

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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**CA 18-01380**

PRESENT: WHALEN, P.J., CENTRA, NEMOYER, CURRAN, AND WINSLOW, JJ.

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TEALYE CARRINGTON, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

NEW YORK STATE OFFICE FOR PEOPLE WITH  
DEVELOPMENTAL DISABILITIES, DEFENDANT-RESPONDENT.

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LEGAL SERVICES OF CENTRAL NEW YORK, INC., SYRACUSE (JAMES M. WILLIAMS  
OF COUNSEL), FOR PLAINTIFF-APPELLANT.

BARBARA D. UNDERWOOD, ATTORNEY GENERAL, ALBANY (PATRICK A. WOODS OF  
COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County  
(Deborah H. Karalunas, J.), entered October 4, 2017. The order  
granted defendant's pre-answer motion to dismiss the complaint.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for  
defendant's alleged violation of the Human Rights Law resulting from  
its denial of her employment application based solely on her previous  
criminal conviction (see Executive Law § 296 [15]). We reject  
plaintiff's contention that Supreme Court erred in granting  
defendant's pre-answer motion pursuant to CPLR 3211 (a) (5) and  
dismissing the complaint on the ground that it was time-barred by CPLR  
214 (2). "[D]efendant had the initial burden of establishing prima  
facie that the time in which to sue ha[d] expired . . . , and thus was  
required to establish . . . when . . . plaintiff's cause of action  
accrued" (*Wendover Fin. Servs. v Ridgeway*, 137 AD3d 1718, 1719 [4th  
Dept 2016] [internal quotation marks omitted]). Here, defendant  
demonstrated that the last discriminatory act set forth in the  
complaint occurred on August 30, 2013, and thus the cause of action  
accrued and the three-year statute of limitations for the Human Rights  
Law began to run on that date (see *State Div. of Human Rights v  
Burroughs Corp.*, 73 AD2d 801, 801 [4th Dept 1979], *affd* 52 NY2d 748  
[1980]; *New York State Div. of Human Rights v Folino*, 140 AD3d 1730,  
1730 [4th Dept 2016]; *Martinez-Tolentino v Buffalo State Coll.*, 277  
AD2d 899, 899 [4th Dept 2000]). Defendant further demonstrated that  
plaintiff did not file her complaint until March 10, 2017, i.e., over  
six months after the limitations period had expired.

Inasmuch as defendant met its burden, the burden shifted to

plaintiff to establish that an exception to the limitations period applies (see *Siegel v Wank*, 183 AD2d 158, 159 [3d Dept 1992]), and we conclude that plaintiff failed to meet that burden. Contrary to plaintiff's contention, the denial of an employment application is a single act rather than an ongoing policy of discrimination, and thus the continuing violation exception did not apply to toll the statute of limitations (see generally *Burroughs Corp.*, 73 AD2d at 801; *Martinez-Tolentino*, 277 AD2d at 899).

Entered: March 15, 2019

Mark W. Bennett  
Clerk of the Court