

JAN 19 2000

JUDGE SWEET CHAMBERS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE CIVIC ASSOCIATION OF THE DEAF OF :  
NEW YORK CITY, INC. (also known as :  
the New York City Civic Association :  
of the Deaf) and STEVEN G. YOUNGER II, :  
on behalf of themselves and all :  
others similarly situated, :

Plaintiffs, :

95 Civ. 8591 (RWS)

- against - :

JUDGMENT

RUDOLPH GIULIANI, as Mayor of the :  
City of New York, HOWARD SAFIR, as :  
Commissioner of the Fire Department :  
of the City of New York, CARLOS :  
CUEVAS, as City Clerk and Clerk of :  
the New York City Council, PETER :  
VALLONE, as Speaker and Majority :  
Leader of the New York City Council, :  
THOMAS OGNIBENE, as Minority Leader :  
of the New York City Council, and :  
the CITY OF NEW YORK, :

Defendants. :

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This class action, brought pursuant to the Americans with Disabilities Act of 1990 ("the ADA"), 42 U.S.C. §§12101 et seq., (Supp. II 1991) and the regulations thereunder, the Equal Protection Clause of the Fourteenth Amendment, the Fifth Amendment, and the Rehabilitation Act of 1973 ("the Rehabilitation Act"), 29 U.S.C. § 794 (1988), seeking (1) class certification; (2) a declaratory judgment; (3) a permanent

injunction against Defendants Rudolph Giuliani, as Mayor of the City of New York ("Mayor"), Howard Safir, as Commissioner of the Fire Department of the City of New York ("Fire Commissioner"), Carlos Cuevas, as City Clerk and Clerk of the New York City Council, Peter Vallone, as Speaker and Majority Leader of the New York City Council, Thomas Ognibene, as Minority Leader of the New York City Council, and the City of New York (the "City") (collectively, "defendants"), to prevent them from carrying out the removal of emergency alarm boxes located on the streets of the City ("the street alarm boxes") and from replacing those street alarm boxes with notification alternatives which are not accessible to the deaf and the hearing-impaired, and to require them to reconnect those street alarm boxes which had been deactivated or disconnected since September 21, 1995; and (4) attorneys' fees and costs connected with this action pursuant to 29 U.S.C. §794a, 42 U.S.C. §1998 (1988 and Supp. V) and 42 U.S.C. §12205 (Supp. II 1991), came on for trial on December 5, 1995 before the Honorable Robert W. Sweet, sitting without a jury. The allegations and proofs of the parties having been heard and considered, and the Court having rendered and filed an Opinion and Order dated February 9, 1996, 915 F.Supp. 622 (S.D.N.Y. 1996) ("Civic Association I"), and the Court having rendered and filed an Opinion and Order dated July 28, 1997, 970 F.Supp. 352 (S.D.N.Y. 1997) ("Civic Association II"),

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Class Certification. A class is hereby certified, pursuant to Rule 23(a), 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure, consisting of persons who are deaf or hearing-impaired and who use a Telecommunications Device for the Deaf ("TDD") to communicate via telephone and who reside, work or are present in the City and use the walks, highways or public places of the City, and this action will proceed as a class action on behalf of that class. Civic Association of the Deaf I, 915 F.Supp. at 634;

2. Declaratory Judgment. For the reasons set forth in the Opinions and Orders in Civic Association I and Civic Association II, and because a Declaratory Judgment will serve a useful purpose in clarifying the legal relations at issue in this action and will terminate and afford relief from uncertainty, the following Declaratory Judgments are rendered:

a) Defendants' removal of or deactivation of the emergency street alarm boxes and their replacement with notification alternatives inaccessible to the deaf or hearing-impaired would violate the ADA, regulations promulgated under the ADA, and the Rehabilitation Act, as set forth in Civic Association of the Deaf I, 915 F.Supp. at 635-36, 638-39;

(b) The notification alternatives to the existing street alarm box system which are described in a two-volume

report of defendant Fire Commissioner entitled "Amended Report to the City Council: Planned Removal of Street Alarm Boxes & Notification Alternatives," dated June 21, 1995, and in a report of defendant Fire Commissioner entitled "Modification to Planned Removal of Street Alarm Boxes & Notification Alternatives, Dated June 21, 1995," dated August 17, 1995 ("the August Plan"), and which were approved by Local Law 73 of 1995, passed by defendant New York City Council on September 6, 1995 and signed by defendant Mayor on September 21, 1995, violate the ADA and regulations promulgated under the ADA, as set forth in Civic Association of the Deaf I, 915 F.Supp. at 628, 635-36, 638;

(c) Defendants' conversion of two-button alarm boxes to one-button alarm boxes in the pilot areas constitutes an "alteration" of the public "facilities" for reporting emergencies from the street which violates the ADA and regulations promulgated under the ADA, as set forth in Civic Association of the Deaf II, 970 F.Supp. at 359-60;

(d) Defendants' operation of one-button alarm boxes in the pilot areas does not provide adequate access for the deaf and hearing-impaired and violates the ADA and regulations promulgated under the ADA, as set forth in Civic Association of the Deaf II, 970 F.Supp. at 359-360.

