

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

This matter is before the Court on the Petition of the People of the State of New York (State) seeking relief under New York Executive Law § 63(12) and General Business Law (GBL) Article 22-A to enjoin the Respondents AAUCONNECT.COM, LLC d/b/a New York International Academy (AAU Connect), Chris Bevin (Bevin), and Hazel Ward (Ward) from continuing what the State claims are deceptive, fraudulent, and illegal business practices in connection with their ownership and operation of a high school and postgraduate high school basketball business. AAU Connect, Bevin, and Ward deny most of the operative allegations of the Petition and seek its dismissal.

This matter arises out of the desire of young athletes to play college basketball at the highest level. It also arises out of their parents' desire to see their children attain their dreams. This case is about the Respondents' role in helping them attain those dreams or, as the State contends, using those dreams to take advantage of them.

It was Frank Sinatra who sang:

“Fairy tales can come true, it can happen to you  
If you're young at heart  
...  
You can go to extremes with impossible schemes  
You can laugh when your dreams fall apart at the seams...”

The young men and their families who participated in the program found it very difficult to laugh as their dreams fell apart. And fall apart they did.

### Procedural Background

The State commenced this special proceeding by filing an Order to Show Cause and Verified Petition with the Broome County Clerk's Office on September 17, 2018. The Petition contains the following three causes of action: (1) fraud pursuant to Executive Law § 63(12); (2) deceptive acts and practices in violation of GBL § 349 which constitute repeated and persistent illegality in violation of Executive Law § 63(12); and (3) false advertising in violation of GBL § 350 which constitutes repeated and persistent illegality in violation of Executive Law § 63(12). The Petition seeks to enjoin the Respondents' allegedly 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.

The State sought an Order permitting alternative service and ultimately obtained a default judgment. The Respondents moved to vacate the Order permitting alternative service and the default judgment.

By Decision and Order dated November 9, 2018, the Court denied the motion to vacate the Order to Show Cause insofar as it permitted alternate service on the Respondents and granted the motion vacating the default judgment, directed the State to hold in escrow any funds received by execution upon the Judgment, directed that the State not further seek to enforce the Judgment, and continued the Judgment to stand as security pending the final disposition of the Petition.

The Respondents filed their Answer to the Petition on November 24, 2018. The Answer includes a Counter Statement of Facts and Affirmative Defenses and/or Objections in

Point of Law. The Respondents also filed numerous affidavits and exhibits in support of their claim that the Petition should be dismissed.

The State filed reply affidavits and exhibits on December 3, 2018.

Counsel for both parties presented oral argument in support of their positions on January 29, 2019. At that time, it appeared there were issues that could only be decided after an evidentiary hearing, while others could be decided based on the written submissions of the parties. For those issues requiring an evidentiary hearing, the hearing was scheduled for May 28 and 29, 2019. The other issues were decided by Decision and Order dated June 4, 2019.

The June 4, 2019 Decision and Order enjoined the Respondents from continuing to make or have certain representations or statements on their website, including ones: about high school or girls' basketball programs; that reference or describe accommodations other than actual photographs and descriptions of actual accommodations available to participants;<sup>1</sup> and that suggest meals are designed and prepared by a top chef or served at a restaurant or restaurant like facility.

A status conference was also scheduled for February 22, 2019. At that conference, the Respondents' counsel requested an adjournment of the May 28 and 29, 2019 hearing dates. That request was granted and the hearing was rescheduled for August 26 and 27, 2019. The hearing was held on those dates and on October 7 and 8, 2019.

The parties submitted post-trial memoranda. The Petitioner's post hearing submittal was filed on November 4, 2019 and the Respondents' post hearing submittal was received on

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They were directed to include the actual street address of any reference to or photograph of the accommodations.

December 6, 2019. The Petitioner filed a supplemental post hearing memorandum on December 17, 2019.

### Law

Executive Law § 63(12) provides the Attorney General with authority to seek a court order enjoining the continuance of fraudulent or illegal acts or fraud or illegality in the carrying on, conducting, or transaction of business and providing restitution and damages. Fraud is defined in the statute as “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

“Section 63(12) is construed liberally to effectuate its remedial purpose. As with the Martin Act, neither intent nor reliance need be proven to establish fraud under § 63(12). Ultimately, the ‘test for fraud’ under § 63(12) is whether the targeted act has the capacity or tendency to deceive or creates an atmosphere conducive to fraud” (*People v. Exxon Mobil Corp.*, 65 Misc3d 1233(A) [Sup Ct, NY County 2019] [internal quotation marks and citations omitted]).

General Business Law § 349 provides that deceptive acts and practices in business are unlawful. The elements of a claimed violation of General Business Law § 349 are (1) consumer-oriented conduct that is (2) materially misleading and (3) resulted in injury (*see Koch v. Acker, Merrall & Condit Co.*, 18 NY3d 940, 941 [2012]). While General Business Law § 349 claims are similar to fraud claims, the statute “contemplates actionable conduct that does not necessarily rise to the level of fraud” (*Gaidon v. Guardian Life Ins. Co. of Am.*, 94 NY2d 330, 343 [1999]). A deceptive act or practice is a “representation or omission ‘likely

to mislead a reasonable consumer acting reasonably under the circumstances” (*id.* at 344 [citations omitted]; *see also Benetech, Inc. v. Omni Fin. Group, Inc.*, 116 AD3d 1190, 1191 [3d Dept 2014]).

Even where there is a disclaimer (albeit not sufficiently prominent or clear), solicitation statements may be materially misleading as a matter of law (*see Matter of People v. Orbital Publ. Group, Inc.*, 169 AD3d 564, 565 [1st Dept 2019]; *see also People v. One Source Networking, Inc.*, 125 AD3d 1354 [4th Dept 2015]). To recover damages under General Business Law § 349, a plaintiff need not prove intent to defraud or justifiable reliance (*see Small v. Lorillard Tobacco Co.*, 94 NY2d 43, 55 [1999]). However, the plaintiff “must prove actual injury, though not necessarily pecuniary harm” (*Amalfitano v. NBTY Inc.*, 128 AD3d 743, 746 [2d Dept 2015] [citations omitted]).

#### **The hearing**

Both parties produced the testimony of witnesses and introduced exhibits in support of their claims.

In support of the Petition, the Attorney General produced the testimony of Brendon Doherty, Cole Norris, Tamil Parker, Aisha Norris, Fidel Norris, Daxtonn Delatore, Christopher Marion, Ryan Carney, Kevin Austria, Larry Giles, Isaiah Giles, David Bryant, and Viorel (George) Gheorghe Pop. The Respondent AAU Connect produced the testimony of Christopher Bevin and Hazel Ward.

Mr. Doherty was an assistant basketball coach at a local community college and the Director of Health, Physical Education, and Community Education at the local Jewish

Community Center in 2013 and 2014. Mr. Doherty joined the AAU Connect program after meeting with Mr. Bevin several times. He became the head coach of the program.

Mr. Doherty handled numerous things beyond the basketball coaching duties, which included receiving and handling complaints from the participants. In particular, there were complaints about the housing, which at the time was located at the Red Carpet Inn in Endicott, NY. He looked into this issue and confirmed the accommodations were dirty, not well maintained, and had no cooking facilities. He testified he relayed this information to Mr. Bevin, but nothing was done.

Mr. Doherty testified that gym access was limited to two hours per day. During his first year, there were 10 to 11 players who started in the program. Some left the same day they arrived and approximately 7 or 8 were left after that. To apparently fill this void, Mr. Doherty recruited other local players to play tuition free. They traveled by van. The players' accommodations were not near a grocery store. There was no supervision of the players other than Mr. Doherty's coaching. Once a week, a tutor would hold 30 minutes to one hour of SAT preparation. Mr. Doherty used his Junior College and D-III<sup>2</sup> connections to seek placement of the players. Only one player was placed, and he went to a junior college in Erie, Pennsylvania. At the end of the season, he had 10 or 11 players 6 or 7 of whom were left from the beginning of the program.

Mr. Doherty returned for the 2016-2017 season. He testified that he did communicate his frustration with the program to Mr. Bevin, who said the problems would be fixed. Mr.

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This refers to the NCAA division of college athletics.

Doherty assisted in recruiting and did tours of facilities. The tours included the Jackson Avenue offices, the Our Lady of Good Counsel gym,<sup>3</sup> the La Quinta Inn<sup>4</sup> near the Oakdale Mall, and the Floyd L. Maines Veterans Memorial Arena (Arena),<sup>5</sup> which was the “home gym.”

