

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
MAURICE BRAHMS :
OFFICER OF 1526 BROADWAY CORPORATION :
for Revision of a Determination or for Refund :
of Sales and Use Taxes under Articles 28 and 29 :
of the Tax Law for the Period June 1, 1979 :
through February 28, 1983. :

DECISION
DTA NOS. 801441
AND 808444

In the Matter of the Petition :
of :
MAURICE BRAHMS :
OFFICER OF 29-37 WEST 52ND :
STREET CORPORATION :
for Revision of a Determination or for Refund :
of Sales and Use Taxes under Articles 28 and 29 :
of the Tax Law for the Period September 1, 1977 :
through February 28, 1982. :

Petitioner Maurice Brahms, officer of 1526 Broadway Corporation and officer of 29-37 West 52nd Street Corporation, 1 Taylor Lane, Harrison, New York 10528, filed an exception to the order of the Administrative Law Judge issued on May 9, 1996. Petitioner appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (John E. Matthews, Esq., of counsel).

Petitioner filed a brief on exception. The Division of Taxation did not file a brief in opposition. Petitioner's request for oral argument was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision. Commissioner Jenkins took no part in the consideration of this decision.

ISSUE

Whether petitioner was entitled to an order vacating the stipulations for discontinuance executed in each proceeding herein, relieving him of all liability for taxes assessed against him as a responsible officer of each corporation, and a refund of taxes and interest paid in satisfaction of his tax liability for 29-37 West 52nd Street Corporation.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

In January 1981, petitioner, Maurice Brahms, was the principal owner of two corporations which operated three night clubs in New York City. These corporations were 1526 Broadway Corporation ("1526 Broadway") and 29-37 West 57nd Street Corporation ("29-37 West").

Petitioner pled guilty to tax evasion in connection with the operation of the night clubs and was incarcerated from January 1981 until January 1983. Upon his release from prison, petitioner attempted to continue operating one of the night clubs owned by 1526 Broadway. At that time, the corporation was deeply in debt for unpaid Federal and State taxes. Petitioner was contacted by the Division of Taxation ("Division") and entered into negotiations with the Division for the payment of unpaid back taxes.

In his motion papers, petitioner describes his communications with the Division at that time as follows:

"7. During the visit by representatives of the Department, Plaintiff [Mr. Brahms] sought to limit his liability by offering to pay the Department a minimum amount every week towards the reduction of Plaintiff's potential liability as an officer of the corporation. The Department agreed that the initial payment (\$12,500) they were then receiving was to go towards the current assessment. Future payments were also to be applied towards the current assessment, until an additional \$10,000 was received (\$22,500 in total). Thereafter, for as long as Plaintiff remained current with new taxes arising from the continuation of the business, all future payments would be applied to back taxes for which Plaintiff might be responsible as an officer of the corporation. Although Plaintiff knew that an another [sic] assessment was imminent, he was uncertain of the amount."

Petitioner made payments to the Division in January, February and March 1983. The night club operated by 1526 Broadway was closed in April 1983 as a result of actions taken by the Internal Revenue Service, and petitioner stopped making payments to the Division.

On or about June 5, 1984, the Division issued to petitioner two notices of determination and demands for payment of sales and use taxes due for the period June 1, 1979 through February 28, 1983 (notice numbers S840605910M and S840605911M) which assessed tax against petitioner in the amount of \$156,230.83. Notices of determination were also issued to 1526 Broadway Corporation assessing the same amount of tax against the corporation for the same tax periods. None of the notices of determination were placed in evidence by either party. Maurice Brahms, as officer of 1526 Broadway Corporation, filed a petition with the former State Tax Commission on September 4, 1984 protesting the notices of determination and demands for payment of sales and use taxes due issued to him as an officer (DTA No. 801441) and to the corporation (DTA No. 801440).¹ After a conciliation conference in the former Tax Appeals Bureau, the amount of tax asserted against petitioner was reduced by the Division to \$19,262.32.

