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COMMENTS

CONSTITUTIONAL ASPECTS OF LEGISLATION PROHIBITING DISCRIMINATION IN HOUSING

Since the end of World War II, there has been a growing body of legislation directed against discrimination based on race, color, creed, or national origin.¹ Legislation in fields such as employment² and public accommodations³ has met with a fair measure of success,⁴ and has encouraged the extension of such legislation to other areas. The most recent and most controversial field attempted to be controlled is that of private housing.⁵ Since private property rights are involved, a majority of states have not yet enacted such anti-discrimination legislation in the housing field, perhaps fearing an unconstitutional infringement on those property rights. The small amount of legislation already adopted in this field has yet to be tested in the courts, but if and when it is upheld such legislation may well win widespread acceptance in those states actively seeking to eliminate discrimination.

The purpose of this Comment is to examine the existing and proposed legislation, and to determine whether it is within the state's power to regulate private property for such a purpose, or whether it is, or would be, an unconstitutional interference with private property rights.

PRE-LEGISLATIVE ERA

Private Housing

In the absence of statute, buying, leasing or renting of private property for living quarters has never been held to be a civil right, to be protected from private discriminatory action.⁶ At common law a private owner could sell, lease or rent to whomever he pleased, and could also refuse for any reason, however discriminatory or arbitrary.⁷

1. Twelve states (Colorado, Connecticut, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin) have enacted some type of anti-discrimination legislation.

2. In 1945 New York enacted the first statute prohibiting discriminatory employment practices (N.Y. Executive Law art. 15), which served as the model for statutes in other states.

3. E.g., New York has had such a statute for more than half a century (N.Y. Civ. Rights Law art. 4).

4. See Carter, *Practical Considerations of Anti-Discrimination Legislation—Experience Under the New York Law Against Discrimination*, 40 *Cornell L.Q.* 40 (1954).

5. New York passed the first statute affecting discrimination in private housing in 1950 (N.Y. Civ. Rights Law art. 2-A).

6. *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512, 87 N.E.2d 541 (1949). Cf. *Robeson v. Fanelli*, 94 F. Supp. 62, 66 (S.D.N.Y. 1950).

7. *Johnson v. Levitt & Sons, Inc.*, 131 F. Supp. 114 (E.D. Pa. 1955); *Globerman v. Grand Central Parkway Gardens*, 115 N.Y.S.2d 757 (Sup. Ct. 1952), *aff'd*, 281 App. Div. 820, 118 N.Y.S.2d 917 (1st Dep't 1953); *Novick v. Levitt & Sons, Inc.*, 200 Misc. 694, 103 N.Y.S.2d 615 (Sup. Ct.), *aff'd*, 279 App. Div. 617, 107 N.Y.S.2d 1016 (2d Dep't 1951); *Alsberg v. Lucerne Hotel Co.*, 46 Misc. 617, 92 N.Y. Supp. 351 (Sup. Ct., App. T. 1905). See also *Annot.*, 14 A.L.R.2d 154-58 (1950).

Many methods have been used to maintain segregated private housing areas. For a time, one of the most widely used and most effective means was the use of a restrictive covenant in real estate deeds, forbidding the sale or rental of the property to certain "undesirables." These covenants proved effective until 1948, when the Supreme Court, in *Shelley v. Kraemer*,⁸ ruled that they were unenforceable in state courts. The Court reasoned that judicial enforcement of such covenants constituted state action and being discriminatory, operated as a denial of the equal protection guaranteed by the fourteenth amendment.⁹ The Court made it clear, however, that ". . . the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful."¹⁰ The Court declined to declare the restrictive covenant illegal per se, and indicated that voluntary compliance was not prohibited. In the later case of *Barrows v. Jackson*¹¹ the Supreme Court held that a state court's award of damages for breach of a restrictive covenant also constituted "state action" prohibited by the fourteenth amendment. Together, the *Shelley* and *Barrows* decisions destroyed all legal effectiveness of the restrictive covenant, but private owners were still free to discriminate voluntarily.

Public Housing

Even in the absence of statute, it is clear from the *Shelley* case and other Supreme Court decisions interpreting "state action"¹² that any housing owned or operated by the state or any of its political subdivisions must be made available to all the people of the state on equal terms.¹³ In light of the recent Supreme Court decision rejecting the "separate but equal" doctrine,¹⁴ this would seem necessarily to mean completely integrated public housing. Some states do have legislation expressly providing for this,¹⁵ but at the present time such legislation would seem to be merely a codification of constitutional guarantees, unnecessary in those states which have not adopted such legislation.

Public or Private?

The boundary at which "state action" ceases and "private action" begins has not been clearly defined. In fields other than housing the Supreme Court has interpreted "state action" quite liberally.¹⁶ However, in 1949 the New York

8. 334 U.S. 1 (1948).

9. *Id.* at 10: "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property."

10. *Id.* at 13. *Accord*, *Civil Rights Cases*, 109 U.S. 3 (1883).

11. 346 U.S. 249 (1953).

12. See *Marsh v. Alabama*, 326 U.S. 501 (1946); *Smith v. Allwright*, 321 U.S. 649 (1944); *Nixon v. Condon*, 286 U.S. 73 (1932); *Buchanan v. Warley*, 245 U.S. 60 (1917).

13. *Jones v. City of Hamtramck*, 121 F. Supp. 123 (E.D. Mich. 1954); *Vann v. Toledo Metropolitan Housing Authority*, 113 F. Supp. 210 (N.D. Ohio 1953).

14. *Brown v. Board of Educ.*, 349 U.S. 294 (1955). See also *Seawell v. MacWithey*, 2 N.J. Super. 255, 63 A.2d 542 (Ch.), *rev'd on other grounds*, 2 N.J. 563, 67 A.2d 309 (1949).

15. For example, N.Y. Pub. Housing Law § 223.

16. See note 12 *supra*.

Court of Appeals, in *Dorsey v. Stuyvesant Town Corp.*,¹⁷ considered the case of a private housing corporation charged with discriminatory renting practices. The corporation had erected a housing development on land which had been obtained by the state through the power of eminent domain and which was then sold to the corporation. The corporation was also given a special tax exemption on the property for a number of years. After reviewing the Supreme Court decisions concerning "state action," the New York Court of Appeals, by a 4 to 3 decision, ruled that the aid given by the state did not constitute "state action," and that the housing corporation, as a private owner, had the right to discriminate, in the absence of any statutory prohibition.

Whether the Supreme Court would agree with this interpretation of "state action" is debatable. However, the Court denied certiorari, so that the *Stuyvesant Town* case remains the law of New York. The immediate effect of the case, however, was to bring about the first legislation controlling discrimination in private housing.¹⁸

ANTI-DISCRIMINATION HOUSING LEGISLATION

The existing or proposed anti-discrimination legislation in the private housing field falls into three classes, regulating: (1) all private housing; (2) state-aided private housing; (3) federally-aided private housing.

All Private Housing

Shelley v. Kraemer and the *Stuyvesant Town* case made it clear that private discriminatory practices violate no constitutional rights. Therefore, if such practices are to be made illegal, they must be made so by legislation. At the present time no state has enacted a comprehensive anti-discrimination housing statute encompassing all private housing.¹⁹ However, there is a strong possibility that such legislation will eventually be adopted, and such an eventuality would raise the basic question: Does the state have the power to adopt such legislation, or would it be an unconstitutional invasion of personal property rights?

The fourteenth amendment provides that no state shall deprive a person of his property without due process of law.²⁰ This does not mean that a state cannot under any circumstances limit the use of private property, but only requires that the state comply with due process in doing so. It is well established that a state, in the valid exercise of its police power, may limit a person in the use of his property, or when necessary deprive him of it entirely.²¹ The

17. 299 N.Y. 512, 87 N.E.2d 541, cert. denied, 339 U.S. 931 (1949).

18. N.Y. Civ. Rights Law §§ 18-a to 18-e were passed, requiring that state-aided private housing avoid discriminatory practices.

19. A local law was recently passed by the City of New York, prohibiting discrimination in the sale, rental, or leasing of privately-owned multiple dwellings (three or more families). New York City Administrative Code, § X 41-1.0. In the past New York City legislation in the anti-discrimination field has served as a model for later state legislation.

