

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

AOD No. 13-384

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In the Matter of:

ATLANTIC THEATER COMPANY

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

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In December 2012, the Office of the Attorney General of the State of New York began to investigate, pursuant to the provisions of 63(12) of the New York State Executive Law, the extent to which the Atlantic Theater Company ("Respondent") denied full and equal enjoyment of the theater experience to persons with disabilities by (1) failing to ensure that accessible seating was sold during the same hours and stages of sales as other seating, and made available through the same distribution and purchasing methods as other seating, including telephone service, in-person ticket sales at the facility, or third-party ticketing services; and (2) failing sufficiently to provide auxiliary aids and services to hearing-impaired persons, namely, hearing-aid compatible assistive listening devices.

The OAG reviewed, among other information, Respondent's accessibility policy and agreements with third-party vendors to evaluate to what extent Respondent met the requirements set forth in the Americans with Disabilities Act Accessibility Guidelines regarding ticket sales and the availability of auxiliary aids and services.

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. **“Accessible Seating”** means wheelchair spaces and companion seats that comply with sections 221 and 802 of the 2010 ADA Standards along with any other seats required to be offered for sale to the individual with a disability.
 - b. **“ADAAG”** means the Americans with Disabilities Act Accessibility Guidelines, 28 C.F.R. § 36.301 *et seq.*
 - c. **“Assurance”** means this Assurance of Discontinuance.
 - d. **“Disability”** means a physical or mental impairment that substantially limits one or more major life activities, a history of having such an impairment, or being perceived as having such an impairment.
 - e. **“Third Party Vendor”** means any company, organization, or website other than Respondent that has been authorized by Respondent to sell tickets to Respondent's events.

II.
FINDINGS

2. The New York 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. The Atlantic Theater Company operates two live theater establishments: the Linda Gross Theater, with a seating capacity of 199 people and 6 wheelchair accessible seats, and the Atlantic Stage 2, with a seating capacity of 95 people and 4 wheelchair accessible seats.
5. Respondent provides a public accommodation subject to The New York Human Rights Law §§ 290 *et seq.* and Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181 *et seq.*
6. In December of 2012 and January of 2013, the OAG conducted an investigation into whether theaters were compliant with the ADA, and with the ticket sales and auxiliary aids requirements of the ADAAG.
7. In its investigation of the Atlantic Theater Company, the OAG found credible evidence that the policies and practices of the Atlantic Theater Company involving the sale of theater tickets to persons with disabilities constituted violations of the New York 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.*, in that persons with disabilities were not provided with the same opportunities to purchase tickets as persons seeking to purchase general seating. The OAG also found credible evidence that the policies and practices of the Atlantic Theater Company involving auxiliary aids and services for hearing-impaired persons constituted violations of the New York 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., in that none of the headsets currently made available at Atlantic Theatre Company is hearing-aid compatible and thus, Atlantic Theater Company does not meet the requirements of the ADAAG.

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. 1281 *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 the additional steps 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 Atlantic Theater Company by ensuring that persons with disabilities have the same access to purchase theatre tickets as other members of the general public, including online and telephone

sales by third party vendors and that assistive listening devices provided to hearing-impaired persons meet the full technological requirements of the ADA and ADAAG;

WHEREAS, Respondent has taken steps to ensure that persons with disabilities have the same access to purchase theater tickets as other members of the general public, including through online and telephone sales;

WHEREAS, Respondent has agreed that it will purchase four (4) assistive-listening devices that are compatible with hearing aids;

WHEREAS, Respondent neither admits nor denies the OAG's Findings set forth in Paragraphs 2 - 7;

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

8. 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 that (1) persons seeking to purchase accessible seating must be able to do so during the same hours and in the same manner as persons seeking to purchase general seating; and (2) hearing-aid compatible 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

9. No more than two months after the Effective Date, Respondent shall create and implement a revised policy governing the procedures for the sale of accessible seating, subject to the reasonable approval of the OAG, that:
- a. Requires that accessible seating be sold to individuals with mobility impairments on a first come, first served basis:
 - i. During the same hours as other seating;
 - ii. During the same stages of sale as other seating, including, but not limited to, pre-sales, promotions, general sales, wait lists, or lotteries; and
 - iii. Through the same distribution and purchasing methods as other seating;

- b. Offers that any person purchasing an accessible seat will be able to purchase up to three (3) companion seats contiguous with or immediately proximate to the accessible seat, provided that, at the time of purchase, such seats are available;
- c. Designates a single individual within Respondent's organization as ADA Coordinator and Antidiscrimination Officer ("the Antidiscrimination Officer"), who shall be the person responsible for receiving complaints concerning disability discrimination; and
- d. Specifies that any complaints of discrimination or harassment reported to the Antidiscrimination Officer shall be investigated and, if necessary, appropriate action shall be taken to promptly resolve such complaints.

Such complaints shall be reported to the OAG as specified below.

10. 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:

- a. Requires that at least two (2) assistive listening devices that are compatible with hearing aids shall be offered for all performances at the Linda Gross Theater; and
- b. Requires that at least two (2) assistive listening devices that are compatible with hearing aids shall be offered for all performances at the Atlantic Stage 2 Theater.

VI.
TRAINING AND PUBLICITY

11. Respondent shall post its policies concerning accessible seating and auxiliary aids and services or a short statement summarizing the key terms of those policies on the Atlantic Theater Company website, and in a publicly visible location in the Box Office or in a publicly visible location in the theater lobby. In addition, Respondent will include the International Symbol of Access in a visible and conspicuous location on its website and on written materials reflecting the Respondent's accessible seating policy, and 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.
12. 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 purchase accessible seats and how to obtain an ordinary or hearing-aid compatible assistive listening device. Such materials shall also include the International Symbol of Access and the International Symbol of Access for Hearing Loss.

VII.
RECORD KEEPING AND MONITORING

13. Three (3) months, twelve (12) months, and twenty-three (23) months after the Effective Date, Respondent will submit or make a 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 subject to Paragraph 9(d) of this Assurance and their resolution.

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

14. This Assurance of Discontinuance shall be effective on the date that it is signed by an authorized representative of the OAG ("Effective Date").
15. This Assurance shall expire two (2) years after the Effective Date.
16. 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.
17. 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.
18. 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 20 U.S.C. § 2092(f) 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.

19. 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.
20. 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.
21. 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.
22. Nothing in this Assurance is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the parties hereto.
23. Nothing in this Assurance is intended to, nor shall, limit the OAG's investigatory compliance review powers otherwise provided by law or this Assurance.
24. This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
25. 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.

26. 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

Monica Iyer
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

Atlantic Theater Company

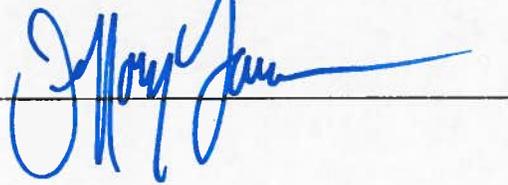
Jamie Tyrol
General Manager
Atlantic Theater Company
76 9th Avenue, STE 537
New York, NY 10011
Tel.: (646) 216-1090
Fax: (212) 645-8755
Email: jtyrol@atlantictheater.org

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York
July ____, 2013

Atlantic Theater Company

By:



CONSENTED TO:

Dated: New York, New York
July 16, 2013

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

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