In October 1986, petitioner filed perfected petitions with the former State Tax Commission. The petition filed by Mr. Brahms as officer of 1526 Broadway shows the amount of tax protested and the periods involved as follows:

<u>Tax Period</u>	<u>Amount of Tax Determined</u>
11/30/79	\$ 200.32
2/28/80	7,310.96
5/31/80	7,109.76
8/31/80	2,532.64
11/30/80	2,108.64

¹The filing date of these petitions and other facts concerning the procedural history of these matters are taken from the records of the Division of Tax Appeals. Official notice of these facts is taken pursuant to State Administrative Procedure Act § 306(4).

Mr. Brahms's officer petition explicitly raised the issue of application of payments made by petitioner to the Division in 1983. The petition states:

"Back taxes of at least \$15,000 or \$20,000 were paid to the State Tax Commission during January through March 1983, which payments would be applied to the time period in question."

It is apparent from letters and other documents placed in evidence that the application of payments was a matter of dispute between petitioner and the Division. By letter dated August 30, 1984, petitioner asked the Division for "an accounting of what payments were made during the period of Jan. 1983-March,1983 [sic] (including the first lump sum), the dates of said payments, and what your records show that the payments were credited to."

In response to his letter, Mr. Brahms eventually received a document from the Division's White Plains District Office, dated November 2, 1984. This document bears the name of "A. Domizio". At the bottom of the sheet is a handwritten listing of what appears to be payments received by Mr. Domizio from Mr. Brahms in the amount of \$15,852.78. There is no indication of how these payments were applied. On the top of the document is a handwritten listing described as "[t]he balance of your account, with statutory charges". It shows balances of corporation franchise tax and sales tax. There are no assessment or notice numbers on the document, and it appears that the balances referred to are amounts owed by 1526 Broadway. Petitioner's liabilities cannot be determined from this document. In a letter to the Division, dated January 30, 1990, Mr. Brahms acknowledges his receipt of this document, but he claims that it does not account for all of the payments made. He also states: "It was a very confusing document and I am still not satisfied."

Petitioner was represented in the 1526 Broadway matter by Roger Cukras, Esq., who held a power of attorney executed by Mr. Brahms. The Division's attorney, Kevin A. Cahill, and Mr. Cukras, entered into settlement negotiations. By letter dated March 10, 1989, Mr. Cahill forwarded to Mr. Cukras forms entitled Stipulation of Discontinuance of Proceeding. In that letter, Mr. Cahill stated:

"It is also my understanding that Mr. Brahms believes that part or all of the tax due for the periods for which he is being held personally responsible has or should

have been satisfied with prior payments. I received the copy of the 11/2/84 correspondence from Mr. Domizio, Tax Compliance Agent regarding taxes purportedly due and/or paid. I will forward the document the [sic] Tax Compliance Division for a further explanation. Any additional documentation or supporting information regarding payments should be sent to this office at your earliest convenience. As we discussed, this office will continue to make every effort to determine any payments which have been credited to the subject liabilities. Further, I will attempt to clarify the criteria used by the Tax Compliance Division to credit those payments to particular periods. In the event payments have been erroneously credited to other than those intended by the petitioner, to the extent proper and permissible, adjustments will be made."

On March 20, 1989, Mr. Cukras and Mr. Cahill executed a Stipulation for Discontinuance of Proceeding for the petition filed by Mr. Brahms as officer of 1526 Broadway. As relevant, the stipulation states:

The above-entitled proceeding [referring to Notice numbers S840605910M and S840605911M] having been resolved, it is hereby stipulated and agreed by and between the parties herein that such proceeding be and the same is discontinued, with prejudice, and that the deficiency/determination or refund is recomputed as follows:

"Deficiency/determination or (refund) 19,262.32

"Interest to be computed

"Penalty -0- "

A stipulation was also executed for 1526 Broadway Corporation (notice numbers S840605914M and S840605915M). Petitioner's motion to reopen does not encompass that stipulation.

Mr. Brahms later located money order receipts showing payments to the Division in January, February and March 1983. He forwarded copies of these receipts to Mr. Cahill.

In his letter to Mr. Cukras, Mr. Cahill mentioned that they had also discussed the possibility of settling an additional matter involving 29-37 West, but Mr. Brahms states that he had no contact with the Division regarding 29-37 West until he received a letter dated January 24, 1990 from another Division attorney, Carroll R. Jenkins, offering a settlement. Mr. Jenkins's letter of January 24, 1990 indicates that there was a prior agreement to settle the matter and that stipulations were being forwarded to Mr. Brahms in accordance with that agreement; however,

there is no evidence in the record of any prior communications between Mr. Jenkins and Mr. Brahms. Mr. Brahms did not agree to settle the 29-37 West matter at that time.²

Mr. Brahms responded to Mr. Jenkins in a letter dated January 30, 1990. He enclosed in his letter copies of the money order receipts previously sent to Mr. Cahill. They show tax payments totalling approximately \$31,500.00 (some of the copies are unclear). Two of the money orders (for \$500.00 each) were made payable to "NYS Unemployment Ins." Two were made payable to New York State Income Tax Bureau (in the amounts of \$570.00 and 907.75, respectively). The remainder of the money orders were made payable to the State Tax Commission or the Sales Tax Bureau.

Mr. Brahms also provided Mr. Jenkins with two receipts evidencing payments received by the Tax Compliance Division in January 1983. The first receipt is for \$12,500.00 (including \$7,500.00 in cash and a \$5,000.00 money order). It was applied to assessment "D8112144220 et al." The second receipt is for \$10,000.00. It was applied to assessment D8112144220 which is described on this document as "8-31-81 Sales Tax". Mr. Brahms also submitted a balance sheet which he received from a Division employee identified as "G. Sussman". A cover letter prepared by Mr. Sussman refers to 1526 Broadway and states that the enclosed balance shows where petitioner's payments of tax were applied.

The balance sheet shows that payments totalling \$10,340.00 were applied to a corporation tax assessment for the period March 1, 1980 through February 28, 1981. Payments totalling \$3,269.07 were applied to a withholding tax assessment. Payments of \$62,479.66 were applied to a sales tax assessment for the period March 1, 1981 through May 31, 1981 (S8108116385). Payments of \$6,262.78 were applied to a sales tax assessment for the period September 1, 1981 through November 30, 1981.

²Neither the notice, or notices, issued in connection with 29-37 West nor the petitions filed were submitted as evidence. The records of the Division of Tax Appeals indicate that Maurice Brahms as officer of 29-37 West filed a petition with the Division of Tax Appeals on August 8, 1990 protesting a notice of determination of sales and use taxes due in the amount of \$255,265.42 for the period September 1, 1977 through February 28, 1982 (DTA No. 801444). The petition itself and any other documents filed in connection with it are no longer available.

In a letter to Mr. Brahms dated May 17, 1990, Mr. Jenkins rejected Mr. Brahms's contention that the documents submitted reflect payments of tax which were, or should have been, applied to the officer assessments settled by Mr. Cahill (S840605910M and S840605911M). He noted that the "check copies" do not direct payment to any particular liability. Moreover, he noted that the payments documented by Mr. Brahms were made before the relevant assessments were issued to Mr. Brahms as an officer of 1526 Broadway. In short, Mr. Jenkins took the position that all payments made by Mr. Brahms had been properly applied to various tax assessments issued against the corporate entity. Mr. Jenkins repeated his offer to settle the matter of 29-37 West. His letter states:

"Now we come to my letter of January 24, 1990 which incorporates the substance of our agreed settlement (before you again decided to disagree). I have no interest in further discussion. If you wish to dispose of this matter along the lines of the January 24 letter (attached) I enclose the appropriate document for your signature. Otherwise I will place this matter on the hearing calendar. One way or the other, I intend to get this case off of my desk."

The petition of 29-37 West was scheduled for hearing in the Division of Tax Appeals on March 27, 1991. The records of the Division of Tax Appeals show that a hearing was scheduled and adjourned at least once before that time. On March 27, 1991, Mr. Jenkins met with petitioner and his representative, Leo Kaden. On that date, petitioner and Mr. Jenkins executed a Stipulation for Discontinuance of Proceeding which states, as relevant:

The above-entitled proceeding having been resolved, it is hereby stipulated and agreed by and between the parties herein that such proceeding be and the same is discontinued, with prejudice, and that the deficiency/determination or refund is recomputed as follows:

"Deficiency/determination or (refund) \$ 9,352.48

"Interest Minimum

"Penalty None

. . . Notice of Determinations Affected S830620193C And S830620194C".

In an affidavit, Mr. Kaden states that he and petitioner met with Mr. Jenkins in New York in March 1991. He avers as follows:

"2. We negotiated a settlement and did not appear before the Administrative Law Judge. At Mr. Jenkins' suggestion we settled for \$9,352.48, plus interest but without penalty, to cover the personal liability of Mr. Brahms as a responsible corporate officer of 29-37 West 52nd Street Corp. and agreed that Mr. Brahms owed no money re 1526 Broadway Corp. We did not settle any claims against the two corporate taxpayers.

* * *

"4. Mr. Jenkins promised me and Mr. Brahms that he would furnish us with releases for his personal liability re both corporations, but he has failed to furnish us with a release for 1526 Broadway Corp. despite requests made on several occasions." (Emphasis added.)

In an affirmation, Mr. Jenkins denies that he ever agreed "that Mr. Brahms owed no money re 1526 Broadway Corp." He states that Mr. Brahms repeatedly claimed that the tax and interest owed in the 1526 Broadway matter had been paid. He also states that he told Mr. Brahms that he would ensure that any payments made by Mr. Brahms would be applied correctly if Mr. Brahms provided evidence to show that he had directed that his payments be applied in a specified manner. Mr. Jenkins's letter of May 17, 1990 is his response to the evidence offered by Mr. Brahms.

Petitioner paid the agreed upon liability for 29-37 West in the amount of \$25,106.44 (\$9,352.48 plus interest). He claims that he received a "release" from any personal liability for 29-37 West beyond that amount. He also claims that Mr. Jenkins refused to issue a similar release for the 1526 Broadway liability despite repeated requests from Mr. Kaden.

Sometime in 1995, petitioner was contacted by the White Plains Tax Compliance section which was attempting to collect sales taxes from Mr. Brahms for the 1526 Broadway liability. Plaintiff submitted a letter to a Division employee, Theodore Eckler, explaining why he believes that the 1526 liability was satisfied with payments made before the stipulation was executed. Mr. Eckler responded by letter dated September 19, 1995. In that letter, Mr. Eckler stated that the Division's own records do not show that petitioner had directed the application of his 1983 payments to any particular tax assessment or tax period. Mr. Eckler indicated that he had previously sent petitioner a letter, dated August 28, 1995, which showed how the Division applied the payments it received. That letter was not placed in evidence. Mr. Eckler referred petitioner to the Division's Office of Counsel. He closed by stating that the Division considered

petitioner's liability for the 1526 Broadway assessments to be fixed and final based upon the signed discontinuance of proceeding. Apparently, Mr. Eckler enclosed in his letter an internal memorandum from Mr. Jenkins to the Division's Assessment Review Unit, dated January 25, 1990. That memorandum states:

"The above referred case was settled by Kevin Cahill. A Stipulation of Discontinuance has been executed on behalf of the corporation agreeing to the tax asserted as due plus interest to be computed.

"Based on additional records provided at tax conference and the fact that Brahms was incarcerated 12/1/80 - 2/28/83, tax was adjusted for period 6/1/79 - 11/30/80. As adjusted, the tax asserted as due from Brahms was \$19,262.32 plus interest to be computed. Based on this adjustment the Stipulation of Discontinuance was signed closing the associated (officer's) case.

"We are marking this matter on our records as closed."

Petitioner claims that Mr. Jenkins induced him to settle the 29-37 West matter by promising to release him from any liability for monies owed by petitioner on behalf of 1526 Broadway, and he alleges that Mr. Jenkins breached that agreement. He also states that Mr. Jenkins acted fraudulently by promising, in January 1990, to investigate the payment issue while at the same time writing a memorandum to the Assessment Review Unit stating that the matter was closed.

OPINION

In denying petitioner's motion for relief, the Administrative Law Judge concluded that while the Tax Appeals Tribunal has the authority to consider a motion to vacate a stipulation for discontinuance of proceeding, the sole grounds on which such a stipulation can be annulled, modified, set aside or disregarded pursuant to Tax Law § 171(18) are fraud, malfeasance, or misrepresentation of a material fact. Petitioner, she concluded, did not satisfy his burden of proving fraud, malfeasance, or misrepresentation of a material fact and, therefore, grounds for vacating the subject stipulations do not exist.

The Administrative Law Judge found that no documentary evidence had been presented to support petitioner's contention that Mr. Cahill had agreed that petitioner's tax payments made in January, February and March, 1983 would be applied to his personal liability for the 1526

Broadway sales taxes. The stipulation executed by petitioner's representative in that proceeding did not address the application of prior payments nor did the March 10, 1991 Cahill letter contain a promise to apply prior payments made on behalf of 1526 Broadway to Mr. Brahms's personal liability for the sales tax assessments which were the subject of the stipulation. Rather, payments made by petitioner in 1983 were apparently applied to corporate tax liabilities other than those for which petitioner admitted personal liability and no direction was made as to the application of these payments at the time they were made.

Further, the Administrative Law Judge concluded that there was no documentary evidence to support petitioner's contention that Mr. Jenkins induced him to execute the 29-37 West stipulation by agreeing to release him from any liability he might have for the 1526 Broadway taxes. Rather, the evidence demonstrated that the Division never agreed with petitioner's allegation that he had satisfied his personal liability for the 1526 Broadway sales taxes.

On exception, petitioner alleges that the Administrative Law Judge erred in not finding that the Division's representative was guilty of fraud, malfeasance and misrepresentation of a material fact because he closed the Division's litigation file concerning 1526 Broadway before reviewing petitioner's evidence concerning payments of taxes made on behalf of 1526 Broadway. Additionally, petitioner claims that the Division's representative failed to accept this evidence as sufficient proof of payment of his liability. Petitioner further argues that the Division's representative allegedly induced him to stipulate that he was liable for taxes owed by 29-37 West in return for cancelling the 1526 Broadway liability. Petitioner also argues that the Cahill letter of March 10, 1991 should be made part of the 1526 Broadway stipulation for discontinuance of proceeding.

We affirm the determination of the Administrative Law Judge.

Section 171 of the Tax Law, paragraph 18, provides that the Commissioner of Taxation and Finance shall:

"[h]ave authority to enter into a written agreement with any person, relating to the liability of such person (or of the person for whom he acts) in respect

of any tax or fee imposed by the tax law or by a law enacted pursuant to the authority of the tax law or article two-E of the general city law, which agreement shall be final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact: (a) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of this state, and (b) in any suit, action, or proceeding, such agreement or any determination, assessment, collection, payment, cancellation, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded" (Tax Law § 171, ¶ 18, emphasis added).

This Tribunal has held that while it may be appropriate to reopen a closed matter in extraordinary circumstances, the need for finality of proceedings requires "a strict view of attempts by either petitioners or the Division to reopen or to reargue matters which have been closed" (Matter of D & C Glass Corp., Tax Appeals Tribunal, June 11, 1992).

In Matter of Westbury Smoke Stax, Ltd. v. New York State Tax Commn. (142 AD2d 878, 531 NYS2d 65, lv denied 73 NY2d 706, 539 NYS2d 299), the taxpayer and the Division reached an agreement as to the amount of the taxpayer's liability. Thereafter, the taxpayer withdrew his petition and discontinued his case. After payment of tax and interest, the taxpayer sought to reopen the matter on the grounds that the settlement agreement was predicated on payment of interest only from the date of settlement, not the date the tax was due. The Court denied the taxpayer's application and found that despite the fact that the Division erroneously informed the taxpayer that he had a right to a hearing, his right to hearing was forfeited when he entered into the settlement agreement with the Division.

As petitioner points out, where circumstances have been found to warrant it, the Tax Appeals Tribunal has been willing to grant an equitable remedy (see, Matter of Eastern Tier Carrier Corp., Tax Appeals Tribunal, December 6, 1990 [taxpayer is entitled to rely upon a letter from the Division stating that it would be entitled to a hearing before the Division issued an assessment]; Matter of Harry's Exxon Serv. Station, Tax Appeals Tribunal, December 6, 1988 [taxpayer is entitled to rely on a Division letter stating that the sales tax audit was concluded and no sales tax was due]). In this case, however, no equitable relief is warranted.

Petitioner does not contest that he is a person responsible for the sales tax due from 1526 Broadway and 29-37 West. He does not claim that the 1526 Broadway stipulation for discontinuance of proceeding was signed by his representative without his knowledge or authorization. Rather, he claims that his liability for taxes owed by 1526 Broadway was paid in 1983, prior to the issuance to him of the 1984 assessment for such taxes and prior to his 1989 stipulation that he was liable for such taxes. Further, he claims that the Cahill letter must be considered as part of the stipulation for discontinuance of proceeding. Consequently, the statement in that letter concerning the intent of petitioner as to how payments were to have been applied requires a consideration of the actions and statements of petitioner when he authorized the payments to be made as well as testimony by others who were present at the time. He also argues that there was a verbal agreement between petitioner and Division employees as to how the payments were to be applied which was, in effect, to apply such payments toward petitioner's personal liability.

In the first instance, such claims are not supported by the evidence. The 1989 statement by petitioner's bookkeeper avers that petitioner told Division agents in 1983 that he wanted to keep 1526 Broadway open for business so that he could "pay back the taxes which he was personally liable for" (Exhibit "H"). When the payments at issue were made in 1983, petitioner had not yet been assessed as a person responsible for the tax due from 1526 Broadway for the periods at issue. Therefore, no application of payments toward his as yet non-existent liability would have been possible. Further, petitioner's right to a hearing before the Division of Tax Appeals in order to resolve the application of his payments and establish the existence of a verbal agreement with the Division's employees was waived when petitioner's representative executed the stipulation for discontinuance of proceeding on his behalf. The liability of petitioner was established when the stipulation was executed. There is no evidence in the record to indicate that it was the intent of either party to incorporate the Cahill letter by reference or otherwise into the stipulation. The issue of credit for prior payments made was not preserved for litigation nor made a contingency in the stipulation for discontinuance. The documents submitted in support

of petitioner's motion show only that the payments made by petitioner were applied to 1526 Broadway corporate tax liabilities, including sales, income and withholding taxes for periods other than those herein at issue. The copies of the money orders given in payment contain no indication as to how they were to be applied. Further, there is no indication in the record as to what taxes were owed by 1526 Broadway beyond those for which petitioner stipulated his liability.

We agree with the Administrative Law Judge's conclusion that:

"[t]he stipulation does not address the application of prior payments or indicate that the parties had reached an agreement concerning the reduction of the stipulated liability on the basis of prior payments of tax. Moreover, Mr. Cahill's letter of March 10, 1991 does not contain a promise to apply prior payments to Mr. Brahms's personal liability for the sales tax assessments which were the subject of the stipulation. Mr. Cahill merely stated that he would make an effort 'to determine any payments which have been credited to the subject liabilities.' He also stated that if payments were erroneously applied adjustments would be made. Mr. Brahms was given the opportunity to show that adjustments were warranted. The evidence he provided was reviewed by Mr. Cahill's successor, Mr. Jenkins, who determined that none of the payments should have been applied to Mr. Brahms's personal liability" (Order, conclusion of law "C").

Alternatively, petitioner claims that Mr. Jenkins assured him and his representative that, in return for agreeing to liability for the tax asserted due against him as an officer of 29-37 West, the Division would cancel any remaining liability he had for tax due from 1526 Broadway. According to petitioner's claim, the Division's acceptance of payment of his liability for the tax due from 29-37 West should have fully resolved both of these matters. Aside from the affidavits submitted by petitioner, there simply is no support for this position. In finding against petitioner on this issue, the Administrative Law Judge concluded that documents submitted by petitioner and the Division demonstrate that the Division never agreed with petitioner's allegation that he had satisfied his personal liability for the 1526 Broadway sales taxes. The Administrative Law Judge stated that: "I am especially persuaded by the fact that the Division (including Mr. Jenkins) consistently stated in all written communication with petitioner that his personal liabilities for 1526 Broadway remained unpaid" (Order, conclusion of law "D"). We agree with the Administrative Law Judge that petitioner has not satisfied his burden to demonstrate that the

Division has committed fraud, malfeasance, or misrepresentation of a material fact and, as a result, there is no reason to vacate or modify the Stipulations for Discontinuance of Proceeding executed by petitioner and his representative in these proceedings.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Maurice Brahms, officer of 1526 Broadway Corporation and officer of 29-37 West 52nd Street Corporation, is denied;
2. The order of the Administrative Law Judge is affirmed; and
3. The motion of Maurice Brahms, officer of 1526 Broadway Corporation and officer of 29-37 West 52nd Street Corporation, is denied.

DATED: Troy, New York
July 3, 1997

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner