STATE OF NEW YORK

4887

2021-2022 Regular Sessions

IN ASSEMBLY

February 8, 2021

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

AN ACT to amend the executive law, in relation to enforcement of fair housing

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

Section 1. The executive law is amended by adding a new section 298-b to read as follows:

§ 298-b. Enforcement relating to the conduct of owners, agents, employees and others involved in the sale or rental of housing. If the commissioner finds that a violation of subdivision two-a, subdivision three-b or subdivision five of section two hundred ninety-six of this article has occurred, the commissioner shall issue an order which shall do one or more of the following:

1. award compensatory damages to the person aggrieved by such violation;

2. to vindicate the public interest, assess a civil penalty: (i) in an amount not exceeding twenty-five thousand dollars if the respondent has not been adjudged to have committed any prior discriminatory housing practice; (ii) in an amount not exceeding fifty thousand dollars if the respondent has been adjudged to have committed one other discriminatory practice during the five-year period prior to the date of the filing of the complaint; and (iii) in an amount not exceeding seventy-five thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period prior to the date of the filing of the complaint, except that if the acts constituting the discriminatory practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (ii) and (iii) of this paragraph may be imposed without regard to the

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

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period of time within which any subsequent discriminatory practice occurred. Any civil penalty imposed pursuant to this subdivision shall not limit the award of damages or other relief available at law or in equity to the person aggrieved by such violation;

3. require the respondent to cease and desist from such unlawful discriminatory practices;

4. award punitive damages to the person aggrieved by such violation;

5. grant such other relief the commissioner deems just and equitable.

§ 2. Section 298 of the executive law, as amended by chapter 236 of the laws of 2020, is amended to read as follows:

§ 298. Judicial review and enforcement. 1. Any complainant, respondent or other person aggrieved by an order of the commissioner which is an order after public hearing, a cease and desist order, an order awarding damages, an order dismissing a complaint, or by an order of the division which makes a final disposition of a complaint may obtain judicial review thereof, and the division may obtain an order of court for its enforcement and for the enforcement of any order of the commissioner which has not been appealed to the court, in a proceeding as provided in this section. Such proceeding shall be brought in the supreme court in the county wherein the unlawful discriminatory practice which is the subject of the order occurs or wherein any person required in the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be initiated by the filing of a notice of petition and petition in such court. Thereafter, at a time and in a manner to be specified by rules of court, the division shall file with the court a written transcript of the record of all prior proceedings. Upon the filing of a notice of petition and petition, the court shall have jurisdiction of the proceeding and of the questions determined therein, except that where the order sought to be reviewed was made as a result of a public hearing held pursuant to paragraph a of subdivision four of section two hundred ninety-seven of this article, the court shall make an order directing that the proceeding be transferred for disposition to the appellate division of the supreme court in the judicial department embracing the county in which the proceeding was commenced. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside in whole 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.

2. In an action filed by the attorney general pursuant to subdivision twelve of section sixty-three of this chapter, in addition to any other available relief, a court may, to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed the following:

(a) If the defendant is a natural person, (i) fifty thousand dollars for a first violation, and (ii) one hundred thousand dollars for a second or subsequent violation.

(b) If the defendant is a corporate entity, (i) one hundred thousand dollars for a first violation and (ii) two hundred fifty thousand dollars for a second or subsequent violation.

§ 3. This act shall take effect on the same date and in the same manner as section 2 of chapter 236 of the laws of 2020, takes effect.