



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11
Burlington, Vermont 05401
(802) 865-7122

**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

NOTICE OF DECISION

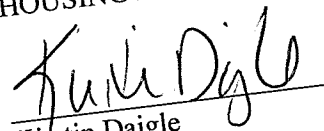
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 2/9/15

**CITY OF BURLINGTON
HOUSING BOARD OF REVIEW**


Kirstin Daigle
Board Chair

cc: Olga Sideleva
First Vermont Properties LLC

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of OLGA)
SIDELEVA Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by FIRST VERMONT) HOUSING BOARD OF REVIEW
PROPERTIES LLC for Rental Unit at)
103 N. Winooski Avenue, Apt. 2)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on January 5, 2015. Board Chair Kirstin Daigle presided. Board Members Loyal Ploof, Jason L'Ecuyer, Patrick Kearney and Ben Traverse were also present. Petitioner Olga Sideleva was present and testified. Respondent First Vermont Properties LLC was represented by Evan Stainman.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent First Vermont Properties LLC is the owner of a rental unit, 103 N. Winooski Avenue, Apt. 1, in the City of Burlington which is the subject of these proceedings. Evan Stainman manages the property.
2. Petitioner Olga Sideleva moved into the rental unit on December 1, 2010 under the terms of a written lease. Monthly rent was \$1250.00.
3. Petitioner paid a security deposit of \$1250.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on November 4, 2014.
5. Respondent sent a written statement to petitioner's forwarding address, by certified mail, in conformance with ordinance requirements. Said statement itemized deductions totaling \$2,648.84. Interest in the amount of \$36.00 was credited to the deposit.

6. Both parties testified concerning unpaid rent which appeared as a \$154.84 deduction on the itemized statement. Respondent deducted 4 days of rent for November. Petitioner objected to the deduction on the grounds that she was not told she would be charged for rent when she asked to stay an additional 4 days.

7. Both parties testified as to several deductions made for cleaning: \$165.00 for cleaning the kitchen and \$100.00 for cleaning baseboard trim, window sills and radiators. Respondent hired Laura's Cleaning Service to thoroughly clean the kitchen, including moving the appliances to clean behind and under them. The service spent 5.5 hours cleaning at a rate of \$30/hour. In addition, respondent's contractor cleaned all the base board and molding in the apartment at an actual cost of \$93.69.

8. Both parties testified concerning the oven which appeared as a \$300.00 deduction on the itemized statement. At the end of the tenancy 2 elements on the stove were not working; petitioner was aware that 1 element was not working at the end of the tenancy and she reported the problem to respondent. In addition, the drip pans were corroded, as were areas of the stove top. After pricing out the cost of replacement parts, respondent decided it was more economical to buy a new range; the cost of the new range was \$549.00.

9. Both parties testified as to deductions made for damage to 2 doors: a hollow core door costing \$175.00, a 6 panel wooden door costing \$350.00, and a door knob costing \$30.00. Both doors were damaged during petitioner's tenancy: one door had a hole in it (undisputed by petitioner) and the other was separated at the bottom, as well as being splintered around the doorknob. Based on photos submitted by respondent, the 6 panel door appears to be an older door.

10. Both parties testified as to deductions made for carpets, including: \$350.00 for carpet cleaning and \$400.00 for damage to the carpet in 2 rooms. The carpet was approximately 5 years old at the end of the tenancy. There were carpet pulls in 2 rooms which respondent attributed to petitioner's cat.

11. Both parties testified as to the following additional deductions: \$50 for repainting the entry doors; \$50 for patching, priming and painting a hole in the living room wall; and \$50 for patching,

priming and painting a hole in a bedroom wall. Petitioner did not dispute the damage but claimed the deductions were in excess of reasonable costs.

12. Both parties testified concerning repair to the vinyl at the bottom of the stairs, which appeared as a \$75.00 deduction on the itemized statement. Petitioner disputed the deduction because only 1 square in the vinyl had damage to it. However, the vinyl is sold in sheets, meaning it is impossible to replace just 1 square in the sheet.

13. Both parties testified as to deductions made to remove candle wax from 2 walls which, totaling \$75.00 on the itemized statement. The wax needed to be scraped off the wall and then the wall needed to be patched, primed and painted.

14. Both parties testified as to deductions made for 2 wall sconces, totaling \$60.00 on the itemized statement. Both sconces were replaced due to damage to them. Petitioner disputed the cost and argued the damage was normal wear and tear.

15. Both parties testified concerning a bi-fold closet door, which appeared as a \$50.00 deduction on the itemized statement. There was a hole in the door, costing \$62.06 to repair. Petitioner did not remember any damage to the door.

16. Both parties testified concerning paint on a wall in one of the bedrooms, which appeared as a \$20.00 deduction on the itemized statement. Petitioner disputed the cost to repaint. The cost to repaint was \$50 as evidenced by respondent's contractor.

17. Both parties testified concerning the mini-blinds, which appeared as a \$54.00 deduction on the itemized statement. Respondent replaced all the mini-blinds because they were filthy and it would have cost more to try to clean them.

18. Both parties testified concerning plumbing charges, which appeared as a \$140.00 deduction on the itemized statement. In March 2013, petitioner had a clogged toilet; respondent had his plumber auger the toilet. Petitioner disputed the deduction on the basis that respondent never told her she would be charged for the plumber and the charge arose in 2013, well more than a year before she moved out.

CONCLUSIONS OF LAW

19. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

20. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

21. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by certified mail. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Timely notice was provided.

22. Based on the evidence, the Board concludes the deductions for the oven, the baseboard, the carpet cleaning, and the wall sconces were not reasonable as the damage was part of normal wear and tear. With respect to the oven, in particular, although the damage appeared to be great, the oven was at the end of its life cycle and required replacement regardless of any damages attributable to petitioner. Moreover, it was unreasonable for respondent to deduct costs for the plumber services in March 2013—respondent should have billed petitioner for the service call in 2013 if it was his intent to hold petitioner responsible for the call.

23. The other damages attributable to petitioner went beyond normal wear and tear, thereby entitling respondent to retain a reasonable amount of petitioner's security deposit. Additionally, it was permissible for respondent to retain prorated rent for November 2014—although petitioner claims she did not know she would be charged for this rent, there is no enforceable agreement absolving her of this liability. Accordingly, based on the evidence, the Board concludes respondent was warranted in deducting the following reasonable amounts from petitioner's security deposit:

• Rent for November 2014	\$ 154.84
• Kitchen cleaning	\$ 85.00
• Damage to 2 doors & 1 knob	\$ 375.00
• Damage to carpet	\$ 200.00
• Repainting, patching, priming	\$ 150.00
• Damage to vinyl	\$ 75.00
• Removal of wax	\$ 75.00
• Bi-fold door	\$ 50.00
• Paint on wall	\$ 20.00
• Replace mini-blinds	\$ 54.00
Total	\$1238.84

ORDER

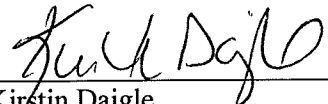
Accordingly, it is hereby ORDERED:

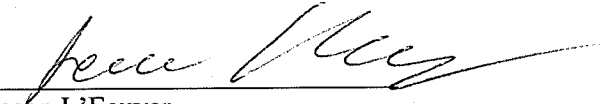
24. Petitioner Olga Sideleva is entitled to recover from respondent First Vermont Properties LLC the following amounts:

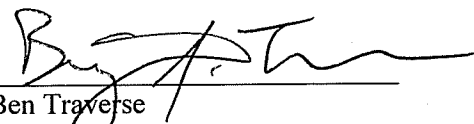
- a) \$48.16 of the principal amount of the security deposit improperly withheld after November 18, 2014; and
- b) Additional interest of \$0.0003 per day from November 19, 2014 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 9th day of February, 2014⁵.

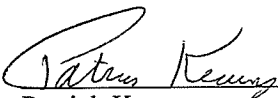
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle


Jason L'Ecuyer


Ben Traverse


Loyal Ploof


Patrick Kearney



HOUSING BOARD OF REVIEW

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DATED 2/9/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Board Chair

cc: Taylor Bickford & Jake Dryden-Jaffe
Frank Marcou

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

In re: Request for Hearing of TAYLOR)
BICKFORD and JAKE DRYDEN-JAFFE)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by FRANK MARCOU for) HOUSING BOARD OF REVIEW
Rental Unit at 169 ½ B North St)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on January 5, 2015. Board Chair Kirstin Daigle presided. Board Members Loyal Ploof, Jason L'Ecuyer, Patrick Kearney and Ben Traverse were also present. Petitioners Taylor Bickford and Jake Dryden-Jaffe were present and testified. Respondent Frank Marcou was present and testified. Appearing and testifying as witnesses were Ken Sanders and Lisa Bickford.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent Frank Marcou is the owner of a rental unit, 169 ½ B North Street, in the City of Burlington which is the subject of these proceedings.
2. On October 12, 2014, petitioners Taylor Bickford and Jake Dryden-Jaffe signed a written lease to rent the apartment. Jake Dryden-Jaffe moved into the rental unit that night even though work was still being done in the apartment. Petitioners agreed that workers would have access in the apartment to do the work. The parties disputed the date by which the repairs were supposed to be complete: petitioners testified that the parties verbally agreed to the work being completed on October 14, two days after the written lease was executed, while respondent testified that the parties agreed to the repairs being completed within a couple of weeks. What is undisputed, though, is that even after a couple of weeks had gone by, the kitchen still required significant cleaning and repairs, and the shower surround needed to be replaced.

3. Petitioners paid a security deposit of \$1400.00 to respondent. Monthly rent was \$1400.00. Petitioner was to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioners, dissatisfied with the time it was taking to make the repairs, notified respondent on October 23, via email, that they would be breaking their lease and moving out of the apartment by November 1. Respondent and petitioners' parents (who were co-signors of the lease) proceeded to email back and forth about whether or not the apartment was habitable and whether or not respondent's workers had been denied access to the apartment. Petitioners claim the apartment was not habitable and claim they never denied anyone access to the apartment. However, there were times when a worker was scheduled to be at the apartment, but did not show up—for example, on one occasion, respondent's carpenter called and asked to come to the apartment with no notice; petitioners arranged for the carpenter to come the next day, but he never arrived.

5. Petitioners moved out on October 31, 2014. On November 13, respondent sent a written statement to petitioners, by certified mail, in conformance with the requirements of State law and local ordinances. Said statement indicated \$840.00 of the deposit was being withheld for prorated rent for November; respondent charged petitioners for 18 days of rent for November, as he was able to rent the apartment to new tenants until November 19. Accordingly, the amount of the security deposit returned to petitioners was \$561.00.

6. Interest in the amount of \$1.00 was credited to the deposit.

7. Petitioners argue that the apartment was not ready on the date by which work was supposed to be completed and that it was uninhabitable. Respondent argued that petitioners moved in knowing that the apartment was not ready and hampered work being done in the apartment by denying his workers access to the apartment.

8. The Board finds that the apartment was not ready to be occupied when petitioners moved into the apartment, petitioners did not deny access to the apartment and the work that still needed to be done in

the apartment could not have been completed in the 2 day time period petitioners state was the agreed upon date.

CONCLUSIONS OF LAW

9. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

10. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

11. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by certified mail. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Timely notice was provided.

12. "[I]n the rental of any residential dwelling unit an implied warranty exists in the lease, whether oral or written, that the landlord will deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean and fit for human habitation." *Hilder v. St. Peter*, 144 Vt. 150, 160 (1984). As is applicable here, "a tenant who enters into a lease agreement with knowledge of any defect in the essential facilities cannot be said to have assumed the risk, thereby losing the protection of the warranty. Nor can this implied warranty of habitability be waived by any written provision in the lease or

by oral agreement.” *Id.* When a landlord is found in breach of the implied warranty of habitability, “[t]he tenant will be liable only for the reasonable rental value [if any] of the property in its imperfect condition during his period of occupancy.” *Id.* at 161 (quotation omitted).

13. A valid lease agreement existed between the parties; petitioners acted in breach of that lease agreement when they moved out of the rental unit, and, generally speaking, that entitled respondent to retain petitioners’ security deposit for unpaid rent. Based on the evidence presented, however, the Board concludes respondent breached the implied warranty of habitability—he should not have allowed any tenant to move into the apartment until all the necessary work was completed. The Board is tasked with reviewing the “reasonableness” of a landlord’s security deposit deductions. Minimum Housing Code Sec. 18-120(e). Respondent’s breach of the implied warranty of habitability rendered it unreasonable for him to require petitioners to pay rent in full through November 18, 2014. The Board concludes that a reasonable deduction would have been \$420.00.

ORDER

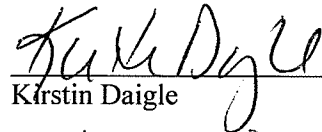
Accordingly, it is hereby ORDERED:

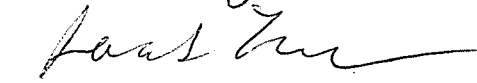
14. Petitioners Taylor Bickford and Jake Dryden-Jaffe are entitled to recover from respondent Frank Marcou the following amounts:

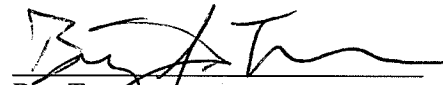
- a) \$420.00 of the principal amount of the security deposit improperly withheld after November 14, 2014; and
- b) Additional interest of \$0.003 per day from November 15, 2014 until such date as the amount improperly withheld is returned to petitioners.

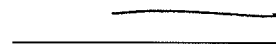
DATED at Burlington, Vermont this 9th day of February, 2014.⁵

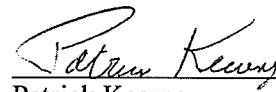
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle


Jason L'Ecuyer


Ben Traverse


Loyal Ploof


Patrick Kearney



HOUSING BOARD OF REVIEW

City of Burlington

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HOUSING BOARD OF REVIEW

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NOTICE OF DECISION

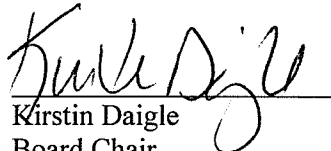
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DATED 2/9/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Board Chair

cc: Erin Brennan & James Morrell
Thomas Matthews

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of ERIN BRENNAN)
and JAMES MORRELL Regarding)
Withholding of Security Deposit by) CITY OF BURLINGTON
THOMAS MATTHEWS for Rental Unit at) HOUSING BOARD OF REVIEW
185 N. Willard Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on January 5, 2015. Board Chair Kirstin Daigle presided. Board Members Loyal Ploof, Jason L'Ecuyer, Patrick Kearney and Ben Traverse were also present. Petitioners Erin Brennan and James Morrell were present and testified. Respondent Thomas Matthews was also present. Also appearing and testifying as a witness was Ray Davis.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent Thomas Matthews is the owner of a rental unit, 185 N. Willard Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Erin Brennan and James Morrell moved into the rental unit under the terms of a written lease which ran from June 1, 2013 to May 30, 2014; thereafter, they rented on a month to month basis. Monthly rent was \$1450.00.
3. Petitioners paid a security deposit of \$1450.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners vacated the apartment on November 1, 2014.

5. On November 17, 2014, respondent sent a written statement to petitioners, by first-class mail, informing them that part of their security deposit was being withheld. Respondent's statement itemized deductions totaling \$559.76. The amount of the deposit returned to petitioners was \$870.24.¹

6. Interest was not credited to the deposit.

CONCLUSIONS OF LAW

7. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

8. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

9. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by certified mail. Minimum Housing Code Sec. 18-120(c).² If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e).

10. A landlord who decides to retain all or part of a security deposit must comply with 3 specific requirements of the ordinance: the deposit must be returned within 14 days of the date the tenant vacated

¹ The Board notes that the deductions taken (\$559.76) and the amount returned (\$870.24) totals \$1430, not \$1450 (the amount of the deposit).

² An amendment to Sec. 18-120(c) took effect on January 7, 2015 and landlords are now required to comply with this section by "hand-delivering or mailing the statement and any payment required to the last-known address of the tenant"—in effect, the "certified mail" requirement has been removed. The amendment was not intended to apply retroactively, though, and since all dates relevant to this matter fell before January 7, 2015, the Board is required to apply the version of the Minimum Housing Code in effect at the time.

or abandoned the rental unit with a written statement itemizing any deductions; the statement must contain notice of the tenant's right to appeal to the Housing Board of Review; and the statement must be hand-delivered or sent by certified mail. See *Lieberman v. Circe*, No. S21-13 Cncv (Crawford, J., March 27, 2013) and Minimum Housing Code Sec. 18-120(c). The Vermont Supreme Court required the literal enforcement of these requirements in *In re Soon Kwon*, 189 Vt 598 (2011). Accordingly, a landlord who fails to meet all of these requirements forfeits the security deposit. In this case, respondent failed to comply with the notice requirements by failing to hand-deliver or send by certified mail an itemized statement within 14 days and by failing to include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. Petitioners are entitled to recover interest on the security deposit. Minimum Housing Code Sec. 18-120(c). The Housing Code requires that the security deposit be held by the owner in an interest-bearing account with an interest rate equivalent to a current Vermont bank passbook savings account. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

ORDER

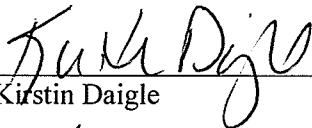
Accordingly, it is hereby ORDERED:

12. Petitioners Erin Brennan and James Morrell are entitled to recover from respondent Thomas Matthews the following amounts:

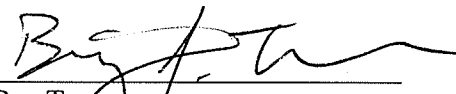
- a) \$579.76 of the principal amount of the security deposit improperly withheld after November 15, 2014;
- b) Interest of \$5.30 on the entire amount of the deposit for the period June 1, 2013 through November 15, 2014; and
- c) Additional interest of \$0.004 per day from November 16, 2014 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 9th day of February, 2014⁵.

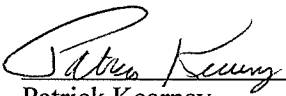
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