To Be Argued By:
Warren J. Roth
Time Requested: 15 Minutes

APL-2023-00083

Albany County Clerk's Index No.907212/2020
Appellate Division, Third Department Case No. 533530

Court of Appeals

STATE OF NEW YORK

In the Matter of the Application of

FRANCO COMPAGNONE,

Petitioner-Appellant,

against

THOMAS P. DINAPOLI, as State Comptroller,

Respondent-Respondent.

For a Judgment Pursuant to Article 78 to Review and Annul the Determination Made by the Executive Deputy Comptroller of the New York State and Local Retirement System Denying Petitioner's Application for Accidental Disability Retirement and for Such Other Appropriate Relief.

BRIEF FOR PETITIONER-APPELLANT

Of Counsel:
Warren J. Roth

Date Completed: February 9, 2024

SCHWAB & GASPARINI, PLLC
Attorneys for Petitioner-Appellant
222 Bloomingdale Road, Suite 200
White Plains, New York 10605
914-304-4353
wroth@schwabgasparini.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF RELATED CASES 1

QUESTION PRESENTED 2

PRELIMINARY STATEMENT 2

PROCEDURAL HISTORY 3

JURISDICTIONAL STATEMENT 5

STATEMENT OF FACTS 6

LEGAL STANDARDS 7

ARGUMENT 8

POINT I

THE INCIDENT OF OCTOBER 27, 2013 CONSTITUTES AN ACCIDENT AS THAT TERM IS USED UNDER THE RSSL 8

POINT II

THE APPELLATE DIVISON DECISION PRODUCES THE FLAWED RESULT THAT POLICE OFFICERS WHO BECOME PERMANENTLY DISABLED DUE TO ANY UNSEEN CONDITION IN THE DARK ARE NOT ENTITLED TO ACCIDENTAL DISABILITY BENEFITS 13

CONCLUSION 19

CERTIFICATE OF COMPLIANCE 20

TABLE OF AUTHORITIES

Page(s)

Cases

300 Gramatan Ave. Assoc. v. State Div. of Human Rights, 45 NY2d 176 [1978] 10

Castellano v. DiNapoli, 197 A.D.3d 1478, 154 N.Y.S.3d 170 (2021) 17, 18

Cuccia v. New York Employees' Retirement System, 113 N.Y.S. 3d 827 (2019) 12

Matter of Bodenmiller v. DiNapoli, 157 AD3d 1120 [2018] 10

Matter of Jonigan v. McCall, 291 AD2d 766 (2002) 9

Matter of Kelly v. DiNapoli, 30 NY3d 364 (2018) 14

Matter of Kenny v. DiNapoli, 11 NY3d 873 (2008) 8, 16

Matter of Lichtenstein v. Board of Trustees of Police Pension Fund of Police Dept. of City of N.Y., Art. II, 57 NY2d 1010 [1982] 8

Matter of McCambridge v. McGuire, 62 NY2d 563 [1984] 8, 9, 16

Matter of Miller v. DeBuono, 90 NY2d 783 [1977] 10

Matter of Mirrer v. Hevesi, 4 AD3d 722 (2004) 9

Matter of Roberts v. DiNapoli,
117 AD3d 1166 (2014) 9

Matter of Stancarone v. DiNapoli,
161 AD3d 144 [3d Dept 2018] 9, 15, 19

Matter of Walion v. New York State &
Local Police & Fire Retirement Sys.,
118 AD3d 1215 (2014) 9, 12

Ridge Road Fire Dist. v. Schiano,
16 NY3d 494 [2011] 10

Statutes

CPLR § 5602.....5

Retirement and Social Security Law § 363 .....3, 4

RSSL § 363(a).....7

STATEMENT OF RELATED CASES

The present appeal to the Court of Appeals concerns Franco Compagnone v. Thomas P. DiNapoli as State Comptroller, (Index No. 907212-20).

