# STATE OF WASHINGTON

1 DEPARTMENT OF FINANCIAL INSTITUTIONS 2 **SECURITIES DIVISION** 3 4 IN THE MATTER OF DETERMINING SDO - 77 - 01 5 Whether there has been a violation Of the Franchise Investment Protection Act by: SUMMARY ORDER TO CEASE AND DESIST AND 6 SUSPENDING EFFECTIVENESS OF F-70011779 AND NOTICE OF INTENTION TO REVOKE LADY OF AMERICA FRANCHISE CORP.; ROGER 7 EFFECTIVENESS OF F-70011779 WITTENBERNS; WILLIAM S. LANDMAN; their agents and employees, 8 Case No. 01-09-342 9 Respondents. 10 THE STATE OF WASHINGTON TO: Lady of America Franchise Corp. 11 2400 E. Commercial Boulevard, Suite 808 Fort Lauderdale, FL 33308 12 Roger Wittenberns, President 13 Lady of America Franchise Corp. 2400 E. Commercial Boulevard, Suite 808 14 Fort Lauderdale, FL 33308 15 William S. Landman, Senior-Vice President Lady of America Franchise Corp. 16 2400 E. Commercial Boulevard, Suite 808 Fort Lauderdale, FL 33308 17 STATEMENT OF CHARGES 18 Please take notice that the Securities Administrator of the State of Washington has reason to believe that 19 Respondents, Lady of America Franchise Corp., Roger Wittenberns, and William S. Landman have violated the 20 Franchise Investment Protection Act and that their violations justify the entry of an order of the Securities 21 Administrator under RCW 19.100.248 and RCW19.100.120 to cease and desist from such violations and to 22

suspend the effectiveness of Respondents' registration statement. The Securities Administrator finds that delay in

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SUMMARY ORDER TO CEASE AND DESIST AND SUSPENDING EFFECTIVENESS OF F-70011779 AND NOTICE OF INTENTION TO REVOKE EFFECTIVENESS OF F-70011779

DEPARTMENT OF FINANCIAL INSTITUTIONS **Securities Division** PO Box 9033 Olympia, WA 98507-9033 360-902-8760

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ordering the Respondents to cease and desist from such violations would be hazardous to investors and the public and that a Summary Order To Cease and Desist and Suspending Effectiveness of F-70011779 should be entered immediately. The Securities Administrator finds as follows:

#### TENTATIVE FINDINGS OF FACT

## **I.** Respondents

- 1. **LADY OF AMERICA FRANCHISE CORP.** ("Lady of America") is a Florida corporation with a principal business address of 2400 E. Commercial Boulevard, Suite 808, Fort Lauderdale, Florida 33308. Lady of America offers franchises for the establishment of business centers to provide aerobic and health services on a membership basis.
- 2. **ROGER WITTENBERNS** was the Chairman of the Board of Directors and President of Lady of America at all times relevant to the matters set for the herein.
- 3. **WILLIAM S. LANDMAN** was the Senior Vice President of Lady of America at all times relevant to the matters set forth herein.

## II. Nature of the Offer

4. In or around April of 2001, a Washington resident (hereinafter referred to as the "purchaser"), entered into a deposit agreement with Lady of America whereby the purchaser made formal application for a Lady of America franchise. In connection with the offer of the franchise by Lady of America and its representative William Landman, and pursuant to the terms of the deposit agreement, the purchaser deposited \$2,500 with Lady of America as an indication of his bona fide intent to enter into a Lady of America Franchise Agreement with Lady of America. In the deposit agreement, the purchaser acknowledged receipt of Lady of America's franchise offering circular. The deposit agreement stated that if the applicant desired to cancel the application, the deposit would be returned, less Lady of America's out-of-pocket expenses and time and effort expended by Lady of America on behalf of the applicant.

- 5. In or around June of 2001, the purchaser cancelled the application and made several oral and written demands with Lady of America for a return of his deposit. As of the date this order is entered, the purchaser has not been refunded all or a portion of this deposit, and has received no formal explanation from Lady of America as to their refusal to give said refund.
- 6. Lady of America has failed to respond to the Division's written request for information regarding this matter.

# **III. Registration Status**

- 7. On February 1, 2001, Lady of America filed a franchise registration application with the Securities Division to offer and sell franchises, file number F-70011779, that was made effective on February 5, 2001.
  - Lady of America is currently registered to sell franchises in the state of Washington.
     Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

#### CONCLUSIONS OF LAW

## I. Franchise

The offer and/or sale of the deposit agreement described in paragraph 4 of the Tentative Findings of Fact constitutes the offer and/or sale of a franchise as defined in RCW 19.100.010(4).

## **II. Violation of RCW 19.100.170**

The offer and/or sale of said franchise is in violation of RCW 19.100.170 because as set forth in paragraphs 4 and 5 of the Tentative Findings of Fact, Respondents either made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

## III. Emergency

The Securities Administrator finds that an emergency exists, that the continued violation of RCW 19.100.170 constitutes a threat to the investing public, and that a summary order to cease and desist from those violations is in the public interest and necessary for the protection of the investing public.

#### SUMMARY ORDER

Based upon the above Tentative Findings of Fact and Conclusions of Law, NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED that Lady of America, Roger Wittenberns, William S. Landman, and their agents and employees, each cease and desist from further violations of RCW 19.100.170; and

It is further SUMMARILY ORDERED that the effectiveness of the franchise registration application F-70011779 is hereby suspended.

## NOTICE OF INTENTION TO REVOKE REGISTRATION

Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to permanently revoke the effectiveness of the franchise registration of Lady of America, file number F-70011779.

#### **AUTHORITY AND PROCEDURE**

These Orders are entered pursuant to the provisions of RCW 19.100.248, RCW 19.100.120, and RCW 19.100.130, and are subject the provisions of ch. 34.05. Each of the Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order.

If a Respondent does not request a hearing, the Securities Administrator intends to adopt the above

1	Tentative Findings of Fact and Conclusions of Law as final, enter a final order to cease and desist against each of
2	the Respondents, and permanently revoke the effectiveness of the franchise registration of Lady of America, file
3	number F-70011779.
4	DATED this day of, 2001.
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7	Debark R Borner
8	DEBORAH R. BORTNER
9	Securities Administrator
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11	Approved by: Presented by:
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14	Michael E. Stevenson Chief of Enforcement Staff Attorney
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