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MUNICIPAL ORDINANCE - NEW YORK

Eric M. Berman, P.C. v. City of New York

Court of Appeals of New York - June 30, 2015 - N.E.3d - 2015 WL 3948182 - 2015 N.Y. Slip Op. 05594

Law firms involved in debt collection brought action in federal district court against city, city council, and others, alleging that amendments to city debt collection ordinance were contrary to New York state law, violated the Commerce and Contract Clauses of the United States Constitution, and rendered the ordinance unconstitutionally vague. On the parties' cross-motions for summary judgment District Court granted plaintiffs' motion in part, ruling that ordinance was invalid to the extent it purported to regulate the conduct of attorneys. Defendants appealed. The Court of Appeals certified questions of whether amended ordinance was preempted by state's statutory authority to regulate the conduct of attorneys and, if not, whether it violated city charter.

The Court of Appeals of New York held that the ordinance pertaining to debt-collection activities, insofar as it regulated attorney conduct, did not constitute an unlawful encroachment on the state's authority to regulate attorneys, nor was there a conflict between the ordinance and the state's authority to regulate attorneys, such that ordinance was not preempted.

Ordinance, by its terms, governed conduct of debt-collection agencies and did not purport to regulate attorneys as such even though attorneys who were acting in debt-collecting capacity might fall within its penumbra, ordinance expressly did not pertain to attorneys engaged in practice of law on behalf of particular client, no express conflict existed between courts' broad authority to regulate attorneys under Judiciary Law and licensing of individuals as attorneys engaged in debt-collection activity, and courts' authority to regulate attorney conduct did not evince intent to preempt field of regulating nonlegal services rendered by attorneys.