



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/040/
UNAT/1703
Judgment No.: UNDT/2011/117
Date: 30 June 2011
Original: English

Before: Judge Marilyn J. Kaman

Registry: New York

Registrar: Santiago Villalpando

PANDEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Salim Shaikh

Counsel for Respondent:
Jorge A. Ballesterro, UNICEF

Introduction

1. The Applicant appealed to the former United Nations Administrative Tribunal against the Secretary-General's 2 December 2008 decision to compensate the Applicant in the amount of two years' net base salary following a determination by the Joint Appeals Board ("JAB") that the Applicant's due process rights had been violated in the non-renewal and non-extension of her fixed term contract with the United Nations Children's Fund ("UNICEF"). The Applicant has confirmed to the Dispute Tribunal that she has received payment of the two years' net base salary, but the Applicant now contends that the award made was insufficient.

2. The Applicant also filed a formal complaint of harassment, sexual harassment and abuse of authority against the Country Representative of UNICEF New Delhi Office, as well as against the Applicant's immediate supervisor in the office. The Applicant submits that these matters are linked to the non-renewal and non-extension of her fixed-term contract, as will be delineated herein.

3. The present case is adjudicated by the Dispute Tribunal after the case was transferred to it on 1 January 2010 from the former United Nations Administrative Tribunal as a result of the abolition of the latter Tribunal.

Facts

4. On 30 April 2007, the Applicant filed a statement of appeal with the JAB against the decisions not to renew her fixed-term contract beyond 31 December 2006, when she was on extended sick leave, and against the non-extension of her appointment to cover that sick leave.

5. On 2 December 2008, the JAB panel adopted its Report No. 2022 in relation to the Applicant's statement of appeal to the JAB.

6. Some of the circumstances on which the Applicant's JAB appeal was based included the fact that the Applicant had submitted a formal complaint of harassment, sexual harassment and abuse of authority against the Country Representative of UNICEF New Delhi Office, as well as against the Applicant's immediate supervisor in the office. UNICEF appointed a three-member team to investigate the Applicant's complaint and ultimately concluded that "clear and convincing evidence" did not exist to support the Applicant's allegations, and the case was closed. The Applicant requested a copy of the final investigation report and witness statements, and also requested that another investigation be conducted. All of these requests were denied by UNICEF, which later informed the Applicant that since no administrative decision had been taken against her, the Applicant could not appeal against the findings of the investigation team.

7. On 30 March 2007, the Applicant instituted a formal complaint with the Deputy and Assistant Commissioners of Police, New Delhi, against the Country Representative and against the Applicant's supervisor for, *inter alia*, harassment and criminal activities, and against other United Nations officials for acts of omission and commission in her case against the Country Representative and the supervisor.

8. On 4 September 2007, the Applicant wrote to the Secretary-General, asking that immunity against the Country Representative be lifted or waived, so that the case could proceed against him in Indian courts. It is not clear from the record if a reply was received with regard to this issue.

9. In its deliberations, the JAB panel had access to the full and unredacted investigation report on the Applicant's charges of harassment, sexual harassment and abuse of authority.

10. The JAB panel decided to carry out its considerations of the Applicant's case under three main rubrics:

- a. The time-bar issue (not relevant for the Tribunal's decision here);

b. The non-renewal of the Applicant's contract while she was on sick leave;

c. The non-renewal of the Applicant's contract on the basis of performance and linkage of her non-renewal claim to her sexual harassment case, bearing in mind the high profile nature of that case.

11. The JAB panel specifically noted that it "was aware that it was not mandated to reopen the sexual harassment case that had already been dealt with by a special investigation team established by UNICEF" (JAB Report No. 2011, para. 25). For the JAB panel, the issue was whether the Applicant's due process rights had been observed in the non-renewal of her contract (*id.*) The JAB panel concluded that the Applicant's due process rights had been violated for having denied the Applicant a "basic right", which was the extension of her contract while she was on certified sick leave.

