

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION OF THE  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues against:**

**BRIAN C. SPERBER, Respondent**

**Agency Case No. 2019-0251**

**OAH No. 2019051161**

**PROPOSED DECISION**

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on December 9, 2019, in Los Angeles, CA.

John Shipley, Sr., Attorney at Law, represented complainant Renee Ostrander, Chief, Employer Account Management Division (EAMD), Board of Administration (Board), California Public Employees' Retirement System (CalPERS).

Respondent Brian C. Sperber appeared and represented himself.

Oral and documentary evidence was received. The record was held open to allow complainant and respondent to file closing briefs by January 6 and February 10, 2020, respectively. Complainant and respondent timely filed closing briefs, which were marked for identification as exhibits 18 and G, respectively.

The record was closed and the matter was submitted on February 10, 2020.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED March 30 20 20  
LFA

## **FACTUAL FINDINGS**

### **Jurisdiction and Parties**

1. CalPERS is a unit of the Government Operation Agency. (Gov. Code, § 20002.) Under the Public Employees' Retirement Law (PERL), CalPERS administers the retirement system for employees of the State of California and other public entities. The CalPERS Board administers CalPERS' defined benefit retirement plan. Benefits for members are funded by member and employer contributions and by interest and other earnings on those contributions.

2. Respondent was employed by the California Department of Fair Employment and Housing (DFEH). By virtue of his employment with DFEH, respondent is a non-safety member of CalPERS.

3. By letter dated October 31, 2018, CalPERS notified respondent it had initially enrolled him in an incorrect retirement benefit level and that it was correcting his employment classification. In the letter, CalPERS stated the correction was necessary in order to comply with the Public Employees' Pension Reform Act (PEPRA), which took effect on January 1, 2013, and applied to respondent, whose CalPERS membership date was January 7, 2013.

4. Respondent timely filed an appeal.

5. Complainant filed a Statement of Issues in May 2019.

### **Calculating Retirement Allowance**

6. Retirement benefits for CalPERS members are calculated in accordance with the PERL. Members begin to accrue retirement benefits based on a retirement

formula. A percentage, usually between two and three percent, determined by the member's age at retirement, is multiplied by the member's total years of service and the dollar amount of the member's "final compensation," a term defined in the PERL. The total years of service is based, in part, on the date an employee begins membership in CalPERS.

7. In September 2012, PEPRRA, a state law effective January 1, 2013, amended the PERL to create a new retirement plan for all public employees who became members on or after January 1, 2013. PEPRRA set a new maximum retirement benefit, a lower-cost pension formula requiring employees to work longer to reach full retirement age, and a cap on the compensation amount used to calculate a pension.

8. Until December 31, 2012, the formula for retirement benefits was known as the "2 Percent at Age 60" benefit formula. PEPRRA created a "2 Percent at age 62" benefit formula. PEPRRA was enacted to protect the financial viability of the CalPERS retirement benefits system.

### **Respondent's History as a Member**

9. The first day of work for which DFEH compensated respondent was January 7, 2013.

10. Respondent testified that when he was offered employment as Legislative & Regulatory Counsel at DFEH in the Fall of 2012, his future supervisor, Annmarie Billotti, Chief of Dispute Resolution and Legislative & Public Affairs, told him she would be on vacation in December. She encouraged respondent to start work in January, when she could be present for his first day in the office. Ms. Billotti submitted a declaration corroborating this testimony.

11. Respondent knew of PEPRRA before January 2013 and knew at the time that his first day of employment would have an effect on his classification under PEPRRA. He testified that DFEH told him that he had "beat" PEPRRA, because DFEH hired him in December 2012, so he need not report to work until January 2013. Respondent testified that, had he known in December 2012 how PEPRRA would operate, he would have started work in December 2012. But, based on Ms. Billotti's advice and that of Director Phyllis Cheng, who both encouraged respondent to take time off before starting work, he worked on a political campaign and took a vacation.

