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Fitness Co. Must Face Class Claims Over Membership Deals

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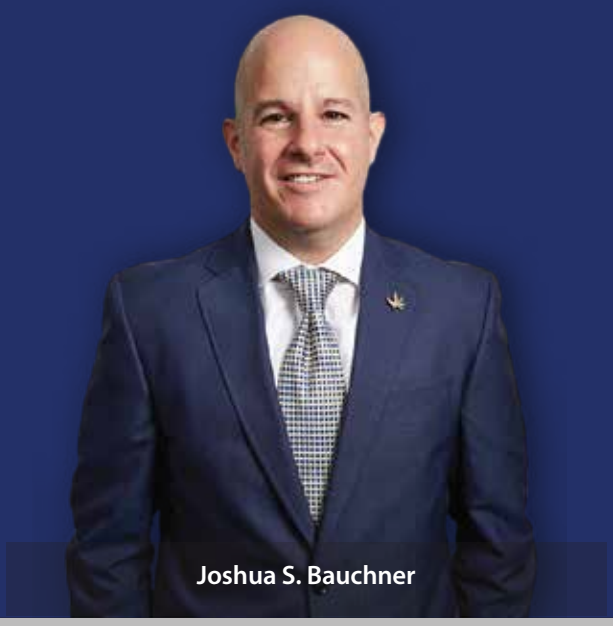
– Joshua S. Bauchner, Ansell Grimm & Aaron

By Bill Wichert



Joshua S. Bauchner

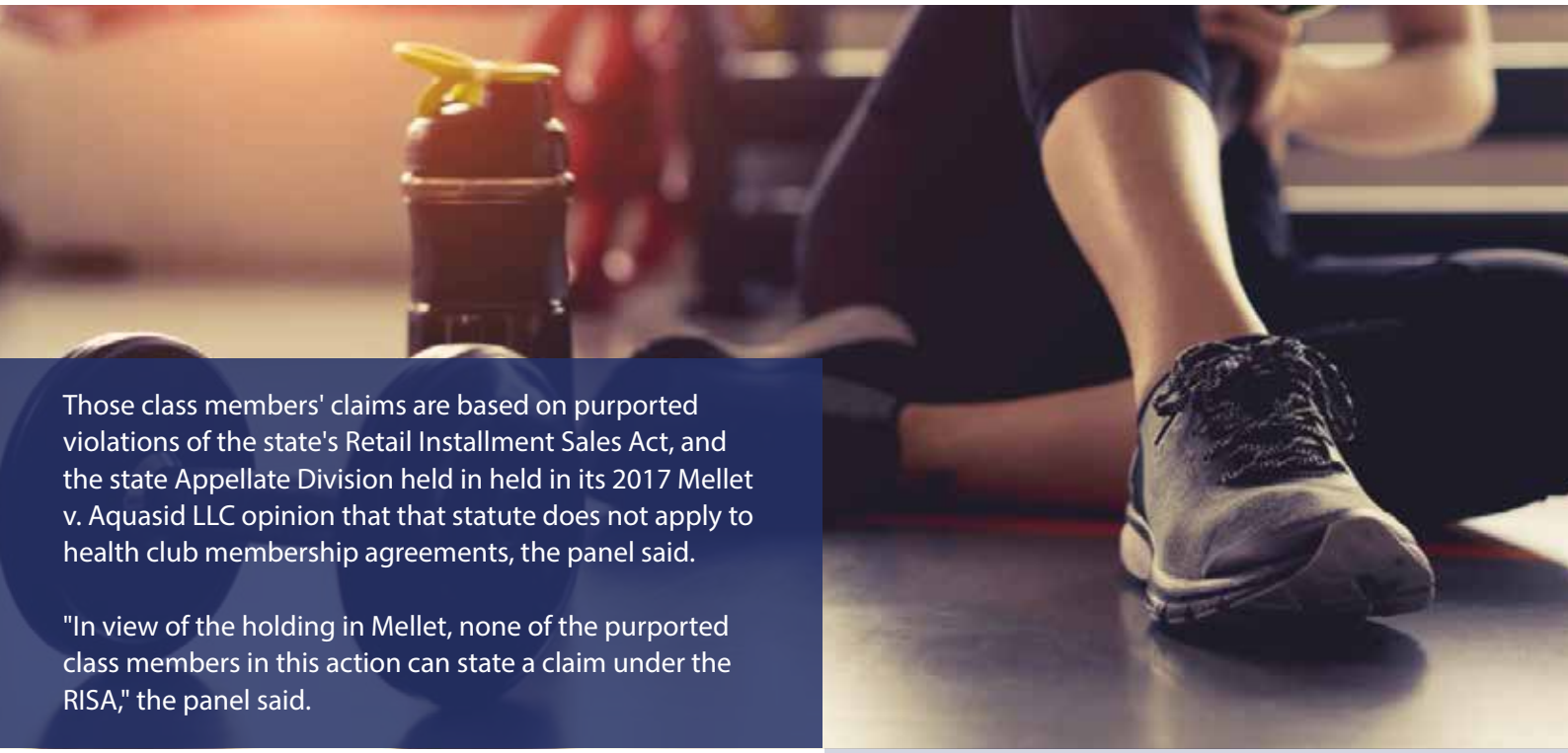
A fitness club company and related businesses fell short in their bid to wipe away class certification in a consumer fraud suit over membership agreements after a New Jersey appeals court said Tuesday they must face claims regarding their cancellation policies.

