STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions :

of :

BEIJING CHINA BUFFET, INC. :

for Revision of a Determination or Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period September 1, 2004 through February 28, 2007. :

In the Matter of the Petition :

of :

PING DI CHEN :

for Revision of a Determination or Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period December 1, 2004 through February 28, 2007. :

In the Matter of the Petition :

of :

YONG LI :

for Revision of a Determination or Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period December 1, 2004 through February 28, 2007. :

DETERMINATION
DTA NOS. 822635, 822636
AND 822637

Petitioners, Beijing China Buffet, Inc., Ping Di Chen and Yong Li, filed petitions for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 2004 through February 28, 2007.[1]

A hearing was held before Joseph W. Pinto, Jr., Administrative Law Judge, at the offices of the Division of Tax Appeals, 633 Third Avenue, New York, New York, on July 14, 2009 at 10:30 A.M., and continued to conclusion on July 15, 2009, with all briefs to be submitted by March 26, 2010, which date began the six-month period for the issuance of this determination. Petitioner appeared by the Law Offices of Stephen K. Seung (Robert Nizewitz, Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (Michael Hall).

ISSUES

I. Whether the Division of Taxation properly determined additional sales and use taxes due from Beijing China Buffet, Inc., Ping Di Chen and Yong Li for the period September 1, 2004 through February 28, 2007 using an estimated audit methodology.

II. Whether the estimated audit methodology utilized by the Divison of Taxation was rational and reasonably calculated to reflect the taxes due.

FINDINGS OF FACT

1. Petitioner Beijing China Buffet, Inc. (Beijing)[2] operated a Chinese buffet-style restaurant at 2429 Military Road, Niagara Falls, New York, between September 1, 2004 and February 28, 2007 (the audit period) making sales of food and drink.

2. An audit appointment letter, dated March 5, 2007, was mailed to petitioner's representative, Shiugeen Chin, CPA, to review petitioner's sales and use tax records for the period

[1]The officers were not assessed for the quarter ended November 30, 2004.

[2]References to all three petitioners herein will be in the singular throughout this determination.

September 1, 2004 through February 28, 2007. The appointment was scheduled for April 30, 2007 and requested that specific records pertinent to the audit period be made available at that time, including: sales tax returns; federal income tax returns; New York State corporation tax returns; the general ledger; general journal and closing entries; all exemption documentation to support nontaxable sales; chart of accounts; fixed asset purchase and sales invoices for the audit period; expense purchases; merchandise purchases; bank statements and canceled checks and deposit slips for all bank accounts maintained by petitioner; cash receipts journal; cash disbursement journal; the corporate book; depreciation schedules for the audit period; State Liquor Authority license in effect for the audit period; utility bills; guest checks; and cash register tapes for the audit period.

3. On March 27, 2007, the auditor received a power of attorney from petitioner's new representative, Evelyn Kung, CPA, and traveled to her office to review petitioner's records, which consisted of federal income tax returns, bank statements, canceled checks, wage reporting statements, sales summaries, purchase records for food and beverages and utility bills. At this time, the auditor informed Ms. Kung that petitioner did not have adequate sales and purchase records.

4. The auditor performed a detailed review of petitioner's fixed asset or capital accounts and determined that tax had not been paid on some assets valued at $19,984.00 which resulted in additional tax due of $1,629.23. Petitioner provided no documentation to demonstrate that sales tax had been paid on these asset purchases.

5. Since petitioner did not maintain a general ledger, cash register tapes or guest checks, there was no source documentation for sales. Additionally, the purchase records maintained by petitioner along with information the Division of Taxation (Division) received from vendors

indicated purchases for the fiscal year ended October 31, 2005 of $92,508.45, while the federal income tax returns filed for the same period stated purchases (cost of goods sold) of $76,995.00. A similar discrepancy was found for the fiscal year ended October 31, 2006, where petitioner's records indicated purchases of $125,275.28, but the federal tax return recorded only $98,799.00. Given the lack of source documentation for sales and the unreliability of the purchase information available, the Division concluded that it would be impossible to perform a detailed audit of petitioner's records to determine petitioner's tax liability for the audit period and resorted to an indirect audit methodology.

