

**ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CIVIL RIGHTS BUREAU**

**AOD No. 12-098**

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**In the Matter of:**

**ACORN THEATRE AND THE 42ND STREET  
DEVELOPMENT CORPORATION**

**ASSURANCE OF  
DISCONTINUANCE  
PURSUANT TO  
EXECUTIVE LAW  
63(15)**

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In June 2012, the Office of the Attorney General of the State of New York began to investigate, pursuant to the provisions of 63(12) of the New York State Executive Law, the extent to which the Acorn Theatre and the 42nd Street Development Corporation ("42nd Street") (collectively, "Respondents") denied full and equal enjoyment of the theater experience to persons with disabilities by failing to ensure that accessible seating was sold during the same hours and stages of sales as other seating, and made available through the same distribution and purchasing methods as other seating, including telephone service, in-person ticket sales at the facility, or third-party ticketing services.

The OAG reviewed, among other information, Respondents' accessible seating policy and agreements with third-party vendors to evaluate to what extent Respondents met the ticket sales requirements set forth in the Americans with Disabilities Act Accessibility Guidelines.

This Assurance of Discontinuance contains the OAG's findings in connection with its investigation of Respondents and the resolution agreed to by the OAG and Respondents.

## **I.** **DEFINITIONS**

1. Throughout this Assurance of Discontinuance, the following terms shall have the following meanings:
  - a. “**Accessible Seating**” means wheelchair spaces and companion seats that comply with sections 221 and 802 of the 2010 ADA Standards along with any other seats required to be offered for sale to the individual with a disability.
  - b. “**ADAAG**” means the Americans with Disabilities Act Accessibility Guidelines, 28 C.F.R. § 36.301 *et seq.*
  - c. “**Assurance**” means this Assurance of Discontinuance.
  - d. “**Disability**” means a physical or mental impairment that substantially limits one or more major life activities, a history of having such an impairment, or being perceived as having such an impairment.
  - e. “**Third Party Vendor**” means any company, organization, or website other than Respondents that has been authorized by Respondents to sell tickets to Respondents' events.

## **II.** **FINDINGS**

2. The New York Human Rights Law §§ 290 *et seq.* and Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181 *et seq.* prohibit public accommodations from discriminating against people with disabilities by denying them access to goods or services on the basis of their disability.

3. New York State Executive Law § 63(12) prohibits repeated or persistent fraudulent or illegal acts in the transaction of business.
4. The Acorn Theatre is a live theater establishment with a seating capacity of 199 people and 5 wheelchair accessible seats.
5. 42nd Street is the owner and operator of Theatre Row, a collection of theatres in New York's Times Square that includes the Acorn Theatre, the Beckett Theatre, the Clurman Theatre, the Kirk Theatre, the Lion Theatre, and the Studio Theatre.
6. Respondents provide a public accommodation subject to The New York Human Rights Law §§ 290 *et seq.* and Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181 *et seq.*
7. In June and July of 2012, the OAG conducted an investigation into whether theaters were compliant with the ADA and the ticket sales requirements of the ADAAG.
8. In its investigation of the Acorn Theatre, the OAG found credible evidence that the policies and practices of the Acorn Theatre and 42nd Street involving the sale of theater tickets to persons with disabilities constitute violations of Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.* and the Americans with Disabilities Act Accessibility Guidelines, 28 C.F.R. § 36.301 *et seq.*, in that persons with disabilities were not provided with the same opportunities to purchase tickets as persons seeking to purchase general seating.

### **III.** **PROSPECTIVE RELIEF**

**WHEREAS**, Respondents are subject to the New York State Executive Law § 290 *et seq.*, and Title III of the Americans with Disabilities Act, 42 U.S.C. 1281 *et seq.*,

which prohibits public accommodations from discriminating against people with disabilities by denying them access to goods or services on the basis of their disability;

**WHEREAS**, New York State Executive Law § 63(12) prohibits repeated or persistent illegal acts in the transaction of business;

**WHEREAS**, the New York State Human Rights Law and the ADA were enacted to protect the rights of individuals with disabilities by eliminating barriers to their participation in major life activities, which includes providing equal access to theaters and other public accommodations;

**WHEREAS**, the OAG seeks to ensure that all individuals have equal access to goods and services provided by public accommodations regardless of their disabilities;

