NEW YORK CITY TAX APPEALS TRIBUNAL

In the Matter of	:	DECISION
1465-69-71 BUSHWICK AVE LLC	:	TAT (E) 14-14 (RP)
Petitioner.	:	

1465-69-71 Bushwick Ave LLC (Petitioner) filed an exception (Exception) to an Amended Determination of an Administrative Law Judge (ALJ) dated March 16, 2015 (ALJ Determination) which granted the motion of the Commissioner of Finance of the City of New York (Respondent) for an order dismissing the Petition for Hearing (Petition) on the grounds that the Petition was not timely filed. Petitioner appeared by Barry R. Feerst, Esq., of Barry R. Feerst & Associates. Respondent appeared by Amy H. Bassett, Esq., Assistant Corporation Counsel of the New York City Law Department. Neither Party requested oral argument before the Tribunal Commissioners.

The New York City Department of Finance (Department) issued a Notice of Determination to Petitioner dated April 17, 2012 (Notice) asserting a Real Property Transfer Tax (RPTT) deficiency in the principal amount of $106,860.57 plus interest through May 16, 2012 of $18,651.00, and penalties of $7,480.24, for a total amount due of $132,991.81, as a result of the March 24, 2010 transfer of real properties. [1]

Petitioner filed a Request for Conciliation Conference with Respondent's Conciliation Bureau, dated June 19, 2012 (Request) identifying Harry Hirschfeld as

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[1] Except as otherwise noted, the ALJ's Findings of Fact, although paraphrased herein, generally are adopted for purposes of this Decision. Certain Findings of Fact not necessary to this Decision have not been restated and can be found in the ALJ Determination.

Petitioner's representative. A Department Power of Attorney Form naming Harry Hirschfeld as Petitioner's representative was submitted with the Request.

Duncan D. Riley, Director, Conciliation Bureau, issued a Conciliation Decision dated April 18, 2013 (2013 Conciliation Decision) discontinuing Petitioner's conciliation proceeding "as a result of the taxpayer's or their duly authorized representative's failure to appear for a scheduled conciliation conference (via telephone)."[2] The 2013 Conciliation Decision stated that "[i]f within thirty (30) days of the date of service of this decision, the taxpayer files a written application with the Conciliation Bureau showing a reasonable excuse for the failure to appear, this decision may be withdrawn by the Conciliation Bureau and the proceeding reopened."[3] The 2013 Conciliation Decision also stated that Petitioner must file a petition with the New York City Tax Appeals Tribunal (Tribunal) within 90 days from the date of service of the 2013 Conciliation Decision in order to receive a hearing at the Tribunal.

By letter dated May 8, 2013, Petitioner's current representative, Barry R. Feerst, Esq., sent a letter to Mr. Riley identifying himself as Petitioner's representative and requesting that the 2013 Conciliation Decision be withdrawn and the proceeding reopened. Attached to Mr. Feerst's letter was a power of attorney (Form POA-1) executed on May 8, 2013 appointing Mr. Feerst as Petitioner's representative and listing his address as "194 South 8th Street, Brooklyn, NY 11211" (2013 Power of Attorney). The Conciliation Bureau sent a letter to Petitioner dated May 31, 2013, with a copy to Mr. Feerst, stating that "[w]e have received your request for a re-instatement of a previously scheduled conciliation conference that was discontinued" and providing a date and time for a rescheduled conference.[4]

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[2] Respondent's Reply Affirmation in Support of Motion to Dismiss, exhibit C.
[3] *Id.*
[4] Petitioner's Affirmation in Opposition, exhibit 2. Although no document was submitted stating that the 2013 Conciliation Decision was withdrawn, this letter from the Conciliation Bureau rescheduling the conference supports the conclusion that it was withdrawn.

Mr. Riley issued a second conciliation decision dated March 14, 2014 discontinuing Petitioner's reopened conciliation proceeding (2014 Conciliation Decision) "as a result of the taxpayer's or their duly authorized representative's failure to execute and return the Conciliation Bureau's Proposed Resolution dated December 16, 2013."[5] The 2014 Conciliation Decision also stated that Petitioner must file a petition with the Tribunal within 90 days of the date of service of the 2014 Conciliation Decision to receive a hearing at the Tribunal.

On July 1, 2014, Mr. Feerst, faxed a second power of attorney (Form POA-1) dated July 1, 2014 (2014 Power of Attorney) to Mr. Riley. The 2014 Power of Attorney also appointed Mr. Feerst as Petitioner's sole representative. Mr. Feerst's Affirmation in Opposition explains that he submitted the 2014 Power of Attorney at Mr. Riley's request to obtain information from the Conciliation Bureau.[6]

Petitioner filed a Petition for Hearing with this Tribunal (Petition) protesting the Notice. The Petition was signed by Barry R. Feerst who was identified in the Petition as Petitioner's representative. Attached to the Petition was a copy of the 2014 Power of Attorney. The Petition was dated July 7, 2014, was mailed in an envelope postmarked July 9, 2014 and was received by the Tribunal on July 10, 2014.

The Tribunal issued an Acknowledgement and Request for Information dated July 18, 2014 (Acknowledgement). The Acknowledgement stated that the Petition appeared not to have been timely filed and directed the Parties to provide "all evidence relative to the mailing and receipt of the Petition and the conciliation decision being protested" within 60 days from the date of the Acknowledgement. The Acknowledgement also

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[5] Respondent's Affirmation in Support of Motion to Dismiss (Respondent's Affirmation), exhibit C.
[6] Petitioner's Affirmation in Opposition, n 1. The 2014 Power of Attorney differed from the 2013 Power of Attorney in that it provided the name of Mr. Feerst's firm and provided the date of the transfer, rather than just the year. Mr. Feerst's address was the same on both powers of attorney.

stated that the Department had 90 days from the date of the Acknowledgement to answer the Petition and that "[i]f within such ninety day period Respondent moves to dismiss the Petition for lack of jurisdiction, the time Respondent has to answer the Petition will be extended to thirty (30) days from the resolution of such motion."[7]

On August 13, 2014, Respondent submitted to the Chief Administrative Law Judge: (i) a copy of the 2014 Conciliation Decision, (ii) a copy of the USPS Form 3811, Domestic Return Receipt, showing mailing by certified mail to Barry R. Feerst at Barry R. Feerst & Assoc., 194 South 8th Street, Bklyn, NY, 11211 and receipt, and (iii) a copy of the printout of the Product Tracking Information for the Tracking Number (identical to the Article Number shown on the USPS Form 3811) from USPS.com showing mailing by certified mail on March 14, 2014 and delivery on March 15, 2014 of an item with the Tracking Number/Article Number 7099 3220 0007 2105 5019. Petitioner did not reply to the Tribunal's request for information.

Respondent filed its Answer dated October 9, 2014. The Answer raised an affirmative defense that the Petition was filed more than 90 days after the 2014 Conciliation Decision was mailed and again attached copies of the above documents.[8]

On December 16, 2014, Respondent filed a Notice of Motion to Dismiss the Petition on the grounds that it was untimely filed. The motion was supported by the Respondent's Affirmation with exhibits including the affidavit of Duncan D. Riley describing the Conciliation Bureau's general procedures for preparing and mailing conciliation decisions in effect on March 14, 2014, and describing the mailing of the 2014 Conciliation Decision (Riley Affidavit).

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[7] We have modified the ALJ's Finding of Fact regarding the wording of the Acknowledgement to more accurately reflect the text of the Acknowledgement.
[8] Answer, exhibits 2 and 3.

On March 14, 2014, Mr. Riley was employed by Respondent in his current position as the Director of the Conciliation Bureau. In the Riley Affidavit, Mr. Riley attested to the Conciliation Bureau's routine practice for preparing and mailing conciliation decisions, which are described as follows: Once a conciliation decision is signed by the Director of the Conciliation Bureau, the Conciliator prepares an envelope to transmit it to "the taxpayer." The Conciliator also prepares a USPS Form 3800, Receipt for Certified Mail, and a USPS Form 3811. The Riley Affidavit goes on to describe the mailing procedures of the Conciliation Bureau.

To the Riley Affidavit were attached the USPS Form 3811 addressed to Barry R. Feerst at Barry R. Feerst & Assoc., 194 South 8th Street, Bklyn, NY 11211, Article Number 7099 3220 0007 2105 5019 which was returned to Duncan D. Riley at the NYC Department of Finance, 345 Adams Street – 3rd Floor, Brooklyn, NY 11201. The USPS Form 3811 shows the signature of an unidentified individual at Mr. Feerst's address. The Riley Affidavit also states that while Mr. Riley does not have the USPS Form 3800 – Receipt for Certified Mail, the tracking information printed from USPS.com for this item of mail shows that it arrived at the USPS facility in New York, NY 10199 on March 14, 2014 and was delivered on March 15, 2014 in Brooklyn, NY 11211.[9] The Riley Affidavit concludes that the Conciliation Bureau's mailing procedures were followed in this matter.

The ALJ granted Respondent's Motion to Dismiss the Petition on the grounds that it was not timely filed and dismissed the Petition. The ALJ concluded that it was reasonable for the Department to send the 2014 Conciliation Decision to the authorized representative without also sending it to the taxpayer. The ALJ also determined that there is no time limitation on the filing by Respondent of a motion to dismiss in this

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[9] While Mr. Feerst contends that the absence of the USPS Form 3800 shows that the Conciliation Bureau's procedures were not followed, Petitioner's Brief at 9, he does not contend that the 2014 Conciliation Decision was not received by him or that the USPS Form 3811 was not signed by anyone at his office.

matter because the timely filing and service of a petition is a jurisdictional prerequisite to the Tribunal's review of a petition.

On appeal, Petitioner argues that Respondent's Motion to Dismiss should be denied. Petitioner argues that, because the 2014 Conciliation Decision was not mailed to the taxpayer at its last known address, the 90-day period for the filing of a petition for hearing with this Tribunal never commenced in this matter and Petitioner should receive a hearing at the Tribunal. Petitioner also asserts that because Respondent did not move to dismiss the Petition within the 90-day period following the Tribunal's issuance of the Acknowledgement, Respondent has waived the issue of jurisdiction.[10] Petitioner also asserts that both the interests of justice and the necessity of a complete record mandate a hearing on Petitioner's claims and that, but for a strict adherence to the 90-day period for the filing of a petition, Petitioner would not be liable for the RPTT asserted by the Department in the Notice.

Respondent argues that the ALJ Determination should be affirmed. Respondent asserts that the 2014 Conciliation Decision was appropriately mailed on March 14, 2014 to Petitioner's attorney and authorized representative, Mr. Feerst, and that the Petition mailed on July 9, 2014 was filed more than 90 days after the mailing of the 2014 Conciliation Decision. Respondent asserts that, therefore, the Tribunal does not have jurisdiction over this matter and the Petition must be dismissed.

As the ALJ stated, "[t]he timely filing and service of a petition is a jurisdictional prerequisite to the Tribunal's review of a taxpayer's petition. . . ." (Charter of the City of New York [City Charter] §170[a]; *Matter of TBY Four Seasons Fruit & Vegetable*

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[10] Respondent's Brief in Opposition to Petitioner's Exception (Respondent's Brief) states that Petitioner has not raised this argument on appeal. Respondent's Brief n 5. Although this argument is neither raised in the Exception nor in Petitioner's Brief, the attachments to the Exception do address this argument and thus we will briefly address this argument in our Decision.

Market, Inc., TAT [E] 93-12 [GCT] [New York City Tax Appeals Tribunal, November 17, 1993].) In matters where a conciliation conference has been requested, City Charter § 170(a) provides that a taxpayer must both serve the petition upon Respondent and file the petition with the Tribunal "within ninety days from the mailing of the conciliation decision or the date of the [Respondent's] confirmation of the discontinuance of the conciliation proceeding." Furthermore, City Charter § 170(a) also provides that the Tribunal "shall not extend the time limitations for commencing a proceeding for any petitioner failing to comply with such time limitations." There is, however, no time limitation on Respondent's filing of a motion to dismiss in this matter. The Tribunal's Rules of Practice and Procedure at 20 RCNY §1-05(b)(1)(ix) provides that "[i]n no event shall a failure by [Respondent] to make such a motion [including a motion to dismiss because the petition has not been timely filed] be deemed a waiver of any defense." Thus, we agree with the ALJ's conclusion that Respondent did not waive the issue of jurisdiction by not moving to dismiss the Petition within the 90-day period following the Tribunal's issuance of the Acknowledgement.

When, as in this matter, the timeliness of a petition is at issue, Respondent has the burden of proving proper addressing and mailing of the document being protested. (*2981 Third Avenue, Inc.,* TAT [E] 93-2092[RP], [New York City Tax Appeals Tribunal, June 14, 1999].) In this matter, however, Petitioner is not arguing that the 2014 Conciliation Decision was not mailed to and received by Mr. Feerst, Petitioner's authorized representative pursuant to the 2013 Power of Attorney. The only issue is whether the 90-day limitation period for filing the Petition with the Tribunal began to run because the 2014 Conciliation Decision was not mailed to Petitioner.

Petitioner does not cite any New York City statute or rule that requires that a conciliation decision be mailed to a taxpayer when that taxpayer has an authorized representative pursuant to a valid power of attorney. Instead, Petitioner relies on two New York State (State) decisions interpreting Tax Law § 681(a) regarding the mailing of

a State notice of deficiency in income tax cases. (*Matter of Kenning v State Tax Commn.*, 72 Misc2d 929 [Sup Ct Albany County, 1972], *aff'd,* 43 AD2d 815 [3d Dept 1973] and *Matter of MacLean v Procaccino,* 53 AD2d 965 [3d Dept 1976].) Those cases are not relevant to this proceeding because the applicable law in those cases, Tax Law § 681(a), requires that a notice of deficiency "be mailed by certified or registered mail to the taxpayer at his last known address in or out of this state." Also, neither of these cases indicates that the taxpayer had a representative at the time the notice of deficiency was issued and thus do not address that issue.

Section 11-2107 of the Administrative Code of the City of New York (Administrative Code) provides that with respect to the RPTT:

> "If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of finance. . . . Notice of such determination shall be given to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. . . ."

Administrative Code § 11-2116.a provides that with respect to RPTT:

> "Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this chapter in any application made by him or her. . . . The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time

> which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice."

Administrative Code § 11-124.a provides, in relevant part, that Respondent may "establish a procedure for providing conciliation conferences for purposes of settling contested determinations of taxes or charges" including the RPTT. Administrative Code § 11-124.d authorizes and empowers Respondent to "make, adopt and amend rules appropriate to the carrying out of this section and the purposes thereof."

The Department's Conciliation Bureau Rules (Conciliation Rules) provide at 19 RCNY § 38-07 that "[t]he service of a conciliation decision discontinuing conciliation shall start the running of the 90 day period for filing a petition. . . . A conciliation decision shall be served on the requestor and a copy thereof shall be mailed to the tribunal." Conciliation Rule § 38-08(a)(2) provides that "[s]ervice of conciliation decisions shall be made by hand delivery or by registered or certified mail."

Conciliation Rule § 38-01 defines the term "requestor" as "the person on whose behalf conciliation is requested and . . . any person authorized to represent such person at conciliation." Respondent argues that the use of the word "and" in the definition of the term "requestor" in the Conciliation Rules can be and should be read as "or" for purposes of determining who should be served a conciliation decision. Respondent asserts that there are other references to "requestor" in the Conciliation Rules where "or" should be used rather than the word "and". One example is Conciliation Rule § 38-05(b)(3), which states that a "requestor" can file a written application to reopen a conciliation proceeding with the Conciliation Bureau after a conciliation decision has been issued for failure to appear. Respondent asserts that the rule cannot mean that both the taxpayer and the authorized representative must make written applications to reopen the proceeding, but that either may make the written application. Petitioner, in effect, followed this reading of the definition of "requestor" when Mr. Feerst sent a letter dated May 8, 2013 to Mr.

Riley identifying himself as Petitioner's representative and requesting that the 2013 Conciliation Decision be withdrawn and the proceeding reopened. The letter was not submitted by both Petitioner and Mr. Feerst (each a requestor as defined in Conciliation Rule § 38-01.) Petitioner was not copied on the letter and Petitioner did not send a separate letter making the same request.

In *Bianca v Frank*, 43 NY2d 168 (1977) (*Bianca v Frank)*, the New York Court of Appeals determined that the attorney who represented a patrolman at a disciplinary proceeding is required to be served with a copy of the Police Commissioner's determination in order for a 30-day limitations period to commence stating:

> "This argument contravenes basic procedural dictates and the fundamental policy considerations which require that once counsel has appeared in a matter a Statute of Limitations or time requirement cannot begin to run unless that counsel is served with the determination or the order or judgment sought to be reviewed. [Citation omitted.]
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> "Indeed, once a party chooses to be represented by counsel in an action or proceeding, whether administrative or judicial, the attorney is deemed to act as his agent in all respects relevant to the proceeding. Thus, any documents, particularly those purporting to have legal effect on the proceeding, should be served on the attorney the party has chosen to handle the matter on his behalf. This is not simply a matter of courtesy and fairness, it is the traditional and accepted practice which has been all but universally codified. [Citations omitted.]
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> "Of course a legislative enactment could specifically exclude the necessity of serving counsel, but any intention to depart from the standard practice must be clearly established and stated in unmistakable terms. Short of that any general requirement that notice must be served upon the party . . . must be read in the accepted sense to require at least, that notice be served upon the attorney the party has chosen to represent him." (43 NY2d at 173.)

Thus, the Conciliation Bureau was required to send the 2014 Conciliation Decision to Mr. Feerst in order for the 90-day limitations period for filing a petition with the Tribunal to start running. Moreover, under *Bianca v Frank,* if the Conciliation Bureau had sent the 2014 Conciliation Decision to Petitioner and *not* to Mr. Feerst, the 90-day limitations period for filing a petition with the Tribunal would not have started to run. Therefore, the fact that the Conciliation Bureau did not send a copy of the 2014 Conciliation Decision to Petitioner is not fatal to Respondent's claim that the 2014 Conciliation Decision was properly addressed and mailed to Mr. Feerst on March 14, 2014 and that the Petition was untimely filed with the Tribunal on July 9, 2014.

In *Matter of the Petition of Matt Petroleum Corp,* DTA No. 812104 (New York State Tax Appeals Tribunal July 7, 1994), the New York State Tribunal (State Tribunal) addressed the timeliness of a petition filed with the State Division of Tax Appeals regarding a conciliation decision issued by the State Bureau of Conciliation and Mediation Services (BCMS). The petitioner in that matter argued, in part, that at the time of the issuance of the conciliation decision, another individual was petitioner's duly appointed representative and that BCMS did not send a copy of the conciliation decision to that individual. The State Tribunal stated in its decision that "by mailing a copy of the Conciliation Order to Mr. Graziano, [BCMS] fulfilled its obligation of serving petitioner's representative." In *Matter of the Petition of Multi Trucking, Inc., et al.*, DTA Nos. 804829, 804830 (New York State Tax Appeals Tribunal, October 6, 1988), the State Tribunal held that *Bianca v Frank* "would require a tolling of the 90 day period for filing of petitions if, in fact, petitioners' representative was not served with the notices. Thus, the State Tribunal's decisions make it clear that there is a requirement to serve a conciliation decision on a taxpayer's representative and that mailing a conciliation decision to the taxpayer where there is an authorized representative is insufficient to commence the running of the limitations period.

Petitioner argues that the 2014 Conciliation Decision should have been mailed to Petitioner and that Respondent did not satisfied its burden of providing proof of proper mailing to the [Petitioner] because it only furnished proof of mailing the [2014] Conciliation Decision to [Mr. Feerst]." Petitioner contends that the Conciliation Bureau did not follow its own mailing procedures described in the Riley Affidavit because it did not send the 2014 Conciliation Decision to "the taxpayer" and, furthermore, that the Riley Affidavit does not include a description of the Conciliation Bureau's mailing procedures for sending a conciliation decision to someone other than a taxpayer.[11] Petitioner asserts that although it is not claiming that Mr. Feerst did not receive the 2014 Conciliation Decision, the Conciliation Bureau is not entitled to the presumption of delivery because the presumption of delivery does not arise until adequate proof of mailing has been adduced. In addition, Petitioner contends that the Conciliation Bureau cannot show proof of mailing because it did not follow its own mailing procedures as described in the Riley Affidavit.

Although Mr. Riley did not cite the Conciliation Rules or the case law in the Riley Affidavit, the Conciliation Bureau did properly mail the 2014 Conciliation Decision by certified mail to Mr. Feerst. Had the Conciliation Bureau not sent the 2014 Conciliation Decision to Mr. Feerst, under the applicable case law, the 90-day limitations period for the filing of a petition with the Tribunal never would have begun to run. Notwithstanding Mr. Riley's reference to "taxpayer" in the Riley Affidavit, the actions of the Conciliation Bureau in this matter were correct. While it would not have been incorrect to send a copy of the 2014 Conciliation Decision to Petitioner also, this was not required under the relevant Conciliation Rules and case law which required that it be mailed to Petitioner's representative.

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[11] Although Petitioner argues here that the Conciliation Bureau and Respondent should be bound by the use of the word "taxpayer" in the Riley Affidavit for purposes of determining whether the 2014 Conciliation Decision was mailed in accordance with the Conciliation Bureau's procedures, we note that Mr. Feerst and not Petitioner signed the Petition although the statutes governing the filing of petitions refer to "taxpayer" (City Charter §170(a)) and "person against whom [the tax] is assessed." (*See e.g.* Administrative Code §11-2107.)

Box 5 of the 2013 Power of Attorney (in effect at the time of the March 14, 2014 mailing) provides for the sending of statutory notices and other communications where a power of attorney is in effect. The Department's power of attorney form provides that notices will be sent to the first named representative, unless the taxpayer designates a different representative. The form further allows the taxpayer to choose not to have notices and certain other communications sent to any representative. That portion of the form was left blank and, thus, Petitioner clearly indicated that it wanted notices and certain other communications to be sent to Mr. Feerst. [12]

Petitioner also asserts that all previous mailings by the Conciliation Bureau in this matter were sent to Petitioner with copies sent to Mr. Feerst and that, therefore, the Conciliation Bureau did not follow its procedures in mailing the 2014 Conciliation Decision solely to Mr. Feerst. However, we agree with Respondent that, as long as the mailing of the 2014 Conciliation Decision to Mr. Feerst alone as Petitioner's representative was proper and in accordance with the law and applicable rules, it does not matter that some or all prior notices were mailed to Petitioner with copies to Mr. Feerst. The Conciliation Rules contain no procedures for mailing other correspondence.

Petitioner further asserts that Mr. Riley's request for a new power of attorney in July 2014 before sending information to Mr. Feerst after the 2014 Conciliation Decision was mailed on March 14, 2014 indicates that he deemed the 2013 Power of Attorney ineffective. Therefore, Petitioner contends, any mailing of the 2014 Conciliation Decision on March 14, 2014 pursuant to the defective 2013 Power of Attorney could not satisfy the Conciliation Bureau's burden of proving proper mailing.

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[12] We need not decide whether, in light of *Bianca v Frank*, this Tribunal or any other government body could rely on a taxpayer's election not to have notices or other correspondence sent to any representative appointed on the power of attorney.

Respondent argues that the 2014 Power of Attorney did not invalidate the 2013 Power of Attorney[13] or demonstrate that the 2013 Power of Attorney was deemed ineffective by Mr. Riley at the time the 2014 Conciliation Decision was mailed on March 14, 2014. As pointed out by the ALJ, the only differences between the two powers of attorney is that the 2014 Power of Attorney provided the name of Mr. Feerst's firm and the date of the real property transfer instead of only the year. Thus, there is nothing on the face of the two powers of attorney that would lead to a conclusion that the 2013 Power of Attorney was defective. In addition, Petitioner has not shown any connection between the mailing of the 2014 Conciliation Decision on March 14, 2014 and Mr. Riley's request for a new power of attorney almost four months later. The Affirmation in Opposition explains that Mr. Feerst submitted the 2014 Power of Attorney at Mr. Riley's request to obtain information from the Conciliation Bureau. Thus, we agree with Respondent that the mailing of the 2014 Conciliation Decision to Mr. Feerst on March

[13] A new power of attorney does not invalidate actions already taken pursuant to a valid prior power of attorney. It does, however, replace the prior power of attorney and invalidates any actions taken pursuant to the prior power of attorney after the issuance of the new power of attorney.

14, 2014 was done pursuant to the valid 2013 Power of Attorney appointing Mr. Feerst as Petitioner's authorized representative.[15]

We conclude, therefore, that the Conciliation Bureau properly mailed the 2014 Conciliation Decision to Mr. Feerst, Petitioner's authorized representative, by certified mail on March 14, 2014, starting the running of the 90-day limitations period for filing the Petition with the Tribunal. As a consequence, the mailing of the Petition on July 9, 2014 was untimely and the Tribunal does not have jurisdiction to address the issues raised in the Petition.[16]

Dated: January 19, 2016
New York, NY

Ellen E. Hoffman
Commissioner and President

Robert J. Firestone
Commissioner

[15] We need not address the question of whether the second power of attorney was necessary.
[16] We have considered all of the other arguments of the Parties and find them unpersuasive.