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In the Matter of the Interest	:	
Arbitration	:	
- Between -	:	
COUNTY OF NASSAU	:	
	:	SUPPLEMENTAL
"County"	:	INTEREST ARBITRATION
	:	AWARD
- and -	:	
POLICE BENEVOLENT ASSOCIATION,	:	
POLICE DEPARTMENT, COUNTY OF	:	
NASSAU, NEW YORK, INC.	:	
	:	
"PBA"	:	

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APPEARANCES

For the County

LAMB & BARNOSKY
 Richard K. Zuckerman, Esq., Attorney
 Michael Krauthamer, Esq., Attorney
 Alison Matthews, Esq., Attorney

For the PBA

GREENBERG, BURZICHELLI & GREENBERG
 Harry Greenberg, Esq., Attorney
 Seth Greenberg, Esq., Attorney

BEFORE: JOHN M. DONOGHUE, ESQ., CHAIRMAN OF THE PANEL
 MARTIN F. SCHEINMAN, ESQ., NEUTRAL MEMBER OF THE PANEL
 HOWARD C. EDELMAN, ESQ., NEUTRAL MEMBER OF THE PANEL
 DANIEL MCCRAY, ESQ., COUNTY MEMBER OF THE PANEL
 JAMES CARVER, PBA MEMBER OF THE PANEL

BACKGROUND

Faced with a virtually unprecedented downturn in the economy manifesting itself in decreased revenue from all sources, the County in late 2008 and early 2009 reached out to the five (5) unions representing the bulk of the County's non-College workforce, the Civil Service Employees Association, the Police Benevolent Association, the Detective Association, Inc., the Sheriff Officers' Association and the Superior Officers' Association. Over the course of weeks, the parties discussed a series of options to address the crisis.

Ultimately, on February 2, 2009, County Executive Thomas R. Souzzi, in a televised speech before a special session of the Nassau County Legislature set forth his plan to ameliorate the economic crisis faced by the County which approximated a shortfall of \$130 million dollars. It involved cutting government and revenue enhancement. An important element of Suozzi's plan was labor savings from the five (5) unions in the amount of (7%) seven percent. For example, for the three (3) police unions, Suozzi targeted \$14,102,419 from the PBA, \$3,800,091 from the DAI and \$4,419,651 from the SOA. Without such savings, Suozzi indicated he would be forced to layoff, demote and furlough County workers, and

eliminate or consolidate assignments which would dramatically impact the compensation of those other employees not laid off, demoted or furloughed. Suozzi asked the unions to work with him to avoid these consequences.

Thereafter, the unions met with representatives of the County in an attempt to find a solution which would impact upon their respective memberships in the least possible way. The unions insisted any sacrifices must be shared, and must be combined with concomitant economic sacrifices by non-union County employees. The unions desired any reductions in force to be accomplished through attrition, rather than layoffs, and that any agreements to save the County money be temporary with the reductions being returned to the employees once the economic crisis abated.

Over the course of group meetings on February 11, 19, 22, 27 and 28, and dozens of smaller meetings involving individual unions and the County, many with Panel Member Martin F. Scheinman, Esq., who had been mutually requested to serve as Mediator, a good deal of progress was made. For example, the bargainers for the three (3) police unions agreed: to reduce the sworn head count by civilization saving millions of dollars and

accepted the concept of a two (2) week lag payroll in 2009 as long as all unions were treated likewise. However, an overall settlement with all unions on identical terms did not materialize. Instead, the unions determined to go on their own in discussions with the County and the Mediator to attempt to meet the targets necessary to avoid layoffs, demotions and or furloughs.

It must be noted the attempt to attain a global solution was hindered by the fact the unions did not enter these discussions in identical circumstances. Some were covered by long term contracts. Some were not. The terms of their contracts are not identical. The PBA is covered by an interest arbitration and an extension expiring December 31, 2015. Similarly, CSEA is covered by an interest arbitration award through December 31, 2015. Neither of these unions was interested in opening up the terms of those agreements or awards. DAI is covered by an interest arbitration award through December 31, 2012, and is engaged in negotiations for an extension to also expire on December 31, 2015. SHoA is covered by an agreement through December 31, 2012, and is engaged in negotiations for an extension to also expire on December 31, 2015. SOA is in the midst of a interest arbitration process wherein that panel has jurisdiction through

December 31, 2013. At the same time, SOA and the County are exploring the possibility of an extension.

By the time we are constructing this Opinion and Award, CSEA and DAI are about to conclude agreements which address the economic crisis. If finalized, the DAI agreement will include an extension. Both the CSEA agreement and the DAI agreement need to be ratified by their respective memberships. The SOA has also agreed to react to the County's articulated targets provided its interest arbitration process has been completed and the terms of its Award are known. Such an SOA accord on addressing the financial crisis, which may include an extension, will have to be approved by its membership. Finally, SHoA is meeting with the County to find a solution to County proposed mandates which will substantially impact upon the economic circumstances of Correction Officers. Such an accord, which may also include an extension, will be submitted to its membership.

On or about June 29, 2007, this Interest Arbitration Panel constituted pursuant to Section 209.4 of the Civil Service Law, issued an Interest Arbitration Award covering terms and conditions of employment for the PBA for the period January 1, 2007 through December 31, 2012.

One of the items addressed therein was the "No Layoff" provision. In that finding the Panel rejected the PBA's then demand for a clause prohibiting the County from laying off Police Officers during the term of the Award. However, we also held:

should the County propose or implement layoffs of any members of the PBA bargaining unit through December 31, 2012, the PBA may request the Panel be reconvened to address this issue. If asked to do so, the Panel shall accept jurisdiction. (See page 21).

Still being subject to layoffs, and faced with the County's unwillingness to agree to either the PBA's renewed insistence upon a no layoff clause or that all concessions be re-paid to its membership, the PBA on March 2, 2009, determined to utilize the right it had been awarded to reconvene the Panel to adjudicate this issue. It designated President James Carver as the PBA member of the Panel to replace its former designee.

Given the pressing nature of this dispute, and so as to promptly resolve the uncertainty faced by PBA members and County residents, at the Panel's suggestion, the parties agreed to argue their case based upon written

submissions. They also were asked to accept an Opinion in abbreviated form. They agreed to this request, too. Thereafter, the undersigned Panel received the parties written submissions. Upon receipt of same, we closed the record and went into Executive session. This Opinion and Award follows.

POSITIONS OF THE PARTIES

The PBA acknowledges the County faces very difficult economic times. However, it submits, these difficulties cannot be solved by laying off Police Officers. This is so, it stresses, because public safety is of paramount importance to the residents of Nassau County. Depleting the police force by some 250 Officers, about a fifteen (15%) percent reduction, will inevitably result in more crime and an increased fear of crime, it alleges. Such a result cannot be tolerated, the PBA maintains.

It is for this reason the PBA comes to the Panel asking for a no layoff provision through December 31, 2015, the full term it is covered by interest arbitration awards and a memorandum of agreement with the County. The PBA notes our December 20, 2004 and June 29, 2007, Interest Arbitration Awards were premised upon the conclusion there would be no layoffs. It notes, in then rejecting the PBA's request for a no layoff clause, we

wrote on December 20, 2004, "We must conclude a no layoff clause is not needed, at this time. This conclusion is based entirely on representations made to the PBA and to this Arbitration Panel that the Police will not face layoffs during the term of our Award".

The PBA insists this same logic applied when in Section 3 of our June 29, 2007, Interest Arbitration Award, in commenting upon the renewed request for a no layoff clause we wrote: "No Layoff Provision. The provision related to Layoffs contained in the 2001-2006 Award shall be continued for the period January 1, 2007 through December 31, 2012."

The PBA notes the threat of layoffs is now real. "A resolution has been proposed and is working its way through the County Legislature that would give [County Executive] Suozzi the authority to implement those layoffs." (PBA brief at Pg 1). It asserts this Damocles Sword and many other factors provide the rationale for the Panel to award a no layoff clause.

First, the PBA argues the Police Department's budget is fully funded. That is, the PBA claims the tax revenues designated for police and other monies generated by the police are sufficient to operate the Department, including the needed funds for compensation and benefits of

uniformed employees.

Second, using the County's own numbers, but six (6) months ago the County and PBA entered into a Memorandum of Agreement, dated September 5, 2008, which saved \$15 million dollars in recurring savings. The PBA believes those savings should be credited to the PBA in this round of discussions and in this Interest Arbitration. It also insists that MOA continued the no layoff promise of the prior Interest Arbitration Awards.

Third, the PBA maintains there is ample legal precedent for awarding a job security or no layoff provisions. It cites several cases to support this view.

As to the County's proposals, the PBA asserts it is willing to cooperate with three (3) assurances. There must be job security so PBA members will as soon as possible be placed in the same position as before such change. It must be clear any change has no impact upon the member's pension. Lastly, all County employees must share in "in the proverbial 'Pain'". Moreover, argues the PBA, if there turns out to be a surplus, it should be entitled to relief. It also claims any awarded relief should end any calls by the County for further reductions. In the PBA's view, the County must be prohibited from being able to "come back to the Panel".

The County, on the other hand, argues it is encountering dire economic straits not of its own making. It insists there can be no dispute there exists a need for an immediate and sustained reduction in government costs. It notes the PBA membership is extremely well paid and such pay is deserved. In good economic times, the citizens can afford such compensation. However, given what is happening on a regional, national and international basis it is essential the PBA membership do its fair share now. It notes the PBA's share of the headcount reduction and lag payroll savings if awarded equal approximately \$10 million dollars. It submits Exhibits B and C in support of these calculations. Therefore, beyond those initiatives which it asks us to award below, the County needs to be able to obtain an additional \$4 million dollars in savings from the PBA in order to meet the County Executive's articulated goals, insists the County.

The County objects to the PBA's demand for a no layoff clause through December 31, 2015. It urges there are significant risks for the County in future years including continued sales tax decline beyond what is now being forecasted, variable rate debt resets and increased medicaid payments to name a few. As a result of such risks, maintains the County, a no layoff clause "through

2015 is simply irresponsible". (County's Submission at Pg 3). In short, the County asks we reject the PBA's request for a no layoff clause.

The County asks if we are in any way asserting our jurisdiction to opine upon the County's right to layoff police officers we must, at a minimum, Award implementation of a two (2) week lag in 2009 of all monies included in the bi-weekly pay check using a methodology agreed upon by both parties. It insists all of the County unions will participate in this lag (as will non-union employees) or face more severe economic reductions.

In support of the County's headcount reduction plan impacting upon the entire Police Department, the County asks we authorize beyond earlier civilianization directed by the Panel an additional twenty six (26) positions. The positions to be civilianized are set forth in the exhibit attached to its submission. The County notes this plan has been discussed extensively with the police unions. It demonstrates shared sacrifice. It sees no reason why the Department should not have the ability to fill the positions identified with non-police employees.

In support of the unions' proposal force reductions be accomplished by attrition, rather than layoffs, a position pressed strenuously by the PBA, the County asks

the termination payout rules in paragraph 11 of the September 5, 2008, Memorandum of Agreement become effective July 1, 2009. It asserts moving the maximum payout from November 1, 2009, until July 1, 2009, makes good sense.

Finally, whether in the areas of a permanent reduction in holidays, vacation, equipment and uniform allowance, or some combination of these benefits, the County requests a (2%) two percent decrease in compensation so the PBA meets its proportional share of the savings necessary to avoid layoffs, demotions or furloughs.

DISCUSSION AND FINDINGS

Several introductory comments are appropriate. There is no doubt the County faces a real economic crisis, the likes of which have not been seen in decades. As it established in its submissions, revenues have declined substantially over the last six (6) months. Sales tax and mortgage tax reductions show no sign of rebounding in the near future. Frankly, the County is no different than any other employer, public or private sector, facing an extraordinary downturn. On this there can be no reasonable dispute.

As such, the Panel is convinced the County needs real economic savings to avoid layoffs, demotions or furloughs.

We are also persuaded addressing but a single year, 2009, is illogical. No respected forecast suggests this crisis will be resolved in 2009 or 2010. Yet, we are not so pessimistic as to be persuaded the magnitude of the problem will exist forever.

On balance, we conclude a three (3) year horizon is the proper course for addressing this rescue package. Thus, our determination covers the time frame from the issuance of our Opinion and Award through December 31, 2011.

We are also persuaded the PBA has a legitimate interest in seeing to it reductions are not so extensive so as to substantially impair Police Officers' economic well being. We do not subscribe to the view this crisis is the time to change the basic paradigm created by these parties. Thus, some temporary savings, rather than solely permanent ones, have been awarded to help meet this goal.

At this time, in this economy, we also subscribe to the PBA's view, which comports with the position of the other unions, attrition is the better methodology for reducing the County's head count in the Police Department.

Finally, it is worth noting preventing layoffs of Police Officers serves both the County's interests and the PBA's. The County has a duty to protect its citizens. Low crime statistics are a testament to the fine work of Police

Officers. Were permanent layoffs to occur, the safety of the public would surely be compromised. Such a result is to be avoided.

Obviously, the PBA also has a substantial interest in avoiding layoffs. Potentially affected Police Officers' jobs are saved and they may continue to provide for themselves and their families in very difficult economic times. Also, the morale of Officers not slated for layoff is improved by the realization their fellow Officers will remain on the job and future possible layoffs which could affect them will be unnecessary. Thus, the retention of the current work force, except through attrition, meets the needs of all concerned.

With these principles in mind, we turn to the specific issues at hand.

How can the savings necessary to avert layoffs be achieved? The County insisted it needed real savings to retain current staff members. While we agree with this contention, we must reject the County's demand to substantially and permanently reduce vacation, holiday, uniform and or equipment allowances.

With respect to other benefit modifications proposed by the County, the changes issued below will achieve tangible savings. As such, while not as drastic as those

proposed by the County, they are nonetheless real and significant, we conclude.

We determine a combination of permanent and temporary savings is fair to both the County and the PBA. This combination can be achieved in the following ways, we find:

1. Civilianization

The County is authorized to civilianize twenty six (26) jobs, in accordance with the head count Exhibit attached to the County's submission. These are in addition to prior authorization for civilianization already awarded by this Panel. The cost differential between a civilian employee and a Police Officer is substantial. Civilianization is an important component of the County's plan to lower the head count in the Police Department. Once this revised head count is accomplished there will be a permanent, substantial savings to the County which for the three (3) police unions will be more than \$14 million by calendar year 2010. A good portion of that amount is attributable to the PBA which is entitled to that credit.

Moreover, civilianization permits the County to deploy Police Officers where they are needed most, we find. We are persuaded by the County's presentation the jobs identified in the Exhibit attached to the County's submission to be civilianized are appropriate.

2. Paragraph 11 of the MOA of September 5, 2008

To further facilitate this permanent savings attendant with the reduction of head count through attrition, we award, premised upon appropriate New York State action to bond termination pay, a modification of the September 5, 2008 MOA so that the changes to termination pay shall be effective July 1, 2009, instead of November 1, 2009. We shall retain jurisdiction should New York State not pass such a bill.

3. Equipment Allowance

For the calendar years 2009, 2010 and 2011 only, Police Officers shall not be paid their equipment allowance but instead will have it paid upon separation. As this is not part of termination pay, the cap referenced in Number 2, above, does not apply to such equipment allowance deferral payment. The emoluments lost for 2009, 2010 and 2011 result in an annual savings in excess of \$1,800,000.

4. Holidays

For the calendar years 2009, 2010 and 2011 only, Columbus Day, Election Day and Veteran's Day, for all purposes, shall not be treated as holidays. As a result, the holiday check received on the first Thursday in December in 2009, 2010 and 2011 shall be reduced from six (6) days to three (3) days. At the Officer's option, these

three (3) days lost each year, for a total of (9) days through 2011, may be put into the Officer's vacation leave (but may not be used before January 1, 2012) or may be cashed out at separation. If cashed out at separation, the cash value of these days will not count against the cap set forth in Number 2, above.

At the Officer's option, premium pay for working any of these three(3) days will be paid upon his or her separation or placed into the Officer's compensation time bank.

For any Officer using 2009, 2010 and or 2011 as part of his or her final average salary, who did not use all of these lost holidays as vacation, shall receive retroactive reimbursement for amounts deferred, including premium pay, if any.

The PBA compensatory time bank shall be the same as that in existence for the SOA and DAI.

By implementing these changes in Holiday, the County will realize annual savings in excess of \$2.5 million dollars. Yet, we direct the parties accomplish these changes so all deferred monies are pensionable.

5. Lag Payroll

The County has demonstrated, in addition to the savings effectuated above, immediate financial relief in

response to the extraordinary fiscal straits is needed. Such relief can best be accomplished promptly by instituting a two (2) week lag payroll in 2009. Officers' compensation for 2009 shall be temporarily reduced by two (2) weeks' pay in a manner to be determined by the parties. However, the methodology selected must not adversely effect an Officer's pension. While we are not advocating any one of the many ways to implement the lag, we remind the parties the last time there was a lag in the County the parties received the following opinion from the Assistant Counsel for the Comptroller's Office assigned to handle the New York State and Local Retirement Systems, "Retirement benefit calculations are based on the period which salary is earned not the period it is paid. Therefore, the move to a lag payroll will not have any effect on benefit calculations." (PBA submission at Pg 6).

We conclude this lag payroll will result in a cash savings exceeding \$2.5 million dollars in 2009.

6. No Layoff Clause

The PBA has proposed in light of the threatened layoffs of its members we award a no layoff clause through December 31, 2015, or if there is a layoff, all concessions be returned. While we are sensitive to these requests, we believe these requests are not yet ripe in light of the

County's recent action.

The County is in the process of applying for a grant offered by the United States Department of Justice under the "COPS Hiring Recovery Program". Municipalities are eligible for such funds for three (3) purposes: (1) to hire and increase the size of a department, (2) to prevent layoffs and (3) to rehire laid off police officers. The County's request falls under number (2), to prevent layoffs scheduled for April 1, 2009.

As we understand it, if funding is received it is conditioned upon the County not laying off Officers. Therefore, if the County is awarded the grant layoffs are no longer an option for the County. Accordingly, it is unnecessary and inconsistent with fundamental arbitral principles to decide an issue which is not yet ripe.

However, should the County not obtain or reject the grant and then again decide to propose layoffs we will sua sponte reopen the record for two (2) purposes only. First, to determine whether to impose a no layoff clause which we conclude is within our authority. Second, to determine the appropriate length of such no layoff clause, if any, consistent with our authority or whether simply to return all concessions.

In summary, the modifications listed above reflect the

difficult economic circumstances the County faces. They are necessary to relieve the County of some of its contractual fiscal burdens. On the other hand, we would not have imposed them without the strong belief other police unions were also doing their fair share. We expect them to proportionally experience the same "pain". Should the DAI and or SOA not in the end do so, the PBA may return to the Panel.

Accordingly, for all of the foregoing, the changes described are to be imposed as indicated, herein. It is so ordered.

AWARD

1. The County is authorized to civilianize twenty six (26) jobs, in accordance with the head count Exhibit attached to the County's submission. These are in addition to prior authorization for civilianization awarded by this Panel.
2. Paragraph 11 of the Memorandum of Agreement of September 5, 2008, shall be modified so that the changes in termination pay shall be effective July 1, 2009, instead of November 1, 2009.
3. For the calendar years 2009, 2010 and 2011 only, Police Officers shall not be paid their equipment allowance but instead will have it be paid upon separation.
4. For the calendar years 2009, 2010 and 2011 only, Columbus Day, Election Day and Veteran's Day, for all purposes, shall not be treated as holidays. As a result, the holiday check received on the first Thursday in December in 2009, 2010 and 2011 shall be reduced from six (6) days to three (3) days. At the Officer's option, these three (3) days lost each year, for a total of (9) days through 2011, may be put into the Officer's vacation leave (but may not be used before January 1, 2012) or may be cashed out at separation. If cashed out at separation, the cash value of these days will not count against the cap set forth in Number 2 of this Award.

At the Officer's option, premium pay for working any of these three (3) days will be paid upon separation or placed into the Officer's compensation time bank.

For any Officer using 2009, 2010 and or 2011 as part of their final average salary, who did not use all of these lost holidays as vacation, shall receive retroactive reimbursement for amounts deferred, including premium pay, if any.

The PBA compensatory time bank shall be the same as that in existence for the SOA and DAI.

We direct the parties work together in implementing these changes to assure all deferred monies are pensionable.

5. The County may implement a lag payroll for two (2) weeks in 2009. The manner to implement this lag shall be agreed to by the parties. We direct the parties implement this lag to assure all deferred monies are pensionable. If no agreement is reached, either party may return to the panel which will decide the issue.
6. Consistent with our Opinion above, the PBA's request for a no layoff provision is not ripe at this time. Should the County not obtain or rejects the "COPS Hiring Recovery Program" grant and then again decide to propose layoffs we will sua sponte reopen the record for two (2) purposes. First, to determine whether to impose a no layoff clause which we conclude is within our authority. Second, to determine the appropriate length of such no layoff clause, if any, consistent with our authority, or whether simply to order the return of all concessions.
7. In addition to our retention of jurisdiction under our Interest Arbitration Awards of December 20, 2004 and June 29, 2007, and our retention of jurisdiction regarding our Opinion above, we shall retain jurisdiction over any disputes regarding the application, implementation or interpretation of this Award.

DATED: 3/9/09



John M. Donoghue, Esq., Chairman
Interest Arbitration Panel

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

On this 9th day of March 2009, before me personally came and appeared JOHN M. DONOGHUE, ESQ., Chairman, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



NOTARY PUBLIC

EMILIE A. LONG
Notary Public, State of New York
No. 01LO6135760
Qualified in Orange County
Commission Expires 10/24/ 09

DATED:

3/9/09



Martin F. Scheinman, Esq.,
Neutral Member
Interest Arbitration Panel

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

On this 9th day of March 2009, before me personally came and appeared MARTIN F. SCHEINMAN, ESQ., Neutral Member, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


NOTARY PUBLIC

KATE TIERNEY
Notary Public, State of New York
No. 01T16136538
Qualified in Queens County
Commission Expires November 7, 20 09

DATED: March 9, 2009 Howard C. Edelman
Howard C. Edelman, Esq.,
Neutral Member
Interest Arbitration Panel

Howard C. Edelman, Esq.,
Neutral Member
Interest Arbitration Panel

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On this 8TH day of March 2009, before me personally came and appeared HOWARD C. EDELMAN, ESQ., Neutral Member, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Mary Hallerstadt
NOTARY PUBLIC

MARY HALBERSTADT
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01HAG101768
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES NOVEMBER 17, 2011

DATED:

3/9/09



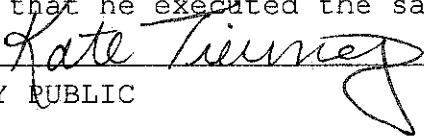
Daniel McCray, County Member
Interest Arbitration Panel

STATE OF NEW YORK)

) ss.:

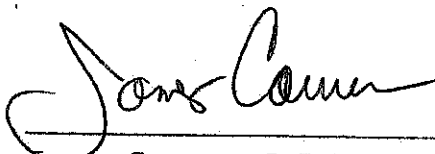
COUNTY OF NASSAU)

On this 9th day of March 2009, before me personally came and appeared DANIEL MCCRAY, County Member, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


NOTARY PUBLIC

KATE TIERNEY
Notary Public, State of New York
No. 01TI6136538
Qualified in Queens County
Commission Expires November 7, 2009

DATED: 3/9/09



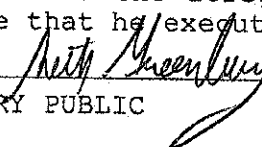
James Carver, P.B.A. Member
Interest Arbitration Panel

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

On this 9th day of March 2009, before me personally came and appeared JAMES CARVER, P.B.A. Member, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


NOTARY PUBLIC

SETH GREENBERG
Notary Public, State of New York
No. 02GR6107620
Qualified in Nassau County
Commission Expires April 5, 2012