

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

JOSEPH DEVITO,

Complainant,

v.

SEARS, ROEBUCK AND COMPANY,

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10125673

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Order of Annulment of Election of Remedies (“Recommended Order”), issued on April 3, 2009, by Thomas J. Marlow, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is

the subject of the Order occurred, 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, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **APR 07 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

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on the Complaint of

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**RECOMMENDED ORDER
OF ANNULMENT OF
ELECTION OF REMEDIES**

Case No. **10125673**

PROCEEDINGS IN THE CASE

On May 19, 2008, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

The case was assigned to Thomas J. Marlow, an Administrative Law Judge (“ALJ”) of the Division. Complainant was represented by Stephen Bergstein, Esq., of Bergstein & Ullrich, LLP. Respondent was represented by Joseph A. Saccomano, Jr., Esq., of Jackson Lewis LLP.

By correspondence dated March 26, 2009, counsel for Complainant requested that the Division dismiss the complaint on the grounds that Complainant’s election of an administrative remedy is annulled so that the complaint may be pursued in court. (ALJ’s Exhibit 1)

By correspondence dated April 1, 2009, counsel for Respondent indicated that Respondent does not oppose Complainant's request. (ALJ's Exhibit 2)

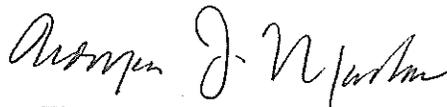
Pursuant to Section 297.9 of the Human Rights Law, a complainant, at any time prior to a hearing before a hearing officer, may request that the Division dismiss the complaint and annul the election of remedies so that the case may be pursued in court, and the Division may, upon such request, dismiss that case on the grounds that the complainant's election of an administrative remedy is annulled.

Section 297.9 of the Human Rights Law provides that:

... where the Division has dismissed such complaint on the grounds ... that the election of remedies is annulled, such person shall maintain all rights to bring suit as if no complaint had been filed. ... [I]f a complaint is so annulled by the division, upon the request of the party bringing such complaint before the division, such party's rights to bring such cause of action before a court of appropriate jurisdiction shall be limited by the statute of limitations in effect in such court at the time the complaint was initially filed with the division.

Complainant has made a request for an annulment. The complaint is ordered dismissed, on the grounds that Complainant's election of an administrative remedy is annulled.

DATED: April 3, 2009
Bronx, New York



Thomas J. Marlow
Administrative Law Judge