

1 We certified to the New York Court of Appeals the question of
2 whether New York law permits a bail bondsman to retain a
3 premium where the bail was rejected pursuant to NYCPL § 520.30
4 and the defendant was never admitted to bail. The Court of Appeals
5 answered in the negative, ruling that New York Insurance Law
6 “prohibits a bail bond surety from retaining a premium when the
7 criminal defendant is not released on bail.” That conclusion being
8 determinative of this appeal, we REVERSE the judgment of the
9 district court and REMAND the case with instructions to enter
10 judgment in favor of appellants.
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14 ANDREW LAVOOTT BLUESTONE, New York, NY, *for*
15 *Plaintiffs-Appellants Karine Gevorkyan, Arthur*
16 *Bogoraz, Inna Moldaver, Sam Moldaver.*

17 KYLE B. WATTERS, Kyle B. Watters, PC, Bayside,
18 NY, *for Defendant-Appellee Ira Judelson.**
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*Attorney Jonathan Svetkey authored Defendant-Appellee’s brief on appeal and argued before us. Attorney Svetkey withdrew as Defendant-Appellee’s counsel on July 12, 2017, and Attorney Watters filed a notice of appearance the same day.

1 PER CURIAM:

2 On November 14, 2016, we certified the following question to
3 the New York Court of Appeals.

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5 Whether an entity engaged in the “bail business,”
6 as defined in [New York Insurance Law (“NYIL”)]
7 § 6801(a)(1), may retain its “premium or
8 compensation,” as described in NYIL § 6804(a),
9 where a bond posted pursuant to NYCPL § 520.20
10 is denied at a bail-sufficiency hearing conducted
11 pursuant to NYCPL § 520.30, and the criminal
12 defendant that is the subject of the bond is never
13 admitted to bail.

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15 *Gevorkyan v. Judelson*, 841 F.3d 584, 589 (2d Cir. 2016).¹ In certifying
16 this question, we noted that “the resolution of this question will
17 determine the outcome of this appeal,” because if “New York law
18 does not permit a bail bond agent to retain its premium following
19 the rejection of a bail package at a sufficiency hearing, the district
20 court would be reversed.” *Id.*

21 The New York Court of Appeals has now answered our
22 certified question. *See Gevorkyan v. Judelson*, – N.E. 3d –, 2017 WL
23 2742192 (June 27, 2017). The Court concluded that New York
24 Insurance Law “prohibits a bail bond surety from retaining a
25 premium when the criminal defendant is not released on bail,” and
26 that a bail bond surety’s retention of a premium under such
27 circumstances contravenes the “insurance law principle that
28 premium follows risk.” *Id.*, slip op. at 10.

29 The Court of Appeals’ ruling requires that we reverse the
30 judgment of the district court. As we previously noted, the district

¹ We assume familiarity with our certification opinion.

1 court rested its conclusion that Judelson could retain his premium
2 exclusively on principles of contract interpretation. It did so because
3 it found that existing New York precedent was “not dispositive” of
4 the present issue. App’x at 37. The Court of Appeals has now made
5 clear the principle of New York law that decides this issue: because
6 Bogoraz was never admitted to bail, New York Insurance Law
7 precludes Judelson from retaining the premium. This prohibition
8 applies regardless of the terms of the parties’ contract because,
9 under New York law, contractual provisions that contravene
10 applicable laws in ways that harm the public policies underlying
11 those laws are unenforceable. See *Village Taxi Corp. v. Beltre*, 91
12 A.D.3d 92, 99–100 (2d Dep’t 2011) (citing, *inter alia*, *Galbreath-Ruffin*
13 *Corp. v. 40th & 3rd Corp.*, 19 N.Y.2d 354, 364 (1967)). The Court of
14 Appeals has now clearly opined that a bail bondsman’s retention of
15 a premium after the denial of bail violates New York law and runs
16 afoul of an important public policy underlying New York Insurance
17 Law. Accordingly, we REVERSE the judgment of the district court
18 and REMAND the case with instructions to enter judgment in favor
19 of appellants.