
State of New York
Court of Appeals



In the Matter of the Application of

ROY DEN HOLLANDER,
Petitioner-Appellant,

-against-

THE CITY OF NEW YORK COMMISSION ON HUMAN RIGHTS,
Respondent-Respondent.

**NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE
COURT OF APPEALS WITH SUPPORTING PAPERS**

ROY DEN HOLLANDER, ESQ.
Petitioner-Appellant, Pro Se
545 East 14th Street, 10D
New York, New York 10009
(917) 687-0652

Date Completed: June 17, 2014

Appellant Division, First Department
Supreme Court, New York County, Index No. 100299/13

DICK BAILEY SERVICE (212) 608-7666 (718) 522-4363 (516) 222-2470 (914) 682-0848 Fax: (718) 522-4024
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**COURT OF APPEALS
STATE OF NEW YORK**

-----X

In re ROY DEN HOLLANDER,

Petitioner-Appellant,

New York County
County Clerk Index No.:
100299/13

v.

**Notice of Motion for
Leave to Appeal to the
Court of Appeals**

THE CITY OF NEW YORK COMMISSION
ON HUMAN RIGHTS,

Respondent-Respondent.

-----X

PLEASE TAKE NOTICE that, upon the annexed supporting papers pursuant to the Court of Appeals Rules of Practice, Roy Den Hollander will move this Court, at the Court of Appeals Hall, Albany, New York, on June 30, 2014, for an order granting leave to appeal to this Court from an order of the Supreme Court, Appellate Division, First Department, dated June 3, 2014, affirming a judgment of the Supreme Court, New York County, and for such other and further relief as this Court finds just and proper.

Answering papers, if any, must be served and filed in the Court of Appeals with proof of service on or before the return date of the motion.

/S/

Dated: New York, N.Y.
June 10, 2014

By: Roy Den Hollander,
Attorney and Petitioner-Appellant
545 East 14 Street, 10D
New York, N.Y. 10009
(917) 687-0652
rdenhollander97@gsb.columbia.edu

Zachary W. Carter
Corporation Counsel of the City of N.Y.
Attorney for Respondent-Respondent
100 Church Street
New York, N.Y. 10007
(212) 356-0853

**COURT OF APPEALS
STATE OF NEW YORK**

-----X

In re ROY DEN HOLLANDER,
Petitioner-Appellant,

New York County
County Clerk Index No.:
100299/13

v.

THE CITY OF NEW YORK COMMISSION
ON HUMAN RIGHTS,
Respondent-Respondent.

**Affidavit in Support
of Motion for
Leave to Appeal**

-----X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, Roy Den Hollander, the Petitioner-Appellant and an attorney admitted to practice in the State of New York, being duly sworn, depose and say:

Statement of Procedural History

1. Petitioner-Appellant (“Den Hollander”) brought a petition pursuant to CPLR Article 78 in the Supreme Court, New York County, to annul a determination of Respondent-Respondent City of New York Commission on Human Rights (“City HR”), dated January 11, 2013, Ex. A, which dismissed Den Hollander’s complaint of age-based discrimination by a public accommodation nightclub.

2. Judgment by the Supreme Court (Alexander W. Hunter, J.) denied the Article 78 petition, which was entered August 6, 2013, Ex. B.

3. The Appellate Division, First Department of the Supreme Court denied Den Hollander’s appeal and affirmed Judge Hunter’s Judgment. The Appellate

Division's Order was entered on June 3, 2014, and served by first class post on June 5, 2014, Ex. C.

4. There was no motion for leave to appeal at the Appellate Division.

Court of Appeals has Jurisdiction.

5. The only issue to be appealed is whether N.Y.C. Admin. Code § 8-109(f)(iii) is interpreted to prevent discrimination complaints being filed with City HR when the State Division of Human Rights previously dismissed a discrimination complaint because it did not have jurisdiction over a different discriminatory practice arising from the same fact situation but not alleged with the State Division while City HR did have jurisdiction.

6. For example, a party complains to the State Division about sex discrimination when encountering an admission barrier to a public accommodation, the State Division, however, finds that age discrimination was probably at work, but the State Division lacks jurisdiction over age discrimination, so it dismisses the complaint. City HR, however, does have jurisdiction over age discrimination by a public accommodation.

7. This issue was preserved in the Supreme Court in Judge Hunter's Judgment at 2-3, Ex. B, and the Appellate Division's Decision and Order at 42-43, Ex. C, and raised in Den Hollander's Appellate Brief at 18-19 and Reply at 13-14 and City HR's Brief at 25.

8. The Decision and Order of the Appellate Division disposed of all the issues in the action. Ex. C.

Question Presented.

9. When a complaint alleging one discriminatory practice (here sex discrimination by a public accommodation) had been filed with the State Division of Human Rights, but the State Division found that the incident indicated a different discriminatory practice over which it did not have jurisdiction (here age discrimination), which required the State Division to dismiss the complaint, State Division Order at 2, Ex. D, can the aggrieved person file a complaint for the indicated discriminatory practice (here age) with City HR, which does have jurisdiction over that type of discriminatory practice, when there is only one fact situation involved?

10. The lower courts interpreted N.Y.C. Admin. Code § 8-109(f)(iii) to mean that a complainant is barred from filing with City HR if he first complains to the State Division about one type of discrimination by a public accommodation over which the State has jurisdiction [race, creed, color, national origin, sex, disability, marital status, sexual orientation, or military status, State Exec. Law §296(2)(a)], but the State dismisses the complaint because it finds the discrimination was likely based on a type of discrimination over which it does not have jurisdiction [age,

partnership status, alienage, or citizenship], but City HR does under N.Y.C. Admin. Code §8-107(4)(a).

Reasons for granting the motion

11. The lower courts' interpretation creates a trap for those discriminated against by leaving them without any legal remedy. A person cannot go to City HR, which has jurisdiction, because he already filed a complaint with the State Division that was dismissed for lack of jurisdiction, and he cannot start a new action in court because Exec. Law § 297(9) and N.Y.C. Admin. Code § 8-502(a) prevent it. In addition, any appeal of the State Division's dismissal of the non-jurisdictional cause of action would fail because it did not have jurisdiction to begin with.

12. It is unlikely that the New York City Council intended the consequences that the lower courts support. The City Council's legislative intent for enacting its human rights law, which is more expansive than the State's, follows:

The council . . . [declared] that prejudice, intolerance, bigotry, and discrimination . . . threatened the rights and proper privileges of [the City's] inhabitants and menaced the institutions and foundation of a free democratic state. [City HR Commission] was created with power to eliminate and prevent discrimination from playing any role in actions relating to . . . public accommodations N.Y.C. Admin. Code §8-101.

13. More likely is that the Council Members were not blind to the difference in the jurisdictional reach of the State Division of Human Rights and City HR. They knew a resident might file with the State Division that did not have the power to

deal with a particular type of discrimination, so rather than preventing that resident from going to City HR, which did have the power, they enacted N.Y.C. Admin. Code § 8-109(f)(iii) to make sure that New York City’s protection against certain discriminatory practices would not be thwarted by the election of remedies law N.Y. State Exec. Law 297(9).

14. In order to assure the reach of the City’s protection against more discriminatory practices by public accommodations than under State law, the Council used the term “grievance” to mean a discriminatory practice or cause of action, and not the fact situation from which it arose, which is how the term is used in N.Y. Exec. Law § 297(9).

15. Of course, Council Members were also mindful of not wasting an agency’s resources on a type of discrimination that was already resolved by another agency. Use of the term “grievance” as a discriminatory practice or cause of action provides the best of both worlds—protection of rights and conservation of the taxpayers’ money.

