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45 N.Y.2d 176
Court of Appeals of New York.

300 GRAMATAN AVENUE ASSOCIATES, Respondent,
v.
STATE DIVISION OF HUMAN RIGHTS (complaint of Harold Johnson), Appellant.

July 13, 1978.

Synopsis

The State Human Rights Appeal Board affirmed an order of the Commissioner of the State Division of Human Rights finding petitioner guilty of a discriminatory practice in refusing to rent an apartment to complainant on the basis of his race and color. An order of the Appellate Division, Supreme Court, Second Judicial Department, granted a petition to annul the determination. On further appeal, the Court of Appeals, Cooke, J., held that: (1) in testing for substantial evidence to support the decision of the Division, the court was to keep in mind that the statute was to be construed liberally for accomplishment of its purposes, that wide powers had been vested in the Commissioner in order that he effectively eliminate specified unlawful discriminatory practices, and that discrimination is rarely so obvious or its practice so overt that recognition of it is instant and conclusive, and (2) evidence sustained the finding of discrimination.

Order of Appellate Division reversed, order of Appeal Board reinstated and cross motion for order enforcing award granted.

West Headnotes (10)

[1] **Civil Rights** Judicial review and enforcement of administrative decisions

The "substantial evidence" standard was applicable in reviewing order of Commissioner of State Division of Human Rights upon complaint of racial discrimination. Executive Law §§ 297–a, subd. 7, pars. d, e, 298.

12 Cases that cite this headnote

[2] **Administrative Law and Procedure** Substantial evidence

Generally, on judicial review of administrative agency's findings, determination is regarded as supported by "substantial evidence" when proof is so substantial that facts found may be reasonably inferred from it, and such meaning of "substantial evidence" is applicable in examination of findings of State Commissioner of Human Rights. Executive Law §§ 297–a, subd. 7, pars. d, e, 298.

338 Cases that cite this headnote

[3] **Administrative Law and Procedure** Weight of evidence

Legal residuum rule and doctrine that annulment was in order where agency's findings were such that jury's verdict to same effect would be set aside by court as against weight of evidence no longer obtain. Civil Practice Act, § 1296, subd. 7.

12 Cases that cite this headnote

[4] **Civil Rights** Judicial review and enforcement of administrative decisions

Where there is room for choice, neither weight which might be accorded nor choice which might be made by court are germane upon analysis for presence of substantial evidence before Commissioner of State Division of Human Rights. Executive Law §§ 297–a, subd. 7, pars. d, e, 298.

7 Cases that cite this headnote

[5] **Administrative Law and Procedure** Substantial evidence

"Substantial evidence" for purposes of judicial review of administrative decision is of solid nature and ability to inspire confidence, and means such relevant proof as reasonable mind may accept as adequate to support conclusion

of ultimate fact, and, although it is less than preponderance, it must have relevance and probative character. Executive Law §§ 297–a, subd. 7, pars. d, e, 298.

573 Cases that cite this headnote

[6] **Administrative Law and Procedure** Substantial evidence

Whether administrative agency determination is shored up by substantial evidence is question of law for courts.

97 Cases that cite this headnote

[7] **Civil Rights** Judicial review and enforcement of administrative decisions

Judicial review of determination of administrative agency such as State Division of Human Rights is limited to consideration whether resolution is supported by substantial evidence upon whole record. State Administrative Procedure Act, §§ 302, subd. 3, 306, subd. 1; CPLR 7803, subd. 4.

67 Cases that cite this headnote

[8] **Administrative Law and Procedure** Substantial evidence

Court reviewing substantiality of evidence upon which administrative agency has acted exercises genuine judicial function and does not confirm determination simply because it was made by such agency. Executive Law §§ 297–a, subd. 7, pars. d, e, 298.

58 Cases that cite this headnote

[9] **Civil Rights** Judicial review and enforcement of administrative decisions

In testing for substantial evidence to support decision of State Human Rights Division, court was to keep in mind that statute was to be construed liberally for accomplishment of its purposes, that wide powers had been vested in Commissioner in order that he effectively eliminate specified unlawful discriminatory practices, and that discrimination is rarely so obvious or its practice so overt that recognition of it is instant and conclusive. Executive Law §§ 296, subd. 5(a)(1), 297–a, subd. 7, pars. d, e, 298, 300.

46 Cases that cite this headnote

[10] **Civil Rights** Evidence

Evidence sustained finding of State Human Relations Division that complainant, a black person, had been "discriminated against" as prospective tenant for available apartment. Executive Law §§ 296, subd. 5(a)(1), 297–a, subd. 7, pars. d, e, 298, 300; State Administrative Procedure Act, §§ 302, subd. 3, 306, subd. 1; CPLR 7803, subd. 4.

Attorneys and Law Firms

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***179** OPINION OF THE COURT

COOKE, Judge.

Petitioner, 300 Gramatan Avenue Associates, owns an apartment building with about 96 units in the City of Mount Vernon. In March of 1975, one of its tenants, Frank Interdonti, a postal worker, told Harold Johnson, a Black friend who served as passport agent and registry clerk at the same post office, that there was an apartment available upstairs at his address. Johnson went to the premises on March 10, 1975, examined a vacant five-room apartment and, after talking with the superintendent, attempted to rent it. Told a bit later that day that the apartment was "under litigation" and not available for rental, Johnson filed a complaint two days later with the State Division of Human Rights.

The commissioner of said division, after a hearing, determined that petitioner, in violation of the Human Rights Law, had discriminated against Johnson because of his race and color, by refusing to consider him as a prospective tenant for an available apartment. The State Human Rights Appeal

Board affirmed. In a proceeding under section 298 of the Executive Law to review the order of the appeal board, the Appellate Division, one Justice dissenting, held that the determination of the commissioner ***56** as affirmed by the board was not supported by substantial evidence and that the findings made were arbitrary and capricious, granted the petition of the owner, on the law, annulled the order and dismissed the complaint.

[1] Underlying this appeal is the issue of whether the order of the commissioner was "supported by substantial evidence on the whole record", to which the review of the appeal board was limited (Executive Law, s 297-a, subd. 7, par. d; see, also, par. e). If the findings of fact, on which the order of the appeal board was based, were "supported by sufficient evidence on the record considered as a whole", we are directed by statute that they are conclusive and that order should not be disturbed (Executive Law s 298; City of Schenectady v. State Div. of Human Rights, 37 N.Y.2d 421, 424, 373 N.Y.2d 59, 62, 335 N.E.2d 290, 292).

[2] **[3]** **[4]** Generally speaking, upon a judicial review of findings made by an administrative agency, a determination is regarded as being supported by substantial evidence when the proof is "so substantial that from it an inference of the existence of the fact found may be drawn reasonably" (Matter *180 of Stork Rest. v. Boland, 282 N.Y. 256, 273, 26 N.E.2d 247, 255; Labor Bd. v. Columbian Co., 306 U.S. 292, 299, 59 S.Ct. 501, 83 L.Ed. 660; see 1 Benjamin, Administrative Adjudication in New York 328-340; Advisory Comm. on Practice and Procedure (2d Preliminary Rep. 1958) 399).* This general rule, this statement of meaning, likewise applies to a judicial examination of findings of the State Commissioner of Human Rights (Matter of Holland v. Edwards, 307 N.Y. 38, 44, 119 N.E.2d 581, 583). So too, where there is room for choice, neither the weight which might be accorded nor the choice which might be made by a court are germane upon an analysis for the presence of substantial evidence before the commissioner (State Div. of Human Rights v. Columbia Univ. in City of N. Y., 39 N.Y.2d 612, 616, 385 N.Y.S.2d 19, 21, 350 N.E.2d 396, 397; Matter of Stork Rest. v. Boland, 282 N.Y. 256, 267, 26 N.E.2d 247, 252, Supra).

[5] The concept of substantial evidence, a term of art as related to administrative **1186 decision making, is rather easily verbalized but, when put to use in respect to a particular determination, frequently causes difficulty and disagreement, as witnessed here by the divergence at the Appellate Division (see Matter of Stork Rest. v. Boland, 282 N.Y. 256, 274, 26 N.E.2d 247, 255, Supra ; see, also, Matter of Paulsen (Catherwood), 27 A.D.2d 493, 495, 280 N.Y.S.2d 491, 493). It is related to the charge or controversy and involves a weighing of the quality and quantity of the proof (Matter of Di Nardo v. Monaghan, 282 App.Div. 5, 7, 121 N.Y.S.2d 119, 121; McCormick, Evidence (2d ed), s 352); it means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact (New York State Labor Relations Bd. v. Shattuck Co., 260 App.Div. 315, 317, 20 N.Y.S.2d 949, 951). Essential attributes are relevance and a probative character (Edison Co. v. Labor Bd., 305 U.S. 197, 229, 59 S.Ct. 206, 83 L.Ed. 126; Matter of Ralph v. Board of Estimate of City of N. Y., 306 N.Y. 447, 454, 119 N.E.2d 37, 40). Marked by its substance its solid nature and ability to inspire confidence, substantial evidence does not rise from bare surmise, conjecture, speculation or rumor (cf. Matter of Milea v. Easy Appliance Div., Murray Corp., 29 A.D.2d 730, 286 N.Y.S.2d 522). More than seeming or imaginary, it is less than a preponderance of the evidence, overwhelming ***57** evidence or *181 evidence beyond a reasonable doubt (see People ex rel. Consolidated Water Co. v. Maltbie, 275 N.Y. 357, 370, 9 N.E.2d 961, 965; Matter of Erin Wine & Liq. Store v. O'Connell, 283 App.Div. 443, 446, 128 N.Y.S.2d 364, 367, aff'd 307 N.Y. 768, 121 N.E.2d 614; Matter of Paulsen (Catherwood), 27 A.D.2d 493, 495, 280 N.Y.S.2d 491, 493, Supra; cf. State v. Randecker, 79 Wn.2d 512, 517-518, 487 P.2d 1295; District of Columbia v. Heman Ward, Inc., 261 A.2d 836, 840 (D.C.App.)).

[6] **[7]** Whether an administrative agency determination is shored up by substantial evidence is a question of law to be decided by the courts (Matter of Clark v. Board of Zoning Appeals of Town of Hempstead, 301 N.Y. 86, 90-91, 92 N.E.2d 903, 904, cert. den. 340 U.S. 933, 71 S.Ct. 498, 95 L.Ed. 673; Matter of McGuinn v. Woolworth Co., 277 App.Div. 1066, 100 N.Y.S.2d 617), it having been stated with some frequency that insufficient evidence is, in the eyes of the law, no evidence (Matter of Case, 214 N.Y. 199, 203-204, 108 N.E. 408, 409; Matter of 54 Cafe & Rest. v. O'Connell, 274 App.Div. 428, 431, 84 N.Y.S.2d 729, 732). Judicial review of the determination made by an administrative agency, such as the State Division of Human Rights, is limited to a consideration of whether that resolution was supported by substantial evidence upon the whole record (Matter of Holland v. Edwards, 307 N.Y. 38, 44, 119 N.E.2d 581, 583, Supra ; see State Administrative Procedure Act, s 302, subd. 3; s 306, subd. 1; CPLR 7803, subd. 4; Matter of Kelly v. Murphy, 20 N.Y.2d 205, 209, 282 N.Y.S.2d 254, 257, 229 N.E.2d 40, 42); and allowance may not be made

for information outside of it (Matter of Simpson v. Wolansky, 38 N.Y.2d 391, 396, 380 N.Y.S.2d 630, 634, 343 N.E.2d 274, 277). A practical test, employed in ascertaining whether the proof is "so substantial that from it an inference of the existence of the fact found may be drawn reasonably", is found in measuring the evidence against the standard of sufficiency such as to require a court to submit it as a question of fact to a jury (Matter of Stork Rest. v. Boland, 282 N.Y. 256, 273, 26 N.E.2d 247, Supra; Erin Wine & Liq. Store v. O'Connell, 283 App.Div. 443, 446-447, 128 N.Y.S.2d 364, 367-368, aff'd 307 N.Y. 768, 121 N.E.2d 614, Supra).

[8] A court reviewing the substantiality of the evidence upon which an administrative agency has acted exercises a genuine judicial function and does not confirm a determination simply because it was made by such an agency (Matter of McCormack v. National City Bank, 303 N.Y. 5, 8-9, 99 N.E.2d 887, 888). In final analysis, substantial evidence consists of proof within the whole record of such quality and quantity as to generate conviction in and persuade a fair and detached fact finder that, from that proof as a premise, a conclusion or ultimate fact may be extracted reasonably probatively and logically (cf. Matter ****1187** of Di Nardo v. Monaghan, 282 App.Div. 5, 7, 121 N.Y.S.2d 119, 121, Supra; Matter of Thomas v. Codd, 51 A.D.2d 418, 420, 382 N.Y.S.2d 483, 484; ***182** Matter of Phinn v. Kross, 8 A.D.2d 132, 137, 186 N.Y.S.2d 469, 470; 24 Carmody-Wait 2d, Proceeding Against Body or Officer, s 145:350). Put a bit differently, "the reviewing court should review the whole record to determine whether there is a rational basis in it for the findings of fact supporting the agency's decision" (McCormick Evidence (2d ed), s 352, p. 847; see Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 839, 313 N.E.2d 321, 325; Siegel, New York Practice (1978), s 560, p. 783).

As in Stork Rest., 282 N.Y., at p. 267, 26 N.E.2d, at p. 252 Et seq., we brief the testimony to the extent necessary to discover and decide whether there was evidence which adequately upholds the commissioner's and thus the appeal board's determination. Here, there was evidence, Inter alia : that in December, 1974 apartment D55 consisting of five rooms became vacant or abandoned, the former tenant having moved out in November and having last paid the rent for that month; that Interdonti, a tenant in the building, told fellow worker Johnson that an apartment was available there; that on the morning of *****58** March 10, 1975 Mrs. Interdonti contacted Rosemann, the building superintendent, and then reported that the apartment was available and could be seen that afternoon and that the rent was $225; that upon Johnson's arrival on the premises Mrs. Interdonti contacted Rosemann and arrangements were made that Johnson and Rosemann meet at the vacant quarters; that upon seeing and meeting Johnson, Rosemann stated he did not know whether he had the key but, upon checking, found it in his pocket; that after looking around, Rosemann asked Johnson if he wanted the apartment and the latter replied he did; that when Johnson said he liked the rooms, Rosemann replied "Well, did you look around?"; that when Johnson said he wanted the apartment, Rosemann said "Well, are your sure you want this apartment because, you know, I have some more"; that after discussing the rent, Johnson said he would have to go to the bank to get $450, representing one month's rent and security, and that he would be back in 10 or 15 minutes; that upon return Johnson rang the bell at the superintendent's apartment and someone inside said "just a minute"; that no one came to the door and the bell was rung again and, after a 10-minute wait, Rosemann came out and said "I have just talked to the boss and he told me that the apartment was under litigation and I can't rent the apartment." Rosemann failed to mention to Johnson the availability of apartment D54, a very large four and a half room ***183** apartment, located on the floor below which was expected to be available for rental in a week or two.

Significantly, Manzo, the building's managing agent, admitted that apartment D55 in fact was not in litigation on March 10, 1975 and, furthermore, no action had even been commenced against the prior tenant, even up to the time of the hearing. Additionally, it was evidence: that in December, 1974 the lock on the apartment had been changed by Rosemann and the apartment had been painted and cleaned by him around the Christmas season so as to be physically ready for rental in the ensuing January or February; that sometime around the holidays Manzo told the superintendent that he was going to ask $225 for the apartment when cleaned and painted; that, contrary to Manzo's version, Rosemann was not told prior to Johnson's visitation that the subject apartment was not to be shown; that, at the time Johnson came, there was a large four and one-half room apartment available and Manzo had no recollection of telling the superintendent to show it to Johnson; that in early April the apartment was rented to others for $225; and that in March only one of the 90-odd tenants was Black and he had moved away prior to the hearing.

[9] **[10]** In no uncertain terms, the Human Rights Law provides "(i)t shall be an unlawful discriminatory practice for the owner * * * or managing agent of, or other person having the right to * * * ****1188** rent or lease a housing accommodation, * * * or any agent or employee thereof: (1) To refuse to * * * rent, lease * * * such a housing accommodation because of the race * * *

color * * * of such person or persons" (Executive Law s 296, subd. 5, par. (a), cl. (1)). In assaying the record before us to determine the existence of substantial evidence, three underlying principles should be borne in mind: the statute is to be "construed liberally for the accomplishment of the purposes thereof" (Executive Law, s 300); wide powers have been vested in the commissioner in order that he effectively eliminate specified unlawful discriminatory practices (Batavia Lodge No. 196, Loyal Order of Moose v. New York State Div. of Human Rights, 35 N.Y.2d 143, 146-147, 359 N.Y.S.2d 25, 27, 28, 316 N.E.2d 318, 319-320; Gaynor v. Rockefeller, 15 N.Y.2d 120, 132, 256 N.Y.S.2d 584, 592, 204 N.E.2d 627, 633); and discrimination is rarely so obvious or its practices so overt that recognition of it is instant and conclusive, it being accomplished usually by devious and subtle means (***59 State Div. of Human Rights v. Kilian Mfg. Corp., 35 N.Y.2d 201, 209, 360 N.Y.S.2d 603, 608, 318 N.E.2d 770, 773; Matter of Holland v. Edwards, 307 N.Y. 38, 45, 119 N.E.2d 581, 584, Supra). *184 Thus guided in our review, we determine that the commissioner's findings are amply supported.

Review here, buttressed by these sound precepts, points to the irresistible conclusion that there is sufficient evidence in the record to support the commissioner's findings. A number of items the vacancy of the apartment, its preparations for and readiness for rental, the failure to notify the superintendent that the apartment was not to be shown, the communication that it was available at a specified rental, the meeting with the superintendent at the apartment site for the purpose of exhibition, his concern about the key upon seeing the Black prospect, his inquiries of the prospect as to whether the unit did in fact please when the prospect had already indicated enthusiastic acceptance, the failure to halt the prospect's departure to the bank to secure the down payment, the extended wait outside the superintendent's door upon return, the proffered excuse that the apartment was in litigation when in fact it was not and reasonably would not be, the failure to show another vacant apartment of similar size, the lack of proof of any suggestion by the managing agent that such other vacancy existed, the failure to obtain normal background particulars concerning the prospect, the subsequent lease for the same rental, and the dearth of Black tenants in the building yield the inference and basis on which the discriminatory practice, as found, might have been deduced reasonably and properly.

That the discrimination practiced upon complainant was intentional is readily inferable. There was proof of minimal out-of-pocket expenses for transportation incidental to viewing the apartment. More importantly, complainant believed, and quite reasonably so, that he had been "discriminated against." That mental anguish and upset resulted from this belief, particularly when the objectionable activity occurred in the presence of a personal and business acquaintance, is obvious. Such distress follows such bias and exclusion as night follows day. Under all the circumstances, in view of the strong statutory policy to be effected and considering the size of the award, the statutory standard has been met and the award of compensatory damages should not be disturbed (see Batavia Lodge No. 196, Loyal Order of Moose v. New York State Div. of Human Rights, 35 N.Y.2d 143, 147, 359 N.Y.S.2d 25, 28, 316 N.E.2d 318, 320, Supra ; State Comm. for Human Rights v. Speer, 29 N.Y.2d 555, 324 N.Y.S.2d 297, 272 N.E.2d 884, revg on dissenting opn at App.Div. 35 A.D.2d 107, 113, 313 N.Y.S.2d 28, 34).

*185 Accordingly, the order of the Appellate Division should be reversed, with costs, the order at the State Human Rights Appeal Board reinstated and the cross motion for an order enforcing the award granted.

BREITEL, C. J., and JASEN, GABRIELLI, JONES, WACHTLER and FUCHSBERG, JJ., concur.

Order reversed, etc.

All Citations

45 N.Y.2d 176, 379 N.E.2d 1183, 408 N.Y.S.2d 54, 96 A.L.R.3d 488

Footnotes

* The legal residuum rule and the doctrine, based on the language of former subdivision 7 of section 1296 of the Civil Practice Act, that annulment was in order where the agency's findings were such that a jury's verdict to the same effect "would be set aside by the court as against the weight of evidence" no longer obtain, regardless of whatever validity, if any, they may have once enjoyed (see 8 Weinstein-Korn-Miller, N.Y. Civ. Prac., par. 7803.09; 23 Carmody-Wait 2d,

Proceeding Against A Body or Officer, s 145.20; see, also, Toch, Judicial Review of Administrative Determinations in New York State, 24 Albany L.Rev. 95, 115-119 (1960)).

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