UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

----------X

GVS PROPERTIES, LLC,

Case No.: 29-CA-077359

Respondent,

-and-

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 15, LOCAL LODGE 447

Charging Party.

----------X

RESPONDENT GVS PROPERTIES, LLC'S MEMORANDUM OF LAW IN SUPPORT OF ITS EXCEPTIONS TO THE DECISION AND ORDER OF THE ADMINISTRATIVE LAW JUDGE

On the brief:

Richard M. Howard, Esq.
Alexander Leong, Esq.
Jonathan D. Farrell, Esq.

LAW OFFICES
MELTZER, LIPPE, GOLDSTEIN & BREITSTONE, LLP
190 WILLIS AVENUE, MINEOLA, NY 11501
(516) 747-0300
FACSIMILE: (516) 747-0653

608094-3

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

FACTS 6

The DBSWPA 6

GVS' Lawful Refusal to Bargain 9

ARGUMENT 15

POINT 1 15

THE ALJ'S CONCLUSION THAT GVS IS A BURNS SUCCESSOR IS INCORRECT FOR A NUMBER OF REASONS 15

A. ALJ Chu's Consideration of An Issue About Which He Specifically Precluded GVS From Introducing Proof, Reflects A Decision That Is Arbitrary and Capricious, Biased and a Denial of Due Process 15

B. Contrary to ALJ Chu's Opinion, GVS Did Not Make A Voluntary Decision To Hire a Majority Of Its Workforce From Its Predecessor 18

C. ALJ Chu's Decision Would Supercede Burns and Render the DBSWPA Meaningless 24

CONCLUSION 26

TABLE OF AUTHORITIES

Federal Cases

Chapman v. California, 386 U.S. 18 (1967) 17
Cunningham v Stegall, 13 Fed Appx. 286 (6th Cir. 2001) 17
Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27, 40–41 (1987) ..... 2, passim
Howard Johnson Co., Inc. v. Detroit Local Joint Executive Board, 417 U.S. 249 (1974) 18
James G. Paulsen v. GVS Properties, LLC, 2012 WL 5612509 (E.D.N.Y., Nov. 13, 2012).. 1, 20, 24
Maurino v. Johnson, 210 F.3d 638 (6th Cir. 2000) 17
NLRB v. Burns International Security Services, Inc., 406 U.S. 272 (1974) ..... 2, passim
Radzanower v. Touche Ross & Co., 426 U.S. 148 (1976) 25
Rhode Island Hospitality Assocation v. City of Providence, 667 F.3d 17 (1st Cir. 2011)... 3, 4, 22
Rhode Island Hospitality Association v. City of Providence, 775 F.Supp.2d 416 (D.R.I. 2011) . 3, 22
S & F Mkt. St. Healthcare LLC v N.L.R.B. 570 F.3d 354 (D.C. Cir. 2009) 23
Spotless Enterprises, Inc. v. Carlisle Plastics, Inc., 56 F.Supp.2d 274 (E.D.N.Y. 1999) 25
United States v. Wittig, 2005 WL 1227938 (D. Kan. May 23, 2005) 16

State Cases

California Grocers Association v. City of Los Angeles, 52 Cal.4th 177 (2011) 3, 19
Rova Farms Resort v. Investors Ins. Co. of America, 65 N.J. 474 (1974) 17
State v. Johnson, 42 N.J. 164 (1964) 17

NLRB Cases

Canteen Co., 317 N.L.R.B. 1052 (1995) 4
M&M Parkside Towers LLC, 29-CA-27720, 2007 WL 313429 (NLRB Div of Judges Jan. 30, 2007) ..... 2, passim
S & F Market Healthcare, LLC d/b/a as Windsor Convalescent Center of North Beach, 351 NLRB 975 (2000) 23
Sahara Las Vegas Corp, 284 NLRB 337 (1987) 24
Springfield Transit Management, Inc., 281 NLRB 72 (1986) 23
Spruce Up, 209 N.L.R.B. 194 (1974) 4

Statutes

Displaced Building Service Workers Protection Act ..... 2, passim
National Labor Relations Act ..... 1, passim
New York City Administrative Code §22-505 ..... 7, 8

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

----------X

GVS PROPERTIES, LLC,

Case No.: 29-CA-077359

Respondent,

-and-

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 15, LOCAL LODGE 447

Charging Party.

----------X

PRELIMINARY STATEMENT

GVS Properties, LLC ("GVS" or the "Employer") submits this memorandum of law in support of its Exceptions to Administrative Law Judge Kenneth Chu's ("ALJ Chu") decision and order dated December 27, 2012 ("Decision") and issued pursuant to an unfair labor practice hearing on August 14, 2012 ("Hearing"). ALJ Chu found GVS violated sections 8(a)(5) and 8(a)(1) of the National Labor Relations Act ("NLRA"). ALJ Chu's Decision should be reversed and the Complaint should be dismissed in its entirety, as the Decision is contrary to: (1) applicable law; (2) the General Counsel's most recent pronouncement regarding the central issue in this case; and (3) the evidence presented at the Hearing.

After reviewing the record from the Hearing in connection with Region 29's related application for 10(j) relief under the NLRA, U.S. District Court Judge Brian Cogan denied the Region's application because there was no reasonable cause to believe GVS committed an unfair labor practice. ALJ Chu's Decision must be set aside as it is arbitrary, capricious and/or biased against GVS as evidenced by the following: despite acknowledging the absence of any allegation

in the Complaint charging GVS with any impropriety for the termination of its predecessor's employees; despite acknowledging that the bases for their terminations were not at issue; and despite prohibiting GVS from introducing proof to the contrary, ALJ Chu specifically found GVS discharged employees due to anti-union animus.

The central issue in this matter is how compulsory retention statutes, such as New York City's Displaced Building Service Workers Protection Act ("DBSWPA"), affect the time period for determining whether a new employer is the "successor" of the predecessor employer as defined under NLRB v. Burns International Security Services, Inc., 406 U.S. 272 (1974). It is well-settled Burns successorship arises upon the **voluntary decision** of a new employer "to maintain generally the same business and to hire a majority of its employees from the predecessor...." Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27, 40–41 (1987).

Recognizing the DBSWPA temporarily deprives a new employer the ability to make a voluntary decision to hire its predecessor's employees, the General Counsel in M&M Parkside Towers LLC, 29-CA-27720, 2007 WL 313429 (NLRB Div of Judges Jan. 30, 2007) previously took the position, as GVS espouses here, that the determination of Burns successorship cannot be made until after the conclusion of the mandatory retention period required by the DBSWPA. In summarizing the General Counsel's position, Administrative Law Judge Raymond Green ("ALJ Green") wrote:

> Although contending that this law is not relevant in determining *if* the Respondent became a successor, the **General Counsel does concede that it should be considered as to *when* the Respondent became a successor**. In this regard, he asserts that given the facts of this situation and the fact that the Respondent hired these employees in accordance with the local law, the employees should be construed as probationary or contingent employees until they were offered regular employment. As such, **he states "that Respondent, during that 90 day period between January 5 and April 5, had no obligation to recognize or**

> **bargain with the Union before making any changes." He continues: "Respondent's Burns successorship obligation commenced on approximately April 5, the time that Respondent's bargaining unit was composed of Union members whose employment was no[t] longer required by the DBSWPA.** After April 5, the DBSWPA ceased to exist for all practical purposes and, therefore, Respondent's obligations under the Act were unaffected by any other statute that could conflict with the Act."

Ibid. (emphasis added). Prior to this matter, the above was the General Counsel's last publicly stated view regarding the effect of the DBSWPA upon Burns successorship.

Agreeing with the General Counsel's position regarding the interplay between the DBSWPA and Burns successorship, ALJ Green held in M&M:

> In my opinion, the determination of that question should be based on the date that offers of employment are actually made, or if not made, at a reasonable time after the expiration of the 90 day period. Thus, if an employer makes an offer before the 90 days, the date of the offer should be construed as the date that the employees would become permanent. If an employer makes the offer within a reasonable period of time after the 90 days, then that should also be the date that the employees would become permanent. And if an employer does not make an explicit employment offer at all but continues to employ such individuals, then their status as permanent employees would come into existence after a "reasonable time."[7]

In considering local laws similar to the DBSWPA, the First Circuit Court of Appeals and the California Supreme Court accepted the General Counsel's then position, as it was in M&M, and agreed that absent a voluntary decision (not a compulsory evaluation period pursuant to the local law), Burns successorship did not arise. See California Grocers Association v. City of Los Angeles, 52 Cal.4th 177 (2011), quoting Rhode Island Hospitality Association v. City of Providence, 775 F.Supp.2d 416, 432 (D.R.I. 2011) aff'd 667 F.3d 17 (1st Cir. 2011) ("'[E]xisting case law indicates that the successor employer will be obligated to bargain with [a union] only if the successor employer retains its predecessor's employees beyond the mandatory

employment period or if it extends an offer for permanent employment prior to the expiration of the mandatory retention period.' We agree."); see also Rhode Island Hospitality Association v. City of Providence, 667 F.3d 17, 29-30 (1st Cir. 2011). But for this interpretation, these courts would have found the retention statutes unenforceable, as pre-empted by the NLRA.

Here, GVS was deprived of the ability to form the conscious decision to "hire a majority of its employees from its predecessor" until after the conclusion of the ninety (90) day retention period mandated by the DBSWPA. Until then, it was compelled by operation of law to retain and evaluate its predecessor's employees and could not form its own conscious decision. Although GVS initially retained seven (7) of the eight (8) employees previously working at said properties for ninety (90) days upon assuming operation of the properties, it is undisputed GVS did so to comply with its legal obligations under the DBSWPA. ALJ Chu's attempt to recast GVS' obligatory compliance with the law as a voluntary choice to hire a majority of its workforce from its predecessor is ridiculous and distorts the requirement in Burns successorship that an employer make a conscious decision to hire a majority of its employees from its predecessor.

It is undisputed that one day prior to assuming operations of the affected properties, GVS properly advised its predecessor's employees that GVS was revoking all prior terms and conditions of employment in their entirety and unilaterally establishing the initial terms and conditions.[1] It is also undisputed that at that time, GVS notified its predecessor's employees

[1] *See* Spruce Up, 209 N.L.R.B. 194 (1974), where employer lawfully established its initial terms and conditions of employment. *See also* Canteen Co., 317 N.L.R.B. 1052 (1995), in which the Board stated a purchaser can set its own initial terms and conditions of employment if such terms are presented to potential hires in the first communication(s) the purchaser has with them. GVS clearly set forth, prior to the hire of any unit employee, the initial terms and conditions of employment (with GVS).

that it was not hiring all of them and was temporarily retaining the predecessor's employees out of compulsion pursuant to the DBSWPA. After operating the properties for ninety (90) days, it is undisputed GVS did not hire a majority of its employees from its predecessor. Therefore, GVS is not a Burns successor, and is under no duty to recognize or bargain with the International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 15, Local Lodge 447 ("Union").

In spite of: (1) applicable law; (2) the General Counsel's prior position that Burns successorship could not be determined until after the conclusion of the DBSWPA period; (3) the fact that GVS did not hire a majority of its workforce from its predecessor at the conclusion of the DBSPWA period, and (4) Judge Cogan's finding, when reviewing the Hearing record, that there is no reasonable basis to find an unfair labor practice, ALJ Chu erroneously determined GVS was a Burns successor and failed to bargain with the Union in violation of the NLRA.

ALJ Chu's Decision is based upon: (1) his above stated improper and unsubstantiated supposition that GVS initially laid off one employee and discharged three (3) employees at the end of the DBSWPA's mandatory ninety (90) day compulsory retention period "in a transparent effort to dilute the Union's majority and evade its successorship bargaining obligation"; and (2) his view GVS made a conscious choice to purchase properties subject to the DBSWPA and therefore became a Burns successor upon retaining its predecessor's employees in compliance with the DBSWPA and receiving a demand for recognition from the Union.

The first basis is outrageous given the above stated acknowledged facts i.e., (1) the Complaint does not charge GVS with any violation of Section 8(a)(3) of the NLRA; (2) the issue was not before the Court; and (3) ALJ Chu expressly precluded GVS' attempts to introduce contradictory evidence because "[t]here's no charge on these terminations."

ALJ Chu's second basis is equally specious. The choice upon which Burns successorship rests is not the entrepreneurial decision to purchase a business or property, but the new employer's voluntary decision to hire a majority of its employees from its predecessor after the purchase. ALJ Chu also obfuscates obligatory statutory compliance with voluntary behavior. By its very definition, mandatory compliance cannot be deemed voluntary choice. More specifically, GVS purchased properties pursuant to an ordinance which was[2] interpreted by the First Circuit Court of Appeals, the Supreme Court of the State of California, General Counsel to the National Labor Relations Board and an Administrative Law Judge of the National Labor Relations Board, as failing to create Burns successorship in and of itself. Under such circumstances, its decision to purchase the properties and comply with the DBSWPA cannot be realistically construed as choosing to become a Burns successor.

As ALJ Chu's Decision is based on erroneous findings not supported by the record, contradicts well-established law and is logically inconsistent, it must be reversed, and the Complaint dismissed.

FACTS

The DBSWPA

Passed in the aftermath of the September 11, 2001 attacks, the DBSWPA is a New York City ordinance designed to "promote stability in employment for building service workers, which will reduce the need for social services resulting from unemployment, and promote stability in the service industry." New York City Local Law No. 39/2002, Section 1. The New York City Council, which passed the DBSWPA, stated the law was necessary because: "The effects of September 11 and the deepening recession have been devastating for low income New

[2] Itself or its clone for the industry and location in question.

Yorkers. The volatility of the real estate industry coupled with new trends in the service economy are undermining stable relationships and creating a drain on an already overburdened social service system." Ibid.

Under the DBSWPA, "[a] successor employer[3] shall *retain* for a ninety (90) day transition employment period at the affected building(s) those building service employee(s) of the terminated building service contractor (and its subcontractors), or other covered employer, employed at the building(s) covered by the terminated building service contract or owned or operated by the former covered employer." (emphasis added). New York City Administrative Code §22-505(b)(5). The DBSWPA prohibits what is defines as a successor employer from terminating the employees of its predecessor during this ninety (90) period, unless the employee is discharged for cause or the successor employer determines that fewer building service employees are needed to operate the affected building(s) and any employees are laid off in accordance with reverse seniority within their job classification and other limitations. New York City Administrative Code §22-505(b)(6)-(7). At the conclusion of the ninety (90) day period, the successor employer is obligated to perform a written performance evaluation for each incumbent employee retained, and "[i]f the employee's performance during such ninety (90) day period is

[3] The DBSWPA defines a "successor employer" as "a covered employer that (i) has been awarded a building service contract to provide, in whole or in part, building services that are substantially similar to those provided under a service contract that has recently been terminated, or (ii) has purchased or acquired control of a property in which building service employees were employed. New York City Administrative Code §22-505(a)(8).

As Judge Cogan noted in footnote 4 of his Memorandum Decision and Order dated November 13, 2012, "Although the [DBSWPA] uses the term 'successor employer' to describe a new employer, there is no reason to believe that it is referring to a 'successor employer' as defined by the Supreme Court in Burns and Fall River." Indeed, neither the General Counsel, nor the Union contend a "successor employer" as defined in the DBSWPA is identical meaning to a "successor employer" as defined by the Supreme Court in Burns and Fall River.

satisfactory, the purchaser *shall* offer the employee continued employment under terms and conditions established by the successor employer or as required by law." (emphasis added). New York City Administrative Code §22-505(b)(8).

There are limited circumstances under which a successor employer may exempt itself from the obligations imposed by the DBSWPA. Specifically, the obligations imposed by the DBSWPA:

> shall not apply (i) to any successor employer that, on or before the effective date of the transfer of control from a predecessor covered employer to the successor employer or the commencement of services by a successor building service contractor, agrees to assume, or to be bound by, the collective bargaining agreement of the predecessor covered employer covering building service employees, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees; or (ii) where there is no existing collective bargaining agreement as described in subsection (i) above, to any successor employer that agrees, on or before the effective date of the transfer of control from a predecessor covered employer to the successor employer or the commencement of services by a successor building service contractor, to enter into a new collective bargaining agreement covering its building service employees, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees; or (iii) to any successor employer whose building service employees will be accreted to a bargaining unit with a pre-existing collective bargaining agreement, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees; or (iv) any covered employer that obtains a written commitment from a successor employer that the successor employer's building service employees will be covered by a collective bargaining agreement falling within subparts (i), (ii), or (iii) above.

New York City Administrative Code §22-505(d).

GVS' Lawful Refusal to Bargain

Until on or about February 17, 2012, Vantage Building Services LLC ("Vantage") managed the following properties located in New York, New York: 601 West 139th Street (a/k/a 3421 Broadway); 614 West 157th Street; 600 West 161st Street (a/k/a 3851 Broadway); 559 West 164th Street; 701 West 175th Street (a/k/a 414 Broadway); 700 West 176th Street (a/k/a 4151 Broadway); and 667 West 177th Street (a/k/a 4180 Broadway) (collectively "Properties") (Joint Ex. 1, ¶¶ 3, 8[4]). Vantage was signatory to a collective bargaining agreement with the Union effective May 1, 2010 to April 30, 2013, under which the Union was recognized as the collective bargaining representative of Vantage's employees in the bargaining unit described as: all full-time superintendents and porters (also know as maintenance technicians and maintenance assistants respectively) and excluding all other employees, clerical employees, managerial employees, guards and supervisors as defined in the NLRA, employed at said Properties. (Joint Ex. 1, ¶¶ 7, 11).

On or about February 17, 2012 -- one day prior to assuming management of the Properties – GVS advised Vantage's building service employees in writing that: (1) GVS would be assuming management of said Properties on or about February 18, 2012; (2) all prior terms and conditions of employment were revoked in their entirety; (3) GVS was unilaterally setting the initial terms and conditions of employment; (4) GVS was not hiring all employees who formerly worked at said Properties; (5) the employees were being retained for a ninety (90) period pursuant to the DBSWPA during which their (the employees') performance would be reviewed; and (6) GVS would determine its hiring and staffing needs after the conclusion of the

[4] All citations to the Stipulation of Facts, which was introduced into evidence as Joint Exhibit 1 are identified as "Joint Ex. 1" followed by the paragraph number.

ninety (90) day period required by the DBSWPA. (T. 27, 28; Employer's Ex. 32-51). In short, GVS "Spruced up"[5], letting all know it acted out of compulsion and, when permitted by the DBSWPA, would then make its own choice as to its labor force. (T. 27, 28; Employer's Ex. 32-51).

On or about February 18, 2012, GVS retained seven (7) of eight (8) of its predecessor's employees in compliance with the DBSWPA. (T. 10, 35[6]; Joint Ex. 1, ¶¶ 7, 8, 12-16). GVS laid off one (1) of the predecessor's employees in accordance with DBSWPA because GVS initially believed it could effectively operate the affected buildings with seven (7) employees. (T. 28, 29). Several weeks later, on or about March 7, 2012, the Union's General Counsel, James M. Conigliaro, sent a written demand for bargaining to Nicholas Conway, Operations Manager for Alma Realty LLC.[7] (Joint Ex. 1 ¶ 22; Employer's Ex. 66).

By letter dated March 13, 2012, GVS rejected the Union's request to commence bargaining because GVS was still in the midst of the ninety (90) day transition period required by the DBSWPA and had not yet established its full complement of employees.[8] (T. 31; Joint Ex. 1 ¶ 24; Employer's Ex. 67-68). In its correspondence to the Union, GVS stated, in part:

> Please be further advised in accordance with the New York City Displaced Building Service Workers Protection Act ("DBSWPA") (§22-505 of the Administrative Code of the City of New York),

---

[5] *See* footnote 2.

[6] All citations to the August 14, 2012 hearing transcript for the unfair labor practice hearing in this case are identified as "T." followed by the page number.

[7] Alma Realty Corp. ("Alma") is a management company hired by GVS to manage the properties in question. (T. 19).

[8] This office did not respond on Alma's behalf because no response was necessary because Alma neither purchased the properties nor employed the former employees in question.

> GVS is currently evaluating the performance of the former employees of Vantage Building Service LLC (or its related entities). Upon the conclusion of the ninety (90) day evaluation period, as mandated and set forth in DBSWPA, GVS will determine its staffing needs as well as decide who will be offered positions of employment. Accordingly, at this juncture it is unclear whether District 15, Local 447 International Association of Machinists and Aerospace Workers, AFL-CIO ("Local 15")[9] is a *Burn Successor* as that term is generally used and accepted in the field of labor relations. (*See* NLRB v. Burns International Security Service, Inc., 406 U.S. 272 (1972); Fall River Dyeing and Fishing Corp., 482 U.S. 27 (1987).) Said ninety (90) day evaluation period will conclude on or about May 17, 2012. Upon the conclusion of the ninety (90) day evaluation period, and the offer of a more permanent position, GVS will determine if it has a bargaining obligation with Local 15.

(Employer's Ex. 67-68).

During the ninety (90) day transition period, GVS reviewed the work performance of all the employees retained by GVS from its predecessor. (T. 35). GVS administered disciplinary notices on an as-needed basis and placed three (3) of the retained employees on a "*Performance Improvement Plan*" due to their poor performance. (Employer's Ex. 79-85, 88-94, 106-107, 109-110, 112-128).

At the conclusion of the ninety (90) transition period[10], GVS terminated the employment of three (3) employees who were initially retained by GVS as compelled by DBSWPA. (T. 37-38; Employer's Ex. 105, 108, 111). Similarly, after operating the Properties for ninety (90) days, GVS concluded it needed a complement of eight (8) workers to adequately service the properties. (T.41-42). As a result, on or about May 16, 2012, GVS decided to continue the employment of four (4) of the employees who were retained by GVS for the mandatory ninety

---

[9] The author inadvertently referred to the Union instead of GVS in this sentence of the March 13, 2012 letter.

[10] Two employees were advised on the 89th day of the transition period because they were not scheduled to work the following day.

(90) day period, and hired four (4) new employees (T. 42, 44). At the conclusion of the ninety (90) day period, GVS did not recognize the Union because GVS did not hire a majority of its eight (8) employees from its predecessor, and GVS had no reason to believe that a majority of the employees employed supported the Union. (T. 48).

On or about March 28, 2012, the Union filed an unfair labor practice charge with Region 29 ("Region") of the Board, alleging that GVS violated Sections 8(a)(5) and 8(a)(1) of the NLRA by virtue of its refusal to bargain with the Union. (Joint Ex. 1 ¶ 1). In its charge, the Union never alleged GVS engaged in discriminatory or retaliatory conduct in violation of Section 8(a)(3). On or about May 18, 2012, GVS filed a position statement with the Region categorically denying that it violated the NLRA by refusing to bargain with the Union. Subsequently, on or about May 31, 2012, the Regional Director issued a complaint and notice of hearing ("Complaint") on the allegations set forth in the charge. (Joint Ex. 1 ¶ 2). On or about June 12, 2013, Respondent timely answered the Complaint and on or about August 14, 2012, Respondent amended its answer to the Complaint. (Joint Ex. 1 ¶ 2).

The Hearing in this case was held before ALJ Chu on August 14, 2012. During the Hearing, GVS offered unrebutted testimony that one (1) of the predecessor's employees was laid off at the start of the ninety (90) period under the DBSWPA because GVS believed it could operate the Properties with the remaining employees. (T. 29, 32). Also, during the hearing, ALJ Chu limited the scope of the evidence which GVS attempted to introduce concerning the ground(s) for terminating the employment of three (3) other employees who worked for Vantage. (T.37). Indeed, when GVS attempted to introduce evidence concerning the grounds for terminating said employees, the General Counsel stated:

> Objection, Your Honor. The employer's reason for terminating these employees is not relevant.... *There has been no allegation that the employer's motive's in terminating the employees at this point was improper,...*

(emphasis added) (T.37). In sustaining the General Counsel's objection, ALJ Chu stated:

> *I agree. We don't need to go into the reason for the termination. There's no charge on these terminations.*

(emphasis added) (T.37). Nevertheless, the limited evidence GVS was permitted to introduce on this issue was unrebutted and established that said employees were discharged for cause and poor performance. (Employer's Ex. 105-128; T.37, 41).

Despite (1) the General Counsel's acknowledgment on the record that GVS has not been charged with an impropriety relating to its (GVS') termination of certain employees; (2) ALJ Chu's acknowledgement on the record that no charge was brought relating to GVS' termination of employees; (3) ALJ Chu's ruling to limit the introduction of evidence relating to GVS' reason(s) for discharging Vantage's employees; and (4) the existence of unrebutted record evidence establishing legitimate, non-discriminatory reasons for terminating the employment of Vantage's employees, ALJ Chu remarkably found that GVS "initially laid-off one employee and discharged three at the end of the 90 day period in a transparent effort to dilute the Union's majority and evade its successorship bargaining obligation" in violation of 8(a)(3) and 8(a)(1) of the NLRA. (Decision P. 9, L. 35-39). Such a finding contradicts the undisputed record evidence and demonstrates the arbitrary and capricious nature of the ALJ Chu's Decision.

Following the Hearing and prior to the issuance of ALJ Chu's Decision, Region 29 of the Board petitioned the U.S. District Court for the Eastern District of New York for injunctive relief under 10(j) of the NLRA to, among other things, compel GVS to recognize and bargain with the Union. By Memorandum Decision and Order dated November 13, 2012 ("Order"), Judge Cogan

denied the Region's application because there was no reasonable cause to believe GVS violated sections 8(a)(5) and 8(a)(1) of the NLRA. Significantly, after reviewing the record from the Hearing, Judge Cogan found GVS was not a Burns successor and GVS acted within its rights when it refused to recognize and bargain with the Union after GVS retained seven (7) out of eight (8) of Vantage's employees in compliance with the DBSWPA. Judge Cogan rejected the arguments raised by the General Counsel and Union in the instant unfair labor practice case.

GVS notified ALJ Chu of Judge Cogan's Order, but ALJ Chu gave no weight to said Order in his Decision, claiming the issue before the Board was very different from the injunctive relief sought before Judge Cogan. ALJ Chu, however, is mistaken because the issues examined by ALJ Chu and Judge Cogan are identical. ALJ Chu was charged with determining if GVS engaged in an unfair labor practice, while Judge Cogan had to determine whether the Region possessed reasonable cause to believe GVS committed an unfair labor practice. In both situations, ALJ Chu and Judge Cogan had to examine the same record evidence and question of law: Was GVS a Burns successor and therefore obligated to recognize and bargain with the Union on or about February 18, 2002, when it initially retained seven (7) out of eight of its predecessor's employees pursuant to the DBSWPA? The Region simply had a lesser burden before Judge Cogan, which it could not meet. As the Region could not satisfy the lesser burden of establishing the existence of reasonable cause to believe that GVS violated sections 8(a)(5) and (1) of the NLRA based on the Hearing record, then the Region/General Counsel cannot possibly satisfy the more onerous burden of demonstrating GVS violated sections 8(a)(5) and (1) of the NLRA through a preponderance of the evidence to ALJ Chu.

ARGUMENT

POINT I

THE ALJ'S CONCLUSION THAT GVS IS A *BURNS* SUCCESSOR IS INCORRECT FOR A NUMBER OF REASONS

A. ALJ Chu's Consideration of An Issue About Which He Specifically Precluded GVS From Introducing Proof, Reflects A Decision That Is Arbitrary and Capricious, Biased and a Denial of Due Process

It is absolutely remarkable that ALJ Chu would preclude GVS from introducing evidence as to the reason(s) it took the employment related actions in question and then rule that GVS acted based upon anti–union animus. Such actions constitute a denial of due process. Without a scintilla of evidence to support his position, ALJ Chu found that GVS' actions constituted "a transparent effort to dilute the Union's majority and evade its successorship bargaining obligation." (P. 9)

ALJ Chu provided no indication of how he came to this conclusion, which is not surprising, inasmuch as the only evidence adduced at the Hearing (before ALJ Chu precluded any further evidence on point) was that the predecessor's employees who were discharged by GVS were "particularly bad employees." (T. 37)

Two questions arise from ALJ Chu's actions. First, what motivated ALJ Chu to preclude evidence as irrelevant and then base his Decision upon the purported irrelevancy? Second, what is the effect of ALJ Chu's actions?

Only ALJ Chu can set forth with certainty why he acted in this fashion. It is not a leap of faith, but rather a logical inference, to deduce that ALJ Chu wanted to uphold the General Counsel's position so desperately that he was willing to substitute his idol speculation for the limited evidence he allowed adduced and for the remaining evidence he precluded. More

importantly, regardless of ALJ Chu's motivation, the effect of his actions is clear. His decision must be reversed.

It is well-settled that precluded evidence cannot be the basis for a decision. As stated in United States v. Wittig, 2005 WL 1227938 (D. Kan. May 23, 2005):

> The motion is limine will be granted to preclude evidence of the SEC rules, unless the government presents evidence that the proxies contained false representations or omissions. Needless to say, until the Court hears the government's evidence, the Court cannot rule on this issue and takes this matter under advisement.

In sum, there can be no reference to the issue and any such reference may be sanctionable. Ibid, stating:

> While this issue is under advisement, the parties are precluded from any mention, suggestion, or presentation of evidence concerning the SEC rules on calculating personal airplane usage using aggregate incremental cost. The Court strongly cautions counsel that while this issue is under advisement, counsel shall not in any respect, attempt to inject the SEC rules or aggregate incremental cost, into the trial.

Here, as in Matter of Moorhouse, 250 NJ Super. 307, 322 (NJ Super Ct. App. Div. 1991), if the ALJ was interested in the issue, the actual evidence was available and GVS sought to introduce same. Nonetheless, ALJ Chu inexplicably precluded GVS from introducing all its evidence relating to same. In such a circumstance, the ALJ's Decision must be reversed. As stated in Moorhouse:

> However, the trial judge inexplicably refused to hear the testimony of any of them, although they were present in the courtroom and prepared to testify. The judge nevertheless found clear and convincing evidence of the hospital medical ethics committee's and neurologists' findings and of Moorhouse's medical condition without hearing the testimony or admitting the records of any doctor or medical expert although readily available in court....

> Because the trial judge's findings were not based on sufficient credible evidence in the record, we reverse his finding of clear and convincing evidence of Moorhouse's medical condition. ***323** Rova Farms Resort v. Investors Ins. Co. of America, 65 *N.J.* 474, 484, 323 *A.*2d 495 (1974); State v. Johnson, 42 *N.J.* 146, 162-63, 199 *A.*2d 809 (1964).

ALJ Chu's bias is readily apparent, thereby rendering his decision of no value and mandating its reversal. No part of the decision may stand "[b]ecause judicial bias infects the entire trial process it is not subject to harmless error review." Cunningham v Stegall, 13 Fed Appx. 286, 289 (6th Cir. 2001); see also Maurino v. Johnson, 210 F.3d 638, 645 (6th Cir. 2000); Chapman v. California, 386 U.S. 18, 23, n .8 (1967).

The ALJ's bias is discernible because his Decision displays obvious favoritism, being based on something between off the record speculation and absolutely nothing whatsoever. In any event, the ALJ's Decision has no relationship to the record evidence and is at a minimum, arbitrary and capricious. As stated in Cunningham, *supra* at 289-290:

> ...opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible....
>
> They *may* do so **if they reveal an opinion that derives from an extrajudicial source;** and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.... (Emphasis added.)

Here, ALJ Chu's opinion stems entirely from an extrajudicial source. It has to, as he precluded the introduction of evidence on point. ALJ Chu displayed, at worst, bias or at best, such a remarkable error in judgment as to mandate reversal.

B. Contrary to ALJ Chu's Opinion, GVS Did Not Make A Voluntary Decision To Hire a Majority Of Its Workforce From Its Predecessor

Burns successorship depends upon the **voluntary decision** of a new employer to hire a sufficient number of its predecessor's employees such that they comprise a majority of the new employer' workforce. Indeed, as the Supreme Court stated in Burns, "The source of its [Burns] duty to bargain with the union is not the collective-bargaining contract but the fact that it ***voluntarily*** took over a bargaining unit that was largely intact and that had been certified within the past year." Burns, 402 U.S. at 287. Further, as the Supreme Court subsequently held in Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27, 40–41 (1987):

> [T]o a substantial extent the applicability of Burns rests in the hands of the successor. If the new employer makes a **conscious decision** to maintain generally the same business and to hire a majority of its employees from the predecessor, then the bargaining obligation of §8(a)(5) is activated. This makes sense when one considers that the employer **intends** to take advantage of the trained work force of its predecessor 'to maintain generally the same business and hire a majority of its employees from the predecessor.'"

(emphasis added).

Whether or not an employer becomes a Burns successor is determined by whether the employer made a choice to hire more than fifty percent (50%) of its workforce from its predecessor's workforce. It is this choice -- this freely made decision -- that is critical to the analysis. If the employer chooses not to do so, it is not a Burns successor, Howard Johnson Co., Inc. v. Detroit Local Joint Executive Board, 417 U.S. 249, 259 (1974) (finding Howard Johnson was not a Burns successor because "Howard Johnson *decided* to select and hire its own independent work force to commence its operation of the restaurant and motor lodge.") (emphasis added). If it chooses to do so, then, and only then, it is a Burns successor.

In his Decision, ALJ Chu found that GVS became a Burns successor by virtue of GVS' decision to purchase the Properties with the understanding that such purchase was subject to the statutory obligations of DBSWPA. ALJ Chu's finding, however, is erroneous for a number of reasons. *First*, ALJ Chu has mischaracterized the test for Burns successorship. The choice upon which Burns successorship rests is not the voluntary decision to purchase a property or business, but an employer's voluntary decision to hire a majority of its employees from its predecessor and take advantage of the training and expertise these employees acquired while working for the predecessor. *See* Fall River Dyeing & Finishing Corp., 482 U.S. at 40–41. The focus of analysis to determine a Burns successor is not the entrepreneurial decision to acquire a business or property. Rather, the voluntary decision of the purchaser regarding its employee complement subsequent to the acquisition is the proper focus.

Second, ALJ Chu concluded that by purchasing a building subject to the DBSWPA GVS chose to be a Burns successor. This notion, tantamount to claiming GVS intended to be a Burns successor, cannot be sustained. As noted above, such a rationale is inconsistent with Burns because it focuses on an entrepreneurial decision not the employment choices made subsequently. Moreover, to even imply that GVS chose to, or intended to, be a Burns successor is wholly contrary to the extant decisional law (*e.g.*, M&M, *supra,* Rhode Island Hospitality. *Supra* and California Grocers Association v. City of Los Angeles, *supra.)* which held that GVS would not be a Burns successor merely by virtue of its acquisition of Properties. Indeed, the existing case law and the espoused position of the General Counsel was that a Burns successorship determination could not be made until the completion of the DBSWPA period, as per M&M, *supra,* Rhode Island Hospitality, *supra* and California Grocers Association v. City of Los Angeles, *supra.* GVS did not intend to be a Burns successor solely on the basis of its

decision to acquire a property subject to the DBSWPA, nor would the prevailing law suggest that its actions would be viewed as having such effect.

GVS' retention of its predecessor's employees following its assumption of operations of the Properties cannot trigger Burns successorship as such retention was compelled by law. As noted above and consistently held by the Supreme Court, Burns successorship hinges upon the voluntary decision of the new employer to hire a majority of its employees from its predecessor. Here, GVS did not "hire" seven (7) of its predecessor's eight (8) employees when it assumed operations of the Properties. Rather, GVS was legally obligated to accept the **burden** of retaining and evaluating its predecessor's workforce for a ninety (90) day period.[11] The DBSWPA therefore temporarily deprived of GVS of any choice regarding employees until the conclusion of the ninety (90) retention period mandated by the DBSWPA. The DBSWPA restricts a new employer's ability to terminate a predecessor's employees to two (2) grounds, to wit: either for cause or redundant services. Although GVS could have discharged the employees of its predecessor for "cause" at the start of or during the ninety (90) transition period, its failure to do so cannot and should not be deemed as an affirmative act by GVS to hire a majority of its employees from its predecessor's employees. No inference or conclusion should be drawn by GVS' inaction in this regard because it did not possess sufficient knowledge as to the job

[11] As Judge Cogan stated in denying the Regional Director's application for 10(j) relief, the express language used in the DBSWPA supports the conclusion that a new employer cannot be considered a Burns successor during the ninety (90) transition period. Indeed, the DBSWPA states that a new employer "shall retain" its predecessor employees for ninety (90) days, thereby suggesting the new employer has no ability to decide whether to hire its predecessor employees for a finite ninety (90) period. By contrast, following the ninety (90) period, if the new employer finds a predecessor employee's performance to be satisfactory, the new employer "shall offer" said employee continued employment under the terms and conditions established by the new employer or as required by law. This markedly different language suggests that a new employer only possesses the ability to decide which predecessor employees to hire following the end of the ninety (90) day period. See, pages 12-13 of Judge Cogan's November 13, 2012 Order.

performance and skills of the predecessor's employees to discharge them for cause. Rather, it is further indication of the absence of any anti-union animus. Consequently, GVS could not have possessed the capacity to make voluntary decisions to become a Burns successor during the first ninety (90) days after assuming operations.

In this case, it is undisputed that upon assuming operation of the properties, GVS complied with its obligation under the DBSWPA to retain and evaluate its predecessor's employees for ninety (90) days. As GVS did not hire a majority of its employees from its predecessor at the conclusion of the ninety (90) day period, GVS is not a Burns successor as a matter of fact and law, and no unfair labor practice occurred.

ALJ Chu's attempt to equate GVS' compliance with its obligations under the DBSWPA with the voluntary act of choosing to hire a majority of its workforce from the predecessor is absurd.[12] Essentially, ALJ Chu's position is that if you comply with the law, you must have chosen to support its underlying policy. This is simply untrue. Compliance with a military draft does not equal support for a particular war. It is simply meeting an obligation.

If ALJ Chu's flawed analysis is adopted, any purchaser who buys a piece of New York City real estate covered by the DBSWPA and with unionized employees will be deemed a Burns successor. The DBSWPA, however, makes no such statement. If the ALJ's decision is affirmed, the fact-based analysis used to determine Burns successorship under Burns and Fall River will be rendered superfluous. In short, ALJ Chu's Decision permits the New York City Council to supercede the Supreme Court and national labor law.

---

[12] The previously quoted statements of the First Circuit Court of Appeals in Rhode Island Hospitality, of Burns, itself and of Fall River Dyeing, *supra* are illustrative.

The General Counsel and ALJ Green previously considered when Burns successorship arises in the context of the DBSWPA and reached similar conclusions in M&M. The First Circuit Court of Appeals and the California Supreme Court have also considered the Burns successorship doctrine in relation to compulsory retention laws similar to the DBSWPA. Both courts, in considering the rationale set forth in Burns and its progeny, believed the M&M decision to be correct, as Burns successorship must wait until said employer has the opportunity to exercise a choice.[13] See California Grocers Association v. City of Los Angeles, 52 Cal.4th 177 (2011), *quoting* Rhode Island Hospitality Association v. City of Providence, 775 F.Supp.2d 416, 432 (D.R.I. 2011) *aff'd* 667 F.3d 17 (1st Cir. 2011) ("[E]xisting case law indicates that the successor employer will be obligated to bargain with [a union] only if the successor employer retains its predecessor's employees beyond the mandatory employment period or if it extends an offer for permanent employment prior to the expiration of the mandatory retention period. We agree.") (citations omitted). In Rhode Island Hospitality Association, the First Circuit stated:

> The Supreme Court has explained that the successorship doctrine is based on the "*conscious decision*" of the new employer "to maintain generally the same business and to hire a majority of its employees from the predecessor." Fall River Dyeing, 482 U.S. at 41, 107 S.Ct. 2225 (emphasis added). "This makes sense when one considers that the employer *intends* to take advantage of the trained work force of its predecessor." *Id.* Under the Ordinance, however, the new employer has made no such "conscious decision," nor has the employer "intend[ed] to take advantage" of the work force. Rather, it will have been compelled to continue the employment of the former business's employees, subject to conditions, for three months. To the extent that employee expectations about continued employment are relevant, the fact that retention of employees is only for three months pursuant to the Ordinance may also weigh against a finding of successorship. *See id.* at 43, 107 S.Ct. 2225. (Emphasis in original.)[14]

Id. at 29-30 (1st Cir. 2011.)

---

[13] Both cases viewed the issue from the perspective of applications to hold the local law preempted by the NLRA.

[14] Employee expectations may or may not be relevant. They cannot, however, change the critical issue of voluntary choice of the employer in determining Burns successorship.

ALJ Chu's efforts to find support for his Decision in Springfield Transit Management, Inc., 281 NLRB 72 (1986) is unavailing. Springfield Transit is factually and critically different than the situation presented herein. In Springfield Transit, the respondent, STM, was deemed a Burns successor because the respondent had made it "perfectly clear" *before* hiring the predecessor's employees that it intended to hire them all. Notably, the Board stated:

> In point of fact, STM hired all the [predecessor's] office clerical personnel when it took over the management of the Springfield bus lines from [predecessor] on November 2. Perkins admitted that when he entered into the premises on that date to assume the management of the operation, it was his intention to hire all the former employees of [predecessor], provided they would come to work for STM on his terms. This was apparently a policy decision taken by his superiors during the weekend, which preceded the takeover.

Springfield Transit, 281 NLRB at 78.

By contrast, here, there is no contention by the General Counsel that GVS was a "perfectly clear" successor.[15] It is undisputed that on or about February 17, 2012 and prior to assuming management of the Properties, GVS sent a written "Spruce up" (See footnote 1) notice to the predecessor's employees, letting all know it acted out of compulsion and, when permitted by the DBSWPA, would then make its own choice as to its labor force. (T. 27, 28; Employer's

---

[15]As stated in S & F Mkt. St. Healthcare LLC v N.L.R.B. 570 F.3d 354, 358 (D.C. Cir. 2009):

> In ***Burns,*** the Supreme Court explained that, "although successor employers may be bound to recognize and bargain with the union," except in rare circumstances "they are not bound by the substantive provisions of a collective-bargaining contract negotiated by their predecessors but not agreed to or assumed by them." ***Id.*** at 284, 92 S.Ct. 1571. The rare exception is for "instances in which it is perfectly clear that the new employer plans to retain all of the employees in the [bargaining] unit." ***Id.*** at 294-95, 92 S.Ct. 1571. That is, "a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor," but a so-called "perfectly clear" successor must bargain with the employees' representative before it changes any terms to which its predecessor had agreed. ***Id.***

Ex. 32-51). Based on this correspondence, GVS cannot be construed as a "perfectly clear" successor.[16]

C. ALJ Chu's Decision Would Supercede Burns and Render the DBSWPA Meaningless

ALJ Chu erroneously claims GVS' interpretation of the meaning and application of the DBSWPA would result in preemption of the NLRA.[17] To the contrary, as the DBSWPA gives an employer two (2) options – (1) retain a predecessor's employees for a ninety (90) day transition period, evaluate them following the ninety (90) days, and offer employment to those who performed satisfactorily; or (2) recognizing the union and assume the collective bargaining agreement -- ALJ Chu's interpretation yields only one result – successorship. ALJ Chu's view would supersede and ignore Supreme Court decisional law (Burns, Fall River, *etc.*) on matters of national labor relations policy; render the statutory scheme devised by the DBSWPA meaningless; and "deprive employers of the ability to structure the relationship with their employees to avoid being a successor in the manner permitted by Burns." See, pages 13-14 of Judge Cogan's November 13, 2012 Order. As such, ALJ Chu's Decision may not stand. Only by giving meaning to the first option of the DBSWPA and awaiting conclusion of the ninety (90)

---

[16] The other two (2) cases cited by ALJ Chu, S & F Market Healthcare, LLC d/b/a as Windsor Convalescent Center of North Beach, 351 NLRB 975 (2000) and Sahara Las Vegas Corp, 284 NLRB 337 (1987), involve voluntary probationary periods and have no application to the case at bar.

[17] Footnote 10 of ALJ Chu's Decision is remarkably self-contradictory. ALJ Chu asserts, on the one hand, that Burns successorship occurred the moment GVS hired the prior employer's employees (as mandated by the DBSWPA) and recognition was requested, and then asserts the right to discharge for cause or operational need, as if this would in any way alter the obligation imposed by the ALJ's already corrupted viewpoint. This is most clearly evidenced by the alternative suggestion of ALJ Chu that GVS could have simply assumed the prior CBA. This is an alternative neither Burns nor the DBSWPA requires and which serves no benefit if the purpose is the evaluation of employees, rather than simply demanding full employment for union employees, with no similar obligation for non-union employees.

day period can it be said here, that a conscious decision has been made as to GVS's employment complement. Absent such a construction, the DBSWPA and Supreme Court decisional law cannot be reconciled.

Longstanding rules of statutory construction also indicate that ALJ Chu's finding should be rejected. It is well settled that statutes should be interpreted to work together, See Spotless Enterprises, Inc. v. Carlisle Plastics, Inc., 56 F.Supp.2d 274, 286 (E.D.N.Y. 1999). ("Statutory interpretation requires [that] consideration must be given to the total corpus of pertinent law and the policies that inspired ostensibly inconsistent provisions."). Hence, the NLRA and DBSWPA should be reconciled, as done by ALJ Green in M&M, and the First Circuit and the California Supreme Court in recent cases involving laws similar to the DBSWPA. See Radzanower v. Touche Ross & Co., 426 U.S. 148, 155 (1976).

GVS argues that the successorship determination could not be made in this case until after the ninety (90) day compulsory retention period expired - - not that the DBSWPA ends the successorship inquiry. GVS also submits employees' Section 7 rights are not diminished by interpreting the interplay between the DBSWPA and Burns successorship in the same manner recognized by the General Counsel and ALJ Green in M&M. Employees continue to have the right to organize and engage in concerted activity. Nor does GVS suggest the DBSWPA was intended to circumvent the collective bargaining rights of employees, as ALJ Chu charges. Unlike ALJ Chu's interpretation, GVS' interpretation of the DBSWPA and its impact on the successorship doctrine is consonant with Burns, its progeny, and the rights recognized by the NLRA.

CONCLUSION

For all of the reasons stated in GVS' exceptions and discussed above, GVS respectfully requests ALJ Chu's Decision be reversed and the Complaint be dismissed in its entirety.

Dated: February 7, 2013

Respectfully submitted,
Meltzer, Lippe, Goldstein & Breitstone, LLP

By: _____

Richard M. Howard, Esq.
Alexander Leong, Esq.
Jonathan D. Farrell, Esq.
Attorneys for Respondent
190 Willis Avenue
Mineola, New York 11501
(516) 747-0300

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

----------X

GVS PROPERTIES, LLC

X

and

X

Case No.: 29–CA–077359

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 15, LOCAL LODGE 447 X

----------X

AFFIDAVIT OF SERVICE

STATE OF NEW YORK}
} ss:
COUNTY OF NASSAU }

Carene N. Rundlett, being duly sworn, deposes and says: I am not a party to this action; I am over 18 years of age; and I reside in Nassau County, New York

On February 7, 2013, I served a true and correct copy of **Respondent GVS Properties, LLC'c Exceptions to the Decision of the Administrative Law Judge** and **Respondent GVS Properties, LLC's Memorandum of Law in Support of Its Exceptions to the Decision and Order of the Administrative Law Judge** by enclosing same in a post-paid, properly addressed first-class wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York upon and via electronic mail upon:

Colleen P. Breslin Esq.
National Labor Relations Board, Region 29
2 MetroTech Center, 5th Fl.
Brooklyn, NY 11201-3838
colleen.breslin@nlrb.gov

James M. Conigliaro Esq.
District 15, Local 447 International Association of Machinists and Aerospace Workers, AFL-CIO
652 4th Avenue
Brooklyn, NY 11232
jconigliaro@iamdistrict15.org

Carene N. Rundlett

Carene N. Rundlett

Sworn to before me this
7th day of February 2013

Sharon M Brown

Notary Public

SHARON M BROWN
Notary Public, State of New York
No. 01BR6195437
Qualified in Suffolk County
Commission Expires 10/20/16

606854-1