

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 17CH037
DIVISION I

COMMONWEALTH OF KENTUCKY, *ex rel.*
ANDY BESHEAR, ATTORNEY GENERAL

PLAINTIFF

COMPLAINT

v.

Fitness World, LLC

Serve:

Oscar E. "Corky" Salyer, as agent of Fitness World, LLC
900 Cherokee Road
Raceland, KY 41169

Oscar E. "Corky" Salyer, Individually

Serve:

Oscar E. "Corky" Salyer
900 Cherokee Road
Raceland, KY 41169

DEFENDANTS

Comes the Plaintiff, the Commonwealth of Kentucky, *ex rel.* Andy Beshear, Attorney General, and for its Complaint against the Defendants states as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, the Commonwealth of Kentucky, *ex rel.* Andy Beshear, Attorney General, (hereinafter "Commonwealth," "Attorney General," or "OAG") is responsible for the enforcement and administration of Kentucky law, including the Consumer Protection Act, KRS 367.110, *et seq.* and the registration of health spas, KRS 367.905, *et seq.* The Attorney General is authorized by KRS 367.190 and KRS 367.925 to bring this action in the name of the Commonwealth because he has reason to believe that Defendants are operating a health spa without registering with the Commonwealth in violation of KRS 367.900 to 367.930 and has

determined this action to be in the public interest.

2. Oscar E. Salyer is the manager and organizer of Fitness World, LLC. Fitness World, LLC operates a health spa located at 900 Cherokee Road, Raceland, KY 41169.

3. Defendants have sold memberships without being properly registered as required by KRS 367.905 (1) (a) and posting the bond required by KRS 367.905 (1) (b). They have also failed to renew the registration and post a bond in violation of KRS 367.905 (2).

4. Venue is proper in Franklin County pursuant to KRS 367.190 (1) in that the failure to register took place in Franklin County.

II. FACTS

5. The Commonwealth hereby incorporates by reference the foregoing paragraphs.

6. Fitness World was registered for the 2015-2016 year. See Affidavit of Angela Turton attached as Exhibit A.

7. Health spas are required to renew annually on July 1 of each year.

8. The Defendants failed to file a renewal or post a bond for the 2016-2017 year. See Exhibit A.

9. The Defendants also failed to file a renewal or post a bond for the 2017-2018 year. See Exhibit A.

III. LAW

10. Defendants have sold memberships without being properly registered as required by KRS 367.905 (1) (a) and posting the bond required by KRS 367.905 (1) (b). They have also failed to renew the registration and post a bond in violation of KRS 367.905 (2).

11. KRS 367.905 (1) states, in pertinent part:

(1) Any person, corporation, partnership, association, or group intending to open or operate a health spa within the Commonwealth **shall**:

(a) File a registration statement, accompanied by a one hundred dollar (\$100) initial registration fee, with the Attorney General's Division of Consumer Protection **prior** to the sale of any memberships in the Commonwealth of Kentucky....

(b) **Prior** to the sale of any memberships in the Commonwealth of Kentucky, provide the Attorney General's Division of Consumer Protection with a surety bond meeting the requirements of KRS 367.906.

(Emphasis added).

12. Once initially registered, KRS 367.905 (2) requires that a new registration statement be filed on or before July 1 of each subsequent year.

13. All of the remedies provided to the Attorney General by the Consumer Protection Act, KRS 367.190 to 367.300, apply to the health spa registration requirements. KRS 367.925. This includes a permanent injunction pursuant to KRS 367.190 and a civil penalty of \$2,000 per violation pursuant to KRS 367.990 (2).

IV. CONCLUSION AND PRAYER FOR RELIEF

14. The Defendants, Oscar E. Salyer, and Fitness World, LLC have failed to register as a health spa and post the required bond for the last two (2) registration years, 2016-2017 and 2017-2018.

WHEREFORE, Plaintiff prays for relief as follows:

A. An injunction pursuant to KRS 367.190 that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, device, affiliate, or other entity, and any other persons in active concert or participation with the Defendants is hereby permanently restrained or enjoined from the operation of a health spa in the Commonwealth of Kentucky;

B. A finding that the Defendants willfully used methods, acts, or practices declared unlawful by KRS 367.170;

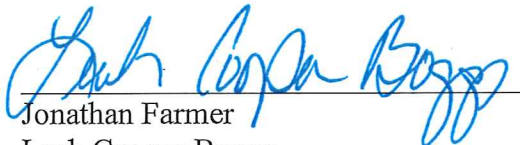
C. A civil penalty of two thousand dollars (\$2,000) pursuant to KRS 367.990 (2) for each year that the Defendants has not filed a registration statement in violation of KRS 367.905 (1) (a) and KRS 367.905 (2) for a total of four thousand dollars (\$4,000);

