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STATE OF NEW YORK
OFFICE OF THE INSPECTOR GENERAL
-----x
AN INVESTIGATION CONCERNING ALLEGATIONS
THAT HERBERT TEITELBAUM, EXECUTIVE
DIRECTOR OF THE COMMISSION ON PUBLIC
INTEGRITY, DISCLOSED INFORMATION
CONCERNING THE COMMISSION'S INVESTIGATIONS
-----x

October 27, 2008
10:19 a.m.

INTERVIEW UNDER OATH of MICHELLE
HIRSHMAN, held at the Office of the Inspector
General, State of New York, 61 Broadway, New
York, New York, before David Levy, CSR, a
Notary Public of the State of New York.

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A P P E A R A N C E S :

OFFICE OF THE INSPECTOR GENERAL

STATE OF NEW YORK

61 Broadway

New York, New York 10016

BY: HON. JOSEPH FISCH,

Inspector General, State of New York

-and-

ARLENE OSTERER, ESQ.,

Investigative Counsel

PAUL, WEISS, RIFKIND,

WHARTON & GARRISON LLP

Attorneys for the Witness

1285 Avenue of the Americas

New York, New York 10019-6064

BY: JAMES L. BROCHIN, ESQ.

1

2

MR. FISCH: My name is Joseph Fisch.

3

I'm the state Inspector General. We are

4

in my Manhattan office of 61 Broadway, New

5

York County. Present is Arlene Osterer,

6

of my staff. The witness is Michelle

7

Hirschman, who is represented.

8

Counsel, will you note your

9

appearance?

10

MR. BROCHIN: James Brochin.

11

MR. FISCH: Ms. Hirschman, you're

12

appearing voluntarily in response to

13

telephone calls that were made?

14

THE WITNESS: That's correct.

15

MR. FISCH: And you consent to this

16

interview being recorded stenographically?

17

THE WITNESS: Yes, I do.

18

MR. FISCH: As I advised your

19

attorney, as you know, all of my

20

interviews are taken under oath. So will

21

you raise your right hand --

22

MR. BROCHIN: Can we go off the

23

record for one minute?

24

MR. FISCH: Sure.

25

(Discussion off the record.)

1

2 M I C H E L L E H I R S H M A N , having been

3 duly sworn, was examined and testified as

4 follows:

5 EXAMINATION BY

6 MR. FISCH:

7 Q. Can you tell us, Ms. Hirshman, your

8 professional background after law school.

9 A. After law school, I clerked for Judge

10 Pierre Lavalley in the Southern District of New

11 York. I then was an associate at Schulte Roth &

12 Zabel. I then served in the United States

13 Attorney's office for almost twelve years for the

14 Southern District of New York. After that, I was

15 First Deputy Attorney General in the New York

16 Attorney General's office from 1999 until 2007.

17 And then, I joined Paul, Weiss, Rifkind, Wharton

18 & Garrison as a partner.

19 Q. At the Attorney General's office, I

20 believe your title was first assistant?

21 A. First Deputy Attorney General.

22 Q. That was for Eliot Spitzer?

23 A. Yes.

24 Q. Are you currently representing him?

25 A. Correct.

1 Hirshman

2 Q. Is he being represented by your firm?
3 Because I note another member of your firm, Ann
4 Raish, represented him at one of my examinations.

5 A. The firm represents him, as in all my
6 representations in connection with the firm.

7 Q. Prior to arranging for your
8 appearance here, I did speak to Mr. Brochin and
9 ask that you consult with Mr. Spitzer and inquire
10 of him whether he's willing to waive
11 attorney-client privilege for the purpose of this
12 limited inquiry. Have you had that opportunity?