In upholding part of a trial court's certification ruling in the suit against Retrofitness LLC and other defendants, the panel said state Consumer Fraud Act claims dealing with those cancellation terms — including the provision that cancellation requests be sent via certified mail to a club instead of by email or in person — met the criteria for class certification.

"The point, of course, is that membership agreements that impose unduly restrictive cancellation requirements can readily be viewed as frustrating cancellation, thus evidencing the absence of good faith, honesty in fact, and observance of fair dealing; or, in CFA terms, an unconscionable commercial practice intended to extract extra dues from consumers," the panel said.

The panel affirmed the certification of a subclass of individuals "who canceled or attempted to cancel their membership agreement, and who were charged additional monthly payments and/or an annual rate guarantee fee after the cancellation date." The defendants have identified about 70,000 people who meet the definition of that subclass and paid roughly $2 million in post-cancellation fees, the panel said.

Another subclass — individuals "who paid an annual rate guarantee fee or similar charge" — did not warrant certification, the panel said.



Those class members' claims are based on purported violations of the state's Retail Installment Sales Act, and the state Appellate Division held in held in its 2017 Mellet v. Aquasid LLC opinion that that statute does not apply to health club membership agreements, the panel said.

"In view of the holding in Mellet, none of the purported class members in this action can state a claim under the RISA," the panel said.

The panel vacated the trial court's certification of that subclass and the general class of individuals who enrolled at a Retrofitness club in New Jersey "where the membership agreement used to enroll that person contained terms the same or similar to the membership agreements used in the transactions with the named plaintiffs."

Besides Retrofitness, the defendants include four franchisees and a company that provides billing services to all Retrofitness franchisees in New Jersey. Named plaintiffs Joseph Ardino, Samantha Ardino, Krista A. DeFazio, Scott Richter, James Heaney and Phillip Mazzucco each signed one of the clubs' membership agreements.

The defendants appealed the trial court's certification ruling.

In addition to dismissing the RISA claims, the appellate panel axed claims asserting violations of the state's Truth-in-Consumer Contract, Warranty and Notice Act and the state's Health Club Services Act.

The TCCWNA claims cannot go forward in light of the New Jersey Supreme Court's holding last year in Spade v. Select Comfort Corp. that a consumer isn't an "aggrieved consumer" in the absence of any adverse consequences as a result of the offensive contract terms and isn't owed a monetary penalty under the TCCWNA, according to the panel.

"Although the consumer need not suffer an 'injury compensable by monetary damages' to be aggrieved under the TCCWNA, the consumer must have suffered some harm," the panel said, adding that "no plaintiff has alleged he or she has suffered harm as a consequence" of certain provisions in the membership agreements.

As for their HCSA claims, the plaintiffs contended the defendants violated that statute in various ways, including by not spelling out the members' total payment obligation on the first page of the agreements and by obligating members for more than three years and requiring them to renew their contracts, according to the appellate opinion.

But the panel rejected such allegations, saying the agreements "displayed all fees to be paid by the member" and that the contracts neither obligated

members for more than three years nor required them to enroll in an automatic renewal program. Members who joined that program could cancel their agreements by following the cancellation notice provisions, the panel said.

"Plaintiffs cannot state a claim, let alone satisfy the class action requirements, by superimposing their own interpretations upon clear statutory or contractual terms," the panel said.

An attorney for the plaintiffs, Andrew R. Wolf of The Wolf Law Firm LLC, told Law360 on Tuesday, "We think it's good that the second subclass ... has been confirmed certified on appeal," adding that that group is "a sizable class" with significant damages.

Joshua S. Bauchner of Ansell Grimm & Aaron PC, representing the Retrofitness franchisees, told Law360 on Tuesday, "We are delighted by the court's reversal which confirms that these gym class actions targeting New Jersey small business owners are meritless having rejected seven of the eight claims. We anticipate returning to the trial court and bringing this matter to an expedient close."

Counsel for the other parties could not immediately be reached for comment Tuesday.

Judges Carmen H. Alvarez, William E. Nugent, and Richard J. Geiger sat on the panel for the Appellate Division.

The plaintiffs are represented by Andrew R. Wolf of The Wolf Law Firm LLC, Joseph K. Jones and Benjamin J. Wolf of Jones Wolf & Kapasi LLC and John Poulos and Joseph LoPiccolo of Poulos LoPiccolo PC.

Retrofitness is represented by Justin M. Klein and Steven T. Keppler of Marks & Klein LLP.

The billing company is represented by Jonathan A. Cass of Cohen Seglias Pallas Greenhall & Furman PC.

The franchisees are represented by **Joshua S. Bauchner and Michael H. Ansell of Ansell Grimm & Aaron PC.**

The case is Joseph Ardino et al. v. Retrofitness LLC et al., case number A-2836-16T1, in the Superior Court of New Jersey, Appellate Division.

--Additional reporting by Jeannie O'Sullivan. Editing by Marygrace Murphy.