

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

JAMES R. LEVIER,)	
)	
PLAINTIFF)	
)	
v.)	Civil No. 00-54-P-H
)	
SCARBOROUGH POLICE)	
DEPARTMENT, ET AL.,)	
)	
DEFENDANTS)	

**ORDER ON DEFENDANT SCARBOROUGH POLICE
DEPARTMENT'S MOTION TO DISMISS**

The plaintiff, James R. Levier, has filed this lawsuit under the Rehabilitation Act, 29 U.S.C.A. § 794, and the Americans with Disabilities Act, 42 U.S.C.A. § 12132, against the Scarborough Police Department, the Biddeford Police Department and Bail Commissioner Barbara Guimond. Levier is deaf and claims that the defendants discriminated against him during his arrest in the Spring of 1997 by failing to “provide sign language interpreters, telecommunications equipment, and other appropriate auxiliary aids and services.” Compl. at 1. Levier seeks permanent injunctive relief, as well as compensatory and punitive damages, fees and costs. See id. at 8. The defendant Scarborough Police Department seeks dismissal of the claims for injunctive relief and punitive damages. I **GRANT** the motion to dismiss the claim for permanent injunctive relief, but **DENY** the motion to dismiss the claim for punitive damages.

DISCUSSION

Whether I frame the analysis in terms of standing or the existence of an adequate basis for equitable relief, Levier's Complaint will not support an injunction against the Scarborough Police Department under the standards established by the United States Supreme Court in City of Los Angeles v. Lyons, 461 U.S. 95, 101-102 (1983). There, the Supreme Court held that to obtain permanent injunctive relief against a particular practice, a plaintiff must demonstrate that she faces a "real and immediate" threat of re-encountering the behavior. Accord Lopez v. Garriga, 917 F.2d 63, 67-68 (1st Cir. 1990). There is nothing in Levier's Complaint to suggest that he will be arrested again or, if he is, be subjected to the same treatment. In an affidavit Levier says that he has "sometimes severe emotional problems" and that he has tried to hurt himself as a result. Aff. of James Levier ¶ 2. In the legal memorandum, Levier's lawyer says Levier's "mental health issues . . . make it more likely than not that he will again have contact with the Scarborough Police." Pl.'s Objection to Mot. to Dismiss at 3. This is too speculative a basis upon which to premise a claim for an injunction concerning future discrimination by the Scarborough Police Department against this plaintiff. See Lyons, 461 U.S. at 111 ("The equitable remedy is unavailable absent a showing of irreparable injury, a requirement that cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again . . .") (internal quotation and citation omitted). And Levier is not without an adequate remedy at law; he has his claim for compensatory and

punitive damages. Cf. id. Consequently, Scarborough Police Department's motion to dismiss Levier's claim for permanent injunctive relief is **GRANTED**.

Scarborough Police Department's motion to dismiss Levier's claim for punitive damages is **DENIED**. The Department cites caselaw under section 1983 prohibiting punitive damages there, but Levier's lawsuit is not under section 1983. Previous cases in this District have established that punitive damages are available under section 794 of the Rehabilitation Act. See Kilroy v. Husson College, 959 F. Supp. 22 (D. Me. 1997) (Brody, J.), McKay v. Winthrop Bd. of Educ., 1997 WL 816505 (D. Me. 1997) (Beaulieu, M.J.). Further, by its plain language, subchapter II, part A, of the Americans with Disabilities Act, 42 U.S.C.A. §§ 12131 -12134, provides the same damages as section 794. See 42 U.S.C.A. § 12133 (West 1995) (providing to successful claimants under 42 U.S.C.A. § 12132 those remedies available under 29 U.S.C.A. § 794).

SO ORDERED.

DATED THIS 10TH DAY OF MAY, 2000.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
Civil Docket for Case #: 00-CV-54

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