

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LAURA CHAMAIDAN, Individually and on
Behalf of All Others Similarly Situated,
Plaintiff(s)

- against -

TOMY B HAIRCARE INC.
Defendant

COMPLAINT

17 Civ. 6948

JURY DEMAND

The Plaintiff, LAURA CHAMAIDAN, as and for her complaint against the Defendant respectfully alleges:

NATURE OF THE CASE

1. In violation of well-settled, decades old law, Defendant has chosen not remove a variety of unlawful architectural barriers, and has instead decided to exclude Plaintiff and all other disabled persons, who use wheelchairs and scooters, from having access to and use of Defendant's public accommodation.
2. Plaintiff LAURA CHAMAIDAN files this action on behalf of herself and for those similarly situated, complaining of Defendant's violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12182 (hereinafter "ADA"), New York State Human Rights Law § 296, New York State Civil Rights Law, and Nassau County Administrative Code § 21-9.8 et seq.
3. Plaintiff seeks damages, declaratory and injunctive relief, as well as fees and costs against the defendant.

VENUE AND JURISDICTION

4. The jurisdiction of this court is invoked pursuant to 28 U.S.C. Sections 1331 and 2201 and through the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events, or omissions, giving rise to this action, including the unlawful practices alleged herein, occurred within Nassau County.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendant is a resident in this district and state.

PARTIES

7. That at all times hereinafter mentioned, Plaintiff is now, and at all times mentioned in this complaint, a resident of New Hyde Park, New York.

8. Defendant **TOMY B HAIRCARE INC.** is a New York domestic business corporation company authorized by the Secretary of the State of New York to do business in New York State with its principal County of business designated as Suffolk County.

CLASS ACTION

9. Plaintiff brings this suit for declaratory and injunctive relief and, pursuant to F.R.C.P. 23, as a class action for all those similarly situated, who, as persons who are disabled, and who use or desire to use the services and accommodations offered to the public by Defendant, are protected by, and are beneficiaries of, the ADA, state and local laws.

10. Plaintiff, complaining for herself and all other residents in the State of New York,

similarly situated, alleges: (a) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (b) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (d) the representative parties will fairly and adequately protect the interests of the class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

STATUTORY SCHEME

11. The 2010 United States Census indicates that more than 56.6 million persons in the United States have a disability. The 2010 US Census also indicates that more than 1.39 million New Yorkers have a mobility disability.

12. The ADA, New York State Human Rights Laws, and Nassau County Administrative Code recognizes individuals with disabilities as a protected class.

13. As such, it is unlawful for a private entity that owns, leases to or operates a place of public accommodations to discriminate against an individual with a disability.

14. The ADA, New York State Human Rights Laws, and Nassau County Administrative Code requires a public accommodation to be readily accessible to and usable by a disabled individual.

15. If a public accommodation is altered in the manner that affects or could affect the usability of the public accommodation thereof, it must make alterations in such a manner that, to

the maximum extent feasible, the altered portions of the public accommodation are readily accessible to and usable by individuals with disabilities.

16. Where a public accommodation undertakes an alteration that affects or could affect usability of or access to an area of the public accommodation containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, of the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities.

17. All public accommodations, regardless of the year it was built or altered, have a continuous lawful obligation to remove all readily achievable barriers which denies a disabled individual with the opportunity to participate in or benefit from services or accommodations.

18. Failure to remove all readily achievable architectural barriers is defined as disability discrimination in violation of the ADA. *See* 42 U.S.C. § 12182(b)(2)(A)(iv).

19. The ADA requires public accommodations to make reasonable modifications to the policies, practices, or procedures to afford access to persons with disabilities that is equal to the access afforded to individuals without disabilities.

20. Discriminatory intent is not required to establish liability under the ADA, New York State Human Rights Laws, and Nassau County Administrative Code.

FACTUAL BACKGROUND

21. Plaintiff is substantially limited in walking and uses a scooter for mobility.

22. Plaintiff is a qualified individual with a disability for purposes of this action.

23. Defendant TOMY B HAIRCARE INC. owns or leases, and operates a public

accommodation named Tomy B. Haircut located at 113 Hillside Avenue, Williston Park, NY (‘ hereinafter “public accommodation”).

24. Plaintiff resides approximately 3 miles from Defendant's public accommodation and is frequently near Defendant's public accommodation.

25. In or about July 2017, Plaintiff wanted to enter Defendant’s public accommodation, however, was unable to because of the existence of an unlawful architectural barrier.

26. Upon information and belief, since 1992, Defendants public accommodation has undergone alterations to the areas which affects or could affect access to or usability of its place of public accommodation.

