

Yellow Pages Run Up Against Transsexual Challenge

By Paul Schindler

The refusal by Bell Atlantic Yellow Pages to run an advertisement for Platinum Class She Male Escorts began as four months of haggling over the wording of a quarter page ad between a company sales agent and a 37-year-old cooperative transsexual gay man who owns a small Manhattan business. In the past ten days, however, the dispute has blossomed into something of a legal David versus Goliath that must have at least some executives at the telephone giant scratching their heads about a controversy that seems to have appeared out of nowhere.

The case now before Judge Louis B. York of the State Supreme Court in Manhattan holds out the prospect of addressing two significant legal issues: whether transsexuals enjoy protection against discrimination under the city's Human Rights Law and whether the Yellow Pages, like public transport, restaurants, and hotels, are "public accommodations" subject to greater scrutiny than they might ordinarily be as private enterprises.

Both of these propositions face stiff challenges in the legal arguments put forth by Bell Atlantic in this case, and it is not clear whether either of them will be directly addressed in resolving it. One impact of the legal maneuvering, however, has been immediate and profound. Since March 15 for a period that will last until at least April 5, Bell Atlantic has been restrained from going forward with the printing of its 2000 Manhattan Yellow Pages, already overdue at the printer.

The case began humbly enough last year with a simple, one-line name and phone number listing, costing \$50, that Simone Peterson placed in the Manhattan and Bronx Yellow Pages. Peterson, who in court papers is identified as he, but in conversation describes herself as she, now has an escort business that employs five other people. Last November, with the help of an investor, Peterson began inquiring into the possibility of purchasing a quarter page ad in new edition of the Manhattan book due to be printed this March. The total cost of the ad was \$15,000, payable upfront.

The ad that Peterson proposed was built around the business' identity as Platinum Class She Male Escorts. As Peterson is quick to note, nothing in the original language she contemplated could be construed as "lascivious." Peterson said she had been aware of escort ads in the Yellow Pages featuring transsexuals for at least the past four years. (Indeed, Bell Atlantic does not dispute the fact that in past years the book did accept advertising for transsexual escort services.)

Despite this history, Peterson was told from the outset of her discussions with Bell Atlantic beginning in November that her proposed language was not acceptable, due to requirements of the company's "ethics committee." According to her sworn affidavit, when Peterson pressed her sales rep to explain the reason her ad had been rejected, she was told it was

considered "offensive." As she began to suggest alternative wordings, Peterson realized that all language referring to herself and her staff as transsexuals faced veto by Bell Atlantic.

After several weeks of negotiations, the Bell Atlantic sales rep offered Peterson a list of terms acceptable for use in the escort category. The list was varied, and included several that specifically suggested a "queer" orientation - including gay, lesbian, homosexual, bisexual, alternative lifestyle, and exotic. However, the list contained no term - whether clinical, vernacular, or otherwise - that suggested transsexual, transgendered, or transvestite experience.

Peterson's next tack was to use the "approved" list of words in a manner artful enough to get her message across. One solution she offered was: "Attention: Heterosexual Gentleman seeking the companionship of 100% feminine looking people who are really men." This, too, was rejected. Even though the words, or contents, were acceptable, the context was not.

The best offer Peterson received from her sales rep was "New York Queens," a term she explains she rejected because she is neither from that borough nor a member of royalty.

After close questioning of her sales rep, Peterson surmised that the policy directives regarding transsexuals were coming from Denise Melendy, a Bell Atlantic executive located in Massachusetts. After some skilled sleuthing, Peterson located Melendy's phone number and called to pursue the matter further.

Melendy reiterated the policy that Peterson's sales rep had explained, using terms including "offensive," "not appropriate," and "not considered proper," according to a transcript of the conversation made available to *LGNY* by Peterson's attorney.

After the conversation with Melendy, Peterson says she became convinced that she was dealing with anti-transsexual discrimination, a possibility that apparently had not earlier occurred to her. In consultation with Allen Roskoff, a long-time gay activist who does community outreach in Public Advocate Mark Green's office, Peterson contacted Thomas D. Shanahan, an attorney who specializes in sexual orientation discrimination for the midtown firm of Tratner and Malloy. After speaking with Peterson and reading the transcript of her conversation with Me-

lendy, Shanahan says he was convinced that there was a strong case to be made against Bell Atlantic.

Shanahan's original court filing, completed March 6, alleged that Bell Atlantic acted arbitrarily in denying ad space to Peterson in a discriminatory fashion based on sexual orientation. The lawsuit, which originally did not seek damages, aimed to prevent the company from acting similarly in the future.

When Bell Atlantic learned of the suit, it made an unsuccessful attempt at compromise, offering to allow Peterson to describe herself as a female impersonator. Never that upbeat about that wording solution in the first place and newly confident because of her legal team, Peterson rejected the offer.



A Sudden Busy Signal

Simone Peterson discusses her newfound legal activism with attorney Thomas Shanahan. photo lgny

In its response to the filing, Bell Atlantic challenged the plaintiff on the issues of arbitrary discrimination and on the applicability of the city's Human Rights Law, upon which Peterson's filing relied. The company argued that it had adopted a new policy on words allowed in its escort section during the past year that it was applying uniformly, and added that the changes specifically allowed for gay-related advertising. Bell Atlantic also claimed that its

policies did not fall under the purview of the city's ordinance because it was a "private enterprise" and not a "public accommodation."

Shanahan challenged the argument that the Yellow Pages are not a public accommodation, and that the new policy on its face was discriminatory toward transgender people, which he argues is impermissible under the city's statute.

Shanahan's arguments, if successful, would break new ground on several fronts. First, among transsexual activists, there is a widespread belief that the Human Rights Law in its current form is not sufficiently broad to provide protections. In fact, in just the past month, activists from the New York Association for Gender Rights Advocacy standing beside City Council allies announced an effort to amend the law to add "gender identity and expression" as protected classes.

Shanahan is familiar with this legislative effort, but argues that the effort is designed to "clear up ambiguity, not add a new category." Peterson's attorney points to cases where transsexuals have received protections from discrimination, but the specific examples cited were based on findings of gender-based, rather than orientation-related, discrimination.

Despite the breadth of Peterson's legal claims, Shanahan achieved early encouragement in the Court. On March 15, York restrained Bell Atlantic indefinitely from going to press, pending a written ruling. The decision must have been a shock to the company, since its "drop-deadline" for ad copy was March 17, and it was eager to move toward production.

The Judge's order prompted another move for compromise on the company's part. By the 17th, it was willing to run Peterson's ad as originally proposed. Attorneys for Bell Atlantic argued that the proposed settlement rendered Peterson's lawsuit moot and filed a motion for an order to show cause forcing the plaintiff to explain why the case should not be dropped.

Shanahan says he is convinced that Bell Atlantic moved to settle out of fear that it would lose on the public accommodations question, a precedent that would have a permanent impact on its business operations. In response to the company's motion, Shanahan amended the plaintiff's suit, asking for \$5 million in punitive damages, \$2.5 million in compensatory damages, legal fees and expenses, and the appointment of a monitor to address corporate discrimination issues.

On March 21, Judge York acted to keep the legal battle alive, at least for a few more weeks. He will entertain the company's motion for dismissal of the case, but only on April 5, until which time Bell Atlantic remains constrained from printing the Yellow Pages.

Not surprisingly, Bell Atlantic has had little to say publicly about the case. When contacted by *LGNY*, spokesperson Phil Santoro initially denied that words such as transsexual were forbidden in the Yellow Pages escort section. Asked about the transcript of Peterson's conversation with Melendy, in which the Bell Atlantic official allegedly responded negatively to a laundry list of transsexual-related terms, Santoro said he needed to consult the trial record. When he next spoke to *LGNY*, Santoro said that company policy bars public comment about pending litigation. He insisted though that Bell Atlantic continues to view Peterson's challenge as moot in light of the company's offer to run her original ad.

Santoro also said flatly that the company does not discriminate against transsexuals, and that in fact is a big supporter of gay, lesbian, bisexual, and transgender rights both internally and in its civic activities. Bell Atlantic has been a major corporate sponsor of the Heritage of Pride activities held each June in New York. The company was also cited last year in a nationwide survey of the top gay-friendly corporations.

The next move will come in Judge York's courtroom April 5. Only then will there be a clear indication of how seriously the court will entertain Peterson's bold legal assertions. The strategy is ambitious, perhaps even high-flying, but then so too are most approaches that establish new precedent.

In the meanwhile, make sure you hang on to those '99 Yellow Pages.

Bell Atlantic refused ad from transsexual escort service

BY TOM McGEVERAN

A New York County Supreme Court justice last week delayed the printing of Bell Atlantic's popular Yellow Pages directory until he issues a ruling in the case of an escort service owner who claims the company discriminates against her as a transsexual.

The owner of an escort service, Simone Peterson, filed suit against Bell Atlantic March 13, claiming the company violated the city's human rights law when it refused to print an advertisement for "Platinum Class Shemale Escorts" in the Yellow Pages.

The dispute will significantly delay the printing of the directory; Acting Supreme Court Justice Louis B. York told the defendants Wednesday he will not make a ruling before April 5, almost three weeks after the scheduled publication date.

Bell Atlantic changed its policy on escort ads last year, advising businesses to stay away from using "suggestive" words. Peterson charges that a Bell Atlantic representative told her that the terms "transgender,"

"transsexual," "pre-operative," "post-operative," and "she-male" were all forbidden under the policy. Peterson's lawyer said she is unable to accurately describe the nature of her business without using those words.

Peterson charged that Bell Atlantic refused her ad despite repeated efforts to make it comply with the company's policy. Peterson said that other ads for non-transsexual escort services that appeared to violate the policy were accepted.

Lawyers for Bell Atlantic had asked the judge to rule in the case immediately, arguing that the company would lose standing with advertisers for being unable to keep its print schedule. But the judge refused, saying he would have to consider the legal issues in the case before issuing a ruling.

Lawyers for the company then motioned to have the case dismissed, saying that the company had decided to accept the advertisement from Peterson after all. But lawyers for Peterson, in an effort to ensure that the charges would go to trial,

upped the ante Monday by revising the original suit to seek \$7.5 million dollars in damages.

Tom Shanahan, the attorney representing Peterson, said they made the move so that the judge will still have to rule on whether the Yellow Pages is a public accommodation subject to the human rights law and whether discrimination against transsexuals is covered under that law, regardless of whether they run Peterson's ad as promised.

The term "transsexual" does not appear in the law, but Shanahan said he plans to argue that the appearance of both "sex" and "sexual orientation" as protected categories under the law should imply protections for transsexuals.

Other ads that have run afoul of Bell Atlantic's policy include those for the East Village Chinese restaurant Lucky Cheng's, famous for its cross-dressing wait staff, and La Nouvelle Justine, an S/M-themed restaurant. The latter was forced to remove terms like "fetish" and "queen" from an ad that had run in previous years.

Staten Island

Dozens protest billboard removal

Nearly 50 residents of Staten Island gathered at Borough Hall Sunday to protest the removal of two anti-gay billboards.

The billboards were covered over with public service ads on March 8 after Borough President Guy Molinari joined gay activists in lambasting their anti-gay message.

Those who attended the rally said they gathered to protest what they felt was a violation of their freedom of speech. "We're not against gay people. We're against sin," said John Ross, a Staten Island resident who offered \$2,000 to help find a new venue for the billboards.

The billboards, featuring four translations of the Bible verse Leviticus 18:22, were sponsored by the Staten Island religious group Keyword Ministries. That passage is often used against gay civil rights advocates as proof that the Bible condemns homosexuality.

Staten Island gay groups, including Staten Island HIV Care Network, Lambda Associates of Staten Island, Integrity, and the Lesbian Sisterhood of Staten Island conducted a prayer vigil to condemn the billboards just a week before.

The two billboards now feature public service announcement featuring Smokey the Bear and McGruff the Crime Dog.

— TOM McGEVERAN