



AFFIRMED
MOTOR VEHICLE COMMISSION

OAL
State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

Date 12-1-17

INITIAL DECISION

OAL DKT. NO. MVH.18900-16

AGCY DKT. NO. DXXXX XXXXX 08802

MOTOR VEHICLE COMMISSION,

Petitioner,

v

OZGUR DEMIR,

Respondent

Kenneth Vercammen, Esq., for petitioner, (Kenneth Vercammen & Associates,
P C, attorneys)

Albert P. Mollo, Esq., for respondent (Mollo Law Firm, attorneys)

Record Closed June 27, 2017

Decided October 17, 2017

BEFORE **LELAND S. MCGEE, ALJ**

STATEMENT OF THE CASE

This is an appeal by Ozgur Demir ("Respondent") challenging a proposed 960-day suspension of his driving privileges pursuant to N J S A 39 5-30 as a result of a determination that it was unsafe for him to continue driving because he was involved in an accident on February 26, 2016 resulting in the death of his passenger. As a result of Respondent's operation of the motor vehicle, Police summonses were issued for reckless driving (N J S A 39-4-96), careless driving (N J S A 39 4-97), and unsafe vehicle

(N.J.S.A. 39 3-44) The issue to be decided in this case is whether Respondent's driving privileges should be suspended for 960 days in the interest of public safety.

PROCEDURAL HISTORY

On November 23, 2016, the Motor Vehicle Commission (MVC or Petitioner) sent a Notice to Respondent advising him of a scheduled suspension effective December 3, 2016, for a 960-day term. The matter was transmitted to the Office of Administrative Law ("OAL") as a contested case, pursuant to the provisions of N.J.S.A. 52 14B-1 through -15 and N.J.S.A. 52 14F-1 through -13, and on December 16, 2016, it was filed with the OAL. On February 2, 2017, a Preliminary Hearing was held before the Honorable Robert J. Giordano, ALJ, at which time the Judge did not find that it was in the best interest of public safety to suspend Respondent's driving privileges pending final agency decision. A Plenary Hearing was scheduled for April 11, 2017, and adjourned at Petitioner's request. On April 19, 2017, Pre-Hearing telephone conference was to resolve outstanding discovery issues. On May 31, 2017, a hearing was held before the undersigned. Summations were filed on June 12, 2017, and June 27, 2017, respectively, and the record closed.

FINDING OF FACTS

I FIND the following undisputed **FACTS** to be the **FACTS** of this case. Respondent was a bread truck driver and the operator of a motor vehicle on February 26, 2016. He was driving a white 2004 GMC box truck on State Highway 23 northbound near milepost 12.9 in the Boro of Riverdale, Morris County, New Jersey.

Respondent started his shift at 11:00 p.m. when he and Mr. Garrison loaded the vehicle. He testified that he checked all the basic operational functions of the truck, and he believed that it was in good operating order. Shortly after departing on his route, the dash board lights came on and stopped the vehicle to inspect it. He believed that everything was operating properly. After two additional deliveries, the vehicle stopped on a hill; however the engine continued running.

At approximately 5:03 a.m. Respondent experienced mechanical problems with the truck, and brought it to a stop in the right lane of the highway. Respondent's passenger, John Garrison, exited the vehicle and was standing near the rear of the truck talking on his cell phone at the time of the accident. Respondent had applied the vehicle's emergency brake but it did not hold and the vehicle rolled backward down the inclined roadway and fatally struck Mr. Garrison. He was not aware that Mr. Garrison was behind, and was struck by the truck.

Police Officer Patrick Harden reported that "[w]hile on scene and standing outside the truck, with nobody inside, the truck's engine was turning over as if someone was trying to start it. Ptlm Salvati got inside the truck to take the keys out of the ignition but there were no keys in the ignition." (R-2). Officer Harden testified that he was never called to appear regarding the summonses that were issued.

Respondent's counsel represented that when Respondent appeared in Municipal Court to answer the Summonses, all charges were voluntarily dismissed by the State at its own request. The owner of the vehicle pled guilty to an equipment violation.

Toxicology testing of breath and blood samples provided by Respondent were negative for both alcohol and drugs. Postmortem toxicology testing of Mr. Garrison was negative for alcohol and positive for 220 ng/mL of Oxycodone and 3.3 ng/mL of Oxymorphone.

LEGAL ANALYSIS

N.J.S.A. 39-5-30 provides that the driving privileges of an individual may be suspended when it is in the best interest of public safety. The imposition of a suspension rests on a determination "that the highway would be a safer place for the public if the violator were removed as a driver for some period of time." Atkinson v. Parsekian, 37 N.J. 143, 155 (1962). "The primary object of the statute is to enforce the safety on the highway and not to impose criminal punishment to vindicate public justice." Id.

CONCLUSION

Based on the findings of fact and legal authority, I **CONCLUDE** that Respondent's driving privileges should not be removed in the interest of public safety. He was not actually operating the vehicle at the time of the accident and the evidence indicates that the vehicle malfunctioned

ORDER

I hereby **ORDER** Respondent's driving privileges not be suspended.

I hereby **FILE** my Initial Decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, P.O. Box 160, Trenton, New Jersey 08666-0160**, marked "Attention Exceptions" A copy of any exceptions must be sent to the judge and to the other parties

October 17, 2017

DATE



LELAND S. MCGEE, ALJ/t/a

Date Received at Agency

October 17, 2017

Date Mailed to Parties

OCT 17 2017



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

In

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, P.O. Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 17, 2017
DATE


LELAND S. MCGEE, ALJ/t/a

Date Received at Agency

October 17, 2017

Date Mailed to Parties

lr

APPENDIX

WITNESSES

For Petitioner

Police Officer Patrick Harden

For Respondent.

Ozgur Demir

EXHIBITS

For Petitioner

P-1 Crash Investigation Report

P-2 Operations Report

P-3 Morris County Medical Examiner Report

P-4 Fatal Accident Report

P-5 Abstract of Driver History Record

For Respondent

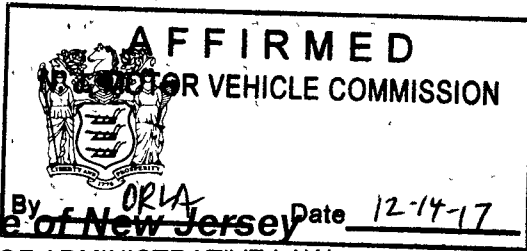
None



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

**This decision was mailed to the parties
on OCT 17 2017**



By ORLA Date 12-14-17
State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. MVH.08413-2017

AGENCY DKT. NO CXXXX XXXXX 12902

**NEW JERSEY MOTOR
VEHICLE COMMISSION,**

Petitioner,

v

OWEN T. COX,

Respondent

Blondeen Bryan, Driver Improvement Analyst 3, for petitioner pursuant to N J A C
11-54(a)2

Owen T. Cox, respondent, pro se

Record Closed September 14, 2017

Decided October 30, 2017

BEFORE **JUDITH LIEBERMAN**, ALJ

STATEMENT OF THE CASE

Owen T Cox ("respondent") appeals an Order of Suspension issued by the Motor Vehicle Commission ("Commission") for accumulating twelve points in under two years. The Commission proposed to suspend respondent's driving privilege for thirty days; effective April 2, 2017.

PROCEDURAL HISTORY

The Commission issued a Notice of Scheduled Suspension on March 9, 2017. Respondent submitted a timely request for a hearing on the suspension. The Commission transmitted this matter to the Office of Administrative Law (OAL), where it was filed on June 9, 2017, as a contested case N.J.S.A. 52.14B-1 to -15, N.J.S.A. 52.14F-1 to-13. The hearing was conducted September 14, 2017, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

Having considered the documentary evidence and testimony, which is not disputed, I **FIND** the following **FACTS**:

Respondent was licensed in 2007. He was cited for motor vehicle violations five times between July 20, 2015, and February 7, 2017. He was cited for speeding on July 20, 2015, July 3, 2016 and August 3, 2016. He was assessed a total of eight points for these violations. He was cited for careless driving on March 12, 2016 and February 7, 2017, for which he was assessed a total of four points. On June 25, 2015, he was cited for failure to obey a directional signal, a no-point offense. He has no other citations on his driving record. On February 8, 2017, respondent was credited two points because, on his own initiative, he completed a defensive driving program. He now has ten points on his driving record. (P-1).

On March 9, 2017, the Commission notified respondent that his license was scheduled to be suspended for thirty days, effective April 2, 2017, because he had accumulated twelve points in under two years. (P-2).

During the approximately eighteen-month period during which respondent accumulated twelve points, he experienced anxiety and depression due to stressful circumstances involving his family, friends and work. His mother was experiencing significant financial difficulties and he was assisting a friend whose parent was dying. Respondent's stress contributed to the way he drove, though he recognized this was not an excuse for his poor driving. He learned,

through the defensive driving course he completed, that he had placed others at risk. He is seeking help from a medical professional for stress management.

Respondent is currently seeking work and uses his car to travel to job interviews. He also travels to his doctor by car. He is contrite and recognizes that his behavior requires imposition of an administrative penalty. He expressed willingness to participate in any form of program, class or other alternative to suspension of his license, in whole or in part.

LEGAL ANALYSIS AND CONCLUSIONS

N.J.S.A. 39:5-30.8 provides that, except for good cause, the chief administrator shall suspend the license of any driver who accumulates twelve or more points in a period of two years or less, or fifteen or more points in a period greater than two years. Drivers who accumulate twelve points in less than two years are subject to a suspension of not less than 30 days. N.J.A.C. 13:19-10.2(a)(1)

The schedule of suggested suspensions should be followed in the interest of uniformity, unless an individual licensee is able to demonstrate extraordinary circumstances justifying a reduction or waiver. Administrative suspensions are remedial in nature, designed to promote public safety rather than to punish wrongdoers. Atkinson v. Parsekian, 37 N.J. 143, 155 (1962). Suspensions are intended to reform the motorist, not to frighten or deter others, even though that may be an incidental result. Cresse v. Parsekian, 81 N.J. Super 536, 549 (App. Div. 1963), aff'd, 43 N.J. 326 (1964).

Respondent has the burden of proving "good cause" for an exception to the usual suspension imposed in similar cases. Good cause is a flexible concept. It is impossible to construct a "definitive catalogue" of all circumstances to be considered in determining the existence of good cause. "Each case must be decided upon its own facts." Ullmann v. Hartford Fire Ins. Co., 87 N.J. Super 409, 414 (App. Div. 1965)

Factors that may be relevant in determining the appropriateness of a suspension include the individual's past driving record, length of time licensed, receipt of proper warnings or prior attendance at driver improvement school, attitude and maturity level, evidence of recent improvement, need for a license and other aggravating or mitigating

circumstances. N J A C 13 19-10 2(b), Cresse, supra, 81 N.J Super at 549 When the proposed suspension is not more than thirty days, consideration shall be given to the number of assessed points, period of time during which the points were accumulated, and any point reduction credits that were earned. N J S A 39 5-30 8 Need alone cannot be the deciding factor, since virtually everyone needs a driver's license to earn a living and perform normal daily activities. Div of Motor Vehicles v. Morton, 4 N J A R 95 (Dir. of Motor Vehicles 1982).

Here, respondent started driving in 2007. He was cited for speeding violations on July 20, 2015, July 3, 2016 and August 3, 2016. He was cited for careless driving on March 12, 2016 and February 7, 2017. He was cited only one other time since he was licensed in 2007 a zero-point citation for failure to obey a directional signal, on June 25, 2015. He has no other citations on his driving record. Respondent also independently completed a defensive driving program, for which he received a two-point credit in February 2017.

Respondent's driving record was nearly spotless for approximately eight years. He took a defensive driving course that he asserts helped him to understand his past errors, the necessity of careful driving, and the need to obey the law. He is pursuing stress management treatment. Accordingly, based upon the totality of the circumstances, including respondent's driving record and his effort and progress toward improvement, I **CONCLUDE** that the appropriate remedial sanction, which will satisfy the competing interests of respondent and the public, is a ten-day suspension of respondent's driving privileges.

ORDER

Based upon the foregoing, I therefore **ORDER** that the Commission's decision to suspend respondent's license for a total period of thirty days should be and is hereby **MODIFIED** to a period of ten days, effective on such date as shall be set forth in an Order of Suspension, which the Commission will send to respondent

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions". A copy of any exceptions must be sent to the judge and to the other parties.

October 30, 2017
DATE

Date Received at Agency

Date Mailed to Parties

vj



JUDITH LIEBERMAN, ALJ

10/30/17

10/31/17

APPENDIX

WITNESSES

For petitioner:

Blondeen Bryan, Driver Improvement Analyst 3

For respondent:

Owen T Cox

EXHIBITS

For petitioner:

- P-1 Certified Abstract
- P-2 Copy of Scheduled Suspension Notice, dated March 9, 2017
- P-3 Copy of respondent's request for a hearing, dated March 31, 2017
- P-4 Copy of Conference Report

For Respondent:

None



AFFIRMED
MOTOR VEHICLE COMMISSION

By ORJA Date 12-26-17
State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO MVH 8100-17
AGENCY DKT NO 06442

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v

GILBERTO SANTIAGO,

Respondent

Anthony J. Apicelli, Jr., Esq , for petitioner

Jose Miquel Ortiz, Esq , for respondent

Record Closed October 26, 2017

Decided. November 9, 2017

BEFORE **MARY ANN BOGAN, ALJ**

STATEMENT OF THE CASE

Gilberto Santiago, respondent, is a commercial licensed driver, and an employee for the County of Mercer TRADE Transportation (TRADE) On October 12, 2016, respondent was in the driveway of the East Windsor Township Senior Citizen Center (Senior Center) with his commercial vehicle when an accident took place that ultimately resulted in the death of an eighty-seven year old female named Mary J Wall (Mrs

Wall) The New Jersey Motor Vehicle Commission (MVC) determined that respondent committed the following motor vehicle violation(s) N J S A 39.4-97 Careless Driving, N J S A 39 3-44 Vehicle in unsafe condition, and N J S A 39 4-97.2 Unsafe Operation of Motor Vehicle MVC seeks a twenty-three month suspension. Respondent disputes the charges and contends that he is not guilty

PROCEDURAL HISTORY

MVC transmitted this matter to the Office of Administrative Law (OAL) on June 8, 2017, for determination as a contested case pursuant to N J S A 52 14B-1 to B-15 and N J S A 52 14F-1 to F-13, and a hearing took place on September 1, 2017, and September 11, 2017 After a post-hearing conference, the hearing record closed on October 25, 2017

FACTUAL DISCUSSION AND CONCLUSIONS

The parties have stipulated to the following facts

- 1 Mrs Wall died in the hospital on October 13, 2016 (J-1)¹
- 2 The respondent's driving history is depicted in the Motor Vehicle Commission Abstract of Driver History Record. (J-2)
- 3 The accident occurred at the entrance to the Senior Center which is accurately depicted in J-3
- 4 Petitioner charged respondent with motor vehicle violations, N J S A 39 4-97 Careless Driving, N J S A 39 3-44 Vehicle in unsafe condition, and N J S A 39 4-97 2 Unsafe Operations of Motor Vehicle, and scheduled the suspension of his New Jersey driving privileges for twenty-three months.

¹ The stipulation to J-1 is limited to Mrs Wall's death

- 5 Respondent was not under the influence of CDS or alcohol
- 6 The vehicle repair record indicates that the solenoid on the bus driven by respondent was replaced the day after the incident (J-5)
- 7 The TRADE bus driven by respondent is accurately depicted in R-2, and has handicapped lifts as depicted in J-6

Testimony

Patrol Officer David Oleksy, (Oleksy), has been employed as a police officer with the East Windsor Township Police Department since 2015. Previously he worked for the Point Pleasant Beach Police Department. After taking various courses including Crash Investigations I and II, and Crash Reconstruction, Oleksy was certified in accident reconstruction. He previously testified before the Grand Jury, Mercer County on traffic reconstruction. Oleksy previously performed two fatal accident investigations, and responded to about 800 traffic accidents. Oleksy was qualified as an expert in accident reconstruction.

On October 12, 2016, Oleksy was assigned regular traffic duty when around 12:30 p.m. he was dispatched to the Senior Center to investigate an accident. Initially, the call was reported as a pedestrian fall. When he arrived at the Senior Center, Oleksy observed the pedestrian in the ambulance, and the TRADE bus parked at the beginning of the half circle driveway. Two investigating police officers reported that the pedestrian was walking with the assistance of a walker, and fell backwards on to the driveway when the bus moved.

Oleksy took verbal statements from respondent, Mrs. Wall, and a passenger in the TRADE bus. Respondent reported that around 11:00 a.m. that morning, the bus experienced some mechanical difficulty when he tried to switch gears from park to drive. Respondent started the bus from the neutral position, and before the gears were switched into drive, the bus moved forward and he heard a crash. Respondent noted,

when he was parked, the wheels were turned toward the left, instead of straight. The respondent checked the mirrors, and saw Mrs Wall on the driveway. Oleksy acknowledged the physical evidence was difficult to assess because when he arrived, the walker was moved from its original location to inside the Senior Center, respondent's bus, as well as a second bus, were moved from their original locations, and the pedestrian was in the ambulance. He did not observe damage to the bus and found this "made sense," since speed was not a factor. Oleksy identified fresh damage to the rear walker legs, and determined that damage was consistent with the curb height.

Mrs Wall was in the ambulance when she was interviewed. She stated that she was walking out of the Senior Center with the assistance of her walker, coming off the driveway, and onto the asphalt between bus one in order to walk to bus two located behind bus one. Mrs Wall's walker made contact with the first bus, and she fell and injured herself. At the time of contact, she was on the driveway.

Oleksy next interviewed a passenger in respondent's bus who reported he heard a crash, and felt the bus jolt forward. He did not see the collision, or Mrs Wall.

Oleksy found no debris at the scene.

Oleksy concluded that his accident scene reconstruction reflects that the vehicle's mechanical difficulty, the layout of the circular driveway, which caused the wheels to be turned to the left, and the vehicle's jolt or pop when the gear freely went into drive, caused the rear of the bus to swing towards the Senior Center, striking Mrs. Wall's walker as she attempted to walk to bus two which was parked behind bus one, and causing her to fall. He determined that respondent operated the bus with due caution, and properly checked his mirrors but could not view Mrs Wall because she was behind the bus. Oleksy determined there was sufficient room between the bus and the curb for the walker, and at the point of impact between the bus and the walker is where the curb began. He explained that the location of Mrs Wall on the police crash investigation report identified her location at the point of impact, not where she landed.

when she fell. The walker was pinned between the asphalt and the bus (P-1). He also concluded that Mrs. Wall was not negligent because a pedestrian cannot be charged when walking on a private driveway. Oleksy did not include all of his findings in the police crash investigation report he prepared. Oleksy charged respondent with careless driving because he willingly and knowingly operated a bus that was having mechanical issues with its gears.

Oleksy did not interview the witness who drove bus two, because that vehicle was not involved in the accident.

Steven Joseph Csik (Csik) was a passenger on the TRADE bus operated by respondent. Csik arrives at the Senior Center, every day Monday through Friday, and is very familiar with the procedures for entering and exiting the bus. He has been coming to the Senior Center for nine years. Each day the bus arrives and parks at the main entranceway of the Senior Center, and picks up passengers to take them home. Passengers routinely wait for their bus, inside the vestibule behind the glass door, or outside on the front entranceway area sidewalk. Csik has never observed passengers walking on the driveway past a parked bus to enter a waiting bus.

The TRADE bus Csik entered was parked a little to the left of the front of the Senior Center, and one foot or less from the curb, not enough driveway space for a walker to fit between. He sat about midway, on the driver's side. The respondent started the vehicle, put the vehicle in gear, and turned the steering wheel to the left. Then the bus traveled forward, moving "very slowly." After the bus moved about one to one and half feet, Csik recalled hearing a "horrible" crash. The respondent applied his brakes, so "smoothly", Csik recollected that the bus did not lurch forward or suddenly move in any manner. Then respondent shut off the bus, and exited.

After hearing the loud noise, passengers on the right side of the bus looked at the window. He heard some passengers say, "Oh my God, a woman is lying along the side of the bus." Eventually the passengers exited the bus, and transferred to bus two. After Csik exited the bus, another passenger told him, "a woman lost her balance and

fell against the bus "

Mr. Csik never observed Mrs Wall

The police officer did not ask Csik details about his recollection of the accident, and Csik did not report that the bus lurched or jolted suddenly in any manner

Csik "cannot imagine" anything that the respondent did wrong, while operating the TRADE bus on the day of the incident. He found the respondent to be "more cautious" than other bus drivers.

Mario Prophete (Prophete) is a licensed commercial driver, employed by TRADE

Prophete knew the decedent, Mrs Wall "very well" because for the last five years he picked her up from her home between 9:20 a.m. to 10:00 a.m. each weekday, drove her to the Senior Center, then drove her home between 12:00 p.m. and 12:30 p.m. He provided Mrs. Wall with "full accommodations" because she "does not have good balance and she is unstable on her feet." Each day, he assisted her with walking from the front door of her residence, to the bus, then he helped her on the bus. He provided Mrs Wall with the same assistance going home. When Prophete returns to pick up passengers from the Senior Center, they always wait at the Senior Center entranceway area.

On October 12, 2016, Prophete arrived at the Senior Center, and parked at the beginning of the half circle driveway (R-5)

He exited his bus to assist respondent who was having difficulty moving the gear from park to drive. When the bus started, Prophete watched as the bus moved forward. The bus did not jump or jolt, and Mrs Wall was not near the bus or in the area at that time. He never heard a loud noise. He explained that every morning drivers perform safety inspections before beginning their assigned routes. If a safety issue is

discovered, the driver is assigned a different bus

He returned to his assigned bus, and after he sat down in the driver's seat, he had a clear view of the main entranceway to the Senior Center. He saw a female lying down backwards on the sidewalk with her head near the double doors. She was nowhere near the bus. By this time, the respondent drove the bus sixteen to twenty feet in the forward direction. Prophete went over, and saw Mrs. Wall, who told him that she fell, and asked for help getting up. Mrs. Wall never mentioned that she was hit by the bus. Prophete believes that because of his close friendship with Mrs. Wall, she would have told him if she had been hit by the bus, but she never did. After he spoke with Mrs. Wall, Prophete went inside, reported Mrs. Wall's fall to the receptionist, and called 911.

Prophete explained that Mrs. Wall has never walked on the driveway to get to a waiting bus. Every day she, along with other waiting passengers, wait at the entranceway to the Senior Center for the bus to pull up to the main entranceway and park, and then the passengers enter the bus. He also explained that on that day, Mrs. Wall saw him at lunch inside the center and knew he would pick her up at the entranceway.

Prophete drove respondent's bus without difficulty after a police officer asked him to move it forward. The police officer also asked him a few general questions but never interviewed him or asked about his observations.

Prophete stated the location of both busses, and Mrs. Wall's body, were both incorrectly depicted on the police report (P-1). Mrs. Wall was not lying on any portion of the blacktop (driveway) and, it was impossible for Mrs. Wall to fall like the officer described because he observed her at the time of the fall, and she was lying on the ground, in the middle of the entranceway sidewalk with her head near the entranceway double doors.

Prophete recalled the entranceway double doors that Mrs. Wall exited from are

automatic and "problematic," and persons, especially, those using the assistance of walkers, have trouble exiting from the doors

Gilberto Santiago, respondent, has been employed as a bus driver with TRADE for twenty years. He previously worked as a bus driver for various bus companies

On the day of the accident, he was operating a TRADE bus (R-2). The first time he had trouble starting the bus was after he arrived at the Senior Center, assisted passengers onto the bus, and attempted to start the bus. When he asked Prophete for assistance, he came over and started the bus. Before moving forward, he checked his mirrors. He had a clear view, and did not see any pedestrians. He drove forward without issue. After respondent began moving forward he conducted a routine check of his mirrors again, and saw a woman lying on the ground. He applied his brakes, shut off the engine, and exited the bus to assist. He recalls seeing a walker but does not remember where it was located because he was focused on helping the woman who fell. Prophete also came over to help. They remained with her until the ambulance arrived.

When he provided a verbal statement to the police officer, he did not report that the bus jolted forward. He recalled saying when he applied the brakes, the vehicle moved in the normal manner that vehicles do after applying the brakes.

Respondent does not feel responsible for the incident in any manner. He disputes the portion of the testimony from passenger Csik, about hearing a loud crash noise because there was never a loud noise.

FINDINGS OF FACT

Based on the documentary and testimonial evidence and having had the opportunity to observe the witnesses' demeanor and assess their credibility, I **FIND** the **ADDITIONAL FACTS** to be as follows:

- 1 Respondent is a twenty-year employee of TRADE a bus company for the County of Mercer, New Jersey
- 2 On October 12, 2016, respondent was operating a TRADE bus in the driveway of 40 Lanning Boulevard, the Senior Center, when an accident occurred that resulted in the death of an eighty-seven-year-old pedestrian, Mary J Wall
3. Officer David Oleksy of the East Windsor Township Police Department was placed in charge of investigating the accident. He arrived at the scene after all physical evidence was removed.
- 4 Prior to driving forward, respondent checked his mirrors, and did not see Mrs Wall
- 5 The bus did not jolt involuntarily when respondent drove forward
- 6 The left rear wheel/leg of the walker was damaged. The respondent's bus had no fresh damage or signs of contact.
- 7 The bus was towed from the scene. Mrs Wall was transported by ambulance to Robert Wood Hospital as a result of her injuries.
8. Passengers routinely enter the bus from the main entranceway of the Senior Center
- 9 The New Jersey Police Crash Investigation Report inaccurately depicts the location of bus one and bus two (P-1)
- 10 The respondent had difficulty switching the gears from park to drive when he started the bus to depart from the Senior Center on the day of the accident
- 11 Mrs Wall had difficulty with balance and walking, and walked with the assistance

of a walker.

12. No one witnessed Mrs Wall's fall

13 Mrs Wall was found lying on the ground on the sidewalk entranceway to the Senior Center with her head near the double door entrance

14 Prophete drove bus one without difficulty after the accident

15 There was no evidence that the broken solenoid contributed to the cause of the accident

16 There have been no convictions of the respondent or grand jury indictments

17 Respondent's driver's license suspension means he will lose his job with TRADE

LEGAL DISCUSSION AND ANALYSIS

MVC is empowered to suspend a motorist's driving privileges when it is shown that the driver has operated a vehicle in violation of any of the provisions of Title 39, and it results in the death of another N J S A 39 5-30b The primary object of a suspension or revocation of a driver's license "is to foster safety on the highway and not to impose criminal punishment to vindicate public justice " Id at 155, see also David v Strelecki, 51 N J 563 (1968) Suspensions must be imposed only for the purpose of reforming the particular motorist, and are not to be imposed administratively for the purpose of deterring others. This matter involves a proposed suspension of respondent's license for a substantial period due to the death of an individual in an accident where it is alleged by the MVC that respondent violated the following motor vehicle offenses (a) Careless Driving, N J S A 39 4-97, (b) Vehicle in unsafe condition, N J S A 39 3-44, and (c) Unsafe Operation of Motor Vehicle N J S A 39.4-97 2

The burden of establishing that a licensee operated a motor vehicle in a manner that compels the MVC to suspend his or her driving privileges lies with the petitioner, who must meet that burden by a preponderance of the credible evidence N J A C 4A:2-1 4(a). Preponderance is the greater weight of the credible evidence in the case, not necessarily dependent on the number of witnesses or exhibits, but having the greater convincing power State v Lewis, 67 N J 47 (1975). The petitioner must establish by preponderance of the credible evidence that respondent was guilty of the charges Atkinson v Parsekian, 37 N J 143, 149 (1962). Evidence is said to preponderate "if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypotheses, in all human likelihood is true". See Loew v Union Beach, 56 N J Super 93, 104 (App Div 1959), overruled on other grounds, Dwyer v Ford Motor Co, 36 N J 487 (1962). Accordingly, I must make a reasonable choice as to the direction the evidence preponderates to show that a reasonable person, acting reasonably, could accept the evidence as adequate support for the conclusion herein. Hornauer, T/A Blue Roof Restaurant v Division of Alcoholic Beverage Control, 40 N J Super 501, (App. Div. 1956). In this case, the petitioner has the burden of establishing that respondent engaged in careless driving causing the accident that resulted in Mrs Wall's death. Careless driving may be found when the individual has driven a motor vehicle carelessly, or without due caution and circumstances, in a manner so as to endanger, or be likely to endanger, a person or property N J A C 39 4-97. Among other lesser included offenses, this violation necessarily includes operating a vehicle in an unsafe manner that endangers persons or property, N J S A 39 4-97 2, which the MVC charged, in addition to N J S A 39.3-44 Vehicle in unsafe condition.

Here, the investigating officer indicates that he issued a summons for careless driving because respondent willingly and knowingly operated the bus even though he knew he was having trouble with the gears. As a result, the bus involuntarily jolted forward causing the rear of the bus to make contact with Mrs Wall's walker which caused her to fall. That has not been proven. He bases this conclusion on his observation of the damage to the walker used by Mrs Wall, and the verbal statement

he gathered from the respondent at the accident scene regarding respondent's trouble with the bus having started around 11 00 a m. During his testimony, respondent denied stating that he began having mechanical difficulty with the bus around 11.00 a m. It is the obligation of a driver to drive the vehicle in a safe manner, particularly here where the driver is licensed to transport passengers. However, since the investigating officer was not present at the time of the accident, he did not know whether the bus moved forward in a safe manner, nor did he have any idea where Mrs. Wall was located. Indeed, he did not know much about the actual accident, and was required to rely on physical evidence which he acknowledged was difficult to assess because when he arrived at the scene the physical evidence had been removed. Instead, he relied on Mrs. Wall's bare-boned statement, the damaged walker, and a less than adequate crash investigation report that was not supported by the record, and does not include all of his own findings, contains limited empirical evidence, and directly contradicts the testimony of the witnesses, and the established and familiar procedures for entering and exiting the bus. It is significant that the investigating officer, other than gathering two general verbal statements, did not interview key witnesses at the scene, and drew a conclusion that interviewing the driver of the second bus, who the decedent spoke to at the accident scene, and who is an eyewitness to most of the incident, was not necessary. The driver of the second bus, Prophete, provided direct testimony about his observations, while he was at the scene of the accident, and also revealed that Mrs. Wall, who he knew very well, never mentioned to him that the bus hit her walker. The investigating officer would have been provided with more detailed information about the accident scene, and he would have learned that this witness assisted the decedent with her daily routine to and from the senior center for more than five years, she was unstable on her feet and she always waited at the front entranceway to board the bus home. Moreover, the petitioner did not present testimony or documentary evidence from the two responding officers.

It is not in dispute that respondent had difficulty starting the bus and moving the gear from park to drive. However, he checked his mirrors before proceeding forward, he drove in a careful manner, and he was not under the influence of CDS or alcohol. The witnesses present at the scene testified credibly and consistently, that the bus

proceeded forward in a safe manner without jolting and without incident. Moreover, the investigating officer concluded that the respondent operated the bus with due caution.

Accordingly, I **CONCLUDE** that the petitioner has failed to establish by a preponderance of the credible evidence that the respondent's conduct was the proximate cause of the decedent's injury and subsequent demise. As to N J S A. 39-4-97 Careless Driving, respondent did not drive a vehicle carelessly, or without due caution and circumspection, in a manner so as to endanger, or be likely to endanger a person or property. Respondent put the vehicle in drive and began to slowly move forward. He took no affirmative actions which were negligent or otherwise unsafe. As a result, he is not guilty of careless driving. As to N J S A 39 4-97 2 Unsafe operation of a motor vehicle, respondent's operation of the vehicle was not unsafe. As previously stated, respondent put the vehicle in drive and began to slowly move forward. He took no affirmative actions which were negligent or otherwise unsafe. As a result, he is not guilty of Unsafe operation of a motor vehicle. Finally, as to N J S A 39 3-44 Vehicle in unsafe condition, petitioner has failed to prove that respondent's vehicle was unsafe. Respondent's vehicle had no documented instances of being an unsafe vehicle prior to the incident herein, and notwithstanding this, there was no evidence that the broken solenoid contributed to the cause of the accident. As a result, he is not guilty of Unsafe Vehicle.

Thus, I cannot conclude that respondent committed a moving violation in connection with the fatal accident by violating N J A C 39:4-97 Careless driving, or the other lesser included offenses, operating a vehicle in an unsafe manner that endangers persons or property, N J S A. 39 4-97 2, or N J S A 39 3-44 Vehicle in unsafe condition.

CONCLUSION

Based upon the foregoing, I **CONCLUDE** that the MVC has not met its burden of establishing by a preponderance of the credible evidence that respondent committed violations of the Division of Motor Vehicle statutes, specifically the weight of the

evidence is lacking that respondent engaged in N J A C 39 4-97, careless driving, N J S A 39 4-97 2, Unsafe Operation of Motor Vehicle, or N J S A 39 3-44 Vehicle in unsafe condition

ORDER

It is hereby **ORDERED** that the Notice of Scheduled Suspension imposing a twenty-three month suspension of respondent's driving privileges should be and is hereby **DISMISSED**.

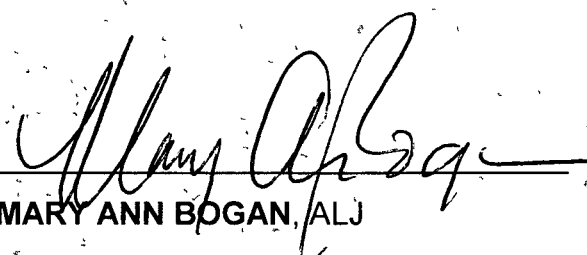
I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N J S A 52 14B-10

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions". A copy of any exceptions must be sent to the judge and to the other parties.

November 9, 2017

DATE



MARY ANN BOGAN, ALJ

Date Received at Agency

November 9, 2017

Date Mailed to Parties

November 9, 2017

MAB/cb

APPENDIX

WITNESSES

For petitioner:

Patrol Officer David Oleksy
Steven Joseph Csik

For respondent:

Gilberto Santiago
Mario Prophete

Interpreter:

Maria Christina Fichtenbaum, Spanish Court Interpreter, appeared on the day of the hearing as a Spanish language interpreter in this matter pursuant to N J A C 14-14 3(c)

EXHIBITS

Jointly submitted:

- J-1 Certificate of Death
- J-2 State of New Jersey Motor Vehicle Commission Abstract of Driver History Record
- J-3 Photo – Front view of Senior Center
- J-4 U S Department of Transportation (DOT) Alcohol Testing Form
- J-5 Vehicle Repair documents
- J-6 TRADE Bus Handicap Ramp in down position

For petitioner:

- P-1 New Jersey Police Crash Investigation Report

For respondent:

- R-1 Photo – TRADE Bus handicap access ramp
- R-2 Photo – TRADE bus
- R-3 Photo – Side view of Senior Center
- R-4 Photo – Sidewalk at Senior Center
- R-5 Photo – Marked location of Bus 2

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: 1044-17
OAL DOCKET NUMBER: MVH 11733-16**

IN THE MATTER OF :
APPLICATION OF :
ALAN & SCOTT SHEPPARD : **FINAL DECISION**
(SOUTH JERSEY MOTORCARS, LLC) :

The Motor Vehicle Commission (MVC or Commission) hereby determines the matter of the proposed denial of a used motor vehicle dealer license for **ALAN & SCOTT SHEPPARD (SOUTH JERSEY MOTORCARS, LLC)**, respondents, for failure to satisfy the requirements providing for a suitable place of business pursuant to N.J.A.C. 13:21-15.4. Prior to this final agency determination, I carefully reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ), the letter of exceptions to the Initial Decision, which was filed with the Commission by counsel for petitioner, and the reply to petitioner's exceptions filed by counsel for respondents. In the Initial Decision, the ALJ determined that no material facts were in dispute and decided the matter by summary decision. Initial Decision at 5. Based upon a de novo review of the record and arguments presented, I shall reject in part the findings and conclusions contained in the Initial Decision, and shall reject in part the recommendation of the ALJ, thereby denying respondents' application for the license.

Based on the record below, which consists of the moving, opposition, and reply

briefs of the parties, including exhibits and certifications¹, I make the following findings. “Because the case was disposed of in a summary judgment proceeding, [the] statement of the facts is based on [my] consideration of the evidence in the light most favorable to the part[y] opposing summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

The relevant material facts are that South Jersey Motorcars, LLC, located at 1044 Industrial Highway, Unit No. 17, West Berlin, New Jersey, applied for a used motor vehicle dealer’s license on May 19, 2015. Initial Decision at 3. South Jersey Motorcars, LLC, is a business entity owned by Alan and Scott Sheppard. Ibid. The initial license application indicated that the business was located in a Type C facility, meaning that it was located in a building that contains one or more business entities, where a New Jersey motor vehicle dealer did not have a valid license in the multi-unit facility as of March 6, 2006. Id. at 3 – 4.

During the course of a field inspection by the MVC, respondents’ business was seen to be located within an industrial complex consisting of several buildings. Certification of Scott T. Sheppard in support of Motion for Summary Decision, “Sheppard Cert.,” Exhibit B. The building where respondents were located is approximately 150 feet x 300 feet and was divided into numerous office units, each separate from the other. Ibid. Other business entities were present at the same premises. Ibid. The building consisted of nineteen separate units. Certification of Nonee Lee Wagner, DAG, “Wagner Cert.,” Exhibit A. Unit 17 was on the left side of a long building bounded by units 16 and 18 on either side and by unit 10 in the rear. Ibid. A floor plan submitted in the application

¹ This makes clear that the record includes the Certification of Nonee Lee Wagner, including exhibits A, B, and C.

process showed that the walls separating the units were not in compliance with the firewall regulation, N.J.A.C. 13:21-15.4(d). Ibid.

On October 27, 2015, the MVC issued an Order of Denial of the application due to the failure of the respondents to comply with the requirement that the business be located in a facility separated from other businesses by exterior walls or a firewall. Sheppard Cert., Exhibit G. On October 30, 2015, respondents asked the MVC for a hearing to contest the denial of their application. Id., Exhibit H. On November 9, 2017, the MVC denied the request for a hearing on the basis that the request failed to list all disputed material facts, legal issues and/or specific mitigating circumstances the respondents intended to raise at a hearing. Id., Exhibit I.

On December 21, 2015, respondents filed a second application where they failed to include the form indicating the type of walls at the business location. Id., Exhibit J.

On January 5, 2016, the MVC rejected the second application as incomplete. On March 15, 2016, then-counsel for respondents supplemented the second application with the walls form indicating that as a Type A facility, a firewall was not required. Id., Exhibit K. On March 30, 2016, a site inspection for the second application was conducted, and the MVC determined that the application was not approved because of the lack of firewalls.

On May 5, 2016, respondents requested that a Notice of Proposed Denial be issued in order to have a hearing on the firewall issue. On May 19, 2016, the MVC issued an Amended Notice of Proposed Denial followed by respondents filing a request for a hearing at the Office of Administrative Law (OAL). Id., Exhibit L. The MVC granted respondents' request for a hearing and transmitted the case to the OAL on July 28, 2016.

After a series of conference calls, the OAL determined that expert testimony on the firewall was required. Respondents submitted an expert report indicating that Unit No. 17 was constructed with a two-hour firewall installed between it and each of the other units. Id., Exhibit N. Respondents' expert opined that the MVC's requirement of a three-hour firewall extending through the roof on the premises under the International Building Code was not applicable. Ibid.

Without waiting for petitioner to file its expert report, or holding a hearing to determine whether respondents' business was in fact located in a Type C or Type A facility, the ALJ decided by summary decision that "the MVC improperly denied the company's dealer license application for failure to comply with the firewall requirement under N.J.A.C. 13:21-15.4(d)." Initial Decision at 11. As to the collateral challenges to the MVC's rulemaking authority and the validity of the regulations, the ALJ correctly declined to rule on those issues. Ibid.

The issue under consideration was whether the respondents' facility occupies the same premises as the other businesses, thereby requiring it to be separated by exterior walls or a firewall.

The Administrative Procedure Act allows an agency head to reject or modify the findings of an ALJ. N.J.S.A. 52:14B-10(c). Neither court nor agency head is bound by the ALJ's findings. In re Suspension of License of Silberman, 169 N.J. Super. 243, 255-56 (App. Div. 1979), aff'd, 84 N.J. 303 (1980). Moreover, it is not the function of the reviewing court to substitute its independent judgment on the facts for that of an administrative agency. In re Grossman, 127 N.J. Super. 13, 23 (App. Div.), certif. denied, 65 N.J. 292 (1974). In this matter, the ALJ failed to address the factual discrepancy

underlying the respondents' changing of the building type in their second application, seemingly to avoid the firewall requirement.

The regulations governing used motor vehicle dealers require that “[a]ll licensees selling used motor vehicles exclusively shall maintain a permanent, properly identified location with a minimum office space of 72 square feet within a permanent enclosed building” N.J.A.C. 13:21-15.4(a)(2). Further,

[a] proposed place of business will not be considered suitable for approval if there already exist one or more licenses issued for, or other business entities present at, the same premises. . . . A proposed place of business is deemed to occupy the same premises as another dealership if the two facilities: (1) [a]re not completely separated by exterior walls or a firewall. .

..

[N.J.A.C. 13:21-15.4(d).]

The Initial Decision raised an issue as to the meaning of “same premises.” Initial Decision at 9. The ALJ contended that the plain meaning of the word “premises” can apply to part of a building. Ibid. The dictionary definition of the word used by the ALJ, however, can also mean simply “a building.” Initial Decision at 9 (emphasis added). Moreover, “[i]t is settled that an administrative agency’s interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to [a reviewing court’s] deference.” Seigel v. N.J. Dep’t of Env’tl. Prot., 395 N.J. Super. 604, 613 (App. Div.), certif. denied, 193 N.J. 277 (2007) (internal citations omitted). The MVC’s reading of the regulation is consistent both with the plain reading and with the Commission’s long-standing interpretation, to which the Initial Decision failed to give any notice.

Additionally, “[r]egulations are subject to the same rules of construction as a statute,’ and ‘should be construed in accordance with the plain meaning of [their] language’ ‘and in a manner that makes sense when read in the context of the entire regulation.’” Id. at 618, quoting, Medford Convalescent & Nursing Ctr., v. Div. of Med. Asst. and Health Svcs., 218 N.J. Super. 1, 5 (App. Div.), certif. denied, 102 N.J. 385 (1985). Presumably, the ALJ’s use of “same premises” would apply only if Unit 17 itself were subdivided in two. This would lead to the untenable and ridiculous situation whereby Unit 17 would be divided by a firewall, without requiring that a firewall be constructed between each half of Unit 17 and the other units in the multi-unit facility. Such a reading would not make sense in the overall context of the regulation.

“When a plain meaning of the statute leads to an absurd result or one at odds with the statutory scheme, [the reviewing court] may resort to extrinsic evidence, which includes ‘legislative history, committee reports, and contemporaneous construction.’” In re Raymour and Flanigan Furniture, 405 N.J. Super. 367, 376 (App. Div. 2009), quoting, DiProspero v. Penn, 183 N.J. 477, 492-93 (2005). “When interpreting a statute or regulation that an agency is charged with enforcing, [the reviewing court] give[s] substantial deference to the agency’s interpretation which ‘will prevail provided it is not plainly unreasonable.’” Id., quoting, Merin v. Maglaki, 126 N.J. 430, 436-37 (1992). In defining the meaning of “same premises,” the ALJ neglected to consider the MVC’s interpretation of the term in context with the dealer regulations as a whole and in light of the interpretation given by the Commission over time.

In the summary of the changes to N.J.A.C. 13:21-15.4 that were proposed in 2005, the MVC stated that the amendment “clarifies the requirement that each dealership be

separated from every other dealership and every other business entity unless there is complete identity of ownership of the two businesses” 37 N.J.R. 1002 (April 4, 2005). This regulation was further clarified in 2017, where references to the outdated National Building Code were amended to reference the International Building Code New Jersey Edition requirements, as updated, and as adopted by the New Jersey Uniform Construction Code pursuant to N.J.A.C. 5:23-3.14. These changes over the years reflect the ongoing efforts of the MVC to ensure the integrity of dealer facilities in the face of abuses reported to the Commission. As published in the response to comments on the 2017 amendments, the MVC noted that

investigatory activity has uncovered that much of the illicit activity by dealers engaged in illegitimate business is connected to premises that lack the requisite office facilities, including firewalls that protect documents and individuals. Fire-rated walls provide insufficient protection for documents or individuals located in the inner offices of the facility. Investigation by State authorities has revealed facilities where no dealers were present and no vehicles were for sale. One facility was, and still is, surrounded by barbed-wire chain-link fencing and an expanse of empty pavement sprouting weeds that appeared more like an abandoned warehouse than a legitimate used car dealer facility. The facility houses more than 300 dealer-tenants who operate out of cubicles packed in rows inside the main building. Repeated visits to the facility have shown only empty dealer cubicles behind locked doors with no phones ringing, no sales personnel, no customers, and no inventory.

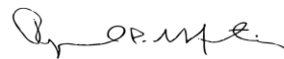
[49 N.J.R. 1445 (June 5, 2017).]

Therefore, it is important when interpreting the regulations that they be read in the totality of the context of the regulatory and statutory regime.² To remain consistent with the statutes and regulations, as well as a common sense reading of the same, a firewall must separate offices that are split in a shared building that is separated into individual units.

² In order to ensure clarity of meaning, the Commission intends further rulemaking to clarify the term “premises.”

In conclusion, the MVC rejects the recommendation of the ALJ in the Initial Decision for the aforementioned reasons.

It is, therefore, on this 21st day of December, 2017, **ORDERED** that the used motor vehicle dealer license application of **ALAN AND SCOTT SHEPPARD (SOUTH JERSEY MOTORCARS, LLC)** be DENIED.



Raymond P. Martinez
Chairman and Chief Administrator

RPM: rdd

cc: Thomas G. Russomano, Esq.
Zachary N. Klein, DAG
Nonee Lee Wagner, DAG