AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the matter of arbitration between JOHN CRUZ, Claimant, - and - NAPOLI BERN RIPKA, LLP, NAPOLI BERN RIPKA SHKOLNIK, LLP, NAPOLI BERN RIPKA SHKOLNIK & ASSOCIATES, LLP, Respondents.	AAA Case No. 01-16-0000-6239 Tribunal: William L. Kandel, Esq., Chair Alfred G. Feliu, Esq. David C. Singer, Esq.

PARTIAL FINAL AWARD ON LIABILITY

I. Background

WE, the UNDERSIGNED TRIBUNAL, having been designated pursuant to the arbitration provision contained in paragraph 14 of the Parties' Retainer Agreement dated December 7, 2009 (the "RA"),[1] having been duly sworn, having held an Evidentiary Hearing, and having duly considered the proofs and allegations of each party, do hereby **FIND** as follows.

Claimant John Cruz (hereinafter **Claimant** or **Cruz**) is represented by Nicholas J. Damadeo, Esq., of Nicholas J. Damadeo, P.C. and Andrew Grosso, Esq., of Andrew Grosso & Associates.

[1] The parties do not dispute that the RA applies to this matter; indeed, this was noted in the memorandum decision of July 15, 2015, by Justice Engoren in New York State Supreme Court, compelling arbitration. According to the RA, the Commercial Rules of the American Arbitration Association and New York law shall apply. (RA 13, 14).

Respondents Napoli Bern Ripka, LLP, Napoli Bern Ripka Shkolnik, LLP, and Napoli Bern Ripka Shkolnik & Associates, LLP (hereinafter **Respondents** or **Napoli**), are represented by Christopher T. Scanlon and Rebecca Ahdoot of Clausen Miller, P.C. (Cruz and Napoli are collectively hereinafter **the Parties.**) The Tribunal denied Napoli's motion seeking dismissal, following which the Parties completed discovery and proceeded to an Evidentiary Hearing on September 19, 20, and 21, 2016. Testimony under oath was taken from Cruz, Benjamin **Fink**, Joseph **Slater**, and Andrew **Grosso**, all called by Claimant; and Mark **Bern**, called by Respondents (all hereinafter cited by last names). The Parties availed themselves fully of the opportunity to examine, cross-examine, and introduce documentary evidence. The Parties submitted their post-hearing briefs with exhibits, received by the Tribunal on October 25 and 26, 2016. The Tribunal, after considering whether the record was complete, declared the Hearing closed on November 2, 2016.

This Partial Final Award, rather than a final award, is based on the Parties' stipulation, for good and sufficient reason, to bifurcate the Evidentiary Hearings between liability and remedies. Evidence was introduced relevant to the liability portion of the Parties' dispute. The gravamen of this dispute is whether Napoli, a law firm, committed legal malpractice by failing to file a timely whistleblower complaint on behalf of Cruz against his former employer HSBC, a large bank and financial services institution covered by the Sarbanes-Oxley whistleblower protections (hereinafter **SOX**). Central to this claim is whether the alleged malpractice damaged Cruz, or whether he would have lost his whistleblower case anyway because HSBC had sufficient cause, unrelated to his whistleblowing, to fire him: in other words, even if Napoli failed to meet professional standards, "no harm; no foul."

Based on the record as a whole, we find that Napoli's legal services on behalf of Cruz amounted to malpractice, and that Cruz would have had a viable SOX whistleblower claim against HSBC. We find that Cruz proved, by a preponderance of the evidence, that his whistleblower activities were protected, were known by HSBC and a contributing factor in HSBC's decision to fire him. Napoli failed to prove by clear and convincing evidence (a much higher burden of proof) that Cruz was terminated for reasons unrelated to his protected activity.

II. Reasons for Findings and Conclusions on Liability

A. The RA Committed Napoli to Protect Cruz's Rights Under SOX

The RA between Cruz and Napoli, sub-titled "Whistleblower Claims", obligated Napoli "as attorneys in the prosecution of a claim against any and all parties, individuals and/or corporations that are found to be liable under the law for damages suffered by me arising out of certain whistleblower actions." The Parties dispute the scope of representation to which this sentence committed Napoli to work on Cruz' behalf: Napoli seeks a narrow construction, that its role was confined to initiating a state or federal qui tam action. Cruz contends that a narrow view is belied by the above-cited language, because "damages suffered by me" necessarily implicate SOX. Napoli argues that a retaliatory discharge on February 17, 2010 could not have been intended to be covered because the RA nowhere mentions HSBC, and the agreement became effective on December 7, 2009, while he was still working there.

However, to the extent this argument raises ambiguity about the RA, Napoli drafted it without negotiation. Bern himself was unclear as to scope of representation. Construing

this ambiguity against the drafter, a New York canon of contract interpretation, the scope of representation by Napoli included whistleblowing and retaliatory discharge under SOX. Long after expiration of the SOX statute of limitations, Napoli tried to resolve in its favor the ambiguous scope of its RA representation: Napoli returned its Cruz file to Slater, who had referred the matter, and Slater promptly notified Cruz, on January 25, 2011, that Napoli "wanted me to make sure that I communicate to you that you understand that they are not pursuing any claims against HSBC on your behalf" and that Cruz should seek other counsel for that purpose. (JX 45). Had the 13-months' retention of Napoli been clearly limited to a qui tam action, there would have been no reason at its conclusion for Napoli to communicate that message.

Indeed, the RA language "damages suffered by me", construed in the context of qui tam law at the time of the RA, compels the conclusion that SOX had to be within Napoli's scope of representation under the RA. As Justice Engoron concluded in denying Napoli's motion to dismiss, qui tam actions - federal or state - "do not apply to whistleblower claims in general; rather they apply specifically to claims affecting the United States or New York State treasury, which is not the case here." Their multi-year statutes of limitations are thus inapplicable here.

Accordingly, we reject Napoli's argument that, even after the law firm ended its representation of Cruz by letter dated January 24, 2012, he could still have filed a timely and viable whistleblower claim. He could not: Cruz' SOX rights expired 90 days after his discharge by HSBC on February 17, 2010. The RA expressly provided that he was being

represented by Napoli specifically for the purpose of pursuing whistleblower claims on his behalf.

We also reject the related argument that other lawyers – specifically, Slater, Damadeo, and/or Grosso – caused or contributed to Cruz' missing the SOX limitations period. They did not. Slater merely referred Cruz to Napoli, and neither advised nor held himself out as a whistle- blower lawyer. Napoli, similarly inexperienced in whistleblower law and skeptical about the feasibility of this practice, nonetheless decided to try it out through the Cruz engagement. Damadeo and Grosso, savvy in whistleblower law, did not begin to advise or represent Cruz until after the SOX 90-day filing period had expired. See Grosso's retainer agreement, dated August 27, 2010 (JX 48) and Damadeo's, dated September 24, 2012 (JX 50). Sole responsibility for this failure of timely filing rests with Napoli.

B. Napoli's Representation of Cruz Did Not Meet Legal Standards

Cruz met his threshold burden to prove that Napoli's missing the SOX statute of limitations was a failure to exercise the ordinary and reasonable skill and knowledge common in the legal profession. Dempster v. Liotti, 86 AD 3d 169 (2d Dept. 2011) (2011 WL 2090823); McCluskey v. Gabor and Gabor, 61 AD 3d 646 (2d Dept. 2009). Although missing the SOX deadline was the ultimate manifestation of Napoli's legal malpractice, lack of due care was evident throughout its representation of Cruz. First, admittedly lacking the relevant experience, Napoli failed to consult or associate with an outside attorney versed in whistleblower law. This access was specifically permitted in RA paras. 11 and 12. Second, Napoli exacerbated its deficiency in whistleblower expertise by assigning summer intern

Fink to research how to file a qui tam lawsuit, not even the full range of state and federal claims possibly available to Cruz. Third, Napoli made Fink's qui tam research the limited basis for follow-up activity by the two attorneys assigned to develop Cruz' case. SOX was never in the picture. Fourth, despite the RA's purpose of having Napoli prosecute claims to protect Cruz in his whistleblowing – and Napoli's knowing in detail the facts leading up to his termination of employment by HSBC after blowing the whistle – Napoli did nothing: not only did Napoli fail to file with any court or agency, it did not even engage on Cruz' behalf with HSBC.

However, by proving Napoli committed legal malpractice, Cruz is only part way to a remedy. To have an actionable malpractice claim, he must also prove that he suffered damages. Rudolf v. Shayne, Dachs, Stanisci, Corker & Sauer, 8 N.Y. 3d 438 (2007). This necessary element of proof requires that the Parties present the SOX retaliation case, which would have been pursued by Cruz against HSBC but for Napoli's failure to file it – aptly described as the case within a case. Aquino v. Kuczinski, Vila & Assoc., P.C., 39 A.D. 3d 216, 218 – 219, 835 N.Y.S. 2d 16 (1st Dept. 2007). The arbitration proceeded with abundant HSBC documents, but no witness from HSBC. The absence of HSBC witnesses obviously affected the presentations, the relative disadvantage depending on each side's burden of proof.

