



**Division of  
Human Rights**

# ANNUAL REPORT

*FY2014-15*

# **Annual Report FY2014-2015**

## **A Message from the New York State Division of Human Rights**

The New York State Division of Human Rights (“the Division”) is honored to present to Governor Andrew M. Cuomo, the Legislature, and the people of New York its Annual Report for Fiscal Year 2014-2015.

The Division of Human Rights is the agency charged with enforcing the New York State Human Rights Law. The law ensures equal opportunity in employment, housing, credit, places of public accommodation, volunteer firefighting, and private, non-sectarian educational institutions.

The mission was important when the law was enacted in 1945 and it is even more important 70 years later.

The Division of Human Rights enforces this law through: the investigation, hearing, and resolution of complaints filed by individuals against alleged discriminators; the creation of programs and campaigns designed to inform and educate the public on the effects of discrimination and their rights and obligations under the law; and the development of human rights policies and proposed legislation for the State.

Each year the Division makes every effort to protect citizens from discrimination and ensure that the Division’s mission and operations are carried out efficiently and effectively.

The Division will continue to take the necessary steps to fulfill the agency’s mission and enact the Human Rights Law’s mandate that “every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the state.”

### **History**

The present New York State Division of Human Rights can trace its history back to the State War Council of the State of New York Temporary Committee on Discrimination in Employment, created in 1942. One of the main accomplishments of the Committee was the passage of the 1945 Ives-Quinn Anti-Discrimination Bill. Signed on March 12, 1945 by Governor Thomas E. Dewey, the law effectively made New York the first state in the nation to enact legislation prohibiting discrimination in employment based on race, creed, color, and national origin. In doing so, New York also became the first state to establish a permanent agency to enforce such legislation, the State Commission against Discrimination (SCAD). Federal institutions were not introduced until nearly 17 years later.

In 1968, the Ives-Quinn Anti-Discrimination Law was renamed the Human Rights Law, and the State Commission against Discrimination was renamed the New York State Division of Human Rights.

In its inception SCAD had jurisdiction only over employment issues and dealt strictly with discrimination based on race, color, creed, and national origin. Over the following years, the Law has been expanded to reflect the changing culture and needs of New Yorkers.

For example, in 1974, the Law was broadened to protect people with disabilities; in 1991, the Law was amended to protect families in the area of housing; in 1997, the Law was changed to include an express provision requiring reasonable accommodations in employment for persons with disabilities; in 2002, the Law was amended to protect both religious practices and religious observances; in 2003, the Sexual Orientation Non-Discrimination Act was passed so to include sexual orientation among the protected traits/characteristics; and in 2003, the Law was extended to encompass military status.

In 2009, the Law was amended to provide protections to domestic violence victims from employment discrimination, and in 2011, it was amended to protect domestic workers from sexual harassment and discrimination based on gender, race, religion or national origin.

In 2014, the Law was amended to include protections to unpaid interns from harassment and other forms of unlawful discrimination in the workplace.

## **Complaint Process**

### **Filing a Complaint**

If an individual feels he or she has been the victim of illegal discriminatory behavior, a complaint can be filed at any of the twelve Division offices throughout the state within one year of the date the last discriminatory incident occurred. Complaints can be filed in person in any of our offices. A complaint form can also be downloaded from the Division's website at [www.dhr.ny.gov](http://www.dhr.ny.gov). All complaints must be completed as instructed and signed before a notary public. Completed complaints may be mailed or hand delivered to our offices.

### **The Investigation**

Once a complaint is filed, an investigator will be assigned to investigate the complaint. This may be conducted through, among other methods, written correspondence, telephone interviews, and visits to the site where the alleged discrimination took place. Based on the information collected during the investigation, a determination will be made as to whether there is probable cause to conclude that unlawful discrimination occurred. A determination of no probable cause will result in the dismissal of the case; this is a final order of the Division that may be appealed in court. If the Division determines that there is probable cause that illegal discrimination took place, the case will advance to the hearing process.

### **The Administrative Hearing**

An Administrative Law Judge will conduct a hearing based on the allegations in the complaint. During the hearing both sides will be able to present evidence to support their positions. The Division will provide an attorney free of charge to present the case in support of the complaint. Complainants may also bring their own attorneys.

