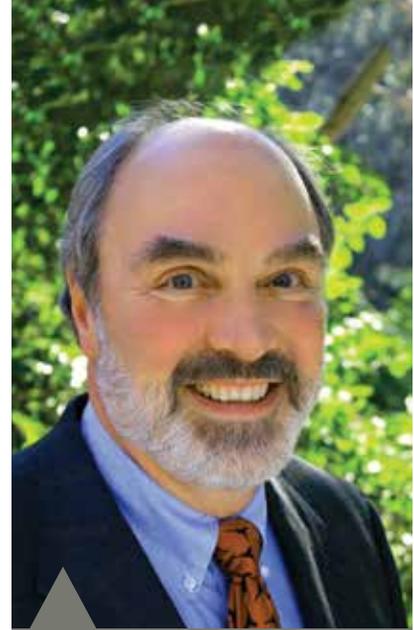


LAW IN ORDER

The Warren Report

AN ISSUE OF MIND OVER MATTER



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The year is 2019. August 1, 2019 to be more precise. The venue is MetLife Stadium, East Rutherford, New Jersey. The act: The Rolling Stones.

Mick Jagger, front man of the Stones, will be 76 years old when this concert begins. Guitarist Ronnie Wood will be 72. Charlie Watts, the drummer, will be 78. Guitarist and author, Keith Richards, will still be a spry age 75, looking at a December birthday.

This piece, however, is not about aging rockers. Rather, the star is one Michael Boyajian, who was 60 years old in December 2018. He filed a discrimination complaint against the Stones and the band's promoter, Concerts West/AEG, alleging he was discriminated against because of his mobility-based disability.

According to a story in the New York Daily News (NYDN), Mr. Boyajian found himself between a rock and a hard place in his efforts to check "seeing the Rolling Stones perform live" off his bucket list. His yet unresolved complaint cites viola-

tions of the Americans With Disabilities Act (the ADA). Mr. Boyajian contends the complaint has merit, according to the NYDN story, for two reasons: (1) the relative scarcity of tickets for people with impaired mobility; and (2) the huge markup for wheelchair-accessible seating. The alleged markup was five times the price of average non-accessible seats. It was reported that a \$200.00 regular

ticket would cost \$1,075.00 in a wheelchair-accessible seating area. These were prices for the August 2019 concert to be held in New Jersey.

Mr. Boyajian, according to the NYDN story, has had trouble getting around since 2011, when he injured his right leg in a fall down the icy steps in front of his Fishkill, New York, home. He hurt his left leg two years later in another tumble and now says he needs a walker to get around because he has trouble getting up and down steps.

Mr. Boyajian is a retired admin-

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istrative law judge. On his May 2019 Facebook page, the complainant states that between 2000 and 2002, and again between 2004 and 2008, no judicial decision of his was ever reversed on appeal. Of course, that same Facebook page also boasts that as a litigator between 1996 and 2012, he never lost a case. Does any of that translate over to his discrimination complaint?

Those who attend fair housing seminars occasionally hear that the ADA, the statute at issue for the Boyajian complaint, is generally inapplicable to housing situations. That is because the ADA, in a multi-housing context, is designed simply to ensure the full and final enjoyment of the facilities of *any place of public accommodation*.

The most obvious such place at an apartment community, for example, is the leasing and business office. Here, whether one is a resident of the apartment community or not, persons are afforded free entry into the office. There, they may inquire about what is available for rent, review various amenities available to residents, and consider whether to make this community their home. In addition, persons who deliver the mail and various packages also have free entry into the office whether they reside at the community or not. This part of the management and leasing office may be viewed as a place of public accommodation, although other parts, reserved for residents, may not.

You also know, from attendance at fair housing seminars, that the ADA's approach to service animals is markedly different than that of the Fair Housing Act (the FHA). Noteworthy is the fact that the ADA only recognizes dogs and miniature horses as service animals; and an ADA recognized service animal

must be trained to assist with disabilities which are typically readily apparent. The ADA, for example, does not recognize emotional disabilities.

Enough of that. Let us now return to *Michael Boyajian vs. The Rolling Stones, et al.* Despite alleging to be a person with a disability since 2011, Mr. Boyajian did not limit the approach in his complaint under the Americans With Disabilities Act to one based on disability alone.

Mr. Boyajian also played the **age card**. In a quote used by most of the news agencies reporting on the Boyajian complaint, the complainant was quoted as follows: "It blew my mind. The baby boomers are their biggest Rock-n-Roll fans, and we're aging out now."



In his discrimination complaint, with an *age twist*, Mr. Boyajian states that when he tried to buy tickets for wheelchair-accessible seating, it was either nonexistent or quickly sold out for the New Jersey shows. When he was searching online, he stated that other accessible seats were still available, although for people with hearing and visual impairments. Those tickets, Mr. Boyajian claimed, did not address his challenges, were out of his league pricewise and were sold in a discriminatory manner. Is this enough for Mr. Boyajian *to launch*, as he states on his Facebook page, *a disability discrimination case* against the Rolling Stones?

His case is clearly not one to be affected by the FHA. It does not involve housing at all. Yet it is not so far removed from the disability-based claims filed in the multi-housing context under the FHA. Think about some of those you have seen or heard about.

According to the National Fair Housing Alliance, in its 2018 Fair Housing Trends report, the most common type of discrimination complaint in 2017 was based on *disability* (57%). The Department of Housing and Urban Development (HUD), in its overview of fiscal year 2017 fair housing activities, stated that "...as in recent years, complaints involving disability discrimination represented the single largest category of

complaint filings at 59.4% of total complaints filed with HUD..."

What relief is Mr. Boyajian seeking through his New York State complaint? His complaint requests that the Rolling Stones "...provide additional accessible seats at all their future shows..." Fine. That is an admirable goal.

But there is more. According to the NYDN story, Mr. Boyajian also "... seeks tick-

ets for him and his wife to one of the Stones' shows in New Jersey, as well as any civil remuneration..." Something tells me these might be *free tickets*. If not, certainly the *civil remuneration* also being sought could be used to offset their cost.

The Ticketmaster website was one of those utilized by Mr. Boyajian, according to reports, while conducting his online search for tickets. A link on the Ticketmaster website states the NYDN story, offers an accessibility disclaimer which notes, in pertinent part, that "... venues are solely responsible for establishing their own accessible-seating ticket policies..." In fact, notes

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Ticketmaster, some venues sell all or a portion of their accessible-seating tickets only through their box office.

In the December 28, 2018, NYDN story by Michael Gartland, it appears that when asked about the Ticketmaster disclaimer, Mr. Boyajian said he didn't see one and doesn't think its presence would impact his case. "Wild Horses" (ironically a huge Rolling Stones hit) supposedly couldn't drag him away from his claim.

"That's going to be up to the investigators. I'm going forward with it," Mr. Boyajian is quoted as saying.

Where do the Rolling Stones weigh in on all of this? As of December 28, 2018, NYDN's Michael Gartland stated that a publicist for the Rolling Stones had not returned calls. AEG, another of those accused by the complainant, also did not respond.

In a January 5, 2019 post on *Raised on Hoecakes* (an *American* blog), an interesting commentary appears. It directly follows recitation of a purported assertion by Mr. Boyajian that the scarcity of tickets for disabled people, and their high prices, are a breach of his human rights. The rebuttal is as follows: "We are hard-pressed to believe that seats selling out quickly is a reason for a lawsuit. After all, Boyajian and others faced the same market availability issue for seats.

Generally speaking, good cheap seats—whether for disabled or not disabled people—are in high demand and will sell out quickly. One would have to think that the number of seats for the disabled in the arena is prescribed by law and that the arena complies with that law."

That all sounds rather matter of fact, doesn't it? The blog post, however, adds quite the witty remark

ute? Isn't it the Americans *With Disabilities Act*? Age is not one of the seven federal protected classes. Age alone is certainly not a disability. And Mr. Boyajian's age is not the issue, for he is only 60 to 61 years old, depending on when you read this. Rather it is the age of the Rolling Stones, from Charlie Watts at age 78 down to a chipper Ronnie Wood at age 72, that steals the headlines.

When Keith Richards and Mick

Jagger wrote the song, "You Can't Always Get What You Want," they commented upon the difference between a need and a want. "You can't always get what you want," they wrote. "But if you try sometimes, you just might find, you get what you need."

Soul-searching is inevitable in discrimination complaints. The legitimate ones are never easy to decide. If one can see beyond the disability, the issue of *who is responsible for what* always

remains to be addressed.

Think of it as Mark Twain might. He said that age is an issue of mind over matter. If you don't mind, it doesn't matter.

Mind over matter. If you try sometimes *you just might find* you get what you need. Then again, *you might just miss* the point entirely. ☹



with this quote: "But perhaps the worst part of the [lawsuit]? Mr. Boyajian, a retired administrative law judge, argued that the Rolling Stones should be more mindful of the [price] discrepancy, given all the band members are in their 70s."

Is it ironic that the *disability-based* complaint of Mr. Boyajian, filed under the ADA, gets its real appeal from a subject not even covered by that stat-

"You can't always get what you want, but if you try sometimes, you just might find, you get what you need."

BILL WARREN is in his 37th year as a lawyer. His law practice focuses on a variety of issues and cases, the majority of which address the concerns of those active in the multi-family industry. He founded and manages Warren Law Firm. In addition, he serves as Of Counsel for the Texas Apartment Association and as Legal Counsel of the Austin Apartment Association. Bill is also a Credentialed Mediator in Texas. He writes and speaks regularly, and as author of *Law In Order: The Warren Report* he has had over 120 articles published. His topics cover all nature of issues pertaining to rental housing, from onsite to the boardroom to the courtroom. Bill has been Board Certified in Civil Trial Law by the Texas Board of Legal Specialization for 30 years, and is also a Fellow of the College of the State Bar of Texas. He can be reached at Warren Law Firm, 1011 Westlake Drive, Austin, Texas 78746, (512) 347-8777, or through his firm's website at www.WLFTexas.com.