

**Matter of CCA Civil, Inc. v Contract Dispute  
Resolution Bd. of the City of N.Y.**

2018 NY Slip Op 30379(U)

February 1, 2018

Supreme Court, New York County

Docket Number: 101905/2016

Judge: Carmen Victoria St. George

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

EA  
2/5/18  
E

**PRESENT: HON. CARMEN VICTORIA ST. GEORGE  
J.S.C.**

**PART** 34

Index Number : 101905/2016  
OCA CIVIL, INC.  
THE CONTRACT DISPUTE RESOLUT  
Sequence Number : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_  
 Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_  
 Answering Affidavits — Exhibits \_\_\_\_\_  
 Replying Affidavits \_\_\_\_\_

No(s) 1-3, Exh A-G  
 No(s) 4-7, Exh 1-C  
 No(s) 8-9

Upon the foregoing papers, it is ordered that this motion is petition is dismissed  
pursuant to the accompanying order. The  
clerk is directed to enter judgment accordingly.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**RECEIVED**  
FEB 05 2018  
NYS SUPREME COURT - CIVIL  
GENERAL CLERK'S OFFICE

**FILED**

FEB 14 2018

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 2-1-18

\_\_\_\_\_, J.S.C.

**HON. CARMEN VICTORIA ST. GEORGE**

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 46

-----X

In the Matter of the Application of  
CCA CIVIL, INC.,

Under Article 78 of the CPLR

Petitioner,

-against-

Index No.  
101905/2016

THE CONTRACT DISPUTE RESOLUTION BOARD  
OF THE CITY OF NEW YORK, THE CITY OF NEW  
YORK, THE OFFICE OF THE COMPTROLLER OF  
THE CITY OF NEW YORK, AND THE CITY OF NEW  
YORK DEPARTMENT OF TRANSPORTATION,

Respondents.

-----X

**Carmen Victoria St. George, J.S.C.:**

In this Article 78 proceeding, petitioner CCA Civil, Inc. (CCA) seeks a judgment reversing and vacating the decision of respondent The Contract Dispute Resolution Board (CDRB), dated July 19, 2016, dismissing CCA’s claim for extra work, on the ground that it was affected by an error of law and in violation of lawful procedure (CPLR § 7803 [3]), and remanding this matter to the respondent Office of the Comptroller of the City of New York (Comptroller) to investigate, audit, or attempt to compromise or adjust CCA’s extra work claim on the merits.

**BACKGROUND**

This is a dispute regarding a public improvement construction project, being performed by CCA for respondent New York City Department of Transportation (DOT), to replace the Gerritsen Inlet bridge, under New York City Standard Construction Contract No. HBK643 ( the Contract)

(Petition, ¶¶ 5-6). On December 6, 2012, the DOT awarded the Contract to CCA (*id.*). Pursuant to Article 27 of the Contract, respondent City of New York (the City) requires an alternative dispute resolution claim procedure regarding disputes that are initially determined by the City's project engineer (exhibit A to petition, Contract). In order to avail themselves of this dispute resolution procedure, the contractor and the agency must act promptly, within the time frames set forth in the Contract, and the Procurement Policy Board Rules (PPB rules).

Under Article 27 of the Contract, a dispute arises between the parties when the "Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the Contractor disagrees" (exhibit A to Petition, Contract, Article 27.1.2). CCA is required under Article 27.4, and section 4-09 (d) (1) of the PPB rules, to submit its notice of dispute, in writing, to the agency head within thirty days "of receiving written notice of the determination or action that is the subject of the dispute" (exhibit A to Petition, Contract, Article 27.4; exhibit B to Petition, PPB rules § 4-09 [d] [1]). Under Article 27.5.2 of the Contract, the record is closed when all papers are submitted to the commissioner/agency head, and thereafter, the commissioner renders a decision.

During the course of the construction, the DOT expressed concern about staining and discoloration on the surface of the steel girders for the project (Petition, ¶ 9). CCA and DOT both consulted with experts, and on November 18, 2014, CCA, DOT, the steel fabricator and the steel mill company met to develop protocols for steel testing and conditioning (*id.*, ¶ 11). DOT believed the discoloration was a contamination of the steel, and CCA believed it was not, and did not bear upon the integrity of the steel (*id.*, ¶¶ 12-13).

On December 5, 2014, CCA sent a letter to the DOT engineer in charge, Daniel Hom, P.E.

(Engineer Hom), memorializing a prior meeting, and indicating that it could not go on indefinitely with blasting, grinding, and marking anomalies to prove the steel was sound, and reconfirming its notice for extension of time, notice of conditions causing delay, and notice of claim. It also stated that it would duly document all impacts and delays, and that “costs will be submitted as they become available” (exhibit E to Petition).

By letter dated December 9, 2014, Engineer Hom responded that “[a]ll issues related to impacts and delays shall be addressed under separate cover, however, no compensation shall be provided for the operations associated with the testing program and the conditioning (grinding) of the girders” (exhibit F to Petition).

By letter dated January 30, 2015, CCA submitted to Engineer Hom its change order request for additional compensation for the costs of conditioning the steel, at an estimated total of \$390,812.50 (exhibit G to Petition).

Engineer Hom responded by letter, dated February 9, 2015, stating, again, that “no compensation shall be provided for the operations associated with the testing program and the conditioning of the girders required for acceptance of the material. Compensation for issues related to impacts and delays shall be considered independently” (exhibit H to Petition). Engineer Hom added that “[i]f you wish to pursue compensation for conditioning costs further, please follow the procedures in Article 27, Resolution of Disputes” (*id.*).

On March 6, 2015, CCA submitted its notice of dispute to DOT’s commissioner, seeking over \$390,000 in additional costs for the work (exhibit 8 to answer to petition).

On April 23, 2015, CCA also submitted a notice of claim to the City comptroller (Comptroller) (exhibit K to Petition).

On April 29, 2015, DOT's commissioner denied CCA's request for additional costs on the merits (exhibit 9 to answer to petition).

On November 27, 2015, the Comptroller's office notified CCA's counsel that Engineer Hom issued a non-payment determination to CCA on December 9, 2014, but that CCA did not submit its notice of dispute until March 6, 2015, and sought an explanation as to why the Comptroller should not find CCA's notice of dispute untimely (exhibit L to Petition). On December 8, 2015, CCA emailed its response to the Comptroller (exhibit M to Petition).

On January 20, 2016, the Comptroller found that CCA's notice of dispute was untimely, concluding that the December 9, 2014 letter from Engineer Hom "made it clear to CCA that there would be no compensation for the reconditioning costs" (exhibit 10 to answer to petition at 3).

On February 18, 2016, CCA filed its verified petition with CDRB, appealing the decisions and seeking payment for the extra work (exhibit O to Petition).

On May 13, 2016, DOT filed a letter application with CDRB seeking dismissal of CCA's claim as time-barred (exhibit 11 to answer to petition). DOT argued that its engineer's December 9, 2014 letter was an unambiguous nonpayment determination which began the 30-day clock to run for CCA's filing of its notice of dispute.

On June 6, 2016, CCA replied to DOT's letter application (exhibit Q to Petition, CDRB decision at 1).

On July 19, 2016, the CDRB issued its unanimous decision that CCA's additional cost claim was time-barred (*id.* at 2). The CDRB reviewed the relevant Contract and PPB rule provisions, the evidence presented, including the letters between CCA and DOT's engineer, and the cases cited by the parties (*id.* at 2-8). It found that the December 9, 2014 letter from Engineer Hom which stated

that “no compensation shall be provided for the operations associated with the testing program and the conditioning (grinding) of the girders,” was “a clear and unambiguous denial of CCA’s claim” that triggered its “30-day time period to file a Notice of Dispute” (*id.* at 4). It rejected CCA’s argument, that the December 9, 2014 letter was not a determination because it was in response to CCA’s December 5, 2014 letter, which merely memorialized an earlier meeting. The CDRB found that CCA’s December 5, 2014 letter specifically provided that it could not indefinitely continue with the conditioning, that it was time to move on, and that it would submit a request for compensation for the costs of the work (*id.* at 5). It also disagreed with CCA’s contention that there was no determination until the engineer invoked Article 27 in his February 9, 2015 letter. It asserted that there was no requirement in the PPB rules or the Contract that a determination must include a reference to Article 27, citing CDRB cases supporting that assertion. The CDRB also rejected CCA’s contention that the December 9 letter was not a determination, because CCA had not yet submitted a change order or request for compensation, and distinguished, on the facts, the cases relied upon by CCA, *Triton Structural Concrete Inc. v Dept of Design & Constr.* (Triton #1) (CDRB decision index, Tab 22) and *Triton Structural Concrete, Inc. v Dept. of Parks & Recreation* (Triton # 2) (CDRB decision index, Tab 23). CDRB pointed to *B & F Skilled, Inc. v Dept. of Transport*, OATH index No. 2199/05 [2005], *affd sub nom B & F Skilled, Inc. v Weinshall*, 45 AD3d 281 [1<sup>st</sup> Dept 2007] [CDRB decision index, Tab 4 at 4]), in which the CDRB found that “[n]othing in the contracts or PPB rules limits an action or dispute to the rejection of an invoice” (*id.*). The First Department, in affirming, found that a later rejection of the contractor’s invoices did not extend the accrual of its claims (45 AD3d at 281).

In its Article 78 petition, CCA asserts that there was an error of law and unlawful procedure

in that: (1) the CDRB reviewed and relied upon findings by the Comptroller, which findings were not made by the commissioner/agency head, and that the CDRB had no jurisdiction to do that under PPB rules § 4-09 (g); (2) it also had no jurisdiction over the Comptroller under PPB rules § 4-09 (g); and (3) the CDRB failed to follow other controlling CDRB decisions, including *Triton I* and *Triton II* (CDRB decision index, Tabs 22 and 23). CCA further argues that its notice of dispute was timely, because the December 9, 2014 letter from Engineer Hom was ambiguous, not final, and did not refer to Article 27. Further, CCA argues it was timely since it had not yet sought a dollar amount for the additional costs. It contends that it was denied its due process rights because CDRB disregarded its own rules and regulations. Finally, it asserts that this matter should be remanded to the Comptroller's office for investigation, audit, compromise or adjustment, which is the Comptroller's only jurisdiction and authority.

Respondents counter that the December 9, 2014 letter was final, there is no requirement to recite Article 27, there was no ambiguity, and a monetary request from CCA was not required before the determination was final. It refutes CCA's procedural arguments, contending that the DOT was not limited to its arguments raised and relied upon by the commissioner/agency head in the earlier dispute resolution process, but could raise the time bar in the CDRB appeal.

### **DISCUSSION**

The Article 78 petition is denied and dismissed.

In the context of an Article 78 proceeding, the court's power of review is narrowly circumscribed, and its function is exhausted when it finds a rational basis for the conclusions approved by the administrative body (*Matter of Kilgus v Board of Estimate of City of N.Y.*, 308 NY 620, 627 [1955]; see *Matter of Goldstein v Lewis*, 90 AD2d 748, 749 [1<sup>st</sup> Dept 1982], *aff'd* 59 NY2d

706 [1983]; *Matter of Soho Alliance v New York State Liq. Auth.*, 32 AD3d 363, 363 [1<sup>st</sup> Dept 2006]). The court may not consider facts de novo, nor may it substitute its judgment for that of an administrative agency, or overturn an administrative determination because it would have reached a contrary conclusion (see *Matter of Sullivan Co. Harness Racing Assn. v Glasser*, 30 NY2d 269, 278 [1972]; *Matter of C.K. Rehner, Inc. [City of New York]*, 106 AD2d 268, 270 [1<sup>st</sup> Dept 1984]; see also *Matter of Mark Shuman v New York State Racing and Wagering Bd.*, 40 AD3d 385, 385-386 [1<sup>st</sup> Dept 2007]).

Under CPLR § 7803 (3), the bases for review are errors of law, arbitrariness or abuse of discretion. The petitioner bears the burden of proving that the agency's determination lacks a rational basis or was in violation of law (*Matter of Patrick R. Brereton & Assoc. v Regan*, 94 AD2d 886, 887 [3d Dept], *affd* 60 NY2d 807 [1983]). The interpretation of statutes and regulations by the agency responsible for their administration must be upheld if that interpretation is rational or reasonable (*Matter of Howard v Wyman*, 28 NY2d 434, 438 [1971]). Where acting pursuant to its authority and in its area of expertise, the agency's decision is entitled to great deference (see *Matter of Mark Shuman v New York State Racing and Wagering Bd.*, 40 AD3d at 388). The decision may only be reversed if it is a clearly erroneous interpretation of law or facts (*Matter of American Tel. & Tel. Co. v State Tax Commn.*, 61 NY2d 393, 400 [1984]).

CDRB's authority to resolve contractual disputes between the respondent and a contractor or vendor is set forth in the PPB rules. The PPB rules were incorporated into Article 27 of the parties' Contract, and authorize the CDRB to resolve disputes about "the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the vendor's work to the contract, . . . and the acceptability and quality of the vendor's work . . ." (exhibit B to

Petition, PPB rules § 4-09 [a] [2]). PPB rules § 4-09 (g) (4) provides that the CDRB reviews the decision of the agency head , and CDRB's "decision must be consistent with the terms of the contract" (*id.*, PPB rules § 4-09 [g] [4]).

In the context of Article 78 challenges, under PPB rules § 4-09 (g) (6), the "CDRB's decision shall be final and binding on all parties," and the court's review "shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion" (exhibit B to Petition, PPB rules § 4-09 [g] [6] at 133; *see Matter of Start El., Inc. v City of New York*, 104 AD3d 488, 488 [1<sup>st</sup> Dept 2013]). The PPB rules set forth the process: the contractor shall present its dispute in writing to the agency head within 30 days of receiving written notice of the determination that is the subject of the dispute. The engineer then submits all materials it deems pertinent. The agency head examines the materials, and makes his or her determination within 30 days after receipt of all materials, or such longer time as agreed by the parties (exhibit B to Petition, PPB rules § 4-09 [d]). Before it may bring the dispute to the CDRB, the contractor must also bring the dispute to the Comptroller for his or her "review, investigation, and possible adjustment" (*id.*, PPB rules § 4-09 [e]). Section 4-09 (g) sets forth the rules for a petition to the CDRB, stating that if the claim was not settled or adjusted by the Comptroller within the 45-day time period provided, the contractor, within 30 days thereafter, "may petition the CDRB to review the Agency Head determination" (*id.*, PPB rules § 4-09 [g] at 132). The agency shall respond to the petition and make available all materials submitted to both the Agency Head and the Comptroller *id.*, PPB rules § 4-09 [g] [2]). CDRB will then make a decision within 45 to 90 days (*id.*, PPB rules § 4-09 [g] [4]).

CCA fails to show that the CDRB's decision was in violation of lawful procedure, or was

effected by an error of law (*see* PPB rules § 4-09 [g] [6]; Article 27 of Contract 27.7.6). It urges that CDRB failed to follow the proper procedures, because it considered the Comptroller's untimeliness argument. First, the CDRB is authorized to rule on timeliness issues (*see* PPB rules § 4-09 [f], [g]; *see Alta Indelman, Architect/Builders Group, LLC v Dept. of Sanitation*, OATH index No. 1092/05 [2005], CDRB decision index, Tab 3 at 3). While apparently the timeliness issue was first raised before the Comptroller, both DOT and CCA had the opportunity to address the issue and submit their proof, and then the DOT raised it again before the CDRB, and, again, CCA submitted its arguments and materials. Thus, CDRB properly considered the issue.

CCA argues that the CDRB's decision must be viewed like an appellate court decision, with the agency head (Commissioner) determination as similar to a trial court decision, and, that the only claims the CDRB may address are those relied upon by the agency head. This argument however misinterprets the dispute resolution process, which is more informal and not subject to the identical legal and evidentiary requirements as in the court appellate process (*see Kiewit/Weeks, J.V. v Dept. of Transp.*, OATH index No. 1268/15 [2015], CDRB decision index, Tab 14 at 4 [not like an appeal in court system, informal, DOT can raise argument before CDRB not raised at the agency head level]). The CDRB has clearly held, in a number of cases, that both the City agencies and the petitioners are not limited to the arguments raised before the Agency Head when litigating before the CDRB (*id.*; *Ferreira Constr. Co., Inc. v Dept. of Transp.*, OATH index No. 1629/12 [2012], CDRB decision index, Tab 10 at 12 [“(n)or does the fact that the DOT Commissioner denied the claim on the merits, and did not refer to the time-bar in her decision waive the applicability of the contractual time frame”]; *Alta Indelman, Architect/ Builders Grp., LLC v Dept. of Sanitation*, OATH index No. 1092/05, CDRB decision index, Tab 3 at 7 [“(n)or is respondent restricted in making its

arguments here by any arguments or decisions made at earlier stages of this dispute resolution proceeding”]).

CCA’s argument that CDRB does not have jurisdiction to review findings made by the Comptroller (*citing Pile Foundation Constr. Co., Inc. v Dept. Env’tl. Protection*, OATH index No. 1785/09 [2009] CDRB decision index, Tab 18, *aff’d* 2010 NY Slip Op 31067 [U] [Sup Ct, NY County 2010]), is not disputed and does not advance its position. CDRB was not reviewing the Comptroller’s decision. It simply was determining whether CCA’s claim was time-barred, which was within its jurisdiction, even if the Agency Head did not decide the matter based on that issue. CCA fails to show how it was denied due process when it admittedly had the opportunity, both before the Comptroller and the CDRB, to present its arguments regarding the timeliness issue, which were reviewed and considered by the CDRB (*see Romano Enters. of N.Y., Inc. v New York City Dept. of Transp.*, 254 AD2d 233, 233 [1<sup>st</sup> Dept 1998]). CDRB did not exceed its authority, or violate the PPB rules by considering that issue, and its interpretation of the rules was procedurally proper and rational.

CDRB also rationally concluded that CCA’s claim for additional compensation for testing and conditioning steel girders was time-barred because CCA failed to file its notice of dispute within 30 days of Engineer Hom’s December 9, 2014 unambiguous nonpayment determination. Failure to comply with the PPB rules and contract provisions regarding the timely filing of a claim is grounds for dismissal (*see Matter of Start El., Inc. v City of New York*, 104 AD3d at 488). Contrary to CCA’s argument, neither the Contract nor the PPB rules requires that a change order or extra work request be submitted and rejected in order to trigger the 30-day filing period for a notice of dispute (*see B & F Skilled, Inc. v Dept. of Transp.*, OATH Index No. 2199/05 [2005], at 4 “[n]othing in the

contracts or PPB rules limits an action or dispute to the rejection of an invoice”], CDRB decision index, Tab 4 at 4; *Prismatic Dev. Corp. v Dept. of Sanitation*, OATH Index No. 1239/16, at 8 [2016] [“(n)either the rule nor the Contract requires that a change order be submitted and rejected in order for the 30-day time frame for filing a (notice of dispute) to commence”]; CDRB decision index, Tab 19 at 8). Rather, the PPB rules simply provide that a dispute arises when an engineer or other designee of the commissioner “makes a determination with which the vendor disagrees” (exhibit B to Petition, PPB rules § 4-09 [a] [2]).

Next, CCA argues that Engineer Hom’s December 9, 2014 letter was not final because it failed to reference Article 27 of the Contract, and his subsequent February 9, 2015 letter did. CDRB’s decision that the letter need not reference Article 27, however, was rational. In *Prismatic Dev. Corp. v Dept. of Sanitation* (OATH index No. 1239/16, CDRB decision index, Tab 19 at 7), the contractor argued that the emails from the City agency did “not constitute a determination because they d[id] not specifically invoke section 27.2 of the Contract” (*id.*). CDRB rejected that argument, finding that “failure to include reference to section 27.2 in the written notice is not fatal to finding that it is a determination as the PPB rules do not require invocation of the provision” (*id.*; *see also B & F Skilled, Inc. v Dept. of Transp.*, OATH index No. 2199/05, CDRB decision index, Tab 4 at 2, 4). Even in *Triton I* (CDRB decision, Tab 22), relied upon by CCA, the CDRB noted that a reference to Article 27’s dispute resolution process was only one factor in deciding if the determination was unambiguous, and not the deciding, or even a required, element.

CCA urges that the CDRB failed to follow other controlling CDRB decisions, particularly the *Triton I* and *Triton II* decisions. First, as CCA recognizes, the PPB rules provide that the CDRB decisions shall not have precedential effect (exhibit B to Petition, PPB rules § 4-09 [g] [4]). Second,

the CDRB panel, here, did not fail to follow the *Triton* decisions. Rather, it distinguished them on the facts. In *Triton I*, the City agency, in a June 6, 2013 email, informed Triton that its beams did not conform to the contract requirements, and that it ““must submit a repair detail and procedure for review and approval as a repair is required to provide the structural system shown on the contract documents”” (*Triton I*, CDRB decision index, Tab 22 at 2). The City agency argued that this email triggered Triton’s obligation to file a notice of dispute. Here, as the CDRB rationally found, that argument was rejected in *Triton I* “because while ‘there was a dispute about whether the work was required by the Contract, no determination on the amount Triton requested to remedy this non-compliance was made since that claim had not yet been submitted’” (exhibit Q to Petition, CDRB dec at 6, quoting *Triton I*, CDRB decision index, Tab 22 at 6). In *Triton II*, the City agency argued that in meeting minutes from April 2010, it was noted that Triton had suggested a proposal for fixing a problem with certain railing, and the City had ordered Triton to submit details. Then, in a May 2010 letter, Triton raised various issues about whether existing handrails could be reinstalled, which would increase costs and be covered under a different bid item number. The City agency responded, in the minutes of a May 2010 meeting, indicating that the reinstallation would come under yet a different bid item number. In both *Triton I* and *Triton II*, the City agency’s communications did not inform Triton that it would not receive additional compensation for the work. Based on the specific facts of those cases, the CDRB concluded that it was not unreasonable for Triton to wait until it performed the work, submitted a change order, which was then denied, before it pursued its remedies under Article 27 of the Contract (*Triton I*, CDRB decision index, Tab 22 at 6; *Triton II*, CDRB decision index, Tab 23 at 5).

The CDRB, here, distinguished the *Triton* cases from CCA’s dispute because, unlike in the

*Triton* cases, while CCA had not yet submitted a request for an exact dollar amount at the time of the December 9, 2014 letter, CCA “had already notified DOT on December 5, 2014, that it would seek compensation for the costs of the work” (exhibit Q to Petition CDRB dec at 7). Moreover, the CDRB rationally distinguished the *Triton* cases, because the letters the City agency was urging were determinations, failed to make reference to the fact that Triton would not receive compensation for the work. The CDRB contrasted those facts with the facts here, where Engineer Hom’s December 9, 2014 letter “did clearly state that CCA would not receive extra compensation for the work” (*id.*). These factual distinctions provide a rational basis for the CDRB to not follow either of the *Triton* cases.

The CDRB found that Engineer Hom’s statement that “no compensation shall be provided for the operations associated with the testing program and the conditioning (grinding) of the girders” was “a clear and unambiguous denial” of CCA’s steel condition costs claim, triggering the 30-day time period for its notice of dispute (exhibit Q to Petition, CDRB decision at 4). The CDRB cited multiple decisions with parenthetical explanations to support its conclusion (*see, e.g. Manuel Elken Co., P.C. v Dept. of Design & Constr.*, OATH index No. 1010/07 [2007], CDRB decision index, Tab 17 at 4; *Dell Tech Enters., Inc. v Dept. of Env’tl. Protection*, OATH index No. 427/07 [2006], CDRB decision index, Tab 9 at 5-6; *Ajet Constr. Corp. v Dept. of Parks & Recreation*, OATH index No. 1418/01 [2000], CDRB decision index, Tab 2 at 7; *see also B & F Skilled, Inc. v Dept. of Transp.*, OATH index No. 2199/05, CDRB decision index, Tab 4 at 4). Its determination was well supported.

CCA argues that the CDRB decision was irrational because the board did not analyze the entire sentence. That sentence in its entirety states: “All issues related to impacts and delays shall be addressed under separate cover, however, no compensation shall be provided for the operations

associated with the testing program and the conditioning (grinding) of the girders” (exhibit F to Petition). The two parts to that sentence do not make the engineer’s nonpayment determination ambiguous. His use of the word “however” clearly separates the discussion of impacts and delays, from the determination that no compensation would be provided to CCA for the steel conditioning claim. The term “however” is an adverb in this sentence, and means “in spite of that” ([www.merriam-webster.com/dictionary/however](http://www.merriam-webster.com/dictionary/however)), and, basically, is being used to introduce a statement that contrasts with the statement regarding impacts and delays. It does not make the clear determination that CCA will not receive compensation ambiguous. CDRB rationally found that the DOT’s message was unambiguous and final that CCA would not get any additional funds, and, thus, that the December 9, 2014 letter was an unambiguous nonpayment determination.

Accordingly, it is

ADJUDGED that the petition is denied and the proceeding is dismissed, with costs and disbursements to respondents; and it is further

ADJUDGED that respondents, having an address at Corporation Counsel of the City of New York, 100 Church Street, New York, New York 10007, do recover from petitioner, CCA Civil, Inc., having an address at c/o Goldberg & Connolly, 66 North Village Avenue, Rockville Centre, New York 11570, costs and disbursements in the amount of \$ <sup>200.00</sup> \_\_\_\_\_, as taxed by the Clerk, and that respondents have execution therefor. X

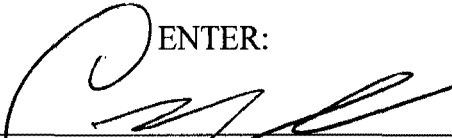
Dated: February 1, 2018

**FILED**

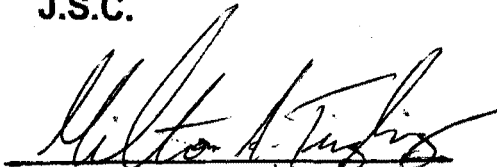
**FEB 14 2018**

**COUNTY CLERK'S OFFICE  
NEW YORK**

ENTER:

  
Carmen Victoria St. George, J.S.C.

**HON. CARMEN VICTORIA ST. GEORGE  
J.S.C.**

  
clerk