

N J L R C

New Jersey Law Revision Commission

FINAL REPORT

CIVIL PENALTY ENFORCEMENT ACT

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Introduction

The Civil Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.) now provides for judicial enforcement of civil penalties. Court Rule 4:70. (Summary Proceedings for the Collection of Statutory Penalties) complements the statute. Civil penalty enforcement actions reach the courts in notably different stages of development. Many penalties are presented in the form of a final administrative order. In these cases, the facts have been judged and monetary penalties have been determined pursuant to the provisions of the Administrative Procedure Act (N.J.S. 52:14B-1 et seq.). Appeal from final orders emanating from such procedures is to the Appellate Division. Other cases involve actions in which (1) no hearing on the facts has been provided, or (2) a penalty for a fixed total amount of money has not been determined. This category includes actions by state agencies which have not chosen to make use of the Administrative Procedure Act procedures for contested cases and by municipal agencies to which those procedures do not apply.

The statute provides that civil penalties are collected by summary action, but the statute leaves “summary” undefined. R. 4:70-4(b) directs that in a summary hearing “the court in which the proceedings were instituted shall summarily, without the filing of any pleadings except the complaint, hear the testimony and determine and give judgment in the matter.” The ambiguous nature of the actions complicates the undefined nature of the proceedings. In cases where enforcement of a final administrative order is sought, it is not clear what testimony is to be heard and what matters are to be determined. As a result, cases hold that, in an enforcement action, a court should not examine the factual basis for the penalty; Dept. of Community Affairs v. Wertheimer, 177 N.J. Super. 595 (App. Div. 1980). Where there is a final administrative order based on a contested case, the party against whom it was entered has a choice: he may appeal the administrative decision, or he may accept it and allow it to be enforced. However, where there is no final administrative decision of a contested case, this caselaw is inapposite; the court must determine the facts.

A similar problem occurs where an administrative agency is authorized to award payment of damages to a third party. Here, the Civil Penalty Enforcement Law does not apply, but, in some cases, similar specific provisions do. For Example, the Director of the Division of Civil Rights may award damages to a person who has suffered unlawful discrimination. N.J.S. 10:5-17. Such an award is enforceable by a “summary civil action brought by the director in Superior Court.” N.J.S. 10:5-19. While the statute leaves the nature of the summary action undefined, the same logic that applies to a penalty enforcement case should control. An enforcement action should not re-examine the facts; if a party seeks to challenge the administrative finding, he should appeal it.

To remedy these defects, the proposed statute distinguishes two distinct categories of actions. The first category may be described as actions to enforce civil penalties or awards for violations where the facts have been judged and monetary penalties or awards have been determined in contested cases under the provisions of the Administrative

Procedure Act. Since there are no facts to be determined, the proposed statute allows the administrative agency to record the final order in the judgment docket. This approach follows the model of N.J.S. 2A:16-11 and 2B:12-26 which provide for docketing Special Civil Part judgments and municipal court judgments in the Superior Court to give them the same effect as other Superior Court judgments. The proposed statute abandons the ambiguous form of a “summary action.” In these cases, there are no issues for a judge to examine. What is sought, is enforcement of a case that has been decided elsewhere, in an administrative tribunal. The most efficient method of enforcement where no issues need decision is direct docketing on the Superior Court judgment docket. If a party wants to present any issue to a court, appeal is available.

Section 2 of the proposed statute provides for the second category of penalty enforcement actions: cases where the facts have not been determined administratively. In all such cases, where a statute or ordinance authorizes enforcement in summary proceedings under the civil penalty enforcement law, the statute requires that the court provide a hearing and make a judgment.

PROPOSED STATUTE:

Section 1. Proceedings to enforce civil penalties and awards

a. If an administrative agency of the State has assessed a fixed amount of money as a civil penalty or award after the person subject to the penalty or award was afforded an opportunity for a hearing pursuant to the Administrative Procedure Act, at the request of the agency, the clerk of the Superior Court or the Clerk of the Superior Court, Law Division, Special Civil Part shall record the final order assessing the penalty or award on the judgment docket of the court.

b. The final order of the agency recorded on the judgment docket of the court thereafter shall have the same effect as a judgment of the court.

Source: New

COMMENT

This section provides a mechanism for enforcement of administrative penalties and awards of damages in cases where the violation has been established and the penalty or award set in administrative proceedings. These matters are “contested cases” under the Administrative Procedure Act; N.J.S. 52:14B-1 through 15. As such, a person against whom payment of the penalty or award is sought has the right to notice, a hearing, and findings of fact before an adverse administrative adjudication is entered. 52:14B-9 and 10. An appeal may be taken to the Superior Court Appellate Division from the final administrative orders. Rules of Court 2:2-3(a)(2). Because of procedural protections afforded within the administrative process, courts have been unwilling to allow re-litigation of the basis for penalties as part of the enforcement process. Dept. of Community Affairs v. Wertheimer, 177 N.J. Super. 595 (App. Div. 1980). The restrictions on the role of the court remove any real purpose to a full court action to enforce a penalty or award. The purpose of court involvement is to make the judicial enforcement power available to enforce the administrative order. Docketing the penalties and awards as judgments on the judgment docket serves that purpose.

This section authorizes an administrative agency to have a final order imposing a civil penalty or award entered on either the judgment docket of the Superior Court or of the Special Civil Part. After docketing, an order is treated in the same way as a judgment: it may be enforced against the property of person against whom the order runs and a court may conduct proceedings to require payment. Allowing the choice of court dockets allows an agency to select the enforcement procedures appropriate to the penalty or award imposed.

Other statutes allow particular agencies to file certificates of debt or liens in certain circumstances. The section does not affect those remedies.

Section 2. Actions to adjudge violation and impose civil penalties

a. If a statute or ordinance allows a court action to impose a civil penalty or a penalty has been imposed that may not be enforced pursuant to section 1, an action to impose a penalty shall be brought as provided by this section.

b. The action may be brought in the Superior Court. If the statute that establishes the civil penalty provides that the action may be brought in a municipal court, the action may be brought in any municipal court that has territorial jurisdiction over the action or in the Superior Court.

c. The court shall decide the case in a summary manner and without a jury unless otherwise provided in the statute imposing the penalty. It shall hear testimony on any factual issues, and if it finds that the violation occurred, impose a penalty as provided by the statute.

d. Unless precluded by the statute imposing the penalty, informal disposition may be made of any case by stipulation, agreed settlement, or consent order. Payment of a penalty pursuant to an informal disposition shall be considered a prior violation for the purpose of determining subsequent offender status.

e. An action in Superior Court to impose a civil penalty may be joined with an action brought to restrain related violations.

f. If a judgment for a civil penalty is rendered against a defendant, payment shall be made to the court and shall be remitted to the state treasurer of New Jersey, unless other disposition is provided for in the statute imposing the penalty.

Source: 2A:58-1 through 3; 2A:58-8.

COMMENT

This section is derived from N.J.S. 2A:58-1 and 3. It governs cases where a statute allows an administrative agency, an officer or a private party to bring an action to impose a civil penalty for a violation of law. In such a case, there has been no prior administrative adjudication; the court must decide whether the violation occurred and what the appropriate penalty is. While the proceedings are summary, testimony must be taken. Subsection (c) incorporates the N.J.S. 2A:58-3 bench trial requirement.

Subsection (a) applies this enforcement procedure to ordinances as well as statutes. That is in accord with practice; see Verona v. Shalit, 96 N.J. Super. 20 (App. Div. 1967) and Court Rule 4:70. Subsection (d) is based on a similar Administrative Procedure Act provision for informal disposition. See, 52:14B-9(d). It allows more flexibility to the administrative agency than the current provision: 2A:58-5.

The jurisdictional provision, subsection (b), differs slightly from the current provision, 2A:58-2. While both allow the statute imposing a penalty to specify which courts have jurisdiction over a penalty action, the subsection provides for jurisdiction in both the Superior Court and the appropriate municipal court if the statute is silent.

Subsection (f) is substantially identical to 2A:58-8.

Section 3. References to chapter

This chapter shall be known as "the penalty enforcement law of 1997." References to the "penalty enforcement law" which this law replaces shall be treated as references to this law.

Source: N.J.S. 2A:58-9.

COMMENT

To avoid transition problems, this section provides that any penalty statute that now refers to the current law be treated without amendment as referring to the new law.

TABLE OF DISPOSITIONS

CURRENT	PROPOSED	COMMENT
2A:58-1	Section 2(c)	
2A:58-2	Section 2(b)	
2A:58-3	Section 2(c)	
2A:58-4	deleted	unnecessary
2A:58-5	Section 2(d)	
2A:58-6	deleted	unnecessary
2A:58-7	deleted	unnecessary
2A:58-8	Section 2(f)	
2A:58-9	Section 3	