

# The New York Times

## *Court Bars Personal Liability For Repayment of Political Funds*

By SEWELL CHAN

A state appellate court ruled yesterday that because of an "apparent loophole" in city rules, a candidate whose campaign has failed to document that it properly spent public matching funds cannot be held personally liable for repaying the money.

The ruling, a defeat for the New York City Campaign Finance Board, is significant because it could cripple the board's ability to crack down effectively on campaign finance violations and the misuse of matching funds. "The board is reviewing the decision at this time, and considering whether to appeal," said Amy M. Loprest, executive director of the board.

The decision arose after the board cited two unsuccessful candidates for the City Council for violating campaign finance rules that require documentation of contributions and expenses. In 2002, the board ordered one candidate, Edwin O. Ortiz Jr., and his campaign treasurer, Kenneth T. Brennan, to repay \$46,071 in matching funds. In 2003, it ordered the second candidate, Richard Perez, to repay \$63,756. Mr. Brennan and Mr. Perez appealed; although Mr. Ortiz did not, he stands to benefit from the decision.

Writing for the Appellate Division of State Supreme Court in Manhattan, Justice Richard T. Andrias ruled that the board's audit reports — the basis for demanding repayment — applied strictly to the two men's campaign committees.

The board had argued that it routinely warned the candidates and

their campaign treasurers that they would be held personally liable for repaying funds not shown to have been properly spent. The board sent letters demanding the repayments and even posted the delinquent candidates' names on its Web site to shame them into complying.

But Justice Andrias concluded that those warnings were not legally relevant. He found that although one provision of the city's Administrative Code holds candidates and their treasurers personally liable for penalties imposed for rule violations, another provision specifically states that when matching funds must be repaid to the city, it is the campaign committee that is responsible.

He called the distinction between the two provisions "clear and unambiguous."

Justice Andrias wrote, however, that he wished to suggest "that if this laudable legislation is intended to have its full desired effect," the City Council should address the matter

Laurence D. Laufer, who represented Mr. Brennan in the appeal, said the board should enforce rules about matching funds before elections, rather than after. "The fundamental problem in these cases is that the board defers these issues until after the election — when bankrupt committees don't have the wherewithal to raise new money," Mr. Laufer said.

Ms. Loprest said the ruling would make it "virtually impossible" to recover matching funds that are mispent because a campaign committee "usually exists only as a 'shell' entity after a campaign is concluded."