STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition of **RAJNI T. MOHNANI** 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, 2013 through February 28, 2017.	DECISION DTA NO. 828964

Petitioner, Rajni T. Mohnani, filed an exception to the determination of the Administrative Law Judge issued on April 21, 2022. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Elizabeth Lyons, Esq., of counsel).

Petitioner filed a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioner did not file a reply brief. Oral argument was heard in New York, New York on May 25, 2023, which date began the six-month period for issuance of this decision.

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

ISSUES

I. Whether the audit methodology utilized by the Division of Taxation in its audit of 101 Auto Mall, Inc., had a rational basis and was reasonably calculated to reflect the taxes due.

II. Whether petitioner Rajni T. Mohnani was personally liable for the sales and use taxes due on behalf of 101 Auto Mall, Inc., as a person required to collect and pay such taxes under the Tax Law.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. Those facts appear below.

1. The Division of Taxation (Division) conducted a sales and use tax audit of 101 Auto Mall, Inc. (the business), a used car dealership and auto repair shop, for the period September 1, 2013 through November 30, 2016.

2. The Division assigned auditor Joon Kim to perform the audit. On February 17, 2017, the auditor sent an initial appointment letter to commence the audit, as well as an information document request (IDR), to the business.

3. The February 17, 2017 IDR requested the business' books and records for the period September 1, 2013 to November 30, 2016, including: sales tax returns, worksheets, and canceled checks showing taxes paid; federal income tax returns; New York State corporate tax returns; general ledger; general journal and closing entries; sales invoices; all exemption documentation supporting non-taxable sales; chart of accounts; fixed asset purchase and sales invoices; expense purchase invoices; merchandise purchase invoices; bank statements, canceled checks and deposit slips for all accounts; cash receipts journal including sales journal; cash disbursement journal including purchase journal; the corporate book, including minutes, board of directors and articles of incorporation; depreciation schedules; lease/rental agreements; waste tire management fee returns; NYS motor vehicle MV-50 forms; books of registry; dealer financial statements; car jackets (a/k/a deal jackets or customer files); dealer floor plan; service vehicle replacement report; demo/loaner/rental vehicle log; wage reporting tax returns; and manufacturer parts statements.

4. On February 28, 2017, the auditor went to the business location and met with petitioner to discuss the audit. On April 14, 2017, the auditor again went to the business location and met with petitioner to discuss the audit. At this meeting, petitioner provided bank statements, federal income tax returns for 2013 through 2015 for the business, and purchase bills from an auto auction.

5. On April 20, 2017, the auditor went to the business location and received the following additional information requested in the February 17, 2017 IDR: vehicle purchase list from the automobile seller Manheim for 2013-2017, vehicle purchase list from the automobile seller Dealer Block for 2016, and New York State MV-50 forms for 2013 through 2016. At this meeting, the auditor inquired about bills of sale, purchaser information, and payment methods for the business. Petitioner informed the auditor that for the business' used vehicle sales, the business only maintained the MV-50 forms.

6. The business filed New York State sales tax returns for the periods ending November 30, 2014 and November 30, 2016. However, the business failed to file sales tax returns for the remaining quarters of the audit period. The auditor determined that the books and records provided were inadequate since there were no source documents to support the reported gross sales reflected on the sales tax returns filed.

7. On May 9, 2017, the auditor informed petitioner that the audit period was being extended to February 28, 2017. On May 9, 2017, the auditor sent an IDR for the updated audit period. The May 9, 2017 IDR requested: sales tax returns, worksheets, and canceled checks showing taxes paid; federal income tax returns; New York State corporate tax returns; general ledgers; general journal and closing entries; sales invoices; all exemption documentation supporting non-taxable sales; chart of accounts; fixed asset purchase sales invoices; expense

purchase invoices; merchandise purchase invoices; bank statements; canceled checks and deposit slips for all accounts; cash receipts journal including sales journal; cash disbursement journal including purchase journal; the corporate books, including minutes of the board of directors' meetings and articles of incorporation; depreciation schedules and lease/rental agreements.

8. In May of 2017, petitioner provided the auditor MV-50 forms for the updated audit period and certain repair invoices for the business' repair shop.

9. The Division issued notice of determination L-048700629 (notice), dated August 16, 2018, to petitioner as a responsible person of the business assessing tax due of $150,718.36, plus interest and penalties.

10. Petitioner filed a petition with the Division of Tax Appeals protesting the notice. Petitioner asserts in the petition that she was not a responsible person of the business.

11. After the July 2, 2021 hearing in this matter, the record was kept open until July 16, 2021 to enable petitioner to submit additional documentation in support of her position. On July 15, 2021, petitioner submitted an equipment invoice dated September 4, 2013 for automobile repair equipment purchased by the business.

12. At the hearing, the Division presented the testimony of its auditor, Joon Kim. The auditor testified as to the conduct of the audit and the assessment of petitioner as a responsible person of the business.

13. The business did not maintain a general ledger or all the invoices for the repair shop sales. The business failed to provide the contracts of sale or finance documents for the used car sales which the auditor requested in order to verify sales. The only records maintained by the business for its used car sales were New York State MV-50 forms.

14. To calculate the business' used car sales for the audit period, the auditor used the MV-50 forms provided by petitioner since they were the most accurate and complete document the auditor received from the business.[1] The auditor took the business' MV-50 forms for the audit period and transcribed the information onto a worksheet. For the business' wholesale, out of state sales, or loaner car transactions, the auditor testified that these sales were not included in the final calculation of the business' retail sales subject to sales tax.[2] The auditor added up all of the applicable retail sales reflected on the business' MV-50 forms provided and calculated estimated gross sales of $1,584,852.10 for the period at issue. The gross sales were reduced to $1,580,131.10 to reflect when the auditor determined that a MV-50 form sale price included sales tax in the overall sales price.

15. The auditor reviewed the repair invoices provided by petitioner to estimate the business' auto repair sales. The auditor asserts that petitioner only provided auto repair invoices for the 18 months of October 2014 to July 2015; November 2015 to January 2016 and April 2016 to August 2016.[3] Total sales in the amount of $94,315.59 were calculated from all of the auto repair invoices provided and $2,015.52 in sales tax paid was subtracted from the total sales, resulting in total auto repair sales of $92,300.07. The auditor calculated average repair sales of

[1] The auditor testified that certain information for automobile sales (e.g., trade-in vehicle allowances) would not be reflected on the MV-50 form.

[2] A review of the relevant audit workpapers by the Administrative Law Judge supports this assertion. The audit workpapers show several "sales" memorialized from the MV-50 forms but there is no correlating sales dollar amount for the transaction included in the sales column of the auditor's worksheets. This indicates that the auditor received several MV-50 forms from petitioner but did not include the transactions as sales subject to State sales tax.

[3] In a review of the audit workpapers, the Administrative Law Judge noted that the auditor transcribed repair invoice information for the month of February 2016. Contrary to the Division's assertions, it appears that petitioner provided the auditor invoices for 19 months.

$5,115.00 per month by dividing what the auditor represented as total repair sales of $92,070.07[4] by 18 months, which is the total number of months for which the auditor represented he had received repair invoices from the business. The auditor estimated that the business' repairs started in September of 2013. The auditor applied the $5,115.00 per month average of auto repair sales to any month from the beginning of the audit period, September 2013, through end of the audit period, February 2017, in which the auditor determined that invoices had not been provided by petitioner. Otherwise, the auditor utilized the actual invoice repair sales numbers, except for the February 2016 repair invoice, provided by petitioner for a given month**.** Total repair sales were determined to be $209,715.07 for the audit period.

16. The auditor added taxable car sales of $1,580,131.13 and repair shop sales of $209,715.07 for total taxable sales of $1,789,846.20. This amount was further reduced by the additional sales taxes included in that number, $21,950.00, and resulted in $1,767,896.20 of taxable sales for the audit period.

17. Total taxable sales of $1,767,896.20 was multiplied by the applicable sales tax rate of 8.875% to determine total sales tax due of $156,900.79. The auditor deducted $6,182.43 in sales tax previously assessed for total sales tax due of $150,718.36, which was the amount of additional tax assessed on the notice.

18. The auditor assessed penalty because he determined that the business was collecting sales tax on some sales but not remitting such to the State.

19. Petitioner was assessed as a responsible person of the business. During the audit, the auditor met with petitioner several times to discuss the audit, and the auditor testified that, at all

[4] $94,315.59 - $2,015.52 = $92,300.07; the Division fails to explain why the number calculated as total sales by the auditor differs from the calculation that the Division and auditor represented was completed, which was the total repair sales less the taxes included therein. The difference is in petitioner's favor and deemed immaterial.

times, petitioner appeared to have had access to the books and records of the business and was able to explain the business' operations. The auditor completed a survey report on February 28, 2017, which noted that petitioner had indicated to the auditor that she was the owner of the business and oversaw the records of the business. The auditor also performed a business entity search with the New York State Department of State, which showed petitioner as the registered agent for the business. Petitioner was listed as the responsible person and president on the business' Application to Register for a Sales Tax Certificate of Authority, form DTF-17.

20. On October 19, 2017, on behalf of the business, petitioner executed a consent extending the statute of limitations for the audit. An additional consent was executed by petitioner, on behalf of the business, on April 25, 2018. Petitioner executed both consents as the president of the business.

21. Petitioner signed a form entitled Communication with the Tax Department during your Audit, on which she identified herself as president for the business.

22. Petitioner signed, as the business' president, the State general business corporation franchise tax returns, form CT-3, for 2014, 2015, 2017, and 2018.

23. The audit report includes business checks signed by petitioner.

24. Petitioner's name appears in the "submitted by" line of the two sales tax returns filed by the business during the audit period.

25. Petitioner testified at the hearing that she did not know that the business was required to collect and remit sales tax to the State.

26. Petitioner testified that she submitted New York State corporate tax and sales tax returns for the business. She testified that she had access to the books and records of the

business. She testified that the business was not maintaining adequate business records and was only maintaining the MV-50 forms for used car sales.

27. Petitioner testified that the business was collecting sales tax on transactions but was not remitting the sales tax to the State but rather was using it to pay other business expenses because such was needed to keep the business operating.

28. Petitioner testified that she was at the business daily,[5] and that she signed checks on behalf of the business.

29. Petitioner testified that she consulted with her brother about running the business, made business decisions on her own and had the independent ability to give input into the operations of business even though her decisions were not always taken into consideration.

30. Petitioner testified that auto repair sales began in late-2014 because it took time to fully set up and utilize the repair equipment purchased and, prior to that time period, any repairs were on cars owned by the business and were done at no charge in order to prepare the cars for sale.

31. At the hearing, petitioner presented the testimony of her brother, Roger Mohnani.[6] Mr. Mohnani testified that petitioner was involved in the business. Mr. Mohnani also testified that the business collected sales tax on transactions but used the money to pay business expenses.

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[5] In petitioner's brief filed after the hearing, she asserts that she did not understand what was being asked of her when she testified that she came to the business "daily." It is noted that at the beginning of the hearing the Administrative Law Judge offered petitioner free access to a translator for the hearing and petitioner rejected such. Moreover, even if we discounted petitioner's testimony on this issue, it would not impact the ultimate conclusions found herein.

[6] The audit file indicates that the auditor concluded that Mr. Mohnani should have been assessed personally as an additional responsible person of the business; however, the audit file indicates that the auditor reached this conclusion too late to assess him as such.

32. Mr. Mohnani testified that the business did not maintain adequate records. He testified that the business did not have a general ledger, invoice of sales or other accounting records.

33. In her letter brief filed after the hearing, petitioner asserted that the Division's assumptions are incorrect and most of the business' sales were non-taxable wholesale sales. Petitioner also argued that many of the invoices the Division used in its calculations were invoices for a different auto dealership, one owned by her brother, Roger Mohnani, which was operating next door to petitioner's business. Finally, petitioner argued the business was closed in 2018 and neither the business nor petitioner have money to pay the assessment and therefore it should be reduced or cancelled.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge determined that the Division reasonably used the MV-50 forms provided during the audit to estimate the business' receipts from car sales. The Administrative Law Judge dismissed as unsubstantiated petitioner's claim that some of the audited taxable sales were made by a different business owned by petitioner's brother and that some were wholesale sales, i.e., nontaxable sales for resale. The Administrative Law Judge also found that the Division reasonably estimated car repair sales because the Division used the business' own records calculating its estimate. The Administrative Law Judge did direct the Division to make two adjustments to the estimate of repair sales. First, he found that petitioner produced records for 19 months, rather than the 18 months, and directed the Division to adjust its calculation of audited average monthly repair sales using 19, rather than 18, as the denominator. The Administrative Law Judge also found, consistent with petitioner's testimony, that the business began its repair shop operations in October 2014, rather than September 2013 as

determined on audit. The Administrative Law Judge directed the Division to modify its calculation of car repair sales in accordance with these changes.

As to petitioner's personal liability for the business' sales taxes, the Administrative Law Judge determined that the Division properly assessed petitioner as a person responsible for the collection of sales tax due from the business, and thus personally liable for such taxes, under Tax Law §§ 1131 (1) and 1133 (a). The Administrative Law Judge noted various facts in the record showing that petitioner had a sufficient degree of authority and control over the business to be considered such a responsible person.

ARGUMENTS ON EXCEPTION

Petitioner contends that the audit method was unreasonable, had no rational basis, and was inaccurate. Specifically, petitioner contends that, as MV-50 forms do not contain trade-in allowance information, audited taxable receipts for car sales are overstated. Petitioner also observes that some of the listed transactions in the auditor's compilation of MV-50 sales do not have a listed sale price. Petitioner asserts that the Division improperly assessed tax on those transactions. Petitioner also contends that the use of an estimated audit method for car repairs is inherently unreasonable because such sales vary widely from month to month. Petitioner also argues in favor of the Administrative Law Judge's adjustments to the audit. That is, petitioner contends that the audit improperly used 18 months of car repair invoices in the audit because 19 months of such invoices were provided and that the business began its repair shop operations in October 2014, rather than September 2013 as determined on audit.

As she did below, petitioner further contends that she lacks the resources to pay the assessment. She also argues that her brother, Roger Mohnani, was responsible for the business.

The Division asserts that the Administrative Law Judge correctly determined that the audit method was reasonable. The Division accepts the modifications to the audit of repair sales as determined by the Administrative Law Judge. The Division also agrees with the Administrative Law Judge's finding that petitioner was a responsible person and thus personally liable for the business' sales taxes.

OPINION

The business was required to collect sales tax on its taxable sales (Tax Law §§ 1131 [1] and 1133 [a]). The business was further required to "keep records of every sale . . . and of all amounts paid, charged or due thereon and of the tax payable thereon, in such form as the commissioner of taxation and finance may by regulation require" (Tax Law § 1135 [a] [1]). Among other items, the records must contain a true copy of each "sales slip, invoice, receipt . . . cash register tape and other original sales document" (20 NYCRR 533.2 [b] [1] [i] [iii]). Additionally, the records must be sufficient to verify all transactions; kept in a manner suitable to determine the correct amount of tax due; and available for the Division's inspection and examination upon request for a period of three years (Tax Law §§ 1135 [g], 1142 [5]; 20 NYCRR 533.2 [a] [1] [2]; ***see Wolkowicki v New York State Tax Appeals Trib.***, 136 AD3d 1223 [3d Dept 2016]).

Tax Law § 1138 (a) (1) provides in relevant part that if a sales tax return is not filed, "or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined [by the Division] from such information as may be available. If necessary, the tax may be estimated on the basis of external indices . . . . " The standard for the use of external indices is well established. The Division must first make an explicit request for the taxpayer's books and records (***Matter of Christ Cella, Inc. v State Tax Commn.***, 102 AD2d 352 [3d Dept 1984]) for

the entire audit period (***Matter of Adamides v Chu***, 134 AD2d 776 [3d Dept 1987], ***lv denied*** 71 NY2d 806 [1988]). The Division must then undertake a sufficient investigation of the materials provided by the taxpayer in order to determine whether such materials are capable of supporting a complete audit (***Matter of King Crab Rest. v Chu***, 134 AD2d 51, 53 [3d Dept 1987]). Where such review indicates that the records are so insufficient that it is virtually impossible for the Division to verify taxable sales receipts and conduct a complete audit from which the exact amount of tax due can be determined, then the Division may resort to the use of external indices to estimate tax (***Matter of W.T. Grant Co. v Joseph***, 2 NY2d 196 [1957], ***rearg denied*** 2 NY2d 992 [1957], ***cert denied*** 355 US 869 [1957]). When estimating sales tax, the Division must adopt an audit method reasonably calculated to determine the amount of tax due (***id.***). Exactness in the amount of tax is not required where the taxpayer's own failure to maintain records prevents it (***id.***). The burden is then on the taxpayer to demonstrate by clear and convincing evidence that the result of the audit method employed was unreasonably inaccurate or that the amount of the tax assessed is erroneous (***Matter of Meskouris Bros. v Chu***, 139 AD2d 813 [3d Dept 1988]).

Pursuant to these principles, the Division's use of estimated audit methods in the present matter was proper. There is no dispute that the Division clearly and explicitly requested records from the business pertaining to sales and use tax liability for the entire audit period (***see*** findings of fact 3 and 7). In response to those requests, the business made available only limited records, which were clearly incomplete for the purpose of verifying sales (***see*** findings of fact 4, 5, 8, 11 and 13). The business thus failed to maintain source records of sales from which the Division could accurately determine its taxable sales and the amount of sales tax collected from its customers during the audit period as required (***see*** 20 NYCRR 533.2 [b]).

As the Administrative Law Judge determined, the specific estimated audit methods employed herein were reasonable. We have previously determined that, in the absence of adequate records, the use of information obtained from MV-50 forms as a basis to estimate a car dealer's car sales is reasonable (***see Matter of Silverstein***, Tax Appeals Tribunal, December 7, 2017; ***Matter of Anthony***, Tax Appeals Tribunal, November 30, 1995; ***Matter of Pasquarella***, Tax Appeals Tribunal, July 18, 1991). We reach the same conclusion here, as the Division determined audited car sales by simply totaling the sales price as indicated on the form for each taxable sale during the audit period.

Petitioner criticizes the Division's audit method as inaccurate for failure to take trade-in allowances into account. The value of a trade-in allowance reduces the taxable receipt on a car purchase from a dealer (***see*** 20 NYCRR 526.5 [f]). The case law is clear, however, that any imprecision in the results of an audit that arises by reason of the vendor's failure to maintain and make available full and complete records of its sales must be borne by the taxpayer (***Matter of Silver Saddle Deli Grocery Inc.***, Tax Appeals Tribunal, April 25, 2019; ***see also Matter of Markowitz***, 54 AD2d 1023 [3d Dept 1976], ***affirmed*** 44 NY2d 684 [1978]). Accordingly, to the extent that the business' records failed to account for trade-in allowances on its retail sales, the business must bear the consequences.

Petitioner also contends that audited car sales included wholesale sales (i.e., nontaxable sales for resale) and sales to non-New York residents. There is no evidence, however, that any such sales were included in audited taxable car sales. Indeed, the record indicates that the Division excluded wholesale and out of state sales from audited taxable car sales (***see*** finding of fact 14). At oral argument, petitioner complained that the Division incorrectly applied New

York City sales tax rates to all taxable sales. That is, petitioner asserts that some sales were made to non-New York City residents. Petitioner offered no evidence of any such sales.

The Division's audit method for car repair sales was also reasonable. The Division accepted petitioner's available invoices as the total monthly repair sales for the months for which they were available and used an average monthly repair sales amount for the months for which no invoices were available. This is a test period methodology and is well established as reasonable (***see Hwang v Tax Appeals Trib. of State of N.Y.***, 105 AD3d 1151, 1152 [3d Dept 2013]). This portion of the audit, as modified by the Administrative Law Judge, is thus properly sustained.

As to whether the Division properly assessed petitioner as a responsible person, Tax Law § 1133 (a) imposes personal liability for sales tax upon every person required to collect tax. As relevant here, Tax Law § 1131 (1) defines such a person as including:

> "[E]very vendor of tangible personal property or services [and] every recipient of amusement charges . . . . Said term [ ] shall also include any officer, director or employee of a corporation . . . who as such officer director, or employee is under a duty to act for such corporation . . . in complying with any requirement of [the sales tax law]."

Whether a particular individual is responsible for collecting and remitting sales tax for a corporation and thereby personally liable for the taxes not collected or paid depends on the facts of each case (***Matter of Cohen v State Tax Commn.***, 128 AD2d 1022, 1023 [3d Dept 1987]). We consider various factors in making such a determination. The holding of corporate office is one such factor, but is not determinative (***see Chevlowe v Koerner***, 95 Misc 2d 388 [Sup Ct Queens Cty 1978]). Conversely, "the lack of an official title in a corporation should not shield an individual from responsibility where that individual in fact controls the corporation" (***Matter of Ianniello***, Tax Appeals Tribunal, November 25, 1992, confirmed 209 AD2d 740 [3d Dept

1994]). The Division's regulations provide that "[g]enerally, a person who is authorized to sign a corporation's tax returns or who is responsible for maintaining the corporate books, or who is responsible for the corporation's management, is under a duty to act" (20 NYCRR 526.11 [b] [2]). Other relevant factors include the individual's economic interest in the corporation, knowledge of and control over the corporation's financial affairs, authority to hire and fire employees, and authority to sign corporate checks (***see e.g. Matter of Ippolito v Commissioner of N.Y. Dept. of Taxation & Fin.***, 116 AD3d 1176 [3d Dept 2014]; ***Matter of Luongo***, Tax Appeals Tribunal, July 10, 2012; ***Matter of Constantino***, Tax Appeals Tribunal, September 27, 1990). "What must be considered is petitioner's authority and responsibility to exercise control over the corporation, not his actual assertion of such authority (citations omitted)" (***Matter of Coppola v Tax Appeals Trib. of State of N.Y.***, 37 AD3d 901 [3d Dept 2007]). Ultimately, we seek to determine "whether the individual had or could have had sufficient authority and control over the affairs of the corporation to be considered a responsible officer or employee" (***Matter of Constantino***).

Petitioner bears the burden of proving, by clear and convincing evidence, that she was not a person required to collect tax under Tax Law §§ 1131 (1) and 1133 (a) (***Matter of Goodfriend***, Tax Appeals Tribunal, January 15, 1998).

The Administrative Law Judge properly determined that petitioner was a person responsible to collect tax on behalf of the business and was therefore personally liable for the tax at issue. During the audit, petitioner met with the Division's auditors, she had access to and oversaw the business' books and records, she identified herself as president of the business on a form entitled Communication with the Tax Department during your Audit, and, as president, she signed consents extending the period of limitations for assessment (***see*** findings of fact 4, 19, 20,

21 and 26). She also signed corporate tax returns as president of the business, as well as corporate checks (***see*** findings of fact 22 and 23). She submitted sales tax returns for the business (***see*** finding of fact 26). Additionally, petitioner is listed as a responsible person and president of the business on its application for a certificate of authority to collect sales tax (***see*** finding of fact 19). These facts are compelling evidence that petitioner had or could have had sufficient authority and control over the affairs of the business such that she was a responsible person for sales tax purposes (***Matter of Constantino***).

Regarding petitioner's claim that Roger Mohnani was responsible for the business, it is well established that more than one person can be held liable as a responsible officer, as Tax Law § 1133 (a) imposes joint and several liability (***see e.g. Matter of Sacher***, Tax Appeals Tribunal, July 2, 2015). Hence, this assertion does not support petitioner's contention that she was not a responsible person (***Matter of Hopwood***, Tax Appeals Tribunal, February 9, 2017).

As to petitioner's claim that she lacks the financial resources to pay the assessment, it is also well established that economic hardship does not relieve a taxpayer of their duty to pay over taxes collected on behalf of the state (***Matter of Snyder***, Tax Appeals Tribunal, May 5, 2011).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Rajni T. Mohnani is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Rajni T. Mohnani is granted to the extent indicated in conclusion of law E of the determination, but is otherwise denied; and

4. The notice of determination, dated August 16, 2018, as modified pursuant to such conclusion of law E, is sustained.

DATED: Albany, New York
September 14, 2023

/s/ Anthony Giardina
Anthony Giardina
President

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner