

Elena Ruth Sassower

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BY FAX: 718-643-7889 (10 pages)

March 5, 2010

Paul Kenny, Chief Clerk
Appellate Term, Second Judicial Department
141 Livingston Street, 15th Floor
Brooklyn, New York 11201

RE: Quality Control at the Clerk's Office: Request for:
(1) Copies of Original October 1, 2008 Decision & Order and any
Other Signed Appellate Term Orders Denying my Motions; and
(2) Certification Pursuant to Judiciary Law §255 Where Signed
Orders Cannot be Found
John McFadden v. Doris L. Sassower & Elena Sassower
Appellate Term: 2008-1427-WC; 2009-148-WC
John McFadden v. Elena Sassower
Appellate Term: 2008-1433-WC; 2008-1428-WC

Dear Mr. Kenny,

This follows up our extensive conversation at the Clerk's Office on March 1, 2010, in which I reported to you evidence of record-tampering by your Clerk's Office. At issue are the alterations made in the copies of the Appellate Term's original October 1, 2008 decision and order, sent to the parties. Said decision and order, by a panel consisting of Justices McCabe, Tanenbaum, and Molia denied, *without reasons*, my August 13, 2008 vacatur/dismissal motion in the above-entitled appeal and, *sua sponte*, conditioned my stay pending appeal on payment to Mr. McFadden of "any and all arrears in rent/and or use and occupancy...within 10 days from the date of this order...".

Annexed hereto is a copy of the decision and order made from the copy your Clerk's Office sent me at that time – which I annexed as the first exhibit to my October 15, 2008 order to show cause for reargument/renewal thereof – and, most recently, as Exhibit F to my January 2, 2010 motion for Justice Molia's disqualification. No date appears on the decision and order. However, at the top of the order is a fax transmittal date of "10/01/2008". At the bottom of the order there appears to be a signature, presumably by Justice McCabe, above his printed name and title: "HON. EDWARD G. McCABE, JUSTICE PRESIDING, Appellate Term".

On March 1, 2010, Senior Clerk Julio Mejia showed me, at my request, the original of this decision and order. Both are date-stamped "OCT 01, 2008", with the original order

apparently signed not by Justice McCabe, but by someone who appended the notation "per dr" after an illegible signature.

Based thereon, I now believe that someone in your Clerk's Office made a copy from the original, whiting out the signature above Justice McCabe's typewritten name at the bottom of the order to conceal that Justice McCabe had not signed it and, additionally, whiting out the date-stamp on both the decision and order before sending me what I then believed to be true copies.

Mr. Mejia refused my request for a copy of the original October 1, 2008 decision and order, without reasons. You, likewise, refused, stating that you would have to first consult with counsel at the Office of Court Administration. This is to reiterate my request that you do so – and that you preserve, intact, the 14 stapled pages that Mr. Mejia had given me, which strangely included Mr. Sclafani's October 17, 2008 notice of entry for the Appellate Term's decision and order, which, unlike mine, contained a handwritten date "10/1/08" on the order.

Moreover, if it is your contention that, as a matter of procedure, the Clerk's Office does not furnish parties with copies of the justices' signed orders so as to prevent their signatures from being wrongfully affixed or forged on other documents, which is what you stated to me, please set that forth, in writing, with legal authority for removing their signatures from copies of their orders and sending these, without notice thereof, to parties. Please further explain why the Clerk's Office nonetheless furnished me with what I believe to be Justice McCabe's signature on my order to show cause for a stay pending appeal, dated July 31, 2008. A copy is enclosed for your convenience and to enable you to more easily compare the signature thereon with the different signature on the original October 1, 2008 order. Parenthetically, this is not the only order to show cause on my appeals, signed by an Appellate Term justice. Justice Molia signed my October 15, 2008 reargument/renewal order to show cause – a copy of which is Exhibit G to my January 2, 2010 motion for her disqualification.

In any event, such procedure of deleting the signatures of Appellate Term justices from copies of their orders, if it exists, would not justify the Clerk's Office in having whited out the signature on the original October 1, 2008 order – or your denying me a copy of the original – because the signature is NOT Justice McCabe's. Or do you contend that the signature on the original October 1, 2008 order is Justice McCabe's?

