

Supreme Court of Pennsylvania

Court of Common Pleas  
Civil Cover Sheet

Delaware County

CV-2019-000 507

For Prothonotary Use Only:

Docket No:

2019 JAN 22 PM 2:53

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:

- Complaint
- Writ of Summons
- Petition
- Transfer from Another Jurisdiction
- Declaration of Taking

Lead Plaintiff's Name:  
Commonwealth of Pa, Office of Attorney General

Lead Defendant's Name:  
Dowd Company LLC d/b/a Snap Fitness Havertown

Are money damages requested?  Yes  No

Dollar Amount Requested:  within arbitration limits  
 outside arbitration limits  
(check one)

Is this a Class Action Suit?  Yes  No

Is this an MDJ Appeal?  Yes  No

Name of Plaintiff/Appellant's Attorney: Phoenicia D.W. Wallace, Deputy Attorney General

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 ONE 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)

- Intentional
- Malicious Prosecution
- Motor Vehicle
- Nuisance
- Premises Liability
- Product Liability (does not include mass tort)
- Slander/Libel/ Defamation
- Other:

**CONTRACT** (do not include Judgments)

- Buyer Plaintiff
- Debt Collection: Credit Card
- Debt Collection: Other
- Employment Dispute: Discrimination
- Employment Dispute: Other
- Other:

**CIVIL APPEALS**

- Administrative Agencies
- Board of Assessment
- Board of Elections
- Dept. of Transportation
- Statutory Appeal: Other
- Zoning Board
- Other:

**MASS TORT**

- Asbestos
- Tobacco
- Toxic Tort - DES
- Toxic Tort - Implant
- Toxic Waste
- Other:

**REAL PROPERTY**

- Ejectment
- Eminent Domain/Condemnation
- Ground Rent
- Landlord/Tenant Dispute
- Mortgage Foreclosure: Residential
- Mortgage Foreclosure: Commercial
- Partition
- Quiet Title
- Other:

**MISCELLANEOUS**

- Common Law/Statutory Arbitration
- Declaratory Judgment
- Mandamus
- Non-Domestic Relations Restraining Order
- Quo Warranto
- Replevin
- Other: Assurance of Voluntary Compliance

**PROFESSIONAL LIABILITY**

- Dental
- Legal
- Medical
- Other Professional:

IN THE COURT OF COMMON PLEAS OF  
DELAWARE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA  
BY ATTORNEY GENERAL JOSH SHAPIRO

Petitioner

v.

DOWD COMPANY 2 LLC DOING BUSINESS AS  
SNAP FITNESS HAVERTOWN  
2320 Haverford Road  
Ardmore, Pennsylvania 19003

Respondent

Term: \_\_\_\_\_

Case No.: CV-2019-000 507

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, 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 Dowd Company 2 LLC doing business as Snap Fitness Havertown pursuant to the *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 1600 Arch Street, Third Floor, Philadelphia, Pennsylvania 19103 and 15<sup>th</sup> Floor, Strawberry Square, Harrisburg, Pennsylvania 17120;

WHEREAS, Respondent Dowd Company 2 LLC (hereinafter "Respondent" and/or "Dowd Company") is a Pennsylvania limited liability company with a registered business address of 26 Mill Road, Havertown, Pennsylvania 19083.

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DELAWARE COUNTY

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## BACKGROUND

**WHEREAS**, from on or about September 18, 2009, through the present date, Respondent 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 operates a Health Club located at 2320 Haverford Road, Ardmore, Pennsylvania 19003, under the unregistered fictitious name “Snap Fitness Havertown”;

**WHEREAS**, Respondent is registered as a limited liability company with the Corporations Bureau, with an address of 26 Mill Road, Havertown, Pennsylvania 19083;

**WHEREAS**, Respondent sold “Health Club Contracts”, as defined by Section 2162 of the *HCA*, at Snap Fitness Havertown, 73 P.S. § 2162;

**WHEREAS**, based upon its investigation, the Commonwealth believes Respondent engaged in conduct, which violated the *Consumer Protection Law*, the *HCA*, and the *Fictitious Names Act*, 54 P.S. § 301 (hereinafter “FNA”), as more fully set forth below:

