



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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For Immediate Release

**COURT UPHOLDS WATER BOARD REGULATION
IMPOSING SURCHARGES ON BUILDINGS
WHICH FAILED TO INSTALL WATER METERS**

SURCHARGES OF 100 PERCENT OF PRIOR WATER BILLS HELD TO BE RATIONAL

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New York, Tuesday, February 24, 2004 – A New York City Water Board regulation adopted to encourage the timely installation of water meters has withstood a legal challenge brought by eight owners of residential apartment buildings. The regulation, adopted on July 1, 2000, imposes a surcharge of 100 percent of the last annual unmetered water and sewer charge when an owner of a property failed to install a meter by July 1, 2000.

The surcharge was imposed as of July 1, 2000, unless a customer had requested prior to that date to have DEP install a meter at their property. The surcharge on unmetered properties remains in effect until the customer installs a meter using their own plumber pursuant to a permit issued by DEP.

The case, *77 Realty et al. versus New York City Water Board*, was decided by Edward H. Lehner of the Supreme Court of New York County. The decision involves the eight building owners who eventually installed the required water meters after July 1, 2000, but who commenced litigation seeking a refund of the surcharges imposed upon them.

The owners raised several claims, including an argument that the surcharge constituted an unconstitutional excessive fine. Justice Lehner rejected all of petitioners' claims, holding that "the court does not find that the sanction imposed by the rate schedule of a 100 percent surcharge on owners who remained out of compliance 'shocks the judicial conscience', nor that it is an unconstitutional penalty." The challenged regulation was adopted as a result of a consent decree entered by the City and the New York State Department of Environmental Conservation in which the City was required to meter multiple dwellings with 6 or more units.

The City was represented in this proceeding by Assistant Corporation Counsels Mark Muschenheim and Dana Biberman of the Administrative Law Division of the New York City Law Department. "Metering is a vital part of the City's ongoing efforts to conserve water," Muschenheim noted. "This metering requirement – and the related sanctions – were imposed to ensure that building owners would participate in this important conservation effort. The decision recognize the importance of this policy."

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