### **Resolution**

Based on the evidence presented at the hearing, the Administrative Law Judge will issue a recommended order advising the parties and the Commissioner how they believe the case should be resolved. The Commissioner will review the allegations, the evidence, and the recommended order and will issue a final Commissioner's Order. If the ruling is in favor of the complainant, the Order will specify a remedy. In housing cases, remedies may include a change of policy or practice, provision of services, compensation for emotional distress, punitive damages, among others. In employment cases, remedies may include change in policies and practice, back pay with interest or benefits lost due to the discriminatory practice and/or compensation for emotional distress. In all cases of discrimination, civil fines and penalties may be assessed in amounts up to \$100,000.

### **Appeals**

A Commissioner's Order can be appealed to the New York State Supreme Court within 60 days after it is issued.

## Budget and Finances

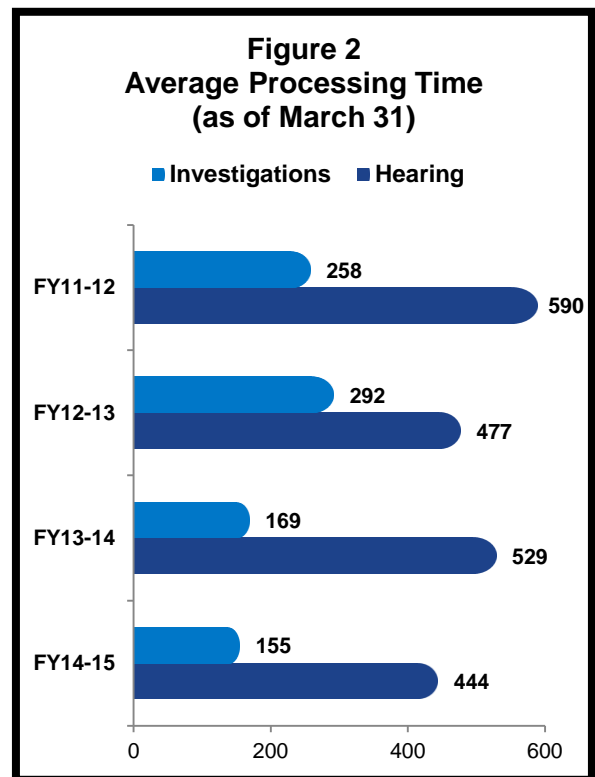
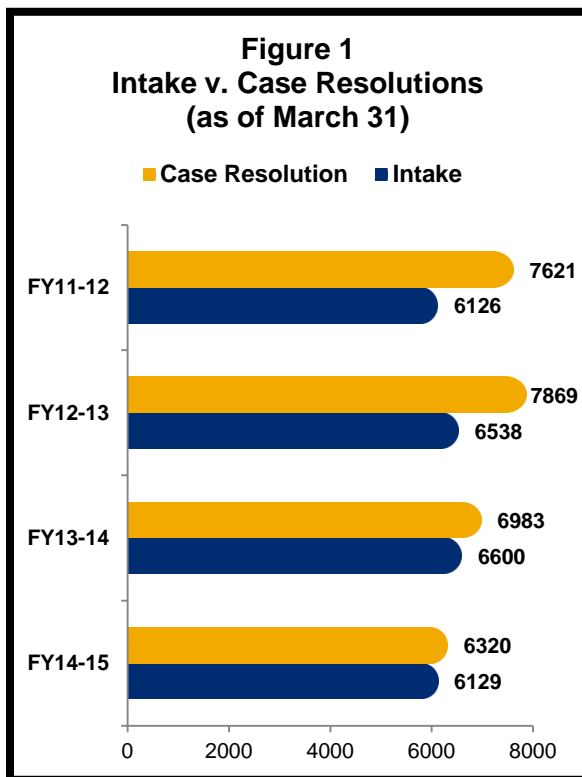
The State of New York operates on a fiscal year commencing each April 1, and ending on the following March 31. The Governor submitted the SFY 2014-2015 Executive Budget in January 2014 for consideration by the Legislature. This year's budget was enacted by the Legislature in March 2014.

The Division's enacted budget for the 2014-15 fiscal year provided for an all funds appropriation of \$18,010,000, consisting of \$12,010,000 in General Fund (State tax-levy) appropriations and \$6,000,000 in Special Revenue Funds, which are monies provided by the federal government for the Division's program contracts with the U.S. Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC).

## Division Operating Statistics

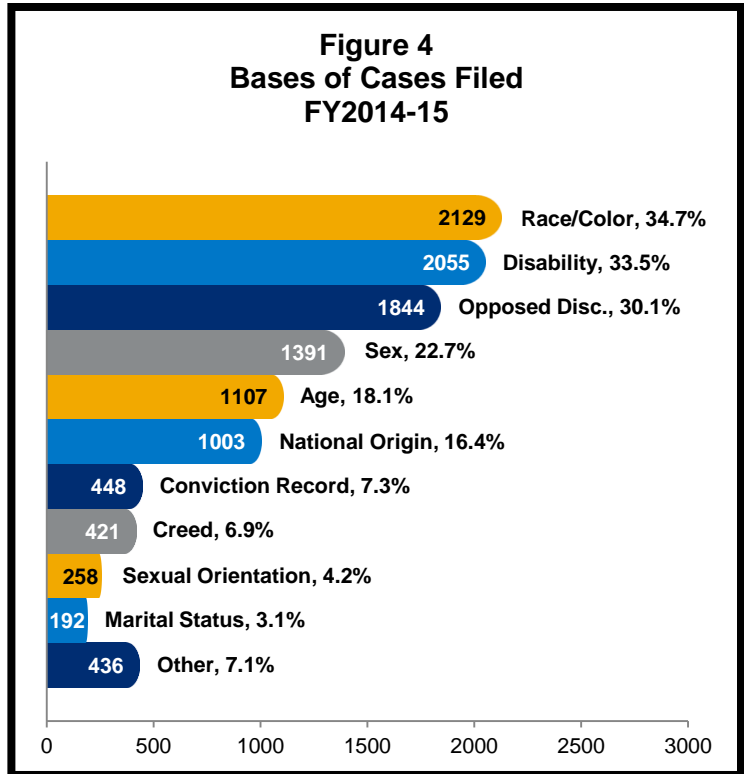
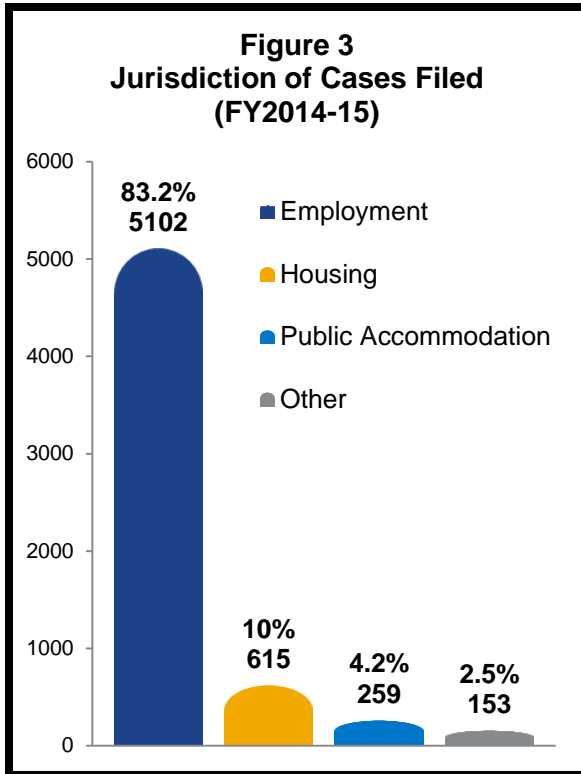
There were 6,129 complaints filed with the Division in FY2014-15. During this same time period, the Division resolved 6,320 complaints (see Figure 1).

The average processing time for complaints through the investigation process for FY2014-15 was 155 days. The average processing time for cases through the hearing process for FY2014-15 was 444 days (see Figure 2).



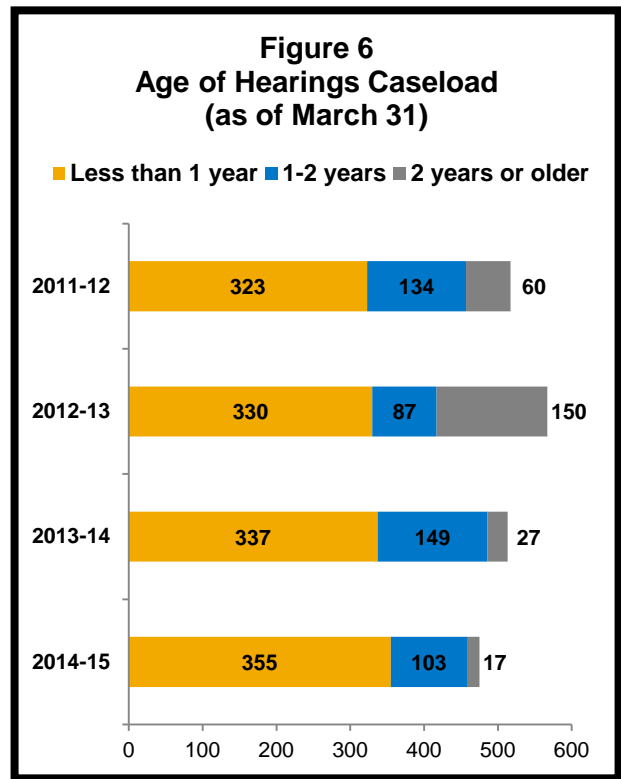
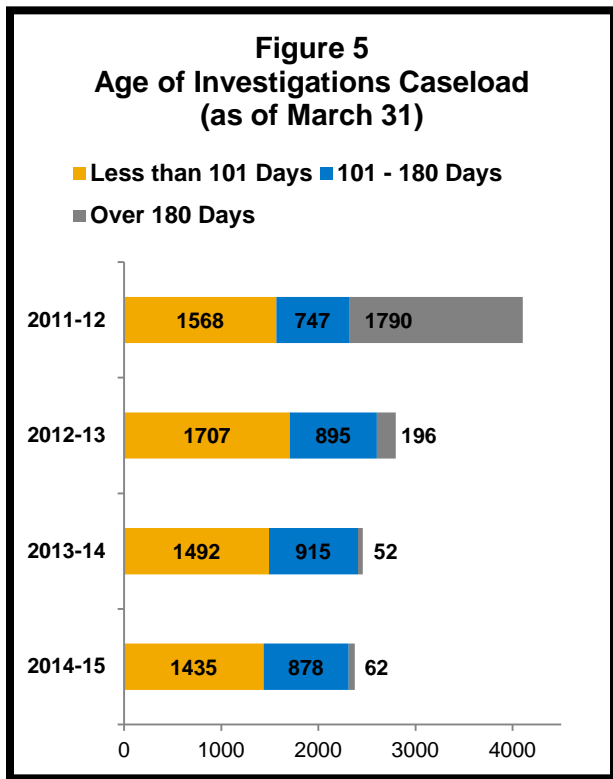
In FY2014-15, the majority of complaints filed were in the area of Employment (approximately 83.2%), followed by Housing (approximately 10%), Public Accommodation (approximately 4.2%), with the sum of all other areas comprising approximately 2.5% of all cases filed (see Figure 3).

The most frequently cited basis of complaints filed in FY2014-15 was Race/Color (34.7%), followed by Disability (33.5%), and Opposed Discrimination/Retaliation (30.1%). It is important to note that some complaints allege more than one basis; therefore, the total percentage of bases cited will be more than 100% (see Figure 4).



