



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1165

**Rhyan Ramsaroop
(Appellant/Respondent)**
v.
**Secretary-General of the United Nations
(Respondent/Appellant)**
&
Miksch *et al.*
(Respondents/Appellants on Cross-Appeal)
v.
**Secretary-General of the United Nations
(Appellant/Respondent on Cross-Appeal)**

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Sabine Knierim
Case Nos.:	2021-1510 & 1511
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Rhyan Ramsaroop and Miksch <i>et al.</i> :	Dorota Banaszewska, OSLA
Counsel for Secretary-General:	André Luiz Pereira de Oliveira

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Miksch *et al.*,¹ six staff members of the Department of Safety and Security (DSS) contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) their non-selection for posts of Security Sergeant at the S-4 level. In Judgment No. UNDT/2020/192, the UNDT granted the applications in part, finding that Miksch *et al.* had not been fully and fairly considered. The UNDT ordered that two of the applicants, Mr. George and Mr. Kennedy, each be paid an amount equivalent to 9.8 per cent of the difference between their salaries and the salary they would have obtained at the S-4 level for one year; and the other four applicants, Mr. Miksch, Mr. Miyashiro, Mr. Ramsaroop and Mr. Mazioui, each be paid an amount equivalent to 9.8 per cent of the difference between their salaries and the salary they would have obtained at the S-4 level for the period between the unlawful decision and the prospective date of their retirement from the Organization, with a cap of two years' net base salary.

2. Mr. Ramsaroop and the Secretary-General both appealed the UNDT Judgment. Miksch *et al.* filed a cross-appeal. For the reasons set out below, we partially uphold the appeal of the Secretary-General and dismiss the appeal of Mr. Ramsaroop and the cross-appeal.

Facts and Procedure

3. On 25 May 2018, five posts of Security Sergeant at the S-4 level were advertised in Job Opening No. 97591 (the posts). Miksch *et al.*, six staff members of DSS who had previously been placed on the roster of pre-approved candidates for the position of Security Sergeant at the S-4 level, applied. All six staff members were shortlisted and invited to sit for a written assessment. By e-mail dated 17 August 2018, in response to Miksch *et al.*'s inquiry, they were informed that their participation "in the written assessment and other steps that follow[ed]" was not required.

4. The matrix prepared by the Hiring Manager comparing all the shortlisted candidates included the following information: performance at a technical assessment in 2011, performance at a technical assessment in 2014, performance at a technical assessment in 2018, and performance appraisals for the 2016-2017 and 2017-2018 performance cycles. The

¹ Before the UNDT, Miksch *et al.* included six applicants: Mr. Reginald George, Mr. Timothy Kennedy, Mr. Youcef Mazioui, Mr. Thomas Miksch, Mr. Javier Miyashiro, and Mr. Rhyan Ramsaroop. On appeal, Miksch *et al.* includes the original applicants before the UNDT for the purpose of the answer to the Secretary-General's appeal but excludes Mr. Ramsaroop for the purpose of the cross-appeal.

matrix reflects that none of the applicants took the written test in 2018, and instead their performances at two prior recruitment exercises, in 2011 and 2014, were taken into consideration in comparing them with the other candidates. None of the six staff members were selected for the positions.

5. On 24 May 2019, all of the applicants, except Messrs. Kennedy and George participated in a second selection exercise for similar posts, Security Sergeant at the S-4 level (the second selection exercise). All four were not successful. There is no evidence before us of any allegation of irregularity in relation to this selection process or that it is subject to legal challenge.

6. On 20 June 2019, Miksch *et al.* filed separate applications with the UNDT contesting their non-selection for the posts under Job Opening 97591 and seeking compensation *in lieu* of rescission, compensation for loss of opportunity, and moral damages. At their request, the UNDT joined all six cases.

