

DIVISION OF CONSUMER SERVICES
(850) 410-3800



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TALLAHASSEE, FLORIDA 32399-6500

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER NICOLE "NIKKI" FRIED

April 12, 2019

VIA: USPS

Suzanne Van Wyk
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

RE: AGENCY FINAL ORDER
Case No. 1809-43450
Agency Clerk Tracking No. B17296

Enclosed is a copy of the Department's final agency action in the matter of the above-referenced case.

Please read the Final Order. You have 30 days from the rendition of the Final Order to request a notice of right to a judicial review.

Should you have any questions please contact me at (850) 410-3772.

Sincerely,

Nicole Fried
COMMISSIONER

Anita Francis
Regulatory Consultant
Anita.francis@freshfromflorida.com

Enclosure: Final Order

FILED
2019 APR 15 PM 1:35
DIVISION OF
ADMINISTRATIVE HEARINGS

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

SHERYL KOZIARSKI,

Petitioner,

v.

PONTE VEDRA A1A, INC., d/b/a
PONTE VEDRA FITNESS and HUDSON
INSURANCE COMPANY, AS SURETY,

Respondents.

FDACS Case No.: 1809-43450
DOAH Case No.: 18-5655
Agency Clerk No.: B17296

FINAL ORDER

THIS CAUSE came before the Department of Agriculture and Consumer Services for consideration and final agency action following issuance of the attached Amended Recommended Order by The Honorable Suzanne Van Wyk, Administrative Law Judge (ALJ) with the Division of Administrative Hearings.

Sheryl Koziarski (Petitioner) filed a timely claim against the surety bond held by Ponte Vedra A1A, Inc., d/b/a Ponte Vedra Fitness (Respondent). Petitioner's claim (FDACS Case No. 1809-43450) alleged a breach of contract on the part of Respondent. On October 15, 2018, Respondent submitted a hearing request that included disputes of material facts.¹ On October 23, 2018, the case was referred to the Division of Administrative Hearings so that a formal hearing could be conducted pursuant to section 120.57(1), Florida Statutes.

¹ Hudson Insurance Company, which had issued the bond held by Respondent pursuant to § 501.016, Florida Statutes, did not request a hearing in the matter and made no appearance in these proceedings.

The ALJ's Recommended Order was entered on January 11, 2019. On January 29, 2019, an Amended Recommended Order was entered. No party filed exceptions to the Recommended Order or to the Amended Recommend Order.

STATEMENT OF THE ISSUE

Whether Respondent is liable to Petitioner for the balance of funds paid for a health studio membership contract, and if so, in what amount.

FINDINGS OF FACT

1. The Department is charged with regulating Florida health studios, pursuant to sections 501.012-501.019, Florida Statutes.
2. After review of the record, it is determined that the Findings of Fact set forth in paragraphs 1 through 11 of the Amended Recommended Order are supported by competent, substantial evidence, and the Department adopts and incorporates them as if fully set forth herein.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter and parties to this proceeding pursuant to chapters 120 and 501, Florida Statutes.
2. The Conclusions of Law set forth in paragraphs 12 through 16 of the Amended Recommended Order are supported by law, and the Department adopts and incorporates them as if fully set forth herein.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, and being otherwise fully advised in the premises it is hereby **ORDERED** that:

- A. Petitioner's claim against Respondent and its surety bond is **DENIED**;
- B. The attached Amended Recommended Order is adopted *in toto*.

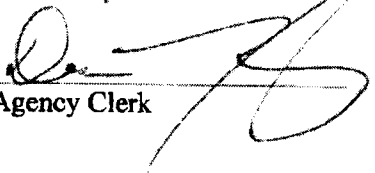
DONE and ORDERED in Tallahassee, Florida, this 11th day of April, 2019.


MATTHEW VAN NAME
CHIEF OF STAFF

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party to these proceedings adversely affected by this Final Order is entitled to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Judicial review proceedings must be instituted by filing a Notice of Appeal with the Department's Agency Clerk, 407 South Calhoun Street, Suite 509, Tallahassee, Florida, 32399-0800, within thirty (30) days of rendition of this order. A copy of the Notice of Appeal must be filed with the Clerk of the appropriate District Court of Appeal accompanied by any filing fees prescribed by law.

Rendered this 11th day of April 2019.


Agency Clerk

Copies furnished to:

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Jacksonville Beach, Florida 32250

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