STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
AARON ZIEGELMAN	:	DECISION DTA No. 809760
for Revision of a Determination or for Refund of Tax on Gains Derived from Certain Real Property Transfers under Article 31-B of the Tax Law.	:	

Petitioner Aaron Ziegelman, c/o Joel Schneider, 152 West 57th Street, New York, New York 10019, filed an exception to the determination of the Administrative Law Judge issued on November 17, 1993. Petitioner appeared by Ziegler, Sagal & Winters, P.C. (Stephen S. Ziegler, Esq., Lanny Sagal, Esq., and Alan Winters, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Andrew J. Zalewski, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a brief in opposition. Petitioner's reply brief was received on March 16, 1994, which date began the six-month period to issue this decision. Petitioner's request for oral argument was denied.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUES

I. Whether the transfer of real property to a cooperative housing corporation should be treated as a separate taxable event for gains tax purposes.

II. Whether "negative carry" and "estimated negative carry" incurred by petitioner should be included in the original purchase price of each apartment unit as a cost of conversion.

III. Whether petitioner's taxable gain should be reduced by the "adjusted payments" he made or, in the alternative, whether such payments should be considered part of the sales price other than for real property and, therefore, not subject to gains tax.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. We have also made an additional finding of fact. The Administrative Law Judge's findings of fact and the additional finding of fact are set forth below.

On December 16, 1992, the parties entered into a "Stipulation Admitting Certain Facts" which has been incorporated into the following Findings of Fact.[1] In addition, petitioner submitted 14 proposed findings of fact. Some of them (proposed findings of fact "1," "2," "4," "5," "6," "7," "8," the first paragraph of "10," and "13") are, for the most part, restatements of provisions of the aforesaid stipulation and, accordingly, have been incorporated, but not separately set forth, into the following Findings of Fact. The balance of the proposed findings of fact have been dealt with as follows:

(a) Proposed finding of fact "3", while incorporated into the following Findings of Fact, is relevant only if it is determined that the transfer by the sponsor (petitioner) to the cooperative housing corporation is a transfer subject to gains tax and, by virtue of such determination, permits a step-up of the original purchase price to include a portion of the cooperative housing corporation's cost of the property;[2]

(b) Proposed findings of fact "9" and "11" are incorporated in the following Findings of Fact;

(c) The second paragraph of proposed finding of fact "10" and proposed finding of fact "12" are contentions of petitioner and, while based upon the testimony of a witness called

---

[1]Attached to the Stipulation Admitting Certain Facts were two exhibits (Exhibit "A" is a copy of the offering plan; Exhibit "B" is a copy of the closing statement). Several of the paragraphs of the stipulation contain references to the aforesaid exhibits which, for purposes of incorporation into the Findings of Fact, have been omitted.

[2]Reference to the transfer of the property by the sponsors to the cooperative housing corporation as the "Realty Transfer" has been omitted due to its implication that, by virtue thereof, a taxable event occurred. In addition, the value of unsold shares ($1,500,000.00) is accepted herein only for the limited purpose of valuing consideration paid by the cooperative housing corporation to the sponsor.

to testify on petitioner's behalf, are rejected as conclusory in nature and not otherwise supported by evidence in the record; and

(d) Proposed finding of fact "14" is a statement of the issues and the parties' positions on each of these issues. Since the contents thereof are not facts, they will be addressed separately in paragraphs under the heading "Summary of the Parties' Positions" which immediately follows the Findings of Fact.

Aaron Ziegelman ("petitioner") and William K. Langfan were the sponsors of a cooperative conversion of the property located at 37-27 86th Street, Jackson Heights, New York (the "property"). Petitioner had a 50% tenants-in-common interest therein.

The conversion of the property was accomplished by the sponsors transferring the real property to the cooperative housing corporation ("CHC") in exchange for:

(a) the stock of the CHC not sold to unrelated parties at the time of conversion (the "unsold shares");

(b) the proceeds from the sale of stock of the CHC to unrelated parties at the time of conversion (net of certain expenses); and

(c) the assumption and/or the granting of a mortgage on the real property.

The consideration paid by the CHC to the sponsors for the transfer of each property was as follows:

Shares subscribed to prior to closing (5,335 shares)		$ 486,514.00
Shares not subscribed to prior to closing ("Unsold Shares")		1,500,000.00
First mortgage		669,197.00
Second mortgage		571,816.00
Gross Price		$3,227,527.00
Deduct:		
Capital Improvements	$322,000.00	
Working Capital Fund	45,000.00	
Brokerage	24,326.00	
Legal Fees	35,000.00	
Other	42,074.00	
		468,400.00
Net Purchase Price		$2,759,127.00

The effective date of the conversion was prior to March 28, 1983, the effective date of the gains tax. Accordingly, there were sales of cooperative apartments which were exempt from the gains tax because the sales occurred before the effective date of the tax or were made pursuant to contracts entered into before the effective date of the tax (the "grandfathered sales"). The grandfathered sales in the conversion may be summarized as follows:

Total Number of Shares	% Grand-fathered	Shares Allocable to Grandfathered Sales	Shares Allocable to Taxable Sales
42,425	16.1579%	6,855	35,570

The conversion was made pursuant to a noneviction plan. Accordingly, the sponsor was required to make sales of apartments to at least 15% of the existing tenants of the property in order to have the plan effective.

The sponsor offered discounts to the existing tenants. The sales to insiders were made at a discount in order to:

(a) achieve the level of insider sales necessary to have an effective plan; and

(b) achieve the lowest possible level of apartments occupied by "protected tenants" (as that term is defined below).

Under State and local laws, tenants of the property who did not wish to purchase their apartments (the "protected tenants") were entitled to remain as tenants as long as said tenants paid the rent increases permitted under the rent stabilization and rent control laws (which laws remained applicable to a protected tenant after the conversion) and did not breach their lease or statutory tenancy. Under these rent stabilization and rent control laws the sponsor, which becomes the owner of the apartments occupied by the protected tenants, is limited in its ability to raise the rents of protected tenants and may terminate their tenancies in only very limited circumstances.

From the effective date of the cooperative conversion until an apartment occupied by a protected tenant is sold, the sponsor was liable to the CHC for the maintenance payable with respect to such apartment, and the sponsor was liable under the offering plan, the proprietary lease and applicable law for other expenses related to the tenancy of the protected tenant (e.g., interior repairs, appliance repairs, painting as required by rent stabilization laws). If the sponsor did not pay the maintenance on the units occupied by protected tenants, it would forfeit said units -- on which the maintenance charges are a first lien.

The sponsor was also entitled to the rent paid by the protected tenant occupying such apartment. The maintenance payments and other expenses incurred by petitioner as owner of the apartments occupied by protected tenants (i.e., insurance, repairs, management fees) exceeded the rent paid by the protected tenants. (Such excess is hereinafter referred to as the "negative carry"). It is usual for a sponsor of a cooperative conversion to pay negative carry with respect to the unsold shares received by the sponsor in the conversion.

The total negative carry incurred by petitioner was $72,392.00.

The sponsor sold to unrelated investors apartments occupied by protected tenants (the "investor sales"). The sales contract provided that the sponsor would pay any negative carry incurred by the investor from the date the investor purchased the apartment until the date the protected tenant terminated its tenancy (such payment by the sponsor is hereinafter referred to as the "adjustment payment").

We find an additional finding of fact to read as follows:

Paragraph 13(f) of the sales contract provided as follows:

> (f) Seller's obligation to make payments for Operating Deficit Payments and Capital Improvements for any Apartment shall cease (and Purchaser will be required to make such payments thereafter) upon the occurrence of any of the following events:
>
> (i) if a non-purchasing tenant in occupancy shall surrender possession of such Apartment, voluntarily or otherwise; or

(ii) if that portion of Principal allocated to such Apartment, as evidenced by the Promissory Note and Pledge Agreement, is paid in full; or

(iii) the expiration of fifteen (15) years from date of the Closing.[3]

During the period 1983 through 1990, the actual amount of adjustment payments made by petitioner was $12,549.00.

The Division of Taxation ("Division") computed the tax on the conversion as follows:[4]

Consideration:	
Sales Price of Shares	$2,626,465.00
Mortgage	1,020,001.00[5]
Less: Brokerage Fees	(131,323.00)[6]
Less: Reserve Fund	(36,986.00)[7]
Less: Mortgage Amortization	(8,783.00)
Total Consideration	$3,469,374.00
Original Purchase Price:	
Sponsor's Purchase Price to Acquire	$1,550,000.00
CHC Purchase Price to Acquire	-0-
Acquisition Costs	26,769.00
Capital Improvements	320,500.00
Conversion Costs	84,338.00
Negative Carry	-0-
Subtotal	$1,981,607.00
x Non-Grandfathered %	x .82191
Total Original Purchase Price	$1,628,703.00
Gain Subject to Tax	$1,840,671.00
x Rate	x .10
	$ 184,067.00

On August 21, 1989, the Division issued a Notice of Determination to petitioner in the amount of $354,560.52 ($187,411.00 additional gains tax; $101,555.67 interest; $65,593.85 penalty).

---

[3]We made the additional finding of fact to more adequately reflect the record.

[4]Per 8/8/90 Audit Schedule which differs slightly from Notice of Determination.

[5]$1,241,013.00 x .82191 non-grandfathered percentage of units sold per audit.

[6]$2,626,465.00 cash consideration x 5%.

[7]$45,000.00 x .82191 non-grandfathered percentage of units sold per unit.

The Division's Bureau of Conciliation and Mediation Services, by a Conciliation Order dated May 17, 1991 (CMS No. 100720), recomputed the tax due from $187,411.00 to $181,307.00, plus penalty and interest computed at the applicable rate.

At the hearing (see, tr., pp. 15-17), the Division's representative stated that the actual amount of tax at issue was $180,445.00, which amount is the result of multiplying the number of shares taxed (34,870 shares) times the amount of tax per share ($5.1748).

At the hearing, James L. Levy of Appraisers and Planners, Inc. in New York City testified as to the value of apartments occupied by protected tenants. Based upon his analysis of comparable sales, Mr. Levy stated that, for the years 1982 through 1984, sales of occupied cooperative apartments were generally made at a discount rate of 50 to 70%. Pursuant to his testimony (see also, Exhibit "3"), these apartments (containing 37,090 shares) were sold by petitioner at 50% of market value. Mr. Levy testified that, in reality, the percentage was lower because petitioner agreed to pay the negative carry after the ownership of the apartments was transferred to the investors and, in addition, because the investors did not have to put down any cash (petitioner provided 100% financing). Based upon the 50% discount and a negative cash flow of $19,258.00 (see, Exhibit "2") which was capitalized at 10%, the value of these shares was appraised by Mr. Levy at $1,395,015.00 which, when rounded off, became $1,500,000.00.

OPINION

The Administrative Law Judge rejected petitioner's contention that the transfer to the cooperative housing corporation is a separate taxable event for gains tax purposes and, therefore, held that petitioner could not step up the original purchase of the real property to reflect a portion of the cooperative housing corporation's cost of the property and could not exclude the mortgage received on the property from consideration in subsequent sales of shares of stock. The Administrative Law Judge held the Tax Appeals Tribunal has already addressed the same arguments as advanced by petitioner in Matter of 61 East 86th St. Equities Group (Tax Appeals

Tribunal, January 21, 1993), and the Administrative Law Judge declined to decide to the contrary.

On exception, petitioner advances the same arguments it raised before the Administrative Law Judge for support that the transfer to the CHC is a separate taxable event for gains tax purposes. We affirm the determination of the Administrative Law Judge on this issue.

First, petitioner argues Matter of 1230 Park Assocs. v. Commissioner of Taxation & Fin. of the State of New York (170 AD2d 842, 566 NYS2d 957, lv denied 78 NY2d 859, 575 NYS2d 455) was incorrectly decided by the Appellate Division, Third Department because they did not take into account the modifications made by the Court of Appeals in Mayblum v. Chu (67 NY2d 1008, 503 NYS2d 316). We disagree.

> "The . . . decision in Matter of 1230 Park Assocs. v. Commissioner of Taxation & Finance of the State of New York (supra) squarely addresses the issue of whether two separate and distinct taxable events occur in the cooperative conversion scenario. In 1230 Park, the Court expressly rejected the petitioner's argument that a cooperative conversion involves two distinct taxable transfers for gains tax purposes. The Court premised its position on the Court of Appeals' statements in Mayblum v. Chu (supra), where the Court stated that the gains tax is imposed on the overall cooperative conversion plan.
>
> "Other than its objections to the conclusions in 1230 Park, petitioner has not explained why 1230 Park should not be treated as precedent. Accordingly, we reject petitioner's contention that a cooperative conversion involved two transactions in light of the 1230 Park decision" (Matter of 61 East 86th St. Equities Group, supra).

Petitioner's next line of reasoning in support of his contention that the transfer to the CHC is a separate taxable event for gains tax purposes is that the statutory definition of transfer is inconsistent with 20 NYCRR 590.33 which treats the transfer to the CHC as a nullity. We disagree. "The regulation does not treat the transfer to the CHC as a nullity; rather, it states that the transfer to the CHC is not the event which requires payment of the tax" (Matter of 61 East 86th St. Equities Group, supra).

Petitioner also contends that there is no statutory basis for the Division's disparate treatment of cooperative housing corporations as compared to other entities. We disagree. In Matter of 61 East 86th St. Equities Group (supra) we stated:

> "[a]s we noted in 1230 Park, Article 31-B has a number of provisions that single out transfers pursuant to a cooperative or condominium plan for treatment different from that applied to other types of transfers. In our view, these provisions, contained in former sections 1440(7), 1442, and section 1443(6), provide ample support for the Division's decision to tax transfers pursuant to a cooperative plan like transfers pursuant to a condominium plan and, as a result, to treat cooperative corporations differently from non-cooperative corporations."

Therefore, we reject petitioner's argument.

Next, petitioner contends that since the Legislature did not adopt an amendment to the gains tax law as proposed by the Division in 1984, the gains tax law cannot be applied as interpreted by the Division.

> "We reject this conclusion in light of the Court of Appeals analysis in Mayblum v. Chu (supra). In that case, the Court had no difficulty in accepting the Division's application of the gains tax law to CHCs, notwithstanding the Legislature's failure to codify the Division's proposed amendments" (Matter of 61 East 86th St. Equities Group, supra).

Petitioner also argues that because the New York State Real Estate Transfer Tax was amended to conform substantially to the gains tax, it may be relied on to interpret the gains tax. We disagree. As we stated in Matter of 61 East 86th St. Equities Group (supra), the New York State Real Estate Transfer Tax and the Article 31-B Gains Tax are two separate and distinct taxes. Furthermore, Article 31-B contains distinct provisions which are only applicable to CHCs, while Article 31 does not.

Likewise, petitioner contends the amendments to the New York City Transfer Tax (Administrative Code of the City of NY § 11-2102[b]) also provide support for petitioner's interpretation of the gains tax as applied to CHCs. "We see no basis to petitioner's contention that these amendments are relevant to the construction of the gains tax" (Matter of 61 East 86th St. Equities Group, supra).

Next, petitioner asserts there are substantial factual and economic differences between condominium and cooperative conversions which require different treatment. We disagree. In 1230 Park, we noted that, the scheme set forth in the gains tax:

> "in effect ignores the realty transferor's transfer to the cooperative housing corporation and instead treats the realty transferor as if it were directly transferring its interest in the real property to the unit purchasers" (Matter of 1230 Park Assocs., Tax Appeals Tribunal, July 27, 1989).

Further, we went on to point out that:

> "it is significant that these provisions consistently treat transfers pursuant to a cooperative plan in exactly the same manner as transfers pursuant to a condominium plan. From this we conclude that the Legislature intended transfers pursuant to a cooperative plan to be treated exactly like transfers pursuant to a condominium plan - as transfers directly by the realty transferor to the unit purchasers" (Matter of 1230 Park Assocs., supra).

Finally, petitioner contends that the decision in Matter of 1230 Park Assocs. v. Commissioner of Taxation & Fin. of the State of New York (supra) is inconsistent with Matter of Perry Thompson Third Co. (Tax Appeals Tribunal, December 5, 1991, affd 185 AD2d 49, 592 NYS2d 121) and Matter of Cheltoncourt Co (Tax Appeals Tribunal, December 5, 1991, affd 185 AD2d 49, 592 NYS2d 121). Petitioner argues that in Perry Thompson and Cheltoncourt "the Tribunal found that the sponsor's transfer of the property to the cooperative housing corporation was to be treated as a transfer for Gains Tax Purposes, and that accordingly, the commercial lease should be treated as consideration given back to the sponsor" (Petitioner's brief on exception, p. 32).

While we agree with petitioner that the lease is to be treated as consideration to the sponsor, neither of these cases stand for the proposition that the realty transfer from the sponsor to the CHC is a separate taxable transfer for gains tax purposes. "Instead, Perry Thompson and Cheltoncourt held that the lease was one component of the consideration received by the sponsor in the overall conversion plan, which is completely consistent with the holding of 1230 Park, i.e., 'that the gains tax is imposed . . . on the overall conversion'" (Matter of 61 East 86th St. Equities

Group, supra, quoting Matter of 1230 Park Assocs. v. Commissioner of Taxation & Fin. of the State of New York, supra, 566 NYS2d 957, 959).

The second issue to be addressed is whether negative carry and estimated negative carry are properly includible in original purchase price. Again, the Administrative Law Judge held that the Tax Appeals Tribunal already considered and rejected the exact same arguments on the issue of negative carry as a component of original purchase price in Matter of 61 East 86 St. Equities Group (supra), and declined further comment. Petitioner raises the same arguments on exception with respect to this issue that were raised before the Administrative Law Judge. We affirm the determination of the Administrative Law Judge on this issue, and will briefly reiterate the proper treatment of negative carry.

Petitioner first argues that negative carry is a customary, reasonable and necessary expense incurred to create ownership interests in cooperative form. We disagree. First of all, negative carry is not a cost incurred to create ownership interests in cooperative form, but a cost of carrying the property in cooperative form (Matter of 1230 Park Assocs., supra). Petitioner, however, contends that disallowing negative carry because it is not a cost of creating ownership interests in cooperative form but a cost of carrying property in cooperative form is inconsistent with treating the initial realty transfer to the CHC as a nullity. We reject this argument in light of the fact the transfer to the CHC is not treated as a nullity, "it is just not treated as the taxable event" (Matter of 61 East 86th St. Equities Group, supra).

In the alternative, petitioner asserts that negative carry can be included in original purchase price as an acquisition cost because it constitutes a cost for receiving an interest in real property. We disagree. Negative carry is "a cost of carrying to preserve the status quo" (Matter of 1230 Park Assocs. v. Commissioner of Taxation & Fin. of the State of New York, supra, 566 NYS2d 957, 959).

Petitioner also argues that negative carry is properly includible in original purchase price because it can be treated as a capital improvement. Petitioner argues that since the language of

Tax Law § 1440(5)(a) does not limit the term to physical improvements, "[t]he statute can properly be construed as covering a significant upgrading change in the rights constituting an intangible property" (Petitioner's brief on exception, p. 49). In Matter of 61 East 86th St. Equities Group (supra) we held that "capital improvements" for purposes of Tax Law § 1440(a)(5) are properly limited to physical improvements. Petitioner has not acknowledged this decision, much less addressed our analysis, so we refuse to overturn it.

Finally, petitioner argues that the Appellate Division, Third Department erred when it deferred to the Tribunal's interpretation of the gains tax in Matter of 1230 Park Assocs. v. Commissioner of Taxation & Fin. of the State of New York, (supra). "Since the Appellate Division, Third Department reviews our decisions (Tax Law § 2016), and not vice versa, we decline to comment on petitioner's criticism of the Appellate Division's decision" (Matter of 61 East 86th St. Equities Group, supra).

The last issue to be addressed is whether gain should be reduced by petitioner's obligation to make adjustment payments. The Administrative Law Judge refused to allocate any part of the purchase price to the obligation to make adjustment payments. Although petitioner presented testimony and letters of valuation concerning the value of these adjustment payments, the Administrative Law Judge held that these valuations were not made at the time of transfer, but several years after.

On exception, petitioner argues the obligation to make adjustment payments constitutes intangible personal property which is not subject to gains tax. Petitioner then argues consideration can be apportioned to the obligation based on relative fair market value.

Tax Law § 1440(1)(c) provides, in pertinent part, that:

> "[i]n the case of a transfer which includes other assets which are in addition to real property or an interest therein and for which there is no reasonable apportionment of the consideration for such real property or interest, consideration means that portion of the total consideration which represents the fair market value of such real property or interest."

