to waive or limit any right of action by any individual, person or entity, or by any local, state, federal or other governmental entity.

D. CHUCK HONABACH (Name), as OWNER (Title) of Respondent Figure Firm, hereby states that he/she is authorized to enter into and execute this Assurance on behalf of Respondent Figure Firm; and, further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance.

E. Respondent Figure Firm further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance, whether required prior to, contemporaneous with, or subsequent to the Effective Date, as defined herein.

F. Any failure of the Commonwealth to exercise any of its rights under this Assurance shall not constitute a waiver of its rights hereunder.

G. This Assurance may be executed in any number of counterparts and by different signatories on separate counterpart, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this agreement may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

H. This Assurance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

I. Respondent Figure Firm understands and agrees that if any false statement is made on its behalf in or related to this Assurance, that such statement is made pursuant to and under penalty of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

J. Respondent Figure Firm agrees by the signing of this Assurance that Respondent Figure Firm shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to seek penalties provided for under Section 201-8(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), and to seek any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

K. The "Effective Date" of this Assurance shall be the day it is filed with the Court.

L. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and the Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

M. Respondent Figure Firm shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent Figure Firm's past or current business practices, efforts to improve their practices, or any future practices that Respondent Figure Firm may adopt or consider adopting.

WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

{SIGNATURES ON THE FOLLOWING PAGES}

For the Petitioner:

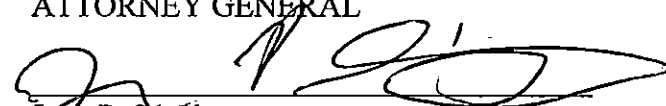
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

Date:

17/20/18

By:



Juan P. Sanchez
Senior Deputy Attorney General
PA Attorney I.D. No. 206839
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, PA 17120
Telephone: (717) 787-9707
Facsimile: (717) 705-3795
Email: jpsanchez@attorneygeneral.gov

For the Respondent:
Figure Firm Spa, Inc.

Date: 12/19/2018

By: 

Name: CHUCK HONABACH

Title: OWNER

CORPORATE RESOLUTION

RESOLUTION OF THE BOARD OF DIRECTORS

OF

FIGURE FIRM SPA, INC.

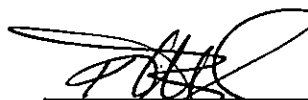
The Board of Directors of Figure Firm Spa, Inc. met on the 19 day of

DECEMBER, 2018, and approved the following resolution:

RESOLVED, that CHUCK HONZBACH (Name), the OWNER (Title) of Figure Firm Spa, Inc., is hereby authorized and empowered on behalf of Figure Firm Spa, Inc. to enter into an Assurance of Voluntary Compliance with the Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection upon the terms and conditions contained in the proposed Assurance of Voluntary Compliance attached hereto and made a part hereof.

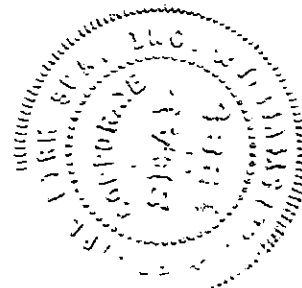
Filed with and attested to by the Secretary of the Corporation, this 19 day of

DECEMBER, 2018.



Secretary

[CORPORATE SEAL]



IN THE COURT OF COMMON PLEAS
OF LANCASTER COUNTY PENNSYLVANIA

COMMONWEALTH OF
PENNSYLVANIA
BY ATTORNEY GENERAL JOSH
SHAPIRO,

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v.

FIGURE FIRM SPA, INC.
1400 Elm Avenue
Lancaster, Pennsylvania 17603

Respondent

CIVIL ACTION

No. 18-10947

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

For the Petitioner:

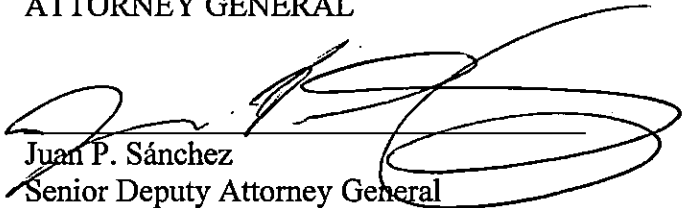
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

Date: _____

12/28/18

By: _____



Juan P. Sánchez
Senior Deputy Attorney General
PA Attorney I.D. No. 206839
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, PA 17120
Telephone: (717) 787-9707
Facsimile: (717) 705-3795
Email: jpsanchez@attorneygeneral.gov

IN THE COURT OF COMMON PLEAS
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BY ATTORNEY GENERAL JOSH
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FIGURE FIRM SPA, INC.
1400 Elm Avenue
Lancaster, Pennsylvania 17603

Respondent

CIVIL ACTION

No. 18-10947

CERTIFICATE OF SERVICE

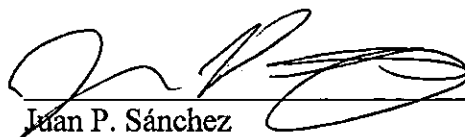
Undersigned counsel does hereby certify that a true and correct copy of the foregoing Assurance of Voluntary Compliance was served by means of First Class U.S. Mail, postage prepaid, on the date noted below:

Figure Firm Spa, Inc.
c/o Chuck Honabach, Owner
1400 Elm Avenue
Lancaster, PA 17603

Date:

12/21/18

By:



Juan P. Sánchez
Senior Deputy Attorney General
PA Attorney I.D. No. 206839
Bureau of Consumer Protection

Supreme Court of Pennsylvania

Court of Common Pleas

Civil Cover Sheet

Lancaster

County



For Prothonotary Use Only:

Docket No:

18-10947

ENTERED AND FILED
 2018 DEC 21 PM 1:11
 PROTHONOTARY
 LANCASTER COUNTY

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A	Commencement of Action: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking	
	Lead Plaintiff's Name: Commonwealth of Pennsylvania Office of Attorney General	Lead Defendant's Name: Figure Firm Spa, Inc.
	Are money damages requested? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Dollar Amount Requested: <input type="checkbox"/> within arbitration limits (check one) <input checked="" type="checkbox"/> outside arbitration limits
	Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Name of Plaintiff/Appellant's Attorney: Juan P. Sánchez <input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)	

SECTION B	Nature of the Case: Place an "X" to the left of the <u>ONE</u> case category that most accurately describes your PRIMARY CASE . If you are making more than one type of claim, check the one that you consider most important.		
	TORT (do not include Mass Tort) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (<i>does not include mass tort</i>) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____	CONTRACT (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____	CIVIL APPEALS Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____
	MASS TORT <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	REAL PROPERTY <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	MISCELLANEOUS <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input checked="" type="checkbox"/> Other: Assurance of Voluntary Compliance
	PROFESSIONAL LIABILITY <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____		