

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

TARGET #1268,

Petitioner,

DECISION/ORDER/JUDGMENT

-against-

Index No. 900775-2015
RJI No. 01-15-117674

THE BOARD OF ASSESSORS AND/OR
THE ASSESSOR OF THE TOWN OF COLONIE,
AND THE BOARD OF ASSESSMENT REVIEW,

Respondents.

To Review Real Property Assessment Pursuant to
Article 7 of the Real Property Tax Law

(Supreme Court, Albany County, Special Term)

(Hon. Margaret T. Walsh, Acting Supreme Court Justice, Presiding)

APPEARANCES:

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Walsh, J.:

The Petitioner commenced this proceeding pursuant to Real Property Tax Law (RPTL) article 7 challenging the assessment on the petitioner's property for the year 2015. A bench trial was held on January 23 and 24, 2017. Post-trial memoranda of law with proposed findings and conclusions from counsel were fully submitted as of May 17, 2017.

The parties stipulated to the following: (1) standing of the Petitioner to bring these proceedings; (2) the jurisdiction of the Court to hear and determine the proceeding; (3) that the property subject is the Target store located at the Northway Mall, identified on the Respondents' tax rolls as Section 42.13, Block 3, Lot 5.2; (4) that the assessed value of the property on the tax status date of March 1, 2015 was \$7,900,000 which indicates a market value of \$11,660,517; (5) that the equalization rate for said year was 67.75%; (6) that the Petitioner's appraiser and Respondents' appraiser are both licensed in New York State and are duly qualified as experts in the field of real estate appraisals; and (7) to the receipt of the Petitioner's appraisal report (Petitioner's Exhibit 1) and the Respondents' appraisal report (Respondent's Exhibit A) in evidence, subject to cross-examination and reserving the parties' respective rights to strike. The only witnesses to testify at the non-jury trial were the parties' appraisers: Chris L. Harland for the Petitioner, and John F. O'Neill for the Respondents. The appraisers provided their opinions and conclusions on the subject of fair market value (FMV) as compared to the assessed value of the property, which the Court summarizes as follows:

<u>Year</u>	<u>Assessed Value</u>	<u>Equalization Rate</u>	<u>FMV</u>	<u>Petitioner's</u>	<u>Respondents'</u>
2015	\$7,900,000	67.75%	\$11,660,517	\$6,400,000	\$14,500,000

The Court has carefully considered the testimony and exhibits received in evidence and makes the following findings and determination. In tax certiorari proceedings such as this, "tax

assessments enjoy a presumption of validity” (*Matter of Rite Aid of N.Y. No. 4928 v. Assessor of Town of Colonie*, 58 AD3d 963, 964, *app denied*, 12 NY3d 709 [2009]; and see, *Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack*, 92 NY2d 179, 187, 677 NYS2d 269 [1998]; *Matter of Home Depot U.S.A. v. Assessor of the Town of Queensbury*, 129 AD3d 1427, 1427 [3d Dept. 2015]; *Matter of Friar Tuck Inn of the Catskills, Inc. v. Town of Catskill*, 2 AD3d 1089, 1090 [3d Dept. 2003]). To overcome this presumption, a petitioner must come forward with “substantial evidence” that the property at issue is overvalued (see, *Matter of Kohl’s Ill., Inc. #691 v. Board of Assessors of the Town of Clifton Park*, 123 AD3d 1315, 1316 [3d Dept. 2014]). The Third Department has summarized the threshold inquiry as follows:

If... the petitioning taxpayer comes forward with substantial evidence to the contrary, the presumption of validity disappears...[T]he substantial evidence standard requires the petitioner to demonstrate nothing more than the existence of a valid and credible dispute as to the underlying valuation. Thus, in resolving this threshold inquiry, a court’s function is not to assess the merits of the petitioner’s arguments or to weigh the evidentiary value of the parties’ respective submissions, but, rather, to simply determine whether the documentary and testimonial evidence proffered by [the] petitioner is based on sound theory and objective data...rather than on mere wishful thinking. Such objective data may include...a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser.

(*Matter of AG Props. of Kingston, LLC v. Town of Ulster*, 138 AD3d 1273, 1274 [3d Dept. 2016], quoting *Matter of Ulster Bus. Complex v. Town of Ulster*, 293 AD2d 936, 938 [3d Dept. 2002]). Once a petitioner meets the threshold burden, the presumption of validity disappears (*Matter of Kohl’s Ill., Inc. #691 v. Board of Assessors*, 123 AD3d at 1316, citing *Matter of FMC Corp. (Peroxygen Chems. Div.) V. Unmack*, 92 NY2d at 187), and the court must then “weigh the entire record, including evidence of claimed deficiencies in the assessment, to determine whether petitioner has established by a preponderance of the evidence that its property has been overvalued” (*Matter of Kohl’s Ill., Inc. #691 v. Board of Assessors of the Town of Clifton Park*, 123 AD3d at 1316,

quoting *Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack*, 92 NY2d at 188; see also, *Matter of George A. Donaldson & Sons, Inc. v. Assessor of the Town of Santa Clara*, 135 AD3d 1138, 1140 [3d Dept. 2016]).

At the close of Petitioner's case, the Respondents moved to dismiss for Petitioner's failure to adduce sufficient evidence to rebut the presumption. The Respondents argue that the Petitioner's appraisal report is deficient because Mr. Harland, in his analyses, utilized the sales of vacant properties and "inadequately adjusted, markedly dissimilar leases" in his methodologies to arrive at his ultimate expert opinion as to the fair market value of the property's fee simple interest. The Respondents contend that Mr. Harland therefore failed to employ "sound theory" or "objective data" sufficient to overcome the presumption of validity. "Substantial evidence is a minimal threshold demonstrating 'a valid and credible dispute regarding valuation'" (*Matter of George A. Donaldson & Sons, Inc. v. Assessor of the Town of Santa Clara*, 135 AD3d at 1140, quoting *Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack*, 92 NY2d at 187) and can be met with the proffering of "a detailed, competent appraisal based on standard, accepted appraisal techniques and prepared by a qualified appraiser" (*id.*, quoting *Matter of Niagara Mohawk Power Corp. v. Assessor of Town of Geddes*, 92 NY2d 192, 196 [1998]). The appraisal is to be disregarded where it fails "to adequately 'set forth the facts, figures and calculations supporting the appraiser's conclusions'" (*Matter of Board of Managers of French Oaks Condominium v. Town of Amherst*, 23 NY3d 168, 178 [2014]). A review of Mr. Harland's written appraisal and of his testimony shows that he employed the sales comparison approach and income capitalization approach—both long-accepted methodologies—in rendering his opinion as to the fair market value of the subject property. That Mr. Harland utilizes the sales of vacant property to the exclusion of properties with commercial leases for his sales comparison approach and, for his income capitalization approach, utilizes second-

generation leases which the Respondents opine are dissimilar, go to the weight to be accorded to his appraisal report, as opposed to the report's validity (see, *Matter of Eckerd Corp. v. Burin*, 83 AD3d 1239, 1242 [3d Dept. 2011]; cf., *Matter of Rite Aid Corp. v. Haywood*, 130 AD3d 1510, 1514-1515 [4th Dept. 2015], *lv denied*, 26 NY3d 915 [2016]). Mr. Harland's methodologies and employment of particular data in support of his conclusions and valuations have been "previously reviewed and accepted" (*id.*; and see, *Matter of Home Depot U.S.A., Inc. v. Assessor of the Town of Queensbury*, and see, *Matter of Home Depot U.S.A. v. Assessor of the Town of Queensbury*, 129 AD3d at 1429, citing *id.*; *Matter of Rite Aid of N.Y. No. 4928 v. Assessor of Town of Colonie*, 58 AD3d at 966; *Matter of Brooks Drugs, Inc. v. Board of Assessors of City of Schenectady*, 51 AD3d 1094, 1095 [2008]; *Matter of Eckerd Corp. v. Semon*, 44 AD3d 1232, 1234 [3d Dept. 2007]). Because his report "was [largely] supported by ascertainable and verifiable data" (*Matter of Eckerd Corp. v. Burin*, 83 AD3d at 1242, citing *Matter of Ames Dept. Stores v. Assessor of Town of Greenport*, 276 AD2d 890, 892 [2000]; and see, *Matter of Board of Managers of French Oaks Condominium v. Town of Amherst*, 23 NY3d at 177 [appraiser must 'prove' facts relied upon with confirmable data]), the Petitioner has met its threshold burden to overcome the presumption of validity of the assessment. The Court therefore denies the Respondents' motion.

The Court now turns to the question of whether the Petitioner met its burden of establishing by a preponderance of credible evidence that the property is overvalued (*Matter of Friar Tuck Inn of the Catskills, Inc. v. Town of Catskill*, 2 AD3d at 1090, citing *Matter of Villa Roma Country Club v. Fulton*, 301 AD2d 911, 911-912 [3d Dept. 2003]). The property is owner-occupied and consists of a 10.90 acre parcel improved with a 124,224 +/- square foot "big box" retail building together with an asphalt parking lot covering over 225,000 square feet. The property was developed in the year 2000 to the specifications of the Petitioner for the purpose of operating a retail store, which was

its use as of the July 1, 2014 valuation date. The property is situated within the Northway Mall Shopping Center in an established commercial location on Central Avenue.

“[V]alue is to be determined on the basis of the condition of the subject property according to its state on the taxable status date, [and] not on the basis of some use contemplated in the future” (*Matter of General Motors Corp. Central Foundry Div. v. Assessor of Massena*, 146 AD2d 851, 852 [3d Dept. 1989], citing *Matter of Adirondack Mountain Reserve v. Board of Assessors*, 99 AD2d 600, *aff'd* 64 NY2d 727). “A recent arm’s length sale of the subject property is the best evidence of value; however, absent that, the traditional valuation methods are comparable sales, income capitalization and reproduction costs” (*Matter of Lowe’s Home Ctrs., Inc. v. Board of Assessment Review*, 106 AD3d 1306, 1307 [3d Dept. 2013], citing *Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack*, *supra* at 189; see also, *Matter of Ace Hardware Corp. v. Little*, 63 AD3d 1345, 1347 [3d Dept. 2009]). Of the latter three methods, the market value approach is often preferred and may be the most reliable measure of a property’s full value for assessment purposes (*id.* at 1307, quoting *Matter of Allied Corp. v. Town of Camillus*, 80 NY2d 351, 356 [1992]; see also, *Saratoga Harness Racing v. Williams*, 91 NY2d 639, 643 [1998]; *Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack*, *supra* at 189; *Lehigh Portland Cement Co. v. Assessor of the Town of Catskill*, 263 AD2d 558, 561 [3d Dept. 1999]). “[M]arket value may be determined with evidence of ‘recent sales of comparable properties’” which “may even lie outside of the local market of the subject property when evidence indicates that a broad regional market exists” (*Matter of FMC Corp. [Peroxygen Chems. Div.] v. Unmack*, *supra* at 189, quoting *Matter of General Elec. Co. v. Town of Salina*, 69 NY2d 730, 731). A comparable sale does not need to be identical to the subject property. It “need only be ‘sufficiently similar to serve as a guide to the market value of the [subject property], notwithstanding differences between [the] comparables and the [subject] property’” (*Matter of FMC*

Corp. [Peroxygen Chems. Div.] v. Unmack, supra at 189, quoting *Matter of General Elec. Co. v. Town of Salina*, 69 NY2d at 732). “The determination of market value essentially is a question of fact” left to the sound determination of the trial court (*Saratoga Harness Racing v. Williams*, supra at 646-647, quoting *Matter of W.T. Grant Co. v. Sgroi*, 52 NY2d 496, 510-511 [1981]; *Matter of Home Depot U.S.A., Inc. v. Assessor of the Town of Queensbury*, 129 AD3d at 1429-1430).

For the sales comparison approach, Mr. Harland used five properties located in the following areas: Malta, New York; Clay, New York; Canandaigua, New York; North Adams, Massachusetts; and Lancaster, New York. Each of these properties is situated in other regions both in and outside of the state; Mr. Harland does not refer to any transactions based in Albany County. Four out of the five properties are improved with buildings of less than 100,000 square feet, with two being significantly smaller than the subject (Malta at 21,089 sq/ft, and Lancaster at 55,800 sq/ft). Additionally, all of the properties were vacant at the time of sales, unlike the subject property, which is occupied and operating as a retail store. Mr. Harland made some adjustments to account for location, size and visibility and arrived an average adjusted price per square foot of \$40.47, which he then adjusted further to \$50.00 per square foot, yielding a value (rounded) of \$6,230,000 as of the taxable status date. In support of his conclusions, Mr. Harland also refers to sales of “former Target store properties” around the country ranging from \$2,600,000 to \$5,300,000 (Petitioner’s Exh. 1, pp. 56-58). In contrast, Respondents’ expert, Mr. O’Neill, utilized sales of similar commercial properties located within the Capital District area, including one located in the same retail corridor as the subject property (Respondents’ Exh. A, pp. 86-110). Mr. O’Neill testified that, for his comparables, he would not use a property that was vacant for an extended period of time because vacancy affects marketability. Mr. O’Neill further noted that the sales of these properties included leases and one lease buyout—in other words, that almost all of his comparables were purchased for the purpose of

operating box retail stores, which is the way the subject property was being utilized on the valuation date (see, RPTL §302[1]; *Matter of Peaceful Val. Land Stewardship, LLC v. Johnson*, 132 AD3d 999, 1001 [2d Dept. 2015]). Based on his sales comparison approach, Mr. O'Neill arrived at an average per square foot of \$124.10 after adjustments and ultimately opined that the market value of the subject property was \$120.00 per square foot, or \$14,906,880, rounded to \$14,900,000 under this methodology. In support of his conclusion, Mr. O'Neill accorded the most weight to sales comparable number one—a BJ's Wholesale Club which sold for \$12,000,000—which was similar in size to the subject property and the sale of which was proximate to the taxable status date of the subject property but located in a somewhat less desirable area. The Court has carefully weighed the foregoing proof offered by both experts and ultimately credits the data utilized by and conclusions reached by Mr. O'Neill as being more reliable in establishing a fair market value for the subject property. While “the law contemplates that comparable sales will have differences from the subject property” (*Matter of Gordon v. Town of Esopus*, 31 AD3d 981, 982 [3d Dept. 2006]), the Court is unpersuaded by Mr. Harland's use of dissimilar, vacant properties located outside of the region in establishing a value for the subject property (see, *Matter of Lia v. Town of Niskayuna*, 300 AD3d 876, 878 [3d Dept. 2002]; *Matter of City of Troy v. Kusala*, 227 AD2d 736, 739-740 [3d Dept. 1996])[“comparables should be in close geographic proximity to the property being appraised”]; compare, *Matter of United Parcel Service v. Assessor of Town of Colonie*, 42 AD3d 835, 838 [3d Dept. 2007])[petitioner's expert utilized sales of similar properties located within same town and county as subject property which use and analysis was credited by court]). The subject property is occupied by a visually-appealing, Class A big box structure in a heavily trafficked prime location, unlike the properties utilized by Mr. Harland. Moreover, Mr. Harland does not provide any underlying data for any of the former Target store transactions to which he refers in his report, noting

only that he spoke with an unidentified Target representative on an unknown date. It is therefore not possible to confirm whether, for example, the sales were at arm's length or to verify any other particular circumstance of each transaction (see, *Matter of United Parcel Service v. Assessor of Town of Colonie*, 42 AD3d 835, 837 [3d Dept. 2007]). In summary, the Court finds that the comparables used by Mr. O'Neill are much more similar to the subject property and are, accordingly, more credible in establishing a fair market value for the subject property.

The parties' experts also utilized the income capitalization approach for valuation of the subject property. "The income capitalization approach calls for an estimation of a property's income potential; here, both appraisers looked at comparable leases to determine the property's market rent and then, using a capitalization rate, calculated the present value of that amount" (*Matter of Eckerd Corp. v. Semon*, 35 AD3d 931, 934 [3d Dept. 2006], citing *Matter of New Cobleskill Assoc. v. Assessors of Town of Cobleskill*, 280 AD2d 745, 746, *lv denied* 96 NY2d 715 [2001]). As the subject property is owner-occupied, "the key to this methodology in the context of an owner-occupied property...is the selection of comparable rental properties to determine the instant property's estimated market rent" (*Matter of Norton Co. v. Assessor of Watervliet*, 3 AD3d 760, 761 [3d Dept. 2004]; *Matter of Saratoga Harness Racing v. Williams*, 91 NY2d at 644). "The rubric is that 'market rent is the rental income that a property would most probably command in the open market' ... [and] should be determined by analysis of the rent paid for other comparable properties and then imputed to the subject property" (*Matter of Saratoga Harness Racing v. Williams*, *supra*, quoting Appraisal Inst., *Appraisal of Real Estate*, at 489 [11th ed]).