An appeal was taken to the Appellate Division, Third Department (Case No. 533530).

QUESTION PRESENTED

1. Did the Appellate Division err in concluding that substantial evidence supported the Respondent Comptroller's determination that an injury caused by Appellant's fall into a three-foot-deep hole in the ground was not accidental, i.e., a sudden, fortuitous mischance, unexpected, out of the ordinary and injurious in impact?

   The Court erred in so holding.

PRELIMINARY STATEMENT

The Appellant, Franco Compagnone, hereinafter mentioned, "Appellant," was a member of the New York State and Local Employees' System ("Retirement System" or "System"), assigned Registration Number 0A799593 by virtue of his employment and service as a police officer with the City of Rye Police Department.

The Respondent, Thomas. P. DiNapoli, as State Comptroller, hereinafter mentioned, "Respondent," is charged with the responsibility of administering the applicable Retirement Systems for New York State employees, including applications filed for Accidental Disability Retirement benefits.

Appellant police officer Franco Compagnone became permanently incapacitated due to injuries sustained at work on October 27, 2013, and June 6, 2016. At the time of the incident of October 27, 2013, the Appellant was investigating a suspicious light coming from a residence which was under

construction at approximately 1:00 a.m. in performance of his duties as a patrol officer. As Appellant walked alongside the house, he suddenly and unexpectedly fell into a three-foot-deep hole in the ground.

The Appellant in this case contends that the Respondent's determination in denying his application for accidental disability retirement benefits was not supported by substantial evidence and is contrary to case law that would otherwise support his application for benefits. In that vein, the Respondent's determination was arbitrary and capricious and, as will be shown, was based upon loose application of case law. The rationale as also adopted by the Third Department in this case renders any injury involving a fall while conducting an investigation in the dark to be non-accidental. For the reasons set forth below, Appellant respectfully requests that the Opinion and Judgment of the Appellate Division be reversed, the Respondent's determination be annulled, and the matter remitted to the Respondent Comptroller for further proceedings.

PROCEDURAL HISTORY

On or about August 29, 2016, Appellant filed an application for Accidental Disability Retirement pursuant to Retirement and Social Security Law (hereinafter, "RSSL") Section 363. Said application alleged a permanent disability as a result of injuries sustained at work on October 27, 2013 and June 6, 2016 (see R. 123-126).

By determination dated April 10, 2017, the New York State and Local Police and Fire Retirement System denied the Appellant's application for Accidental Disability Retirement on the grounds that the incidents alleged to have occurred on October 27, 2013 and June 6, 2016 did not constitute "accidents" as the term is used in RSSL §363 (see R. 127-128).

Thereafter, Appellant subsequently filed a timely request for a hearing and redetermination of the determination.

A hearing was held in connection with this matter on June 18, 2019, where exhibits were entered into evidence, and the Appellant gave testimony at said hearing. The issue was whether the incidents of October 27, 2013 or June 6, 2016 constitute "accidents" as that term is used in the RSSL (see R. 75-122).

On October 1, 2019, a Hearing Officer appointed by the Comptroller, found that the incidents of October 27, 2013 and June 6, 2016 do not constitute "accidents" as that term is used in Section 363 of the RSSL and recommended denial of the Appellant's underlying application (see R. 46-57).

On January 3, 2020, the Executive Deputy Comptroller issued its final determination denying Appellant's application for Accidental Disability Retirement (see R. 19-30).

On November 15, 2020, Appellant filed and served a petition pursuant to Article 78 to review and annul the determination made by the Executive Deputy Comptroller (see R. 8-18, excluding exhibits).

By Order of Hon. Jonathan D. Nichols dated March 29, 2021, this matter was then transferred to the Third Department (see R. 2-4).

By Opinion and Judgment dated January 26, 2023, the Third Department held that the Respondent Comptroller's findings were supported by substantial evidence and adjudged that the determination is confirmed, and the petition was dismissed (see R. 184-190).

This Appeal now ensues.

JURISDICTIONAL STATEMENT

The Court has jurisdiction to entertain this appeal pursuant to CPLR 5602, based upon the Decision and Order on Motion which granted permission to appeal to this Court (see R. 191). Although this matter ultimately presents one question – i.e., whether the Respondent's determination was supported by substantial evidence, the underlying issues for this Court to resolve are:

1. What test or tests should be used to determine whether an incident meets the criteria for an "accident" within the meaning of the RSSL?
2. Does substantial evidence support the Respondent's determination that the incident of October 27, 2013, whereby Appellant fell into a hole described as

waist deep, while conducting an investigation in the dark, was not accidental? This issue was raised below and is preserved for the Court's review (see R. 12-16).

3. Did the Respondent loosely apply case law involving another officer who trips on an unseen condition while engaged in an investigation as the predicate for denying the Appellant accidental disability retirement benefits? This issue was raised below and is preserved for the Court's review (see R. 13-14).
4. Did the Respondent err in disregarding the nature of the unseen condition, and in doing so, wrongfully impute knowledge upon the Appellant that he should have reasonably anticipated falling into a three-foot-deep hole? This issue was raised below and is preserved for the Court's review (see R. 14).

STATEMENT OF FACTS

With respect to the incident of October 27, 2013, Appellant testified that he served as a patrol officer on the midnight shift, which ran from midnight until 8:00 a.m. (R: 93). At approximately 1:00 a.m., while on patrol. Appellant saw a light on the 2nd floor of a house he knew was under construction and empty (R: 93-95). Appellant testified that it was dark and there were no streetlights in the vicinity of the house (R: 95-96).

Appellant walked around the perimeter of the house while shining his flashlight at the second floor where he had seen the suspicious light (R: 94-95).

Appellant had never been to the residence before, other than when he drove by (R: 96). Appellant looked down at the ground "every couple steps" as he walked around the house (R: 114). Appellant testified that as he reached the east side of the house, "all of a sudden, I found myself in a hole unexpectedly" (R: 95). Further, Appellant testified that he was looking up, attempting to see if anyone was in the home, because the light was on (R: 111).

With respect to the area around the hole, Appellant testified that there were no construction barriers, no cones, no netting, "nothing to obstruct any person from avoiding that hole that was dug" (R: 97). Appellant described the hole as deep enough that when he tried to stand up, "it was to my waist, 3 feet and the length was enough for me to be totally submerged into it, totally, my whole body, and I'm 6 feet tall" (R: 97-98).

LEGAL STANDARDS

Under Section 363(a) of the RSSL, a member of the police and fire retirement system "shall be entitled to an accidental disability retirement allowance if, at the time the application is filed, he [or she] is "(1) "physically or mentally incapacitated for performance of duty as the natural and proximate result of an accident not caused by his [or her] own willful negligence sustained in such service and while actually a member of the policemen's and firemen's retirement system" and (2) was within service for any portion of the preceding two years.

This Court has "defined an accident as a 'sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact"' (Matter of Kenny v DiNapoli, 11 NY3d 873, 874 (2008) [citation omitted]). "According to this definition, an injury which occurs without an unexpected event as the result of activity undertaken in the performance of ordinary employment duties, considered in view of the particular employment in question, is not an accidental injury" (Matter of Lichtenstein v Board of Trustees of Police Pension Fund of Police Dept. of City of N.Y., Art. II, 57 NY2d 1010, 1012 [1982]).

The applicant bears the burden of establishing that the injury was the result of an accident (see Matter of McCambridge v McGuire, 62 NY2d 563, 567 [1984]). The Comptroller's determination that an injury was not the result of an accident may be reversed if not "supported by substantial evidence in the record" (Matter of Kenny v DiNapoli, 11 NY3d at 875).

For the reasons that follow, the Respondent's determination is unsupported by substantial evidence and the judgment of the Appellate Division should be reversed.

