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People v. Grucci, 729 N.Y.S.2d 577 (N.Y. 2001)

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dismissed the action.

The court determined a petitioner must exhaust all administrative remedies unless an agency's action is unconstitutional, wholly beyond the scope of the agency's power, when relying on an administrative remedy would prove futile, or when pursuing an administrative remedy would cause irreparable harm. The court determined the complaint raised no constitutional issue. The court further determined the permit and conditions were squarely within the agency's power. Relying on the agency's granted power, the court determined the agency may require conditions as necessary to protect the population and the environment. Finally, the court agreed with the trial court that administrative relief would not have been futile or resulted in irreparable harm. Thus, the court affirmed the trial court's decision.

Lynne Stadjuhar

People v. Grucci, 729 N.Y.S.2d 577 (N.Y. 2001) (holding that the state lacked jurisdiction to regulate shellfish within privately owned lands).

New York Environmental Conservation Law section 13-0311 allows the state to regulate public shellfish taking by requiring a permit to take shellfish. Joseph J. Grucci ("Grucci") was caught catching clams with a revoked clamming permit. Grucci sought to dismiss the taking charge, arguing a permit was not required.

The violation occurred within the Town of Brookhaven. Through private patents, Brookhaven had received underwater land rights. The court questioned whether the state or the underlying owner had the right to take shellfish on privately owned land. The court examined the state's right to regulate an activity related to both the tidal waters and the underlying land. Furthermore, the court examined the relationships between shellfish taking on both the navigable water and the underlying land. The court ruled a state could control and regulate an activity closely related to the use of public waters. However, the underlying land ownership determined the private or public character of the activity.

The court maintained that clams, by nature, live in the land, and thus the landowner has more than nominal control over them. As a result, the court found shellfish taking more closely related to the underlying land. Thus, the court held that since the state had invested Brookhaven with private ownership of the tidal lands, Grucci was exempted from state regulation and control. The state did not own the shellfish under section 13-0311 and the court dismissed the charges against Grucci.

Jon Hyman