

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2015-02080**

**Between**

**DAVID LOPEZ**

**Claimant**

**AND**

**DR. LINCOLN DOUGLAS**

**MINISTER OF ARTS AND MULTICULTURALISM**

**Defendant**

**Before The Honourable Mr. Justice Seepersad**

Appearances:

1. Ms. D. Peake S.C., Mr. R. Nanga and Ms. Natasha Bisram for the Claimant
2. Ms. K. Seenath, Mr. R. Ramcharitar and Mrs. Kamala Mohammed-Carter for the Defendant

**Date of Delivery: 5<sup>th</sup> November, 2015**

## DECISION

1. Before the Court for its determination is a claim for judicial review of the decision of the former Minister of Arts and Multiculturalism (the Defendant) to terminate the appointment of the Claimant as a Commissioner to the Board of the National Carnival Commission (NCC).
2. The claim was commenced by the Claimant's *ex parte* application for leave to apply for judicial review filed on June 18<sup>th</sup>, 2015. In support of the application was the Claimant's affidavit, also filed on June 18<sup>th</sup>, 2015 ("the Claimant's affidavit"). Leave was granted to apply for judicial review on June 24<sup>th</sup>, 2015 and to rely on the Claimant's affidavit in support of the fixed date claim form that was to be filed. Pursuant to the leave granted, the Claimant filed his Fixed Date Claim Form on June 29<sup>th</sup>, 2015.
3. In opposition to the claim, the Defendant filed his affidavit on August 25<sup>th</sup>, 2015 ("the Defendant's affidavit").
4. On September 22<sup>nd</sup>, 2015 the Claimant filed an affidavit in response to the Defendant's affidavit ("the Claimant's affidavit in response"). The Claimant's affidavit in response was filed without prejudice to an application to strike out certain paragraphs of the Defendant's affidavit.
5. By an Application filed on the 9<sup>th</sup> September, 2015 the Claimant applied to the Court pursuant to **Part 31.3(1)** of the Civil Proceedings Rules ("**CPR**") and/or under its inherent jurisdiction of the Court, to strike out certain paragraphs and exhibits from the Defendant's affidavit.
6. The said application was determined by the Court on the 17<sup>th</sup> September 2015 and the Court's order was as follows:

*“ i. Save for the objection made in relation to paragraph thirteen (13) of the affidavit of Dr. Lincoln Douglas filed on 25<sup>th</sup> August, 2015 all the other objections raised in the Notice of Application filed herein are dismissed;*

*ii. In relation to paragraph thirteen (13) of the said affidavit of Dr. Lincoln Douglas the words “A copy of one such letter of complaint dated 18<sup>th</sup> March, 2015 is attached hereto and marked “HLD6” are hereby struck out and the exhibit “HLD6: is hereby struck out;*

*iii. There shall be no order as to costs on the Notice of Application.”*

7. By way of the fixed date form filed the Claimant sought the following reliefs:

“a. A declaration that the decision of the Defendant as communicated to the Claimant by letter dated April 10<sup>th</sup>, 2015 to terminate the appointment of the Claimant as a Commissioner to the Board of the National Carnival Commission (“NCC”) was:

*(i) illegal and/or unauthorized or contrary to law and/or ultra vires and/or in excess of jurisdiction;*

*(ii) unreasonable and/or irrational;*

*(iii) based on an absence of evidence on which a finding or assumption of fact could reasonably be based;*

*(iv) in breach of the principles of natural justice;*

*(v) actuated by bad faith and/or amounted to an abuse of power;*

b. An order of certiorari to remove into this Honourable Court and to quash the decision referred to in paragraph (a) above;

c. Costs;

d. Such other orders, directions or writs as the Court considers just and as the circumstances warrant, pursuant to section 8(1)(d) of the Judicial Review Act.”

## The Claimant's case

8. The Claimant is the President of the National Carnival Bands Association (NCBA) and he was appointed by the Defendant to the Board of the NCC for a period of 2 years with effect from 4<sup>th</sup> December 2014. Under section 5 of the National Carnival Commission Act (NCC Act), the Claimant was appointed as the NCBA's nominee to the Board. The Claimant, prior to the aforesaid appointment had previously served for 2 years as a Commissioner on the Board.
9. Following Carnival 2015, the Defendant requested the NCC to provide a report on the finals of the competitions run by the various special interest groups/representative organisations. By letter dated 20<sup>th</sup> February, 2015, the NCC wrote to the NCBA. This letter was addressed to the Claimant in his capacity as the NCBA's President and it was requested that the information be provided by the 23<sup>rd</sup> February, 2015 for this report, the information requested were as follows:
- (i) A listing of the placements of all the competitions;
  - (ii) Copies of the score sheet for all participants;
  - (iii) A listing of any competitor who may have been disqualified or had points deducted and the reason/s for this action;
  - (iv) A listing of the Prize Structure
10. By letter also dated 20<sup>th</sup> February, 2015 the Claimant in his capacity as the NCBA's President responded to the request by stating, inter alia;

*“Item 1 – A listing of placements can be found on the Association's website [www.ncbatt.com](http://www.ncbatt.com).*

*Item 2 – Score sheets are confidential and a copy is only available to participants who request in writing a copy of their individual score sheet from the Chief Adjudicator.*

*Item 3 – A penalty sheet is attached to the score sheet indicating the deductions and reasons, and this is also confidential.*

*Item 4 – The prizes are available for competitors who make a request to the NCBA for the prize awarded to them, in the competition in which they are registered to participate and in which they have placed.”*

11. By letter dated 10<sup>th</sup> April, 2015 the Defendant terminated the appointment of the Claimant pursuant to section 5(2)(a) of the NCC Act with immediate effect.

12. The Defendant in the letter of 10<sup>th</sup> April 2015 stated inter alia:

*“Your deliberate refusal to comply with requests for the provision of critical reports and your persistently uncooperative conduct are prejudicial to the interests of your representative organisation and challenges the achievement of the objectives of the NCC. As a result, it has become necessary to take appropriate action”*

13. The Claimant stated that he was never previously accused by the Defendant of being unable to perform his duties as a Commissioner, nor was he ever previously informed that he had performed his duties in a negligent manner or that he had acted in dereliction of duty.

14. The Claimant further stated that at no time prior to the issue of the letter of termination was he given an opportunity to answer the very serious allegations raised in the Defendant’s letter of the 10<sup>th</sup> April, 2015. He deposed that he was never advised, inter alia, that he was uncooperative nor was he provided with particulars of his alleged deliberate refusal to comply with requests for the provision of critical reports and stated that he was never furnished with any particulars of any alleged persistent uncooperative conduct.

15. The Claimant also pointed out that at no time was there any request of him, in his capacity as a Commissioner to the Board, to provide critical reports.

## **The Defendant's case**

16. The Defendant deposed that subsequent to the Claimant's appointment to the Board that he had cause to verbally raise issues of performance and attitude, with the Claimant.
17. The Defendant also deposed that he made similar requests, as those contained in the letter dated 20<sup>th</sup> February, 2015, to Pan Trinbago and TUCO and that these bodies complied with the requests within the requested time frame.
18. The Defendant further deposed of having received what he describes as "the NCBA's response" to his request and that same was tantamount to a refusal to supply the information that was requested.
19. The Defendant, at paragraph 4 of his affidavit stated that by letter dated 9<sup>th</sup> March 2015 the NCC informed him that pursuant to the request for information from the special interest groups, the NCC received the requested information from TUCO and Pan Trinbago. The letter noted that the NCBA did not submit the requested information but had sent a letter dated 20<sup>th</sup> February, 2015, which was attached for the Defendant's consideration.
20. According to the Defendant after he received the NCBA's letter of 20<sup>th</sup> February 2015, he spoke to the Chairman of the NCC expressing concerns and requested that she inform the Claimant that his letter did not comply with the request and to ask him to submit the information as requested.
21. The Defendant testified that by letter dated 17<sup>th</sup> March, 2015 he wrote to the Chairman of the NCC expressing regret at the correspondence received from the NCBA and stated:

"The NCBA is now incorporated by statute and section 4(d) of the NCBA Act indicates that one of their objectives is to "represent the interests of the Association and its members in dealing with the State, the National Carnival Commission of Trinidad and Tobago and other persons...". Failure to comply

with this request may be tantamount to a dereliction of duty in this regard and is contrary to serving the interests of their members.

The request for information should therefore be reiterated, highlighting this challenge...”.

22. The Defendant acknowledged that the NCBA requested particulars from him concerning the allegations contained in the Claimant’s termination letter and that he responded that he was seeking legal advice.

### **The Claimant’s evidence in Reply**

23. The Claimant denied that the Defendant ever raised concerns relative to his performance as a Commissioner with him and he exhibited a copy of Pan Trinbago’s response to the NCC request which was exhibited as DL1 to the said affidavit in Reply.

### **Issues**

24. The issues that fall to be determined, on the facts before the Court and in accordance with the grounds upon which the Claimant’s case was premised, are as follows:
- i. Whether the Defendant’s decision was illegal, irrational or unreasonable, ultra vires and in excess of jurisdiction and/or whether it was made in circumstances that were procedurally improper.

### **The Law**

25. Lord Diplock in **Council of Civil Service Unions v Minister for the Civil Service** [1984] 3 WLR at 1174 at page 1196 stated:
- “By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v. Bairstow* [1956] A.C. 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

26. By virtue of letter dated 10<sup>th</sup> April, 2015 the Claimant's appointment was terminated and the Defendant contended that the decision was in accordance with section 5(2)(a) of the NCC Act which provides as follows:

"A Commissioner appointed under subsection (1) shall serve for a period of two years, but his appointment may be terminated by the Minister-

(a) where he is unable to perform his duties, performs his duties in a negligent manner or is in dereliction of duty;"

The sub-section identified three statutory grounds upon which termination by the Minister can be based, namely:



- (i) the inability of the Commissioner to perform his duties [as Commissioner];
- (ii) the negligent performance of the duties of a Commissioner;
- (iii) a dereliction of duty by a Commissioner.

27. Outside of the statutorily outlined circumstances under section 5(2)(a) of the NCC Act, the Defendant had no power to terminate a Commissioner's appointment and therefore any termination that fell outside the ambit of the section 5 (2) (a) of the said act would be illegal, ultra vires, null and void. In the letter dated 10<sup>th</sup> April, 2015, the Defendant did not allege an inability to perform, negligent performance or dereliction of duty on the part of the Claimant. The letter stated that there was a deliberate refusal to comply with requests and that there was persistent uncooperative conduct which was prejudicial to the interests of NCBA and which challenged the achievement of the objectives of the NCC, these matters do not, without more, satisfy the statutorily defined grounds for termination.

28. The Defendant had no locus to determine whether or not the Claimant's conduct was prejudicial to the interests of the NCBA and even, if the Claimant's conduct was indeed prejudicial to the interests of the NCBA, such conduct did not relate to the Claimant, in his capacity as a Commissioner of the NCC. Any inability to fulfil his duties or negligence or dereliction of duty must have been in reference to the Claimant's performance as a Commissioner and not in any other capacity. Notwithstanding the Defendant's assertions that there was a failure by the Claimant to comply with requests for the provision of critical reports and that he was persistently uncooperative, no documentary evidence was adduced to support same. No record was produced that detailed the instances of the alleged persistent lack of cooperation, nor was there any recorded reference to instances where reports were requested by the Defendant and the Claimant failed to provide same. The Defendant also failed to link the conduct which he characterised as uncooperative to the Claimant's capacity and performance as a Commissioner. If the Defendant felt that the NCBA's response was inadequate he should

have sought clarification and/or further information but it appears that the Defendant simply attributed the NCBA's response to the Claimant.

29. Given the fact that mere months prior to his termination, the Claimant was reappointed by the Defendant, it is not unreasonable to conclude that the Defendant had no significant problems with the Claimant's performance of his duties as a Commissioner at least as at December, 2014, since any such problems may have militated against a reappointment. Any persistent lack of cooperation or failure to provide critical reports must therefore have occurred between December, 2014 and the date of the Claimant's termination but no evidence in support of any such circumstance was placed before the Court.

30. **On the facts, the Court formed the view that there was no factual foundation upon which a rationale or reasoned conclusion that any of the statutory grounds for termination as outlined by section 5(2) of the NCC Act, could have been based. The Defendant could not have reasonably formed the view that there was even a prima facie case to justify termination pursuant the said section and the Defendant erred and acted outside the scope of his jurisdiction when he purported to terminated the Claimant's appointment as a Commissioner pursuant to section 5 (2) of the Act. Notwithstanding the Court's conclusion as aforementioned the Court proceeded to also consider whether the Defendant's decision was a breach of natural justice, procedurally improper and/or whether he acted in bad faith.**

31. Section 20 of the **Judicial Review Act Chap. 7:08** ("the JRA") provides:

*"An inferior court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall exercise that duty or perform that function in accordance with the principles of natural justice or in a fair manner."*

32. **The law has developed in such a way so as to impose standards of procedural fairness that must include inter alia, the right to a fair hearing and the absence of**

**bias in the decision making process. There is an obligation imposed upon the decision makers to clearly indicate the matters that are considered as being of importance to the decision that he has to be made, to the affected party and to afford the affected party an opportunity to respond.**

33. In **R v P Borough Council ex parte S** [1999] LGR 203 at page 234 stated:

“One of the basic requirements of procedural fairness is that the decision-maker must disclose to the person affected, in advance of the decision, information of relevance to the decision so that the person affected has an opportunity to controvert it or to comment on it. For example: (a) the general principle relating to procedural fairness was stated by Lord Bridge of Harwich in *Lloyd v Mahon* (*supra.*), at pp 702–703:

“In particular, it is well established that when a statute has conferred on anybody the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.”

34. In **Ridge v Baldwin** [1963] 2 All ER 66 at 102 per Lord Morris of Borth-y-Gest:

*“It is well established that the essential requirements of Natural Justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges of allegations or suggestions that he has to meet...here is something which is basic to our system: the importance of upholding it far transcends the significance of any particular case.”*

35. **The requirement for fairness has to be viewed having regard to the particular factual context in which a decision was made and natural justice must be regarded as a factual and contextual principle.**

36. The law in this area was restated by the Privy Council in **Permanent Secretary, Ministry of Foreign Affairs & Patrick Manning v Feroza Ramjohn** [2011] UKPC 20 where the Judicial Committee upheld the decision of the Court of Appeal in a case

involving the decision of the Prime Minister to rescind the appointment of Ms. Ramjohn to the London High Commission on the grounds of a report which was not disclosed to her and of which she became aware only after judicial review proceedings had been filed. Lord Brown said:

*[39] As is trite law, the requirements of fairness in any given case depend crucially upon the particular circumstances – see, for example, R v Secretary of State for the Home Department ex parte Doody [1994] 1 AC 531, 560, [1993] 3 All ER 92, [1993] 3 WLR 154. Almost always, however, if a decision is to be taken against someone on the basis of an allegation such as that made here, fairness will demand that they be given an opportunity to meet it. A characteristically illuminating statement of the law appearing in Bingham LJ's judgment in R v Chief Constable of the Thames Valley Police ex parte Cotton [1990] IRLR 344 (para 60) deserves to be more widely known:*

*“While cases may no doubt arise in which it can properly be held that denying the subject of a decision an adequate opportunity to put his case is not in all circumstances unfair, I would expect these cases to be of great rarity. There are a number of reasons for this:*

- 1. Unless the subject of the decision has had an opportunity to put his case it may not be easy to know what case he could or would have put if he had had the chance.*
- 2. As memorably pointed out by Megarry J in John v Rees [1970] Ch 345 at page 402, experience shows that that which is confidently expected is by no means always that which happens.*
- 3. It is generally desirable that decision-makers should be reasonably receptive to argument, and it would therefore be unfortunate if the Complainant's position became weaker as the decision-maker's mind became more closed.*
- 4. In considering whether the Complainant's representations would have made any difference to the outcome the court may unconsciously stray from its proper province of reviewing the propriety of the decision-making process into the forbidden territory of evaluating the substantial merits of a decision.*
- 5. This is a field in which appearances are generally thought to matter.*

*6. Where a decision-maker is under a duty to act fairly the subject of the decision may properly be said to have a right to be heard, and rights are not to be lightly denied.”*

**37. In the instant case the Claimant was not informed prior to his termination that the response issued by him on the 20<sup>th</sup> February, 2015 amounted to a refusal to respond to the request of even date. As was alluded to earlier, there was also no evidence to support the position advanced that the Claimant had engaged in persistent uncooperative conduct or that he in his capacity as a Commissioner had refused to comply with requests to provide critical reports.**

**38. There is also no evidence to suggest that the Claimant was afforded proper notice of any such allegation nor is there any evidence that he was given any opportunity to be heard and/or to respond prior to the decision by the Defendant to terminate his appointment and/or no fair opportunity was extended to the Claimant to correct or contradict the Defendant’s views. By letter dated 17<sup>th</sup> March, 2015 written to the Chairman of the National Carnival Commission, the Defendant stated that failure to comply with the request may be tantamount to a dereliction of duty in that regard and was contrary to serving the interests of their members. The letter concluded:**

*“The request for information should therefore be reiterated, highlighting this challenge. You are kindly asked to apprise me of developments in relation to this matter, with recommendations for relevant action as deemed necessary.”*

**39. There is no adequate evidence that the contents of the said letter was brought to the attention of the Claimant and the Defendant’s assertions at paragraph 21 of his affidavit that he was informed verbally by the Chairman of the NCC that his concerns and request were transmitted to the NCBA and the Claimant is not sufficient.**

40. **The Court therefore formed the view that the Claimant was not duly informed by the Defendant of the factors and/or considerations that may have weighed against his interests nor was he informed of the gist of the case that he had to answer, prior to the Defendant’s decision to terminate his appointment.**
41. **The Court noted with a measure of disquiet, the Hansard extract of 14<sup>th</sup> April 2015 which was exhibited as DL13 to the Claimant’s affidavit. Four days after the termination letter had been issued, the Defendant informed the Parliament that the reason for the Claimant’s termination was not related to issues of the auditing of accounts but “very specifically to a request made to the NCBA to submit reports on Carnival 2015 as it relates to competitions held, to results, to scores, to a range of requests that were presented to all three of the special interest groups and that the NCBA, however, refused to submit same and said it is none of the Minister’s business.”**
42. **In *Congreve v Home Office* [1976] QB 629, it was held by the Court of Appeal that where a licence was revoked for no good reason, this will amount to a misuse of power and the courts can step in and set aside the revocation. The Court established that it would intervene where statutory power is exercised arbitrarily and unreasonably or for an improper purpose. Lord Denning stated at page 649:**

“Now for the carrying out of the statutory provisions. Undoubtedly those statutory provisions give the Minister a discretion as to the issue and revocation of licences. But it is a discretion which must be exercised in accordance with the law, taking all relevant considerations into account, omitting irrelevant ones, and not being influenced by any ulterior motives.... If the licence is to be revoked—and his money forfeited—the Minister would have to give good reasons to justify it ... But, when the licensee has done nothing wrong at all, I do not think the Minister can lawfully revoke the licence, at any rate, not without offering him his money back, and not even then except for good cause. If he should revoke it without giving reasons, or for no good reason, the courts can set aside this revocation and restore the licence. It would be a misuse of the power conferred on him by Parliament: and these courts have the

authority—and I would add, the duty—to correct a misuse of power by a Minister or his department, no matter how much he may resent it or warn us of the consequences if we do. *Padfield v Minister of Agriculture, Fisheries & Food* is proof of what I say. It shows that when a Minister is given a discretion—and exercises it for reasons which are bad in law—the courts can interfere so as to get him back on to the right road. Lord Upjohn ([1968] 1 All ER at 719) put it well when he said:

“... [the Minister] is a public officer charged ... with the discharge of a public discretion affecting Her Majesty's subjects; if he does not give any reason for his decision it may be, if circumstances warrant it, that a court may be at liberty to come to the conclusion that he had no good reason for reaching that conclusion and order a prerogative writ to issue accordingly.”

43. It appears that the Defendant’s decision to terminate the Claimant’s appointment was based on his view that the NCBA had refused to comply with a request to submit reports on Carnival 2015. Even if this was accurate and there was such a refusal by the NCBA, such a circumstance did not impact upon the Claimant’s discharge of his duties and obligations as a Commissioner on the NCC Board.

44. **Public officials should always take conscious steps to ensure that personal concerns and egos are not factored into the decision making process. A Minister may be justified in making a request for information from special interest groups that fall under his Ministry’s purview especially when such groups receive state funding. The issue of public accountability in relation to any such allocation and the use of state funds must always be at the forefront of the national agenda. Transparency is fundamental if those who govern are serious about inculcating and engendering public trust and confidence in the process of governance. The abuse of public trust erodes the respect that the citizenry has for the State and a lack of respect inevitably leads to a breakdown of the rule of law. There is no evidence that could reasonably lead the Court to conclude that the Defendant acted reasonably when he formed the view that the Claimant was deliberate in his refusal to supply the information that was requested or that he was uncooperative while discharging his duties as a Commissioner. The Defendant stated that all the bodies associated with Carnival namely the NCBA, Pan Trinbago and TUCO had been requested to supply**

information and that only the NCBA refused to comply. The Defendant also stated that Pan Trinbago and TUCO complied within the requested time period. This assertion was inconsistent with the evidence, the NCC in fact wrote to Pan Trinbago in order to follow up with the initial request for information. Further the Defendant stated that Pan Trinbago had provided the names of the competitors who were disqualified as well as a list of the prizes but the Claimant exhibited in his affidavit in reply, Pan Trinbago's response to the NCC and Pan Trinbago in fact provided only the list of placements. The other items that were requested including the names of the competitors who were disqualified were not supplied.

45. The Court noted that the information provided by Pan Trinbago, save for the list of placements was similar to the information that was provided by the NCBA. The Defendant apparently took no issue with Pan Trinbago's response but had an issue with the NCBA's response. The Defendant did not address the issue involving the Claimant's termination in a reasoned and rationale manner and it appears that he took into account irrelevant facts and did not treat with the Claimant fairly or in a manner that accorded with the principles of natural justice and he failed to act with procedural fairness.

46. In the circumstances the Defendant's decision to terminate the Claimant's appointment as a Commissioner under section 5(2)(a) of the National Carnival Commission of Trinidad and Tobago Act Chp. 42:01 by letter dated 10<sup>th</sup> April, 2015 was unlawful, irrational, procedurally improper and was one which was characterised by a failure to observe the rules of natural justice, and consequently this Court orders as follows:

- i. The Court hereby declares that the decision of the Defendant communicated to the Claimant by letter dated 10<sup>th</sup> April, 2015 to terminate his appointment as a Commissioner to the board of the National Carnival Commission was



**and is unlawful, irrational, procedurally improper and in contravention of the principles of natural justice.**

- ii. An order of certiorari is hereby issued and the decision to terminate the appointment of the Claimant as a Commissioner to the board of the National Carnival Commission is hereby quashed.**
  
- iii. The Defendant is to pay to the Claimant costs associated with this action to be assessed by this Court in default of agreement.**

.....  
**FRANK SEEPERSAD**  
**JUDGE**