

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
MICHIGAN TAX TRIBUNAL

CRJ Enterprises, LLC,  
Petitioner,

v

MTT Docket No. 456091

City of Monroe,  
Respondent.

Tribunal Judge Presiding  
Preeti P. Gadola

**FINAL OPINION AND JUDGMENT**

INTRODUCTION

Petitioner, CRJ Enterprises, LLC (“CRJ”), appeals the ad valorem real property tax assessment levied by Respondent, City of Monroe, against Parcel No. 58-55-39-00195-000 for the 2013 tax year. Harold Hoyt represented Petitioner, and Sam Guich, Assessor, City of Monroe, represented Respondent. A hearing on this matter was held on February 25, 2014. Petitioner did not present any witnesses and Respondent’s sole witness was Paula Smith, Property Appraiser, City of Monroe. Petitioner’s contentions of true cash value (“TCV”), state equalized value (“SEV”), and taxable value (“TV”), for the 2013 tax year, are as follows:

**Parcel Number: 58-55-39-00195-000**

Year	TCV	SEV	TV
2013	\$160,000	\$80,000	\$80,000

Respondent’s contentions of value of the tax roll:

**Parcel Number: 58-55-39-00195-000**

Year	TCV	SEV	TV
2013	\$482,820	\$241,410	\$241,410

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Respondent's revised contentions of value:

**Parcel Number:** 58-55-39-00195-000

Year	TCV	SEV	TV
2013	\$485,000	\$242,500	\$241,410

Based on the evidence, testimony, and case file, the Tribunal finds that the TCV, SEV, and TV of the subject property for the years under appeal are as follows:

**Parcel Number:** 58-55-39-00195-000

Year	TCV	SEV	TV
2013	\$483,000	\$241,500	\$241,410

The subject appeal was originally filed in the small claims division of the Michigan Tax Tribunal on May 31, 2013. At that time, the amount of contention in state equalized and taxable value listed on the Petition was \$61,410 which was within the jurisdictional limits of the small claims division for a commercial property, such as the subject. See TTR 263. Subsequent to the filing of the Petition, Petitioner obtained an appraisal of the property prepared by Kenneth Johnson, CGA (Certified General Appraiser). The appraisal concluded in a TCV for the property of \$160,000. Respondent's appraisal report, prepared by Paula Smith, Property Appraiser, concluded in a revised TCV for the subject property of \$485,000.

After completion of the appraisals, the amount in contention in this matter was no longer within the jurisdictional limit of the small claims division of the Tribunal and Petitioner requested it be removed into the Entire Tribunal Division on January 14, 2014. The Motion to Transfer included a Motion for Immediate Consideration as the matter was scheduled for hearing in the small claims division on January 29, 2014. The Motion for Immediate Consideration and Motion to Transfer were granted by the Tribunal on January 24, 2014 and the Entire Tribunal

hearing was scheduled for February 25, 2014. The Order granting Immediate Consideration and Transfer instructed the parties to file and exchange exhibit lists and prehearing statements (with witness lists) by February 11, 2014, and for Petitioner to notify the Tribunal as to the name, address and telephone number of the retained court reporter by the same date. Petitioner did not file an exhibit list including its appraisal as an exhibit. Respondent did file an exhibit list, but did not include its appraisal as an exhibit.

Both parties' representatives' indicated that as the matter commenced in the small claims division, they were of the impression that the appraisals were already admitted into the case file and record. The Tribunal finds that though both appraisals were already part of the case file, they were not automatically admitted into the record; however, as there was equal confusion by both parties, the Tribunal will consider both appraisals in its independent determination of the true cash value of the subject property for the 2013 tax year. Respondent further noted that Petitioner's appraiser was not present at the hearing in order to be subject to cross-examination, however, Respondent's witness critiqued, at length, Petitioner's appraisal on the record and the critique would be of no value to the Tribunal should the appraisal be barred from the record. The Tribunal finds that in this unique circumstance, it will consider Petitioner's appraisal without the authentication of such by its author, as it was signed by the appraiser and the appraiser's qualifications were listed in the appraisal and found to be satisfactory. Petitioner's appraisal at 2, 28, 48. It should also be noted that though Petitioner's appraiser was not subject to cross-examination, he was also not able to support his appraisal or rehabilitate his appraisal after Respondent's critique.

