

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

SIZE APPEAL OF:

Vortec Development, Inc.

Appellant

Appealed from
Size Determination No. 3-2007-33

SBA No. SIZ-4866

Decided: October 15, 2007

APPEARANCES

Richard D. Lieberman, Esq., Nicole S. Allen, Esq., McCarthy, Sweeney & Harkaway, P.C., Washington, D.C., for Appellant.

Lillian K. Mauldin, President of Tiger Enterprises, Inc., Coats, North Carolina.

DECISION

PENDER, Administrative Judge:

I. Introduction and Jurisdiction

On August 9, 2007, Vortec Development, Inc. (Appellant) filed an appeal of Size Determination No. 3-2007-33 (size determination) dated July 25, 2007 with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). This size determination was issued by the SBA's Office of Government Contracting, Area Office III (Area Office) in response to OHA's May 1, 2007 Remand Order. *See Size Appeal of Tiger Enterprises, Inc.*, SBA No. SIZ-4848 (2007). The Area Office found Appellant other than small under North American Industry Classification System (NAICS) code 532210, Consumer Electronics and Appliances Rental, with a corresponding \$6.5 million size standard.

II. Issue

Whether the size determination was based on clear error of fact or law. *See* 13 C.F.R. § 134.314.

III. Background

A. Procedural History

1. On January 30, 2007, the Department of Army Fort Bragg Directorate of Contracting (Army) issued solicitation No. W91247-07-R-A001. The solicitation provided the procurement would be set-aside for small businesses and identified NAICS code 532210, Consumer Electronics and Appliances Rental, with a \$6.5 million size standard, as the applicable size standard. Offers were due on February 9, 2007.

2. On February 16, 2007, the Contracting Officer (CO) awarded the contract to Appellant.

3. On March 2, 2007, the CO notified Tiger Enterprises, Inc. (Tiger) of award to Appellant. On March 7, 2007, Tiger filed a protest alleging affiliation between Appellant and Tarheel Specialties, Inc. and its affiliates (TSI). On March 20, 2007, the CO adopted Tiger's protest.

4. On March 21, 2007, the Area Office notified Appellant of the size protest and requested it respond. The Area Office asked Appellant to provide: (1) a statement responding to the allegations and any supporting evidence; (2) a completed SBA Form 355; (3) a copy of Appellant's corporate charter and bylaws; (4) Appellant and its affiliates' last annual statement to shareholders; (5) tax returns; (6) IRS Form 4506; (7) copies of technical and cost proposals; and (8) copies of agreements with subcontractors.

5. On April 2, 2007, the Area Office issued Size Determination No. 3-2007-33 finding Vortec to be "small" for the \$6.5 million size standard.

6. On May 1, 2007, I issued *Size Appeal of Tiger Enterprises, Inc.*, SBA No. SIZ-4848 (2007) (Remand Order), vacating the April 2, 2007 size determination and remanding the case to the Area Office. In the Remand Order, I ordered the Area Office to: (1) find facts and summarize available evidence from all sources, paying particular attention to relationships and individual roles; (2) summarize the protest; (3) identify potentially applicable affiliation regulations and their elements; (4) analyze the facts and apply the elements of relevant affiliation regulations to the facts it finds; and (5) determine whether affiliation exists consistent with its analysis of the facts and law.

B. Facts

1. Appellant was purchased on August 9, 2006, for \$1000. Appellant is owned equally by Charlotte Day (Vice-President), Beverly Gurkin (Secretary), and Deborah Byrd (President).

2. DGS Contract Services, Inc. (DGS) was a government contracting corporation, which dissolved as a corporation on January 18, 2002. Prior to its dissolution, DGS was partly owned by Appellant's current owners, Beverly Gurkin and Charlotte Day, and Rickie Day.

3. Beverly Gurkin and Brian Gurkin are siblings. Ms. Day lived with Mr. Harrold's family from the age of 18 to 22.

4. TSI, a large concern, is jointly owned by Brian Gurkin and James Harrold, former DGS employees. Beverly Gurkin worked as a Contracts Administrator for TSI from 2001 until February 2, 2007. Charlotte Day also worked at TSI as the Director of Human Resources until February 2, 2007.

5. While employed by TSI, Beverly Gurkin was paid 1% less than her sibling, Brian Gurkin. Tiger Response, Attachment 4 (September 12, 2003 Deposition of Mr. Gurkin).

6. After Beverly Gurkin, Charlotte Day, and Deborah Byrd acquired Appellant, the following transactions occurred:

a. Beverly Gurkin purchased one trailer from Brian Gurkin to transport washers at Ft. Bragg, among other uses;

b. Beverly Gurkin purchased one trailer from James Harrold for transporting various items, including dryers;

c. Appellant purchased 85 latrines and two pumper trucks from TSI;

d. Appellant purchased one pick-up truck from TSI as the highest bidder at an auction; and

e. Beverly Gurkin, Charlotte Day, Rickie Day, and Judy Day purchased Lots 3, 7, 8, and 9, Roy Lincoln Byrd Estate, North Carolina, from TSI.

Appellant's June 5, 2007 Responses to Area Office Questions; Recorded General Warranty Deed.

7. Appellant sold firearms and ammunition to TSI for use on a TSI security contract.

8. Beverly Gurkin and Charlotte Day personally signed for a loan for TSI (March 27, 2007 Declaration of Ms. Gurkin and June 5, 2007 Declaration of Ms. Day).

C. The Size Determination

On July 25, 2007, the Area Office issued its size determination on remand, finding Appellant other than small under the applicable size standard. The Area Office found affiliation between Appellant and TSI based on the newly organized concern rule and the identity of interest rule. Alternatively, the Area Office found affiliation under the totality of the circumstances, citing the ongoing relationships, familial identity of interest, and the succession of business entities in the same or related lines of work.

The Area Office began by describing the ownership structure of Appellant's alleged

affiliates, DGS and TSI, and other acknowledged affiliates. The Area Office made a number of findings, and concluded that Ms. Day and Ms. Gurkin, Appellant's co-owners, "had a long history of being involved in businesses in identical, or very closely related lines of work as [Appellant]." Size Determination, at 3.

The Area Office found continuing business relationships among Mr. Gurkin, Ms. Gurkin, Ms. Day, and Mr. Harrold, "beginning with [DGS], then progressing to [TSI], and finally, to [Appellant]." Size Determination, at 3. The Area Office underscored the fact that DGS (a defunct company) was not mentioned for affiliation purposes, but merely to "exhibit how continuing business relationships exist among the same group of people engaged in the same or related industry...." Size Determination, at 5. The Area Office noted the following: (1) TSI acquired 26 percent of DGS's contracts; (2) Appellant purchased trailers from TSI's owners for use at Ft. Bragg; (3) TSI sold 85 latrines and two pump trucks to Appellant; and (4) Mr. and Ms. Gurkin signed personally for a loan for TSI's washers and dryers at Camp LeJeune, North Carolina.

The Area Office found Appellant affiliated with TSI under the newly organized concern rule because: (1) Appellant is a newly organized concern "since it has been engaged in a new line of work after being acquired by the current owners, and not having previously had government contracts"; (2) Appellant's line of work is leasing washers and dryers, similar to TSI's business; (3) Ms. Gurkin and Ms. Day's long association with DGS and TSI as key employees allow them to import expertise to Appellant; (4) Appellant's co-owners and key employees, Ms. Day and Ms. Gurkin, were former key employees of TSI; and (5) TSI and Appellant used the same equipment on government contracts. Size Determination, at 6.

The Area Office concluded the following supported a finding of identity of interest affiliation between Appellant and TSI: (1) Ms. Gurkin and Ms. Day have common investments in Appellant, Mastin Baker Investments LLC (MBI)¹, Myers Anderson & Associates, LLP (MA&A)², 4W Fiber Engineering & Services, LLC (4W Fiber)³, and 4 Corners Framing and Photography, Inc. (4 Corners)⁴; (2) Ms. Day and her ex-husband, Mr. Day (co-owner of MBI), continue to have economic and contractual relationships; (3) Ms. Gurkin (Appellant's co-owner) and Mr. Gurkin (TSI's co-owner) have a familial relationship; (4) Ms. Day was "treated as being a member of the Harrold family during her formative years"; and (5) there is no clear fracture as the business relationship between TSI and Appellant is ongoing (trailer, latrine, and truck purchases). Size Determination, at 8.

¹ MBI is co-owned by Beverly Gurkin, Ms. Day, and Charlotte Day's ex-husband (Mr. Day).

² MA&A is partially owned by Charlotte Day (33 1/3%) and Beverly Gurkin (33 1/3%).

³ 4W Fiber is Appellant's acknowledged affiliate, although Appellant claims that 4W Fiber is now dissolved.

⁴ 4 Corners is owned by Sarah Stump (50%) and Beverly Gurkin (50%).

Alternatively, the Area Office found affiliation under the totality of the circumstances based on the personal and business ties between TSI and Appellant.

D. The Appeal

On August 9, 2007, Appellant filed the instant appeal. As an initial matter, Appellant contends that there is no record that the CO notified Tiger of the intended awardee prior to award (as required by FAR 15.503(a)). Appellant contends that had the CO provided the proper notice of award, Tiger's protest would have been untimely and, in turn, the CO would not have had a protest to adopt.

Appellant argues the size determination is based on clear error because: (1) Appellant is not affiliated with DGS, a now defunct company; (2) Appellant is not affiliated with TSI because key employees are not shared between Appellant and TSI under the newly organized concern rule, nor is there a shared identity of interest under 13 C.F.R. § 121.103(f); and (3) Appellant does not qualify as other than small under the totality of the circumstances.

First, Appellant contends the Area Office's references to DGS are irrelevant because DGS was dissolved in January 2002. After dissolution, Appellant asserts that DGS's co-owners, Beverly Gurkin and Charlotte Day, worked as employees at TSI from 2002 to 2007, and acquired an interest in Appellant in 2006. Appellant argues that a dissolved concern should not be regarded as an affiliate because it is not a business entity within the meaning of 13 C.F.R. § 121.105(a)(1), and therefore DGS is not Appellant's affiliate.

Appellant then argues that it is not affiliated with TSI under the newly organized concern rule, 13 C.F.R. § 121.103(g). Appellant maintains that neither Ms. Gurkin nor Ms. Day was a key employee for TSI as neither exerted a critical influence in or substantive control over the operations or management of TSI. Appellant contends the Area Office misguidedly relied on Ms. Gurkin and Ms. Day's job titles to conclude they were key employees, "without considering or attempting to determine the work Ms. Gurkin or Ms. Day actually performed on a day to day basis...." Appeal Petition, at 5. Appellant cites Ms. Gurkin and Ms. Day's Declarations, wherein they contend that they did not make management decisions while at TSI.

Next, Appellant asserts that it does not share key employees with TSI. Appellant contends that neither Ms. Gurkin nor Ms. Day was employed by TSI and Appellant at the same time. Appellant asserts that the Area Office erroneously contends that Ms. Gurkin worked for both companies between August 2006 and January 2007. However, Ms. Gurkin was not on Appellant's payroll until after departing from TSI.

Further, Appellant argues the newly organized concern rule is inapplicable because Appellant was an ongoing concern when it was acquired by Ms. Day, Ms. Gurkin, and Ms. Byrd in August 2006. Appellant contends that its purchase price (\$1000) has no bearing on whether it was newly organized, but merely reflects that it had few assets to justify a higher purchase price. In addition, Appellant asserts that its arms-length purchase of certain equipment from TSI's owners (not TSI itself) does not give rise to affiliation given that the two companies operate in a

small town with limited resources.

Next, Appellant asserts that it is not in the same or related industry as TSI, barring affiliation under the newly organized concern rule. Appellant argues the Area Office's assertion that Ms. Gurkin and Ms. Day have been involved in businesses that were closely related to Appellant's line of work is factually inaccurate. Appellant asserts its principal lines of work are cutting/sewing body armor fabrics and small arms manufacturing (with only 9% of its personnel devoted to furnishing washer/dryers at military bases). In contrast, TSI's business is focused on the storage and sale of seized assets, disaster clean-up, and guard services. Further, Appellant asserts it is unfair to penalize Appellant's owners "for attempting to employ the experience they developed in prior employment and business ventures, particularly when it constitutes but a small fraction of [Appellant's] overall business profile." Appeal Petition, at 4.

Appellant then argues that it is not affiliated with TSI under the identity of interest rule because Ms. Day and Ms. Gurkin were not shared or key employees of TSI and there is no substantive business relationship between Appellant and TSI. Appellant argues that despite the familial relationship between its owners and TSI's owners, Appellant has "ma[d]e a clean break from [TSI]." Appeal Petition, at 9. However, Appellant notes that interactions will inevitably occur due to the small town in which Appellant and TSI operate. Further, Appellant argues that it would be unjust to find affiliation based on identity of interest because that would "condemn every small town in the United States with the mandate to foreclose all ties of family and friendship in their business concerns, in order to avoid affiliation." Appeal Petition, at 8.

Finally, Appellant requests an oral hearing to "provide a more complete and accurate explanation of the small town climate of Erwin and Lindin, North Carolina, as well as the relationships of the people and businesses at issue...." Appeal Petition, at 9.

E. Protestor's Response

On August 23, 2007, Tiger filed its Response requesting that the size determination be upheld. Tiger asserts that the initial size protest was timely because the protest was adopted by the CO, and contracting officer protests are always timely under 13 C.F.R. § 121.1004(b). With regard to the relevance of DGS, Tiger argues that the Area Office made clear that DGS was not an affiliate. However, Tiger contends a discussion of DGS was necessary to provide "historical background information." Response, at 2.

Next, Tiger contends that former, not shared, key employees are relevant to 13 C.F.R. § 121.103(f) and (g). With regard to identity of interest affiliation, Tiger asserts that TSI and Appellant are in the same line of work, their owners are family members, and they are economically dependent through contractual relationships. With regard to affiliation under the newly organized concern rule, Tiger argues that Appellant is newly organized (despite being incorporated prior to Ms. Gurkin and Ms. Day's "token" purchase) because Appellant's new owners "installed a new president, vice president, secretary and treasurer as well as a Board of Directors." Response, at 2.

Tiger then disputes Appellant's assertion that its principal line of business is cutting and

sewing body armor fabric. Tiger asserts that there is no evidence that Appellant has any body armor contracts. Rather, Appellant has one latrine contract, one ammunition contract, and the protested washer/dryer contract. Tiger asserts TSI's own submissions show that the largest percentage (36.5%) of its business is devoted to washer/dryer contracts. Accordingly, Tiger claims that Appellant and TSI are in the same line of business.

Tiger then asserts that Ms. Gurkin and Ms. Day were key employees at TSI. Tiger asserts that the Area Office relied not merely on job titles, but on the type of work Ms. Gurkin and Ms. Day performed at TSI. Tiger also alleges that Ms. Gurkin's salary was only approximately \$15/week less than TSI's President, indicating that Ms. Gurkin was a key employee at TSI.

Finally, Tiger opposes Appellant's motion for an oral hearing. Tiger contends that the relationship between TSI and Appellant is one of choice, and is not necessitated by the small town in which TSI and Appellant operate.

IV. Discussion

A. Applicable Law

1. Timeliness

Appeals must be filed and served at OHA within 15 days after an appellant receives a size determination. 13 C.F.R. § 134.304(a)(1).

2. Standard of Review

The standard of review for this appeal is whether the Area Office based its size determination upon clear error of fact or law. 13 C.F.R. § 134.314. In evaluating whether there is a clear error of fact or law, OHA does not consider Appellant's size *de novo*. Rather, OHA reviews the record to determine whether the Area Office based its size determination upon a clear error of fact or law. *See Size Appeal of Taylor Consulting, Inc.*, SBA No. SIZ-4775 (2006) (providing a full discussion of the clear error standard of review). Consequently, I will disturb the Area Office's size determination only if I have a definite and firm conviction the Area Office made key findings of law or fact that are mistaken.

3. Applicable Regulations

Affiliation based on identity of interest is defined at 13 C.F.R. § 121.103(f), which provides:

Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated.

Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

Affiliation based on the newly organized concern rule is defined at 13 C.F.R. § 121.103(g), which provides:

Affiliation may arise where former officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, principal stockholders, managing members, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. A "key employee" is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

B. Analysis

1. Timeliness

On March 20, 2007, the CO adopted the size protest. Because the time limitations on size protests do not apply to protests filed by contracting officers, the CO protest was timely. 13 C.F.R. § 121.1004(b).

Appellant appealed the size determination within 15 days of receiving it. Therefore, Appellant's appeal is timely. 13 C.F.R. § 134.304(a)(1).

2. Oral Hearing

Oral hearings will be held "only upon a finding by the Judge of extraordinary circumstances." 13 C.F.R. § 134.311. Appellant has failed to demonstrate how explaining the small town atmosphere of Appellant's place of business is an extraordinary circumstance warranting an oral hearing. *See Size Appeal of Lanzen Fabricating North, Inc.*, SBA No. SIZ-4723 (2005). Accordingly, Appellant's request for an oral hearing is DENIED.

3. Acknowledged Affiliates

In its SBA Form 355, Appellant acknowledges affiliation with MBI, MA&A, Chase Environmental, Inc., Ann Gurkin Realty, Inc., 4 Corners, and 4W Fiber. Therefore, it is unnecessary to determine whether the Area Office's characterization of the ownership and relationships among these entities was based on clear error. The average annual receipts of Appellant and these entities are well below the applicable size standard. Accordingly, this decision will focus on whether the Area Office committed a clear error in determining that

Appellant was affiliated with TSI, a large concern.

4. Identity of Interest

The Area Office based its finding of affiliation on familial identity of interest. SBA's regulations and OHA decisions provide that individuals with substantially identical business interests, such as family members, may be affiliated. 13 C.F.R. § 121.103(f); *Size Appeal of Osirus, Inc.*, SBA No. SIZ-4546 (2003). Mr. Gurkin has the power to control TSI. Mr. Gurkin's sister, Beverly Gurkin, has the power to control Appellant. Accordingly, there is a presumption of affiliation between Appellant and TSI that Appellant can rebut by showing "clear fracture." *Id.*

However, rather than establishing a clear fracture, Appellant essentially admits there is no fracture by explaining that its business relationship with TSI is inevitable given the small town in which it does business. Appellant also requests a hearing to explain the necessity of the relationship. Appeal, at 9.

The Record shows Beverly Gurkin and Charlotte Day have had a continuing business relationship with TSI. For example, Beverly Gurkin and Charlotte Day have bought trailers, trucks, and 85 latrines from TSI, signed a loan instrument on TSI's behalf, and bought real property from TSI (albeit with other parties) (Facts 6 - 8). I find these transactions demonstrate a lack of fracture.

Under the circumstances, Appellant has failed to demonstrate a clear line of fracture between TSI and Appellant. Accordingly, I hold that Appellant has not rebutted the identity of interest presumption and that TSI and Appellant are affiliated under the identity of interest rule.

5. Newly Organized Concern

Under the newly organized concern rule, two firms are affiliated when (1) former officers, directors, principal stockholders, or key employees of one firm organize a new firm; (2) these individuals serve as the new firm's officers, directors, principal stockholders, or key employees; (3) the new firm is in the same or a related industry or field of operation; and (4) the one concern is furnishing or will furnish to the new concern contracts, financial or technical assistance, bid or performance bond indemnification, or other facilities. 13 C.F.R. § 121.103(g). There is no requirement that the concerns share employees, only that former key employees of the large concern are now key employees of the small concern.

The first issue is whether the Area Office made a clear error in finding Ms. Day and Ms. Gurkin former key employees of TSI. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern. 13 C.F.R. § 121.103(g).

I find the Area Office did not commit clear error in finding that Beverly Gurkin was a key employee of TSI, as evidenced by her title as Contract Administrator and the 1% difference between her salary and that of TSI's co-owner, Mr. Gurkin (Fact 5). Because TSI's revenue

relied upon Government contracts and Beverly Gurkin earned only 1% less than her brother, the Area Office reasonably concluded Beverly Gurkin, as TSI's Contracts Administrator, had critical influence in or substantive control over TSI's day-to-day operations. Accordingly, it is unnecessary to address Ms. Day's status as a key employee of TSI.

The next issue is whether Appellant is a newly created concern given that it was incorporated prior to Ms. Day and Ms. Gurkin's purchase in 2006. OHA decisions have held that a concern may be formed prior to when a key employee begins working at the concern and still be considered newly created where, although technically incorporated, the concern did not generate revenue and was dormant until after the key employee joined the concern. *See Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 17 (2006).

The facts show that Appellant was a failed concern before Charlotte Day, Beverly Gurkin, and Deborah Byrd revived it for the nominal sum of \$1,000. Appellant admits that prior to Ms. Day and Ms. Gurkin's purchase, Appellant "had no income or assets (see the Form 355 submitted to the Area Office)..." Appeal Petition, at 6. Nor had Appellant had government contracts. Under these circumstances, the Area Office did not err in finding Appellant a newly organized concern, since former key employees of TSI revived Appellant and then installed new officers and directors, and provided a new business focus.

The Area Office found that Appellant and TSI were in the same or related lines of work, furnishing washers and dryers. However, Appellant asserts its principal lines of work are cutting/sewing body armor fabrics and small arms manufacturing (with only 9% of its personnel devoted to furnishing washer/dryers at military bases). In contrast, TSI's business is focused on the storage and sale of seized asserts, disaster clean-up, and guard services.

The newly organized concern rule does not require the new firm to be focused exclusively on a certain line of business for it to be "in the same or a related industry or field of operation." Rather, it is sufficient that both concerns actually engage in the industry that is the subject of the instant procurement. Both Appellant and TSI have or have had washer/dryer contracts. Accordingly, the Area Office did not commit clear error in finding TSI and Appellant to be engaged in related industries.

The newly organized concern rule also requires that TSI is furnishing or will furnish Appellant with contracts, financial or technical assistance, bid or performance bond indemnification, or other facilities. 13 C.F.R. § 121.103(g). TSI has furnished trailers to Beverly Gurkin that were used to transport Appellant's washers and dryers. In addition, Appellant purchased 85 latrines and two pumper trucks from TSI. Therefore, the Area Office did not commit clear error in finding TSI is furnishing Appellant with equipment and facilities.

Affiliation under the newly organized concern rule can be rebutted if the challenged firm can demonstrate a clear line of fracture between itself and the other firm. 13 C.F.R. § 121.103(g). However, as discussed in the identity of interest section of this decision, there is no clear line of fracture. Accordingly, it was not clear error for the Area Office to conclude that Appellant and TSI are affiliated under the newly organized concern rule.

6. Totality of the Circumstances

Area offices may find affiliation based upon the totality of the circumstances (13 C.F.R. § 103(a)(5)). I discussed this rule at length in *Size Appeal of Lance Bailey & Associates, Inc.*, SBA No. SIZ-4817, at 13 - 15 (2006). As noted in that decision, it is OHA's preference that area offices first find affiliation based upon the specific factors enumerated in 13 C.F.R. § 121.103, *i.e.*, 13 C.F.R. § 121.103(c), (d), (e), (f), (g), and (h). That is, area offices should not use totality of the circumstances as a basis to find affiliation when the area office should have found affiliation under one or more of the specific factors. Accordingly, since the Area Office has found Appellant is affiliated with TSI under two independent bases for affiliation, it is not necessary for me to address the alternative totality of the circumstances finding.

V. Conclusion

Appellant is affiliated with TSI based upon (a) the identity of interest rule; and (b) the newly organized concern rule. Accordingly, the Area Office correctly aggregated the receipts of TSI and Appellant under 13 C.F.R. § 121.104(d) and found Appellant to be other than small for NAICS code 532210. Therefore, the size determination is AFFIRMED and Appellant's appeal is DENIED.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(b).

THOMAS B. PENDER
Administrative Judge