12. On the issue of whether the Applicant's allegations of harassment, sexual harassment and abuse of authority were related to the non-renewal and non-extension of her contract, the JAB panel found that it was not in a position to re-open the investigation into the Applicant's charges against her supervisors. The JAB panel concluded, at para. 42:

(c) It was not within the Panel's mandate to reopen the investigation into the [Applicant's] sexual harassment charges against the [Applicant's] supervisors. To the Panel, it appeared that the Investigation Team had done a thorough job in attempting to unravel what was basically a "he said/she said" case and that the [Applicant's] due process rights had been upheld.

13. The JAB panel unanimously agreed to recommend that compensation be set at two years' net base salary plus interest, or USD76,800, for violation of the Applicant's due process rights in connection with the non-extension and non-renewal of her contract.

14. By a letter dated 18 March 2009, the Deputy Secretary-General (“DSG”) transmitted a copy of the JAB report to the Applicant and informed her that the Secretary-General decided to accept the JAB panel’s findings for compensation to the Applicant in the amount of two years’ net base salary in effect on 31 December 2006.

15. On 15 June 2009, the Applicant filed an application with the former United Nations Administrative Tribunal, appealing the Secretary-General’s decision of 18 March 2009. In her application, the Applicant asked the Tribunal to:

- a. Rescind the decision of the Respondent not to renew her fixed-term appointment;
- b. Reinstatement her in her original position with all benefits effective on 1 January 2007;
- c. Initiate punitive action against “those accountable for causing irreparable loss to her career with the UN and her honour and reputation”;
- d. Award appropriate additional damages and financial relief of 36 months’ net base salary “over and above the compensation awarded by the JAB for the irreparable damage caused to the dignity, integrity, career of the Applicant especially with the [United Nations], mental and emotional torture to which the Applicant was subjected to during the last three years since she is running from post to pillar to seek justice from the Management”;
- e. Additionally, grant salary for the period January 2007 to 5 June 2007, the period for which the Applicant’s sick leave was “deemed to be approved by the [United Nations] Medical Director”;
- f. Hold her two supervisors responsible for “their nefarious acts of severely damaging the Applicant’s civil reputation, career prospects, etc. and to make them personally liable to pay damages of USD100,000 each to the Applicant”; and

g. Order the Secretary-General to waive the immunity enjoyed by her two supervisors in order to “facilitate the Applicant to pursue the criminal proceedings already instituted with the law enforcing authorities in India”.

Scope of the case

Article 10.5 of the Statute of the Dispute Tribunal

16. Pursuant to paragraph 28 of General Assembly resolution 63/253 of 24 December 2008 (“... the Tribunal ... shall not have any powers beyond those conferred under [the Statute]”) and art. 10.5 of the Statute of the Dispute Tribunal, the only permissible forms of relief that the Tribunal may order are the following :

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation, which shall normally not exceed the equivalent of two years’ net base salary of the Applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation and shall provide the reasons for that decision.

Relief requested by the Applicant, as described in para. 15 (c), (f) and (g) above

17. With reference to the relief sought by the Applicant, as outlined in para. 15 above, it is clear that the Dispute Tribunal lacks the authority to “initiate punitive action” (subparagraph c), to hold two of the Applicant’s superiors responsible for “their nefarious acts ... and to make them personally liable to pay damages of USD100,000 each to the Applicant” (subparagraph f), or to “order” the Secretary-General to waive the immunity enjoyed by certain individuals (subparagraph g). Furthermore, the Applicant has not formulated any such actions as violating her

contractual rights for which the Tribunal could possibly grant specific performance under art. 10.5(a) of the Statute (see, e.g., *Aly et al* UNDT/2010/195). These findings are without prejudice to the competence that the Tribunal holds under art. 10.8 of the Statute (“The Dispute Tribunal may refer appropriate cases to the Secretary-General of the United Nations or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability”).

18. The Tribunal finds that it does not have authority to order any of the means of relief requested by the Applicant as described in para. 15 (c), (f) and (g) above.

Relief requested by the Applicant, as described in para. 15 (a), (b) and (e) above

19. As described in para. 15 (a), (b) and (e) above, in essence, the Applicant requests that she be re-instated in the position for which her appointment was not renewed with full pay, including also for the time when she allegedly was sick, from January 2007 to 5 June 2007.

20. In her 18 March 2009 letter to the Applicant, the DSG confirmed the JAB panel’s recommendation regarding compensation and stated, *inter alia*, that:

The Secretary-General has examined your case in the light of the JAB’s report and all the circumstances of the case. With respect to the non-renewal of your fixed-term appointment, the Secretary-General has taken note of the JAB’s observation that, “UNICEF was inconsistent in its approach and the reasons it provided for [your] non-renewal, on the one hand discounting performance as an issue and stating that fixed-term contracts can simply be permitted to expire automatically without notice or reason provided and on the other, that [you] did not meet performance standards”. Consequently, the Secretary-General has decided to accept the JAB’s finding that ‘UNICEF had failed in its duty towards [you] in this respect, depriving [you] of a basic right, the right to have your performance reviewed and therefore of due process. The lack of updated PERs [Personnel Evaluation Reports] demonstrated an abuse of authority on the part of [your] supervisors and demonstrated that [your] non-renewal was badly managed’. With respect to the non-extension of your fixed-term appointment to cover your sick leave, the Secretary-General has taken note of and accepts the JAB’s finding that your due process rights had

been violated by ‘the failure of the UNICEF Administration to extend [your] contract while [you were] on certified sick leave’.

In light of the foregoing, the Secretary-General has decided to grant you compensation in the amount of two years net base salary at the rate in effect on 31 December 2006, as compensation for the violation of your rights.

21. Thus, the Applicant has already been compensated for loss of the income she would have obtained under a renewed contract for the entire period from the expiry of the previous contract on 31 December 2006 and two years ahead, i.e. until 31 December 2008. As for reinstating her in the position, the renewed (hypothetical) contract would have since expired, so it is not possible for the Dispute Tribunal to do so under art. 10.5 of its Statute.

22. The Tribunal finds that it does not have the authority to order any of Applicant’s claims mentioned under para. 15 (a), (b) and (e).

Relief requested by the Applicant, as described in para. 15 (d) above

23. In Order No. 276 (NY/2011) of 14 October 2010, this Tribunal found that:

... the only issue before it is the question of the sufficiency of the compensation to the Applicant for the violation of her due process rights in her non-renewal case, namely two years’ net base salary plus interest or USD76,800

24. With the remaining matter before the Tribunal being the sufficiency of the compensation paid to the Applicant for violation of her due process rights in the decisions not to renew her fixed-term contract beyond 31 December 2006 when she was on extended sick leave and the non-extension of her appointment to cover that sick leave, the question arises whether the Tribunal is also required to examine, once more, the underlying merits of the Applicant’s due process claims.

25. As to that point, the Applicant advances contradictory contentions. She seeks to keep the JAB decision intact (finding that she was entitled to compensation as a result of the violation of her due process rights, although the Applicant contends that

the compensation was inadequate), while at the same time, she seeks to set aside the JAB decision and to open inquiry into the underlying merits of her case, including the issues of harassment, sexual harassment and abuse of authority. The Applicant's 31 May 2010 submission states, *inter alia*, (underline in the original, italics added by the Tribunal):

(iii) It is respectfully submitted that the appeal of the Applicant is not only limited to the award of compensation for the wrong done (which is admitted by the Respondent to the extent of non-renewal of [the fixed-term appointment], ... etc.) but the other core issues e.g. sexual harassment to the extent of forceful attempt to rape and defame of the Applicant due to the wide publicity of the case in the print and electronic media, even which was echoed in the [United Nations Headquarters]. *Therefore, it is prayed that the appeal submitted may humbly be considered in its totality.*

(iv) The Applicant is highly convinced and firmly believes that the compensation was inadequate and disproportionate to the extent of damage caused to her career with the UN, her civil reputation, mental and physical impairment, stress/agonny and depriving the single parent with three children of their livelihood. The compensation was a normal one. The case is an exception one as is fully explained in the appeal and the Applicant respectfully cites a few of the jurisprudence of the UNAT, in this connection...

26. The Tribunal is convinced that the Applicant's contentions cannot exist simultaneously.

27. The only administrative decisions appealed against were the decisions on the non-renewal and non-extension of the Applicant's contract while she was on sick leave, and those are the only decisions under consideration by the Tribunal at this time. The Applicant's claims of harassment, sexual harassment and abuse of authority presented to the JAB were not independent claims in and of themselves, but merely constituted support for the Applicant's contention that her due process rights had been violated in the context of the non-renewal and non-extension. As the JAB panel correctly noted, it was not for the JAB panel (nor is it for this Tribunal) to make an independent investigation into the conduct of the United Nations officials named

by the Applicant in her formal complaints of harassment, sexual harassment and abuse of authority. Such an inquiry is to be undertaken by other authorities.

28. In short, at this juncture and considering the posture of the case presented to the JAB and on review by the Dispute Tribunal, the Tribunal determines that it is without authority to re-examine the investigation into the Applicant's sexual harassment charges.

29. The Respondent also submits that the only issue before the Tribunal pertains to the Applicant's request to grant additional compensation, due to her belief that the compensation recommended by the JAB panel and paid by the Respondent was inadequate and disproportionate to the extent of damage caused to her. As stated by the Respondent:

6. It is noteworthy that the Applicant requests the Tribunal to consider her appeal "in its totality", while at the same time denies the Tribunal the possibility of reviewing the findings of the JAB.

7. If the Applicant wants the Tribunal to consider her case *de novo*, "in its totality", then the logical consequence of her request is that if the Tribunal does not agree with the findings of the JAB it may well order the payment of less than two years' net base salary or no compensation at all.

8. The Applicant has failed to comply with the Tribunal's order to explain what makes the Applicant's case an "exceptional case", warranting more than the maximum compensation already awarded and paid. From the examples provided by the Applicant it is clear that the alleged exceptionality is nowhere to be found.

...

17. There exists no further issue to adjudicate besides the Applicant's request for additional compensation, in excess of what the JAB recommended

30. The Tribunal agrees with the Respondent and decides that the only issue before it is the sufficiency of compensation paid to the Applicant for the violation of her due process rights in the non-renewal and non-extension of her contract.

31. The Tribunal affirms its finding of Order No. 276 (NY/2010) determining that the only issue before it is the adequacy of the compensation awarded to the Applicant by the Secretary-General of two years' net base salary effective on 31 December 2006, plus interest, for shortcomings in the decisions taken regarding the non-renewal and non-extension of the Applicant's contract.

32. After making its finding in Order No. 276 (NY/2010), the Tribunal then directed the parties to file and serve final written submissions "limited to the question of the amount of the compensation awarded to the Applicant, including addressing the issue of exceptional circumstances under 10.5(b) of the Statute". Regarding the question whether a hearing was necessary in the case, the Respondent rejected this, and the Applicant wished to examine two witnesses. However, since both proposed witness testimonies merely concerned the question of the Applicant allegedly being sexually harassed, in Order No. 60 (NY/2011) of 28 February 2011, the Tribunal decided to proceed on the papers.

Applicant's submissions

33. In general, the submissions of Counsel for the Applicant in reply to Order No. 276 (NY/2010) were unstructured and referred to issues clearly outside the scope of the present case (despite the fact that Counsel had been properly advised by the Tribunal about the scope of the case in Order No. 276 (NY/2010)). Further, the language used by Counsel for the Applicant was, at times, not suitable for a written submission before the Tribunal.

34. The Tribunal again reminds counsel and applicants of their obligations when making submissions to the Tribunal. These obligations, *inter alia*, include (a) clearly defining the issues of her/his case, as well as the administrative decision s/he wishes to appeal (*Ibrahim* UNDT/NY/115, *Planas* 2010-UNAT-049 and *O'Neill* UNDT/2010/203), (b) articulating the issues in a coherent manner (*Simmons* UNDT/2011/085), and (c) articulating issues that are only relevant to the case (*Simmons* UNDT/2011/085 and the present Judgment).

35. In the following summary, the Tribunal reorganized and rephrased the Applicant's contentions, in an attempt to give relevance within the context of the present case. Insofar as Counsel's submissions were entirely irrelevant or simply inappropriate, the Tribunal has disregarded or has reformulated them. Based thereon, the Applicant's principal contentions may be summarised as follows:

- a. UNICEF deprived the Applicant of at least one, and possibly several, rightful extension(s) of contract;
- b. The Applicant's supervisor made sexual favours "a precondition" for her "future employment";
- c. The Applicant's supervisor, when harassing, sexually harassing and abusing his authority toward the Applicant, acted "in utter defiance and disregard of art. 101.3 of the United Nations Charter [concerning respect for fundamental human rights]" and "acted deliberately in [a] contentious manner against these provisions and demonstrates an official and personal character, not suiting an international civil servant";
- d. The sexual harassment and the "widespread publicity has caused irreparable injury and damage to the official and civil honour, dignity and reputation and had almost reduce[d] her to be in an untouchable state in the society, especially in a country like India, with the very harmful consequences of loss of job depriving the bread and butter of a single parent caring and supporting three children No[t] only [the] Applicant, but her entire family constituting of her three children suffered un-measurable trauma and were relentlessly stigmatized by Indian society"; and
- e. The Respondent "*malafidely* adopted extraordinary measures to frustrate the provision of staff rules and due process procedures e.g. non-preparation of two consecutive PER [Performance Evaluation Reports], advice from the APC [Appointment and Placement Committee] on future

contractual status on completion of four years' service as a national office and thereby approval by the Regional Director, etc.”.

Respondent's submissions

36. In essence, the Respondent contends that the Applicant has not substantiated why the present case is “exceptional” under art. 10.5(b) of the Statute of the Dispute Tribunal for the Tribunal to order the payment of compensation beyond two years' net base salary.

37. Furthermore, the Respondent requests that costs be awarded against the Applicant, in accordance with art. 10.6 of the Statute, for Counsel for the Applicant's “unsubstantiated and outrageous accusations”.

Consideration

38. With respect to the determination whether a case is “exceptional” under art. 10.5(b), the United Nations Appeals Tribunal stated that this provision “does not require a formulaic articulation of aggravating factors; rather it requires evidence of aggravating factors which warrant higher compensation” (*Mmata* 2010-UNAT-092, para. 33).

39. The “aggravating factors” to which the Applicant has pointed in the present case are the following:

a. Had UNICEF not unlawfully refused to renew and extend her contract, she would have worked with the Fund for a longer time than the two years for which she was compensated;

b. The circumstances of the alleged sexual harassment leading to her employment contract not being renewed or extended were so “aggravating” that they justified more than two years' net base salary plus interests in compensation to cover her injuries; and

c. Other “extraordinary” circumstances existed, including the impropriety of the Applicant’s performance appraisal reports not being prepared in time and the Appointment and Placement Committee not being involved in her case.

40. As for the first circumstance, namely whether her contract of employment with UNICEF would have been renewed and extended beyond the two years for which she was compensated, the Applicant has entirely failed to provide any evidence to corroborate that any such additional renewals and/or extensions were likely; rather it would seem that both the Applicant and her supervisor wanted to terminate the employment relationship (see more in para. 43 below). Under *Mmata*, without such evidence, the Tribunal cannot establish that any “aggravating factors” existed to justify that the Applicant case is “exceptional” pursuant to art. 10.5(b) of the Statute of the Dispute Tribunal.

41. Concerning the Applicant’s sexual harassment allegations, for these to constitute “aggravating factors” in the present case, the Applicant must be able to establish that there was a causal link between these circumstances and the eventual termination of her appointment, since the issue in question is the adequacy of the compensation for the non-renewal and non-extension of the Applicant’s contract and not for her allegedly being sexually harassed (see paras. 29–31 above). In other words, since this case relates to an appointment issue, it will not be sufficient for the Applicant to prove that she was a victim of sexual harassment; the Applicant must also prove that this circumstance was relevant (i.e., had a direct bearing) on the fact that the Applicant’s contract was not renewed or extended.

42. The Respondent denies that any sexual harassment occurred, and his Counsel states in his 8 June 2010 submission that the investigation panel examining the Applicant’s harassment claims “was not able to substantiate” any of these and that the panel even concluded “that some of [her] allegations were ‘distorted’ or ‘fabricated’”. In his reply, the Respondent also states that the reason why the investigation report

was not provided to the Applicant was that the investigation panel found against the Applicant, since “the facts reported in the investigation report appear[ed] to indicate that misconduct has not occurred” (see UNICEF’s Policy on Preventing Harassment, Sexual Harassment and abuse of authority, CF/AI/2005/017, 16 December 2005, para. 41).

43. Annexed to the Applicant’s statement of appeal is a “Note for the Record of Meeting” of a meeting that was held on 26 July 2006 between the Applicant, her supervisor and a Human Resources Officer, where her possible separation from UNICEF was discussed. From the Note, it follows that the Applicant’s separation from UNICEF seemed to be the result of the Applicant’s own failed promotion expectations, and possibly also of the fact that her supervisor wanted her to leave (for a reason that is not clear from the document):

The objective of the meeting was to discuss clearly and concretely [the Applicant’s] future plans having given a firm indication at an earlier meeting (before proceeding on extended sick leave) of her desire to issue notice of resignation from UNICEF on or around 1st July 2006 ... [The supervisor] went on to say that this was an opportune time to talk concretely about what [the Applicant] wanted to do, specifically if she was continuing with UNICEF or was going to resign. [The Applicant] said she didn’t know but thought that if there was a possibility of working at a higher level she would be interested in continuing; otherwise if there were no prospects of growth she would consider moving on ... [The Applicant] then said that she would appreciate knowing if her contract would be extended upon its expiry in December, 2006, to which [her supervisor] responded by telling her that UNICEF will not extend her contract. ...

44. Nothing in the above Note indicates or implies any connection to the harassment, sexual harassment and abuse of authority allegations made by the Applicant. The Tribunal observes that the Note was signed by all the participants after the meeting, who assumingly thereby all consented to its contents, and that the Applicant has not subsequently denied its veracity.

45. It further follows from the JAB Report No. 2022 that the JAB panel, after reviewing the investigation report, considered the possible nexus between the

Applicant's non-renewal/non-extension and her sexual harassment allegations. The JAB panel found that it did not want to "second guess the Investigative Team on the sexual harassment charges ... the Panel ... concentrated on whether due process was followed in the non-renewal of her contract". Thus, the JAB panel rejected even to consider the Applicant's allegations of harassment, sexual harassment, and abuse of authority in the context of her non-renewal and non-extension claims. Rather, the JAB panel chose to focus its attention on the Applicant not being provided with the appropriate procedural rights in the non-renewal and non-extension process.

46. The Tribunal in no way minimises the serious nature of the Applicant's claims of harassment, sexual harassment and abuse of authority, but the Applicant has not been able to demonstrate the existence of a causal link between these claims and the claims that are before the Tribunal. Further, nothing in the case record even implies that such a connection ever existed.

47. The third "extraordinary" circumstance to which the Applicant refers is constituted by the shortcomings identified in the JAB report and which led the JAB panel to award two years' net base salary plus interest in compensation (see paras. 11 and 13 above). However, the Applicant has not pointed to any particular evidence to support the conclusion that any of these circumstances is so "aggravating" as to render her case "exceptional" within the meaning of art. 10.5(b) of the Statute. Under *Mmata*, the Tribunal therefore cannot justify a higher compensation award on this basis.

48. Finally, according to the JAB report (para. 19), the Tribunal notes that the Applicant's initial request was for the JAB panel to recommend:

... compensation of [USD]76,800, which would be the equivalent of the last two years of Appellant's net salary, for the irreparable morale and career damage done to her professional reputation and for the financial loss incurred by her illness.

49. Having been compensated in the amount of two years' net base salary, the Applicant since has raised her compensation request to three years' net base salary,

but she has nowhere explained what prompted this increase. Although the Applicant is not bound by her original plea to the JAB in her later appeal to the former Administrative Tribunal (and now to the Dispute Tribunal), the Applicant's initial request in some manner is indicative of her own initial determination that two years' net base was sufficient to compensation for her losses.

Conclusion

50. The Tribunal finds that the Applicant has failed to provide sufficient evidence to corroborate the existence of "aggravating factors", in accordance with *Mmata*, and has failed to prove that the present case is "exceptional" as to warrant an order for payment of compensation beyond two years' net base salary under art. 10.5(b) of the Statute of the Dispute Tribunal.

51. For all of the foregoing reasons, the application is rejected in its entirety.

(Signed)

Judge Marilyn J. Kaman

Dated this 30th day of June 2011

Entered in the Register on this 30th day of June 2011

(Signed)

Santiago Villalpando, Registrar, New York