C. The SOX Allocation of Burden of Proof Favors Whistleblowers

1. Preponderance versus clear and convincing evidence

Crucial to determining whether retaliatory discharge occurred is understanding which party has the burden of proof and the quantum required for each. Basically, Cruz

must prove the elements of his retaliatory discharge claim against HSBC (and Napoli) by a "preponderance" of the evidence, i.e., that facts and conclusions favorable to him are more likely than not. By contrast, SOX requires that HSBC (and Napoli) prove their defense – that Cruz was fired for non-SOX reasons – by "clear and convincing" evidence. This shift in burden of proof is a SOX requirement. See 18 U.S.C. sec. 1514A (b) (2) (A), incorporating the anti-retaliation provisions of the Air Commerce and Safety Act, 49 U.S.C. sec. 42121 (b) (2) (B). While courts acknowledge the distinction is somewhat impressionistic, "clear and convincing" requires heightened evidence beyond the requirement for preponderance.

2. Proof requirements for protected activity

SOX, at 18 U.S.C. sec. 1514A, prohibited HSBC from taking adverse employment action against Cruz because of "any lawful act" to provide information or otherwise assist in an investigation regarding any conduct which he "reasonably believes" to be mail fraud, wire fraud, bank fraud, securities fraud, or violation of any other federal law or regulation relating to fraud on shareholders, when his communications or assistance are provided to a federal agency, an HSBC investigator, or his supervisors (hereinafter **protected activity**). Cruz has the initial burden to prove his 1514A claim, by a preponderance of the evidence, the essential elements being (1) he engaged in protected activity, (2) HSBC knew it, (3) he suffered an adverse employment action by HSBC, and (4) the protected activity was a contributing or motivating factor in HSBC's taking the adverse action. See Sharkey v. J. P. Morgan Chase & Co., No. 15-3400-CV, 2016 U. S. APP. LEXIS 16636 at * (2d Cir. 9/12/16), 2016 WL 4820997.

3. Cruz proved a prima facie case of SOX retaliation

We conclude that Cruz has established his engagement in protected activity. His surreptitious taping of supervisors, investigators, and co-workers, while contrary to HSBC policy and norms of appropriate employee conduct, was nonetheless lawful in New York (a one-party consent state) N.Y. Penal Law, sec. 250.00 (1) – (2); also, under federal law, see 18 U.S.C. sec. 2511 (2) (d); and under SOX Gunther v. Deltek, Inc., 2013 DOLSOX LEXIS 35, 22 – 23 (2013) ("... Complainant's recordings were all made in furtherance of her whistleblowing [under SOX] and therefore constitute protected activity."), aff'd, Deltek, Inc. v. Dept. of Labor, 649 Fed. Appx. 320 (4th Cir. 2016); see also Hoffman v. Netjets Aviation, Inc., ARB No. 09-021, ALJ No. 2007-AIR-007 (ARB March 24, 2011) ("lawful taping of conversations to obtain information about safety-related conversations is a protected activity and should not subject an employee to any adverse action"). Similarly, nothing in Cruz' taking and using HSBC documents to advance his case was shown to have violated any law.

We also find that Cruz' protests and participation in investigations were sufficiently related to SOX-specific issues, particularly money laundering and mail, wire, and bank fraud, to be protected activity. Cruz' presentation proved that, during his protected activity, he "reasonably believed" the subject of his whistleblower claims, that HSBC through individual managers and documents with which he had direct contact, were engaged in, or at least suborning, wide-ranging fraud. That he did not know about SOX specifically does not diminish the reasonableness of his belief – derived partly from HSBC training to "know your customer" – that fraud was afoot at HSBC.

Cruz also established the second element, that HSBC knew he was engaged in protected activity prior to firing him. It is undisputed that Cruz told Michael Jenkins, his direct supervisor, about suspicious activity not only among his portfolio clients but also in HSBC branches. Cruz summarized his concerns about rampant fraud in the self-evaluation portion of his mid-year performance review, dated July 16, 2009. (JX 6). Cruz also told George Matranga, HSBC's security manager whom he understood to be responsible for fraud investigations. Prior to reporting his suspicions of fraud to federal and state authorities, Cruz notified in writing the appropriate people at HSBC of what he intended to do, leaving no doubt that HSBC knew in advance that they would be firing a whistleblower. The depth or completeness of Cruz' whistle- blowing is beside the point for purposes of the second element of his claim: HSBC was unquestionably put on notice by Cruz of SOX-related fraud issues, and knew of his protected activity for months before terminating his employment on February 17, 2010.

As to item (3), Cruz' burden to prove that he suffered an adverse employment action, it is undisputed that he was fired by HSBC within months of HSBC's becoming aware of his protected activity, and within a week of learning that he recorded conversations to support his claims. Thus, just prior to Cruz' termination, Maria Malanga of HSBC Human Resources sent him a written notice (CX 20) criticizing his violation of HSBC's electronic monitoring policy by tape recording conversations, and warning of possible termination. Fraud- and taping-related exchanges between Cruz and Malanga continued during the week leading up to his February 17 termination letter. (JX 34 - 36). That SOX protected Cruz' taping is pointed out later herein.

As to item (4) of Cruz's claim, having to show causation between his protected activity and HSBC's firing him, he met that burden by relying on HSBC's own written recitation of reasons in his February 17 termination letter (JX 36): that Cruz had admittedly violated HSBC policy by recording a meeting with his manager (ignoring whether it might have been SOX-protected activity); that Cruz' "repeated statements" to co-employees "about purported concerns of fraudulent activities is disruptive and distract him from meeting performance expectations" (ignoring that reasonable communication is often necessary in SOX whistleblowing, and that a showing of impaired performance is the employer's burden to prove); and that he spent too much time "visiting [HSBC] branches and talking with employees about 'customer fraud' issues" (ignoring that branch visits were included in his job responsibilities, and that proving disproportionate devotion of time or disruptiveness would be HSBC's burden). This documentation alone, authenticated and uncontradicted, enables Cruz to meet his burden to make at least a prima facie case of causation between his protected activity and termination of his employment.

4. HSBC could not rebut the SOX retaliation claim with clear and convincing evidence

Expressly incorporating the enforcement procedure set forth in 49 U.S.C. sec. 42121 (b) (2) (B), SOX imposes unequal burdens of proof: Cruz need only show that his protected activity "was a contributing factor in the unfavorable personnel action alleged in the complaint." supra, at (i); by contrast, HSBC (here, Napoli) must demonstrate, "by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior." Supra at (ii). Construing these subsections

together, as invited by their consecutive placement which was adopted by SOX, we conclude that Napoli's burden is not only to prove that HSBC would have fired Cruz absent protected activity, but also that the protected activity was not "a contributing factor" in the decision to terminate him.

As if Napoli's statutory burden of proof were not heavy enough, the evidentiary hearing proceeded without a single witness, other than Cruz, who had worked at HSBC. Nothing said or done by the Tribunal contributed to this one-sidedness in testimony. Neither side sought a hearing subpoena for any HSBC witness and no discovery ruling affected access to HSBC material (although the Tribunal indicated their lack of authority to subpoena HSBC witnesses for depositions).

Effective cross-examination exposed a lack of credibility in portions of Cruz' testimony, but not with respect to facts material to his whistleblower claim. We conclude that Cruz, not his supervisor Jenkins, authored his self-assessment for 2009 (JX 4 - 6), but that this misrepresentation at the hearing was immaterial. Cruz merely acknowledged that his 2009 job performance did not meet his own expectations but was correctible. Even if mounting job insecurity motivated Cruz' whistleblowing, that would provide HSBC no defense under SOX, which relies on employee self-interest to advance its legislative purpose. Similarly, Cruz failed to support his allegation that he supplied Matranga of HSBC security with several email reports. Not one was produced. However, Cruz taped his Matranga meeting about his SOX-type claims which, along with his communications to Jenkins, put HSBC on notice of his whistleblower issues. Just because Cruz was not credible in parts of his testimony regarding peripheral issues does not compel the Tribunal to

discount all of what he said, particularly where exhibits in evidence establish, without rebuttal, the essential elements of his claim.

What reduced the significance of cross-examination, and Cruz' testimony in general, was the predominance of documentary over testimonial evidence regarding the material elements of the whistleblower claims. Exhibits at the evidentiary hearing covered far more than the typical documentation related to a retaliatory discharge: Cruz introduced transcripts (stipulated as accurate) of recorded conversations that underlay his prima facie case – that he protested internally at HSBC to Jenkins and Matranga, and externally to federal and state agencies, about SOX-related subjects. HSBC personnel forms simultaneously described Cruz' sub-par job performance. Whether his discharge reflected irremediable performance deficiencies or HSBC's retaliatory motive was found less in testimony than in the documents. Napoli's burden was increased by HSBC's letter terminating Cruz' employment, setting forth a mix of performance- and SOX-related reasons. (JX 36). These SOX-related reasons appear on their face to have made a difference in HSBC's decision to terminate rather than take less drastic personnel action. No testimony contradicted this conclusion.

Napoli urges that Cruz' personality and job performance were so beyond the pale that his whistleblower claim could not have survived. Characterizing as delusional his suspicions that people associated with HSBC were out to kill him and his family, Napoli suggests that Cruz was incapable of the "reasonably objective" belief of a SOX violation sufficient to deserve statutory protection as a whistleblower. However, Cruz' fraud allegations, documented and described at the Evidentiary Hearing, were consistent with

independently documented evidence of similar fraud elsewhere at HSBC in and around the time Cruz worked there. The Parties' post-hearing submissions included the December 2012 Deferred Prosecution Agreement (the "DPA") between the U. S. Department of Justice and HSBC. The DPA's supporting documents contain examples of fraud, money laundering, and failure to "know your customer" similar to what Cruz reported. No evidence suggests that Cruz even knew about the later-signed DPA, or took on the veneer of a "reasonably objective" whistleblower by merely re-cycling old allegations in the public domain. Further evidence of Cruz' reasonable objectivity was borne out by the HSBC email to Cruz, dated January 10, 2010, that its Anti-Money Laundering Unit was investigating two of the accounts he had reported for fraudulent activity (CX 18).

Burdened by the whistleblower-related entries in HSBC's documentation of Cruz' firing, which support a finding that they were "a contributing factor", Napoli focuses on showing, "by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that [whistleblower] behavior." See Bechtel v. Admin. Review Bd. U.S. Dept. of Labor, 710 F. 3d 443, 448 – 449 (2d Cir. 2013). Napoli relies largely on the contents of HSBC's Corrective Action Termination Form (hereinafter **CATF**) attached to the February 17, 2010 termination letter (JX 36). The CATF purports to document not only Cruz' unsatisfactory job performance but also the reasons to fire him. It describes quantifiable failures by Cruz – insufficient client development efforts and results; failure to meet sales goals and ranking in the bottom 10% of his peers; a "4" numerical ranking translated as "inconsistent performance." The CATF also criticizes unacceptable behavior, such as alleging "consumer fraud" ambiguously, then complaining about inaction; recording at-work conversations contrary to HSBC policy; misleading supervisors about

tasks undone; disrupting co-workers by discussing his fraud investigations and recordings; and angrily walking out of a meeting with a new supervisor just prior to missing work without authorization the day before his discharge. The CATF also cited as "disruptive" Cruz' "repeated statements to colleagues about purported concerns of fraudulent activities"; and that instead of visiting customers "he had spent his time visiting branches and talking with employees about 'customer fraud' issues."

Putting aside the presence of SOX-related activities among the reasons to terminate set forth in the CATF, this document alone does not meet HSBC's burden to justify the firing by "clear and convincing evidence." Nobody from HSBC testified (or even wrote) that Cruz would have been terminated solely for poor performance in the absence of his protected activity. One need not act like a super-personnel department to raise issues of pretext versus the argument that performance alone motivated HSBC. Were other "4" rated employees working in his business unit and were they also fired? Were other employees in the bottom 10% of sales also fired? Did the performance review language explaining the "4" rating indicate a redeemable rather than unreachable employee? What evidence of "disruptiveness" accompanied the criticism of Cruz' fraud-related conversations? How frequent were they? Did any co-worker complain about these conversations?

Napoli introduced an allegation of sexual harassment against Cruz, but it was supported by no documentation or testimony, was absent from the CATF, and was denied by Cruz. Were some of these performance and behavioral failures alleged by HSBC as retaliation against Cruz for raising the fraud claims? Because nobody from HSBC testified at the hearing, these and other contextual issues remain unresolved. Granted, Cruz'

subjective self-evaluation – that he was better than his CATF, or that there were extenuating circumstances – is not entitled to much weight. But the CATF's ambiguities and cryptic conclusions, without testimonial support or at least explanation, do not prove by clear and convincing evidence that HSBC would have fired Cruz anyway. The record fully supports our finding that his protected activity was "a contributing factor."

5. Attorney Grosso's testimony was inconsequential

Napoli objected vigorously to the Tribunal's allowing Attorney Grosso to testify on behalf of his client Cruz. The Tribunal, all attorneys themselves, considered the risks of advocate-witness testimony, especially of undue influence by a fellow member of the bar versus loss of credibility because of Grosso's advocacy role at the Evidentiary Hearing. The Tribunal felt fully competent to weigh Grosso's testimony fairly. Unlike jurors, the Tribunal would not be unduly influenced by the witness' officer-of-the-court status. Also, because parties in arbitration need not have lawyers, the Tribunal is experienced at receiving party-advocate testimony and how to weigh evidence thus presented. Moreover, Grosso's testimony was invited when Napoli began pointing fingers at Grosso and Damadeo for possibly missing qui tam statutes of limitations. Because of this blame shifting, it became relevant when and why Grosso and Damadeo were retained by Cruz.

The scope and duration of Grosso's testimony were inconsequential, basically summarizing the context and chronology of his retainer agreements with Cruz for pursuing his tips of improper conduct against HSBC before the SEC and IRS (JX 48) and claims in court for common law retaliation/wrongful discharge (JX 50). Contrary to Napoli's post-hearing submission, we find nothing "unfairly prejudicial" in Grosso's testimony that Cruz

"always" wanted to sue HSBC. We understand that Grosso could not have known Cruz' intent prior to first communicating with him, which occurred after expiration of the SOX statute of limitations.

All told, Grosso's testimony consumed 15 minutes on direct, and 5 minutes on cross. We find nothing prejudicial or even improper in its admission.

III. CONCLUSION

Based on the record as a whole, we find that Napoli is liable to Cruz for legal malpractice in failing to file a whistleblower claim on his behalf within the SOX statute of limitations.

Because evidence on remedies has not yet been presented in this bifurcated hearing, and unless the Parties can stipulate as to damages, fee-shifting and costs, a schedule for the completion of discovery and phase II of the Evidentiary Hearing needs to be scheduled. Accordingly, a conference call is scheduled for December 5, 2016 at 11:00 a.m. in order to schedule discovery and Phase II of the Evidentiary Hearing (to take place between February and April 2017).

Dated: November 28, 2016

New York, New York

November 29, 2016 William Kandel

DATE **WILLIAM L. KANDEL, CHAIRMAN**

I, **WILLIAM L. KANDEL,** do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the **PARTIAL FINAL AWARD.**

November 29, 2016 William Kandel

DATE **WILLIAM L. KANDEL, CHAIRMAN**

State of New York }
County of New York } SS:

On this 29th day of November, 2016, before me personally came and appeared **WILLIAM L. KANDEL,** to me known and known to me to be the individual described in and who executed this **PARTIAL FINAL AWARD** and acknowledged to me that he executed the same.

November 29th 2016 Hertha Brito

DATE **NOTARY PUBLIC**

HERTHA BRITO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01BR5035092
Qualified in New York County
My Commission Expires January 29, 2019

November 28, 2016
DATE

ALFRED G. FELIU

I, **ALFRED G. FELIU**, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the **PARTIAL FINAL AWARD.**

November 28, 2016
DATE

ALFRED G. FELIU

State of New York
County of Westchester } SS:

On this 28th day of November, 2016, before me personally came and appeared **ALFRED G. FELIU**, to me known and known to me to be the individual described in and who executed this **PARTIAL FINAL AWARD** and acknowledged to me that he executed the same.

November 28, 2016
DATE

NOTARY PUBLIC

ELIZABETH F. WOLFE
Notary Public, State of New York
Westchester County
Reg. 01WO6339963
Commission Expires April 04, 2020

November 28, 2016
DATE

DAVID C. SINGER

I, **DAVID C. SINGER**, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the **PARTIAL FINAL AWARD**.

November 28, 2016
DATE

DAVID C. SINGER

State of New York
County of New York } SS:

On this 28th day of November, 2016, before me personally came and appeared **DAVID C. SINGER,** to me known and known to me to be the individual described in and who executed this **PARTIAL FINAL AWARD** and acknowledged to me that he executed the same.

November 28, 2016
DATE

NOTARY PUBLIC
CHOW LAI CHU
Notary Public, State of New York
No. 01CH4808062
Qualified in Suffolk County
Commission Expires March 30, 2018