As the copies of the Appellate Term's other orders that the Clerk's Office sent me, denying my motions, are all unsigned, except for the February 19, 2010 order severing and referring to Justice Molia the first branch of my January 2, 2010 motion for her disqualification and denying the second, third, fourth, and fifth branches, which you signed and which is the subject of my February 25, 2010 letter to you, please advise whether the originals of these orders, in your Clerk's Office files, are signed by the

justices whose names are indicated thereon – and furnish me with copies.

These orders are:

- (1) the Appellate Term's November 26, 2008 order by a panel consisting of Justices McCabe, Tanenbaum, and Molia, denying my October 15, 2008 reargument/renewal order to show cause, with scant reasons which are incomplete and false – which indicates Justice McCabe as the intended signator¹;
- (2) the Appellate Term's June 22, 2009 order by a panel consisting of Justices Rudolph and Molia (with Justice Scheinkman "taking no part"), denying my May 11, 2009 motion for a proper Clerk's Return on Appeal for #SP-1474, without reasons – which indicates Justice Molia as the intended signator²;
- (3) the Appellate Term's February 19, 2010 order by Justice Molia denying the first branch of my January 2, 2010 motion for her disqualification, without reasons – which indicates Justice Molia as the intended signator³.

If signed originals of these three orders denying my meritorious motions cannot be found among "the files, papers, records, and dockets" of your Clerk's Office, I request that you certify same pursuant to Judiciary Law §255 **"Clerk must search files upon request and certify as to result"**:

"A clerk of a court must, upon request, and upon payment of, or offer to pay...diligently search the files, papers, records, and dockets in his office...and certify that a document or paper, of which the custody legally belongs to him, can not be found."

As previously stated, I await your expeditious response so that I may be guided accordingly in safeguarding my continuously trampled rights – and, in conjunction therewith, those of my mother, Doris L. Sassower, a respondent on appeals #2008-1427-WC and #2009-148-WC.

¹ Annexed as Exhibit H-2 to my January 2, 2010 motion for Justice Molia's disqualification.

² Annexed as Exhibit I-2 to my January 2, 2010 motion for Justice Molia's disqualification.

³ Attached to my February 25, 2010 letter to you.

Thank you.

Very truly yours,



ELENA RUTH SASSOWER

Appellant *Pro Se*

Enclosure: copy of [October 1, 2008] decision & order, as sent by Appellate Term
copy of signed July 31, 2008 order to show cause for stay pending appeal

cc: Leonard A. Sclafani, Esq.

Doris L. Sassower

New York State Attorney General Andrew Cuomo

ATT: Deputy Solicitor General Benjamin N. Gutman

Assistant Solicitor General Diana R.H. Winters

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : 9th and 10th JUDICIAL DISTRICTS

-----X

PRESENT : McCABE, J.P., TANENBAUM and MOLIA, JJ.

-----X

JOHN McFADDEN,

Respondent,

-against-

NO. 2008-1427 W C

DORIS L. SASSOWER,

Respondent,

-and-

ELENA SASSOWER,

Appellant.

-----X

JOHN McFADDEN,

Petitioner,

-against-

NO. 2008-1504 W.C

DORIS L. SASSOWER and ELENA SASSOWER,

Respondents.

-----X

DECISION

On the court's own motion, the motions by Elena Sassower returnable August 13, 2008 and August 21, 2008, the motion by John McFadden returnable September 4, 2008 and the motion by Doris L. Sassower returnable August 18, 2008 are consolidated for disposition.

RE: JOHN MCFADDEN v DORIS L. SASSOWER and ELENA SASSOWER
NO. 2008-1427 W C

-----X
JOHN McFADDEN v DORIS L. SASSOWER and ELENA SASSOWER
NO. 2008-1504 W C
-----X

On the court's further motion, the appeal by Elena Sassower from the order of the City Court of White Plains, Westchester County (Jo Ann Friia, J.), dated July 3, 2008, is deemed from the final judgment of said court entered, pursuant to the July 3, 2008 order, on July 21, 2008 (see CPLR 5512 [a]; Neuman v Otto, 114 AD2d 791 [1985]).

Motion by John McFadden to enlarge time to submit opposition to the motion returnable August 21, 2008 is granted and the opposition papers are deemed timely served and filed.

Motion by Doris Sassower for stay denied.

Motion by Elena Sassower to vacate the decision and order of the White Plains City Court dated July 3, 2008 and its final judgment entered July 21, 2008, and for other relief denied.

Motion by Elena Sassower seeking in effect to stay enforcement of the final judgment entered July 21, 2008 is granted and enforcement of the final judgment is stayed pending hearing and determination of the appeal on condition that the appeal is perfected on or before December 5, 2008. Movant is directed to pay John McFadden any and all arrears in rent/and or use and occupancy at the rate most recently payable within 10 days from the date of this order and to continue to pay use and occupancy at a like rate as the same becomes due.

In the event that any of the above conditions are not met, the court, on its own motion, may vacate the stay, or respondent John McFadden may move to vacate the stay on three days' notice.

We note that Doris L. Sassower has failed to file a notice of appeal.

rec'd 10/3/08
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**At a term of the Appellate Term of the Supreme Court
of the State of New York for the 9th & 10th Judicial Districts**

HON. EDWARD G. McCABE, J.P.
HON. MELVYN TANENBAUM
HON. DENISE F. MOLIA, JJ.

-----X
JOHN McFADDEN,
Respondent,
-against-

NO. 2008-1427 W C

DORIS L. SASSOWER,
Respondent,
-and-

Lower Ct #
SP-651/89
"SP 2008-1471"

ELENA SASSOWER,
Appellant.

-----X
JOHN McFADDEN,
Petitioner,

-against-

NO. 2008-1504 W C

DORIS L. SASSOWER and ELENA SASSOWER,
Respondents.

-----X
The above named appellant having appealed to this court from an ORDER of the CITY COURT, WHITE PLAINS, WESTCHESTER COUNTY entered on JULY 3, 2008, and the APPELLANT (ELENA SASSOWER) having moved this court by order to show cause returnable AUGUST 13, 2008 to STAY THE ENFORCEMENT OF THE FINAL JUDGMENT ENTERED JULY 21, 2008 PENDING THE DETERMINATION OF THE APPEAL and the APPELLANT (ELENA SASSOWER) having moved this court by notice of motion returnable AUGUST 21, 2008 to VACATE THE DECISION OF THIS WHITE PLAINS CITY COURT DATED JULY 3, 2008 AND FOR OTHER RELIEF and the RESPONDENT (JOHN McFADDEN) having moved this court by order to show cause returnable SEPTEMBER 4, 2008 to ENLARGE THE TIME TO SUBMIT OPPOSITION PAPERS TO THE MOTION RETURNABLE AUGUST 21, 2008 and the RESPONDENT (DORIS SASSOWER) having moved this court by order to show cause returnable AUGUST 18, 2008 to STAY ALL PROCEEDINGS PENDING THE DETERMINATION OF THE APPEAL and said motions having duly come on to be heard;

RE: JOHN MCFADDEN v DORIS L. SASSOWER and ELENA SASSOWER
NO. 2008-1427 W C

-----X
JOHN MCFADDEN v DORIS L. SASSOWER and ELENA SASSOWER
NO. 2008-1504 W C
-----X

Now, on reading the papers filed in support of said motion and the papers filed in opposition thereto, and due deliberation having been had thereon, it is,

ORDERED that on the court's own motion are hereby consolidated for disposition; and it is further,

ORDERED that on the court's further motion, the appeal by Elena Sassower from the order of the City Court of White Plains, Westchester County (Jo Ann Fria, J.), dated July 3, 2008, is deemed from the final judgment of said court entered, pursuant to the July 3, 2008 order, on July 21, 2008 (see CPLR 5512 [a]; Neuman v Otto, 114 AD2d 791 [1985]); and it is further,

ORDERED that the motion by John McFadden to enlarge time to submit opposition to the motion returnable August 21, 2008 is granted and the opposition papers are deemed timely served and filed; and it is further,

ORDERED that the motion by Doris Sassower for a stay is denied; and it further,

ORDERED that the motion by Elena Sassower to vacate the decision and order of the White Plains City Court dated July 3, 2008 and its final judgment entered July 21, 2008, and for other relief is denied; and it is further,

ORDERED that the motion by Elena Sassower seeking in effect to stay enforcement of the final judgment entered July 21, 2008 is granted and enforcement of the final judgment is stayed pending hearing and determination of the appeal on condition that the appeal is perfected on or before December 5, 2008. Movant is directed to pay John McFadden any and all arrears in rent/and or use and occupancy at the rate most recently payable within 10 days from the date of this order and to continue to pay use and occupancy at a like rate as the same becomes due; and it is further,

ORDERED that in the event that any of the above conditions are not met, the court, on its own motion, may vacate the stay, or respondent John McFadden may move to vacate the stay on three days' notice.

We note that Doris L. Sassower has failed to file a notice of appeal.

HON. EDWARD G. McCABE
JUSTICE PRESIDING
Appellate Term

(4/08)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERMS: SECOND & ELEVENTH AND
NINTH & TENTH JUDICIAL DISTRICTS

Index No. SP-651/89
SP-2008-1474

John McFadden,
Petitioner

against

Doris L. Sasso &
Elmer Sasso
Respondents-Appellants

ORDER TO
SHOW CAUSE

Upon the annexed affidavit of John McFadden sworn to on July 21, 2008

notice of appeal dated July 23, 2008 the order/judgment of the City

Court, City of White Plains, Westchester County

dated July 6, 2008 and upon all the papers and proceedings heretofore had herein:

July 21, 2008

LET Respondent(s) or h attorney(s), show cause before this court, at the Courtroom
located at 141 Livingston Street, Brooklyn New York, 15th Floor on August 13th, 2008
10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, why
an order should not be made herein staying all proceedings pending determination of appeal
and why such other and further relief should not be granted as may be deemed just and proper.

2008
JSC

(4/08)

SUFFICIENT CAUSE THEREFORE APPEARING IT IS ORDERED THAT,

Pending the hearing and determination of this motion and the entry of an order hereon, LET all proceedings on the part of the Respondent(s), or any person acting on behalf of Respondent(s) including the attorney(s) and agent(s) of Respondent(s) and any marshal or sheriff BE STAYED.

And, LET PERSONAL service of a copy of this Order, together with the affidavit, exhibits and all supporting papers, on the Respondent(s) or to attorney(s) and on the marshal, if any, on or before 5:00 P.M. on August 1st 2008, be deemed good and sufficient service. Service shall not be made by mail.

These papers may be served by the appellant in person.

Opposition papers, if any, must be served by personal service at least two (2) days prior to the return date herein.

Proof of service and of deposit (if any deposit is required) must be filed with the clerk of this Court no later than 5:00 P.M. on August 11, 2008.

~~THIS TEMPORARY STAY IS CONDITIONED UPON THE MOVANT DEPOSITING WITH THE CLERK OF THIS COURT BELOW THE SUM OF \$ [redacted] BY OR BEFORE 5 P.M. SAID AMOUNT TO REMAIN ON DEPOSIT UNTIL APPEAL IS DETERMINED OR UNLESS OTHERWISE ORDERED BY THIS COURT. IF THE DEPOSIT IS NOT TIMELY MADE, THEN THE TEMPORARY STAY IS DEEMED VACATED, TO BE WITH THE LOWER COURT TO DETERMINE THE METHODS OF PAYMENT ACCEPTABLE AND THE LOCATION WHERE THE DEPOSIT MUST BE MADE.~~

JUSTICE OF THE APPELLATE TERM

~~Hon. Edward G. McCabe~~

Hon. Edward G. McCabe

DATED: July 31, 2008
Brooklyn, New York
Minoda

NOTE: IF YOU HAVE BEEN SERVED WITH THESE PAPERS YOU MAY CALL THE APPELLATE TERM CLERK'S OFFICE AT 347-401-9680 TO VERIFY THE AUTHENTICITY OF THESE PAPERS.

NO APPEARANCE IS REQUIRED ON THE RETURN DATE. ALL MOTIONS ARE SUBMITTED ON PAPERS.