

SIDNEY SIBEN'S AMONG US

Announcements, Achievements, & Accolades...

Allison C. Shields, recently spoke for the New York State Bar Association's Solo Practitioner's Conference in New York City on the topic, "Using LinkedIn Ethically and Effectively." She was also recently honored by the American Bar Association Law Practice Division's *Law Practice* magazine with its award for best column for her column, Simple Steps. *Law Practice* magazine is available to members and non-members alike on the ABA's website.

Sharon N. Berlin, of Lamb & Barnosky, LLP, presented on a panel on the topic "The 'Ayes' Have It: Legislative Update #1/An Overview of New Laws with a Focus on Employment Issues;" on Dec. 6. **Robert H. Cohen** presented on a panel on the topic "A Peek into Special Education: How the New Legislation Impacts Students with Disabilities;" **Mara N. Harvey** presented on a panel on the topic "Seeing if there is a Better Way: A Look into Student Discipline as We Head into 2020;" **Matthew J. Mehnert** presented

on a panel on the topic "Stopping Those Prying Eyes: Protecting Student Data, Cybersecurity and the Threat of Ransoms;" and **Alysa L. Zuckerman** will presented on a panel on the topic "Navigating Labor Relations with the Benefits of Hindsight in the Modern Age" at the 2019 Annual School Law Conference sponsored by the Nassau and Suffolk Academies of Law and the Education Law Committees of the Nassau and Suffolk County Bar Associations. **Lindsay T. Crocker** is one of the conference chairs.

Allison C. Shields, president of Legal Ease Consulting, Inc., is proud to announce the publication of her new book, "Make LinkedIn Work for You: A Practical Handbook for Lawyers and Other Legal Professionals," with co-author Dennis Kennedy. The book is a step-by-step guide for anyone in the legal profession about how best to maximize their LinkedIn Profile, make use of their Connections, and Participate effectively on the platform. The book is available through Amazon in both e-book and paperback formats.

Lisa Pomerantz have been named to the EDNY ADR Advisory Council for a two-year term.

Congratulations...

Congratulations to SCBA members who are the 2019 Long Island Business News Leadership in Law Award Recipients: **Sima Asad Ali, Jeffrey V. Basso, Elaine M. Colavito, Robert W. Doyle, Jr., John J. Felin, Garrett L. Gray, Jessica A. Leis, Barry Lites, Russell I. Marnell, Kera Murphy Reed, Stephen P. Scaring, J. Timothy Shea, Jr. and Jay Sheryll.**

Bridget Tartaglia-Vales, partner at St. James law firm Jakubowski, Robertson, Maffei, Goldsmith & Tartaglia, LLP, has been named a recipient of the 2019 WVI Dolphin Foundation's Spirit of Youth Sports Award. Ms. Tartaglia-Vales has been cited for her tireless efforts as a coach of boys' basketball in the CYO program at Infant Jesus Church in Port Jefferson, an assignment she has taken on the past eight years

Lamb & Barnosky, LLP has been named to the U.S. News & World Report and Best

Lawyers® 2020 "Best Law Firms" List as a Metropolitan Tier 1-Long Island for Education Law and Labor Law-Management.

Lisa Pomerantz was selected for inclusion among Long Island Business News Top 50 Women on Long Island.

Condolences...

Our sympathy on the passing of Kenneth J. Mangan, husband of **Karen D. McGuire** and father of Academy Officer **Brittney C. Mangan.**

New Members...

The SCBA extends a warm welcome its newest members: **Paul R. Feuer, Larry Flowers, Matthew B. Guerra, Robert K. Howard, Lawrence E. Mullins, Charlene D. Rogers Sanders and Michael A. Schilling.**

The SCBA also welcomes its newest student members and wishes them success in their progress towards a career in the law: **Jordan Krasnoff, Brianna Mattiucci, Siara Ossa and Desiree Saad.**

REAL PROPERTY

Housing Discrimination Lawsuits and Damages

By Andrew Lieb



ANDREW LIEB

On Nov. 17, 2019, Newsday published "Long Island Divided," a report of the state of housing discrimination on Long Island. The report concerned a three-year Newsday investigation that involved 25 undercover testers it trained, 93 real estate agents it tested, 240 hours of meetings secretly recorded, and 5,763 house listings analyzed. Findings included that discrimination occurred 19 percent of the time against Asians, 39 percent against Hispanics and 49 percent against Blacks.

