



April, 2009

Client Alert

Discrimination Against Male Patrons at Nightclubs and Bars Sorry, “Too Many Guys”

THE FACTS

In March, 2009, a complaint was filed with the New York State Division of Human Rights against a popular bar in Lower Manhattan, alleging unlawful discriminatory practices in relation to gender. The complaint was filed by a male patron who, along with three other male associates, was denied entrance to the bar. The men were allegedly advised by the doorman that they were “too many guys together” and denied them entry. The men then waited a few minutes while the doorman admitted females. After waiting for several minutes, the doorman reiterated to the men that he was not going to let them in and that they should leave. The men left and subsequently filed the complaint. After the Division of Human Rights conducted a preliminary investigation, which included interviewing all the parties involved, it determined that the claimants had raised sufficient facts to state a valid cause of action against the bar and scheduled a full public hearing.

Based upon the foregoing, the following is a brief discussion of possible discriminatory practices which may be unintentionally committed, and should preferably be avoided, by New York City nightclubs, lounges and bars.

THE LAW

Article 15 of the New York Executive Law, also known as the Human Rights Law, provides that New York State has the responsibility to insure that every individual within the state is afforded an equal opportunity to enjoy a full and productive life free of intolerance and discrimination. To such end, the law provides for the formation of the Division of Human Rights, which is charged with the policing and enforcement of anti-discriminatory legislation.

Furthermore, Section 296 2(a) of the Human Rights Law provides that it is unlawful for an owner, manager or employee of a place of public accommodation to refuse access to such accommodations or facilities to any person based on race, creed, color, national origin, sexual orientation, military status, sex, disability or marital status.

As nightclubs, lounges, bars, pubs and other similar establishments fall under the definition of “public accommodations,” it is important that they know and understand the law, and their obligations thereto, so as to avoid the unnecessary time, effort and expense in defending against a potential discrimination claim.

THE LAW IN PRACTICE

The image of the posh and exclusive nightclub with a strict doorman and tight door selectively screening patrons has become almost iconic within New York's nightlife culture. However, this practice of selectively screening patrons for entrance, if found to be in violation of the spirit of the Human Rights Law, can subject an establishment to various penalties.

Specifically, as evidenced by the above-referenced case, the practice of controlling the ratio of men and women inside the establishment by allowing women to enter while excluding men may be considered a gender based discriminatory practice related to public accommodation and, as such, a violation of the Human Rights Law. An establishment providing public accommodations must provide equal access to both men and women and cannot use gender as a determinative factor in granting or restricting access.

Should the Division of Human Rights determine that a violation of the Human Rights Law has indeed occurred, it has the authority to grant any of the following relief: (i) ordering the establishment to cease and desist the discriminatory behavior; (ii) awarding the plaintiff compensatory damages; and/or (iii) disgorging defendant's profits obtained through the discriminatory acts. It is important to note that in order to receive compensatory damages for unlawful discrimination, a plaintiff must offer sufficient proof of mental or emotional anguish as result of the discrimination. As such,

although compensatory damages are an available remedy for unlawful discriminatory acts, in the context of screening practices regarding entrance to a nightclub, bar, etc., it may be difficult for a plaintiff to prove any such damages. However, although a violation may not necessarily lead to large monetary penalties, the defendant will still have to deal with attorneys' fees, inconvenienced employees and the attendant negative publicity of such a claim.

PERMISSIBLE EXCEPTION

Notwithstanding the forgoing, public accommodation establishments may refuse entry to any patron so long as such refusal is not based on any of the factors listed in §296 2(a).

Therefore, doormen, valets, bouncers and any other employees who oversee admittance of patrons may only refuse entrance based on non-discriminatory criteria. This includes the right to deny entrance to any person who appears inebriated or is acting in a violent, rude or belligerent manner to its employees or other patrons. Gender, should not be used as the sole basis for entry or denial. Moreover, should a patron be refused entrance, the establishment's employees need not give any reason whatsoever to the patron and should never advise that the refusal is based on the patron's gender.

If you have any questions about the matters covered in this client alert, please contact Terrence A. Oved, Esq. at Oved & Oved LLP, 212.226.2376 or terry@ovedlaw.com.

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion