

which corroborated the hearsay testimony, and provided significant detail about petitioner's involvement in the marijuana grow operation. Petitioner was able to cross-examine Cangelosi, as well as Agent DiPasquale, who was called to introduce the hearsay statements made by others which implicated petitioner.

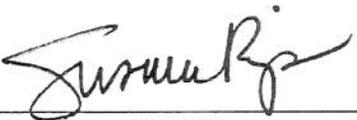
Petitioner's inability to cross-examine his brother, one of the individuals who made the statements implicating petitioner, does not require a different result. The Administrative Law Judge issued a subpoena in accordance with respondent's rules to compel the brother's attendance in order to give petitioner the opportunity to cross-examine him. The fact that the subpoena may have been ignored was not the fault of respondent or the ALJ, and constitutes good cause for failing to produce petitioner's brother, who was incarcerated at the time.

Petitioner's reliance on *People ex rel. McGee v Walters* (62 NY2d 317 [1984]), is misplaced. In *McGee*, the administrative decision to revoke the petitioner's parole was based solely upon the parole officer's report, and the officer was not produced at the hearing because he was no longer employed by the Division of Parole. No reason was given for the failure to produce the parole officer that constituted good cause. Here, petitioner was

able to cross-examine the live witnesses, and good cause was established for the failure to produce his brother at the hearing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 12, 2013


CLERK