12. Ms. Billotti declared that "[a]t the time of his hire, I did not know that [respondent's] start date could impact the terms, conditions, or privileges of his employment." (Ex. B.) Respondent testified that other state agencies advised their newly hired employees to start in December to avoid the effect of PEPRRA, but that DFEH was uniquely uninformed about how PEPRRA would go into effect.

13. Respondent's testimony about advice given by other agencies to new employees was uncorroborated; it is, however, consistent with the actions CalPERS took to notify *all* state agencies about the upcoming operation of PEPRRA.

a. On November 27, 2012, CalPERS published on its website a summary of PEPRRA, defining a "new member" as a "new hire who is brought into CalPERS membership for the first time on or after January 1, 2013, and who has no prior membership in any other California public retirement system." (Ex. 16, p. 1.) PEPRRA "[c]reates a new defined benefit formula of 2% at age 62 for all new miscellaneous (non-safety) members with an early retirement age of 52 and a maximum benefit factor of 2.5% at age 67." (*Id.* at p. 2.)

b. On December 3, 2012, CalPERS issued a "Circular Letter" to "All CalPERS Employers." (Ex. 15.) "The purpose of the Circular Letter is to confirm CalPERS current interpretation of the [PEPRA] . . . signed by the Governor on September 12, 2012." (*Ibid.*) The letter confirmed the definition of a "new member." "Effective January 1, 2013, every new enrollment will be tested against this definition of "new member" . . . [¶] Based on the information provided by the employer, my[CalPERS will automatically determine the proper benefit group for each member." (*Id.* at p. 2.) "CalPERS will be sending a letter to each employer this month outlining the benefit formula applicable to new members, as well as the employer and member contribution rates that will be effective January 1, 2013, for new members." (*Id.* at p. 4.)

14. Respondent admitted he relied solely on what DFEH told him. He did not contact CalPERS prior to January 2013 to see whether the new PEPRA retirement benefit formula would apply to him if he started work after January 1. Nor did he check the CalPERS website. Prior to January 1, 2013, respondent did not communicate with CalPERS or receive from CalPERS any erroneous advice or information regarding his membership classification.

15. When respondent began working at DFEH on January 7, 2013, CalPERS automatically placed him in the Alternative Retirement Program (ARP). ARP is a retirement savings program in which certain state employees were enrolled between August 11, 2004, through June 30, 2013, for their first two years of employment with the state. ARP provided two years of retirement savings in place of retirement service credit under CalPERS. After two years, employees could choose either to convert their retirement savings to CalPERS service credit or put the savings in a 401k retirement account. At the end of his first two years of employment, respondent opted to convert his retirement savings to service credit. The first time he ever called CalPERS was on

January 26, 2015, two years after becoming a member, to obtain information about his ARP options. (Ex. 12, p. 8.)

16. During a 2018 review of the operation of PEPRRA, CalPERS found that the my|CalPERS system, which tracks each member's account activity, had not properly identified new employees who began work on or after January 1, 2013, as "new members" subject to PEPRRA's retirement benefit formula. It erroneously classified them, instead, as "classic members" with the classic retirement benefit formula of 2 Percent at Age 60. Because the classification did not affect the individual employees' membership until retirement, CalPERS was not aware earlier of the computer error.

17. By letter dated July 20, 2018, CalPERS informed respondent that he was enrolled in the incorrect retirement benefit level. The letter stated that, based on respondent having become a member after January 1, 2013, he was a "new member" under PEPRRA. The letter informed respondent that CalPERS is legally obligated to correct its errors, and that respondent's account would be adjusted to reflect the PEPRRA retirement benefit formula of "2 Percent at Age 62." (Ex. 10.) Respondent testified that this was how he first learned of CalPERS's position on this issue.

18. Certain members belonged to a category to which a "2 Percent at Age 55" retirement benefits formula applied. On July 30, 2018, respondent contacted CalPERS to ask why that formula did not apply to him. Diana Smiley, at CalPERS, told respondent that he was not eligible for that formula, which applied only to members hired before a certain date in 2011. She also told respondent that his hire date in the CalPERS system was listed as January 7, 2013, and that he should contact the DFEH human resources department to have them update their records.

19. On August 2, 2018, CalPERS corrected respondent's benefit enrollment level to the "2 Percent at Age 62" benefit formula. (Ex. 12, p. 6.) CalPERS contacted respondent on August 6, 2018, to discuss the benefit enrollment level change based on records reflecting a membership date of January 7, 2013. Respondent asked for a review of his membership date because he believed he started in his DFEH position prior to January 1. On August 11, 2018, CalPERS determined that, based on payroll records, respondent's earliest employment date with the State was January 7, 2013. (Ex. 12, p. 6.) CalPERS notified respondent of its determination, and of respondent's right to appeal, by letter dated October 31, 2018.

### **Respondent's Arguments and Supporting Evidence**

20. Respondent argued that CalPERS should be equitably estopped to change his benefits formula.

a. Respondent's myCalPERS account reflected the classic formula for five and one-half years. Written materials CalPERS mailed to respondent during that period also reflected this, though respondent did not rely on those materials, admitting at this administrative hearing that he never read the numerous documents CalPERS sent him. (Respondent's recanting of this testimony in his closing argument, saying he did read the PEPPRA and benefits information and only ignored other material, concerning education and member events, was self-serving and not deemed credible. It is, in any event, not determinative in this matter.)

b. Respondent argued that, though he never consulted CalPERS about the effect of PEPPRA on his benefits before deciding to wait until January 7 to begin work, CalPERS should nevertheless be estopped because DFEH was in privity

with CalPERS, since they shared an interest in properly administering the retirement benefits plan.

c. Respondent argued that he was harmed in that he will have to work longer to receive the retirement benefits he justifiably believed he was eligible to receive. Based on the evidence on the record, including the legislative intent underlying PEPRRA and the difference in formulas, and all other things being equal, one may reasonably anticipate that respondent's retirement allowance as a "new member" will probably be less than it would have been as a "classic member."

d. Respondent argued he was also harmed in that, relying on being eligible for the "2 Percent at Age 60" benefit formula, he chose to convert his two years of ARP retirement savings into service time, to his detriment. Had he placed those funds in a 401k retirement savings account, he claims, he would have benefitted from gains in the stock market. Respondent testified that he had about \$40,000 in ARP funds after two years; the evidence shows that, in fact, he had about \$10,000. Based on the evidence on the record, respondent's claim is too speculative and uncertain to credit.

e. Respondent argued that estopping CalPERS would not result in a ruling of general effect. He argued that, because the dispute is over only the first seven days in January 2013, applying the doctrine of estoppel would not affect a large class; it would only apply to respondent. He failed to establish this, however; evidence tends to support the contrary, as CalPERS found the error to be one that applied generally to new government employees who became members after the start of 2013.

21. Respondent was not employed by any public employer and was not a member of any qualifying public retirement system before January 1, 2013. Respondent argued that CalPERS should credit him for becoming a member in December 2012, because he began preparing for his new job with DFEH that month. But respondent offered no evidence to corroborate his unsupported assertion, which is the subject of a current dispute between respondent and DFEH. CalPERS reasonably relied on DFEH's payroll data to ascertain respondent's first paid date of employment, as well as to determine DFEH's required contribution to the retirement system on behalf of respondent.

## **LEGAL CONCLUSIONS**

1. CalPERS initiated this action by filing a Statement of Issues. (Factual Finding 5.) CalPERS has the burden of proof in this proceeding. The standard of proof is a preponderance of the evidence, meaning that CalPERS is obliged to prove its case with evidence that has more convincing force than that opposed to it. (Evid. Code, § 115; *Glover Vernon. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

2. PEPRRA provides that a "new member" is one "who becomes a member of any public retirement system for the first time on or after January 1, 2013, and who was not a member of any other public retirement system prior to that date." (Gov. Code, § 7522.04, subd. (f).) With certain exceptions not applicable here, every public employer that offers a defined benefit plan must use the defined benefit formula specified in section 7522.20 for non-safety members. That defined benefit formula provides that the member's pension at retirement shall equal the percentage of the member's final compensation at a given age multiplied by the number of years in

service. If a member retires at age 60, a 1.8 percentage applies. If a member retires at age 62, a 2.0 percentage applies. (Gov. Code, § 7522.20, subd. (a).)

