

Joint Memorandum

THE AMERICAN JEWISH COMMITTEE

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FROM: Sol Rabkin and Theodore Leskes

DATE: November 18, 1955

SUBJECT: Further developments in Castle Hill Beach Club, Inc. vs. Arbury

Digest: Supreme Court Justice Martin M. Frank denies a motion by the Castle Hill Beach Club, Inc. to vacate the cease-and-desist order issued by the New York State Commission Against Discrimination against the Club on the ground that after the order was signed, the original complainant, Mrs. Anita Brown, filed an action in the Municipal Court of the City of New York against Castle Hill Beach Club to recover damages for violation of the New York State Civil Rights Law barring discrimination in places of public accommodation.

This is a report on a new development in the case of Castle Hill Beach Club, Inc. vs. Arbury. Previous memoranda dated December 14, 1953, January 11, 1955 and July 15, 1955, reported the filing of the complaint, the public hearings, the cease-and-desist order of the New York State Commission Against Discrimination and the action of the N. Y. State Supreme Court in upholding that cease-and-desist order against the Beach Club which insisted that it was a "private club" not subject to the provisions of the Law Against Discrimination.

On July 21, 1955 a new development occurred. Following the July 11 order of the Supreme Court compelling compliance with the SCAD mandate, the original complainant, Mrs. Brown, began suit in the Municipal Court of the City of New York against the Castle Hill Beach Club to recover the sum of \$500 as a civil penalty for violation of the New York State Civil Rights Law, which authorizes both criminal prosecution and civil suit for damages for violation of the ban against discrimination in places of public accommodation.

The New York Law Against Discrimination which gives concurrent jurisdiction to the State Commission Against Discrimination over discrimination in places of public accommodation, contains specific language covering possible efforts by a person aggrieved to seek remedies with SCAD and by criminal or civil action. Section 300 of the New York State Executive Law reads as follows:

"CONSTRUCTION - The provisions of this article shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this article shall be deemed to repeal any of the provisions of the civil rights law or any other law of this state

relating to discrimination because of race, creed, color or national origin; but, as to acts declared unlawful by section two hundred ninety-six of this article, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. If such individual institutes any action based on such grievance without resorting to the procedure provided in this article, he may not subsequently resort to the procedure herein."

It would appear from this section that the Castle Hill Beach Club had an obvious remedy under Section 300 against Mrs. Brown's action for damages and could have moved to dismiss the Municipal Court action. The Club failed to follow this strategy but tried instead to use the commencement of the Municipal Court action for damages as an excuse to terminate the action between it and the State Commission Against Discrimination. The Castle Hill Beach Club contended that when Mrs. Brown began her suit in Municipal Court she ousted the Commission and the State Supreme Court from jurisdiction over the case because of Section 300 quoted above.

In the same motion the Castle Hill Beach Club, Inc. sought as an alternative remedy the revocation of the cease-and-desist order of the Commission and the enforcement order of the Court and the remission of the case to the State Commission, for the submission of additional evidence by the Club.

Justice Frank, after noting that the only additional evidence referred to in the Club's motion was the filing of the civil action in Municipal Court by Mrs. Brown, denied the Club's motion. He found that no useful purpose could be served by the remission of the case to the Commission to establish an admitted fact.

Discussing Section 300 of the Executive Law, the Court decided that "the statutory scheme in creating the Commission was to give to a person aggrieved the right of election to prosecute either pursuant to the Executive Law (the Law Against Discrimination) before the Commission or by a plenary civil or criminal action for a violation of the Civil Rights Law, but not both". He concluded, therefore, that the Section in question should be interpreted as meaning that during pendency of a proceeding before the Commission, that should be the exclusive remedy, and a final determination by the Commission barred resort to any other forum. He therefore denied the motion.

COMMENT. The action of the Castle Hill Beach Club in seeking to use the civil suit brought by the victimized person to undo what the State Commission Against Discrimination had done may well be an indication of the comparative effectiveness of the two procedures involved in this matter. Even though the Castle Hill Beach Club could obviously have brought about the immediate dismissal of the civil suit for damages under the New York Civil Rights Law because of the clear language of Section 300 of the Executive Law, it preferred to go to trial on the civil suit and chance a judgment against it of an amount up to \$500 in preference to a cease-and-desist order enforceable by contempt of court, the ultimate sanction involved in the proceedings before the State Commission Against Discrimination. It was willing to take a legal position that was most difficult to sustain in the face of the language of the statute, in an effort to end the involvement of the State Commission in the case.