Art. 78 Petitioner's Reply - FUSL000139 (2022-01-26)

FUSL000139

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of
[redacted]

Petitioner,

-against-

TINA M. STANFORD,
CHAIRWOMAN, NEW YORK STATE
BOARD OF PAROLE,

Respondent.

For Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Affirmation in Reply and further support of Article 78 Petition

Index No. [redacted]

MARTHA RAYNER, an attorney duly admitted to practice law in the State of New York, hereby affirms the following under penalty of perjury:

1. I am a law professor at Fordham University School of Law and associated with the law school's clinical law office, Lincoln Square Legal Services, Inc., 150 West 62nd Street, New York, NY 10023.

2. I represent Petitioner [redacted] I submit this affirmation in reply to Respondent's January 14, 2022 Answer and Memorandum in Support and in further support of the Amended Petition.

RESPONDENT RELIES ON INAPPLICABLE LAW TO SUPPORT ITS CONTENTION THAT THE BOARD MET ITS OBLIGATION TO EXPLAIN DEPARTURE FROM LOW COMPAS SCORES

1. In response to Petitioner's argument that the Board failed to explain its departure from [redacted] low COMPAS scores, Respondent relies on an inapplicable portion of the regulation as well as caselaw predating the adoption of the correct portion of the

regulation.[1] *See* NYSCEF No. 66 at 7–8, Memorandum of Law in Support of Respondent's Answer [hereinafter "Resp. Memo."] (discussing the 2011 amendments to the Executive Law requiring the Board to consider "risk and needs" principles, but ignoring the 2017 amendment to the applicable regulation, 9 N.Y.C.R.R §8002.2(a)).

2. Respondent inaccurately asserts that because the Board considered the COMPAS risk and needs assessment tool, it satisfied its obligation under 9 NYCRR §8002.2(a). Respondent overlooks the fact that the same regulation, as amended in 2017, requires the Board to "specify any scale within the Department Risk and Needs Assessment from which it departed and provide an individualized reason for such departure" when it departs from the COMPAS. 9 NYCRR §8002.2(a).[2] Respondent cites no authority indicating that the Board can forego this obligation. Indeed, Respondent relies exclusively on authority predating the 2017 amendment to 9 N.Y.C.R.R. §8002.2(a).[3]

3. Petitioner does not assert, as Respondent claims, that "the COMPAS mandate[s] a particular result" or that the Board was required to give the COMPAS "dispositive weight." NYSCEF No. 66 at 7–8, Resp. Memo. Rather, Petitioner urges the Court to grant a *de novo* review based on the Board's failure to comply with its own regulation. *See Voii v. Stanford*, (Sup. Ct. Dutchess Cnty. 2020) (noting that the Board's parole denial based on the social welfare and deprecate standards did not "excuse the Board from complying with 9 N.Y.C.R.R. §8002.2(a) and ordering a *de novo* review).

[1] "Low" and "unlikely" scores on the COMPAS Risk and Needs Assessment indicate positive scores. *See* NYSCEF No. 39 at 1, 2020 COMPAS.
[2] The excerpted language was added to the regulation in 2017, three years before the parole review at issue in the instant proceeding. N.Y. Reg., Sept. 27, 2017.
[3] Even though *Gonzalvo v. Stanford*, cited by Respondent, was decided after 9 N.Y.C.R.R. §8002.2(a) was amended, the denial decision at issue predated the amendment and the decision does not address the Board's obligation to explain departure from low COMPAS scores. 153 A.D.3d 1021 (3d Dep't 2017).

4. In addition, rather than respond substantively to Petitioner's persuasive authority in support, Respondent makes the specious claim that Petitioner's citations to unreported cases "betrays the weakness" of Petitioner's argument. NYSCEF No. 66 at 9 n.5, Resp. Memo.; NYSCEF No. 58, Memorandum of Law in Support of Petition at 4–6 [hereinafter "Pet. Memo."]. The unreported decisions were made by courts of coordinate jurisdiction to this Court and their unpublished status does not diminish their persuasive authority. Tellingly, Respondent makes no argument nor cites authority disputing *the merits* of the six decisions, all of which support Petitioner's argument regarding the Board's regulatory obligation to explain departures from COMPAS. *See* NYSCEF No. 66 at 7–8, Resp. Memo.; *see also* NYSCEF No. 58 at 3–6, Pet. Memo.

5. To the extent Respondent now argues that the disciplinary ticket Petitioner received within 24 months of the 2020 review explains the Board's departure from the COMPAS, this is belied by the record. *See* NYSCEF No. 66 at 8, Resp. Memo. (arguing the "COMPAS report suggests that Petitioner remains violent."). The Board explicitly found that, despite the recent ticket, [redacted] had a good disciplinary history and the high COMPAS score did not accurately reflect [redacted] disciplinary record while incarcerated. At the 2020 interview, the Board stated: "I think it's obvious that your misconduct is not high." NYSCEF No. 36 at 24, 2020 Parole Interview and Decision [hereinafter "2020 Transcript"]. The Board recognized that "it was not normal for [redacted] to catch that ticket" and that [redacted] last violent ticket was in 1990. *Id.* at 17. Moreover, the Board did not cite to the recent ticket as a reason for the denial of parole or as a reason for departure from all the other positive COMPAS scores. *See id.*

at 30 (the Board's decision regarding the COMPAS noted only "the low scores indicated therein.").

6. Indeed, although the COMPAS states that [redacted] received 1 ticket in the 24 months prior to the review for "fighting," it also states that [redacted] did not "appear to have notable disciplinary issues." NYSCEF No. 39 at 4–5, 2020 COMPAS. [redacted] received low scores in the 11 other categories. *Id.* at 1. Thus, both the COMPAS itself and the Board's assessment thereof are critically different from Respondent's characterization of the COMPAS in its pleadings.

7. Therefore, based on the record facts and as argued by Petitioner, the denial should be annulled, and a *de novo* review granted. NYSCEF No. 58. at 3–5, Pet. Memo.

RESPONDENT IMPROPERLY DEEMS THE ISSUE OF PENAL PHILOSOPHY UNPRESERVED AND MISCHARACTERIZES THE FACTUAL RECORD

8. First, the argument, both as to the penal philosophy expressed by the prosecutor and the sentencing court, and that likely expressed by the voluminous opposition material, was raised and addressed in the administrative appeal. NYSCEF No. 74 at 21, Petitioner Administrative Appeal [hereinafter "Admin. App."] Ground Four of the administrative appeal brief, titled "The Parole Board's Decision Constitutes an Unauthorized Resentencing," raises this issue, namely that the Board relied on penal philosophy. Although [redacted] a *pro se* petitioner, did not expressly use the term of art "penal philosophy," he argued that "the Board is not tasked with the 'establishment of penal *policy*'" (emphasis added) and relied extensively on the Appellate Division decision in *King v. New York State Div. of Parole*, 190 A.D.2d 423 (1993), *aff'd*, 83 N.Y.2d 788 (1994). NYSCEF No. 74 at 22, Admin. App. Consideration and reliance on penal philosophy is also preserved by [redacted] claim, in the administrative appeal brief,

that "the board took on the personae of the sentencing court and chose to re-sentence [redacted] to a sentence that they felt was more appropriate to fit the crimes he was convicted of." *Id.* As [redacted] argued in his administrative appeal, the Board "effectively resentenced [redacted] to an additional term of incarceration, overriding the intent of the legislature while disregarding the very rationale behind parole." *Id.* at 21.

9. Moreover, the administrative appeal decision recognized and addressed this argument. The Board's administrative appeal decision affirming denial of parole found that contrary to Petitioner's contention, there was no "penal philosophy discussed." NYSCEF No. 75 at 3, Decision on Administrative Appeal [hereinafter "App. Dec."]. Thus, Respondent's claim that the issue of penal philosophy was not raised in the administrative appeal is wrong.

10. Second, as to the merits, the Board raised the penal philosophy of the sentencing judge during the interview, notwithstanding Respondent's claim that it was raised in response to something [redacted] stated. NYSCEF No. 66 at 10, Resp. Memo. The Board's discussion of the sentencing judge's penal philosophy did, as a matter of placement, precede a discussion of a *potential* 440 motion.[4] But, it was gratuitous for the Board to raise the sentencing court's personal penal philosophy. It was after informing [redacted] that he would not face the same judge again should he file a post-conviction motion that the Board needlessly recited the sentencing judge's penal philosophy. This interjection of penal philosophy was not relevant to the 440 motion since, according to the Board, the sentencing judge had passed away. NYSCEF No. 66 at 10, Resp. Memo.

[4] Respondent incorrectly asserts that [redacted] "had not been successful" in a 440 motion. NYSCEF No. 66 at 10, Resp. Memo. [redacted] has not filed a motion pursuant to Section 440 of the Criminal Procedure Law.

Rather than conveying the futility of post-conviction relief, as Respondent claims, the Board's inclusion of the sentencing judge's recommendation is better characterized as conveying the futility of [redacted] ever being granted parole. *See* NYSCEF No. 36 at 12, 2020 Transcript ("[the judge] said that you should never be released and his last day in office, he was going to make sure he wrote to the parole board.").

11. In addition, Respondent ignores the penal philosophy expressed in the recommendation letters from the prosecutor and judge, which as Respondent concedes, the Board is required to consider. *See generally* NYSCEF No. 72, Letters from Petitioner's Counsel, ADAs, and Trial Judge [hereinafter "Letters"]; *see also* N.Y. Exec. Law § 259-i (c)(A). Petitioner has now had the chance to read these strongly worded letters, in which the retired sentencing judge writes to the Board directing them to "never, never, never, never parole" [redacted] NYSCEF No. 72 at 6, Letters. The Board's invocation of the sentencing judge's penal philosophy during the interview and the five letters from the district attorney and judge convey recommendations based exclusively on their own personal views of the appropriate punishment. Therefore, the Board considered penal philosophy by affirmatively raising the sentencing court's recommendation during the interview and failing to disavow the same penal philosophy expressed in later letters from the judge and DA. *See* NYSCEF Doc. No. 58 at 9–11, Pet. Memo.

12. Finally, rather than refute the Board's consideration of penal philosophy, Respondent argues it is permitted. *See* NYSCEF No. 66 at 10, Resp. Memo. Respondent contends that because today's law requires a life without parole sentence upon conviction of killing a police officer, this permits the Board to consider penal philosophy that expresses a punishment the law requires today. *Id.* ("…to the extent that the Board considered any

philosophy that Petitioner should never be released, they were considering the wishes of the society as expressed by the Legislature."). Respondent essentially argues that life without parole may be functionally imposed by the Board, through repeated denials of parole, because it is the law today. NYSCEF No. 66 at 10–11, Resp. Memo. ("The Legislature has spoken clearly: a 'defendant must be sentenced to life imprisonment without parole upon conviction of the crime of' killing a police officer. P.L. § 70.70(5) (incorporating P.L. § 125.26)"). This displays a profound misunderstanding of the Board's power and is further evidence of the Board's reliance on penal philosophy.

13. By invoking the sentencing court's penal philosophy at the interview, not disavowing the penal philosophy conveyed in the judge and DA recommendation letters and arguing in its opposition that the Board was permitted to consider penal philosophy that was consistent with current sentencing law, Respondent has considered factors outside the scope of the law. *See King*, 83 N.Y.2d at 791.

RESPONDENT MISREPRESENTS THE BOARD'S REASONING AND THE FACTUAL RECORD TO SUPPORT ITS ASSERTION THAT THE BOARD'S DECISION WAS NOT PREDETERMINED

14. Respondent argues that the Board considered the relevant statutory factors, and therefore could not have predetermined its decision; however, Respondent does not address the cursory nature of the Board's assessment, or its consideration of non-statutory and highly prejudicial factors and the impact such consideration had on the Board's decision. *See* NYSCEF No. 66 at 9, Resp. Memo.; *see also* NYSCEF No. 58 at 14–17, Pet. Memo.

15. Respondent now asserts a new rationale for the Board's decision to deny [redacted] parole, one which contradicts the Board's analysis during the review and its written decision. In support of its altered analysis of [redacted] as a parole applicant,

Respondent now contends that "Petitioner's interview demonstrated that he has not put this [violent] conduct in the past." NYSCEF No. 66 at 10, Resp. Memo. Respondent argues that [redacted] went "out of his way" to "absolve himself of responsibility," and to "label the witnesses against him 'prostitutes.'" *Id.* at 9. While Respondent now argues why [redacted] *should have been* denied parole, Respondent's position in its pleadings is divorced from the Board's view in the parole interview and resulting decision—the record. The Board did not cite [redacted] alleged failure to accept responsibility in its decision denying parole. NYSCEF No. 36 at 30, 2020 Transcript. To the extent the Board "considered" [redacted] "claim of innocence," it did not indicate the effect of that consideration. *See id.* Further, the Board's decision does not mention lack of remorse or witnesses at [redacted] trial. *Id.* The Board's decision notes [redacted] most recent disciplinary ticket but labels his disciplinary record "relatively clean…despite" that ticket. *Id.*; *see also id.* at 23–24 ("Commissioner Coppola: I think that Tier II ticket tripped you up. I disagree with that…it's obvious your misconduct is not high."). The Board's decision primarily focuses on [redacted] instant offense. *See id.* at 30–31. Thus, the record contradicts Respondent's changed view, first asserted in its pleadings in the instant proceeding, that the denial was based on [redacted] inability to put "violent conduct in the past." NYSCEF No. 66 at 10, Resp. Memo.

16. Further, Respondent does not meaningfully dispute that [redacted] case is high-profile or that the Board considered the high-profile nature of [redacted] case when denying him parole. Respondent's sole claim regarding this issue is that "Petitioner cannot inject an issue into the interview only to complain that that issue infected his

interview." NYSCEF No. 66 at 9, Resp. Memo. This assertion ignores the fact that the Board has discussed the publicity associated with [redacted] case since his first parole review in 2012. *See* NYSCEF No. 48 at 10, 2012 Transcript; *see also* NYSCEF No. 58 at 15–17, Pet. Memo. Similarly, in 2017, it was the Board who first noted that [redacted] case was "extremely high profile." NYSCEF No. 50 at 19, 2017 Transcript. In the instant review, the Board resurfaced the subject of the "high profile" nature of [redacted] case near the end of the interview without [redacted] mentioning the topic. NYSCEF No. 36 at 24, 2020 Transcript. The 2020 Board opted to do this while listing the other factors it would consider in its parole decision. *Id.* It is inaccurate for Respondent to claim that [redacted] injected this topic when the Board first raised it and has repeatedly done so since 2012. NYSCEF No. 58 at 15–17, Pet. Memo. Even assuming *arguendo* that [redacted] injected the topic into the 2020 review, that does not grant the Board license to consider irrelevant, non-statutory, and highly prejudicial subject matter in its parole determinations. *Id.* at 14.

17. Respondent's recharacterization of the Board's 2020 assessment and effort to downplay its consideration of the high-profile nature of [redacted] case underscores the fact that the Board gave cursory consideration to [redacted] release in 2020, despite its duty to give "genuine consideration to the statutory factors." *Ferrante v. Stanford*, 172 A.D.3d 31, 38 (2d Dep't 2019); *Rossakis v. New York State Div. of Parole*, 146, A.D.3d 22, 27 (1st Dep't 2016). Respondent essentially urges the Court to rule that if the Board pays lip-service to the statutory factors in its decision, its actions effectively become unreviewable—even if the record reflects the Board's consideration of prejudicial and irrelevant material. NYSCEF No. 66 at 9, Resp. Memo. Respondent's position is

untenable and at odds with decisional authority. *See Ferrante*, 172 A.D.3d at 38; *Rossakis*, 146 A.D.3d at 27; NYSCEF No. 58, at 14–15, Pet. Memo.

PETITIONER'S FACTS ESTABLISHING [redacted] PERSONAL BIAS SHOULD BE DEEMED ADMITTED

18. Respondent's denial of facts based on a claimed lack of knowledge when Respondent certainly has such knowledge is improper, and thus such facts should be deemed admitted. *See* NYSCEF No. 65 (denying knowledge as to the allegations contained in paragraphs 61, 62, 73–87, all of which concern [redacted] past parole decisions, job tenure, and failure to comply with court orders). Respondent may not "close his eyes and ears for the purpose of avoiding knowledge and information." *Dahlstrom v. Gemunder*, 198 N.Y. 449, 454 (1910). Where "the fact alleged is something the court feels the defendant must know first-hand, one way or the other, a denial upon information and belief will not do." Practice Commentary CPLR 3018:3; *see also* 84 N.Y. Jur. 2d Pleading § 138 ("Where the defendant has personal knowledge of the facts alleged, however, a denial based on lack of information or knowledge is inappropriate."); Seigel's New York Practice, 6th Ed. § 221, 532 ("Denials must be made in good faith.").
19. The Petition cited to multiple specific instances in which [redacted] voted to deny the release of a person convicted of killing a police officer and provided citations to supporting documents. *See* NYSCEF No. 35 at ¶ 73–87, Amended Petition. Yet, Respondent claimed it did not have "knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained." NYSCEF No. 65 at 3:10, Resp. Answer. In one instance, [redacted] violated a court order which prohibited

him from sitting on the *de novo* appearance of a parole applicant—a person convicted of killing a police officer—after [redacted] was found to have wrongfully denied parole based solely on the nature of his crime. *See* NYSCEF No. 35 at ¶ 74–81, Amended Petition. In another cited instance, the Board, by a majority, found that the law required the release of a parole applicant who was convicted of killing a police officer. [redacted] ignoring the law, dissented. *See id.* at ¶ 82–83; NYSCEF No. 47 at 83, Pet. Ex. 12. Yet, again, despite Petitioner's provision of citations and exhibits in support of such facts, Respondent claimed it did not have sufficient knowledge to answer. NYSCEF No. 65 at 3, Resp. Answer. These are facts known by Respondent. A party may be deemed to possess personal knowledge of his transactions. *Weiskopf v. City of Saratoga Springs*, 244 A.D. 417 (3d Dep't 1935), *rev'd on other grounds*, 269 N.Y. 634 (1936). Respondent surely possesses knowledge of [redacted] voting record. If not through a record search, then Respondent need only ask [redacted]

20. When a party has personal knowledge but nevertheless denies the allegation, "the allegation purportedly denied may be deemed an admission." Practice Commentary CPLR 3018:3; *see also Gilberg v. Lennon*, 193 A.D.2d 646 (2d Dep't 1993) ("to the extent the portions of the answer constitute improper denials, they may be deemed admissions"); *see also In re Clement*, 132 A.D. 598, 599–600 (3d Dep't 1909); *Kirschbaum v. Eschmann*, 205 N.Y. 127, 131 (1912). *See also Kuehne & Nagel, Inc. v. Baiden*, 36 N.Y.2d 539, 544 (1975) ("Facts appearing in the movant's papers which the opposing party does not controvert, may be deemed to be admitted"); *Sellitti v. Acrish*, 580 N.Y.S.2d 503, 505 (3d Dep't 1992). Respondent had an entire month to answer the amended petition, and over two months since receiving the original petition, well over the

statutorily allotted 15 days. CPLR §7804(c). Respondent never requested more time to conduct fact finding. Instead, Respondent simply claims lack of knowledge of facts within its possession and attacks only the circumstantial evidence of personal bias based on political affiliation and campaign donations. NYSCEF No. 66 at 12–14, Resp. Memo. (referring to Petitioner's claims as "an unseemly investigation" which "rests upon multiple levels of hearsay").

21. It is troubling that despite many objective facts establishing personal bias, it appears Respondent did not attempt to determine if this former commissioner in fact holds such a bias. In light of Respondent's improper response to the Petition, Paragraph 10 of the Answer, those allegations in Paragraphs 61, 62 and 73–88 of the Petition should be deemed admitted.

IN THE ALTERNATIVE, PETITIONER REQUESTS AN EVIDENTIARY HEARING PURSUANT TO CPLR 7804(H)

22. To the extent that the Court deems Respondent's inappropriate denials of knowledge ("DKIs") effective denials of Petitioner's allegations, Petitioner requests an evidentiary hearing pursuant to CPLR 7804(h). *See infra* ¶18-20. Respondent's obfuscation of basic facts within its possession frustrates the adversarial process and efficient adjudication. *See* NYSCEF No. 35 at ¶ 73–88, Amended Petition (alleging, *inter alia*, bias on the part of [redacted] based on his decisional history as a parole commissioner). If Respondent's DKIs are deemed denials, an evidentiary hearing pursuant to 7804(h) is warranted as it is "impossible to determine the matter upon the submitted papers alone." *Ames v. Johnston*, 169 A.D.2d 84, 85 (3d Dep't 1991); *See Lakeshore Nursing Home v. Axelrod*, 181 A.D.2d 333, 340 (3d Dep't 1995) (ordering a hearing pursuant to CPLR 7804(h) and noting that "…article 78 proceedings are summary in nature and require

resolution of factual disputes at a hearing…"). Respondent should be compelled to produce [redacted] to testify at a hearing to permit the Court to determine the relevant facts of bias.

THE BOARD HAD ACCESS TO A RECORD DEMONSTRATING [redacted] LACK OF HONESTY AND INTEGRITY

23. [redacted] was constitutionally entitled to have the parole decision determined by unbiased commissioners. A Petitioner "is constitutionally entitled to unprejudiced decision-making by an administrative agency. It follows that a determination based not on a dispassionate review of facts but on a body's prejudgment or biased evaluation must be set aside." *Warder v. Bd. of Regents of Univ. of State of N. Y.*, 53 N.Y.2d 186, 197 (1981) (internal citations omitted). [redacted] was not afforded his right to unprejudiced decision-making.

24. Respondent contended in its administrative appeal decision that [redacted] is entitled to the presumption of honesty and integrity. NYSCEF No. 75 at 3, App. Dec. In response to this claim, Petitioner has now put forward a range of facts rebutting this presumption. Setting aside evidence of [redacted] political affiliations, Petitioner has brought forward direct evidence that establishes former Commissioner's personal bias and establishes that, as to persons convicted of killing police officers, [redacted] does not act with honesty and integrity. Yet, rather than investigate Petitioner's allegations, Respondent claims such facts are not part of the record.

25. The Board cites to one case to support its argument that it did not have *any* record of [redacted] history of bias when it made its administrative decision. *See* NYSCEF Doc. 66 at 12 (citing *Yarbough v. Franco*, 95 N.Y.2d 342, 347 (2000)). Notwithstanding the inapplicability of this case to the present facts, the citation provided

stands for the proposition that the administrative agency must have *a* record "upon which to weigh the [] party's excuse and potential defense." *Yarbough v. Franco*, 95 N.Y.2d 342, 347 (2000). Though the facts of [redacted] bias were not put forward by [redacted] at his parole interview, where counsel is not permitted to appear, nor in his *pro se* appeal, at which he had no access to such facts, Respondent certainly had a record of the facts put forward in the Petition. The facts are purely *Respondent's* facts. It is therefore erroneous to claim that the Board did not have a record of [redacted] history of bias.

26. Respondent determined at the administrative appeal level, documented in its decision, that [redacted] was deserving of the "presumption of honesty and integrity that attaches to Judges and administrative fact-finders." NYSCEF No. 75 at 3, Resp. Ex. I. Respondent cannot now claim that it did not have access to the record when Respondent raised the very issue of honesty and integrity in its own administrative decision. The fact that the Board ignored its own record facts of bias, whether intentionally or unintentionally, should not preclude this Court from determining whether Respondent's reliance on the presumption of honesty and integrity has been overcome by the facts alleged in the Amended Petition.

27. Petitioner acknowledges that in order to allege bias, it "must set forth a factual demonstration supporting the allegation as well as prove that the administrative outcome flowed from it." *Sunnen v. Admin. Rev. Bd. for Pro. Med. Conduct*, 244 A.D.2d 790, 791–92 (1997). Petitioner has satisfied both requirements. As to the first requirement, Petitioner has set forth ample facts demonstrating [redacted] history of bias towards parole applicants with convictions for killing police officers. The second prong

naturally flows from the first, in that [redacted] bias maps directly on to [redacted] crime of conviction. Petitioner has satisfied his burden without any substantive response or denial from Respondent.

CONCLUSION

For the reasons set forth, the Petition together with the relief sought should be granted, in addition to any additional relief the Court deems just and proper.

Dated: New York, New York
January 26, 2022

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STATEMENT PURSUANT TO 22 NYCRR 202.8-B

I, Martha Rayner, affirm under penalty of perjury pursuant to CPLR 2106, that the total number of words in the foregoing Amended Petition, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 4,166 words. The foregoing Affirmation in Reply complies with the word count limit set forth in 22 NYCRR 202.8-b. In determining the number of words in the foregoing Memorandum of Law, I relied upon the word count of the word-processing system used to prepare the document.

/s/ Martha Rayner_____
MARTHA RAYNER
Lincoln Square Legal Services, Inc.