

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

Delores and Charles Earley Plaintiffs

against

Summons Index No. 401239/11

Michael Aryeh Brian Newman 1 Convent Realty, LLC Defendants

To the above named Defendants:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the attached complaint of the plaintiffs and to serve a copy of your answer on the plaintiffs' attorneys at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

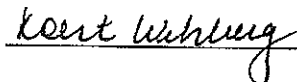
The plaintiffs designate New York County as the place of trial and the basis of venue is the residence of plaintiffs, which is 1 Convent Avenue, Apartment 21, New York, New York 10027.

Dated:

New York, New York

May 11, 2011

Koert Wehberg, Esq.



New York Lawyers for the Public Interest, Inc.

Attorneys for Plaintiffs

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

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Delores and Charles Earley, :
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Plaintiffs, :
 :
-against- :
 :
Michael Aryeh Brian Newman, :
1 Convent Realty, LLC :
Defendants. :
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VERIFIED COMPLAINT

Preliminary Statement

1. Plaintiffs Delores and Charles Earley, by and through their attorneys, New York Lawyers for the Public Interest, bring this action against defendants 1 Convent Realty, LLC, Michael Aryeh, and Brian Newman for denying them, as tenants with disabilities, a reasonable accommodation in housing in violation of the New York City Human Rights Law (HRL).
2. The Earleys are both elderly individuals living on limited incomes with severe arthritis. They need grab bars in their bathroom so that they can safely use the bathtub.
3. The Earleys asked the defendants 1 Convent Realty, LLC, their landlord; Michael Aryeh, the landlord's head officer; and Brian Newman, the landlord's managing agent, to purchase and install grab bars as a reasonable accommodation for their severe arthritis, which is a disability under the HRL.
4. The defendants have denied the plaintiffs' request on several occasions and are therefore in violation of the HRL.

5. The plaintiffs seek declaratory and injunctive relief, compensatory damages, punitive damages, and reasonable attorney's fees and costs under the HRL.

Applicable Law

6. The HRL requires covered entities, including landlords, owners, and managing agents, to make reasonable accommodations for tenants with disabilities. N.Y.C. Admin Code §8-102(17); §8-107(5)(a)(2).

7. The HRL defines a person with a disability as someone who has a physical impairment. N.Y.C. Admin Code §8-102(16)(a).

8. Refusing to make reasonable accommodations for tenants with disabilities constitutes discrimination. N.Y.C. Admin Code §8-107(15)(a).

9. The New York City Commission on Human Rights, the agency responsible for enforcing the HRL, has identified grab bars as a common example of a structural change that constitutes a reasonable accommodation for tenants with disabilities.

<http://www.nyc.gov/html/cchr/html/housing.html> last visited May 11, 2011. A copy of this guidance document is attached as Plaintiffs' Exhibit 1.

The Parties

10. The Earleys are residents of 1 Convent Avenue, Apartment 21, New York, New York 10027 in the County of New York,

City and State of New York.

11. The Earleys have both been diagnosed with severe arthritis, which constitutes a disability under the HRL. N.Y.C. Admin Code §8-102(16) (a).

12. Defendant 1 Convent Realty, LLC has been at all relevant times the Earleys' landlord and is a domestic limited liability company with a principal place of business at 619 West 54th Street, Suite 10A New York, New York 10019, in the County of New York, City and State of New York.

13. Defendant Michael Aryeh has been at all relevant times the head officer and owner of 1 Convent Realty, LLC.

14. Defendant Brian Newman has been at all relevant times the managing agent of 1 Convent Realty, LLC.

15. 1 Convent Realty, LLC, Mr. Aryeh, and Mr. Newman are covered entities pursuant to the HRL since they own or manage the Earleys' apartment. N.Y.C. Admin Code §8-102(17); §8-107(5) (a) (2).

Jurisdiction and Venue

16. Jurisdiction in this court over the defendants is proper because this is a declaratory judgment action against a domestic limited liability company and natural persons in the County of New York, City and State of New York. CPLR 301, 3001.

17. Venue in this court is proper because the Earleys are residents of the County of New York, City and State of New York.

CPLR 503.

Factual Background

18. The Earleys are tenants of a three-bedroom rent-stabilized apartment located at 1 Convent Avenue, Apartment 21, New York, New York 10027.
19. The Earleys' apartment building is a five-story 24-unit building owned and managed by 1 Convent Realty, LLC, Mr. Ariyeh, and Mr. Newman.
20. The Earleys' combined income consists of Social Security Disability (SSD) benefits of approximately \$1,900 per month.
21. The Earleys have each been diagnosed with severe arthritis.
22. The Earleys are in constant pain while walking, which requires them to use canes. They are also limited in their ability to bend and lift objects.
23. Because of their severe arthritis, Mr. Earley, age seventy-five, and Mrs. Earley, age seventy-four, have both experienced tremendous hardship in using their bathtub without grab bars.
24. The Earleys' bathtub is deep and requires them to step over the edge of the tub and then lower themselves to the bottom.
25. Without grab bars, the Earleys are forced to take turns holding onto each other as they descend into the bathtub to make

sure they do not injure themselves.

26. For each of the Earleys, descending into the bathtub is an arduous and dangerous process that can last between ten and twenty minutes.

27. The Earleys only use the bathtub once or twice a week because they are afraid of falling and hurting themselves.

28. Since they can only use the bathtub once or twice a week, the Earleys feel increased pain and discomfort from their severe arthritis.

29. After months of experiencing fear, pain, and discomfort, the Earleys talked to Dr. Matthew Hurley, their physician, who recommended that they obtain grab bars as a solution.

30. On or about August 17, 2010, the Earleys asked Dr. Hurley to support their request to the defendants that they purchase and install grab bars near their bathtub. Dr. Hurley put his recommendation in writing in a letter dated August 27, 2010. A copy of this letter is attached as Plaintiffs' Exhibit 2.

31. A few days later, on or about August 30, 2010, Mrs. Earley called Mr. Newman and asked him, as the managing agent of 1 Convent Realty, LLC, to pay for and install grab bars for the bathtub in the apartment.

32. Mr. Newman said that 1 Convent Realty, LLC would install the grab bars but would not pay for them.

33. Seeking to have the defendants reconsider their denial, the Earleys sent a certified letter on or about September 3, 2010, attaching Dr. Hurley's prior correspondence, to Mr. Newman and Mr. Aryeh, again asking them to pay for and install grab bars for the bathtub in their apartment. A copy of this letter is attached as Plaintiffs' Exhibit 3.

34. On or about September 16, 2010, Mrs. Earley called Mr. Newman and Mr. Aryeh to request a response to the Earleys' September 3 2010 letter.

35. Mr. Newman and Mr. Aryeh refused to reconsider their decision, saying that it was not the landlord's responsibility to pay for grab bars.

36. The defendants' multiple, willful refusals to pay for and install grab bars in the Earleys' apartment, combined with the pain and discomfort the Earleys have experienced over the past eleven months, have caused the plaintiffs emotional and physical distress.

Cause of Action and Damages

37. Plaintiffs incorporate paragraphs 1-36 of this complaint as fully set forth herein.

38. By refusing to purchase grab bars for the Earleys' bathtub and thereby exacerbating their severe arthritis, 1 Convent Realty LLC, Brian Newman, and Michael Aryeh are failing

to make a reasonable accommodation for their tenants with disabilities, a discriminatory practice in violation of the HRL. N.Y.C. Admin Code §8-107(15)(a).

39. The conduct of Brian Newman and Michael Aryeh has been willful, intentional, and in reckless disregard of the Earleys' civil rights.

40. As a direct and proximate result of defendant's unlawful conduct, plaintiffs are being discriminated against in violation of the HRL.

41. Accordingly, plaintiffs are entitled to a declaratory judgment, injunctive relief, compensatory damages, punitive damages, and reasonable attorney's fees and costs.

42. Plaintiffs have served a copy of this complaint upon authorized representatives of the New York City Commission on Human Rights and the Corporation Counsel designated to receive copies of complaints in actions commenced pursuant to the HRL.

Request for Relief

WHEREFORE, Plaintiffs request the following relief from this Court:

- a) A declaration that the defendants have violated N.Y.C. Admin Code §8-107(15)(a) by failing to pay for and install grab bars in the Earleys' apartment;
- b) An order directing defendants to pay for and install

grab bars in the Earleys' apartment pursuant to N.Y.C.
Admin Code §8-107(15) (a);

- c) An award of compensatory and punitive damages, in an amount to be determined by the jury;
- d) An award of pre-judgment interest pursuant to CPLR 5001 and 5004;
- e) An award of reasonable attorney's fees and costs; and
- f) Such further relief as the Court deems just and proper.

Koert Wehberg, Esq.

Koert Wehberg

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151 W 30th ST
11th Floor
New York, NY 10001

Dated: May 11, 2011
New York, New York

