

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Mark Jacobson :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Year 1974. :

State of New York  
County of Albany

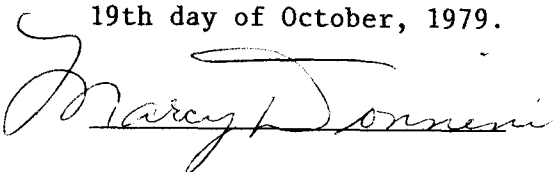
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Irving Mandell the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

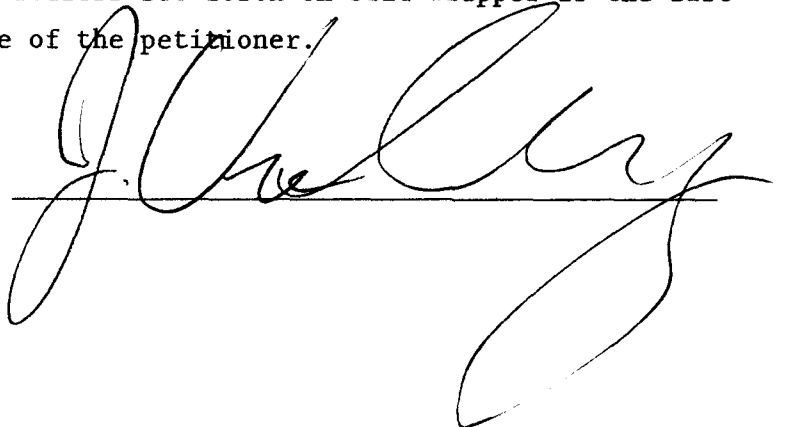
Mr. Irving Mandell  
110-11 Queens Blv.  
Forest Hills, NY 11375

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
19th day of October, 1979.

  
Nancy Donneni



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Mark Jacobson :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 22 of the Tax Law

for the Year 1974. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Mark Jacobson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark Jacobson

42-25 21st St.

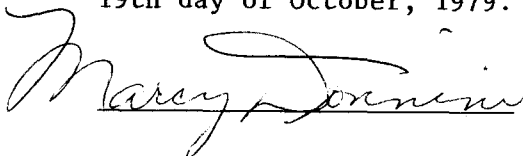
Long Island City, NY

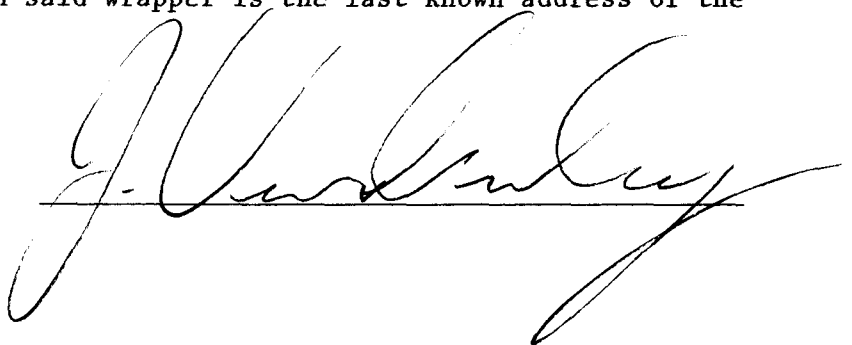
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this

19th day of October, 1979.

  
Marcy Dominici



STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 19, 1979

Mark Jacobson  
42-25 21st St.  
Long Island City, NY

Dear Mr. Jacobson:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Irving Mandell  
110-11 Queens Blv.  
Forest Hills, NY 11375  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MARK JACOBSON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1974.	:	

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Petitioner, Mark Jacobson, c/o Irving Mandell, Esq., 110-11 Queens Boulevard, Forest Hills, New York 11375, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 16618).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1978 at 10:45 A.M. The Income Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq. and Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioner was properly held personally liable under the Tax Law, for a penalty equal to the amount of income taxes withheld from the wages of employees of a corporation of which petitioner was an officer.

II. Whether the Income Tax Bureau was required to seek payment of unpaid income taxes withheld, but not paid over by an employer, from the employer corporation before proceeding against an officer.

FINDINGS OF FACT

1. Ranger Bakers, Inc., of which petitioner was president, failed to pay over to the Income Tax Bureau, New York State personal income taxes withheld from its employees for the period November 1, 1974 through December 31, 1974 in the amount of \$36,846.29.

2. On July 8, 1975, the Income Tax Bureau issued a Notice and Demand for Payment of Withholding Tax due against Ranger Bakers, Inc. (under Assessment No. W7507080706), for taxes of \$36,846.29, plus penalty of \$5,066.40 and interest of \$1,729.01, for a total allegedly due of \$43,641.70. The Notice indicated that the withholding tax return had been filed on February 11, 1975, with a tax due of \$36,846.29, and that no tax had been paid.

3. On October 24, 1975, petitioner, Mark Jacobson, as president of Ranger Bakers, Inc., signed an agreement to pay the entire amount of withholding taxes, plus penalties and interest. A payment of \$10,000.00 was to be made on October 29, 1975, and then \$6,458.55 per month for six months, until the whole amount due had been paid.

4. On November 19, 1975, Ranger Bakers, Inc. made an assignment for the benefit of creditors in the Supreme Court, County of Queens, New York. The Assignment was signed by petitioner as president of Ranger Bakers, Inc.

5. On June 28, 1976, the Income Tax Bureau issued a Statement of Deficiency against petitioner, equal to the amount of New York State withholding taxes due from Ranger Bakers, Inc. for 1974. This was done on the grounds that he was a person required to collect, truthfully account for and pay over said taxes, and that he willfully failed to do so.

6. On September 15, 1976, petitioner, Mark Jacobson, timely filed a petition for redetermination of the penalty assessed against him. He argued that he should not be held personally liable for the unpaid withholding taxes until the State Tax Commission had sought payment from the assignee for the benefit of creditors.

7. On October 26, 1977, petitioner mailed a letter to the State Tax Commission, in which was enclosed a promissory note dated October 25, 1977 and which, inter alia, stated:

"Enclosed you will find a promissory note dated October 25, 1977 pursuant to which Mr. Jacobson personally promises to pay Ranger's entire debt for the years 1974 and 1975."

8. Petitioner did not appear at the formal hearing and no evidence was introduced on his behalf.

9. The deficiency has not yet been paid, other than \$10,000.00 on October 25, 1977, receipt of which was acknowledged by the Income Tax Bureau.

#### CONCLUSIONS OF LAW

A. That petitioner, Mark Jacobson, as president of Ranger Bakers, Inc., was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for 1974, in accordance with the meaning and intent of section 685(n) of the Tax Law.

B. That since petitioner, Mark Jacobson, willfully failed or caused Ranger Bakers, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for 1974, a penalty equal to the total amount of the unpaid withholding taxes was properly assessed against him, in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the Income Tax Bureau is not required to attempt to collect unpaid withholding taxes from a corporation, or from its assignee for the benefit of creditors, before imposing and collecting from responsible officers the penalty provided for by section 685(g) of the Tax Law.

D. That the petition of Mark Jacobson is granted to the extent that the deficiency is reduced by \$10,000.00, an amount equal to the payment made on October 25, 1977, but that the petition is in all other respects denied. The Notice of Deficiency dated June 28, 1976, with the modification set out herein, is hereby sustained.

DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**  
TAX APPEALS BUREAU

TO.....Paul Coburn.....

Please file.

Returned - Addressee Unknown

MARK JACOBSON

November 2, 1979

M-75 (5/76)

From Robert F. Mulligan



TA-26 (4-76) 25M

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

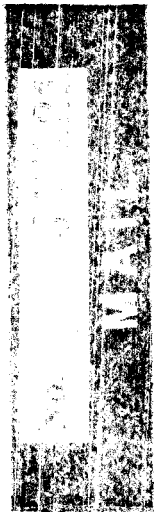
*CHK*

RETURNED TO SENDER  
ADDRESSEE UNKNOWN  
11101

Mark Jacobson  
42-25 21st St.  
Long Island City, NY

*Fanned*

TAX APPEALS BUREAU  
OCT 26 1979  
RECEIVED



STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 19, 1979

Mark Jacobson  
42-25 21st St.  
Long Island City, NY

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NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Irving Mandell  
110-11 Queens Blv.  
Forest Hills, NY 11375  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
MARK JACOBSON : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Year 1974. :

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7. On October 26, 1977, petitioner mailed a letter to the State Tax Commission, in which was enclosed a promissory note dated October 25, 1977 and which, inter alia, stated:

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8. Petitioner did not appear at the formal hearing and no evidence was introduced on his behalf.

9. The deficiency has not yet been paid, other than \$10,000.00 on October 25, 1977, receipt of which was acknowledged by the Income Tax Bureau.

#### CONCLUSIONS OF LAW

A. That petitioner, Mark Jacobson, as president of Ranger Bakers, Inc., was a person required to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for 1974, in accordance with the meaning and intent of section 685(n) of the Tax Law.

B. That since petitioner, Mark Jacobson, willfully failed or caused Ranger Bakers, Inc. to willfully fail to collect, truthfully account for and pay over New York State withholding taxes due from said corporation for 1974, a penalty equal to the total amount of the unpaid withholding taxes was properly assessed against him, in accordance with the meaning and intent of section 685(g) of the Tax Law.

C. That the Income Tax Bureau is not required to attempt to collect unpaid withholding taxes from a corporation, or from its assignee for the benefit of creditors, before imposing and collecting from responsible officers the penalty provided for by section 685(g) of the Tax Law.

D. That the petition of Mark Jacobson is granted to the extent that the deficiency is reduced by \$10,000.00, an amount equal to the payment made on October 25, 1977, but that the petition is in all other respects denied. The Notice of Deficiency dated June 28, 1976, with the modification set out herein, is hereby sustained.

DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

William Jawarski :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Year 1971. :

State of New York

County of Albany

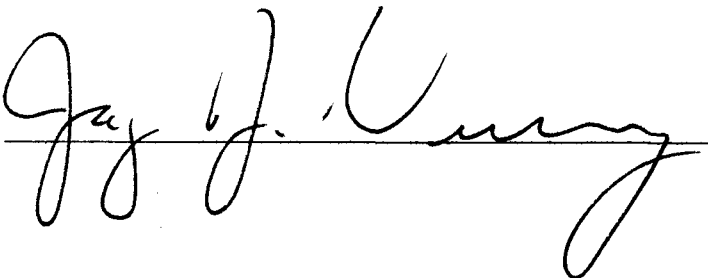
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Default by certified mail upon William Jawarski, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

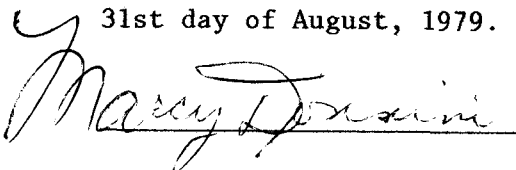
William Jawarski  
3223 Glenwood Ave.  
Blasdell, NY 14219

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
31st day of August, 1979.







STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

William Jawarski  
3223 Glenwood Ave.  
Blasdell, NY 14219

Dear Mr. Jawarski:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 690 of the Tax Law, any proceeding in court to review this decision must be commenced within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Very truly yours,  
*Victoria Gary*

cc: Petitioner's Representative

Taxing Bureau's Representative



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM JAWARSKI

DEFAULT ORDERfor Redetermination of Deficiency or for Refund of  
Personal Income  
Taxes under Article ~~(s)~~ 22 of the Tax Law for the  
Year ~~(s)~~ 1971

Petitioner ~~(s)~~ William Jawarski, 3223 Glenwood Avenue, Blasdell,  
New York 14219 filed a petition for redetermination of deficiency  
or for refund of Personal Income taxes under Article ~~(s)~~  
22 of the Tax Law for the year ~~(s)~~ 1971 . File No. ~~(s)~~ 12519

A small claims hearing on the petition was scheduled before  
Carl P. Wright, Hearing Officer, at the offices of the State  
Tax Commission, Genesee Building, One West Genesee Street, Suite 750,  
Buffalo, New York 14202  
on April 25, 1979 at 1:15 P.M. . Notice of said small claims  
hearing was given to petitioner ~~(s)~~ and petitioner ~~(s)~~ representative  
XX

. Petitioner ~~(s)~~ XXX did  
not appear at the small claims hearing . A default has been duly noted.

Now on motion of the attorney for the Department of Taxation and Finance,  
it is

ORDERED that the petition of WILLIAM JAWARSKI  
be and the same is hereby denied.

DATED: Albany, New York  
AUG 31 1979

STATE TAX COMMISSION

James G. Tuel  
PRESIDENTMilton Kuersten  
COMMISSIONER

COMMISSIONER

A. C. S. TRUCK REPAIR  
AUTO CARE SERVICES  
356 HOPKINS ST.  
BUFFALO, N. Y. 14220

Secretary of Tax Commission

Bldg. # 9

State Campus

Albany, New York 12227

November 20, 1979

William F. Jaworski  
3243 Glenwood Avenue  
Blandell, New York 14219

RE: DEFAULT ORDER-WILLIAM JAWORSKI  
TAB #12519

Dear Mr. Jaworski:

This is to acknowledge receipt of your letter of November 13, 1979 requesting that the default order issued in the above matter be vacated.

Your application was referred to State Tax Commissioner Thomas H. Lynch for consideration. Commissioner Lynch has denied your application.

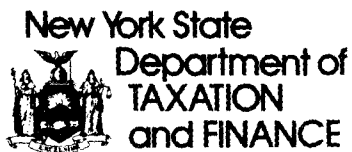
This represents an exhaustion of your administrative remedies. If you wish to pursue the matter further, you must institute an Article 78 Proceeding in Supreme Court, Albany County within four months after the date of the default order.

Very truly yours,

PAUL B. COBURN  
Secretary to the State  
Tax Commission

PBC:mac

cc: Commissioner Thomas H. Lynch  
John Sollecito




Date 11/19/79

To Commissioner Lynch

For your attention. This is a  
default for failure to appear  
at a hearing.

M-75.1

  
Paul Coburn  
Secretary to the  
State Tax Commission

William F. Jaworski  
3243 Glenwood Ave.  
Blasdell, New York 14219

November 13, 1979

Secretary of Tax Commission  
Bldg/ # 9  
State Campus  
Albany, New York 12227

Re: Default Order - File 12519  
Dated: August 31, 1979

Dear Sirs:

On October 17, 1979 I wrote and asked for a vacate on the above default order, I was declined (See Attached).

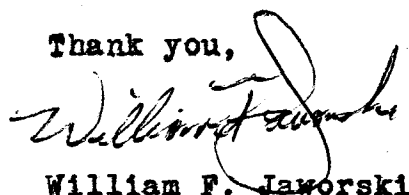
I then contacted Mr. Joseph Chyrywaty of the Tax Appeal Bureau and he told me to write to you again.

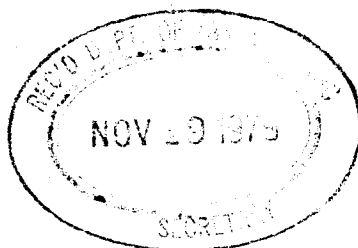
I have proof that I'm not liable for the tax in question (see Note attached). I have contacted my attorney Mr. Donald Coppola of that time (1971). He is now searching his files to find Releases and Stock Transfer Records. Mr. Coppola has assured me he has these records, but it will take time to locate them in his 1971 files, which are in dead storage.

I still contend that I never received notification of the second court date.

With this new evidences now presented to you, I again ask that the default order be vacated and a new court date set.

Thank you,

  
William F. Jaworski





STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

*Called again*  
*11/8/79*

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

TELEPHONE: (518)457-1723

October 31, 1979

Mr. William F. Jaworski  
3243 Glenwood Avenue  
Blasdell, New York 14219

Dear Mr. Jaworski:

This is to acknowledge receipt of your October 17, 1979 correspondence.

A hearing in your matter was initially scheduled in Buffalo on September 17, 1976 and was adjourned pursuant to your request. Your matter was rescheduled for hearing on April 25, 1979 and a hearing notice sent to your current address. The hearing notice was not returned from the post office.

As the petitioner, you were properly notified of your hearing on two different occasions and failed to appear at the final hearing.

Accordingly, the Default Order issued in your matter will not be vacated.

Very truly yours,

Joseph Chyrywaty  
Hearing Examiner

*Article 58 Processing -*

*Dec. 31*

21-178  
September 5, 1979

Deputy Commissioner and Counsel  
New York State Department of Taxation and Finance  
Albany, New York 12227

To whom this may concern:

On September 4, 1979 I received by registered mail a Default Order of which I know nothing about.

A Small Claims Hearing was supposed to be held on April 25, 1979 of which I know nothing about!

The Default Order is to myself for the year 1971 and file # 12512.

Please have someone contact me in regards to this by mail or by phone.

Thank you,

William F. Jaworski  
3243 Glenwood Ave.  
Blasdell, N.Y. 14219

Home Phone - 1-716-826-5341  
Work Phone - 1-716-825-7881

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM JAWARSKI

DEFAULT ORDER

for Redetermination of Deficiency or for Refund of  
**Personal Income**  
Taxes under Article (x) 22 of the Tax Law for the  
Year(x) 1971

Petitioner(x) William Jawarski, 3223 Glenwood Avenue, Blasdell,

New York 14219

filed a petition for redetermination of deficiency

or for refund of **Personal Income**

taxes under Article(x)

22 of the Tax Law for the year(x) 1971

File No.(x) 12519

A small claims hearing on the petition was scheduled before

Carl P. Wright, Hearing Officer

, at the offices of the State

Tax Commission, Genesee Building, One West Genesee Street, Suite 750,  
Buffalo, New York 14202

on April 25, 1979 at 1:15 P.M. Notice of said small claims

hearing was given to petitioner(x) ~~XXXXXXXXXXXXXXXXXXXX~~

. Petitioner(x) ~~XXXXXXXXXXXXXXXXXXXX~~ did

not appear at the small claims hearing. A default has been duly noted.

Now on motion of the attorney for the Department of Taxation and Finance,

it is

ORDERED that the petition of

WILLIAM JAWARSKI

be and the same is hereby denied.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION

*James H. Tull*  
PRESIDENT

*Milton Krenny*  
COMMISSIONER

*Thomas H. [Signature]*  
COMMISSIONER



DONALD P. COPPOLA  
ATTORNEY

LAW OFFICES

SUITE 921  
290 MAIN STREET BUILDING  
BUFFALO, N.Y. 14202

856-9363

*Conne: keep 1 copy  
with Tax returns and  
send 1 copy to Puttner*

April 13, 1978

TO WHOM IT MAY CONCERN:

Re: William Jawarski v Barcomb

Gentlemen:

In my opinion, collection on the judgement above-captioned is fruitless. I believe the indebtedness to be uncollectable and I have closed my file.

Very truly yours,

*Donald P. Coppola*  
DONALD P. COPPOLA  
~~RICHARD ROSEY JR. GALLIVAN~~

290 Main Street  
Suite 921  
Buffalo, N.Y. 14202

RSFG/deh

Amount: \$3200<sup>00</sup>

Buffalo, New York  
July 29, 1971

Capital Remodeling, Inc and William Barcomb, jointly and severally promise to pay to the order of William F. Jaworski, at 3223 Glenwood Ave, Buffalo, N.Y. 14219, the sum of \$3200<sup>00</sup> with interest at 7% per annum, payable as follows: The sum of \$200<sup>00</sup> on September 1, 1971, and a like amount on the 1<sup>st</sup> day of each and every month thereafter, until the full amount of this note, together with interest at the rate of 7% per annum, is paid in full. Said payments shall be applied first to the payment of interest on the unpaid principal balance, at the rate of 7% per annum, and the balance to be applied to the reduction of principal.

In the event the makers shall default on