S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 14, 2014

Introduced by M. of A. BORELLI -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to the provision of attorney's fees in cases of housing, employment or credit discrimination; to amend the executive law, in relation to the awarding of reasonable attorney's fees

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 10 of section 297 of the executive law, as added by section 17 of part D of chapter 405 of the laws of 1999, is amended to read as follows:

10. With respect to ALL cases of HOUSING DISCRIMINATION AND housing RELATED CREDIT discrimination [only], in an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court may in its discretion award reasonable attorney's fees to any prevailing or substantially prevailing party; AND WITH RESPECT TO A CLAIM OF EMPLOYMENT OR CREDIT DISCRIMINATION WHERE SEX IS A BASIS OF SUCH DISCRIMINATION, IN AN ACTION OR PROCEEDING AT LAW UNDER THIS SECTION OR SECTION TWO HUNDRED NINETY-EIGHT OF THIS ARTICLE, THE COMMISSIONER OR THE COURT MAY IN ITS DISCRETION AWARD REASONABLE ATTORNEY'S FEES ATTRIBUTABLE TO SUCH CLAIM TO ANY PREVAILING PARTY; provided, however, that a prevailing respondent or defendant in order to recover such reasonable attorney's fees must make a motion requesting such fees and show that the action or proceeding brought was frivolous; and further provided that in a proceeding brought in the division of human rights, the commissioner may only award attorney's fees as part of a final order after a public hearing held pursuant to subdivision four of this section. In no case shall attorney's fees be awarded to the division, nor shall the division be liable to a prevailing or substantially prevailing party for attorney's fees, except in a case in which the division is a party to the action or the proceeding in the division's capacity as an employer. IN CASES OF EMPLOYMENT DISCRIMINATION, A RESPONDENT SHALL ONLY BE LIABLE FOR ATTORNEY'S FEES UNDER THIS SUBDIVISION IF THE RESPONDENT HAS BEEN FOUND LIABLE FOR HAVING COMMITTED AN

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

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UNLAWFUL DISCRIMINATORY PRACTICE. In order to find the action or proceeding to be frivolous, the court or the commissioner must find in writing one or more of the following:

(a) the action or proceeding was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or

(b) the action or proceeding was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action or proceeding was promptly discontinued when the party or attorney learned or should have learned that the action or proceeding lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

S 2. Paragraph c of subdivision 7 of section 296-a of the executive law, as amended by chapter 632 of the laws of 1976, is amended to read as follows:

c. If the superintendent finds that a violation of this section has occurred, the superintendent shall issue an order which shall do one or more of the following:

(1) impose a fine in an amount not to exceed ten thousand dollars for each violation, to be paid to the people of the state of New York;

(2) award compensatory damages to the person aggrieved by such violation;

(3) FOR A CLAIM OF SEX DISCRIMINATION ONLY, AWARD REASONABLE ATTORNEY'S FEES ATTRIBUTABLE TO SUCH CLAIM TO ANY PREVAILING PARTY; PROVIDED, HOWEVER, THAT A PREVAILING RESPONDENT OR DEFENDANT IN ORDER TO RECOVER SUCH REASONABLE ATTORNEY'S FEES MUST MAKE A MOTION REQUESTING SUCH FEES AND SHOW THAT THE ACTION OR PROCEEDING BROUGHT WAS FRIVOLOUS. IN NO CASE SHALL ATTORNEY'S FEES BE AWARDED TO THE DEPARTMENT, NOR SHALL THE DEPARTMENT BE LIABLE TO A PREVAILING PARTY FOR ATTORNEY'S FEES. IN ORDER TO FIND THE ACTION OR PROCEEDING TO BE FRIVOLOUS, THE SUPERINTENDENT MUST FIND IN WRITING ONE OR MORE OF THE FOLLOWING:

(A) THE ACTION OR PROCEEDING WAS COMMENCED, USED OR CONTINUED IN BAD FAITH, SOLELY TO DELAY OR PROLONG THE RESOLUTION OF THE LITIGATION OR TO HARASS OR MALICIOUSLY INJURE ANOTHER; OR

(B) THE ACTION OR PROCEEDING WAS COMMENCED OR CONTINUED IN BAD FAITH WITHOUT ANY REASONABLE BASIS AND COULD NOT BE SUPPORTED BY A GOOD FAITH ARGUMENT FOR AN EXTENSION, MODIFICATION OR REVERSAL OF EXISTING LAW. IF THE ACTION OR PROCEEDING WAS PROMPTLY DISCONTINUED WHEN THE PARTY OR ATTORNEY LEARNED OR SHOULD HAVE LEARNED THAT THE ACTION OR PROCEEDING LACKED SUCH A REASONABLE BASIS, THE COURT MAY FIND THAT THE PARTY OR THE ATTORNEY DID NOT ACT IN BAD FAITH.

(4) require the regulated creditor to cease and desist from such unlawful discriminatory practices;

[(4)] (5) require the regulated creditor to take such further affirmative action as will effectuate the purposes of this section, including, but not limited to, granting the credit which was the subject of the complaint.

S 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the

legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 4. This act shall take effect on the sixtieth day after it shall have become a law, and shall apply to actions commenced on or after such date.