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Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

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DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on April 30, 2002, an arbitration panel rendered a decision in the matter of *Thomas T. Massa v. New York State Commission for the Blind and Visually Handicapped* (Docket No. R-S/00-6). This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d-1(a), after the Department received a complaint filed by the petitioner, Thomas T. Massa.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper removal of complainant, Mr. Thomas T. Massa, from the Randolph-Sheppard vending facility program by the New York State Commission for the Blind and Visually Handicapped, the State licensing agency (SLA), in violation of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: Complainant was licensed by the SLA on July 28, 1995. In 1996, he was assigned to operate and manage a vending facility at the U.S. Customs House, 6 World Trade Center in New York City, New York.

On August 3, 1998, complainant alleged that he informed the SLA that he was experiencing a severe financial crisis resulting from theft of lottery tickets and from difficulties with the SLA's accounting and recordkeeping procedures. On August 28, 1998, a State lottery official notified complainant that he had an outstanding balance of \$7,558.34 and would be responsible for making weekly payments over a period of 24 months to pay off the balance.

After receiving complainant's notification of his financial status, the SLA conducted a facility review. The SLA determined that there were record keeping lapses but nothing to explain the severity of complainant's financial situation. Subsequently, on September 3, 1998, the SLA informed complainant that effective September 18, 1998, he was being removed as the manager of the U.S. Customs House vending facility and that his vending operator's license was being revoked effective October 9, 1998.

Complainant requested and received a full evidentiary hearing, which was held on December 4, 1998, March 3, 1999, and September 13, 1999. On May 30, 2000, an Administrative Law Judge (ALJ) rendered a decision affirming the SLA's termination of complainant's vending operator's license and removal from his vending facility. The SLA adopted the ALJ's decision as final agency action.

Later, complainant filed for a Federal arbitration hearing alleging that the SLA failed to provide due process to him regarding his removal from the U.S. Customs House vending facility and the revocation of his vending operator's license as provided by the Act and implementing regulations. A hearing on this matter was held on July 26, 2001.

Arbitration Panel Decision

The issue heard by the panel was whether the actions taken by the New York State Commission for the Blind and Visually Handicapped to terminate complainant's vending operator's license and his removal from the U.S. Customs House vending facility were in accordance with the Act, implementing regulations, and State rules and regulations.

After reviewing the record, the arbitration panel concluded that the SLA had made the decision to remove complainant at the initial steps of the

State fair hearing process. As a result, the SLA's decision to revoke complainant's vending operator's license occurred prior to the State fair hearing. In addition, the panel determined that complainant had successfully completed vending facility management training 2 years prior to the first signs of problems at his vending facility. Also, the panel found that neither the complainant nor the SLA were able to explain the cause, source, or reason for the alleged violations in complainant's recordkeeping.

Based upon the foregoing, the panel ordered the SLA, within 3 months of the panel's decision, to reinstate Mr. Massa to a vending facility or to another job available through the SLA and previously determined to be suitable by the complainant.

Concerning over \$7,500 allegedly owed to the SLA by Mr. Massa from the sale of lottery tickets, the panel ruled that had complainant continued as a vending facility manager prior to the State fair hearing, he might have been able to make weekly installment payments to the SLA. Therefore, the panel ruled that complainant should pay the SLA \$4,500, less payments already made by him, when and if he is reinstated to gainful employment.

Finally, the panel ruled that if Mr. Massa elects not to follow the remedy in the panel's decision or chooses to refuse an opportunity of employment offered to him by the SLA, then his complaint should be dismissed. However, in that event, his obligation to reimburse the SLA still remains.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3232, Mary E. Switzer Building, Washington, DC 20202-2738. Telephone: (202) 205-8536. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205-8298.

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