NEW YORK APPELLATE DIGEST, INC.

Weekly Reversal Report
March 9 – 13, 2026

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts March 9 – 13, 2026, and Posted on the New York Appellate Digest Website on Monday, March 16, 2026. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on the Official New York Courts Website. Click on “Table of Contents” in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Report.

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ADMINISTRATIVE LAW, EVIDENCE.

THE NYS GAMING COMMISSION RELIED ON HEARSAY TO FIND THAT PETITIONER, A RACE-HORSE TRAINER, VIOLATED A LIMIT IMPOSED ON THE AMOUNT OF A DRUG WHICH MAY BE ADMINISTERED TO A RACE HORSE; THE HEARSAY LETTERS FROM TWO LABORATORIES WHICH TESTED THE HORSE'S BLOOD CONSTITUTED INSUFFICIENT EVIDENCE OF THE VIOLATION BECAUSE THE LETTERS DID NOT DESCRIBE THE TESTING METHODS AND THE RELIABILTIY OF THOSE TESTING METHODS; MATTER REMITTED (THIRD DEPT).

The Third Department, annulling the NYS Gaming Commission's ruling and remanding the matter for a new hearing, determined the Commission relied on hearsay to find that petitioner (a race-horse trainer) violated a rule limiting the amount of a drug (bute) which can be administered to a race horse. The petitioner brought an Article 78 proceeding arguing that the ruling was improperly based upon hearsay. The Article 78 proceeding was transferred to the Third Department:

Petitioner … contends that respondent failed to introduce competent evidence establishing the reliability of the testing that was conducted on the postrace samples that purportedly demonstrated the presence and concentration of bute. … [P]etitioner challenges the admission and reliance on a letter … providing the result of testing from the postrace sample. The objection lodged by petitioner's counsel to the letter was that it could not be properly admitted through … the medical director for respondent … as he had not reviewed the testing data and was not involved in the testing process. … [S]n objecting to the letter received by respondent {from a second laboratory], counsel raised the same objection … . * * *

… [I]t is of particular note that the sole proof relied upon by respondent to establish that the bute concentration from postrace samples exceeded the permissible limit were the letters from the New York and California laboratories. The letter from the New York laboratory indicated the overage in bute concentration but did not provide for the method of testing, and although the method of testing was provided in the letter from the California laboratory, neither letter gave any indication as to the reliability or general acceptance of the tests

utilized to ascertain the presence and concentration of bute in the postrace samples … . … [R]elying solely on the hearsay proof in this case to establish the rule violation rendered the hearing fundamentally unfair under the circumstances presented and persuades us to remand the matter for a new hearing … . Matter of Pletcher v New York State Gaming Commission, 2026 NY Slip Op 01435. Third Dept 3-12-26

Practice Point: Although an administrative agency may base a ruling on hearsay, here hearsay letters from laboratories describing the results of testing for a drug in a race horse's blood did not rise to the level of "substantial evidence" because the testing methods and the reliability of those methods were not described.

March 12, 2026

ADMINISTRATIVE LAW, LABOR LAW.

THE COMMISSIONER OF LABOR COULD NOT IMPOSE A NEW "RULE" WHICH HAD NEVER BEEN SUBJECT TO THE FORMAL RULEMAKING REQUIREMENTS IN THE STATE ADMINISTRATIVE PROCEDURE ACT (THIRD DEPT).

The Third Department, annulling the Department of Labor's (DOL's) determination, held that the Commissioner's ruling was based upon a "rule" which had never been subject to the rule-making procedures required by the State Administrative Procedure Act. The Commissioner turned down the petitioner's application for an O & P license (a license to own, possess and/or transport fireworks) because petitioner did not hold a PCC (an occupational license for the use of pyrotechnics). Making a PCC a requirement for an O & P license constituted a new "rule" which was invalid because the formal rulemaking procedures were never instituted:

… [T]he PCC requirement does not concern "forms and instructions, interpretive statements and statements of general policy which in themselves have no legal effect but are merely explanatory," all of which are excluded from formal rulemaking … . Instead, mandating access to a PCC for all O & P license applicants is a "[b]lanket requirement[ ] . . . to be generally applied in the future,

regardless of individual circumstances" that is subject to the State Administrative Procedure Act's rulemaking process … . Respondents' failure to comply with the State Administrative Procedure Act before implementing the mandatory PCC requirement renders that requirement unenforceable … . Matter of Linear Research Assoc., Inc. v Reardon, 2026 NY Slip Op 01434, Third Dept 3-12-26

Practice Point: Consult this decision for insight into the difference between an administrative "rule" which is subject to the formal rulemaking requirements of the State Administrative Procedure Act and a "statement of general policy" which is not.

March 12, 2026

ANIMAL LAW, CONSTITUTIONAL LAW, MUNICIPAL LAW.

A NEW YORK CITY LOCAL LAW WHICH PROHIBITS THE SALE OF FOIE GRAS, A "FATTY LIVER" CREATED BY FORCE FEEDING GEESE AND DUCKS, IS NOT PRE-EMPTED BY THE AGRICULTURE AND MARKETS LAW (THIRD DEPT).

The Third Department, reversing Supreme Court, in a full-fledged opinion by Justice Mackey, determined the NYC Local Law which prohibited the sale of foe gras was not pre-empted by the Agriculture and Markets Law. Foie gras (fatty liver) is produced by force feeding geese or ducks several times a day:

Foie gras, which translates to English as "fatty liver," is a food product obtained through such forced feeding of a goose or duck, by which the animal is made to consume large quantities of grain and fat using a pipe that is inserted down the esophagus. This process, which is repeated several times per day, seeks to produce a significantly enlarged liver when compared to that of a non-force-fed bird. * * *

… Agriculture and Markets Law § 305-a provides that "[l]ocal governments, when exercising]their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in

contravention of the purposes of this article unless it can be shown that the public health or safety is threatened" … . * * *

… Agriculture and Markets Law article 25-AA was expressly enacted to protect agricultural lands from "nonagricultural development extend[ing] into farm areas," as well as "[o]rdinances inhibiting farming," which "often lead[ ] to the idling or conversion of potentially productive agricultural land" … . The Legislature thus clearly expressed its intent that Agriculture and Markets Law § 305-a preempt those local laws that result in direct and unreasonable restrictions or regulations upon farming operations and the associated use of land — not the sale of products produced as a result of those operations in retail food and food service establishments, which may be subject to other statutory and regulatory limitations. Matter of City of New York v Ball, 2026 NY Slip Op 01426, Third Dept 3-12-26

Practice Point: Consult this opinion for insight into the Home Rule and pre-emption issues raised by a claim that a NYC Local Law, which prohibits the sale of animal products produced by force-feeding, is pre-empted by the Agriculture and Markets Law which seeks to limit infringement on farming operations. The pre-emption argument was rejected.

March 12, 2026

CRIMINAL LAW, EVIDENCE, JUDGES.

HERE THE RESITITUTION FOR THE VICTIM'S OUT-OF-POCKET MEDICAL EXPENSES WAS VACATED BECAUSE THE JUDGE DID NOT MAKE A RECORD SUPPORTING THE AMOUNT AWARDED (THIRD DEPT).

The Third Department, vacating the restitution for the victim's out-of-pocket medical expenses, determined the judge failed to make a record of those expenses as required by Penal Law section 60.27:

Although the restitution amount did not exceed the agreed-upon limit, the record is devoid of any hearing, colloquy or judicial determination confirming the actual

out-of-pocket medical expenses incurred by the victim (see Penal Law § 60.27; CPL 400.30). Absent record evidence that the restitution imposed satisfied the requirements of Penal Law § 60.27, the order of restitution must be vacated and the matter remitted to County Court for reconsideration in accordance therewith … People v Jimenez- Rivera, 2026 NY Slip Op 01421, Third Dept 3-12-26

Practice Point: Penal Law 60.27 requires record evidence of the amount of restitution for out-of-pocket medical expenses.

March 12, 2026

NEGLIGENCE, EVIDENCE.

PLAINTIFF DID NOT KNOW WHAT CAUSED HER TO SLIP ON A STAIRWAY STEP BUT SHE TESTIFIED SHE LOOKED FOR SOMETHING TO HOLD ONTO AND THERE WAS NO HANDRAIL; THERE WAS A QUESTION OF FACT WHETHER THE ABSENCE OF A HANDRAIL WAS A PROXIMATE CAUSE OF HER FALL (SECOND DEPT).

The Second Department, reversing Supreme Court, determined defendant's motion for summary judgment in this stairway slip and fall case should not have been granted. Although plaintiff did not know what caused her to slip on the step, she testified she "wanted something to hold on to" but there was no handrail:

Although the plaintiff testified that she did not know what caused her to slip on the step, she also testified that she "wanted to hold onto something," but she "didn't have anything to hold onto." Even if the plaintiff's fall was precipitated by a misstep, her testimony that she looked for something to hold onto, but there was nothing there, presented "an issue of fact as to whether the absence of a handrail was a proximate cause of her injury" … . Flores v 1298 Grand, LLC, 2026 NY Slip Op 01340, Second Dept 3-11-26

Practice Point: Here plaintiff's testimony that she did not know what caused her to slip on a stairway step did not warrant summary judgment in defendant's favor. There was no handrail and plaintiff testified she "looked for something to hold

onto." Therefore a question of fact was raised about whether the absence of a handrail rendered the stairway unsafe and was a proximate cause of the fall.

March 11, 2026