ARGUMENT

POINT I

THE INCIDENT OF OCTOBER 27, 2013 CONSTITUTES AN ACCIDENT AS THAT TERM IS USED UNDER THE RSSL

As the Court of Appeals has made clear, in order to find that an Appellant has suffered an accident for the purposes of accidental retirement disability benefits, it

is "critical" that the "precipitating accidental event" of an Appellant's injuries is "not a risk of the work performed" by him or her. Matter of McCambridge v McGuire, 62 NY2d 563, 568 (1984); see Matter of Mirrer v Hevesi, 4 AD3d 722, 723 (2004); Matter of Jonigan v McCall, 291 AD2d 766, 766 (2002). Therefore, to constitute an accident, "the event must arise from risks that are not inherent to Appellant's regular employment duties". Matter of Roberts v DiNapoli, 117 AD3d 1166, 1166 (2014); see Matter of Walion v New York State & Local Police & Fire Retirement Sys., 118 AD3d 1215, 1216 (2014). Finally, an Appellant bears the burden of proving that his or her injuries were the result of an accident (see Matter of Walion v New York State & Local Police & Fire Retirement Svs., 118 AD3d at 1215).

The Third Department ruled that an incident would be expected, and thus, not an accident, if it could be reasonably anticipated because the officer had direct knowledge of the hazard. (Matter of Stancarone v. DiNapoli, 161 AD3d 144 [3d Dept 2018]). The Court further held that for an event to be expected (and therefore not an accident) the record must contain specific information from which it could be found that a person in the applicant's position and location could or should have reasonably anticipated the hazard (*Id.*).

In the instant case, Appellant could not have reasonably known that there would be a man-made hole in the ground that was large enough to submerge his whole body. Yes, it was a construction site, but it wasn't a war zone. Constructions

sites are generally subject to safety laws at the local, state and federal level. The fact that this hole was not sectioned off or made safe is substantial evidence that falling into that type of hole could not have been anticipated. There were no barriers in place to protect him or anyone else from falling into that hole. There was no safety tape and no sawhorses.

As an applicant for accidental disability retirement benefits, "[petitioner bears the burden of demonstrating that his disability arose out of an accident as defined by the Retirement and Social Security Law, and [respondent's] determination in that regard will be upheld if supported by substantial evidence" (Matter of Bodenmiller v. DiNapoli, 157 AD3d 1120, 1121 [2018] [internal quotation marks and citations omitted]).

As is the case herein, the Hearing Officer's decision and Respondent's final determination is not supported by substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion (Ridge Road Fire Dist. v Schiano, 16 NY3d 494 [2011]); Matter of Miller v DeBuono, 90 NY2d 783 [1977]). It is a lesser standard than a preponderance of the evidence or evidence beyond a reasonable doubt (300 Gramatan Ave. Assoc. V State Div. of Human Rights, 45 NY2d 176, 180-181 [1978]). Similarly, whether the agency's determination has a rational basis is a question of reasonableness.

The Respondent adopted the finding that the incident of October 27, 2013 was not an accident under the RSSL. Although it is reasonable to encounter construction materials and debris at a construction site, those were not the cause of the Appellant's incident. The hole that Appellant fell into was described as waist deep, three feet deep, three feet wide and approximately 6 feet in length. There were no barricades, cones or netting to warn or prevent any person from falling into the hole. The circumstances were such that the Appellant was by himself at 1:00 am in a residential area with no streetlights, it was very dark and he used his flashlight to look into the second floor to see if anyone was in the house. Although the Appellant looked at the ground every couple of steps to see where he was going, he had to be on high alert for any suspicious persons or activity in the home he knew was under construction. The Appellant had never been on the property before, although he drove past it prior to the date of the incident.

Taken together, the facts do not amount to substantial evidence that the Appellant could have reasonably anticipated falling into a massive hole which left him waist deep upon falling in. Even where it can be reasonably anticipated that there may be a hole dug at a construction site, the homeowners and/or contractors were negligent in creating an unreasonably hazardous condition by not making the area reasonably safe, i.e., barricades or cones. A reasonable person would expect a hole of that depth and dimensions to be barricaded or surrounded by cones or have

any other indication or warning. Based on Appellant's testimony, there was nothing to obstruct any person from avoiding that hole.

In the decision adopted by the Respondent, the Hearing Officer incorrectly relies upon the case of Matter of Walion v. New York State & Local Police & Retirement System, 118 AD3d 1215, 1215-1216 (3d Dept 2014). There, a police officer stumbled on unlit steps during an investigation. Based on these facts, the Third Department confirmed that the incident did not constitute an accident and holding that the risk an officer may trip on an unseen condition while engaged in such investigation is not unforeseen, but rather is an inherent risk of the officer's employment duties. That case should be distinguished from the case at bar because the Appellant did not merely trip on construction materials or debris. The Appellant fell into a massive hole that was not warded off at all. Hence, where it is reasonable to anticipate stumbling on unlit steps, the hole in this case, albeit on a construction site, was large enough to submerge the Appellant waist deep and long enough that he could lie down in the hole. A reasonable person could not accept the facts in this case as adequate to support the conclusion that Appellant should have anticipated the hazardous hole. Moreover, each case requires a fact-specific inquiry, and the Hearing Officer loosely applied the facts from *Matter of Walion* to the case at bar.

In the case of Cuccia v. New York Employees' Retirement System, 113 N.Y.S. 3d 827 (2019), the Court found that a sanitation worker whose foot got caught in a

crack in a sidewalk was entitled to accidental disability retirement benefits as the crack in the sidewalk was not known to him or expected. The Court found that the Appellant's injury was an accident since it was unexpected, out of the ordinary and injurious upon impact. And finally, the Court concluded that the Respondent's determination was not based on substantial evidence to the extent that it was not supported by adequate proof that the crack was sufficiently visible to render the Appellant's fall as occurring in the ordinary course of his duty. Similar to the case herein, Appellant did not have knowledge of the massive hole he fell into. He did not have a reasonable expectation that a hole of that magnitude (3 feet deep x 3 feet wide x 6 feet long) would be present and unguarded and unsecured. Further, the hole was not visible given the time of night (1:00 a.m.). There were no streetlights in the vicinity and the situation did not permit the officer to look down because he had to keep his sights on the 2nd story of the house. Therefore, it was an abuse of discretion to disregard the size of the hole and whether it was sufficiently visible to render the Appellant's fall as occurring in the ordinary course of his duty.

POINT II

THE APPELLATE DIVISON DECISION PRODUCES THE FLAWED RESULT THAT POLICE OFFICERS WHO BECOME PERMANENTLY DISABLED DUE TO ANY UNSEEN CONDITION IN THE DARK ARE NOT ENTITLED TO ACCIDENTAL DISABILITY BENEFITS

With regards to the incident of October 27, 2013, the Third Department determined that "As petitioner's regular employment duties included conducting

investigations in the dark, the risk that he might fall due to an unseen condition while engaged in such activity is an inherent risk of that employment; thus substantial evidence supports respondent's finding that this incident did not constitute an accident within the meaning of the Retirement and Social Security Law (citations omitted)." (see R. 189). In determining that the 2013 incident is not an accident, the Third Department did not consider the nature of the "unseen condition", even though the Court acknowledged that the petitioner "fell in a three-foot-deep hole in the ground that had been dug alongside the house" (Id.). The Third Department decision recognized that an inherent risk cannot be deemed "unexpected" (citing Matter of Kelly v. DiNapoli, 30 NY3d at 683). (Id., at footnote 2). However, the Court falls short of assessing whether falling into a three-foot-deep hole in the ground is an inherent risk.

In this context, Appellant agrees that conducting investigations in the dark is a part of his regular employment duties. However, not every fall while conducting an investigation in the dark is expected and also an inherent risk of the employment. By not considering the nature of the unseen condition, the Third Department may as well find that if the Appellant had stepped on a land mine, it would not have been an accident. What if the Petitioner stepped into a bear trap? Or fell into an uncovered manhole? Hence, the nature of the unseen condition must be an integral part of the test.

As the facts demonstrate that the Appellant was conducting an investigation on a residential construction site, an officer in the Appellant's position and location arguably could or should reasonably anticipate tripping and falling due to unseen hazardous conditions, such as construction materials and debris. Even if it can be determined that a three-foot-hole is common to a construction site, the facts that were overlooked and misapprehended by the Third Department are such that the hole was not sectioned off or made safe. Further, there were no barriers in place to protect the Petitioner or anyone else from falling into that hole. There was no safety tape and no sawhorses. There were no barricades, cones or netting to warn or prevent any person from falling into that hole. These were all facts established in the record but were not then considered by this Court as relevant for the purpose of determining whether the Appellant could or should have reasonably anticipated the hazard.

The Third Department cites to the matter Matter of Stancarone v. Dinapoli, 161 Ad3d 144 (3rd Dept 2018), which holds that for an event to be expected (and therefore not an accident) the record must contain specific information from which it could be found that a person in the [Appellant's] position and location could or should have reasonably anticipated the hazard. The Third Department did not apply this test to the unique facts surrounding the event of October 27, 2013. In applying this test, the nature of the unseen condition or hazard should have been a key element in determining whether the Appellant could or should have reasonably anticipated

the hazard. Furthermore, there is no specific information from which it could be found that Appellant could or should have reasonably anticipated the hazard. Rather, the Respondent summarily concluded that because falling due to an unseen condition is an inherent risk of conducting an investigation in the dark, the incident involving Appellant is not an accident.

As indicated by the Third Department decision in this matter, the manner and degree to which a petitioner's knowledge affects the analysis is also in question (see R. 187). In *Matter of McCambridge*, the Court held that an officer entering a car during a rainstorm and slipping on water had encountered a precipitating event outside the risks of the work performed as a matter of law. However, in Matter of Kenny v. Dinapoli, 11 NY3d 873 (2008), the Court held that where a police detective slipped on a wet ramp while exiting a restaurant was not an accident as the detective knew that the ramp was wet and therefore knew of the hazard that led to his injury before the incident occurred. As the Third Department decision points out, the same can be said of the officer in the *Matter of McCambridge*, such that there can be little doubt that the officer knew, or should have known, that the pavement was wet and slippery (see R. 188; and at footnote 1). And yet, McCambridge is still good law and has not been overturned. Accordingly, the Third Department decision indicates "whether and to what degree a petitioner's job assignment, actual knowledge, and

readily imputable knowledge affect the inquiry are all questions which remain, without clear answers" (see R. 188).

Recently, in Matter of Vito Castellano v. Thomas P. DiNapoli, the Third Department held that the Respondent's finding that the incident where police officer slipped on black ice was not an accident was not supported by substantial evidence. The facts of that case are such that "As petitioner exited his vehicle, he slipped on what he later described as black ice and sustained injuries. Petitioner testified that, although it was cold and blustery at the time of his fall, it was not raining or snowing, and he did not recall any precipitation occurring in the days prior to the incident. As petitioner was focused on "[o]bserving the scene," he also did not recall looking down at the surface of the parking lot prior to exiting his patrol vehicle." Castellano v. DiNapoli, 197 A.D.3d 1478, 1480, 154 N.Y.S.3d 170, 172 (2021). Nonetheless, the Court found "absent some indication of meteorological conditions that would be amenable to the presence or formation of black ice, respondent's determination – that petitioner could have reasonably anticipated the slippery condition that he encountered at the time of his fall – is not supported by substantial evidence. (Id, at 170, 173).

Similar to Appellant Compagnone in this case, Appellant police officer Vito Castellano's incident also occurred at night and the facts of that case demonstrate the parking lot where he slipped and fell due to an unseen condition (black ice) was

poorly illuminated (*Id.*, at 172). As decided by the Third Department in this case, the takeaway is that any fall due to an unseen condition is an inherent risk of conducting an investigation in the dark and because an inherent risk cannot be unexpected, the Third Department in this case affirmed the Respondent's determination. However, if that is the takeaway, then that would be inconsistent with holding in *Castellano v. DiNapoli.*

In reconciling these two decisions, this Court should find that absent some evidence in this case record that Appellant could have reasonably anticipated the hazardous condition of a three-foot-deep hole that he encountered at the time of his fall – the Respondent's determination was without substantial evidence and must be overturned. As previously argued, there was no indicia that a hole of that size and magnitude would be present at the residential construction site. Based on the size of the hole and the danger it presented, it would not have been reasonable for a similarly situated police officer to anticipate the hazard. This is especially the case as the hole was not barricaded or surrounded by any safety tape or the like to prevent someone from falling in the hole. Moreover, there is no evidence in the record to suggest that the nature of the unseen condition is something that is common for a construction site or that the Appellant knew or should have known he could fall into a hole that would land him waist deep.

CONCLUSION

Given the attendant circumstances of the incident in question were highly unusual, unsafe, and irregular, and that the Third Department did not seemingly apply the standard set forth in Stancarone v. Dinapoli, and for all the aforementioned reasons, it is respectfully submitted that the Opinion and Judgment of the Appellate Division should be reversed. Moreover, the Appellant's petition should be granted with costs, the Respondent's determination be annulled, and an order be entered adjudging and declaring Appellant entitled to accidental disability retirement benefits, and for such other and further relief as this Court deems just and proper.

Dated: White Plains, New York
February 9, 2024

Respectfully submitted,
Schwab & Gasparini, PLLC.

By: Victor Aqeel

Victor Aqeel, Esq.
Appellate Counsel to Petitioner-Appellant
222 Bloomingdale Road, Suite 200
White Plains, NY 10605
(914) 874-5255

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR § 500.13(c) that the foregoing brief was prepared on a computer.

A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman

Point size: 14

Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of the statement of the status of related litigation; the corporate disclosure statement; the table of contents, the table of cases and authorities and the statement of questions presented required by subsection (a) of this section; and any addendum containing material required by § 500.1(h) is 4,235.

Dated: February 9, 2024
White Plains, New York

Respectfully submitted,
Schwab & Gasparini, PLLC.

By: Victor Aqeel

Victor Aqeel, Esq.
Appellate Counsel to Petitioner-Appellant
222 Bloomingdale Road, Suite 200
White Plains, NY 10605
(914) 874-5255

Prepared by PrintingHouse Press, Ltd. 10 East 39th Street, New York, NY 10016
Tel No: (212) 719-0990 Fax No: (212) 398-9253

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS

James Pacheco, Being duly sworn, deposes and says that deponent is not party to the action, and is over 18 years of age.

That on 2/9/2024 deponent caused to be served 3 copy(s) of the within

Appellant's Brief

upon the attorneys at the address below, and by the following method:

By Overnight Delivery

LETITIA JAMES
ATTORNEY GENERAL OF THE
STATE OF NEW YORK
Attorneys for
Respondent-Respondent
28 Liberty Street
New York, New York 10005
212-416-8000
appeals.nyc@ag.ny.gov

Sworn to me this
Friday, February 9, 2024

KEVIN AYALA
Notary Public, State of New York
No. 01AY6207038
Qualified in New York County
Commission Expires 7/13/2025

Case Name: Franco Compagnone v. Thomas P. DiNapoli (2)

Docket/Case No: APL-2023-00083

Index: 907212/2020, App. Div. Case No. 53350