

Briccetti, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

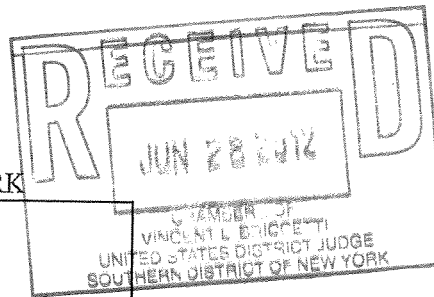
UNITED STATES OF AMERICA,

Plaintiff,

v.

LARKIN, AXELROD, INGRASSIA &
TETENBAUM, LLP, and JOHN INGRASSIA,

Defendants.



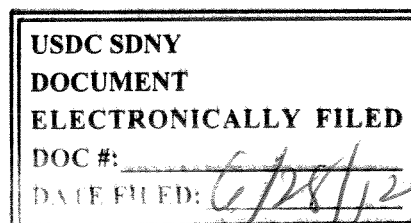
11 Civ. 8003 (VB) (PED) ✓

CONSENT DECREE

WHEREAS, this action was brought by the United States of America (the "Government") to enforce the provisions of Title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. pt. 36 (together, "Title III");

WHEREAS, the Government's complaint in this action alleges that disability discrimination in violation of Title III of the ADA occurred when defendants Larkin, Axelrod, Ingrassia & Tetenbaum, LLP, a law firm with offices in Newburgh and Middletown, New York ("Larkin Axelrod" or the "firm"), and John Ingrassia, a partner of the firm (together, "defendants"), denied complainant Lauren Klejmont, a client of the firm, access to defendants' law office located at 356 Meadow Avenue, Newburgh, New York, because Klejmont uses a service animal as a result of her disability;

WHEREAS, nothing contained in this Consent Decree is intended or shall be construed as an admission by or finding against defendants that defendants were in violation of the Americans with Disabilities Act or any other federal statutes or regulations. ✓



NOW, THEREFORE, IT IS ADJUDGED, ORDERED and DECREED as follows:

JURISDICTION

1. The Court has jurisdiction of this action pursuant to 42 U.S.C. § 12188(b)(1)(B) ✓
and 28 U.S.C. §§ 1331 and 1345.

2. This Consent Decree will remain in effect for three (3) years from its effective ✓
date. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the
terms of the Consent Decree, at which time the case shall be dismissed with prejudice. The
Government may move the Court to extend the duration of the Consent Decree in the interests of
justice.

STIPULATED FACTS

3. The parties stipulate to the truth of the following facts: ✓
- (a) On January 29, 2009, the complainant, a client of Larkin Axelrod,
appeared at Larkin Axelrod's office with her service dog for a meeting
with one of the firm's partners and an associate attorney employed with
Larkin Axelrod. They were unaware that the complainant would be
accompanied by her service animal, and the partner asked her to leave it
outside because the partner had allergy problems. He subsequently
apologized and advised the complainant that in the future he would make
advance arrangements to deal with his allergy issues and meet with her
and her service dog;
 - (b) On January 13, 2010, the complainant requested a meeting with the ✓
associate attorney employed by Larkin Axelrod. The associate attorney
advised the complainant that he had a dog phobia and that the complainant
could not bring the service dog into the firm's offices. By letters dated

- January 13 and 25, 2010, the associate attorney told the complainant that he would meet with her either in the firm's offices as long as she did not bring her service dog with her, or in the firm's parking lot as long as the dog remained in her car during the meeting. On February 3, 2010, after Larkin Axelrod's principals learned of these events through a complaint filed by complainant, the associate attorney telephoned the complainant and offered to meet with her and her service dog in the firm's offices; and
- (c) Larkin Axelrod did not have a service animal policy in place through January 2009 or later.

INJUNCTIVE RELIEF

4. The firm shall adopt and implement the service animal policy attached to this Consent Decree as Attachment A (the "policy"). The policy shall be included in all of the firm's written and oral procedures. ✓

5. The firm shall post and maintain in a public and conspicuous location a sign stating: ✓

Service Animals Welcome. For information about the ADA or how to file an ADA complaint, visit the website www.ada.gov or call the U.S. Department of Justice at 1-800-514-0301 (voice) and 1-800-514-0383 (TTY). ADA complaints can be sent by email to ADA.complaint@usdoj.gov.

The sign shall be printed in a dark, bold font, 26 point or larger, on a contrasting light background and be refreshed, as necessary, so it remains easily readable by any customers who visit the firm's premises.

6. The service animal policy adopted pursuant to paragraph 4 shall be prominently posted and maintained in employee areas at the firm's premises.

7. The firm shall conduct one training session on service animal issues for all current employees within the next month.

8. Each new employee of the firm will receive a copy of the service animal policy adopted pursuant to paragraph 4 and sign a form acknowledging receipt of the policy within three (3) business days of beginning work. The firm shall maintain copies of the signed acknowledgments for review by the United States Attorney's Office.

GENERAL NONDISCRIMINATION OBLIGATIONS

9. Defendants, and each of their partners, employees, agents, successors, and assigns, and all other persons in active concert or participation with them, are permanently enjoined from:

- (a) Discriminating on the basis of disability as prohibited by Title III, as defined herein;
- (b) Discriminating against any individual because of that individual's known relationship to or association with an individual with a known disability, as set out in 42 U.S.C. § 12182(b)(1)(E) and 28 C.F.R. § 36.205;
- (c) Imposing or applying eligibility criteria that screen out or tend to screen out an individual on the basis of disability from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, as provided by 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(a);
- (d) Failing or refusing to make reasonable modifications in policies, practices, and procedures when necessary to avoid discrimination against persons with disabilities, including persons who use service animals, 42 U.S.C. § 12182(b)(2)(A)(ii) and 28 C.F.R. § 36.302(a), (c); and

- (e) Engaging in retaliation, coercion, interference, intimidation, or any other action prohibited by section 503 of the ADA, 42 U.S.C. § 12203 and 28 C.F.R. § 36.206.

MONETARY RELIEF AND CIVIL PENALTY

10. Defendants shall pay a total of Twenty Thousand Dollars (\$20,000) in monetary damages to Lauren Klejmont, which amount is inclusive of any claim for attorney's fees by Ms. Klejmont and/or by Stephen Bergstein, Esq., her attorney. Such payments shall be made by sending certified checks made payable to the order of Lauren Klejmont and Stephen Bergstein, Esq., as Attorney in the respective amounts specified herein to Mr. Bergstein at 15 Railroad Avenue, Chester, New York 10918, by common carrier Federal Express, delivery prepaid. It shall be a condition precedent to the entry of this Consent Decree that Mr. Bergstein tender to the Government a Waiver and Release of Claims, duly executed by Lauren Klejmont, in the form attached hereto as Attachment B. The Government will hold the Waiver and Release of Claims in escrow pending full payment of all sums due under Paragraphs 10 to 12 of this Consent Decree, and will send the original Waiver and Release of Claims to defendants by common carrier, Federal Express delivery prepaid, within ten days after successful negotiation of the final check due under Paragraph 12 hereof.

11. Defendants shall pay a total of Five Thousand Dollars (\$5,000.00) made payable to the order of the United States Treasury as a civil penalty pursuant to 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3). Defendants will deliver the check or money order to counsel for the Government by common carrier Federal Express, delivery prepaid.

12. The payments set forth in paragraphs 10 and 11 may be made in up to a total of ten monthly installments of Two Thousand Five Hundred Dollars (\$2,500.00) each, with the first

eight installment payments being made to Klejmont and the final two installment payments being made to the United States of America.

MISCELLANEOUS PROVISIONS

13. Failure by the Government to enforce this entire Consent Decree or any of its provisions or deadlines shall not be construed as a waiver of the right of the United States to enforce other deadlines and provisions of this Consent Decree. ✓
14. All materials sent to the Government pursuant to this Consent Decree shall be sent to the following address by common carrier Federal Express, prepaid delivery: United States Attorney's Office, Civil Division, 86 Chambers Street, 3rd Floor, New York, New York 10007, Attn: Chief, Civil Rights Unit. The cover letter shall include a subject line referencing the caption and docket number of this action. ✓
15. The effective date of this Consent Decree is the date of entry by the Court after the signatures of all parties have been obtained. ✓
16. This Consent Decree, including Attachments A and B, constitutes the entire agreement between the parties 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 written Consent Decree, will be enforceable under its provisions. ✓
17. Except as set forth in Attachment B (Waiver and Release of Claims), this Consent Decree is limited to resolving claims under the ADA related to the allegations set forth in the Government's complaint in the above captioned action and does not purport to remedy any other existing or potential violations of the ADA or any other federal law. ✓
18. This Consent Decree in no way limits defendants' continuing responsibility to comply with all aspects of the ADA and all other federal laws, including but not limited to the obligations under Title III of the ADA to ensure effective communication, remove barriers to ✓

access when it is readily achievable to do so, and make reasonable modifications in policies, practices, and procedures when necessary to avoid discrimination on the basis of disability.

19. A copy of this Consent Decree and any information contained in it, including the service animal policy, will be made available to any person by defendants or the Government upon request. ✓

20. By consenting to entry of this Consent Decree, the Government and defendants agree that in the event that defendants engage in any future violation(s) of Title III of the Americans with Disabilities Act, such violation(s) shall constitute a "subsequent violation" pursuant to 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3). ✓

21. The Government and defendants shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by defendants to perform in a timely manner any act required by this Consent Decree or otherwise to act in conformance with any provision thereof, the Government may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform. With respect to any failure by defendants to comply with any requirement(s) of the ADA, the Government may, in its sole discretion, seek any appropriate relief under the terms of this Consent Decree or file a separate enforcement action seeking relief under the ADA. ✓

22. Any time limits for performance imposed by this Consent Decree may be extended by the mutual written agreement of the Government and defendants. ✓

23. Each of the parties to this litigation will bear his or its own costs and attorney's fees associated with this litigation. The Clerk is directed to close this case subject to reopening or good cause. ✓

THE PARTIES HEREBY CONSENT to the entry of the foregoing Consent Decree:

FOR DEFENDANTS:

Dated: June __, 2012
Newburgh, New York

LARKIN, AXELROD, INGRASSIA & TETENBAUM, LLP

By: *James Alexander Burke*
JAMES ALEXANDER BURKE, ESQ.
356 Meadow Avenue
Newburgh, New York 12550
Telephone: (845) 562-3366
Facsimile: (845) 566-5148
E-mail: jburke@laitlaw.com

FOR PLAINTIFF:

Dated: June 27, 2012
New York, New York

PREET BHARARA
United States Attorney

By: *Michael J. Byars*
MICHAEL J. BYARS
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2793
Facsimile: (212) 637-2717
E-mail: michael.byars@usdoj.gov

SO ORDERED:

Vincent L. Briccetti ✓
VINCENT L. BRICCETTI
UNITED STATES DISTRICT JUDGE

Dated: June 28, 2012 ✓
White Plains, NY

ATTACHMENT A

**LARKIN, AXELROD, INGRASSIA & TETENBAUM, LLP,
NEWBURGH AND MIDDLETOWN, NEW YORK
POLICY REGARDING SERVICE ANIMALS
FOR PEOPLE WITH DISABILITIES**

Larkin, Axelrod, Ingrassia & Tetenbaum, LLP (the "Firm"), located in Middletown and Newburgh, New York is committed to making reasonable modifications to its policies, practices, and procedures to permit the use of service animals by individuals with disabilities. Service animals play an important role in ensuring the independence of people with disabilities, and it is therefore the Firm's policy to welcome into the Firm's premises individuals with disabilities and their service animals.

What is a Service Animal?

Service animals are dogs that are individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Service animals come in all breeds and sizes, may be trained either by an organization or by an individual with a disability, and need not be certified or licensed. Service animals do not always have a harness, a sign, or a symbol indicating that they are service animals. A service animal is **not** a pet. Service animals assist people with disabilities in many different ways, such as:

- Guiding people who are blind or have low vision and retrieving dropped objects for them;
- Alerting people who are deaf or hard of hearing to sounds and the presence of others;
- Carrying and picking up items, opening doors, or flipping switches for people with disabilities who have limited use of hands or arms, limited use of their legs, or limited ability to bend or stoop;
- Pulling wheelchairs;
- Providing physical support and assisting people with physical disabilities with stability and balance; and
- Alerting people with disabilities to the onset of seizures, protecting them and cushioning them if they fall, reviving them, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties.

Employee Requirements with Regard to Service Animals:

Many times it is apparent what work or task a service animal provides. If it is not obvious what service an animal provides, you should not make the individual feel unwelcome by asking questions. If you are unsure whether an animal meets the definition of a service animal, you may ask the individual the following questions at the point that the individual enters the premises:

- Is the animal required because of a disability?
- What task or work has the animal been trained to perform?

You may **not** ask an individual questions about his or her disability. You may **not** ask an individual to show certification or a special ID card as proof of his or her animal's training. You may **not** ask an individual with a service animal to use a specific entrance or exit at the Firm's premises.

Once an individual with a service animal has answered the above two questions posed by an employee of the Firm, no employee may ask the individual any further questions about his or her service animal. You **must** permit service animals to accompany individuals with disabilities to all areas where visitors or clients of the Firm are allowed to go.

You may ask an individual with a disability to remove an animal from the premises if (i) the animal is out of control and the animal's handler does not take effective action to control it, or (ii) the animal is not housebroken. In such circumstances, you must give the individual with a disability the opportunity to obtain services from the Firm without having the animal on the Firm's premises. The fact that the premises are crowded or that the service animal engages in minor misbehavior, such as sniffing, is **not** a basis for excluding the service animal. The Firm will not exclude a particular service animal based on past experience with other animals or based on fear that is not related to a service animal's actual behavior. Each situation will be considered individually.

The Firm's obligations regarding service animals apply equally to individuals with a disability using miniature horses that have been individually trained to do work or perform tasks for them.

Please handle any individual's inquiries or complaints about this policy in accordance with our usual procedures by contacting one of the Firm's partners.

ATTACHMENT B

WAIVER AND RELEASE OF CLAIMS

In consideration of the payment of monetary relief to me as set forth in paragraph 10 of the Consent Decree entered in Civil Action No. 11 Civ. 8003 (VB) in the United States District Court for the Southern District of New York, I, Lauren Klejmont ("Releasor"), hereby release Larkin, Axelrod, Ingrassia & Tetenbaum, LLP, and John Ingrassia, Esq., and all of their present and former partners, employees, agents, insurers, representatives, heirs, executors, assigns, predecessors and successors in interest, from any and all claims, demands, disputes, controversies, actions, causes of action, obligations, costs, damages and liabilities of any nature whatsoever, whether at law or in equity, arising prior to the date of this Waiver and Release and arising from or related to the facts and circumstances alleged in the complaint in Civil Action No. 11 Civ. 8003, and/or my use of a service animal. This includes, without limitation, all claims for monetary or equitable relief that I may have under federal, state or local law based on the facts and circumstances described in the complaint in Civil Action No. 11 Civ. 8003. I have been advised that, before signing this release, I have the right to consult a private attorney regarding its contents and I have done so. I have read this release, understand its contents, and choose to sign it of my own free will and not under duress.

In Witness Whereof, the Releasor has hereunto set her hand and seal on the ____ day of
____, 2012.

In presence of

LAUREN KLEJMONT L.S.

STATE OF NEW YORK COUNTY OF ORANGE

On _____, 2012, before me personally came Lauren Klejmont, to me known, and known to me to be the individual described in, and who executed, the foregoing Release, and duly acknowledged to me that she executed same.

Notary Public

STEPHEN BERGSTEIN, ESQ.
Counsel for Lauren Klejmont

Date