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Administrative Law—Certain Situations Require Agencies to Grant Full Hearing

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effect is to control a business which provides a market for stolen property." This control is achieved by granting licenses to individuals who are not likely to receive stolen property and refusing to grant licenses to those people that the commissioner decides are prone to acting as receivers of stolen property.

It seems clear that the majority opinion is more likely to secure effective and harmonious business regulation by vesting the power to regulate different aspects of trade in those agencies that are best qualified to handle them. The Commissioner of Licenses may have been well meaning in his refusal to issue a license in order to protect the neighborhood, however he would have been powerless to protect the same area from a glue factory or a slaughterhouse because they do not require a license. It follows that the holding of *Picone v. Commissioner of Licenses* is applicable, "As the commissioner does not deny that petitioner is a fit and proper person to operate a junk (boat), it follows that his action in refusing to grant a license to the appellant was, however well intentioned, in a legal sense an abuse of his decretion."[31]

CERTAIN SITUATIONS REQUIRE AGENCIES TO GRANT FULL HEARING

The State Residential Rent Law[32] was amended in 1957[33] to make it mandatory for the Rent Administrator to use a sales price as the valuation base in a rent adjustment proceeding, when certain conditions exist.[34] The conditions are: (1) The sale must be bona fide and within the period from March 15, 1953 to the time of filing the application; (2) The transaction must be at arm's length, on normal financing terms at a readily ascertainable price; (3) It must be unaffected by special circumstances such as forced sale, exchange of property, package deal, work sale, or sale to a cooperative.[35] In *Realty Agency, Inc. v. Weaver*,[36] the Court of Appeals considered a case where a petition asking that the sales price be used as opposed to assessed valuation was denied by the Rent Administrator based upon his determination that the sale in question was not an "arm's length" transaction and was affected by special circumstances. The facts show that the stockholders of petitioner's principal held a 35 per cent interest in the operating profits and proceeds of sale of the property purchased. It is upon this ground, after the normal routine investigation, no hearing being granted to the petitioner, that the Administrator denied the petition for rent increase sufficient to allow a 6 per cent net annual return on the basis of the purchase price. The Court reversed the decision of the Appellate Division[37] which upheld the Rent Administrator's action. The Court decided that on the face of the record there was no substantial evidence to support the Administrator's finding that the consumated bargain was

31. 241 N.Y. 157, 162, 149 N.E. 336, 341 (1925).
32. N.Y. Sess. Laws, 1946 ch. 274 et seq.
33. N.Y. Sess. Laws, 1957 ch. 755, § 4(4)(a)(1).
34. Ackerman v. Weaver, 6 N.Y.2d 283, 189 N.Y.S.2d 646 (1959).
35. Supra note 33.
36. 7 N.Y.2d 249, 196 N.Y.S.2d 953 (1959).
37. 8 A.D.2d 773, 186 N.Y.S.2d 428 (1st Dep't 1959).

other than an arm's length transaction. It further decided that the parties to the sale appeared to act as adverse parties, standing upon their respective rights and neither under the other's control. The record did not show that the seller sold for less than the fair market value of the property. The Court also decided that the term "special circumstances" must be measured by the doctrine of *ejusdem generis*. The specific words which follow the general term "special circumstances" reflect a type of circumstance where the price yields a distorted reflection of value, and the general term must be interpreted to encompass and be circumscribed by all of the same type of circumstances. No such distortion appeared on the record.

Before 1957, the Rent Administrator had discretion as to the basis for valuation to be used and his discretion would be honored provided it rested on sound considerations in fact and law.[38] It has been recognized that the findings or determinations of administrative bodies, supported by substantial evidence and being neither unreasonable, arbitrary nor capricious, may not be disturbed by the courts.[39] The few cases that have been decided on this matter since the 1957 amendment do not indicate a change in the respect which had been accorded the Administrator's determination. Of course, the Administrator no longer has discretion to fix the valuation basis but must use sales price if the sale fulfills the conditions in the statute. Whether the sale fulfills the conditions in the statute is, however, still an administrative determination. One case said that the Administrator's action was illegal, unreasonable and arbitrary, in refusing to accept sales price as the valuation basis and in denying a hearing or examination of the facts which the petitioner attempted to adduce as a basis for its requested increase.[40] Later, it was held that it is within the sole discretion of the Rent Administrator to determine in each case whether the transaction is a package deal within the intention of the statute.[41] As late as December, 1959, a Supreme Court case held that there is no authority making it mandatory that the Rent Administrator grant a hearing. It is within his discretion. It further said that sometimes questions of fact may arise that cannot be resolved without a hearing. If there is ample basis in the record for the Administrator's determination, it will not be upset as arbitrary or capricious.[42]

The Court of Appeals in the instant case follows the previously mentioned cases. The Court holds that the refusal by the Administrator to examine the preferred evidence of the petitioner, under the facts of this case was arbitrary.

38. Kaufman v. Abrams, — Misc. —, 141 N.Y.S.2d 716 (Sup. Ct. 1955), aff'd 286 App. Div. 998, 145 N.Y.S.2d 310 (1st Dep't 1955).
39. Staten Island Edison Corp. v. Maltbie, 296 N.Y. 374, 73 N.E.2d 705 (1947); People ex rel. Consolidated Water Co. of Utica v. Maltbie, 275 N.Y. 357, 9 N.E.2d 961 (1937).
40. Management Holding Corp. v. Weaver, 10 Misc. 2d 1000, 169 N.Y.S.2d 763 (Sup. Ct. 1957).
41. Halperin v. Caputa, 21 Misc. 2d 413, 194 N.Y.S.2d 414 (Sup. Ct. 1959).
42. Kellar v. Herman, 20 Misc. 2d 842, 195 N.Y.S.2d 489 (Sup. Ct. 1959).

It interprets the statute as requiring the Administrator to regard all relevant and nonrefuted objective facts and to hold hearings and make inquiries when warranted by the facts in light of the standards of Section 4 before reaching his determination. This decision cannot be interpreted as requiring a standard for determination different from one resting on sound considerations in fact and law,[43] or one, substantially supported by the evidence.[44]

TENDENCY OF COURT TO MODIFY ADMINISTRATIVE PUNISHMENT

The petitioner, an employee of the New York City Transit Authority for over twenty years, was charged by the Authority with stealing several fares. After a hearing before the Authority, in which she was represented by counsel and testified in her own behalf, the hearing officer sustained the charges. Upon her dismissal by the Authority, she brought an Article 78[45] proceeding to have this determination reviewed by the courts. The Appellate Division[46] modified the discipline from outright dismissal to a six month suspension. The Court of Appeals, in *Mitthauer v. Patterson*,[47] by a 5-2 decision, affirmed the Appellate Division.

> Section 1296 of the Civil Practice Act provides: "In a proceeding under this article, the questions involving the merits to be determined upon the hearing are the following only:
> 5-(a). Whether the respondent abused his discretion in imposing the measure of punishment or penalty or discipline involved in the determination."

There is little or no doubting the fact that subdivision 5-(a) was added in 1955 to overrule cases which held that no judicial review could be had of the measure of punishment imposed by administrative agencies acting within their powers.[48]

The first issue faced by the Court of Appeals was whether subdivision 5-(a) should apply at all to this case. In 1957 this subdivision had been interpreted by the Appellate Division in *Stolz v. Board of Regents* as follows: " . . . the statute authorizes us to set aside a determination by an administrative agency, only if the measure of punishment or discipline is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness."[49] The Transit Authority argued that the dismissal of an employee who has stolen her employer's property does not shock anyone, and that the Appellate Division abused its discretion in mitigating the punishment. The Court of Appeals agreed that the evidence supported the finding of guilt and

43. Supra note 38.
44. Supra note 39.
45. N.Y. Civ. Prac. Act Article 78 is entitled "Proceeding Against A Body Or Officer" and sets forth the procedure under which the actions of a governmental agency can be reviewed by the courts.
46. 8 A.D.2d 953, 190 N.Y.S.2d 431 (2d Dep't 1959).
47. 8 N.Y.2d 37, 201 N.Y.S.2d 321 (1960).
48. See Barsky v. Board of Regents, 305 N.Y. 89, 111 N.E.2d 222 (1953).
49. 4 A.D.2d 361, 364, 165 N.Y.S.2d 179, 182 (3d Dep't 1957).