

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**February 28, 2003 through March 6, 2003**

A list of appeals with short title, jurisdictional predicate, subject matter and key issues is prepared each week.

Some of these filed appeals may never reach decision on the merits because of dismissal on motion, sua sponte, or for time deficiencies or because of stipulated withdrawals by the parties. Also, some counsel fail to file timely jurisdictional statements and thus the list should not be treated as comprehensive for any particular week.

**The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Court Rule 500.11 and direct any questions to the Clerk's Office.**

For February 28, 2003 through March 6, 2003 the following jurisdictional statements for appeals were filed:

BANKERS TRUST CORPORATION v NEW YORK CITY DEPARTMENT OF FINANCE, et al.:

1<sup>ST</sup> Dept. App. Div. order of 11/19/02; reversal; leave to appeal granted by Court of Appeals, 2/20/03;  
TAXATION - SCOPE OF NEW YORK CITY TAX AUDIT UPON THE FILING OF A REFUND CLAIM AFTER EXPIRATION OF LIMITATION PERIOD FOR DEFICIENCY ASSESSMENTS; ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 11-678(3)(c); EFFECT TO BE GIVEN TO SETTLEMENT AGREEMENTS BETWEEN PLAINTIFF AND DEFENDANT NEW YORK CITY DEPARTMENT OF FINANCE; Supreme Court, New York County, granted plaintiff's motion for summary judgment declaring that it was entitled to the tax refunds it had claimed from the City and denied defendants' cross motion for summary judgment; App. Div. reversed, denied plaintiff's motion and granted defendants' cross motion for summary judgment.

PINELAWN CEMETERY, INC. v BOARD OF ASSESSORS and BOARD OF ASSESSMENT REVIEW OF TOWN OF BABYLON, et al.:

2<sup>nd</sup> Dept. App. Div. order of 12/16/02; reversal; sua sponte examination of whether a substantial constitutional question is directly involved;

CONSTITUTIONAL LAW - TAXATION - EQUAL PROTECTION CHALLENGE TO REAL ESTATE TAX ASSESSMENT OF GOLF COURSE;

Supreme Court, Suffolk County, granted a CPLR article 78 petition and vacated an increased tax assessment of petitioner's real property; App. Div. reversed, denied the petition and reinstated the tax assessment.

STEVENS and THOMPSON PAPER COMPANY v NIAGARA MOHAWK POWER CORPORATION:

3<sup>rd</sup> Dept. App. Div. order of 11/7/02; affirmance; leave to appeal granted by Court of Appeals, 2/20/03;

PUBLIC UTILITIES - ALTERNATIVE ENERGY PRODUCERS - LONG-TERM ENERGY RATE CONTRACT BETWEEN UTILITY COMPANY AND PRIVATE ENERGY PRODUCER - EFFECT ON CONTRACT OF 1992 AMENDMENTS TO PUBLIC SERVICE LAW § 66-c - GRANDFATHERING PROVISION OF AMENDED STATUTE; Supreme Court, Washington County, granted in part and denied in part plaintiff's motion and defendant's cross motion for summary judgment; App. Div. affirmed.

STOP-THE-BARGE, et al. v CAHILL, AS COMMISSIONER OF ENVIRONMENTAL CONSERVATION, et al.:

3<sup>rd</sup> Dept. App. Div. order of 10/31/02; modification; leave to appeal granted by Court of Appeals, 2/25/03;

ENVIRONMENTAL CONSERVATION - ENVIRONMENTAL QUALITY REVIEW - APPLICATION BY UTILITY COMPANY TO CONSTRUCT POWER GENERATION FACILITY ON BARGE TO BE DOCKED IN BROOKLYN NAVY YARD - NEGATIVE DECLARATION - STATUTE OF LIMITATIONS (ENVIRONMENTAL CONSERVATION LAW § 19-0511[2]);

Supreme Court, Albany County, granted respondents' motions to dismiss the CPLR article 78 petition; App. Div. modified the judgment by reversing so much thereof as granted the motion of respondents Commissioner of Environmental Conservation and Department of Environmental Conservation and as dismissed the petition against New York City Energy, LLC, denied the motion and affirmed the judgment as so modified.

THEROUX, et al., MATTER OF, v REILLY, et al.:

2<sup>nd</sup> Dept. App. Div. order of 8/26/02; reversal; leave to appeal granted by Court of Appeals, 12/12/02;

MUNICIPAL LAW - BENEFITS FOR CORRECTIONS OFFICERS INJURED IN THE PERFORMANCE OF THEIR DUTIES (MUNICIPAL LAW § 207-C) - PROPRIETY OF APPLICATION BY MUNICIPALITY OF HEIGHTENED RISK STANDARD IN DETERMINING WHETHER TO AWARD § 207-c BENEFITS TO CORRECTIONS OFFICERS;

Supreme Court, Nassau County, annulled respondents' determination that four correction officers were ineligible for General Municipal Law § 207-c benefits, dismissed the petition of the fifth officer and directed submission of a judgment on notice; App. Div. reversed, denied the petition and dismissed the article 78 proceeding as to the four appealing petitioners.

THE UNITED FEDERATION OF TEACHERS, LOCAL 2, AFT, AFL-CIO, MATTER OF, v THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK:

1<sup>st</sup> Dept. App. Div. order of 7/18/02; reversal; leave to appeal granted by Court of Appeals, 2/20/03;

ARBITRATION - AWARD ALLEGED IN EXCESS OF ARBITRATOR'S POWERS - MAINTENANCE OF EDUCATIONAL STANDARDS - SELECTION OF TEACHERS FOR AFTER-SCHOOL PROGRAM; VACATUR OF ARBITRATION AWARD ON PUBLIC POLICY GROUNDS; ARBITRATOR'S ALLEGED USURPATION OF BOARD OF EDUCATION'S NON-DELEGABLE DUTY TO APPOINT QUALIFIED TEACHERS TO POSITIONS; WAIVER;

Supreme Court, New York County, granted petitioner's motion to confirm and denied respondent's cross motion to vacate an arbitration award; App. Div. reversed, denied petitioner's motion to confirm and granted respondent's cross motion to vacate the arbitration award.

VERGES v SABOURIN:

3<sup>rd</sup> Dept. App. Div. order of 10/31/02; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - LIMITATION OF ACTIONS - COMMENCEMENT OF FOUR MONTH STATUTE OF LIMITATIONS PERIOD (CPLR 217[1]); EXTENSION OF LIMITATIONS PERIOD (CPLR 201) FOR INMATE'S HOSPITALIZATION AND CONFINEMENT IN PROTECTIVE CUSTODY;

Supreme Court, Albany County, granted respondents' motion to dismiss petitioner's CPLR article 78 proceeding as time barred; App. Div. affirmed.