

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

STATE OF KANSAS, ex rel.
CARLA J. STOVALL, Attorney General,

Plaintiff,

vs.

FUN & FITNESS, INC., d/b/a THE NEW
MADEMOISELLE and AUGUST MANSKER,
individually and personally,

Defendants.

Case No. 94 C 9151
Court No. 8

JOURNAL ENTRY OF DEFAULT JUDGMENT

NOW on this 16th day of March, 1995, the above-entitled matter comes on regularly before the court for hearing upon the plaintiff's Motion for Default Judgment. The plaintiff appears by and through Kristy L. Hiebert, Assistant Attorney General. The defendant does not appear in person or by counsel.

The court being fully and duly advised finds as follows:

- 1.) Plaintiff's petition was filed herein on August 10, 1994.
- 2.) Defendant August Mansker, as incorporator and registered agent, incorporated Fun & Fitness, Inc., 10550 West 103rd, Overland Park, KS on October 6, 1992.
- 3.) Defendants advertised and sold memberships to individuals from approximately October 6, 1992 to May 29, 1994, to a health club located at 10550 West 103rd Street, Overland Park, KS.

4.) The purchase price for the memberships varied between approximately \$190.00 to \$300.00 plus dues, depending upon the length of the membership, promotional discounts, and various other factors.

5.) Defendants ceased doing business at 10550 West 103rd, Overland Park, KS on or about May 29, 1994.

6.) Defendants are suppliers within the definition of K.S.A. 1993 Supp. 50-624(i) and engaged in consumer transactions in Kansas within the definition of K.S.A. 1993 Supp. 50-624(c).

7.) Service was obtained on defendant August Mansker and on Fun & Fitness, Inc. c/o August Mansker, Resident Agent, by residence service on October 17, 1994. Plaintiff filed Returns on Service on November 2, 1994.

8.) Service was obtained on defendant Fun & Fitness, Inc. d/b/a The New Mademoiselle c/o August Mansker, Resident Agent, and on August Mansker, personally, by certified mail on October 15, 1994. Plaintiff filed Returns of Service on October 31, 1994.

9.) Defendants have not filed an answer or responded to discovery, nor have they otherwise entered an appearance.

10.) On December 16, 1994, plaintiff served on both defendants, via certified mail, return receipt requested, a Notice to Take Default Judgment, pursuant to K.S.A. 60-254(c) and Kan. Ct R. Annot. 118(d).

11.) Defendants August Mansker and Fun & Fitness, Inc. d/b/a The New Mademoiselle have submitted to the jurisdiction of the courts of this state by transacting business within this state

and have entered into consumer transactions as defined by the Kansas Consumer Protection Act, K.S.A. 50-623 et seq.

12.) The court has subject matter jurisdiction and personal jurisdiction over defendants August Mansker and Fun & Fitness, Inc. d/b/a The New Mademoiselle.

13.) Motion for Default Judgment was filed herein on February 15, 1995.

14.) Notice of Hearing on the default judgment was sent to defendants August Mansker and Fun & Fitness, Inc. d/b/a The New Mademoiselle at their last known address on February 14, 1995 by certified mail and was returned to sender by the U.S. Postal Service with a forwarding address.

15.) The Notice of Hearing on the Motion for Default Judgment was resent to both defendants to the forwarding address by certified mail on February 22, 1995, and was returned by the U.S. Postal Service as "Attempted Unknown."

16.) Defendants are in complete default by their non-appearance and failure to defend this action.

17.) By its default, defendant does not deny the allegations set forth in plaintiff's petition. The statements of fact and conclusions of law are therefore incorporated by reference and are adopted as the findings of the court.

18.) Each of the acts or omissions of defendants August Mansker and Fun & Fitness, Inc. d/b/a The New Mademoiselle as set forth in the Petition, ¶11-39, constitute a violation of the Kansas Consumer Protection Act, K.S.A. 50-623 et seq. for each of the consumers involved.

19.) It is unlikely that Defendants August Mansker and Fun & Fitness, Inc. can maintain a legal, equitable or managerial interest in the health spa business without violating the Kansas Consumer Protection Act, K.S.A. 50-623 et seq.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

A) The acts of defendants August Mansker and Fun & Fitness, Inc. d/b/a The New Mademoiselle as set forth in the Petition, ¶11-39, are declared to be violations of the Kansas Consumer Protection Act.

B) Defendants August Mansker and Fun & Fitness, Inc. d/b/a The New Mademoiselle are enjoined from further acts declared to be deceptive and unconscionable and in violation of the Kansas Consumer Protection Act.

C) Defendants August Mansker and Fun & Fitness, Inc. d/b/a The New Mademoiselle are permanently enjoined from owning, managing, operating, or being a partner, director, officer, shareholder, consultant, employee or independent contractor or having any legal, equitable or managerial interest in any organization, entity or enterprise, incorporated or unincorporated, engaged in the business of providing or offering for sale or selling health club services in or from the State of Kansas.

D) All consumer complaints filed after the date of the Notice to Take Default Judgment which are relative to defendants' actions shall be resolved by defendants to the satisfaction of the

Attorney General within 30 days of notice of complaint to the defendants.

E) Defendants August Mansker and Fun & Fitness, Inc. d/b/a The New Mademoiselle are jointly and severally liable for all amounts ordered herein.

F) Defendants August Mansker and Fun & Fitness, Inc. d/b/a The New Mademoiselle are ordered to pay and plaintiff shall have judgment against both defendants for the following sums:

- 1) Pursuant to K.S.A. 50-636, civil penalties in the amount of \$324,000.00 to the State of Kansas. (162 consumers x \$2,000.00)
- 2) Pursuant to K.S.A. 50-632, reasonable investigative fees and expenses in the amount of \$4,725.00 to the Office of the Attorney General. (135 hours x \$35.00/hr.)
- 3) Pursuant to K.S.A. 50-632, restitution to consumers in the amount of \$28,791.21. (Sum of amounts consumers paid for the unused portion of their memberships. This applies to 162 consumers who obtained memberships less than one year before the club closed).

G) Costs of this action are assessed against defendants.

-IT IS SO ORDERED.

STEVE LEBEN

DISTRICT COURT JUDGE

PREPARED AND APPROVED:

Kristy L. Hiebert, #14716
Assistant Attorney General
Office of the Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(913) 296-3751

Attorney for plaintiff

JE#DEF/KRISTYH/MLE