6. In choosing a methodology, the Division rejected a markup test due to the lack of reliable purchase information and the fact that petitioner operated a buffet style restaurant that prevented an accurate determination of the quantities of food sold. Instead, it was decided to do a cash to credit card sales analysis, utilizing the results of a one-day observation test and petitioner's own records of credit card sales as disclosed in banking records.

7. The Division's investigators conducted an observation at petitioner's restaurant, the Beijing China Buffet, on Thursday, November 8, 2007 from 10:30 A.M. to 8:00 P.M. The restaurant was located on a high volume traffic road close to the Niagara Prime Outlet Mall. There was seating for approximately 240 patrons. Customers pay for their meals upon entering regardless of whether they are eating in or taking the food out.

8. Between 11:00 A.M. and 8:00 P.M., there were 96 transactions, 16 of which were take-outs. The total value of all the transactions was $1,454.91, of which 14 were credit card transactions totaling $238.80, or 16.41% of the total. The amounts reported by the investigators from the observation were inclusive of sales tax. However, when the tax was backed out of the sales total, it amounted to $1,347.14. Credit card sales exclusive of tax amounted to $221.11 and

cash sales totaled $1,126.03. Based on these figures, the resulting cash to credit card sales ratio was 5.093.

9. The total amount of cash sales could not be determined from petitioner's records. In fact, petitioner's Key Bank monthly bank statements from December 2004 through February 2007 indicated that there were no cash deposits at all for the months of January, April and August 2006 and nine other months with cash deposits of $100.00 or less.

10. Of the ten vendor/suppliers that appeared in petitioner's records for the period September 2004 through October 2005, only one was paid by check, with all others compensated in cash.

11. Because credit card deposits were made directly into petitioner's bank account by the credit card companies, credit card sales could be tracked and substantiated by the Division. The Division took the credit card deposits to petitioner's bank account for the audit period,[3] $453,319.78, and applied the cash to credit card ratio determined in the observation test, 5.0923, to said figure (on a quarterly basis) to arrive at a projection of cash sales for the audit period, $2,360,128.74. The appropriate tax rate was applied for each quarter to arrive at total audited tax due on sales of $189,884.98. After giving credit for tax reported of $52,195.68, the additional tax on sales due per the audit was determined to be $137,689.30.

12. Based upon the audit findings, the Division issued to Beijing China Buffet, Inc., a Statement of Proposed Audit Change, dated November 21, 2007, which set forth additional sales and use tax due of $139,318.52, plus penalty and interest for the period September 1, 2004

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[3]The Division explained in its workpapers that the bank records with which it was presented showed a balance of $10,273.20 for the period ended December 2004. This presumably came from the January statement as a carry forward or starting balance. The Division's bank deposit analysis disclosed that, on average, 92.83% of the account balance was the result of credit card deposits. It concluded from the balance of $10,273.20 that 92.83%, or $9,536.61, represented credit card sales for December 2004.

through February 28, 2007. The additional tax due was comprised of the additional tax due on capital asset purchases for which petitioner did not offer any substantiation and the additional tax on sales as projected from the observation test and petitioner's books and records.

13. On or about January 11, 2008, petitioner's representative, Evelyn Kung, CPA, sent the Division a calculation of the cash to credit ratio based upon petitioner's records for the months of August through December 2007.[4] According to the calculations, petitioner recorded 4,540 sales during these five months with $113,882.00 in cash sales and $93,734.00 in credit card sales. These figures yielded a cash to credit card sales ratio of 1.215.

14. Petitioner took the credit card deposits for all the months of the audit period, netted the deposits of 15% to allow for tips, and then applied its own cash to credit card ratio (1.215) to determine cash sales and then total sales. Petitioner then backed out sales tax to determine sales net of tax, applied the sales tax rates used by the Division in its analysis to arrive at its own sales tax liability. Reported sales were subtracted to determine additional tax due. For the period December 2004 through February 2007, petitioner estimated additional tax due on sales of $19,061.05.

15. Upon review of petitioner's calculations, the auditor concluded that he could not accept petitioner's projections based upon a cash to credit card sales ratio of 1.215 since it did not take into account the months during the audit period where there were no cash deposits to the bank

[4]In its brief, the Division asserted that the letter from Ms. Kung with the attachments was not admitted into evidence. At hearing, petitioner had the document identified and marked as Petitioner's Exhibit 1. After being marked, the document became the focal point of several pages of questioning. There is no indication in the record that the Division objected, or would have objected, to its introduction given the extensive discussion and the assumed inclusion of the letter and its attachments in the official audit file. By oversight, the Administrative Law Judge did not formally receive the transcript in evidence. Under these circumstances, it is reasonable to expressly state here that the letter from Ms. Kung, identified as Exhibit 1 in the record, has been admitted into evidence. (***See also*** State Administrative Procedure Act § 306[1]; 20 NYCRR 3000.15[d][1].)

account and many others less than $100.00. The auditor believed that failing to recognize such data made the projections "self-serving" and eroded any credibility that could be ascribed to petitioner's conclusions drawn therefrom. The auditor believed the data used by petitioner in its calculations was not indicative of the circumstances that presented themselves during the audit period.

16. Petitioner Ping Di Chen was the vice-president of Beijing China Buffet, Inc., during the period in issue. He came to the United States in 1998 from China and began working at the Beijing China Buffet sometime prior to October 2004 as a cook. He does not speak or read the English language and has little formal education.

17. In October 2004, Mr. Ping Di Chen and Mr. Yong Li took over the restaurant from the prior owner. Mr. Chen continued to work in the kitchen, cooking and ordering food. He was a signatory on the corporate bank account and did sign checks, including at least one for the payment of sales tax with the return for the quarter ended February 28, 2007 and others for expense purchases. He also signed sales tax returns filed during the audit period. He was listed on, and executed, the Application for Registration as a Sales Tax Vendor as an officer (vice-president) of the corporation in November 2004. In addition, Mr. Chen was listed as an officer on both the 2005 and 2006 federal income tax returns.

18. Mr. Yong Li was also listed as an officer, president, on the Application for Registration as a Sales Tax Vendor, was a signatory on the corporation's bank account, signed most of the sales tax returns filed during the audit period, and was listed as an officer on the federal income tax returns for the fiscal years ended October 31, 2005 and 2006. The auditors also observed checks issued by Mr. Li for the corporation's expense purchases. Mr. Chen stated that Mr. Li had acted as manager for an undisclosed period, but that they delegated that responsibility to persons

they hired for most of the audit period. Managers were hired to bridge the language barrier and generally help them with the operation of the business. Mr. Chen also stated that Mr. Li helped their accountant to prepare tax returns.

19. Mr. Yong Li left the business sometime in January 2007.

SUMMARY OF THE PARTIES' POSITIONS

20. Petitioner argues that the methodology chosen by the Division was irrational and not reasonably calculated to reflect the sales tax due because the cash to credit card sales ratio applied a ratio established on one day that was not necessarily the same as all the others in the audit period. Petitioner maintains that its own test of sales after the audit proved that the ratio changed on a frequent basis. Therefore, an accurate projection of sales could not be based on such a ratio.

21. Petitioner believes that the Division should have utilized other indices to determine if the cash to credit card sales ratio was applicable to weekends or other seasons of the year or comparing the results to other, similar audits or industry guidelines.

22. Petitioner suggests that the observation test itself should have been used to project sales for the audit period rather than the cash to credit card sales ratio. In fact, petitioner contends that use of a multi-day observation test would have better reflected the business operations of petitioner. Petitioner believes the Division could have used internal indices to better predict taxable sales. By dismissing these checks on its own methodology, the Division appeared to be interested in maximizing gross sales, not accuracy.

23. The Division argues that petitioner did not have adequate books and records available after properly requesting them and then closely examining them. It then chose to perform an indirect audit using the books and records that were available and deemed accurate and an observation test. Given the broad discretion the Division believes it is has when faced with

circumstances like those herein, it believes the cash to credit card sales ratio was both reasonable and accurate, although exactness was not required.

24. The Division believes that petitioner's own work papers, based upon several months of sales after the audit, were rife with unexplained deductions and never substantiated with records. Further, the Division contends that a taxpayer's alternative audit methodology is not grounds for reducing or canceling the assessment herein, particularly where there is no evidence to support that alternative methodology.

CONCLUSIONS OF LAW

A. Tax Law § 1105(a) imposes a sales tax on the receipts from every "retail sale" of tangible personal property except as otherwise provided in Article 28 of the Tax Law. A "retail sale" is "a sale of tangible personal property to any person for any purpose, other than . . . for resale as such . . ." (Tax Law § 1101[b][4][i]). Tax Law § 1138(a)(1) provides, in relevant part, that if a sales tax return was not filed, "or if a return when filed was incorrect or insufficient, the amount of tax due shall be determined [by the Division of Taxation] from such information as may be available. If necessary, the tax may be estimated on the basis of external indices. . . ." (Tax Law § 1138[a][1].) When acting pursuant to section 1138(a)(1), the Division is required to select a method reasonably calculated to reflect the tax due. The burden then rests upon the taxpayer to demonstrate that the method of audit or the amount of the assessment was erroneous (***see Matter of Your Own Choice, Inc.,*** Tax Appeals Tribunal, February 20, 2003).

B. The standard for reviewing a sales tax audit where external indices were employed was set forth in ***Matter of Your Own Choice, Inc.,*** as follows:

> To determine the adequacy of a taxpayer's records, the Division must first request ***(Matter of Christ Cella, Inc. v. State Tax Commn.***, [102 AD2d 352, 477 NYS2d 858] ***supra***) and thoroughly examine (***Matter of King Crab Rest. v. Chu***,

134 AD2d 51, 522 NYS2d 978) the taxpayer's books and records for the entire period of the proposed assessment (***Matter of Adamides v. Chu***, 134 AD2d 776, 521 NYS2d 826, ***lv denied*** 71 NY2d 806, 530 NYS2d 109). The purpose of the examination is to determine, through verification drawn independently from within these records (***Matter of Giordano v. State Tax Commn.***, 145 AD2d 726, 535 NYS2d 255; ***Matter of Urban Liqs. v. State Tax Commn.***, 90 AD2d 576, 456 NYS2d 138; ***Matter of Meyer v. State Tax Commn.***, 61 AD2d 223, 402 NYS2d 74, ***lv denied*** 44 NY2d 645, 406 NYS2d 1025; ***see also***, ***Matter of Hennekens v. State Tax Commn.***, 114 AD2d 599, 494 NYS2d 208), that they are, in fact, so insufficient that it is "virtually impossible [for the Division of Taxation] to verify taxable sales receipts and conduct a complete audit" (***Matter of Chartair, Inc. v. State Tax Commn.***, 65 AD2d 44, 411 NYS2d 41, 43; ***Matter of Christ Cella, Inc. v. State Tax Commn.***, ***supra***), "from which the exact amount of tax due can be determined" (***Matter of Mohawk Airlines v. Tully***, 75 AD2d 249, 429 NYS2d 759, 760).

Where the Division follows this procedure, thereby demonstrating that the records are incomplete or inaccurate, the Division may resort to external indices to estimate tax (***Matter of Urban Liqs. v. State Tax Commn.***, ***supra***). The estimate methodology utilized must be reasonably calculated to reflect taxes due (***Matter of W.T. Grant Co. v. Joseph***, 2 NY2d 196, 159 NYS2d 150, ***cert denied*** 355 US 869, 2 L Ed 2d 75), but exactness in the outcome of the audit method is not required (***Matter of Markowitz v. State Tax Commn.***, 54 AD2d 1023, 388 NYS2d 176, ***affd*** 44 NY2d 684, 405 NYS2d 454; ***Matter of Cinelli***, Tax Appeals Tribunal, September 14, 1989). The taxpayer bears the burden of proving with clear and convincing evidence that the assessment is erroneous (***Matter of Scarpulla v. State Tax Commn.***, 120 AD2d 842, 502 NYS2d 113) or that the audit methodology is unreasonable (***Matter of Surface Line Operators Fraternal Org. v. Tully***, 85 AD2d 858, 446 NYS2d 451; ***Matter of Cousins Serv. Station***, Tax Appeals Tribunal, August 11, 1988). In addition, "[c]onsiderable latitude is given an auditor's method of estimating sales under such circumstances as exist in [each] case" (***Matter of Grecian Sq. v. New York State Tax Commn.***, 119 AD2d 948, 501 NYS2d 219, 221).