20. U.S. Const. amend. XIV, § 1.

21. *Queenside Hills Realty Co. v. Saxl*, 328 U.S. 80, 83 (1946); *Block v. Hirsch*, 256 U.S. 135, 155 (1921); *Wulfsohn v. Burden*, 241 N.Y. 283, 302, 150 N.E. 120, 124 (1925).

police power is a very broad one, far transcending the power of eminent domain, for in its exercise property may be taken even without compensation.²² However, the police power is not unlimited, but must operate within constitutional grounds, particularly in compliance with the due process and equal protection of the laws clauses of the fourteenth amendment.²³ Due process requires that the legislation be not "unreasonable, arbitrary or capricious," and that the purpose intended and the means used bear a substantial relation to the public health, safety, morals, convenience, or general welfare.²⁴ Equal protection of the law requires that the statutes apply to all persons in the same category equally, and that any classification made be on a reasonable basis.²⁵

Private property is traditionally a field in which the state can properly exercise its police power. Zoning regulations, building codes, slum clearance projects, and emergency rent control statutes are some of the regulatory legislative enactments which have been upheld as valid exercises of the police power in the private property field.²⁶ As the Supreme Court clearly stated in *Buchanan v. Warley*,²⁷ ". . . dominion over property springing from ownership is not absolute and unqualified. The disposition and use of property may be controlled in the exercise of the police power in the interest of the public health, convenience, or welfare."²⁸ This is particularly true where housing is concerned, since shelter is one of man's basic requirements, and the state, acting for the general welfare, can exercise its power to provide adequate housing for all its citizens. As the Supreme Court has pointed out, "housing is a necessary of life. All the elements of a public interest justifying some degree of public control are present."²⁹

If a state legislature did adopt a statute forbidding discrimination in all private housing, would the courts find "a public interest justifying some degree of public control"? The proponents of such legislation point out that the state should properly concern itself with providing or securing adequate housing for all its citizens, and that many members of minority groups are compelled to live in substandard and overcrowded housing, unable to move into better lodgings because of discriminatory practices. In the words of one statute, "these conditions have caused increased mortality, morbidity, delinquency, risk of fire, intergroup tension, loss of tax revenue and other evils. As a result, the peace, health, safety, and general welfare . . . are threatened."³⁰

22. *Miller v. Schoene*, 276 U.S. 272 (1928).

23. *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423 (1952); *Nebbia v. New York*, 291 U.S. 502, 525 (1934); *Munn v. Illinois*, 94 U.S. 113, 134 (1877); *People v. Faxlanger*, 1 A.D.2d 92, 94, 147 N.Y.S.2d 595, 598 (4th Dep't 1955), *aff'd*, 1 N.Y.2d 393, 135 N.E.2d 705 (1956).

24. *Nebbia v. New York*, *supra* note 23; *Wulfsohn v. Burden*, 241 N.Y. 288, 298, 150 N.E. 120, 122 (1925).

25. *Walters v. St. Louis*, 347 U.S. 231, 237 (1954).

26. *Queenside Hills Realty Co. v. Saxl*, 328 U.S. 80 (1946); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Block v. Hirsch*, 256 U.S. 135 (1921).

27. 245 U.S. 60 (1917).

28. *Id.* at 74.

29. *Block v. Hirsch*, 256 U.S. 135, 156 (1921).

30. N.Y. City Administrative Code, § X 41-1.0.

Obviously, discrimination is not the sole cause of any one of the social evils listed. At the same time, it can scarcely be denied that the practice of discrimination is a contributing factor. Since the courts require only that the legislation bear a "substantial" relation to the public health, welfare, etc., the showing of a reasonable relation between the practice of discrimination and the social evils sought to be eliminated would seem to satisfy the due process requirements.

