

PUBLIC SAFETY

Judge tosses bid by Rutland gym owner to collect from state over Covid-19 closure

By Alan J. Keays

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Superior Court Judge Robert Mello. Pool photo by Gregory J. Lamoureux/County Courier

A Vermont judge has thrown out a bid by a Rutland gym owner seeking to recoup money and collect damages for emotional distress from the state over the forced shut down of

his business as part of Gov. Phil Scott's response to the Covid-19 pandemic.

Sean Manovill of Club Fitness of Vermont had contended in a legal action he brought against the state, Scott and Attorney General TJ Donovan that the closing of his gym was a violation of the Constitution on several grounds, including calling it an "unlawful taking" without compensation.

Judge Robert Mello issued a 19-page decision this week granting a motion filed by the Attorney General's Office to dismiss Manovill's action.

Mello, in the ruling, talked about the broad powers of governors during health emergencies to protect the public.

He also wrote about the "plethora" of case law that "compel the conclusion that the actions of the State, Governor and Attorney General do not amount to governmental taking" requiring compensation.

In a footnote to his ruling, Mello added, "Defendants [Manovill and Club Fitness] appear not to recognize the reality of COVID-19, the state of emergencies that have been announced throughout the country, and the attempts by courts at all levels to address situations similar to the present case."

The ruling stems from an executive order issued by the governor in March that called for the closing of many businesses, including Manovill's Club Fitness, to help control the spread of the coronavirus.

Manovill reopened his gym in May with that order still in effect, prompting the Vermont Attorney General's office to seek a preliminary injunction in Rutland County civil court to get him to close.

While that request by the Attorney General's Office was dropped about two weeks later as a result of a change in the governor's executive order permitting fitness centers to reopen with specific guidelines, Manovill brought his own action against the state, governor and Donovan.

Lawsuits raising similar issues have been brought in other states over emergency orders issued by governors related to measures taken to help stop the spread of Covid-19.

“It’s the first such case in Vermont,” Assistant Attorney General Eleanor Spottswood, chief of the office’s civil division, said Wednesday. “There have been lots of other cases nationwide and Judge Mello relied on those other cases in coming to his decision.”

Spottswood added, “The judge wrote a very thorough decision and we’re very happy with it. I think he ruled for us on all the major points.”

Spottswood said the case remains pending regarding the state’s bid to seek penalties against Manovill over claims of violating the governor’s emergency order. The possible penalty is up to \$1,000 for each day in violation of that order.

Deborah Bucknam, an attorney who has represented Manovill in the case, could not be reached Wednesday for comment.

