

[J-72-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 57 MAP 2001
ACTING BY ATTORNEY GENERAL D.	:	
MICHAEL FISHER,	:	Appeal from the Order of the
	:	Commonwealth Court entered April 6,
Appellant	:	2001 at No. 5 MD 1997.
	:	
	:	
v.	:	
	:	
	:	
TIGER SCHULMANN'S KARATE	:	
CENTERS A/K/A UNITED AMERICAN	:	
KARATE AND PHILLY KARATE, INC.	:	
D/B/A TIGER SCHULMANN'S KARATE	:	
CENTERS AND QUAKERTOWN	:	
KARATE, INC. D/B/A TIGER	:	
SCHULMANN'S KARATE AND FITNESS	:	
CENTER AND WILLOW GROVE	:	
KARATE, INC. D/B/A TIGER	:	
SCHULMANN'S KARATE AND FITNESS	:	
CENTER AND TIGER SCHULMANN'S	:	771 A.2d 107 (Pa. Cmwlth. 2001)
KARATE AND FITNESS CENTER AND	:	
DANIEL SCHULMANN,	:	ARGUED: April 8, 2002
	:	
Appellees	:	

DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: December 19, 2002

As I disagree with the majority that a martial arts facility is not a health club for purposes of the Health Club Act, I must respectfully dissent.

The Act defines a health club as:

A person, firm, corporation, organization, club or association engaged in the sale of memberships in a health spa, racquet club, figure salon, weight reduction center or *other physical culture service enterprise offering facilities for the preservation, maintenance, encouragement or development of physical fitness or physical well-being.*

73 P.S. §2162 (emphasis added).

This definition plainly includes martial arts centers, which clearly are, at least in my view, "physical culture service enterprise[s] offering facilities for the preservation, maintenance, encouragement or development of physical fitness or well-being." While the majority essentially finds that karate does not preserve, maintain, encourage, or develop physical fitness or well-being, such a position completely conflicts with my understanding of what karate entails. The art of karate, as even Appellees noted in their advertisements, is a physical activity that builds and tones muscle and increases cardiovascular fitness. That said, I have trouble reaching the conclusion that Appellees are not, at a minimum, physical culture service enterprises engaged in encouraging physical well-being.

Thus, unlike the majority, I agree with the Commonwealth that martial arts centers, such as Appellees, squarely fit within the Health Club Act's definition of a health club and therefore, that Appellees are required to comply with the Health Club Act.