**WHEREAS**, Respondents have cooperated in the OAG's investigation and will work cooperatively with the OAG to improve accessibility at the Acorn Theatre and other theaters operated and managed by 42nd Street Development Corporation by ensuring that persons with disabilities have the same access to purchase theatre tickets as other members of the general public, including online and telephone sales by third party vendors;

**WHEREAS**, in response to the OAG's investigation, Respondents have requested that Telecharge, Respondents' third party ticketing agent, ensure that persons with disabilities have the same access to purchase theatre tickets as other members of the general public, including through online and telephone sales by Telecharge;

**WHEREAS**, Respondents neither admit nor deny the OAG's Findings set forth in Paragraphs 2 - 8;

**WHEREAS**, the parties desire to obviate the need for further investigation or

litigation, and it is expressly understood that, with respect to the investigation of the OAG, this is a compromise settlement entered into to avoid the expense and inconvenience of further investigation and litigation; and

**WHEREAS**, the OAG is willing to accept the terms of this Assurance pursuant to New York State Executive Law § 63(15) and to discontinue its investigation of Respondent; and

**WHEREAS**, the parties believe that the obligations imposed by this Assurance are prudent and appropriate;

**IT IS HEREBY UNDERSTOOD AND AGREED**, by and between Respondents and the OAG as follows:

**IV.**  
**COMPLIANCE WITH THE LAW**

9. Respondents agree to fully comply with the obligations and conditions of New York State Executive Law §§ 63(12) and 296(2)(a) and Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.* and the Americans with Disabilities Act Accessibility Guidelines, 28 C.F.R. § 36.301 *et seq.*, which requires that persons seeking to purchase accessible seating must be able to do so during the same hours and in the same manner as persons seeking to purchase general seating.

**V.**  
**POLICY AND PROCEDURES**

10. On or before February 1, 2013, 42nd Street shall create and implement a revised policy governing the procedures for the sale of accessible seating, subject to the reasonable approval of the OAG, for all Theater Row theaters that:

- a. Requires that accessible seating be sold to individuals with mobility impairments on a first come, first served basis:
  - i. During the same hours as other seating;
  - ii. During the same stages of sale as other seating, including, but not limited to, pre-sales, promotions, general sales, wait lists, or lotteries; and
  - iii. Through the same distribution and purchasing methods as other seating;
- b. Offers that any person purchasing an accessible seat by telephone or in person will be able to purchase up to three (3) companion seats contiguous with or immediately proximate to the accessible seat, provided that, at the time of purchase, such seats are available; and that any person purchasing an accessible seat online will be able to purchase one (1) companion seat contiguous with or immediately proximate to the accessible seat, and two (2) more such companion seats will be made available in a manner that is technologically feasible.
- c. Designates a single individual within the 42nd Street organization as ADA Coordinator and Antidiscrimination Officer ("the Antidiscrimination Officer"), who shall be the person responsible for receiving complaints concerning disability discrimination at any of the Theatre Row theaters; and
- d. Specifies that any complaints of discrimination or harassment reported to the Antidiscrimination Officer shall be investigated and, if necessary,

appropriate action shall be taken to promptly resolve such complaints.

Such complaints shall be reported to the OAG as specified below.

**VI.**  
**TRAINING AND PUBLICITY**

11. Respondent shall inform all personnel who have contact with theater patrons of the location of and route to accessible seats and the accessible rest room. Personnel shall be instructed to provide this information to theater patrons upon request, escort patrons with disabilities to designated wheelchair accessible areas if requested to do so, and direct all complaints of discrimination or harassment to the individual designated by Respondent as its Antidiscrimination Officer. Respondent shall also inform all personnel who sell tickets to the general public (including those personnel with whom Respondent contracts to sell tickets) of the existence and location of accessible seating at the Theatre Row theatres and the procedures for purchasing such seating as described in Paragraph 10 of this Assurance.
12. Respondents shall post their accessible seating policy or a short statement summarizing the key terms of that policy on the Theatre Row website, and in a publicly visible location in the Box Office for all Theatre Row theaters or in a publicly visible location in the lobby of such theaters.

**VII.**  
**RECORD KEEPING AND MONITORING**

13. Three (3) months, twelve (12) months, and twenty-four (24) months after the Effective Date, Respondents will submit or make a report to the Office of the Attorney General's Civil Rights Bureau (hereinafter "Bureau"):

- a. Summarizing the continued implementation of this Assurance and any issues arising therefrom; and
- b. Enumerating any complaints received subject to Paragraph 10(d) of this Assurance and their resolution.

**VIII.**  
**OTHER RELIEF**

14. No less often than once a month for a period of one (1) year from the Effective Date of this Assurance, Respondent shall offer one (1) accessible seat and one (1) companion seat at the Acorn Theatre, free of charge, according to the distribution method set forth in this Paragraph. Respondents shall offer this single pair of tickets to non-profit organizations that provide services to persons with disabilities in New York State for use by persons with a disability of limited means and such party's companion. Promptly following the execution of this Assurance, the OAG shall provide Respondents with a list of such organizations, and Respondents shall, thereafter, contact one or more of said organizations with the dates on which seats can be made available and, thereafter, cooperate in the distribution of tickets therefore. In no event shall any publicity for said ticket distribution be permitted without Respondents' prior written consent thereto. If consent is granted for any publicity regarding the availability or distribution of said tickets, it shall be accompanied by a statement that Theatre Row Studios and 42nd Street Development Corporation are committed to ensuring that persons with disabilities have the same access to purchase theatre tickets as other members of the general public, including online and telephone sales by third party vendors.

15. At the written request of the OAG, the program of ticket distribution established in Paragraph 14 may be extended for a period not to exceed one (1) year. The OAG will consider feasibility data or other information provided by Respondents before making a request for extension of the program.

**IX.**  
**SCOPE OF THE ASSURANCE, JURISDICTION, AND**  
**ENFORCEMENT PROVISIONS**

16. This Assurance shall expire two (2) years after the Effective Date.
17. Notwithstanding any provisions of this Assurance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for Respondents to comply with any provision of this Assurance. The OAG will grant reasonable extensions of time where good cause is shown.
18. The signatories to this Assurance warrant and represent that they are duly authorized to execute this Assurance and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Assurance to effectuate its terms.
19. The parties may seek to enforce this Assurance through administrative or judicial enforcement proceedings, including a civil action in federal or state court, as appropriate, seeking specific performance of the provisions of this Assurance. Pursuant to New York State Executive Law § 63(15), evidence of a violation of this Assurance will constitute prima facie proof of a violation of New York State Executive Law §§ 63(12), 296(2)(a) and/or 20 U.S.C. § 2092(f) in any civil action or proceeding hereafter commenced by the OAG in connection with this Assurance. However, in the event of a dispute among the parties regarding any

issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking administrative or judicial intervention.

20. The failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.
21. If any provisions, terms, or clauses of this Assurance are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Assurance shall remain valid and binding on the parties.
22. This Assurance constitutes the entire agreement between Respondents and the OAG on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party that is not contained in this Assurance shall be enforceable.
23. Nothing in this Assurance is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the parties hereto.
24. Nothing in this Assurance is intended to, nor shall, limit the OAG's investigatory compliance review powers otherwise provided by law or this Assurance.
25. This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
26. This Assurance is final and binding on the parties, including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof.

No assignment by any party hereto shall operate to relieve such party of its obligations herewith.

27. All communications and notices regarding this Assurance shall be sent by first class mail and by facsimile or electronic mail, if twenty-five (25) pages or less in length, to:

Office of the Attorney General

Monica Iyer  
Assistant Attorney General  
Civil Rights Bureau  
Office of the New York State Attorney General  
120 Broadway, 3rd Floor  
New York, NY 10271  
Tel.: (212) 416-8250  
Fax : (212) 416-8074  
Email: Civil.Rights@ag.ny.gov

42nd Street Development Corporation

Bruce Levine  
42nd Street Development Corporation  
330 West 42nd Street  
New York, NY 10036

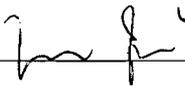
with a copy to:

Stacy G. Rom-Jensen, Esq.  
Law Offices of Stacy G. Rom-Jensen  
270 Madison Avenue  
Suite 1500  
New York, NY 10016

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York  
January \_\_\_\_, 2013

42nd Street Development Corporation

By:  \_\_\_\_\_

CONSENTED TO:

Dated: New York, New York  
January 8, 2013

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York

By:  \_\_\_\_\_  
Kristin Clarke  
Bureau Chief

Monica Iyer  
Assistant Attorney General

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