



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

DAVID BATTAGLIA,

Complainant,

v.

BUFFALO NIAGARA INTRODUCTIONS, INC.,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10138581

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on January 28, 2012, by Martin Erazo, Jr., an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: MAR 08 2012
 Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

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**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10138581**

SUMMARY

Complainant alleged that Respondent, a dating service, denied his application because of his disabilities. Complainant failed to meet his burden of proof. Accordingly, this matter must be dismissed.

PROCEEDINGS IN THE CASE

On January 7, 2010, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to public accommodation in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Martin Erazo, Jr., an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on October 18, 2011.

Complainant and Respondent appeared at the hearing. The Division was represented by Richard J. Van Coevering, Esq., Senior Attorney. Respondent was represented by the law offices of Chiaccia and Fleming, L.L.P., Andrew P. Fleming, Esq., of counsel.

The parties made closing arguments on the record in lieu of post-hearing briefs.

FINDINGS OF FACT

1. Complainant suffers from anxiety and depression. (Tr. 27, 35)

2. Complainant takes Bupropion, Zoloft, Inderal, Klonopin and Esgic. Complainant has been under the treatment of a psychiatrist since 1999 and has received Social Security Disability since 2000. (Tr. 35-36)

3. Patricia Novak is the owner of Buffalo Niagara Introductions, Inc. (Tr. 10, 23-24, 37)

Respondent’s Dating Service

4. Respondent runs a dating service. It is a business that is very personal in nature. The purpose of Respondent’s dating service is to match the personal preferences of male and female applicants. (Tr. 58, 60) All applicants are “paying clients looking for love.” (Tr. 59)

5. Respondent conducts a personal interview with all applicants and learns of an applicant’s personal preferences for a match which may include, among other issues, religion, race, age, income, educational level or other personal considerations. (Tr. 60-63)

6. In addition, Respondent conducts personal interviews of all applicants in order “to understand their background for the safety purposes of bringing somebody on.” This includes information about criminal backgrounds, disabilities, or medications. (Tr. 57-58, 77)

7. Respondent seeks as many persons in its dating service as possible to allow for a larger diverse matching pool. (Tr. 58-64)

8. In addition, more applicants equal greater income for Respondent’s business. Respondent charges \$795 for a six month program and \$995 for a 12 month program. Respondent may have to refund monies depending on Respondent’s success in matching an applicant. Two hundred dollars of the program charge is a non-refundable processing fee. (Tr. 72, 85-89)

9. Respondent has clients with physical disabilities, mental disabilities, and clients who take medications for their mental health. (Tr. 56-57, 78)

10. At times, Respondent encounters an applicant with a disability who prefers a match with another individual with a similar disability. (Tr. 63-62)

11. On the other hand, Respondent denied a particular applicant with uncontrolled bipolar episodes because of the safety concerns to other persons in the dating service. (Tr. 79-80)

12. Given the intimate nature of the service, Respondent is always concerned about “the safet[y] of the people, both the male and female” (Tr. 78-79)

Complainant’s Application

13. On June 15, 2009 Complainant filled out an internet application to join Respondent’s dating service. (Tr. 9, 21-21)

14. Respondent’s internet application asks if the applicant has a disability. (Tr. 10, 22)

15. Complainant wrote that he was “a working disabled person.” Complainant did not provide any more information about his disability. (Tr. 22-23)

16. In June, 2009, in response to Complainant’s internet application, Respondent scheduled Complainant for an in-person interview. (Tr. 22)

17. Complainant was interviewed by Respondent’s employee, Ms. Trimper. During the interview Ms. Trimper asked Complainant about the nature of his disability. (Tr. 10)

18. Complainant was evasive in his answers. Complainant only responded that he was a person who receives Social Security Disability and that it was not a physical disability. (Tr. 10, 23-24)

19. Ms. Trimper proceeded to place Respondent’s owner, Ms. Novak, on the telephone. (Tr. 10, 24-25)

20. Complainant informed Ms. Trimper and Ms. Novak that he would not disclose his disability or medications. (Tr. 10, 74-75)

21. Ms. Novak informed Complainant that if he did not disclose the information, Respondent would be unlikely to match Complainant to others. (Tr. 10-11, 64)

22. Complainant eventually revealed that he suffers from depression but refused to provide any other information. (Tr. 28-29, 32, 75-77)

23. Complainant did not reveal that he suffered from anxiety. (Tr. 81)

24. Contrary to Complainant’s allegations, Respondent never stated that if it took him on as a client Respondent would have to hide his disability. (Tr. 72)

25. Complainant was denied membership into Respondent’s dating service because of his unwillingness to be forthright with information surrounding his disability, not because he is disabled. (Tr. 76-77)

26. Respondent did not accept Complainant's application and did not take any money from him. (Tr. 85-86)

OPINION AND DECISION

Human Rights Law § 296.2(a) states that "it shall be an unlawful discriminatory practice for any person, being the owner ... of any place of public accommodation ... because of the ... disability ... of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof ..."

Respondent's dating service qualifies as a place of public accommodation under the Human Rights Law § 292.9

Complainant's dating service application was not denied because of his disabilities of anxiety and depression. Complainant was denied because he refused to be clear about information he placed in the application. This prevented Respondent from screening for issues of safety.

A respondent's legitimate consideration for safety is well-established law. *See Munsiff v. Office of Court Administration*, 31 A.D.3d 114, 816 N.Y.S.2d 455 (1st Dept. 2006) (Munsiff, an attorney, was denied a secure pass due to his criminal background and potentially uncontrolled paranoid schizophrenia); *Blum v. New York Stock Exchange*, 298 A.D.2d 343, 751 N.Y.S.2d (2nd Dept. 2002) (Blum was denied the continued use of a free standing stool for his medical condition because it was located on a major evacuation route).

Respondent's business is a dating service. The service is unique given the highly personalized nature of its function. Respondent matches individuals placing them in potentially vulnerable situations. Complainant refused to be forthright. The proof established that

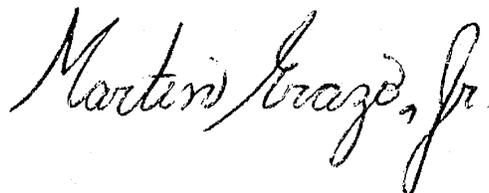
Complainant gave shifting and evasive answers to Respondent. Initially Complainant gave a vague answer that he was a working disabled individual. Subsequently, Complainant explained his initial answer by stating he receives Social Security Disability. After further discussion Complainant revealed to Respondent that he suffered from depression. Complainant never indicated that he suffers from anxiety. Complainant never revealed his medications.

Respondent is not screening for the class of mental health disabilities. The proof established that Respondent has an ongoing history of accepting persons with mental health disabilities. Respondent has applicants who have mental health conditions similar to Complainant. Respondent generates greater profit by having a larger matching pool. Furthermore, the proof established that there are some applicants who have a preference for other individuals who have similar mental health conditions. The proof established that Respondent would have accepted Complainant's application if he had been clear about the condition of his mental health. Given Complainant's lack of candor, Respondent was unable to satisfy its legitimate concern for the safety of any potential match.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby dismissed.

DATED: January 28, 2012
Buffalo, New York



Martin Erazo, Jr.
Administrative Law Judge