### **PETITIONER'S CONTENTIONS**

Petitioner contends that the subject property is a multi-unit apartment complex with eighteen units. It is located at 423 Washington in the City of Monroe. The property was purchased in January, 2012 for \$60,000. Petitioner alleges that the property was in a state of disrepair at the time of purchase and had been on the market for 489 days prior to purchase. Petitioner represents that it spent about \$100,000 rehabilitating the property. Petitioner presented the Tribunal with sales and income approaches to value the property, with its final value conclusion to be \$160,000 for the 2013 tax year. The value was supported by the sale price plus repair expenses and also by the appraisal.

### **PETITIONER'S ADMITTED EXHIBITS**

Appraisal of the property prepared by Kenneth Johnson, CGA.

### **PETITIONER'S WITNESSES**

Petitioner did not present any witnesses at the hearing.

### **RESPONDENT'S CONTENTIONS**

Respondent contends that the subject property's true cash value is supported by Respondent's sales comparison and income approaches to value. Respondent contends that it relied on its income approach as the subject apartment building is an income producing property.

### **RESPONDENT'S ADMITTED EXHIBITS**

Respondent's Appraisal Report prepared by Paula J. Smith, Property Appraiser

R-1 Rental Inspection Report

- R-2 Valuation Statement and Engineering and Building Department Report for Petitioner's comparable three.
- R-3 Property Record Card, screen shots and photographs for 620 John Anderson Court.
- R-4 Property Record Cards for 612 John Anderson Court.
- R-5 Permit Report for the subject property.
- R-6 Income/Expense Statement for 423 Washington Street.

### **RESPONDENT'S WITNESS**

#### **Paula Smith**

Paula Smith, Property Appraiser, City of Monroe, commenced her testimony by critiquing Petitioner's appraisal of the subject property. She testified that Petitioner's sales comparable three was located in Trenton, outside of the City of Monroe, and "was in complete state of disrepair at the time of its sale in 2012." Transcript at 12. It was a sixty-unit apartment building and thirty-three of the sixty were uninhabitable and many had code violations. The 2014 valuation statement for the property has the improvement designated as 13% good indicating that it still had a large amount of obsolescence. Ms. Smith included in Respondent's Exhibit one, information from the City of Trenton engineering and building department regarding the code violations present in the comparable property. Transcript at 12-14. Ms. Smith's conclusion was that comparable three was not a good comparable to the subject property.

With regard to Petitioner's comparable one, Ms. Smith testified that it contained forty-four units of which eleven were inhabitable at the time of its sale in February, 2012. Ms. Smith

testified that the property was located in Monroe, however, unlike Petitioners' comparable three. Transcript at 14.

With regard to Petitioner's comparable two, Ms. Smith testified that it was located in Dundee, some distance from the subject property. It was built in 2004 while the subject property was built in 1929. Also, "there are attached garages to these apartments and it's all one story, so I didn't feel it was a good comp. I didn't feel it was comparable to the subject property." Transcript at 15. Further, Ms. Smith testified that its occupancy is "also geared more towards the elderly and they offer services that a normal apartment complex would not offer. So it just didn't fit in with the subject property." *Id.* Ms. Smith testified that she had three good sales so she queried why Petitioner would choose sales incomparable to the subject property and/or with uninhabitable apartments.

Ms. Smith testified that the subject property was purchased in January, 2012 for \$60,000. She testified that she considered the building permits pulled for the property and noted that an additional \$60,000 was spent on windows and yet another permit was pulled to do "some minor work on plumbing fixtures on the second and third floor and some – replaced some bathtubs." Transcript at 16. Ms. Smith testified that the improvements were completed before December 31, 2012.

With regard to Ms. Smith's own sales approach to value, she chose three sales and adjusted them to be consistent with the characteristics of the subject property. Sale number one was located at 50 Virginia Drive in the City of Monroe. It sold for \$580,000 in March, 2013. It was a sixteen unit apartment complex with three stories like the subject property. The property was built in 1952 and sold for \$36,250 per unit. Transcript at 26.

Ms. Smith's comparable two was located at 615 Washington Ave., Monroe. It was an REO sale, but Ms. Smith testified that it was exposed to the market and was built in a similar year as the subject property (1928 versus 1929) so she felt it was a good sale to use. The property sold in February, 2013 for \$25,000 per unit. Transcript at 27. With regard to Ms. Smith's comparable three, located at 14533 Linda, she testified that it sold in March, 2012 for \$30,000 per unit. Ms. Smith's final determination of the true cash value for the subject property under the sales comparison approach was \$590,000.

Ms. Smith also testified regarding her income approach to value. She utilized three rent comparables in her income approach to determine the true cash value the subject property for the 2013 tax year. She utilized the same comparables in her income and sales approaches, but did also consider additional rental comparables. Transcript at 35. Ms. Smith testified that the City sends out questionnaires to apartment property owners and gets back about fifteen or twenty each year. She testified that the questionnaires are the source of her market analysis of vacancy and collection loss, market rent, expenses, and other indicators necessary for the completion of an income approach to value the subject property. Transcript at 19. After an analysis of market rent and the contract rent for the subject property, Ms. Smith determined that the subject contract rent was at market. Transcript at 35-36; Respondent's appraisal at 37.

The differences between Ms. Smith's and Mr. Johnson's appraisals included the fact that Ms. Smith incorporated miscellaneous income from the onsite washers and dryers and the seven garages available for rent, at the subject property, that Petitioner's appraiser did not include in his income approach to value. She used a market rate of two rented garages at \$50 per month and half a percent of potential gross income for the washers and dryers. Transcript at 17. She

also utilized a 10% vacancy and collection loss and 50% in operating expenses. Transcript at 19-21. She noted that the apartment manager for the subject property informed her that the property consists of six units per each of its three floors: “On the first floor there are two efficiency apartments and four one-bedroom apartments. On the second and third floor there are six one-bedroom apartments on each floor,” which is different from what Petitioner’s appraiser reported. Petitioner’s appraisal at 16; Transcript at 21-22. In terms of the additional differences between Petitioner’s appraisal and Ms. Smith’s, she testified that,

six of his units are below contact rents. He is not reporting any miscellaneous income on the property. He’s using a 15% vacancy rate, even though when I spoke to the apartment manager [in] December, 2013 she indicated there was a 0% vacancy. The management expenses are six times higher than those reported of comparable properties and the repairs and maintenance are twice of what other comparables are reporting. Transcript at 22-23.

Ms. Smith testified that she determined her capitalization rate from a calculation using direct capitalization and the mortgage equity method and determined a weighted average between the two rates which was “added to the effective tax rate which gave me my overall tax rate.” Transcript at 29. Ms. Smith’s final indicated value for the subject property for the 2013 tax year was \$485,000 under the income approach.

#### **FINDINGS OF FACT**

1. The subject property is identified as Parcel No. 58-55-39-00195-000 and is located in the City of Monroe, Monroe County, Michigan. Its street address is 423 Washington Street, Monroe, Michigan.
2. The subject property is classified as commercial real property.

3. The subject property is an income producing property which is currently used as a multi-tenant apartment complex with eighteen units. It has laundry facilities with coin operated machines and garages for rent.
4. Both parties' prepared appraisals that were entered into the record and both parties prepared sales and income approaches to value the subject property in the appraisals.
5. Petitioner's appraiser utilized eight sales comparables in his sales comparison approach. Only one of the sales was located in Monroe. Ms. Smith utilized three sales comparables located in the City of Monroe.
6. Petitioner's appraiser utilized five rental comparables in his income approach to value. All of the comparables were located in the City of Monroe. In his income approach, Petitioner's appraiser did not include miscellaneous income for laundry and garage rental.
7. Respondent's appraiser utilized three rental comparables in Monroe, in her income approach to value. She did include miscellaneous income for laundry and garage rental.
8. Ms. Smith contends that Petitioner's appraiser's management expenses were six times higher than those reported in comparable properties in Monroe.
9. Ms. Smith contended that Petitioner's appraiser's repairs and maintenance expenses were twice what other comparables in Monroe were reporting.
10. Ms. Smith contends that Petitioner's appraiser's vacancy rate of 15% is too high when compared to market vacancy.
11. Ms. Smith determined market management expenses, repair and maintenance costs and vacancy rates from questionnaires sent out to apartment building owners in the City of Monroe.

### CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. See MCL 211.27a.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . . Const 1963, art 9, sec 3.

The Michigan Legislature has defined “true cash value” to mean:

the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1).

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.” *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.” *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.” *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). In that regard, the Tribunal “may

accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.” *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp, supra* at 352-353.

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin Steel Corp, supra* at 354-355. However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.” MCL 205.737(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach. *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968). “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace

trading.” *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale, supra* at 276 n 1). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). The Tribunal finds that the correct technique to value an income producing property such as the subject is the income approach to value.

#### Sales Comparison Approach

Petitioner’s appraiser and Ms. Smith presented sales comparison approaches to value. Petitioner’s appraiser’s approach utilized eight sales and only one was located in Monroe. The additional sales were located in Trenton, Dundee, Ypsilanti Township, Superior Township, Westland, Wayne and Milan, Michigan. The Tribunal finds, based on the location of the sales alone, that they are not comparable to the subject property. The only sale located in Monroe contained forty-four units of which eleven were uninhabitable at the time of its sale in February, 2012. The Tribunal does not find Petitioner’s sales approach to value to be probative.

Ms. Smith’s sales comparison approach to value presented three sales all located in the City of Monroe. While the Tribunal finds that the sales comparable approach was properly prepared and probative, it finds that the income approach is most probative in its independent determination of the true cash value of the subject property for the 2013 tax year, in this income-producing property.

Income-producing real estate is typically purchased as an investment, and from an investor’s point of view earning power is the critical element affecting property value. One basic investment premise holds that the higher the earnings, the higher the value, provided the amount of risk remains constant. An investor who purchases income-producing real estate is essentially trading present dollars for

the expectation of receiving future dollars. Appraisal Institute, *The Appraisal of Real Estate* (Chicago, 14<sup>th</sup> ed 2013), p. 438, under the heading, “*The Income Capitalization Approach.*”

As the subject property was purchased for an investment by Petitioner, the income approach is the appropriate method of valuation.

#### Income Approach

Both parties presented an income approach to value the subject property. As noted above, the City of Monroe sends out questionnaires to individual apartment building property owners in the City. The questionnaires request income and expense information, vacancy rates and miscellaneous income. Included in Ms. Smith’s appraisal report are spread sheets with the resulting information from the questionnaires. The Tribunal finds the method of collecting market data by the City of Monroe to be convincing evidence of accurate market data and the income approach is properly completed with market information. However, after an analysis of market information including market rent, market rent can equal contract rent. In this matter, Ms. Smith determined that the contract rent in the subject apartment building was market rent. Transcript at 35-36; Respondent’s appraisal at 37.

It appears that Petitioner’s appraiser was also trying to determine market rent from his rental comparables, but the Tribunal was unconvinced that the comparables were truly comparable to the subject property, especially when the “market rent” conclusion was even lower than contract rent in six of Mr. Johnson’s apartments. Ms. Smith’s conclusion of market/contract rent for the two efficiency units was \$525 per month/each, for twelve one-bedroom units, \$495 per month/each and for four one-bedroom units, \$545 per month/each. Respondent’s appraisal at 37-38. Mr. Johnson indicated market rent (which he also concluded

was contract rent) was \$495 per month for each one-bedroom apartment and \$450 per month for each efficiency apartment. Petitioner's appraisal, pp. 25-26. The Tribunal is unable to determine Mr. Johnson's source of contract rent, however, as Ms. Smith received her information from the apartment manager, the Tribunal finds it to be persuasive.

Ms. Smith noted that Petitioner's appraiser's income approach did not include miscellaneous income generated by the property. It also utilized a 15% vacancy rate, its management expenses were six times higher than market management expenses and the repairs and maintenance expenses were two times higher than market repair and maintenance expenses. The Tribunal also notes that Petitioner's appraiser included an apartment provided for the building manager as an expense of \$495 per month. The Tribunal opines that generally in a small apartment building, such as the subject, an apartment for the manager is not provided. When questioned by Tribunal regarding this issue, Ms. Smith answered, "generally in a small apartment building it is not." Transcript at 23. Further, with regard to expenses, Ms. Smith testified that Mr. Johnson used an expense ratio of 72% while her market information resulted in an expense ratio of 51%. *Id.* Ms. Smith also utilized a market based vacancy rate of 10% versus Petitioner's 15% rate. Overall, the Tribunal finds that Ms. Smith's income approach is representative of the true cash value of the subject property for the 2013 tax year.

Ms. Smith calculated market income from rental income and miscellaneous expenses (washer and dryers and garage rental income), for a potential gross income of \$111,790. She utilized a vacancy and collection loss of 10% or \$11,179 for an effective gross income of \$100,611. Ms. Smith included in expenses, management, salaries, utilities, supplies and materials, repairs and maintenance, reserves for replacement, insurance and miscellaneous. She

concluded in a market operating expense ratio of 50%. Her net operating income was calculated to be \$50,305. Her capitalization rate, as determined in her testimony above (by blending two methods), was .0759, it was tax loaded by adding .0282 for an overall capitalization rate of 10.41%. Her determination of true cash value for the subject property for the 2013 tax year was calculated by dividing net income by the capitalization rate for a total value of \$483,237 which was rounded to \$485,000. Respondent's appraisal at 40-42, 51. The Tribunal does not find it necessary to round the value conclusion all the way up to \$485,000, so it determines a true cash value for the subject property for the 2013 tax year of \$483,000.

With regard to Petitioner's contention that the market value of the subject property could be properly determined by starting with the purchase price of \$60,000 and adding the amount of money spent on repairs (\$100,000), the Tribunal finds such method to be unpersuasive. Based on the sales comparables presented by Respondent, in the City of Monroe, the subject property sale does not appear to be subject to normal market pressures. Further sales price does not equal market value.<sup>1</sup> Also, in his closing statement, Petitioner's representative indicated that when Petitioner acquired the property, "the police report when he acquired it [indicated] there were broken-in doors for police actions, windows were blown out of the building . . . ," however, no photos were provided of the condition of the property at the time of purchase, the owner of the property was not present to testify regarding the state of the property at the time of purchase, and Petitioner's appraiser did not mention a dilapidated property in his appraisal and provided photos of an intact structure, only. Finally, Petitioner's representative indicated that the property was

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<sup>1</sup> By law, even for an arms-length transaction, the purchase price paid in a transfer of real property is not the presumptive true cash value. MCL 211.27(6)

repaired on December 31, 2012<sup>2</sup>, therefore it was no longer in the condition it was alleged to be in at the time of sale, on tax day. Transcript at 51-52.

The Tribunal is bound to make an independent determination of the true cash value of the subject property for the 2013 tax year. In that regard, it considered both appraisers sales and income approaches to value and finds that Ms. Smith's income approach is the best indication of the true cash value of the subject property for the 2013 tax year. The Tribunal finds the true cash value of the subject property to be \$483,000 for the 2013 tax year.

### **JUDGMENT**

IT IS ORDERED that the property's state equalized for the tax year at issue is MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 28 days of the entry of this Final Opinion and Judgment. If a

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<sup>2</sup> MCL 211.2(2) states: The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.

refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of the Tribunal's Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

By: Preeti P. Gadola

Entered: 4/7/14