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Administrative Law—Retroactive Application of Administrative Order

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appearance of same." Five registered optometrists brought a declaratory judgment action to have the above rule invalidated on the principle ground that the prohibition of the use of any illuminated signs was arbitrary and unreasonable since not every such sign could be said to constitute unprofessional advertising.

Admitting that the rule forbade the use of any illuminated sign advertising, the majority of the Appellate Division,[11] affirming a referee's decision for the defendants, held there was adequate proof that it was the will of the majority of the optometry profession that such advertising be forbidden and therefore it was not for the court to rewrite or strike down the rule. Justice Halpern, dissenting in part, felt that a construction of the rule was possible whereby the word "illuminated" could derive its meaning from the words accompanying it. Thus only large, glaring and/or flickering illuminated signs were forbidden. If, however, the reach of the regulation precluded the use of any illuminated signs, then his position was that the Board had exceeded its authority since there is no question that the Board's rule-making power is limited to the prevention of unprofessional conduct and it may not ban proper and improper conduct indiscriminately.[12] Certainly not every illuminated sign was necesarily improper.

While the appeal was pending in the Court of Appeals, the aforementioned rule was amended to permit the use of an illuminated sign setting forth the name of the individual and accompanied by the word "optometrist." Because it is established that the law as it exists at the time of the decision controls,[13] the issue raised by Justice Halpern was rendered moot and the Court had no difficulty holding the amended rule reasonable and valid.

Retroactive Application Of Administrative Order

A landlord undertook and completed a capital improvement pursuant to and in reliance upon a Rent Administrator's Schedule of Rental Values. By it he was entitled to, and was granted, a flat sum per unit rent increase. A subsequent revision of the schedule provided for a new basis of increase "In the future . . . ." The Rent Administrator modified the prior rent increase to conform with the subsequent schedule.

In *Alamac Estates v. McGoldrick*,[14] the Court of Appeals reversed the order

11. 2 A.D.2d 179, 153 N.Y.S.2d 397 (3rd Dep't 1956).
12. Dubin v. Board of Regents of University of State of New York, 1 N.Y.2d 58, 150 N.Y.S.2d 183 (1956); Cherry v. Board of Regents of University of State of New York, 289 N.Y. 148, 44 N.E.2d 405 (1942).
13. Black River Regulating District v. Adirondack League Club, 307 N.Y. 475, 121 N.E.2d 428 (1954); Gallewski v. Hentz & Co., 301 N.Y. 164, 93 N.E.2d 620 (1950); Boardwalk & Seashore Corp. v. Murdock, 286 N.Y. 494, 36 N.E.2d 678 (1941).
14. 2 N.Y.2d 87, 156 N.Y.S.2d 853 (1956).

of the Appellate Division[15] and the Special Term and granted the application of the landlord to set aside the modification and reinstate the original increase.

The State Rent Administrator has the power to make and carry out rules and regulations to effectuate the duty imposed upon him by law.[16] Being administrative in nature his orders necessarily involve an exercise of discretion,[17] and the court will refuse to upset them unless clearly unreasonable, or abusive of the discretion.[18] Acts of administrators having the force and character of legislation are subject to the same tests of validity and construction as are statutes.[19] The repeal or amendment of a statute cannot have the effect of extinguishing an existing indebtedness acquired under the former law.[20] Such acts should be construed prospectively.[21]

The act of the administrator in giving retroactive application to his later order in spite of established interpretive law, added to the fact that the order itself called for prospective application in its own words was clearly unreasonable and an abuse of discretion.

Denial Of Certificate Of Eviction—Bad Faith

In *Friedman v. Weaver*[22] the Court reinstated an order of the State Rent Administrator which had denied landlords a certificate of eviction on grounds that application for such certificate had not been made in good faith nor had an immediate and compelling necessity been shown.

While renting a first floor apartment from landlords, tenant worked for them as a resident superintendent. Although tenant was subsequently discharged as superintendent, he continued to rent the apartment and was still a tenant within the meaning of the Rent and Eviction Regulations[23] and subject to its protection. Therefore he could only be evicted upon the finding of the State Rent Administrator that a petition for eviction applied for by landlords was made in

15. 286 App. Div. 1074, 146 N.Y.S.2d 672 (1st Dep't 1955).
16. EMERGENCY HOUSING RENT CONTROL LAW, 2 MCKINNEY'S UNCONSOLIDATED LAWS §8581; 755 Third Ave. Realty Corp. v. Lustig, 1 A.D.2d 348, 150 N.Y.S.2d 73 (1st Dep't 1956), *aff'd*, 1 N.Y.2d 833, 153 N.Y.S.2d 217 (1956).
17. N.Y. CIV. PRAC. ACT §1283.
18. Stern v. McCaferry, 279 App. Div. 461, 110 N.Y.S.2d 705 (1st Dep't 1942), *aff'd*, 304 N.Y. 828, 109 N.E.2d 61 (1952).
19. Arizona Grocery Co. v. Atchison, T.&S.F.R. Co., 284 U.S. 370 (1932).
20. Kornbluth v. Reavy, 261 App. Div. 60, 24 N.Y.S.2d 514 (3rd Dep't 1941); Knickerbrocker Village v. Birnbaum, 191 Misc. 874, 78 N.Y.S.2d 825 (Munic. Ct. 1948).
21. Addiss v. Selig, 264 N.Y. 274, 109 N.E. 490 (1934); Feiber Realty Corp. v. Abel, 265 N.Y. 94, 191 N.E. 847 (1956).
22. Friedman v. Weaver, 3 N.Y.2d 123, 164 N.Y.S.2d 404 (1957).
23. RENT AND EVICTION REGULATIONS §2(7) (1953).