13 MR. BROCHIN: You can answer that.

14 A. Yes.

15 Q. And is he willing to waive
16 attorney-client privilege?

17 MR. BROCHIN: At my direction,
18 Ms. Hirshman is not going to answer that
19 question.

20 MR. FISCH: I can't hear you.

21 MR. BROCHIN: At my direction,
22 Ms. Hirshman is not going to answer that
23 question. It's not an appropriate
24 subject --

25 Q. Is it your intention to assert

1 Hirshman
2 attorney-client privilege with regard to certain
3 communications?

4 A. Yes, it is.

5 MR. FISCH: So I take it from that --

6 Q. -- well, did you discuss with him
7 whether he's willing to waive?

8 MR. BROCHIN: Don't answer.

9 Q. As you know, by letter dated August
10 6th of 2008, the District Attorney of Albany
11 County, David Soares, had requested or had
12 referred to my office an investigation concerning
13 allegations that Herbert Teitelbaum, executive
14 director of the commission on public integrity,
15 originally the ethics commission, had disclosed
16 information concerning the commission activities
17 to Robert Hermann who, in turn, had communicated
18 that to members of the executive chamber.

19 You're familiar with the subject of
20 that investigation?

21 A. Yes, I am, based on your
22 conversations to me.

23 Q. And in that connection, with your
24 assistance, I interviewed Eliot Spitzer at his
25 office, I think it was early October -- I'm

1 Hirshman

2 sorry, September 19th.

3 My limited inquiry regard to the
4 governor was to confirm information that we had
5 received under oath from Lloyd Constantine that,
6 on or about November 1st, 2007, Mr. Hermann had
7 communicated to Constantine information
8 concerning activities of the Commission on Public
9 Integrity, and that he, Mr. Constantine, had in
10 turn discussed this with Governor Spitzer.

11 Are you familiar with that?

12 A. I'm familiar with what you advised
13 was the purpose of your inquiry, correct.

14 Q. Okay. And I tried to limit that
15 because you've indicated that any conversations
16 you had with Mr. Spitzer would be privileged, and
17 so I tried to limit my questions to, sensitive to
18 that issue.

19 Now, Mr. Spitzer, as undoubtedly you
20 know, confirmed the conversation with
21 Mr. Constantine, cannot be certain of the date,
22 but basically confirmed that such a conversation
23 took place.

24 Did you ever speak to Robert Hermann
25 concerning these allegations?

1 Hirshman

2 A. Yes.

3 Q. Could you tell me when and under what
4 circumstances?

5 A. My recollection, what I remember, is
6 that I spoke to Mr. Hermann over the telephone
7 sometime after November 1st about trying to sit
8 down with him to talk about the matters that he
9 had relayed to Mr. Constantine.

10 Q. Okay. And how often did you speak to
11 him?

12 A. I don't -- it was a very -- it
13 occurred over a brief period of time. I don't
14 recall. I do recall that, at a certain point in
15 time, which was, I believe, by Saturday, November
16 3rd, Mr. Hermann called, either called me or I
17 called him, but we had a conversation in which he
18 indicated to me that he would prefer not to come
19 in and speak to me in person.

20 Q. Did you discuss any of this with him
21 by telephone?

22 A. I only discussed -- I have no
23 specific recollection of the conversations. My
24 specific recollection is that we were -- that I
25 was asking him to come in, sit down and meet with

1 Hirshman

2 me about the matter.

3 Q. Did you tell him why?

4 A. Pardon?

5 Q. Did you tell him why you wanted to
6 speak to him?

7 A. I don't have a recollection one way
8 or another.

9 Q. Did he ask you why you wanted to meet
10 with him?

11 A. It was obvious to both of us that it
12 concerned the matters which he had relayed to
13 Mr. Constantine.

14 Q. On what basis are you saying that it
15 was obvious?

16 A. Because I -- I recall that that
17 was -- that that was the background of the
18 conversations.

19 Q. Had you spoken to him or attempted to
20 speak or meet with him prior to this?

21 A. No.

22 Q. So you asked him, you told him you
23 wanted to meet with him; is that correct?

24 A. I can't recall the specifics of
25 any --

1 Hirshman

2 Q. You're a very good lawyer, noted for
3 your attention to detail. So tell me what you do
4 recall.

5 A. I told you what I recall. I recall
6 that there were phone -- there were phone
7 conversations between Mr. Hermann and myself.
8 What I remember is that the point of those
9 conversations was to see whether Mr. Hermann
10 would be willing to come in and speak to me about
11 what he spoke to Mr. Constantine about.

12 I don't recall any specifics of those
13 conversations other than that was the point of
14 the conversation.

15 Q. So you did tell him that you wanted
16 to meet with him or talk to him about his
17 conversation with Constantine.

18 A. I -- my recollection is, I certainly
19 would have conveyed that I wanted to talk to him
20 about the background of the things that he had
21 reported to Constantine. I wasn't interested in
22 following up on any conversation with
23 Constantine. I was interested on the
24 conversation that was claimed to have been had
25 with Teitelbaum.

1 Hirshman

2 Q. So you initiated a phone call, told
3 him what you wanted to meet about. And then he
4 said, "No, I don't want to meet with you"?

5 A. No. There were -- there were --
6 there was back-and-forth that I don't remember.
7 I just know, at a certain point in time, he said
8 he had decided -- he decided he didn't want to
9 come in and speak with me.

10 Q. Did he ever tell you anything on the
11 telephone about his conversation with
12 Constantine?

13 A. I don't remember that. I don't
14 remember one way or another.

15 Q. There were a number of telephone
16 conversations with him, is that right?

17 A. I don't remember any specifics other
18 than there were telephone conversations, the
19 point of which was for me to ask, you know, would
20 he come in and talk with me.

21 Q. And with all of the -- there were a
22 number of conversations, was his position always
23 the same, that he did not want to meet with you?

24 A. No. There wasn't -- I think he -- I
25 don't remember what he said. My recollection of

1 Hirshman

2 A. As I said, I understood it generally,
3 not how you have related it.

4 Q. All right. What is your
5 recollection?

6 A. That there were general allegations
7 about influencing. I don't recall anything about
8 sworn testimony to that effect.

9 Q. Do you remember the name Nocenti
10 having been involved?

11 A. Yes.

12 Q. Peter Pope?

13 A. Yes.

14 Q. Darryl Dopp?

15 A. Yes.

16 Q. Sworn testimony by Dopp before the
17 Ethics Commission?

18 A. I don't remember hearing anything
19 about sworn testimony on that subject.

20 Q. What was your purpose in meeting with
21 Hermann if you were able to arrange a meeting?

22 A. I was representing Governor Spitzer.
23 These were -- and there was this information that
24 had been relayed and I wanted to find out what it
25 was that Mr. Hermann said Mr. Teitelbaum had

1 Hirshman

2 said.

3 Q. Did you ask Constantine about that
4 conversation?

5 A. About what conversation?

6 Q. About the conversation as you related
7 to the Governor which you were trying to explore
8 with Hermann.

9 A. As I related to the Governor?

10 Q. Did you ask Constantine for any
11 further details?

12 A. I had a conversation with
13 Mr. Constantine.

14 Q. About this?

15 A. Yes. He called me, in which he
16 provided me this information that he had heard
17 from Mr. Hermann. That the how I first heard
18 about this.

19 Q. Is this after he met with the
20 Governor?

21 A. I don't know.

22 Q. Was it before you called Hermann?

23 A. Was my conversation with Constantine?

24 Yes.

25 Q. Okay. In terms -- how soon after his

1 Hirshman

2 relating information to the Governor did you
3 speak to Constantine?

4 A. I do not know when Mr. Constantine
5 spoke to the Governor.

6 Q. We put the date as November 1st.

7 A. I spoke to Mr. Constantine on
8 November 1st.

9 Q. Okay.

10 A. But I don't know when in the sequence
11 of events that occurred.

12 Q. Speak to him in the morning, in the
13 afternoon?

14 A. Late in the day.

15 Q. Okay. Our information, based upon
16 the swipe card which indicates when Hermann came
17 to the New York office, was that he arrived
18 around 2:30 or so, met with Constantine shortly
19 thereafter, and sometime thereafter, Constantine
20 met with the Governor.

21 Your conversation was later in the
22 day?

23 A. Late in the afternoon.

24 Q. What did Constantine tell you?

25 A. To the best of my recollection, I

1 Hirshman

2 Q. Did he mention the composition of
3 that committee as relayed to him by Hermann?

4 A. I don't remember the names. I think
5 he remembered some names. It was supposed to
6 be -- there were Republicans and Democrats on it.

