

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DANNY ABRAHAMS, ANTHONY
CELARDO, KEVIN CHRISTMAN,
LAUREN EPSTEIN, MERYL JACKELow,
EVAN SKIDMORE, DAVID TINDAL,
LEE WOLBRUM, JOSE DELEON,
TRACEY GILBERT, VISHNU
KONDREDDI, MARICAR MARQUEZ,
SARA STRONG, and NATHAN WRIGHT

Plaintiffs

AMENDED COMPLAINT

DOCKET NO.
CV 10-1535 (JS) (AKT)

-against-

MTA LONG ISLAND BUS,

Defendants

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INTRODUCTION

1. Plaintiffs Danny Abrahams, Anthony Celardo, Kevin Christman, Lauren Epstein, Meryl Jackelow, Evan Skidmore, David Tindal, Lee Wolbrom, Jose DeLeon, Tracey Gilbert, Vishnu Kondreddi, Maricar Marquez, Sara Strong, and Nathan Wright, by counsel, bring this class action against defendant MTA Long Island Bus.

2. This is a civil rights action for declaratory and injunctive relief and damages to remedy a violation of the Americans With Disabilities Act (ADA) and its regulations by defendant MTA Long Island Bus for eliminating paratransit service for people with disabilities

in contravention of the ADA and its regulations. This action is also brought pursuant to the Federal Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973, and the New York State Human Rights Law on the grounds that the services cuts made by MTA Long Island Bus in general have a discriminatory and disparate impact on people with disabilities in violation of that law.

3. The removal of this service will prevent people with disabilities from being able to live independently in the community. It will prevent and make extremely difficult their ability to go to their jobs or medical appointments or visit friends and family or continue with other social activities in the community.

JURISDICTION

4. Jurisdiction is conferred on this Court by 42 U.S.C. §§ 3613 and 12133 and 28 U.S.C. §1331.

5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because the claims arose in this District, all of the parties reside in this District, and the Defendants conducts business in this District. This Court may assert supplemental jurisdiction over the State law claims.

PARTIES

6. Plaintiffs Danny Abrahams, Anthony Celardo, Kevin Christman, Lauren Epstein, Meryl Jackelow, Evan Skidmore, David Tindal and Lee Wolbrom are people with disabilities who are residents of several communities in Nassau County, New York.

7. Plaintiffs Jose DeLeon, Tracey Gilbert, Vishnu Kondreddi, Maricar Marquez, Sara Strong, and Nathan Wright are all associated with the Helen Keller National Center, a facility that provides services to people who are deaf and/or blind. The Helen Keller National Center is

located in Sands Point, New York, a community in the No-Able Ride Zone and would lose Able Ride service if defendant's new policy takes effect on April 12, 2010.

8. Defendant MTA Long Island Bus is a public transportation company that is an agency of the Metropolitan Transportation Authority, State of New York. Its principal offices are located in Garden City, Nassau County, New York.

FACTS

A. The New MTA Long Island Bus Policy.

9. Under its present policy, MTA Long Island Bus provides paratransit service called "Able Ride" to qualified people with disabilities in Nassau County.

10. That service was a door to door service, regardless of proximity to a fixed bus route.

11. In other words, if a person with a disability needed a paratransit to bring them from their home in Great Neck to a job in Plainview, the paratransit would meet the person with a disability at their home in Great Neck, transport them directly to their job in Plainview, and back again at the end of the workday.

12. As a result, people with disabilities were able to live independent lives in Nassau County. They were able to go from one end of Nassau County to another, arrange for housing in the community of their choice and medical care and jobs based on the paratransit system. They were able to visit their family and friends in other sections of Nassau County. The system allowed these people to live independent lives.

13. On March 10, 2010, defendant MTA Long Island Bus sent a letter to consumers of its Able Ride service stating as follows;

Effective April 12, 2010, Able-Ride will no longer provide a paratransit service to areas of Nassau County that are beyond the service area defined by the Americans With Disabilities Act. (ADA).

The ADA requires public transportation agencies to provide matching paratransit service to locations within the three-quarters of a mile on either side of a fixed-route (regular) bus line. This service also includes a three-quarter mile radius at the end of each fixed-route bus line. In addition, paratransit service must be offered during the same days and hours that the regular fixed-route bus is in operation.

Since its inception, Able-Ride has also provided service in areas such as Bayville, Syosset and Oyster Bay, which are outside the area required by the ADA. This additional service represented approximately 9 percent of Able-Ride's total completed trips in 2009.

13. Reading this statement as best as possible, it appeared that the letter stated that anyone living more than three-quarters of a mile from a bus route would not receive any Able Ride service and that anyone living three-quarters of a mile or less from a bus route would receive Able Ride service but only to the bus route.