Two to three weeks prior to October 1st, which was the start date for the program, Mr. Doherty was told to find accommodation options for the players. On October 1st, Mr. Doherty learned there would be 30 or more players coming to the program.

As the players arrived, they were taken to apartment accommodations which were scattered throughout the Endicott, NY area. Complaints were immediate and Mr. Doherty passed them on to Mr. Bevin. Mr. Doherty testified Mr. Bevin tried to calm down the players and their parents.

Thirty-two players ended up staying. At the team’s first tournament, they had 20 jerseys for 32 players. One of the assistants quit at this time. Shortly thereafter, Mr. Doherty quit after a Virginia tournament.

Cole Norris is the father of Fidel Norris. Mr. Norris testified that his son received an email from AAU Connect. They looked at the AAU Connect website, sent videos of Fidel playing basketball, and shortly thereafter received an acceptance letter from AAU Connect.

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A gymnasium at a local Catholic parish and former school.

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Mr. Doherty did not go inside the hotel, as AAU Connect did not have a contract with that facility.

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Formerly known as the Broome County Veterans Memorial Arena.

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The Norrises set up a tour for July 5, 2016. The tour was conducted by Mr. Doherty, who took them to the Jackson Avenue training room, Davis College, the Arena,<sup>6</sup> the Our Lady of Good Counsel practice gym, and the La Quinta Inn.<sup>7</sup>

They received a request to pay \$9,000.00. There was nothing in the acceptance letter about a refund policy. They opted out of the SAT prep classes, which reduced the fee for the program. They paid a \$650.00 down payment to reserve one of what he was told were 12 spots in the program and then paid the balance by an electronic transfer.

The Norrises arrived at the Jackson Avenue facility on October 1, 2016 at 8:30 AM. They were greeted by Mr. Doherty and an assistant coach and told they must pay a \$260.00 room and key deposit. The Norrises initially said they were leaving, but decided to stay after arrangements were made to pay the fee in installments of \$10.00 per week. They saw that there were around 30 players present, not the 12 they were led to believe would be in the program.

The Norrises were taken to apartment accommodations on Nanticoke Avenue in Endicott. The apartment was, by Mr. Norris's description, rundown. He was told these accommodations were temporary.

Fidel Norris left the program on October 21, 2016. The Norrises sought a refund, but were told no refund would be given.

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They did not go in.

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They were told the basement floor would be used by the team. They did not go into the hotel.

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During her testimony, AAU Connect witness Hazel Ward asserted Fidel Norris smoked marijuana at the apartment and broke the television. This was cited as a reason he was disciplined during his time with the program.

Tamil Parker Turner also testified. She is the mother of Chappel Parker Turner, who in 2015 was a high school senior. AAU Connect contacted him through a recruiting website on which he posted his information. Ms. Parker Turner testified that AAU Connect communicated that it saw both academic and athletic opportunities for her son. Chappel applied to the program and sometime thereafter received an acceptance letter. They paid a deposit and then received a payment plan which required that all payments be made prior to the October 1st start date of the program.

The Parker Turners paid approximately \$5,000.00 and then tried to get student loans, but learned that the program was not eligible for student loans. They started asking about refunds and were told in early September that there would be no refunds. Ms. Parker Turner testified this was the first they heard about a no refund policy.

When Ms. Parker Turner and Chappel arrived in Endicott on October 1st, they saw Mr. Doherty and about 30 other players. The apartment accommodations were rundown and there were 6 to 7 players in a 2-bedroom apartment. Ms. Parker Turner provided photographs of the apartment (Petitioner's exhibit 4).

Ms. Parker Turner testified that she attended the Virginia tournament. She described the hotel where the players stayed as "rundown." The team did not have enough uniforms for the tournament and the players had to share uniforms.

Chappel left the program.

Aisha Norris is the mother of Fidel Norris. She took a tour of the AAU Connect program in July 2015. Mr. Doherty led the tour. At the time, she expressed concern about meals for her son and was told there was a Wegmans store nearby. She was aware the players would (at that time) be responsible for their own food. She testified that the apartment where her son was housed was not at all near a Wegmans store.

Fidel Norris testified regarding the allegation that he used marijuana while a participant in the program. He stated he did not use marijuana and the allegation stemmed from a lighter being found in a search of his room. He also testified he did not damage the television, as claimed by the Respondents. He testified the players put the television and stand together and a week or so later it fell off the stand and cracked.

Daxtonn Delatore testified he was attending the University of Utah (an NCAA Division I school) in December 2017 when he received an email from Mr. Bevin about the AAU Connect program. Mr. Delatore was interested in playing Division I basketball.<sup>8</sup> He stated that he tried to research the AAU Connect program, but found nothing other than the AAU Connect website. According to the website, AAU players would play 30+ games, all with college coaches in the stands. During a telephone call with Ms. Ward, he learned the details of the meal plan, local travel via vans to the grocery store, and meals at a private dining hall restaurant.<sup>9</sup> Although it was halfway through the program, he decided to enroll and arrived

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He was not on the University of Utah basketball team.

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By this time, AAU Connect was advertising that it had a meal program.

in Broome County on January 1, 2018.

Upon arrival he was picked up by Mr. Carney, the coach at that time. He had to pay \$350.00 for a non-refundable room and key deposit.<sup>10</sup> He was taken to a dirty rundown apartment where he was alone. He recounted numerous shortcomings in the program that did not meet the descriptions he was told or read on the website. He played in about 10 games. The games in the Arena only had about 10 to 25 spectators. He did believe that a few college coaches may have been present at some of the games. He did observe filming of the games, but did not receive any film. Later, he accessed video online that was less than three minutes, but he was unable to download it. He left the program on March 21, 2018.

Christopher Marion testified. He was the General Manager of the Arena in August 2016 and beyond. He also had experience running a high school/prep school basketball tournament in Broome County. He set up 5 dates for games in 2017 and attended those games. When AAU Connect combined their games with local modified games, there would be 250 to 750 spectators. For the AAU Connect games, the crowd was about 50 people including the teams. The contract was later modified because the crowds at the games were so small. He did not observe any college coaches at the games after the first few games in 2017. The County cancelled the contract and there were no AAU Connect games at the Arena after December 2018.

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The witnesses refer to this as a "deposit," which would lead some to think it would or at least could be returned if certain conditions were met. If it was "non-refundable," then it is more a fee than a deposit. There is no testimony that the money was ever returned to players at the end of their participation in the program if they returned the key and the room was in acceptable condition.

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Ryan Carney was hired by AAU Connect as the coach in November 2017. He was paid \$462.00 per week. He served as the coach from November 2017 through April 1, 2018. Initially, there was an assistant coach, who later quit. Soon after he was hired, Mr. Carney moved into a local apartment complex where some of the players were housed. At one point, meals were provided. Later, the cook quit and meals were obtained by getting takeout from local restaurants (including Nirchi's, Tony's, and Phil's Chicken House).

Mr. Carney testified that during his tenure as coach he started with 20 players and at one point had only 8 players. He testified that he did not see any players with Division I ability and there might have been one or two with low Division II ability.

Kevin Austria testified. He was contacted by AAU Connect via email in August 2017. At the time he was playing club basketball. He looked online and could find no information other than the website. He applied for admission that month. He was accepted and traveled to Endicott. He was contacted by Ms. Ward and a coach came to pick him up. At that point, he was advised that he must pay a \$350.00 deposit. Later, he was taken to the food service restaurant for breakfast. He described the players there as upset about the food.

While he was there, the coaching staff quit and the players went one week without a coach. Practices were just scrimmages and he never received any skills training. He played in about 10 games. He never noticed any college coaches at the games and the crowds for the games were comprised of about 40 people. He was part of the program for a few months and then left on December 12, 2017. He requested a refund, which was refused after being told for the first time there was a no refund policy.

Larry Giles testified. He is the father of Isaiah Giles, who started the program on October 1, 2018. Mr. Giles attended a game in Syracuse, NY on November 2, 2018. He and his son left the program after that game. Mr. Giles stated that his observations convinced him that the program was being operated to benefit the coach's son who was on the team.<sup>11</sup> He asked Ms. Ward for a refund, which was refused.

Isaiah Giles testified. He stated that his mother received an email from AAU Connect. He was interested in the program, but it was initially too late to switch from the college he was attending. He ultimately decided to attend the AAU Connect program the next year, hoping to improve his skills and have people see his talent. AAU Connect still offered him the scholarship he was offered the previous year. The meal program consisted of food brought to the apartment. Dinner was typically a pan of lasagna, pizza, or spaghetti with soda and no salad or vegetables. Breakfast was cereal, milk, bananas, and yogurt. As for contacts with college coaches, he was told to email 150 coaches himself. He did say that while he was with the program, the team won a tournament in North Carolina.

David Bryant testified. His son, Joseph, wanted to play basketball in the United States. He obtained information about the program from the website, applied,<sup>12</sup> and received an acceptance letter.

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This coach did not testify at the hearing and it appears he is no longer with the program. Indications are that this coach, who is identified in some of the affidavits filed in this proceeding, coached the program only while his son was a participant.

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Unlike many others, he initiated the contact with AAU Connect.

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Mr. Bryant came to Endicott with his son. His son went to the apartment as directed by AAU Connect, which was, according to Mr. Bryant, "total chaos." The apartment was not near services and there was loud music coming from the bar across the street. The apartment had 4 beds, no television, no wifi access, 1 toilet, and 1 shower for 6 people. They left the program. Their \$200.00 deposit for the sports gear was returned to them, but no other refunds were provided.

Viorel ("George") Gheorghe Pop testified. He testified his son learned of the program through an American trainer with whom he was working. Prior to enrolling in the program, they had numerous conversations with Ms. Ward.

Mr. Bevin testified. He is the owner of AAU Connect, which was incorporated in 2015. Prior to the incorporation, he ran basketball programs as a sole proprietor. He has operated a program in Europe which fields a team of 14 to 18-year olds known as the Euro Lions. He submitted exhibits showing that the Euro Lions have won tournaments.

Mr. Bevin played college basketball and later played professionally in Europe. He has played basketball since 2004 and is still playing, though now he is more often paid to coach youth teams.

He testified that the first season of the AAU Connect program started in October 2015. It had 12 players at the end of the season, with some having left and others having joined the program in December. The coach that year was Brendon Doherty, who was recommended to him by the coach of the local community college team.

He stated that the first year they did not use the Arena, there was no meal plan, and accommodations were at the Red Carpet Inn. Transportation was provided to games only.

Practices were held at the nearby Our Lady of Good Counsel Church gymnasium.<sup>13</sup> Other facilities used included the local Boys and Girls Club and a building located at 23 Jackson Avenue in Endicott, NY. Mr. Bevin arranged for the team to play tournaments.

Mr. Bevin did acknowledge that he received some complaints about playing time and the accommodations. He stated that Mr. Doherty was in charge of college recruitment.<sup>14</sup> He stated the website never indicated the LaQuinta Inn would be used for accommodations.

In 2016, there were around 34 players at the start of the program. He acknowledged that there were too few uniforms for the players, which he attributed to Coach Doherty and the supplier.<sup>15</sup>

The program changed over the years with the addition of available college courses and a meal plan. In 2016, 13 players registered to take on-line courses through Davis College. Only 3 players completed the courses. Mr. Bevin stated that no one opted to take the college courses after that.

After the coaches quit mid-season in November 2017, Ryan Carney was hired as the replacement.

Mr. Bevin stated that college coaches did attend games and came to tournaments. He did not offer specifics. AAU Connect's Exhibit H consists of copies of several email chains

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This is very near (a short walk from) the Red Carpet Inn.

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The record lacks anything connecting AAU Connect's promises of college recruitment and placement to Mr. Doherty's ability to deliver those promises.

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He said Mr. Doherty "forgot" the jerseys.

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in which AAU Connect invites coaches to attend games at the Arena in Binghamton. The emails, with a few exceptions, are directed to junior college coaches.<sup>16</sup> There is an email to a Binghamton University assistant coach, who indicated he might be able to attend the games. Binghamton University is a Division I school. The trip from the Binghamton University campus to the Arena takes 5 to 15 minutes by car.

Mr. Bevin testified that the no refund policy was posted on the website in early 2016 before the start of recruiting.

Some acceptance letters state the program has a “full-time” teacher. When questioned about this, Mr. Bevin stated the program had Tyler Wolford working for 3 hours a day 5 days a week, which he called full-time.

In his affirmation, Mr. Bevin states, “No high school programs nor any girls’ basketball program have ever been formed nor operated by AAUCONNECT.COM, LLC” (see Bevin affirmation dated August 30, 2018 at ¶ 6). Mr. Bevin testified the reference to the high school girls’ program was removed from the website before this proceeding was commenced.<sup>17</sup>

Mr. Bevin stated that AAU Connect does have a no refund policy. However, it was not in the acceptance letters until December 2018.

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None of the players were looking for the program to place them on a junior college team, nor does the AAU website or any other source of information indicate this is a goal.

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As the program existed since at least 2015 and the Attorney General commenced this proceeding in September 2018, this misleading information was likely on the website for up to three years.

As to the “college environment,” Mr. Bevin stated that off campus housing is part of a college environment. As to housing at the LaQuinta Inn, Mr. Bevin stated that this was Mr. Doherty’s idea, which was considered but then rejected as the rooms did not have kitchens.

When asked about the program’s success in placing players in a Division I or II college basketball program, Mr. Bevin acknowledged that the chances of actual placement in such a program are very low. He mentioned that one player did make the college team at a small Christian school in Florida.<sup>18</sup>

Hazel Ward, Mr. Bevin’s wife, also testified. She stated she is a volunteer for the program, doing paperwork and admissions and helping Mr. Bevin. She typed the acceptance letters and handled telephone calls. She stated that she told players or parents of the no refund policy. She added that most people asked about the policy in that regard, but if they did not, she would tell them. As to the LaQuinta Inn, she told people it was being considered.

It was this Court’s observation that, overall, the witnesses who testified on behalf of the State were forthright and very specific with respect to the issues about which they were testifying. The same cannot be said of Mr. Bevin and Ms. Ward, whose testimony glossed over or lacked specificity when addressing many of the pertinent issues. It is also worth noting that AAU Connect did not produce a single former player or parent of a former player to testify regarding his or her satisfaction with the program.

### **Analysis**

How did we get here?

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There is no indication this was a Division I or II school.

It seems to start with the widespread desire of young people (and to a greater or lesser extent their parents) to achieve athletic success and a college scholarship along with it.<sup>19</sup> Yet, the skills and talent needed to reach the highest levels of college sports are extraordinary. Many promising and talented high school athletes simply do not have what it takes to compete at the college Division I or Division II level.

This was aptly illustrated in this trial. Ryan Carney was, for a time, the coach of the AAU Connect program. Mr. Carney was an athlete of some renown in this community. He had the size and in high school exhibited the talent and skill which a layperson might reasonably presume would take him to a successful college athletic career at the Division I or II level. He did play college basketball at the Division III level at the State University of New York at Brockport.<sup>20</sup> He had a successful college athletic career at that level.

The participants in the AAU Connect program were not typically seeking help in playing at the Division III level.

What the testimony revealed was that AAU Connect had access to information about individuals looking to play college basketball. In a very real way, the players and the families (the victims) provided the information needed to take advantage of them. They listed their information on college athletics recruiting websites. They apparently got no or very minimal

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Talk to a promising or excelling young athlete or his or her parents at a middle school or high school sporting event and you may very well hear talk of college scholarships. In a few instances that dream may come true, but the reality is in almost every instance it does not. For many it is truly just a dream.

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Now known as The College at Brockport.

interest from Division I and II college basketball programs. There is no indication any of them were offered a Division I or II college scholarship and were looking to improve their skills to play at a more renowned or competitive Division I or II college. Nor was there any information that anyone in the program was competing successfully at the Division III or junior college level. But AAU Connect contacted many of them asking them to apply to the program.<sup>21</sup> It seemed (or the players and their families hoped or assumed) this contact was generated by thoughtful AAU Connect analysis that a bit more training and an opportunity to hone skills were what they needed to make that step to recruitment and a scholarship with a Division I or II basketball program.

The truth is there was no such analysis. The AAU Connect witnesses did not supply any information or testimony to indicate in any way that AAU Connect examined and analyzed the skills and talents of the players it contacted (recruited) to evaluate and determine if they had a real or more than remote chance of playing basketball in a Division I or II program.

What did the AAU Connect program promise and what did it deliver?

What it promised can be seen from its website. The testimony made it clear that most of the information obtained by the participants was obtained through the website, screen shots of which are attached to the Petition as exhibits.

The website opens with this: "AAUCONNECT offers a selection of programs to suit the different needs of players who are looking to develop, play college basketball or start their professional basketball career."