3. If the Board determines there is a conflict between PEPRRA and the PERL, PEPRRA shall control. (Gov. Code, § 20004, subd. (b).)

4. CalPERS has the authority and the responsibility to correct errors in the calculation of benefits under section 20160, which provides, in part:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member . . . . [¶]

(b) Subject to subdivisions (c) and (d), the board *shall correct* all actions taken as a result of errors or omissions of . . . any contracting agency . . . or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164. [¶] . . . [¶] (§ 20160, italics added.)

5. CalPERS's re-classification of respondent as a "new member" and its application of the "2 Percent at Age 62" benefit formula was in compliance with PEPRRA and the PERL, and was mandated under section 20160. (Factual Findings 1 through 19.)

6. Respondent has raised an equitable estoppel defense, however. Examining all relevant factors, CalPERS is not estopped to reclassify respondent as a "new member" under PEPR.

7. The doctrine of equitable estoppel generally requires the establishment of four elements: (1) the party being estopped must be apprised of the facts; (2) the party must intend or reasonably believe that its conduct will be acted upon; (3) the party asserting the estoppel must be ignorant of the true state of facts; and (4) the party asserting the estoppel must actually rely upon the other party's conduct to their detriment. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.)

8. When applying equitable estoppel against the government, an additional factor must be considered. Doing so requires a balancing between the government's responsibilities and the injustice that will occur if the government is not estopped.

9. "The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present *and*, in the considered view of a court of equity, *the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.*" (*City of Long Beach v. Mansell, supra*, 3 Cal.3d at pp. 496-497, italics added.) "The tension between these twin principles makes up the doctrinal context in which concrete cases are decided." (*Id.* at p. 493.)

10. Equitable estoppel may be applied against a governmental agency only "where justice and right require it," but it will not be applied against the government where it would effectively nullify a rule of public policy adopted for the benefit of the public. (*City of Long Beach v. Mansell, supra*, 3 Cal.3d at pp. 489, 493; *Lentz v.*

*McMahon* (1989) 49 Cal.3d 393, 399; *Barrett v. Stanislaus County Employees Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1607; *Crumpler v. Board of Administration, PERS* (1973) 32 Cal.App.3d 567, 584.) The doctrine may not be used to contravene a "statutory limitation." (*City of Oakland v. Oakland Police and Fire Retirement System* (2014) 224 Cal.App.4th 210, 243.) Nor may it be used to compel CalPERS to provide benefits in excess of CalPERS's statutory authority to do so. (*Id.* at p. 245; *Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 870-871.)

11. Respondent has not established all the elements required to successfully invoke estoppel in this case.

12. The first factor is whether CalPERS was apprised of the facts. CalPERS was aware in December 2012, when respondent was making his decision about when to start work, that PEPRAs required classifying new employees beginning after January 1, 2013, as "new members". CalPERS notified all state employers, before respondent made his decision, of the effect PEPRAs would have on new employees starting work after January 1, 2013. Thus, DFEH was aware of the correct information when Ms. Billotti at DFEH incorrectly advised respondent.

13. Respondent argues that, though he knew PEPRAs would affect certain members and yet chose never to contact CalPERS to discuss how it might affect him, DFEH and CalPERS were "in privity," so Ms. Billotti's statements bind CalPERS. "CalPERS was in privity with DFEH in 2012 when DFEH through my direct supervisor and the director told me expressly that I beat PEPRAs." (Ex. G, p. 13.) Respondent fails to explain the extent of or limits to this alleged privity and fails to cite authority that demonstrates that a supervisor at a state agency may bind CalPERS to an incorrect retirement benefits formula for one of the agency's employees. Case law on point is very much to the contrary.

14. An agency may not bind CalPERS to an erroneous interpretation of the PERL. (*City of Pleasanton v. Board of Administration* (2012) 211 Cal.App.4th 522 (*City of Pleasanton*)). From 1998 to 2006, the City of Pleasanton made PERS contributions, incorrectly calculated by including certain employees' standby pay as "special compensation" to be included in their retirement benefits. CalPERS never represented that standby pay would be included. Upon learning in 2006 of the employers' error, CalPERS informed the city of its mistake. The court found that Linhart, the employee who, along with the city, petitioned the court for a writ of mandate, had not proven the elements of estoppel. CalPERS did not know of the extra pay or of the city's belief that the pay was pensionable, i.e., properly included in the calculation of the employee's pension benefits.

The first element of estoppel, that PERS knew the true facts, requires proof of either actual knowledge or of "careless and culpable conduct resulting in the deception of the party entitled to claim the estoppel." (*Banco Mercantil v. Sauls, Inc.* (1956) 140 Cal.App.2d 316, 323 [I].)

(*City of Pleasanton, supra*, 211 Cal.App.4th at p. 543.)

15. Here, there is no evidence showing that CalPERS knew of DFEH's incorrect advice about the effects of PEPRRA prior to respondent's reliance on that advice in December 2012, or that CalPERS was careless or culpable in not knowing what DFEH supervisors were telling newly hired employees. The evidence is to the contrary. Had DFEH read the material CalPERS circulated to employers and posted on its website, or had respondent consulted CalPERS, respondent would have learned of CalPERS's statutory interpretation and could have acted accordingly. "PERS's fiduciary duty to its members does not make it an insurer of every retirement promise

contracting agencies make to their employees. PERS has a duty to follow the law." (*Id.* at p. 544, citing *City of Oakland v. Oakland Police and Fire Retirement System* (2014) 95 Cal.App.4th 29, 46.)

16. In a footnote, the *City of Pleasanton* court even more explicitly rejected the argument that the city and CalPERS were in privity.

We reject Linhart's claim that Pleasanton and PERS are in privity for estoppel purposes such that the city's knowledge and negligence can estop PERS from determining pensionable compensation according to law. (See *Hudson v. Board of Administration* (1997) 59 Cal.App.4th 1310, 1331–1332, 69 Cal.Rptr.2d 737 [allowing conduct of contracting agency to estop PERS would usurp PERS's statutory authority to determine compensation for retirement purposes and permit such agencies to disregard the applicable law].) To the extent that *Crumpler, supra*, 32 Cal.App.3d at pages 582–584, 108 Cal.Rptr. 293 suggests otherwise, we do not find it persuasive.

(*City of Pleasanton, supra*, 211 Cal.App.4th at p. 545, fn. 11.)

17. Thus, even were privity of some nature deemed to exist between DFEH and CalPERS, that privity would not extend to the authority to determine the applicability of PEPR to members' retirement benefits, which lies solely with CalPERS, which must act in accordance with the statute. Respondent's reliance on *Lusardi Const. Co. v. Aubry* (1992) 1 Cal.4th 976, 995, is misplaced. That court applied the general proposition, that agencies may be in privity with each other, to facts not apposite here;

it did not address the limits of an agency to bind CalPERS in the administration of statutes governing retirement benefits.

18. Respondent also argues that some cases recognize the potential for application of equitable estoppel where the retirement board has discretionary power, citing *Crumpler v. Board of Administration* (1973) 32 Cal.App.3d 567. (See also *Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 870.) But no provision of PEPR or the PERL authorizes CalPERS to treat state agency employees beginning work after January 1, 2013, as "classic members." The court in *City of Pleasanton* made an analogous finding and distinguished *Crumpler*. (*City of Pleasanton, supra*, 211 Cal.App.4th at p. 543.)

19. The second factor is whether CalPERS intended or reasonably believed that its conduct would be acted upon. In this case, the conduct at issue must be any representations about the effect of PEPR that CalPERS made before January 1, 2013, in time for respondent to make an informed decision. In the final months of 2012, CalPERS circulated correct information about PEPR to all state agencies; respondent's employer, DFEH, is a state agency. CalPERS also posted correct information on its website. CalPERS never provided incorrect information to respondent before 2013; respondent never sought guidance from CalPERS before 2013. Nothing in the record suggests that CalPERS knew or reasonably believed that state agency personnel would give contrary advice to new employees; to the contrary, the record reflects evidence of CalPERS's efforts to prevent incorrect advice. It was manifestly unreasonable for respondent to rely only on his supervisor-to-be for an authoritative interpretation of PEPR. A reasonable person, knowing, as respondent did, that a new law governing retirement benefits was to take effect on January 1, 2013, would have contacted CalPERS directly. An attorney hired to work on legislative and regulatory issues for

DFEH, such as respondent, would have had even greater incentive to do so. Had respondent contacted CalPERS, he would have learned, based on the evidence on this record, that he must start work before January 1, 2013, if he wished to be classified as a "classic member."

20. The third factor is whether respondent was ignorant of the true state of facts. If respondent did not know that PEPRA would classify him as a "new member" were he to begin work after January 1, 2013, it was due to his unreasonable reliance solely on a supervisor at DFEH. The error CalPERS's computer system made in January 2013, which CalPERS did not discover until 2018, is not relevant to the state of respondent's knowledge as the end of 2012 approached, when he had to make a decision about when to begin work at DFEH.

21. The fourth factor is whether respondent actually relied on CalPERS's conduct to his detriment. CalPERS's conduct before January 1, 2013, regarding the effect of the new law was to provide correct advice about PEPRA to all state employers, and to post that correct advice on its website. CalPERS provided no incorrect information to respondent prior to January 1, 2013. Respondent argues that the advice he relied on was advice he received from a DFEH supervisor in privity with CalPERS. That argument has been rejected. (See Legal Conclusions 12-17.) Respondent also argues that until 2018, when CalPERS informed him it was correcting the computer error, he continued to work at DFEH rather than seek employment in the private sector because he expected to receive the pension benefits accorded a "classic member." Whether respondent would, in fact, have sought and obtained employment elsewhere sometime after January 2013 had he known he would be considered a "new member" is too speculative and uncertain to form the basis of a finding of detriment. Aside from failing to establish more than a hypothetical effect on respondent's own

decision-making and job prospects, respondent did not establish that PEPRA resulted in hiring difficulties for state agencies generally.

22. The fifth factor requires balancing harm to respondent against the effect of estoppel on public interests and policy. Though the detriment to respondent cannot be calculated now with any specificity, because respondent is not yet retiring from state employment, it is reasonable to anticipate the likelihood that his retirement benefits will be less than they would have been had he been a "classic member." The competing public interest and policy purpose of PEPRA was to provide less expansive retirement benefits to "new members" in order to reduce the financial burden on state and local governments and ensure the continuing viability of the CalPERS system.

The centerpiece of PEPRA was a pension plan applicable only to newly hired public employees that is less expansive, and therefore less burdensome for the state and local governments, than the plans covering then-existing public employees. As compared to existing employees' pensions, the new plan increased the age at which employees could claim equivalent pension benefits, set a cap on the total compensation on which pension benefits could be based, required employees to pay one-half of the cost of funding their pensions, and required the annual compensation used to calculate pension benefits to be determined by averaging over a three-year period, rather than using a single year. (§§ 7522.02, subd. (b); 7522.10, subds. (c), (g); 7522.20, subd. (a); 7522.30, subd. (a); 7522.32, subd. (a).) All

of these are less favorable than the equivalent benefits typically available to then-existing public employees.

*(Cal Fire Local 2881 v. CalPERS (2019) 6 Cal.5th 965, 974-975.)*

23. Respondent has failed to establish that the effect of equitable estoppel on public interest and policy will be minimal. Contrary to respondent's argument that estopping CalPERS will not have a general effect, the error in CalPERS's computer system did not single out respondent but applied generally to the class of new employees who became members after January 1, 2013.

24. Given the foregoing, CalPERS is not estopped to reclassify respondent as a new member under PEPR.

## ORDER

The appeal of respondent Brian C. Sperber from CalPERS's reclassification of him as a "new member" under PEPR, with a concomitant application to him of the "2 Percent at Age 62" retirement benefits formula, is denied.

DATE: March 25, 2020

DocuSigned by:  
*Howard W. Cohen*  
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HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings