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Administrative Law—Timely Proceedings Under Article 78

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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).

and held that the action was barred by section 1286 as untimely and therefore respondent's motion to dismiss should have been granted.

The trial court took the position that the remedy sought was historically that of mandamus and since the Legislature, in enacting Article 78, had not intended to change the substantive law with respect to this remedy, the time limitation did not begin to run until the respondent's refusal to comply with petitioners' demand.³¹ If such a view were upheld, it would seem to render ineffective the desire of the Legislature to remove the technical distinctions then existent in the writs of certiorari, mandamus and prohibition.³²

The Court of Appeals held that the determination involved solely a juxtaposition of the exchange's standards with the conduct of the petitioners, and as such, was clearly a matter of discretion and judgment within section 1284(2).

The dissent took the position that the petitioners had been denied due process in their hearing before the exchange's business conduct committee and thus any action taken by the respondent's board of managers was without jurisdiction and void. Under this view the remedy sought was to compel performance of a legal duty within section 1284(3) and therefore timely.³³

The case represents an admonition to lawyers not to rely on their own views of the interpretation to be given to a potential review. By filing a petition which would be within either provision of section 1286, the attorney is assured his client will not fall victim to the infirmity exemplified by the instant case.

31. 1 Misc.2d 643, 148 N.Y.S.2d 601 (Sup. Ct. 1956).

32. *Newbrand v. City of Yonkers*, 285 N.Y. 164, 174, 33 N.E.2d 75, 80 (1941); THIRD ANNUAL REPORT OF THE JUDICIAL COUNCIL (1937) pp. 180, 181.

33. *Foy v. Schechter*, 1 N.Y.2d 604, 154 N.Y.S.2d 927 (1956); *Williams v. Morton*, 297 N.Y. 328, 79 N.E.2d 428 (1948).