**FILED,** Clerk of the Supreme Court, 24 Jan 2024, **088942**, **AMENDED**

**SUPREME COURT OF NEW JERSEY**
**Docket No. 088942**

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| In the Matter Of,<br><br>A.D.,<br><br>An Alleged Incapacitated Person. | : | A Petition for Certification from the November 29, 2023, Judgement of the SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION<br>Docket No. A-2652-21<br><br>Sat Below:<br><br>Hon. Francis J. Vernoia, J.A.D.<br>Hon. Katie A. Gummer, J.A.D.<br>Hon. K. Walcott-Henderson, J.A.D. |

# AMENDED PETITION AND APPENDIX FOR CERTIFICATION OF APPELLANT-PETITIONER, BRIAN C. LUNDQUIST, ESQ., PRO SE

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## REASONS WHY CERTIFICATION SHOULD BE ALLOWED

The Appellate Division has now galvanized that the defense of a guardianship action adequately prosecuted by a "state agency" involving an indigent "alleged incapacitated person" ("AIP") must be self-funded by the attorney(s) appointed to represent the AIP. This includes not only attorneys fees, but also litigation costs, as well as expert fees. This even includes instances, like here, where the efforts of the court-appointed representatives directly contributed to the state agency seeking modified relief, resulting in a substantially greater preservation and retention of the AIP's basic rights and liberties.

Worse, in doing so, the Appellate Division has also left behind a hodgepodge standard of review governing fee applications in guardianship actions, comprised of the misfit pieces of an enabling statute, a court rule, but now also two published Appellate Division decisions prohibitively in conflict. If left still, to say the least, it will place trial judges in an unenviable position as they undertake to consider future applications for fees and costs submitted by court-appointed counsel in guardianship actions pursuant to R. 4:86-4(e).

Practically, the implications of this outcome cannot be overstated. Were it not the case before, the message to future attorneys appointed to represent indigent AIPs in guardianship actions filed by state agencies is now crystal clear: no matter how much time or expense you invest, and no matter how remarkable the result, unless

your adversary participates in affirmative "misconduct," your chances of recouping fees and costs are zero.

As a result, this case raises questions of critical public importance concerning the practical, chilling effect which will invariably be imposed upon court-appointed representatives confronted with the certainty that any good faith opposition to a guardianship action filed, and adequately prosecuted by a state agency concerning an indigent AIP, will be entirely self-funded.

As a profession, we can self-flatter all we like that, regardless of expectation of compensation, we are duty bound to zealously advocate for our clients regardless of circumstance. But when this duty also guarantees that any efforts and costs expended will be entirely unpaid, including attorneys fees, deposition fees, trial costs, as well as other litigation costs, it would be dangerously naïve to think that such a reality will not impact the manner in which some court-appointed professionals choose to defend a matter.

Without this Court's intervention, the Appellate Division's decision poses a genuine threat to the preservation of rights and freedoms of vulnerable, indigent adults throughout this State. Thus, the opinion below is a compelling candidate for certification under R. 2:12-4.

## STATEMENT OF THE MATTER INVOLVED

This matter concerns the action for guardianship filed on June 2, 2020 by the Sussex County Division of Social Services, Office of Adult Protective Services ("APS"), pursuant to R. 4:86-1, et seq., which action (initially) sought to (i) have A.D., the alleged incapacitated person (hereinafter, "Hank"), adjudged legally incapacitated in "all areas" (i.e. medical, legal, residential, educational and vocational, etc.) as well as (ii) have a "plenary" (i.e. full) guardian appointed on his behalf.

At the time of filing, Hank was a vulnerable 58 year old man, living alone in Montague Township, Sussex County. (Aa23 (¶¶1-2).) Approximately one month before the Complaint was filed, Hank's father suddenly passed away. Prior to his death, Hank's father was Hank's sole roommate, care provider, as well as his designated representative payee.(Aa24 (¶7).) Hank has no siblings, children or other family of note. (Aa23 (¶3).)

At just sixteen years of age, Hank sustained a traumatic brain injury in a motor vehicle accident, resulting in permanent cognitive injuries. (Aa24 (¶6).) Due to his impairment, Hank was constrained to live with his father at their family home his entire life. (Aa24 (¶8).) Consequently, when his father unexpectedly passed in 2020, Hank found himself living alone without any assistance for the first time in over forty years.

APS opened a case file for Hank on April 15, 2020. (Aa24 (¶5).) In connection with its initial investigation, APS alleged it found Hank's home "extremely unkept," including "a large piece of wood from a telephone pole that penetrates through the living room ceiling." (Aa24 (¶¶10,13).) APS further alleged they found Hank "ungroomed," "wearing the same clothes for over three weeks," unemployed, and exhibiting an inability to handle necessary life skills, including paying bills and food shopping. (Aa25 (¶¶14, 19).)

Due to these findings, APS arranged for Hank to undergo cognitive capacity evaluations the following month. (Aa25 (¶21).) Hank was first evaluated on May 4, 2020 via "video conference" by family physician, Douglas A. Ballan, M.D., who concluded that Hank was "unfit and unable to govern himself and to manage his affairs in some areas but does have capacity in the areas listed below . . . [s]upervised recreation, able to vote." (Aa38 (¶9).) On May 19, 2020, Hank was next evaluated by board certified psychiatrist, Elda P. Sancho Mora, M.D., who concluded that Mr. [A.D.] was "unfit and unable to govern himself and to manage his affairs in all areas." (Aa45 (¶9).)

Armed with these "plenary" opinions, rather than seeking limited guardianship, APS filed the underlying guardianship complaint on June 2, 2020 (the "Complaint") seeking (i) to have Hank adjudged mentally incapacitated and unable to govern himself "in all areas (including medical, legal, residential, educational and

vocational)" and (ii) the appointment of a "general 'full' legal guardian of the person and estate" on Hank's behalf. (Aa28 (¶41).) Despite APS' "plenary" plea, the Complaint failed to identify any proposed individual or agency to serve as "full" guardian. (Aa28 (¶41).) Per Court Rule, the Complaint was additionally accompanied by a proposed form of "Order Appointing Temporary Guardian for Hank and Setting Matter for Hearing (For Guardianship of an Alleged Incapacitated Person)." (Aa51-56.)

On June 11, 2020, Sussex County Surrogate, Gary R. Chiusano, returned a fully conformed, filed copy of APS' Order Appointing Temporary Guardian for Hank, which Order, inter alia (i) scheduled a final hearing before the Honorable Maritza Berdote Byrne, P.J.Ch. on July 14, 2020, (ii) appointed Steven J. Kossup, Esq. as attorney for the "alleged incapacitated person" (sometimes, the "CAA"), and (iii) appointed the undersigned, Brian C. Lundquist, Esq., as "temporary guardian for the alleged incapacitated person" (sometimes, the "GAL"). (Aa51-56 (¶¶1,4,9).)

In returning the conformed copy of the Complaint, the Court further sua sponte partially deleted two nearly identical sentences contained at paragraphs "43." and "44." each stating ". . . that APS bear no responsibility for the costs and fees associated with the appointment of a temporary guardian for Hank pursuant to N.J.S.A. 52:27D-409." (Aa29 (¶¶43-44).) Each deletion is accompanied in the right margin by the handwritten notation "Per M.M.B. PJ.Ch. 6/11/2020." (Id.)

Reasonably so, the GAL understood these deletions by "M.M.B. P.J.Ch." [i.e. the Hon. Maritza Berdote Byrne, P.J.Ch.] to mean, at the very least, that the issue of payment of fees and costs by APS was not barred ab initio. (Id.)

Following appointment, the GAL and CAA promptly began their respective investigations and tasks as commanded by the Court's June 11, 2020 Order and New Jersey law. However, almost immediately, it was clear to both the GAL and CAA that, despite his diagnosis, Hank was actually, objectively, very high functioning. As a result, over the following year, the GAL undertook, at a minimum, the following efforts informed by Hank's unique status and needs, which, at all points, militated strongly against APS' uncompromising pursuit of a judgment of legal incapacity in "all areas":

- Canvasing of Prospective Guardians: As discussed, inasmuch as APS' Complaint failed to identify or recommend any proposed guardian, the GAL interviewed distant family, so-called friends, numerous state agencies, several nonprofit entities, and even private attorneys in an effort to locate any organization or individual willing to serve as Hank's (plenary or limited) guardian (Aa60-61.);
- NJDHS Rental Subsidy / Single Occupancy Apartment: Rather than seek residential placement at an inpatient, nursing home-type facility (assuring a vastly diminished quality of life), the GAL alternatively secured a New

Jersey Department of Human Services "housing assistance payment and family contribution" subsidy for Hank, thereby enabling him to afford and successfully rent his own one-bedroom apartment at a private apartment complex located in the Town of Newton, Sussex County. (Aa62 (¶15(a)).);

- 37 Weekly Hours of Community Care Supervision: In addition to the above housing subsidy, Hank also successfully applied for a "Community Care Plan" a/k/a "Individual Service Plan" funded by the New Jersey Division of Developmental Disabilities facilitated locally by agents of Skylands Family Services. (Aa78-86.) Per the approved "Community Care Plan" or "CCP," Hank receives 37 hours of weekly supervision by agents of Skylands Family Services, who assist him with daily selfcare, general health, travel, shopping, and attending medical appointments. (Aa63 (¶15(c)).) Aided by this robust, individualized plan, Hank has and continues to successfully maintain a substantial level of independence and dignity, which he indisputably would not have enjoyed had he been adjudged incapacitated in "all areas" as sought by APS;
- SCARC's Acceptance of Appointment as Representative Payee: Although Sussex County-based, nonprofit organization, SCARC Guardianship Services, Inc., was initially consulted, but ultimately unable to accept appointment as Hank's guardian (as necessary), the GAL ultimately

persuaded SCARC to accept court appointment as Hank's "representative payee" for the limited purpose of maintaining his personal finances and assisting him with continued government benefits application/reporting compliance. (Aa88.). This appointment was also critical inasmuch as Hank's eventual appointed limited guardian, the New Jersey Bureau of Guardianship Services, would not accept guardianship appointment unless a separate agency agreed to serve as representative payee (Aa106); and

- Resumption of Medicaid, Food Stamp and SSI Benefits: Although Hank's receipt of the foregoing benefits lapsed following his father's passing, all such benefits were reapplied for, and restored shortly following the filing of the Complaint. (Aa62 (¶15(b)).)

While the above summary of benefits and services retained for Hank is not intended to be exhaustive, it is undeniably true that none of the foregoing benefits would have been sought or retained had the GAL and CAA acquiesced to APS' unrelenting pursuit of an incapacity judgment in "all areas." And yet, despite Hank's undeniable success in this least restrictive environment for more than a year, APS still refused during the pendency of this matter to amend its position and alternatively seek limited guardianship despite numerous requests by the CAA and GAL.

Seeing no end to APS' intransigence, the GAL was eventually constrained to retain, and, in fact, did personally pay $1,500.00 for the expert services of a third medical professional, board certified clinical psychologist, Leslie J. Williams, Ph.D. (Madison, New Jersey), to evaluate Hank. Following Dr. William's own evaluation on May 19, 2021, he issued a final opinion contrary to the "plenary" opinions previously issued by APS' doctors, alternatively concluding that Hank "is appropriate for a limited guardianship in the legal and medical domains." (Aa101 (¶8).)

The final competency hearing in the underlying matter proceeded before Judge Berdote Byrne (with all counsel present) on July 22, 2021. Shortly after coming on the record, Judge Berdote Byrne remarked "[t]his is one of my favorite cases because it fairly highlights how well everything works together when -- the Surrogate gets involved and Adult Protective Services gets involved, and when exceptional attorneys do exceptional jobs." (T1:4-2 to 4-7.) Judge Berdote Byrne next questioned counsel for APS, William G. Johnson, Esq., whether APS was "now seeking limited guardianship of Hank?" (T1:4-10 to 4-11.) In response, Attorney Johnson stated for the first time in more than a year "[t]hat is correct," noting in particular "some resistance to [plenary guardianship] on behalf of Hank by both, Mr. Kossup and Mr. Lundquist." (T1:4-12 to 4-18.)

Following the Court's entry into evidence of the parties' respective expert reports, Judge Berdote Byrne ruled "with services in place, Hank [is] capable of making decisions in many areas of his life independently but does require a limited guardian in the area of legal and medical decision making." (T1:18-24 to 19-2.). A Judgement of Legal Incapacity and Appointment of a Limited Guardian to this effect, appointing BGS as Hank's limited guardian, was filed on August 4, 2021. (Aa108 (¶2).)

Following the court's entry of judgment, the GAL and CAA each made applications for attorneys fees and costs against APS as permitted by R. 4:86-4(e), and as codified by the Appellate Division's decision in In the Matter of the Guardianship of DiNoia, 464, N.J. Super. 562 (App. Div. 2019). After briefing and hearing the argument of counsel, however, Judge Berdote Byrne denied the both fee applications by Order with Statement of Reasons filed on March 28, 2022 citing, inter alia, the absence of any finding of "state agency misfeasance" or "extraordinary circumstances," which the trial court deemed "necessary." (Aa143-144.).

The GAL filed its Notice of Appeal on April 25, 2022 as prescribed by R. 2:4-1. (Pa1-19.). The Appellate Division affirmed the trial court's March 28, 2022 Order by way of a reported decision filed on November 29, 2023. (PCa2-20.) Petitioner filed a notice of petition for certification on December 15, 2023. (PCa1.)

## QUESTIONS PRESENTED

1. Did the Appellate Division err by permitting "state agency misfeasance" and "extraordinary circumstances" to survive as evidentiary preconditions for an award of attorneys fees and costs against a state agency in guardianship proceedings?

2. Did the Appellate Division err by codifying that the defense of a guardianship action filed by a "state agency" must now be fully funded by court appointed counsel whenever the alleged incapacitated person is indigent?

## ERRORS COMPLAINED OF

1. By affirming the trial court's imposition of "state agency misfeasance" and "extraordinary circumstances" as evidentiary preconditions for awards of fees and costs against state agencies in guardianship actions, it has made even more convoluted an already prohibitively conflicted "standard of review" governing such applications made pursuant to R. 4:86-4(e).

2. By affirming the trial court's denial of fees against APS, the Appellate Division has dangerously overlooked the fact that all credible disputes of guardianship actions involving indigent alleged incapacitated persons ("AIPs") filed by state agencies must now be fully funded by the attorneys appointed by the court to represent them, including attorneys fees, litigation costs, and expert fees.

## COMMENTS WITH RESPECT TO THE APPELLATE DIVISION DECISION

### I. THE APPELLATE DIVISION ERRED BY AFFIRMING THE IMPOSITION OF "STATE AGENCY MISFEASANCE" AND "EXTRAORDINARY CIRCUMSTANCES" AS EVIDENTIARY PRECONDITIONS FOR FEE AWARDS AGAINST STATE AGENCIES IN GUARDIANSHIP ACTIONS.

Guardianship actions for incapacitated persons in New Jersey are governed by R. 4:86 and N.J.S.A. 3B12-24 to -28. R. 4:86-4(e) (entitled "Compensation") states that the "compensation of the attorney for the party seeking guardianship, appointed counsel, and of the guardian ad litem, if any, may be fixed by the court to be paid out of the estate of the alleged incapacitated person or in such other manner as the court shall direct." R. 4:86-4(e). The official comments to R. 4:86-4(e) further instruct "paragraph (e) of the rule makes clear that the attorney for a party seeking appointment of a guardian for an alleged incompetent is entitled to an attorney's fee award." Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 4:86-4 (2022).

Accordingly, while the "American Rule does not allow for the shifting of attorney's fees, [R.] 4:86-4(e) is an exception to the general rule." In the Matter of the Guardianship of DiNoia, 464, N.J. Super. 562, 567 (App. Div. 2019); see also R. 4:42-9(a)(3) ("In a guardianship action, the court may allow a fee in accordance with [R.] 4:86-4(e) to the attorney for the party seeking guardianship, counsel appointed to represent the alleged incapacitated person, and the guardian ad litem.").

Notwithstanding the constraints imposed where the petitioner of a guardianship action is a "state agency" (see infra), a trial court's review of fee applications made pursuant to R. 4:86-4(e) is governed by New Jersey's ubiquitous "good cause" standard, further subject to "abuse of discretion" analysis on appeal only. See Estate of Semprevivo by and through Semprevivo v. Lahham, 468 N.J. Super. 1, 14 (App. Div. 2021) ("We have recognized the term 'good cause' evades precise definition. Instead, courts applying the good cause standard must exercise sound discretion in light of the facts and circumstances of the particular cause considered in the context of the purposes of the Court Rule being applied.")(internal citations and quotations omitted); see also Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)(quoting Rendline v. Pantzer, 141 N.J. 292, 317 (1995) ("Where a trial court has authority to grant attorneys fees [however,] we grant it broad discretion and will not disturb its decision unless there has been a clear abuse of that discretion.")

Where, however, the petitioner of a guardianship action is APS, as is the case here, the Appellate Division has now ruled that any such fee award, in the first instance, may only be paid (i) "by or on behalf of the vulnerable adult for protective services from his own estate" (see N.J.S.A. 52:27D-418), or (ii) from "the estate of the alleged incapacitated person." N.J.S.A. 3B:12-24.1(c)(9) (See also PCa16.) Put differently, if the AIP in such case is indigent, or without sufficient funds to cover

the cost of their defense, the court-appointed professional(s) appointed to represent the AIP heretofore can expect that no such fee award or disbursement reimbursement against APS will be forthcoming.

In the eyes of the Appellate Division, the only exceptions to the above exist where APS has engaged in either (i) "conduct outside the scope of their employment, or which constitutes a crime, actual fraud, actual malice, or willful misconduct" per N.J.S.A. 52:27D-418 of APS' enabling statute, the Adult Protective Services Act, N.J.S.A. 52:27D-406 to -425, or (ii) some other "misconduct" (allegedly) pursuant to the Appellate Division's earlier holding in DiNoia, even though same decision never mentions "misconduct," and specifically cites only "APS protracting the litigation by not supplying the financial analysis and investigation required by R. 4:86-2(b)" and the "exceptional efforts expended" by the court-appointed attorney in affirming the trial court's award of fees against APS pursuant to R. 4:86-4(e). (PCa17-18); see also DiNoia, 464, N.J. Super. at 568-69.

Furthermore, if it is indeed immutable that awards of fees against APS may only occur in the presence of "conduct outside the scope of their employment, or which constitutes a crime, actual fraud, actual malice, or willful misconduct" pursuant N.J.S.A. 52:27D-418 (as construed in In re Farnkopf, 363 N.J. Super. 382 (App. Div. 2003)), how can it also be true, as stated by the Appellate Division, that Farnkopf is not in "conflict" with DiNoia, which requires only "misconduct" as a

precondition for fees. (PCa17.) As a result, not only are these two holdings clearly in "conflict," equally clear is that fact that, substantively, they cannot continue to successfully coexist.

If the above "exceptions" were not already tortured enough, now throw onto the pile the further evidentiary burdens and touchpoints affirmed here demanding "necessary" findings of "state agency misfeasance" or "extraordinary circumstances" as preconditions for an award of fees against APS, despite the fact no party disputes that such burdens have never before existed, let alone be applied. (PCa13.) As argued below, while it is certainly within the trial court's "discretion" to grant awards of fees when authorized by law, it is decidedly not within the trial court's purview to condition such awards on entirely new evidentiary burdens not recognized by applicable law. See DeMarco v. Stoddard, 434 N.J. Super. 352, 381 (App. Div. 2014) ("Where a trial court has authority to grant attorneys fees [however,] we grant it broad discretion and will not disturb its decision unless there has been a clear abuse of that discretion.")

If the above in the entirety is permitted to stand, it will seat trial courts in the middle of an unnavigable hodgepodge, both in conflict with itself, and, at least in part, previously unrecognized by New Jersey law. As a result, this case clearly merits certification to address the prohibitive inconsistences inherent in the now

several standards of review governing applications for fees against state agencies (including APS) in guardianship actions submitted pursuant to R. 4:86-4(e).

## II. THE APPELLATE DIVISION ERRED BY HOLDING THAT ANY DISPUTE OF A GUARDIANSHIP ACTION PROSECUTED BY A STATE AGENCY INVOLVING AN INDIGENT ALLEGED INCAPACITATED PERSON MUST NOW BE FULLY FUNDED BY THE ATTORNEY(S) APPOINTED TO REPRESENT THE AIP.

Even more problematic than the above substantive considerations, are the sincerely threatening practical implications now posed by the Appellate Division's affirmance of the trial court's denial of the GAL and CAA's respective fee applications made pursuant to R. 4:86-4(e).

Intended or not, it is now the law of this State that any good faith defense or contest of a guardianship action adequately prosecuted by a "state agency" (including APS), where the alleged incapacitated also lacks sufficient funds to cover the cost of their defense, must be fully funded by the attorney(s) appointed by the court to represent the AIP. Period, end of story.

As was the case here, following nearly a year of requests by the GAL and CAA, APS still refused to amend their relief sought to alternatively seek a "limited" guardianship for Hank in lieu of a judgement of incapacity in "all areas." Again, all such requests were motivated by the undeniable fact that Hank was incredibly high-functioning, and the even more tangible fact that, as time progressed since the filing

of the Complaint, Hank was already successfully thriving in the less restrictive environment coordinated by the GAL and CAA.

Confronted by APS' uncompromising pursuit, which, if successful, would have deprived Hank of independent decision making in "all areas," the GAL felt duty bound to, and ultimately did personally pay $1,500.00 for a third-party evaluation by expert board-certified clinical psychologist, Leslie J. Williams, Ph.D. It was only after the GAL's production of Dr. William's report did APS finally relent, and instead acquiesce to the court's entry of a "limited" guardianship on Hank's behalf. (Aa101 (¶8).)

Nevertheless, inasmuch as "APS submitted with the complaint a certification of assets and the certifications of two qualified physicians" who each "opined Hank lacked capacity to govern his affairs and needed the appointment of a plenary guardian," the Appellate Division agreed with the trial court that no "misconduct" by APS was present, therefore, the denial by the trial court of the GAL and CAA's respective fee applications did not constitute an abuse of discretion. (PCa18.)

As a result, the Appellate Division essentially calcified that, so long as a state agency (including APS) files a guardianship complaint supported by two "plenary" physician certifications; is accompanied by a certification of assets; and the subject agency otherwise adequately does its job, the state agency is henceforth immune from having to pay any of the fees, costs, or expert fees accrued by the attorney or

guardian ad litem appointed for the alleged incapacitated person. This now obviously also includes instances, like here, where the efforts and personal expenditures of the court appointed representatives directly impacted the outcome, including persuading the subject state agency to amend the final relief sought, proximately resulting in a significant retention and preservation of the indigent AIP's rights and liberties.

As a further consequence, the message to all future court-appointed representatives for alleged incapacitated persons in state agency guardianship actions is clear: unless (i) the brand of "actual fraud," etc. discussed in APS' enabling statute and Farnkopf is present, or (ii) the "misconduct" (not actually) discussed in DiNoia occurs, any investments of time or money expended in the defense of an indigent, vulnerable adult's rights and liberties will be entirely on that attorney's "own dime." And although it would be easy to reflexively reconcile this outcome by focusing instead on the oath each member of this Bar has taken to zealously advocate for their clients (nearly irrespective of personal circumstances), doing so would be dangerously naïve.

The group of professionals and firms that make up the New Jersey Bar are obviously widely diverse, ranging in size, scope, expertise, and resources. A given firm could be comprised of 100 attorneys and 200+ professional staff, or one attorney and one part-time paralegal. These two hypothetical firms could even share

the same street address in the same commercial park, in nearly any county in this State. Such diversity being the case, it would be intellectually disingenuous to think that all attorneys in New Jersey are confronted by the same considerations when determining how to personally litigate a given matter. An attorney at a well-heeled firm, supported by other producing partners, might not give a thought to the time or expense which may be required to robustly contest a guardianship action filed by a state agency involving an indigent adult. By sharp contrast, a solo practitioner, who may be individually responsible for multiple staff salaries and office expenses, likely is not a survivable position to spend untold time and expense on a matter in which they know, in the absence of their adversary's "fraud" or "misconduct," they will not be paid.

The Appellate Division's affirmance of the trial court's denial of the GAL and CAA's fee applications stands to impose a grave chilling effect on court-appointed practitioner's unrestricted ability to zealously defend vulnerable, indigent adults in guardianship actions filed by state agencies. This case clearly merits certification to undo this existential threat to the basic rights and liberties of an already underserved population that can nary more afford it.

## CONCLUSION

For the above reasons, Petitioner asks this Court to grant the petition and reverse the Appellate Division's judgment.

Respectfully submitted,

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## CERTIFICATION

The undersigned counsel certifies that this Petition presents a substantial question and is filed in good faith and not for the purposes of delay.

Respectfully submitted,

MORRIS, DOWNING & SHERRED, LLP

By: */s/ Brian C. Lundquist*
_____

Brian C. Lundquist, Esq., 02897-2009

Dated: December 29, 2024