

Supreme Court, Appellate Division, Second Department, New York.
In the Matter of Roy J. LESTER, appellant,

v.

NEW YORK STATE OFFICE OF PARKS, RECREATION & HISTORIC PRESERVATION,
et al., respondents.
March 3, 2009.

Background: Petitioner sought review of determination of New York State Division of Human Rights, which dismissed petitioner's discrimination complaint against New York State Office of Parks, Recreation, and Historic Preservation. The Supreme Court, Nassau County, Galasso, J., dismissed petition. Petitioner appealed.

Holding: The Supreme Court, Appellate Division, held that Civil Procedure rule providing for additional time for service by mail did not extend 60-day period for petitioner to initiate review proceeding.
Affirmed.

*569 Lester & Associates, P.C., Garden City, N.Y. (Roy J. Lester pro se, of counsel), for appellant.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Richard Dearing and Richard O. Jackson of counsel), for respondent New York State Office of Parks, Recreation & Historic Preservation.

JOSEPH COVELLO, J.P., DANIEL D. ANGIOLILLO, ARIEL E. BELEN, and CHERYL E. CHAMBERS, JJ.

In a proceeding pursuant to Executive Law § 298 to review a determination of the New York State Division of Human Rights, dated December 7, 2007, which dismissed the petitioner's complaint upon a finding that there was no probable cause to believe that the respondent New York State Office of Parks, Recreation & Historic Preservation engaged in an unlawful discriminatory practice, the petitioner appeals from a judgment of the Supreme Court, Nassau County (Galasso, J.), entered March 21, 2008, which dismissed the petition as time-barred.

ORDERED that the judgment is affirmed, with costs.

The 57-year-old petitioner claimed that the respondent New York State Office of Parks, Recreation & Historic Preservation practiced illegal age discrimination when, on several testing dates, due to his refusal to wear the State issued "speedo" swimsuit, he was not permitted to take the re-

qualification test to be rehired as a seasonal lifeguard at Jones Beach State Park, and thereafter also was not permitted to take the test for those seeking to be newly hired as lifeguards. The State Division of Human Rights issued a determination finding no probable cause for his action. Sixty-two days after the order was served, the petitioner commenced this proceeding pursuant to Executive Law § 298.

A proceeding to review a determination of the New York State Division of Human Rights must be initiated within 60 days after service of the order upon the party aggrieved by it (*see* Executive Law § 298). Contrary to the petitioner's contention, his time to commence the proceeding was not extended by CPLR 2103, which provision for additional time for service by mail is expressly restricted to service "in a pending action" (*Matter of Fiedelman v. New York State Dept. of Health*, 58 N.Y.2d 80, 82, 459 N.Y.S.2d 420, 445 N.E.2d 1099; *see Matter of Gil v. New York State Div. of Human Rights*, 17 A.D.3d 365, 792 N.Y.S.2d 565; *Matter of Lumbermens Mut. Cas. Co. v. City of New York*, 5 A.D.3d 684, 774 N.Y.S.2d 758). Consequently, the Supreme Court properly dismissed the petition as time-barred.

N.Y.A.D. 2 Dept., 2009.

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874 N.Y.S.2d 568, 2009 N.Y. Slip Op. 01651

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