

**United States Small Business Administration
Office of Hearings and Appeals**

IN THE MATTER OF:

Tony Vacca Construction, Inc.

Petitioner

SBA No. BDP-321

Decided: May 13, 2009

APPEARANCES

John Vacca, President, Tony Vacca Construction, Inc., *pro se*, Ojai, California, for Petitioner.

Christopher R. Clarke, Esq., Sara Lipscomb, Esq., General Counsel, Small Business Administration, Washington, D.C., for the Agency.

DECISION

ARKOW, Administrative Law Judge:

I. Introduction and Jurisdiction

On February 23, 2009, Tony Vacca Construction, Inc. (Petitioner) appealed a Small Business Administration (SBA) determination denying Petitioner entry into the 8(a) program. The SBA found Petitioner did not establish by a preponderance of evidence that its owner is socially disadvantaged. I find that the SBA erred in concluding that Petitioner's owner was not subject to chronic and substantial bias based on his disability, which negatively impacted his entry into and advancement in the business world, and thus not socially disadvantaged. Accordingly, the SBA determination was arbitrary, capricious, and contrary to law.

This appeal petition is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 124 and 134. The appeal is timely. 13 C.F.R. § 134.202(a)(1).

II. Issue

Whether the SBA's determination denying Petitioner admission into the 8(a) program is arbitrary, capricious, or contrary to law. *See* 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406(b).

III. Facts

Petitioner is owned, controlled, and managed by its President, John Vacca. Mr. Vacca was medically discharged from the military in 1971 because of physical injuries. Petitioner applied for admission into the 8(a) program on January 2, 2008, based on Mr. Vacca's social disadvantage stemming from his physical disability. Administrative Record (AR), Ex. 18.

On June 4, 2008, the SBA denied Petitioner's 8(a) application. AR, Ex. 12. The SBA found, among other things, that Mr. Vacca was not socially disadvantaged.

On July 29, 2008, Petitioner requested reconsideration. Mr. Vacca described the following relevant incidents in his request for reconsideration to support his claim of substantial and chronic social disadvantage:

1. While working at Channel Islands Dental Lab, the owner was "very skittish" about Mr. Vacca's ability to perform the work and Mr. Vacca worked in an isolated corner. After being absent from work for numerous surgeries, he found out that his position was filled and he was "placed in a part time/as needed position without a choice." AR, Ex. 10, at 5. Mr. Vacca worked there from 1971 to 1984 (AR, Ex. 15, at 5), "slowly moving up the scale," but he was passed over for supervisory positions because "the owner stated that he felt it was for [Mr. Vacca's] own good not to work overtime," even though Mr. Vacca merely used a cane at that point in his life. AR, Ex. 10, at 6.

2. While looking for other employment, Mr. Vacca continued to work at Channel Islands. At some point, presumably 1984, Mr. Vacca required hip replacement surgery, and Channel Islands terminated him because he was unable to perform his job which required him to sit for eight to ten hours a day. While the employer told him that he was welcome back after his surgery if there was a position available, no such position was available after his recovery six months later.

3. In 1984, Mr. Vacca found employment at another dental lab (Pacific Gnathologicals, or Pacific), but he was not allowed to leave work for physical therapy appointments. His co-workers also made fun of him for using a cane and commenting on his chronic pain. Mr. Vacca eventually became head of the ceramics division at Pacific until he left the company in 1989. AR, Ex. 15, at 5.

4. In 1985, Mr. Vacca started his own vending business, initially working during the evening and weekend hours while he continued working at Pacific. A doctor at Ventura Community Memorial Hospital, one of his largest accounts, commented that he looked more like a patient than a worker. A hospital administrator also told him not to injure himself at the hospital. AR, Ex. 10, at 7.

5. Mr. Vacca claims he sold his vending business because he "felt that its growth had reached its peak due to the fact that [Mr. Vacca] was using a cane more often and when [he] would attempt to solicit new accounts, [he] was turned away and even told on a few occasions

that they questioned how [he] could run the business in [his] ‘disabled condition.’” AR, Ex. 10, at 7-8.

6. In 1990, Mr. Vacca worked for his father-in-law’s construction company, Joe Silvestri Construction. AR, Ex. 15, at 5. His co-workers would make disparaging comments, e.g., “How could a gimp from the office run a job?” While working at an Army Corps site, a member of Mr. Vacca’s crew called him a “hop-a-long.” The Army Corps contract specialist admonished the crew member and told everyone there was no room for prejudice on his job site. AR, Ex. 10, at 8-9. Mr. Vacca continued at Joe Silvestri until 1998, when Mr. Vacca started working part-time for TACT Construction, Inc. AR, Ex. 15, at 5.

7. In 2004, Mr. Vacca started working for Alberto Luna Construction, whose owner berated Mr. Vacca for his unwillingness to go on the roofs and accused him of using his disability to abuse the system. AR, Ex. 10, at 9.

8. In 2006, Mr. Vacca formed Petitioner. When Mr. Vacca applied for a business loan, the loan officer questioned why a fifty-seven-year-old disabled man would start his own business. The loan officer also stated that the loan approval board would question Mr. Vacca’s numerous surgeries. This incident embarrassed Mr. Vacca and he did not fill out the loan application. AR, Ex. 10, at 10.

9. At a job site at Point Mugu, the contract specialist asked Mr. Vacca to descend from a ladder and allow Mr. Vacca’s son to perform the work. Petitioner was subsequently not invited to bid on Phase Two of the project because the department felt Mr. Vacca was not suited for the job, as the work involved ladders and scaffolds, despite the fact that the customer on Phase One requested Petitioner on Phase Two. AR, Ex. 10, at 10.

10. At a job site on San Nicolas Island, the general contractor’s superintendent commented that “the last thing he needed was [Mr. Vacca] on the Island taking a fall and ‘wrapping [his] bum leg around [his] neck.’” AR, Ex. 10, at 11.

11. A contracting officer at VA Loma Linda told Mr. Vacca that they had “enough service disabled veteran contractors in their area and they were injured in the current war.” AR, Ex. 10, at 12.

12. An employee at the Westwood VA Center told Mr. Vacca that he had “a hard time giving some of these projects to Veterans like [Mr. Vacca] since [he] had some bad luck with service disabled Veterans before.” AR, Ex. 10, at 12.

IV. SBA’s Final Determination

On February 5, 2009, after evaluating Petitioner’s request for reconsideration, the SBA determined that Petitioner did not submit sufficient evidence to overcome its determination that Mr. Vacca was not socially disadvantaged because of his disability.¹ The SBA found Petitioner

¹ The SBA found Petitioner overcame the other findings of ineligibility.

made generalized statements that Mr. Vacca had a difficult time because of his disability that were insufficient to support his claim of social disadvantage.

The SBA also found that the dental lab's failure to rehire Mr. Vacca after his hip replacement surgery because there were no available positions did not constitute evidence of bias. The SBA also found Mr. Vacca's original narrative did not reference working for two dental labs. Instead Mr. Vacca originally claimed he was successful at the dental lab, working his way up to managing seven to ten employees, meeting with dentists to establish the budget, and ordering supplies.² Thus, Mr. Vacca's original narrative shows that he was able to advance in the dental lab profession, which is not indicative of bias.

The SBA also found Petitioner only supplied general information that he had difficulty finding customers when he started his vending machine business. When potential customers inquired about how he would be physically able to perform the vending work, the SBA found the inquiries reasonable albeit without tact. The SBA also concluded that worksite comments by co-workers reflected rudeness but did not constitute evidence of substantial bias. Finally, the SBA found that the incident at the Westwood VA Center where he was told that they had had bad luck with service-disabled veterans in the past, and he did not get the job, amounted to substantial bias. This one incident, however, was not enough to establish chronic bias.

V. Position of the Parties

A. Petitioner

On February 23, 2009, Petitioner filed its appeal. With regard to Petitioner's vending business, Mr. Vacca states that one potential customer, Amgen, denied him work because "they were worried about [Mr. Vacca's] use of the cane never questioning if [he] had any employees that would be performing the work." Appeal, Attachment 2, at 1. Mr. Vacca also reiterated the incident at Ventura Community Memorial Hospital, where a doctor told him he looked more like a patient than a worker providing vending services.

Petitioner concedes that Mr. Vacca's disability did not prevent him from advancing at the dental lab. Petitioner contends, however, that Mr. Vacca's need for surgery could have been accommodated by a reduced work schedule, but instead he was discriminated against based on his disability. Finally, Mr. Vacca argues that the incidents at Loma Linda VA, Point Mugu Naval Base, San Nicholas Island, Army Corps projects, Alberto Luna Construction, and his bank are evidence of social disadvantage on a chronic basis.

B. Respondent SBA

On April 9, 2009, the SBA filed its response to the appeal. The SBA reiterates and expands upon many of the examples cited by the SBA in its final determination as insufficient to support Mr. Vacca's claim of social disadvantage.

² The SBA did not state which dental lab it was referring to, but the SBA appears to be referencing Channel Islands Dental Lab.

The SBA maintains that Mr. Vacca's disability did not affect his employment opportunities. Indeed, Mr. Vacca's dental lab employer made special accommodations in order to work with Mr. Vacca's disability and Mr. Vacca admits that he advanced within the company, becoming head of the ceramics division. The SBA asserts the dental lab's failure to rehire him after his surgery because the position was filled was not discriminatory because there is no evidence Mr. Vacca was treated differently than any other employee would have been.

With regard to the Army Corps incident, the SBA asserts that the disparaging comment was made by Mr. Vacca's subordinate and the contract specialist took action when the incident was observed. Thus, this incident does not evince social disadvantage. With regard to the Alberto Luna incident, the SBA asserts there is no evidence that he was punished for refusing to go on the roof or forced to quit and start his own business. With regard to the Hospital Administrator incident, the SBA asserts the comment was made by an employee of Mr. Vacca's client, the hospital, and did not prevent his entry or advancement in the business world.

The SBA also contends the bank loan officer's questions do not rise to the level of discrimination or bias as it is reasonable to seek assurances about why someone is starting a business. Also, Mr. Vacca was never told the bank would not grant him a loan; Mr. Vacca never even applied for the loan. The SBA also asserts that the Point Mugu incident does not appear to be discrimination, but a supervisor's concern about Mr. Vacca's safety. The SBA also argues Mr. Vacca did not provide enough information on how the San Nicholas Island incident hindered his advancement in the business world.

In sum, the SBA argues Mr. Vacca's narratives failed to describe how he was personally subjected to substantial and chronic social disadvantage and the SBA's determination should be affirmed.

VI. Discussion

A. Standard of Review

The SBA's determination must be sustained unless a review of the written administrative record demonstrates the SBA acted arbitrarily, capriciously, or contrary to law in concluding that Mr. Vacca is not socially disadvantaged. 13 C.F.R. § 134.406(b).

My review of the administrative record is narrow and does not permit me to substitute my own judgment for that of the SBA. I must examine whether the SBA considered all of the facts presented as well as the laws and regulations that guide the decision-making process. Then, I must determine whether the SBA made a clear error of judgment in its decision before I can find the SBA acted arbitrarily, capriciously, or contrary to law. *See Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

A clear error of judgment can be found if the SBA (1) fails to properly apply the law and regulations to the facts of the case; (2) fails to consider an important aspect of the problem; (3) offers an explanation for its determination that runs contrary to the evidence; or (4) provides

an implausible explanation that is more than a difference between my views and those of the SBA. In sum, the SBA must articulate a reasonable explanation for its action, including a rational connection between the facts found and its determination. *See id.* As long as the SBA's determination is reasonable, it must be upheld on appeal. 13 C.F.R. § 134.406(b). This appeal reviews the SBA's determination solely on the contents of the administrative record. 13 C.F.R. § 134.406(a).

B. Proof of Social Disadvantage

To be accepted into the 8(a) Program, Petitioner must establish that Mr. Vacca, who owns and controls Petitioner, is socially and economically disadvantaged. 13 C.F.R. § 124.101. The issue in this appeal is whether Mr. Vacca is socially disadvantaged.

“Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities.” 13 C.F.R. § 124.103(a). Because Mr. Vacca is not presumptively socially disadvantaged under 13 C.F.R. § 124.103(b)(1), Mr. Vacca must establish his social disadvantage by a preponderance of the evidence. 13 C.F.R. § 124.103(c)(1). *See Matter of Bitstreams, Inc.*, SBA No. BDP-122, at 9 (1999) (discussing the preponderance of evidence standard). Petitioner need only establish prejudice or bias, not discrimination, in American society. *See Matter of Med-Choice, Inc.*, SBA No. SDBA-179, at 6 (2008).

A physical handicap is a distinguishing feature that can contribute to social disadvantage. 13 C.F.R. § 124.103(c)(2)(i). Petitioner must establish Mr. Vacca's social disadvantage by showing his claim of disadvantage due to a physical handicap was based on personal experiences of substantial and chronic social disadvantage in American society. Those personal experiences of social disadvantage must have had a negative impact on his entry into or advancement in the business world. *See* 13 C.F.R. § 124.103(c)(2)(ii), (iii). Any relevant evidence, particularly disadvantage in education, employment, and business history, may show the negative impact. 13 C.F.R. § 124.103(c)(2)(iii).

During the Vietnam War, Mr. Vacca served in the U.S. Army. In 1969, he injured his hip and was medically discharged from the Army in 1971. The effects of his injury have lingered to this day, and have caused Mr. Vacca much pain and discomfort. When Mr. Vacca was thirty-five years old, he required hip replacement surgery. At various times since he was injured, Mr. Vacca was in a wheelchair, used a cane, and walked without assistance but with a noticeable limp. Thus, he has a physical handicap, which the SBA does not dispute.

What is disputed is whether the effects of Mr. Vacca's injury have led to a chronic and substantial social disadvantage that has negatively impacted his entry into or advancement in the business world. *See* 13 C.F.R. § 124.103(c)(2).

C. Chronic and Substantial Social Disadvantage Element

Petitioner must establish that the social disadvantage was personal to Mr. Vacca, rooted in treatment he experienced in American society, and chronic and substantial. All of the incidents of claimed bias and prejudice were personal to Mr. Vacca and occurred in American society. Evidence of chronic and substantial disadvantage means there must be more than one or two specific, significant incidents. Each specific incident of social disadvantage in the applicant's claim must be presented in sufficient detail to be evaluated. *See Matter of Ace Technical, LLC, Inc.*, SBA No. SDBA-178, at 4-5 (2008). Petitioner must also establish Mr. Vacca's personal experiences of social disadvantage had a negative impact on his entry into or advancement in the business world.

Generally, if an individual cannot accomplish a task because of a physical handicap, he cannot be considered to have been subjected to prejudice or bias. *See Matter of Diamond Quality Construction Enterprises, Inc.*, SBA No. MSB-523 (1995). But if, because of prejudice or bias against a physically handicapped individual, the individual is not permitted to perform a task, not awarded a contract, or not given a loan because of an unfounded or unreasonable fear that a handicap might cause an injury or prevent the successful accomplishment of a job, then that is the type of prejudice or bias that is contemplated in determining social disadvantage.

Petitioner cites many incidents that it believes establish Mr. Vacca's substantial and chronic social disadvantage stemming from his disability. Only the following conclusions in the SBA determination warrant discussion. The SBA's conclusions regarding the remaining incidents do not appear to be unreasonable.

Westwood VA Center

Petitioner received a referral for work at the Westwood VA Center. Mr. Vacca then met with an employee of the VA Center and prepared bid packages at the employee's request. When Mr. Vacca did not receive a response to his bid, he called the employee who told him that he had "a hard time giving some of these projects to Veterans like [Mr. Vacca] since [he] had some bad luck with service disabled Veterans before." AR, Ex. 10, at 12. The SBA found this incident amounted to an incident of substantial disadvantage, but concluded this one incident was insufficient to establish bias on a chronic basis. Based on the discussion below, and contrary to the SBA's conclusions, I find the incidents, taken together, establish substantial and chronic social disadvantage.

Point Mugu

While performing work at Point Mugu, the contract specialist asked Mr. Vacca to descend a ladder and allow Mr. Vacca's son to perform the work. Petitioner was subsequently not invited to bid on Phase Two of the project because the department felt Mr. Vacca was not suited for the job, as the work involved ladders and scaffolds, despite the fact that the customer on Phase One requested Petitioner on Phase Two. AR, Ex. 10, at 10.

The SBA found there were not enough facts to conclude Mr. Vacca's disability was the reason he was not invited to bid on Phase Two. The SBA surmised that the supervisor may have been concerned about Mr. Vacca's safety on the roof, a concern that Mr. Vacca himself expressed elsewhere in his narrative. The SBA noted that if a decision was made that Mr. Vacca could not safely or adequately perform the work because of his disability, this is not evidence of discrimination. There is no evidence in the record, however, to support the SBA's assumption that Petitioner could not safely or adequately perform the work. Thus, it cannot be considered reasonable.

Moreover, the record makes it apparent that Mr. Vacca is not the only employee of his business. Assuming Mr. Vacca could not safely do the job himself, he could delegate the work to one of his employees. Even so, this assumption is not supported in the record. At this point in time, Mr. Vacca was not in a wheelchair or even using a cane, and had been successfully working in the construction business for a number of years.

SBA counsel argues concerns about whether an individual can safely perform the work do not amount to discrimination. Petitioner, however, does not need to establish discrimination. All that need be established is that there was bias against Mr. Vacca because of his disability, and that bias impacted negatively on his success in the business world. It must be assumed that Petitioner wanted to work on Phase Two of the Point Mugu project. Being unable to compete for the job, after being successful on Phase One, when combined with the fact that he was taken off a task because of his disability, establishes an incident of substantial bias based on Mr. Vacca's disability.

Counsel argues there was not enough information to make a determination as to why Petitioner was not invited to bid. SBA counsel's argument is unreasonable because it places an unreasonable burden on Petitioner. The rationale for the contracting agency was unlikely provided to Petitioner and would be difficult for it to discern. The only possibility presented to the SBA was the comment about Mr. Vacca's disability. The SBA must rely on Mr. Vacca's statement unless there is some specific reason for disbelieving it. Indeed, just as the SBA accepted Mr. Vacca's account of the Westwood VA Center employee's statement to support Mr. Vacca's claim of substantial bias, the SBA should accept Mr. Vacca's account of the Point Mugu employee's comment, unless there is a reason to disbelieve it.

Accordingly, the SBA's conclusion to the contrary is unreasonable, arbitrary, and capricious.

Denial of Business Opportunities with Vending Machine Business

Petitioner also states that when Mr. Vacca solicited new customers for his vending business, which existed between 1985 and 1992, he "was turned away and even told on a few occasions that they questioned how [Mr. Vacca] could run the business in [his] 'disabled condition.'" AR, Ex. 10, at 8.

The SBA found Petitioner did not provide sufficient details as to who turned Petitioner away and when. The SBA also found the question may "simply have been an inquiry (albeit

without tact) from the prospective client asking for information on how the vending machines would be serviced, so that the client could understand what the contract would involve before committing to engage [Petitioner].” SBA’s finding is speculative and not supported in the record.

First, the SBA cannot expect Mr. Vacca to recall the names and other details of failed business opportunities that occurred over 15 years ago. This failure does not cast doubt on Mr. Vacca’s credibility with regard to his claim of bias that negatively impacted on the success of his vending machining business. The requirement for sufficient detail in asserting claims of bias stems from the *Bitstreams* decision. *Matter of Bitstreams, Inc.*, SBA No. BDP-122 (1999). The requirement, however, was one of the tests for measuring the credibility of a claim, not for establishing a claim. If it is more likely than not that Mr. Vacca lost out on business opportunities because of his handicap, the claim is established. Here, the SBA had no reason for disbelieving Mr. Vacca. The fact that he gave up his vending machine business and went to work for his father-in-law supports the conclusion that it was not as successful as Mr. Vacca had hoped. Contrary to the SBA’s determination, this evidence and the reasonable inferences drawn from that evidence warrant a conclusion that Mr. Vacca’s disability negatively impacted the success of his vending machine business.

SBA counsel argues that questioning the capability of a person to perform a task is not evidence of discrimination. The regulation, however, only requires socially disadvantaged individuals to demonstrate “racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities.” 13 C.F.R. § 124.103(a). Counsel’s argument requiring discrimination is unsupported by the regulation; Petitioner need only establish prejudice or bias, not discrimination, in American society. *Matter of Med-Choice, Inc.*, SBA No. SDBA-179, at 6 (2008). Evidence of bias by potential customers against a handicapped entrepreneur is sufficient to show substantial social disadvantage. Further, there is no reasonable explanation by the SBA why Mr. Vacca’s disability would affect his ability to run a vending machine business.

Accordingly, the SBA’s conclusion to the contrary is unreasonable, arbitrary, and capricious.

Workplace Accommodation for Physical Therapy

Between 1984 and 1989, Petitioner worked at Pacific dental lab both part-time and full-time. Mr. Vacca claims he was not allowed to leave work to attend mandatory physical therapy appointments following his hip surgery. The SBA determination did not address this issue.

An employer’s failure to permit an employee to attend to his medical needs required for the treatment of his handicap places an employee at a disadvantage in the workplace. And that failure to reasonably accommodate an employee’s medical needs is indicative of bias towards the disabled. Whether such failure to accommodate affords the employee legal recourse against the employer does not matter. What is significant for purposes of admission into the 8(a) program is that the employee was put at a disadvantage at his place of employment. He had to make a

choice between forgoing physical therapy and satisfying his employer or tending to his medical needs.

It was unreasonable for the SBA not to address this substantial issue and determine whether Pacific's failure to accommodate Mr. Vacca's disability amounts to substantial bias which impacted his ability to succeed at his job. I cannot substitute my conclusion whether this was an incident amounting to substantial disadvantage. But, the SBA's failure to assess the claim is unreasonable.

Denial of Supervisory Position

Between 1971 and 1984, while working at Channel Islands Dental Lab, Petitioner claims he was passed over several times for supervisory positions because the owner stated that he felt it was for Mr. Vacca's own good not to work overtime. Based on Petitioner's original narrative, the SBA found that Mr. Vacca supervised and managed a department of seven to ten employees. Thus, because Mr. Vacca advanced in the dental lab profession to become head of the ceramics division, the SBA found no indication of bias against Mr. Vacca because of his disability.

Mr. Vacca's employer's conclusion that Mr. Vacca should not work overtime "for his own good" demonstrates bias because of Mr. Vacca's handicap. Only Mr. Vacca, or his doctor, can conclude that it would be unwise for Mr. Vacca to work overtime. This denied Mr. Vacca overtime pay and thus negatively impacted his employment.

Simply because Mr. Vacca became head of the ceramics division does not mean that he did not suffer any bias at the dental lab. Moreover, the supervisory positions that Mr. Vacca was denied may have been in a different field, outside of the ceramics division. The SBA failed to fully analyze this claim of social disadvantage and recognize that Mr. Vacca's supervisor's refusal to grant him overtime was unwarranted and thus evidence of bias. Accordingly, the SBA's conclusion is unreasonable, arbitrary, and capricious.

Summary

Mr. Vacca's claims of bias because of the disability he incurred during his service in the Army are credible and longstanding. The incidents recounted above are each substantial and, taken together, chronic. Further, in each case, they negatively impacted Mr. Vacca's success as an employee and in the business world. All of these incidents were the result of bias in some form against Mr. Vacca because of his disability. Further, the SBA summarily discounted Mr. Vacca's claims that throughout his adult lifetime he was mocked, belittled, and harassed because he was disabled. This evidence, while not establishing social disadvantage by itself, should have been considered by the SBA to support and lend credence to the other substantial claims of bias. What is required is bias, not legal discrimination. The bias need not be established with exactitude. All that must be established is that is more likely than not that events happened. That is the preponderance of evidence standard.

The SBA made a clear error of judgment by failing to consider important facts presented by Petitioner and by failing to reasonably assess the facts presented. Thus, the SBA

determination, denying Petitioner admission into the 8(a) program, is unreasonable, arbitrary, capricious, and contrary to law.

VII. Conclusion

Respondent Small Business Administration's decision denying Petitioner admission into the 8(a) program is ARBITRARY, CAPRICIOUS, AND CONTRARY TO LAW. *See* 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406(b).

Subject to 13 C.F.R. § 134.409(c), this is the final decision of the Small Business Administration. *See* 15 U.S.C. § 637(a)(9)(D); 13 C.F.R. § 134.409(a).

RICHARD S. ARKOW
Administrative Law Judge