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## Due Process

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**SUPREME COURT  
NEW YORK COUNTY**

**Ricketts v. City of New York<sup>1</sup>  
(decided March 18, 1999)**

Plaintiff's action sought to "nullify local legislation giving the City of New York authority to granting franchises for the operation of commuter van services."<sup>2</sup> In this case, there were four causes of action. First, the plaintiffs claimed that they were denied due process guarantees pursuant to the Federal<sup>3</sup> and State<sup>4</sup> Constitutions because they were prohibited from using bus routes and picking up customers without arrangement in advance.<sup>5</sup> The second claim dealt with the many problems with applications for commuter van services, which the plaintiffs alleged violated their constitutional rights.<sup>6</sup> The third cause of action sought to "nullify Local Law 115 (1993)."<sup>7</sup> The plaintiffs alleged that this legislation was not consistent with State law and deprived them of their

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<sup>1</sup> 181 Misc. 2d 838, 688 N.Y.S.2d 418 (Sup. Ct. New York County 1999).

<sup>2</sup> *Id.* at 840, 688 N.Y.S.2d at 420.

<sup>3</sup> U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment provides in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." *Id.*

<sup>4</sup> N.Y. CONST. art. 1, § 6. This section provides in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." *Id.*

<sup>5</sup> *Ricketts*, 181 Misc. 2d at 840, 688 N.Y.S.2d at 420.

<sup>6</sup> *Id.* The plaintiffs alleged "a violation of constitutional rights by allowing the application for commuter van services to be denied without explanation or a record for review or merely not responding to the application within 180 days," which deprived the plaintiffs of their right to earn a living. *Id.*

<sup>7</sup> *Id.* Under the third cause of action, the plaintiffs also argued "that the State enabling legislation transferring regulatory authority from a mayoral designated agency is violated by Local Law 115 which gives the final authority of approval to the City Council, a local legislative body rather than a city agency." *Id.* This argument was "nullified by the decision in *Giuliani v. The Council of the City of New York*," 688 N.Y.S.2d 413 (1999), where the "defendants in this action had a full and fair opportunity to litigate this issue." *Ricketts*, 181 Misc. 2d at 841, 688 N.Y.S.2d at 421.

constitutional right to liberty.<sup>8</sup> The fourth cause of action “[was] directed against Local Law 83 (1997)<sup>9</sup> imposing a moratorium on the granting of new applications.”<sup>10</sup> Plaintiffs moved for summary judgment on the third and fourth causes of action and the defendants cross-moved for partial summary judgment on all four causes of action.<sup>11</sup> The Supreme Court, New York County, concluded that due process was satisfied, the Local Law 115 provision dealing with applications was invalid, and the plaintiffs were not deprived of their constitutional right to liberty because of the lack of permanency of the grandfather authorizations.<sup>12</sup>

The plaintiffs comprised “operators of existing commuter services who ha[d] been denied their requests to expand operations or [were] seeking to obtain authorization for a new commuter van service and the organization representing the interests of commuter van operators.”<sup>13</sup> They objected that the City of New York had control over granting franchises for commuter van services.<sup>14</sup> Within the four causes of action, several New York State constitutional issues were raised.<sup>15</sup>

The lower court stated, “[a] local law is clothed with the presumption of constitutionality,” however, it “may not be arbitrary.”<sup>16</sup> It was the responsibility of the City Government to

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<sup>8</sup> *Id.* The third cause of action claims “that this [law] which does not provide for the permanent authorizations accorded by the State to existing commuter van services is . . . invalid as inconsistent with State law and deprives the owners . . . of their constitutional right to liberty by depriving them of the right to earn a living.” *Id.*

<sup>9</sup> Local Law 83 of 1997 provides in pertinent part: “a local law . . . in relation to imposing a moratorium on the acceptance, processing and approval of application for authorization to operate or expand the operation of commuter van services.” *Id.*

<sup>10</sup> *Id.* The Local Law 83 (1997) under the fourth cause of action expired and was not renewed.

<sup>11</sup> *Id.* at 840, 688 N.Y.S.2d at 420.

<sup>12</sup> *Id.* at 841, 688 N.Y.S.2d at 421.

<sup>13</sup> *Id.* at 840, 688 N.Y.S.2d at 420.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 841, 688 N.Y.S.2d at 421. The court noted that:

[t]he exceedingly strong presumption of constitutionality applies not only to enactments of the legislature but to

regulate traffic on the public streets, and under of Local Law 115, the City had the power to regulate van service travel routes.<sup>17</sup> In this case, the power granted to the City could be related to its responsibility to regulate traffic.<sup>18</sup> The lower court analyzed the holding of the Court of Appeals in *Bakery Salvage Corporation v. City of Lackawanna*.<sup>19</sup> In *Bakery Salvage* the court dealt with an ordinance that restricted certain size trucks from using a residential street.<sup>20</sup> The plaintiffs brought action challenging the ordinance, but the court found the ordinance valid, stating that there was no doubt that the city had the power to enact a reasonable ordinance to regulate the weight and size of vehicles on city streets.<sup>21</sup> The court in *Bakery Salvage* explained that the plaintiffs' claims could not "override the safety of residents and the reasonable regulations of a city designed to promote the public safety."<sup>22</sup>

In the current case, the lower court did not conclude that the permanent status of the franchises under State control violated State law.<sup>23</sup> The lower court also reasoned that it was clear that the State intended the City to have "its own licensing policy undisturbed by the prior licensing policy of the State."<sup>24</sup> Therefore, the plaintiffs' argument was flawed. The court disagreed with the plaintiffs' contention that there was an

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ordinances of municipalities as well. While this presumption is rebuttable, unconstitutionality must be demonstrated beyond a reasonable doubt and only as a last resort should courts strike down legislation on the ground of unconstitutionality.

*Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 842, 688 N.Y.S.2d at 421-22.

<sup>19</sup> 24 N.Y.2d 643, 249 N.E.2d 438, 301 N.Y.S.2d 581 (1969).

<sup>20</sup> *Id.* at 645, 249 N.E.2d at 438, 301 N.Y.S.2d at 582.

<sup>21</sup> *Id.* at 644, 645, 249 N.E.2d at 438, 301 N.Y.S.2d at 581, 582.

<sup>22</sup> *Id.* at 646, 249 N.E.2d at 439, 301 N.Y.S.2d at 583.

<sup>23</sup> *Ricketts*, 181 Misc. 2d at 842, 688 N.Y.S.2d at 422.

<sup>24</sup> *Id.* at 843, 688 N.Y.S.2d at 422. "It is obvious that this legislation permits the City of New York to limit the previous permanent licenses to operate that were granted by the State. This was the understanding of the State legislators most directly involved in the enactment of the legislation." *Id.*

unconstitutional taking of property and a denial of their right to earn a living.<sup>25</sup>

The court also relied on *People v. Cook*<sup>26</sup> in reaching its conclusion that the power to regulate or prohibit a business did not violate the due process clause because “[t]he right to do business has never been considered a fundamental right.”<sup>27</sup> The court in *Cook* explained that New York City had the “power to regulate retail prices of cigarettes” and it could require a price difference between cigarettes with high tar and nicotine and those with low tar and nicotine.<sup>28</sup> The appellant in *Cook* argued, among other things, that this price difference was unconstitutional because it “violate[d] the constitutional guarantee of due process because its pricing requirements [were] too vague.”<sup>29</sup> The court held the reason for the price differential was health promotion, and New York City was “granted the exercise of police power to promote health by the sovereign people acting through the State Constitution and the State Legislature.”<sup>30</sup>

Additionally, the court in the instant case addressed the specific issue of whether Local Law 115 could exist without the “call back provision” and whether it was intended to exist if not all the provisions were considered valid.<sup>31</sup> Stating that this issue has to be looked at on a case by case basis, the court applied the principle in *Mayor of the City of New York v. Council of the City of New York*.<sup>32</sup> Here, Local Law 13 was considered invalid because a portion of it had given defendant Council the ability to share

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<sup>25</sup> *Id.* “[T]he plaintiffs’ licenses to operate their franchises do not constitute a property right protected by the State and Federal constitutions; nor do their businesses fall under the liberty clauses of those constitutions.” *Id.*

<sup>26</sup> 34 N.Y.2d 100, 312 N.E.2d 452, 356 N.Y.S.2d 259 (1974). The primary issue in this case was “whether New York City has the power to regulate retail prices of cigarettes so as to require retailers to maintain a difference in price between brands that have a higher tar and nicotine content.” *Id.* at 103, 312 N.E.2d at 454, 356 N.Y.S.2d at 262.

<sup>27</sup> *Ricketts*, 181 Misc. 2d at 843, 688 N.Y.S.2d at 422.

<sup>28</sup> *Cook*, 34 N.Y.2d at 103, 312 N.E.2d at 454, 356 N.Y.S.2d at 262.

<sup>29</sup> *Id.* at 104, 312 N.E.2d at 454, 356 N.Y.S.2d at 262.

<sup>30</sup> *Id.* at 105, 312 N.E.2d at 455, 356 N.Y.S.2d at 263.

<sup>31</sup> *Ricketts*, 181 Misc. 2d at 844, 688 N.Y.S.2d at 423.

<sup>32</sup> 235 A.D.2d 230, 651 N.Y.S.2d 531 (1997).

statutory executive power with the Mayor, resulting in the Mayor's powers being limited.<sup>33</sup> The court found that the Mayor should not be forced to share statutory power and declared the entire law invalid, rather than severing the specific portion.<sup>34</sup> The court did not find that the defendant intended to have the law enforced if part of it was removed, and it was intended to exist with all the provisions.<sup>35</sup> Likewise, in *Ricketts*, if the invalid provisions of a statute were "incidental to the main purpose of the statute," then they can be removed without affecting the rest of the statute.<sup>36</sup> The *Ricketts* court concluded that the invalid provision was incidental to the main purpose of Local Law 115, which gave city authorities the control over the approval and regulation of commuter van services.<sup>37</sup>

Furthermore, the court disagreed with the section in Local Law 115 which declared the automatic denial of a licensee after the passing of 180 days without giving a reason.<sup>38</sup> The court noted that it was only fair, as well as essential for due process, that licensees receive notice of a denial, be given a reason for it, and also be given an opportunity to present their case.<sup>39</sup> The court cited *Taddonio v. Heckler*,<sup>40</sup> which stated that the defendant's procedure in terminating plaintiff's supplemental security income benefits did not violate due process.<sup>41</sup> In *Taddonio*, the court found that it was important to give the plaintiff adequate process before his benefits were terminated and due process required this in order to be sure

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 231, 651 N.Y.S.2d at 532.

<sup>35</sup> *Id.*

<sup>36</sup> *Ricketts*, 181 Misc. 2d at 844, 688 N.Y.S.2d at 423. "The City Council has vigorously opposed invalidation of the statute even if the challenged portions of Local Law 115 were declared unconstitutional." *Id.* at 845, 688 N.Y.S.2d at 423.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 845, 688 N.Y.S.2d at 423-24.

<sup>40</sup> 609 F. Supp. 689 (E.D.Pa. 1985). In *Taddonio*, the plaintiff "argues that the termination of his Supplemental Security Income benefits for non-medical reasons prior to a hearing before an Administrative Law Judge violated his" due process rights. *Id.* at 690.

<sup>41</sup> *Id.* at 694.

that the individual was given an opportunity to present his case.<sup>42</sup>Likewise, the *Ricketts* court remanded the case “to the City defendants in order that the Taxi and Limousine Commission may adjudicate the plaintiffs’ individual claims.”<sup>43</sup>

In sum, the Constitution of the State of New York<sup>44</sup> parallels that of the Federal Constitution<sup>45</sup> with respect to due process. When analyzing due process requirements in regard to licensees receiving notice and reason for denial, as well as an opportunity to present their case, the due process rights guaranteed under the United States and New York Constitutions are virtually indistinguishable.<sup>46</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> *Ricketts*, 181 Misc. 2d at 846, 688 N.Y.S.2d at 424.

<sup>44</sup> N.Y. CONST. art. 1, § 6. *See supra* note 4 and accompanying text.

<sup>45</sup> U.S. CONST. amend. XIV, § 1. *See supra* note 3 and accompanying text.

<sup>46</sup> *Ricketts*, 181 Misc. 2d at 845, 688 N.Y.S.2d at 423-24.