

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**TRANSCENDENCE TRANSIT II, INC.;**

**TRANSCENDENCE TRANSIT, INC.;**

**Case 29-CA-182049**

**PATRIARCH PARTNERS, LLC AND**

**PATRIARCH PARTNERS AGENCY SERVICES;  
Single Employers or Joint Employers**

**And**

**LOCAL 1181-1061, AMALGAMATED TRANSIT  
UNION, AFL-CIO**

**COUNSEL FOR THE GENERAL COUNSEL’S ERRATA TO BRIEF IN SUPPORT OF  
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE’S DECISION**

Counsel for the General Counsel files this Errata to correct the unintentional omission of the list of exhibits numbers in Section II. Questions Presented on pages 29 and 30 of its Brief filed on October 30, 2019. Counsel for the General Counsel respectfully requests that the following be substituted for Section II Questions Presented (corrected pages 29 and 30 are attached).<sup>1</sup>

**II. QUESTIONS PRESENTED**

A. Did ALJ Chu err in finding that Respondent Transcendence II never operated?

Relating to Exception Nos: 4-8, 10-42, 77, 78

B. Did ALJ Chu err in finding that Respondent Transcendence II was not a successor employer to TransCare NY when, on about February 24, it took over and continued TransCare NY’s paratransit operations in unchanged form?

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<sup>1</sup> This substitution does not add any additional lines to Counsel for the General’s Counsel’s brief and would not result in exceeding the Board’s 50-page limit.

Relating to Exception Nos: 4-42, 74, 76, 77, 80-82

- C. Did ALJ Chu err in finding that Respondent Transcendence II was not a single employer with Respondents Transcendence, Patriarch and/or PPAS?

Relating to Exception Nos: 1-3, 6, 22, 43-73, 75-77, 79, 81, 82

Dated at Brooklyn, New York  
this 1<sup>st</sup> day of November 2019

Respectfully Submitted,

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Respondents' admission that Transcendence was operating as of February 26.

Contrary to Tilton's hearing testimony that Respondents Transcendence and Transcendence II never operated and had no employees, in her October 30, 2018 bankruptcy court deposition, Lynn Tilton testified that the February 26 notice of the cessation of operations went to NewCo. Employees and not TransCare employees. (GC Exh. 35 at p.124 (see Tr. 502 identifying the document referred to during Tilton's deposition testimony as General Counsel's exhibit 4)). Tilton also testified in her October 30, 2018 deposition that "Transcendence Transit was never considered operational because the Trustee did not acknowledge the foreclosure on those assets, and therefore they became Oldco. . . . When the Trustee decided not to acknowledge the foreclosure, those employees became Oldco employees." (GC Exh. 35 p. 141). However, her testimony at the hearing was that the paratransit employees were never hired by Transcendence II, part of new co. Irreconcilably, her deposition testimony was that the employment relationship between Transcendence II and the paratransit employees was nullified after it had been established by the Trustee's decision not to acknowledge the foreclosure. Again, the ALJ ignored this admission by Respondent's primary witness that the paratransit employees who received the February 26 announcement were employees of New Co., i.e., Respondent Transcendence II, at the time the communication was sent to them. The ALJ failed to explain the basis for concluding that Respondent Transcendence II never hired the paratransit drivers in light of Tilton's admission that the paratransit employees were employees of Transcendence II when operations ceased on February 26.

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TransCare NY's paratransit operations in unchanged form?

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- c. Did ALJ Chu err in finding that Respondent Transcendence II was not a single employer with Respondents Transcendence, Patriarch and/or PPAS?

Relating to Exception Nos: 1-3, 6, 22, 43-73, 75-77, 79, 81, 82

### **III. ARGUMENT**

The ALJ's decision is replete with factual errors, misapplication of Board law, and gross omissions of facts and analysis and therefore should be overturned. The ALJ's copious errors in his recitation of the facts, including in his misstatement of witness testimony and his mischaracterization of record evidence shows that his conclusions are not based on an accurate evaluation of the probative record evidence. Additionally, the ALJ was silent about and failed to consider and reconcile record evidence that was contrary to his findings, showing that his decision is based on only on select portions of the record evidence, rather than on the record as a whole. It is impossible for a trier of fact to make valid determinations based on a preponderance of the record evidence when that trier of fact fails to consider the complete record. Furthermore, in numerous instances, the ALJ improperly substituted his own speculation and conjecture, for testimonial and documentary evidence. Accordingly, contrary to the ALJ's decision, the Board's de novo review of the evidence and application of relevant Board law will make clear that the probative evidence establishes that Respondent Transcendence II operated, that is was a successor to TransCare NY, that Respondents were a single employer and that they failed to provide the Union with notice and opportunity to bargain over the effects of their decision to shut down paratransit operations on February 26.

#### **A. The ALJ Erred by Failing to Find that Transcendence II Operated**

ALJ Chu found that Transcendence II could not have operated because it did not have access to a necessary computer server and because it had not entered into a contract to provide