

# **Bond Case Briefs**

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## **MUNICIPAL ORDINANCE - NEW YORK**

### **D'Alessandro, ex rel. Vallemaio Properties, LLC v. Kirkmire**

**Supreme Court, Appellate Division, Fourth Department, New York - February 6, 2015 - N.Y.S.2d - 2015 N.Y. Slip Op. 01018**

Petitioners commenced a hybrid CPLR article 78 proceeding and declaratory judgment action seeking to declare section 90-21 of the Municipal Code of the City of Rochester (Code) unconstitutional. That section of the Code permits the City to collect a “case management fee” (CMF) of \$100 in any case in which a property owner has failed, for over one year, to comply with a notice and order notifying that owner of Code violations related to the property.

The Supreme Court, Monroe County, declared that the CMFs were valid, constitutional and legally imposed. Petitioners appealed.

The appeals court reversed, holding that section 90-21 of the Municipal Code of the City of Rochester was unconstitutional under the United States and New York Constitutions, because the CMFs were, in actuality, a fine that was imposed upon property owners without due process.