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Administrative Law—Denial of Certificate of Eviction—Bad Faith

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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).

good faith and there was an immediate and compelling necessity.[24] Landlords applied for a certificate of eviction on grounds that the apartment was needed for a resident superintendent. The State Rent Administrator ruled that the landlords had failed to fulfill the requirements of good faith and necessity, because a resident superintendent was not required by any law, the action was brought only after tenant complained about the apartment service, and the landlords did not place such needed superintendent in other vacant apartments.

A Court may not overrule the judgment of an administrator when there was a reasonable basis for such judgment.[25] From the facts it is evident that a reasonable basis for such judgment did exist. The Court was justified, therefore, in overruling the lower court and upholding the finding of the State Rent Administrator.

Timely Proceedings Under Article 78

A recurring problem in proceedings under Article 78 of the Civil Practice Act to review action by administrative or corporate bodies is the question of the timeliness of the proceedings. Inherent in this problem is the difficulty of ascertaining the nature of the determination to be reviewed.[26] Section 1286 provides that a proceeding under Article 78 to review a discretionary determination,[27] or to compel performance of a duty mandated by law,[28] must be brought within four months after the determination becomes final and binding, or, in the case of a demand for action in accordance with law, the time begins to run as of the date of the refusal of such demand.

In *Colodney v. New York Coffee & Sugar Exchange*,[29] petitioners applied for a review of action by the respondent's board of managers censuring and fining petitioners for conduct unbecoming members of the exchange. The proceeding was instituted within four months following the board's refusal of petitioners' demand for performance of its alleged duty, but after four months had expired from the date of the determination by the board. The Court of Appeals, Per Curiam, with one judge dissenting, affirmed the Appellate Division's reversal of the trial court,[30]

24. Levine v. Abrams, 1 A.D.2d 213, 149 N.Y.S.2d 168 (1st Dep't 1956).
25. Bromberg v. McGoldrick, 281 App. Div. 1038, 121 N.Y.S.2d 367 (2d Dep't 1953), *aff'd*, 306 N.Y. 690, 117 N.E.2d 638 (1954).
26. Foy v. Brennan, 285 App. Div. 669, 140 N.Y.S.2d 132 (1st Dep't 1955).
27. N.Y. CIV. PRAC. ACT §1284(2). The expression "to review a determination" refers to relief heretofore available in a certiorari or a mandamus proceeding for the review of any act or refusal to act of any body exercising administrative or corporate functions, which involves an exercise of judgment or discretion.
28. 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.
29. 2 N.Y.2d 149, 157 N.Y.S.2d 573 (1956).
30. 1 A.D.2d 998, 151 N.Y.S.2d 705 (1st Dep't 1956).