

**APS Contrs., Inc. v New York City Hous. Auth.**

2021 NY Slip Op 32137(U)

October 27, 2021

Supreme Court, New York County

Docket Number: Index No. 155973/2020

Judge: Carol R. Edmead

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT:** HON. CAROL EDMEAD **PART** **35**

*Justice*

-----X

APS CONTRACTORS, INC., NORTH AMERICAN  
SPECIALTY INSURANCE COMPANY

Petitioner,

- v -

NEW YORK CITY HOUSING AUTHORITY, VITO  
MUSTACIUOLO,

Respondent.

-----X

**INDEX NO.** 155973/2020

**MOTION DATE** 12/08/2020,  
08/31/2021

**MOTION SEQ. NO.** 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 162

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, it is

ADJUDGED that the verified petition/complaint of petitioners-plaintiffs APS Contractors, Inc. and North American Specialty Insurance Company (motion sequence number 001) is denied with respect to the first cause of action therein; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211, of the respondents-defendants New York City Housing Authority and Vito Mustaciulo, in his capacity as General Manager and Chief Operating Officer of the respondent New York City Housing Authority (motion sequence number 001), is granted to the extent that the first cause of action in the verified petition/complaint is dismissed; and it is further

ORDERED that this hybrid action/special proceeding is dismissed, and the Clerk of the Court is directed to enter judgment in favor of respondents-defendants dismissing this matter, together with costs and disbursements to respondents-defendants, as taxed by the Clerk upon presentation of a bill of costs; and it is further

ORDERED that the motion, pursuant to CPLR 408, of petitioners-plaintiffs APS Contractors, Inc. and North American specialty Insurance Company (motion sequence number 002) is denied as moot; and it is further

ORDERED that counsel for respondents-defendants shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

## BACKGROUND

In this hybrid Article 78 proceeding/declaratory judgment action, the court entered a decision on April 27, 2021 that granted this cross-motion pursuant to CPLR 3211 (motion sequence number 001) by co-respondents-defendants the New York City Housing Authority (NYCHA) and its General Manager/Chief Operating Officer Vito Mustaciuolo (Mustaciuolo; together, respondents) to the extent of dismissing the second through seventh causes of action in the verified petition/complaint of the of the co-petitioners-plaintiffs APS Contractors, Inc. (APS) and North American Specialty Insurance Company (NAS; together, petitioners). The April 27, 2021 decision denied respondents' cross-motion with respect to petitioners' first cause of action, which seeks relief pursuant to CPLR Article 78, and directed respondents to file an answer. NYCHA eventually did so on June 3, 2021, and petitioners subsequently filed reply papers on July 16, 2021. *See* verified answer; verified reply. In the meantime, however, the court had entered an "interim restoration order" on May 25, 2021 that granted the parties' request to restore this matter to active status. Later, after the parties had completed their submissions, petitioners filed a new motion seeking limited discovery, pursuant to CPLR 408 (motion sequence number 002). After conducting several preliminary conferences, the court issued a second interim order on September 13, 2021 which made the following determination:

"The Court finds that the proper way to proceed here is for the Court to issue a decision resolving Motion Seq. 001 before it turns to Petitioners' motion for limited discovery. Petitioners argued during the September 10 conference that limited discovery is necessary here as there is not a sufficient evidentiary record upon which the Court can review NYCHA's determination. However, the issue of the sufficiency of the evidentiary record is a matter that the Court will assess during its review of the papers submitted under Motion Seq. 001. If the Court determines that the issues presented under Motion Seq. 001 indicate that this matter does not fit within the standard Article 78 parameters, the Court will reach Petitioners' motion for limited discovery. The Court notes that issuing a decision on Motion Seq. 002 prior to resolving the Article 78 application would essentially be akin to treating this matter as a plenary action, and this Court has already

held in its April 9 decision that Petitioners' only cognizable cause of action is under Article 78.

"Accordingly, it is hereby

"ORDERED that the Court shall issue a written decision resolving Motion Seq. 001 'On Submission.' Should the Court determine that it cannot conclude, based on the submissions alone, whether Respondents' determination was 'arbitrary and capricious, lacked a rational basis, and constituted an abuse of discretion' pursuant to Article 78, it will reach Petitioner's motion for limited discovery (Motion Seq. 002)."

This decision disposes of both motions (motion sequence numbers 001 and 002).

## FACTS

NYCHA owns and manages a low-income residential apartment complex known as the Walt Whitman Houses, located at 287 Myrtle Avenue in the County of Kings, City and State of New York. *See* verified petition/complaint, ¶ 3. NYCHA retained APS as a construction contractor to perform certain renovation work pursuant to a "Contract for Exterior Restoration at Whitman Houses" which the parties executed on August 15, 2016 (the contract). *Id.*, ¶ 4; exhibit B. NAS is APS's insurer pursuant to the terms of a \$29,393,616.00 performance bond that NAS issued on April 6, 2016 (the performance bond). *Id.*, ¶ 4; exhibit C. The dispute underlying this matter arose after NYCHA served APS with a notice of default on October 9, 2019 that asserted that APS had failed to complete its work within the time specified in the contract (the notice of default). *Id.*, ¶¶ 5-6; exhibit A. The contract's relevant provisions follow:

### "GENERAL CONDITIONS

\* \* \*

#### "6. Construction Progress Schedule

"(a) The Contractor [i.e., APS] shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer [i.e., Mustaciuolo], prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.

“(b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA [i.e., NYCHA]. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

“(c) *Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.*

\* \* \*

### “31. Disputes

“(a) ‘Claim,’ as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

“(b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

“(c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.

“(d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made

“(e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.

“f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

“32. **Default**

“(a) *If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or falls to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed.* In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties [i.e., NAS] shall be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

“(b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if

“(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

“(2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.

“(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

\* \* \*

“**SPECIAL CONDITIONS**

\* \* \*

“37. Disputes as to the Work: Supplementing Section 31 of HUD FORM 5370:

“A fundamental intent of the Contract is that all Work required by the Authority [i.e., NYCHA] shall be promptly performed in accordance with its directions and to its

satisfaction, but without prejudice to the rights of either party as to the proper determination of questions relating to compensation, damages, or other money payments or deductions from payments as provided in this Contract. *The Contractor shall, under no circumstances, cause any delay of the Work during any dispute as to the Work or compensation or the meaning of the specifications or plans or drawings, or because of any dissatisfaction with any decision of the Authority, but shall proceed with the Work promptly, as directed.*

“38. Default: Supplementing Section 32 of HUD FORM 5370:

(a) The Authority shall have the right to declare the Contractor in default on the whole or any part of the Contract and/or the Project if:

“1. The Contractor shall fail to begin the Work to be done under the Contract on the date of award or the date otherwise specified in writing by the Authority, or if the Contractor shall abandon the Project, or

“2. The Contractor shall assign the Contract or sublet the Work otherwise than as permitted by the Contract, or

“3. *The Contractor has unnecessarily or unreasonably delayed the Project or any part thereof, or has persistently or repeatedly refused or failed to supply enough properly skilled workers or proper materials, or*

“4. The Contractor has failed to make prompt payment to subcontractors, suppliers of materials, or other creditors; or has failed to display the prevailing wage poster, to provide a copy of the prevailing wage schedule when requested, to complete the Development Log or to submit the Contractor Daily Sign-In Sheets in compliance with the requirements of Form HUD-5730 Section 46, as amended by Supplemental Section 48 (below); or has failed to observe or perform the provisions of any term whatsoever of the Contract, or

“5. The Contractor shall become bankrupt or insolvent, or makes an assignment for the benefit of creditors, or its affairs are placed in the hands of a receiver or trustee.

“(b) *Upon declaration of default in writing to the Contractor, the Contractor shall not begin or shall discontinue or not resume the work.* Pursuant to Section 151(1) of the New York Public Housing Law, in the case of default by the Contractor the Authority may adopt on behalf of the Authority all subcontracts made by such Contractor and all such subcontractors shall be bound by such adoption if made, and the Authority may relet, with or without public advertisement, the work specified in the original contract, exclusive of so much thereof as shall be provided in any subcontracts so adopted. The Authority may prosecute the same to completion as agent for and at the expense of the Contractor, either directly or through other contractors, with or without public advertisement, or by calling upon the surety or sureties, if any, to complete the Contract as provided for in the Performance Bond, and the Contractor and sureties shall be liable to the Authority for any loss, damage, extra cost, or detriment to the Authority thereby. The Authority may take immediate possession of and utilize in completing the Work all materials and equipment provided for the Work. The Authority may also adopt and enforce any subcontracts which may have been let for any part of the Work. The Authority's certificate as to the excess cost and excess time, if any, of completing the Work, and the amount of damage suffered, shall be binding and conclusive upon the Contractor and its sureties.

“(c) *The right to declare the Contractor in default for any of the grounds specified or referred to in Section 32 of HUD Form 5370 shall be exercised by the Authority by sending the Contractor a written notice setting forth the ground or grounds upon which such default is declared (the ‘Notice of Default’).*

“(d) The Authority's determination that the Contractor is in default shall be conclusive, final and binding on the parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Contract. If the Contractor protests the Authority's determination, the Contractor may commence a lawsuit in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.

\* \* \*

“57. No Estoppel or Waiver: Supplementing HUD FORM 5370:

“(a) *The Authority shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, made by any of its officers, agents or employees, from showing the true amount and character of the work performed or that such acceptance, certificate or payment is incorrect or improperly made, and to recover on such account any monies paid in excess of those the Contractor is entitled to or any damages it may have sustained by reason of the Contractor's failure to comply with the Contract.*

“(b) *No act done or permitted to be done by any member, officer, agent or employee of the Authority at any time shall be deemed to be a waiver of any provision of the Contract, excepting only a resolution of the members of the Authority providing expressly for such waiver.*

“58. Extensions of Time: Supplementing HUD FORM 5370:

“The Contracting Officer's determination whether an extension of time is justified and how long the period of extension should be shall be conclusive and binding upon the Contractor. *Except as otherwise provided in this Contract, the Contractor expressly agrees to make no claim or maintain any action against the Authority for damages for suspension of or delay in the performance of this Contract occasioned by delays to or interruptions of the work, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance.*”

See verified answer, exhibit 2 (emphasis added). In addition, Section 25 of the contract’s General Conditions (as supplemented by Article I, Section 3 [e] of contract’s Special Conditions) sets forth APS’s obligation to complete the work within 791 days of receiving a “notice to proceed” from NYCHA. *Id.*, exhibit 2. The court notes that NYCHA served that notice on APS on August 30, 2016, and specified a completion date of October 30, 2018 therein. *Id.*, verified answer ¶¶ 73-74; exhibit 3. Section 25 of the contract’s General Conditions (as supplemented by Article III, Section 27 of contract’s Special Conditions) further sets forth a “time of the essence” clause that provided as follows:

“Inasmuch as the provisions of the Contract relating to the time of performance and completion of the Work are for the purpose of enabling the Authority to administer public property efficiently and economically and in accordance with a predetermined program, all such time limits are of the essence of this Contract.”

*Id.*, ¶¶ 209-217; exhibit 2.

As indicated above, petitioners’ first cause of action seeks an order pursuant to CPLR Article 78 to vacate NYCHA’s default notice as arbitrary and capricious. *See* verified petition, ¶¶ 67-70, p 38. The petition specified the following six grounds for that relief, including:

“(a) [that] NYCHA's material breaches of the Contract discharged APS's obligations to perform;

“(b) NYCHA's failure to address the design issues and changed field conditions to allow approval of the windows and mockup to permit the installation of 19 windows;

“(c) NYCHA's taking the position that it would not issue a notice to proceed for Phase II work to commence;

“(d) NYCHA's failing to address, take a position, or ever respond to the demand for termination for convenience;

“(e) NYCHA's failing to respond with a position with respect to Payment Requisition 15, and/or ever pay or deny same; [and]

“(f) NYCHA's failing to properly pay for materials and failing to properly make progress payments.”

*Id.*, ¶ 67. Respondents’ June 3, 2021 post-dismissal answer asserted that NYCHA had a rational basis to issue the default notice for the following three reasons: 1) APS breached General Condition 6 (c) of the contract (“Construction Progress Schedule”) by “failing to timely prosecute the work, failing to follow NYCHA directives, and failing to provide an adequate workforce”; 2) APS breached General Condition 32 (a) (“Default”) by “refus[ing] or fail[ing] to prosecute the work . . . with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fall[ing] to complete said work within that time”; and 3) APS breached Special Condition 38 (a) (3) (“Default”) by “unnecessarily or unreasonably delay[ing] the Project . . . , or . . . persistently or repeatedly refus[ing] or fail[ing] to supply enough properly skilled workers or proper materials.” *See* verified answer, ¶¶ 99-140. NYCHA served APS with the default notice on October 9, 2019, and it stated as follows:

“This letter serves as the Authority's declaration that APS is in default under the Contract for reasons more fully described herein. Pursuant to Section 32 (a) of HUD Form 5370 (‘HF 5370’), which is part of the Contract, and Article III, Section 38 of the Contract's Special Conditions (the ‘Special Conditions’), APS's right to proceed with the Work is terminated and APS must discontinue the Work immediately. **Therefore, APS is directed to immediately cease any and all Work in progress, and to not undertake any new Work.**”

“The Authority declares APS in default pursuant to Section 32 (a) of HF 5370 because APS ‘fail[ed] to prosecute the work . . . with the diligence that will insure its completion within the time specified in [the] contract, or any extension thereof, or [has] fail[ed] to complete said work within this time[.]’ and Special Conditions Article III, Section 38 (a) (3) because APS ‘has unnecessarily or unreasonably delayed the Project.’ The Contract initially required substantial completion of the Work by October 30, 2018 and final completion by January 20, 2019. The Authority previously granted APS two time extensions totaling 156-consecutive calendar days (the ‘156 Day Extension’), extending the substantial completion date to April 3, 2019 and final completion date to June 29, 2019. APS has failed to achieve both critical dates.

“LiRo Program and Construction Management, PE P.C. (‘LiRo’), the Authority's construction manager, performed the attached time impact analysis (‘TIA’) dated July 3, 2019. Per the TIA, APS's claims for additional time extensions for delays allegedly caused by the Authority are not justified and lack merit because: (1) the delays are offset by APS caused delays and are therefore concurrent;<sup>1</sup> or (2) APS was in fact responsible for the delays. The Authority has reviewed LiRo's TIA and fully accepts the findings and conclusions therein.

“Under the Contractor's critical path baseline schedule approved on February 3, 2017 (the ‘Baseline Schedule’), the Work was to be completed in four phases (each a ‘Phase’). Based on the TIA, and adjusting the Phase start and completion dates on the Baseline Schedule to account for the 156 Day Extension: (a) the Phase I start and end dates were February 15, 2017 and January 3, 2018 respectively; (b) the Phase 2 start and end dates were December 15, 2017 and May 10, 2018 respectively; (c) the Phase 3 start and end dates were May 18, 2018 and November 10, 2018 respectively; (d) the Phase 4 start and end dates were September 23, 2018 and April 3, 2019 respectively; and (e) the final completion date was June 29, 2019.

“To date, however, even after adjustment of the Baseline Schedule to account for the 156 Day Extension:

“(a) APS did not start Phase I until June 6, 2017, almost three months after the February 15, 2017 adjusted Baseline Schedule start date, and completed the Work on May 22, 2019, more than 16 months after the January 3, 2018 adjusted Baseline Schedule completion date.

“(b) Despite an early start to Phase 2 on July 23, 2017, nearly five months before the December 15, 2017 adjusted Baseline Schedule start date, APS failed to complete Phase 2. More than 14 months after the May 10, 2018 adjusted Baseline Schedule completion date, APS has completed only 45% of the Phase 2 Work.

---

<sup>1</sup> “An example of a concurrent delay not justifying an additional time extension is the delay resulting from the Contractor's retention of Triangle as a subcontractor.”

“(c) Per the adjusted Baseline Schedule, APS was to start Phase 3 on May 18, 2018 and complete the Work by November 18, 2018. To date, APS has failed to perform any of the Phase 3 work.

“(d) The adjusted Baseline Schedule required APS to start Phase 4 on September 23, 2018 and complete the Work by April 3, 2019. To date, APS has failed to perform any of the Phase 4 work.

“As the TIA details, the prolonged and unjustified delays with respect to Phase 1 and Phase 2 completion and failure to perform any of the Phase 3 and 4 Work are completely unreasonable and unacceptable. APS's additional actions, or non-actions, that caused the Work to fall so far behind schedule are detailed in the TIA (and other documents and correspondence pertaining to the Project) and demonstrate that APS has failed to prosecute the Work with the diligence necessary to insure its completion within the time specified in Contract, or any extension thereof; i.e., the Baseline Schedule adjusted for the 156-Day Extension.

“The Contract's extended June 29, 2019 completion date has come and gone. Further delays in the Contract's completion will compromise the well-being and quality of life of the residents at Whitman Houses. It is imperative that actual, realistic, efforts to complete the Work and to recover as much lost time as possible be undertaken without delay. Because APS has thus far been incapable of managing the Project so as to complete the Work in an efficient and timely manner in accordance with the Contract's requirements, the Authority has no confidence or logical reason to believe APS will capably undertake the necessary steps and effort to meet Contract requirements and complete this Project without falling further behind schedule.

“In addition to finding APS in default for the reasons described above, the Authority finds the Contractor in default under Special Conditions Article III Section 38 (a) (3) for ‘fail[ure] to supply enough properly skilled workers.’ Throughout the Project, APS has routinely understaffed the Work. The number of masons and ACM workers APS employed and staffed on the Project is below industry standards and insufficient to meet the completion dates on the Baseline Schedule. This understaffing has been a recurring problem and continues to date, despite the Authority's and LiRo's clear warnings and directives during the early stages of the Project in 2017 that the Work would be delayed and fall behind schedule if the Contractor did not increase its workforce. APS's failure to heed those warnings and directions, in addition to being a breach of contract and grounds for finding the Contractor in default, is a substantial cause of the numerous and significant delays described above.

“At this time, submission of a recovery schedule pursuant to Section 7 (b) of HF 5370 or the Contract's specifications is not an option because the Contract's June 29, 2019 final completion date has passed making any theoretical recovery within the time for completion no longer possible. Moreover, the Authority gave APS numerous opportunities to demonstrate how the approved rate of progress would be regained and how further delays on the Project would be avoided. Despite delays continuing to add up and the Project falling further behind schedule, the Authority partook in numerous project meetings and correspondence to discuss efforts to get the Project back on schedule and directed APS to submit contractually required recovery schedules. These measures were unsuccessful in getting the Project back on schedule as APS either failed to provide the required recovery schedules or provided inadequate schedules that failed to realistically

demonstrate how APS could get the Project back on schedule and regain time lost to APS's delays.

“Additionally, the Authority took steps it was not obligated to take under the Contract to facilitate APS’s performance. These steps included, but were not limited to, (a) allowing APS to complete Phase I Work without the use of lipped bricks, thereby allowing APS to forego corrective measures that would have caused further delays and (b) turning over additional buildings 4 and 14 to APS in April 2018 for purposes of allowing it to increase production and recover lost time. Despite the Authority's efforts to accommodate and work with APS, within reason, APS fell so far behind schedule it became clear, for the reasons set forth above, any further efforts would be futile. Based on APS’s performance to date, APS’s continued work on the Project will result in the Project unjustifiably falling further behind schedule, without any foreseeable date of completion. Therefore, the Authority declares the Contractor in default and directs the Contractor to immediately cease any and all Work in progress and to not undertake any new Work.

“A copy of this letter is being sent simultaneously to North American Specialty Insurance Company (‘North American’), the Surety under the bonds APS furnished in connection with the Contract and shall serve as notice to North American of the Authority's default of APS under the Contract, and that the Authority may exercise its rights and remedies under such bonds as a result of the declaration of default.

“This letter is written without prejudice to the Authority's rights and remedies, all of which are expressly reserved and none of which are waived.”

*Id.*, ¶ 141; verified petition, exhibit A (emphasis in original).

As indicated above, NYCHA also served a “Claim Upon Performance Bond” on NAS on November 13, 2019 (the claim notice). *See* verified petition, ¶ 52; exhibit II. NAS and APS responded by serving their own notices of claim on NYCHA on December 10, 2019, and January 15, 2020, respectively. *Id.*, ¶¶ 65-66; exhibits MM, NN. Petitioners subsequently commenced this hybrid proceeding on August 7, 2020. *Id.*; affidavit of service. As was mentioned earlier, NYCHA filed an answer on June 3, 2021 after the court had granted the bulk of their dismissal motion in its April 27, 2021 decision (motion sequence number 001). *See* verified answer; exhibit 1. Pursuant to the court’s September 13, 2021 interim order, this matter is now deemed fully submitted (motion sequence numbers 001 & 002).

## DISCUSSION

“Judicial review in this CPLR article 78 proceeding is limited to whether the challenged determination ‘was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion’ CPLR 7803 (3).” *Matter of Stonewall Contr. Corp. v New York City Sch. Constr. Auth.*, 120 AD3d 503, 504 (2d Dept 2014); citing *Matter of Classic Realty v New York State Div. of Hous. & Community Renewal*, 2 NY3d 142, 146 (2004); *Matter of Scherbyn v Wayne–Finger Lakes Bd. of Coop. Educ. Servs.*, 77 NY2d 753, 757 (1991); c.f. *Abiele Contr. v New York City Sch. Constr. Auth.*, 91 NY2d 1, 8 [1997]. A determination will only be found arbitrary and capricious if it is “without sound basis in reason, and in disregard of the . . . facts.” See *Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983); citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 (1974). However, if there is a rational basis for the administrative determination, there can be no judicial interference. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232.

As previously mentioned, the surviving first cause of action in the petition alleges that NYCHA’s decision to serve the default notice was “arbitrary and capricious, lack[ed] a rational basis, and constitutes[d] an abuse of discretion.” See verified petition, ¶¶ 67-70. Petitioner’s original memorandum of law raised five arguments to support their claim, including that:

“1) ‘a hearing is required to determine any disputed factual issues pursuant to CPLR 7804 (h)’; 2) NYCHA ‘waived the time is of the essence contract completion date by permitting APS to continue to perform under the contract after April 2019 without re-establishing a reasonable completion date;’ 3) the default determination ‘lack[ed] a rational basis because that date was waived by NYCHA and NYCHA acknowledged that that completion date was obsolete and not operative;’ 4) the default determination ‘was vitiated by a cardinal change occurring on the project giving rise to NYCHA’s fundamental breach of its obligations under the contract’; and 5) ‘NYCHA’s failure to give APS access to the worksite constitutes a fundamental breach of NYCHA’s obligations under the contract.’”

See petitioner's mem of law (motion sequence number 001) at 18-29. Respondents did not oppose those arguments in their cross-motion to dismiss, but instead requested leave to file an answer. See notice of cross motion (motion sequence number 001), Nahmias affirmation, ¶ 55. The memorandum of law accompanying respondents' June 3, 2021 answer sets forth their opposition to petitioners' original arguments, and further asserts that NYCHA's decision to serve the default notice had a rational basis. See respondents' mem of law at 4-20. APS's reply papers omitted its "cardinal change" argument, and instead asserted that NYCHA's issuance of the default notice was arbitrary and capricious for several reasons, and that a fact-finding hearing is necessary. See petitioners' reply mem at 2-28. This decision will address all of the parties' respective points; however, for the sake of clarity, it will do so in the order that the court deems most logical rather than the order in which the parties presented them.

Because petitioners' sole remaining claim seeks relief pursuant to CPLR Article 78, the most important argument before the court is whether NYCHA acted arbitrarily and capriciously in issuing the default notice, or whether its decision to do so was rationally based. Respondents argue that "NYCHA'S default declaration is rational based on APS's chronic failure to timely prosecute the work, submit required construction schedules, and adequately staff the Whitman Project." See respondents' mem of law at 4-8. Respondents cite the decisions by the Appellate Division, First Department, in *Matter of Murgrose Constr., Inc. v City of N.Y. Dept. of Transp.* (180 AD3d 625 [1<sup>st</sup> Dept 2020]), and the Second Department in *Matter of Clover Constr. Consultants, Inc. v New York City Hous. Auth.* (44 AD3d 654 [2d Dept 2007]), in both of which the courts found that there was a rational basis for a City agency to issue a default declaration against a construction contractor where the agency's determination was supported by documented proof of, e.g.: 1) multiple missed deadlines; 2) construction delays; 3) failure to

submit and/or abide by progress schedules (or other necessary paperwork); 4) failure to maintain an adequate workforce; and/or 5) inability to demonstrate the capacity to complete work within the contractually specified time period. 180 AD3d at 625; 44 AD3d at 655.

Here, the default notice recited that NYCHA based its determination on the “time impact analysis” report (TIA) that was prepared on July 3, 2019 by its construction manager, LiRo Program and Construction Management, PE P.C. (LiRo). *See* verified petition, exhibit A. Respondents’ answer annexes copies of the documentary evidence that LiRo reviewed when it prepared the TIA report, including: 1) the contract; 2) the notice to proceed; 3) the “approved baseline schedule”; 4) the minutes of several “pre-construction” and “progress meetings”; 5) a quantity of correspondence between LiRo, APS and its counsel; 6) a quantity of submissions from subcontractors whose work APS was responsible for coordinating; 7) several NYCHA “change orders”; 8) several NYCHA “directives”; 9) records of APS’s “manpower count”; and 10) records of NYCHA’s payment history for the work. *See* verified answer, exhibits 2-35. In their brief, respondents argue that these documents support the findings in the TIA report, and that it was consequently reasonable for NYCHA to adopt and rely on those findings. *See* respondents’ mem of law at 4-8. Having itself reviewed the documents, the court agrees. The contract, the notice to proceed and the approved baseline schedule together establish that APS agreed to begin renovation work on 15 Whitman Houses buildings on February 15, 2017, to perform that work over four “phases,” to achieve “substantial completion” of the work by October 30, 2018, and to “close out” the entire project by June 29, 2019.<sup>2</sup> *Id.*, exhibits 2, 3, 5. However, the meeting minutes and some of the correspondence record multiple instances where

---

<sup>2</sup> These dates were adjusted to account for the 156-day extension that NYCHA had granted APS, and are thus constitute adjusted baseline dates rather than original baseline dates. *See* verified petition, exhibits H, I; verified answer, ¶ 124.

APS failed to file timely subcontractor approval applications with the City and/or timely progress reports with NYCHA. *Id.*, exhibits 4, 6, 7-10, 8-13, 16-26, 31. In the bulk of the correspondence, LiRo notes multiple instances of APS's construction and/or filing delays, and requests that APS respond to NYCHA by submitting "recovery" plans and schedules pursuant to which it might meet the adjusted baseline dates. *Id.*, exhibits 8-10, 12-13, 18, 24, 26. The correspondence also shows that APS failed to file revised schedules regarding phases 3 and 4 of the work until shortly before the baseline dates for those phases arrived. *Id.* Other LiRo correspondence, NYCHA change orders and directives concern three specific instances of delays (to paving work throughout the Whitman Houses facility, and to window and roof repairs on certain buildings), that resulted in NYCHA approving reductions to the type of work APS was to perform, along with reductions to APS's contractual payments. *Id.*, exhibits 17, 19-23, 25-26, 28-31. Finally, the meeting minutes and several items of correspondence record LiRo's and NYCHA's concern that APS was insufficiently staffing some of the work projects. *Id.*, exhibits 4, 8, 12-13. The veracity of those concerns was supported by NYCHA's "monthly workforce totals" records, which show that the number of APS and subcontractor employees at the work site was lower than the numbers projected in the baseline schedule or any of APS's recovery plans. *Id.*, exhibit 15.

The court's review of the above documents indicates that the conclusions in LiRo's TIA report were reasonable. The evidence that APS (a) failed to provide NYCHA with recovery work schedules in timely fashion, (b) failed to abide by its work schedules; (c) failed to file legally required subcontractor-related paperwork in a timely fashion (which led to subcontractor-related work delays); and (d) consistently understaffed work sites despite repeated requests to increase manpower, placed APS squarely in breach of General Condition 6 (c) of the contract for "failing

to timely prosecute the work, failing to follow NYCHA directives, and failing to provide an adequate workforce.” The evidence that APS (a) failed to abide by the adjusted baseline schedules for phases I and II of the work (via delays which caused work to continue past the planned completion dates for those phases), (b) failed to submit timely proposed recovery schedules for phases II and I of the work (which resulted in no work at all being done on those phases during the adjusted baseline schedule), and (c) consistently understaffed work sites despite repeated requests to increase manpower, justified LiRo’s determination that a default declaration was warranted by General Condition 32 (a) of the contract (as supplemented by Special Condition 38 [a] [3] of the contract) for “fail[ure] to prosecute the work . . . with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, [and/]or fail[ure] to complete said work within this time” and by, inter alia, “unnecessarily or unreasonably delay[ing] the Project . . . or . . . persistently or repeatedly refus[ing] or fail[ing] to supply enough properly skilled workers.” As the court noted earlier, the First and Second Departments have both upheld default declarations that were issued based on evidence of similar failures. *Matter of Murgrose Constr., Inc. v City of N.Y. Dept. of Transp.*, 180 AD3d at 625; *Matter of Clover Constr. Consultants, Inc. v New York City Hous. Auth.*, 44 AD3d at 655. Accordingly, the court concludes that NYCHA’s decision to issue the instant default declaration against APS had a rational basis in the administrative record.

Petitioners’ first reply argument<sup>3</sup> asserts that “lack of access vitiates the allegation of abandonment.” *See* petitioners’ reply mem at 9-10. The “lack of access” petitioners allege appears to refer to some of the buildings that were scheduled to be renovated during phase II of

---

<sup>3</sup> The court will address the sole remaining dismissal argument from petitioners’ original memorandum of law (i.e., “cardinal change”) at the end of this decision.

the Whitman Houses project. *Id.* at 4-6, 8. Petitioners claim that NYCHA “refused to release” those buildings to APS despite APS having informed NYCHA that it was ready to proceed with the renovation work on those buildings in November 2018. *Id.* Respondents note, however, that (a) APS had actually failed to complete its work on all of the phase I and phase II buildings at the time that it made the November 2018 request (and that APS would not complete work on the phase I buildings until a month later), and (b) APS failed to provide NYCHA with recovery schedules detailing the work it intended to do when it made its request. *See* respondents’ mem of law at 18-19. Respondents also note that they were not obliged to grant APS’s request, since paragraph 7 of Section D (“Phasing and Coordinating of Work”) of Section 1-11-16 (“Summary of Work”) of the “Specifications” section of the contract provides that “[b]uildings shall be completed to the complete satisfaction of the Authority [i.e., NYCHA], prior to the Contractors being directed to proceed with the next available building or Phase.” *See* verified answer, exhibit 2, part 2, p 269. Respondents assert that APS had *not* completed its phase I and II work when it made the November 2018 request, and that NYCHA was *not* satisfied with the work which APS had performed. *See* respondents’ mem of law at 18-19. The court finds that the documented proof that APS had not completed phases I or II of the Whitman Houses renovation project by November 2018 vitiated its request to begin work on more buildings at that time, pursuant to the quoted contractual language. Therefore, the court rejects petitioners’ “lack of access” argument.

Petitioners’ next reply argument asserts that “lack of access vitiates the allegation of insufficient manpower.” *See* petitioners mem of law at 10-14. This argument asserts that (a) NYCHA waived the contract’s “time of the essence” provision by allowing masonry work to proceed after APS had exceeded certain baseline dates, and (b) NYCHA itself then caused any

manpower shortages that might be reflected in the records by insisting that APS submit unreasonable recovery schedules while simultaneously barring APS from actually performing any work. *Id.* Respondents deny both assertions, and in particular note that Special Condition 57 (b) of the contract provides that:

“[n]o act done or permitted to be done by any member, officer, agent or employee of the Authority at any time shall be deemed to be a waiver of any provision of the Contract, excepting only a resolution of the members of the Authority providing expressly for such waiver.”

*Id.*; *see* verified answer, exhibit 2. The court finds that this contractual provision vitiates petitioner’s “manpower” argument, and therefore rejects that argument.

Petitioners’ next reply argument asserts that “the defective existing roofs and NYCHA’s refusal to take action to resolve their own design errors, which rendered the work impossible, deprived APS of the ability to continue performance of the contract based on an arbitrary, capricious and non-justifiable basis and was an abuse of discretion.” *See* petitioners’ mem of law at 15-23. This is a factual argument over the issue of which party was responsible for the delays to the roofing work on several of the phase II buildings. *Id.* The court notes that the default notice did not mention roofing work. *See* verified answer, exhibit 2. Respondents’ memorandum of law in opposition did not discuss that issue either. However, the documents attached as exhibits to respondents’ answer belie petitioners’ assertions. Instead, meeting minutes and NYCHA change orders and directives make it clear that (a) the roofs on the buildings in question had been renovated less than 10 years before APS began work at the Whitman Houses, and the renovation work was still under warranty, (b) the warranty required that only the roofing company which had performed the renovations could be used to perform repair work during the 10-year warranty period, and (c), despite having been informed of this warranty provision, APS delayed in submitting the necessary paperwork to authorize that roofing

company as a subcontractor for the Whitman Houses work. *See* verified answer, exhibits 25-32. Thus, to the extent that the “delays” referred to in the default declaration included delays to the subject roofing work, the court rejects petitioners’ argument that NYCHA was responsible for those delays, since that argument is based on assertions which are belied by the evidence.

Petitioners’ next reply argument asserts that “NYCHA’s answer relies on contract specifications without reference to the facts, and relies on NYCHA having no contractual obligations [itself].” *See* petitioners’ mem of law at 24-26. It asserts that “NYCHA specifically relies on Special Conditions Section 56 to argue that even if it breached the contract, APS’s obligation to perform was not excused.” *Id.* at 24. This argument is disingenuous. In its entirety, Special Condition 56 (“Rights and Remedies of the Contractor”) provides as follows:

*“The Contractor [i.e., APS] agrees that money damages are adequate compensation for any breach of the Contract which may be committed by the Authority, and that no default, act or omission of the Authority shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind it or (unless the Authority shall so direct in writing) to suspend or abandon performance. The Contractor hereby waives any and all rights and remedies to which the Authority might otherwise be or become entitled because of any wrongful act or omission of the Authority, saving only the right to money damages.”*

*See* verified answer, exhibit 2 (emphasis added). In attempting to circumvent this provision, petitioners obliquely suggest that it cannot be enforced because NYCHA itself is in “fundamental material breach” of the contract. *See* petitioners’ mem of law at 24-26. A property owner who commits a “material breach” of a general contracting agreement may face liability even if the general contracting agreement contains a “no damages for delay provision;” however, the contractor must demonstrate “bad faith or willful, malicious, or grossly negligent conduct.” *See e.g., Dinallo Constr. Corp. v Phoenix RMA Constr. Servs., LLC*, 193 AD3d 407 (1<sup>st</sup> Dept 2021); *WDF Inc. v Turner Constr. Co.*, 177 AD3d 513 (1<sup>st</sup> Dept 2019). Here, APS has made no such showing. Further, where a “no damages for delay” clause does not seek to exempt the

property owner from liability, but merely to limit such liability to an award of money damages, the clause is enforceable in all circumstances. *See International Fid. Ins. Co. v Quenzer Elec. Sys., Inc.*, 132 AD3d 811 (2d Dept 2015). Here, Special Condition 56 plainly contains the money damages limitation. Therefore, the court deems the provision enforceable, and rejects petitioners' argument to the contrary.

Petitioners final reply argument is that "a fact-finding hearing is necessary because each basis for the default declaration and termination is disputed on the facts." *See* petitioners' mem of law at 26-29. The first portion of this argument asserts that:

"The disputed facts include the reasonability of NYCHA's: (i) decision to block APS's access to Phase II buildings despite requiring completion of the work by date certain which required access to the work; (ii) decision to require a specific and sole roof contractor (Triangle) which was not part of the bid specifications, (iii) decision not to acknowledge the faulty roof work done 11 years before or to maintain the roofs so that the warranty could be maintained; (iv) decision not to issue a new roof design when the roof work became impossible to perform which still remains unresolved; (v) decision not to provide new window designs when the Architect's designs were impossible to comply with; (vi) decision to refuse to allow the work to progress and declare APS in default despite APS being financed by NAS . . ."

*Id.* at 26. However, the court has already determined that the conclusions that NYCHA reached in the default order were reasonably based on the documentary evidence (discussed above).

Petitioners' disputes concerning those conclusions are therefore of no moment. The First Department consistently holds that "even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record." *Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 (1<sup>st</sup> Dept 2007), citing *Matter of Tolliver v Kelly*, 41 AD3d 156, 158 (1<sup>st</sup> Dept 2007); *Awl Indus., Inc. v Triborough Bridge & Tunnel Auth.*, 41 AD3d 141, 142 (1<sup>st</sup> Dept 2007). The second portion of petitioners' "fact-finding hearing" argument is likewise unavailing. Although CPLR 7804 (h)

provides that “[i]f a triable issue of fact is raised in a proceeding under this article, it shall be tried forthwith,” the petitioner bears the initial burden of proof that a triable issue of fact exists. *See e.g., Matter of Cipco Boarding Co., Inc. v Town of Hempstead*, 164 AD3d 1235 (2d Dept 2018); *Matter of Guldal v Inta-Boro Two-Way Assn., Inc.*, 74 AD3d 1198 (2d Dept 2010). Here, petitioners have extensively listed their disagreements with the conclusions that NYCHA reached in the default notice, but they have not explained how any one them involves a triable issue of fact. Therefore, the court rejects petitioners’ “fact-finding hearing” argument as unsupported.

At the outset of this discussion, the court noted that petitioners’ initial memorandum of law contained one legal argument that they did not repeat in their reply papers; specifically, that “NYCHA’S default determination was vitiated by a cardinal change occurring on the project giving rise to NYCHA’S fundamental breach of its obligations under the contract.” *See* petitioners’ mem of law at 26-27. This argument refers to a change order that APS submitted (and NYCHA rejected) regarding the roofing work to the phase II buildings. *Id.* Petitioners assert that NYCHA’s rejection was improper and amounted to a breach of the contract. *Id.* Petitioners’ argument is unavailing. Firstly, its assertion that different, more extensive and expensive roofing work was required for the buildings in question - so significant, in fact, that it amounted to a “cardinal change” in the work - is conclusory and belied by the evidence. Although APS might have deemed such work necessary, the documents reviewed *supra* established that the roofing work was the responsibility of non-party Triangle General Contractors, Inc. (Triangle), the company which had previously renovated the roofs and was obligated to service them during the ensuing 10-year warranty period. *See* verified answer,

exhibits 25-32. APS's overtures about performing different roof work were therefore immaterial, and, at best, constituted a "red herring."

Petitioners' reliance on the "cardinal change" doctrine is also inapposite. That doctrine applies where it is discovered during the course of a construction project that the work cannot be completed unless certain other, more extensive work is also performed at the same time. New York law permits rescission of the original construction contract where there has been a "cardinal change" in the nature of the construction project which "affect[ed] 'the essential identity or main purpose of the contract,' such that it 'constitutes a new undertaking.'" *Matter of Tutor Perini Corp. v City of N.Y. Off. of Admin. Trials & Hearings Contract Dispute Resolution Bd.*, 193 AD3d 665, 666 (1<sup>st</sup> Dept 2021); quoting *Albert Elia Bldg. Co. v New York State Urban Dev. Corp.*, 54 AD2d 337, 343 (4<sup>th</sup> Dept 1976). However, the doctrine does not apply where the original construction contract's "main purpose" is not "fundamentally changed" by the need for additional work. See e.g., *Five Star Elec. Corp. v Trustees of Columbia Univ.*, 189 AD3d 536, 537 (1<sup>st</sup> Dept 2020). Here, there was no "fundamental change" to the portion of the contract that required roof renovations to the phase II buildings in question. It was simply necessary for a specified subcontractor to perform that work, rather than APS. Therefore, the court finds that petitioners' reliance on the "cardinal change" doctrine is inapposite, and rejects petitioners' "cardinal change" argument.

At this juncture, the court reiterates its findings that (a) the conclusions which NYCHA expressed in the default notice were rationally based on the documentary evidence that it and LiRo reviewed, and (b) petitioners have failed to support their argument that those conclusions were arbitrary and capricious. Accordingly, the court concludes that petitioners' sole surviving cause of action for relief pursuant to CPLR Article 78 lacks merit, and consequently grants so

much of respondents' cross motion as requests dismissal of that claim pursuant to CPLR 3211 (a) (7). Since that decision also results in the dismissal of the instant petition, and the end of this litigation, there is no need for the court to consider petitioners' recent motion for limited discovery, and the court denies it as moot.

#### DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

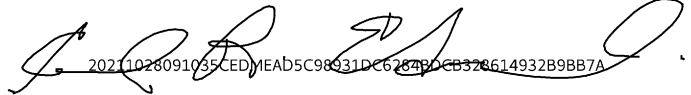
ADJUDGED that the verified petition/complaint of petitioners-plaintiffs APS Contractors, Inc. and North American Specialty Insurance Company (motion sequence number 001) is denied with respect to the first cause of action therein; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211, of the respondents-defendants New York City Housing Authority and Vito Mustaciuolo, in his capacity as General Manager and Chief Operating Officer of the respondent New York City Housing Authority (motion sequence number 001), is granted to the extent that the first cause of action in the verified petition/complaint is dismissed; and it is further

ORDERED that this hybrid action/special proceeding is dismissed, and the Clerk of the Court is directed to enter judgment in favor of respondents-defendants dismissing this matter, together with costs and disbursements to respondents-defendants, as taxed by the Clerk upon presentation of a bill of costs; and it is further

ORDERED that the motion, pursuant to CPLR 408, of petitioners-plaintiffs APS Contractors, Inc. and North American specialty Insurance Company (motion sequence number 002) is denied as moot; and it is further

ORDERED that counsel for respondents-defendants shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

  
20211028091035 CED MEAD5C98931DC62879 DEC326614932B9BB7A

10/27/2021  
DATE

\_\_\_\_\_  
CAROL EDMED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE