2015 CONNECTICUT SUPREME COURT YEAR IN REVIEW
Administrative Procedures Are Focus of Insurance Case

Partnership questions also receive high court scrutiny

By JEFFREY WHITE and KATE DION

In the 2014-15 court year, the Supreme Court interpreted three statutory regimes that all impact the business community. As discussed below, the court rendered noteworthy decisions with respect to the Uniform Administrative Procedures Act, the Uniform Partnership Act and the Fair Employment Practices Act.

Administrative Procedures Act

In Financial Consulting v. Commissioner of Insurance, 315 Conn. 196 (2014), the Supreme Court, in an opinion authored by Justice Richard Robinson, reversed the judgment of the trial court dismissing the plaintiffs' complaint for failure to exhaust administrative remedies. The plaintiffs, a group of insurance producers, received “second chance” notices from the Department of Insurance informing them of an investigation into alleged misconduct that occurred during the sale of insurance policies to military personnel, and offered them an opportunity to show their compliance with the insurance law. In response, the plaintiffs conferred with the department to show their compliance and petitioned the commissioner for a declaratory ruling that their conduct was legal. After the commissioner failed to take action on their petition, the plaintiffs filed a declaratory judgment action.

The commissioner moved to dismiss on the ground that the plaintiffs did not have access to any administrative remedies that they had not previously exhausted. An agency proceeding is commenced only after the department serves its complaint pursuant to §38a-8-60(a) of the Regulations of Connecticut State Agencies. Because the Insurance Department did not begin this process, a “cloud” remained over plaintiffs’ business, and they were unable to obtain guidance as to the legality of their conduct in future business dealings.

The Supreme Court also concluded that the plaintiffs alleged sufficient standing to bring a declaratory judgment action. Specifically, the plaintiffs alleged that the “statutes and regulation subject to the petition for declaratory ruling and directly relate to the plaintiffs’ business practices and the sale of their insurance products,” and, thus, they had a “direct interest in the subject matter of the requested declaratory relief.” They also alleged that the Insurance Department “stated that it intends to enforce the subject statutes and regulations against the plaintiffs in such a fashion that such applications threaten to interfere with or impair the plaintiffs’ legal rights or privileges as insurance sales producers and small businessmen.” These allegations were confirmed by the department’s in-house attorney who averred that the declaratory ruling petition and subsequent complaint “related to events already under investigation by [the] department.” Thus, the plaintiffs had a very personal interest in the subject matter of their declaratory judgment action.

Uniform Partnership Act

The Supreme Court also had cause to construe the General Statutes relating to partnership valuations in Brennan v. Brennan Associates, 316 Conn. 677 (2015). In a previous decision (Brennan I), the Supreme Court upheld Thomas Brennan’s right to dissociate from the Brennan Associates partnership. On remand, the trial court valued Brennan’s partnership interest at $6.9 million and awarded him $3.5 million in interest on that award. The partnership appealed arguing, in part, that the trial court should have valued Brennan’s interest in the partnership as of the date the Supreme Court upheld Brennan’s dissociation, and that interest did not accrue on Brennan’s buyout award from the date of the judgment of dissociation.

General Statutes §34-362(b) states that a dissociated partner’s interest should be valued as of the “date of dissociation.” The parties disagreed as to whether the “date of dissociation” was the date the trial court rendered its decision to dissociate Brennan or the date the Supreme Court upheld the trial court’s decision. In a 6-1 decision (Justice Dennis Eveleigh dissented on this portion of the decision), a majority of the Supreme Court sided with the partnership and held that Brennan's partnership interest should be valued as of the date it rendered its decision in Brennan I.
The phrase “date of dissociation” was not defined by General Statutes §34-262(b). The majority, therefore, looked to the language of the surrounding statutes, and in particular, General Statutes §34-555(5)(C), which proved dispositive. General Statutes §34-555(5)(C) provided that a partner’s dissociation occurs, in relevant part, by “the partner’s expulsion by judicial determination.” The majority interpreted this phrase to mean that dissociation occurs when the partner is actually expelled from the partnership and not the date that the judgment of dissociation is rendered. According to the majority, this interpretation is confirmed by General Statutes §34-257, which states that when a partner is dissociated, he can no longer participate in the management of the business or conduct the partnership’s business.

According to the majority, Brennan was not dissociated from the partnership until the Supreme Court upheld the trial court’s decision. Due to the automatic stay that was in place while the appeal was pending, Brennan was able to attend partnership meetings, vote at those meetings, and communicate with prospective and existing tenants of the partnership. He also received approximately $1.7 million in partnership profits. Thus, Brennan was still permitted to carry on the business while his appeal was pending. He was dissociated once the automatic stay terminated—after Brennan I was officially decided and the time to file a motion for reconsideration passed.

The majority held that sound public policy supported this decision. If a partner’s interest was evaluated before the time control of the partnership was divested from him, then he could be incentivized to file meritless appeals solely or sabotage the business of the partnership. Conversely, a partner who engaged in good-faith efforts to run the business during the pendency of his appeal could be deprived of sharing in the value that he added to the business.

Next, a unanimous court (Eveleigh concurring on this portion of the decision) determined that Brennan was not entitled to interest on his buyout award. Brennan and the partnership argued that competing subsections of General Statutes §34-362 applied. Brennan argued that General Statutes §34-362(c) applied, and interest came due and owing immediately on his dissociation regardless of whether that dissociation was wrongful. The partnership argued that General Statutes §34-362(h) applied, which provides for a deferred payment to a partner who dissociates wrongfully.

The court held that General Statutes §34-262(h) applied. It stated that it was undisputed that Brennan dissociated wrongfully from the partnership. The legislative history of §34-262(h) provided that the purpose of subsection (h) was “to protect the non-breaching partners [of a term partnership] from an unexpected loss of capital.” By contrast, subsection (c) permits a rightfully dissociating partner to recover interest “to compensate the dissociating partner for the use of his interest in the firm.” This rationale does not apply to payments to wrongfully dissociating partners. Rather, as with other sections of the Uniform Partnership Act, a wrongful dissociating partner forfeits certain rights as a consequence of his wrongful conduct. According to the court, because Brennan fell into the category of wrongful dissociating partners, he was not entitled to interest on his award.

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Fair Employment Practices Act

In Desrosiers v. Diageo North America, 314 Conn. 773 (2014), the Supreme Court needed to determine whether the Fair Employment Practices Act (FEPA) protected persons on the basis that they had a perceived physical disability. Mireille Desrosiers brought suit against her former employer to recover damages for wrongful termination. The trial court dismissed her claim that she was terminated because her employer believed her to be disabled on the basis that this was not a recognized cause of action in Connecticut. The Appellate Court affirmed.

In a 6-1 decision, the Supreme Court reversed and held that wrongful termination based on a perceived physical disability is a viable cause of action. The majority noted that General Statutes §46a-60(a)(1) unambiguously protects individuals who have a physical disability from discrimination. Nonetheless, the court held that that definition must be extended to include perceived physical disabilities in order to avoid an absurd or unworkable result. According to the majority, this conclusion was supported by the context of the legislative history of the FEPA, case law and the interpretation given by the Commission on Human Rights and Opportunities.

The majority reviewed the statute’s legislative history and noted that the intent was to “cover as many people as possible under the definition and leave it open and broad” as well as to “increase protections for individuals with disabilities.” The commission has followed this intent since 1989, and interpreted the FEPA to protect individuals who are regarded as physically disabled by their employer because it was the act of discrimination that was prohibited, regardless of whether the employee could prove an actual disability. According to the majority, the fact that the legislature had not clarified the definition of physically disabled despite 25 years of decisions compelled the conclusion that this interpretation was correct.

Because the defendant’s sole basis for summary judgment on this claim was based on the argument that Connecticut law does not recognize a cause of action for perceived disability, the court remanded the case back for trial. The court concluded that summary judgment in this case would be inappropriate because genuine issues of material fact existed as to whether Desrosiers was, in fact, terminated because her employer believed that she was physically disabled.

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