

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

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|---------------------------|---|------------------------------|
| DISABLED IN ACTION OF | : | |
| PENNSYLVANIA, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | Civil Action No. 03-CV- 1577 |
| v. | : | |
| | : | |
| SOUTHEASTERN PENNSYLVANIA | : | |
| TRANSPORTATION AUTHORITY, | : | |
| | : | |
| Defendant. | : | |

FOURTH AMENDED COMPLAINT

INTRODUCTION

1. Plaintiff Disabled In Action of Pennsylvania, Inc., a non-profit organization that provides advocacy and services to persons with disabilities, brings this action against the Southeastern Pennsylvania Transportation Authority (“SEPTA”) for:

(A) its failure to provide access to persons with disabilities to the newly altered and renovated entrance to the Market-Frankford Elevated Line at the northwest corner of 15th and Market Streets in Philadelphia;

(B) its failure to provide access to persons with disabilities both to the newly altered and renovated southeast entrance and to the planned alterations and renovations of the northwest entrance to the Broad Street Subway Line at the City Hall Station located in the City Hall Courtyard; and

(C) in the alternative, its failure to make any entrances accessible to Philadelphia’s “Key Stations” at City Hall Station to the Broad Street Subway Line and/or the 15th Street Station to the

Frankford-Market Elevated Line (hereinafter the “Key Stations”).

2. This denial of equal access violates of Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (“§ 504”).

3. Plaintiffs seek injunctive relief requiring Defendants SEPTA to provide equal access to the Market-Frankford Elevated Line via its newly altered entrance at 15th and Market Streets and to provide equal access to the City Hall Broad Street Subway Station via its newly altered entrances in the City Hall Courtyard, and in the alternative seek an injunction to require the Defendants SEPTA to make accessible its Key Station at City Hall to both the Broad Street Subway Line and the Market-Frankford Elevated Line.

JURISDICTION AND VENUE

4. This court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(3), and 42 U.S.C. § 12188(a). Plaintiffs' claims are authorized by 42 U.S.C. § 1983, and 28 U.S.C. §§ 2201 and 2202.

5. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b)(2) since all of the events that give rise to this Complaint occurred in this district.

PARTIES

6. Plaintiff Disabled in Action of Pennsylvania (“DIA”), a non-profit corporation, advocates for the civil rights of and services for persons with disabilities. DIA is an organization open to anyone who has a disability, including persons with mobility and/or visual impairments.

7. DIA’s primary organizational function is to assist persons with disabilities achieve equality with nondisabled persons and to advocate on behalf of and with persons with disabilities to eradicate discrimination against people with disabilities in all aspects of community life, including accessible

entrances to the Broad Street Subway Line located at the City Hall Station in the City Hall Courtyard and Market-Frankford Elevated Line located at the 15th Street Station, and in the alternative at an entrance to the “Key Station” to both the Broad Street Subway Line and Market-Frankford Line at these stations.

8. Plaintiff DIA has existed since the mid 1970s. Participants use and want access to Septa’s Frankford-Market Elevated and Broad Street Subway Lines and to access them at the City Hall/15th Street entrances. As defined by the ADA and Rehabilitation Act of 1973, persons who participate with DIA and who have these disabilities are “handicapped” with mobility and/or visual impairments, and are “otherwise qualified” to use SEPTA’s Broad Street subway and Market-Frankford Elevated transportation services. Some persons who have mobility and/or visual impairments and who seek DIA’s assistance and/or participate in DIA’s meetings and other activities are and will continue to be injured by Defendant’s refusal to comply with the ADA’s and Section 504’s statutory and federal regulation mandates.

9. SEPTA’s violation of its statutory and regulatory obligations directly and concretely injure DIA, by requiring DIA to advocate for the development and improvement of nondiscriminatory transportation services, instead of spending its time and resources assisting persons with disabilities with other issues, including accessible and affordable housing, attendant care services, equal employment opportunities and access to places of public accommodation.

10. DIA is also directly and concretely harmed by SEPTA’s failure to provide access to the Key Station and the entrances to the City Hall Station’s entrances to the Broad Street Subway Line and the 15th Street Courtyard entrance to the Market-Frankford Elevated Line because other persons with disabilities are unable to use this station to get to from meetings, programs and advocacy activities

which further curtails the organizational activities and goals of DIA.

11. Defendant SEPTA is a public entity which receives federal funding, including federal funds for capital programs, and which operates a fixed route transportation system, including the Broad Street Subway Line and the Market-Frankford Elevated Line.

FACTS

A. Alterations to Existing Facilities

12. In 2000 Defendant SEPTA renovated the northwest 15th Street Courtyard entrance to the Market-Frankford Elevated Line.

13. The Market-Frankford Elevated Line is a rapid rail transit system operated with both high level platform stations and underground stations.

14. The northwest 15th Street Courtyard entrance is a part of an existing facility used to provide public transportation services, in large part, to the Market-Frankford Elevated Line.

15. SEPTA demolished the existing stairway at the northwest 15th Street entrance Courtyard and built another stairway.

16. The alteration affects the usability of the 15th Street entrance by persons with disabilities.

17. SEPTA did not make the 15th Street entrance accessible to persons who use wheelchairs.

18. The altered portions of the 15th Street Courtyard entrance is not accessible to or usable by persons who use wheelchairs.

19. There are no public entrances to the Market-Frankford Elevated Line at 15th and Market Streets that are accessible to or usable by persons who use wheelchairs.

20. There are four entrances in the City Hall Courtyard to the Broad Street Subway Line.

21. The Broad Street Subway Line is a rapid transit system operated with primarily underground

stations.

22. In 2003, Defendant SEPTA renovated the Southeast entrance located in the City Hall Courtyard to the Broad Street Subway Line by altering and replacing the existing escalator.

23. This City Hall Station entrance in the City Hall Courtyard is part of an existing facility used in providing public transportation services, in large part, to the Broad Street Subway Line.

24. SEPTA replaced the existing escalator at the Southeast entrance to the Broad Street Subway Line in the City Hall Courtyard with a new escalator. See Attachment "A," Fiscal Year 2004 Capital Budget (incorporated by reference herein). (Attachment "A" is a true and correct copy of SEPTA's Fiscal Year 2004 Capital Budget.)

25. The alteration affects the usability of the City Hall Station entrance in the City Hall Courtyard by persons with disabilities.

26. SEPTA did not make the entrance accessible to persons who use wheelchairs.

27. The altered portions of the City Hall Courtyard entrance to the Broad Street Subway Line is not accessible to or usable by persons who use wheelchairs.

28. There are no public entrances to the Broad Street Subway Line at the City Hall Station that are accessible to or usable by persons who use wheelchairs.

29. In its Fiscal Year 2004 Capital Budget, SEPTA stated that it plans to replace the escalator at the "City Hall Station (Northwest entrance) on the Broad Street Subway Line." See Attachment "A."

30. That alteration will affect the usability of the City Hall Station entrance by persons with disabilities.

31. The altered Northwest entrance will not be accessible to or usable by persons who use

wheelchairs.

32. In Disabled in Action of Pennsylvania v. Sykes, 833 F. 2d 1113 (3rd Cir.1987), the Third Circuit held that the alteration of the Columbia Avenue subway station entrance (replaced stairways and installed an escalator) without making the entrance to the subway accessible to persons who used wheelchairs violated Section 504 of the Rehabilitation Act and the federal regulations promulgated by the U.S. Department of Transportation. The federal regulations require:

Each facility or part of a facility which is altered by, on behalf of, or for use of a recipient ... in a manner that affects or could affect the accessibility of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and useable by handicapped persons.

49 C.F.R. § 27.67(b).

33. The Broad Street Subway and Market-Frankford Elevated Lines cross at the City Hall and 15th Street stations.

34. The City Hall and 15th Street stations are the transfer locations for persons between the Broad Street Subway and Market-Frankford Elevated Lines.

35. The City Hall and 15th Street stations are the only transfer locations for these two Lines.

36. At the City Hall and 15th Street stations, there are numerous entrances to the Broad Street Subway line and Frankford Elevated line.

37. None of the entrances either at the City Hall or 15th Street stations are accessible to persons who use wheelchairs.

B. Key Stations

38. The City Hall Station is the most used entrance to the Broad Street Subway Line.

39. The City Hall Station services on a weekday approximately 26,950 persons boarding the

Broad Street Subway Line.

40. The number of people using the City Hall Station to access the Broad Street Subway line is approximately 23% of the average daily station passenger boardings on the entire Broad Street Line which has approximately 116,034 persons daily boarding the entire Line.

41. The next most used station on the Broad Street Subway Line is the Olney Station which services on a weekday about 16,433 persons daily boarding the Broad Street Subway Line. The Olney Station is accessible to persons who use wheelchairs.

42. After the Olney Station, the third most used Broad Street Subway Station is Erie which services on a weekday about 7,119 persons daily boarding the Broad Street Subway Line.

43. The 15th Street Station is the most used entrance to the Market-Frankford Elevated Line.

44. The 15th Street Station services on a weekday approximately 29,435 persons daily boarding the Market-Frankford Elevated Line.

45. The number of people using the 15th Street Station to the Market-Frankford Elevated Line is approximately 19% of average station passenger daily boardings on the entire Market-Frankford Elevated Line which has about 153,317 persons daily boarding the entire Line daily.

46. The next most used station is the Frankford Terminal which services on a weekday about 15,188 persons daily boarding the Market-Frankford Line.

47. After the Frankford Terminal, the third most used Market-Frankford Station is the 8th and Market Station which services on a weekday about 10,288 persons daily boarding the Market-Frankford Elevated Line.

48. The City Hall and 15th Street Stations are the transfer stations between both the Broad Street Subway Line and the Market-Frankford Line, as well as the transfer stations for the Suburban Station

which services both the regional commuter rail station and the rail line to the Philadelphia International Airport.

49. The City Hall and 15th Street Stations are a major interchange location with SEPTA's bus routes and subsurface trolleys.

50. The City Hall and 15th Street Stations are at the heart of and serve various major activity centers, including the City of Philadelphia's government centers, both City Hall and the Municipal Services Building.

51. Since approximately the late 1990s, SEPTA commenced planning to install elevators to the Broad Street Subway and Market-Frankford Elevators via the City Hall Station on the Dilworth Plaza.

52. Capital funds for design were allocated so that accessibility on the City Hall Station would be designed by April 30, 2002, construction commenced by October 31, 2002, and the project completed by June 30, 2005.

53. SEPTA has failed either to fund or commence such construction, the failure of which denies persons with disabilities equal access to Broad Street Subway and Market-Frankford Elevated Lines at the City Hall Station and 15th Street Station.

54. The City Hall Station Design elevators are identified as Elevators 3, 8 and 9 in Attachment "B." These elevators are part of the City Hall Station Design (see Attachment "C").

55. Attachment B is a true and correct copy of the Plan developed by Defendant SEPTA and approved by Defendant City of Philadelphia in 2000. Attachment C is a true and correct copy of SEPTA's Capital Project Summary Report, October 2003.

56. The attached City Hall Station Design elevators provides access for disabled person who use

a wheelchair to gain access to the Broad Street Subway and the Market-Frankford Street Elevated Lines.

57. Defendant SEPTA had originally proposed funding for the City Hall Station Design elevators in FY 2002.

58. Defendant SEPTA did not fund the City Hall Station Design elevators in 2002.

CLAIMS

59. DIA, a disability advocacy organization, is an aggrieved “person” within the meaning of the ADA and § 504 of the Rehabilitation Act of 1973. 42 U.S.C. § 12133; 29 U.S.C. § 794a.

Count I - Alteration to Existing Facilities

60. Defendant SEPTA’s alterations to the 15th and Market Street Courtyard entrance to the Market-Frankford Elevated Lines by constructing new stairs, SEPTA’s alterations to the City Hall Station in the City Hall Courtyard by replacing an escalator to the Southeast entrance to the Broad Street Subway Lines, and SEPTA’s plans to construct a new escalator to the Northwest entrance of the City Hall Station in the City Hall Courtyard to the Broad Street Subway Lines — without providing for accessible for persons with disabilities, including persons who use wheelchairs, at these three entrances, violate the Americans with Disabilities Act, 42 U.S.C. § 12101, Subchapter II, Part B and the federal United States Department of Transportation regulations implementing the ADA and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and contravenes the Third Circuit’s holding in Disabled in Action v. Sykes, 833 F. 2 1113 (3rd Cir. 1987).

Count II - Key Station Inaccessibility

61. Defendant SEPTA has failed to make accessible for persons with disabilities, including persons who use wheelchairs, the Broad Street Subway and Market-Frankford Elevated Lines at the

City Hall and 15th Street Stations, the stations that are the “Key Stations” in both the Broad Street Subway and Market-Frankford Elevated Line systems.

62. SEPTA’s failure to make these Lines at these stations accessible violates the “Key Station” requirements in the Americans with Disabilities Act, 42 U.S.C. § 12101, Subchapter II, Part B and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

PRAYER FOR RELIEF

To remedy Defendant’s federal statutory violations, Plaintiffs respectfully request that this Court:

- A. Exercise jurisdiction over this matter;
- B. Declare that Defendant’s alterations to the 15th and Market Streets entrance to the Market-Frankford Elevated Line, to the City Hall Station’s Southeast Courtyard entrance to the Broad Street Subway Line, and to the City Hall Station’s Northwest Courtyard entrance to the Broad Street Subway Line, without providing for access for persons with disabilities, and, in the alternative, Defendant’s failure to make accessible the Broad Street Subway and Market-Frankford Elevated Lines at the City Hall/15th Street Courtyard, violates the “Key Station” mandates in the ADA and Section 504 and the federal regulations that implement those statutes;
- C. Issue preliminary and permanent injunctive relief to enjoin Defendant to begin construction immediately of elevators either at the 15th and Market Street Courtyard entrance to the Market-Frankford Elevated Line and at the City Hall Station Courtyard’s Northwest and Southeast entrances to the Broad Street Subway Line to assure access for persons with disabilities, including persons who use wheelchairs, or to begin construction immediately of elevators ## 3, 8 and 9 in Attachment B; and

D. Grant Plaintiffs such additional relief as this Court may deem just, proper and equitable, including an award of reasonable attorneys' fees and costs.

Respectfully submitted,

By: /s/ _____
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Dated: February 15, 2005

CERTIFICATE OF SERVICE

I, Stephen F. Gold, certify that a copy of the Fourth Amended Complaint were mailed first class on February 15, 2005 to Adam A. Despio c/o Saul H. Krenzel & Associates, The Robinson Building, Suite 800, 42 S. 15th Street, Phila., Pa. 19102, counsel for Septa.

Stephen F. Gold