1. Respondent violated the *HCA* by failing to register with the Bureau before entering into health club contracts, in violation of Section 2177 of the *HCA*, 73 P.S. § 2177;
2. Respondent 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 violated the *HCA* by accepting pre-payments for health club memberships without posting financial security with the Bureau, in violation of Section 2171 of the *HCA*, *See* 73 P.S. § 2171

4. Respondent violated the *HCA* by charging \$75.00 early cancellation and \$35 enhancement fees in health club contracts without posting financial security with the Bureau, in violation of Section 2171 of the *HCA*, *See* 73 P.S. § 2171;

5. Respondent violated the *HCA* by failing to include in its contracts a provision that if a health club facility temporarily closes for thirty (30) days or less, the buyer shall receive an extension of the membership term equal to the period during which the facility is closed, as required by Section 2163 of the *HCA*, 73 P.S. § 2163(a)(3);

6. Respondent violated the *HCA* by failing to include in its contracts a provision permitting the buyer to extend the membership term of the contract at no additional cost for a period of time equal to the duration of a disability where the buyer has a disability which precludes the buyer from using one-third or more of the health club facilities for a period of less than six (6) months and the disability is verified by a physician, as required by Section 2163 of the *HCA*, 73 P.S. § 2163(a)(5);

7. Respondent violated the *HCA* by failing to include in its contracts provisions that, to cancel a contract pursuant to paragraph (2), (4), (6) or (7), the buyer shall notify the health club of cancellation in writing, by certified mail, return receipt requested, or by personal delivery to the address specified in the health club contract; that all money to be refunded upon cancellation of the health club contract shall be paid within 40 days of receipt of the notice of cancellation; and that, if the buyer has executed a credit, lien or automatic funds transfer agreement with the health club to pay for health club services, any negotiable instrument or credit or lien agreement executed by the buyer shall also be returned and any automatic transfer shall be canceled within forty (40) days after the cancellation, as required by Section 2163 of the *HCA*, 73 P.S. § 2163(a)(8);

8. 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);

9. As a result of the violations of the *HCA* set forth above, Respondent 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), (v) 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);
- (c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, 73 P.S. § 201-2(4)(v); and
- (d) 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 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” and/or “Assurance of Voluntary Compliance”) 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; and

**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 of Voluntary Compliance, Respondent 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 SHALL comply with any and all provisions of the *Consumer Protection Law* and any amendments thereto; and is permanently enjoined from any violation thereof.

B. Respondent 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 post financial security with the Bureau before entering into health club contracts, in violation of Section 2171 of the *HCA*. *See* 73 P.S. § 2171;

2. Failing to include in its contracts the provision as to temporary closure for thirty (30) days or less, as required by Section 2163 of the *HCA*. *See* 73 P.S. § 2163(a)(3);

3. Failing to include in its contracts the provision as to extension of membership due to temporary disability, as required by Section 2163 of the *HCA*. *See* 73 P.S. § 2163(a)(5); and

4. Failing to include in its contracts the provision as to cancelling a contract pursuant to paragraph (2), (4), (6) or (7) of Section 2163, as required by Section 2163 of the *HCA*. *See* 73 P.S. § 2163(a)(8).

C. Respondent SHALL register with the Bureau and file and maintain financial security with the Bureau, as long as required to do so and if applicable under the *HCA*. See 73 P.S. §§ 2171, 2177.

D. Respondent Dowd Company 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. 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 contracts issued by health clubs which are exempt from the financial security requirements under Section 2173 of the *HCA*, 73 P.S. § 2173.

### III. Monetary Relief

A. Upon signing this Assurance of Voluntary Compliance, Respondent Dowd Company shall be liable for payment of the sum of SEVEN HUNDRED EIGHTY FOUR and 25/100 Dollars (\$784.25), (hereinafter "Required Payment"), which shall be allocated as follows:

1. **Civil Penalties** – in the amount of SEVEN HUNDRED FIFTY and 00/100 Dollars (\$750.00), (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 THIRTY FOUR and 25/100 Dollars (\$34.25), (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**

Upon signing this Assurance of Voluntary Compliance, Respondent 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, 1600 Arch Street, Third Floor, Philadelphia, Pennsylvania 19103.

