REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

Q-CLEAN LIVING PHILS., CORP., Petitioner,	**CTA CASE NO. 8586** Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 30 2015 11:35 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review filed by petitioner Q-Clean Living Phils., Corp., seeks the cancellation of Assessment Notice No. AO-038-B028-07, finding petitioner liable for deficiency Value Added Tax and deficiency income tax in the total amounts of P1,414,045.66 and P1,967,022.74, respectively.

THE FACTS

Petitioner Q-Clean Living Phils., Corp. is a domestic corporation duly organized and existing under Philippine laws, with principal office at No. 53 Visayas Avenue, VASRA, Quezon City.[1]

[1] The Parties, Petition for Review, Docket, Vol. I, p. 8.

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

By virtue of Letter of Authority No. 00033762[2] dated June 1, 2010 and Letter Notice No. 038-TRS-07-AD-00102[3] dated October 29, 2009, the BIR conducted an investigation of petitioner's income/other (issue-based) tax returns for the period covering January 1, 2007 to December 31, 2007. Consequently, the BIR issued a Preliminary Assessment Notice (PAN)[4] for deficiency income tax in the amount of P1,967,022.74 and for deficiency Value Added Tax (VAT) in the amount of P1,414,045.66, respectively.

On December 15, 2010, respondent issued its Final Assessment Notices (FAN),[5] finding petitioner liable for deficiency income tax and VAT for the said amounts. On even date, respondent also issued a Formal Letter of Demand (FLD) with Details of Discrepancies.[6]

On March 14, 2011,[7] petitioner filed a letter purporting to be a protest of the FANs before the BIR. On January 13, 2012,[8] respondent issued its Final Decision on the Disputed Assessment (FDDA).

On February 2, 2012,[9] petitioner filed a "follow-up letter" before the BIR, requesting for the re-evaluation of its assessment. On March 13, 2012,[10] respondent replied to petitioner, requesting the latter to submit additional documents. gc

[2] Exhibit "R-3", BIR Records, p. 116.
[3] Exhibit "R-2", BIR Records, p. 2.
[4] Summary of Admitted Facts, Amended Joint Stipulation of Facts & Issues (AJSFI), Docket, Vol. I, par. 9, p. 301; Exhibit "E", Docket, Vol. I, p. 244; Exhibit "R-8", BIR Records, p. 79.
[5] Summary of Admitted Facts, AJSFI, Docket, Vol. I, pars. 11-12, p. 301; Exhibits "G" and "G-1", Docket, Vol. I, pp. 248-249; Exhibits "R-9" and "R-9-a", BIR Records, pp. 88-89.
[6] Summary of Admitted Facts, AJSFI, Docket, Vol. I, par. 10, p. 301; Exhibit "F" and "F-1", Docket, Vol. I, pp. 246-247; Exhibit "R-9-b" and "R-9-c", BIR Records, pp. 86-87.
[7] Exhibit "H", Docket, Vol. I, p. 252.
[8] Exhibit "R-11", BIR Records, p. 93.
[9] Exhibit "I", Docket, Vol. I, p. 256.
[10] Exhibit "K", Docket, Vol. I, p. 261.

On October 15, 2012,[11] the BIR issued a second FDDA which was received by petitioner on November 5, 2012.[12] On November 27, 2012,[13] petitioner, through Meneses Gonzalez & Gupit Law Offices, filed with the BIR a letter which partly reads:

> "In view of the above, may we request that the details of the Details of Withholding Agents/Payors and Payees/Income Recepient Records be generated and issued to our client emanating from Philip Morris Manufacturing Inc. be presented for the purpose of giving our client the opportunity to present its position on the matter as provided in RMO 17-2009 due to the presentation of conflicting document.
>
> May we likewise request that an extension of time be granted to our client on the 30 day period granted to the taxpayer to appeal this matter to the Court of Tax Appeals due to the incidents mentioned above to finally settle the said matter."

On December 5, 2012, petitioner filed through registered mail the instant Petition for Review.

In her Answer,[14] respondent raised the following Special and Affirmative Defenses:

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 8. The assessment for calendar year 2007 deficiency income tax and Value Added Tax in the amount of **PESOS: THREE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND FIVE HUNDRED FORTY-FOUR AND 48/100** (Php3,425,544.48) was issued in accordance with applicable laws and regulations. The factual and legal bases of the assessments are contained in the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN).

[11] Exhibit "M", Docket, Vol. I, p. 263.
[12] Nature of the Petition and Jurisdiction, Petition for Review, par. 3, Docket, Vol. I, p. 9; Answer, par. 1, Docket, Vol. I, p. 60.
[13] Exhibit "N", Docket, Vol. I, pp. 264-265.
[14] Docket, Vol. I, pp. 60-65.

9. As alleged by Petitioner in its Petition, it received the Final Decision on November 5, 2012. However, the Petitioner failed to submit the required documents in support of its protest within sixty (60) days from the date of filing of its letter of protest, hence, the assessment have already become final, executory and demandable. Consequently, this Honorable Court cannot anymore exercise jurisdiction over Petitioner's Petition for Review.

xxx xxx xxx

10. A perusal of Annex "8" of the Petition for Review purporting to be a protest letter does not stand the test as required under RR 12-99.

xxx xxx xxx"

On May 10, 2013, the parties filed their Joint Stipulation of Facts and Issues.[15] Subsequently, on September 26, 2013, the parties submitted their Amended Joint Stipulation of Facts and Issues.[16] On October 2, 2013, the Court issued its Pre-Trial Order.[17]

In support of its Petition, petitioner presented the following witnesses: Mr. Alex R. Quijano[18] - Director and Treasurer of Petitioner; and Ms. Catherine De Asa[19] - Senior Tax Manager of PMFTC. Likewise, petitioner made its Formal Offer of Evidence.[20]

On the other hand, respondent presented the following witnesses: Mr. Rehmar Q. Mortiz[21] - Revenue Officer I of the BIR; and Gerard Christopher B. Tamayo[22] - also a Revenue Officer I of the BIR. Likewise, respondent made her Formal Offer of Evidence.[23]

[15] Docket, Vol. I, pp. 135-141.
[16] Docket, Vol. I, pp. 300-306.
[17] Docket, Vol. I, pp. 312-316.
[18] Minutes of the Hearing dated November 11, 2013, Docket, Vol. I, p. 328; Exhibit "P", Amended Judicial Affidavit, Docket, pp. 221-232.
[19] Minutes of the Hearing dated December 2, 2013, Docket, Vol. I, p. 361; Exhibit "W", Judicial Affidavit, Docket, Vol. I, pp. 340-347.
[20] Docket, Vol. I, pp. 364-375; Docket, Vol. II, pp. 530-535.
[21] Minutes of the Hearing dated April 28, 2014, Docket, Vol. I, p. 453; Exhibit "R-15", Docket, Vol. I, pp. 416-418.
[22] Minutes of the Hearing dated April 28, 2014, Docket, Vol. I, p. 453; Exhibit "R-16", Docket, Vol. I, pp. 427-432.
[23] Docket, Vol. I, pp. 454-459.

In the Resolution[24] dated October 8, 2014, the Court required the parties to submit their memoranda. On November 10, 2014, respondent filed her Memorandum,[25] while petitioner filed through registered mail on October 24, 2014 its Motion to Suspend the Period to File Memorandum,[26] which the Court granted in the Resolution[27] dated November 10, 2014. On February 11, 2015, petitioner filed its Memorandum.[28]

Thus, on February 20, 2015,[29] the case was deemed submitted for decision. Hence, this Decision.

THE ISSUES

The parties stipulated on the following issues[30] to be resolved by the Court:

> "1. How much is petitioner's sales to PMPI for the year 2007?
>
> 2. Whether or not petitioner was validly assessed deficiency income tax.
>
> 3. Whether or not petitioner was validly assessed deficiency value added tax.
>
> 4. Whether or not petitioner is liable for deficiency Income Tax and deficiency Value-Added Tax for the taxable year 2007 in the total amount of Php3,425,544.80 inclusive of interest and surcharges.
>
> 5. Whether or not the Assessments [sic.] have already become final, executory and demandable."

To encapsulate, the following are the issues to be resolved by the Court: (1) Whether or not the subject assessments state the facts and the law from which they are based; (2) Whether or not the

[24] Docket, Vol. II, pp. 545-546.
[25] Respondent's Memorandum, Docket, Vol. II, pp. 566-572.
[26] Docket, Vol. II, pp. 556-559.
[27] Docket, Vol. II, p. 574.
[28] Docket, Vol. II, pp. 579-604.
[29] Docket, Vol. II, p. 606.
[30] Proposed Issues to be Resolved, AJSFI, Docket, Vol. I, p. 303.

subject assessments have already become final, executory and demandable; and (3) Whether or not the subject assessments are correct.

THE RULING

The Court shall first determine if petitioner timely pursued its administrative and judicial remedies.

Section 228 of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended), provides:

> "**SEC. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided*, however, That a preassessment notice shall not be required in the following cases: xxx xxx xxx
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of

Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In relation thereto, Section 3.1.5 of Revenue Regulations No. 12-99 (RR No. 12-99) provides:

"3.1.5 Disputed Assessment. - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable."

Based from the foregoing, an aggrieved taxpayer must administratively file a valid protest against the assessment by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt thereof. Otherwise, the assessment shall become final, executory and demandable. The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall likewise become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative or if the latter fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission of the required documents, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision or from the lapse of the said 180-day period, as the case may be.

In the instant case, records show that on December 15, 2010, respondent issued the subject deficiency income and VAT assessments. On March 14, 2011, petitioner filed its protest.

The Court notes that nowhere from the pieces of evidence submitted by the parties can it be found the date of receipt by petitioner of the subject assessments. Nevertheless, it was alleged in the instant Petition that:

> "9. Petitioner made a timely protest in a letter dated 07 March 2011, which was duly received by the Respondent on 14 March 2011. xxx"[31]

Significantly, respondent denied the aforesaid allegation in this manner:

> "3. Respondent **ADMITS** material allegations in paragraphs 6, 7, 8, 9 and 13 of the Petition for Review as to the existence of xxx Protest Letter dated March 7, 2011 xxx but **SPECIFICALLY DENIES** the date of receipt thereof **and the rest of the allegations stated therein for lack of knowledge or information sufficient to form a belief as to the truth thereof** and for reasons stated in the **SPECIAL AND AFFIRMATIVE DEFENSES OF THIS ANSWER**;"[32] *(Emphasis supplied)*

A careful analysis of respondent's Answer reveals that she made a general denial, not a specific denial, as to the timeliness of

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[31] The Material Facts and Antecedent Proceedings, Petition for Review, par. 9, Docket, Vol. I, p. 11.
[32] Answer, par 3., Docket, Vol. I, p. 60.

petitioner's protest, albeit the use of the word "specifically". In this regard, it has been held that a "general denial does not become specific by the use of the word specifically. When matters of whether the defendant alleges having no knowledge or information sufficient to form a belief are plainly and necessarily within the defendant's knowledge, an alleged ignorance or lack of information will not be considered as a specific denial."[33]

In the absence of any evidence and considering that respondent failed to specifically deny the material averment of petitioner *vis a vis* the timeliness of the filing of its protest, such allegation is deemed admitted under Section 11, Rule 8 of the Revised Rules of Court.[34] Thus, the Court rules that the administrative protest was timely filed.

The pleadings submitted by the parties further reveal that petitioner received the second FDDA on November 5, 2012.[35] Counting 30 days therefrom, petitioner had until December 5, 2012 within which to file the Petition for Review. Considering that petitioner filed through registered mail the instant Petition on December 5, 2012, the same is timely filed.

In view thereof, the Court rules that petitioner filed both the administrative protest and the instant Petition within the reglementary period. Hence, the Court shall now proceed to resolve the other issues.

The subject assessments state the facts and the law from which they are based

Petitioner questions the validity of the subject assessments on the ground that it failed to indicate the facts and the law from which they are based. As such, petitioner asserts that its right to due process was violated.

However, an examination of the "Details of Discrepancies" attached to the subject assessments which both petitioner and

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[33] *Agrifina Aquintey v. Spouses Felicidad and Rico Tibong*, G.R. No. 166704, December 20, 2006.
[34] **SEC. 11.** *Allegations not specifically denied deemed admitted.* – Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. xxx"
[35] See Note 12.

respondent offered as evidence,[36] shows that respondent explained the factual and legal bases of the assessments. Thus, the Court declares that petitioner's right to due process was observed by respondent.

The subject assessments did not become final, executory and demandable

On this score, respondent avers that petitioner failed to submit the required documents within 60 days from the date of the protest. Hence, the subject assessments have already become final, executory and demandable. On the other hand, petitioner asserts that it submitted the pertinent documents required by respondent.

A perusal of the records shows that, indeed, petitioner submitted before the BIR pertinent documents to dispute the subject assessments. Thus, at the time of the filing of its protest, petitioner presented a Certification[37] from Philip Morris Manufacturing Inc. (Philip Morris) that the latter's purchases from petitioner in 2007 amount only to P2,273,500.00. When the BIR further required petitioner to submit additional documents in the letter[38] dated March 13, 2012, petitioner immediately requested for the assistance of Philip Morris to produce the said documents.[39] Meanwhile, on November 27, 2012, petitioner through its counsel requested for the BIR to issue the Details of Withholding Agents/Payors and Payees/Income Recipient Records,[40] which the BIR issued to petitioner on November 29, 2012.[41]

These pieces of evidence presented by petitioner belie respondent's assertion that petitioner failed to submit the required documents. Hence, the Court rules that the subject assessments did not become final, executory and demandable.

The subject assessments are incorrect

Finally, the Court shall now resolve whether the subject assessments are correct.

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[36] Exhibit "G-3", Docket, Vol. I, p. 251; Exhibits "R-8-a" and "R-9-c", BIR Records, pp. 78 and 86, respectively.
[37] Exhibit "H-1", Docket, Vol. I, p. 253.
[38] Exhibit "K", Docket, Vol. I, p. 261.
[39] Exhibit "L", Docket, Vol. I, p. 262.
[40] Exhibit "N", Docket, Vol. I, p. 264.
[41] Exhibit "Y" to "Y-1", BIR Records, pp. 180-181.

A reading of the pertinent assessments reveals that the discrepancies[42] found by the BIR emanated from the computerized Alphalist of Income Payments (Purchases) reported by Philip Morris, as one of petitioner's payors. Based from the computer-generated Alphalist, Philip Morris yielded income payments in the total amount of P7,798,216.50. The Details of Discrepancies found by the BIR are as follows:

DETAILS OF DISCREPANCIES

DEFICIENCY INCOME TAX

Additional Taxable Sales (P2,778,441.98) – Computerized matching conducted by the Bureau on the Alphalist of Income payments (Purchases) reported by your payors against the Sales declared in your tax returns disclosed the following discrepancies, hence, you are hereby assessed of the corresponding deficiency income tax pursuant to Sections 31 and 32 of the NIRC of 1997, as amended, Revenue Memorandum Order No. 30-2003 and Revenue Memorandum Order No. 42-2003, to wit:

Per Alphalist of Income Payments by your payors	P	7,798,216.50
Sales per Income Tax Return		2,099,553.61
Discrepancy in Sales (under-declaration)	P	5,698,662.89
Add: Per Pre-processed LN-TRS		1,874.61
Total Discrepancy		5,700,537.50
Divide by COS Ratio		
Additional Taxable Sales per Discrepancy	P	5,700,537.50
Add: Per Pre-processed LN-TRS		
Total	P	5,700,537.50
Multiply by Gross Profit Rate		48.74%
Additional Taxable Sales	**P**	**2,778,441.98**

DEFICIENCY VALUE-ADDED TAX

Additional Vatable Sales (P5,700,537.50) – Computerized matching conducted by the Bureau on the Alphalist of Income payments (Purchases) reported by your payors against the Sales declared in your tax returns disclosed the following discrepancies, hence, you are hereby assessed of the corresponding deficiency value-added tax pursuant to Sections 106 and 108 of the NIRC of 1997, as amended, Revenue Memorandum Order No. 30-2003 and Revenue Memorandum Order No. 42-2003, to wit:

Per Alphalist of Income Payments by your payors	P	7,798,216.50
Sales per Tax Returns Filed		2,099,553.61
Discrepancy in Sales (under-declaration)	P	5,698,662.89
Add: Per Pre-processed LN-TRS		1,874.61
Total Discrepancy		5,700,537.50
Divide by COS Ratio		
Additional Taxable Sales per Discrepancy	P	5,700,537.50
Add: Per Pre-processed LN-TRS		
Additional Vatable Sales	P	**5,700,537.50**

[42] See Note 36.

Petitioner disputes the aforesaid findings on the ground that based on the Certification[43] issued by Philip Morris, the latter's purchases from petitioner in 2007 amount only to P2,273,500.00 and not P7,798,216.50, as per findings of the BIR.

A close scrutiny of the records shows that respondent, through a Memorandum[44] from Marilou S. Valles – Assistant Chief of LT Document Processing & Quality Assurance Division of the BIR, confirmed that the total amount of purchases of Philip Morris from petitioner for the year 2007 amounted only to P2,029,910.00, which amount when subjected to VAT amounts to P2,273,499.20, with a difference only of P0.80 as contended by petitioner.

Moreover, the facts stated in the Certification issued by Philip Morris and in the above-Memorandum were further supported by sales invoices[45] to substantiate the sale of goods by petitioner to Philip Morris in the total amount of P2,273,500.02, inclusive of VAT.

Considering the said pieces of evidence, the Court holds that respondent's deficiency income tax and VAT assessments are incorrect. Thus, the granting of the instant Petition is in order.

WHEREFORE, in view thereof, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's assessments as to petitioner's deficiency Value Added Tax and income tax for the year 2007 under Assessment Notice No. AO-038-B028-07 in the total amounts of P1,414,045.66 and P1,967,022.74, respectively, are hereby declared **CANCELLED AND WITH NO FORCE AND EFFECT**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[43] See Note 37.
[44] See Note 41.
[45] Exhibits "S", "T", "U" and "V"", Docket, Vol. II, pp. 509-512. **N.B.**: The Exhibits which were provisionally marked were permanently marked during the Hearing dated December 2, 2013 as per Transcript of Stenographic Notes dated December 2, 2013, pp. 7-8.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice