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BenchNOTES

AGENCY HEAD REVIEW OF RECOMMENDED DECISIONS

In some administrative proceedings conducted at OATH, the ALJ issues a report and recommendation that is subject to review and final action by the head of the referring agency. This article will discuss the procedures governing agency head review of recommended decisions.

After conclusion of the administrative hearing in disciplinary and certain licensing and regulatory matters, the ALJ issues a decision in the form of a report and recommendation.

The report and recommendation and the record of the proceeding are transmitted to the agency head for a final decision. Generally, agency heads cannot delegate the authority to make a final decision to the presiding ALJ.

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Threats to supervisors warrant severe discipline

Machinist was found to have made three threatening statements to different supervisors after his request for a work location reassignment was denied. ALJ John Spooner found the threats were disruptive and deserving of a severe penalty, but not termination.

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He noted that two of the remarks were made in the heat of an argument and were not premeditated and that the target of the most provocative remark testified that he did not feel concerned for his safety. The recommended penalty was a suspension without pay for 55 days.

Dep't of Environmental Protection v. Danko, OATH Index No. 1060/08 (Apr. 11, 2008).

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Practice and Procedure

Criminal charges no bar to disciplinary hearing

ALJ Casey denied a sewage treatment worker's objection to going forward with a disciplinary hearing while criminal charges were pending. Contrary to the employee's claim, going forward with the hearing did not violate his Fifth Amendment right against self-incrimination.

Dep't of Environmental Protection v. Bellach, OATH Index No. 1574/08 (Apr. 30, 2008).

Real Property

SRO tenants harassed by landlord

ALJ Richard recommended denial of an SRO owner's application for a certificate of no harassment. The owner had illegally converted SRO units into Class A apartments before obtaining a certificate of no harassment or an Alteration Type I permit.

The illegal conversion supported an inference of the owner's intent to empty the building of lawful SRO occupants, given the timing which coincided with the unexplained exodus of 26 SRO tenants only weeks after the owner bought the building.

The owner was also found to have allowed overcrowding and other hazardous conditions, and made repeated false certifications that violations had been corrected when they had not.

Dep't of Housing Preservation & Development v. Avid, OATH Index No. 801/08 (Apr. 4, 2008).

Vehicle Retention

PD defeats innocent owner claim

ALJ John Spooner ruled the Police Department was entitled to retain a car which was seized in connection with the arrest of the owner's grandson for drug and gun possession and driving with a suspended license.

He rejected the owner's claim that she was entitled to return of the vehicle as an innocent owner. ALJ Spooner drew a negative inference against the owner as to her knowledge of her grandson's past criminal activities based upon her election to remain silent and not challenge the Department's evidence.

Police Dep't v. Outlaw, OATH Index No. 1181/08, mem. dec. (Apr. 29, 2008).

Licensing

Taxi driver not guilty of assault

Taxi driver was charged with assaulting and verbally harassing another driver after he had allegedly cut off the other driver. ALJ Alessandra Zorgniotti found that the Commission failed to prove the assault charge but did prove that the driver cursed at the other driver.

The recommended penalty was a \$350 fine. *Taxi & Limousine Comm'n v. Sobczak*, OATH Index No. 1691/08 (Apr. 7, 2008).

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