16. Neither the City nor Den Hollander was able to find a case on point that interpreted the word “grievance” in N.Y.C. Admin. Code § 8-109(f)(iii).

Sworn to before me on the
10th day of June 2014

_____/S/_____
Roy Den Hollander

_____/S/_____
Notary Public

Exhibit A

**THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS**

-----x
In The Matter of the Complaint of

ROY DEN HOLLANDER,

Complainant,

- against -

AMNESIA J.V. LLC., and DAVID "L.N.U.",

Respondents.
-----x

**DETERMINATION AND ORDER
AFTER REVIEW**

Complainant No.: M-P-A-11-1024266

GC No.: 12-901N

Complainant requests review of the Administrative Closure dismissing the above-captioned complaint.

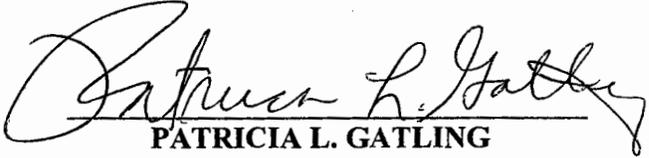
In considering complainant's request, I have reviewed the following: the complaint; the answer; comments from all parties (if submitted); the Notice of Administrative Closure; and complainant's request for review.

Upon review of these materials, I hereby affirm the Administrative Closure dismissing the complaint.

Pursuant to Section 8-123(h) of Title 8 of the Administrative Code of the City of New York, complainant has thirty (30) days after service of this Order to seek review in the New York State Supreme Court.

Dated: New York, New York
January 11, 2013

**IT IS SO ORDERED
NEW YORK CITY COMMISSION
ON HUMAN RIGHTS**


PATRICIA L. GATLING
Commissioner/Chair

To:

Roy Den Hollander
Attorney at Law
545 East 14th Street, #10D
New York, New York 10009

Roger Griesmeyer
LaSasso Griesmeyer Law Group PLLC
80 Maiden Lane, Suite 2205
New York, New York 10038

Carlos Velez
Managing Attorney
Law Enforcement Bureau
New York City Commission on Human Rights
40 Rector Street – 10th Floor
New York, New York 10006

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x

In the Matter of the Application of

ROY DEN HOLLANDER,

Petitioner,

-against-

THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS,

Respondent.

----- x

NOTICE OF ENTRY

Index No.: 100299 / 2013

(Part 33; Hunter, J.)

CITY OF NEW YORK DEPT. OF
CORRECTIONS
2013 AUG 15 PM 1:30

PLEASE TAKE NOTICE that the attached is a true copy of an Order in the above-captioned action dated July 30, 2013 and duly entered in the office of the Clerk, New York State Supreme Court, County of New York, on August 6, 2013.

Dated: New York, New York
August 6, 2013

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
*Attorneys for Respondent New York City
Commission on Human Rights*
100 Church Street, Room 20-101
New York, New York 10007
(212) 356-2294

By: 
Leonard M. Braman
Assistant Corporation Counsel

To: Roy Den Hollander, Esq.
Petitioner Pro Se
545 East 14th Street, 10D
New York, New York 10009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33

-----X
In the Matter of the Application of Roy Den Hollander,

Index No.: 100299/13

Petitioner,

-against-

The City of New York Commission on Human Rights

Respondent.
-----X

Order and Judgment
UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

HON. ALEXANDER W. HUNTER, JR.

Two separate applications, an Article 78 petition and a motion to dismiss, were filed in this matter under motion sequences #1 and #2. Both applications will be decided herein.

Petitioner's application for an order pursuant to CPLR Article 78, reversing the Final Determination and Order, dated January 11, 2013, of the City of New York Commission on Human Rights, and finding that petitioner was unlawfully discriminated against because of his age by Amnesia J.V. LLC, and David L.N.U., is denied and the proceeding is dismissed without costs and disbursements to either party. Respondent's motion to dismiss the petition is granted.

On or about January 10, 2010, petitioner filed a verified complaint with the New York State Division of Human Rights (the "Division") charging Amnesia J.V. LLC ("Amnesia"), a night club, with an unlawful discriminatory practice relating to public accommodations because of sex in violation of Article 15, Executive Law (the "Human Rights Law"). Petitioner alleged that on January 9, 2010, petitioner and a male friend stood on a line in front of Amnesia but was refused admittance by doorman David Last Name Unknown ("L.N.U."), unless petitioner and his friend agreed to purchase a \$350 bottle of alcohol. Petitioner and his friend declined, stepped out of the line, and subsequently observed women entering the night club without having to purchase a \$350 bottle of alcohol.

On September 16, 2010, the Division issued a Determination and Order After Investigation, dismissing petitioner's complaint and ordering the file closed for lack of probable cause. The Division investigated petitioner's complaint and noted *in dicta* that petitioner "is significantly older than [Amnesia's] patrons, and age discrimination is beyond the jurisdiction of the Division with regards to public accommodation."

On October 22, 2010, petitioner filed a verified complaint with respondent the City of New York Commission on Human Rights (the "Commission") charging that Amnesia discriminated against him based upon his age. On July 27, 2012, respondent issued a Determination and Order After Investigation, dismissing petitioner's complaint concluding that (1) respondent was statutorily barred from considering petitioner's discrimination claim because he had previously filed a discrimination complaint with the Division based on the same incident

and (2) probable cause did not exist to infer that Amnesia had engaged in age discrimination (the "July 27, 2012 Administrative Closure").

On August 17, 2012, petitioner appealed the July 27, 2012 Administrative Closure whereby petitioner raised various legal and factual objections. On January 11, 2013, respondent issued a Final Determination and Order After Review upholding its July 27, 2012 Administrative Closure (the "January 11, 2013 Final Determination").

On February 8, 2013, petitioner commenced the instant special proceeding, seeking an order reversing the January 11, 2013 Final Determination of respondent, and finding that petitioner was unlawfully discriminated against because of his age by Amnesia and David L.N.U. Petitioner avers that (1) respondent's finding of no probable cause was not based on the evidence as a whole or substantial evidence; (2) respondent's July 27, 2013 Administrative Closure relied on misrepresentations in finding no probable cause; and (3) respondent conducted an abbreviated and one-sided investigation. On March 1, 2013, petitioner filed a verified supplement to his petition to add a Fourteenth Amendment procedural due process claim against respondent.

In opposition, respondent moves to dismiss, as petitioner's claims are barred under New York City Administrative Code ("Admin. Code") §8-109(f)(iii) and Executive Law ("Exec. Law") §297(9). Respondent avers that petitioner is prohibited from bringing successive discrimination complaints based upon the same incident.

A court may not disturb an administrative decision unless the agency's action was arbitrary and capricious, was in violation of lawful procedures, or was made in excess of its jurisdiction. See CPLR 7803(3); Pell v. Board of Education of Union Free School District No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County, 34 N.Y.2d 222 (1974). The Commission's no probable cause determinations will not be overturned unless they are arbitrary or capricious, or lack a rational basis. See Matter of Soo Ching Wu v. New York City Commn. on Human Rights, 84 A.D.3d 823 (2nd Dept. 2011).