14. Prior to commencing the lawsuit on April 7, 2010, plaintiffs' counsel spoke to counsel for the defendant and asked for a clarification as to meaning of the letter. Defendant's counsel declined to provide any clarification.

15. On the morning of April 7, 2010, defendant's counsel along with a Thomas Charles, an MTA employee with some responsibility over Able Ride came to Court with plaintiffs' counsel.

16. At that time, Mr. Charles made the following representations about the new policies to plaintiffs' counsel:

a. Able Ride service within most of Nassau County was not being discontinued. For example, if someone wanted an Able Ride from Great Neck from Massapequa, that person would receive door-to-door service even if they lived more than three-quarters of a mile from a bus route.

b. However, Able Ride would no longer provide any service within the Northeastern quadrant of Nassau County and a few other areas (“No-Able Ride Zone”). Syosset, Oyster Bay, Bayville and Sands Point are in the No-Able Ride Zone. Therefore, if someone living in or working at the Helen Keller National Center in Sands Point (located in the No-Able Ride Zone) could not receive an Able Ride to neighboring Port Washington since Sands Point is in the No-Able Ride Zone.

c. Similarly, someone eligible for Able Ride service could not receive Able Ride service to the No-Able Ride Zone. Therefore, someone living in Port Washington could not receive Able Ride service to Sands Point since Sands Point is in the No-Able Ride Zone.

d. A person living in an Able Ride area seeking to go to a location in the No-Able Ride Zone would be eligible for an Able Ride to a designated location in the Able Ride Zone and would then have to arrange for other transportation in the No-Able Ride Zone. Conversely, a person living in the No-Able Ride Zone would have to arrange for other transportation in the No-Able Ride Zone to a designated location in the Able Ride Zone and then receive an Able Ride from there within the Able Ride Zone.

e. The maps presented by Mr. Charles were not clear as to the boundaries of the No-Able Ride Zone and Mr. Charles did not even know whether Plainview, a destination of two of the named plaintiffs, was in the No-Able Ride Zone.

f. Mr. Charles did not seem clear whether the pick-up places for Non-Able Ride Zone riders in the Able Ride Zone have already been selected. Mr. Charles did not know where plaintiff Epstein, a resident of Oyster Bay in the Non-Able Ride Zone, would have to meet the Able Ride in order to use the Able Ride in the Able Ride Zone.

17. Mr. Charles' explanation of the Able Ride service reductions was both complicated and confusing (all the more so for the persons with disabilities who rely on Able Ride) and, most important, substantially different from the description in the March 10th letter. Mr. Charles' explanation of the "pick up" places in "designated locations" was not included in the March 10th letter and defendant's representatives could not identify where these "pick up" places were located or how a person who needs Able Ride transportation could identify the location of these "pick up places." Without this information, no one could "navigate" the Able Ride system."

18. If defendant's representatives cannot provide a clear and complete explanation of how the plan for reduced Able Ride service will work, then persons with disabilities and their representatives cannot be expected to be able to explain the intricacies of the reduction plan and how it may affect them.

19. With regard to defendant's counsel's representations about communications with people with disabilities with regard to the cuts in services, defendant's counsel claimed that some notice was placed in Able Ride vehicles and that there were public hearings on budget cuts in Flushing, Westbury and Riverhead. Defendant's counsel could not produce the notice that was purportedly placed in the Able Ride vehicles.

20. The public hearing in Westbury was held on March 2, 2010, only eight days before the notice was given to Able Ride riders about the cuts in Able Ride services, and it is not clear what was discussed at that public hearing.

21. In any event, a public hearing held eight days before a service cut is hardly the communication intended by the ADA regulations pertaining to communication between a service provider and people with disabilities. It was not, as required by the ADA regulations, an

“ongoing mechanism for the participation of individuals with disabilities in the continued development and assessment of services to persons with disabilities” required by the ADA.

22. From the abovementioned communications with Mr. Charles and defendant’s counsel on April 7, 2010, the following can be concluded:

a. There was no ongoing mechanism for the participation of individuals with disabilities in the continued development and assessment of services to persons with disabilities as required by the ADA regulations.

b. Considering that the defendant will provide long rides by Able Ride (Such as from Great Neck to Massapequa) but not relatively short rides (such as from the Helen Keller National Center in Sands Point to Port Washington), it is hard to imagine the logic behind the decision as to which Able Ride services to cut or that there had been communication between the Helen Keller Center which serves a substantial number of Able Ride users in the No-Able Ride Zone.

c. Not only was the March 10, 2010 letter not reflective of the policy defendant aims to put into effect on April 12, 2010, it is impossible for users to determine the boundaries of the No-Able Ride Zone and it is not clear that there have been pick-up points yet designated by the defendant in the Able Ride Zone to meet No-Able Ride Zone riders.