27. Features of Defendant’s public accommodation inaccessible to Plaintiff, and others similarly situated, are including but not limited to:

a. Defendant does not provide at least one accessible route within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; An accessible entrance is not provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve in violation of the ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendix B § 206.2.1.

b. There does not exist an accessible route to enter its public accommodation in violation of 28 CFR § 36.403(e) and ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendix D § 402.

c. An accessible means of egress is not provided in violation of the ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendix B § 207.1.

d. The walkway to enter defendant’s public accommodation have unlawful changes in level in violation of the ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendix D §§ 303.2.

e. The entrance door lacks proper maneuvering clearance to enter the public accommodation in violation of the ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendix D § 404.

f. The walkway to enter Defendants' public accommodation have unlawful changes in level in violation of the ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendix D §§ 303, 403.

g. Upon information and belief, there does not exist proper turning radius, maneuvering clearance, and accessible route to enter the public use bathrooms in violation of the ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendix D §§ 304, 305 and 402.

h. Upon information and belief, the bathroom is inaccessible in violation of the ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendix D § 604.

i. The lavatories and sinks are inaccessible in violation of the ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendix D § 606.

j. Upon information and belief, the bathroom faucet is inaccessible in violation of ADA Accessibility Guidelines, 36 C.F.R. Part 1191 Appendix D § 309. The faucets cannot be operated with one hand and requires tight grasping, pinching, and twisting of the wrist.

28. The removal of existing architectural barriers is readily achievable.

29. To date, Defendant has failed to remove the architectural barriers

30. Plaintiff is deterred from visiting Defendant's noncompliant accommodation because of the existing accessibility barriers.

31. Plaintiff has the intention to return to Defendant's public accommodation once it becomes readily accessible to and usable.

**FIRST CAUSE OF ACTION
(Violations of the Americans with Disabilities Act)**

32. Defendant **TOMY B HAIRCARE INC.** owns, leases (or leases to), or operates a place of public accommodation named Tomy B. Haircut located at 113 Hillside Avenue, Williston Park, NY (hereinafter 'facility').

33. Defendant's facility, named Tomy B. Haircut located at 113 Hillside Avenue, Williston

Park, NY, is a public accommodation within the meaning of New York State Human Rights Law § 292(9) and Title III of the ADA, 42 U.S.C. § 12181.

34. Defendant has failed to make adequate accommodations and modifications to its facility named Tomy B. Haircut located at 113 Hillside Avenue, Williston Park, NY.

35. Defendant has failed to remove all architectural barriers that are structural in violation of 42 U.S.C. § 12182(b)(2)(A)(iv).

36. There exist readily achievable modifications which would make Defendant's public accommodation accessible and readily usable by Plaintiff and all others similarly situated.

37. Defendant failed to make the necessary readily achievable modifications to its public accommodation.

38. It is not impossible for Defendant to remove the architectural barriers which exist at its facility.

39. Defendant failed to design and construct its facility that is readily accessible to and usable by Plaintiff in violation of 42 U.S. Code § 12183(a)(1).

40. It is not structurally impracticable for Defendant's facility to be accessible.

41. Defendant failed to alter its facility to the maximum extent feasible in violation of 42 U.S. Code § 12183(a)(2).

42. Defendant's facility is not fully accessible to, or readily useable by individuals with disabilities.

43. Defendant has discriminated against Plaintiff, and all others similarly situated, on the basis of their disability, in the full and equal enjoyment of the goods, services, facilities,

privileges, advantages, or accommodations of its public accommodation in violation of 42 U.S. Code § 12182(a).

44. Defendant has subjected Plaintiff, and all others similarly situated, on the basis of their disability, directly, or through contractual, licensing, or other arrangements, denial of the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Defendant in violation of 42 U.S. Code § 12182(b)(1)(A)(i).

45. Defendant has afforded Plaintiff, and all others similarly situated, on the basis of their disability, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals in violation of 42 U.S. Code § 12182(b)(1)(A)(ii)..

46. Defendant has provided Plaintiff, and all others similarly situated, on the basis of their disability, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals in violation of 42 U.S. Code § 12182(b)(1)(A)(ii).

47. Defendant has not afforded plaintiff, and all others similarly situated, the goods, services, facilities, privileges, advantages, and accommodations in the most integrated setting appropriate in violation of 42 U.S. Code § 12182(b)(1)(B).

48. Defendant has denied Plaintiff, and all others similarly situated, the opportunity to participate in such program or activities that is not separate or different in violation 42 U.S. Code § 12182(b)(1)(C).

49. Defendant has imposed or applied an eligibility criteria that screened out or tended to screen out Plaintiff, and all others similarly situated, from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations being offered in violation of 42 U.S. Code § 12182(b)(2)(A)(i).

50. Defendant has failed to make reasonable modifications in their policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to Plaintiff in violation of 42 U.S. Code § 12182(b)(2)(A)(ii).

**SECOND CAUSE OF ACTION
(Violations of New York State Human Rights Laws)**

51. Plaintiff realleges and incorporates by this reference all allegations set forth in this Complaint as if fully set forth herein.

52. Defendant has not provided Plaintiff and others similarly situated with evenhanded treatment in violation of New York State Human Rights Law § 296.

53. Defendant does not provided Plaintiff and others similarly situated with equal opportunity to the use of their public accommodation.

54. Defendant has, because of Plaintiff's disability, directly or indirectly, refused, withheld from or denied Plaintiff any of the accommodations, advantages, facilities or privileges of their public accommodation.

55. Defendant has demonstrated that the patronage or custom thereat of Plaintiff and others similarly situated, are unwelcome, objectionable or not acceptable, desired or solicited.

56. Defendant discriminated in against Plaintiff by creating, fostering, and otherwise failing to prevent or remedy the discrimination against Plaintiff, in violation of New York State Human Rights Law § 296.

57. As a direct and proximate result of Defendant's unlawful discrimination in violation of New York State Human Rights Laws, Plaintiff has suffered, and continue to suffer emotional distress -- including but not limited to humiliation, stress, embarrassment, anxiety, loss of self-esteem and self-confidence, emotional pain and suffer.

**THIRD CAUSE OF ACTION
(Violations of New York State Civil Rights Laws)**

58. Plaintiff realleges and incorporates by this reference all allegations set forth in this Complaint as if fully set forth herein.

59. Defendant, her agent, servants, and/or tenants discriminated against Plaintiff pursuant to New York State law.

60. Consequently, Plaintiff is entitled to recover the penalty prescribed by Civil Rights Law § 40-c and 40-d, in the amount of \$500 for each and every violation.

61. Notice of the action has been served upon the Attorney-General as required by Civil Rights Law § 40-d.

**FOURTH CAUSE OF ACTION
(Violations of Nassau County Administrative Code)**

62. Plaintiff realleges and incorporates by this reference all allegations set forth in this Complaint as if fully set forth herein.

63. Defendant's demonstrate that their accommodation, advantages, facilities and privileges

shall be refused, withheld from or denied to Plaintiff and all others similarly situated on account of actual or perceived disability.

64. On the basis of Plaintiff's disability, Defendant's demonstrate that the patronage of Plaintiff is unwelcome, objectionable, or not acceptable, desired or solicit.

65. On the basis of Plaintiff's disability, Defendant has directly or indirectly, refused, withheld from or denied Plaintiff with similar accommodations, advantages, facilities or privileges as offered to individuals who are not disabled.

**FIFTH CAUSE OF ACTION
(Declaratory Relief)**

66. Plaintiff realleges and incorporates by this reference all allegations set forth in this Complaint as if fully set forth herein.

67. Plaintiff is entitled to a declaratory judgment concerning the violations committed by Defendant specifying the rights of Plaintiff and other persons similarly situated as to the policies, practices, procedures, facilities, goods and services provided by Defendant.

INJUNCTIVE RELIEF

68. Plaintiff and others similarly situated will continue to experience unlawful discrimination as a result of Defendant's failure to comply with fed New York State Human Rights Laws and Title III of the ADA, and Nassau County Administrative Code, therefore, injunctive relief is necessary to order Defendant to alter and modify their facility, policies, practices, and procedures.

69. Issue a permanent injunction enjoining Defendant from disability discrimination.

70. Issue a permanent injunction ordering Defendant to alter its facility to make such facility readily accessible to and usable by individuals with disabilities.

71. Issue a permanent injunction requiring Defendant to make all necessary modifications to Defendant's policies or practices so that Plaintiff and other persons similarly situated will not be subject to further unlawful discrimination.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court entered a judgment in her favor containing the following relief:

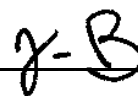
- A. Certify this case as a class action;
- B. Issue a permanent injunction 1) proscribing disability discrimination, 2) requiring Defendant to alter its facility making such facility readily accessible to and usable to individuals with disabilities, and 3) compelling Defendant to make all necessary modifications to Defendant's policies or practices so that Plaintiff will not be subject to further discrimination in accordance with New York State Human Rights Laws, and Title III of the ADA.
- C. Enter declaratory judgment, specifying Defendant violation of Nassau County Administrative Code, ADA and New York State Laws, and declaring the rights of plaintiff and other persons similarly situated as to Defendant's policies, practices, procedures, facilities, goods and services offered to the public.

- D. Award Plaintiff the mandatory, minimum statutory damages of \$5000 from each Defendant for their violations of Nassau County Administrative Code § 219.9.1.
- E. Pursuant to New York State Civil Rights Law § 40-c and 40-d, hold Defendant liable for \$500 for *each* violation.
- F. Pursuant to New York State Civil Rights Law § 40-d, find Defendant guilty of a class A misdemeanor for violating New York State civil rights law.
- G. The Court retain jurisdiction over the Defendant until the Court is satisfied that the Defendant's unlawful practices, acts and omissions no longer exist and will not reoccur.
- H. Award Plaintiff actual damages as a result of Defendant's violations of New York State Human Rights Laws.
- I. Award Plaintiff compensatory damages in the amount of \$5,000 from Defendant for its violation of New York State Human Rights Laws.
- J. Find that Plaintiffs are a prevailing party in this litigation and award reasonable attorney fees, costs and expenses.
- K. For such other and further relief, at law or in equity, to which the Plaintiff and other persons similarly situated may be justly entitled.

Dated: November 27, 2017

LAW OFFICES OF JAMES E. BAHAMONDE,
P.C.

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