

\$350

1

1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN F. PEOPLES
Plaintiff
vs.
DISCOVER FINANCIAL SERVICES, INC.
and DISCOVER CARD SERVICES, INC.
trading as DISCOVER CARD
and
GINGER DAYLE, GINGER DAYLE
PRODUCTIONS and NEW CITY
STAGE COMPANY
Defendants

CIVIL ACTION NO.

08cv2024

FILED

308
By _____
Dep. Clerk

COMPLAINT

Plaintiff John F. Peoples, being of full age, by way of Complaint in a civil action, hereby pleads the following facts and averments in support of the causes of action asserted herein.

BACKGROUND FACTS

1. Plaintiff John F. Peoples is an individual of full age residing at 2701 West Chester Pike, Suite 104, Broomall, Delaware County, Pennsylvania 19008.
2. Defendants Discover Financial Services Inc. and Discover Card Services Inc. trading as Discover Card (hereinafter "Discover Card") are active corporations registered to do business in the Commonwealth of Pennsylvania, with main corporate offices located at PO Box 30943, Salt Lake City, Utah 84130-0943
3. Defendant Ginger Dayle is an individual of full age residing at 2020 Walnut Street, Apartment 16D, Philadelphia, Pennsylvania 19103-5640. Defendant Ginger Dayle Productions is a private, for-profit, active Pennsylvania corporation with main office located at 2020 Walnut Street, Apartment 16D, Philadelphia, Pennsylvania 19103-5640. New City Stage Company is a company or trade name located at 2031 Locust Street, Suite 702, Philadelphia, Pennsylvania 19103.

430 08
151
by

4. Plaintiff is, and has been since birth, legally blind. His blindness is so severe he cannot operate a motor vehicle or perform other normal daily routines requiring sight. He uses a special cane to walk. His daily activities are substantially affected by his blindness. Plaintiff is “Disabled” and suffers from a permanent “Disability” as defined by the Americans with Disabilities Act, 42 USC § 12102, Section 504 of the Rehabilitation Act of 1973, 29 USC § 705(20) and Section 954(p) of the Pennsylvania Human Relations Act, 43 PS § 954(p).

5. At all relevant times, Plaintiff was a member, cardholder and customer of Defendant Discover Card. Plaintiff and Defendant Discover Card had entered into a binding contract wherein Plaintiff received and used a Discover Card as a member and cardholder. Plaintiff was entitled to all the privileges of Discover Card cardholder/members. Plaintiff regularly used his Discover Card for consumer purchases.

6. Defendant Ginger Dayle is a service provider, providing personal, private sessions with clients for a predetermined per-session fee. She is not a doctor, nurse or licensed medical practitioner. She advertises herself as an expert at providing personal, hands-on service to individual customers in private sessions at a set rate.

7. At all relevant times, Defendant Ginger Dayle was employed by, and was acting within the scope of her employment with, Defendants Ginger Dayle Productions and New City Stage Company. She is also a principal, upper manager and owner of those companies and has authority to bind them contractually.

8. Defendants Ginger Dayle, Ginger Dayle Productions and New City Stage Company (collectively, “Dayle Defendants”) are merchants with Discover Card and accept Discover Card as payment for their services and had a contract with Discover Card as a merchant.

9. Subject Matter Jurisdiction for this case in the United States District Court is based on Federal Question Jurisdiction, 28 USC §1331, because the primary claims herein arise under federal statutes, 42 USC § 12101 et seq. and 29 USC § 794. The US District Court’s subject matter jurisdiction over the Pennsylvania

statutory and common law claims asserted herein is based on Supplemental Jurisdiction or ancillary jurisdiction, 28 USC § 1367, because these state law claims are substantially related to the claims herein brought under federal statute and form part the same case or controversy.

10. Personal Jurisdiction over Defendants in Pennsylvania is based on the Dayle Defendants being located in Pennsylvania, and on the Discover Card Defendants regularly transacting business in the Commonwealth of Pennsylvania, and on the underlying transactions having occurred in the Commonwealth of Pennsylvania.

11. Venue for this matter being in the Eastern District of Pennsylvania is based on the fact that all underlying transactions occurred in the eastern region of the Commonwealth of Pennsylvania, and the fact that Plaintiff and the Dayle Defendants, and accordingly the main witnesses, are located in this region.