**IV. Miscellaneous Terms**

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

B. Time shall be of the essence with regard to Respondent's obligations hereunder.

C. Nothing in this Assurance of Voluntary Compliance 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. Christopher C. Dowd, as Managing Member of Respondent Dowd Company 2 LLC, hereby states that he is authorized to enter into and execute this Assurance of Voluntary Compliance on behalf of Respondent Dowd Company 2 LLC; 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 of Voluntary Compliance.

E. Respondent further agrees to execute and deliver all authorizations, documents, and instruments, which are necessary to carry out the terms and conditions of this Assurance of



Voluntary Compliance, 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 of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

G. This Assurance of Voluntary Compliance 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 of Voluntary Compliance 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 of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

I. Respondent understands and agrees that if they have made any false statement in or related to this Assurance of Voluntary Compliance, that such statement is made pursuant to and under penalty of 18 P.S. § 4904, relating to unsworn falsifications to authorities.

J. Respondent agrees by the signing of this Assurance of Voluntary Compliance that Respondent 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 of Voluntary Compliance shall be the day it is filed with the Court.

L. If any clause, provision, or section of this Assurance of Voluntary Compliance 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 of Voluntary Compliance and the Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

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

**{SIGNATURES ON THE FOLLOWING PAGE}**

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

**For the Petitioner:**

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO  
*Attorney General*

Date: 1-22-19

By:

Phoenicia D.W. Wallace  
PHOENICIA D.W. WALLACE  
Deputy Attorney General  
Attorney I.D. No.: 315597  
Pennsylvania Office of Attorney General  
Bureau of Consumer Protection  
1600 Arch Street, Third Floor  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 560-2414  
Facsimile: (215) 560-2494  
Email: pwallace@attorneygeneral.gov  
*Attorney for Petitioner*

**For the Respondent:**

DOWD COMPANY 2 LLC

Date: 1/15/19

By:

C. Dowd  
CHRISTOPHER C. DOWD  
Managing Member  
Dowd Company 2 LLC  
2320 Haverford Road  
Ardmore, Pennsylvania 19003

**RESOLUTION**

**RESOLUTION OF THE CONTROLLING MEMBERS**

**OF**

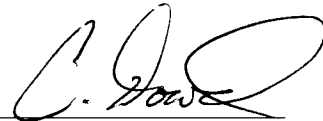
**DOWD COMPANY 2 LLC**

The Controlling Members of Dowd Company 2 LLC met on the day of JAN 15, 20-  
19 and approved the following resolution:

RESOLVED, that Christopher C. Dowd, Managing Member of Dowd Company 2 LLC, is hereby authorized and empowered on behalf of Dowd Company 2 LLC, to enter into an Assurance of Voluntary Compliance on behalf of Dowd Company 2 LLC, with the Commonwealth of Pennsylvania, Office of Attorney General, 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 Managing Member of the limited liability company, this  
15<sup>TH</sup> day of

JANUARY, 2019.



Managing Member

CHRIS DOWD



**CERTIFICATE OF COMPLIANCE**

I certify that this filing (Assurance of Voluntary Compliance) 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.

Date: 1-22-19

By:

*Phoenicia D.W. Wallace*

PHOENICIA D.W. WALLACE

Deputy Attorney General

Attorney I.D. No.: 315597

Pennsylvania Office of Attorney General

Bureau of Consumer Protection

1600 Arch Street, Third Floor

Philadelphia, Pennsylvania 19103

Telephone: (215) 560-2414

Facsimile: (215) 560-2494

Email: [pwallace@attorneygeneral.gov](mailto:pwallace@attorneygeneral.gov)

*Attorney for Petitioner*

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OFFICE OF JUDICIAL SUPPORT  
DELAWARE COUNTY, PA