

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

1998

2015-2016 Regular Sessions

I N A S S E M B L Y

January 13, 2015

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Judiciary

AN ACT to amend the executive law, in relation to providing for the award of attorney's fees and expert witness fees in appropriate cases

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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 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. In no case shall
15 attorney's fees be awarded to the division, nor shall the division be
16 liable to a prevailing or substantially prevailing party for attorney's
17 fees, except in a case in which the division is a party to the action or
18 the proceeding in the division's capacity as an employer. EXPERT
19 WITNESS FEES MAY BE AWARDED IN THE SAME MANNER AS ATTORNEY'S FEES. In
20 order to find the action or proceeding to be frivolous, the court or the
21 commissioner must find in writing one or 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.

LBD00704-01-5

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 on the ninetieth day after it shall
9 have become a law.