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ADMINISTRATIVE LAW

New Findings Based on Annulled Proceedings

In *Fink v. Cole*,¹ petitioner sought, under the Civil Practice Act, Article 78, to have reviewed and set aside a denial, by the State Racing Commission, of his application for a horse racing license. Petitioner contended that the denial was based upon findings in a prior proceeding before the Commission (in which the petitioner's first application had been denied), a determination which had been annulled on the grounds that the hearing board had been functioning under an unconstitutional statute.² Petitioner further claimed that the second denial of his application was made without affording him a hearing and that no charges or opinion were expressed by the Commission.

Since the annulment of the first proceedings the statute under which the Commission is to operate has been amended to provide that the Commission may grant or deny licenses in certain defined factual situations and provides for notification to the applicant of a denial.³ The amended statute does not provide for a hearing and under such circumstances there is no statutory or implied requirement for a hearing.⁴ The Court, reversing the Appellate Division,⁵ (5-1) that the denial was proper and that there were no prejudicial errors to the petitioner.

The purpose of review in cases of this sort is to determine whether the Commission has acted in an arbitrary or capricious manner.⁶ If there are reasonable grounds for the denial it cannot be set aside by the courts.⁷ The Court agreed

1. 1 N. Y. 2d 48, 133 N. E. 2d 691 (1956).

2. *Fink v. Cole*, 302 N. Y. 216, 97 N. E. 2d 873 (1951), held that L. 1926, c. 440, §9-b, as added by L. 1934, c. 310, §5, as amended, was unconstitutional because of an improper delegation of licensing power and a lack of proper guides and standards.

3. STATE RACING COMMISSION ACT §9-b; 2. If the state racing commission shall find that the financial responsibility, experience, character and general fitness of the applicant are such that the participation of such person will be consistent . . . and with the best interests of racing . . . ; it shall thereupon grant a license. If the commission shall find that the applicant fails to meet any of the said conditions, it shall not grant a license and it shall notify the applicant of the denial. The commission may refuse to issue or renew a license, . . . if . . . the applicant . . . is consorting or associating with or has consorted or associated with bookmakers, touts . . . or has himself engaged in similar pursuits

4. Cf. *Matter of Guardian Life Ins. Co. v. Bohlinger*, 308 N. Y. 174, 124 N. E. 2d 110 (1954), motion for reargument denied, 308 N. Y. 810, 125 N. E. 2d 867 (1954), 5 BUFFALO L. REV. 224 (1956). The Court concluded that, ". . . in expressly providing for review in some sections of the Insurance Law and making up provision . . . in other sections the legislature followed a consistent and purposeful pattern." In the State Racing Commission Act §9-b, subd. 2, the legislature does not provide for a hearing; whereas in §9-b, subd. 3, a hearing is provided in respect to a revocation of an existing license.

5. *Fink v. Cole*, 286 App. Div. 73, 140 N. Y. S. 2d 708 (1st Dep't 1955).

6. *Kaplan v. O'Connell*, 281 App. Div. 46, 117 N. Y. S. 2d 410 (1st Dep't 1952), *aff'd.*, 305 N. Y. 850, 114 N. E. 2d 42 (1953).

7. *Small v. Moss*, 277 N. Y. 501, 14 N. E. 2d 808 (1938).

that the Commission, operating under the new statute, could not reaffirm the determination of the annulled proceedings but decided that all information available, including the findings of the annulled proceeding, could have been considered by the Commission and were reviewable by the Court.⁸ As to the failure of the Commission to properly notify the petitioner as required by the amended statute,⁹ the Court held that such failure was not so prejudicial as to demand reconsideration and reaffirmation by the Commission for a valid denial. An administrative denial unaccompanied by specific factual findings does not satisfy the statute in most cases;¹⁰ however, in the present case the petitioner was adequately represented by counsel before the Commission in the annulled proceedings and the Court deemed this sufficient notification of the Commission's grounds for denial.

The Court did not feel it was impeded in its review by the general character of the denial by the Commission¹¹ and seemed reluctant to find the refusal arbitrary even though there had not been strict compliance by the Commission with the amended statute. While the Court did not demand literal compliance, it felt that the safeguards of the statute were preserved to the petitioner in the instant case. A dangerous precedent has not been set in view of the statement of the Court that in most cases of an administrative denial unaccompanied by specific factual findings stricter compliance would be required.¹²

Review of Administrative Determination

In view of a serious post-war housing shortage, the legislature in 1946 established the Temporary State Housing Rent Commission in the interests of public health, safety, and general welfare to provide regulations to assure the maintenance of "the same . . . essential services . . ." to tenants as they enjoyed before the bill became effective.¹³

In *First Terrace Gardens, Inc. v. McGoldrick*¹⁴ the Court held that the evidence sustained a determination by the Rent Administrator that tenants of a

8. *People ex rel. Empire Trotting Club v. State Racing Comm.*, 190 N. Y. 31, 82 N. E. 723, (1907); *Grannan v. Westchester Racing Ass'n.*, 153 N. Y. 449, 47 N. E. 896 (1897); *Agolia v. Mulrooney*, 259 N. Y. 462, 182 N. E. 84 (1922).

9. See text of Act at note 3, *supra*.

10. *Perpente v. Moss*, 293 N. Y. 325, 56 N. E. 2d 726 (1944); In *Scudder v. O'Connell*, 272 App. Div. 251, 70 N. Y. S. 2d 607 (1st Dep't 1947), where the State Liquor Authority denied reconsideration of its denial of an application for a license on facts and factors that were not disclosed to the petitioner, it was noted: ". . . (I)t ought not to be necessary for an applicant to start a proceeding under Article 78 of the Civil Practice Act in order to learn why he has been turned down."

11. *Barry v. O'Connell*, 303 N. Y. 46, 100 N. E. 2d 127 (1951); *Newbrand v. City of Yonkers*, 285 N. Y. 164, 33 N. E. 2d 75 (1941).

12. See note 10, *supra*.

13. N. Y. Sess. Laws 1946, c. 274 §4(5).

14. 1. N. Y. 2d 1, 132 N. E. 2d 887 (1956).