In response to the article, elected officials have called for action. In New York state, the governor, attorney general, both Long Is-

land county executives and many local legislators have assured that they will enforce discrimination laws. New York state established a new hotline at (844) 862-8703 "to raise awareness and give individuals a dedicated contact point to file complaints." On the federal level, U.S. representatives Kathleen Rice and Thomas Suozzi have called on HUD to act. Clearly, further investigations are underway with charges, fines and the like on the horizon.

Beyond governmental enforcement, private discrimination lawsuits are about to flood the courts and practitioners should be prepared. Unlike governmental enforcement, where the Newsday report detailed fines ranging from \$6,000 to \$15,000, private law-

suits can easily result in six to seven figure awards. These private lawsuits on Long Island will include causes of action authorized under the Suffolk County Human Rights Law (SCHRL) or Nassau County Human Rights Law (NCHRL), the New York State Human Rights Law (NYSHRL) and the Federal Fair Housing Act (FHA).

Pursuant to §528-13(R) of the SCHRL, within two years of the alleged discrimination, an aggrieved individual "shall have a cause of action in any court of competent jurisdiction for damages, injunctive relief and such other remedies as may be appropriate." Additionally, the SCHRL provides for the award of "[r]easonable attorney's fees and costs." Further, §528-14(A) provides that "[i]n cases of housing discrimination only, punitive damages in an amount not to exceed

\$10,000 may be awarded to the individual aggrieved by such practice."

Pursuant to §21-9.7(d)(3) of the NCHRL, within three years of the alleged discrimination, "any person claiming to be aggrieved by a practice prohibited by this title shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages and for injunctive relief or such other remedies as may be appropriate." Further, where an investigation is necessary to discover that a "covered entity is engaging or has engaged in an unlawful discriminatory practice," then "[t]he measure of compensatory damages for a person injured as defined in this subparagraph shall include the fair market value of the efforts such person has

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ACROSS THE BOARD

Here to Keep you Informed as Always

By Patrick McCormick

It's the holiday season! Before we all get too distracted by present shopping and end-of-the-year vacations, here is your monthly update on our most recent Board of Directors meeting. Remember to check out this column each month and visit the Association's website (www.scba.org) to find out about the latest SCBA news, upcoming events and ways that you can get involved.

At our November board meeting, we discussed bringing together the presidents of bar associations across our region. SCBA President Lynn Poster-Zimmerman will represent the SCBA and explore ways that our associations can collaborate. Lynn will also be meeting with state and local legislators regarding the proposed increases to the 18b rates. On Jan. 14, 2020, we will welcome Chief Administrative Judge Lawrence K. Marks to the

Great Hall for a discussion about the key provisions of the Chief Judge's Court Consolidation Proposal. We also discussed the creation of a Joint Task Force with Nassau County Bar Association to study the proposal (committee co-chairs: Donna England and Marc Gann). I'll keep you updated as news develops.

The board is also looking for new members. The nominating committee will be meeting soon, so if you're interested in getting more involved with the SCBA, keep an eye out for more information, or reach out to any of the committee members: John Calcagni, Cheryl Mintz, Richard Stern, Robert Harper, Patricia Meisenheimer, Louis Pagan, Robin Abramowitz, Harvey Besunder and Justin Block.

We also received an update from co-chairs Hon. Derrick J. Robinson and Cornell V.



PATRICK MCCORMICK

Bouse about the Speakers Bureau, which has been very busy. Their members have presented at Stony Brook University and Suffolk Community College, just to name a few. If this sounds interesting to you, please reach out — they're still looking add speakers.

We also discussed the lack of a Long Island testing center for the NYS Bar Examination. Historically, there have always been four testing centers, and the only center in lower New York is in New York City. At the upcoming meeting between the Nassau and Suffolk Bar associations, we will consider a resolution to call for the creation of an examination center on Long Island.

In upcoming events, Vincent Messina reported on the Legislative Breakfast Meeting set for Wednesday, Dec. 18, where local and state legislators will discuss regional matters.

Also, consider joining your colleagues at the NYSBA Gala Dinner at the Museum of Natural History on Thursday, Jan. 30. Finally, save the date — the SCWBA will participate in a collaborative program celebrating Women's History Month in March 2020 honoring Hon. Letitia James. Date coming soon.

That's it for this month. We look forward to seeing you at our upcoming events and be sure to keep an eye out for the next "Across the Board" in upcoming issues. I look forward to keeping you informed. I hope you all have a very happy holiday.

Note: SCBA Secretary Patrick McCormick is a Senior Partner at Campolo, Middleton & McCormick, LLP, a premier law firm with offices across Long Island, and the immediate Past Dean of the Suffolk Academy of Law. Email Patrick at pmccormick@cmmlp.com.

