

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS
on the Complaint of

KRISTY MONTANARO,

Complainant,

v.

ROBERT M. WEICHERT, WEICHERT
PROPERTIES,

Respondents.

NOTICE AND
FINAL ORDER

Case No. 10117054

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Order of Annulment of Election of Remedies (“Recommended Order”), issued on February 19, 2009, by Michael T. Groben, 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: **MAR 25 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

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

Case No. 10117054

PROCEEDINGS IN THE CASE

On April 4, 2007, Complainant filed a verified complaint (“the Complaint”) with the New York State Division of Human Rights (“Division”), charging Weichert Realtors with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”). On June 22, 2007, the Complaint was amended to delete Weichert Realtors, and to add Robert M. Weichert and Weichert Properties as Respondents.

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

The case was assigned to Tammy B. Collins, an Administrative Law Judge (“ALJ”) of the Division. Complainant was represented by Ronald L. Van Norstrand, Esq., and the Fair Housing Council of Central New York. Respondent Robert M. Weichert appeared pro se.

By Notice of Motion dated December 3, 2008, Respondent moved for dismissal of the Complaint on the grounds that it failed to state facts sufficient to constitute probable cause or to charge the offense claimed.

The Division promulgated a notice of hearing dated November 27, 2007, which scheduled a public hearing for December 7, 2007. The hearing was adjourned prior to the opening of the record.

By Notice of Supplemental Motion dated December 10, 2007, Respondent again moved for dismissal, alleging that the Division did not have jurisdiction over the Complaint because the hearing date had been adjourned; that ALJ Collins had engaged in impermissible ex parte communications with DHR staff regarding the Complaint; and that Complainant had failed to answer Respondent's demand for a Bill of Particulars.

On or about December 20, 2007, Respondents Robert M. Weichert and Weichert Properties filed a Petition pursuant to Article 78 of the C.P.L.R. in the Onandaga County Supreme Court, under Index No. 2007-8551. The Petition named the Division and Complainant as respondents, and sought, inter alia, an order dismissing the Complaint. By Order dated April 8, 2008, the Honorable Justice Donald A. Greenwood denied the Petition.

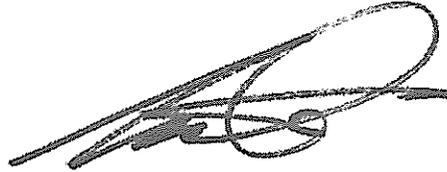
The Case was then assigned to ALJ Michael Groben.

Respondents appealed from Justice Greenwood's Order by Notice of Appeal dated April 28, 2008 and filed April 30, 2008. However, Respondents failed to perfect their appeal within the applicable limitations period of nine months, and their appeal is deemed abandoned pursuant to 22 NYCRR 1000.12(b).

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 Complaint is ordered dismissed, on the grounds that the Complainant's election of an administrative remedy is annulled, and Respondent's December 3, 2008 Motion to Dismiss and December 10, 2008 Supplemental Motion to Dismiss are denied as moot.

DATED: February 19, 2009
Bronx, New York

A handwritten signature in black ink, appearing to read "Michael T. Groben", written in a cursive style.

Michael T. Groben
Administrative Law Judge