

STATE OF NEW YORK

7282

2017-2018 Regular Sessions

IN ASSEMBLY

April 19, 2017

Introduced by M. of A. BUCHWALD, PEOPLES-STOKES -- (at request of the Division of Human Rights) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to providing that, in housing cases only, after a dismissal for lack of probable cause or lack of jurisdiction, a complainant would have the option to appeal the final order, or bring a de novo action in court

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

1 Section 1. Subdivision 9 of section 297 of the executive law, as
2 amended by section 16 of part D of chapter 405 of the laws of 1999, is
3 amended to read as follows:

4 9. Any person claiming to be aggrieved by an unlawful discriminatory
5 practice shall have a cause of action in any court of appropriate juris-
6 diction for damages, including, in cases of housing discrimination only,
7 punitive damages, and such other remedies as may be appropriate, includ-
8 ing any civil fines and penalties provided in subdivision four of this
9 section, unless such person had filed a complaint hereunder or with any
10 local commission on human rights, or with the superintendent pursuant to
11 the provisions of section two hundred ninety-six-a of this chapter,
12 provided that, where the division has dismissed such complaint on the
13 grounds of administrative convenience, on the grounds of untimeliness,
14 or on the grounds that the election of remedies is annulled, such person
15 shall maintain all rights to bring suit as if no complaint had been
16 filed with the division. At any time prior to a hearing before a hearing
17 examiner, a person who has a complaint pending at the division may
18 request that the division dismiss the complaint and annul his or her
19 election of remedies so that the human rights law claim may be pursued
20 in court, and the division may, upon such request, dismiss the complaint
21 on the grounds that such person's election of an administrative remedy
22 is annulled. Notwithstanding subdivision (a) of section two hundred four

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

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1 of the civil practice law and rules, if a complaint is so annulled by
2 the division, upon the request of the party bringing such complaint
3 before the division, such party's rights to bring such cause of action
4 before a court of appropriate jurisdiction shall be limited by the stat-
5 ute of limitations in effect in such court at the time the complaint was
6 initially filed with the division. Any party to a housing discrimination
7 complaint shall have the right within twenty days following a determi-
8 nation of probable cause pursuant to subdivision two of this section to
9 elect to have an action commenced in a civil court, and an attorney
10 representing the division of human rights will be appointed to present
11 the complaint in court, or, with the consent of the division, the case
12 may be presented by complainant's attorney. A complaint filed by the
13 equal employment opportunity commission to comply with the requirements
14 of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b) shall not
15 constitute the filing of a complaint within the meaning of this subdivi-
16 sion. No person who has initiated any action in a court of competent
17 jurisdiction or who has an action pending before any administrative
18 agency under any other law of the state based upon an act which would be
19 an unlawful discriminatory practice under this article, may file a
20 complaint with respect to the same grievance under this section or under
21 section two hundred ninety-six-a of this article. In cases of housing
22 discrimination only, a person whose complaint has been dismissed by the
23 division after investigation for lack of jurisdiction or lack of proba-
24 ble cause may file the same cause of action in a court of appropriate
25 jurisdiction pursuant to this section, unless judicial review of such
26 dismissal has been sought pursuant to section two hundred ninety-eight
27 of this article.

28 § 2. Section 298 of the executive law, as amended by chapter 166 of
29 the laws of 2000, is amended to read as follows:

30 § 298. Judicial review and enforcement. Any complainant, respondent
31 or other person aggrieved by an order of the commissioner which is an
32 order after public hearing, a cease and desist order, an order awarding
33 damages, an order dismissing a complaint, or by an order of the division
34 which makes a final disposition of a complaint may obtain judicial
35 review thereof, and the division may obtain an order of court for its
36 enforcement and for the enforcement of any order of the commissioner
37 which has not been appealed to the court, in a proceeding as provided in
38 this section. Such proceeding shall be brought in the supreme court in
39 the county wherein the unlawful discriminatory practice which is the
40 subject of the order occurs or wherein any person required in the order
41 to cease and desist from an unlawful discriminatory practice or to take
42 other affirmative action resides or transacts business. Such proceeding
43 shall be initiated by the filing of a notice of petition and petition in
44 such court. Thereafter, at a time and in a manner to be specified by
45 rules of court, the division shall file with the court a written tran-
46 script of the record of all prior proceedings. Upon the filing of a
47 notice of petition and petition, the court shall have jurisdiction of
48 the proceeding and of the questions determined therein, except that
49 where the order sought to be reviewed was made as a result of a public
50 hearing held pursuant to paragraph a of subdivision four of section two
51 hundred ninety-seven of this article, the court shall make an order
52 directing that the proceeding be transferred for disposition to the
53 appellate division of the supreme court in the judicial department
54 embracing the county in which the proceeding was commenced. The court
55 shall have power to grant such temporary relief or restraining order as
56 it deems just and proper, and to make and enter upon the pleadings,

1 testimony, and proceedings set forth in such transcript an order enforc-
2 ing, modifying, and enforcing as so modified, or setting aside in whole
3 or in part such order. No objection that has not been urged in prior
4 proceedings shall be considered by the court, unless the failure or
5 neglect to urge such objection shall be excused because of extraordinary
6 circumstances. Any party may move the court to remit the case to the
7 division in the interests of justice for the purpose of adducing addi-
8 tional specified and material evidence and seeking findings thereon,
9 provided he or she shows reasonable grounds for the failure to adduce
10 such evidence in prior proceedings. The findings of facts on which such
11 order is based shall be conclusive if supported by sufficient evidence
12 on the record considered as a whole. All such proceedings shall be heard
13 and determined by the court and any appeal taken from its judgment or
14 order shall be reviewed by the appropriate appellate court as expe-
15 ditiously as possible and with lawful precedence over other matters. The
16 jurisdiction of the courts over these proceedings, as provided for here-
17 in, shall be exclusive and their judgments and orders shall be final,
18 subject to appellate review in the same manner and form and with the
19 same effect as provided for appeals from a judgment in a special
20 proceeding. The division's copy of the testimony shall be available at
21 all reasonable times to all parties for examination without cost and for
22 the purposes of judicial review of such order. Any appeal under this
23 section and any proceeding, if instituted under article seventy-eight of
24 the civil practice law and rules to which the division or the board is a
25 party shall be heard on the record without requirement of printing. The
26 division may appear in court by one of its attorneys. A proceeding under
27 this section when instituted by any complainant, respondent or other
28 person aggrieved must be instituted within sixty days after the service
29 of such order. In cases of housing discrimination only, a complaint
30 dismissed after investigation for lack of jurisdiction or lack of proba-
31 ble cause may either be appealed pursuant to this section or the same
32 cause of action may be filed in a court of appropriate jurisdiction
33 pursuant to section two hundred ninety-seven of this article.

34 § 3. This act shall take effect on the ninetieth day after it shall
35 have become a law.