Family (Continued from page 5)

ex, and her failing to be pacified by the stern warnings by the trial judge to the other side to tell his client to “bring your toothbrush” should the case not resolve by the next date, you decide to whip up a memo to facilitate that harbinger of the only method that seemingly resolves these cases — the sound of three court officers clicking open the handcuffs, standing behind the contemnor spouse.

Inability to pay, while the last bastion of those who can’t and those who won’t pay is not a talismanic incantation shield-all against incarceration. There has to be demonstrated, by competent and credible evidence, that the person required to pay the sum of money made diligent efforts to, for example, obtain

employment to be able to pay a support obligation. Simply saying I can’t find work will just not do.

The person asserting such a defense must come forward (just like on a downward modification application) with (I submit) stacks and stacks of resumes, cover letters, follow-up emails and other correspondence demonstrating his or hers dogged, determined effort to become suitably employed. See *Matter of Fallon v. Fallon*, 286 AD2d 389. Likewise, it is not merely enough to claim you lost your job to assert the inability to pay defense; the same rules apply — one must demonstrate, to a fairly high burden of proof — a continued effort to become re-em-

ployed at a commensurate level. See *Ferrer v. Brown*, 165 AD3d 929.

Nor is there any purchase in such a scenario to the argument that incarceration would be a bar to the ability to find further employment; what’s good for the goose is good for the gander. If a party claiming inability to pay fails to produce competent credible evidence of having looked for work, then they cannot also claim that six months (max) in the Suffolk County jail will somehow impede them from looking for work that they haven’t yet started to search for.

Finally, under this rubric (and an all-fours-match) from the child support imputation factor of gifts/services/loans from family and

friends, is the careful scrutiny of the presence of any of the foregoing in the matter. In other words, if the contemnor spouse is claiming an inability to pay but it turns out that his mother paid his attorney’s bill in full, this again inures towards incarceration as it evinces the ability to get the money to pay for certain debts, just not the ones so-ordered by the court.

Note: Vesselin Mitev is a partner at Ray, Mitev & Associates, LLP, a New York litigation boutique with offices in Manhattan and on Long Island. His practice is 100 percent devoted to litigation, including trial, of all matters including criminal, matrimonial/family law, Article 78 proceedings and appeals.

Real Property (Continued from page 7)

undertaken to investigate and remedy the unlawful discriminatory practice.”¹ Still further, §21-9.7(d)(4) provides for civil penalties to “be paid into the general fund of the County” “in an amount not more than fifty thousand dollars” or of “not more than one hundred thousand dollars” where it is found that the “discriminatory practice was the result of the respondent’s wanton or malicious act.” Finally, §21-9.7(d)(5) provides that the “court, in its discretion, may award the prevailing party or parties costs and reasonable attorney’s fees regardless of the amount of damages awarded to a complainant in such action.”

Pursuant to §297(9) of the NYSHRL, within three years² of the alleged discrimination, “[a]ny person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages, including...punitive damages, and such other remedies as may be appropriate, including any civil fines and penalties provided in subdivision four of this section.” Such civil fines and penalties set forth in subdivision four include “(i) requiring such respondent

to cease and desist from such unlawful discriminatory practice; (ii) requiring such respondent to take such affirmative action, including (but not limited to) . . . admission to or participation in a guidance program, apprenticeship training program, on the job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, granting the credit which was the subject of any complaint. . . ; (iii) awarding of compensatory damages to the person aggrieved by such practice; (iv) awarding of punitive damages...in an amount not to exceed ten thousand dollars, to the person aggrieved by such practice; (v) requiring payment to the state of profits obtained by a respondent through the commission of unlawful discriminatory acts described in subdivision three b of section two hundred ninety six of this article; and (vi) assessing civil fines and penalties in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or

not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious; (vii) requiring a report of the manner of compliance.” Further §297(10) provides that a “court may in its discretion award reasonable attorney’s fees to any prevailing or substantially prevailing party.”

Beyond governmental enforcement, private discrimination lawsuits are about to flood the courts and practitioners should be prepared.

Pursuant to 42 USC §3613(a)(1)(A) of the FHA, “[a]n aggrieved person may commence a civil action in an appropriate United States district court or state court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice.” Further, subsection (c) (1) provides that “the court may award to the plaintiff actual and punitive damages, and...any permanent or temporary injunc-

tion, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).” Still further, subsection (c)(2) provides for “reasonable attorney’s fee and costs” in the court’s discretion.

As a result, a discrimination plaintiff bringing a court proceeding will seek actual damages (direct for loss of housing and consequential of emotional distress for loss of dignity), punitive damages, statutory penalties, attorneys’ fees and costs. Are you ready?

Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Smithtown and Manhasset. He is a past co-chair of the Real Property Committee of the Suffolk Bar Association and has been the Special Section Editor for Real Property for The Suffolk Lawyer for years

¹ *Newsday* could bring suit itself under this section

² *Murphy v. American Home Products Corp.* 58 N.Y.2d 293, 307 (1983).

Surrogate (Continued from page 8)

your petition. If your client takes issue with one of the distributees and that distributee files first, you must file objections and pay the filing fee. In those objections, you must allege the grounds for ineligibility listed in SCPA §707. If you cannot prove SCPA §707 grounds and you are the last to file, you face an uphill battle in trying to have your client appointed. Hostility between distributees does not, in and of itself, constitute grounds for disqualification under SCPA §707. However, where disharmony or hostility jeopardizes the interests of the beneficiaries and the proper administration of the estate, the Surrogate has the right to disqualify any or all distributees and appoint the Public Administrator.⁴

Among parties that have equal priority to issuance of letters, the court may appoint any or all of those persons.⁵ Be mindful of the numbers when making your application. If there are persons of equal priority, the courts generally like to issue letters to the person(s)

who represent the largest share of the estate. If you represent the minority interest, unless there is some disqualifying characteristic in the petitioner pursuant to SCPA §707, it is unlikely that your client will be appointed.⁶

If a negotiated settlement can be reached for the appointment of co-administrators, the court is unlikely to interfere with that solution. Counsel should be aware that if the court is called on to consider the reasonableness of the attorneys’ fees, the court will determine what one reasonable attorney’s fee would be for the estate involved. While both fiduciaries are free to retain their own counsel, the estate will not bear two full attorneys’ fees. If there is a dispute about the reasonableness of the attorney’s fees for each administrator’s separate counsel, then the issue would be resolved either in a judicial accounting or a separate proceeding pursuant to SCPA §2110.

It is not always advisable to resolve family disputes for letters of administration by agreeing to have the two or more adminis-

trators serve together. If the level of hostility is great, it is unlikely that they will be able to work together for the smooth administration of the estate. In such a case, the parties might be able to agree on a third party to serve, known as a designee pursuant to SCPA §1001(6). If not, the court may appoint one of the parties or might appoint the Public Administrator.⁷ While the Public Administrator will ensure fairness in the process, its fees are typically higher than if a family member served. The Public Administrator will take statutory commissions if appointed, and the Public Administrator will also be entitled to have its attorneys’ fees and the expenses of its office paid from the estate.

The practitioner must consider the issues of priority, eligibility, and consent when representing a client in an administration proceeding. SCPA §§1001 and 707 are your guides. If all the decedent’s distributees are eligible to receive letters of administration, then all distributees must consent before the

court can appoint a non-distributee. If some, but not all, of the distributees are eligible, then all eligible distributees must consent. If none of the decedent’s distributees are eligible, then all distributees must consent.

Note: Kera Reed is the co-chair of the Surrogate’s Court Committee and the Supervising Attorney in the Trusts and Estates Department at Burner Law Group, P.C.

¹ *In re Estate of Salvan*, 132 AD2d 662 (2d Dept 1987)

² *Matter of Cohen*, 14 Misc 3d 1208[A], 2006 NY Slip Op 52445[U] (Sur Ct, Dutchess County 2006)

³ See SCPA §1001(1)(a); 22 NYCRR 130-1.1.

⁴ *Estate of Brice Edward Lambert*, 2014 NYLJ LEXIS 3498 (Sur. Ct, Suffolk County 2014)

⁵ *Matter of Meltzer*, 62 Misc 3d 1201[A], 2018 NY Slip Op 51844[U] (Sur Ct, Dutchess County 2018)

⁶ See SCPA §1001(1)(f)(i); *Matter of Pikoris*, N.Y.L.J. Dec. 31, 2002, at 19, col. 6 (Sur. Ct. New York County).

⁷ *Matter of Mergentime*, 155 Misc. 2d 502, 588

N.Y.S.2d 736 (Sur. Ct. Westchester County 1992), aff’d, 207 A.D.2d 452, (2d Dep’t 1994); SCPA 1001 (8);

Matter of Rad, 162 Misc. 2d 229, (Sur. Ct. New York County 1994).