

SUPERIOR COURT

Gold's Gym hit with \$46,200 fine

■ Gold's slandered smaller gym, jury finds, saying telling people competitor was floundering.

by ANDREW WOLFE
Telegraph Staff

NASHUA — A jury awarded a Merrimack health club \$46,200 in damages Wednesday, finding that Gold's Gym employees slandered the smaller club by telling people it was going out of business.

Karen Tessier, owner of The Ultimate Gym & Fitness Center, 416 Daniel Webster Highway, Merrimack, sued Gold's Gym in 1998, and the case was tried this week in Hillsborough County Superior Court.

On Wednesday, the jury ruled in Tessier's favor, ordering Gold's to pay her \$4,200 for damages to her business, \$22,000

See GYM, Page 12

Gym

■ From Page 1

for damage to her business reputation and \$20,000 compensation for distress over the matter, lawyers in the case said Wednesday.

Gold's Gym plans to appeal the verdict and amount of the award to the state Supreme Court, however, the company's lawyer, Christine Friedman of Manchester, said. "We really, honestly do deny the allegations that Gold's said anything negative about the plaintiff's (Tessier's) gym. . . . Gold's really goes above and beyond the call of duty to make sure its salespeople don't say anything bad about our competitors," Friedman said.

"Obviously, the jury found differently, for whatever reason," she added.

Gold's Gym co-owner Theodore Berson declined to comment.

Tessier's Ultimate Gym & Fitness Center has been in business for about seven years, Tessier said. Her troubles with Gold's Gym began in 1997, she said, after Gold's bought out the former Adam & Eve Fitness Center at 515 Daniel Webster Highway, Merrimack.

Soon after Gold's came to town,

'We're left scratching our heads at the jury's verdict, because we didn't think there was any basis for awarding her damages.'

— Christine Friedman,
attorney for Gold's Gym

Tessier's suit stated, members began asking whether it was true that she was going out of business. Customers and friends told Tessier that they had heard her gym was financially troubled and would be closing, she said.

When Tessier asked where people had heard that, "they inevitably identified members of Gold's Gym as being the sources," her lawyer, B.J. Branch of Manchester, said in an interview last September.

Such rumors can be especially damaging in the health club industry, which has been plagued by clubs that shut down abruptly without refunding membership dues, Branch and Tessier said.

Tessier decided to sue after speaking with a friend, also a business owner, who had heard the rumor, she said Wednesday.

"I'm just a small facility, approximately 300 members in my club. . . . I didn't understand why they really needed to make comments about my business," Tessier said.

"They weren't playing fair at all. They were cheating. . . . They made their accusations very believable," she said.

"Because of their size, I would have expected they would have just sold the positive points of

their business and not tried to be negative about anyone else in the community."

Gold's Gym has about 16,000 members at its Nashua, Manchester and Merrimack gyms, Friedman said.

Tessier's suit charged Gold's Gym with engaging in unfair business practices by slandering her business.

"It was never a money issue," Branch said Wednesday. "Calling attention to the conduct was the issue. . . . There are some limits to what you can do."

The jury didn't award any damages for unfair trade practices, however, Friedman said.

"Despite the fact that she brought a consumer protection act claim, the jury didn't award her any damages for any knowing or willful unfair competition," which would have doubled or tripled the damages, Friedman said.

Competition from Gold's Gym doesn't seem to have hurt Ultimate Gym at all, Friedman said.

"Even though the jury did award these damages to the plaintiff . . . she had tremendous jumps in her membership after Gold's came to Merrimack," Friedman said.

"We're left scratching our heads at the jury's verdict, because we didn't think there was any basis for awarding her damages." □ □ □

Andrew Wolfe can be reached by calling 594-6410 or by e-mail at wolfe@telegraph-nh.com.