

STATE OF NEW YORK

9525

IN ASSEMBLY

January 24, 2020

Introduced by M. of A. BUCHWALD, ZEBROWSKI -- (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
23 of the civil practice law and rules, if a complaint is so annulled by
24 the division, upon the request of the party bringing such complaint
25 before the division, such party's rights to bring such cause of action

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

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

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

27 § 298. Judicial review and enforcement. Any complainant, respondent
28 or other person aggrieved by an order of the commissioner which is an
29 order after public hearing, a cease and desist order, an order awarding
30 damages, an order dismissing a complaint, or by an order of the division
31 which makes a final disposition of a complaint may obtain judicial
32 review thereof, and the division may obtain an order of court for its
33 enforcement and for the enforcement of any order of the commissioner
34 which has not been appealed to the court, in a proceeding as provided in
35 this section. Such proceeding shall be brought in the supreme court in
36 the county wherein the unlawful discriminatory practice which is the
37 subject of the order occurs or wherein any person required in the order
38 to cease and desist from an unlawful discriminatory practice or to take
39 other affirmative action resides or transacts business. Such proceeding
40 shall be initiated by the filing of a notice of petition and petition in
41 such court. Thereafter, at a time and in a manner to be specified by
42 rules of court, the division shall file with the court a written tran-
43 script of the record of all prior proceedings. Upon the filing of a
44 notice of petition and petition, the court shall have jurisdiction of
45 the proceeding and of the questions determined therein, except that
46 where the order sought to be reviewed was made as a result of a public
47 hearing held pursuant to paragraph a of subdivision four of section two
48 hundred ninety-seven of this article, the court shall make an order
49 directing that the proceeding be transferred for disposition to the
50 appellate division of the supreme court in the judicial department
51 embracing the county in which the proceeding was commenced. The court
52 shall have power to grant such temporary relief or restraining order as
53 it deems just and proper, and to make and enter upon the pleadings,
54 testimony, and proceedings set forth in such transcript an order enforc-
55 ing, modifying, and enforcing as so modified, or setting aside in whole
56 or in part such order. No objection that has not been urged in prior

proceedings shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. Any party may move the court to remit the case to the division in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided he or she shows reasonable grounds for the failure to adduce such evidence in prior proceedings. The findings of facts on which such order is based shall be conclusive if supported by sufficient evidence on the record considered as a whole. All such proceedings shall be heard and determined by the court and any appeal taken from its judgment or order shall be reviewed by the appropriate appellate court as expeditiously as possible and with lawful precedence over other matters. The jurisdiction of the courts over these proceedings, as provided for herein, shall be exclusive and their judgments and orders shall be final, subject to appellate review in the same manner and form and with the same effect as provided for appeals from a judgment in a special proceeding. The division's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of such order. Any appeal under this section and any proceeding, if instituted under article seventy-eight of the civil practice law and rules to which the division or the board is a party shall be heard on the record without requirement of printing. The division may appear in court by one of its attorneys. A proceeding under this section when instituted by any complainant, respondent or other person aggrieved must be instituted within sixty days after the service of such order. In cases of housing discrimination only, a complaint dismissed after investigation for lack of jurisdiction or lack of probable cause may either be appealed pursuant to this section or the same cause of action may be filed in a court of appropriate jurisdiction pursuant to section two hundred ninety-seven of this article.

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