

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
CIVIL RIGHTS BUREAU**

AOD No. 14-056

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In the Matter of:

MANHATTAN THEATRE CLUB

**ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW
63(15)**

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In May 2013, the Office of the Attorney General of the State of New York began to investigate, pursuant to the provisions of Section 63(12) of the New York State Executive Law, the extent to which the Manhattan Theatre Club (“Respondent”) denied full and equal enjoyment of the theater experience to persons with disabilities by failing to provide auxiliary aids and services to persons who are hard of hearing, namely, hearing-aid compatible assistive listening devices.

This Assurance of Discontinuance contains the OAG's findings in connection with its investigation of Respondent and the resolution agreed to by the OAG and Respondent.

**I.
DEFINITIONS**

1. Throughout this Assurance of Discontinuance, the following terms shall have the following meanings:
 - a. “**ADAAG**” means the Americans with Disabilities Act Accessibility Guidelines, 28 C.F.R. § 36.301 *et seq.*

- b. **“Assistive Listening System”** means an amplification system utilizing transmitters, receivers, and coupling devices to bypass the acoustical space between a sound source and a listener by means of an induction loop, radio frequency, infrared, or direct-wired equipment.
- c. **“Assurance”** means this Assurance of Discontinuance.
- d. **“Disability”** means a physical or mental impairment that substantially limits one or more major life activities (including hearing), a history of having such an impairment, or being perceived as having such an impairment.

II. **FINDINGS**

- 2. The New York State Human Rights Law § 290 *et seq.* and Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181 *et seq.* prohibit public accommodations from discriminating against people with disabilities by denying them access to goods or services on the basis of their disability.
- 3. New York State Executive Law § 63(12) prohibits repeated or persistent fraudulent or illegal acts in the transaction of business.
- 4. Respondent operates three live theater establishments: the Friedman Theater, with a seating capacity of 650 people, the New York City Center Stage I, with a seating capacity of 299 people, and the New York City Center Stage II, with a seating capacity of 150 people.
- 5. Respondent provides a public accommodation subject to the New York State Human Rights Law § 290 *et seq.* and Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181 *et seq.*

6. From May through September 2013, the OAG conducted an investigation into whether theaters were compliant with the ADA, and the auxiliary aids requirements of the ADAAG. This investigation included a review of publicly-available information regarding the theaters' services and a review of information provided by complainants. Hearing loss is the most commonly reported disability in the United States. At least 10% of Americans suffer from some degree of hearing loss. As a result, it is important that theaters provide assistive listening systems and devices in order to ensure that individuals with hearing loss are able to participate fully in the theater experience. In addition, because a significant portion of persons who are hard of hearing use hearing aids, it is important that hearing-aid compatible assistive listening devices are offered. In its investigation of Respondent, the OAG found credible evidence that the policies and practices of Respondent involving auxiliary aids and services for persons who are hard of hearing constituted violations of the New York State Human Rights Law § 290 *et seq.*, Title III of the ADA, 42 U.S.C. § 12181 *et seq.* and the ADAAG, 28 C.F.R. § 36.301 *et seq.* Specifically, the OAG's investigation revealed that while assistive listening devices were made available at each of the live theater establishments operated by Respondent, no hearing-aid compatible devices were offered at the New York City Center Stage I Theatre and the New York City Center Stage II Theater, and an insufficient number of hearing-aid compatible devices were offered at the Friedman Theatre.
7. The assistive listening systems offered by Respondent at the New York City Center Stage I Theatre and the New York City Center Stage II Theater are

provided by, and remain the property of, Respondent's landlord, New York City Center, Inc. ("City Center").

8. Since October 2013, Respondent has made available at least eight (8) hearing-aid compatible devices at the Friedman Theatre and six (6) hearing-aid compatible devices at the New York City Center, which houses the Stage I and Stage II Theatres, in compliance with the New York State Human Rights Law § 290 *et seq.*, Title III of the ADA, 42 U.S.C. § 12181 *et seq.* and the ADAAG, 28 C.F.R. § 36.301 *et seq.*

III. PROSPECTIVE RELIEF

WHEREAS, Respondent is subject to the New York State Executive Law § 290 *et seq.*, and Title III of the ADA, 42 U.S.C. § 12181 *et seq.*, which prohibit public accommodations from discriminating against people with disabilities by denying them access to goods or services on the basis of their disability;

WHEREAS, New York State Executive Law § 63(12) prohibits repeated or persistent illegal acts in the transaction of business;

WHEREAS, the New York State Human Rights Law and the ADA were enacted to protect the rights of individuals with disabilities by eliminating barriers to their participation in major life activities, which includes providing equal access to theaters and other public accommodations;

WHEREAS, the OAG seeks to ensure that all individuals have equal access to goods and services provided by public accommodations regardless of their disabilities;

WHEREAS, Respondent has demonstrated a commitment to providing service to persons with disabilities and a commitment to taking action necessary to achieve full compliance with the requirements of the ADA and ADAAG;

WHEREAS, Respondent has cooperated in the OAG's investigation and will work cooperatively with the OAG to improve accessibility at its theatres by ensuring that assistive listening devices are provided to persons who are hard of hearing in accordance with the full technological requirements of the ADA and ADAAG;

WHEREAS, Respondent neither admits nor denies the OAG's Findings set forth in Paragraphs 2 – 8;

WHEREAS, the parties desire to obviate the need for further investigation or litigation, and it is expressly understood that, with respect to the investigation of the OAG, this is a compromise settlement entered into to avoid the expense and inconvenience of further investigation and litigation; and

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York State Executive Law § 63(15) and to discontinue its investigation of Respondent; and

WHEREAS, the parties believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between Respondent and the OAG as follows:

IV.
COMPLIANCE WITH THE LAW

9. Respondent agrees to fully comply with the obligations and conditions of New York State Executive Law §§ 63(12) and 296(2)(a) and Title III of the ADA, 42

U.S.C. § 12181 *et seq.* and the ADAAG, 28 C.F.R. § 36.301 *et seq.*, which require, *inter alia*, that assistive listening devices must be made available in accordance with the numerical and technical requirements set forth in Sections 219.3 and 706.3 of the 2010 ADAAG and Sections 4.33.7 and A4.33.7 of the 1991 ADAAG.

V.
POLICY

10. No more than two months after the Effective Date, Respondent shall create and implement a policy governing the availability of auxiliary aids and services, subject to the reasonable approval of the OAG, that requires that:

- a. an assistive listening system be made available in each of the Friedman Theater, the New York City Center Stage I Theater, and the New York City Center Stage II Theater;
- b. at least twenty-six (26) assistive listening devices be offered at the Friedman Theater, at least eight (8) of which will be hearing-aid compatible;
- c. at least eighteen (18) assistive listening devices be offered at the New York City Center, which houses the Stage I and Stage II theaters, at least six (6) of which will be hearing-aid compatible.

11. Respondent shall make good faith efforts to work with City Center to further the objectives of this Assurance. If at any point during the term of this Assurance, City Center fails to make its assistive listening systems available, Respondent will immediately provide notice to the OAG and take steps to secure access to alternate assistive listening systems.

VI.
TRAINING AND PUBLICITY

12. No more than three months after the Effective Date, Respondent shall provide training on the policy required by Paragraph 10 as follows. Respondent shall arrange meetings with all employees responsible for making decisions about the provision of auxiliary aids and services and inform all such employees of the requirements of paragraphs 9–10 of this Assurance. The meetings shall take place no later than three (3) weeks after the Effective Date, or, if an employee responsible for making decisions about the provision of auxiliary aids and services is hired after the Effective date, no later than two (2) weeks after his or her hire date. Respondent shall maintain attendance records of all such meetings providing the date of the meeting and the names of all persons present.
13. Respondent shall post in a publicly visible location in the theater lobby a notice indicating that ordinary and hearing-aid compatible assistive listening devices are available, providing instructions as to how to obtain such assistive listening devices, and including the International Symbol of Access for Hearing Loss.
14. Respondent shall include accessibility information, including information on how to obtain an ordinary or hearing-aid compatible assistive listening device, on its official website and in its Subscriber Handbook. Such materials shall also include the International Symbol of Access for Hearing Loss.

VII.
RECORD KEEPING AND MONITORING

15. One (1) month, twelve (12) months, and twenty-three (23) months after the Effective Date, Respondent will submit a written report to the Office of the Attorney General's Civil Rights Bureau (hereinafter "Bureau"):

- a. Summarizing the continued implementation of this Assurance and any issues arising therefrom; and
- b. Enumerating any complaints received relating to the subject-matter of this Assurance and their resolution.

VIII.
OTHER RELIEF

16. Over a period of one (1) year from the Effective Date of this Assurance, Respondent shall offer twenty-four (24) seats at performances or events at the Friedman Theatre or the Stage 1 and Stage 2 Theatres, free of charge, according to the distribution method set forth in this Paragraph. To the extent possible, Respondent shall endeavour to offer one (1) pair of such seats per month. Respondent shall offer these seats to non-profit organizations that provide services to persons with disabilities or services to persons with hearing loss in New York State for use by persons with a disability of limited means and such party's companion. Promptly following the execution of this Assurance, the OAG shall provide Respondent with a list of such organizations, and Respondent shall, thereafter, contact one or more of said organizations with the dates on which seats can be made available and, thereafter, cooperate in the distribution of tickets therefor.

IX.
SCOPE OF THE ASSURANCE, JURISDICTION, AND
ENFORCEMENT PROVISIONS

17. This Assurance of Discontinuance shall be effective on the date that it is signed by an authorized representative of the OAG ("Effective Date").
18. This Assurance shall expire two (2) years after the Effective Date.
19. Notwithstanding any provisions of this Assurance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for Respondent to comply with any provision of this Assurance. The OAG will grant reasonable extensions of time where good cause is shown.
20. The signatories to this Assurance warrant and represent that they are duly authorized to execute this Assurance and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Assurance to effectuate its terms.
21. The parties may seek to enforce this Assurance through administrative or judicial enforcement proceedings, including a civil action in federal or state court, as appropriate, seeking specific performance of the provisions of this Assurance. Pursuant to New York State Executive Law § 63(15), evidence of a violation of this Assurance will constitute *prima facie* proof of a violation of New York State Executive Law §§ 63(12), 296(2)(a), and/or 42 U.S.C. § 12182(a) in any civil action or proceeding hereafter commenced by the OAG in connection with this Assurance. However, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking administrative or judicial intervention.

22. The failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.
23. If any provisions, terms, or clauses of this Assurance are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Assurance shall remain valid and binding on the parties.
24. This Assurance constitutes the entire agreement between Respondent and the OAG on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party that is not contained in this Assurance shall be enforceable.
25. Nothing in this Assurance is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the parties hereto.
26. Nothing in this Assurance is intended to, nor shall, limit the OAG's investigatory compliance review powers otherwise provided by law or this Assurance.
27. This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
28. This Assurance is final and binding on the parties, including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. No assignment by any party hereto shall operate to relieve such party of its obligations herewith.

29. All communications and notices regarding this Assurance shall be sent by first class mail and by facsimile or electronic mail, if twenty-five (25) pages or less in length, to:

Office of the Attorney General

Mayur Saxena
Assistant Attorney General
Civil Rights Bureau
Office of the New York State Attorney General
120 Broadway, 3rd Floor
New York, NY 10271
Tel.: (212) 416-8250
Fax : (212) 416-8074
Email: Civil.Rights@ag.ny.gov

Manhattan Theatre Club

Florie Seery
General Manager
311 West 43rd Street
New York, New York 10036
Tel.: (212) 399-3000
Fax: (212) 399-4329
fseery@mtc-nyc.org

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York
March ~~28~~, 2014

Manhattan Theatre Club

By:



CONSENTED TO:

Dated: New York, New York
March ~~22~~, 2014
April

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By:



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