



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

Suzanne K. BRACKER, Plaintiff-Respondent,
v.
Jeffrey R. COHEN, etc., et al., Defendants -
Appellants.

May 10, 1994.

Action was brought to recover compensatory and punitive damages under city code for sex discrimination. The Supreme Court, New York County, Huff, J., denied defendants' motion to dismiss, and defendants appealed. The Supreme Court, Appellate Division, held that: (1) city had authority to create private right of action for unlawful discrimination with punitive damages as a remedy, and (2) city ordinance was not inconsistent with State Human Rights Law.

Affirmed.

West Headnotes

[1] Civil Rights **1768**

78k1768 Most Cited Cases
(Formerly 78k454)

[1] Municipal Corporations **589**

268k589 Most Cited Cases

City had authority under State Constitution to create private cause of action for unlawful discrimination with punitive damages as a remedy. McKinney's Const. Art. 9, § § 2(c)(ii), 2(c)(ii)(10), 3(c); McKinney's Municipal Home Rule Law § 51.

[2] Municipal Corporations **592(1)**

268k592(1) Most Cited Cases

City's creation of private cause of action for unlawful discrimination with punitive damages as a remedy was not inconsistent with State Human Rights Law. McKinney's Executive Law § 290 et seq.

[3] Civil Rights **1704**

78k1704 Most Cited Cases

(Formerly 78k441)

[3] Municipal Corporations **592(1)**

268k592(1) Most Cited Cases

State Human Rights Law was not intended to preempt field of antidiscrimination legislation. McKinney's Executive Law § 290 et seq.

[4] Municipal Corporations **592(3)**

268k592(3) Most Cited Cases

City ordinance creating private cause of action for unlawful discrimination should not be deemed inconsistent with State Human Rights Law simply because it provided additional penalty in form of punitive damages. McKinney's Executive Law § 290 et seq.

[5] Municipal Corporations **592(1)**

268k592(1) Most Cited Cases

As long as local law neither prohibits what would be permissible under state law nor imposes prerequisites or additional restrictions on rights granted under state law so as to inhibit operation of state's general law, it cannot be said to be inconsistent with state law.

****114** Before MURPHY, P.J., and CARRO, ASCH, NARDELLI and WILLIAMS, JJ.

MEMORANDUM DECISION.

***115** Order, Supreme Court, New York County (Carol Huff, J.), entered December 29, 1993, which, in an action to recover compensatory and punitive damages under Administrative Code of the City of New York § 8-502 for sex discrimination, denied defendants' motion to dismiss the complaint for lack of subject matter jurisdiction and failure to state a cause of action, unanimously affirmed, without costs.

[1][2] The IAS court correctly held that the City has authority to create a private cause of action for unlawful discrimination with punitive damages as a remedy, and that the ordinance enacted, Administrative Code § 8502, is not inconsistent with the State Human Rights Law (Executive Law, article 15). The authority specifically conferred on municipalities under N.Y. Constitution article 9, § 2(c)(ii), 2(c)(ii)(10) to enact laws "whether or not they relate to the property, affairs or government of

such local government" is to be liberally construed (N.Y. Const., art. 9, § 3 [c]; Municipal Home Rule Law § 51), is broad enough to include the creation of a private cause of action (*Karom v. Altarac*, 3 A.D.2d 925, 162 N.Y.S.2d 968), and makes inapposite traditional limitations upon the exercise of "police powers" as interpreted by the authorities cited by defendants (*see, e.g.,* 6 McQuillan, Municipal Corporations § 22.01, and cases cited therein [3d ed rev]; *McCrorry Corp. v. Fowler*, 319 Md. 12, 570 A.2d 834). Absent from Municipal Home Rule Law § 11, which lists the areas in which local governments may not legislate, is any language relating to the creation of private causes of action, notwithstanding the legislative overruling of *Karom v. Altarac, supra*. (*See, Municipal Home Rule Law* § 11[1][j]). In the absence of a specific prohibition, the creation of private causes of action in favor of its citizens falls within the police powers of ****115** the municipality (*see, also,* 187-48, 1987 Opns Atty Gen 1090; Opns St Comp No. 79-812).

612 N.Y.S.2d 113, 204 A.D.2d 115, 64 Fair Empl.Prac.Cas. (BNA) 1314

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[3][4][5] The State Human Rights Law was not intended to preempt the field of antidiscrimination legislation (*see, New York State Club Assn. v. City of New York*, 69 N.Y.2d 211, 513 N.Y.S.2d 349, 505 N.E.2d 915, *aff'd* 487 U.S. 1, 108 S.Ct. 2225, 101 L.Ed.2d 1), and the local law in issue should not be deemed inconsistent therewith simply because it provides an additional penalty in the form of punitive damages (*see, e.g., Matter of Bri-Mar Corp. v. Town Bd. of Town of Knox*, 74 N.Y.2d 826, 546 N.Y.S.2d 334, 545 N.E.2d 624; *People v. Judiz*, 38 N.Y.2d 529, 381 N.Y.S.2d 467, 344 N.E.2d 399). ***116** As long as a local law neither prohibits what would be permissible under State law nor imposes prerequisites or additional restrictions on rights granted under State law so as to inhibit the operation of the State's general law, it cannot be said to be inconsistent with the State law (*see, New York State Club Assn. v. City of New York, supra*, 69 N.Y.2d at 217, 513 N.Y.S.2d 349, 505 N.E.2d 915, quoting *Consolidated Edison Co. v. Town of Red Hook*, 60 N.Y.2d 99, 108, 468 N.Y.S.2d 596, 456 N.E.2d 487, quoting *F.T.B. Realty Corp. v. Goodman*, 300 N.Y. 140, 147-148, 89 N.E.2d 865; *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 100, 524 N.Y.S.2d 8, 518 N.E.2d 903). *Thoreson v. Penthouse Intl.*, 80 N.Y.2d 490, 591 N.Y.S.2d 978, 606 N.E.2d 1369, merely construed the State Human Rights Law as not providing for an award of punitive damages, and did not, as defendants argue, announce a public policy prohibition against punitive damages as a remedy for discriminatory practices.