

- **Real Estate Damages Clarified**
- **Teacher's Paid Leave For "Religious Observance" Is Unconstitutional**
- **Parents Complaining About Their Child's Special Education Needs, Must First Exhaust Administrative Remedies**

## Real Estate Damages Clarified



According to New York's highest Court, it has just considered for the first time in its history of New York jurisprudence the measure of damages for a purchaser's breach of a contract to sell real property. This is an amazing fact, given the Court of Appeals was established by the State Constitution of 1846. In *White v. Farrell* (March 21, 2013), the Court of Appeals held that a contract buyer who breaches his contract to purchase real property should be subject to damages equivalent to the difference,

if any, between the value of the property when the contract was signed and when it was breached.

In this case, the sellers of property in upstate New York had argued that the contract buyers should have to pay them \$348,450, which was the difference between the \$1,725,000 they agreed to pay for the home on lakefront property, and the \$1,376,550 that the sellers sold the property for to a third-party 14 months after the buyers pulled out of the deal. The sellers also sought over \$200,000 in other damages, such as additional costs of mortgage payments and property taxes attributed to the contract breach. It was already settled that the purchasers breached the contract of sale, even though they had commenced the action against the sellers for the return of their \$25,000 deposit.

The would-be purchasers asked the Court of Appeals to "put aside settled law and adopt a new rule" that departs from the majority of jurisdictions on the appropriate measure of damages. They argued that the damages for the purchasers' breach of a contract to sell real property should always be the difference between the contract price and any later lower selling price, and nothing more. The sellers argued that the damages incurred as a result of the breach should be *either* the difference between the contract price and the subsequent lower sale price or, where no subsequent sale price has occurred, the difference between the contract price and the market value of the real property at the time of the breach.

The Court of Appeals rejected both arguments and adopted the standard used by the majority of jurisdictions nation-wide, as explained in *Williston on Contracts* as follows: “Unless the vendor has elected to accept, as the exclusive remedy, liquidated damages represented by the purchaser’s deposit, where the vendor sues the purchaser for breach of contract, the vendor may recover for the loss of the bargain, and the generally accepted measure of damages is the difference between the contract price and the fair market value of the property at the time of the breach. Vendor may recover damages in the amount of the contract price reduced by the fair market value of the property, less any deposit or earnest money paid by the purchaser.... The price obtained by the vendor on a later resale of the property may be regarded as competent evidence of its fair market value on the date of the purchaser’s breach, provided that the market conditions are similar and the time elapsed between the date of the breach and the date of the resale is not too great.”

Concluding here that the fair market value is a “question of fact,” because there was contradicting evidence with respect to the market value, the Court of Appeals remitted the case to the trial court to consider at least the following factors relevant to damages: “whether, or the degree to which, the property’s resale in January 2007 for \$1,376,550 reflects fair market value as of October 2005, given the lapse of time (about 14 months) and any differences in market conditions and contract terms; whether the [sellers] made sufficient efforts to mitigate (*i.e.*, to resell at a reasonable price after the [buyers’] default), which is relevant to any weight to be given the resale price as a measure of fair market value at the time of the breach.”

Two of the judges concurred with the result of the ruling, but said that the rule established by the majority would effectively absolve many buyers who breach their purchase contracts from substantial penalties. They concluded that “[u]nder the majority’s rule, it is the innocent sellers, and not the breaching buyers, who must bear the cost of the buyers’ breach,” adding that the “reality of realty” means that in many cases where there are contract breaches, sellers will suffer from the time, energy and expense of restarting the sales process anew, while the “breaching buyer will walk away indifferent to the hardship caused to the seller by his conduct.”

## Teacher's Paid Leave For "Religious Observance" Is Unconstitutional



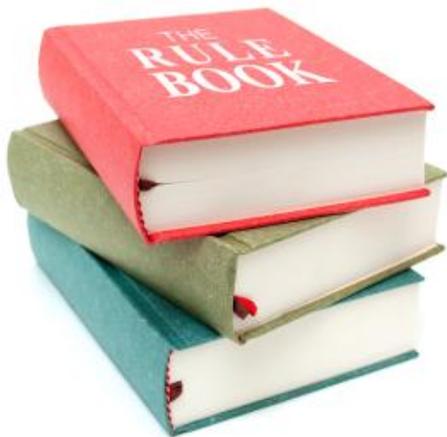
The New York State Appellate Division recently held that a provision in the collective bargaining agreement ("CBA") granting teachers additional paid days off to observe religious holidays violated the Establishment Clause of the United States Constitution.

In the Mineola School District, the CBA granted teachers up to five paid-days off strictly for "religious observance"; however, in October 2010, the District informed the

Mineola Teachers Association that it was discontinuing this practice. The Association filed a grievance, which was denied, and then sought arbitration. The District commenced a proceeding by petition to stay the arbitration, and the Association moved to compel arbitration. The Supreme Court granted the District's petition, and denied the Association's motion, and the Appellate Division affirmed.

In its decision, the Appellate Division stated: "Here, the clear wording of the religious holidays provision rewarded members of the Association who claimed to be religiously observant with more paid days off than those afforded to agnostics, atheist, and members who were less observant. As a result, the religious holiday provisions violated the Establishment Clause of the First Amendment of the United States Constitution." See *Board of Educ. of Mineola Union Free Sch. Dist. v. Mineola Teachers Ass'n*, 2013 WL 1223356 (2d Dept. Mar. 27, 2013).

## Parents Complaining About Their Child's Special Education Needs, Must First Exhaust Administrative Remedies



In *Intravaia v. Rocky Point Union Free Sch. Dist.*, \_\_F.Supp.2d\_\_, 2013 WL 358162 (E.D.N.Y. 2013), the parents of a child with Asperger's syndrome sued their child's school district, Superintendent, and the school district's attorney claiming that they had violated their rights under the Individuals with Disabilities Act ("IDEA"). They maintained that the school district failed to provide special education services set forth in their child's Individualized Education Program ("IEP"), and that the school district and its attorney wrongfully commenced an impartial hearing in order to interfere with a New York State Education Department ("SED") investigation into the matter that had been opened when the

parents filed a complaint with SED.

As a result of the defendants' commencement of the impartial hearing, SED set aside its investigation into the parent's complaint (as required by 8 NYCRR 200.5[1][2][vii]) in order to allow the impartial hearing to proceed. SED notified the parents that they could reopen their complaint after the impartial hearing if they felt that the issues had not been addressed appropriately. The parents then sued in Federal Court, maintaining that the defendants deliberately commenced the impartial hearing in order to block the SED investigation. Our firm represented the school district's attorney sued by the parents.

In dismissing the parents' lawsuit, the District Court judge noted the well-settled rule that the IDEA requires an aggrieved party to exhaust all administrative remedies *before* bringing a civil action in federal or state court. A plaintiff's failure to exhaust its administrative remedies under the IDEA deprives a court of jurisdiction to hear the case.

The parents argued that their request for an SED investigation was the "administrative remedy," but that the defendants blocked the SED investigation by commencing the impartial hearing. Rejecting this argument, the court held that the parents' request for an SED investigation "has no bearing on the administrative process that needs to be exhausted . . . before filing a civil action [in court]." Instead, it noted, only the impartial due process hearing that had been requested by the defendant school district (pursuant to 8 NYCRR 200.5[i][1]) would have satisfied the exhaustion requirement. As the District Court observed, "[i]f anything, by initiating an impartial hearing regarding the very violations which are the subject of the instant action, defendants started the administrative process that plaintiff's had to complete before coming to court."

The District Court also held that New York State regulations explicitly state that either "a parent *or school district* may file a due process complaint with respect to any matter relating to . . . the provision of a free and appropriate education to . . . a student with a disability." As the court found, by commencing the impartial hearing, "defendants were following the very due process procedures put in place to protect a disabled child's rights."