

Case No. 2008-1433 WC

To be Argued by:
Elena Sassower
(15 minutes requested)

APPELLATE TERM OF THE SUPREME COURT
NINTH & TENTH JUICIAL DISTRICTS

JOHN McFADDEN,

Cross-Appellant,

-against-

ELENA SASSOWER,

Appellant.

APPELLATE TERM
ELENA SASSOWER
08 NOV 13 PM 3:00

APPELLANT'S BRIEF*



ELENA SASSOWER, Appellant *Pro Se*
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***Appeal 1: Judge Brian Hansbury's October 11, 2007 Decision & Order
(Westchester City Court #1502/07)**

INTRODUCTION

This is an appeal from an October 11, 2007 decision & order that is void *ab initio*. It was rendered by White Plains City Court Judge Brian Hansbury who thereafter recused himself, without explanation or disclosure, by a January 29, 2008 decision & order which simultaneously denied appellant's legally-sufficient motion for his disqualification for demonstrated actual bias and interest and for vacatur of the October 11, 2007 decision & order by reason thereof or upon the granting of reargument – a motion which had additionally requested that he disclose facts bearing upon his impartiality, if disqualification were denied. The January 29, 2008 decision & order is also before this Court on appellant's appeal under #2008-1428-WC, incorporated herein by reference.

As hereinafter shown, the October 11, 2007 decision & order is the product of a flagrantly biased and interested judge. It deprives appellant of relief to which she is entitled, *as a matter of law*: dismissal of the Petition and summary judgment on her four Counterclaims, costs and maximum sanctions against the cross-appellant and his counsel, and their referral to disciplinary and criminal authorities. This Court's granting of such relief is mandated on this appeal – as it is on appellant's accompanying appeal from the January 29, 2008 decision & order.

QUESTIONS PRESENTED FOR REVIEW
APPEAL 1: #2008-01433-WC

1. Was appellant's September 5, 2007 cross-motion sufficient, *as a matter of law*, to have required any fair and impartial tribunal to have granted:

- (a) its second branch: dismissal under CPLR §3211(a)1, 2, 4, 5, & 10;
- (b) its third branch: summary judgment pursuant to CPLR §3211(c);
- (c) its fourth branch: an award of costs and maximum sanctions against the cross-appellant and his counsel pursuant to 22 NYCRR §130-1 *et seq*;
- (d) its fifth branch: disciplinary and criminal referrals of the cross-appellant's counsel pursuant to the Court's mandatory "Disciplinary Responsibilities" under the Chief Administrator's Rules Governing Judicial Conduct, 22 NYCRR §100.3D(2)?

Judge Hansbury's October 11, 2007 decision & order made no factual findings in denying appellant a judgment of dismissal with the conclusory assertion that there were "triable issues of fact with respect to the nature and terms of [her] tenancy"; made no factual findings as to her entitlement to summary judgment; made no factual findings in denying, without reasons, "imposition of sanctions and referral to the Disciplinary Committee", and made no disclosure of facts bearing upon his fairness and impartiality.

2. Is the October 11, 2007 decision & order contrary to law, fact, and an abuse of discretion in denying the first branch of appellant's September 5, 2007 cross-motion:

to refer the disputed issue raised by the Petition and her Answer as to whether she is protected under the Emergency Tenants Protection Act and other rent regulations to the Office of Rent Administration of the New York State Division of Housing and Community Renewal for determination and, pending same, to hold the proceeding in abeyance?

Judge Hansbury's decision & order asserted that "whether or not the...cooperative apartment is subject to the ETPA involves interpretation of statute/regulation and resolution of this issue is not within the particular expertise of the DHCR", citing

Davis v. Waterside Housing Co., Inc., 182 Misc.2d 851 – disregarding that such case had been reversed by the Appellate Division, First Department in 2000 on precisely the point of that agency’s “expertise” – and further disregarding that the coverage question is not limited to “interpretation of statute/regulation”, but involves factual issues such as whether the necessary paperwork had ever been filed with DHCR removing the apartment from coverage. Having so ruled, he did not then adjudicate the disputed and potentially dispositive issue.

3. Is the October 11, 2007 decision & order consolidating “any prior pending action” with this proceeding contrary to law and reversible, *as a matter of law*?

Judge Hansbury’s consolidation was without adjudicating, or even identifying appellant’s First Affirmative Defense (“Open Prior Proceedings”); was sua sponte; without specifying the “prior pending action[s]” being consolidated; without giving notice to the parties therein; and without changing the caption to reflect consolidation.

4. Does the October 11, 2007 decision & order so falsify the state of the record and so violate the most fundamental legal and adjudicative standards as to manifest Judge Hansbury’s actual bias, if not interest – requiring him to have disqualified himself *sua sponte*?

Judge Hansbury failed to disqualify himself sua sponte and made no disclosure of facts bearing upon his fairness and impartiality, although disclosure was requested by appellant’s papers.