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In re Vill. of Scarsdale v. New York City Water Bd., 15 A.D.3d 590 (N.Y. App. Div. 2005)

## NEW YORK

**In re Vill. of Scarsdale v. New York City Water Bd., 15 A.D.3d 590 (N.Y. App. Div. 2005)** (holding the Water Board's method for calculating excess water consumption of municipalities, using the monthly consumption figures of individual municipalities, conformed with the Water Supply Act).

The Village of Scarsdale ("Scarsdale") brought an action in the Westchester County Supreme Court alleging the New York City Water Board ("Water Board") improperly calculated its water entitlement amount. Scarsdale claimed the correct procedure was for the Water Board to calculate Scarsdale's annual consumption based on a larger geographical unit, rather than its current method of using the monthly consumption figures of individual municipalities. The lower court rejected Scarsdale's claim and held the Water Board's method of calculating Scarsdale's excess consumption of the New York City water supply complied with the Water Supply Act ("WSA") and was not arbitrary and capricious. Scarsdale appealed to the Appellate Division of the New York Supreme Court, Second Department.

Under the WSA, municipal corporations were entitled to take a particular amount of water from the New York City water supply system, called their "entitlement amount." Any water consumed in excess of the entitlement amount was known as "excess consumption." The Water Board billed municipal corporations for their water consumption, which the municipality was obligated to pay for under the New York City Administrative Code. After the Water Board calculated the municipality's entitlement amount, it billed the municipality based on the amount of entitlement water and excess water the municipality consumed.

Scarsdale argued the Water Board calculated Scarsdale's entitlement amount lower than it actually was because the Water Board used an incorrect method to calculate the amount. Scarsdale argued the correct method was to use annual consumption figures of a larger geographic area, such as Westchester County, rather than the monthly consumption figures for an individual municipality. The court rejected Scarsdale's arguments, stating that Scarsdale raised the same issue in *Matter of Village of Scarsdale v. Jorling* where the court rejected the claim, and the previous case was binding. Also, the court held Scarsdale failed to establish the method the Water Board used was an error of law or was arbitrary and capricious. Therefore, the court affirmed the decision of the lower court and declared the Water Board's method of calculating excess water consumption was consistent with the Water Supply Act.

*Kate Brewer*