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Administrative Law—Insurance Regulation with Respect to Premium Rates for Credit Life Insurance Held Valid

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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).

ance with respect to premium rates for credit life insurance, promulgated pursuant to Sections 154 and 204 of the Insurance Law.⁴⁶ The Court at Special Term granted the application and annulled the regulation. The Appellate Division unanimously reversed and dismissed the petition.⁴⁷

The petitioner contends that the Superintendent has no statutory authority to promulgate industry-wide premium rates for credit life insurance, and further, that even if Sections 154 and 204⁴⁸ be construed to authorize the Superintendent to issue Regulation 27A, they are so vague and inadequate as to amount to an unconstitutional delegation of legislative power.

It is to be noted that the Superintendent, three months after the present proceeding was commenced, amended Regulation 27A by adding a new subdivision C⁴⁹ to its Section 7 to permit insurers to establish independently factors or conditions to justify higher rates than those suggested by the Superintendent in subdivision A of Section 7.⁵⁰

The Court of Appeals, in *Old Republic Ins. Co. v. Wickler*,⁵¹ after examining the Superintendent's statutory authority to disapprove premium rates which are "unreasonable in relation to the benefits provided" stated: "Whether or not this permits him to make or fix rates, it is well within his statutory power to suggest reasonable ones (Reg. 27A, § 7, subd. A) as a sort of guide or 'bench mark' for insurers, while affording them freedom to show that higher rates would not be unreasonable (§ 7, subd. C)."⁵² In support of their conclusion, the Court refers to a number of other instances where they have been called upon to uphold special rules made pursuant to broad statutory powers granted administrative officials.⁵³ A notable case was that of *Ross v. Macduff*⁵⁴

46. N.Y. Insur. Law § 154(7): .

Without limiting his other powers and duties under this section, the superintendent shall not approve any such forms or premium rates if such premium rates are unreasonable in relation to the benefits provided. . . . The superintendent shall from time to time prescribe, in writing, official regulations. . . .

N.Y. Insur. Law § 204(1)c:

The superintendent shall prescribe from time to time in writing, official regulations determining the procedures, terms and conditions applicable to a policy issued pursuant to this paragraph to the trustee or trustees or agent designated by two or more creditors or vendors . . . The superintendent shall not approve any such forms if the premium charged is unreasonable in relation to the benefits provided.

47. *Old Republic Life Insurance Co. v. Wikler*, 12 A.D.2d 310, 211 N.Y.S.2d 79 (3d Dep't 1961).

48. *Supra* note 46.

49. Nothing herein, however, shall preclude an insurer from filing for the approval of the Superintendent of Insurance rates or identifiable charges which exceed the standards in A and B, above, provided such insurer shall demonstrate to the Superintendent that the filing conforms to the standards prescribed in subsection 7 of Section 154 of the Insurance Law.

50. *Supra* note 45.

51. 9 N.Y.2d 524, 215 N.Y.S.2d 481 (1961).

52. *Id.* at 530, 215 N.Y.S.2d at 484.

53. See, e.g., *Gair v. Peck*, 6 N.Y.2d 97, 188 N.Y.S.2d 491 (1959); *Ross v. Macduff*, 309 N.Y. 56, 127 N.E.2d 806 (1955); *Humphrey v. State Ins. Fund*, 298 N.Y. 327, 331, 83 N.E.2d 539, 540 (1949); *Marburg v. Cole*, 286 N.Y. 202, 36 N.E.2d 113, 136 A.L.R. 734 (1941).

54. *Supra* note 53.

where this Court upheld and applied a "point system" adopted by the Bureau of Motor Vehicles to determine whether an operator was a "persistent violator" within the meaning of the statute for purposes of license suspension or revocation. The Superintendent, the Court concludes, is merely declaring "in advance that certain rates are so plainly reasonable 'in relation to the benefits provided' (§ 154, subd. 7) as to require no further detailed consideration by the Superintendent in the ordinary rate application."⁵⁵ The declaration of rates, does not, as the petitioners contend, shift the burden of proof with respect to reasonableness of rates from the Superintendent to the insurer, for, as the Court observes, "with or without the regulation, the insurer must establish by ordinary principles of administrative law that its filing should be approved. . . ."⁵⁶

The Court finds little merit in the petitioner's further argument that Sections 154 and 204 represent an unconstitutional delegation of legislative power. "The standards laid down in these statutes, that the premium rates approved be not 'unreasonable in relation to the benefits provided,' are fully as specific and clear as other statutory standards which this court has upheld."⁵⁷ In *Mir. of City Utica v. Water Control Bd.*,⁵⁸ this Court, after first recognizing that the Legislature, when conferring discretion upon administrative agency, must limit the discretion and provide standards to govern its exercise stated: "It is enough if the Legislature lays down 'an intelligible principle,' specifying the standards or guides in as detached a fashion as is reasonably practicable in the light of the complexities of the particular area to be regulated."⁵⁹

Bd.

POWER OF ATTORNEY GENERAL UNDER MARTIN ACT EXTENDS TO INVESTIGATION OF INVESTMENT COMPANY WHICH PUBLISHED QUESTIONABLE BOOK

Article 23-A of the General Business Law, titled "Fraudulent Practices in Respect to Stocks, Bonds, and Other Securities," otherwise known as the Martin Act or Blue Sky Law, authorizes the Attorney General to conduct an investigation and examine persons and records, both generally and preliminary to an action,⁶⁰ whenever any such person engages in any practice, transaction, or course of business relating to investment advice, which is believed to be fraudulent and deemed a subject of inquiry to protect the public.

In *In re Attorney General*,⁶¹ an ex parte order was issued requiring one Nicholas Darvas, author of a best-seller, "How I Made \$2,000,000 in the Stock Market," the American Research Council, the publisher, and Bernard Mazel, president of the company, to produce papers and records concerning alleged

55. *Old Republic Life Insurance Co. v. Wikler*, supra note 51 at 531, 215 N.Y.S.2d at 485.

56. *Ibid.*

57. *Old Republic Life Insurance Co. v. Wikler*, supra note 51 at 532, 215 N.Y.S.2d at 486.

58. 5 N.Y.2d 164, 182 N.Y.S.2d 584 (1959).

59. *Id.* at 169, 182 N.Y.S.2d at 587.

60. N.Y. Gen. Bus. Law §§ 352, 354.

61. 10 N.Y.2d 108, 217 N.Y.S.2d 603 (1961).