To be argued by
RICHARD HARTZMAN

NEW YORK SUPREME COURT

Appellate Division—First Department

In the Matter of the Application of
DR. ROBERT L. CUCIN,

Petitioner-Appellant,

against

DIVISION OF HOUSING AND COMMUNITY RENEWAL OFFICE OF RENT ADMINISTRATION, DOROTHEA WEITZNER and LEONARD HABER,

Respondents-Respondents.

BRIEF OF RESPONDENT-RESPONDENT NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL

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SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION : FIRST DEPARTMENT

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BRIEF FOR RESPONDENT-RESPONDENT DIVISION OF HOUSING AND COMMUNITY RENEWAL

This is an appeal from that part of an order of the Supreme Court (Sandifer, J.) entered in the office of the New York County Clerk on December 17, 1987, which decided appellant's motion to reargue and adhered to that part of the prior order and judgment of the Supreme Court (Sandifer, J.), dated October 20, 1987, dismissing as untimely an Article 78 petition seeking review of an administrative determination by the New York State Division of Housing and Community Renewal (hereinafter "State Division") issued on July 6, 1987. The State Division found the appellant guilty of harassment and imposed a fine of $16,300.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Where the applicable statutes of limitations provide that a CPLR Article 78 proceeding to review any action taken pursuant to the Rent Stabilization and Rent Control Laws shall be brought within sixty (60) days, was a proceeding against the State Division of Housing and Community Renewal instituted by service of an order to show cause and petition upon the Attorney General on the sixty-fifth day after the State Division's order was issued, but not served upon the State Division until the ninety-first (91) day, timely brought?

The court below answered in the negative.

COUNTER-STATEMENT OF THE NATURE OF THE CASE

Pursuant to Sections 26-411(a)(1) (the Rent Control Law) and 26-516(d) (the Rent Stabilization Law) of the Administrative Code of the City of New York, Article 78 proceedings challenging determinations made pursuant to the Rent Stabilization and Rent Control Laws must be brought within sixty days of the determination. Section 7804(c) of the CPLR provides that an Article 78 proceeding must be commenced by serving any adverse party, and additionally, in cases where the adverse party is a state body or officer, the Attorney General of the State of New York. However, appellate courts have repeatedly held that the moment of the claim's interposition for limitations' purposes is when the notice of petition and petition are served on the respondent state body or officer and that service upon the attorney general does not toll the statutory period of limitations and allow for late service upon the respondent. Somlo v. State Division of Housing and Community Renewal, ___ A.D.2d ___, 531 N.Y.S.2d 3 (1st Dept. 1988).

Petitioner herein sought to challenge two orders in the underlying administrative proceedings; one issued on July 6, 1987, and one issued on August 12, 1987. The orders involved determinations

under both the Rent Control and Rent Stabilization Laws. Pursuant to Sections 26-411(a)(1) and 26-516(d) of the Administrative Code petitioner was required to commence the proceeding against the order of July 6, 1987 by Friday, September 4, 1987. However, the record shows that did petitioner did not make service until Wednesday, September 9, 1987, sixty-five days after issuance of the July 6, 1987 order; and that said service was only made upon an office of the attorney general. Not only was that service untimely, but it was not made upon the State Division. The petitioner did not serve the respondent State Division of Housing and Community Renewal until October 5, 1987, ninety-one days after issuance of the order. As petitioners did not timely serve its challenge to the July 6, 1987 order upon the respondent State Division of Housing and Community Renewal, the Court below clearly was correct in granting the State Division's cross-motion to dismiss the petition as to the July 6, 1987 order.

COUNTER-STATEMENT OF THE FACTS

Tenants of the subject building, located at 8 East 62nd Street, New York, New York, filed complaints of harassment and a decrease in building-wide services with the agency.

After hearings held in 1985 and 1986, the Deputy Commissioner found the appellant guilty of harassment pursuant to the Rent Control and Rent Stabilization Laws, imposed a fine of $16,300.00, and ordered appellant to cease and desist from acts of harassment. The harassment order was issued and served upon appellant on July 6, 1987. (Record: 52 et seq., 113, 124)

With regard to the services complaint, the District Rent Administrator, on August 13, 1985, issued a determination directing the appellant to restore building-wide services. Thereafter, the appellant filed a Petition for Administrative Review ("PAR") on September 3, 1985. On August 12, 1987, the Deputy Commissioner issued a determination denying the PAR. (Record: 89-91)

Appellant then attempted to commence an Article 78 proceeding challenging both orders of the Deputy Commissioner. An Order to Show Cause was signed by Justice Jawn Sandifer of the Supreme Court, New York County directing personal service "upon respondents and the Attorney General of the State of New York". (Record: 10) The Order to Show Cause and Petition was served on an Office of the Attorney General on Wednesday, September 9, 1987. (Record: 98) The Petition was dated September 8, 1987 and verified by petitioner, Robert L. Cucin on the same day. (Record: 50, 51)

The State Division then interposed a cross-motion to dismiss the petition on the ground (1) that the Order to Show Cause and Petition was not served in a manner authorized by law in that it was not served upon the State Division, and (2) that the proceeding was not timely commenced within the sixty-day statute of limitation contained in the Rent Stabilization Law.

In his affidavit in opposition to the cross-motion, counsel for petitioner argued that service upon the Attorney General was sufficient to commence a proceeding against the State Division, and that the sixty-day statute of limitations did not begin to run until receipt of the Commissioner's order by the petitioner.

The Order to Show Cause and Petition was finally served upon the Division of Housing and Community Renewal on Monday, October 5, 1987, along with the affidavit of petitioner's counsel. (Record: 112) Thereafter, the State Division conceded that it had now been properly and timely served with respect to the Article 78 challenge of the August 12, 1987 order directing restoration of services. However, it continued to maintain that the Article 78 was untimely commenced as against the July 6, 1987 harassment order, arguing not only that service was only upon the Attorney General was inadequate, but that said service was in any case not timely made as the statute of limitations

begins to run from the date of issuance of the order. (Record: 112 et seq.)

On October 20, 1987, the Court below rendered a decision and judgment dismissing the Article 78 petition in its entirety as being untimely, stating that:

> Pursuant to section 26-516(d) of the Rent Stabilization Law and 26-411(a)(1) of the Rent Control Law, the petitioner was obligated to institute this proceeding within sixty days of the issuance of the order which is sought to be reviewed.
>
> The petitioner contends, however, that he is entitled to an extension of five days, pursuant to CPLR 2103(b)(2), where, as here, the order has been served by mail.
>
> The provisions of CPLR 2103 (subd.[c') prescribing extensions of time where service of a party is made by mail do not apply to administrative proceedings." (Fiedelman v. Dept. of Health, 58 N.Y. 2d 80).
>
> The petitioner instituted this proceeding sixty-five days after issuance of the final administrative order, the proceeding must therefore, be dismissed in its entirety.

(Record: 132-134)

The appellant moved to reargue on or about November 5, 1987. The State Division opposed the motion, except as to the oversight by the Court below in dismissing that part of the Article 78 petition which challenged the August 12, 1987 service restoration order. (Record: 135 et seq.)

On December 8, 1987, the Court below issued an order granting the motion to reargue only to the extent of recognizing its error in dismissing the petition as to the August 12, 1987 order. The Court adhered to its earlier decision dismissing the petition as to the July 6, 1987 harassment order[1].

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[1] The appellant subsequently served an amended petition upon the State Division challenging only the August 12, 1987 services determination. Upon judicial review, the Court below has rendered a judgment dated October 11, 1988, affirming the State Division's determination on the merits.

(Record: 7)

This appeal ensued challenging the dismissal of the petition as to the July 6, 1987 order.

ARGUMENT

THE COURT BELOW PROPERLY GRANTED THE CROSS-MOTION TO DISMISS THE PETITION AS THE PROCEEDING IS BARRED BY THE STATUTE OF LIMITATIONS

The administrative determination which appellant sought to challenge in his Article 78 petition was rendered under both the Rent Stabilization and Rent Control Laws. Under both laws a harassment order is a final order of the Commissioner subject to judicial review without there first being an administrative protest or Petition for Administrative Review.

The statute of limitation for challenging any action taken pursuant to the Rent Stabilization Law is contained in Section 26-516(d) of the Administrative Code of the City of New York. In the Rent Control Law, the statute of limitation is contained in Section 26-411(a)(1) of the Administrative Code of the City of New York. (Both provisions are in McKinney's Unconsol. Laws)

Section 26-516(d) (as amended by Chapter 600 of the Laws of 1987, effective August 3, 1987), provides in pertinent part as follows:

> Any proceeding pursuant to article seventy-eight of the civil practice law and rules seeking review of any action pursuant to this chapter shall be brought within sixty days of the expiration of the ninety day period and any extension thereof provided in subdivision h of this section or the rendering of a determination, whichever is later.
> (emphasis added)

Thus, if petitioners desired to commence an Article 78 proceeding, they were required to do so within 60 days of the rendering of the harassment determination, that is the date of issuance of

the order.

This statute of limitations is also found in Section 9 NYCRR 2530.1 of the Rent Stabilization Code, which provides in pertinent part as follows:

> A proceeding for judicial review of an order pursuant to Section 2526.2(c)(2) [harassment] or Section 2529.8 of this title shall be brought within 60 days after the issuance of such order. (emphasis added)

The Rent Control statute of limitations, 26-411(a)(1), provides as follows:

> Any person who is aggrieved by the final determination of the city rent agency in an administrative proceeding protesting a regulation or order of such agency may, in accordance with article seventy-eight of the civil practice law and rules, within sixty days after such determination, commence a proceeding in the supreme court.
> (emphasis added)

This statute of limitations is also contained in the Rent Control Regulations, 9 NYCRR 2208.12, which provide in pertinent part:

> A proceeding for review may be instituted under article 78 of the Civil Practice Law and Rules, provided the petition in the Supreme Court is filed within 60 days after the final determination of the order. Service of the petition upon the Division of Housing and Community Renewal shall be made by leaving a copy thereof with the counsel's office at the division's principal office.
> (emphasis added)

Thus, as in the Rent Stabilization Law, an Article 78 proceeding under the Rent Control Law must be commenced within 60 days of issuance of the order.

Furthermore, in order to effectuate the commencement of an Article 78 proceeding against the State Division, service must be made on the agency. Section 7804(c) of the CPLR specifically provides that an Article 78 proceeding must be commenced by serving any adverse party, and additionally, in cases where the adverse party is a state body or officer, the attorney general. The

statute reads as follows, in relevant part:

> ...a notice of petition, together with the petition and affidavits specified in the notice, shall be served on any adverse party at least twenty days before the time at which the petition is noticed to be heard...In the case of a proceeding pursuant to this article against a state body or officers...in addition to the service thereof provided in this section, the order to show cause or notice of petition must be served upon the attorney general... (emphasis added)

Just as Section 2208.12 of the Rent Control Regulations, as quoted above, sets forth the proper manner for serving the State Division of Housing and Community Renewal, so does Section 9 NYCRR 2530.1 of the Rent Stabilization Code:

> Service of the petition upon the DHCR shall be made by personal delivery of a copy thereof to Counsel's Office at the DHCR's principal office, One Fordham Plaza, Bronx, New York 10458, or such other address as may be designated by the Commissioner, and to an Assistant Attorney General at an office of the New York State Attorney General in the City of New York.

Timely service upon the Attorney General[2] does not toll the statutory period of limitations and allow for untimely service of the notice of petition (or order to show cause) and Article 78 petition upon the respondent to a proceeding. This Court recently held this rule to be specifically applicable to the State Division in Somlo v. State Division of Housing and Community Renewal, ___ A.D.2d ___, 531 N.Y.S.2d 3 (1st Dept. 1988). The Court found:

> In order to properly commence the proceeding, service had to be made upon the respondent and specifically upon the respondent's counsel at respondent's principal office. (See CPLR Section 7804(c) and 9 NYCRR 2510.12 which was applicable to New York City until

[2] As argued below, the State Division does not concede that timely service was made even upon the New York State Attorney General.

> May 1, 1987[3]). Service upon the Attorney General alone on January 26, 1987 did not constitute service upon the respondent agency. (See Matter of Corbisiero v. State Tax Commission, 82 A.D.2d 990, 440 N.Y.S.2d 396 (3rd Dept. 1981), aff'd. 56 N.Y.2d 680, 451 N.Y.S.2d 716, 436 N.E.2d 1318 (1982); Matter of Upstate Milk Cooperatives, Inc. v. State of New York Department of Agriculture and Markets, 101 A.D.2d 940, 475 N.Y.S.2d 633 (3rd Dept. 1984), lv. to appeal denied, 63 N.Y.2d 604, 480 N.Y.S.2d 1026, 469 N.E.2d 531. (emphasis added)

In Somlo the Attorney General was served on the sixty-second day after issuance of the order, the last day to make timely service because the sixtieth day had fallen on a Saturday. The State Division was not served until the next day, Tuesday, the sixty-third day. Since service of the petition was not made upon the State Division itself on last day for timely service, it was dismissed by this Court as barred by the statute of limitations.

In the case at bar the Commissioner issued and served the harassment order being challenged on July 6, 1987. The sixtieth day thereafter was Friday, September 4, 1987. Appellant's Order to Show Cause and Petition was served on an Office of the Attorney General on Wednesday, September 9, 1987. (Record: 98) The order to show cause and petition was not served upon the State Division until Monday, October 5, 1987, the ninety-first day after issuance of the harassment order. Clearly, service upon the State Division was not made until well after the running of the sixty day statute of limitations had expired. Indeed, the petition was not even dated and verified until after the running of the statute of limitations, i.e., not until Tuesday, September 8, 1987, the sixty-fourth day after issuance of the harassment order.

Even if it had been sufficient to make service solely upon the Attorney General, service in

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[3] 9 NYCRR 2510.12 was superceded by 9 NYCRR 2530.1, which however contains the same requirement as the former provision and which was in effect on the dates in question in this proceeding.

the case at bar was still untimely, as concluded by the court below. Appellant erroneously argues that the sixty day statute of limitation runs, not from the date of issuance of the order, which is the clear meaning and intent of the pertinent statutes and regulations, but from the date of receipt. Service made even directly upon the State Division on the sixty-fifth day after issuance of an order would still be time barred.

The courts have repeatedly dismissed Article 78 proceedings commenced beyond the applicable statute of limitations. This Court in Somlo v. State Division of Housing and Community Renewal, ___ A.D.2d ___, 531 N.Y.S.2d 3 (1st Dept. 1988), recognized that an Article 78 proceeding must be commenced within 60 days of issuance of an order by the State Division, stating that:

> Petitioners had sixty days from the date of the November 25, 1987 determination in which to commence this Article 78 proceeding (Section 516 d, Administrative Code of the City of New York).

In Matter of Rosenblatt v. City Rent and Rehabilitation Administration, 38 Misc.2d 253, 235 N.Y.S.2d 280 (Sup. Ct., N.Y. Co., 1962, Amsterdam, J.), the court said:

> * * * The cases are legion that the statute is to be strictly applied and that the failure to institute a petition within the thirty days from the issuance of the order sought to be reviewed is a bar to an Article 78 proceeding (Matter of Unity Estates, Inc. v. Abrams, 3 App. Div.2d 699, 159 N.Y.S.2d 40).
>
> * * * *
>
> Accordingly, the cross-motion is granted dismissing the petition.

In Matter of Magid v. Gabel, 25 A.D.2d 649, 268 N.Y.S.2d 551 (First Dept., 1966) the Appellate Division dismissed a petition which was filed one day after the expiration of the thirty-day limitation then in effect:

> Order, entered on December 6, 1962, denying respondent's cross-motion to dismiss petition reversed on the law with $50 costs and disbursements to appellant, and cross-motion granted. This Article 78 proceeding sought to review a final determination of the City Rent Administrator made and served on petitioner on October 16, 1962. The petition in such a proceeding must be filed in the Supreme Court within 30 days of the determination (Sec. Y51-9.0, Administrative Code). The thirtieth day from October 16, 1962 was November 18, 1962, but as this was a Sunday the expiration dated was November 19, 1962. The petition was filed November 20, 1962. It could therefore not be entertained (Matter of Rosenblatt v. City Rent and Rehabilitation Administration, 38 Misc. 2d 253, 235 N.Y.S.2d 280). Special Term denied the application on the ground that the papers did not show the filing date. The records of the court, which were called to Special Term's attention, did so show, and should have been accorded judicial notice."

Courts have routinely dismissed Article 78 proceedings which were not commenced within 60 days of the Commissioner's order. Regents Park Associates v. State of New York Division of Housing and Community Renewal, September 1, 1987, Index No. 10653/87 (Sup.Ct., Queens Co., Di Tucci, J.) (n.o.r.); Terry Gruber v. New York State Division of Housing and Community Renewal, April 5, 1988, Index No #30004/87 (Sup. Ct., New York Co., Shainswit, J.) (n.o.r.).

In MRA Management Co., Inc. v. State Division of Housing and Community Renewal, April 23, 1987, Index No. 5717/87, n.o.r., Sup. Ct., Kings Co., Held, J. (copy annexed), the court held:

> Although it is true that the petitioner had 15 days from August 22, 1986 to file a PAR, and the PAR was indeed filed on September 2, 1986, this does relieve the obligation of the petitioner to contest the underlying inequities of the denial of the PAR within 60 from the date said determination was issued, to wit, September 30, 1986. (emphasis added)

The State Division respectfully submits that the decision of Justice Kassof in Case Whitney Co. v. Division of Housing and Community Renewal, Index No. 3709/87 (Sup. Ct., Queens Co., June 30, 1987), cited by appellant in support of the proposition that the statute runs from the date of

receipt, is erroneous and not in accord with the great weight of case law[4].

Inasmuch as the instant proceeding was not commenced within sixty days of issuance of the order, the Court below properly dismissed the petition as against the July 6, 1987 harassment order.

Appellant's erroneous argument that it is not the date of issuance but the date of receipt of the order from which the sixty day period runs, is essentially based on the Article 78 statute of limitation contained in Section 217 of CPLR and on decisions interpreting that provision. However, Sections 26-411(a)(1) and 26-516(d) of the NYC Administrative Code, not Section 217 of CPLR, are the statutes of limitation applicable to rent control and rent stabilization proceedings. And those sections are different from Section 217 and thus are the controlling provisions. As provided for in Section 101 of CPLR:

> The civil practice law and rules shall govern the procedure in civil judicial proceedings in all courts of the state and before all judges, except where the procedure is regulated by inconsistent statute.
> (emphasis added)

Section 217 of CPLR commences the running of the statute of limitation from the date an action becomes "final and binding". Section 26-411(a) of the Rent Control commences the running from the date of the "determination". Section 26-516(d) of the Rent Stabilization Law also commences the running from the date of the "rendering of the determination". And the Rent Stabilization Code, 9 NYCRR 2530.1, specifically refers to the date of "issuance".

Clearly, the date of determination is the date the Commissioner signs an order, i.e., the date of issuance. Thus the cases construing the term "final and binding" of Section 217 of CPLR as meaning the date notice of an agency action is received, are not controlling cases with respect to rent

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[4] Appellant annexed this unreported decision to his brief despite the fact that the decision is not part of the record below. This is an improper augmentation of the record of the proceedings.

control and rent stabilization proceedings.

Appellant's reliance upon Biondo v. NYS Board of Parole, 60 NY2d 832, 470 NYS2d 130 (1983) is thus misplaced. In Biondo CPLR 217 provided the four month statute of limitations for commencing an Article 78 proceeding. Thus, the four month period is applicable unless a shorter period is specified as is the case here. CPLR 217, however, leaves unclear whether the four month statute of limitations begins to run from the date of the issuance of the order or from the date of receipt. 9 NYCRR 2530.1 leaves no question that the 60 days runs from the issuance of the order.

Moreover, in Biondo there was a question as to whether petitioner received the order and whether that order was a final order for purposes of judicial review. There is no question of receipt here or that this was a final order ripe for judicial review.

Appellant cites two cases in support of the vague proposition that the time of running begins when the party knew or should have known of the determination: Connell v. Town Board of Town of Wilmington, 113 A.D.2d 359, 496 N.Y.S.2d 106 (3rd Dept. 1985); and Tufaro Transit Co., Inc. v. Board of Education of City of New York, 79 A.D.2d 376, 436 N.Y.S.2d 886 (2d Dept. 1981). Neither of those decisions define the terms "knew or should have known". Nor do they contradict the language of the Rent Control and Rent Stabilization Law which limit the time to commence a proceeding from the date of the administrative determination.

In Connell v. Town Board of Town of Wilmington, 113 A.D.2d 106, 496 N.Y.S.2d 106, 110 (3rd Dept. 1985), the court counted the tolling of the statute of limitations from the date an annexation resolution was adopted. That is equivalent to the date the order was issued in the instant case. Similarly, in Tufaro Transit Co. v. Board of Education, 79 A.D.2d 376, 436 N.Y.S.2d 886 (2nd Dept. 1981), the date of a board meeting at which a resolution was passed withdrawing a contract

award was the date from which the statute of limitations was considered to run by the court. Thus in both cases, the date the determination was made known was deemed to be the date the resolution was passed.

Appellant attempts to distinguish, Oak Island Beach Association, 96 A.D.2d 841, 465 N.Y.S.2d 596 (2nd Dept. 1983), a case which is precisely the one among all the cases cited by him which is most closely analogous to the case at bar. The case involves a statute of limitations which is essentially equivalent to that in the Rent Control and Rent Stabilization Laws, providing that review must be sought "within thirty days from the date of the commissioner's order." The court held that:

> . . . the limitations period commences from the date of the order and not the date of service. Hence the date of service is irrelevant. . .

465 N.Y.S.2d 596, 597. This case shows that the petitioner's reliance on cases construing CPLR Section 217 is misplaced.

Hutchins v. McGoldrick, 307 N.Y. 86, 120 N.E.2d 335, relied upon by the petitioner, also involved a different statute as well as a finding by the lower court that notice was either not mailed or not received.

A conclusion different from that reached by the court below in the case at bar is not warranted by any in the other of cases cited by the appellant: Edmead v. McGuire, 67 N.Y.2d 714, 499 N.Y.S.2d 934 (1986); R. Bernstein Co., v. Popolizio, 97 A.D.2d 735, 468 N.Y.S.2d 888 (1st Dept. 1983); Kaufman v. Anker, 66 A.D.2d 851, 411 N.Y.S.2d 388 (2nd Dept. 1978); Matter of Cabrini Medical Center v. Axelrod, 107 A.D.2d 965, 484 N.Y.S.2d 695 (3rd Dept. 1985); Kordal v. Niesley, 66 Misc.2d 781, 322 N.Y.S.2d 189 (Sup. Ct. Nassau Co., 1971); Matter of Castaways

Motel v. C.V.R. Schuyler, 24 N.Y.2d 120, 299 N.Y.S.2d 148 (1969); Filut v. New York State Education Department, 91 A.D.2d 722, 457 N.Y.S.2d 643 (3rd Dept. 1982); Page v. Macchiarola, 85 A.D.2d 658, 445 N.Y.S.2d 220 (2nd Dept. 1981); 301-52 Townhouse Corporation v. Click, 113 Misc. 1050, 450 N.Y.S.2d 716 (Sup. Ct., N.Y. Co., Weisberg, J., 1982); and 140 West 57th St. Corp. v. State Division of Housing and Community Renewal, ___ A.D.2d ___, 517 N.Y.S.2d 720 (1st Dept. 1987).

Finally, appellant relies on a lower court decision from Erie County, Carborundum Abrasives Company v. New York State Department of Environmental Conservation, 129 Misc.2d 1093, 495 N.Y.S.2d 558 (Sup. Ct. 1985), which incorrectly construes the statute of limitations found in Environmental Conservation Law Section 17-0909(2). That statute requires judicial review "within sixty days after service in person or by mail of a copy of the determination. . ." The court in Carborundum ignored the explicit language of the statute in finding that the limitation period begins to run on receipt of the determination. An earlier case, City of Rochester v. Ingraham, 52 Misc.2d 95, 277 N.Y.S.2d 95 (Sup. Ct., Monroe Co., 1967), construing the same statute when it was codified under the Public Health Law, correctly ruled that a proceeding not brought within 60 days after service of a copy of the determination, was untimely.

In the case at bar the July 6, 1987 harassment order was served on the same day as it was issued.

Appellant also makes a misleading argument that the harassment order does not take effect on the date it is issued because the order itself supposedly states that the fine is not payable "until" sixty days after the order is served. That is simply not true. The order directs appellant to pay the fine "within sixty days after service of a copy of this Order". Appellant's argument is totally

specious.

Indeed, appellant ignores the fact that notice of the proper manner of service and the time to bring an Article 78 proceeding was served upon the petitioner when the August 12, 1987 Order deciding the Petition for Administrative Review was issued. The notice states in pertinent part:

RIGHT TO COURT APPEAL

> In order to appeal this Order to the New York Supreme Court, within sixty (60) days of the date this Order is issued, you must serve papers to commence a proceeding under Article 78 of the Civil Practice Law and Rules. No additional time can or will be given.
>
> * * * *
>
> Court appeals from the Commissioner's orders should be served at Counsel's Office, 4th Floor, One Fordham Plaza, Bronx, New York 10458. In addition, the Attorney General must be served at 120 Broadway, 24th Floor, New York, New York 10271. (emphasis added)

In sum it is patently clear that appellant was on notice as to the sixty day statute of limitations and the proper manner of service upon the respondent State Division. He neither served the State Division in a proper manner, nor timely served. Therefore, his Article 78 challenge to the July 6, 1987 harassment order was time barred by the statute of limitations and was properly dismissed by the court below.

CONCLUSION

For the foregoing reasons, the decision of the court below should be affirmed and the respondent granted costs.

Dated: Bronx, New York
November 9, 1988

Respectfully submitted,

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