

ARTICLE 78's

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WHAT IS AN ARTICLE 78?

- Action to review government action in New York State Supreme Court under CPLR Article 78
- Raises questions of
 - Whether body or office failed to perform duty imposed on it by law
 - Whether determination was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious, or an abuse of discretion
 - Whether determination made after a hearing was supported by substantial evidence

CPLR § 7803

VERY HIGH STANDARD

- Courts give government determinations “great weight and judicial deference” if they are “neither irrational, unreasonable nor inconsistent with the governing statute.” 1640 State Route 104, LLC v. Town of Ontario Plan. Bd., 207 A.D.3d 1101, 1104 (4th Dep’t 2022)
- Only 10 – 20% of Article 78’s are successful

HOW TO MEET THIS STANDARD

- **Show agency's decision is contrary to prior decisions with similar facts**
 - Matter of Charles A. Field Delivery Serv., 66 N.Y.2d 516, 516-517 (1985) (“A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious.”)
 - “The policy reasons for consistent results, given essentially similar facts, are . . . to provide guidance for those governed . . . ; to deal impartially with litigants; promote stability in the law; allow for efficient use of the adjudicatory process; and to maintain the appearance of justice. . . [U]nderlying precept is that in administrative, as in judicial, proceedings ‘justice demands that cases with like antecedents should breed like consequences.’” Id. at 519.
 - Howard Johnson Co. v. State Tax Comm’n, 65 N.Y.2d 726 (1982); New York Tele. Co. v. Public Service Comm’n, 62 N.Y.2d 57 (1984)
 - Court’s after-the-fact rationalization of determination does not satisfy *Field Delivery*. Matter of Martin, 70 N.Y.2d 679, 681 (1987); Richardson v. NYC Dep’t of Soc. Servs., 88 N.Y.2d 35, 39 (1996)

HOW TO MEET STANDARD (CONTINUED)

- Show agency failed to follow statutes or regulations
- Government's "discretion . . . cannot be invoked outside the law. It is for the courts, not administrative boards, to determine what action is within, or without the law . . . 'Laws are made by the law-making power, and not by the administrative officers acting solely on their own ideas of sound public policy, however excellent such ideas may be.'" Barry v. O'Connell, 303 N.Y. 46, 52-53 (1951)
- Affiliated Distillers Brands Corp. v. State Liquor Auth., 24 N.Y.2d 31, 39 (1969)("courts have the power and the duty to make certain . . . the administrative official has not acted in excess of the grant of authority given him by statute or in disregard of the standard prescribed by the legislature.")
- Legg v. Eastman Kodak, 248 A.D.2d 936, 938 (4th Dep't 1998)("Division's [of Human Rights] dismissal of . . . complaint . . . was 'purely arbitrary' because it contravened . . . Executive Law § 297(9) and the agency's own regulation.")
- Church v. Wing, 229 A.D.2d 1019, 1020 (4th Dep't 1996)("It is well settled that an agency acts arbitrarily and capriciously by failing to comply with its own rules and regulations.").

HOW DO YOU GET THIS GREAT INFORMATION ABOUT SIMILAR DECISIONS, ETC.?

- Ask your client.
- Send well crafted FOIL demands.

OTHER THINGS TO DO BEFORE BRINGING ARTICLE 78 - EXHAUST ADMINISTRATIVE REMEDIES & READ CPLR ARTICLES 2, 3, AND 78 & COMMENTARIES

- If there is a formal administrative appeal process, must complete before bring an Article 78
- But asking for informal reconsideration does not extend short statute of limitations
- There are specific requirements – venue, serving Attorney General in specific cases, serving papers within 15 days after statute of limitations expires, etc., that must be followed – read statutes, commentary, and cases carefully

COMMENCING AN ARTICLE 78 - VERY SHORT STATUTE OF LIMITATIONS

- Four months from agency's final determination. CPLR § 217
- Be very conservative – measure from date of final determination/letter/ruling, not date you received final determination, whether memorialized in writing or not.
- Statute of limitations for zoning cases can be even shorter – 30 days
 - Zoning Board of Appeals – 30 days – Town Law 267(c)-1; Village Law 70712-c(1); City Law 81-c(1)
 - Planning Board – 30 days –
 - Town Law 274-a(11) [site plan], 274-b(9) [special use permit], and 282 [subdivision or zone change]
 - Village Law 7-725-a(11) [site plan], 7-725-b(9) [special use permit], 7-740 [subdivision or zone change]
 - City Law 27-a(11) [site plan]; 27-b(9) [special use permit]; 38 [subdivision or zone change]
- Look at statutes, regulations, and codes that govern agency.

QUESTIONS?