

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

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GREGORY PIATEK,

Index No.:

Plaintiffs,

COMPLAINT

-against-

THE HAPPIEST HOUR NYC and

Plaintiff Demands a Trial
by Jury

JON NEIDICH , individually,

Defendants.

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Plaintiff, GREGORY PIATEK, by his attorneys, DEREK SMITH LAW GROUP, PLLC, hereby complains of Defendants upon information and belief as follows:

PRELIMINARY STATEMENT

1. Plaintiff Piatek brings this action against Defendants pursuant to the applicable statutory and common laws of the State and City of New York, for the egregious, unlawful, and discriminatory conduct of THE HAPPIEST HOUR NYC (“The Happiest Hour”) and JON NEIDICH., individually and as owner of The Happiest Hour. For Plaintiff Piatek, January 28, 2017 began as a day dedicated to the memory of victims and fallen heroes of the September 11, 2001 attacks. Plaintiff Piatek and two of his close friends, came to New York to visit the September 11th Memorial Museum. Plaintiff Piatek wore his “Make America Great Again Hat,”

not as a symbol of politics; but as a symbol of freedom of speech and as a symbol of his creed.

2. Plaintiff Piatek sought solace in his creed and decided to remain in New York City with his friends so that they could get food and a good cheer. Plaintiff Piatek and his friends found their way to Defendant Neidich's "The Happiest Hour." However, Plaintiff Piatek was not met with happiness. Instead, Plaintiff Piatek was unlawfully ridiculed, discriminated against and ejected from The Happiest Hour on account of his creed, which caused him great emotional distress. Happiness turned to sadness, and for Plaintiff Piatek, what could have been the "happiest hour," turned into one of the saddest hours of his life.

PARTIES

4. At all times hereinafter mentioned, Plaintiff Piatek was and still an individual residing in the State of Pennsylvania, City of Philadelphia, with a place of residence located at 1326 Spruce Street, Apartment 2305, Philadelphia, Pennsylvania 19107.
5. At all times hereinafter mentioned, Defendant "The Happiest Hour NYC" d/b/a "The Happiest Hour" is owned and operated by Jon Neidich, and has a business location at 121 West 10th Street, New York, N.Y. 10011.
6. At all times hereinafter mentioned, Defendant Jon Neidich was and is the owner/proprietor of The Happiest Hour and has a place of residence in New York County. At all times material, Defendants were and are an "owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation" as

defined in New York State's Executive Law, Article 15, § 296 and New York City Administrative Code Section §8-101.

STATEMENT OF FACTS

7. On or about January 28, 2017, Plaintiff Piatek joined two of his friends at the September 11th, 2001 ("9/11"), Memorial Museum.
8. Plaintiff Piatek specifically went to the memorial for the purpose of remembering the fallen victim and heroes of that day.
9. Plaintiff Piatek had a sincerely held set of beliefs in which he felt it was necessary to wear a particular hat in remembrance of the souls who lost their lives and as a symbol of freedom/free speech.
10. Plaintiff Piatek's hat stated "Make America Great Again."
11. Upon departing from the 9/11 Memorial Museum, Plaintiff Piatek and his friends made their way to dinner and then to a cocktail bar and restaurant known as "The Happiest Hour."
12. Upon arrival at "The Happiest Hour" Plaintiff Piatek and his friends situated themselves at a spot along the left side of the bar, located near the entrance.
13. Plaintiff Piatek noticed that Defendants' supervisory bartender, in charge of their section, was purposefully and willingly ignoring Plaintiff and his friends. At the onset, Plaintiff Piatek figured that this was just an honest mistake. However, after the bartender gave Plaintiff Piatek a lengthy death stare, and then walked directly by them countless

times over a period of fifteen to twenty minutes, Plaintiff Piatek was confident that the bartender was willfully ignoring him. In fact, Plaintiff observed the bartender serve the patrons directly to his left and directly to his right numerous times, while still intentionally avoiding the Plaintiff.

14. Plaintiff Piatek's friend called to the bartender and stated "Sorry to bother you, but can we have a drink, we have been waiting fifteen to twenty minutes."

15. Visibly flustered, annoyed and filled with hatred, the bartender walked over to Plaintiff Piatek and said "Is that hat a joke?"

16. The above comments shocked Plaintiff Piatek and prompted Plaintiff's quick response. "So, wait, have you been ignoring me just because of my hat?" The bartender then replied "Yes, that's my thing."

17. At or around this time, Plaintiff Piatek also observed that a number of actual or perceived Hispanic bartenders/managers were wearing stickers that stated "Trump...idiot" which in sum and substance, meant in English that "[President Donald] Trump [was] an idiot."

