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Administrative Law—Right to Receive the Report of SLA Hearing Officer

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The Court of Appeals held that there is not a sufficiently close connection between the Authority and the City to deem it agent and principal. The Authority is a public benefit corporation, designed to function autonomously and free from the controls and restraints which hamper the conventional type of State board or department. On the authority of the *Benz* case, the Court declared that constitutional and legislative policy dictates that public authorities should be subjected only to those procedures which have been specifically mandated. A like result was reached in *Plumbing, etc. Contractors Association v. New York State Thruway Authority*,³⁵ in which case it was held that the Thruway was free from the requirements of the State Finance Law, a statute general in nature. The Public Authorities Law, which is the only specific statute dealing with these bodies, does not authorize the public to inspect the records of Triborough; therefore, the Legislature did not intend to grant the public such a right.

Chief Judge Desmond, who wrote for the majority in *Benz*, emphatically disagreed with the holding in the *N. Y. Post* case. He felt that, in applying the test stated in *Easley*, which found the Thruway Authority to be an arm or agency of the State, to the Triborough Authority, the Court should conclude that the Authority was an arm or agency of the City or, at least, a board acting on behalf of the City. Judge Fuld, in a separate dissenting opinion, points to the *Benz* case as authority for the "public office" character of Triborough.

The *Benz* case points up the public character of an authority; whereas, the *N. Y. Post* case emphasizes its private aspects. As a result of these decisions, the public corporation is put in the unique position of having all the advantages of government and none of the disadvantages of a private body. This presents a fertile area for sovereign irresponsibility.

F. P. M.

RIGHT TO RECEIVE THE REPORT OF SLA HEARING OFFICER

A tavern owner was charged with selling alcoholic beverages to a minor under eighteen years of age.³⁶ A hearing was subsequently held at which a deputy commissioner presided as the hearing officer.³⁷ At the close of the hearing, the attorney for the licensee requested a copy of the hearing officer's report, prior to action thereon by the State Liquor Authority, in order that he might have an opportunity to controvert the findings or conclusions in the report. This request was refused, and the Authority thereafter revoked the licensee's liquor permit. The licensee then instituted the present Article 78 proceeding,³⁸

35. 5 N.Y.2d 420, 185 N.Y.S.2d 534 (1959).

36. N.Y. Alcoholic Beverage Control Law § 65.

37. N.Y. Alcoholic Beverage Control Law § 119 (1, 2). (Providing the Liquor Authority with the authority to revoke licenses and providing a hearing before a hearing commissioner pursuant to final determination by the Authority.)

38. N.Y. Civ. Prac. Act § 1284 provides the court with the power to review any act or refusal to act of a body or officer exercising judicial, quasi-judicial, administrative or corporate functions, which involves an exercise of judgment or discretion.

Sorrentino v. State Liquor Authority,³⁹ and contended that the hearing officer's denial of his request for a copy of the report prior to determination by the State Liquor Authority violated due process. It was the defendant's contention that although he had been afforded a fair hearing, due process must at least require that a party be given such decisive findings as these in order to prepare argument before the final board of review.

The Appellate Division affirmed the court at Special Term annulling the suspension of the liquor license and relying on *O'Meally v. Rohan*.⁴⁰ The *O'Meally* decision followed the New Jersey case of *Mazza v. Cavichea*,⁴¹ both cases having analogous facts to the instant case. Those cases relied on due process considerations.

The Court of Appeals, in affirming the Appellate Division decision refused to base its decision on due process grounds. The Court stated that unlike New Jersey, New York has statutory and administrative rules regulating the conduct of the hearing and the status of the officer conducting it. In New York, broad discretionary powers are given to the hearing officer by statute,⁴² and in most instances the State Liquor Authority will adopt fully the report of the hearing officer, who has heard and evaluated the evidence.

The Court in the instant case recognizes that hearing officers of administrative agencies perform different functions. Where the hearing officer is given broad discretionary powers, the record of the hearing should be made available to the adverse litigant, but where a hearing officer does not submit conclusions and findings of law and fact and is not given the power to recommend that the charge be sustained or disallowed, then a copy of his report is not necessary. Therefore, the Court endeavors to adopt a reasonable procedure which coincides with the concepts of basic fairness, although the Court refuses to extend its holding and rely on the more drastic concept of constitutional fairness.⁴³

L. H. S.

INSURANCE REGULATION WITH RESPECT TO PREMIUM RATES FOR CREDIT LIFE
INSURANCE HELD VALID

The petitioners, two life insurance companies, brought this Article 78⁴⁴ proceeding to annul a regulation (No. 27A)⁴⁵ of the Superintendent of Insur-

39. 10 N.Y.2d 143, 218 N.Y.S.2d 635 (1961).

40. 286 App. Div. 872, 142 N.Y.S.2d 239 (2d Dep't 1955).

41. 15 N.J. 498, 105 A.2d 545 (1955).

42. Rules of State Liquor Authority, Rule 2—Revocation Hearings (The rule allows the hearing commissioner to hear oral argument and grant permission to file briefs. The hearing commissioner is also governed by the rules of evidence and he may curtail the testimony of any witness which he judges to be merely cumulative.)

43. *Simmons v. United States*, 348 U.S. 397 (1955).

44. N.Y. Civ. Prac. Act § 1284.

45. In addition to general rules for filing and approval, subdivision A of section 7 of the regulations sets forth premium rates, later referred to as 'standards' for premium rates, based on studies by the Insurance Department, which, the section declares, 'will be considered adequate and not unreasonable in relation to the benefits provided.' *Old Republic Life Insurance Co. v. Wikler*, 9 N.Y.2d 524, 528-529, 215 N.Y.S.2d 481, 483 (1961).