The Supreme Court has indicated what its attitude towards anti-discriminatory legislation, in general, might well be. In 1945, in *Railway Mail Ass'n v. Corsi*,³¹ the Court considered a labor union's violation of a New York statute³² which prohibited unions from excluding persons from membership solely on grounds of race, color, creed, or national origin. The appellant union argued that the statute violated due process, as an abridgement of the union's property rights and liberty of contract. The Court held that due process had been afforded the union, stating in the course of its opinion that "a judicial determination that such legislation violated the Fourteenth Amendment would be a distortion of the policy manifested in that amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color."³³ Although the issue of interference with private property rights was not so immediate or apparent as it would be in a case involving private housing, it is significant that the issue was raised before the Court and was disposed of by it.

Moreover, the proponents of such legislation can rely on the great leeway given to social legislation by the courts. In determining the constitutionality of a statute, the Supreme Court has stated that ". . . the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power."³⁴ On another occasion the Court declared that ". . . the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation. . . ."³⁵ Therefore, evidence of unconstitutionality must be clear and convincing before the court will set aside an act of the legislature.

The opponents of such a measure claim that the owner of property would be compelled to sell, rent or lease his property against his will. This is not the case. The statute operates only after the owner has indicated that he wishes to sell, rent or lease, and he may still refuse to deal with persons who are undesirable for reasons other than those listed in the statute. However, an owner putting his property on the market would not be allowed to discriminate solely on the basis of race, religion, color, or national origin. Although this does restrict the freedom of the private property owner, the only question the courts will ask is: Is it reasonable?

Another argument frequently raised against such legislation is the loss of

31. 326 U.S. 88 (1945).

32. N.Y. Civ. Rights Law § 43.

33. 326 U.S. at 93-94.

34. *Nebbia v. New York*, 291 U.S. 502, 537-38 (1934).

35. *Berman v. Parker*, 348 U.S. 26, 32 (1954).

property values occasioned by the entrance of minority groups into a segregated neighborhood. Obviously, where an owner sells his property to a member of a minority group, he personally suffers no pecuniary loss, since he has the right to obtain his asking price. Neighboring landowners, however, may in effect suffer depreciation in property values, as well as the owner who merely rents or leases his property. It must be recognized that the selling, renting or leasing of property is a valid legal use, and any damage to neighboring property values is not actionable.³⁶ Therefore, if the statute itself is a valid exercise of the police power, any incidental loss suffered in complying with it is *damnum absque injuria*. This was clearly pointed out by the New York Court of Appeals in considering zoning ordinances, the court declaring that "it is not an effective argument against these ordinances, if otherwise valid, that they limit the use and may depreciate the value of appellant's premises. That frequently is the effect of police regulation and the general welfare of the public is superior in importance to the pecuniary profits of the individual."³⁷ Moreover, in analyzing the reason for the drop in property values, it is apparent that it is caused by the very discrimination against which the statute is aimed. Once discrimination was overcome, and all neighborhoods were integrated, such property loss would no longer occur, since there would be no segregated areas to which to move, and property values would attain their true value.

It is further argued that it is wrong to make people associate socially with others when they do not wish to do so.³⁸ This, however, is clearly not the purpose of such legislation, just as social mixing is not the purpose of integrated schools. The purpose of the legislation is to provide adequate housing on an equal basis to all citizens, as the purpose of integrated schools is to provide equal educational facilities for all. Although greater contact between groups does necessarily result, no person is compelled to associate with any other on the social plane, to take him into his home, his club, or even his church.

It seems clear, therefore, that legislation proscribing discriminatory practices in the sale, rental, or leasing of all private housing would be a valid exercise of the state police power. Private property rights must, when necessary, yield to the public need, for ". . . government cannot exist if the citizen may at will use his property to the detriment of his fellows. . . . Equally fundamental with the private right is that of the public to regulate it in the common interest."³⁹ Of course, factors other than constitutionality must be considered in determining the need or wisdom of such legislation. That is the proper function of the state legislatures. However, if such legislation is carefully framed and adopted, it should be capable of withstanding constitutional attack.

State-Aided Private Housing

The first important existing legislation in the housing field was passed as a result of the *Stuyvesant Town* decision. When the New York Court of Appeals held that a private property owner receiving state aid could practice discrimina-

36. *Stratton v. Conway*, — Tenn. —, —, 301 S.W.2d 332, 333 (1957).

37. *Wulfsohn v. Burden*, 241 N.Y. 288, 302, 150 N.E. 120, 124 (1925).

38. *Avins, Trade Regulations*, 12 Rutgers L. Rev. 149, 157 (1957).

39. *Nebbia v. New York*, 291 U.S. 502, 523 (1934).

tion with impunity, it spurred the New York Legislature to action. In 1950 the equal right to publicly-aided housing was declared to be a civil right,⁴⁰ protected by the state constitution.⁴¹ The statute provided that any private owner who receives aid from the state in the way of tax exemption, or by the state's sale of land below cost, or the state's sale of land which it has obtained by condemnation proceedings, cannot discriminate in the rental or leasing of such property. A person injured by such action can bring an action for equitable relief, or sue for damages.⁴²

Although the statute has not yet been challenged in the courts, its validity does not need to rest on the police power issue. Since the state is under no duty to offer such aid, it would seem that as a condition to the granting of aid the state can exact any reasonable conditions to the acceptance of that aid. One condition is that the donee of the grant will not engage in discriminatory practices. The private owner is not compelled to accept the aid, but if he chooses to do so he must comply with the condition.

Federally-Aided Private Housing

In 1955 the New York anti-discrimination statute was amended to include, in the definition of "publicly-assisted housing," housing financed by loans guaranteed or insured by the federal government.⁴³ This amendment, known as the Metcalf-Baker law, is now being challenged on constitutional grounds, as an unconstitutional interference with the operation of the federal law, and as a denial of equal protection of the laws.⁴⁴

The federal government itself has set no policy requiring non-discrimination as a condition to the granting of FHA aid. Therefore the state law cannot be upheld on that ground. If the statute is valid, it must be as a proper exercise of the police power.

The first argument raised against the statute is that it interferes with the operation of the federal law, and that where the two collide, the federal law is supreme. However, for a federal law to invalidate a state law a clear conflict must be shown.⁴⁵ The federal statute makes no provision at all as to discrimination—therefore there is no express inconsistency. But, it has been argued,

40. N.Y. Civ. Rights Law §§ 18-a to 18-e.

41. N.Y. Const. art. I, § 11 provides: "No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state." In *Green v. New York*, 251 App. Div. 103, 110, 295 N.Y. Supp. 672, 674 (4th Dep't 1937), the court stated that ". . . 'civil rights' as distinguished from rights which are naturally inherent, are those defined and given by positive law enacted for the maintenance of government."

42. Equitable relief is obtained under N.Y. Executive Law § 297; punitive damages are recoverable under N.Y. Civ. Rights Law § 41, which also makes a violation of the statute a misdemeanor.

43. N.Y. Civ. Rights Law § 18-b; N.Y. Executive Law §§ 290, 292, 296.

44. The constitutionality of the Metcalf-Baker law was upheld in a recent lower court proceeding. *New York State Comm'n Against Discrimination v. Pelham Hall Apartments, Inc.*, 139 N.Y.L.J. No. 13, p. 13, col. 1 (Sup. Ct. Jan. 16, 1958). An appeal is expected.

45. *Sinnot v. Davenport*, 63 U.S. (22 How.) 227, 243 (1859).

the state is adding conditions to the granting of federal aid, and therefore in effect is hindering its operation. However, this is not the only example where state legislation might be said to condition federal aid. The state has building codes, fire laws and zoning regulations, which it can change at will, and which must be complied with in constructing and rehabilitating housing, whether built privately or with FHA aid. Clearly Congress did not intend that in providing such aid the states would be deprived of their traditional power to regulate the use of property within their boundaries, and that FHA insured housing would be exempt from state law.

A second argument advanced is more persuasive. As this Comment has shown, the state does have the power to adopt anti-discriminatory legislation controlling all private housing. However, in the exercise of that power the state must treat equally all property owners in the same category. Where a classification is made, it must be a reasonable one, and not arbitrary or capricious.⁴⁶ New York and New Jersey⁴⁷ have chosen to regulate discriminatory practices among private property owners receiving federal aid, but not other private owners. Is such a classification reasonable?

New York adopted the Metcalf-Baker law in light of the Federal Housing Act of 1954,⁴⁸ which provided for large-scale assistance to private owners in the rehabilitation of existing housing and the construction of new housing. Evidence was introduced before the New York Legislature showing that FHA insured housing previously constructed in New York City had been occupied on an almost completely segregated basis.⁴⁹ The proponents of the measure considered it to be only a first step in progress towards the elimination of discrimination in all housing, but reasoned that it would be easier to integrate in new and rehabilitated housing first, rather than to try to integrate all housing at once, particularly housing already occupied on a segregated basis.

It remains to be seen whether the courts will consider such reasons sound enough to support the classification made by the legislature, or whether the classification will be held to be a denial of equal protection of the laws. The Supreme Court has stated that "equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary."⁵⁰ It has also pointed out that a state is not ". . . prevented by the equal protection clause from confining its 'restrictions to those classes of cases where the need is deemed to be clearest.'"⁵¹

The classification and control of new and rehabilitated private housing apart from already built and occupied housing would seem to have a reasonable basis. As a practical matter, integrating new and rehabilitated housing is a much easier

46. *Nebbia v. New York*, 291 U.S. 502, 525 (1934).

47. N.J. Stat. Ann. 18:25-9.1 (Supp. 1957).

48. 68 Stat. 590 (codified in scattered sections of 12 U.S.C.).

49. 1955 N.Y. Legis. Ann. 274-76.

50. *Walters v. St. Louis*, 347 U.S. 231, 237 (1954).

51. *Skinner v. Oklahoma*, 316 U.S. 535, 540 (1942).

process than integrating already occupied housing. There is no prior pattern of segregation to overcome; no economic menace to the landlord by threats of moving on the part of tenants opposing the admittance of minority groups. However, the Metcalf-Baker law goes even further than this. It controls only that portion of new and rehabilitated housing insured by the FHA. Since the federal government sets down no requirement as to discrimination, it is difficult to see why the state should differentiate between housing insured by the federal government and housing insured by private insurers or not insured at all. It might be argued that the federal aid comes out of each taxpayer's pocket, and therefore the state has an interest in seeing that its citizens' money is not misused, but this would seem to be more properly the province of Congress.

Therefore, even though the state would seem to have the power to regulate private housing in general, the use of that power in the Metcalf-Baker law would seem to be somewhat arbitrary. Granting this element of arbitrariness, it is still difficult to predict that the statute will be held unconstitutional. Once the general power to regulate is found, the courts have looked with disfavor on invocations of the equal protection clause, requiring the statute to be "wholly arbitrary."⁵² Justice Holmes, rejecting such a claim, declared: "It is the usual last resort of constitutional arguments to point out shortcomings of this sort. But the answer is that the law does all that is needed when it does all that it can, indicates a policy, applies it to all within the lines, and seeks to bring within the lines all similarly situated so far and so fast as its means allow."⁵³

CONCLUSION

In the adoption of legislation—particularly social legislation fraught with highly emotional issues—other factors than constitutionality must be considered. Is such a law necessary? Is it wise at the present time, or will it only stir up tension? How is it to be made enforceable? Should a violation be a civil or penal offense, or both? Who shall administer the law? These are just some of the questions legislators must ask themselves in considering such legislation.

Those states which have already adopted legislation in the discrimination field have attempted to answer some of those questions. Generally, the administration of the statutes has been placed initially in the hands of an administrative body, rather than in the hands of the courts.⁵⁴ These administrative bodies attempt to stress the conciliatory rather than the penal approach to the problem, and seek voluntary compliance if a violation is found after a hearing on the validity of the charge made against the property owner.⁵⁵ Usually penal sanctions are also available, where conciliation fails.⁵⁶

52. See note 50 *supra*.

53. *Buck v. Bell*, 274 U.S. 200, 203 (1927).

54. In New York State the administrative body is the State Commission Against Discrimination (SCAD).

55. In New York the procedure is governed by N.Y. Executive Law § 297; judicial review is granted by § 298.

56. For example, N.Y. Executive Law § 299 provides that willful resistance or interference with the enforcement of the statute is a misdemeanor punishable by up to one year in jail, and/or a \$500 fine.