

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
VASILIOS TSOUMAS : DETERMINATION
for Redetermination of Deficiencies or for Refund : DTA NO. 827009
of Personal Income Tax under Article 22 of the Tax Law :
for the Period January 4, 2013 through March 31, 2014. :

Petitioner, Vasilios Tsoumas, filed a petition for redetermination of deficiencies or for refund of personal income tax under Article 22 of the Tax Law for the period January 4, 2013 through March 31, 2014.

On January 25, 2016, the Division of Taxation, by Amanda Hiller, Esq. (Peter Ostwald, Esq., of counsel) filed a motion seeking an order dismissing the petition or, in the alternative, granting summary determination of the proceeding pursuant to 20 NYCRR 3000.5, 3000.9(a)(1)(i) and 3000.9(b). Accompanying the motion was the affidavit of Peter Ostwald, Esq., dated January 22, 2016, and annexed exhibits. Petitioner, appearing by Jeffrey Rosenblum, Esq., having been granted an extension of time, submitted affidavits and attached documents in opposition to the Division of Taxation's motion on March 22, 2016, which date commenced the 90-day period for issuance of this determination. Based upon the motion papers, the affidavits and exhibits submitted therewith, and all pleadings and documents submitted in connection with this matter, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner filed timely requests for conciliation conference following the issuance of five notices of deficiency.

FINDINGS OF FACT

1. The Division of Taxation (Division) issued to petitioner, Vasilios Tsoumas, at a Douglaston, New York, address, five notices of deficiency, each dated January 6, 2015, asserting penalty due for withholding tax as follows:

Assessment ID Number	Tax Period Ended	Penalty
L-042337707	March 31, 2014	\$25,997.47
L-042337708	December 31, 2013	\$67,490.15
L-042337709	September 30, 2013	\$64,720.42
L-042337710	June 30, 2013	\$51,436.28
L-042337711	January 4, 2013 through March 31, 2013 ¹	\$47,025.07

Each of these notices of deficiency was issued because petitioner was determined to be an officer or responsible person of Atlas Restoration Corp. (Atlas), who was liable for a penalty equal to the tax not paid by the corporation pursuant to Tax Law § 685(g).

The Explanation and Instructions section of each notice of deficiency included, among other things, the following information:

“IF YOU DISAGREE on the grounds that you are not personally liable for this assessment, refer to the Notice of Taxpayer Rights to determine your options. YOU must initiate action to protest the penalty asserted against you. You CANNOT rely on a petition that may have been filed by or on behalf of the business, regarding the business’ tax liability, to stop collection action against you, or to result in resolution of your personal responsibility for this penalty in the

¹ Notice number L-042337711 listed zero tax, penalty and interest due for the tax periods ended January 4, 2013 and January 11, 2013.

amount of tax owed by the business.

- To request a Conciliation Conference, complete the Request for Conciliation Conference (Form CMS-1) available at www.tax.ny.gov or call us at (518) 457-3280.

- To request a Petition for a Tax Appeals Hearing, complete form TA-10 available at www.nysdta.org or call (518) 266-3000.

- Attach a photocopy of all pages of this notice to the Request for Conciliation Conference.

NOTE: You must file the Request for Conciliation Conference or a Petition For A Tax Appeals Hearing by 04/06/15.”

2. On April 23, 2015, the Division issued a Notice and Demand for Payment of Tax Due and an enclosed Consolidated Statement of Tax Liabilities that listed the subject notices of deficiency as unpaid liabilities totaling \$256,669.39.

3. Petitioner filed five separate requests for conciliation conference (form CMS-1-MN [3/15]) with the Division’s Bureau of Conciliation and Mediation Services (BCMS) hand-dated as signed on May 5, 2015. The envelope in which the five requests were mailed bears the United States Postal Service (USPS) metered stamp dated May 7, 2015. The requests list petitioner’s address as the Douglaston, New York, address. Included with the requests was the Consolidated Statement of Tax Liabilities, dated April 23, 2015.

4. On May 29, 2015, BCMS issued a Conciliation Order Dismissing Request (Order) to petitioner. Bearing CMS No. 266530 and referencing notice numbers L-042337707, L-042337708, L-042337709, L-042337710 and L-042337711, the Order determined that petitioner’s protest was untimely and stated, in part:

“The Tax Law requires that a request be filed within 90 days from the date of the statutory notice. Since the notice(s) was issued on January 6, 2015, but the request was not mailed until May 7, 2015, or in excess of 90 days, the request is late filed.”

5. On June 8, 2015, the Division of Tax Appeals received a petition seeking redetermination of the five deficiencies issued in this matter. The envelope in which the petition was sent by Certified Mail bears a USPS metered stamp dated June 4, 2015. There is no dispute that the petition was filed within 90 days after the May 29, 2015 issuance of the Order, and constitutes a timely challenge thereto. In his petition, petitioner asserts, among other things, that he responded to the notices of deficiency as soon as possible and did not exceed the 90 days.

6. In support of the motion and to prove proper and timely mailing of the five notices of deficiency under protest, the Division submitted the following: (i) an affidavit, dated January 22, 2016, of Peter Ostwald, Esq., the Division's representative; (ii) an affidavit, dated January 14, 2016, of Mary Ellen Nagengast, a Tax Audit Administrator I and Director of the Division's Management Analysis and Project Services Bureau (MAPS); (iii) a "Certified Record for Presort Mail - Assessments Receivable" (CMR) dated January 6, 2015; (iv) an affidavit, dated January 15, 2016, of Bruce Peltier, Principal Mail and Supply Supervisor in the Division's mail room; (v) copies of petitioner's request for conciliation conference, received by BCMS on May 11, 2015; (vi) a copy of the Conciliation Order Dismissing Request, dated May 29, 2015, with cover letter;² and (vii) a copy of the joint New York State Resident Income Tax Return (form IT-201) for the year 2013, dated April 7, 2014, e-filed by petitioner and his spouse, Kathy Tsoumas.³

7. The affidavit of Mary Ellen Nagengast, who has been in her current position since October 2005, sets forth the Division's general practice and procedure for processing statutory

² Mr. Ostwald's affidavit incorrectly states that petitioner's Request for Conciliation Conference was mailed on July 22, 2015 and the Order was issued on August 14, 2015.

³ In his affidavit, Mr. Ostwald incorrectly identifies Attachment 5 as a copy of petitioner's "e-Filed IT-370 application for automatic six-month extension of time for individuals for the tax year 2012, dated April 13, 2013." He further incorrectly states that the address appearing on the application is a Closter, New Jersey, address, and that this address corresponds to the address appearing on the subject notices.

notices. Ms. Nagengast is the Director of MAPS, which is responsible for the receipt and storage of CMRs, and is familiar with the Division's Case and Resource Tracking System (CARTS) and the Division's past and present procedures as they relate to statutory notices. Statutory notices are generated from CARTS and predated with the anticipated date of mailing. Each page of the CMR lists an initial date that is approximately 10 days in advance of the anticipated date of mailing. Following the Division's general practice, this date was manually changed on the first and last page of the CMR in the present case to the actual mailing date of "1/6/15." It is also the Division's general practice that all pages of the CMR are banded together when the documents are delivered into the possession of the USPS and remain so when returned to its office. The pages of the CMR stay banded together unless otherwise ordered. The page numbers of the CMR run consecutively, starting with "PAGE: 1," and are noted in the upper right corner of each page.

8. All notices are assigned a certified control number. The certified control number of each notice is listed on a separate one-page mailing cover sheet, which also bears a bar code, the mailing address and the Departmental return address on the front, and taxpayer assistance information on the back. The certified control number is also listed on the CMR under the heading "CERTIFIED NO." The CMR lists each notice in the order the notices are generated in the batch. The assessment numbers are listed under the heading "REFERENCE NO." The names and addresses of the recipients are listed under "NAME OF ADDRESSEE, STREET, AND P.O. ADDRESS."

9. The CMR relevant to the notices of deficiency under protest consists of 73 pages and lists 797 certified control numbers along with corresponding assessment numbers, names and addresses. Ms. Nagengast noted that portions of the CMR that were attached to her affidavit had

been redacted to preserve the confidentiality of information relating to taxpayers who were not involved in this proceeding. The date "JAN - 6 2015" is stamped on all of the pages of the CMR, many of which dates are illegible. No legible postmarks appear on any pages of the CMR. The date "JAN - 6 2015" is stamped on the last page of the CMR, page 73, which also contained a statement of the total number of pieces received by the Postal Service for mailing.

10. Page 35 of the CMR indicates that five notices of deficiency, assigned certified control numbers 7104 1002 9730 0337 4975, 7104 1002 9730 0337 4982, 7104 1002 9730 0337 4999, 7104 1002 9730 0337 5002 and 7104 1002 9730 0337 5019, and reference numbers L-042337707, L-042337708, L-042337709, L-042337710 and L-042337711, respectively, were mailed to "TSOUMAS-VASILIOS" at the Douglaston, New York, address listed thereon. The corresponding mailing cover sheets, attached to the Nagengast affidavit as "Exhibit B," bear these certified control numbers and petitioner's name and address as noted.

11. The affidavit of Bruce Peltier, a supervisor in the Division's mail room since 1999 and currently Principal Mail and Supply Supervisor in the Division's mail room, describes the mail room's general operations and procedures. The mail room receives the notices in an area designated for "Outgoing Certified Mail." Each notice is preceded by a mailing cover sheet. A CMR is also received by the mail room for each batch of notices. A staff member retrieves the notices and mailing cover sheets and operates a machine that puts each notice and mailing cover sheet into a windowed envelope. That staff member then weighs, seals and places postage and fee amounts on each envelope. The first and last pieces listed on the CMR are checked against the information contained on the CMR. A clerk then performs a random review of 30 or fewer pieces listed on the CMR by checking those envelopes against information contained on the CMR. A staff member then delivers the envelopes and the CMR to one of the various USPS

branches located in the Albany, New York, area. A USPS employee affixes a postmark and also places his or her initials or signature on the CMR, indicating receipt by the post office. Here, as noted, many pages of the CMR contained the stamped date “JAN - 6 2015” but no legible postmarks. The mail room further requests that the USPS either circle the total number of pieces received or indicate the total number received by writing the number on the CMR. Here, on the last page next to “TOTAL PIECES RECEIVED AT POST OFFICE” appears the circled handwritten number “797.” In addition, handwritten initials or a signature appear under the stamped date of “Jan - 6 2015” on the last page.

12. Mr. Peltier’s affidavit states that the CMR is the Division’s record of receipt, by the USPS for pieces of certified mail. In the ordinary course of business and pursuant to the practices and procedures of the Division’s Mail Processing Center, the CMR is picked up at the post office by a member of Mr. Peltier’s staff on the following day after its initial delivery and is then delivered to other departmental personnel for storage and retention.

13. According to both the Nagengast and Peltier affidavits, copies of the subject notices of deficiency were mailed to petitioner on January 6, 2015, as claimed.

14. Vasilios and Kathy Tsoumas’s joint 2013 Resident Income Tax Return, electronically filed on or about April 7, 2014, reported Mr. and Mrs. Tsoumas’s address as one in Douglaston, New York 11363. This was the last return filed by petitioner and his spouse prior to the issuance of the subject notices of deficiency.

15. Petitioner submitted the affidavit of Jeffrey M. Rosenblum, Esq., and the affidavits of Vasilios Tsoumas, Dimitrios Tsoumas and Constantine S. Kapetanos, Esq., and exhibits attached

thereto, in opposition to the Division's motion and in support of his petition.⁴

16. In his affidavit, petitioner asserts that as of May 25, 2010, he was no longer a responsible party for Atlas. Petitioner claims that he had no knowledge that Atlas had failed to pay its trust fund taxes until he received, at his Douglaston, New York, home address, on January 22, 2015, notices of deficiency dated January 6, 2015, in the aggregate amount of \$256,669.69. He further claims that after numerous telephone calls to the Division's civil enforcement section, he finally spoke with an agent, who advised that "they needed Form DTF-95 for proof that I was no longer a responsible person of Atlas." Petitioner, in his affidavit, avers that to show his disagreement with the notices of deficiency, he returned "the notices of deficiency marked 'Please see Form DTF-95 attached' to the civil enforcement section" on March 3, 2015, via certified mail. He further avers that he thought this matter was resolved and that he was complying with his requirements to object to the notices of deficiency by his submission of Form DTF-95. However, petitioner maintains that on or about April 23, 2015, he received a notice and demand for payment in the amount of \$256,669.36, called the number provided on said notice and spoke with Samuel Chacko who directed him to file formal conciliation conference requests, "by going on-line and print the forms seeking a conciliation conference, fill out one form for each assessment, and return them certified mail to the Department. . . ." He further maintains that he filed the formal requests for conciliation conference on May 7, 2015 via certified mail.

17. Documents attached to petitioner's affidavit include, among others things: 1) a page containing photocopies of a USPS Priority Mail Express label and a sales receipt issued by the Flushing, New York, branch of the USPS on March 2, 2015; 2) a two-page photocopy of Form

⁴ The affidavits of Dimitrios Tsoumas and Constantine S. Kapetanos, Esq., address the merits of the petition, not the timeliness of the requests for conciliation conference.

DTF-95 (2/11) New York State Department of Taxation and Finance Business Tax Account Update for Atlas, completed and signed by petitioner and hand-dated “5-25-2010”; and 3) photocopies of the first page of each of the five subject notices of deficiency.

18. The photocopy of the USPS Priority Mail Express label (customer copy), bears number EK 757568075 US and a corresponding bar code, lists the sender as Vasilios Tsoumas, Douglaston, New York, and the recipient as “NYS TAX DEPT, WA HARRIMAN CAMPUS, Albany NY 12227-0155.” The photocopy of the sales receipt issued by the Flushing, New York, branch of the USPS on March 2, 2015 at 4:52:31 P.M. reflects the purchase of Priority Mail Express 1-Day service, USPS Tracking # EK757568075US, scheduled to be delivered to “Albany NY 12227 Zone-2” on Tuesday, March 3, 2015 by 3:00 p.m., and bears the handwritten words “DTF-95 FORM.”

19. In Step 1 of Atlas’s Form DTF-95, the following tax types were checked to be updated: “All business tax types on file with NYS Tax Dept.,” “Corporation,” “Sales and use,” and “Withholding/MCTMT.” In Step 4 of the Form DTF-95, the following owner/officer/responsible person was deleted: Vasilios Tsoumas, president, effective date “1-26-1998 thru 5-25-2010;” and the following owner/officer/responsible person was added: Dimitrios Tsoumas, president, effective date “5-25-2010.” In Step 5 of the DTF-95, the following information appeared “I gift it to my Son and Resigned as an officer,” and the name of buyer was “Dimitrios Tsoumas.”

20. On the page of each notice of deficiency attached to petitioner’s affidavit, a line has been drawn through petitioner’s name and address, and the following handwritten sentence appears at the top of the page “[p]lease see Form DTF-95 attached.”

21. Dimitrios Tsoumas, in his affidavit, asserts, among other things, that he believes that

Atlas's withholding taxes have been paid, in full, by the surety company, Hudson Insurance.

CONCLUSIONS OF LAW

A. The Division has filed alternative motions, seeking dismissal under 20 NYCRR 3000.9(a), or summary determination under 20 NYCRR 3000.9(b). As the Division of Tax Appeals has subject matter jurisdiction on the issue of the timely filing of a request for a conciliation conference in the instant matter, the Division's motion will be treated as one for summary determination (*see Matter of Ryan*, Tax Appeals Tribunal, September 12, 2013).

B. A motion for summary determination shall be granted:

“if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party” (20 NYCRR 3000.9[b][1]).

C. Section 3000.9(c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], citing *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). As summary determination is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where a material fact is “arguable” (*Glick & Dolleck v. Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Museums at Stony Brook v. Vil. of Patchogue Fire Dept.*, 146 AD2d 572, 573 [2d Dept 1989]). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion

(*Gerard v. Inglese*, 11 AD2d 381, 382 [2d Dept 1960]).

D. A taxpayer may protest a notice of deficiency by filing a petition for a hearing with the Division of Tax Appeals within 90 days from the date of mailing of such notice (Tax Law § 681[b]). Alternatively, a taxpayer may contest a notice by filing a request for a conciliation conference with the Bureau of Conciliation and Mediation Services “if the time to petition for such hearing has not elapsed” (Tax Law § 170[3-a][a]). It is well established that the 90-day statutory time limit for filing either a petition or a request for a conciliation conference is strictly enforced and that, accordingly, protests filed even one day late are considered untimely (*see e.g. Matter of American Woodcraft*, Tax Appeals Tribunal, May 15, 2003; *Matter of Maro Luncheonette*, Tax Appeals Tribunal, February 1, 1996). This is because, absent a timely protest, a notice of deficiency becomes a fixed and final assessment and, consequently, the Division of Tax Appeals is without jurisdiction to consider the substantive merits of the protest (*see Matter of Lukacs*, Tax Appeals Tribunal, November 8, 2007; *Matter of Sak Smoke Shop*, Tax Appeals Tribunal, January 6, 1989).

E. Where, as here, the timeliness of a petition or request for conciliation conference is at issue, the initial inquiry is whether the Division has carried its burden of demonstrating proper mailing by certified or registered mail to petitioner’s last known address (Tax Law § 681[a]; *see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991). To prove the fact and date of mailing of the subject notice, the Division must make the following showing:

“first, there must be proof of a standard procedure used by the Division for the issuance of the statutory notices by one with knowledge of the relevant procedures; and second, there must be proof that the standard procedure was followed in the particular instance in question” (*Matter of United Water New York, Inc.*, Tax Appeals Tribunal, April 1, 2004; *see Matter of Katz*).

F. In this case, the Division has introduced adequate proof of its standard mailing procedures through the affidavits of Ms. Nagengast and Mr. Peltier, Division employees involved in and possessing knowledge of the process of generating, reviewing and issuing (mailing) statutory notices (*see Matter of Victory Bagel Time*, Tax Appeals Tribunal, September 13, 2012).

G. The Division failed to present sufficient proof, i.e., the CMR, to establish that the subject notices of deficiency were mailed as addressed to petitioner on January 6, 2015. Specifically, this document did not contain legible USPS postmarks on each page, indicating the mailing date of January 6, 2015, despite the fact that both the Nagengast and Peltier affidavits assert that a postmark was affixed to each page.⁵ Rather, on many pages of the CMR, the barely legible date “JAN - 6 2015” was stamped. It is noted that no legible USPS postmarks appeared on any page of the CMR, including the last page, page 73, which set forth and verified vital information: the total number of pieces being mailed on the date contained in the USPS postmark.

In sum, the CMR was not properly completed and does not constitute adequate documentary evidence of both the fact and date of mailing (*see Matter of Rakusin*, Tax Appeals Tribunal, July 26, 2001).

H. Where proper mailing cannot be proved, demonstration of receipt of the notice by the taxpayer allows for the statutory period to be measured from the date of receipt (*Matter of Bryant Tool & Supply*, Tax Appeals Tribunal, July 30, 1992; *Matter of Avlonitis*, Tax Appeals

⁵ USPS Domestic Mail Manual § 503[5.1.1] provides that each individual firm sheet (form 3877) is postmarked (round-dated) at the time of mailing; and the form(s) are then returned to the mailer and become the mailer’s receipt, i.e., certificate of mailing. A “local” postmark shows the full name of the Post Office, a two-letter state abbreviation, ZIP Code,TM and date of mailing (*see* USPS Handbook PO-408[1-1.3]).

Tribunal, February 20, 1992). In petitioner's affidavit in opposition to the motion for summary judgment, petitioner acknowledges receipt of the notices of deficiency on January 22, 2015.

Therefore, running the statute of limitations from the date of receipt of the notices, the 90-day period ends on April 22, 2015.

I. The conciliation conferee denied petitioner's requests for conciliation conference because the requests were not mailed until May 7, 2015. Based upon the above calculation of the end of the 90-day period from the date of receipt of the notices of deficiency (April 22, 2015), the May 7, 2015 mailing of the requests to BCMS still falls after the expiration of the 90-day period; therefore, petitioner's requests are untimely unless evidence exists in the record which contradicts the May 7, 2015 mailing date and establishes earlier, timely filed requests for conciliation conference (Tax Law § 691[a][1]).

J. Tax Law § 170(3-a)(b) states that "[a] request for a conciliation conference shall be applied for in the manner as set forth by regulation of the commissioner" The applicable regulations, at 20 NYCRR 4000.3, provide, in relevant part, as follows:

"(a) Filing of request. (1) Any person who has received a statutory notice may request a conciliation conference using the form prescribed by the department or by filing a written request with the Bureau of Conciliation and Mediation Services, either in person at the offices in Albany or by mail addressed to:

Bureau of Conciliation and Mediation Services
Department of Taxation and Finance
Building 9
W.A. Harriman Campus
Albany, NY 12227

* * *

(3) Requests should be typewritten, if possible, and should include the information set forth in paragraph (b)(1) of this section. Because the conciliation conference provides an informal and inexpensive way to resolve controversies without the need for a hearing, it is strongly recommended that a request for a

conciliation conference be filed prior to the filing of a petition with the Division of Tax Appeals.

(4) In addition to the methods prescribed in paragraph (1) of this subdivision, a person who has received a statutory notice may request a conciliation conference with the Bureau of Conciliation and Mediation Services in any other manner as prescribed by the department.

(b) *Form of request.* (1) The request should contain:

(i) the name and address of the requester;

(ii) the name and address of the requester's representative, if any;

(iii) if applicable, the taxable years or periods involved and the amount of tax in controversy;

(iv) the action or actions of the operating division or bureau which are being protested;

(v) the facts and law which the requester asserts are relevant to the controversy;

(vi) the signature of the requester or the requester's representative beneath a statement that the request is made with the knowledge that a willfully false representation is a misdemeanor punishable under section 210.45 of the Penal Law;

(vii) a legible copy of the statutory notice being protested; and

(viii) the original or a legible copy of the power of attorney."

20 NYCRR 4000.1(e) defines the term "request" as "the application for a conciliation conference."

K. In his affidavit in opposition to the Division's motion for summary determination, petitioner asserts that he timely objected to the five notices of deficiency by filing with the Division's civil enforcement section a completed Form DTF-95, Business Tax Account Update, for Atlas, and copies of the first page of each notice of deficiency. In support of his assertion, petitioner submitted copies of the completed Form DTF-95, the first page of each notice of

deficiency, a USPS Priority Mail Express label and the associated USPS sales receipt dated March 2, 2015. Contrary to petitioner's assertion, the completed form DTF-95 does not constitute a request for a conciliation conference. While the completed DTF-95 contains facts that petitioner asserts are relevant to the issue of his status as an officer or responsible person of Atlas, it does not contain any written request for a conciliation conference. Furthermore, although the handwritten sentence, "[p]lease see Form DTF-95 attached," appears at the top of the copy of each first page of the five notices of deficiency, no written request for a conciliation conference appears on any of those pages. As such, petitioner did not file any written requests for conciliation conference regarding the five subject notices of deficiency prior to the five requests he mailed on May 7, 2015.

L. Although the Division failed to prove proper mailing of the five notices of deficiency, petitioner acknowledged receipt of the notices of deficiency on January 22, 2015. Petitioner's requests for conciliation conference were not mailed until May 7, 2015, a date beyond the 90-day period, i.e., ended on April 22, 2015, for protesting the five notices of deficiency. Consequently, the Division of Tax Appeals has no jurisdiction over this matter and must grant summary determination in favor of the Division of Taxation. (*See Matter of American Woodcraft*, [a petition was dismissed because it was filed one day late].)

M. The Division of Taxation's motion for summary determination is hereby granted, the May 29, 2015 Conciliation Order Dismissing Request is sustained and the petition of Vasilios Tsoumas is denied.

DATED: Albany, New York
June 16, 2016

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE