State of New York
Court of Appeals

To be argued Tuesday, March 11, 2025, in Binghamton

No. 35 Matter of Dynamic Logic, Inc. v Tax Appeals Tribunal

Dynamic Logic, Inc. offers a service to its business clients, AdIndex, designed to measure the effectiveness of their advertising. The service includes surveying consumers and comparing responses from those who have been exposed to the client's advertising campaign with responses from those who have not, and Dynamic Logic then provides the client with a report analyzing the results and making recommendations to improve the effectiveness of its advertising. The report compares the client's advertising results with industry benchmarks in Dynamic Logic's subscription database, MarketNorms, which aggregates anonymized results from prior surveys conducted for other AdIndex clients. The results of the latest surveys are also added to the MarketNorms database for future use.

In 2016, after an audit, the State Department of Taxation and Finance determined that AdIndex was a taxable information service under Tax Law § 1105(c)(1), which imposes sales tax on: "The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons." The Department assessed nearly $2.3 million in sales taxes against Dynamic Logic for its sale of AdIndex services from September 2011 through August 2014. The Division of Tax Appeals upheld the determination and the Tax Appeals Tribunal affirmed.

The Appellate Division, Third Department confirmed the Tribunal's determination that AdIndex provides taxable information services. "While petitioner insists that the services under consideration constitute nontaxable consulting services, the record supports the finding that the primary function of AdIndex is the collection and analysis of information...," the court said. "Although AdIndex reports also include certain advice and/or recommendations to improve the effectiveness of the client's ad campaign..., the record reflects that such recommendations are, for the most part, drawn directly from the data collected." It said AdIndex did not qualify for the tax exclusion for information that is not "substantially incorporated" into reports furnished to others because Dynamic Logic's clients "could purchase access to the MarketNorms database and the raw data contained therein" and because "MarketNorms data is also used by petitioner to prepare AdIndex reports for its customers" comparing their ad results with industry benchmarks.

Dynamic Logic argues that AdIndex is not a taxable information service "because there is no dissemination of information to other persons" and because it is actually a consulting service. "AdIndex provides a unique report to each client that is relevant only to that client and that is never provided to another." It also contends that AdIndex qualifies for the tax exclusion "because a client's information is never 'substantially incorporated' into reports provided to others." It says the survey response data aggregated in MarketNorms is minimal, not substantial.

For appellant Dynamic Logic: Leah Robinson, Manhattan (212) 506-2799
For respondent Tribunal: Assistant Solicitor General Frederick A. Brodie (518) 776-2317

State of New York
Court of Appeals

To be argued Tuesday, March 11, 2025, in Binghamton

No. 30 People v Christopher Farrell

In September 2021, a building inspector for the City of Kingston found a dog lying immobile in a street and an investigator for the Ulster County Society for the Prevention of Cruelty to Animals picked the dog up as a stray. Four days later the investigator charged the dog's owner, Christopher Farrell, with "failure to provide necessary sustenance" to his dog under Agriculture and Markets Law § 353. In a misdemeanor complaint, the investigator alleged that Farrell "did allow a Black/Tan/White, male Burmese Mountain Dog known as 'Mogley' ... to live with the debilitating medical condition of Spondylosis, causing chronic pain and suffering; as well as being infested with fleas, a mass on his spine and a mass near his heart; denying the animal access to veterinary care. According to Mr. Farrell, he stated the dog has never visited a vet and Mogley is going to die anyway." Farrell moved to dismiss the complaint on the grounds that it was facially insufficient and that section 353 is unconstitutionally vague.

Kingston City Court dismissed the complaint for facial insufficiency, saying the complaint "fails to allege any factual information in non-hearsay form. The investigator verifying the complaint does not allege that he observed the dog known as 'Mogley' nor does he refer to any examination of the dog by a veterinarian." If the term "sustenance" in section 353 "includes veterinarian care as argued by the people, the complaint must set forth what care was mandated but not provided...," it said. "There is nothing to establish what 'sustenance' i.e. veterinary care would entail in the treating of the alleged conditions nor is there any allegation that the defendant refused to provide veterinary care once advised of the alleged conditions."

Ulster County Court reversed and reinstated the complaint. "The hearsay descriptions of Spondylosis and masses, if the only claimed facts in support, would be, standing alone, insufficient to convert the complaint to a triable document," the court said. "However, the factual portion's descriptions of the flea infestation and denial of veterinary care are supported by [the investigator's] direct observations of the dog's condition and defendant's admissions." It concluded that "a failure to provide veterinary care ... may constitute torture or cruelty sufficient to support a charge" under section 353. The court went on to reject Farrell's claim that the statute is void for vagueness, saying that "a person of ordinary intelligence could certainly ... determine whether the act was prohibited and unjustified.... This would assuredly include denial of necessary care where a companion animal plainly suffers from willful neglect."

Farrell argues the complaint is facially deficient because, among other things, it "fails to identify what treatment was available and denied to the dog. There is no allegation that Mr. Farrell was aware, or should have been aware, that the dog had spondylosis or that it had two internal masses." He also contends the failure to provide "necessary sustenance, food or drink," as used in section 353, is unconstitutionally vague because a person of ordinary intelligence would not understand that "sustenance" includes veterinary care and that "failure to discover and treat a latent mass on a dog's spine or near a dog's heart would lead to criminal liability." He says the statute, "precisely because it is silent about veterinary care, provides no guidance as to when ... a person may be criminally charged with 'veterinary neglect.'"

For appellant Farrell: Mitchell H. Spinac, Kingston (845) 331-5777
For respondent: Ulster County Assistant District Attorney Sohil Sharedalal (845) 340-3280

State of New York
Court of Appeals

To be argued Tuesday, March 11, 2025, in Binghamton

No. 32 Matter of Schulze v City of Newburgh Fire Department

Adam Schulze was a firefighter for the City of Newburgh in April 2012, when he suffered disabling work-related injuries to his neck and back, established a claim for workers' compensation benefits and, in 2015, was classified as permanently partially disabled. The City continued to pay Schulze his full salary during his disability, as required by General Municipal Law (GML) § 207-a(1), and it was reimbursed for those wage payments from his workers' compensation awards pursuant to Workers' Compensation Law (WCL) § 25(4)(a). His application for performance of duty disability retirement was approved in April 2016 and he began receiving a 50% pension. At the same time, the City stopped paying his full wages and, pursuant to GML § 207-a(2), began paying him pension supplements to make up the difference between his pension and the amount of his regular wages. In 2020, Schulze received a new award of workers' compensation benefits retroactive to April 2016 and the City sought reimbursement of the pension supplements it had been paying him under GML § 207-a(2).

The Workers' Compensation Board (WCB) rejected the City's reimbursement claim, ruling that pension supplements paid under GML § 207-a(2) are a retirement benefit, not "wages" that would be reimbursable under WCL § 25(4)(a) or § 30(2).

The Appellate Division, Third Department affirmed based on its 1987 decision in M/O Harzinski v Village of Endicott (126 AD2d 56), which held that "the benefit payments ... under General Municipal Law § 207-a(2) do not constitute wages within the meaning of Workers Compensation Law § 25(4)(a) or § 30(2)," which authorize reimbursement from compensation awards for disability payments made "to an employee in like manner as wages" and for "salary or wages paid." The court said, "Any payments made to [Schulze] after he was granted a retirement allowance ... in April 2016 were made to him as a retiree and not as an employee. Further, once granted disability retirement, [GML] § 207-a(2) states that payment of full wages 'shall be discontinued' and does not characterize the statutory benefits paid thereafter as wages but as 'the difference between the amounts received under such ... pension and the amount of his [or her] regular ... wages.'"

The City argues that it is entitled to reimbursement for the payments it made under GML § 207-a(2) because the purpose of the "statutory structure was to prohibit duplicate payments of compensation." It says, "The statutory framework ... generally ensures firefighters who become disabled ... are fairly compensated by receiving the combined equivalent of their regular full salary and wages. However, this same framework provides for an employer to have a right of reimbursement or a credit against an award of compensation as a result of payments made under § 207-a.... Allowing [Schulze] to directly receive workers' compensation benefits retroactively for over three years, where he was already in receipt of a combination of benefits equivalent to his regular salary and wages, thwarts the intent of the statutory scheme, and bestows a prohibited duplicate benefit on the claimant while harming the employer."

For appellant Newburgh F.D. Lars P. Mead, Binghamton (607) 723-9511
For respondent Schulze: Richard T. Cahill Jr., New Windsor (845) 671-3217
For respondent WCB: Assistant Solicitor General Dustin J. Brockner (518) 776-2017