

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

AOD No. 14-055

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In the Matter of:

SVA THEATRE

**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 SVA Theatre (“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 two live theater establishments: the Silas Theater, with a seating capacity of 479 people, and the Beatrice Theatre, with a seating capacity of 266 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 theatre's 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 none of the live theater establishments operated by Respondent made any assistive-listening devices available to individuals who are hard of hearing. In addition, the theatres did not make available any hearing-aid compatible devices.

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 the SVA Theatre 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 has agreed to purchase and install an assistive listening system in each of the live theater establishments that it operates, and to purchase and

make available thirty (30) assistive-listening devices, ten (10) of which are compatible with hearing aids;

WHEREAS, Respondent neither admits nor denies the OAG's Findings set forth in Paragraphs 2 - 6;

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

7. 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 AND PROCEDURES

8. No more than two months after the Effective Date, Respondent shall create and implement a revised policy governing the availability of auxiliary aids and services, subject to the reasonable approval of the OAG, that requires that at an assistive listening system be made available in both the Silas Theater and the Beatrice Theater, and that at least thirty (30) assistive listening devices be offered, at least ten (10) of which will be hearing-aid compatible, to patrons of these theaters.

VI.
TRAINING AND PUBLICITY

9. No more than three months after the Effective Date, Respondent shall provide training on the revised policy required by Paragraph 8, as well as the requirements of the ADA and ADAAG concerning the provision of auxiliary aids and services.
10. All new employees responsible for making decisions about the provision of auxiliary aids and services must receive training on the revised policy within fourteen (14) days of their date of hire.
11. Respondent shall maintain attendance records for all training sessions.
12. Respondent shall post a short statement summarizing the key terms of its policies concerning auxiliary aids and services on the SVA Theatre website. Respondent shall post in a publicly visible location in the theater lobby a notice indicating that auxiliary aids and services are available, providing instructions as to how to obtain auxiliary aids and services, and including the International Symbol of Access for Hearing Loss. In addition, Respondent will include the International

Symbol of Access for Hearing Loss in a visible and conspicuous location on its website and on written materials reflecting the Respondent's auxiliary aids policy.

13. Any promotional materials more than a single page in length created by Respondent after the Effective Date shall include accessibility information, including information on how to obtain an ordinary or hearing-aid compatible assistive listening device. Such materials shall also include the International Symbol of Access for Hearing Loss.

VII.
RECORD KEEPING AND MONITORING

14. 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

15. In order to publicize the availability of auxiliary aids and services, Respondent shall conduct the following outreach activities in connection with events or performances that are open to the public:
 - a. With respect to public events or performances that are hosted by the SVA Theatre or the School of Visual Arts, Respondent shall offer two (2) seats at a performance or event at the Silas Theatre or the Beatrice Theatre, free

of charge, no less often than once a month, but only to the extent that a performance or event has been scheduled in any given month, for a period of one (1) year from the Effective Date of this Assurance. Respondent shall offer this single pair of 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.

- b. With respect to events or performances at the Silas Theatre or the Beatrice Theatre that are not hosted by the SVA Theatre or the School of Visual Arts, Respondent shall inform the hosting organization of the availability of auxiliary aids and services in advance of the event or performance. Respondent shall include information concerning the availability of auxiliary aids and services in its booking form and any sublease contracts entered into with hosting organizations. In addition, Respondent's staff shall ensure that Respondent's policies concerning auxiliary aids and services are complied with at all such events or performances.

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

16. This Assurance of Discontinuance shall be effective on the date that it is signed by an authorized representative of the OAG ("Effective Date").
17. This Assurance shall expire two (2) years after the Effective Date.
18. 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.
19. 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.
20. 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.

21. 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.
22. 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.
23. 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.
24. Nothing in this Assurance is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the parties hereto.
25. Nothing in this Assurance is intended to, nor shall, limit the OAG's investigatory compliance review powers otherwise provided by law or this Assurance.
26. This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
27. 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.

28. 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:

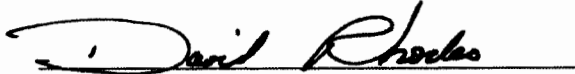
Office of the Attorney General
Mayur Saxena
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SVA Theatre
Adam Natale
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SVA Theatre
333 West 23rd Street
New York, NY 10011
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IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York
April 23, 2014

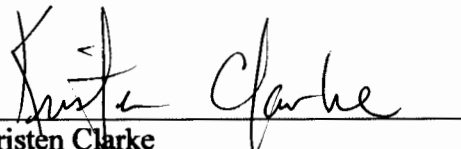
SVA Theatre

By: 
David Rhodes
President, School of Visual Arts

CONSENTED TO:

Dated: New York, New York
April 29, 2014

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