

**FILED**

DEC 23 2015

22<sup>ND</sup> JUDICIAL CIRCUIT  
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**MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(St. Louis City)**

**Maria Chisom**

**VS**

**HD Fitness d/b/a DeAnthony Moore**

**CASE NO. 1522-SC00383-01      DIVISION 29      DATE: 12/18/2015**

**ORDER AND JUDGMENT**

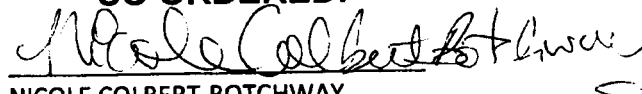
This matter, having been set on the Court's docket, was heard as a trial de novo on December 14, 2015. The parties appeared in person and represented themselves pro se. Plaintiff's witness Brandon Chisom testified along with the Defendant and Defendant's witnesses Derrick Pitts, Jamil Jabar and Ma'ri Byrd. Both parties admitted that Defendant owes Plaintiff \$232.00 for services she rendered at HD Fitness and they entered into the HD Fitness Personal Training Purchase Agreement (contract) dated 01/16/14 (submitted by each party as Plaintiff's Exhibit and Defendant's Exhibit A respectively). Pursuant to the contract, they agreed to individual training sessions that would expire after 18 months, approximately June of 2015, and after paying the initial contract fee Plaintiff purchased additional sessions based on the same agreement. The parties agree there were eighty-five (85) unused individual sessions, charged at the agreed upon rate of \$35.00 per session, remaining as of March 2015 when Plaintiff sought a refund. That the contract states individual training packages require 24 Hour Cancellation Notice to avoid session charges and individual sessions are non - refundable and expire after 18 months.

The court finds that the Defendant presented credible testimony that he attempted to perform the contract within 18 months by attempting to provide accommodations for breaks in training and delays by rescheduling sessions, was willing to extend the contract and is still willing to provide the unused sessions. Further that although Plaintiff failed to give 24-hour notice each time she cancelled or had to reschedule a session, both parties failed to make reasonable arrangements to timely reschedule sessions. The court finds that both parties are equally responsible for the non-performance of the contract. Further, it would be unduly burdensome to require Defendant to accept further training sessions from Plaintiff based on the breakdown in communication and Plaintiff's statement that "it would not be a comfortable scenario" for her to train at the studio.

This case being now submitted to the Judge upon proofs, evidence adduced and pleadings and the Judge being fully advised in the premises finds that the Plaintiff, Maria Chisom, is justly entitled to recover of the Defendant(s).

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff, Maria Chisom shall recover of the Defendant(s) one half of the cost of the unused sessions and \$232.00 for services rendered for a total of \$1,719.50 as and for damages plus cost of Court.

**SO ORDERED:**



NICOLE COLBERT-BOTCHWAY  
ASSOCIATE CIRCUIT COURT JUDGE

12/23/15

CC: Maria Chisom, 3231 Lafayette Ave., Apt. C., St. Louis, MO 63104 and DeAnthony Moore and HD Fitness, 1624 B Delmar Blvd., St. Louis, MO 63103