

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ROSEMARY CIOTTI
900 North Stafford Street, #2322
Arlington, VA 22203

Plaintiff,

v.

NEW YORK CITY DEPARTMENT OF PARKS
& RECREATION
The Arsenal
Central Park
830 Fifth Avenue
New York, NY 10065

CITY OF NEW YORK
Attn: Corporation Counsel
100 Church St., 5 Fl.
New York, NY 10007

CENTRAL PARK BOATHOUSE LLC
d/b/a The Loeb Boathouse Central Park
700 Willis Avenue
Williston Park, NY 11596

Defendants.

COMPLAINT

Civil Action No. 16 cv 853

ECF CASE

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Rosemary Ciotti, by and through undersigned counsel, hereby submits this complaint for violations of Titles II and III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12181 *et seq.*, the New York State Human Rights Law (“NYSHRL”), 15 N.Y. Exec. Law § 290 *et seq.*, and the New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code § 8-101 *et seq.*

NATURE OF ACTION

1. Defendants own and operate a restaurant in Central Park in New York City that is a public accommodation and provides public services but fails to comply with the federal, state, and local statutes requiring public accommodations and public services to be accessible to people who have disabilities.

2. Despite repeated notices from Plaintiff of their non-compliance, Defendants have failed to bring the restaurant into compliance.

3. Accordingly, Plaintiff seeks an order from this Court requiring Defendants to remove architectural barriers at the Restaurant and requiring the Restaurant to modify its practices, policies, and procedures to comply with the ADA, NYSHRL, and NYCHRL. Plaintiff further seeks compensatory and punitive damages, as well as costs, attorneys' fees, and such other relief as this Court deems just and proper.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 because Plaintiff asserts claims under the Americans with Disabilities Act of 1990 as amended (codified at 42 U.S.C. §§ 12101-12213).

5. This Court has supplemental jurisdiction over the non-federal claims pursuant to 28 U.S.C. § 1367 because Plaintiff asserts claims under NYSHRL and NYCHRL which are so related to claims in the action within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

6. The Court has personal jurisdiction over Defendants pursuant to 28 U.S.C. § 1391 because Defendants do business in the Southern District of New York and because Plaintiff's claims for relief arise from Defendants' transaction of business in the Southern District of New York.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because all of the acts and omissions of Defendants giving rise to this action occurred in the Southern District of New York, the property that is the subject of this action is situated in the Southern District of New York, and Defendants are subject to personal jurisdiction in the Southern District of New York.

PARTIES

8. Plaintiff Rosemary Ciotti ("Ms. Ciotti") resides at 900 North Stafford Street, #2322, Arlington, VA 22203. Ms. Ciotti has a physical impairment that substantially limits one or more of her major life activities. She uses a wheelchair for mobility.

9. Defendant New York City Department of Parks & Recreation ("NYC Parks") is the mayoral agency of the City of New York responsible for Central Park and the owner of the property located at East 72nd Street and Park Drive North and known as the Loeb Boathouse.

10. Defendant New York City ("NYC") is the government entity that maintains NYC Parks.

11. Defendant Central Park Boathouse LLC ("CPB") was incorporated on or about March 09, 2000, and holds the concession from NYC Parks to run a restaurant in the Loeb Boathouse which it does under the name "The Loeb Boathouse Central Park" ("Restaurant").

FACTS

General Description of the Restaurant

12. The Restaurant is located in the Loeb Boathouse, which opened in 1954.

13. The Loeb Boathouse is part of Central Park and is owned by Defendant NYC and overseen by Defendant NYC Parks.

14. On information and belief, Defendant CPB signed a fifteen (15) year contract for the concession to run a restaurant in the Loeb Boathouse in October 2000. Defendant CPB then began an extensive renovation process, having “committed to spending \$1.6 million or whatever it took to do it, which ended up being an additional \$6.4 million.”¹ The renovated restaurant opened in 2002.¹

15. The Restaurant is and was at all times relevant to this Complaint a public accommodation as defined by ADA, 42 U.S.C. § 12181(7), and NYSHRL, 15 N.Y. Exec. Law § 292(9), and NYCHRL, N.Y.C. Admin. Code § 8-102(9).