18. Despite The Happiest Hour's employees refusing to serve Plaintiff Piatek on account of his beliefs and despite the shock to Plaintiff Piatek's conscious as a proud American, the Plaintiff figured he would wait for a short while and try to order a drink from another bartender who was more accepting of other people's creeds and beliefs.

19. While Plaintiff Piatek had his back to the bar and was conversing with a group of patrons, another bartender (female with dark hair), walked over to Plaintiff Piatek and yelled in his face “Is that hat a joke?”

20. The bartender then started to berate Plaintiff Piatek over his sincerely held beliefs. The bartender referred to the Plaintiff as a “terrible” human being, which left Plaintiff Piatek feeling depressed and shocked; especially after Plaintiff Piatek had spent his afternoon at the 9/11 memorial museum and was simply trying to enjoy a memorable time with his friends in what is arguably the most accepting city in the world: New York City.

21. After advising Plaintiff Piatek that he was a “terrible” human being, The Happiest Hour’s bartender then proceeded to tell Plaintiff Piatek that she would not serve him.

22. Plaintiff Piatek further observed the bartenders conversing with one another and looking over at the Plaintiff. Plaintiff Piatek also noticed that no bartenders were coming over to serve him and his friends.

23. At or around the time this time, once Plaintiff Piatek realized he was being discriminated against on account of his sincerely held beliefs, Plaintiff Piatek and his group asked the female bartender if they could speak with the Manager of The Happiest Hour.

24. The bartender replied “that will probably get me fired, but I guess that’s what people like you like to do.”

25. Approximately five minutes later, a manager of The Happiest Hour came over to speak with Plaintiff Piatek.

26. The Happiest Hour's Manager advised Plaintiff Piatek that he would look into the situation further by speaking directly to the owner. For a brief period, The Happiest Hour's Manager walked away from Plaintiff Piatek. Plaintiff Piatek observed The Happiest Hour's Manager speaking with other staff members and speaking into an ear piece that the manager attached to his ear.

27. After approximately ten minutes, The Happiest Hour's Manager came back to Plaintiff Piatek and said "I spoke directly to the owner and the owner told me that anyone who supports Trump or believes what you believe is not welcome here! And you need to leave right now because we won't serve you!"

28. Immediately thereafter, The Happiest Hour's Manager called into his ear piece for a team of bouncers.

29. The Happiest Hour's bouncers surrounded Plaintiff Piatek and his friends in an aggressive manner and one of the bouncers told the Plaintiff "We are just doing exactly what the owner told us to do, and the only reason you have to get thrown out is because of what you believe and who you support."

30. The Happiest Hour's bouncers continued to act aggressively and with intimidation toward Plaintiff Piatek. The bouncers then proceeded to escort Plaintiff Piatek and his friends out of the building.

31. After Plaintiff Piatek and his friends were left outside, in the cold, on account of The Happiest Hour's owners and employees refusing to accept anyone who does not think or act like them, another manager of the Happiest Hour came outside to speak with Plaintiff Piatek. That particular manager, described as short, Caucasian and with dark hair, advised Plaintiff Piatek that "The Happiest Hour" didn't want to serve people like him, but that what happened to the Plaintiff was wrong and perhaps Plaintiff should ask the police what he could do."

32. Plaintiff Piatek's friend called the New York City Police Department ("NYPD"). When two officers of the NYPD arrived on the scene, they were sympathetic, accepting, and understanding of the Plaintiff's situation, as one would expect from any New Yorker who respects others even if they are different.

33. The NYPD officers advised Plaintiff Piatek that the matter was not criminal, but suggested they could contact the Better Business Bureau. Plaintiff Piatek then shook the officers' hands, thanked them for their service, and the night ended.

33. Plaintiff Piatek was discriminated against on account of his creed, disgraced, thrown out into the cold and emotionally distressed. Plaintiff Piatek's experience was perhaps the most discriminatory, humiliating and "Saddest Hour" of his life.

34. As a result of Defendants' actions, Plaintiff felt extremely humiliated, degraded, victimized, embarrassed, and emotionally distressed.

35. As a result of Defendants' harassment, discriminatory and intolerable treatment, Plaintiff suffered and continues to suffer from anxiety and severe emotional distress.

36. As Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law, Plaintiff demands punitive damages against all Defendants jointly and severally.

AS A FIRST CAUSE OF ACTION FOR
INTENTIONAL INFLICTION OF EMOTION DISTRESS
(AS AGAINST ALL DEFENDANTS)

37. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs of the Complaint as set forth at length herein.

38. Under New York law, Intentional Infliction of Emotional Distress requires: "(1) extreme and outrageous conduct, (2) intent to cause severe emotional distress, (3) a causal connection between the conduct and the injury, and (4) severe emotional distress." *Bender v. City of New York*, 78 F.3d 787, 790 (2d Cir.1996). "[L]iability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Howell v. New York Post Co.*, 81 N.Y.2d 115, 122, 596 N.Y.S.2d 350, 612 N.E.2d 699 (N.Y.1993).

39. Defendants violated New York law and did intentionally inflict emotional distress on the Plaintiff, when by extreme and outrageous conduct; they intended to cause severe emotional distress upon the Plaintiff.

40. Defendants' ostracizing, yelling, refusal to serve, and ejection from The Happiest Hour, made upon the Plaintiff, was so outrageous in character and extreme in degree so as to go beyond all possible bounds of decency in a civilized society. The Defendants' outrageous and extreme behavior is the direct cause of Plaintiff's emotional distress.

41. Defendants are liable to the Plaintiff for Intentional Infliction of Emotional Distress in which Plaintiff Piatek claims damages in an amount to be determined at trial.

AS A SECOND CAUSE OF ACTION

VIOLATION OF NEW YORK STATE EXECUTIVE LAW, ARTICLE 15, § 296

42. Plaintiff repeats and realleges each and every allegation made in the complaint as if they were set forth herein fully at length.

43. § 296-2a. Unlawful discriminatory practices relating to creed 2.(a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color, national origin, sexual orientation, military status, sex, or disability or marital status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, including the extension of credit, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, sexual orientation, military status,

sex, or disability or marital status, or that the patronage or custom thereof of any person of or purporting to be of any particular race, creed, color, national origin, sexual orientation, military status, sex or marital status, or having a disability is unwelcome, objectionable or not acceptable, desired or solicited.

44. Defendants violated all applicable sections of the NYSHRL Section 296

45. Defendants violated the NYS HRL Exec § 296-2a as set forth herein.

AS A THIRD CAUSE OF ACTION

VIOLATION OF NEW YORK STATE EXECUTIVE LAW, ARTICLE 15, § 296

(AS AGAINST INDIVIDUAL DEFENDANT JOHN NEIDICH)

46. Plaintiff repeats and realleges each and every allegation made in the complaint as if they were set forth herein fully at length.

47. § 296 (6) 6. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

48. Defendant Neidich compelled, coerced and aided The Happiest Hour employees in their efforts to discriminate against Plaintiff Piatek on the basis of creed.

49. Defendant violated the above section of the NYS HRL Executive law as set forth above.

AS A FOURTH CAUSE OF ACTION**FOR DISCRIMINATION****UNDER THE NEW YORK CITY ADMINISTRATIVE CODE SECTION §8-101**

50. Plaintiff repeats and realleges each and every allegation made in the complaint as if they were set forth herein fully at length.

51. § 8-107 Unlawful discriminatory practices: 4. Public accommodations. (a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation because of the actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place or provider shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status or that the patronage or custom of any person belonging to, purporting to be, or perceived to be, of any particular race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status is unwelcome, objectionable or not acceptable, desired or solicited.

52. Defendants violated all applicable sections of NYCHRL.
53. Defendants violated NYCHRL as set forth herein.

AS A FIFTH CAUSE OF ACTION
FOR NEGLIGENCE-NEGLIGENT
HIRING/TRAINING/RETENTION/SUPERVISION

54. Plaintiff hereby incorporates by reference all preceding paragraphs as if fully set forth herein.
55. Defendants owed Plaintiff a legal duty of care. Defendants placed their employees in a position to cause foreseeable harm which the Plaintiff would have been spared had the Defendants taken reasonable care in supervising or retaining their employees.
56. The Defendants knew or should have known of their employees' propensity for the conduct that caused the injury.
57. But-for the Defendants' breach of duty owed to Plaintiff, and Plaintiff's detrimental reliance thereon, Plaintiff would not have suffered the harm alleged herein.
58. Defendants were negligent in the hiring, training, supervision and retention of said employees.
59. As a direct and proximate cause of Defendants' wrongful conduct, Plaintiff has suffered and will continue to suffer emotional distress, mental anguish, and other damages for which he is entitled to compensatory, equitable and other lawfully available relief in an amount to be proven at trial.

JURY DEMAND

Plaintiff requests a jury trial on all issues to be tried.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally in an amount to be determined at the time of trial plus interest, punitive damages, attorneys' fees, costs, and disbursements of action; and for such other relief as the Court deems proper and in the interest of justice.

Dated: New York, New York
March 17, 2017



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