

# **Bond Case Briefs**

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**EMINENT DOMAIN - NEW YORK**

## **TKGSM-NY, LLC v. New York State Urban Development Corporation**

**Supreme Court, Kings County, New York - December 4, 2018 - N.Y.S.3d - 2018 WL 6557879 - 2018 N.Y. Slip Op. 28394**

Condemnee sought additional allowances for attorney fees, expert fees, and disbursements pursuant to the Eminent Domain Procedure Law.

The Supreme Court, Kings County, held that the requested award of additional allowances was not necessary for condemnee to achieve just and adequate compensation.

An award of additional allowances for attorney fees, expert fees, and disbursements was not necessary for condemnee to achieve just and adequate compensation, and thus condemnee was not entitled to such additional allowances pursuant to the Eminent Domain Procedure Law; trial court had awarded condemnee \$28,372,000 for the taking of the subject property, the difference between the award and condemnor's pre-vesting offer of \$25,275,000 was \$3,097,000, which was an increase of 12.2%, both sides had resolved before trial their disagreement as to what remained of property's Industrial and Commercial Incentive Program (ICIP) tax benefits, condemnee's valuation was not a basis for that part of increased award resulting from an increase in net operating income (NOI), which had been another point of disagreement, and neither condemnor's appraisal report nor appraiser's testimony were the basis for the minor adjustment to the cap rate used by condemnor.

Eminent Domain Procedure Law's requirement that an award of fees be necessary to achieve just and adequate compensation limits additional compensation to those portions of the attorneys' and other professionals' work that provided a basis for the higher award.