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Finding the obstacles to ADA compliance

November 16, 2001

By: Omar Perez

It's no secret that the 1990 American with Disabilities Act leads to lawsuits that squeeze the pocketbooks of small businesses.

While plaintiffs are not allowed to make money from a suit, they can request compensation for legal fees. And many South Florida lawyers are busy filing suits against businesses over violations of the act, regardless of the severity.

Enter Dr. Robert Lessne. The Miami rehabilitation ergonomist is trying to reduce the workload of suit-happy lawyers looking to feed on the ADA pie — while making some money himself.

Lessne, along with David Goldfarb, is a founder of ADA Compliance Specialists Inc., a Miami company that advises businesses and institutions on how to bring their facilities up to ADA specs, ultimately preventing them from becoming the target of lawsuits.

Says Lessne: "If you're at fault and I'm an attorney who wants \$7,000 to go away, you have a choice. You pay and fix what you want to fix, or I can take you to court, where you have to pay your own attorney's fees, plus have a judge tell you that you must fix this by a certain number of days."

For a fee starting at \$2,000, the company inspects facilities and finds violations that could spell trouble down the road. It also educates business owners and management on techniques on how to stay compliant.

Probably the major reason behind Lessne's hope for growth is the fact that it's raining lawsuits right now. One Miami Beach-based nonprofit group, Access Now, has filed more than 600 look-alike suits during the past four years. One South Florida quadriplegic has filed 13 suits using identical wording. That includes one against South Miami-Dade adult nightclub Stir Crazy, which he visited several times, according to the complaint. He alleged that the club lacked proper pathways and parking spaces for the disabled.

But there's a reason for those lawsuits. Although ADA laws have been established for more than a decade, many business owners are still not



Robert Lessne, left, and son Dana

Photo by
Aixa Montero Green

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Rick Yamusenor, owner of Hard Rock Sushi restaurant in Fort Lauderdale, says the health department inspected his establishment regularly but he was never aware of potential ADA violations. Recently, a disabled client told him he's not up to ADA specs.

"It was the first time it was ever mentioned to me," says Yamusenor, who was told he had minor violations in his restaurant's restroom. "And I've been in this business for 10 years."

Yamusenor hired ADA Compliance Specialists to help him figure out what he must do to be in compliance.

Indeed, business opportunities for Lessne and Goldfarb abound, if you believe Lessne.

"Almost everybody is in violation, whether it's a parking lot or a restaurant," Lessne says. "I walk down a block and see businesses with many violations." Most of those, he added, aren't easily recognizable as trouble spots.

One litmus test of ADA compliance is that someone with a closed fist should be able to operate everything in a public restroom. Other common types of violations include poorly located trees, display racks or other obstacles that block walkways, and lack of insulation underneath public sinks.

Lessne, 65, and Goldfarb, 29, formed their company in October and say they already have a waiting list of more than 40 establishments seeking their services.

Lessne has been in this business for 20 years.

Lessne — also a founder of Rehabilitation Services Inc., a Miami-based company that helps disabled people — is an expert witness on rehabilitation cases. He partnered with Goldfarb because he says he felt their skills were complementary. Lessne has the ADA background and Goldfarb has experience with starting small businesses, including a parachute ride company and a pre-paid calling card company.

Lessne and Goldfarb used a combined \$20,000 of their own money for startup costs. That included expenses for promotional print materials, a Web site and travel expenses to visit clients throughout the state.

Including Lessne's son Dana, the company now has three employees. The inspections are done by Lessne senior and junior.

Goldfarb expects the majority of revenue to come from initial inspections. However, the company also expects to earn a percentage from any retrofit job a client accepts and assigns to an outside contractor. Goldfarb forecasts revenues of \$200,000 for the next 12 months.

It's not necessary to be a lawyer to be an ADA inspector, experts say. Nor is a certification required. All you need to know are the ins and outs of the ADA law, which hasn't changed since the early 1990s.

"There's no magic to being an inspector," says Matthew Dietz, a Miami attorney and chairman of the Disability Law Committee of the Public Interest

Law Section of the Florida Bar.

But it's not just a matter of knowing the law, Dietz adds. It's a matter of understanding how it applies to an establishment, since ADA construction laws differ, depending on when a building was constructed.

"It's not just a matter of knowing the violations," Dietz says. "You also have to know what is reasonable to remove these violations."

As with most consulting services, Lessne's company cannot claim that its results are foolproof.

"If a person tries to sell you a 100 percent guarantee that you're not going to get sued, it's not going to happen," Dietz says. "But if you have a plan, you're less likely to get sued."

Clients have the added bonus that most of the costs to become ADA compliant are tax deductible. Businesses can recoup the complete amount of a retrofit job that costs up to \$5,000, and half the amount for jobs less than \$10,000.

"If I'm selling you things, would you be interested? Probably not," Lessne says. "But I'm selling things the law requires. Plus it's good business to cater to people with disabilities."

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