

STATE OF NEW YORK

6444

2019-2020 Regular Sessions

IN SENATE

June 11, 2019

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the county law and the New York city charter, in relation to the docketing of adjudications of certain violations of laws enforced by the New York city department of consumer affairs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 4 of section 918 of the county law, as separately amended by chapters 419 and 473 of the laws of 1988, is amended to read as follows:

2 4. Any other laws to the contrary notwithstanding, the county clerk in
3 each of the counties within the city of New York is authorized and
4 empowered to maintain separate judgment docket volumes containing the
5 printed transcript or transcripts, in strict alphabetical order of judgment made, entered and docketed in the civil court of the city of New York against individuals, corporations, and other entities on behalf of the parking violations bureau, the environmental control board, the taxi and limousine commission, the department of consumer affairs and the commissioner of jurors of the city of New York, provided that the judgments made, entered and docketed in the civil court of the city of New York against individuals, corporations, and other entities on behalf of the department of consumer affairs shall be limited to final decisions and orders imposing civil penalties. These volumes may be maintained in the form of computer print outs which shall contain the date of judgment, the name and address of the judgment debtor or debtors, the amount of the judgment and other information which the county clerk may deem necessary to sufficiently describe the parties to the action or proceeding or nature or the manner of the entry of the judgment. [~~Provided, however, with respect to judgments on behalf of the parking violations bureau the~~] The county clerk may, in his or her discretion, in lieu of such volumes, maintain the aforementioned data in a micrographic or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD13287-01-9

1 computer retrievable format. With respect to judgments on behalf of the
2 parking violations bureau such volumes or other format shall be main-
3 tained pursuant to this subdivision for only those individuals, corpo-
4 rations, and other entities having vehicles registered in the counties
5 within the city of New York.

6 § 2. Section 918 of the county law is amended by adding a new subdivi-
7 sion 5 to read as follows:

8 5. Any other laws to the contrary notwithstanding, the department of
9 consumer affairs may file a certified copy of the final decision or
10 order of such department authorizing restitution, imposing monetary
11 damages or providing equitable relief to a party other than the city of
12 New York with the county clerk of any county within the city of New York
13 where a respondent resides or has a place of business, or, if the
14 respondent is a non-resident of the city of New York and no longer has a
15 place of business within the city of New York at the time such depart-
16 ment seeks to file such certified copy, the department of consumer
17 affairs may file such certified copy of such final decision or order
18 with the county clerk of the county in which the department of consumer
19 affairs is located. A party other than the city of New York may file a
20 certified copy of such final decision or order provided that such party
21 has been assigned such final decision or order or a portion of such
22 final decision or order authorizing restitution, imposing monetary
23 damages or providing equitable relief to such party. The filing of such
24 final decision or order shall have the full force and effect of a judg-
25 ment duly docketed in the office of such clerk. The final decision or
26 order may be enforced by and in the name of the department, or by a
27 party other than the city of New York who has been assigned such deci-
28 sion or order or a portion thereof, in the same manner and with like
29 effect as that prescribed by the civil practice law and rules for the
30 enforcement of a money judgment.

31 § 3. Subdivision (h) of section 2203 of the New York city charter, as
32 amended by local law number 46 of the city of New York for the year
33 2013, is amended to read as follows:

34 (h) (1) Notwithstanding any inconsistent provision of law, the depart-
35 ment shall be authorized, upon due notice and hearing, to impose civil
36 penalties for, and to order restitution or other forms of equitable
37 relief and payment of monetary damages in connection with, the violation
38 of any laws or rules the enforcement of which is within the jurisdiction
39 of the department pursuant to this charter, the administrative code or
40 any other general, special or local law. The department shall have the
41 power to render decisions and orders and to impose civil penalties for
42 all such violations[~~, and to order equitable relief for and payment of~~
43 ~~monetary damages in connection with enforcement of chapter 8 of title 20~~
44 ~~of the administrative code~~]. Except to the extent that dollar limits are
45 otherwise specifically provided, such civil penalties shall not exceed
46 five hundred dollars for each violation. All proceedings authorized
47 pursuant to this subdivision shall be conducted in accordance with rules
48 promulgated by the commissioner. The remedies and penalties provided
49 for in this subdivision shall be in addition to any other remedies or
50 penalties provided for the enforcement of such provisions under any
51 other law including, but not limited to, civil or criminal actions or
52 proceedings.

53 (2) All such proceedings shall be commenced by the service of a notice
54 of violation. The commissioner shall prescribe the form and wording of
55 notices of violation. The notice of violation or copy thereof when
56 filled in and served shall constitute notice of the violation charged,

1 and, if sworn to or affirmed, shall be prima facie evidence of the facts
2 contained therein. The notice of violation shall contain information
3 advising the person charged of the manner and the time in which such
4 person may either admit or deny the violation charged in the notice.
5 Such notice of violation shall also contain a warning to advise the
6 person charged that failure to plead in the manner and time stated in
7 the notice may result in a default decision and order being entered
8 against such person. The original or a copy of the notice of violation
9 shall be filed and retained by the department and shall be deemed a
10 record kept in the ordinary course of business.

11 (3) Where a respondent has failed to plead within the time allowed by
12 the rules of the commissioner or has failed to appear on a designated
13 hearing date or a subsequent date following an adjournment of a desig-
14 ated violation, such failure to plead or appear shall be deemed, for
15 all purposes, to be an admission of liability for the purposes of such
16 designated violation and shall be grounds for rendering a default deci-
17 sion and order imposing a penalty up to the maximum amount prescribed
18 under law for the designated violation charged. For purposes of this
19 subdivision, "designated violation" means:

20 (A) any violation of title 20 of the administrative code or of any law
21 or rule, the enforcement of which is within the jurisdiction of the
22 department, to the extent any final decision or order relating to such
23 violation authorizes restitution, imposes an award of monetary damages
24 or provides equitable relief to a consumer or an employee;

25 (B) any violation of subchapters 1, 7, 11, 22, 29, 30, 31 or 35 of
26 chapter 2 of title 20 of the administrative code or of chapters 8, 12 or
27 13 of title 20 of the administrative code or of article eleven of the
28 general business law, including any rules or regulations promulgated
29 thereunder, to the extent any final decision or order relating to such
30 violation imposes civil penalties; or

31 (C) any violation of subchapters 1, 8 or 14-a of chapter 5 of title 20
32 of the administrative code, including any rules promulgated under such
33 subchapters, to the extent any final decision or order relating to such
34 violation imposes civil penalties for two or more violations and the
35 aggregate penalty for such violations exceeds five thousand dollars.

36 (4) At the request of a consumer or an employee, the department shall
37 assign, without consideration or liability, a final decision or order,
38 provided that such decision or order solely authorizes restitution,
39 imposes an award of monetary damages or provides equitable relief to
40 such consumer or employee, or that portion of such award that authorizes
41 restitution, imposes an award of monetary damages or provides equitable
42 relief to such consumer or employee. After such assignment, the depart-
43 ment shall not be required to take any further action to enforce such
44 decision or order.

45 (5) Any final decision or order of the department relating to a desig-
46 nated violation, whether the adjudication was had by hearing or upon
47 default or otherwise, shall constitute a judgment that may be entered
48 and docketed in the civil court of the city of New York or any other
49 place provided for the entry and docketing of civil judgments within the
50 state and may be enforced without court proceedings in the same manner
51 as the enforcement of money judgments entered and docketed in civil
52 actions.

53 (6) Notwithstanding paragraph five of this subdivision, before a judg-
54 ment based upon a default may be so entered and docketed, the department
55 must have notified the respondent in accordance with this paragraph. The
56 commissioner shall determine the form of such notice. If the respondent

1 is a licensee of the department, notice shall be provided by first class
2 mail or hand delivery to the address the licensee has filed with the
3 department pursuant to section 20-112 of the administrative code. For
4 all other respondents, the notice shall be served by first class mail or
5 hand delivery to the address where the decision or order was sent to the
6 respondent by the department. Such notice shall state that:

7 (A) a decision and order of default was issued against the respondent
8 by the department and the amounts of the penalty, restitution, or other
9 monetary relief imposed;

10 (B) a judgment will be entered and docketed in the civil court of the
11 city of New York or any other place provided for the entry of civil
12 judgments within the state of New York; and

13 (C) entry and docketing of such judgment may be avoided by requesting
14 a stay of default for good cause shown and either requesting a new hear-
15 ing or entering a plea pursuant to applicable rules within thirty days
16 of the mailing or hand delivery date of such notice.

17 (7) The department shall not enter any final decision or order pursu-
18 ant to this subdivision unless the notice of violation shall have been
19 served as follows:

20 (A) for any respondent that is a licensee of the department, the
21 department shall serve a notice of violation of a designated violation
22 in one of the following ways:

23 (i) by mailing a copy of such notice to the address the licensee has
24 filed with the department pursuant to section 20-112 of the administra-
25 tive code; or

26 (ii) by personally serving the respondent or delivering the notice of
27 violation to a person of suitable age and discretion employed by the
28 respondent at the premises at which the respondent conducts the business
29 the operation of which gave rise to the violation. In the case of a
30 business that is carried out at large and not at a fixed place of busi-
31 ness or that has filed with the department an out-of-state address
32 pursuant to section 20-112 of the administrative code, the department
33 shall also serve a licensee or employee of such business at the location
34 which gave rise to the violation, the secretary of state pursuant to
35 section three hundred four of the business corporation law or an agent
36 designated for service pursuant to rule three hundred eighteen of the
37 civil practice law and rules or section three hundred five of the busi-
38 ness corporation law.

39 (B) For any respondent that is not a licensee of the department, the
40 department shall serve a notice of violation of a designated violation
41 in one of the following ways:

42 (i) by serving the respondent in the same manner as is prescribed for
43 service of process by article three of the civil practice law and rules
44 or article three of the business corporation law;

45 (ii) by delivering such notice to a person of suitable age and
46 discretion employed by the respondent at the premises where the respond-
47 ent is operating;

48 (iii) by affixing such notice in a conspicuous place to the premises
49 where the respondent is operating and delivering such notice by first
50 class mail to the address of such premises;

51 (iv) by sending such notice by certified mail, return receipt
52 requested, to the respondent's last known business address, provided
53 that delivery of such notice shall be restricted to the respondent; or

54 (v) by sending such notice by electronic mail to the respondent's
55 electronic mail address, provided that the department has received
56 communication from such electronic mail address in the one year prior to

1 the electronic mailing of such notice, and provided further that service
2 in the manner prescribed by clauses (i) through (iv) of this subparagraph
3 are impracticable.

4 (8) Service by certified mail pursuant to clause (iv) of subparagraph
5 B of paragraph seven of this subdivision shall be deemed complete upon
6 the mailing of the notice of violation described in such clause, unless
7 the notice of violation is returned to the sender by the United States
8 postal service for any reason other than refusal of delivery. Service
9 by electronic mail pursuant to clause (v) of subparagraph B of paragraph
10 seven of this subdivision shall be deemed complete upon the electronic
11 mailing of the notice of violation described in such clause unless the
12 department receives an electronic message that its electronic mailing of
13 the notice of violation was undeliverable.

14 (9) Proof of service made pursuant to paragraph seven of this subdivi-
15 sion shall be maintained by, and preserved within, the department for at
16 least six years following the date of the final decision or order relat-
17 ing to the adjudication of the subject notice of violation.

18 (10) Entry and docketing of a judgment shall not limit the application
19 of any other remedies or penalties provided for the enforcement of laws
20 or rules under the jurisdiction of the department.

21 (11) For the purposes of this subdivision, no act or practice shall be
22 deemed a deceptive trade practice unless it has been declared a decep-
23 tive trade practice and described with reasonable particularity in a
24 local law or in a rule or regulation promulgated by the commissioner.

25 ~~[(4)]~~ (12) Notwithstanding any other inconsistent provision of law,
26 powers conferred upon the department by this subdivision may be exer-
27 cised by the office of administrative trials and hearings consistent
28 with orders of the mayor issued in accordance with subdivisions two and
29 three of section one thousand forty-eight of this charter.

30 § 4. This act shall take effect immediately and shall only apply to
31 decisions or orders issued on or after such effective date.