Buffalo Law Review

Volume 6 | Number 2 Article 6

1-1-1957

Administrative Law—Review—Statute of Limitations

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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 Commission[11] 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); *Agoglia 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).

large group of apartment buildings would be deprived of essential services to a substantial extent if the landlord's proposed conversions were approved. Among the requested alterations were the changing of elevators from manual to automatic operation, and elimination of separate lobbies from each adjoining building, substituting therefor two centralized lobbies with corridors affording access to outlying buildings. The Administrator determined that personal protection of the tenants would be sacrificed by such a change and that a compromise protection plan submitted by the owner was insufficient to afford the same protection from intruders now assured by the physical presence of elevator operators.

The regulating powers of the Commission were early reasoned to be administrative in nature[15] and as such they involve an exercise of judgment or discretion which is reviewable.[16] However, the Court will refuse to upset a determination of an administrative body if the order has warrant in the record and a reasonable basis in law.[17] The issue then is whether or not the determination was arbitrary, whimsical, or capricious.[18] The dissent adopted the minority opinion of the Appellate Division that in view of previous lease reservations the owner had secured a right to certain conversions and that it became an unreasonable denial of fundamental property rights for the commission to disallow the request unconditionally.[19]

Finding the determination of the administrative body to be not wholly unwarranted it was incumbent upon the Court to sustain it. The dissent here would require a departure from the settled law[20] by substituting its judgment for that of an administrative body, requiring the administrator to reconsider a determination which they did not hold to be originally arbitrary or capricious.

Review—Statute of Limitations

A proceeding under Article 78 may be brought to compel the performance of a duty specifically enjoined by law[21] or to review a determination.[22] Article 78

15. *Longo v. Tauriello,* 201 Misc. 35, 107 N. Y. S. 2d 361 (Sup. Ct. 1951).
16. N. Y. CIV. PRAC. ACT. art. 78, §§1283 et seq.
17. *Mounting & Finishing Co., Inc. v. McGoldrick,* 294 N. Y. 104, 60 N. E. 2d 825 (1945).
18. *Stern v. McCaffery,* 279 App. Div. 461, 110 N. Y. S. 2d 705 (1st Dep't 1952), *aff'd.,* 304 N. Y. 828, 109 N. E. 2d 611 (1952).
19. *First Terrace Gardens, Inc. v. McGoldrick,* 285 App. Div. 1126, 140 N. Y. S. 2d 447 (1st Dep't 1955).
20. *Marbury v. Cole,* 286 N. Y. 202, 36 N. E. 2d 113 (1941); see note 18 *supra.*
21. N. Y. CIV. PRAC. ACT §1284 (3). The expression "to compel performance of a duty specifically enjoined by law" refers to all other relief heretofore available in a mandamus proceeding.
22. N. Y. CIV. PRAC. ACT §1284(2). The expression "to review a determination" refers to relief heretofore available in certiorari or a mandamus proceeding for the review of any act . . . of a body . . . exercising . . . administrative . . . functions, which involves an exercise of judgment . . . .