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## **Due Process: Manshul Construction Corp. v. New York City School Construction Authority**

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federal substantive due process protection, abridge petitioner's fundamental right to rear and educate their children as they saw fit.<sup>548</sup> Based on this holding, the School Board was "prohibited from dispensing condoms to unemancipated, minor students without the prior consent of their parents or guardians, or without an opt-out provision."<sup>549</sup>

Manshul Construction Corp. v. New York City School  
Construction Authority<sup>550</sup>  
(decided April 19, 1993)

Plaintiff asserted that his rights to due process and equal protection were violated under the New York State<sup>551</sup> and Federal<sup>552</sup> Constitutions when he was denied the opportunity to bid on construction contracts based on his failure to meet established prequalification requirements. The court held that neither the plaintiff's rights to due process nor equal protection were violated.<sup>553</sup>

In this case, the plaintiff brought an article 78 proceeding to review the determination by the defendant that the plaintiff did not satisfy the prequalification requirements necessary to bid on contracts.<sup>554</sup> This proceeding was an appeal by the plaintiff from a prior federal action litigated between the same parties which granted the defendant's motion to dismiss the plaintiff's causes of action.<sup>555</sup>

548. *Alfonso*, 195 A.D.2d at 60, 606 N.Y.S.2d at 268.

549. *Id.*

550. 192 A.D.2d 659, 596 N.Y.S.2d 475 (2d Dep't 1993).

551. N.Y. CONST. art. I, §§ 6, 11. Section 6 provides in relevant part: "No person shall be deprived of life, liberty or property without due process of law." *Id.* Section 11 provides in relevant part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

552. U.S. CONST. amend. XIV. The Fourteenth Amendment provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ." *Id.*

553. *Manshul*, 192 A.D.2d at 659-60, 596 N.Y.S.2d at 476.

554. *Id.* at 659, 596 N.Y.S.2d at 476.

555. *Id.*

In the case at hand, the appellate division referred to the federal district court's decision, which held that the plaintiff's due process rights were not violated, and stated that the plaintiff was therefore collaterally estopped from relitigating his claims of due process violations.<sup>556</sup> In referring to the federal district court's analysis of plaintiff's due process claims, the appellate division explained that the district court applied New York State law and cited *Economico v. Village of Pelham*.<sup>557</sup> In *Economico*, the New York Court of Appeals stated that in order to determine whether an individual has a liberty or property interest, it is necessary to examine the applicable state law.<sup>558</sup> The court applied the relevant state law and held that the failure to afford plaintiff a hearing was not a violation of due process.<sup>559</sup>

More recently, in *Dentom Transportation, Inc. v. New York City Human Resources Administration*,<sup>560</sup> the state supreme court applied relevant state law in examining plaintiff's claims of due process violations.<sup>561</sup> The court reasoned that the defendant was not required to provide a hearing to the plaintiff and held that the plaintiff's due process rights were not violated.<sup>562</sup> The court further held that the defendant was not obligated to give the busing contract to the plaintiff.<sup>563</sup> Similarly, in *Conduit and*

556. *Id.*

557. 50 N.Y.2d 120, 405 N.E.2d 694, 428 N.Y.S.2d 213 (1980). In *Economico*, the plaintiff was a tenured employee who was absent from his work for eighteen months due to injuries he sustained in a non work-related accident. *Id.* at 124, 405 N.E.2d at 695, 428 N.Y.S.2d at 214. Due to the plaintiff's absence, the defendant's board of trustees terminated his employment. *Id.* As a result, the plaintiff filed an article 78 proceeding against the defendant claiming that he suffered due process violations because he was not given a hearing prior to his dismissal. *Id.* at 124, 405 N.E.2d at 696, 428 N.Y.S.2d at 215.

558. *Id.* at 125, 405 N.E.2d at 696, 428 N.Y.S.2d at 215.

559. *Id.* at 128, 405 N.E.2d at 698, 428 N.Y.S.2d at 217.

560. 155 Misc. 2d 31, 588 N.Y.S.2d 713 (1992).

561. *Id.* at 37, 588 N.Y.S.2d at 717. The plaintiff, as a result of having its bid previously rejected by the City Comptroller, brought an article 78 proceeding to require the city to award the plaintiff a busing contract. *Id.* at 32-33, 588 N.Y.S.2d at 714.

562. *Id.* at 37, 588 N.Y.S.2d at 717.

563. *Id.*

*Foundation Corp. v. Metropolitan Transportation Authority*,<sup>564</sup> the court applied the relevant state corporate law and determined that, based upon good reason, any contract bid could be rejected.<sup>565</sup> The court further stated that “[n]either the low bidder nor any other bidder has a vested property interest in a public works contract . . . .”<sup>566</sup> Accordingly, the court held that the plaintiff’s due process rights were not violated.<sup>567</sup>

Federal case law is in agreement with New York State case law in that state law should be applied when determining whether procedural due process rights have been violated because a liberty or property interest existed. In *Board of Regents of State Colleges v. Roth*,<sup>568</sup> the Supreme Court explained that the Constitution does not create property interests.<sup>569</sup> Instead, the Court stated, such interests are defined by state law or existing rules.<sup>570</sup> The Court applied state law, which left to the discretion of the University whether or not to rehire a teacher.<sup>571</sup> Based on the above, the Court held there was no due process violation

564. 66 N.Y.2d 144, 485 N.E.2d at 1005, 495 N.Y.S.2d 340 (1985).

565. *Id.* at 148, 485 N.E.2d at 1008, 495 N.Y.S.2d at 343.

566. *Id.* at 148-49, 485 N.E.2d at 1008, 495 N.Y.S.2d at 343. The court of appeals noted further:

Although the power to reject any or all bids may not be exercised arbitrarily or for the purpose of thwarting the public benefit intended to be served by the competitive process, the discretionary decision ought not to be disturbed by the courts unless irrational, dishonest or otherwise unlawful.

*Id.*

567. *Id.* at 150, 485 N.E.2d at 1009, 495 N.Y.S.2d at 344.

568. 408 U.S. 564 (1972). The plaintiff was hired as an assistant professor at Wisconsin State University for one year and after his term expired he was not rehired. *Id.* at 566. The plaintiff was given no reason why he was not rehired nor was he given a hearing in order to challenge the decision. *Id.* at 568. The plaintiff claimed his procedural due process rights were violated because he was denied a hearing. *Id.* at 569. However, the Court disagreed with plaintiff’s assertions and stated that he did not have a property or liberty interest which would warrant a hearing. *Id.* at 579.

569. *Id.* at 577.

570. *Id.*

571. *Id.* at 566-67.

because plaintiff had failed to “show[] that he was deprived of liberty or property protected by the Fourteenth Amendment.”<sup>572</sup>

The Second Circuit Court of Appeals, in *White Plains Towing Corp. v. Patterson*,<sup>573</sup> followed the reasoning of *Roth* by applying state law in examining whether a liberty or property interest existed in claims of due process violations.<sup>574</sup> In *White Plains Towing Corp.*, the court had to determine whether there had been a violation of due process where State Police terminated a towing company’s contract which provided towing services for Interstate Route 287 in Westchester County.<sup>575</sup> To this end, the Second Circuit applied the reasoning set forth in *Roth*, and stated that in determining whether the plaintiff had a property right in the continued employment, “a plaintiff ‘must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.’”<sup>576</sup> Thus, the court found that under New York State law, the informal relationship which existed between the parties did not create a “property right[] protected by due process.”<sup>577</sup> Additionally, the court held that “plaintiffs had

572. *Id.* at 579.

573. 991 F.2d 1049 (2d Cir.), *cert. denied*, 114 S. Ct. 185 (1993).

574. *Id.* at 1062. “Under New York law, a contract for services that makes no specific provision for duration is presumed to be terminable at will.” *Id.*

575. *Id.* at 1052-53. The court stated that “[a]n interest that state law permits to be terminated at the whim of another person is not a property right that is protected by the Due Process Clause.” *Id.* at 1062.

576. *Id.* (quoting *Roth*, 408 U.S. at 577).

577. *Id.* The court stated:

The parties stipulated that the . . . system for assigning segments of I-287 to towing operators was ‘not specifically authorized by, or codified in any statute or in any regulation of the State Police,’ that these assignments were ‘not contractual in nature’ that the assignments were ‘not specifically licensed or issued permits by the State Police to operate or to provide services under the . . . dispatch system.’

*Id.*; see also *S & D Maintenance Co. v. Goldin*, 844 F.2d 962, 969-70 (2d Cir. 1988). The court stated:

In the absence of a contractual or state law entitlement to prompt payment, we need not consider whether a prompt payment right, if otherwise established, could be interfered with, without some form of

no cognizable property interest in continued towing referrals . . . and the mere termination of their status . . . did not deprive them of a due process-protected interest.”<sup>578</sup>

The plaintiff in *Manshul* also asserted an equal protection claim<sup>579</sup> alleging that he was not allowed to bid on contracts for the defendant.<sup>580</sup> However, the appellate division dismissed plaintiff’s claim and explained that the plaintiff was trying to relitigate the same issue which had already been decided in federal district court, thus the plaintiff was collaterally estopped from relitigating this claim.<sup>581</sup> The court further stated that in order for equal protection to apply under either state or federal law, there must be state action.<sup>582</sup>

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due process protection, by the State’s power to defer payment pending an investigation to determine legality.

*Id.*

578. *White Plains Towing Corp.*, 991 F.2d at 1062.

579. N.Y. CONST. art. I, § 11. The court stated that it has “held that the Equal Protection Clause in the New York State Constitution . . . is no broader in coverage than its Federal counterpart, and this equation with the Federal provision extends to the requirement of ‘State action’ in order for the Equal Protection Clause to be applicable. *Id.* (citations omitted).

580. *Manshul*, 192 A.D.2d at 660, 496 N.Y.S.2d at 476.

581. *Id.*

582. *Id.*; see also *Under 21 v. City of New York*, 65 N.Y.2d 344, 60, n.6, 482 N.E.2d 1, 7, n.6, 492 N.Y.S.2d 522, 528, n.6 (1985) (stating that the Equal Protection Clause under the State and Federal Constitutions are the same in coverage and both require state action in order for the Clause to be applicable); *Esler v. Walters*, 56 N.Y.2d 306, 313-14, 437 N.E.2d 1090, 1094 452 N.Y.S.2d 333, 337 (1982) (stating that the Equal Protection Clause under the State Constitution is not broader than its federal counterpart); *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512, 530, 87 N.E.2d 541, 548 (1949), *cert. denied*, 399 U.S. 981 (1950) (stating that it is necessary to determine whether the Equal Protection Clause under the New York State Constitution is broader than the Equal Protection Clause under the Fourteenth Amendment of the Federal Constitution); *McDermott v. Forsythe*, 188 A.D.2d 173, 177, 594 N.Y.S.2d 436, 439 (3d Dep’t 1993) (holding that the establishment of different dates for reclassification of new civil service titles was not a violation of equal protection); *Shattenkirk v. Finnerty*, 97 A.D.2d 51, 55, 471 N.Y.S.2d 149, 153 (3d Dep’t 1983), *aff’d in part, rev’d in part*, 62 N.Y.2d 949, 468 N.E.2d 53, 479 N.Y.S.2d 215 (1984) (stating that the Equal Protection Clauses under the State Constitution and its federal counterpart were equal).

The federal courts have also interpreted the Federal and State Equal Protection Clauses to grant many of the same rights. In *Burka v. New York City Transit Authority*,<sup>583</sup> the plaintiffs who were drug abusers alleged that they suffered equal protection violations under both the Federal and the New York State Constitutions.<sup>584</sup> They “claim[ed] that they “[were] not afforded the same protection as other *disabled* employees, such as alcohol users . . . .”<sup>585</sup> Specifically, “[t]hey contend[ed] that they [were] treated differently than others (alcohol users) similarly situated within the class, and that such disparate treatment bears no rational relationship to the [defendant’s] stated objectives.”<sup>586</sup> The court dismissed the plaintiff’s federal claim stating that there existed a rational relationship between the Transit Authority’s drug screening program and “its policy . . . designed to help ensure a safe and dependable public transit system.”<sup>587</sup> As to the plaintiff’s state equal protection claim, the court noted that “the equal protection clauses of the United States and New York constitutions are coextensive[.]”<sup>588</sup> thus mandating the dismissal of this claim.<sup>589</sup>

Thus, as to both the due process and equal protection claims asserted in *Manshul*, both the state and federal courts appear to be in agreement as to their handling of the issues presented.

T.E.A. Marine Automotive Corp. v. Scaduto<sup>590</sup>  
(decided December 27, 1993)

Appellant claimed that publication of a tax lien sale violated his right to due process as provided in the State<sup>591</sup> and Federal<sup>592</sup>

583. 680 F. Supp 590 (S.D.N.Y. 1988).

584. *Id.* at 601-02.

585. *Id.* at 601-03.

586. *Id.* at 602. The “policies in issue [in this case] prohibit[ed] drug use, requir[ed] drug testing, and disciplin[ed] or refus[ed] to hire those who test[ed] positive [for drug use] . . . .” *Id.* at 603.

587. *Id.* at 602-03.

588. *Id.*

589. *Id.*

590. \_\_\_ A.D.2d \_\_\_, 607 N.Y.S.2d 47 (2d Dep’t 1993).