12. In and around October and November 2007, Plaintiff was a customer of the Dayle Defendants and received a series of private sessions from Ginger Dayle. The agreed upon price for each session was approximately \$375 for the first lesson and \$275 for each session thereafter.

13. Plaintiff had about 11 sessions with Ginger Dayle in the October-November 2007 time period. The sessions were held in the Philadelphia County/Delaware County, Pennsylvania area. At the time of each session, Ginger Dayle would tell Plaintiff the amount owed for the session and Plaintiff would pay by Discover Card. Since Plaintiff is blind, he cannot read the amount on the credit card receipt when signing and must rely on the honesty of the merchant. Each time, Ginger Dayle told Plaintiff that the receipt indicated that he was being charged \$275. But in reality, Ginger Dayle charged \$1100, and in one case \$1600. Plaintiff signed the receipt nonetheless because he is blind and could not read the amount written in.

14. Defendant Ginger Dayle defrauded Plaintiff by telling him the receipt said \$275 when it said \$1100 or \$1600 and thereby getting him to sign it, knowing he was blind and could not see he was being tricked.

15. When Plaintiff received his credit card statement from Discover Card for the October–November 2007 billing cycle, he discovered (since he has a person to read his billing statements for him) that he had been defrauded, that Ginger Dayle had told him the receipt said \$275 when in fact it had said \$1100 or \$1600. Upon this discovery, Plaintiff promptly notified Discover Card and challenged the charge, and informed Defendant Discover Card of the fraud.

16. Defendant Discover Card failed to take any action in response to the fraud and has not removed the disputed amounts from Plaintiff's bill or charged back against the merchant.

17. At all relevant times, Defendant Discover Card was aware of Plaintiff's blindness/disability and yet failed to make any accommodation for him, either generally or in this specific case.

18. Plaintiff has sustained monetary damages in the amount of approximately \$8,650, which is the amount he was overcharged without knowing it over the course of the eleven sessions.

COUNT ONE

19. Plaintiff incorporates all prior allegations, paragraphs and averments into this Count as if repeated at length herein.

20. Defendant Discover Card has discriminated against Plaintiff on the basis of his disability in violation of Title III of the Americans with Disabilities Act ("ADA"), 42 USC § 12182; and other parts of the ADA, and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 USC § 794, and the Pennsylvania Human Relations Act ("PHRA"), 43 PS § 951 et seq.

21. Title III of the ADA provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, etc., of any place of public accommodation by any person who owns or operates such accommodation. 42 USC § 12182(a). These requirements also exist under Section 504 and PHRA, 43 PS § 953.

22. This section of the ADA applies to private companies providing goods or services to customers within the general public. It applies to Defendant Discover Card, which provides services to the public. Plaintiff, as a customer of Defendant Discover Card is entitled to rights and privileges under that section of the ADA.

23. Despite reasonable and timely requests by Plaintiff, Defendant Discover Card has failed and/or refused to provide reasonable accommodations to Plaintiff to enable him to use the Discover Card services with his blindness disability.

24. Defendant Discover Card is capable of making a reasonable modification of its services for its blind and visually impaired customers in order to avoid what has happened to Plaintiff.

25. Plaintiff wants and needs to continue to use a credit card and specifically the Discover Card, but needs the reasonable accommodation of protection against merchant fraud in deliberately mis-stating the amount of the credit card receipts that are being signed by Plaintiff.

26. Such reasonable accommodation could include, at the very least, chargebacks or action by Defendant Discover Card to not pay or take money back from the merchants, or provide ways for its blind customers not to be defrauded in the first place. Defendant Discover Card has refused and/or failed to provide any such reasonable accommodations to its customers.

27. Defendant Discover Card's services are used in business, stores, shops and many other places open to the public, and therefore Defendant Discover Card falls within the definition of a Public Accommodation under the ADA, 42 USC § 12181, Section 504 and the PHRA, 43 PS § 954(1).

28. As a public accommodation, Defendant Discover Card is required to take steps necessary to ensure that no individual with a disability is excluded, denied services or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless such steps fundamentally alter the nature of the services, privileges, etc., being offered or cause undue burden.

29. Defendant Discover Card has refused and/or failed to take steps to reasonably accommodate Plaintiff in that it has failed to provide an auxiliary device to allow him to hear or feel the amount being charged on his receipt, or to prevent fraud by merchants or to take remedial measures in the case of fraud by merchants.

30. Plaintiff made several contacts with Defendant Discover Card, requested help and made as many good faith attempts as he could to work out some form of reasonable accommodation, but Defendant Discover Card refused to respond to his inquiries and refused to communicate in good faith with him or discuss alternatives.

31. Defendant Discover Card has acted with malice, wanton, willful and reckless disregard of Plaintiff's civil rights and acted with intent to discriminate against disabled persons.

32. Therefore, Defendant Discover Card has violated Plaintiff's rights under statutory law, the Americans with Disabilities Act ("ADA"), 42 USC § 12101 et seq., Section 504 of the Rehabilitation Act of 1973, 29 USC § 794 ("Section 504"), and Pennsylvania Human Relations Act ("PHRA"), 43 PS § 955, and such violation has proximately caused Plaintiff to sustain damages and injuries, including the loss of \$8,650, plus interest, fees and penalties being charged against him, plus other costs, and severe emotional distress.

33. Furthermore, Defendant Discover Card's acts and omissions constitute a Breach of Contract of the written cardholder membership contract between Plaintiff and Defendant Discover Card, by failing to substantially provide the credit card services it agreed to provide to Plaintiff.

34. Plaintiff is entitled under the ADA, including 42 USC § 12205, 12217 and other sections of the ADA, under Section 504 and the PHRA, to compensatory damages for financial and emotional injuries, punitive damages, attorney's fees and costs of litigation and injunctive relief. Plaintiff seeks all of these damages.

WHEREFORE, Plaintiff demands Judgment against Defendants Discover Financial Services Inc. and Discover Card Services Inc. trading as Discover Card, individually, jointly and severally, for compensatory damages for financial and emotional injuries, punitive damages in excess of \$1 million, attorney's fees, costs of litigation, prejudgment interest, and for injunctive relief compelling these Defendants to provide reasonable accommodations to their blind and visually impaired customers to prevent the type of fraud committed in this matter, and for all other relief which this Court deems fair, just and equitable.

COUNT TWO

35. Plaintiff incorporates all prior allegations, paragraphs and averments into this Count as if repeated at length herein.

36. The Dayle Defendants committed common law fraud and Pennsylvania statutory consumer fraud against Plaintiff by telling him the receipt for services said \$275 when it in fact said \$1100 or \$1600, knowing he was blind, and thereby getting him to sign a receipt for the wrong amount.

37. The Dayle Defendants intended to deceive Plaintiff and in fact did deceive Plaintiff into paying substantially more than they told him he was paying, using his blindness against him to defraud him.

38. The Dayle Defendants' actions proximately caused Plaintiff to suffer damages and injuries as averred above.

39. Therefore, the Dayle Defendants are liable to Plaintiff for (1) violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq., (2) Fraud under the common law of Pennsylvania, and (3) Breach of Contract under the common law of Pennsylvania. These torts by these Defendants proximately caused Plaintiff to sustain damages and injuries as alleged above.

40. Plaintiff is entitled to compensatory damages for financial and emotional injuries, punitive damages including treble damages, attorney's fees and costs of litigation. Plaintiff seeks all of these damages.

WHEREFORE, Plaintiff demands Judgment against Defendants Ginger Dayle, Ginger Dayle Productions and New City Stage Company, individually, jointly and severally, for compensatory damages for financial and emotional injuries, punitive damages including treble damages, attorney's fees, costs of litigation, prejudgment interest, and for all other relief which this Court deems fair, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands Trial by Jury for all issues in this case.

CERTIFICATION OF NO OTHER ACTIONS

The undersigned certifies that the claims in this case are not the subject of any other lawsuit, arbitration or legal action in any other forum, and that no other legal action outside of this one is currently being contemplated.

By: LAW OFFICES OF JOHN F. PEOPLES
/s/ Stephen Cristal
Stephen H. Cristal, Esquire, ID# 95020, attorney for PLAINTIFF
2701 West Chester Pike, Suite 104, Broomall, PA 19008
Phone: 610-356-2711, Fax: 610-356-2763, Email: johnfpeoples@yahoo.com

Date: April 18, 2008