

Case No. 2008-1428 WC

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

APPELLATE TERM OF THE SUPREME COURT  
NINTH & TENTH JUICIAL DISTRICTS

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JOHN McFADDEN,

Respondent,

-against-

ELENA SASSOWER,

Appellant.

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CLERK OF COURT  
WESTCHESTER COUNTY

APPELLANT'S BRIEF\*



ELENA SASSOWER, Appellant *Pro Se*  
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**\*Appeal 2: Judge Brian Hansbury's January 29, 2008 Decision & Order  
(Westchester City Court #1502/07)**

## INTRODUCTION

This is an appeal from a January 29, 2008 decision & order of White Plains City Court Judge Brian Hansbury recusing himself, without explanation or disclosure, after denying appellant's legally-sufficient November 9, 2007 motion for his disqualification for demonstrated actual bias and interest – a motion also requesting that he disclose facts bearing upon his impartiality, if disqualification were denied.

As hereinafter shown, appellant's motion entitled her to Judge Hansbury's disqualification, *as a matter of law*, as likewise to vacatur of his October 11, 2007 decision & order by reason thereof or upon the granting of reargument and renewal. Vacatur of both his January 29, 2008 and October 11, 2007 decisions & orders are mandated by this appeal.

Also mandated is the granting of the relief the October 11, 2007 decision & order wrongfully denied – and to which appellant is entitled *as a matter of law*: dismissal of the Petition and summary judgment on her four Counterclaims, with costs and maximum sanctions against respondent and his counsel and their referral to disciplinary and criminal authorities. Such is directly sought by appellant's accompanying appeal of the October 11, 2007 decision & order, #2008-1433-WC, incorporated herein by reference.

Finally, based on the clear and unambiguous record underlying the January 29, 2008 decision & order establishing it and the October 11, 2007 decision & order to be “judicial frauds”, this Court's duty is to refer Judge Hansbury to disciplinary and criminal authorities – consistent with its mandatory “Disciplinary Responsibilities” under §100.3D(1) of the

Chief Administrator's Rules Governing Judicial Conduct and the public declaration of New York's highest state judge: "The court system has zero tolerance for jurists who act unethically or unlawfully"<sup>1</sup>

### **STATEMENT OF THE CASE**

The procedural history of this case, spanning from its commencement by Verified Petition dated June 22, 2007 to Judge Hansbury's October 11, 2007 decision & order – the subject of appellant's appeal under #2008-1433-WC – is set forth by her brief therein.

The continued procedural history to Judge Hansbury's January 29, 2008 decision & order – the subject of this appeal under #2008-1428-WC – follows.

#### **The Clerk's Notice of Trial & Sassower's November 9, 2007 Order to Show Cause**

Eight days after Judge Hansbury's October 11, 2007 decision & order, the White Plains City Court Clerk's Office sent a form-notice dated October 19, 2007 to respondent John McFadden [hereinafter "McFadden"] and appellant Elena Sassower [hereinafter "Sassower"] that the case was scheduled for trial on November 20, 2007.<sup>2</sup>

On November 8, 2007, Sassower filed an order to show cause to stay the November 20, 2007 trial pending determination of her within motion:

"(a) to disqualify Part-Time White Plains City Court Judge Brian Hansbury for demonstrated actual bias and interest pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law

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<sup>1</sup> "Court controversies aren't the whole picture" by Chief Judge Judith Kaye, published by Gannett newspapers, March 22, 2002, underlining added.

<sup>2</sup> The trial notice is Exhibit GG to Sassower's November 9, 2008 order to show cause to stay the trial.

**QUESTIONS PRESENTED FOR REVIEW**  
**APPEAL 2: #2008-01428 WC**

1. Was appellant's November 9, 2007 order to show cause sufficient, *as a matter of law*, for the granting of its requested relief:

(a) to disqualify White Plains City Court Judge Brian Hansbury for demonstrated actual bias and interest based on his October 11, 2007 decision & order and to vacate same by reason thereof, and, if denied, for disclosure by him or any other judge determining the motion of facts bearing upon their impartiality;

(b) to vacate Judge Hansbury's October 11, 2007 decision & order, upon the granting of reargument and renewal;

(c) to transfer the proceeding to another court to ensure the appearance and actuality of impartial justice?

*Judge Hansbury's January 29, 2008 decision & order denied appellant's request for his disqualification, asserting that her motion offered "no basis in fact or law for [his] disqualification"; adhered, upon the granting of reargument/renewal, to his October 11, 2007 decision & order, asserting that her moving papers were "supported by nothing more than conclusory and unsubstantiated assertions, falling short of the standards for a motion to reargue/renew"; and denied "the balance of [her] motion...in its entirety", without reasons and without identifying its requested relief of vacatur of his October 11, 2007 decision & order, disclosure by him of facts bearing on his impartiality, and transfer of the proceeding.*

2. Did the legal sufficiency of appellant's November 9, 2007 order to show cause for Judge Hansbury's disqualification for demonstrated actual bias and interest divest him of jurisdiction to make any substantive determinations other than to disqualify himself— and did Judge Hansbury's recusal, without explanation or disclosure, by his January 29, 2008 decision & order further divest him of jurisdiction to render the substantive determinations he made therein?

*Judge Hansbury's January 29, 2008 decision & order denied the sufficiency of appellant's November 9, 2007 motion for his disqualification, stating that it*

*offered “no basis in fact or law” – and announced his recusal, without explanation or disclosure, after making substantive determinations.*

**3. Do appellant’s November 9, 2007 order to show cause and Judge Hansbury’s adjudication thereof by his January 29, 2008 decision & order require this Court to discharge its mandatory “Disciplinary Responsibilities” under §100.3D(2) of the Chief Administrator’s Rules Governing Judicial Conduct by referring Judge Hansbury to disciplinary and criminal authorities?**

*They surely do.*