



**Division of
Human Rights**

ANNUAL REPORT

FY2012-13

Annual Report FY2012-2013

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 2012-2013.

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 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 continue protecting citizens from discrimination and ensuring 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. In subsequent years, the Law was 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 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.

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 12 Division offices throughout the state, within one year of the date that the last discriminatory incident occurred. Complaints can be filed in person at any of our offices. A complaint form can also be downloaded from the Division's website at 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. 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 dismissal of the case; this is a final order of the Division that may be appealed in court. If the Division determines 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.

Appeals

Any final order of the Division can be appealed to the New York State Supreme Court within 60 days after it is issued. Appeals from Commissioner's Orders after hearing are transferred to the Appellate Division for disposition.

Budget and Finances

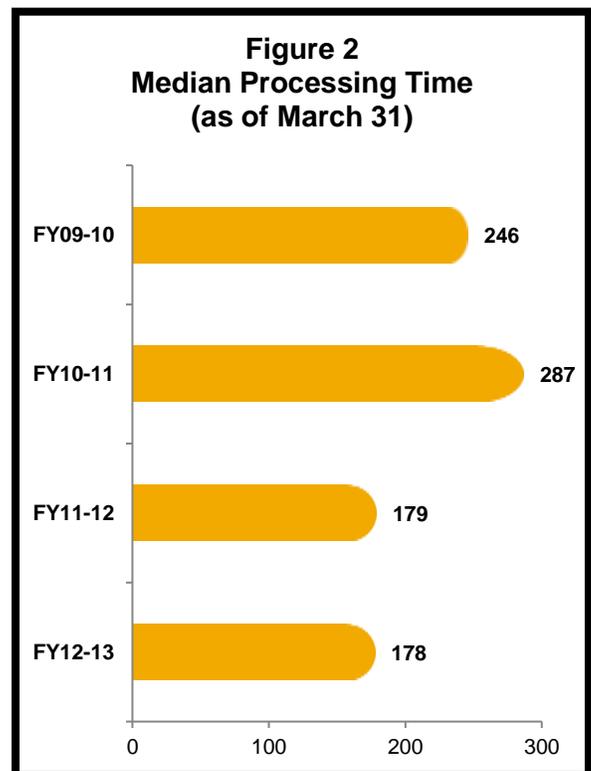
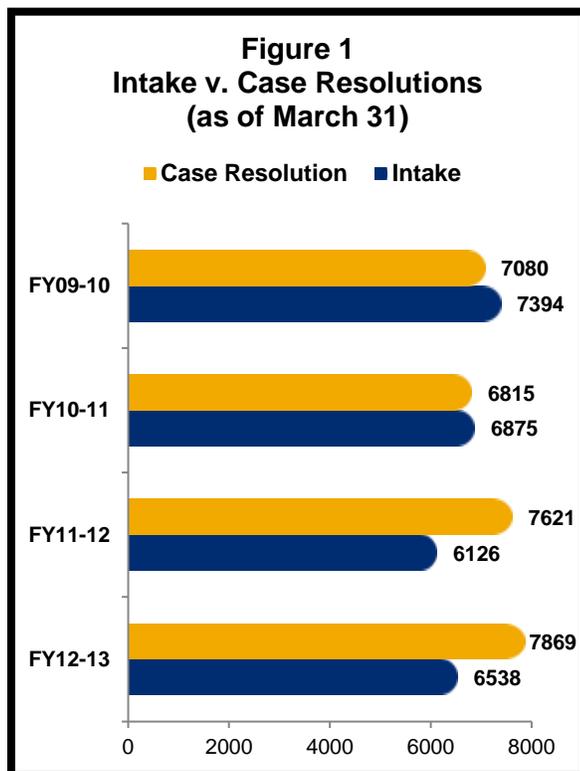
The State of New York operates on a fiscal year commencing each April 1, and ending on the following March 31.

The Division's enacted budget for the 2012-13 fiscal year provided for an all funds appropriation of \$18,744,000, consisting of \$12,744,000 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

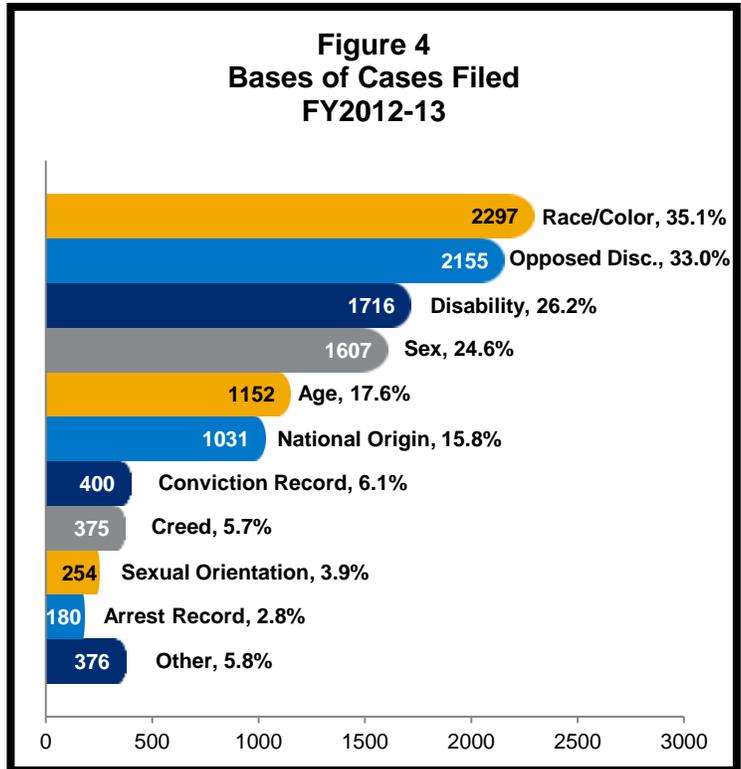
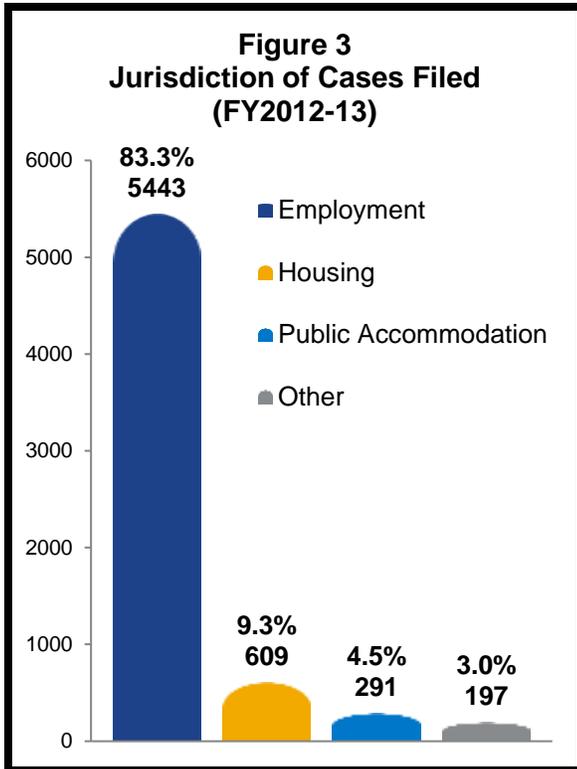
There were 6,538 complaints filed with the Division in FY2012-13. During this same period, the Division resolved 7,869 complaints (see Figure 1).

The median processing time for complaints for FY2012-13 was 178 days (see Figure 2).



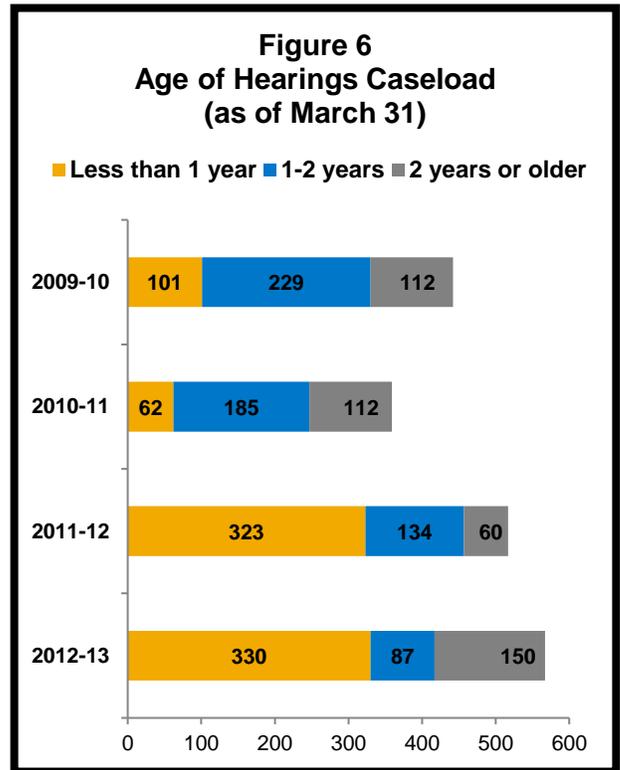
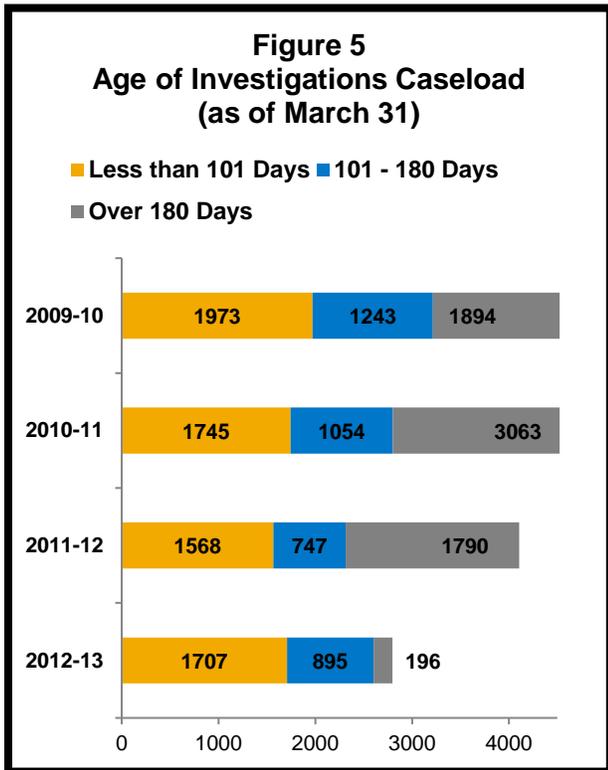
In FY2012-13, the majority of complaints filed were in the area of Employment (approximately 83.3%), followed by Housing (approximately 9.3%) and Public Accommodation (approximately 4.5%), with the sum of all other areas comprising approximately 3% of all cases filed (see Figure 3).

The most frequently cited basis of complaints filed in FY2012-13 was Race/Color (35.1%), followed by Opposed Discrimination/Retaliation (33%), and Disability (26.2%). 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).



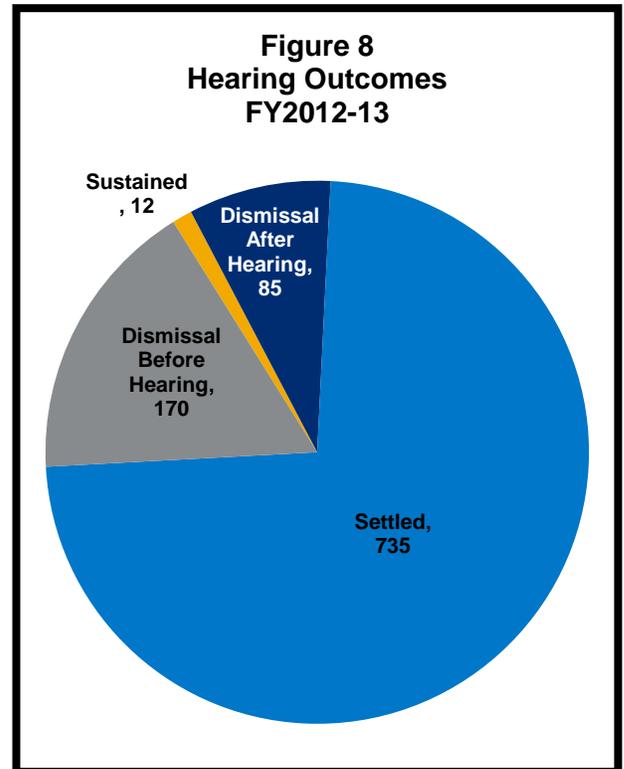
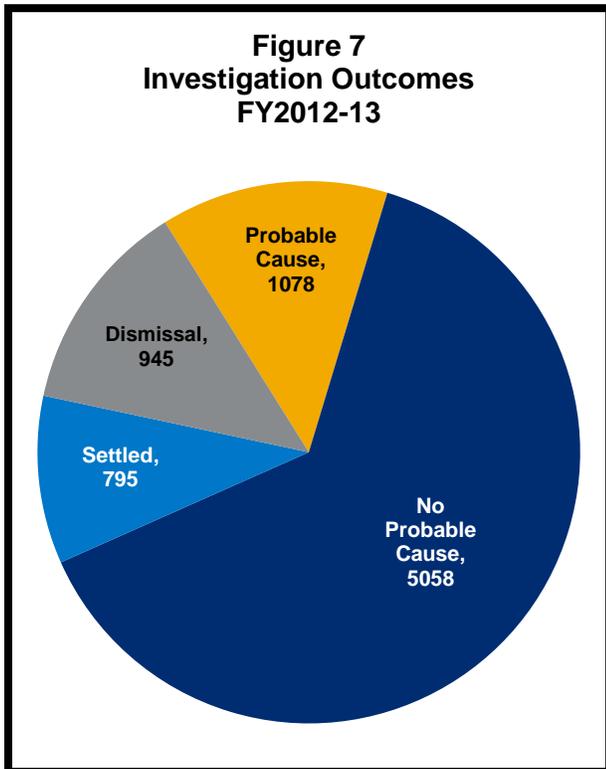
As of the end of FY2012-13, 1707 cases under investigation were less than 101 days old, 895 were between 101 days and 180 days old, and 196 were over 180 days old (see Figure 5).

Of the cases in the Hearing Process that received investigative determinations of Probable Cause, 330 were less than one year old, 87 were between one and two years old, and 150 were two years old or older at the end of FY2012-13 (see Figure 6).



During FY2012-13, the Division issued 7,945 investigative determinations (see Figure 7). Of these, 5,058 were No Probable Cause, 945 were Dismissals and 795 were settlements; 1,078 were Probable Cause determinations, which resulted in those cases advancing to the Hearing Process.

In FY2012-13, the Commissioner issued 1,002 Commissioner's Orders (see Figure 8). Of these, 735 were settlements, 170 were dismissals prior to the completion of the Hearing Process, 85 were dismissed after Hearing, while 12 were sustained after Hearing.



Division-Initiated Investigations

The following Division-Initiated Investigations were resolved in FY2012-13 or are ongoing:

Arrest and Conviction: The Division filed a complaint against Dollar General Corp., alleging discrimination in hiring persons with criminal records. The Division executed a settlement of the complaint in which Dollar General agreed to comply with the State Human Rights Law and revise training and practices to prevent discrimination against employees and applicants with conviction records.

New York Ports: The Division filed a complaint against the International Longshoreman's Association, the New York Shipping Association, and the individual entities they represent. The complaint alleged that the respondents have and continue to discriminate against potential minority workers. The complaint is being investigated.

Housing Discrimination on Long Island: The Division launched an investigation into whether the Town of Oyster Bay's Next Generation and Golden Age housing program's residency preferences (for residents and children of residents of Oyster Bay and its school districts, who are overwhelmingly white) discriminate on the basis of race and national origin, perpetuate residential segregation by preventing people of color from having any real opportunity to obtain such affordable housing, and lock in the present racial composition of the Town. The Town has commenced litigation to seek enjoinder of the investigation.

Outreach and Education

During FY2012-13, the External Relations unit developed and executed three events to educate the public about their rights under the Human Rights Law.

Fair Housing Month Event: The Division held a Fair Housing Conference at the Bronx Zoo, Bronx, NY. The two-day conference was titled "Emerging Federal and State Fair Housing Issues" and took place on April 25 and April 26, 2012. Panels included a discussion on compliance with accessible design and construction requirements for newly constructed multi-family homes; desegregation and federal/state policy; the crisis of the elderly in foreclosure; discrimination based on sex and familial status; reasonable accommodation issues for persons with disabilities with an emphasis on emotional support animals; housing rights of the LGBT community; and new federal/state regulations covering Limited English Proficiency.

Disability and Employment: The Division held an event at the Strong Museum of Play, Rochester, NY, titled "Employment Rights for Persons with Disabilities: Rights, Opportunities & Success Stories" which took place on October 2, 2012. Panel presentations were developed to focus on civil rights protections for persons with disabilities in the workplace, and New York State government programs designed to provide job opportunities for persons with disabilities.

Women's Equality: To mark Women's History Month, the Division held an event at St. Francis College, Brooklyn, NY, titled "Women in the Workplace: Yesterday, Today, Tomorrow" which took place on March 28, 2013. The keynote speaker was retired FDNY Captain Brenda

Berkman, who helped force the department to admit women. The panel presentation included prominent women from the public and private sectors who discussed their experiences and the future of women's equality efforts.

HIV/AIDS Discrimination Campaign: In March 2013, the Division launched a public education campaign to raise awareness of the right of people living 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 print and online in several publications.

Commissioner's Orders

The following is a sampling of cases adjudicated in administrative hearings during FY2012-13. All Commissioner's Orders after Hearing can be found on the Division's website at www.dhr.ny.gov/orders.

Sexual Harassment

10137659, Carmen Hernandez v. Team Taco Mexico, Corp; David Orduna as Aider and Abettor

The complainant, a waitress at a Jackson Heights restaurant, was repeatedly sexually harassed by the restaurant's owner. The respondent touched her inappropriately, appeared at her home uninvited, and offered to pay her rent if she agreed to have a sexual relationship with him. After the complainant refused his advances, the respondent initiated a pattern of abuse that included insulting her in front of customers and paying her a weekly salary that was \$250 less than that of other waitresses. As a result of this treatment, the complainant was forced to resign from her position and suffered depression and anxiety. The Division awarded the complainant \$50,000 in compensatory damages and \$47,363.74 in back wages. The respondent was ordered to pay \$75,000 in civil fines and penalty to the State of New York for violating the Human Rights Law.

Disability

10138076, Harold A. Allen v. Brentwood Union Free School District

The complainant, who suffers from Chronic Obstructive Pulmonary Disease (COPD), was denied a full-time custodial position by respondent due to speculation about his health status, despite the fact that complainant provided certification from his physician that he was able to perform the job. The complainant was awarded \$66,488 for lost wages and \$5,000 for emotional distress damages.

Race, National Origin

10131767, Jose Rodriguez v. Lorenzo International, Inc.; Gregory V. Lorenzo, individually

The complainant, a dispatcher at a commercial trucking business, was subject to a hostile work environment based on race and national origin. The complainant is Hispanic and Puerto Rican and was subjected to offensive racial language on a daily basis. Respondents also constructively discharged the complainant. The complainant was awarded \$26,042 in lost wages and \$60,000 for pain and suffering.

Notable Court Decisions in which the Division was a Party

Education

10125491, Deborah J. Tyler, on behalf of her daughter Leondra Tyler v. North Syracuse Central School District

10109266, Amelia Kearney on behalf of her minor child Epiphany Kearney v. Ithaca City School District

North Syracuse Central Sch. Dist. v. N.Y. State Div. of Human Rights, Ithaca City School District v. N.Y. State Div. of Human Rights, 19 N.Y.3d 481, 950 N.Y.S.2d 67 (2012).

The Court of Appeals held that the Human Rights Law's prohibition against discrimination in education does not apply to public schools. Therefore, the Division lacks jurisdiction to investigate cases filed by students against public educational institutions. Appellate Division decisions in the cases of Ithaca City School District v. N.Y. State Div. of Human Rights (Kearney) and North Syracuse Central School District v. N.Y. State Div. of Human Rights (Tyler) were reversed and the Commissioner's Orders in those cases were vacated.

Housing Discrimination, Race

10131154, New York State, Division of Human Rights v. Town of Oyster Bay; Long Island Housing Partnership, Inc.; The Engel Burman Group; Pulte Homes, Inc.; Timber Ridge at Massapequa, LLC

Town of Oyster Bay v. Kirkland, 19 N.Y.3d 1035, 954 N.Y.S.2d 769 (2012).

The Court of Appeals held the Division's allegation that the Town of Oyster Bay's residency preferences amount to discrimination and Oyster Bay's claim that it would be "reverse discrimination" to eliminate the residency preferences require the resolution of factual issues at the administrative level before they can be passed upon by a court. Oyster Bay had sought to permanently enjoin the Division from proceeding with the complaint.

Housing Discrimination, Race

10143241, Leon H. Martin III v. Paul J. Noe

Noe v. Kirkland, 101 A.D.3d 1756, 957 N.Y.S.2d 796 (4th Dept. 2012).

The Appellate Division concluded that the Division's determination was supported by substantial evidence. The record established that Noe, an experienced landlord, refused to lease an available commercial space to complainant only after meeting him in person and voicing concerns about the race of his existing residential tenants as compared to that of complainant. The record also established that petitioner's purported concerns about complainant's intended use of the space were merely a pretext for racial discrimination, given that he could have easily tailored a lease to address any such concerns. The Division's award of \$10,000 for mental suffering and \$20,000 for a civil fine was confirmed.

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