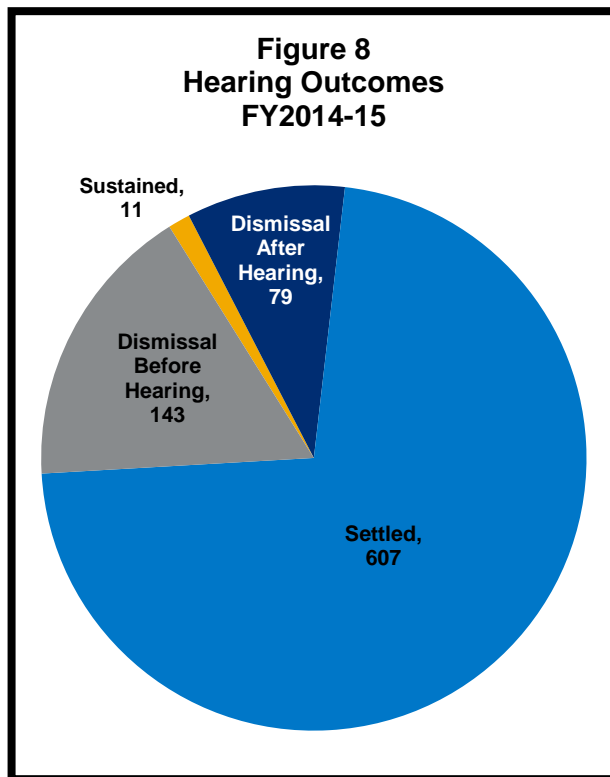
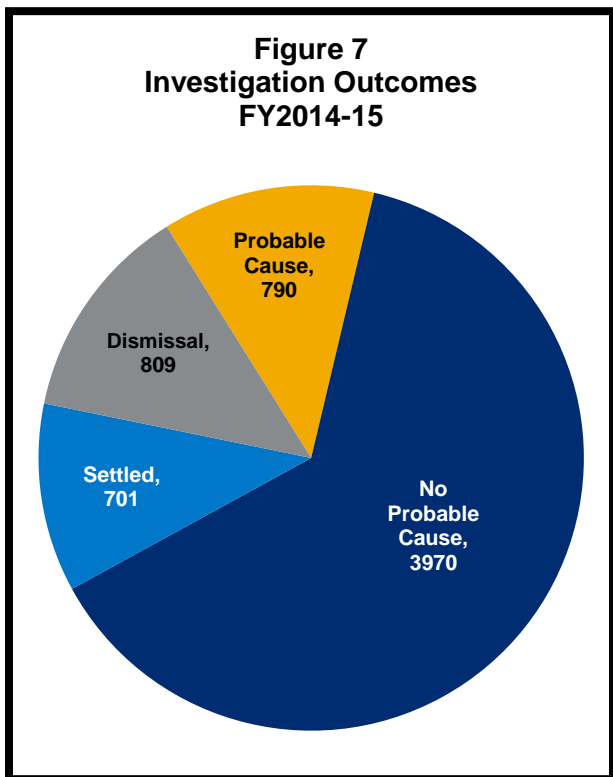
As of the end of FY2014-15, 60.4% of cases under investigation were less than 101 days old, 37% were between 101 days and 180 days old, and 2.6% were over 180 days old (see Figure 5).

Of the cases in the Hearing Process that received investigative determinations of Probable Cause, 74.7% were less than one year old, 21.7% were between one and two years old, and 3.6% were two years old or older at the end of FY2014-15 (see Figure 6).



During FY2014-15, the Division issued 6,270 investigative determinations (see Figure 7). Of these, 63.3% were No Probable Cause, 12.9% were Dismissals and 11.2% were settlements; 12.6% were Probable Cause determinations, which resulted in those cases advancing to the hearing process.

In FY2014-15, the Commissioner issued 840 Commissioner's Orders (see Figure 8). Of these, 72.3% were settlements, 17% were dismissals prior to the completion of the Hearing Process, 9.4% were dismissed after hearing, while 1.3% were sustained after hearing.





## **Division-Initiated Investigations**

The following Division-Initiated Investigations were resolved in FY2014-15 or are on-going:

**Banking Industry:** The Division reached agreements with twelve banks statewide that will guarantee accessible services to people with visual impairments. An investigation by the Division concluded that many of the banks: did not have websites accessible to customers with visual impairments, did not provide documents in alternative formats and; did not have customer service representatives who were prepared to provide information on accessibility features when contacted via telephone.

The twelve banks that settled the discrimination complaints were TD Bank, Capital One, M&T Bank, New York Community Bank, Valley National Bank, Ponce de Leon Federal Bank, Emigrant Savings Bank, Banco Popular, Dime Savings Bank, Flushing Savings Bank, Northfield Savings, and Hudson Valley Bank. All of the banks have agreed to comply with state law by providing services to persons with visual impairments, including informational material and forms in large print, Braille and audio, among other measures. Furthermore, as part of the respective agreements, banks will train customer service staff regarding the appropriate handling of calls or requests made by customers with visual impairments.

**Arrest and Conviction:** The Division investigated the discriminatory failure to hire persons with criminal records within the security guard, retail, building services, and telecommunications industries, three of which have resulted in settlements.

**Employment Age:** The Division investigated and filed complaints against companies that have discriminated against individuals based on age. Several of these complaints have been resolved through conciliation involving the payment of civil fines by the companies and agreements to adopt equal employment policies and be subject to Division monitoring. Twelve complaints were filed against violating companies in 2014, eight of which have resulted in settlements and three of which are currently slated for hearing and are in settlement discussions.

## **Outreach and Education**

During FY2014-15, the External Relations unit developed and executed two statewide information campaigns to educate the public about their rights under the Human Rights Law. Among them:

**Fair Housing Campaign:** The Division launched the first phase of a Fair Housing public information campaign targeting people with Limited English Proficiency (LEP) in the state, with a grant from the U.S. Department of Housing and Urban Development (HUD).

The campaign consisted of 30-second Spanish radio public service announcements during every game of the 2014 Mets baseball season. In addition, the Division was mentioned directly following the singing of the national anthem: "This Salute to America is brought to you by New York State Division of Human Rights."

The campaign ran from March 31, 2014 to September 28, 2014. The public service announcements reflected HUD's sponsorship.

**HIV/AIDS Discrimination Campaign:** In January 2015, the Division launched a public education campaign to raise awareness of the protections afforded to people living with HIV/AIDS under the Human Rights Law.

This campaign was funded by a grant obtained through a Memorandum of Understanding with the NYS Department of Health's AIDS Institute. The advertisements appeared in ten publications throughout the state for several months.

As part of this campaign, the Division created materials, including posters, palm cards, and brochures to be distributed among advocacy groups and service providers statewide. The Division also conducted training and outreach with several agencies and community groups throughout the state.

**ARE YOU POSITIVE (+)?**

**KNOW YOUR RIGHTS.**

People living with HIV/AIDS are protected by the New York State Human Rights Law. Discrimination based on your HIV status is against the law. Take action. Contact the New York State Division of Human Rights. 1-888-392-3644 or [WWW.DHR.NY.GOV](http://WWW.DHR.NY.GOV).

**NEW YORK**  
STATE OF OPPORTUNITY.

**Division of Human Rights**

This advertisement is funded by the New York State Department of Health, AIDS Institute.

## **Commissioner's Orders**

The following is a sampling of cases adjudicated in an administrative hearing during FY2014-15. All Commissioner's Orders after Hearing can be found on the Division's website at [www.dhr.ny.gov/orders](http://www.dhr.ny.gov/orders).

### **Sexual Orientation**

**10157952, 10157963 Melissa McCarthy & Jennifer McCarthy v. Liberty Ridge Farm, LLC; Cynthia Gifford; Robert Gifford**

The complainants, Melissa and Jennifer McCarthy, were a couple looking for a venue in the Albany area to celebrate their wedding. When they reached out to Robert and Cynthia Gifford, the owners of Liberty Ridge Farm to inquire about their venue's availability, they were denied use of the premises because they were a same-sex couple. . The farm owners cited their religious belief about marriage as the reason for declining the couple's request.

In its decision, the Division determined that Liberty Ridge farm was a place of public accommodation and that the farm owners discriminated against the couple by denying them use of the accommodation solely because of their sexual orientation.

The Division ordered the farm owners to pay \$1,500 in compensatory damages for pain and suffering to each of the complainants and \$10,000 in a civil fine and penalty to the State of New York for violating the Human Rights Law.

### **Race, Sexual Harassment**

**10156653 Paolo Andrade v. Wall Street Languages, Ltd. d/b/a Rennert International; Chad Orr**

The complainant, a translation project coordinator, was subjected to a hostile work environment based on his race and gender.

Complainant was awarded \$25,000 for mental anguish and the respondent was ordered to pay \$20,000 in civil fines and penalty to the State of New York for violating the Human Rights Law.

### **Sexual Harassment**

**10145046 Rosangel Fiorillo v. EXSIF Worldwide, Inc.; David Weinfurt**

The complainant, a senior accountant, was subjected to severe and pervasive sexual harassment which created a hostile work environment.

Complainant was awarded \$15,000 for mental anguish and the respondent was ordered to pay \$10,000 in civil fines and penalty to the State of New York for violating the Human Rights Law.

## **Notable Court Decisions in which the Division was a Party**

### **Sexual Harassment**

**7943328 Andrew W. Hay v. Steve's Pier One, Inc.; Pier One On the Sound, LLC; Pier One Bayville on the Sound, Inc.; Crocchiolo Pizzeria, Inc.; Joseph Genova; Bayville Lobster Inc.; Carl Genova**

***State Division of Human Rights v. Steve's Pier One, Inc., 123 A.D.3d 728 (2d Dept. 2014).***

Appellate Division confirmed Division's award of \$200,000 as damages for mental anguish and humiliation to a complainant who endured sexual harassment from coworkers as well as the owner of the restaurant where he worked. Court upheld the naming of the owner as an individual respondent during the administrative process fair and reasonable as the claims against him "related back" to those asserted in his original complaint against the restaurant."

### **Disability**

**10149794 Margaret Pascale v. Erie County, Department of Social Services**

***County of Erie v. New York State Division of Human Rights, 121 A.D.3d 1564 (4th Dept. 2014).***

Appellate Division confirmed Division's determination against a county agency "that the failure to provide a desktop printer as a reasonable accommodation" to an office worker with physical disabilities constituted a violation of the Human Rights Law. Court upheld Division's assessment of civil fines and penalties against the county, finding that "the penalty is not an abuse of discretion as a matter of law."

### **Disability**

**10161972 Fernando Nova v. Cushman & Wakefield National Corporation**

***Cushman and Wakefield National Corporation v. Nova, Index No.: 100073/14 (Supreme Court, New York Co. April 25, 2014).***

In this case, as well as in Perfect Building Maintenance v. Ho, Index No.: 100253/2014 (Sup. Ct., New York Co., July 18, 2014), Supreme Court, New York County held that the Division has the power to investigate and hear an employment discrimination complaint an individual brought to this agency, even if that individual is bound by his collective bargaining agreement to arbitrate his discrimination claims against his employer.

## **New York State Commission Against Discrimination**

1945 Henry C. Turner, Chairman  
Charles Garside, Chairman  
Edward W. Edwards, Chairman  
Ward Arbury, Chairman

1955 Charles Abrams, Chairman  
1959 Elmer A. Carter, Chairman  
1961 Ogden Reid, Chairman

## **New York State Commission for Human Rights**

1962 George Fowler, Chairman  
1967 Robert J. Mangum, Chairman

## **New York State Division of Human Rights**

1970 Jack M. Sable, Commissioner  
1975 Werner Kramarsky, Commissioner  
1982 Robert Shaw, Acting Commissioner  
1983 H. Carl McCall, Commissioner  
1984 Douglas H. White, Commissioner  
1990 Margarita Rosa, Commissioner  
1995 Edward Mercado, Commissioner  
1999 Jerome H. Blue, Commissioner  
2000 Evonne W. Jennings Tolbert, Commissioner  
2003 Michelle Cheney Donaldson, Commissioner  
2007 Kumiki Gibson, Commissioner  
2008 Galen D. Kirkland, Commissioner  
2013 Helen Diane Foster, Commissioner

### **General Counsels**

1945 Henry Spitz  
1975 Beverly Gross  
1977 Ann Thatcher Anderson  
1983 Roberto Albertorio  
1985 Margarita Rosa  
1988 Lawrence Kunin  
1999 Gina M. Lopez  
2007 Caroline Downey