

17 A.D.3d 365, 792 N.Y.S.2d 565, 2005 N.Y. Slip Op. 02663  
(Cite as: 17 A.D.3d 365, 792 N.Y.S.2d 565)

## C

Supreme Court, Appellate Division, Second Department, New York.

In the Matter of Joseph GIL, appellant,

v.

NEW YORK STATE DIVISION OF HUMAN RIGHTS, et al., respondents.

April 4, 2005.

**Background:** Petitioner brought proceeding for review of determination in which New York State Division of Human Rights (NYSDHR) dismissed petitioner's complaint upon finding that there was no probable cause to believe that company had engaged in unlawful discriminatory practice. The Supreme Court, Westchester County, [Donovan, J.](#), dismissed petition as time-barred. Petitioner appealed.

**Holding:** The Supreme Court, Appellate Division, held that proceeding was time-barred.

Affirmed.

West Headnotes

### [1] Civil Rights 78 1712

78 Civil Rights

78V State and Local Remedies

78k1705 State or Local Administrative Agencies and Proceedings

78k1712 k. Judicial Review and Enforcement of Administrative Decisions. [Most Cited Cases](#)

### Civil Rights 78 1731

78 Civil Rights

78V State and Local Remedies

78k1730 Time for Proceedings; Limitations

78k1731 k. In General. [Most Cited Cases](#) Sixty-day period within which proceeding for judicial review of determination of New York State Di-

vision of Human Rights (NYSDHR) must be commenced begins to run upon service of the order dismissing complaint, and not, as in an Article 78 proceeding, when the determination to be reviewed becomes final and binding upon petitioner. [McKinney's Executive Law § 298](#); [McKinney's CPLR 217](#), subd. 1, 7801 et seq.

### [2] Civil Rights 78 1712

78 Civil Rights

78V State and Local Remedies

78k1705 State or Local Administrative Agencies and Proceedings

78k1712 k. Judicial Review and Enforcement of Administrative Decisions. [Most Cited Cases](#)

### Civil Rights 78 1732

78 Civil Rights

78V State and Local Remedies

78k1730 Time for Proceedings; Limitations

78k1732 k. Employment Practices. [Most Cited Cases](#)

Proceeding for review of determination in which New York State Division of Human Rights (NYSDHR) dismissed petitioner's complaint upon finding that there was no probable cause to believe that company had engaged in unlawful discriminatory practice, which was brought more than 60 days after date on which NYSDHR served its order dismissing complaint, was time-barred; accrual rule applied in Article 78 proceedings did not apply. [McKinney's Executive Law § 298](#); [McKinney's CPLR 7801 et seq.](#)

\*\*565 Gucciardo & Raum, P.C., New York, N.Y. ([Brian W. Raum](#) of counsel), for appellant.

\*\*566 Gina M. Lopez Summa, Bronx, N.Y. ([Thelma Joy B. Rodriguez](#) of counsel), for respondent New York State Division of Human Rights.

Quirk and Bakalor, P.C., New York, N.Y. ([Timothy J. Keane](#) of counsel), for respondent SS & C Tech-

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nologies, Inc.

GLORIA GOLDSTEIN, J.P., DANIEL F. LUCIANO, STEPHEN G. CRANE, and ROBERT A. SPOLZINO, JJ.

\*365 In a proceeding pursuant to Executive Law § 298 to review a \*366 determination of the New York State Division of Human Rights, dated April 16, 2003, which dismissed the petitioner's complaint upon a finding that there was no probable cause to believe that the respondent SS & C Technologies, Inc., engaged in an unlawful discriminatory practice, the petitioner appeals from a judgment of the Supreme Court, Westchester County (Donovan, J.), dated October 27, 2003, which dismissed the petition as time-barred.

ORDERED that the judgment is affirmed, with costs.

[1][2] The 60-day period within which a proceeding pursuant to Executive Law § 298 for judicial review of a determination of the New York State Division of Human Rights (hereinafter the NYSDHR) must be commenced begins to run upon service of the order dismissing the complaint (*see Executive Law § 298; Matter of Simmons v. New York State Div. of Human Rights*, 188 A.D.2d 475, 475, 592 N.Y.S.2d 597), not, as in a proceeding pursuant to CPLR article 78, when “the determination to be reviewed becomes final and binding upon the petitioner” (CPLR 217[1]). Thus, contrary to the petitioner's contention, the time within which this proceeding should have been commenced should not have been determined in accordance with the accrual rule enunciated in *New York State Assn. of Counties v. Axelrod*, 78 N.Y.2d 158, 165, 573 N.Y.S.2d 25, 577 N.E.2d 16, regarding proceedings pursuant to CPLR article 78. Rather, since this proceeding was brought pursuant to Executive Law § 298, and was commenced on June 20, 2003, more than 60 days after April 17, 2003, the date on which NYSDHR served its order dismissing the com-

plaint, the Supreme Court properly dismissed the petition as time-barred.

N.Y.A.D. 2 Dept., 2005.  
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**KEYCITE**

**C** [Gil v. New York State Div. of Human Rights](#), 17 A.D.3d 365, 792 N.Y.S.2d 565, 2005 N.Y. Slip Op. 02663 (N.Y.A.D. 2 Dept., Apr 04, 2005) (NO. 2003-10580, 9906/03)

**History****Direct History**

=> **1** [Gil v. New York State Div. of Human Rights](#), 17 A.D.3d 365, 792 N.Y.S.2d 565, 2005 N.Y. Slip Op. 02663 (N.Y.A.D. 2 Dept. Apr 04, 2005) (NO. 2003-10580, 9906/03)

**Court Documents****Appellate Court Documents (U.S.A.)****N.Y.A.D. 2 Dept. Appellate Briefs**

- 2** Joseph GIL, Petitioner-Appellant, v. THE NEW YORK STATE DIVISION OF HUMAN RIGHTS and SS&C Technologies, Inc., Respondents-Respondents., 2004 WL 3417403 (Appellate Brief) (N.Y.A.D. 2 Dept. May 26, 2004) **Petitioner-Appellant's Brief and Appendix** (NO. 2003-10580)
- 3** Joseph GIL, Petitioner-Appellant, v. THE NEW YORK STATE DIVISION OF HUMAN RIGHTS and SS&C Technologies, Inc., Respondents-Respondents., 2004 WL 3417405 (Appellate Brief) (N.Y.A.D. 2 Dept. Jun. 24, 2004) **Brief on Bahalf of Respondent-Respondent New York State Division of Human Rights** (NO. 2003-10580)
- 4** Joseph GIL, Petitioner-Appellant, v. THE NEW YORK STATE DIVISION OF HUMAN RIGHTS and SS&C Technologies, Inc., Respondents-Respondents., 2004 WL 3417404 (Appellate Brief) (N.Y.A.D. 2 Dept. Jun. 30, 2004) **Respondent-Respondent SS&C Technologies, Inc.'s Brief** (NO. 2003-10580)

Date of Printing: Feb 01, 2010

**KEYCITE**

**C** [Gil v. New York State Div. of Human Rights](#), 17 A.D.3d 365, 792 N.Y.S.2d 565, 2005 N.Y. Slip Op. 02663 (N.Y.A.D. 2 Dept., Apr 04, 2005) (NO. 2003-10580, 9906/03)

Westlaw has no direct history for this case

Intermediate Court

KeyCited Case

**C** [Gil v. New York State Div. of Human Rights](#)

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N.Y.A.D. 2 Dept. Apr 04, 2005

[Court Documents](#)

Trial  
Intermediate Court

Trial  
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## KEYCITE

**C** *Gil v. New York State Div. of Human Rights*, 17 A.D.3d 365, 792 N.Y.S.2d 565, 2005 N.Y. Slip Op. 02663 (N.Y.A.D. 2 Dept. Apr 04, 2005) (NO. 2003-10580, 9906/03)

## Citing References

## Positive Cases (U.S.A.)

## ★ Mentioned

- H** 1 Jackson v. N.Y.S. Div. of Human Rights, 2010 WL 184047, \*1, 2010 N.Y. Slip Op. 00400, 00400 (N.Y.A.D. 1 Dept. Jan 21, 2010) (NO. 2032, 407225/) **HN: 1,2 (N.Y.S.2d), 1 (A.D.3d)**
- H** 2 Lester v. New York State Office of Parks, Recreation & Historic Preservation, 874 N.Y.S.2d 568, 569, 60 A.D.3d 680, 2009 N.Y. Slip Op. 01651, 01651 (N.Y.A.D. 2 Dept. Mar 03, 2009) (NO. 2008-03522, 2524/08) **HN: 1,2 (N.Y.S.2d), 1 (A.D.3d)**
- H** 3 Lester v. New York State Office of Parks, 2008 WL 6714697, \*6714697 (Trial Order) (N.Y.Sup. Mar 19, 2008) (NO. 002524/08)

## Secondary Sources (U.S.A.)

- 4 Carmody Wait 2d New York Practice with Forms s 13:351, Actions for unlawful discriminatory practices by employer (2009) **HN: 1,2 (N.Y.S.2d), 1 (A.D.3d)**
- 5 New York Pattern Jury Instructions--Civil DIV 9 I INTRO 1, Intro. 1 (2010) **HN: 1,2 (N.Y.S.2d), 1 (A.D.3d)**
- 6 NY Jur. 2d Civil Rights s 148, Limitations of actions under Human Rights Law (2009)
- 7 NY Jur. 2d Limitations & Laches s 59, Illegal or improper action of public body or officer (2009)
- 8 2032. IN RE JACQUELYN E. JACKSON, PET-AP, V. N.Y.S. DIVISION OF HUMAN RIGHTS RES-RES, 1/25/2010 N.Y. L.J. 25, col. 6, 25, col. 6 (2010) **HN: 1,2 (N.Y.S.2d), 1 (A.D.3d)**
- 9 MATTER OF ROY J. LESTER, AP, V. NEW YORK STATE OFFICE OF PARKS, RECREATION & HISTORIC PRESERVATION RES, 3/10/2009 N.Y. L.J. 40, col. 3, 40, col. 3 (2009) **HN: 1,2 (N.Y.S.2d), 1 (A.D.3d)**
- 10 RECENT CPLR DECISIONS OF INTEREST, 166 Practising Law Institute New York Law 7 (2007) **HN: 1 (N.Y.S.2d), 1 (A.D.3d)**
- 11 RECENT CPLR DECISIONS OF INTEREST, 157 Practising Law Institute New York Law 7 (2006) **HN: 1 (N.Y.S.2d), 1 (A.D.3d)**

## Court Documents

## Appellate Court Documents (U.S.A.)

## Appellate Briefs

- 12 Matter of Diane BALLARD, Petitioner-Appellant, v. HSBC BANK USA, and Edward A. Friedland, Acting Commissioner Of The State Of New York Division Of Human Rights, Respondents-Respondents., 2006 WL 1287517, \*1287517+ (Appellate Brief) (N.Y. Mar 01, 2006) **Brief of Respondent-Respondent HSBC Bank USA, N.A., Successor to HSBC Bank USA** (NO. 2006-0065) ★ ★ **HN: 1 (N.Y.S.2d), 1 (A.D.3d)**
- 13 Roy J. LESTER, Petitioner-Appellant, v. NEW YORK STATE OFFICE OF PARKS, Recreation & Historic Preservation, and New York State Division of Human Rights, Respondents-Respondents., 2008 WL 6715913, \*6715913+ (Appellate Brief) (N.Y.A.D. 2 Dept. Nov 25, 2008) **Reply Brief on Behalf of Petitioner-Appellant Roy J. Lester** (NO. 2008-03522) ★ ★ ★
- 14 Roy J. LESTER, Petitioner-Appellant, v. NEW YORK STATE OFFICE OF PARKS, Recreation & Historic Preservation, and New York State Division of Human Rights, Respondents-Respondents., 2008 WL 6715912, \*6715912+ (Appellate Brief) (N.Y.A.D. 2 Dept. Nov 10, 2008) **Brief for Respondent New York State Office of Parks, Recreation & Historic Preservation** (NO. 2008-03522) ★ ★ ★
- 15 Roy J. LESTER, Petitioner-Appellant, v. NEW YORK STATE OFFICE OF PARKS, Recreation & Historic Preservation, and New York State Division of Human Rights, Respondents-Respondents., 2008 WL 6715911, \*6715911+ (Appellate Brief) (N.Y.A.D. 2 Dept. Oct 08, 2008) **Brief on Behalf of Petitioner-Appellant Roy J. Lester** (NO. 2008-03522) ★ ★
- 16 Jonathan D. BLOOM and Julie A. Bloom, on behalf of themselves and all other persons whose uninsured and underinsured motorist coverage were eliminated when Travelers substituted its Scope excess personal liability policies with its PLUS personal liability umbrella of security policies, Plaintiffs-Appellants, v. THE SAINT PAUL TRAVELERS COMPANIES, INC., THE Travelers Casualty and Surety Company and Automobile Insurance Company of Hartford, Defendants-Respondents., 2008 WL 4962159, \*4962159+ (Appellate Brief) (N.Y.A.D. 2 Dept. Jan 14, 2008) **Brief on Behalf of Defendants-Respondents** (NO. 2007-04406) ★ ★ **HN: 1,2 (N.Y.S.2d), 1 (A.D.3d)**

## Trial Court Documents (U.S.A.)

### Trial Pleadings

- 17 Roy J. LESTER, Petitioner, v. NEW YORK STATE, OFFICE OF PARKS, Recreation & Historic Preservation, and New York State Division of Human Rights, Respondents., 2008 WL 6759615, \*6759615 (Trial Pleading) (N.Y.Sup. Feb 28, 2008) **Verified Answer** (NO. 08-002524) ★ ★ **HN: 1,2 (N.Y.S.2d), 1 (A.D.3d)**