D. A civil penalty of two thousand dollars (\$2,000) pursuant to KRS 367.990 (2) for each year that the Defendants have not posted a surety bond in violation of KRS 367.905 (1) (b) for a total of four thousand dollars (\$4,000);

E. Plaintiff's reasonable costs of litigation incurred in this action; and

F. Any and all other relief to which the Plaintiff may appear entitled.

ANDY BESHEAR, ATTORNEY GENERAL



Jonathan Farmer
Leah Cooper Boggs
Assistant Attorneys General
Consumer Protection Division
1024 Capital Center Drive
Frankfort, KY 40601
502-696-5448
Jonathan.Farmer@ky.gov

AFFIDAVIT OF ANGELA TURTON

Comes the Affiant, being first duly sworn, and states as follows:

1. I am employed as an administrative specialist in the Office of the Attorney General (hereinafter "OAG"). As part of my duties, I register health spas.
2. I am familiar with the facts stated in this affidavit and am competent to testify to these facts.
3. On February 4, 2016, Fitness World and Oscar E. Salyer, completed the registration for years 2013-2014, 2014-2015, and 2015-2016.
4. The registration was due to renew again on July 1st of 2016. A renewal registration was not received.
5. This Office corresponded with the Defendants on October 11, 2016 and reminded them that a renewal had not been received. See Attachment 1.
6. This Office spoke with Mr. Salyer by telephone on November 14, 2016 (see Attachment 2) and another letter was sent. See Attachment 3.
7. The Office again corresponded with the Defendants on May 15, 2017. See Attachment 4.
8. The Defendants did not renew the registration nor post a bond for the 2016-2017 year.
9. The registration was due to renew again on July 1st of 2017. A renewal registration was not received.
10. The Office against corresponded with the Defendants on August 8, 2017. See Attachment 5.

Exhibit A

11. The Defendants did not renew the registration nor post a bond for the 2017-2018 year.

12. The Defendants, Oscar E. Salyers, and Fitness World, LLC have failed to register as a health spa and post the required bond for the last two (2) registration years of 2016-2017 and 2017-2018.

FURTHER AFFIANT SAYETH NOT.

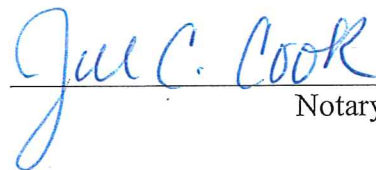
I hereby certify that the foregoing statements are true and correct to the best of my knowledge and belief.



Angela Turton, Affiant

COMMONWEALTH OF KENTUCKY)
COUNTY OF FRANKLIN)

Subscribed and sworn to before me this the 27th day of September, 2017.



Notary Public

My Commission expires 6-22-2019.



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

October 11, 2016

CERTIFIED MAIL

Fitness World
ATTN: Corky Salyers or Lynn Self
PO BOX 1045
Flatwoods, KY 41139

RE: 2016-2017 Health Spa Registration Renewal
HS 103 Fitness World 900 Cherokee Road Raceland, Ky 41169

Dear Mr. Salyers or Ms. Self:

You were registered as a health spa for the 2015-2016 year. A renewal re-
Office by July 1 pursuant to KRS 367.905(2). We have not received your rene-
registration within 10 days or a written response stating that you have ceased
the date you ceased operating.

Failure to comply with the registration requirements while conducting business
in legal action against you by our office. Penalties for operating a health spa
include civil penalties of injunction, restitution, and fines of up to \$2,000.00
operation without proper registration will be treated as a willful violation.

Sincerely,

ANDY BESHEAR
ATTORNEY GENERAL

Kimberly A. Bellamy

Kimberly A. Bellamy, Manager
Office of Consumer Protection
Compliance and Registration
502-696-5534

cc: file



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KENTUCKY 40601

October 11, 2016

CERTIFIED MAIL

Fitness World
ATTN: Corky Salyers or Lynn Self
PO BOX 1045
Flatwoods, KY 41139

RECEIVED

CONSUMER PROTECTION DIVISION

**RE: 2016-2017 Health Spa Registration Renewal
HS 103 Fitness World 900 Cherokee Road Raceland, Ky 41169**

Dear Mr. Salyers or Ms. Self:

You were registered as a health spa for the 2015-2016 year. A renewal registration was due in this Office by July 1 pursuant to KRS 367.905(2). We have not received your renewal. Please send a renewal registration within 10 days or a written response stating that you have ceased operating in Kentucky and the date you ceased operating.

Failure to comply with the registration requirements while conducting business in Kentucky could result in legal action against you by our office. Penalties for operating a health spa without having registered include civil penalties of injunction, restitution, and fines of up to \$2,000.00 per willful violation. Any operation without proper registration will be treated as a willful violation.