We agree with petitioner that consideration could be allocated between the real property and the adjustment payment obligation if petitioner had established the value of this interest at the time of the transfer. However, petitioner has not proven what the fair market value of the obligation to make adjustment payments was at the time of transfer. As the Administrative Law Judge noted, the valuations made by petitioner's expert witness appear to be based on events occurring after transfer. Therefore, petitioner is not entitled to reduce consideration by the obligation to make adjustment payments because "consideration is determined at the time of transfer and is not affected by subsequent events" (Matter of Berkeley Group Assocs., Tax Appeals Tribunal, June 2, 1994).

Petitioner also argues that the adjustment payment obligation can be treated as a discount, credit or rebate pursuant to 20 NYCRR 570.37. The Administrative Law Judge rejected this argument in light of the fact that no evidence was presented to indicate that these adjustment payments had been valued or there was an allocation of purchase price attributed to these payments at the time the contract was executed. 20 NYCRR 590.37 provides, in pertinent part, that:

> "[t]he treatment of a discount, credit or rebate which does not provide the transferee with an economic benefit realized immediately upon the transfer depends on whether the transferee's right to receive the future credit, discount or rebate is absolute or contingent. If the transferee's right to the future credit, discount or rebate is absolute, as provided for in the offering plan or agreement to purchase the shares, the present value of the discount, credit or rebate is a reduction of consideration at the time of the transfer. It will be presumed that a discount factor of 10 percent will be appropriate for calculating the present value of a credit, discount or rebate to which the transferee has an absolute right. If the transferee's right to receive the credit, discount or rebate is contingent upon any condition, the credit, discount or rebate is a reduction of consideration only to the extent that the transferor and transferee have attributed a reasonable value to the credit, discount or rebate in the offering plan or in the agreement to purchase the shares."

Petitioner argues that the adjustment payment, while contingent in amount, is an absolute obligation of the petitioner so its present value should reduce consideration. We disagree. Our

review of the record indicates the adjustment payment obligation was contingent on the continued occupancy of the apartment by a protected tenant and a portion of the principal allocated to the apartment remaining due. Therefore, under 20 NYCRR 590.37, petitioner is not entitled to reduce consideration because of the failure to attribute a reasonable value to the adjustment payment obligation in the offering plan or in the purchase agreement.

Finally, petitioner argues consideration should be reduced by the actual amount of adjustment payments petitioner actually makes. Petitioner asserts "[t]he Department has consistently held open transactions which had contingent consideration" (Petitioner's reply brief on exception, p. 7). Petitioner advanced this same argument before the Administrative Law Judge, but the Administrative Law Judge did not address it in his determination (Petitioner's post-hearing reply brief, p. 11). "The Administrative Law Judge should, as a general rule, address every issue raised by the parties in the proceeding before them, so long as the issue has not been subsequently abandoned by the parties" (Matter of United States Life Ins. Co. in the City of New York, Tax Appeals Tribunal, March 24, 1994). Therefore, we remand this issue back to the Administrative Law Judge for a supplemental determination on whether this transaction should be held open by the Division to determine the actual amount of the adjustment payment obligation. If either of the parties disagrees with the Administrative Law Judge's determination on remand, the party may obtain review of the determination by filing a timely exception to the determination on remand. If no exception is filed to the determination on remand, this decision shall be final for purposes of Tax Law § 2016 after the period for filing an exception to the determination on remand has expired.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Aaron Ziegelman is denied except with respect to the issue of whether the Division of Taxation should hold the transfers open in order to determine the actual adjustment payments made, which issue shall be addressed by the Administrative Law Judge in his determination on remand;

2. The petition of Aaron Ziegelman is denied except to the extent indicated in paragraph "1" above;

3. The determination of the Administrative Law Judge is affirmed, except to the extent indicated in paragraph "1" above;

4. The Notice of Determination dated August 21, 1989, as modified (see, Determination, conclusion of "D"), is sustained except to the extent indicated in paragraph "1" above; and

5. This matter is remanded for the issuance of a supplemental determination consistent with this decision.

DATED: Troy, New York
August 18, 1994

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner