

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

-----x

**LOUISE M. BIZZARI and
BARBARA A. HACKETT,**

Index No. _____

Plaintiffs,

- against -

COMPLAINT

**CHARLES T. SITRIN HEALTH
CARE CENTER, INC.,**

Defendant.

-----x

Plaintiffs, Louise M. Bizzari and Barbara A. Hackett, by their attorneys, as and for their complaint, allege as follows:

INTRODUCTION

1. Even though New York law explicitly prohibits discrimination on the basis of sexual orientation in places of public accommodation, the Charles T. Sitrin Health Care Center, Inc. (“Sitrin” or “Center” or “Defendant”), has refused to allow Louise M. Bizzari (“Louise”) or Barbara A. Hackett (“Barbara”) (collectively “Plaintiffs”) to participate in the fitness and rehabilitation programs that it offers to the public solely because of their sexual orientation.
2. Louise suffers from severe osteoarthritis in her back, hips, knees, ankles and feet, and was bed-ridden for almost a decade due to these and other debilitating health problems. Because Louise’s body cannot withstand the stress caused by most forms of exercise, her

doctor has ordered her to use a pool for at least thirty minutes of aerobic exercise each day. Attempting to comply with her doctor's orders, and motivated by the hope that she might qualify for reconstructive surgery that could restore her mobility if she improved her physical fitness, Louise contacted the Sitrin Center about its numerous aquatic therapy programs.

3. Sitrin's Director of Clinical Rehabilitation Services, Jackie Warmuth, refused to enroll Louise in any of Sitrin's aquatic therapy classes when Louise revealed that her insurance was provided through her domestic partner, Barbara. A few months later, after discovering that Louise and Barbara had enrolled in a separate Sitrin program that allows the public to use its pool apart from its formal classes, Warmuth "dismissed" Louise and Barbara from the pool, calling them "faggots."
4. Because they have not been able to find another pool in the area that is both easily accessible and designed for rehabilitation, Louise and Barbara fear that Louise will not be able to have reconstructive surgery and will suffer other negative health effects.
5. Louise and Barbara seek an order that Sitrin must allow them to use the pool, just as any other member of the public, and damages for Sitrin's discrimination against them.

FACTS

6. Born in Utica in 1949, Louise worked throughout New York State as a registered nurse until she returned home in 2000 to be close to and to care for her dying mother. Barbara, who has been Louise's life partner since 1983 and is also a registered nurse, returned to Utica with her.

Louise's Need to Exercise in a Pool

7. In 1994, Louise went to a doctor with leg pain, which was misdiagnosed as cancer. As part of her treatment, Louise was prescribed massive doses of steroids and other medications, which further weakened her bad leg, and ultimately debilitated her, rendering her immobile. Bed-ridden for nine years, with Barbara caring for her, over time Louise became morbidly obese.
8. In October 2003, Louise had gastric bypass surgery. After this surgery, Louise's surgeon informed her that it was extremely important that she engage in thirty minutes of aerobic exercise each day. Because of her bad leg and severe osteoarthritis in her back, hips, knees, ankles and feet, however, most forms of physical exercise are impossible for Louise to perform. Louise's surgeon therefore instructed her to exercise in a pool. Other doctors that have examined Louise have reiterated these instructions.

Sitrin Refuses to Let Louise Enroll in Aquatic Therapy

9. In an effort to comply with her doctor's orders, Louise began investigating pools in the Utica area where she might be able to exercise. In the spring of 2004, Louise first attempted to use the Faxton Rehabilitation Center, affiliated with St. Luke's Hospital in Utica. After a couple of attempts, however, Louise found it too painful to walk the long distance from the parking lot to the pool facilities.
10. Louise then investigated the facilities at Sitrin, located at 2050 Tilden Avenue in New Hartford, NY. Louise learned that Sitrin not only had a therapeutic heated pool but also had parking that was much closer to the entrance to its facility than Faxton.

11. Louise and Barbara made an appointment for Louise with a physical therapist at Sitrin in March 2004. After his assessment, Louise inquired about the aquatic programs offered by Sitrin during the day. The physical therapist told Louise and Barbara that Louise would need to call the supervisor of the Wellness Program, Jackie Warmuth, to enroll.
12. Louise called Sitrin several times trying to reach Jackie Warmuth. During at least one of these phone calls, Louise asked the person who answered the phone whether Sitrin accepted Empire Blue Cross / Blue Shield insurance. The Sitrin employee with whom Louise spoke stated that Sitrin did, in fact, accept her insurance.
13. Jackie Warmuth, Director of the Clinical Rehabilitation Services at Sitrin, eventually returned Louise's call. Louise explained that she wished to enroll in one of the aquatic programs at Sitrin.
14. When Warmuth asked Louise how she would pay for these programs, Louise replied that she had Empire Blue Cross / Blue Shield insurance. When Warmuth asked what her relationship was to the holder of the insurance policy, Louise replied that she was her domestic partner. Warmuth replied that Sitrin did not take this form of insurance.
15. Louise then noted that these programs would be covered by the out-of-network component of her insurance plan. Warmuth stated that this would not be possible.
16. Louise then stated that she could pay for these programs herself, without using her insurance. At first, Warmuth responded that Louise would not be able to afford these services.
17. When Louise insisted that she would be able to pay for the programs, Warmuth replied that there were no programs at Sitrin suitable for her.

18. After she hung up with Warmuth, Louise called Sitrin again, and asked the receptionist whether the Center accepted Empire Blue Cross / Blue Shield. The receptionist confirmed that Sitrin accepted this insurance. Louise, however, did not pursue the issue any further with Sitrin.

Sitrin Refuses to Let Louise and Barbara Use the Pool

19. Later that spring, Louise and Barbara began searching on the Internet for medical experts who might be able to help Louise with her left foot and leg. They read about the Orthopaedic Surgery Center at Washington University School of Medicine in St. Louis, and contacted doctors there. The individuals at Washington University with whom Louise spoke indicated that she might be a strong candidate for orthopaedic surgery on her feet, ankles and leg. Accordingly, they scheduled an appointment for Louise to come to St. Louis in December 2004.
20. Inspired by this news, Louise was determined to get into a pool so that she could exercise and increase her strength and physical fitness. One of Barbara's friends, who suffered from arthritis, told Barbara that she was swimming at Sitrin in a program that might work well for Louise.
21. Louise called Sitrin, and learned that, in addition to its aquatic therapy classes, Sitrin ran a Wellness Program, which was also open to the public. Through this program, the public can use Sitrin's rehabilitation pool from 4pm to 9pm on Tuesday and Thursday evenings, and on Saturday mornings from 9am to 1pm.
22. The fees for the Wellness Program were \$30 for an individual and \$45 for a family of up

- to four people in the same household.
23. In early summer 2004, Louise and Barbara signed up for the pool as a family and began using the pool.
 24. Louise used the pool consistently over the next six months and became friends with other ladies who used the pool at the time she regularly attended.
 25. Barbara would often meet Louise at the pool in the evening to help her change, put on her leg brace, and to carry her things to the car. At times, Barbara would also swim with Louise.
 26. In the first week of December, Louise and Barbara traveled to St. Louis. After meeting with multiple doctors, Louise was told that the only way that she would be able to have reconstructive surgery on her feet, ankles and legs would be if she increased her upper body strength through exercise. Accordingly, the doctors insisted that Louise keep swimming, which was the only exercise that Louise could do as a practical matter. The doctors scheduled an appointment with Louise in June 2005, at which time they would assess whether her strength had improved enough for them to do the surgery.
 27. Upon her return to Utica, Louise continued to use the pool regularly.
 28. On November 24, 2004, Barbara complained to Sitrin that one of the lifeguards was harassing Louise by demanding money. Sitrin responded by investigating the situation and, upon information and belief, ultimately firing the lifeguard.
 29. Upon information and belief, this complaint, which was not resolved until a few weeks later (i.e., mid to late December 2004), brought Louise and Barbara to the attention of Jackie Warmuth.

30. On January 3, 2005, Barbara received a call from Warmuth telling her that she and Louise had been dismissed from the pool.
31. When Barbara told Louise this news, Louise was devastated. She called Warmuth back to find out what was going on. At first, Warmuth would not take Louise's calls. Ultimately, after Louise had Warmuth paged multiple times, Warmuth got on the phone with Louise.
32. Louise asked Warmuth why she and Barbara had been dismissed from the pool. The only explanation that Warmuth offered was that they had not been attending the Wellness Program, and so it would be in everyone's best interest if they no longer came to the pool.
33. Louise insisted that she had, in fact, been going to the pool regularly, and that the other ladies at the pool could vouch for her. The only time she had not attended the pool, Louise maintained, was during the days that she and Barbara had been in St. Louis for her medical consultation. She explained to Warmuth how important swimming was to her, and how much she wanted and needed to continue using the pool.
34. Warmuth did not offer any further explanation at that time. Warmuth said nothing to suggest that Louise would be thrown out of the Center if she attempted to use the pool.
35. Believing that she had cleared up any misunderstanding, Louise returned to Sitrin on January 4, 2005, to use the pool. Before Louise could enter the pool area, Warmuth confronted Louise and reiterated that Louise had been dismissed from the pool.
36. Louise repeatedly asked Warmuth why she had been dismissed, but Warmuth offered no explanation.

37. Finally, when Louise accused Warmuth of discriminating against her because she had a domestic partner, Warmuth said that Louise and Barbara were “faggots” and stormed off, saying that she was going to call the police.
38. As Louise tried to leave Sitrin, she began suffering from shortness of breath and chest pains. She called her friend who lived in the area and asked her to come to the Center to assist her. Louise sat in a chair by the second floor elevator bank, near the entrance to the pool area, in an attempt to catch her breath.
39. When Louise’s friend arrived, she told Louise that there were police downstairs in the lobby. When she saw Louise’s condition, she asked if Louise needed an ambulance. Louise insisted that this was not necessary, but that she needed to get her heart rate down.
40. The police came up to the second floor, where Louise was sitting. With Warmuth and another man who, upon information and belief, was Warmuth’s supervisor, Mr. Deodotto, looking on, the police repeatedly threatened to arrest Louise if she did not leave immediately. When Louise insisted to the police that she was the victim of discrimination, they refused to take her complaint. Instead, they yelled at her until she limped out of the Sitrin Center with the assistance of her friend.
41. A few days later, Louise and Barbara each received a letter from Sitrin, signed by Jackie Warmuth and dated January 4, 2005, which stated in its entirety: “This letter follows our telephone conversation of 1/3/05, confirming that Sitrin has dismissed you from the Wellness Program as of 1/3/05.”
42. At no time has Louise or Barbara ever been offered an explanation as to why they were dismissed from the Wellness Program.

43. Louise has attempted to find another pool where she can exercise her leg, but none of the options she has investigated are either comparably rehabilitative or as accessible as the Sitrin Center.

AS AND FOR A CAUSE OF ACTION

44. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 43 of this complaint as if more fully set forth at length herein.

45. By refusing to allow Louise to enroll in its aquatic therapy programs because of her sexual orientation, Defendant discriminated against Louise in violation of the New York Human Rights Law, N.Y.Exec. Law § 296(2)(a).

46. By refusing to allow Louise and Barbara to participate in the Wellness Program because of their sexual orientation, Defendant discriminated against Louise and Barbara in violation of the New York Human Rights Law, N.Y. Exec. Law § 296(2)(a).

47. Defendant's programs qualify as a public accommodation under New York Human Rights Law, N.Y. Exec. Law § 296(2)(a), which incorporates the definition of "place of public accommodation, resort or amusement" contained in New York Civil Rights Law § 40.

48. Defendant's actions have caused Plaintiffs significant damages, including but not limited to emotional distress and consequential damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

(a) An order permanently enjoining Defendant from discriminating against Plaintiffs,

- including any refusal by Defendant to enroll Plaintiffs in the Wellness Program or any other program offered at Sitrin for which they would be otherwise eligible;
- (b) judgment against Defendant for damages in an amount to be ascertained at trial, together with interest thereon;
- (c) and such other and further relief as the Court deems just and proper.

Dated: February 24, 2005

Sharon M. McGowan
James D. Esseks
Lesbian and Gay Rights Project
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
(212) 549-2593 (phone)
(212) 549-2560 (fax)

Arthur Eisenberg
Donna Lieberman
New York Civil Liberties Union Foundation
125 Broad Street, 17th Floor
New York, NY 10004
(212) 344-3005 (phone)
(212) 344-3318 (fax)

Samuel C. Young
Cooperating Attorney
205 South Salina Street
Syracuse, NY 13202
(315) 422-1152 (phone)
(315) 422-1139 (fax)

Attorneys for Plaintiff