(e) Defendants have not violated plaintiff's rights to equal protection under the Equal Protection Clause of the Fifth

Amendment, the Fourteenth Amendment or 42 U.S.C. §1983, as set forth in Civic Association I, 615 F. Supp. at 638-639.

3. Permanent Injunction. For the reasons set forth in Civic Association I and Civic Association II, and because plaintiffs have demonstrated the potential for irreparable injury and have succeeded on the merits (Civic Association I, 615 F.Supp. at 639),

(a) Defendants, their employees, agents, and those acting on their behalf are enjoined from carrying out any shutdown, deactivation, removal, elimination, obstruction, or interference with the street alarm box system as it existed on February 9, 1996, and from acting to replace that existing accessible street alarm box system with notification alternatives which are not accessible to the deaf and hearing-impaired. Civic Association of the Deaf I, 915 F.Supp. at 639;

(b) Defendants are enjoined to convert all one-button emergency alarm boxes to two-button boxes and maintain them as same. Civic Association of the Deaf II, 970 F.Supp. at 363;

(c) Defendants may apply at any time to dissolve or modify this injunction by demonstrating that there exists an accessible notification alternative to the existing accessible street alarm box system. Civic Association I, 915 F.Supp. at 639. Among the means by which defendants can meet this burden will be by demonstrating that defendant City's Enhanced 911

System ("E-911") is in operation and effective throughout the City, that a protocol has been developed providing the deaf and hearing-impaired with the ability to use E-911 to report a fire, police or other emergency from the streets and that the fact of such protocol has been disseminated to the deaf and hearing-impaired. Civic Association of the Deaf I, 915 F.Supp. at 638-39 and Civic Association of the Deaf II, 970 F.Supp. at 363;

(d) Defendants are not enjoined to reactivate those street alarm boxes that were deactivated as part of the first phase of the August Plan. Civic Association of the Deaf I, 915 F.Supp. at 639;

(e) If, within one year of judgment, defendants have not successfully dissolved or modified this injunction by making the showing described in (c) above, a further application may be made by plaintiffs with respect to the scope of this injunction and, in particular, those boxes which have been turned off as part of the first phase of the August Plan. Civic Association of the Deaf I, 915 F.Supp. at 639 and Civic Association of the Deaf II, 970 F.Supp. at 355;

(f) Plaintiffs may apply to this Court for further relief if evidence arises demonstrating that (1) the boxes are not "readily accessible," (2) deaf individuals have not been apprised of the E-911 tapping protocol, or (3) tapping calls made from public telephones do not elicit an appropriate response from

dispatchers. Civic Association of the Deaf II, 970 F.Supp. at 363.

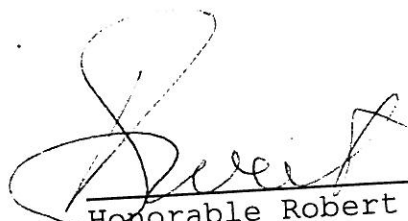
4. Attorneys Fees and Costs.

(a) Plaintiffs, having prevailed in this action, are awarded costs and reasonable attorneys' fees, pursuant to the ADA, 42 U.S.C. §12205, and the Rehabilitation Act, 29 U.S.C. §794a(b). Civic Association of the Deaf I, 915 F.Supp. at 639;

(b) Plaintiffs and defendants having resolved claims for costs and attorneys' fees through July 5, 1997, Plaintiffs shall have through March 10, 2000 to move pursuant to Rule 54(d)(2)(A) of the Federal Rules of Civil Procedure for costs and attorneys' fees arising from proceedings after July 5, 1997.

5. The Court will retain jurisdiction of this action for such other and further orders as may be necessary.

Dated: New York, New York  
January 19, 2000

A handwritten signature in cursive script, appearing to read "Sweet", written over a horizontal line.

Honorable Robert W. Sweet  
United States District Judge