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CasePrepPlus

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Summarizing recent significant
New York appellate cases

In an attempt to prohibit discrimination against renters who receive and use Section 8 housing assistance, the Legislature passed an anti-discrimination provision that bars source-of-income housing discrimination. The necessary consequence of doing so, however, was to impliedly compel landlords to accept Section 8 vouchers and consent to warrantless searches of their apartments. The Third Department recently held that this provision violates the landlords' Fourth Amendment rights and is facially unconstitutional. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

SECOND DEPARTMENT

CIVIL PROCEDURE, CHILD VICTIMS ACT, TOLLS OF STATUTE OF LIMITATIONS

Finley v Diocese of Brooklyn, 2026 NY Slip Op 01183 (2d Dept Mar. 4, 2026)

Issue: For how long did Governor Cuomo's COVID-era executive orders toll the closing of the Child Victims Act revival window?

Facts: "On March 24, 2022, the plaintiff commenced this action pursuant to the CVA against the defendants Diocese of Brooklyn and Mary Queen of Heaven Catholic Academy," alleging that his choir teacher abused him while at the school. The Academy moved to dismiss the complaint as time-barred.

After the plaintiff filed an amended complaint, the Academy again moved to dismiss the amended complaint as time-barred, arguing that "the revival window of CPLR 214-g closed on August 16, 2021 (since August 14, 2021, was a Saturday), and as such, the action, commenced on March 24, 2022, was time-barred. The Academy contended that the August 3, 2020 legislative amendment that expanded the revival window to August 14, 2021, meant that the Legislature intended for all CVA actions to be commenced by August 14, 2021." Plaintiff opposed, arguing that "the action was timely because the pandemic-era executive orders served to toll the closing of the CVA revival window."

Supreme Court denied the Academy's motion to dismiss, holding that "the executive orders created a 228-day toll on the closing of the revival window, extending the plaintiff's time to commence the action."

Holding: The Appellate Division, Second Department affirmed, holding that "the executive orders apply to all CVA actions, enlarging the revival window by 228 total days." The court noted that during the initial CVA revival period, survivors faced an initial obstacle to filing renewed CVA claims with the onset of COVID in March 2020. Following the COVID shutdown, Governor Cuomo issued a series of executive orders that "tolled the limitations period for all civil actions in New York" and eventually signed an amendment to the CVA, which extended the CVA revival period to August 14, 2021.

The Court explained, "[i]n assessing whether the CVA amendment abrogated the effect of the preexisting toll, it should be noted that the plain language of the CVA amendment does not mention any toll that the Legislature knew to be in effect . . . In light of the absence of any provision mentioning tolls, this Court cannot supply one. As such, this Court holds that the CVA amendment extended the time by which survivors can come forward, enlarging the revival window created by the statute without changing the toll in existence."

Therefore, the court concluded, "the executive orders issued by the Governor and the Legislature's amendment of the CVA all functioned together to enlarge and enhance the period of time for survivors to commence CVA actions . . . The CVA amendment and the executive orders work in tandem to accommodate the peculiar difficulties precluding survivors of child sex abuse to come forward in pursuit of justice. The extended revival window provided survivors an opportunity to avail themselves of the CVA revival window despite restrictions by the pandemic or personal trauma. To hold otherwise would belie the very intent of the CVA, which was to permit victims additional time to bring their offenders to justice . . .

In conjunction with the executive orders issued subsequent to the CVA amendment's enactment, which this Court has recently held to be applicable, all of these executive orders impose an aggregate 228-day toll on the closing of the CVA revival window, making March 30, 2022, the latest date by which to commence a CVA action."

THIRD DEPARTMENT

LANDLORD-TENANT, CONSTITUTIONAL LAW, DISCRIMINATION

***Matter of People of the State of N.Y. v Commons West, LLC*, 2026 NY Slip Op 01253 (3d Dept Mar. 5, 2026)**

Issue: Is Executive Law § 296(5)(a)(1), which forbids housing discrimination based on individuals' lawful source of income, including Section 8 vouchers, unconstitutional?

Facts: "In 2020, two prospective tenants filed complaints with petitioner, asserting that respondents, the owners of residential rental properties in the City of Ithaca, Tompkins County, had refused to rent apartments to them on the ground that they were receiving housing assistance pursuant to Section 8 of the United States Housing Act of 1937. After investigating, petitioner commenced this Executive Law § 63 (12) proceeding against respondents, alleging that, by refusing to rent to individuals receiving Section 8 housing assistance, respondents were violating Executive Law § 296 (5) (a) (1), which forbids housing discrimination based on individuals' lawful source of income, defined to include Section 8 vouchers. Petitioner sought to permanently enjoin respondents from future violations and require them to design and implement nondiscriminatory housing accommodation policies regarding sources of income, set aside a percentage of units in each of their buildings for Section 8 recipients for three years, undergo court monitoring and pay restitution and civil penalties."

Respondent moved to dismiss, arguing that section 296(5)(a)(1) is unconstitutional because "it, in effect, requires landlords to take part in the Section 8 program, which in turn obligates them to consent to warrantless searches of their premises and records in violation of the Fourth Amendment . . . Petitioner opposed dismissal of the petition, asserting that any claimed harm to respondents was speculative and that, in any event, the inspections required of landlords taking part in Section 8 did not violate the Fourth Amendment."

Supreme Court, agreeing that "the challenged law forced them to consent to warrantless searches, which the Fourth Amendment forbids," held Executive Law § 296(5)(a)(1) unconstitutional and dismissed the petition.

Holding: The Appellate Division, Third Department affirmed, explaining that "[b]y prohibiting discrimination based upon source of income, . . . the Legislature has required landlords to accept Section 8 vouchers and, as a condition of participating in that program, agree to allow searches of their properties and records . . . The landlord must sign a standard housing assistance payment contract, in which it agrees to provide 'full and free access' to the apartment, the premises and all relevant accounts and records." Although the law does not on its face require landlords to consent to warrantless searches, the Court explained that "they are indirectly compelled through the terms of the Section 8 program and the HAP contract, which obligate landlords to make their premises and records available for searches."

This type of administrative search is impermissible, the court further held, because landlords had no meaningful opportunity to obtain precompliance review before facing penalties for failing to consent to a search of their apartments. "A landlord is required to sign the HAP contract, thereby expressly consenting to all searches before any opportunity to challenge a search would arise. Thus, the landlord would be left in the untenable position of attempting to challenge in court a search to which he or she had already consented in writing . . . Furthermore, even if CPLR article 78 were an appropriate avenue for review, we are unconvinced that it would necessarily occur before the landlord suffered any penalties for failing to comply with the search. That is, the HAP contract provides that, upon a landlord's breach of a contractual requirement which would include refusing to allow an inspection the PHA may exercise any of its rights thereunder, including suspending or terminating rent payments to the landlord. While it is true that the contract requires the PHA to provide the landlord with written notice when it determines that a breach has occurred, nothing prevents the PHA from exercising its rights immediately, before a court proceeding has been commenced."

To satisfy the Fourth Amendment, the court explained, "[a]n inspection scheme must assure that the discretion of the inspecting officers is 'carefully limited in time, place, and scope', and we find that the Section 8 inspection regime lacks these safeguards. With respect to timing, although the regulations set benchmarks for when inspections should be performed at the outset of the tenancy and then at least once every two years thereafter there is no further guidance as to the frequency of the inspections and, indeed, they must be done whenever the PHA receives a complaint. As for the place and scope of a search, while the regulations offer examples of interior spaces that may be searched and explain the purposes of the search, there are no limitations placed on what may be inspected. When combined with the HAP contract, which requires landlords to allow 'full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract,' the place and scope of a permissible search are exceedingly broad. Under these circumstances, the inspection scheme does not provide adequate safeguards."

Therefore, the court held "the source-of-income provision in Executive Law § 296(5)(a)(1) facially unconstitutional to the extent that it makes it an unlawful discriminatory practice to refuse to rent or lease housing accommodations to any person, or group of persons, because their source of income includes Section 8 vouchers."

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