

5441

2015-2016 Regular Sessions

I N A S S E M B L Y

February 23, 2015

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

AN ACT to amend the executive law, in relation to providing for awards  
of attorney's fees in actions under the human rights law

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

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

4 10. [With respect to cases of housing discrimination only, in] IN an  
5 action or proceeding at law under this section or section two hundred  
6 ninety-eight of this article, the commissioner or the court [may in its  
7 discretion] SHALL award reasonable attorney's fees to any prevailing or  
8 substantially prevailing [party; provided, however, that a prevailing  
9 respondent or defendant in order to recover such reasonable attorney's  
10 fees must make a motion requesting such fees and show that the action or  
11 proceeding brought was frivolous; and further provided that in a  
12 proceeding brought in the division of human rights, the commissioner may  
13 only award attorney's fees as part of a final order after a public hear-  
14 ing held pursuant to subdivision four of this section] PLAINTIFF OR  
15 COMPLAINANT. In no case shall attorney's fees be awarded to the divi-  
16 sion, nor shall the division be liable to a prevailing or substantially  
17 prevailing party for attorney's fees, except in a case in which the  
18 division is a party to the action or the proceeding in the division's  
19 capacity as an employer. [In order to find the action or proceeding to  
20 be frivolous, the court or the commissioner must find in writing one or  
21 more of the following:

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

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

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

8 S 2. This act shall take effect immediately.