C. In this case, the record establishes the Division's clear and unequivocal written request for books and records of petitioner's sales, as well as petitioner's failure to produce such books and records. The Division reasonably concluded that petitioner did not maintain or have available books and records that were sufficient to verify gross and taxable sales for the audit period, including any cash register tapes, guest checks or invoices. Having established the unavailability of required books and records, the Division was clearly entitled to resort to the use

of indirect methods, including the use of an observation test, to determine petitioner's sales and sales tax liability. Indeed, the use of a one-day observation test has been specifically addressed and approved (***see Matter of Sarantopoulos v. Tax Appeals Tribunal***, 186 AD2d 878, 589 NYS2d 102 [1992]). Further, the law is clear that the results of a one-day observation test may reasonably be extrapolated over a multiple-year audit period ***(Matter of Marte***, Tax Appeals Tribunal, August 5, 2004).

D. Since it is concluded that the audit method was reasonable, petitioner had the burden of proof to show, by clear and convincing evidence, that the result of the audit was unreasonably inaccurate or that the amount of tax assessed was erroneous (***Matter of Sarantopoulos***). Petitioner failed to meet this fairly substantial burden (***see Matter of Center Moriches Monument Co. v. Commr. of Taxation & Fin.***, 211 AD2d 947, 621 NYS2d 720 [1995]).

Petitioner's arguments focus on the reasonableness of the indirect audit methodology chosen by the Division to estimate petitioner's tax liability and the availability of other methodologies it considered more accurate.

Petitioner relied heavily on the rationale in ***Matter of Cjefa Pizza, Inc.*** (Division of Tax Appeals, January 8, 2009), which also utilized the cash to credit card sales ratio. Initially, it must be noted that the Rules of Practice and Procedure of the New York State Tax Tribunal specifically provide that determinations of administrative law judges are not considered precedent and are not given any force or effect in other proceedings. (20 NYCRR 3000.15[e][2].) Therefore, this determination will not base its conclusions on that case. However, it is also noted that the administrative law judge in ***Cjefas*** specifically concluded that the cash to credit card sales ratio was a reasonable audit methodology, choosing to use it over the method that utilizes the results of an observation test in the "usual fashion." The "usual fashion" referred to taking the sales results for

the day of the observation and, after making adjustments for other days of the week on which sales were lower, projecting a quarterly sales total and comparing it to reported sales to find an error ratio. This ratio was then applied to all quarters in the audit period to determine audited taxable sales.

Therefore, petitioner's reliance on the rationale in ***Cjefas***, notwithstanding its lack of precedential value, was misplaced since the judge's rationale supports the Division's methodology herein.

E. Petitioner also argues that the cash to credit card sales ratio methodology was only one of several methodologies that could have been chosen, specifically referring to those which utilize indices from the Restaurant Industry Operations Report compiled by the National Restaurant Association and Deloitte & Touche LLP or a multi-day observation with adjustments for days of the week and seasons of the year. Petitioner's argument was that these would have been more representative of its actual sales during the audit period.

In ***Matter of Burbacki*** (Tax Appeals Tribunal, February 9, 1995), the Tribunal stated:

> Such assertion does not meet petitioners' burden of proving by clear and convincing evidence that the result of the method used was unreasonably inaccurate (Matter of Meskouris Bros. v. Chu, 139 AD2d 813, 526 NYS2d 679). At best, it is that a better picture of petitioners' liability may have been obtained had a different method been used. It is well established that where the taxpayer's failure to maintain proper records prevents exactness in determination of sales tax liability, exactness is not required (Matter of Club Marakesh v. Tax Commn., 151 AD2d 908, 542 NYS2d 881, lv denied 74 NY2d 616, 550 NYS2d 276).

The same rationale is applicable here. One could speculate that another method may have better projected petitioner's actual sales for the audit period, but that is not the requirement when petitioner has no sales records and operates a cash business, as was the case here.

The cash to credit card sales ratio may very well not have been the most accurate methodology, but it did address several major discrepancies in petitioner's records. First, the ratio was applied to the credit card deposits as recorded on petitioners bank records. Presumably, the credit card deposits would have risen and fallen with petitioner's volume of sales. Therefore, applying the constant ratio to credit card deposits would consistently track cash sales. Although petitioner contends that the ratio could have fluctuated every day and was therefore wildly unpredictable, yielding inaccurate results, it remains that petitioner had no sales records and the ratio was established from its own operations and applied to deposits recorded on its own records. As noted above, the results of a one-day observation test may reasonably be extrapolated over a multiple-year audit period ***(Matter of Marte***).

Further, the auditor rejected petitioner's own data drawn from the months of August, September, October, November and December 2007 primarily because they did not reflect the lack of cash deposits that appeared during the audit period, that is, they were not considered reliable because the records underlying petitioner's projection did not acknowledge the lack of accounting for cash in a cash business. As noted in the facts, petitioner's monthly bank statements from December 2004 through February 2007 indicated that there were no cash deposits at all for the months of January, April and August 2006, and nine other months had cash deposits of $100.00 or less, yet the records underlying petitioner's test months, which it extrapolated to the entire audit period, never had a month where there were no cash deposits. The auditor believed, and correctly so, that this did not accurately reflect the circumstances that existed during the audit period.

F. Although petitioner Ping Di Chen has conceded his liability for the taxes assessed and Yong Li has not raised a defense to his personal liability for the taxes determined to be due from

Beijing China Buffet, Inc. for the audit period, they were responsible for the collection and payment of said taxes.

Exposure to such liability arises under Tax Law § 1133(a), which states that:

> Every person required to collect any tax imposed by this article [Article 28] shall be personally liable for the tax imposed, collected or required to be collected under this article. . . .

Tax Law § 1131(1), in turn, defines "persons required to collect tax" and a "person required to collect any tax imposed by this article [Article 28]" to include any officer or employee of a corporation who, as such officer or employee, is "under a duty to act for such corporation in complying with any requirement of [Article 28]." There being no dispute on this issue, it is determined that Ping Di Chen and Yong Li are personally liable for the sales tax determined due from Beijing China Buffet, Inc. In the case of petitioner Ping Di Chen it is for the period December 1, 2004 through February 28, 2007.

For petitioner Yong Li it is for the period December 1, 2004 through January 31, 2007. This adjustment is made after testimony and documentation demonstrated that Yong Li left the corporation as of January 2007, and the Division is directed to make the appropriate modification to his notice.

G. Having concluded that the Division properly utilized an estimated audit methodology and that petitioner was unable to demonstrate that the results were erroneous, it must be determined if petitioner has established reasonable cause to abate the penalties imposed. Tax Law § 1145(a)(1)(i) provides for penalty to be imposed where a person fails to pay over any tax within the time required by law. Tax Law § 1145(a)(1)(vi) provides for an additional penalty when tax is understated by more than 25 percent. The Division assessed penalty against

petitioner under these sections. Tax Law § 1145(a)(1)(iii) and (vi) provide that the Division can remit the penalty if the failure to pay over the tax was due to reasonable cause.

In establishing reasonable cause for penalty abatement, the taxpayer faces and onerous task (***Matter of Philip Morris, Inc.***, Tax Appeals Tribunal, April 29, 1993). Referring to the mandatory language of Tax Law § 1145(a)(1)(i) , the Tribunal said that "the Legislature evidenced its intent that filing returns and paying tax according to a particular timetable be treated as a largely unavoidable obligation." (***Matter of MCI Telecommunications Corp.***, Tax Appeals Tribunal, January 16, 1992.) In the instant matter, petitioner neither maintained nor produced records as required, and those that were maintained were without any source documentation due to its failure to keep register tapes, guest checks or a general ledger to substantiate each sale. In addition, there was a substantial discrepancy between reported sales and audited sales as evidenced by the tax paid with the returns during the audit period and the tax found due as a result of the audit. For all of these reasons penalties must be sustained.

H. The petition of Beijing China Buffet, Inc., is denied and the Notice of Determination, dated March 3, 2008 is sustained; the Petition of Ping Di Chen is denied and the Notice of Determination, dated March 3, 2008, is sustained; the Petition of Yong Li is granted to the extent set forth in Conclusion of Law F but in all other respects is denied and the Notice of Determination, dated March 3, 2008, is sustained.

DATED: Troy, New York
September 23, 2010

/s/ Joseph W. Pinto, Jr.
ADMINISTRATIVE LAW JUDGE