

*For Immediate Release*

**STATE'S HIGHEST COURT UNANIMOUSLY (7-0)  
REVERSES LOWER COURT;  
FINDS THAT CITY CAN APPLY 2007 STATUTE TO BAR ENGINEER  
FROM FILING ANY DOCUMENTS WITH BUILDINGS DEPARTMENT  
BASED ON FALSE FILINGS HE MADE  
BEFORE EFFECTIVE DATE OF STATUTE**

***RULING HOLDS THAT AGENCY'S APPLICATION OF THE STATUTE IS NOT RETROACTIVE***

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New York, April 30, 2010 – The New York Court of Appeals, the state's highest court, ruled unanimously (7-0) yesterday that a New York State professional engineer who was found to have filed falsified documents with the City of New York's Department of Buildings (DOB) before the enactment of a statute authorizing the DOB to refuse to accept filings from persons found to have made false filings may be prohibited from filing under that statute. It found that, under the Court's precedents, this is not a retroactive application of the law.

"Licensed professionals must understand that taking shortcuts can lead to serious consequences," said Buildings Commissioner Robert LiMandri. "I am pleased by Thursday's court decision because it reinforces the responsibility that all members of the construction industry have to follow the law and ensure the safety and quality of life of our City. I would like to commend all of the City's attorneys who worked on this important case and held this engineer accountable for his unlawful actions."

Added Corporation Counsel Michael A. Cardozo of the New York City Law Department, "This unanimous decision highlights the City's commitment to building safety. We are very pleased that the court recognized the law should be applied as the DOB had determined."

The Court of Appeals unanimously reversed the Appellate Division, First Department, which had held that the application of the statute to the petitioner was "clearly penal in nature [and] may not be applied retroactively."

The Court of Appeals noted that under New York law, retroactive operation of legislation is not favored by courts and statutes will not be given such construction unless the language expressly or by necessary implication requires it. But, "a statute is not retroactive ... when made to apply to future transactions merely because such transactions relate to and are founded upon antecedent events." The Court cited two of its precedents, in one of which (*Miller*), a nursing aide was prohibited from working from any nursing home because she had been found to have physically abused a patient, based on a statute enacted after the incident of abuse had taken place.

The Court stated:

- "The *Miller* rationale controls the question of retroactivity in this case. Administrative Code § 26-124(c) authorizes the Commissioner to refuse to accept applications or documents from 'any

person' found to have knowingly or negligently submitted falsified materials to DOB. By its terms, the provision aims to regulate future professional eligibility. And similar to the regulation at issue in *Miller*, the underlying purpose of the code provision is to promote public safety given the vast number of documents filed with and relied upon by DOB each year. The fact that petitioner's inability to file papers with DOB for a future period of time is predicated on prior false filings does not render the Commissioner's application of the provision retroactive."

The court also rejected the petitioner's contention that Administrative Code § 26-124(c), as applied to him, constitutes an ex post facto law in violation of the Federal Constitution, and found that the Commissioner's determination does not shock the conscience. [Note: City New York City Administrative Code § 26-124 (c) was recodified with minor changes in wording as Administrative Code § 28-211.1.2 in July 2008.]

### Case History

Leon St. Clair Nation, a professional engineer, was charged by the New York City Department of Buildings with certifying the accuracy of falsified documents that he filed for three projects in Brooklyn between 2004 and 2006. The documents included doctored photographs that were submitted with respect to two of the projects and a false application for alterations to the second floor of a third building, where the owner was actually adding a second story on top of a one-story building. After a three-day hearing in May 2007, an Administrative Law Judge (ALJ) found that Nation had negligently, but not knowingly, certified the false documents and she recommended that his certification privileges be revoked.

The Commissioner of DOB adopted the ALJ's report and revoked Nation's professional certification privileges in December 2007. Further, in January 2008, the Commissioner barred Nation from filing any documents with DOB for two years based on Administrative Code § 26-124(c), which had been amended in 2007 to authorize the DOB Commissioner to "refuse to accept any application or other document ... that bears the signature of any person who has been found ... to have knowingly or negligently" submitted false documents to the Department.

Nation commenced this article 78 proceeding to challenge the determinations. Among other things, he argued that section 26-124(c), which took effect on August 15, 2007, was penal in nature, did not take effect until after he certified the false documents, and therefore could not be applied to him retroactively.

### The Lower Court Decision

The Appellate Division, First Department modified by vacating the two-year no-filing penalty imposed under section 26-124(c). It ruled that substantial evidence supported the determination that Nation had negligently certified the false documents and it upheld the revocation of his certification privileges. However, the court said, "Section 26-124(c) did not take effect until well after [Nation] engaged in the acts charged against him. Since it is clearly penal in nature, it may not be applied retroactively ..."

### City Reaction and Legal Teams

Senior Counsel Cheryl Payer and Deputy Chief Stephen McGrath of the Law Department's Appeals Division handled the case in the Appellate Division and in the Court of Appeals. Senior Counsel Louise Moed of the Administrative Law Division was the City's attorney in the Supreme Court and argued the case to the Appellate Division.

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