

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

BARBARA J. MARKIEWICZ,

Complainant,

v.

TOWN OF EVANS, ERIE COUNTY,

Respondent.

AMENDMENT TO
THE COMPLAINT

Case No.
10131093

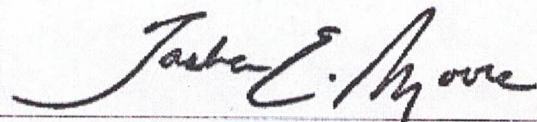
Pursuant to the provisions of § 297.4a of the Human Rights Law (Executive Law, Article 15) of the State of New York, and the New York State Division of Human Rights, Rules of Practice § 465.4, the complaint in the aforesaid proceeding is amended as follows:

The respondent name shall be amended as follows: Town of Evans

Dated: 2/20/2009 12:38:34 PM
Buffalo, New York

STATE DIVISION OF HUMAN RIGHTS

By:



Tasha E. Moore,
Regional Director

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

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AFFIDAVIT OF SERVICE

Case No.
10131093

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

Holly M. Korzen, being duly sworn, deposes and says, that he/she is over the age of 18 years; that he/she is employed by the New York State Division of Human Rights; that on February 20, 2009, he/she served the within AMENDMENT TO THE COMPLAINT upon:

Complainant

Barbara J. Markiewicz
9622 Point Breeze Drive
Angola, NY 14006

Respondent

Town of Evans
Attn: Francis J. Fordum, Supervisor
8787 Erie Road
Angola, NY 14006

Respondent Attorney

J. Grant Zajac, Esq.
8193 Erie Rd., P.O. Box 369
Angola, NY 14006

by personally placing true copies of the same, securely enclosed in postpaid wrappers in the post office box/depository under the exclusive care and custody of the United States Postal Service at 65 Court Street, Buffalo, New York.

Dated: February 20, 2009
Buffalo, New York

Holly M. Korzen
Holly M. Korzen
Secretary

Sworn before me this
20th day of February, 2009

Beverly A. Frescholtz
Notary Public

BEVERLY A. FRESCHOLTZ
Notary Public in the State of New York
No. 01FR6187237
Qualified in Eric County
Commission Expires 5/15/2012

STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS

RECEIVED

FEB 17 2009

HUMAN RIGHTS DIVISION OFFICE

NEW YORK STATE DIVISION OF HUMAN RIGHTS
On the Complaint of

BARBARA J. MARKIEWICZ,
Complainant,

Verified Answer

v.

TOWN OF EVANS, ERIE COUNTY,
Respondent.

Case No. 10131093

The Town of Evans, by its attorney, J. Grant Zajas, Esq., as and for its verified Answer to the Complaint herein alleges:

1. Respondent is a municipal corporation organized and existing under the laws of the State of New York, and having offices at No. 8787 Erie Road, in the town of Evans, Erie County, New York.
2. Though it is difficult to respond to each and every allegation when the same are set forth in narrative form, as in the Complaint herein, the following are set forth upon information and belief, the source of such information and the basis of such belief being the investigation conducted into the matters alleged in the aforesaid Complaint and the review of the relevant circumstances.
3. Respondent denies each and every allegation set forth in the said Complaint which alleges or would in any form allege that the Respondent in any way engaged in conduct which was an unlawful discriminatory practice relating to public accommodation in violation of Article 15 of the Executive Law of the State of New York or any provision of law or statute.
4. The Complaint is silent as to the nature of the disability alleged to be born by the Complainant and therefore Respondent denies knowledge or information sufficient to admit or deny the allegations relative to the same.
5. Indeed, it is understood that the Complainant has appeared at various Town Board meetings without the aid of a wheelchair, scooter or "rally".

6. The Complainant alleges that on two occasions such matters were raised with the Town Board, though dates are not supplied to identify such occasions.
7. Respondent's investigation reveals that on October 17, 2007, Complainant appeared at a regularly scheduled Town Board meeting. Complainant made comments addressed to the then Town Board regarding the condition of said Park and accessibility of the same to persons who may in fact be disabled.
8. The minutes of the aforesaid October 17, 2007, Town Board meeting were the only occasion found by Respondent to refer to any of the concerns therein set forth.
9. Respondent does not dispute that there may have been two such occasions but in attempting to address each allegation made in said Complainant, Respondent merely states that Respondent lacks information sufficient to form a belief to allow the Respondent to either admit or deny such allegation.
10. Respondent is the owner of and charged with the maintenance of Lake Erie Beach Park, hereinafter termed the Park, which it would appear to be facility styled as a public accommodation, with which the allegations of the Complaint are concerned.
11. While the Complainant refers to July 14, 2008, as the most recent act of discrimination about which Complaint complains, Respondent has no information as to circumstances which Complainant may have intended to relate in said Complaint and consequently lacks information or knowledge sufficient to allow Respondent to either admit or deny said allegations.
12. Said Park is marked with paths and walkways to enable and facilitate access by all persons, disabled or not, to the facilities provided by such Park.
13. Not all of the paths of the parkway are blacktopped, indeed many of the same are gravel topped, but useable even by those requiring the use of a wheelchair.
14. However, Complainant apparently complains that she, using a wheelchair or motorized scooter, may have to cross a paved parking lot or basketball court.
15. It does not appear to be alleged that on any date or time Complainant was unable to actually access any of the facilities mentioned in the Complaint, but rather

that access may not be "viable".

16. In fact, Complainants comments made in said Complainant have been investigated and addressed.

17. Though it is alleged that access to all facilities of such park are available to all, disabled or otherwise, conversations have been had with the Complainant by officials and/or employees of the Town and improvement have been considered and in some instances intended.

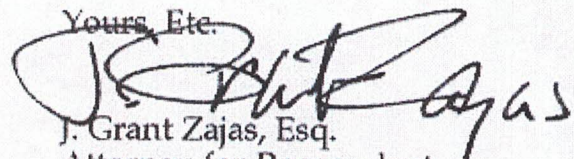
18. However, in any event, it is the position of the Respondent that neither the Complainant, nor any person, disabled or not, has suffered, or been the victim of discrimination of any sort, and especially of the sort intended and addressed by the statute pursuant to which this Complaint has been lodged.

19. Respondent denies each and every allegation of discrimination made in said Complaint not heretofore specifically addressed.

WHEREFORE, Respondent respectfully moves that the Complaint filed herein be dismissed in all regards and that such other and further relief as may be appropriate be granted Respondent.

Dated: February 12, 2009
Town of Evans, New York

Yours, Etc.



J. Grant Zajas, Esq.
Attorney for Respondent
Office and Post Office Address
8193 Erie Road
Town of Evans
Post Office Box 369
Angola, New York 14006
Telephone Number (716) 549-5150

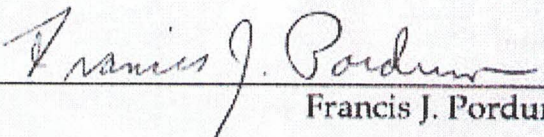
State of New York)
County of Erie)

Francis J. Pordum, being duly sworn, deposes and says:

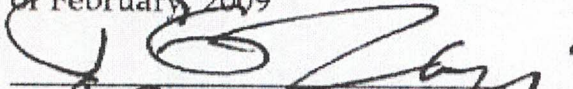
Deponent is the Supervisor of the Town of Evans, the Respondent in the above entitled action;

Deponent has read the foregoing Answer and knows the contents thereof;

That the same is true to the knowledge of the Deponent except as to those matters stated upon information and belief, and as to those matters deponent believes it to be true.


Francis J. Pordum

Sworn to before me this 13th day
of February, 2009


J. GRANT ZAJAS

Notary Public-State of New York

Qualified in Erie County

My Commission expires 1/31/10

Respondent Contact Information

Return to:
NYS Division of Human Rights
Buffalo Regional Office
65 Court Street, Suite 506
Buffalo, New York 14202

Re: Barbara J. Markiewicz v. Town of Evans, Erie County
SDHR NO: 10131093

Correct legal name of Respondent: Town of Evans, New York

Federal Employer identification Number (FEIN): 16-6002246

Contact person for this complaint:

Name: Francis J. Pordum

Title: Supervisor

Street Address: 8787 Erie Road

City/State/Zip: Angola, NY 14006

Telephone No: (716) 549-5787

Do you have an attorney for this matter: Yes No

If yes:

Attorney Name: J. Grant Zajac

Firm: _____

Street Address: 8193 Erie road, Post Office Box 369

City/State/Zip: Angola, NY 14006

Telephone No: (716) 549-5150

Will you participate in settlement/conciliation? Yes No

If yes, for this purpose please contact:

Name: Francis J. Pordum Telephone: (716) 549-5787

(Settlement discussions will not delay the investigation and participation in settlement does not provide good cause for an extension of time to respond to the complaint.)

Francis J. Pordum
Signature

February 13, 2009
Date

STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS

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Verified Answer

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J. Grant Zajas, Esq.
Attorney for Respondent
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8193 Erie Road
Town of Evans
Post Office Box 369
Angola, New York 14006
Telephone Number (716) 549-5150

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VERIFIED COMPLAINT
Pursuant to Executive
Law, Article 15

Case No.
10131093

I, Barbara J. Markiewicz, residing at 9622 Point Breeze Drive, Angola, NY, 14006, charge the above named respondent, whose address is 8787 Erie Road, Angola, NY, 14006 with an unlawful discriminatory practice relating to public accommodation in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of disability.

Date most recent or continuing discrimination took place is 7/14/2008.

Please See Attached Complaint.