New York City's Human Rights Law (the "City Human Rights Law") contains an election of remedies provision that requires a petitioner to choose between an administrative remedy and a judicial one. "[A]ny person claiming to be aggrieved by an unlawful discriminatory practice... shall have a cause of action in any court of competent jurisdiction... unless such person has filed a complaint with the city commission on human rights or with the state division of human rights..." **Admin. Code §8-502(a).** Moreover, the City Human Rights Law does not have jurisdiction to entertain a complaint if there was a previous dismissal by either a court of competent jurisdiction or the Division "with respect to the same grievance which is the subject of the complaint." **Admin. Code. §8-109(f).**

Similarly, the Human Rights Law provides for an election of remedies. See Exec. Law §297(9). Exceptions to the election of remedies bar applies when the complaint was dismissed on the grounds of (1) administrative convenience; (2) untimeliness; or (3) annulment of the election of remedies. **Id.**

Controlling case law construes the doctrine of election of remedies to preclude subsequent complaints based on the same alleged incident, same underlying course of conduct, or same operative events. See Emil v. Dewey, 49 N.Y.2d 968 (1980); Benjamin v. New York City Dept. of Health, 57 A.D.3d 403 (1st Dept. 2008); Higgins v. NYP Holdings, Inc., 836 F. Supp. 2d 182 (S.D.N.Y. 2011). “The facts need not be perfectly identical, and merely adding some additional facts and/or re-labeling the claim will not prevent the application of the doctrine of election of remedies.” Benjamin v. New York City Dept. of Health, 17 Misc. 3d 1122(A) (NY Sup Ct 2007), citing Bhagalia v. State of New York, 228 A.D.2d 882 (3rd Dept. 1996). Petitioner’s age discrimination claim “constitutes the same cause of action as the formerly litigated [gender] claim,” as it arose out of the same transaction or occurrence from January 9, 2010. Troy v. Goord, 300 A.D.2d 1086, 1087 (4th Dept. 2002); see also Smith v. Russell Sage Coll., 54 N.Y.2d 185, 192-194 (1981); Tsabbar v. Delena, 300 A.D.2d 196, 197 (1st Dept. 2002). Accordingly, petitioner’s application for an order reversing the Commission’s January 11, 2013 Final Determination is denied pursuant to Admin. Code §§8-502(a); 8-109(f)(iii); and Exec. Law §297(9).

No further review is warranted in this matter, however were this court to review the January 11, 2013 Final Determination, this court would find that the above mentioned determination was rationally based. Contrary to petitioner’s contention, Amnesia’s decision for requiring \$350 bottle service was based upon a nondiscriminatory, legitimate reason of “limited space and the goal of furthering the image of [Amnesia’s] establishment,” as determined by the Division. This finding, and the lack of any credible basis in the record before the Commission to find age discrimination, provides a rational basis for this court to affirm the Commission’s January 11, 2013 Final Determination.

There is no merit to petitioner’s contention that the Commission failed to conduct an adequate inquiry into his complaint, as the Commission has “broad discretion in determining the method to be employed in investigating a claim.” Wu v. N.Y.C. Commn. on Human Rights, 84 A.D.3d 823, 824 (2nd Dept. 2011), quoting Matter of Levin v. N.Y.C. Commn. on Human Rights, 12 A.D.3d 328, 329 (1st Dept. 2004); see also Stern v. N.Y.C. Commn. on Human Rights, 38 A.D.3d 302, 302 (1st Dept. 2007). It cannot be said that the Commission conducted a one-sided or abbreviated investigation, as it: conducted an intake interview prior to the filing of his complaint; served petitioner’s complaint on his behalf; demanded and obtained a Verified Answer from Amnesia; gave petitioner an opportunity to submit a Rebuttal; obtained and reviewed the Division’s entire file on petitioner’s previous discrimination complaint; attempted to locate David L.N.U.; and attempted to obtain Amnesia’s surveillance video. Consequently, respondent’s investigation was not so one-sided to render it arbitrary or capricious.

Petitioner’s Fourteenth Amendment procedural due process claim is dismissed, as petitioner was afforded constitutional minimum due process of notice and the opportunity to be heard. See Mathews v. Eldridge, 424 U.S. 319 (1976). Furthermore, petitioner had an adequate post-deprivation opportunity to be heard in this Article 78 proceeding. See Velella v. N.Y.C. Local Conditional Release Commn., 13 A.D.3d 201, 202 (1st Dept. 2004).

Accordingly, it is hereby,

ADJUDGED that petitioner's application pursuant to CPLR Article 78, reversing the Final Determination and Order, dated January 11, 2013, of the City of New York Commission on Human Rights, and finding that petitioner was unlawfully discriminated against because of his age by Amnesia J.V. LLC, and David L.N.U., is denied and the proceeding is dismissed without costs and disbursements to either party. Respondent's motion to dismiss the petition is granted.

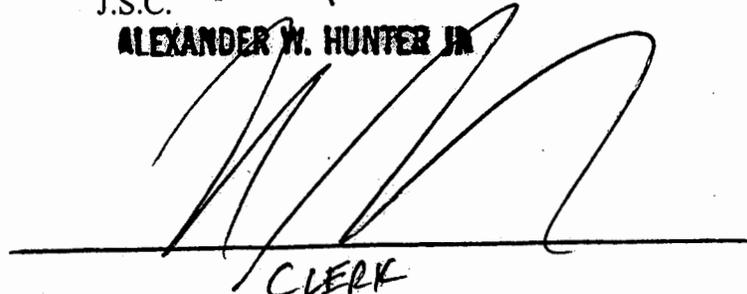
Dated: July 30, 2013

ENTER:



J.S.C.

ALEXANDER W. HUNTER JR



CLERK

FILED

AUG -6 2013

COUNTY CLERK'S OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

ROY DEN HOLLANDER,

Petitioner,

- against -

THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS,

Respondent.

JUDGMENT

MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Respondent The City of New York
Commission on Human Rights
100 Church Street, Room 20-101
New York, N.Y. 10007*

*Of Counsel: Leonard M. Braman
Tel: (212) 356-2294
Law Manager No. 2013-005235*

FILED

AUG - 6 2013

11:20 A M

AT

N.Y., CO. CLK'S OFFICE

Exhibit C

petitioner from filing with CCHR the instant claim of age discrimination with respect to the same alleged incident (see NYC Admin Code § 8-109[f]). This is so even though petitioner is now advancing a different theory of invidious discrimination – age discrimination as opposed to gender discrimination (see *Benjamin v New York City Dept. of Health*, 57 AD3d 403, 404 [1st Dept 2008], *lv dismissed*, 14 NY3d 880 [2010]; *Jones v Gilman Paper Co.*, 166 AD2d 294, 294 [1st Dept 1990]).

In any event, CCHR's alternative determination of "no probable cause" has a rational basis and is not arbitrary and capricious (see *David v New York City Commn. on Human Rights*, 57 AD3d 406, 407 [1st Dept 2008]; *de la Concha v Gatling*, 13 AD3d 74, 75 [1st Dept 2004]). Petitioner was afforded a "full and fair opportunity to present [his] case" (*Matter of Block v Gatling*, 84 AD3d 445, 446 [1st Dept 2011], *lv denied*, 17 NY3d 709 [2011]), and received procedural due process (see *Matter of Daxor Corp. v State of N.Y. Dept. of Health*, 90 NY2d 89, 98 [1997], *cert denied*, 523 US 1074 [1997]; *Pinder v City of New York*, 49 AD3d 280, 281 [1st Dept 2008]). There is absolutely no evidence

that CCHR's Executive Director was biased against him, let alone any showing that any such bias "affect[ed] the result" (*People v Moreno*, 70 NY2d 403, 407 [internal punctuation omitted]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 3, 2014


CLERK

New York Supreme Court
APPELLATE DIVISION : FIRST DEPARTMENT

In re Roy Den Hollander,
Petitioner-Appellant,
-against-
The City of New York Commissioner on Human
Rights,
Respondent-Respondent.

PLEASE TAKE NOTICE that an Order, of which the within is a copy, was duly entered in the office of the Clerk of the Appellate Division of the Supreme Court in and for the First Judicial Department on the 3rd day of June, 2014.

ZACHARY W. CARTER
Corporation Counsel
Attorney for Respondent
100 Church Street
New York, New York 10007
Tel: (212) 356-0853

By: 
Ingrid Gustafson
Assistant Corporation Counsel

To: Roy Den Hollander, Esq.
Appellant *Pro Se*
545 East 14th Street, 10D
New York, NY 10009

**Appellate Division Order
and Notice of Entry**

ZACHARY W. CARTER
*Corporation Counsel
Attorney for Respondent
100 Church Street
New York, N.Y. 10007*

Due and timely service of a copy of the within Order and Notice of Entry is hereby admitted.

New York, N.Y., 2014.

..... Esq.

Attorney for

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007
Appeals Div. - 6th floor

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Roy Den Hollander, Esq.
545 East 14th Street
10D
New York, NY 10009

FOR POLICE & FIRE EMERGENCY ONLY

DIAL 911

10009302404



Exhibit D



DAVID A. PATERSON
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of	
ROY DEN HOLLANDER, ESQ.,	Complainant,
v.	
AMNESIA J.V. LLC,	Respondent.

DETERMINATION AND
ORDER AFTER
INVESTIGATION

Case No.
10138862

On 1/13/2010, Roy Den Hollander, Esq. filed a verified complaint with the New York State Division of Human Rights ("Division") charging the above-named respondent with an unlawful discriminatory practice relating to public accommodation because of sex in violation of N.Y. Exec. Law, art. 15 (Human Rights Law).

After investigation, and following opportunity for review of related information and evidence by the named parties, the Division has determined that there is NO PROBABLE CAUSE to believe that the respondent has engaged in or is engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

The record is not supportive of complainant's allegations of sex discrimination.

Complainant, who is male, alleges that he was required to purchase a \$350.00 bottle of alcohol in order to gain entry into respondent's nightclub, while women were not required to make this purchase to enter.

The record suggests, however, that respondent required complainant to purchase a bottle for the non-discriminatory reasons of limited space and the goal of furthering the image of

respondent's establishment. There is a lack of evidence that respondent's treatment of complainant was based on his sex.

During the course of the investigation, a field visit to respondent's nightclub was made by a male Division investigator accompanied by a male. Both males and females were observed gaining admission to respondent's nightclub in approximately equal proportion. The investigator did not observe respondent's staff asking males or females to purchase bottles of alcohol to gain admission, despite the fact that there were long lines for admission to the club. Although respondent required the male investigator to pay a \$30 cover charge, the investigator observed one of respondent's employees informing others, including females, that they would have to pay the \$30 cover charge to gain admission. Once inside the nightclub, the investigator observed males and females in roughly equal proportion. Although there were several tables for individual bottle service throughout the nightclub, the investigator did not see any patrons, male or female, sitting at these tables.

Based on observations made during the field visit, the vast majority of the patrons of the nightclub appeared to be under the age of 30 years. Respondent asserts that, when the nightclub is crowded, respondent employs an admissions strategy to limit the number of individuals, male and female, who do not have the appearance respondent desires to maintain the image of the nightclub. A photo on complainant's website suggests that he is significantly older than respondent's patrons, and age discrimination is beyond the jurisdiction of the Division with regards to public accommodation.

Our investigation failed to uncover sufficient evidence to establish a causal nexus between respondent's treatment of complainant and his sex. The record does not support a determination of probable cause in this case.

The complaint is therefore ordered dismissed and the file is closed.

PLEASE TAKE NOTICE that any party to this proceeding may appeal this Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a Notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Notice and Petition must also be served on all parties including General Counsel, State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx,

New York 10458. DO NOT FILE THE ORIGINAL NOTICE AND PETITION
WITH THE STATE DIVISION OF HUMAN RIGHTS.

Dated: **SEP 16 2010**
New York, New York

STATE DIVISION OF HUMAN RIGHTS

By:



Leon C. Dimaya
Regional Director