For the income capitalization approach, Mr. Harland employed a net rent analysis and gross rent analysis, utilizing the following rentals: Hobby Lobby in the Northway Plaza, Queensbury, New York; Bass Pro Shops located in the Riverside Plaza in Utica, New York; Big Lots located in The

Crossings in Clifton Park, New York; and Dick's Sporting Goods located in Crossgates Mall, Guilderland, New York. In his net rental analysis, after making some adjustments for location, visibility and size, Mr. Harland determined that the average adjusted rent per square foot to be \$5.59. Opining that retail tenants would be unwilling to pay a higher rent for Target-specific building improvements, Mr. Harland made a further downward adjustment in the average rent price to \$5.50 per square foot. Applying this rent to the square footage of the subject property (124,500), Mr. Harland concluded that the potential income is \$684,750. Mr. Harland then adjusted this amount downward to account for vacancy and collection loss (determined to be 7%), for an effective income of \$636,818. Mr. Harland deducted 7% of operating expenses (consisting of insurance, common area maintenance [CAM], and utilities) as well as other expenses to arrive at a net operating income of \$533,115. He divided this figure by an overall capitalization rate of 8.00% together with the 2015 equalized tax rate of 0.187% to arrive at a value (rounded) of \$6,510,000. Using the same comparable leases, Mr. Harland also undertook a gross rent analysis. This analysis assumed payment of actual real estate taxes by the owner, with taxes presumed to be fair and equitable. After applying the same adjustments for location, visibility and size, Mr. Harland determined the average price per square foot to be \$7.55. He calculated the potential gross income to be \$871,500, then deducted 7% for vacancy and credit loss for an effective gross income of \$810,495. Mr. Harland deducted 7% for insurance, CAM and utilities as well as other expenses, yielding an income of \$701,582. Dividing this amount by the 8% capitalization rate and 2015 equalized tax rate of 2.767%, Mr. Harland determined that the value (rounded) to be \$6,570,000 under the gross rent analysis. Mr. Harland accorded more weight to the gross rent analysis and opined that the value of the subject property was \$6,570,000 as of the valuation date. Mr. Harland reconciled both the sales comparison approach and income capitalization approach to arrive at a valuation of \$6,400,000 for the subject property as of

the valuation date.

Mr. O'Neill, the Respondents' expert, relied on leases for BJ's Wholesale Club in Rotterdam, New York; Bed, Bath & Beyond in Colonie; Shop Rite Supermarket in Colonie; Wal-Mart Store in the Bethlehem Town Center, Guilderland, New York; and Lowe's Home Improvement Center in Latham, Town of Colonie as his comparables in his income capitalization approach. He "made a survey of generally similar larger retail spaces in the subject's market area" (Respondent's Exh. A, p. 51). After making adjustments for location, quality of space and age/condition of building, Mr. O'Neill determined the rental rates of each lease and averaged them to be \$10.70 per square foot. Mr. O'Neill made a further downward adjustment, finding that a market rent of \$10.50 per square foot as of July 1, 2014 was supported by market data. Mr. O'Neill concluded that the potential annual gross rental income for the subject property was \$1,304,352. From this amount, Mr. O'Neill deducted real estate taxes—\$260,870, which he averaged from the assessments on the comparables at \$2.38 per square foot and then reduced to \$2.10 upon according greatest weight to another Target store in the same jurisdiction—to arrive at a total potential gross income of \$1,565,222. Mr. O'Neill did not attribute any vacancy rate, as his "review of the market area shows no vacancy for this type of use" (*id.*, p. 77). From the potential gross income, Mr. O'Neill deducted owner expenses, estimated to be \$65,525 per year as of the valuation date, yielding a net operating income of \$1,499,697. Mr. O'Neill determined that a capitalization rate of 8% was appropriate based upon his thorough and detailed analysis, to which he added a capitalization rate factor of 2.59% derived from the assessor's formula as of July 1, 2014 (tax rate of .03828 x equalization rate of 67.75%), for a total capitalization rate of 10.59%. Mr. O'Neill noted that the Petitioner is a major national credit tenant and that the subject property is considered low-risk. Applying the total capitalization rate of 10.59% to the net operating income of \$1,499,697, Mr. O'Neill determined the estimated market

value of the subject property to be (rounded) \$14,150,000, or \$113.91 per square foot. Mr. O'Neill reconciled the results from the income capitalization approach and sales comparison approach to arrive at a fair market value of \$14,500,000 as of the valuation date.

Upon weighing the experts' respective findings and conclusions, the Court determines that Mr. O'Neill's income capitalization analysis is more credible than that proffered by Mr. Harland. One key difference between the two analyses is the comparable leases utilized. The Court finds the lack of such comparables in or near the geographic area of the subject property in Mr. Harland's analysis renders his estimations unconvincing (see, *Matter of Great Atlantic & Pacific Tea Co. v. Kiernan*, 42 NY2d 236, 241-242 [1977]). Mr. O'Neill utilized lease comparables of properties located near the subject and, with one exception, that were of similar size.¹ While Mr. Harland used Dick's Sporting Goods located at Crossgates Mall, the landlord expended nearly \$5,000,000 to retrofit the space for this tenant, and the lease was executed in November, 2009 during an admitted period of declining rental rates. Nor does the Court find persuasive Mr. Harland's opinion that the subject property would be less desirable to prospective long-term retailers because it was built to suit the Petitioner. The Court instead credits Mr. O'Neill's expert opinion based upon his inspection of the property and specifications that minimal retrofitting would be required by a number of big box retailers who could occupy the property and that the subject property is located in a prime commercial location in the vicinity of other major retailers. The Court also finds Mr. Harland's vacancy rate of 7% to be high, where the average rate accounts for all classes of properties in the

¹Mr. Harland did not reference the Bed, Bath and Beyond leased property that was set forth in Mr. O'Neill's lease comparables. This property sits in close proximity to the subject property and, while smaller than the subject, shows a rent of \$14.00 per square foot, triple net. Additionally, as noted by Mr. O'Neill, the property sold in August, 2014 for \$7,811,594, or \$202.89 per square foot.

Central Avenue Corridor as opposed to Class A “big box” retail space located in a highly desirable location with ready access from major interstate highways. Mr. Harland attempts to bolster his conclusions with an *Albany Business Review* article dating back to 2009, which was not reflective of market conditions existing as of the valuation date in 2014. In the Court’s view, these key aspects undermine Mr. Harland’s opinions and conclusions that the subject property is overvalued. “[A]lthough petitioner’s expert employed accepted valuation methods, his treatment of the various components of that valuation raised serious questions regarding the overall validity of the assessed value that he calculated” (*Matter of Villa Roma Country Club, Inc. v. Fulton*, 301 AD2d at 912-913).

“The ultimate goal of property valuation in any tax proceeding ‘is to arrive at a fair and realistic value of the property involved’” (*Matter of Roth v. City of Syracuse*, 21 NY3d 411, 416 [2013]). Upon weighing the record evidence and testimony presented, the Court finds that the Petitioner did not sustain its burden of proof by a preponderance of evidence that the subject property has been overvalued (*Matter of Kohl’s Ill. Inc. v. Board of Assessors of the Town of Clifton Park*, 123 AD3d at 1316, citing *Matter of FMC Corp. [Peroxygen Chems. Div.]*, 92 NY2d at 188). The petition must be dismissed.

Based upon the foregoing, it is

ORDERED, that the petition is dismissed. The challenged assessment on the 2015 assessment roll is confirmed.

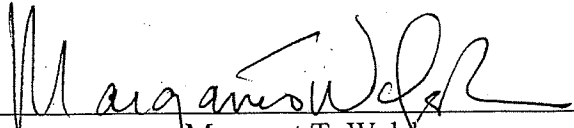
This constitutes the Decision/Order/Judgment of the Court. The original *Decision and Order* and any other original papers submitted on this motion are being delivered by the Court to the Albany County Clerk’s Office for filing and uploading onto NYSCEF (E-Filing). The signing of this

Decision/Order/Judgment shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry, and/or notice of entry.

SO ORDERED.

ENTER.

Dated: August 11, 2017
Albany, New York


Margaret T. Walsh
Acting Supreme Court Justice