STATE OF NEW YORK

8511--A

2019-2020 Regular Sessions

IN ASSEMBLY

August 7, 2019

Introduced by M. of A. EPSTEIN, D'URSO, REYES, MOSLEY, GOTTFRIED, SEAWRIGHT -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the county law and the New York city charter, in relation to the docketing of adjudications of certain violations of laws enforced by the New York city department of consumer affairs

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

Section 1. Subdivision 4 of section 918 of the county law, as separately amended by chapters 419 and 473 of the laws of 1988, is amended to read as follows:

4. Any other laws to the contrary notwithstanding, the county clerk in each of the counties within the city of New York is authorized and empowered to maintain separate judgment docket volumes containing the printed transcript or transcripts, in strict alphabetical order of judgment made, entered and docketed in the civil court of the city of New York against individuals, corporations, and other entities on behalf of the parking violations bureau, the environmental control board, the taxi and limousine commission**, the department of consumer affairs** and the commissioner of jurors of the city of New York**, provided that the judgments made, entered and docketed in the civil court of the city of New York against individuals, corporations, and other entities on behalf of the department of consumer affairs shall be limited to final decisions and orders that either (a) award restitution, or monetary damages, to a consumer or worker; or (b) award such restitution, or monetary damages, to a consumer or worker, together with civil penalties or equitable relief**. These volumes may be maintained in the form of computer print outs which shall contain the date of judgment, the name and address of the judgment debtor or debtors, the amount of the judgment and other

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

LBD13287-06-0

information which the county clerk may deem necessary to sufficiently describe the parties to the action or proceeding or nature or the manner of the entry of the judgment. [~~Provided, however, with respect to judgments on behalf of the parking violations bureau the~~] The county clerk may, in his or her discretion, in lieu of such volumes, maintain the aforementioned data in a micrographic or computer retrievable format. With respect to judgments on behalf of the parking violations bureau such volumes or other format shall be maintained pursuant to this subdivision for only those individuals, corporations, and other entities having vehicles registered in the counties within the city of New York.

§ 2. Section 918 of the county law is amended by adding a new subdivision 5 to read as follows:

5. Any other laws to the contrary notwithstanding, the department of consumer affairs may file a certified copy of the final decision or order of such department, provided that such final decision or order either: (a) awards restitution, or monetary damages, to a consumer or worker; or (b) awards such restitution, or monetary damages, to a consumer or worker together with civil penalties or equitable relief, with the county clerk of any county within the city of New York where a respondent resides or has a place of business, or, if the respondent is a non-resident of the city of New York and no longer has a place of business within the city of New York at the time such department seeks to file such certified copy, the department of consumer affairs may file such certified copy of such final decision or order with the county clerk of the county in which the department of consumer affairs is located. Such consumer or worker may file a certified copy of such final decision or order provided that such person has been assigned such final decision or order or a portion of such final decision or order authorizing restitution, imposing monetary damages or providing equitable relief to such person. The filing of such final decision or order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The final decision or order may be enforced by and in the name of the department, or by a person who has been assigned such decision or order or a portion thereof, in the same manner and with like effect as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

§ 3. Subdivision (h) of section 2203 of the New York city charter, as amended by local law number 46 of the city of New York for the year 2013, is amended to read as follows:

(h) (1) Notwithstanding any inconsistent provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for**, and to order restitution or other forms of equitable relief, and payment of monetary damages, to a consumer or worker in connection with** the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations, and to order equitable relief for and payment of monetary damages in connection with enforcement of chapter 8 of title 20 of the administrative code. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement

of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(2) All such proceedings shall be commenced by the service of a notice of violation. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein. **The notice of violation shall contain information advising the person charged of the manner and the time in which such person may either admit or deny the violation charged in the notice. Such notice of violation shall also contain a warning to advise the person charged that failure to plead in the manner and time stated in the notice may result in a default decision and order being entered against such person. The original or a copy of the notice of violation shall be filed and retained by the department and shall be deemed a record kept in the ordinary course of business.**

(3) **Where a respondent has failed to plead within the time allowed by the rules of the commissioner or has failed to appear on a designated hearing date or a subsequent date following an adjournment of a violation, such failure to plead or appear shall be deemed, for all purposes, to be an admission of liability for the purposes of such violation and shall be grounds for rendering a default decision and order imposing a penalty up to the maximum amount prescribed under law for the violation charged. For purposes of this subdivision, "designated violation" means:**

(A) any violation of title 20 of the administrative code or of any law or rule, the enforcement of which is within the jurisdiction of the department, to the extent any final decision or order relating to such violation authorizes restitution, imposes an award of monetary damages or provides equitable relief to a consumer or a worker;

(B) any violation of subchapters 1, 7, 11, 22, 29, 30, 31 or 35 of chapter 2 of title 20 of the administrative code or of chapters 8 or 12 of title 20 of the administrative code or of article eleven of the general business law, including any rules or regulations promulgated thereunder, to the extent any final decision or order relating to such violation imposes both civil penalties and restitution, monetary damages or equitable relief to a consumer or a worker; or

(C) any violation of subchapters 1, 8 or 14-a of chapter 5 of title 20 of the administrative code, including any rules promulgated under such subchapters, to the extent any final decision or order relating to such violation imposes civil penalties for two or more violations and the aggregate penalty for such violations exceeds five thousand dollars and the final decision or order imposes restitution, monetary damages or equitable relief to a consumer.

(4) At the request of a consumer or a worker, the department shall assign, without consideration or liability, a final decision or order, provided that such decision or order solely authorizes restitution, imposes an award of monetary damages or provides equitable relief to such consumer or a worker, or that portion of such award that authorizes restitution, imposes an award of monetary damages or provides equitable relief to such consumer or a worker. After such assignment, the department shall not be required to take any further action to enforce such restitution, award of monetary damages or equitable relief to such consumer.

(5) Any final decision or order of the department relating to a designated violation, whether the adjudication was had by hearing or upon

default or otherwise, shall constitute a judgment that may be entered and docketed in the civil court of the city of New York or any other place provided for the entry and docketing of civil judgments within the state and may be enforced without court proceedings in the same manner as the enforcement of money judgments entered and docketed in civil actions.

(6) Notwithstanding paragraph five of this subdivision, before a judgment based upon a default may be so entered and docketed, the department must have notified the respondent in accordance with this paragraph. The commissioner shall determine the form of such notice. If the respondent is a licensee of the department, notice shall be provided by first class mail or hand delivery to the address the licensee has filed with the department pursuant to section 20-112 of the administrative code. For all other respondents, the notice shall be served by first class mail or hand delivery to the address where the decision or order was sent to the respondent by the department. Such notice shall state that:

(A) a decision and order of default was issued against the respondent by the department and the amounts of the penalty, restitution, or other monetary relief imposed;

(B) a judgment will be entered and docketed in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state of New York; and

(C) entry and docketing of such judgment may be avoided by requesting a stay of default for good cause shown and either requesting a new hearing or entering a plea pursuant to applicable rules within thirty days of the mailing or hand delivery date of such notice.

(7) The department shall not enter any final decision or order pursuant to this subdivision unless the notice of violation shall have been served as follows:

(A) for any respondent that is a licensee of the department, the department shall serve a notice of violation of a designated violation in one of the following ways:

(i) by mailing a copy of such notice to the address the licensee has filed with the department pursuant to section 20-112 of the administrative code; or

(ii) by personally serving the respondent or delivering the notice of violation to a person of suitable age and discretion employed by the respondent at the premises at which the respondent conducts the business the operation of which gave rise to the violation. In the case of a business that is carried out at large and not at a fixed place of business or that has filed with the department an out-of-state address pursuant to section 20-112 of the administrative code, the department shall also serve a licensee or employee of such business at the location which gave rise to the violation, the secretary of state pursuant to section three hundred four of the business corporation law or an agent designated for service pursuant to rule three hundred eighteen of the civil practice law and rules or section three hundred five of the business corporation law.

(B) For any respondent that is not a licensee of the department, the department shall serve a notice of violation of a designated violation in one of the following ways:

(i) by serving the respondent in the same manner as is prescribed for service of process by article three of the civil practice law and rules or article three of the business corporation law;

(ii) by delivering such notice to a person of suitable age and discretion employed by the respondent at the premises where the respondent is operating;

(iii) by affixing such notice in a conspicuous place to the premises where the respondent is operating and delivering such notice by first class mail to the address of such premises;

(iv) by sending such notice by certified mail, return receipt requested, to the respondent's last known business address, provided that delivery of such notice shall be restricted to the respondent; or

(v) by sending such notice by electronic mail to the respondent's electronic mail address, provided that the department has received communication from such electronic mail address in the one year prior to the electronic mailing of such notice, and provided further that service in the manner prescribed by clauses (i) though (iv) of this subparagraph are impracticable.

(8) Service by certified mail pursuant to clause (iv) of subparagraph B of paragraph seven of this subdivision shall be deemed complete upon the mailing of the notice of violation described in such clause, unless the notice of violation is returned to the sender by the United States postal service for any reason other than refusal of delivery. Service by electronic mail pursuant to clause (v) of subparagraph B of paragraph seven of this subdivision shall be deemed complete upon the electronic mailing of the notice of violation described in such clause unless the department receives an electronic message that its electronic mailing of the notice of violation was undeliverable.

(9) Proof of service made pursuant to paragraph seven of this subdivision shall be maintained by, and preserved within, the department for at least six years following the date of the final decision or order relating to the adjudication of the subject notice of violation.

(10) Entry and docketing of a judgment shall not limit the application of any other remedies or penalties provided for the enforcement of laws or rules under the jurisdiction of the department.

(11) For the purposes of this subdivision, no act or practice shall be deemed a deceptive trade practice unless it has been declared a deceptive trade practice and described with reasonable particularity in a local law or in a rule or regulation promulgated by the commissioner.

[~~(4)~~] (12) Notwithstanding any other inconsistent provision of law, powers conferred upon the department by this subdivision may be exercised by the office of administrative trials and hearings consistent with orders of the mayor issued in accordance with subdivisions two and three of section one thousand forty-eight of this charter.

§ 4. This act shall take effect immediately and shall only apply to decisions or orders issued on or after such effective date.