7. On 16 November 2020, the UNDT issued Judgment No. UNDT/2020/192, granting the applications, in part. The UNDT found that while the applicants had been unequivocally informed by DSS that their participation in the written assessment was not a requirement for the purpose of the selection process under review, their non-participation had later been taken into consideration in the assessment of their candidatures with respect to other candidates. The UNDT held further that the Administration ought not to have given consideration to the applicants' performance in other prior recruitment exercises. It held that performance in prior selection exercises was irrelevant to the determination of whether a candidate was suitable for the advertised vacant post.² In its view, considering past failures in a selection exercise would negate the candidate's ability to improve and therefore deny the staff member's right to have his or her candidacy fairly considered. Hence, the Administration had taken irrelevant considerations into account, resulting in the contested decision being unreasonable and the applicants being denied fair and full consideration.

² Impugned Judgment, para. 15.

8. The UNDT relying on *Robinson*³ held that the fact that the five vacant posts had been filled coupled with the amount of time elapsed rendered the rescission of the decisions “impossible” and no award of compensation could be granted under Article 10(5)(a) of the UNDT Statute. The UNDT, however, awarded compensation for harm (for loss of opportunity) under Article 10(5)(b) on grounds that all six candidates had a significant chance of selection given that they had been rostered for positions similar to those under review and none of them had had negative performance reviews in the previous years.

9. The UNDT found that since 49 individuals, including Miksch *et al.*, had been shortlisted to participate further in the selection process for five posts, each shortlisted candidate had a 9.8 per cent chance of selection.

10. The UNDT agreed with the Secretary-General’s submission that Mr. George and Mr. Kennedy’s compensation should be limited to an amount equivalent to 9.8 per cent of the difference between their salaries and the salary they would have obtained at the S-4 level for one year in light of their failure to mitigate their losses by failing to participate in the second selection exercise for a similar S-4 post in May 2019.

11. As to the remaining four applicants, including Mr. Ramsaroop, who had unsuccessfully participated in the second selection exercise in May 2019, the UNDT found that given that they all held permanent appointments, the compensation of their loss of chance should be calculated for the period between the date of the unlawful decision and the prospective date of their retirement from the Organization, with a cap of two years’ net base salary.

12. The UNDT rejected the applicants’ requests for moral damages in the absence of supporting evidence.

13. On 14 January 2021, Mr. Ramsaroop, one of the six applicants before the UNDT, filed an appeal against the UNDT Judgment with the United Nations Appeals Tribunal (Appeals Tribunal). The Secretary-General filed his answer on 22 March 2021. This case was registered as Case No. 2021-1510.

³ *Herbert Robinson v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1040, para. 24.

14. The Secretary-General also appealed against the Judgment on 15 January 2021. Miksch *et al.*, including all six original applicants before the UNDT, represented by the Office of Staff Legal Assistance, filed an answer on 19 March 2021. Miksch *et al.*, including all original applicants before the UNDT except for Mr. Ramsaroop, filed a cross-appeal on 19 March 2021 and the Secretary-General filed an answer to the cross-appeal on 14 May 2021. The case was registered as Case No. 2021-1511.

15. By Order No. 419 (2021), the President of the Appeals Tribunal ordered that the two cases be consolidated for all purposes.

Submissions

16. The parties have made detailed (and in some respects irrelevant) submissions in the two appeals and the cross-appeal. It is unnecessary to set them out fully or with specific reference to the pleading in which they were made, as they are for the most part repetitive. The issues in the final analysis are straightforward. It therefore will be better to summarize all the submissions made by the Secretary-General on the one hand, and by Miksch *et al.*, on the other hand, in their respective appeals, answers and cross-appeals.

The arguments of the Secretary-General

17. The Secretary-General accepts that the UNDT correctly determined that it was not competent to award Miksch *et al.* compensation *in lieu* since it did not rescind the contested decision under Article 10(5)(a) of its Statute. The UNDT has discretion as to the type of remedy to be granted when it determines that an administrative decision is unlawful. An unlawful administrative decision may be allowed to subsist where otherwise the consequences of invalidity might be onerous or disproportionate to other affected persons.⁴ However, rescission may be appropriate in certain circumstances.

18. The reliance of Miksch *et al.* on *Chhikara*⁵ is misplaced. In that case, the Appeals Tribunal held that the rescission of the non-selection decision was possible in light of the particular circumstances showing “grossly negligent illegalities”; specific circumstances which are not present in this case. These considerations do not apply in this instance.

⁴ *Ross v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-926, para. 49.

⁵ *Virendra Singh Chhikara v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1014.

19. The Secretary-General contends that the UNDT erred in finding that Miksch *et al.* had a significant chance of selection for the posts. Firstly, the UNDT erred in fact in finding that each staff member had a 9.8 per cent chance of selection when all 57 long-listed candidates would have had the same chance of promotion which would yield an 8.8 per cent loss of opportunity. If the chance for selection for the five positions is determined from among the 49 shortlisted candidates for the five positions, the staff members would only have had a 10.2 per cent chance of selection. Under either measurement, their chances of being selected were so low that they had to be considered speculative. In *Hastings*,⁶ the Appeals Tribunal found that while compensation for loss of chance may sometimes be ordered on a percentage basis, where there is a chance of less than ten per cent, damages become too speculative.

20. The Secretary-General maintains further that the UNDT erred by extending the award of compensation for Mr. Miyashiro, Mr. Miksch, Mr. Ramsaroop and Mr. Mazioui until their retirement from the Organization, with a cap of two years' net base salary as they had a further opportunity for promotion about a year after the contested selection exercise in the second selection exercise. The maximum missed opportunity was until the next opportunity for promotion had arisen, i.e. one year later in the 2019 selection process.

21. The Secretary-General accordingly asks the Appeals Tribunal to vacate the award of compensation or, in the alternative, limit the compensation to a one-year period, deducting the amount of salary related to the positions currently encumbered. No compensation should be awarded in relation to Mr. George and Mr. Kennedy since they failed to participate in the 2019 selection process, thereby failing to demonstrate reasonable efforts to limit their alleged material losses from the contested decision. The Secretary-General also requests that the Appeals Tribunal dismiss the cross-appeal in its entirety.

The arguments of Miksch *et al.*

22. Miksch *et al.* contend that the UNDT erred in law by not awarding them compensation *in lieu* of rescission of the contested decision. Relying on *Chhikara*⁷ they argue that a significant length of time between the filing of the application and the issuance of the first instance decision does not constitute an obstacle to an award of compensation *in lieu* of rescission. Compensation *in lieu* has been awarded in cases before the UNDT where the post

⁶ *Hastings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-109.

⁷ *Virendra Singh Chhikara, op. cit.*

in the contested selection procedure had been filled with a candidate other than the applicant contesting a non-selection decision.⁸

23. They further contend that even assuming that an award of compensation *in lieu* of rescission pursuant to Article 10(5)(a) was impossible, the UNDT may order an amount equivalent to three months' net base salary at the S-4 level under Article 10(5)(b). They request that the Appeals Tribunal vacate the UNDT's finding refusing an award of compensation *in lieu* of rescission of the contested decision; and award them compensation *in lieu* in the amount equivalent to three months' net base salary at the S-4 level or alternatively in terms of Article 10(5)(b) of the UNDT Statute.

24. They further submit that the UNDT correctly found that they had a significant chance of selection for the posts and the compensation awarded by the UNDT for loss of opportunity to all six individuals is not in need of a downward revision. The UNDT correctly applied and interpreted the Appeals Tribunal's findings in *Hastings*. Contrary to the Secretary-General's contention, in *Hastings*, the Appeals Tribunal did not set a ten per cent limit to compensation for loss of opportunity, but found that in that particular instance, the ten per cent compensation awarded by the UNDT was excessive. Thus, the UNDT correctly found that given that Miksch *et al.* were all rostered for positions similar to those under review and none of them had had negative performance reviews in the previous years, they all had a significant chance of selection.

25. By the same token, it would be perverse and unjust to claim that a staff member whose chance of selection was smaller than ten per cent is never entitled to compensation for economic loss. This would allow the Administration to be shielded from any liability for the unlawfulness of the selection procedures in all the instances where the candidates applying for a post are numerous.

