Motion 2022-796
Appellate Division Docket No. 533802
Albany County Clerk's Index No. 905032-20

Court of Appeals

of the

State of New York

AARON MANOR REHABILITATION
AND NURSING CENTER, LLC, et al.,

Plaintiffs/Petitioners-Respondents-Cross-Appellants,

– against –

HOWARD ZUCKER, M.D., J.D. AS COMMISSIONER OF HEALTH OF THE STATE OF NEW YORK STATE OR HIS SUCCESSOR IN OFFICE, AND ROBERT MUJICA JR., AS DIRECTOR OF THE BUDGET,

Defendants/Respondents-Appellants-Respondents.

OPPOSITION TO MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

HARTER SECREST & EMERY LLP
F. Paul Greene, Esq.
Christina M. Deats, Esq.
Attorneys for Plaintiffs/Petitioners-Respondents-Cross-Appellants
1600 Bausch & Lomb Place
Rochester, New York 14604
(585) 232-6500
fgreene@hselaw.com
cdeats@hselaw.com

DISCLOSURE STATEMENT

Pursuant to Rules 500.1(f) and 500.22(b)(5) of the Court of Appeals (22 N.Y.C.R.R. §§ 500.1(f) and 500.22(b)(5)), Plaintiffs-Petitioners-Respondents state that none of the Plaintiffs-Petitioners-Respondents have parents, subsidiaries, or affiliates. Plaintiffs-Petitioners-Respondents stated their respective operators in the caption of this action.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES AND OTHER AUTHORITIES

PRELIMINARY STATEMENT

Defendants seek leave to appeal to this Court to give alleged force to a "notwithstanding" clause contained in Public Health Law ("PHL") § 2808(20)(d), which would allow for a retroactive claw back of tens of millions of dollars in Medicaid reimbursement paid for necessary nursing home capital costs from April 2020 to the present. Defendants' arguments are fatally flawed, however, because there is nothing in the statute requiring such retroactive effect, and - - even if the statute did require retroactive effect - - the decades-old mandate of PHL § 2807(7) controls, to wit, retroactive rate making is barred in New York unless certain express, limited exceptions defined in statute apply. Moreover, the "notwithstanding" clause to which Defendants point was not adopted with the provision at issue here; rather it was adopted almost a decade before, with the Legislature's express limitation that the clause would not alter or otherwise diminish pre-existing rights, *i.e.*, it could not and would not serve as justification for the kind of retroactive claw back that Defendants now seek. For these reasons, Defendants' motion should be denied.

COUNTERSTATEMENT OF THE CASE

PHL § 2808(20)(d) addresses capital reimbursement for for-profit nursing homes, and was originally adopted in 2011 to give the Commissioner flexibility in relation to two payment factors unrelated to the present suit: so-called "return on"

and "return of" capital investments made in land and the physical plant of the facility, otherwise known as "equity."[1] *See* PHL § 2808(20)(d) (first clause). In its original form, the statute contained a "notwithstanding" clause, stating that the flexibility accorded to the Commissioner would take effect "[n]otwithstanding any contrary provision of law, rule or regulation." *See id*. The 2011 budget bill of which PHL § 2808(20)(d) was a part, however, made clear that this "notwithstanding" clause would in no way justify retroactive application. *See* L. 2011, ch. 59, § 1, Part H, § 8 (original version of PHL § 2808(20)(d)); *see id.* § 111(u) ("this act shall not be construed to alter, change, affect, impair or defeat any rights, obligations, duties or interests accrued, incurred or conferred prior to the effective date of this act").

In April 2020, PHL § 2808(20)(d) was amended to purportedly eliminate a different payment factor in the capital reimbursement rate for nursing homes: "residual equity." *See* PHL § 2808(20)(d) (second clause). Residual equity reimburses for-profit nursing homes for necessary, ongoing capital costs - - such as replacement of a leaky roof or a failed HVAC system - - beyond the facility's fortieth year of operation. *See* 10 N.Y.C.R.R. § 86-2.21(e)(7). The 2020 amendment to PHL § 2808(20)(d) was to take effect in "rate periods on and after"

[1] In this regard, "equity" as referenced in PHL § 2808(20)(d) is a misnomer. It does not refer to conventional notions of "equity," *i.e.*, balance sheet equity, which consists of assets minus liabilities. It refers, rather, to capital investment: land, buildings, and permanent equipment.

April 1, 2020. *See* PHL § 2808(20)(d). Capital rates are certified on an annual basis, such that the next applicable "rate period[] on and after" April 1, 2020" began as of January 1, 2021. (*See* R. 346-47 ¶¶ 6, 8.)

Before such a significant rate change could take effect, several steps were necessary, including: (i) proposing amended regulations and receiving public comment; (ii) determining whether a rate without "residual equity" would still meet the minimum rate requirements set in PHL § 2807(3); (iii) if not, determining an appropriate replacement for "residual equity," such as depreciation, which is available to all not-for-profit facilities; (iv) calculating the resulting rates into "proposed rate schedules" under PHL § 2807(3); (v) certifying that such proposed rate schedules are "reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities" also under PHL § 2807(3); and (vi) then, and only then, providing 60-days advance notice of approval of such rate schedules to affected nursing homes, prior to such rate schedules becoming effective, under PHL § 2807(7). *See* PHL § 2807(7) (laying out process for certification and advance notice of rate schedules); PHL § 2807(3) (rates certified must be "reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities"); (R. 217 ¶ 14 (Defendants' concession that a change in regulations is required before residual equity could be eliminated).) Defendants did none of these things, but rather

attempted to claw back residual equity from Plaintiffs' rates by way of a unilateral rate change, announced in a so-called "Dear Administrator Letter," dated August 7, 2020. (R. 244-45.)

The trial court enjoined such action and ultimately found it violative of PHL § 2807(7). (R. 30-37; 280-81.) The Third Department affirmed, additionally holding that the 2020 amendment to PHL § 2808(20)(d) did not contain the "clear expression" of legislative intent necessary to justify retroactive application of the amendment. *See Aaron Manor Rehab. & Nursing Ctr., LLC v. Zucker*, 205 A.D.3d. 1193, 1197 (3d Dep't 2022). Defendants have included residual equity generally in the rate schedules noticed to Plaintiffs under PHL § 2807(7) for the 2023 rate year, which begins as of January 1, 2023. Because the capital rate runs on a calendar year basis, the next date on which Defendants may issue rate schedules adjusting or eliminating residual equity is November 1, 2023, for the 2024 rate year. Given the intervening rate years since Defendants' first attempt to retroactively eliminate residual equity, a retroactive claw back beginning as of April 1, 2020 would remove tens of millions of dollars or more from previously paid Medicaid rates statewide, with some facilities facing multi-million dollar impacts on their own. (R. 292 ¶ 26 (discontinuing residual equity eliminates "tens or even hundreds of millions of dollars of reimbursement from for-profit facilities

every year"); ¶ 43 (each Plaintiff stands to lose between hundreds of thousands to millions of dollars in Medicaid reimbursement per year).)

ARGUMENT

THE 2020 AMENDMENT TO PHL § 2808(20)(D) DOES NOT CALL FOR RETROACTIVE ELIMINATION OF THE RESIDUAL EQUITY PAYMENT FACTOR

Defendants' motion - - and indeed their whole approach to this matter - - suffers from a fatal flaw: their contention that the 2020 amendment to PHL § 2808(20)(d) required retroactive elimination of the residual equity payment factor as of April 1, 2020. (*See* Defs.' Mem. of Law at 2, 6, 8-10, 14.) The amendment does no such thing. Rather, it expressly limits its reach to "rate periods on and after April first two thousand twenty." *See* PHL § 2808(20)(d) (second clause, emphasis added).

This clarification by the Legislature is key: the words "rate period" were chosen very carefully to indicate a specific legislative intent, *i.e.*, to allow for the elimination of residual equity with the next applicable rate period, not on a date certain. This is shown by the fact that, when the Legislature wants a rate change to occur on a date certain, it says so, by using the term "period" on its own, without the modifier "rate." This is made clear in the very first section of PHL § 2808, where the Legislature determined funding levels for grants available to facilities required to "address[] the overall increases in input costs borne by such facilities." *See* PHL § 2808(1-a) (referencing three specific "periods" beginning April 1 of

three consecutive years and corresponding with the state fiscal year); *see also* PHL § 2808(2-b)(b)(i)(A) ("for periods on and after April first, two thousand nine the operating cost component of rates of payment shall reflect allowable operating costs as reported in each facility's cost report for the two thousand two calendar year"); § 2808(2-b)(b)(iii) (referencing "periods prior to January first, two thousand nine"); § 2808(2-b)(b)(x) (same); § 2808(2-c)(d) (Quality Pool regulations "may be made effective for periods on and after January first, two thousand thirteen"); § 2808(2-d) (referencing a "period May first, two thousand eleven through May thirty-first, two thousand eleven"); § 2808(2-d)(b) (referencing a "period April first, two thousand nine through March thirty-first, two thousand eleven"); § 2808(12)(a) (referencing a "period July first, nineteen hundred ninety-five through March thirty-first, nineteen hundred ninety-six"); § 2808(12)(c)-(e) (referencing four separate "periods" commencing on April 1 and corresponding to the state fiscal year); § 2808(12)(f) (referencing nine separate "periods" generally corresponding to the state fiscal year); § 2808(12)(f-1) (referencing specific state "fiscal year periods beginning April first, two thousand six"); § 2808(15) (referencing a "period April first, nineteen hundred ninety-five through March thirty-first, nineteen hundred ninety-six"); § 2808(18)(a)-(c) (referencing fourteen separate "periods" beginning on specific months); § 2808(20)(c) (referencing a "period beginning October first, two thousand three or

one hundred eighty days after the effective date of this subdivision, whichever is later, through March thirty-first, two thousand four")[2]; § 2808(21)(e) (referencing "periods prior to April first, two thousand nine"); § 2808(24) (referencing "periods on and after July first, two thousand seven").

By contrast, when the Legislature wants a rate change to occur with the next applicable rate period, it uses the specific term "rate period" to do so. *See* PHL § 2808(2-b) (adjusting rates for fourteen specific "rate period[s]"); PHL § 2808(2-d) (making rate adjustments in two specific "rate period[s]"); PHL § 2808(17)(b) (creating a monetary cap for payment on rate appeals "for rate periods prior to April first, two thousand twenty-three"); PHL § 2808(17)(b) (adjusting payment factors for "rate periods on and after April first 2009"); PHL § 2808(20)(d) (first clause, allowing for elimination of "return on" or "return of" equity "for rate periods on and after April first, two thousand eleven"); PHL § 2808(21)(a), (c), (f), (h), (j), and (i) (making adjustments for specific "rate periods"). Indeed, the Legislature usually uses the "rate period" designation when it is removing a specific cost from the Medicaid rate, which only makes sense, as nursing homes must be able to plan and structure their operations to allow for a cost that will no

[2] This section clearly shows that when the Legislature wishes to set a date certain for a rate change, it uses the term "period" without the modifier "rate." In PHL § 2808(20)(c), the legislature set two alternative dates certain: a "period" beginning October 1, 2003 or 180 days after the section became effective.

longer be reimbursed. *See, e.g.*, PHL § 2808(26) (removing reimbursement for the cost of prescription drugs "for rate periods on and after April first, two thousand ten").

Of course, when the Legislature uses specific language such as "rate period," the Courts must give effect to such language. *See Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577, 583 (1998) ("In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning.") (internal citations omitted). And, as a factual matter, the only proof submitted below as to the meaning of the term "rate period," specifically in relation to the residual equity payment factor, showed that the capital "rate period," of which residual equity is a part, runs on a calendar year basis. (R. 352-53 (Department of Health's Capital Reimbursement Certification for "Capital Reimbursement Rate Year - 2020," issued as part of the standard rate-setting process); *see also* R. 290 ¶ 19; 346-47 ¶¶ 6-8.) And beyond this, residual equity only begins once the 40-year, so-called "useful life" of a facility has run, which "useful life" runs on a calendar-year basis. *See* 10 N.Y.C.R.R. § 86-2.21(a)(7) ("The term useful facility life shall mean a period of 40 years measured from the *calendar year* in which a facility commences operations as determined by

the commissioner." (emphasis added); 10 N.Y.C.R.R. § 86-2.21(e)(7) ("[r]esidual reimbursement" payment factor begins immediately "[a]fter the expiration of useful facility life," *i.e.*, on January first of the year after the facility's "useful life" term has run).

Given this, there was nothing on the face of the 2020 amendments to PHL § 2808(20)(d) calling for retroactive elimination of the residual equity payment factor. Rather, the amendment expressly gave Defendants until the next "rate period," *i.e.*, January 1, 2021, to do all of the things necessary to allow for such elimination. These included: first, providing proper notice of and adopting regulations to allow for the elimination of residual equity. *See* N.Y. S.A.P.A. § 202(1)(a) (60-day notice and comment period for adoption of regulations). Defendants below conceded that such a change in regulations was necessary before they enforced the Residual Equity Elimination Clause, but they eliminated the residual equity payment factor without any such regulatory change. (R. 217-18 ¶ 14 (conceding that regulatory amendment was required before residual equity could be eliminated).) Indeed, today, Defendants' "residual reimbursement" regulation remains the same as it was before the 2020 amendment to PHL § 2808(20)(d), allowing for continued payment of the residual equity elimination factor. *See* 10 N.Y.C.R.R. § 86-2.21(e)(7). Indeed, it is under this regulation that

Defendants have included residual equity as a valid payment factor in Plaintiffs' 2023 capital reimbursement rates.

If Defendants wished to change this regulation in light of PHL § 2808(20)(d), Defendants would be bound to re-assess whether the resulting rates would be sufficient to meet the costs that must be incurred by efficiently and economically operated facilities under both state and federal law. *See* 42 C.F.R. § 447.253; PHL § 2807(3). And once this regulatory change was complete, which could easily take several months, the Department of Health would have to calculate the resulting rates, and certify to the Division of Budget that those rates satisfied the minimums set by 42 C.F.R. § 447.253 and PHL § 2807(3). *See* PHL § 2807(3). The Division of Budget would then be tasked with reviewing and approving such rates. *See id.* Then, as the final step before residual equity could be eliminated from Plaintiffs' Medicaid rates, Defendants would have to provide notice of the properly certified and approved rates at least 60 days before the next effective rate period. *See* PHL § 2807(7). Because capital rates run on a calendar-year basis, such notice would have been required as of November 1, 2020 in order to eliminate residual equity beginning as of the next capital rate period: rate year 2021. None of this occurred here; rather, Defendants rushed to eliminate residual equity under the 2020 amendment to PHL § 2808(20)(d), although the Legislature

expressly structured that amendment, so as to allow Defendants to take these necessary steps.

The "notwithstanding" clause that begins PHL § 2808(20)(d) does nothing to change this. This is because, as shown below, such a "notwithstanding" clause is facially insufficient to meet the high bar of showing retroactive intent in a statute. Second, the "notwithstanding" clause at issue was adopted with an express limitation, making absolutely clear that the clause could never have the retroactive effect that Defendants wish now to give it.

Specifically, PHL § 2808(20)(d) - - together with its notwithstanding clause - - was originally adopted in 2011. *See* L. 2011, ch. 59, § 1, Part H, § 8(d). In its original form, PHL § 2808(20)(d) specifically targeted payment factors in the capital portion of the Medicaid rate, so-called "return on" and "return of" equity. *See* PHL § 2808(20)(d) (first clause). Because of that, PHL § 2808(20)(d), beginning in 2011 and continuing through today, restricted its ambit to the next applicable capital "rate period," *i.e.*, beginning with the next calendar year, 2012. *See* PHL § 2808(20)(d) (first clause). And to underscore that nothing in the statute would change the capital rate either retroactively or for the rate year in progress when the statute was adopted, the 2011 budget bill of which the original version of PHL § 2808(20)(d) was a part, made absolutely clear that "this act shall not be construed to alter, change, affect, impair or defeat any rights, obligations, duties or

interests accrued, incurred or conferred prior to the effective date of this act." *See* L. 2011, ch. 59, §1, Part H, § 111(u).

