SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
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In the Matter of the Application of

MICHAEL VACCARO

Petitioner,

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

CITY OF NEW ROCHELLE, CITY OF NEW ROCHELLE POLICE DEPARTMENT, and ROBERT GAZZOLA, Police Commissioner,

Respondents.
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VERIFIED PETITION

Index No.
Date Filed:

TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF WESTCHESTER:

The Verified Petition of Michael Vaccaro, respectfully alleges as follows:

1. The Petitioner, at all times hereinafter mentioned, was a Police Officer employed by the City of New Rochelle (the "City") with the New Rochelle Police Department (the "Department") and held the rank of Detective.

2. On February 15, 2021, while off-duty and unarmed, the Petitioner observed an individual named Malik Fogg (Fogg) accosting a woman in a gas station parking lot. (VT-113, VT-127)[1] Petitioner attempted to record Fogg's actions with his cell phone and Fogg then turned to his ire toward the Petitioner. (VT-128) [2] The Petitioner drove away to avoid being attacked by Fogg.

[1] Petitioner respectfully anticipates that the City, in filing its answer in this proceeding will provide the Court and Petitioner with a copy of the § 75 record, including the hearing transcripts and exhibits.
[2] Pagination preceded by (T-x) refers to the page of the hearing transcript. The transcript for the last day of the hearing, May 10, 2023 is not sequential to the previous days. References to testimony from that day is identified by the letters VT-x for Detective Vaccaro).

(VT-130).

3. Fogg then followed Petitioner in an aggressive fashion and ultimately was stopped by a uniformed member of the New Rochelle Police Department. (VT-136, 137, 139, 140) Fogg ignored the attempts of the officer to speak to him and again tried to accost the Petitioner. (VT-145, 146) Petitioner advised Fogg that he was an off duty police officer, still Fogg threatened the Petitioner with harm, repeatedly saying he would "beat the shit out of" him. (VT-150, VT-158) The uniform officer tried to restrain Fogg and attempted to place him under arrest. (T-407, 408) Since Fogg was still non-compliant, the Petitioner assisted the uniform officer by grabbing Foggs wrist to put it behind his back. (VT-161, 162, 163, 164) Fogg then clenched his fist and raised it to strike the Petitioner. (VT-165) Believing he was about to be punched, the Petitioner defended himself by punching Fogg. (VT-167, 168) The Petitioner did not punch Fogg until Fogg raised his fist to punch the Petitioner.

4. Fogg continued to resist the efforts of the Petitioner and two other uniformed officers to place him in custody. (VT-168) During the struggle, Fogg reached for his pocket and the Petitioner kicked toward Fogg's hand to prevent him from grabbing what may have been a weapon. (VT-168, 169) Fogg then broke free and turned toward the officers again. (VT-170, 171) One of the officers trained his TASER on Fogg and commanded him to get on the ground. (VT-170, 171) Fogg did not fully comply and instead got down on one knee. (VT-171) The second uniform officer then attempted again to get Fogg's hand behind his back. (VT-175) Seeing that Fogg remained non-compliant, the Petitioner assisted the uniform officer by grabbing the back of Fogg's sweatshirt and pushing him down to the ground in a prone position. (VT-176, VT-181) Fogg was then handcuffed and taken into custody. (J-7)[3]

5. The events described above were partially captured by civilian cell phone video. (J-7)

6. The force used by Detective Vaccaro was at all times objectively reasonable, necessary and justified.

7. Notwithstanding the justified use of force on February 15, 2021, the next day the Department suspended the Petitioner from active duty.

8. Thereafter, on June 17, 2021, the Petitioner was criminal charged by the Westchester District Attorney with Attempted Assault in the Third Degree in violation of New York Penal Law § 110/120.00.1. On July 21, 2022, the Petitioner was acquitted after trial of all the charges. (R-5)[4]

9. On May 5, 2022, nearly fifteen months after the date of event, pursuant to § 75 of the New York State Civil Service Law, the Department preferred disciplinary charges against the Petitioner.[5] Charge I alleged that Detective Vaccaro conducted himself in a manner that reflected unfavorably on the Department. Charge II alleged that Detective Vaccaro's conduct brought the Department into disrepute, reflected discredit upon himself as a member of the Department, impaired the operation and efficiency of the Department, and impaired the operation and efficiency of himself. Charge III alleged that Detective Vaccaro's actions constituted conduct detrimental to the good order, efficiency or discipline of the department. None of these charges were based on the claimed use of force by the Petitioner. (Ex. A)

10. Charges IV and V related to Detective Vaccaro's clearly justified use of force during the ongoing and relentless verbal and physical attacks by Fogg. Charge IV accused the Petitioner of violating the New York Penal Law sections of Harassment in the Second Degree and Attempted Assault in the Third Degree; the latter being the exact same meritless charge that the Westchester County District Attorney unsuccessfully leveled against him, and for which he was rightfully acquitted. (Ex. A)

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[3] J-7 refers to Joint Hearing Exhibit 7.
[4] R-5 refers to Respondents Hearing Exhibit 5.

11. Charge V alleged a violation of Chapter 4, Section 4.1 of the New Rochelle Police Department based upon a claim of the use of physical force "other than when conditioned upon the premise that it is reasonable, necessary and legally justifiable [sic]." The referenced section speaks to the use of firearms and has nothing to do with the use of force. Apparently, the intended section is found in the NRPD Manual of Procedure, Section 5.29, not in the Rules and Regulations. Section 5.29 of the Manual of Procedure states unequivocally that force used must be "objectively reasonable" as that term has been defined through the United States Supreme Court case of *Graham v. Conner*, 490 U.S. 386, 109 S.Ct. 1865 (1989) and its progeny. (Ex. A)

12. Charge VI was a redundant specification alleging that by engaging in the conduct in the preceding specifications I-V, Detective Vaccaro failed to adhere to departmental procedures.(Ex. A).

13. Even though the Petitioner was acquitted of the criminal charges against him on July 21, 2022, the Department persisted in maintaining the allegations in Charge IV (alleging criminal conduct) and refused to dismiss these baseless allegations.

14. After the charges were preferred against Petitioner, the City appointed Hearing Officer Hon. Eileen Powers and hearings were held on December 19, 2022, January 10, 2023, January 17, 2023, January 27, 2023, February 9, 2023 and May 10, 2023. Testimony was taken and evidence was presented, however, as discussed below, the Hearing Officer exhibited a palpable bias throughout.

15. At the conclusion of the hearing the parties submitting memoranda in support of their positions.[6] On August 8, 2023 the Hearing Officer issued her report and findings and recommended

[5] May 5, 2020, Disciplinary Charges are attached as Petition Exhibit A.
[6] Closing Briefs of the parties are attached as Petition Exhibit B

that the Petitioner be terminated.[7] Although the Petitioner made several arguments regarding the appropriate standard of proof to be applied, nowhere in the report and recommendation did the Hearing Officer state which standard of proof was applied in making her determinations.

16. Subsequent to the Hearing Officer's recommendation, the Petitioner submitted a letter to Commissioner Robert Gazzola, expressing, *inter alia*, our belief that the Hearing Officer was unreasonably biased and failed to make appropriate evidentiary determinations. Thereafter, the City submitted a letter in opposition to the Commissioner.[8]

17. On September 1, 2023 Commissioner Gazzola issued his Final Determination, adopted the findings of the Hearing Examiner, and terminated the Petitioner's employment with the Department effective immediately.[9] In his determination the Commissioner noted that he considered the arguments raised in the correspondences submitted by the parties after the Hearing Officer's recommendation, and we respectfully submit that they should be included in the available record. (Ex. E)

18. The determination of the respondents terminating the Petitioner's employment was made in violation of lawful procedure, arbitrary and capricious, an abuse of discretion, and affected by error of law for a number of reasons.

Hearing Officer Bias

19. Respectfully, at all stages of the hearing, the Hearing Officer exhibited an unreasonable bias in favor of the City and did not act as an impartial decision maker.

20. During the hearing, the Hearing Officer improperly refused to permit the admissible testimony of two of the Petitioner's proposed expert witnesses finding them to be not qualified. The Hearing Officer incorrectly made a determination of admissibility which should have more

[7] The Hearing Officer's Findings of Fact and Recommendations is attached as Petition Exhibit C.
[8] The respective letters of the parties to the Commissioner are attached as Petition Exhibit D

appropriately been assigned to the weight of the testimony. The Hearing Officer also held the Petitioner to a higher evidentiary standard when considering the expert qualifications of the Petitioner's witnesses than she did of the City, finding the City's expert to be qualified based on testimony far more lacking than the Petitioner's proposed. (Exhibit D, Petitioner's letter to Commissioner Gazzola).

21. The Hearing Officer also inordinately and repeatedly gave favorable rulings on objections to the City, while refusing to sustain a single objection from the Petitioner over the course of the entire six day hearing. (Exhibit D, Petitioner's letter to Commissioner Gazzola)

22. Throughout the hearing, the Hearing Officer openly displayed disdain for the Petitioner and his witnesses, including one of the uniformed officers that directly engaged Mr. Fogg at the scene; going so far as to suggest that the officer perjured himself and that he should be investigated by the department. No disciplinary charges were brought against this officer for his conduct and to date there has been no investigation by the Department. (Exhibit D, Petitioner's letter to Commissioner Gazzola).

23. The Petitioner raised the issue of bias before the Hearing Officer during the proceedings. (VT-227 through 241).

24. A civil service position is a property interest of substantial value, protected by the due process clause of the constitution, and should not be taken from an individual without a hearing and opportunity to be heard (*see Matter of Hodella v Chief of Police of Town of Greenburgh*, 73 A.D.2d 967, 424 N.Y.S.2d 255 [1980], *lv denied* 49 N.Y.2d 708 [1980]; *Matter of Johnson v. Director, Downstate Medical Center*, 52 A.D.2d 357, 384 N.Y.S.2d 189 [1976], *affd* 41 N.Y.2d 1061, 364 N.E.2d 837, 396 N.Y.S.2d 172 [1977]). Moreover, as pronounced by the New York Court of Appeals, "it is beyond dispute that an impartial decision maker is a core guarantee of due process,

[9] The Commissioner's Final Determination is attached at Petition Exhibit E.

fully applicable to adjudicatory proceedings before administrative agencies . . . [and] no single standard determines whether an administrative decision maker should disqualify himself from a proceeding for lack of impartiality" [***18] (*Matter of 1616 Second Avenue Restaurant, Inc. v New York State Liq. Auth.*, 75 N.Y.2d 158, 161, 550 N.E.2d 910, 551 N.Y.S.2d 461 [1990]); *Matter of Rice v. Belfiore*, 13 Misc. 3d 1223(A), 831 N.Y.S.2d 349 (Sup. Ct., 2006). Respectfully, the Petitioner submits that the Hearing Officer in the instant matter exhibited a bias in favor of the City and did not act as an impartial decision maker.

Hearing Officer applied the incorrect legal standard and burden of proof

25. The report and recommendation of the Hearing Officer is silent regarding the burden of proof she applied, a burden which should have been heightened in regard to a number of the charges. Additionally, the Hearing Officer completely ignored the defense of justification in relation to the several charges alleging a use of force and/or criminal conduct. The application of an incorrect legal standard constitutes an error of law requiring annulment of the determination. *Matter of Bodenmiller v. DiNapoli*, 142 A.D.3d 752, 753, 36 N.Y.S.3d 833, 833 (App. Div. 3rd Dept.); *Matter of Quire v. City of N.Y.*, 2019 N.Y. Misc. LEXIS 2848.

26. Generally, the burden of proof to be applied in a disciplinary proceeding pursuant to Civil Service Law § 75 hearing is that of "substantial evidence." *Pell v. Board of Educ.*, 34 N.Y.2d 222, 230–231, 356 N.Y.S.2d 833; *Acosta v. Wollett*, 55 N.Y.2d 761, 447 N.Y.S.2d 241; *Ansley v. Jamesville-Dewitt Cent. Sch. Dist.*, 174 A.D.3d 1289, 103 N.Y.S.3d 735 (2019). However, "when the penalty of dismissal is accompanied by some added stigma" due process requires application of the preponderance of the evidence standard. *Marentette v. City of Canandaigua*, 159 A.D.3d 1410 at 1411, 73 N.Y.S.3d 823 (quoting *Suitor v. Keller*, 256 A.D.2d 1140, 684 N.Y.S.2d 454 (4th Dep't 1998). *Matter of Field v Board of Educ., Yonkers Pub. Sch. Dist.*, 148 AD3d 702, 703, 49 N.Y.S.3d

472 (2d Dept 2017).

27. Continued public employment covered by Civil Service Law § 75 gives rise to a property interest protected by the Due Process Clause of the Fourteenth Amendment. *See O'Neill v. City of Auburn*, 23 F.3d 685, 688 (2d Cir. 1994)

28. The case law is equally clear that a due process liberty interest may be impaired when the termination of a protected government employee hinders that employee's future employment opportunities or subjects him to a public registry. *See Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 573-74, 92 S.Ct. 2701(1972) (noting that a Fourteenth Amendment liberty interest would be implicated if an individual's reputation and standing in the community were "seriously damage[d]" or if future employment opportunities were lost as a result of his termination); *Patterson v. City of Utica*, 370 F.3d 322, 330 (2d Cir. 2004) (stating that one's loss of reputation "coupled with the deprivation of a more tangible interest, such as government employment," may implicate a liberty interest); *O'Neill*, 23 F.3d at 691-92 (stating that a due process liberty interest may be implicated by "stigmatizing governmental accusations that impose a substantial disability," such as charges of "professional incompetence made in connection with an employee's termination" that "significantly restrict future employment opportunities").

29. In the instant matter, the charges against the Petitioner and his subsequent termination infringed on his liberty interests because they have interfered with and will continue to interfere with his future employment opportunities as a police officer. As a result of his termination, pursuant to 9 NYCRR 6052.2(h) and 6052.4 (e) the Petitioner's basic law enforcement training certificate will be immediately deemed invalid by the Department of Criminal Justice Services. Further, the Legislature has recently amended the statute to now permit the DCJS to permanently invalidate an officer's certificate and make that information part of a nation-wide database, thereby preventing

employment as a law enforcement officer in any jurisdiction.

30. As a dismissal of Detective Vaccaro from the Department would also be accompanied by a significant stigma including the potential if not certain loss of future employment as a law enforcement officer, his liberty interest is impaired and due process requires that, at the minimum, the burden of proof that should have been applied by the Hearing Officer was a preponderance of the credible evidence.

31. With respect to the allegations of use of force, and violations of the New York State Penal Law, the City should have been bound, and the Hearing Officer should have applied the even higher burden of clear and convincing evidence. This is because the Petitioner was acquitted at trial of the criminal charges brought against him. "A determination of innocence in the criminal forum does increase the employer's burden of persuasion that discharge is warranted." *Muskegon Heights Police Dept. and Teamsters* L-214, 88 LA (BNA) 675 (Girolamo, 1987). Since the appropriate initial burden of proof in this matter should have been the preponderance of the credible evidence (based upon the added stigma), the City's burden relating to the allegations of criminal conduct should have been increased to clear and convincing evidence.

32. Additionally, as the allegations against the Petitioner necessitated an examination of his use of force, just as in his criminal trial, he was entitled to the application of the Penal Law defense of Justification. *See* PL § 35.15 (defense of a person) and PL § 35.30 (justification arrest). Justification is considered an "ordinary" defense and in any prosecution where the defense of Justification has been raised, New York State law requires that the prosecutor disprove the defense beyond a reasonable doubt. (PL § 25.00(1)). This added burden upon the charging party reflects the legislatures' desire to provide additional due process protections to the accused. As noted above, however, the Hearing Officer did not apply the legal defense of Justification at all and this

constitutes an additional error of law requiring annulment of the determination.

Commissioner Gazzola applied the incorrect legal standard

33. In his Final Determination, in which Commissioner Gazzola asserts his basis for terminating the Petitioner he states:

> "While all exhibits and testimony were considered, that evidence clearly shows that Detective Vaccaro escalated the situation and used force that was unnecessary and unreasonable under the circumstances. *His actions are to be compared to those of on-duty officers who attempted to deescalate the situation and did not resort to punching or kicking the subject."* (Emphasis added) (Exhibit E).

This is simply a wholly incorrect application of the legal standard to be applied in cases alleging the use of excessive force.

Use of force, under *Graham v. Conner*, 490 U.S. 386, 109 S.Ct. 1865 (1989)(the United States Supreme Court case incorporated by reference in the New Rochelle Police Department Manual of Procedures) must be analyzed "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and with the "recognition that officers must often make split-second judgments about the amount of force that is necessary, in response to 'tense, uncertain and rapidly evolving' circumstances." *Malave v. Austin*, 2021 WL 3603433, at *5 (E.D.N.Y. Aug. 13, 2021) (quoting *Graham*, 490 U.S. at 396-97, 109 S.Ct. 1865) Courts in New York have adopted the same standard. *See, Brown v. City of New York*, 192 A.D.3d 963, 966, 146 N.Y.S.3d 160, 165 (2021), *leave to appeal denied*, 38 N.Y.3d 902, 185 N.E.3d 1003 (2022); *Davila v. City of New York*, 139 A.D.3d 890, 891, 33 N.Y.S.3d 306 (2016); *Vizzari v. Hernandez*, 1 A.D.3d at 432, 766 N.Y.S.2d 883 (2003).

34. The reasonableness standard established by *Graham* refers to the reasonable officer standing in the shoes of the accused officer and being confronted with the same facts and circumstances as that officer. By comparing the conduct of the Petitioner to that of other officers

who *were not* confronted in the same manner as the Petitioner, the Commissioner applied the incorrect standard in determining the reasonableness of the force used.

35. Moreover, the only issue is whether the force, *at the time it is used*, is reasonable and not excessive, and the actions of the officer before that time are not relevant. The Commissioner is essentially saying that because the Petitioner did not de-escalate the situation, or choose a less intrusive alternative in responding to the situation, his use of force should not be considered reasonable.

36. However, this "provocation" theory has been firmly rejected by the United States Supreme Court, and the focus is on the conduct of the officer *at the time* the force is used. *Cnty. of Los Angeles, Calif. v. Mendez*, 581 U.S. 420, 429, 137 S. Ct. 1539, 1547, 198 L. Ed. 2d 52 (2017)("The District Court found…that the use of force by the deputies was reasonable under *Graham*. However, respondents were still able to recover damages because the deputies committed a separate constitutional violation (the warrantless entry into the shack) that in some sense set the table for the use of force. That is wrong. *The* framework for analyzing excessive force claims is set out in *Graham*. If there is no excessive force claim under *Graham,* there is no excessive force claim at all.")(emphasis in original).

37. Nor does it matter if the Petitioner could have accomplished his goal of defending himself, or getting Fogg on the ground through some less intrusive alternative. *See, Malave v. Austin*, 2021 WL 3603433, (E.D.N.Y. 2021), *citing Bancroft v. City of Mount Vernon*, 672 F. Supp. 2d 391, 406 (S.D.N.Y. 2009). ("While it is possible that [plaintiff] did not need to be pushed in order to get [her] to move, as long as it was not unreasonable to push [her] ... it does not matter that some less intrusive alternative would have done the job." *Bancroft v. City of Mount Vernon*, 672 F. Supp. 2d 391, 406 (S.D.N.Y. 2009). Yet, Commissioner Gazzola decided that because the

Petitioner did not use a less intrusive alternative, such as an attempt at de-escalation, his force was excessive. This is a blatant misapplication of the appropriate legal standard.

The Penalty of Termination was Disproportionate to the Misconduct Alleged

38. The Petitioner was an 18 year veteran with the New Rochelle Police Department, who had received numerous commendations during his career for his exemplary police work on behalf of the citizens of New Rochelle. While there are dozens of instances of recognition, several stand out, such as Detective Vaccaro receiving the Police Commissioner's Award in 2016, the New Rochelle Municipal Housing Authority Recognition Award in 2016, his recognition as "Cop of the Month" in December 2019, and receiving The Journal News Police Honor Award in 2019. (Exhibit B, Petitioner's post-hearing Closing Brief).

39. Although the Petitioner has had instances during his career where he faced some discipline, at no time throughout his eighteen-year career did the Department ever receive, or was Detective Vaccaro ever disciplined for a complaint involving the use of excessive force; nor is there any evidence in the record that Detective Vaccaro has been the subject of any civil lawsuits alleging a violation of a person's constitutional rights through the use of force, other than a compliant brought by Mr. Fogg; and for which the City has provided the Petitioner with a defense and indemnification.

40. In evaluating whether the penalty imposed is excessive, a Court must consider whether "in light of all the relevant circumstances, the penalty is so disproportionate to the charged offenses as to shock one's sense of fairness" *Matter of Pell v. Board of Educ. of Union Free School Dist.*, 34 N.Y.2d 222, 356 N.Y.S.2d 833 (1974). "This calculus involves consideration of whether the impact of the penalty on the individual is so severe that it is disproportionate to the misconduct, or to the harm to the agency or the public in general" *Kelly v. Safir*, 96 N.Y.2d 32, 38; 724 N.Y.S.2d 680 (2001), citing *Pell,* 34 N.Y.2d at 234.

41. As established by *Pell*, factors such as the loss of a pension and length of service are significant considerations in determining if a penalty shocks "one's sense of fairness", especially where there is no "grave moral turpitude and grave injury to the agency involved or to the public weal," *Matter of Pell, supra,* 34 N.Y.2d, at 233.

42. Furthermore, discipline may be considered to be excessive if it is disproportionate to the degree of the offense, if it is out of step with the principles of progressive discipline, if it is punitive rather than corrective, or if mitigating circumstances were ignored. *See Clow Water Sys. Co. 102 LA 377, 380 (Dworkin, 1994*); *see also Ansley v. Jamesville-Dewitt Cent. Sch. Dist.*, 174 A.D.3d 1289, 1291, 103 N.Y.S.3d 735, 737–38 (2019) ([T]ermination, absent any other previous progressive disciplinary steps, is so disproportionate to the offense committed as to shock one's sense of fairness).

43. As noted, the Petitioner's termination has not only resulted in his loss of employment but also the current suspension of his police training certificate and possible permanent revocation, making him unemployable as a police officer. The Petitioner was faced with an unprovoked attack by a violent and threatening individual and made the split second determination to defend himself. Termination under these circumstances is wholly disproportionate to offense he is alleged to have committed.

The Hearing Officer's Recommendation was not supported by Substantial Evidence

44. The Hearing Officer's recommendations and findings are also not supported by substantial evidence in that the evidence produced at the hearing does not support a finding that Petitioner is guilty of the charges against him. As noted above, the appropriate standard to be applied is at least a preponderance of the credible evidence, however, even applying the substantial evidence standard, the recommendation remains unsupported.

45. The Petitioner was confronted by a violent threatening individual who tried to punch him while the Petitioner was attempting to assist a fellow officer in placing him under arrest. The testimony, as well as the video evidence leaves no doubt that Fogg raised his fist to strike the Petitioner and the Petitioner was left with no other choice but to defend himself. His conduct was entirely reasonable and justified. He was equally justified in using force to try and bring Fogg to the ground when Fogg refused repeated commands to do so. All of the Petitioners actions were consistent with and within the very training he received from the Department and were objectively reasonable. As such, his actions did not violate the Department procedures and the evidence at the hearing failed to establish his guilt of any of the charges. (See, Hearing Transcript and Exhibits, and Exhibit B, Petitioner's post hearing Closing Brief).

46. Accordingly the determination of respondents was made as a result of hearings held at which evidence was taken and the determination on the entire record is not supported by substantial evidence.

47. No previous application has heretofore been made for the relief requested herein.

48. No Judge of this court has been assigned to the within application.

WHEREFORE, Petitioner demands a Judgment pursuant to Article 78 of the Civil Practice Law and Rules as follows:

(a) Pursuant to CPLR 7803 (3) that the determination made by respondents terminating Petitioner's employment was made in violation of lawful procedure, arbitrary and capricious, not based on substantial evidence, an abuse of discretion and/or affected by error of law and order respondents to reinstate Petitioner with all applicable forfeited compensation and other benefits since the termination including, but not limited to, health insurance and pension contributions;

(b) Pursuant to CPLR 7803 (4) that the determination made by respondents terminating Petitioner's employment as a result of a hearing held, and at

which evidence was taken, pursuant to direction by law, on the entire record, is not supported by substantial evidence;

(c) In the alternative, for an Order pursuant to CPLR 7804 (g), transferring the issues raised herein to the Appellate Division Second Department;

(d) For costs and disbursements of this action; and

(e) For such other and further relief as to this Court may seem just and proper.

Dated: Islandia, New York
December 5, 2023

Respectfully submitted,

DAVIS & FERBER, LLP

/Brian C. Mitchell/

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VERIFICATION

STATE OF NEW YORK }
}S.S.:
COUNTY OF WESTCHESTER }

MICHAEL VACCARO, being duly sworn, deposes and says:

I have read the foregoing Verified Petition and know the contents thereof to be true to my own knowledge.

Michael Vaccaro

Sworn to before me this
5th day of December, 2023

Notary Public

PAUL THOMAS CORRIGAN
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CO6402883
Qualified in Westchester County
My Commission Expires Jan. 13, 2024