

**IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
BY ATTORNEY GENERAL JOSH SHAPIRO	:	
	:	
Petitioner	:	Case No.: _____
	:	
v.	:	
	:	
ESF, INC. d/b/a ESF Camps	:	
750 East Haverford Road	:	
Bryn Mawr, Pennsylvania 19010-3816	:	
	:	
Respondent	:	

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, acting by Attorney General Josh Shapiro, (herein “Commonwealth” and/or “Petitioner”), which has caused an investigation to be made into the business practices of Respondent ESF, Inc. d/b/a ESF Camps (herein “ESF Camps” and/or “Respondent”), pursuant to the provisions of the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.* (herein “Consumer Protection Law”) and states the following:

PARTIES

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, acting by Attorney General Josh Shapiro, with offices located at 1600 Arch Street, 3rd Floor, Philadelphia, PA 19103 and Strawberry Square, 15th Floor, Harrisburg, PA 17120;

WHEREAS, Respondent ESF Camps is registered as a Pennsylvania corporation with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section (herein “Corporations Bureau”) with a registered address of 750 East Haverford Road, Bryn Mawr, Pennsylvania 19010-3816.

FACTS

WHEREAS, Respondent engaged in trade or commerce within the Commonwealth of Pennsylvania through the operations of a business offering and providing day camp programs and related goods and services to consumers;

WHEREAS, Respondent has been operating its camp programs at eleven (11) different sites throughout Pennsylvania, New Jersey, Maryland, Connecticut, and New York;

WHEREAS, Respondent's 2020 camp programs consist of Mini Camp, Day Camp, Sportslab, Tennis Camp, Senior Camp, Specialty Major Camps, and Academic Programs (herein "2020 Summer Camp Programs");

WHEREAS, on May 22, 2020, as a result of both unprecedented safety challenges arising from the worldwide COVID-19 pandemic and operational limitations imposed by state and local authorities, Respondent sent an email to enrolled consumers advising them of its decision to cancel 2020 summer on-site programs and offering three different options for the consumers to choose from. The first option was to enroll in "ESF 365 Online Adventures," a 2020 online summer adventure program to be conducted by Respondent, which included consumers receiving a twenty percent credit of paid tuition towards Respondent's 2021 summer programs. The second option was to roll over the 2020 summer camp payment to enrollment in 2021 summer camp programs, which included consumers receiving a bonus credit of twenty percent of paid tuition. In the third option, labeled as "Special Family Considerations," consumers were to receive a refund following a refund plan explained by a link in the email. The refund was for seventy percent (70%) of what consumers paid for the 2020 Summer Camp Programs regardless of the amount paid by each consumer toward the tuition, with the following payment plan: 25% refund starting June 15, 2020, 25% refund before August 31, 2020, and 20%

refund on or before May 31, 2021 (i.e. If Consumer A paid \$1000 toward tuition, Consumer A would receive \$700 as a refund and Respondent would keep \$300; and if Consumer B paid \$500 toward tuition, Consumer B would receive \$350 as a refund and Respondent would keep \$150);

WHEREAS, Respondent contended that it spent camp deposit money toward camp supplies, salaries and other expenditures for the 2020 Summer Camp Programs, and that the three options offered to enrolled consumers in its May 22nd email were intended to ensure that Respondent would not have to seek bankruptcy protection, thereby likely leaving consumers with a lesser refund option or no refund at all;

WHEREAS, on June 3, 2020, in response to consumers' and the Commonwealth's concerns regarding the failure to provide a full timely refund, Respondent sent out an email revising the refund option to be a 100% cash refund for tuition paid for 2020 summer camp programs. The refund was to follow a payment plan of 25% refunded by June 15, 2020, additional 25% refunded by September 30, 2020, and the remaining 50% refunded on or before January 31, 2021;

WHEREAS, Respondent represented to the Commonwealth that as part of its effort to facilitate refunds to customers it filed a claim pursuant to its business interruption insurance policy, but such claim was denied by its insurance company pursuant to an exclusion;

WHEREAS, Respondent represented to the Commonwealth that it has applied for and is seeking loans and investments to facilitate provide refunds to consumers, and that it anticipates that it will receive sufficient monies to provide full refunds to consumers who opted for a full refund;

WHEREAS, the Commonwealth received numerous consumer complaints from consumers, alleging Respondent failed to provide a full refund to consumers after Respondent cancelled its 2020 Summer Camp Programs;

WHEREAS, while the Commonwealth recognizes the unprecedented safety and operational challenges arising from the COVID-19 pandemic, the Commonwealth nevertheless asserts that Respondent's failure to provide a full refund to consumers in a timely manner when Respondent cancelled its 2020 Summer Camp Programs constitutes unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by Section 201-3 of the *Consumer Protection Law*, as defined by Section 201-2 of the same. 73 P.S. §§ 201-3 and 201-2(4);

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the Consumer Protection Law, in lieu of commencing statutory proceedings provided under Section 201-4. 73 P.S. § 201-4; and

WHEREAS, under Section 201-5 of the Consumer Protection Law, this Assurance of Voluntary Compliance shall not be considered an admission of a violation for any purpose. 73 P.S. § 201-5.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade or commerce within the Commonwealth of Pennsylvania, Respondent agrees for itself, its successors, assigns, officers, partners, agents, representatives, employees, and all other persons acting on its behalf, jointly or individually, directly or indirectly, or through any corporate or business device, as follows:

- I. The above recitals are incorporated herein as though fully set forth.**
- II. Injunctive and Affirmative Relief**

A. Respondent shall fully comply with any and all provisions of the Consumer Protection Law and any amendments thereto, and, is permanently enjoined from any violation thereof.

B. Respondent shall honor all promises and agreements made in any and all of its communications with consumers, promotions and advertisements related to cancellations and refunds.

C. Respondent shall honor and comply with all representations, terms and conditions made in any and all contracts and agreements it enters into with consumers related to cancellations and refunds.

D. Respondent shall not, in the future, engage in conduct which violates the Consumer Protection Law, and any amendments thereto. 73 P.S. § 201-1, *et seq.*

III. Monetary Relief

A. Refund to Eligible Consumers.

1. Respondent shall provide a full refund for tuition paid for 2020 Summer Camp Programs to all those consumers who enrolled in Respondent's 2020 Summer Camp Programs and selected the full refund option (herein "Eligible Consumer(s)"), according to the following payment plan: (a) Respondent acknowledges that 25% of the full refund amount has been paid to each Eligible Consumer on or before June 15, 2020; (b) Respondent shall pay to each Eligible Consumer an additional 25% of the full refund amount on or before September 30, 2020; and (c) Respondent shall pay to each Eligible Consumer the remaining 50% of the full refund amount on or before December 31, 2020.

2. Respondent shall make best efforts to secure applicable loans and new investments to timely provide a full refund to all Eligible Consumers as noted herein

above. If Respondent acquires the necessary funds which would enable the Respondent to provide a full refund to all Eligible Consumers at an earlier date than the date listed in the aforementioned payment plan, then Respondent shall notify the Commonwealth within 5 days of receiving the funds and shall promptly distribute the remaining refunds to all Eligible Consumers, no more than fifteen days after receipt of the funds. Within 5 days after payments are made to Eligible Consumers by Respondent, Respondent shall provide the Commonwealth with written confirmation that the payments were made to all Eligible Consumers pursuant to the payment plan described in this paragraph.

B. **Costs.** Respondent shall pay to the Commonwealth the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) (herein “Costs”). The payment shall be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection as costs of investigation to be deposited into an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

C. **Form of Payment** – All payments made by Respondent to the Commonwealth, pursuant to this Assurance of Voluntary Compliance, shall be in the form of a certified check, cashier’s check, or money order made payable to the “Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection” and forwarded to YongHan Son, Deputy Attorney General, Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, 1600 Arch Street Suite 300, Philadelphia, Pennsylvania 19103.

IV. Miscellaneous Terms

A. This Court shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for the purpose of enforcing its terms.

B. Nothing in this Assurance of Voluntary Compliance shall be construed to waive any individual right of action by a consumer or a local, state, federal, or other governmental entity.

C. Time shall be of the essence with regards to Respondent's obligations hereunder.

D. Michael Rouse is the President of Respondent ESF Camps and certifies that he is authorized to enter into and execute this Assurance of Voluntary Compliance on behalf of Respondent; and, further agrees to execute and deliver all authorizations, documents and instruments necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance.

E. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are reasonably necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with or subsequent to the Effective Date, as defined herein.

F. Respondent understands and agrees that if Respondent made any false statement in or related to this Assurance of Voluntary Compliance, that such statement was made pursuant to and under penalty of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

G. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute as original counterpart hereof.

H. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied relating to the subject matter of this Assurance of Voluntary Compliance. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

I. Respondent agrees by the signing of this Assurance of Voluntary Compliance that Respondent shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to seek penalties provided for under Sections 201-8(a) and 201-9 of the Consumer Protection Law, 73 P.S. §§ 201-8(a) and 201-9, and to seek any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

J. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

K. The “Effective Date” of this Assurance of Voluntary Compliance shall be the day it is filed with the Court.

L. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance of

Voluntary Compliance and this Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

M. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve its practices, or any future practices that Respondent may adopt or consider adopting.

{SIGNATURES ON THE FOLLOWING PAGES}

WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

For the Petitioner:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

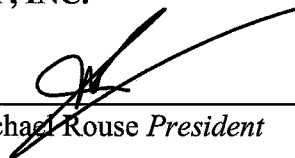
Date: 9/28/2020

By: /s/YongHan Son
YongHan Son
Deputy Attorney General
PA Attorney I.D. No. 325223
Bureau of Consumer Protection
1600 Arch Street Suite 300
Philadelphia, Pennsylvania 19103
Telephone: 215-560-2414

FOR THE RESPONDENT:

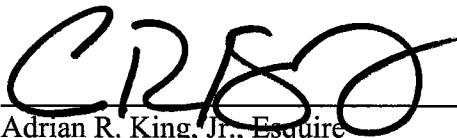
ESF, INC.

Date: 9/25/20



Michael Rouse *President*

Date: 9-25-2020



Adrian R. King, Jr., Esquire
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Attorney for Respondent