

Blind Man Can Sue Inaccessible Website

Appeals court upholds right to sue Rhode Island winery under California law for disability discrimination based on website usage. by Maureen Rubin, J.D.

LOS ANGELES, CALIFORNIA, UNITED STATES, March 21, 2022 /EINPresswire.com/ -- Technology has radically transformed how information is sent and received. But it also poses major challenges for those with disabilities who cannot always access the Internet and all its bounties. One blind man sued a winery because he could not access its website. The trial court dismissed his case, but an appellate court remanded it so a lower court could determine whether the vineyard intentionally discriminated against the blind plaintiff in violation of state law.

In a unanimous, unpublished opinion by a three-judge panel, Associate Justice Lamar W. Baker of the Court of Appeals of California, Second District, Division Five, wrote that plaintiff Abelardo Martinez, Jr. could proceed with his case against Diamond Hill Vineyards in Cumberland, Rhode Island. The vineyard's website describes it as a "small, relaxed, family-run winery with grape and fruit wines." The case is *Martinez v. Diamond Hill Vineyards, LLC*, case no. B308475. Plaintiff-appellant was represented by Scott J. Ferrell and Richard H. Hikida of [Pacific Trial Attorneys](#) in Newport Beach, CA. No appearance was entered by defendant-respondent.

Martinez sued Diamond Hill because its website was incompatible with the screen reading software he needs to access the Internet. He called the website's barriers "pervasive." Its inadequacies included a failure to identify its language, which screen readers need to read the content; a lack of "spacer images," or the alternative text needed to "maintain layout"; and missing form labels, needed to "enable the text labels that provide visible descriptions and larger clickable targets for form controls."

Plaintiff's claim was based on the Unruh Civil Rights Act (Unruh Act), a 1959 California law that protects people from discrimination by businesses based on disability and a number of other traits. The Unruh Act parallels the Americans with Disabilities Act (ADA) by providing that ADA violations that cover public accommodations are automatically Unruh Act violations as well. The Unruh Act, however, also permits monetary damages for successful suits.



Larry Tjan, CEO, NextClient.com



When designing websites for accessibility, there's a lot to consider. WCAG standards have three different levels of compliance, with different standards applicable at different levels."

*Larry Tjan, CEO,
NextClient.com*

Larry Tjan is CEO of [NextClient.com](https://www.nextclient.com), a website design firm for lawyers and law firms. Tjan says his firm first started addressing accessibility issues in 2008, when the World Wide Web Consortium (W3C) released its first version of Website Content Accessibility Guidelines (WCAG). These guidelines were updated in 2012 with WCAG 2.0 and again in 2018 with WCAG 2.1.

"WCAG standards have three different levels of compliance," Tjan explains, "with different standards applicable at different levels." Tjan says that some of the modifications his firm makes when designing websites

include using alternate text options for images and other non-text content, making sure videos on websites are appropriately subtitled or captioned, including options for larger print, ensuring the website can be integrated with the user's screen reader software, and more. "When designing for accessibility," says Tjan, "there's a lot to consider." Tjan continues, "You might need to account for different ways to perform operations with a keyboard versus mouse and other options, expand the time allotted for timed interactions, mute flashing images, and otherwise build a simpler layout and screen navigation for people of differing abilities."

Martinez's claim was based on two theories. First, he claimed intentional discrimination. He said that Diamond Hill constructed, knowingly maintained, and failed to correct its website's deficiencies, even after they had received notice about them. Second, he claimed violations of ADA and the companion Unruh Act. He sought an injunction, damages, attorneys' fees and costs.

The winery did not respond to plaintiff's complaint, and a Superior Court clerk issued a default judgment, but the trial court would not enter it. In its place, it asked Martinez to show cause why his case should not be dismissed. Specifically, it asked him to explain why the case should not be dismissed under the Unruh Act, which requires a "nexus between defendant's website and its physical building." The California Court of Appeals provides precedent that the ADA can only be applied when "a website's access barriers interfered with an individual's ability to use or enjoy facilities offered at a connected physical location." The ADA requires these attributes to meet its definition of "public accommodation."

Martinez responded that a nexus was not necessary, and even if it was, Diamond Hill's facilities met the appellate court's requirement. He said the vineyard hosted a tasting room, gift shop, and facilities for group gatherings. This information, however, was not in his complaint, although he offered to amend it so it could be included. He also argued that the Unruh Act is broader than the ADA.

Unpersuaded, the trial court found that Martinez failed to state a cause of action because he did not show a “nexus between Diamond Hill’s website and a physical location that was “available” or “convenient” to him, despite his having ample opportunities to do so.

In his appellate opinion, Judge Baker found it unnecessary to rule on the nexus issue because Martinez had included an alternate cause of action through his intentional discrimination claim, which ultimately caused the reversal of judgment.

Baker began the explanation of his reasoning by discussing when commercial facilities meet the ADA’s public accommodation requirement. He wrote that federal courts have taken two “general approaches” to this question. First, the minority view believes in the necessity for the physical location requirement discussed above. Second, the majority view holds that websites can support ADA claims if a disabled plaintiff has been “prevented or impeded...from equal access to, or enjoyment of the goods and services offered at the defendant’s physical facilities.”

Baker again explained why his court did not have to decide between the two theories. He said Martinez had provided another “valid, unchallenged theory of recovery,” that of intentional discrimination. He said that “evidence of disparate impact...may be probative of intentional discrimination.” Martinez, he wrote, should be given the opportunity to show how Diamond Hill knew about its inaccessible website and failed to correct its barriers, even after receiving notice of their existence.

He therefore remanded the case to the trial court for further action and awarded costs to Martinez.

Any business operating a website, and that’s probably almost all of them, should stand warned that the disabled need information about their companies, too. And it will be far easier and less costly to make sure they get it now.

Larry Tjan
NextClient.com
+1 800-410-6398

[email us here](#)

Visit us on social media:

[Facebook](#)

[LinkedIn](#)

This press release can be viewed online at: <https://www.einpresswire.com/article/565228070>

EIN Presswire’s priority is source transparency. We do not allow opaque clients, and our editors try to be careful about weeding out false and misleading content. As a user, if you see something we have missed, please do bring it to our attention. Your help is welcome. EIN Presswire, Everyone’s Internet News Presswire™, tries to define some of the boundaries that are reasonable in today’s world. Please see our Editorial Guidelines for more information.

