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Supreme Court of the State of New York  
 County of New York

_____	)	
Bibliotechnical Athenaeum,	)	
	)	
Plaintiff,	)	
	)	Index No. 653668/2016
- against -	)	
	)	
National Lawyers Guild, Inc., &	)	
The National Lawyers Guild	)	
Foundation, Inc.	)	
	)	
Defendants.	)	
	)	
_____	)	

**Memorandum of Law in Support of Motion for Summary Judgment as to Liability**

Plaintiff Bibliotechnical Athenaeum ("Bibliotechnical") by its attorney, Benjamin Ryberg, respectfully submits this Memorandum of Law in support of Plaintiff's motion for partial summary judgment as to Defendant National Lawyers Guild, Inc. ("NLG" or "Defendant").

As set forth in more detail below, Plaintiff would like to apply for an injunction barring the Defendant from future discrimination and, assuming the injunction is granted, to waive any claims for compensatory or punitive damages so that there will be no need for a trial. Moreover, although Defendant The National Lawyers Guild Foundation, Inc. (the "Foundation") has also been named as a Defendant, in the event this motion succeeds, Plaintiff would be willing to withdraw its claims against the Foundation in

order to save time. Even though it appears the Foundation was a party to the discriminatory conduct, an injunction only as to NLG would satisfy the Plaintiff.

### **Introduction**

The undisputed facts in this matter show that the Defendant ("NLG") discriminated against the Plaintiff ("Bibliotechnical") by refusing to run a Dinner Journal advertisement on the basis of Plaintiff's Israeli national origin and citizenship. This is a clear violation of the New York City and State Human Rights Laws. Accordingly, based on the undisputed facts, Plaintiff is entitled to summary judgment enjoining the Defendant from engaging in discriminatory activity.

If the Court grants this injunction, Plaintiff will waive any claim for compensatory or punitive damages and thus there will be no issues left to try.

### **Facts and Procedural History**

By way of background, this matter is a discrimination claim brought by the Plaintiff ("Bibliotechnical" or "Plaintiff") against the Defendants for refusing to run a Dinner Journal ad and permit participation in NLG's annual banquet on account of Bibliotechnical's Israeli citizenship and national origin. (Ryberg Aff. Exh. B)

In advance of NLG's annual convention, which was held in New York in August of 2016, NLG placed solicitations on its internet website for participation in the Convention. (Abrams Aff. Para. 2-3). Among other things, the solicitation offered tickets to an annual banquet and advertisements in its Dinner Journal to be distributed at the banquet. (*Id.*) Significantly, these services were all held open to the general public and

not limited to members in any way. (*Id.*) The solicitation for advertisements stated as follows:

Placing an ad in the journal is a great way to congratulate our outstanding honorees (<http://www.nlg.org/convention/2016-nlg-honorees>), recognize this year's keynote speaker, Elle Hearn, publicize your firm or organization, or just share a message of your own—all while supporting the Guild!

(Abrams Aff. Para. 3)

On or about June 26, 2016, Plaintiff (an Israeli corporation) attempted to place a \$200 advertisement in the Dinner Journal. (Abrams Aff. Para. 4-5)

A copy of the proposed advertisement, when compared with the contents of the 2016 Dinner Journal, shows that the proposed advertisement was typical of ads accepted in the Dinner Journal for that year. (Abrams Aff. Para. 6) More specifically, the message contained in the advertisement—"Congratulations to the honorees"—was in no way political. (*Id.*)

NLG rejected the advertisement, admitting openly that the rejection was due to the Plaintiff's Israeli national origin and citizenship. (Abrams Aff. Para. 4-5)

Subsequently, Bibliotechnical brought suit in this Court seeking damages and injunctive relief. NLG moved to dismiss, and that motion was denied in April 2017. (Docket Entry #19). In September 2017, Bibliotechnical filed an amended complaint. NLG again moved to dismiss, and that motion was denied in March 2018. (Docket Entry #39). NLG filed its Answer to the Amended Complaint in April 2018 (Docket Entry #42). This motion follows.

## Argument

### **I. All Elements of Plaintiff's Claims Are Present Based on the Undisputed Facts**

Under the New York City Human Rights Law, it is unlawful "[b]ecause of any person's actual or perceived . . . national origin . . . or citizenship status, directly or indirectly . . . [t]o refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation . . . ."

New York City Human Rights Law § 8-107(4)(1)(a). The State Human Rights Law contains similar provisions. *See* New York Executive Law § 296(2)(a).

As set forth in more detail below, all of the elements therein are met as a matter of law.

#### **A. Public Accommodation**

As the Court correctly held in April 2017, "public accommodation" is defined very broadly under both statutes and applies to the situation at hand subject to review of the 2016 Dinner Journal itself. (Docket #19 at 11). The Court reiterated its reasoning in March 2018 when it again rejected NLG's advancement of the (same) argument that neither the 2016 banquet nor the Dinner Journal constitute public accommodations. The 2016 Dinner Journal has been supplied with this motion and it confirms Plaintiff's claims that the proposed advertisement was similar in content to ads that were in fact accepted. Accordingly, as a matter of law, Plaintiff was denied services of a public accommodation within the meaning of the anti-discrimination laws.

#### **B. Discrimination**

Similarly, there is no dispute that Plaintiff was denied such services on the basis of its Israeli national origin and citizenship. Indeed, the Defendant specifically and

explicitly advised Plaintiff that this was the reason its money would not be accepted.

Accordingly, as a matter of law, NLG has violated the anti-discrimination laws.

**C. *Boycotting, Blacklisting, or Refusing to Sell***

Under the New York City Human Rights Law, it is unlawful "for any person to discriminate against, boycott or blacklist or to refuse to buy from, sell to or trade with, any person, because of such person's actual or perceived . . . national origin . . . or citizenship status . . . ." New York City Human Rights Law § 8-107(18).

Similarly, the New York State Human Rights Law makes it unlawful "for any person to boycott or blacklist, or to refuse to buy from, sell to or trade with, or otherwise discriminate against any person, because of the . . . national origin . . . of such person . . . ." New York Executive Law § 296(13).

There is no dispute as to the fact that Defendant refused to sell ad space in its Dinner Journal to Plaintiff because of Plaintiff's Israeli national origin and citizenship. Again, Defendant specifically and explicitly advised Plaintiff that this was the reason its money would not be accepted as payment for the ad space. Evidently, this refusal was an implementation of NLG's organizational anti-Israeli boycott policy. Accordingly, as a matter of law, NLG has violated the anti-discrimination laws.

**II. Plaintiff is Entitled to an Injunction**

Under both the City and State anti-discrimination laws, Plaintiff is entitled to injunctive relief. *See* New York City Human Rights Law § 8-502(a) ("[A]ny person claiming to be aggrieved by an unlawful discriminatory practice as defined in chapter one of this title . . . shall have a cause of action in any court of competent jurisdiction for . . . injunctive relief . . . ."); New York Executive § Law Section 297(9) ("Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of

action in any court of appropriate jurisdiction for damages, . . . and such other remedies as may be appropriate . . .").

Accordingly, the Court should enter an order enjoining NLG from refusing advertisements from Israeli persons on account of their national origin or citizenship. If the Court grants such an injunction, Plaintiff will waive compensatory and punitive damages as well as aiding and abetting liability against the remaining Defendant so that there is no need for a trial.

### **Conclusion**

For the foregoing reasons, the Court should enter an order permanently enjoining NLG from refusing advertisements in its Dinner Journal from Israeli persons on account of their national origin or citizenship and closing this case.

Respectfully submitted,

/s/ Benjamin Ryberg

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