

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **EMINENT DOMAIN - NEW YORK**

### **Lebov, LLC v. State**

**Supreme Court, Appellate Division, Second Department, New York - July 22, 2020 - N.Y.S.3d - 185 A.D.3d 911 - 2020 WL 4197130 - 2020 N.Y. Slip Op. 04153**

Condemnee's predecessor commenced claim seeking direct damages for value of land appropriated by State as well as consequential damages for diminution in value to the remainder of the property.

Following trial, the Court of Claims awarded condemnnee \$232,000 in direct damages and lost site improvements but denied condemnnee's claim for consequential damages. Condemnee appealed.

The Supreme Court, Appellate Division, held that:

- Court of Claims properly determined value of appropriated land in determining amount of direct damages owed to condemnnee;
- Condemnee was not entitled to award of consequential damages for State's partial taking of landowner's real property; and
- Condemnee was not entitled to sanctions for spoliation of evidence by according an adverse inference with respect to the alleged destruction of draft appraisal reports prepared by the State's appraiser.

Court of Claims properly determined value of appropriated land in determining amount of direct damages owed to condemnnee in condemnnee's claim for damages for State's partial taking of his land, where amount of direct damages was within range of parties' expert testimony and was adequately explained, court considered comparable sales relied upon by parties' expert, and court did not adopt comparable sales analyzed by court in prior case.

Condemnee was not entitled to award of consequential damages for State's partial taking of landowner's real property, where condemnnee failed to meet its burden of proof to establish indirect damages and to furnish basis upon which reasonable estimate of those damages could be made, condemnnee did not present evidence that potential expansion was physically possible in light of existing zoning requirements or economically feasible, and condemnnee was not entitled to award of consequential damages based upon partial taking reducing amount of parking on property.

Condemnee was not entitled to sanctions for spoliation of evidence by according an adverse inference with respect to the alleged destruction of draft appraisal reports prepared by the State's appraiser in condemnnee's proceeding for damages following State's partial taking of condemnnee's real property, where condemnnee failed to present evidence that State's appraiser violated Uniform Standards of Professional Appraisal Practice by failing to maintain in his work file prior draft appraisal report that was transmitted to State, and condemnnee failed to present evidence that appraiser created and intentionally destroyed prior drafts of appraisal report, which were relevant to condemnnee's claim.