Sincerely,

ANDY BESHEAR
ATTORNEY GENERAL

Kimberly A. Bellamy

Kimberly A. Bellamy, Manager
Office of Consumer Protection
Compliance and Registration
502-696-5534

11/14/16 aht
Called and spoke with
Mr Salyers. Advised that
he had been dealing with
medical issues including
memory loss. No one will
sign for certified mail to him
from his gym. Resent final notice non-certified.

22

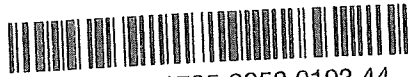
RECEIVED

RECEIVED
JUN 20 1968

0211/07/26

ATTN: Corky Salvors or Lynn Self
PO BOX 1045
Flatwoods, KY 41139

Misses work
ATTN: Corky Salyers or Lynn Self
PO BOX 1045
Flatwoods, KY 41139



9590 9402 1705 6053 0193 44

2. Article Number (Transfer from...)
7008 3230 0001 0444 2042

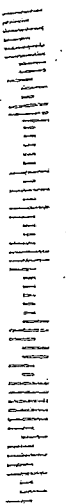
3. Service Type
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☒ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Insured Mail
 - ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PS Form 3811, July 2015 PSN 7530-02-000-9053

CERTIFIED MAIL



COM

OFFICE OF THE ATTORNEY GENERAL



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KENTUCKY 40601

November 14, 2016

FINAL NOTICE

Fitness World
ATTN: Corky Salyers
PO BOX 1045
Flatwoods, KY 41139

**RE: 2016-2017 Health Spa Registration Renewal
HS 103 Fitness World 900 Cherokee Road Raceland, Ky 41169**

Dear Mr. Salyers:

You were registered as a health spa for the 2015-2016 year. A renewal registration was due in this Office by July 1 pursuant to KRS 367.905(2). We have not received your renewal. Please send a renewal registration within 10 days or a written response stating that you have ceased operating in Kentucky and the date you ceased operating.

Failure to comply with the registration requirements while conducting business in Kentucky could result in legal action against you by our office. Penalties for operating a health spa without having registered include civil penalties of injunction, restitution, and fines of up to \$2,000.00 per willful violation. Any operation without proper registration will be treated as a willful violation.

Sincerely,

ANDY BESHEAR
ATTORNEY GENERAL

Kimberly A. Bellamy

Kimberly A. Bellamy, Manager
Office of Consumer Protection
Compliance and Registration
502-696-5534

cc: file



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

May 15, 2017

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601

Fitness World
Attn: Corky Salyer
PO BOX 1045
Flatwoods, KY 41139

RE: 2016-2017 Health Spa Registration Renewal
HS 103 Fitness World – 900 Cherokee Road Raceland, KY 41169

Dear Corky Salyer:

Your file has been turned over to me for action. Under KRS 367.905 you are required to register your health spa with the office of the Kentucky Attorney General every year on or before July 1. Your health spa may also be required to file a bond under KRS 367.906. Fitness World was properly registered for the registration year of 2015-2016. But, Fitness World has not submitted its registration for the 2016-2017 registration year. Please immediately register by submitting the enclosed registration forms. Our office has contacted you several times to inform you that Fitness World has not renewed its registration as a health spa for the 2016-2017 registration year. Your continual operation of a health spa that is not properly registered is a willful violation of the law.

Please be advised that we are preparing to file a lawsuit in this matter and to seek all damages and penalties available under the law. If Fitness World is no longer operating, then you should inform this office that it is not operational in writing. Otherwise, you are directed to complete the enclosed forms and return them to this office within **ten (10) days** of receipt of this letter to avoid legal action. If you have any questions or require additional information, please feel free to call this office and ask to speak to Jonathan Farmer.

Regards,

Jonathan Farmer
Office of Consumer Protection
Kentucky Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601
Direct: (502) 696-5448
Jonathan.Farmer@ky.gov

Attachment 4



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601

August 8, 2017

Mr. Corky Salyer
Fitness World
PO Box 1045
Flatwoods, KY 4119

RE: 2016-2017 & 2017-2018 Health Spa Registration Renewal
HS 103 Fitness World – 900 Cherokee Road, Raceland, KY 41169

Dear Mr. Salyer,

As you know, under KRS 367.905 you are required to register your health spa with the Office of the Attorney General every year on or before July 1. Your health spa may also be required to file a bond under KRS 367.906. Fitness World failed to register and post a bond for both the 2016-2017 and 2017-2018 year.

The Office of the Attorney General intends to file suit seeking a permanent injunction and civil penalties if the registrations for both years are not received by August 21, 2017. Please do not hesitate to contact me if you have any questions.

Sincerely,

ANDY BESHEAR, ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Leah Cooper Boggs".

Leah Cooper Boggs
Assistant Attorney General
Office of Consumer Protection
502-696-5389
Leah.boggs@ky.gov

Attachment 5