



representatives for Jonis at the Tribunal. The power of attorney was signed on July 20, 2008 by Steven Halegua ("Halegua") as a member of Jonis.<sup>2</sup> The Petition protested a Notice of Disallowance issued by the City Department of Finance ("Department") on May 21, 2008 denying a claim for refund of real property transfer tax that was paid by Jonis.

As the Petition appeared to be submitted by Jonis and was otherwise in order, an Acknowledgement that the Petition was in proper form was issued on February 25, 2009. Respondent filed an Answer on April 17, 2009. In the Answer, Respondent raised as an affirmative defense that the Petition should be dismissed as a matter of law. The basis for this claim was that Halegua, by his own admission, had sold his interest in Jonis by May 15, 2006 and was, therefore, not a current member of Jonis at the time that he signed the power of attorney. Thus, the Commissioner asserts, Halegua had no authority to appoint Hearle and Albstein as Jonis' representatives to file a Petition on Jonis' behalf at the time the power of attorney was signed. According to Respondent, the actual taxpayer, Jonis, failed to file a valid Petition.<sup>3</sup>

After receiving the Answer, the Tribunal scheduled a conference. At the conference, the undersigned asked whether Halegua was still a member of Jonis when he signed the power of attorney. Petitioner's representatives confirmed that Halegua was not a member of Jonis after May 15, 2006 and thus was no longer a member of Jonis when he signed the power of attorney. The parties

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<sup>2</sup> Halegua signed beneath a provision of the Power of Attorney which provides "I certify that I have authority to execute this Power of Attorney on behalf of the taxpayer."

<sup>3</sup> In view of the conclusion that the Petition must be dismissed for lack of jurisdiction, this determination, to the extent possible, will not discuss the underlying transaction or other issues raised in the Answer and motion.

discussed the question of the Tribunal's jurisdiction over the Petition. Petitioner's representative asserted, without authority, that Petitioner could cure any defect in the power of attorney executed by Halegua. Indeed, Petitioner was granted time to obtain a properly executed power of attorney or to pursue its claim that it could cure the defects. Various telephone conferences were held but Petitioner still did not submit a properly executed power of attorney or any other relevant claim of entitlement to file the Petition. On October 5, 2009, Respondent filed a Motion For Summary Determination that the Tribunal lacks jurisdiction over the Petition.

Proceedings in the Tribunal are commenced by the filing of a Petition with the Tribunal and the service of a copy of the Petition on Respondent. In order for the Tribunal to have jurisdiction, the Petition must be filed and served within the time period provided by law.<sup>4</sup> Where a Petition is signed by an agent, it must be accompanied by a properly executed power of attorney.<sup>5</sup> If the Petition appears to be timely filed and in proper form, the Chief Administrative Law Judge Acknowledges the Petition.<sup>6</sup>

A Petition must be executed by a person with legal authority to act for the Petitioner. A Petition that is not executed by an authorized person is a nullity and does not confer jurisdiction on the Tribunal.

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<sup>4</sup> New York City Charter Section 170(a).

<sup>5</sup> See, generally, Section 1-03 of the Rules of Practice and Procedure of the New York City Tax Appeals Tribunal ("Rules") regarding who may represent a Petitioner at the Tribunal. With respect to LLCs, the Tribunal requires that the Power of Attorney be executed by a member or manager with authority to act for the LLC.

<sup>6</sup> See, generally, Rule §1-04 regarding pleadings.

The Petition itself acknowledges that Halegua was no longer a member of Jonis after May 15, 2006. Petitioner claims that even though Halegua is no longer a member of Jonis, he had the authority to execute the power of attorney. Accordingly, it claims that facts are in dispute that require a trial. However, Petitioner makes no allegation of any fact sufficient to indicate that Halegua had such authority at the time the power of attorney was executed.

Petitioner also claims that the City cannot now contest jurisdiction. Respondent raised the issue of jurisdiction in its Answer. It could not have raised the issue of jurisdiction in this forum any earlier. That Respondent did not challenge Halegua's status when it disallowed the request for refund does not estop it from raising the jurisdictional defect. *Parkview Assocs. v. City of New York*, 71 NY2d 274, 282 (1988).

Petitioner further argues that under the Rules of the Tribunal for correcting a Petition it should be given thirty days additional time to cure a defect in the Petition. The Rules do not address the correction of a Petition that has been Acknowledged. Even under these circumstances, not addressed by the Rules, the Tribunal does not lightly dismiss a Petition. In this case, Petitioner was given significantly more than thirty days to see if it could correct its improper filing and it failed to do so. Petitioner, to this day, has not submitted a power of attorney signed by a current and authorized member of Jonis. Nor has Jonis appeared in this matter in any fashion or indicated an interest in pursuing the Petition on its behalf.

Petitioner argues that a motion for summary determination is the wrong vehicle for dismissing the Petition for lack of jurisdiction. Petitioner is incorrect. Respondent's use of a

motion for summary determination to dismiss the Petition is one of several appropriate vehicles to address the Tribunal's jurisdiction over a petition. Under Section 1-05(d)(1) of the Tax Appeals Tribunal Rules of Practice and Procedure, a motion for summary determination shall be granted:

if, upon all the facts and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party.

Rule §1-05(d) does not limit the subject matter of a motion for summary determination.

In order to prevail on the motion for summary determination, Respondent must "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York University Medical Center*, 64 NY2d 851, 853 (1985). This motion succeeds or fails depending on whether, at the time of execution, Halegua had legal authority to execute the power of attorney in this matter. In this case, the most relevant fact is whether Halegua was still a member of Jonis when he signed the power of attorney and when the Petition was filed. Petitioner has not shown that Halegua was still a member of Jonis when the Petition was filed. To the contrary, Petitioner's statements in the Petition indicate that Halegua was no longer a member of Jonis after May 15, 2006 and this fact is sufficient to establish Respondent's prima facie case. Nor has Petitioner asserted the existence of any other fact that could support a finding that Halegua had authority to sign the power of attorney. Petitioner's mere assertion that testimony and documents compelled from Jonis

would show Halegua's authority is insufficient to deny Respondent's motion. It bears repeating that no member of Jonis is involved in these proceedings and Jonis has refused to participate in this matter when requested to do so by Mr. Halegua. This implies that Jonis, the taxpayer, is not interested in pursuing the underlying legal matter.

I have considered all other arguments and find them unpersuasive.

**ACCORDINGLY, IT IS CONCLUDED THAT** as Halegua was no longer a member of Jonis after May 15, 2006, he had no authority to execute the power of attorney under which the Petition was filed and served. As the Petition was not signed by a current member of Jonis or a representative duly designated by a member of Jonis, it is invalid. Respondent's motion for summary determination dismissing the Petition on the grounds that the Tribunal lacks jurisdiction to hear the Petition is granted. The Notice of Disallowance issued on May 21, 2008 is sustained.

DATED: July 21, 2010  
New York, New York

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WARREN P. HAUBEN  
Deputy Chief Administrative Law Judge