

Case No. 2008-1428 WC

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

APPELLATE TERM OF THE SUPREME COURT
NINTH & TENTH JUICIAL DISTRICTS

JOHN McFADDEN,

Respondent,

-against-

ELENA SASSOWER,

Appellant.

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APPELLANT'S REPLY BRIEF*



ELENA SASSOWER, Appellant *Pro Se*
c/o Karmel
25 East 86th Street, Apartment 10G
New York, New York 10028
Tel: 646-220-7987

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

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INTRODUCTION

This reply brief of appellant Elena Sassower [Sassower] is submitted in response to the brief of the respondent and purported “cross-appellant” John McFadden [McFadden], signed and presumably written by his counsel, Leonard Sclafani, Esq. [Sclafani].

As hereinafter demonstrated, Sclafani’s brief is no opposition to Sassower’s appeal, as a matter of law. Like Sclafani’s simultaneously-filed 57-page brief in #2008-1433 WC, to which he refers the Court (at p. 4) as “set[ting] forth in detail” “[t]he facts surrounding and leading up to the appeal and cross-appeal addressed herein”, Sclafani’s 17-page brief for #2008-1428 WC is, from beginning to end, fashioned on flagrant omissions, falsifications, and deceits – further reinforcing the merit of Sassower’s appeal and the worthlessness of the “cross-appeal” under applicable legal principles.¹

Indeed, the purported “cross-appeal” is itself a brazen fraud on this Court. Contrary to Sclafani’s assertion in his brief (at p. 3) that “McFadden filed a notice of cross-appeal” from Judge Hansbury’s January 29, 2008 decision & order, he has failed to substantiate same by producing a copy of that notice of cross-appeal, his affidavit of service, and proof of filing with the White Plains City Court.² This Court’s Clerk’s Office has no record of a notice of

¹ See, Corpus Juris Secundum, Vol. 31A, 166 (1996 ed., p. 339) and II John Henry Wigmore, Evidence §278 at 133 (1979), quoted at page 14 of Sassower’s appellant’s brief in #2008-1433 WC from ¶4 of Sassower’s September 5, 2007 cross-motion. These authorities have repeatedly been brought to Sclafani’s attention.

² Attached hereto (Exhibit A-1) is a copy of Sassower’s January 15, 2009 letter to this Court’s Chief Clerk, which she faxed to Sclafani on that date (Exhibit A-4), stating:

cross-appeal for #2008-1428 WC.

Consequently, there is “no cross-appeal” and Sclafani’s attempt to manufacture one, combined with the other pervasive deceits of his brief, entitle Sassower to imposition of maximum costs and sanctions against him and his co-conspiring client pursuant to this Court’s rule 730.3(g)³ and to their referral to disciplinary and criminal authorities pursuant to the Court’s mandatory “Disciplinary Responsibilities” under §100.3D(2) of the Chief Administrator’s Rules Governing Judicial Conduct⁴.

To assist this Court in upholding the integrity of the appellate process, Sassower’s reply brief herein furnishes the Court with a virtual line-by-line demonstration of the fraud that has been visited upon it by Sclafani’s brief, to be passed on to disciplinary and criminal authorities to support their prosecutions of Sclafani and McFadden.

“By copy of this letter to Mr. Sclafani, I hereby demand that he IMMEDIATELY substantiate the claim that ‘McFadden filed a notice of cross-appeal’ for #2008-1428 WC by producing a copy of that notice of appeal, his affidavit of service, and proof of filing with the White Plains City Court.” (p. 1, capitalization in the original)

Sassower received no response from Sclafani to this January 15, 2009 letter – nor to her subsequent January 15, 2009 letter (Exhibit A-2), also faxed to Sclafani on that date (A-3). This Court’s Clerk also apparently received no response from Sclafani – as reflected by his January 23, 2009 order herein (Exhibit B-1). Such order implicitly recognizes that there is no cross-appeal in #2008-1428 WC, identifying McFadden only as “respondent” in the order’s caption – in contrast to the captioning, etc. in his order in #2008-1433 WC, also dated January 23, 2009 (Exhibit B-2).

³ “Any attorney or party to a civil appeal who, in the prosecution or defense thereof, engages in frivolous conduct as that term is defined in 22 NYCRR subpart 130-1.1(c), shall be subject to the imposition of such costs and/or sanctions as authorized by 22 NYCRR subpart 130-1 as the court may direct.”

⁴ “A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.”

As stated by Sassower's incorporated-by-reference reply brief in #2008-1433 WC and equally true here –

“based on the showing herein that Scalfani is virtually incapable of telling the truth in anything he says – replicating his conduct in White Plains City Court, as well as previously before this Court in opposing Sassower's July 30, 2008 order to show cause for a stay pending appeal; her August 13, 2008 vacatur/dismissal motion, and her October 15, 2008 order to show cause for reargument/renewal, & other relief, all arising from #SP-651/89, and docketed herein as #2008-1427 WC – this Court should consider including a request to disciplinary authorities that they order that Scalfani be medically examined, as his behavior is clearly pathological.”

SCLAFANI'S OPPOSITION TO SASSOWER'S APPEAL IS NON-RESPONSIVE, FRIVOLOUS *PER SE*, AND DEMONSTRABLY FRAUDULENT

Unlike Scalfani's brief in #2008-1433 WC, which is completely non-responsive to Sassower's appellant's brief therein, Scalfani's brief herein gives a pretense of responsiveness to Sassower's appellant's brief. Here, too, however, Scalfani does not deny or dispute any of the facts, law, or legal argument summarized and detailed by Sassower's “Questions Presented” (pp. iv-v); her “Introduction” (pp. 1-2); her “Statement of the Case” (pp. 2-26); and her “Argument” (pp. 26-34). This includes the particularized facts, law, and legal argument detailed by Sassower's November 9, 2007 order to show cause – a substantial portion of which her appellant's brief both quotes and summarizes (at pp. 2-20). Such makes Scalfani's opposition to Sassower's appeal frivolous *per se*.

Notwithstanding Sassower's November 9, 2007 order to show cause is the foundation document on which all three of her “Questions Presented” rest, Scalfani fails to identify any

of its recited facts, law, or legal argument. Instead, he regurgitates, essentially *verbatim*, his November 15, 2007 affirmation in support of his cross-motion and in opposition to the November 9, 2007 order to show cause – an affirmation which also failed to identify any of the facts, law, or legal argument of the order to show cause it was opposing. Scalfani does not reveal this, however.

Nor does Scalfani reveal that the regurgitated portions of his brief from his November 15, 2007 affirmation were demonstrated to be factually false and legally baseless by Sassower’s November 26, 2007 affidavit in opposition and in further support of the motion underlying her November 9, 2007 order to show cause⁵. Indeed, the “WHEREFORE” clause of Sassower’s November 26, 2007 affidavit was explicit as to the affirmative relief it was seeking by reason thereof:

“WHEREFORE, the demonstrated perjury, deceit, and fraud that pervades the [November 15, 2007] cross-motion of Leonard A. Scalfani, Esq., on behalf of petitioner John McFadden, mandates that it be denied, with imposition of maximum costs and sanctions against both Mr. Scalfani and Mr. McFadden, pursuant to 22 NYCRR §130-1.1 *et seq.*, with referral of Mr. Scalfani to disciplinary authorities for his substantial violations of New York’s Disciplinary Rules of the Code of Professional Responsibility (*inter alia*, 22 NYCRR §1200.3(a)(4) and §1200.33(a)(5)) and referral of him and his complicit client to criminal authorities for violation of Penal Law §210.10 and other applicable provisions pertaining to perjury and “deceit or collusion, with intent to deceive the court or any party” (Judiciary Law §487).^[fn] ...”.

It is without denying or disputing the accuracy of Sassower’s 25-page November 26, 2007 affidavit that Scalfani regurgitates its demonstrated perjury and deceit for consumption

⁵ Pages 21-24 of Sassower’s appellant’s brief summarize this affidavit.

by this Court. Thus,

- all but the first two and last two paragraphs of Sclafani's Point I on Judge Hansbury's disqualification (pp. 5-7) are essentially a *verbatim* replay of ¶¶20-22 of his November 15, 2007 affirmation – notwithstanding their perjury and deceit were demonstrated by ¶¶26-29 of Sassower's November 26, 2007 affidavit.
- all but the first paragraph of Sclafani's Point II on reargument and renewal (pp. 7-10) are essentially a *verbatim* replay of ¶¶25-29, 33-35, 37-41 of his November 15, 2007 affirmation – notwithstanding their perjury and deceit were demonstrated by ¶¶30-54 of Sassower's November 26, 2007 affidavit.
- all of Sclafani's Point IV pertaining to his “cross-appeal” to strike Sassower's Affirmative Defenses and Counterclaims (pp. 12-16) – elaborating on his overview of the “cross-appeal” in his “Preliminary Statement” (p. 1) – are essentially a *verbatim* replay of ¶¶7-19 of his November 15, 2007 affirmation – notwithstanding their perjury and deceit were demonstrated by ¶¶15-16 of Sassower's November 26, 2007 affidavit.

Indeed, of the four Points in Sclafani's brief (pp. 5-16), there is only a single Point – his Point III pertaining to consolidation (pp. 10-11) – which is not a regurgitation of his November 15, 2007 affirmation. Presumably, this is to better conceal that Sclafani's November 15, 2007 cross-motion had moved for consolidation expressly so that White Plains City Court could thereupon grant summary judgment to McFadden in #SP-651/89.⁶ Such devious and lawless ploy, detailed by ¶¶11-12, 55-61 of Sassower's November 26, 2007

⁶ The pertinent paragraphs of Sclafani's November 15, 2007 affirmation are his ¶¶42-48 – to which Sassower's November 26, 2007 affidavit responded by her ¶¶55-61 under the caption heading:

“MR. SCLAFANI'S CROSS-MOTION FOR CONSOLIDATION IS BASED ON A MYRIAD OF DECEITS, IS LEGALLY UNSUPPORTED AND INSUPPORTABLE, AND MUST BE DENIED, *AS A MATTER OF LAW*”.

These important paragraphs from Sassower's November 26, 2007 affidavit are quoted *verbatim* at pages 22-23

affidavit, was thereafter utilized by Judge Hansbury's successor – Judge Friia – in rendering her July 3, 2008 decision & order in #SP-651/89. Sclafani's Point III purports (at p. 11) that this decision & order moots "[t]he question of consolidation".

Consequently, this Court's adjudication of the aforesaid paragraphs of Sassower's November 26, 2007 affidavit, whose presentation of fact, law and legal argument was undenied and undisputed before Judge Hansbury when he rendered his January 29, 2008 decision – as it is before this Court in reviewing that decision – suffices to establish much of the fraud and deceit by Sclafani and his conspiring client for which Sassower seeks relief from this Court pursuant to its rule 730.3(g) and §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct.

SCLAFANI'S DEFICIENT "PRELIMINARY STATEMENT" WHICH HE SUBSTITUTES FOR A "STATEMENT OF THE CASE"

Sclafani's brief contains no "Statement of the Case". Instead, it jumps from a four-page "Preliminary Statement" (pp. 1-4) to a four-Point Argument (pp. 5-16).

Sclafani's "Preliminary Statement" repeats some of the same materially false statements of his simultaneously-filed brief in #2008-1433 WC. Among these⁷:

(1) that McFadden's August 23, 2007 motion, denied by Judge Hansbury's October 11, 2007 decision, had sought "an order pursuant to CPLR §3211(b) inter alia, striking the ten defenses and four counterclaims" of Sassower's Answer to the Petition (at pp. 1, 4) – when, in fact, the motion had

of Sassower's appellant's brief.

⁷ Sclafani additionally claims that Judge Hansbury's October 11, 2007 decision was "entered" (at pp. 1 & 2) when Sassower's appellant's brief in #2008-1433 WC asserted (at p. 34) that it has not been "entered".

not specified the subdivision of CPLR §3211 and such was highlighted by ¶¶9, 44-47 of Sassower's September 5, 2007 cross-motion;

(2) that Sassower's September 5, 2007 cross-motion, denied by Judge Hansbury's October 11, 2007 decision, was "allegedly pursuant to CPLR §3211 and 3212" (at p. 2) – when, in fact, the cross-motion had not invoked CPLR §3212, but, rather, CPLR §3211(c) in support of summary judgment – as reflected by the decision itself;

(3) that the requested "other relief" of Sassower's September 5, 2007 cross-motion included "an order referring McFadden's counsel to the Westchester County District Attorney's Office for criminal prosecution based upon Sassower's overly imaginative, vitriolic allegations of fraud, deceit and attorney misconduct" (at p. 2) – when, in fact, the referral was also sought against McFadden and was based on a particularized, record-referenced presentation of perjury, fraud, and deceit by him and Sclafani – as to which Judge Hansbury's October 11, 2007 decision made no findings;

(4) that Judge Hansbury's October 11, 2007 decision had *sua sponte* directed that this case be "consolidated with other proceedings pending in the Court between the parties, at least one of which has been pending since as early as 1989" (at p. 2) – when, in fact, the October 11, 2007 decision directed consolidation of "any prior pending proceeding", did not affirmatively state that #SP-651/89 was actually pending – as Sclafani implies – and was made on a record showing that there were two even older cases from 1988 pending – SP-#434/88 and #SP-500/88, alleged to be open by Sassower's First Affirmative Defense.

Sclafani's "Preliminary Statement" also gives a materially incomplete and misleading description (at pp. 2-3) of the relief sought by Sassower's November 9, 2007 order to show cause. Most significantly, he omits that the same first branch as sought Judge Hansbury's disqualification also sought vacatur of his October 11, 2007 decision "by reason thereof" and, if denied, disclosure "by him or such other judge as is determining [the] motion of facts bearing upon their impartiality". These two material omissions, replicating the omission in

Judge Hansbury's January 29, 2008 decision, are germane to Sclafani's Point I deceit (at p. 6) that Judge Hansbury's recusal by his January 29, 2008 decision moots the disqualification branch.⁸

Sclafani also materially omits (at p. 3) that his own November 15, 2007 cross-motion sought "consolidation", in addition to "reconsideration and/or reargument of the October 11, 2007 decision". This omission is germane to Sclafani's Point III deceit (at p. 11) that Judge Friia's July 3, 2008 decision & order in #SP-651/89 moots the "sua sponte" consolidation directed by Judge Hansbury's October 11, 2007 decision herein.

Sclafani's "Preliminary Statement" gives no summary of the content of Sassower's November 9, 2007 order to show cause, nor his own November 15, 2007 cross-motion. And it conceals the very fact that Sassower opposed his November 15, 2007 cross-motion by a November 26, 2007 affidavit, expressly seeking imposition of maximum costs and sanctions against both him and his client by reason of its perjury, deceit, and fraud, as well as their referral to disciplinary and criminal authorities – as to which Judge Hansbury's January 29, 2008 decision made no findings.

As for Sclafani's paltry description (at pp. 3-4) of Judge Hansbury's January 29, 2008 decision – the subject of this appeal – he falsely purports it as having been "entered", only partially identifies its adjudications (omitting, for example, its ruling on consolidation), omits everything about its stated bases for the adjudications he does identify (for instance,

⁸ Sclafani also misrepresents (at p. 3) the stay sought by Sassower's November 9, 2007 order to show

disqualification and reargument/renewal), conceals the requested relief not identified by the decision (for example, vacatur of the October 11, 2007 decision, disclosure, and costs/sanctions against, and disciplinary/criminal referrals of, Sclafani and McFadden); and obscures that it was Judge Hansbury himself who rendered the January 29, 2008 decision, including by the following (at p. 3):

“The court also denied Sassower’s application for disqualification of Judge Hansbury but, at the same time, provided that Judge Hansbury would recuse himself from the case.”

Finally, notwithstanding the reference in the first sentence of Sclafani’s “Preliminary Statement” (at p. 1) to the “four counterclaims” that his August 23, 2007 motion sought to dismiss, the last sentence of his “Preliminary Statement” (at p. 4) seeks – on the “cross-appeal” – the striking of “three counterclaims”.⁹ The missing Counterclaim is presumably the fourth and culminating Counterclaim of Sassower’s Answer entitled, “Ensuring the Integrity of the Judicial Process” – as it alone, in contrast to Sassower’s other three Counterclaims and ten Affirmative Defenses, is not the subject of any Point in Sclafani’s simultaneously-filed brief in #2008-1433 WC, to which he refers the Court in the penultimate paragraph of his “Preliminary Statement”.

cause. It was, in the first instance, to stay the trial pending determination of her within motion.

⁹ Sleight-of-hand being Sclafani’s stock-in trade, his “Conclusion” herein (at p. 17) seeks to have this Court “issue an order striking each and all of the defenses and counterclaims raised by Sassower in her

SCLAFANI'S FRIVOLOUS & FRAUDULENT POINT I
(pp. 5-7) (*Disqualification*)

Sclafani misleadingly titles his Point I “The Court Properly Refused to Direct the Disqualification of Judge Hansbury” (at p. 5), thereby concealing that it was Judge Hansbury himself who decided Sassower’s motion, hardly in a position to have “refused to direct” his own disqualification.

He then follows this with the pretense (at p. 5) that Sassower’s appeal “seeks to have this Court determine that Judge Hansbury should be disqualified”.

This is a flagrant deceit. Sassower’s appeal does not “seek[] to have this Court determine that Judge Hansbury should be disqualified” – as Sclafani well knows in failing to identify which of Sassower’s “Questions Presented” (pp. iv-v) seek such relief. None do. Indeed, Sassower’s first “Questions Presented” is not for the Court to grant the first branch of her November 9, 2007 order to show cause for Judge Hansbury’s disqualification. Rather, it is the legal issue as to whether the November 9, 2007 order to show cause was “sufficient, *as a matter of law*, for the granting of its requested relief”. With respect to disqualification, Judge Hansbury answered the question of legal sufficiency in the negative in denying the request on the stated ground that it offered “no basis in fact or law”

Sassower’s second “Question Presented” explicitly identifies “Judge Hansbury’s recusal, without explanation or disclosure, by his January 29, 2008 decision & order”. Nonetheless, Sclafani makes it appear as if he, not Sassower, is providing this information

answer.”

about Judge Hansbury's recusal – and that it moots the disqualification she allegedly “seeks”.

Thus, he disingenuously states in the penultimate sixth paragraph of his Point I (at pp. 6-7):

“It is significant to note that Judge Hansbury, through his January 28 (sic), 2008 decision and order, sua sponte, involuntarily (sic), recused himself from handling the matter notwithstanding his determination that he should not be disqualified from adjudicating the parties' claims and cross-claims. This circumstance renders that branch of Sassower's application below as sought disqualification of Justice Hansbury, and, consequently, Sassower's appeal herein moot....”.

There is no mootness of the disqualification branch of Sassower's November 9, 2007 order to show cause, whose additional relief – concealed by Sclafani's brief, as likewise by Judge Hansbury's January 29, 2008 decision – was for vacatur of the October 11, 2007 decision by reason of Judge Hansbury's disqualification and for disclosure by him, if disqualification were denied – which it was.

Sassower's first “Question Presented” pertains to the legal sufficiency of her November 9, 2007 order to show cause for this relief, with her second “Question Presented” pertaining to the jurisdictional consequences of this legal sufficiency, as likewise of Judge Hansbury's without explanation recusal by his January 29, 2008 decision – a decision which still stands, as does his October 11, 2007 decision, depriving Sassower of the relief to which the record entitles her, *as a matter of law*: summary judgment dismissal of McFadden's Petition, the granting of her four Counterclaims, and imposition of maximum costs and sanctions against Sclafani and McFadden, and their referral to disciplinary and criminal authorities for their perjury, deceit, and fraud.

Sclafani impliedly disputes the legal sufficiency of Sassower's November 9, 2007 order to show cause by his third, fourth, and fifth paragraphs of his Point I, stating (at pp. 5-6):

"The sole evidence that Sassower advances in support of her assertion is that the judge was obviously biased simply because he did not grant her cross-motion. When all the froth is blown from the surface of that portion of Sassower's application as sought disqualification of Judge Hansbury on the grounds of actual bias, what is left is nothing more than Sassower's pique, expressed in vitriolic hyperbole, over Judge Hansbury's denial of Sassower's cross-motion for dismissal of the petition and for other relief in this matter.

Assuming solely for the purpose of argument herein that the court had erred in its denial of Sassower's cross-motion, this circumstances (sic) would not, itself, have supported a motion for disqualification of the Judge that decided the cross-motion.

The law in this State is clear that neither the formation of an opinion on a question of law nor a judicial ruling in a litigation, however erroneous they may be, constitutes grounds for a charge of bias or prejudice on the part of a judge. *Weiner v. Savarse*, 109 N.Y.S. 2d 14, app. dism'd 112 N.Y.S. 2nd 772; *People v. Byrne*, 163 N.Y.S. 680. See also *Ortiz v. New York*, 136 Misc. 500, 518 N.Y.S. 2d 913."

Sclafani does not reveal that this is essentially a *verbatim* replay of ¶¶20-22 of his November 15, 2007 cross-motion affirmation – and was refuted by Sassower at ¶¶26-29 of her November 26, 2007 opposing affidavit, as follows:

"26. Mr. Sclafani's opposition to the first branch of my motion for Judge Hansbury's disqualification is contained in four short paragraphs: his ¶¶20-23 under his section heading 'Respondent's Motion to Disqualify Judge Hansbury'. Such neither identifies, nor confronts, ANY of the facts, law, or legal argument presented either by my 35-page moving OSC affidavit or by my accompanying 6-page memorandum of law – both devoted exclusively to judicial disqualification/disclosure.

27. Instead, Mr. Sclafani engages in utterly dishonest characterization, purporting (at ¶20) that I am seeking Judge Hansbury's

disqualification based on:

‘nothing more than respondent’s pique, expressed in vitriolic hyperbole, that Judge Hansbury denial (sic) respondent’s cross-motion for dismissal of the petition and for relief in this matter.’

This is then followed by brief argument, with inapplicable legal citation based thereon^[fn11], fashioned from the pretense that I have alleged that Judge Hansbury’s ‘erred’ by his October 11, 2007 decision (§21) and that such is ‘erroneous’ (§22).

28. This is false. I have NOT alleged ‘error’ by Judge Hansbury – *to wit*, wrong decision-making that is the result of some good-faith adjudication. Rather, my motion expressly asserts – and demonstrates – that his October 11, 2007 decision is a knowing and deliberate ‘fraud’ by him, wilfully disregarding the most elementary adjudicative standards, set forth in the record before him, and falsifying the facts, which could not have been clearer and more unequivocal, also in the record before him, entitling me to dismissal of the Petition, summary judgment on my Counterclaims, and costs/sanctions against, and disciplinary/criminal referrals of, Mr. Sclafani and Mr. McFadden for fraud and deceit. Such bad-faith denial of my entitlement, having NO basis in fact or law and brazenly ‘protecting’ the perjury-committing petitioner and his attorney, is grounds not only for Judge Hansbury’s disqualification and reversal of his decision on appeal, but for disciplinary prosecution against him and removal from office – which is why my memorandum of law set forth the pertinent legal citations it did. As stated at page 3 therein:

‘Although recusal on non-statutory grounds is ‘within the personal conscience of the court’, a judge’s denial of a motion to recuse will be reversed where the alleged ‘bias or prejudice or unworthy motive’ is ‘shown to affect the result’, *People v. