



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

nyc.gov/law

For Immediate Release

**SECOND CIRCUIT COURT OF APPEALS
AFFIRMS TWO LOWER COURT DECISIONS
AWARDING CITY \$9.4 MILLION AGAINST AMTRAK**

***RULINGS DEMONSTRATE THE CITY'S ONGOING COMMITMENT
TO SECURE MONIES OWED TO IT***

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, media@law.nyc.gov

New York, April 23, 2010 – A federal appeals court has upheld two lower court decisions ordering Amtrak to pay New York City \$9.4 million. “The decisions exemplify the Law Department’s continued efforts to pursue aggressively monies owed to the City,” noted Corporation Counsel Michael A. Cardozo.

The Second Circuit Court of Appeals -- in a summary order -- affirmed two earlier decisions of District Judge Sandra L. Townes of the Eastern District of New York, adopting her reasoning in all respects. Judge Townes’ decisions in December 2008 and February 2009 did the following:

- granted the City’s motion for summary judgment on liability against the National Railroad Passenger Corporation (Amtrak) for the reimbursement of the cost of relocating Amtrak’s electrical facilities at the Sunnyside Yard in Queens, which the City required to facilitate the rehabilitation of two bridges spanning the Yard, and
- awarded damages of \$5.7 million for the cost incurred by the City to relocate Amtrak’s property and awarded pre-judgment interest to the City in the amount of \$3.7 million. The substantial pre-judgment interest award was the result of the application of the statutory rate of 9 percent on amounts owed on average for more than seven years.

The Second Circuit decision, rendered on April 21st, was decided unanimously by a three-person panel consisting of Judges Pierre N. Leval, Peter W. Hall and Gerard E. Lynch.

“This is a big win for the City, particularly during these tough economic times,” said New York City Department of Transportation (DOT) Commissioner Janette Sadik-Khan. “We are pleased by the Court’s decision and glad to put this matter to rest.”

Case History

The case turned on the interpretation of a 1910 deed that created the Yard, ceding control of the existing streets to Amtrak’s predecessors (railroads tracing their history to the 19th century, which railroads would eventually be merged into the Penn Central Railroad), purportedly granting title to the bridges over the Yard to the City, and giving an easement to the railroads to connect their property to the bridges. When the Queens Boulevard and Honeywell Street Bridges spanning the Yard required rehabilitation in the 1990s, the City demanded that Amtrak remove its electrical facilities from the bridges so that the work could be completed. Amtrak initially refused, but after several years of negotiation, Amtrak eventually agreed to remove its property from the bridges, and the City agreed to bear the cost, but reserved its right to seek recoupment of that cost.

The Lower Court Decisions

Judge Townes had ruled in the City's favor in all respects in her two decisions. In her first decision in December 2008, Judge Townes determined that the 1910 deed, which explicitly required that the railroads not interfere with the use of the bridges for street purposes, required Amtrak to bear the cost of the relocation. The Court also found that the City's claim was not barred by the Rail Passenger Service Act, generally relieving Amtrak from any obligation to pay local taxes and fees and prohibiting the application of state and local laws that affect Amtrak's rates, routes and service. Additionally, Judge Townes held that neither the Rail Act, which resolved the Penn Central bankruptcy, nor the bankruptcy itself extinguished the City's claim.

In her second decision in February 2009, Judge Townes rejected Amtrak's claim that the pre-judgment interest rate was excessive, holding that the New York State statutory rate of 9 percent, which is applicable to property and equitable claims, applied to this federal court action in diversity under well-settled legal principles. The Court again rejected Amtrak's arguments that federal law enacted to protect Amtrak from having to pay state and local taxes or to be subject to local laws affecting rates, routes, and service had any bearing on the award of pre-judgment interest.

City Reaction and Legal Teams

Senior Counsel Scott Shorr of the Law Department's Appeals Division handled the case in the Second Circuit. Senior Counsel Richard J. Costa of the Affirmative Litigation Division was the lead lawyer in the proceedings before Judge Townes.

"We're very pleased that the Second Circuit affirmed the District Court. If a railroad attaches equipment to a City bridge, and the railroad's equipment interferes with City bridge repairs, then the railroad -- rather than City taxpayers -- should bear the cost of getting that equipment out of the way, so the City can proceed with repairs," noted Scott Shorr. "It's a common-sense ruling."

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and one of the largest public law offices in the country. Tracing its roots back to the 1600's, the Department has an active caseload of 90,000 matters and transactions in 17 legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's 650 attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. For more information, please visit nyc.gov/law.

###