



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**STEPHEN LEE,**

Complainant,

v.

**BROADWAY PLAZA, FLUSHING LLC,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10129063

**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 May 7, 2012, by Michael T. Groben, 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:

*7/26/12*  
Bronx, New York



GALEN D. KIRKLAND  
COMMISSIONER



ANDREW M. CUOMO  
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**STEPHEN LEE,**

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**BROADWAY PLAZA, FLUSHING LLC,**

Respondent.

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

Case No. **10129063**

**SUMMARY**

Complainant alleges that he was subjected to unlawful discriminatory treatment at a place of public accommodation. Respondent denies the allegations. Complainant has failed to sustain his burden of proof, and the complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On August 28, 2008, 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 Michael T. Groben, an Administrative Law Judge (“ALJ”) of the Division. The public hearing was held on January 5, 2012.

Complainant and Respondent appeared at the hearing. The Division was represented by Senior Attorney Rosalind M. Polanowski, Esq. Respondent was represented by Arthur H. Forman, Esq.

Permission to file post-hearing briefs was granted, and the parties timely filed proposed findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Complainant is a paraplegic, unable to walk and confined to a wheelchair. (Tr. 13)
2. Complainant was involved in an auto accident in the spring of 2007. (Tr. 13) As a result of that accident, he underwent physical therapy. By letter dated August 15, 2007, an agent of the involved insurance company directed Complainant to report for an independent medical examination at the office of Dr. Francisco H. Santiago, physiatrist, at 162-02 Northern Boulevard, Flushing, New York. That office is located within a small shopping center known as Broadway Plaza. (Complainant's Exhibit 1; Tr. 13-14, 17, 24-25, 26-27)
3. Vincent Randazzo is a part owner of Respondent. Respondent has owned Broadway Plaza since 1985. (Tr. 48-49) Between its purchase of Broadway Plaza in 1985, and August 2007, Respondent did not alter the Broadway Plaza building or its parking lot. (Tr. 50)

4. Broadway Plaza fronts on Northern Boulevard, on the corner of Northern Boulevard and 163rd Street. (Tr. 51)

5. At the time relevant to the complaint, the parking lot of Broadway Plaza contained spaces for 10 cars, with no handicapped parking spaces. That portion of the parking lot fronting on Northern Boulevard was approximately 80 feet long; the parking lot was approximately 30 feet deep. (Tr. 33, 50-52)

6. Persons visiting Broadway Plaza can also park on either Northern Boulevard or 163rd Street, at a distance of approximately 15 to 20 feet from the Broadway Plaza parking lot. (Tr. 33, 50)

7. On August 30, 2007, Complainant, accompanied by his mother, Migi Lee, drove to Broadway Plaza. Because there were no handicapped parking spaces in the parking lot, Complainant parked his van on the street. (Tr. 15-16, 36)

8. When Complainant approached the entrance to Dr. Santiago's office in his wheelchair, he observed that there was a step in front of the door. Complainant asked his mother to go inside the office and ask for help in getting Complainant's wheelchair over the step so that he could enter the office. (Tr. 17, 36-38, 43)

9. The step was between three and five inches in height. (Tr. 18, 37-38, 54, 61)

10. Complainant's mother went inside and returned with two men, one of whom was Dr. Santiago. (Tr. 17-18, 23, 38-39) They attempted to assist Complainant in maneuvering his wheelchair over the step, but were unable to do so. Complainant became angry that he had to ask for help, and that he was unable to immediately access the office. Complainant then stated that he did not want to enter the doctor's office. (Tr. 18, 30-33, 41-43)

11. Complainant did not enter Broadway Plaza. (Tr. 19) After his attempt to enter the premises, he called the insurance company and received directions to appear for his independent medical examination at a different address, which he successfully accomplished. (Tr. 18-23)

12. Prior to Complainant's filing his complaint with the Division, Respondent had received no complaints regarding handicapped access at Broadway Plaza. After Complainant filed the instant complaint, Respondent met with Division personnel and installed a handicapped parking space and a doorway ramp at Broadway Plaza. (Respondent's Exhibits 2 and 3; Tr. 52-60, 62)

### **OPINION AND DECISION**

The Human Rights Law makes it an unlawful discriminatory practice for "any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee 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..." Human Rights Law § 296.2 (a).<sup>1</sup>

In the instant case, Complainant is confined to a wheelchair and is disabled within the meaning of the statute. Human Rights Law § 292.21.

Broadway Plaza, including its parking facilities, is clearly a public accommodation. Human Rights Law § 292.9. It is well settled that an office which provides medical services (as did the psychiatrist's office in the instant case) may be considered a public accommodation for the purposes of the Human Rights Law. *Cahill v. Rosa*, 89 N.Y.2d 14, 651 N.Y.S.2d 344 (1996); *Elstein v. State Division of Human Rights*, 161 A.D.2d 1157, 555 N.Y.S.2d 516 (4th Dept. 1990).

Respondent purchased Broadway Plaza in 1985, and did not alter the premises between the

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<sup>1</sup> The Human Rights Law regarding public accommodations was amended in 2007 to make explicit the requirement that public accommodations reasonably accommodate disabled individuals. (L. 2007, Ch. 394; Memorandum in Support, New York State Assembly [pp. 1905-06]). However, that amendment was not effective until January 1, 2008, some four months after the events in the instant case.

purchase date and the date relevant to the complaint. Therefore, Respondent is subject to the requirements of the Human Rights Law governing public accommodations at existing facilities.

There was no evidence adduced at the public hearing that Respondent denied treatment to Complainant because of his status as a disabled person. Respondent did not provide Broadway Plaza with a handicapped parking space. However, Complainant was able to park on the adjacent street, and to thus approach the entrance to the doctor's office. When Complainant was unable to maneuver his wheelchair over the step at the entrance to the doctor's office, persons from that office attempted to assist him. Frustrated that he had been required to ask for help, and because the proffered assistance was not immediately effective, Complainant stated that he did not want to enter, rejecting any further efforts to access the premises, and left.

Further, evidence at the public hearing demonstrated that once Respondent was made aware of Complainant's concerns, it promptly effectuated changes to its parking lot and entryway in order to facilitate handicapped access. Complainant submitted no proof that these measures were ineffective. To the extent Complainant argues that Respondent had an immediate affirmative duty to accommodate his disability, such accommodation is not required where the lack of accommodation does not rise to the level of or result in a denial of services. *See, Blum v. New York Stock Exchange Inc.*, 298 A.D.2d 343, 751 N.Y.S.2d 202 (2d Dept. 2002); *Eastern Paralyzed Veterans Association, Inc. v. Metropolitan Transportation Authority*, 79 A.D.2d 516, 433 N.Y.S.2d 461 (1st Dept. 1980). Complainant has failed to demonstrate that he was denied services because of his disability, and the complaint must be dismissed.

**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

ORDERED, that the complaint be, and hereby is, dismissed.

DATED: May 7, 2012  
Bronx, New York

A handwritten signature in black ink, appearing to read "Michael T. Groben", with a large, stylized flourish at the end.

Michael T. Groben  
Administrative Law Judge