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Testimony established that some of the players made the initial contact with AAU Connect.

The website discloses, touts, offers, or promises the following:

- “Academic solutions” which cover SAT prep classes, college credits and the option to increase GPA.
- “All our programs are expertly run with clear objectives for you to reach your goals.”
- A New York International Academy High School for basketball players only.
- A girls’ post graduate basketball academy which is “the North-East’s #1 basketball academy.”
- A program for basketball players “who are looking to develop and gain a scholarship offer to college for the following year.”
- “An excellent comprehensive 6-month program.”
- “Skills development and team training on newly refurbished basketball court.”
- “Exclusive strength and conditioning in a full[y] equipped weight room.”
- “Earn up to 6 college credits.”
- “Showcase games in front of college scouts.”
- “Quality accommodation close to basketball practice.”
- “Professional level practice and game gear package.”
- “All your games are videoed.”
- “All videos are edited and made into highlights.”
- “SAT Prep classes with our own high level experienced private Tutor.”
- “College placement through the use of: media marketing, player profile and stats from the academy.”

- “Further development of your skills and abilities.”
- “Learn new plays and how to effectively play and win as a team.”
- “Players will have the opportunity to play in front of a large crowd as we prepare you for D1 basketball.”
- “Maximum exposure by playing 30+ games all with college scouts in attendance.”
- “Preparation for college life by living in recreated college living environment.”
- “We make sure you are 100% eligible for college basketball.”
- “Personal staff member working on your behalf to place you in a suitable college.”
- “Use of media footage from games plus profile & stats to market you to college coaches.”
- “Eat like a Pro at AAU Connect’s new private restaurant.”
- A “top Chef creates delicious dishes specific to the dietary requirements of young basketball players.”
- A “set menu of healthy balanced and nutritious meals for athletes all made from scratch daily.”
- A high school that provides “a learning environment to inspire and develop the young minds of all our student athletes. We teach 7<sup>th</sup> -12<sup>th</sup> grade students in private small classes to maximize student learning and development.”
- Also, under the paragraph mentioning the high school program was the following: “Whether you plan on playing D1 or D2 college level basketball we

will work with you to achieve your educational objectives needed to play at the college level of your choice.”

The testimony established that what AAU Connect delivered was vastly different from what it promised.

The high school program it advertised never existed – yet the website states it was “14<sup>th</sup> of 100 Top Private Schools in New York State,” had “40 plus Faculty,” “16 Advanced Placement Course[s] available,” and was “Chartered by the New York State Board of Regents” next to an image of a building which appears to be a school.

The reality is that the program was an ever-changing series of coaches and support personnel. There was no consistency. Whatever contacts one coach had were lost when he was no longer with the program. The record does not show any coach or other person working for the program who had or used any contacts to put the players in touch with Division I or II coaches or recruiters.

A gaping hole in the program was the lack of any real or even appreciable contact with coaches, recruiters, or others who had any connection with Division I or II recruiting and scholarship offers. There was no testimony or other evidence offered that AAU Connect promoted any of the players to specific Division I or II programs. There was not a single mention of any such contact.

Many of the players were offered “scholarships.” To the players and their families, this might have been viewed as an indication AAU Connect really wanted them to attend the program. Which it was. They also, however, may have viewed this as based on an evaluation of their ability and talent. There is nothing to indicate this was the case.

AAU Connect's website does mention a Foundation. However, there was no scholarship fund or Foundation which had money to reduce the cost of the program for these players. The "scholarships" were nothing more than a reduction of the cost of the program to facilitate their enrollment.

The misleading and false representations even extended to the meals provided by AAU Connect. As noted in the Court's prior Decision and Order, it was undisputed that there was no "top chef" nor was there a restaurant facility at which the players ate their meals. The State asserts the supposed "top chef" for the meal program was nothing more than a short order cook. The proof establishes the so-called "top chef" (cook, in Mr. Bevin's words from a prior affirmation) worked for a period of time, but then quit. After that, food was ordered from two local Italian restaurants and a barbeque chicken restaurant and then made available to the players. Not surprisingly, AAU Connect does not offer any evidence of its former "top chef's" qualifications.

It could be said that the website statements regarding the high school program that never existed are irrelevant in this proceeding, as all of the witnesses were post high school. However, the information that AAU Connect operated a high school for 7<sup>th</sup> to 12<sup>th</sup> grade students with 40 faculty which was chartered by the New York State Board of Regents and ranked 14th among the top 100 private schools in New York sent the message loud and clear that this was an established program and operation of substance. And that was clearly not true.

That these statements made it to the website is telling. The statements are very specific. They are blatantly false. In fact, they have no basis in reality. As such, the

specificity (14th of the top 100 private schools in New York State, 40 plus faculty, 16 available advanced placement courses, and chartered by the New York State Board of Regents) can only be the result of a knowing and intentional scheme to mislead potential players and their families about the nature and substance of the program. Any reasonable person would presume that an entity that operates such a significant high school program surely operates an equally significant post graduate program.

It is difficult to imagine what logical or legitimate basis AAU Connect had to include such detailed and false information on its website. Regardless, it is clear that numerous players and their parents saw and, at least in part, relied upon that information prior to enrolling in the program. Its removal from the website prior to the present litigation shows only that the most egregious falsehoods were deleted prior to the lawsuit.

Making this all the more egregious is AAU Connect's purported no refund policy, which is a large point of contention in this matter. When it became clear the program did not provide the services that were promised, players and parents naturally sought refunds. In all instances, AAU Connect, Mr. Bevin, and Ms. Ward refused to make any refunds, claiming a no refund policy. At times, the no refund policy was clearly stated on the invoices. However, even if the no refund policy is valid and enforceable, it will not prevent a participant in the program from recovering damages (in effect a refund) if the program does not provide the promised services. When people pay for something that you promise to deliver and you fail to deliver it, that is a breach of the agreement and a refund is in order. This is not a situation where the program delivered what it promised and participants chose for their own reasons to drop out.

It might be said that there is a component of “you get what you pay for” in all of this. It seems from the testimony that the AAU Connect program was less expensive – cheaper, really – than comparable programs. However, it certainly was not advertised as the economy version of a post-graduate basketball program. AAU Connect was advertised as a top-notch, well-connected program – but with its revolving door staff, ad hoc housing in scattered apartments, ever-changing meal plan which was not as advertised, and non-existent placement program, it was far from it.

As it relates to this case, the “test for fraud” under Executive Law § 63(12) is whether the statements and representations made by AAU Connect have the capacity or tendency to deceive or create an atmosphere conducive to fraud (*see Exxon Mobil Corp.*, 65 Misc3d at 1233[A]). For all the reasons set forth above, this Court finds that they do. Similarly, the Court finds 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 (*see Koch*, 18 NY3d at 941).

Based on the foregoing, the Respondents AAU Connect, Mr. Bevin, and Ms. Ward are enjoined from continuing or participating in the deceptive, fraudulent, and illegal business practices made in connection with: (1) their ownership and operation of a high school and post-graduate high school basketball business, as discussed herein; and (2) any program that engages in similarly false or misleading conduct.

As noted above, it appears that AAU Connect’s no refund policy was clearly stated on the invoices in some instances and not disclosed at all in others. Even assuming that AAU Connect’s purported no refund policy was valid and enforceable in certain instances, it is clear

to this Court that none of the participants involved in this action received the services promised by AAU Connect. Accordingly, the no refund policy will not prevent recovery of restitution and damages in this matter.

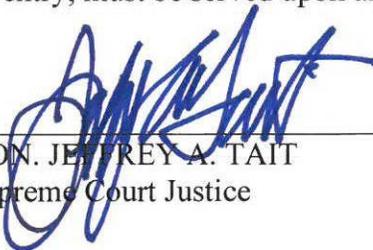
In light of this, certain participants are entitled to refunds and/or damages – whether by virtue of AAU Connect’s failure to disclose the no refund policy or not receiving the promised services. The Attorney General shall have until August 31, 2020 to provide detailed information regarding both the issue of damages generally and which participants are entitled to such refunds and/or damages, the respective amounts sought, and the basis for those calculations. The Attorney General shall also provide a specific request for civil penalties and the basis therefore on or before that date. The Respondents shall have until October 2, 2020 to respond. If a hearing is needed, one will be scheduled.

**Conclusion**

Based on the foregoing, the Petition is granted to the extent 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: May 11, 2020  
Binghamton, New York

  
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HON. JEFFREY A. TAIT  
Supreme Court Justice