16. As the Restaurant is a public accommodation, Defendant CPB is subject to Title III of ADA and the ADA Accessibility Guidelines (“ADAAG”).

17. As the Loeb Boathouse is municipal property, it and Defendant NYC or Defendant NYC Parks are subject to Title II of ADA.

18. Thus, Defendant NYC or Defendant NYC Parks is obligated and empowered to ensure that Defendant CPB operates the Restaurant in a manner that enables municipal defendants to meet their ADA Title II obligations.

19. Defendant CPB describes the Restaurant as “[the ultimate urban oasis](#)” because, their website says, it offers “[Fine dining indoors, and al fresco; at the same time!](#)”

Ms. Ciotti’s Encounters with Defendants

20. Ms. Ciotti relies on a wheelchair for mobility due to a permanent disability.

¹ Elissa Elan, *Dean Poll: A New York Restaurateur At The Center Of It All*, FSR (July 11, 2011), available at <https://www.fsrmagazine.com/dean-poll-new-york-restaurateur-center-it-all?page=2> (last accessed Nov. 14, 2015).

21. In 2014, Ms. Ciotti travelled to New York to scout possible locations for the reception for a contemplated family celebration and visited the Restaurant. During her visit, Ms. Ciotti encountered and described to the Restaurant's staff numerous barriers that denied her full access to the facilities.

22. Ms. Ciotti, through her attorneys, further explained this lack of compliance to Defendants by means of a letter, dated October 16, 2014, sent to the Restaurant in which she described the various non-compliant aspects of the restaurant.

23. In or around August 2015, Ms. Ciotti, eager to dine again at the historic Restaurant, returned to the Restaurant for the first time and found neither remediation nor signs of intent to remediate adequately any of the issues she had described.

24. In spite of the continuing inaccessibility of its amenities, the Restaurant's web site declares, "The restaurant is handicap accessible."²

25. Ms. Ciotti travels to New York City multiple times a year – she was most recently there in late December 2015 – and would very much like to dine at the Restaurant in the future, both indoors in inclement weather and outdoors when the weather permits, if the Restaurant is accessible.

Non-Inclusive List of Barriers to Access

Curb Issues

26. There is a curb along the street by the restaurant that is approximately four (4) inches high.

² Loeb Boathouse Restaurant website, <http://www.thecentralparkboathouse.com/contact-directions.php> (last accessed Jan. 13, 2016).

27. There is no curb cut or ramp within sight of the restaurant that would provide Ms. Ciotti the ability to move from the street to the sidewalk or from the sidewalk to the street.

28. There is an area in front of the restaurant where asphalt has been used to form a quasi-ramp, but one too steep, too rounded, and too narrow to provide an adequate path for Ms. Ciotti or anyone in a wheelchair to transit between the sidewalk and street in safety and without assistance.



Figure 1 - Photograph of Curb Outside Restaurant; visible is the step up from the street to the brick entrance level and poured asphalt ramp. Taken August 27, 2015.

Stairs to Indoor Lower Dining Area

29. To reach the Restaurant's lower dining area from the main entrance or indoor bar without exiting the building, one must traverse a step of significant height to a middle level.

30. The Restaurant's lower dining area is separated from this middle level by a set of three (3) stairs of approximately three (3) inches in height each. Thus, a guest must traverse four (4) steps to go from the main entrance to the Lower Dining Area.

31. When Ms. Ciotti visited the Restaurant in 2014, no attempt had been made to accommodate patrons requiring mobility assistance who wished to traverse these steps to the lower dining area. Ms. Ciotti insisted that she be allowed to reach the lower dining area, and the Restaurant

provided a metal ramp for the lower three (3) steps.



Figure 2 - Photograph of Metal Ramp; visible are steps from Middle Level to Lower Dining Area and equipment blocking access to the ramp, itself of a non-ADA-compliant style. Taken Dec. 26, 2015.

32. The ramp, however, was of a sort used for moving such restaurant equipment as restaurant carts, *a.k.a.* Queen Marys, rather than to accommodate patrons who use wheelchairs for mobility, being far too steep for Ms. Ciotti to negotiate without assistance.

33. When Ms. Ciotti returned to the Restaurant in or around August 2015, the same ramp remained in place on this set of stairs.

34. On information and belief, that non-compliant ramp remains the only means for a person in a wheelchair to transit the three (3) steps from the middle level to the lower dining area without exiting the building.

Blocked Patio Doors

35. The indoor route from the main entrance to the Outdoor Bar and outdoor dining areas runs through patio doors opening off of the lower dining area.



Figure 3 - Photograph of Patio Doors from Brick Patio; visible are the equipment blocking access to the doors. Taken Dec. 26, 2015.

36. Ms. Ciotti sought to access these outdoor areas from the lower dining area but found the doors between locked and access to them blocked by equipment placed before them by Restaurant staff. After Ms. Ciotti insisted that she be granted access, the doors were unlocked and the obstructions removed, and Ms. Ciotti had her meal on the Outdoor Brick Patio.

37. When Ms. Ciotti attempted to leave by the same route after eating, however, she found the doors locked and access blocked.

38. When Ms. Ciotti returned to the Restaurant in or around August 2015, the doors to the patio were again blocked by traystands – some holding full trays of glasses, plates, and the like and

others leaning against the shut doors – and such other restaurant equipment as an ice bucket, trash receptacles, and a large fan.

39. T



Figure 4 - Photograph of Outdoor Amenities; visible are steps from Boardwalk to Brick Patio, from each of those to Outdoor Bar, and from the Patio to the Side Entrance, as well as the Patio Doors to the Lower Dining Area. Taken Dec. 26, 2015.

Steps Down From Side Entrance to Brick Patio

40. The Restaurant has a second route of access from the main entrance to the Outdoor Bar, Brick Patio, and Boardwalk dining areas through a side entrance, avoiding the aforementioned barriers to accessing these outdoor amenities through the Lower Dining Area and Patio Doors.

41. To reach these outdoor amenities from the side entrance, however, one must navigate past an interior set of double-doors onto a small landing that does not provide the clearance required by [ADAAG Figure 25](#) for someone thereon, making the doors inaccessible.

42. If these doors and step are passed, there are a single green door and another set of green double-doors to the outside.

43. Once outside, one must traverse three steps of approximately four (4) inches each to reach the Outdoor Brick Patio. There is neither ramp nor elevator to make that step accessible to Ms. Ciotti or anyone in a wheelchair in safety and without assistance.

44. The lack of any ramp makes these steps impassable for Ms. Ciotti or others who rely on wheelchairs for mobility. There is simply no way for them to move outside from the side entrance to the Brick Patio dining area.

Step Up From Outdoor, Brick Patio to Bar

45. The Restaurant includes an Outdoor Bar that serves the Brick Patio dining area and the Boardwalk dining area. To reach that bar, however, one must navigate a step of approximately four (4) inches from the Brick Patio or three (3) steps from the Boardwalk dining area. *See* Figure 5 and also right side of Figure 4.

46. The lack of any ramp makes these steps impassable for Ms. Ciotti or others who rely on wheelchairs for mobility. There is simply no way for them to move from either outdoor dining area to the outdoor bar without assistance.

Steps Down to Outdoor, Boardwalk Dining Area

47. The Restaurant includes a much larger outdoor dining area located on a Boardwalk.

48. To transit between the Brick Patio and this area one must transit two (2) steps of approximately four (4) inches each. There is no ramp between them, making the steps impassable for Ms. Ciotti or others who rely on wheelchairs for mobility. *See* left sides of Figure 4 and Figure 5.



Figure 5 - Photograph of Outdoor Bar showing close up steps up to it from Brick Patio and Boardwalk. Taken Dec. 26, 2015.

49. To transit outside between the Boardwalk and the side entrance, or to leave the Restaurant, one must also traverse the additional three steps from the entrance to the Brick Patio and, if going indoors, the step and inaccessible interior double-doors into the Restaurant.

50. Ms. Ciotti, as a person with a permanent disability and as a wheelchair user, has suffered and will continue to suffer injury including, but not limited to, a deprivation of her full right to full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the Restaurant, as well as humiliation, embarrassment and emotional distress from the indignity and stigma of discrimination due to her disability.

51. Ms. Ciotti has reasonable grounds to believe that Defendants will continue to fail to provide accessibility to their facilities as required by the ADA, NYSHRL, and NYCHRL and that therefore, Ms. Ciotti will be subjected to continuing discrimination in violation of such laws.

52. Ms. Ciotti has no plain, adequate, or complete remedy at law. Ms. Ciotti has suffered, is suffering, and will continue to suffer irreparable injury as a result of Defendants' continuing discriminatory conduct.

CLAIMS FOR RELIEF

Count I

Violations of Title III of the Americans with Disabilities Act (Against CPB)

53. The preceding paragraphs 1 through 52 are incorporated herein by reference.

54. At all times relevant to this action, ADA was in full force and effect in the United States.

55. The Restaurant is and was at all times relevant to this Complaint a public accommodation as defined by ADA, 42 U.S.C. § 12181(7)(B), and, therefore, covered by Section 302(a) of ADA (codified at 42 U.S.C. § 12182(a)).

56. Defendant CPB leases and operates a “a place of public accommodation” and leases a “building that houses a place of public accommodation” and therefore has obligations under Title III of ADA. 28 C.F.R. § 36.201(a) & (b).

57. Ms. Ciotti is a person with a disability within the meanings of ADA. 42 U.S.C. § 12102.

58. Title III of ADA requires that public accommodations like the Restaurant make alterations to their facilities “in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities.” 42 U.S.C. § 12183(a)(2).

59. The U.S. Department of Justice regulation to ADA similarly requires that “[a]ny alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.” 28 C.F.R. § 36.402(a)(1). The exception to this regulation is limited to cases in which it is “virtually impossible to comply fully with applicable accessibility standards through a planned alteration” and even then the public accommodation must “provide the maximum physical accessibility feasible.” 28 C.F.R. § 36.402(c).

60. Defendant’s failure to remove architectural barriers in compliance with the ADA standards at its entrances, dining areas, and around its floor space violates ADA because removal of these barriers is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304(d).

61. Pursuant to the ADA, places of public accommodation must “make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford

such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities” 42 U.S.C. § 12182(b)(2)(A)(ii).

62. Defendant’s failure to make reasonable modifications to the Restaurant’s policies, practices, or procedures sufficient to afford individuals with disabilities access to its goods, services, facilities, privileges, advantages, or accommodations violates Title III of ADA and irreparably injured Ms. Ciotti.

63. Modification of the Restaurant’s policies, practices, and procedures would not fundamentally alter the nature of its Defendants’ Restaurant, nor of Defendants’ goods, services, facilities, privileges, advantages, or accommodations.

Count II
Violations of Title II of the Americans with Disabilities Act
(Against NYC and NYC Parks)

64. The preceding paragraphs 1 through 63 are incorporated herein by reference

65. At all times relevant to this action, ADA was in full force and effect in the United States.

66. Defendants NYC and NYC Parks are, and were at all times relevant to this Complaint, public entities as defined by ADA, 42 U.S.C. § 12131(1)(A) and (B), respectively.

67. Ms. Ciotti is a qualified individual with a disability within the meanings of ADA, Title II. 42 U.S.C. § 12131(2).

68. Because Defendants own Loeb Boathouse, Defendants are obligated to ensure by contract that the Restaurant is operated in a manner that enables them to meet their obligations under Title II of ADA, even though the Restaurant is not directly subject to Title II.

69. The Loeb Boathouse is an “existing facility” under Title II of ADA, underwent extensive renovation after passage of ADA, and Defendant NYC or Defendant NYC Parks were and are required

“in making alterations to . . . meet the accessibility requirements of §35.151 [*i.e.*, those for new construction, while] giv[ing] priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.” 28 C.F.R. § 35.150.

70. Pursuant to ADA, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity” 42 U.S.C. § 12132.

71. Defendants’ failure to make reasonable modifications to the Restaurant’s policies, practices, or procedures sufficient to afford individuals with disabilities access to its goods, services, facilities, privileges, advantages, or accommodations violates Title II of ADA and irreparably injured Ms. Ciotti.

72. Modification of the Restaurant’s policies, practices, and procedures would not fundamentally alter the nature of Defendants’ service, program, or activity.

Count III
Violations of the New York State Human Rights Law (15 N.Y. Exec. Law §290, *et seq.*)
(Against All Defendants)

73. The preceding paragraphs 1 through 72 are incorporated herein by reference.

74. The Restaurant is and was at all times relevant to this Complaint a public accommodation as defined by NYSHRL, 15 N.Y. Exec. Law § 292(9).

75. Ms. Ciotti is a person with a disability within the meanings of NYSHRL, 15 N.Y. Exec. Law § 292(21).

76. Defendants’ failure to remove architectural barriers at its entrances, dining areas, and floor space violates NYSHRL because removal of these barriers “would [not] fundamentally alter the nature of the facility, privilege, advantage or accommodation being offered [nor] would it result in an

undue burden” and “such removal is readily achievable.” NYSHRL, 15 N.Y. Exec. Law § 296(2)(c)(ii) and (iii).

77. Pursuant to NYSHRL, places of public accommodation must “make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford facilities, privileges, advantages or accommodations to individuals with disabilities” NYSHRL, 15 N.Y. Exec. Law § 296(2)(c)(i).

78. Defendants’ failure to make reasonable modifications to the Restaurant’s policies, practices, or procedures sufficient to afford individuals with disabilities access to its goods, services, facilities, privileges, advantages, or accommodations violates NYSHRL and irreparably injured Ms. Ciotti.

79. Modification of the Restaurant’s policies, practices, and procedures would not “fundamentally alter the nature of such facilities, privileges, advantages or accommodations” 15 N.Y. Exec. Law § 296(2)(c)(i).

Count IV
Violations of the New York City Human Rights Law (N.Y.C. Admin. Code § 8-101, et seq.)
(Against All Defendants)

80. The preceding paragraphs 1 through 79 are incorporated herein by reference.

81. The Restaurant is and was at all times relevant to this Complaint a public accommodation as defined by NYCHRL, N.Y.C. Admin. Code § 8-102(9).

82. Ms. Ciotti is a person with a disability as defined by NYCHRL, N.Y.C. Admin. Code § 8-102(16).

83. Defendants’ failure to remove architectural barriers at its entrances, dining areas, and floor space violates NYCHRL because Defendants are required to “make reasonable accommodation to

enable a person with a disability to . . . enjoy the right or rights in question . . .” N.Y.C. Admin. Code § 8-107(15)(a).

84. Defendants’ failure to make reasonable modifications to the Restaurant’s policies, practices, or procedures sufficient to afford individuals with disabilities access to its goods, services, facilities, accommodations, advantages or privileges violates NYCHRL and irreparably injured Ms. Ciotti.

85. Defendants’ failed to make these accommodations for over ten (10) months despite being informed by Ms. Ciotti of the relevant laws and specific violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court:

- a. Declare that Defendants are operating in a manner which discriminates against individuals with ambulatory disabilities and who depend on the use of wheelchairs or mobility aids, and that Defendants fail to provide access for persons with ambulatory disabilities in violation of the ADA, NYSHRL, and NYCHRL;
- b. Enter a permanent injunction requiring Defendants to:
 - (i) modify their policies, practices, and procedures to comply with ADA, NYSHRL, and NYCHRL; and,
 - (ii) remove non-compliant architectural barriers at the Restaurant;
- c. Enter judgment awarding Ms. Ciotti compensatory damages under the NYSHRL and NYCHRL, in an amount appropriate to the proof at trial;

- d. Enter judgment awarding Ms. Ciotti punitive damages under the NYCHRL, in an amount appropriate to the proof at trial;
- e. Award Ms. Ciotti her costs and attorneys' fees, including litigation expenses, reasonably incurred in the prosecution of the action; and
- f. Award Ms. Ciotti such other and further relief as this Court shall deem just and proper.

Plaintiff, by her counsel and pursuant to Federal Rule of Civil Procedure 38(b), hereby demands a trial by jury on all claims so triable in this action.

DATED this 3rd day of February, 2016.

Respectfully submitted,

/s/ Matthew K. Handley

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