23. While MTA Long Island Bus has made cutbacks in all of its services, the cutback of the paratransit service will have a disparate impact on people with disabilities as opposed to the cuts made in services for non-disabled persons. In other words, while the budget cuts as a whole will have some impact on non-disabled people, they will not wipe out service for non-disabled people. In contrast, the budget cuts as a whole they will effectively eliminate service entirely for some people with disabilities in Nassau County and thus have a disproportionate impact on people with disabilities.

B. Plaintiffs Danny Abrahams, Anthony Celardo, Kevin Christman, Meryl Jackelow, Lauren Epstein, Evan Skidmore, David Tindal and Lee Wolbrom

24. Plaintiff Danny Abrahams is diagnosed with Neurological Impairment.

25. Mr. Abrahams presently receives Able-Ride services from his home in Westbury.

26. Under the new policy, he would not receive Able Ride service in the No-Able Ride Zone.

27. Anthony Celardo, whose residence is in the No-Able Ride community of Syosset, has a primary diagnosis of cerebral palsy and is in a wheelchair.

28. He presently receives Able-Ride services to visit his family and friends, shopping, recreation and running errands, obtaining and maintaining employment and attending medical appointments.

29. As Mr. Celardo lives in the No-Able Ride Zone, he would effectively lose his Able-Ride services from his home and the ability to live independently in the community.

30. Kevin Christman has a diagnosis of cerebral palsy and is in a wheelchair.

31. He currently lives in Wantagh and receives Able Ride services from his home.

32. Mr. Christman would not receive Able Ride service in the No-Able Ride Zone under the new policy.

33. Lauren Epstein has a disability of mild mental retardation, short term memory, seizure disorder, depression and hypothyroid.

34. She lives in the No-Able Ride Zone community of Oyster Bay and would thus lose the Able Ride service from her home.

35. Ms. Epstein's mother lives in Hewlett, and while she presently would receive a paratransit from her home to visit her mother in Hewlett, she would lose that service with the new MTA Long Island Bus policy.

36. She would lose independence in visiting family and friends, shopping, recreation and running errands, and obtaining and maintaining employment.

37. Meryl Jackelow is diagnosed with Cerebral Palsy.

38. She presently receives Able-Ride services from her home in Westbury.

39. Ms. Jackelow would lose Able Ride service in the No-Able Ride Zone under the new MTA policy.

40. Evan Skidmore's diagnosis is cerebral palsy.

41. At present Mr. Skidmore is a student at Hofstra University in Hempstead and uses Able-Ride to travel from his home in Syosset (a community in the No-Able Ride Zone) to Hempstead.

42. Mr. Skidmore has one more semester left at Hofstra, and would not be able to complete that semester without Able-Ride.

43. He also uses Able-Ride to visit his aunt in East Meadow, and would lose the Able Ride to visit her there.

44. David Tindal is diagnosed with cerebral palsy.

45. He lives in Baldwin and uses the Able Ride system..

46. Under the new policy, Mr. Tindal would lose Able Ride service in the No-Able Ride Zone.

47. Lee Wolbrom has a diagnosis of mild mental retardation.

48. Mr. Wolbrom, who lives in Great Neck, presently uses Able Ride.

49. Under the new policy, Mr. Wolbrom would lose Able Ride service in the No-Able Ride Zone.

C. Plaintiffs Jose DeLeon, Tracey Gilbert, Vishnu Kondreddi, Maricar Marquez, Sara Strong and Nathan Wright.

50. Plaintiffs DeLeon, Gilbert, Kondreddi, Marquez, Strong and Wright are all associated with the Helen Keller National Center in Sands Point, a facility servicing people who are hearing and sight impaired.

51. Being located in the No-Able Ride Zone community of Sands Point, the Helen Keller Center would be particularly hard hit by the defendant's new Able Ride policy and would impede the ability of that facility to function.

52. Plaintiff DeLeon, who is legally blind and has sensorineural hearing loss, would lose his Able Ride service from the Helen Keller Center to places of work in Westbury and Manhasset.

53. Plaintiff Gilbert who is legally blind and works at the Helen Keller Center would not be able to receive Able Ride to travel from the Helen Keller Center to the community and for medical appointments.

54. Plaintiff Kondreddi who has hearing and vision loss would lose his Able Ride service from the Helen Keller Center to places of work in Roslyn and Melville (which is presently covered by Able Ride though in Suffolk County on the border of the two counties.)

55. Plaintiff Marquez who is deaf-blind and has Usher's Syndrome would lose her Able Ride from the Helen Keller Center to medical appointments.

56. Plaintiff Strong who is deaf and has Ushers Syndrome, would lose her Able Ride service from the Helen Keller Center to places of work in Manhasset and Westbury.

57. Plaintiff Wright who is legally blind and has sensorineural hearing loss would lose his Able Ride service from the Helen Keller Center to his place of work in Melville which is covered by Able Ride.

D. Class Action Allegations

58. This action is suitable as a Class Action under Rule 23 of the F.R.C.P.

59. The class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and, the representative parties will fairly and adequately protect the interests of the class.

60. The class would be all persons with disabilities qualified to use Able Ride services in Nassau County.

E. The ADA and its Regulations and the New Policy.

61. The ADA requires the defendant to provide paratransit services as a complement to fixed route services. 42 U.S.C. §12143.

62. Under the ADA, the Secretary of Transportation was required to issue regulations to carry out the above section. 42 U.S.C. §12143(b).

63. The Secretary of Transportation did issue such regulations.

64. The regulations require public participation in the development of a paratransit plan by defendant. 49 C.F.R. §37.137(b).

65. Even after the paratransit plan is adopted, defendant is required “to create an ongoing mechanism for the participation of individuals with disabilities in the continued development and assessment of services to persons with disabilities. This includes, but is not limited to, the

development of the initial plan, any request for an undue financial burden waiver, and each annual submission.” Id.

66. In changing the paratransit policy, the defendant did not consult plaintiffs or any other people with disabilities in Nassau County who use the Able-Ride system on the change of policy.

67. If defendant had consulted plaintiffs or other people with disabilities in Nassau County who use the Able-Ride system on the change of policy, it would have learned that plaintiffs and other people with disabilities need far more than one month to rearrange their lives and make other alternatives without the Able-Ride paratransit system, if those alternatives can be made at all.

68. Indeed, if defendant had consulted plaintiffs or other people with disabilities in Nassau County, it may have learned ways that the defendant could save money without gutting the entire Able-Ride system and what other alternatives Able-Ride can make so that people with disabilities do not bear a disproportionate hardship as a result of the budget cuts.

69. The change of policy will cause irreparable damage to plaintiffs and other persons with disabilities since they will not have time to rearrange their lives and will lose jobs, access to day programs, family and friends, and other community resources because of the abrupt change in policy. They will lose their independence and ability to partake in activities in the community.

70. Indeed, some people with disabilities may not even learn that they are going to lose the para-transit service until April 12, 2010, the first day of the new policy.

71. In not consulting with and seeking the participation of plaintiffs and other persons with disabilities in the change of the Able-Ride service policy, defendant violated the regulations of the Secretary of Transportation.

72. Additionally, in virtually eliminating the Able-Ride system for some people with disabilities, the budget cuts as a whole instituted by the defendants have a discriminatory impact on people with disabilities in their ability to live and function in the community in violation of the FHA and Section 504 of the Rehabilitation Act of 1973 and the New York State Human Rights Law.

AS AND FOR A FIRST CAUSE OF ACTION: ADA REGULATIONS

73. In not seeking the participation of plaintiffs and other persons with disabilities changes in the Able-Ride service policy, defendant violated the regulations of the United States Secretary of Transportation. 49 C.F.R. §37.137(c).

AS AND FOR A SECOND CAUSE OF ACTION: ADA, FHA,

SECTION 504 OF THE REHABILITATION ACT, AND NEW YORK

STATE LAW.

74. As defendant's budget cuts as a whole have a greater impact on people with disabilities than others because of their disabilities and because the defendant can find alternative means for their budget cuts that do not so impact people with disabilities the budget cuts which virtually eliminate paratransit service and transportation for some people with disabilities in Nassau County have a disparate impact on people with disabilities as compared to non-disabled persons in violation of the ADA, FHA, Section 504 of the Rehabilitation Act of 1973, and the New York State Human Rights Law (Executive Law §296).

75. Defendant receives considerable Federal funding and is covered under the Rehabilitation Act, and is covered under both Title II and Title III of the ADA since defendant is a public entity and the Able Ride service is a public accommodation.

76. The FHA is implicated here because defendant's budget cuts treat people with disabilities differently from others and impedes people with disabilities from being able to live in the housing of their choice, and especially those who chose to live in the Northeastern quadrant of Nassau County.

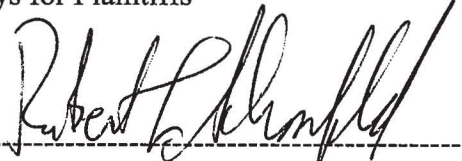
WHEREFORE, it is respectfully requested that:

1. A preliminary and permanent injunction be issued to prevent defendant from instituting the Able-Ride change of policy stated in its letter dated March 10, 2010 or any other proposed change in policy.
2. Compensatory damages to plaintiffs.
3. Attorneys fees.
4. Such other relief as this Court deems appropriate.

Dated: Garden City, New York
April 8, 2010

MORITT HOCK HAMROFF & HOROWITZ LLP
Attorneys for Plaintiffs

By:

A handwritten signature in black ink, appearing to read "Robert L. Schonfeld", is written over a horizontal dashed line.

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