Hence, aside and apart from the Legislature's specific use of the term "rate period" as a limiting factor to the reach of the 2020 amendment to PHL § 2808(20)(d), this language in the 2011 budget bill completely undermines Defendants' argument here, and shows conclusively that nothing in PHL § 2808(20)(d) was intended to allow for the elimination of residual equity before the next applicable rate period, beginning January 1, 2021.[3]

BEDROCK AUTHORITY RESTRICTING RETROACTIVE STATE ACTION REQUIRES MORE THAN A GENERIC "NOTWITHSTANDING" CLAUSE TO SHOW RETROACTIVE INTENT

It is black letter law in New York and under the United States constitutions that retroactive state action is strongly disfavored. *See Jacobus v. Colgate*, 217 N.Y. 235, 240 (1916) ("The general rule is that statutes are to be construed as prospective only. It takes a clear expression of the legislative purpose to justify a retroactive application." (citation omitted)); *see also Majewski*, 91 N.Y.2d at 584 ("It is a fundamental canon of statutory construction that retroactive operation is not favored by courts and statutes will not be given such construction unless the

[3] Given the numerous requirements left for Defendants to fulfill before residual equity may be eliminated, including finding an adequate replacement, issuing new regulations, and providing notice under PHL § 2807(7), the next "rate period" in which residual equity may be eliminated begins January 1, 2024. Defendants have included residual equity in the October 20, 2022 notice of January 1, 2023 capital rates already, which rates are applicable for all of rate-year 2023.

language expressly or by necessary implication requires it."). Such a "clear expression" of retroactive intent is required to ensure that the Legislature has properly considered the inherent unfairness in retroactive state action and determined that such unfairness is outweighed by any resulting benefits. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 272 (1994) ("Requiring clear intent assures that Congress itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits."). Indeed, where a statutory change affects substantive rights and liabilities, it is presumed to have "only prospective effect." *See Bennett v. New Jersey*, 470 U.S. 632, 639 (1985) (applying the "venerable rule" that "statutes affecting substantive rights and liabilities are presumed to have only prospective effect"); *Morales v. Gross*, 230 A.D.2d 7, 10 (2d Dep't 1997) (same); *see also Matter of County of St. Lawrence v. Daines*, 81 A.D.3d 212, 215 (3d Dep't 2011) (statute representing "substantive change in the law regarding the availability of Medicaid . . . reimbursements" applied "prospectively only").

"[T]he date that legislation is to take effect is a separate question from whether the statute should apply to claims and rights then in existence." *Majewski*, 91 N.Y.2d at 583. Even a statute that is to "take effect immediately" does not require retroactive application absent a "clear expression" of the Legislature's

retroactive intent. *See id.* at 590 (statutory change that was to "take effect immediately" held to apply prospectively only).

Here, Defendants' only argument in favor of retroactivity is that the "notwithstanding" clause in the original 2011 version of PHL § 2808(20)(d) must now be read to supersede PHL § 2807(7) for the 2020 amendment to PHL § 2808(20)(d). (*See* Defs.' Mem. of Law at 2, 6, 8-10, 14.) This does nothing to show the "clear expression" of retroactive intent required under *Jacobus* and its progeny. Nor do Defendants discuss any of the authority relied on by the Third Department in its May 12, 2022 decision on the issue of retroactivity. This is fatal to any further appeal here, as the Third Department clearly determined in the first instance that the 2020 amendment to PHL § 2808(20)(d) did not meet the *Jacobus* test as articulated in *Majewski* and *St. Lawrence County v. Daines*. *See Aaron Manor Rehabilitation & Nursing Ctr., LLC*, 205 A.D.3d. at 1197 ("There is no direct evidence or language that the Legislature intended a retroactive application of the ratemaking process.").

Only then did the *Aaron Manor* Court go on to discuss PHL § 2807(7), holding that the limited statutory exceptions to PHL § 2807(7), as contained in PHL § 2808(11), were the only circumstances where retroactive rate making was allowed. *See id*. at 1198. Importantly, in this regard, the *Aaron Manor* Court noted that "the retroactive application of the rate would run counter to the 'general

purpose of the prospective rate system[, which is] to permit providers of [services in residential health care facilities] to conduct their operations in full reliance upon the rates certified by the commissioner.'" *See id.* (*citing Anthony L. Jordan Health Corp. v. Axelrod*, 67 N.Y.2d 935, 936 (1986)). Defendants, however, offer no justification as to why the 2020 amendment to PHL § 2808(20)(d) should have invalidated the 2020 capital rates that had been certified by the Commissioner under PHL § 2807(7) on November 1, 2019. As noted above, and as was undisputed on the proof submitted below, the capital portion of the nursing home Medicaid rate is certified on an annual basis. (R. 346-47 ¶¶ 6, 8.)

Defendants' authority on the role of "notwithstanding" clauses is not to the contrary. To begin with, none of the "notwithstanding" cases that Defendants cite use a generic "notwithstanding" clause to allow for retroactive application of a statute. *See, e.g.*, *Matter of State of N.Y. v. John S.*, 23 N.Y.3d 326 (2014) (applying "notwithstanding" clause to allow for an exception in a contrary provision of the C.P.L., but not involving retroactivity); *Matter of Melendez v. Wing*, 8 N.Y.3d 598 (2007) (allowing for certain benefits to be considered as income in relation to applicant's Emergency Shelter Allowance as of the effective date of a statute that superseded a prior inconsistent statute).[4]

[4] In this regard, *Melendez* undermines Defendants' argument by making clear that when the Legislature wants action to occur as of a date certain, it says so expressly.

Moreover, the term "notwithstanding" is used 45 times in PHL § 2808, but no reported case has ever done what Defendants are asking the Court to do here: use a generic "notwithstanding" clause to not only overcome the presumption against retroactive application under *Jacobus* and *Majewski*, but also expand the statutory exceptions to PHL § 2807(7) beyond the limited exceptions found in PHL § 2808(11). Rather, the authority is unanimous in New York that, absent satisfaction of one of the statutory exceptions to PHL § 2807(7) found in PHL § 2808(11), retroactive rate making is absolutely prohibited, specifically because of the crucial need and right of nursing homes to rely on rates previously certified by the Commissioner. *See, e.g.*, *Jewish Home & Infirmary v. Comm'r of N.Y. State Dep't of Health*, 84 N.Y.2d 252, 262-63 (1994) (restricting exceptions to PHL § 2807(7) to those found in PHL § 2808(11) under the maxim of *expressio unius est exclusio alterius*); *Anthony L. Jordan Health Corp. v. Axelrod*, 67 N.Y.2d 935, 936-37 (1986) (refusing to read retroactive application into legislative change to nursing home Medicaid rate).

Given this, Defendants need two things to allow for retroactive application of PHL § 2808(20)(d): a "clear expression" of legislative intent that such retroactive application must occur and satisfaction of one of the limited exceptions, found in PHL § 2808(11), to the 60-day advance notice rule in PHL § 2807(7). Defendants' "notwithstanding" argument provides neither of these, and therefore

fails to show any conflict between the Third Department's decision and any precedent of this Court. This Court should therefore deny Defendants' application.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully submit that this Court should deny Defendants' motion for leave to appeal in full. Plaintiffs further request such additional relief as this Court deems just, equitable, and proper.

Dated: Rochester, New York
November 18, 2022

HARTER SECREST & EMERY LLP

By: _____

F. Paul Greene, Esq.
Christina M. Deats, Esq.
Attorneys for Plaintiffs-Petitioners-Respondents-Cross Appellants
1600 Bausch & Lomb Place
Rochester, New York 14604
Telephone: (585) 232-6500

STATE OF NEW YORK	)		**AFFIDAVIT OF SERVICE**
	)	ss.:	**BY OVERNIGHT FEDERAL**
COUNTY OF MONROE	)		**EXPRESS DELIVERY**

I, **Jeremy Slyck**, of Rochester, New York, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above.

On November 18, 2022

deponent served the within: **OPPOSITION TO MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEALS (Motion No. 2022-796)**

Upon:

LETITIA JAMES
ATTORNEY GENERAL OF THE STATE OF NEW YORK
Jeffrey W. Lang
Deputy Solicitor General
Victor Paladino
Senior Assistant Solicitor General
Kate H. Nepveu
Assistant Solicitor General
Attorneys for Defendants/Respondents-Appellants-Respondents
The Capitol
Albany, New York 12224
(518) 776-2016

the address(es) designated by said attorney(s) for that purpose by depositing **one (1)** true copy of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on November 18, 2022

Andrea P. Chamberlain
Notary Public, State of New York
No. 01CH6346502
Qualified in Monroe County
Commission Expires August 15, 2024

Jeremy Slyck

Job #511806