26. The Secretary-General's contention that Mr. Miyashiro, Mr. Miksch, Mr. Ramsaroop and Mr. Mazoui did not have a significant chance of promotion, since they were not considered a year later to be serious contenders in different selection proceedings which had a different pool of candidates and a different course and took place a year later, is neither founded nor logical or just.

⁸ *Munyan v. Secretary-General of the United Nations*, Judgment No. UNDT/2018/028.

27. The UNDT took the relevant and correct factors into account when calculating the compensation amount and awarding Miksch *et al.* the just, accurate and reasonable compensation. The UNDT correctly held that had Mr. Mazioui, Mr. Miksch, Mr. Miyashiro and Mr. Ramsaroop been successful in the selection process, given that they hold permanent appointments, the compensation for their loss of chance shall be calculated for the period between the date of the unlawful decision and the prospective date of their retirement. The UNDT also correctly assessed and considered how grave the breach of the Administration was, a violation so evident and grave that even the Secretary-General does not contest the unlawfulness of the Administration's actions.

28. The Secretary-General fails to acknowledge that the compensation awarded by the UNDT reflects the gravity of the breach when he contends that Mr. Mazioui, Mr. Miksch, Mr. Miyashiro and Mr. Ramsaroop should have only been granted compensation limited to one-year net base salary. Firstly, they mitigated their damage as required to the fullest possible extent; and secondly, to succeed in his claim with respect to the mitigation of damages, the Secretary-General would have to show that Miksch *et al.* would probably have succeeded in being selected for the posts in the subsequent proceedings; yet, the Secretary-General admits that they were not considered serious contenders in that subsequent recruitment exercise.

29. Miksch *et al.* request the Appeals Tribunal to vacate the UNDT's finding refusing an award of compensation *in lieu* of rescission of the contested decision and award compensation *in lieu* in the amount equivalent to three months' net base salary at the S-4 level or alternatively in terms of Article 10(5)(b) of the UNDT Statute.

Considerations

30. The finding of the UNDT that the applicants before it did not receive fair and full consideration has not been contested before us. The dispute on appeal is about the remedy granted by the UNDT.

31. Article 10(5) of the Statute of the UNDT confers upon it remedial powers as follows:

As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment,

promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

32. The detailed arguments made by the parties reveal an apparent (though understandable) measure of incoherence in coming to grips with the correct approach to the remedies available to staff members who challenge their non-selection for promotion or appointment on the grounds of unreasonableness or a failure of fair and full consideration.

33. The incoherence is perhaps more apparent than real, because, in fact, remedies for irregularities in non-selection decisions are invariably context specific. They are discretionary in nature and should be tailored to the peculiar circumstances of the case.

34. The jurisprudence of the Appeals Tribunal and the UNDT referred to by the parties in their submissions draws a distinction (either explicitly or tacitly) between the selection decision and the non-selection decision in promotion cases. The selection decision is the decision to favour a particular candidate for promotion or appointment. The non-selection decision (an implied administrative decision) is the decision to reject the unsuccessful candidates. At first glance, the distinction is artificial and sophistic. The decision to select a particular candidate is *a fortiori* a decision to reject the others. The selection and non-selection are simply different sides of the same coin. However, our settled jurisprudence holds that a non-selection decision may be rescinded, while leaving the (invalid) selection intact.⁹

35. This unorthodox expedient grants the UNDT a discretion to remedy a non-selection where the applicant has not been given fair and full consideration, while at the same time taking account of the practical reality that the successful candidate may have been deserving and in post for a significant period of time pursuant to an exercise that was in all other respects fair and reasonable except for the tainted non-selection of the applicant.

⁹ *Virendra Singh Chhikara, op. cit; Ross, op. cit.*

36. In *Ross* we pronounced in relation to this issue as follows:¹⁰

But even where there is a foreseeable and significant chance of promotion, rescission may not always be the appropriate remedy. Although the non-selection may be tainted by illegality, the other legal and factual consequences of the contested administrative decision to select the successful candidate cannot be overlooked. Legal validity is never absolute and can only be described in relative terms, from which it follows that an administrative act may be invalid for one purpose (non-selection) and valid for another (selection). Thus, in certain circumstances, the discretionary remedy of rescission might justifiably not be granted in promotion cases where there may be disproportionate consequences for the selected candidate. In any event, when rescission is granted, the UNDT is obliged in terms of Article 10(5)(a) of the UNDT Statute to set an amount of in-lieu compensation that the Secretary-General may elect to pay as an alternative to the rescission. In this way, a contested administrative decision, though unlawful, is sensibly allowed to subsist for pragmatic reasons where otherwise the consequences of invalidity might be onerous or disproportionate to other affected persons.

37. Faced with an unfair or unreasonable non-selection, the UNDT is obliged within its discretion to make a choice in granting a remedy. There are three possible choices. Firstly, it may rescind the non-selection in terms of Article 10(5)(a) and order (as it is obliged to do) compensation *in lieu* to be paid by the Secretary-General in the event that he is unwilling or unable to rescind the non-selection. Alternatively, as happened in this case, the UNDT, acting in terms of Article 10(5)(b), may award compensation for harm (supported by evidence) in an amount not exceeding the equivalent of two years' net base salary. The third possibility would be for the UNDT to avoid the fiction, by regarding the selection and non-selection as one contested administrative decision, and order the rescission of the entire selection exercise. In this latter event, it is likely that the Secretary-General will pay the compensation *in lieu* and allow the invalid decision (selection) to stand. The problem with the first remedy, which the UNDT prudently declined to grant, is that it may offer little practical relief if the Secretary-General simply abided the rescission of the non-selection.

38. All of this jurisprudential maneuvering reveals a simple truth: as a matter of policy compensation is often the most appropriate remedy for non-selection decisions tainted by irregularity. However, what would have been better achieved in the express language of the

¹⁰ *Ross, op. cit.*, para. 49.

Statute has been accomplished by prudential arguments and judicial pronouncements founded on the structural arrangements established by its provisions.

39. The UNDT, as said, declined to rescind the non-selection on the practical grounds that the lapse of time made it “impossible” to rescind the selection. The choice of language may be hyperbolic, but the point is good. The passage of time and the lack of full information about the merits of the selection would give most judges pause about the feasibility of a rescission of the selection – the third possible remedy. Though, it should be kept in mind, a safeguard exists in the override power of the Secretary-General to pay compensation *in lieu* and to leave the invalid selection extant. This structural arrangement mandated by the statute is a legitimate consideration to be taken into account by the UNDT when deciding to set aside both the selection and the non-selection simultaneously – which the UNDT in certain instances may opt to do, especially if the reason for non-selection is egregious, for instance where the selection was motivated by corruption, nepotism or patronage.

40. Stripped to its essence, the present appeal concerns the amount of compensation. Miksch *et al.* want more compensation which they believe will be possible through an order of rescission and compensation *in lieu*. The Secretary-General would prefer to pay no compensation or less than the amount ordered.

41. As discussed, Article 10(5) of the Statute of the UNDT confers a choice upon the UNDT in relation to the remedy it may grant. The provision provides no directive principle informing that choice. It is a matter within the sole discretion of the UNDT in the strict sense, in that there are a number of legitimate courses available to it. Universally, and traditionally, it is accepted that where a lower tribunal has given a decision on a matter within its discretion in the strict sense, the appellate tribunal should interfere only if it concludes that the tribunal *a quo* had not exercised a judicial discretion by exercising it capriciously or upon wrong principle, did not bring an unbiased judgment to bear on the question, or did not act for substantial reasons. The exercise of power by the UNDT should not be set aside on appeal merely because the Appeals Tribunal would have preferred the UNDT to have followed a different course than the legitimate one it opted to follow.

42. In similar vein, in appeals such as this, concerned essentially with the quantum of compensation, an appellate tribunal will show reluctance to interfere with an award of compensation by the tribunal that tried the case. Article 10(5) of the Statute of the UNDT

provides no governing directive with regard to the relevant principles and factors to be considered by the UNDT in making a compensation award. The estimate of compensation must necessarily be somewhat rough and ready, such as in awards by municipal courts for general damages for defamation, pain and suffering or unfair labour practices. Where the amount of compensation or damages is a matter of estimation and discretion, the appellate tribunal will be slow to intervene. However, that is not say the appellate court should abdicate its supervisory power. Where the lower tribunal has considered irrelevant facts, ignored relevant ones or where there is a substantial variation or a striking disparity between the award by the lower tribunal and the award the Appeals Tribunal considers ought to have been made, the Appeals Tribunal will make an assessment and substitute the impugned award with its own.

43. The decision of the UNDT in this case not to order rescission and compensation *in lieu* on the grounds of infeasibility was not tainted by any irregularity or reliance upon wrong principle. There was no obligation on it to grant relief of that kind instead of compensation for harm, which it legitimately considered more appropriate in the circumstances. The UNDT did not fetter its discretion by holding that it had no power to rescind, it merely opted not to make such an order in the circumstances of the case based on the relevant considerations that the posts had been filled and too much time had lapsed. There is accordingly no basis to set aside the order of the UNDT granting compensation for harm and to substitute it with an order for rescission and compensation *in lieu*.

44. The finding by UNDT (when determining the quantum of compensation for harm) that Miksch *et al* had a significant chance of selection for the posts was a reasonable assessment. They all had an 8 to 10 per cent chance of being selected depending on whether the shortlist or long-list was used as the basis for computation. The decision in *Hastings* was not intended to set an immutable ten per cent threshold for compensation for loss of opportunity. Added to that, Miksch *et al.* were all rostered for positions similar to those under review, and as none of them had negative performance reviews in the previous years, they all had a reasonable chance of selection.

45. However, the UNDT erred by assessing the lost opportunity for Mr. Miyashiro, Mr. Miksch, Mr. Ramsaroop and Mr. Mazioui as enduring until their retirement from the Organization, and compensating accordingly with a cap of two years' net base salary. These applicants had a further opportunity for promotion in the second selection exercise that took

place about a year after the contested selection exercise. The correct principle for compensating the harm suffered by Miksch *et al* was to make good the lost opportunity occasioned by the irregularity. There is no evidence that the second selection exercise was tainted in any way and thus it is reasonable to conclude that the lost opportunity ended with the completion of that selection exercise.

46. Hence, the lost opportunity endured only for a year until the next opportunity for promotion arose which remedied the defect, and of which opportunity Mr. Miyashiro, Mr. Miksch, Mr. Ramsaroop and Mr. Mazioui availed themselves. While Mr. George and Mr. Kennedy did not avail themselves of the opportunity, it does not mean they should not be compensated for the period of the lost opportunity. The UNDT erred in awarding compensation for the period beyond that.

47. The UNDT's calculation of the chance of selection at 9.8 per cent falls within the range of reasonable choices within its discretion and there is no basis to interfere with it.

48. Consequently, the UNDT acted on wrong principle and ignored relevant considerations in determining the amount of compensation. The appeal of the Secretary-General should succeed to that limited extent while the appeal of Mr. Ramsaroop and the cross-appeal must fail.

Judgment

49. The appeal under Case No. 2021-1510 and the cross-appeal under Case No. 2021-1511 are dismissed. The appeal of the Secretary-General under Case No. 2021-1511 partially succeeds and the order of the UNDT is substituted and varied to read as follows:

- a. The application is granted in part;
- b. The Respondent shall pay Applicants Miksch, Miyashiro, Ramsaroop, Mazioui, George and Kennedy each an amount equivalent to 9.8% of the difference between their salaries and the salary they would have obtained at the S-4 level for one year;
- c. The Applicants' claim for moral damages is rejected;
- d. If payment of the above amounts are not made within 60 days of the date at which this judgment becomes executable, five per cent shall be added to the United States Prime Rate from the date of expiry of the 60-day period to the date of payment. An additional five per cent shall be applied to the United States Prime Rate 60 days from the date this Judgment becomes executable.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 27th day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar