

STATE OF NEW YORK
SUPREME COURT: COUNTY OF BROOME

PEOPLE OF THE STATE OF NEW YORK
by LETITIA JAMES,
Attorney General of the State of New York,

**NOTICE OF
ENTRY**

Petitioner,

Index No.: EFCA 2018002420
RJI No.: 2018-1163-M

against

AAUCONNECT.COM, LLC
d/b/a New York International Academy,
CHRIS BEVIN and HAZEL WARD,

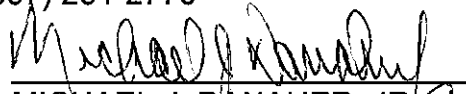
Respondents.

PLEASE TAKE NOTICE that the within is a true and complete copy of the Decision and Order on damages in this proceeding duly entered in the Broome County Clerk's Office on September 10, 2021.

DATED: Binghamton, New York
September 10, 2021

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By:


MICHAEL J. DANAHER, JR.
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At a Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District, at the Broome County Courthouse, in the City of Binghamton, New York on the 26th day of August 2019.

PRESENT: HONORABLE JEFFREY A. TAIT
JUSTICE PRESIDING

STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME

PEOPLE OF THE STATE OF NEW YORK
by LETITIA JAMES, Attorney General of the State
of New York,

Petitioner,

DECISION AND ORDER

vs.

Index No. EFCA 2018-2420
RJI No. 2018-1163-M

AAUCONNECT.COM, LLC
d/b/a New York International Academy,
CHRIS BEVIN and HAZEL WARD,

Respondents.

APPEARANCES:

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Angel Antonio Castro, III, Esq.
Attorney for the Respondents
300 East 95th Street, Suite 172
New York, NY 10128

HON. JEFFREY A. TAIT, J.S.C.

This matter is before the Court for a calculation of the damages in this matter. Liability was established by the Court's Decision and Order dated May 11, 2020 (Decision). The respondents filed a notice of appeal of that Decision. As the record indicates that appeal was never perfected, it appears the liability determination is now final.

The State filed its proposed calculation of damages in the form of an affirmation of Assistant Attorney General Mr. Danaher dated August 27, 2020 detailing the testimony of the witnesses and their recounting of the expenses and damages they incurred. It includes affidavits of participants or parents of participants in the program and exhibits detailing their expenditures and damages.

In opposition, the respondents submitted the affirmation of their attorney.

The State submitted the sur-reply affirmation of Mr. Danaher.

Entitlement to damages

The State has provided affidavits and supporting documents detailing the sums claimed and showing the payments made, to whom they were made, and the purpose of such payments. The payments consist of fees and tuition for various aspects of the services AAU Connect promised to provide. In some instances, they also consist of transportation and lodging costs for the initial arrival to begin participation in the program and to withdraw from the program and return home. The State has also requested that any as yet unidentified aggrieved consumers be given a reasonable period of time after the issuance of the judgment in this matter to submit a claim with verification of the amount paid to join the program. In its memorandum

of law, the State suggests a window period of 90 days and proposes that the Attorney General have “sole discretion . . . to determine the legitimacy of the claim and the amount of any refund and then notify Respondents as to the amount they must pay.”

The respondents assert the claimants identified by the State are not entitled to damages. They oppose any award of damages or restitution where the specific misrepresentations relied on by such claimants are not identified. They assert the claims supported by the parents of participants in the program lack firsthand knowledge, are hearsay, and are unsupported by actual knowledge. They argue there is no basis to award damages for the 2015-2016 seasons and after, as the representations and marketing material were materially different from those which existed for the earlier program participants. They assert that even if some damages are awarded, they should be only a partial refund as a program did exist and at least some of the claimants did participate in the program. They note that for the 2018-2019 program, the complaints were mostly limited to favoritism by the coach and did not involve other aspects of the program. They assert there is no basis upon which to allow additional time for claimants who have not yet submitted claims to submit claims now or at some point in the future. They argue the State has waived civil penalties by failing to specify, claim, or allege any basis for civil penalties.

In reply, the State points out that civil penalties were requested in the petition, with the basis for them set forth in the memorandum of law. The State also points out that the Court heard four days of testimony from many claimants regarding the respondents’ specific misrepresentations and other fraudulent conduct and, in addition, it submitted numerous affidavits from these and other claimants confirming the hearing testimony that the respondents

did not provide what they advertised and promised. The State argues that the claims of the participants' parents are valid because they are typically the ones who reviewed the respondents' website, spoke with the respondents Bevin and Ward, made arrangements to bring their child to the program, paid the respondents, and are owed restitution. The State points out that during the hearing former coaches, participants, and parents testified how they were misled into joining the program, the respondents failed to establish what, if anything, changed in their marketing materials on a yearly basis, and the respondents cannot now relitigate this issue.

Law

The Decision found that the "statements and representations made by AAU Connect¹ have the capacity or tendency to deceive or create an atmosphere conducive to fraud," rendering the respondents liable under Executive Law § 63(12). The State seeks restitution for the claimants pursuant to Executive Law § 63(12), which provides that "[w]henver any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York ... for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts [and] directing restitution and damages...." (*People by Schneiderman v. Credit Suisse Sec. (USA) LLC*, 31 NY3d 622, 636 [2018], quoting Executive Law § 63[12]).

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While the Decision refers to AAU Connect, the hearing testimony was clear that both Ward and Bevins were actively involved in committing the fraud.

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The State also seeks “a sum not exceeding two thousand dollars against each defendant” as allowed by CPLR § 8303(a)(6) in an Executive Law § 63(12) special proceeding.

CPLR § 8303(a)(6) provides, in pertinent part:

“(a) **Discretionary allowance in action.** Whether or not costs have been awarded, the court before which the trial was had, or in which the judgment was entered, on motion, may award:

...

6. to the plaintiffs in an action or proceeding brought by the attorney-general . . . under subdivision twelve of section sixty-three of the executive law . . . , a sum not exceeding two thousand dollars against each defendant.”

The Decision also found that AAU Connect engaged in a pattern of consumer-oriented conduct that is materially misleading and resulted in injury in violation of General Business Law § 349. The State seeks civil penalties pursuant to Article 22-A, § 350-d in the amount of \$5,000 for each of the consumers defrauded by the respondents in violation of that article.

General Business Law § 350-d provides:

“Any person, firm, corporation or association or agent or employee thereof who engages in any of the acts or practices stated in this article to be unlawful shall be liable to a civil penalty of not more than five thousand dollars for each violation, which shall accrue to the state of New York and may be recovered in a civil action brought by the attorney general. In any such action it shall be a complete defense that the advertisement is subject to and complies with the rules and regulations of, and the statutes administered by the Federal Trade Commission or any official department, division, commission or agency of the state of New York.”

The damage claims

Each claimant’s damage claim is summarized in the following chart, with the amounts requested and awarded set forth therein and with the rationale in that regard discussed below:

<u>Claimant²</u>	<u>Damages</u>	<u>Comments</u>
Tamil Parker	Claimed: \$10,195.00 Awarded: \$10,195.00	This claim is for \$9,674 in tuition paid to AAU for her son Chapelle Parker-Turner for the 2016-2017 season, including a \$550 deposit, \$500 in 6/16, \$5,000 8/16, and \$3,845 in 9/16, as well as a \$250 room deposit and late fees. The September payment was a high interest loan. He arrived for the season 10/1/16 and left 10/10/16.
Cole Norris	Claimed: \$6,276.00 Awarded: \$6,276.00	This claim includes payments made to AAU totaling \$6,276 for his son Fidel for the 2016-2017 season, including a \$650 deposit 7/15/16, \$5,000 9/1/16, and \$600 9/2/16. A \$26 payment was made in 10/16. He arrived for the season 10/1/16 and left 10/21/16.
Joseph Bryant	Claimed: \$9,889.00 Awarded: \$9,889.00	This claim is for \$7,884 paid to AAU for his son David for the 2016-2017 season, plus \$1,802 for airfare from the UK and \$203 for hotel accommodations. He arrived for the season 10/1/16 and left within days.
Tamara Smith	Claimed: \$15,897.50 plus interest Awarded: \$15,897.50	This claim is for a \$15,897.50 paid to AAU including origination fees plus 13.97% interest on the loan they arranged for her son Treasure for the 2018-2019 season. He arrived for the season 9/1/18 and left that day.
George Pop	Claimed: \$2,000.00 Awarded: \$2,000.00	This claim includes the \$2,000 down payment made to AAU on 8/10/17 for his son Razvan for the 2017-2018 season. He never attended as he was unable to obtain a visa to travel from Austria and stay for the program. Mr. Pop states Ms. Bevins then refused to return the deposit, informing him for the first time it was non-refundable.

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The claimant is the individual who submitted the affidavit in support of the claim, as detailed in the comments.

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Mackenzie Delatore	Claimed: \$2,500.00 Awarded: \$4,542.00³	This claim seeks a partial refund of the amount paid for her son Daxtonn to participate in the 2017-2018 season, including \$4,192 paid to AAU plus a \$350 cash payment for an apartment/key deposit. She seeks a \$2,500 refund, as her son did receive "some food and lodging, although it was nothing like they represented."
Kevin Austria	Claimed: \$13,357.00 Awarded: \$13,357.00	This claim includes a \$2,000 down payment on 8/31/17, tuition of \$6,707 and \$2,100 paid 9/21/17, \$2,200 for the meal plan, and the apartment/key deposit of \$350 paid to AAU for the 2017-2018 season. He left two months later in December.
Kago Mothale	Claimed: \$14,525.00 Awarded: \$14,525.00	This claim includes a \$3,500 deposit paid to AAU on 10/7/17, plus \$11,025 paid on 11/8/17 by Botswana National Basketball through the Botswana Embassy for the 2017-2018 season. He also left the program in December.
Troy Pheko	Claimed: \$9,700.00 Awarded: \$14,375.00⁴	This claim seeks a partial refund for the 2017-2018 season. \$14,025 was paid to AAU for a six-month program on 10/1/17. That program began 10/1/17 and he left at the end of November. He seeks a 2/3 refund (2/3 of \$14,025 = \$9,350), plus return of the \$350 apartment/key deposit.
Gassy Tchinkati	Claimed: \$11,800.00 Awarded: \$11,800.00	This claim includes payments to AAU for the 2017-2018 season of \$10,000 on 8/14/17, \$1,500 on 8/28/17, and \$300 for the apartment/key deposit. He attended the program from 10/1/17 until 12/12/17. The program was to end 3/31/18.

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For the reasons stated below, this claimant is entitled to a full refund for the program.

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As discussed below, this claimant is entitled to a full refund for the 6-month program, including the two months Mr. Pheko participated in it. However, there is no refund for the off-season training program, which he does not request, as there is no information before the Court regarding that program.

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Larry Giles	Claimed: \$12,560.00 Awarded: \$12,560.00	This claim includes the following payments totaling \$12,560 made to AAU for his son Isaiah to play during the 2018-2019 season: \$5,000 on 8/22/18, \$5,000 on 8/23/18, \$2,560 on 6/20/18.
Luis Baez	Claimed: \$9,807.00 Awarded: \$9,807.00	This claim includes his payments to AAU totaling \$9,807 for the 2016-2017 season.
Adam Bank	Claimed: \$13,850.00 Awarded: \$13,850.00	This claim includes payments to AAU totaling \$13,850 for the 2018-2019 season, including payments of \$1,990, \$7,740, and \$4,120.
Jennifer Berti	Claimed: \$13,269.50 Total Awarded: \$12,999.50⁵	This claim includes the following payments made by Ms. Berti and her mother Sharon Berti on behalf of Ms. Berti's son Isaac Drake for the 2017-2018 season: by Ms. Berti - \$2,050 deposit 8/3/17, \$1,050 meal plan 8/25/17, and \$550 meal plan 10/27/17 totaling \$3,650 to AAU. By Sharon Berti - \$7,794 payment to AAU 8/11/17, \$1,555.50 for airfare on 08/21/17 and 11/9/17 totaling \$9,349.50.
Derrick Bussey, Sr.	Claimed: \$10,634.58 Awarded: \$10,634.58	This claim includes the following payments made on behalf of Mr. Bussey's son, Derrick Jr., for the 2016-2017 season: \$10,154.00 to AAU (\$25 on 8/12/16, \$2,050 on 8/26/16, \$2,050 on 9/30/16, \$2,200 on 9/07/16, \$55 on 10/19/16, \$2,050 on 10/28/16, \$1,724 on 11/30/16) and \$480.58 for travel expenses.
LaKeisha Jackson	Claimed: \$2,123.00 Awarded: \$2,123.00	This claim includes the following payments made to AAU on behalf of Ms. Jackson's son Dai'juan, for the 2019-2020 season: \$1,000 on 5/23/19, \$603 on 6/7/19, and \$520 on 6/15/19.
Marc Mathieu	Claimed: \$2,698.00 Awarded: \$2,698.00	This claim includes the following payments made to AAU for the 2018-2019 season: \$78 in fees on 5/27/18, \$1,260 in tuition and fees on 12/1/18, and \$1,360 in tuition and fees on 12/26/18.

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The reduction is due to a difference in the mathematical calculation.

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Jonae Santos Powe	Claimed: \$4,400.00 Awarded: \$4,400.00	This claim includes the following payments made to AAU on behalf of Ms. Powe's son Angelo Santos, for the 2016-2017 season: \$2,050 on 10/1/16, \$300 key deposit on 9/26/16, and \$2,050 on 8/17/16.
Quintina McDowell	Claimed: \$5,025.00 Awarded: \$5,025.00	This claim includes \$5,025 paid to AAU on behalf of Ms. McDowell's son Teewan Wigginton for the 2015-2016 season.
Sheryl Williams	Claimed: \$9,272.92 Awarded: \$9,272.92	This claim includes \$9,100 paid to AAU on behalf of Ms. Williams's son Dunnell Stafford for the 2016-2017 season and \$172.92 in airfare for Dunnell to attend the program from Georgia.
Silvana Peralta	Claimed: \$10,690.99 Awarded: \$10,690.99	This claim includes \$10,050 paid to AAU on behalf of Ms. Peralta's son Juan Cruz Carreiro for the 2019-2020 season and \$640.99 in airfare and bus fare for her son to attend the program from Argentina. She states the program shut down in 11/19 and never restarted.
Beverlyn Esquerra	Claimed: \$1,885.00 Awarded: \$1,885.00	This claim includes \$1,535 paid to AAU on behalf of Ms. Esquerra's son Zephaniah for the 2019-2020 season and \$350 paid in cash for the room and key deposit. She states the program shut down in 11/19 and never restarted.
Abdifatah Mohamed	Claimed: \$7,900.00 Awarded: \$7,900.00	This claim includes \$7,900 paid to AAU on behalf of Mr. Mohamed's son Abdifatah for the 2015-2016 season: \$6,875 on 8/29/15 and \$1,025 on 7/20/15.
Olivier Brule	Claimed: \$8,631.00 Awarded: \$8,631.00	This claim includes \$7,501 paid to AAU on behalf of Mr. Brule's son Corentin for the 2015-2016 season and \$1,130 in travel expenses to transport him to the program from France and back.

Raphael Provenza De Miranda Rohlfis	Claimed: \$9,625.00 Awarded: \$9,625.00	This claim includes \$9,625 his father Wagner Cancado Rohlfis paid AAU for Raphael to participate in the 2015-2016 season: \$1,025 on 8/25/15 and \$8,600 on 9/29/15. He states he was housed in a run-down motel and forced to vacate it towards the end of the program when Mr. Bevins failed to pay the bill, leaving them with no place to live until "kind people in Endicott" took them in.
Simon Selmann	Claimed: \$2,500.00 Awarded: \$2,500.00	This claim includes \$2,500 paid to AAU on 1/7/16 for the January-March 2016 season.
Henson Ujoh	Claimed: \$11,375.00 Awarded: \$11,375.00	This claim includes \$11,375 paid to AAU on for the 2018-2019 season: \$35 on 7/30/18, \$5,030 on 8/27/18, \$5,030 on 9/24/18, \$1,280 on 9/28/18.

Analysis

Through the hearing testimony, the State established the AAU Connect program and its principals Chris Bevin and Hazel Ward committed fraud pursuant to Executive Law § 63(12), deceptive acts and practices in violation of GBL § 349 which constitute repeated and persistent illegality in violation of Executive Law § 63(12), and false advertising in violation of GBL § 350 which constitutes repeated and persistent illegality in violation of Executive Law § 63(12). The petition sought to enjoin the respondents' deceptive, fraudulent, and illegal business practices related to their ownership and operation of a postgraduate basketball training and exposure program and to recover restitution and damages for those victimized by those unlawful practices, civil penalties, and statutory costs.

While the respondents argue there is no basis to award damages for the 2015-2016 seasons and beyond, the hearing testimony provided ample basis for such an award. Mr.

Doherty testified concerning the issues plaguing the AAU Connect program during his time as head coach during the 2015-2016 season and a few weeks at the beginning of the 2016-2017 season.⁶ Tamil Parker, Aisha and Cole Norris, and David Bryant testified concerning the issues that existed during the 2016-2017 season. George Pop, Daxtonn Delatore, and Kevin Austria testified concerning the issues that existed during the 2017-2018 season. Ryan Carney testified concerning the issues that existed during his time as head coach from November 2017 until April 1, 2018. Larry Giles testified concerning the issues that existed during the 2018-2019 season. Tamara Smith submitted a detailed affidavit concerning what was advertised and what the reality was when she went to drop off her son for the 2018-2019 season, leading her to take him home. Affidavits submitted from the four claimants with respect to the 2019-2020 season all assert that the program shut down prematurely in November 2019 and never restarted.

The amounts of damages and to whom they are awarded is now before the Court. The chart above lists each claimant's damages, the amounts they claim, and the purpose of the payments. The claimants are entitled to the damages to the extent indicated in the chart. To the extent someone other than the claimant paid all or part of the amount claimed and awarded, that is a matter for resolution by the claimant and that other entity or person. The Court makes no determination as to how any damage award should be allocated or apportioned between them in those circumstances.

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He testified he returned to work shortly before the season started on October 1, 2016 and quit the second week of October 2016.

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In the Court's view, whether a player stayed in the program for two days, two weeks, two months, or the whole season does not change the fact that, as a whole, the respondents' program was not even close to what was advertised, as detailed in the prior Decision. There were several families who testified and/or stated in an affidavit that they attempted to leave or expressed the desire to withdraw from the program after making partial payments, only to be told for the first time of the supposed no refund policy. Some of these families left anyway -- some within days or weeks or a few months -- but some stayed for all or a majority of the program, believing they would otherwise forfeit the funds they had already paid. The Decision states, "It is clear to this Court that none of the participants involved in this action received the services promised by AAU Connect." Accordingly, all of these families are entitled to a full refund.

Any as yet unidentified aggrieved consumers shall have 90 days after the issuance of the judgment in this matter to submit a claim with verification of the amount paid to join the program. The claim shall be submitted to the Court as a supplemental filing via NYSCEF. Notice to the respondents through their counsel via NYSCEF is sufficient. The respondents shall have 30 days from the date the claim is filed via NYSCEF to file any papers in response. In the event that the respondents elect to retain new counsel or proceed as self-represented litigants, it will be the obligation of the respondents or their new counsel, as applicable, to update their email address(es) through NYSCEF to ensure that they receive notice of any newly filed claims. Upon expiration of the 30-day period, the Court will determine the legitimacy of the claim and the amount of any refund consistent with the findings in both the prior Decision and herein.

This leaves the State's requests for costs and sanctions. For the reasons set forth herein and in the Decision, those requests are granted as follows: a discretionary allowance of \$2,000 is awarded as against each of the three respondents pursuant to CPLR § 8303(a)(6) and civil penalties in the amount of \$5,000 for each of the 27 claimants defrauded by the respondents are awarded against the respondents pursuant to General Business Law § 350-d.

In total, this amounts to \$141,000 in costs and sanctions awarded to the State. This is awarded in addition to the restitution awarded to the claimants, which totals approximately \$240,000. It is presumed that the State will first prioritize full payment to the claimants and will only pursue its right to costs and sanctions once the restitution claims are fully paid. Accordingly, this Decision and Order provides for payment of full restitution to the claimants first and then, once the restitution claims are fully paid, the State may seek to recoup its costs and sanctions as awarded herein. To the extent the State disagrees with the Court's ruling on this issue, it may make an application to be heard in that regard.

A final observation

It is abundantly clear that AAU Connect, Mr. Bevin, and Ms. Ward took advantage of the young men and their parents based on their dream of playing Division I basketball. That might not have been a violation of the statutes at issue here if the AAU Connect program provided the level of service and opportunity it represented it would. It did not.

It seems reasonably clear the young men here had limited reasonable prospect of playing Division I college basketball. This is not a knock on their talent or ability – they all were in a real sense very good basketball players. What they were not is extraordinarily

talented, superb basketball players as is required to gain a spot on a college Division I basketball team.

AAU Connect, Mr. Bevin, and Ms. Ward are not responsible for the damages because they did not turn these young men into Division I basketball players. They violated the statutes in question because they did not provide the services they promised. On top of that, they lured these young men into the program – and their parents into funding their participation in it – by making it appear that they operated a substantial program providing a Division I-like experience adjunct to an operating private high school with a renowned high school basketball program. It isn't that their program fell short of this. That program didn't even exist. It was a total fabrication. This is what renders them responsible for the damages and civil penalties awarded herein.

Conclusion

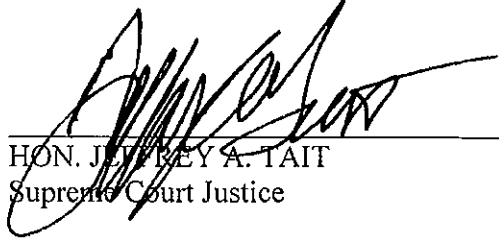
Based on the foregoing, the above-referenced claimants are each entitled to restitution as set forth in the chart above.

The State is awarded a discretionary allowance of \$2,000 against each of the three respondents pursuant to CPLR § 8303(a)(6) and civil penalties totaling \$135,000 pursuant to General Business Law § 350-d against the respondents, both of which may be collected once the restitution claims are fully paid to the above-referenced claimants.

Any as yet unidentified aggrieved consumers shall have 90 days after the issuance of the judgment in this matter to submit a claim with verification of the amount paid to join the program via NYSCEF, as set forth above.

This Decision shall also constitute the Order of the Court pursuant to rule 202.8(g) of the Uniform Rules for the New York State Trial Courts and it is deemed entered as of the date below. To commence the statutory time period for appeals as of right (CPLR 5513[a]), a copy of this Decision and Order, together with notice of entry, must be served upon all parties.

Dated: September 10, 2021
Binghamton, New York



HON. JEFFREY A. TAIT
Supreme Court Justice