7 Q. Did he mention that Howard Levine, a
8 former judge, was a member of that working
9 committee, subcommittee?

10 A. I don't remember.

11 Q. Loretta Lynch?

12 A. I have a vague recollection that the
13 name Loretta Lynch was mentioned.

14 Q. John Feerick, of course?

15 A. Yes, that I remember.

16 Q. Teitelbaum?

17 A. I would have assumed so but I don't
18 remember, have a specific recollection.

19 Q. Any other commissioners by name?

20 A. I don't recall.

21 Q. Did Constantine tell you that Hermann
22 had claimed that the subcommittee was formed or
23 composed in part because of concern over leaks by
24 the Ethics Commission?

25 A. I don't recall.

1 Hirshman

2 Q. Okay. After Constantine told you
3 about this, did he tell you that they were
4 engaging an ethics attorney, Hal Leiberman, to
5 deal with this issue?

6 A. I don't recall whether I heard that
7 in that conversation. At some point in time, I
8 heard that, but not -- I don't recall hearing
9 that in that first conversation.

10 Q. Did he tell you, either during that
11 conversation or subsequently, that he had
12 discussed this with Richard Rifkin?

13 A. I don't recall one way or another. I
14 do recall references to Richard Rifkin at some
15 point in time.

16 Q. Were you advised that Mr. Rifkin felt
17 uncomfortable with the receipt of such
18 information and that he felt obliged ethically to
19 notify the District Attorney that they now,
20 meaning the executive chamber personnel, were in
21 receipt of information that Rifkin felt they
22 should not have?

23 A. I do not recall that issue or subject
24 matter in connection with the first conversation,
25 in connection with another conversation, or

1 Hirshman
2 specifically in connection with Mr. Rifkin.

3 I do recall in connection with
4 hearing about the engagement of Mr. Leiberman
5 that there was that concern, but I don't have any
6 recollection one way or another of it being
7 connected to Mr. Rifkin.

8 Q. What action was taken by the
9 executive chamber, and specifically by the
10 Governor, in connection with the receipt of this
11 information?

12 A. I don't know specifically.

13 Q. Was a determination made that Pope
14 and Nocenti should be, in a sense, isolated from
15 any discussions about the investigations?

16 A. What I remember is that thereafter,
17 my understanding was that Pope and Nocenti, among
18 others, were representing the chamber in
19 connection with the investigations. And that
20 thereafter, Pope and Nocenti were not going to be
21 involved in those matters, at least for some
22 period of time. I don't -- that's what I
23 remember.

24 Q. Were you advised that Hermann had
25 told the Governor directly that Nocenti and Pope

1 Hirshman
2 representing the chamber going forward, but
3 that's very vague.

4 Q. Did you also speak to Nocenti?

5 A. I don't have a recollection one way
6 or the other of speaking to Nocenti.

7 Q. Did you speak to anybody else? You
8 mentioned Pope, you mentioned Constantine.
9 Anybody else?

10 A. Other than my -- within the executive
11 chamber? Other than my client, I spoke to no one
12 else within the executive chamber.

13 Q. Anybody outside the executive chamber
14 in connection with this issue?

15 A. Yes.

16 Q. Whom else?

17 A. I spoke to lawyers for other
18 individuals who were part -- who were subjects of
19 the investigation of the public Integrity
20 Commission -- "subjects" is not the correct word,
21 but who had to testify in connection with that.

22 Q. Ms. Nicholas?

23 A. I talked -- not in connection with
24 this.

25 Q. And what was the purpose of your

1 Hirshman

2 conversations with her?

3 A. Who are you speaking about?

4 Q. People you're speaking about.

5 A. I spoke to those lawyers. My purpose
6 was to find out what, if anything, they knew
7 about the matter that Mr. Constantine had
8 reported.

9 Q. Did you get any response from them
10 concerning Pope's version or Nocenti's version or
11 anything else?

12 A. I didn't hear anything about Pope's
13 version from anyone, and I didn't hear anything
14 about Nocenti's version from anyone in that
15 period.

16 Q. Ms. Hirshman, I'm trying to
17 understand, what was your purpose in speaking to
18 them?

19 A. I'm a lawyer. I'm a lawyer. I
20 represented a client. And I spoke to other
21 lawyers.

22 Q. All right. And so in connection with
23 your representation of Eliot Spitzer, you spoke
24 to them.

25 A. That's correct.

1 Hirshman

2 Q. Okay. Anyone else? You mentioned a
3 number of people within the chamber and some
4 people outside the chamber. Anybody else?

5 A. Other than -- other than my client
6 and other than my partners, no, not that I
7 recall.

8 Q. Okay. Ms. Hirshman, let me get back
9 to your reaching out to Hermann. This is a copy
10 of calls to and from Robert Hermann's telephone.

11 (Handing document to witness.)

12 A. Um-hum.

13 Q. And I direct your attention, I
14 already spoke to you about a certain number of
15 these. On November 2nd, going down about one
16 third of the way, 12:32 p.m., and that was your
17 telephone number, incoming, two minutes; you see
18 that?

19 A. Um-hum, yes.

20 Q. And then going down two lines, and
21 that is a call to you from Mr. Hermann. That was
22 one minute, 3:23 p.m.?

23 A. Um-hum.

24 Q. And then going down about five lines,
25 that was a call from your office at 4:50 p.m.,

1 Hirshman

2 call at 12:32.

3 Was that the final determination that
4 he didn't want to meet with you?

5 A. My recollection is that we talked on
6 Saturday morning when he said he didn't -- he
7 didn't think he wanted to meet.

8 Q. And that he would consider it,
9 however?

10 A. I don't recall anything other than
11 that. I mean, it was a very -- it was a very
12 cordial conversation. He said he didn't want to
13 meet. I said I understood, I appreciated it.
14 And that was that.

15 Q. Okay.

16 MS. OSTERER: Ms. Hirshman, does the
17 phone call on the Saturday, November 3rd,
18 appear on this schedule?

19 THE WITNESS: I have no idea.

20 MS. OSTERER: Please look at it.
21 Because we've only identified the calls to
22 and from your office phone. Would there
23 have been another phone number that he
24 could have called you on?

25 THE WITNESS: He could have called me

1 Hirshman
2 on my cellphone number but I don't see it
3 here. I'll have to look at that.

4 (Witness perusing document.)

5 Q. What is your cell number?

6 A. (347) 622-1178.

7 Q. So it was on Saturday, November 3rd,
8 you believe?

9 A. That is my recollection. My
10 recollection, I was going to be in the office, I
11 was in the office all weekend; if he could come
12 talk to me, that would be great. If I was not --
13 I was in the office on another matter the entire
14 weekend.

15 Q. Was there ever an issue as to where
16 you would meet, in other words, that it had to be
17 in your office in New York, or did you offer to
18 meet him anywhere that was convenient for him?

19 A. I don't have a recollection. I
20 offered -- I certainly -- I would have offered to
21 meet him in my office, and this would be -- this
22 would be speculating, but I wouldn't have offered
23 to meet him anywhere. I would have offered to
24 meet him in my office.

25 Q. I may have asked you this before; if

1 Hirshman

2 so, forgive me. Can you fix the time or the
3 date, roughly, when you were engaged by
4 Mr. Spitzer to represent him?

5 A. In September.

6 Q. Of 2007?

7 A. Correct.

8 Q. And at that time, were Nocenti and
9 Pope out of the picture in terms of representing
10 the Governor?

11 A. In September 2007? No, they were
12 representing the chamber in September 2007.

13 Q. And you draw a distinction --

14 A. That included chamber employees,
15 including the Governor.

16 Q. Including the Governor.

17 A. Correct.

18 Q. Okay. Now, prior to November 1st,
19 November 2nd, roughly, of 2007, they still were
20 regarded as representing the chamber and the
21 Governor?

22 A. Yes. Yes. And they -- my -- my
23 understanding is that they represented the
24 chamber, they represented the Governor, they
25 represented certain chamber employees, including

1 Hirshman

2 the Governor.

3 I represented the Governor
4 personally.

5 Q. Okay. I'm trying to draw a
6 distinction where you fit in and where they fit
7 in. Can you explain that?

8 A. I was retained to represent the
9 Governor personally in September of 2007.

10 Q. The investigations involved
11 allegations concerning the Governor as Governor.
12 Does that mean that they were representing him or
13 you were representing him?

14 A. I can't really speak to that.

15 Q. Can't what?

16 A. I cannot speak to that.

17 Q. Well, that's a matter not of
18 conversations with him, not of privilege, but
19 what you understood your role was to be. You
20 have attorneys who are representing the chamber
21 and the Governor. You're representing the
22 Governor. I don't understand. I'm not trying
23 to --

24 A. I represented the Governor in his
25 individual capacity, in his personal capacity.

1 Hirshman

2 Q. So any investigation concerning
3 whether or not the Governor knew as Governor that
4 Nocenti and Pope allegedly had influenced Dopp in
5 the composition of his statement to the Attorney
6 General would be an area for them, not for you to
7 be stepping in as attorney?

8 A. I can't speak to that. I think it is
9 not uncommon in these investigations for counsel
10 for -- for there to be counsel individually and
11 counsel representing the chamber and the Governor
12 and employees of the chamber in their official
13 capacity.

14 Q. Would you anticipate that all of you
15 would be there representing him, you in his
16 personal capacity and they representing him as
17 Governor?

18 A. I can't speak to any anticipation.

19 Q. Did that ever come up?

20 A. No.

21 Q. Did you have any follow-ups to the
22 Constantine conversation with the Governor with
23 any other people besides chamber people and
24 people outside the chamber?

25 For example, did you ever have any

1 Hirshman

2 2008 meeting with Teitelbaum and with Feerick?

3 A. Because the newspapers reported leaks
4 from sources either in or close to the Commission
5 about the nature of their investigation. And
6 those leaks largely concerned, as best I recall,
7 claims about Mr. Nocenti. And I called and asked
8 for a meeting about it.

9 I advised them I was representing the
10 Governor personally, and I called and asked for a
11 meeting.

12 Q. What were the newspaper articles
13 about?

14 A. I don't remember them specifically
15 now. They were in The Daily News and The New
16 York Post in approximately February 2008.

17 Q. And you said they mentioned Nocenti?

18 A. That's correct.

19 Q. In what connection with the Governor?

20 A. He was the governor's counsel.

21 Q. I know. But what did the article
22 have to say more than that he was the governor's
23 counsel?

24 A. I believe the articles, which you can
25 look at yourself, concerned these, certain of

1 Hirshman
2 these allegations that were reported by
3 Mr. Hermann to Mr. Constantine as having come
4 from Mr. Teitelbaum and being a subject of
5 investigation.

6 Q. So you met with Feerick and you met
7 with Teitelbaum.

8 A. Together.

9 Q. I understand. Again, there were
10 allegations concerning -- this had some
11 relationship to Hermann's conversation with
12 Constantine?

13 A. It related to the subject matter of
14 whether or not -- the subject matter of whether
15 Nocenti had improperly influenced Dopp. That's
16 what the newspaper articles were reporting. They
17 were reporting the subject matter of the
18 investigations. And those were -- newspaper
19 articles were in February. They may have
20 reported other things, I don't remember
21 specifically.

22 (A pause in the proceedings.)

23 Q. Ms. Hirshman, there was an article by
24 Dicker of The New York Post on January 7th, 2008
25 in which he wrote that, "The Commission on Public

1 Hirshman

2 Q. Could you? I'd appreciate that.

3 MS. OSTERER: Was the February 2008
4 meeting that you had with Herbert
5 Teitelbaum and Dean Feerick also attended
6 by Lloyd Constantine?

7 THE WITNESS: Yes.

8 MS. OSTERER: I have no further
9 questions on that.

10 Q. Ms. Hirshman, anything you wish to
11 add to the record?

12 A. No.

13 Q. I would appreciate, can you make a
14 copy of that February article available to us?

15 A. I will look for the articles. My
16 recollection is, there were two articles.

17 Q. Both in February?

18 A. My recollection is that that's
19 when -- that those were the precipitating cause
20 for the meeting.

21 Q. Okay. I'd appreciate that. My PR
22 person was thorough. I don't have that here.

23 MR. FISCH: Okay, thank you both.

24 MR. BROCHIN: Okay.

25 (Time noted: 11:11 a.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, DAVID LEVY, CSR, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that the foregoing proceedings were taken before me on October 27th, 2008;

That the within transcript is a true record of said proceedings;

That I am not connected by blood or marriage with any of the parties herein nor interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th of October, 2008.

DAVID LEVY, CSR

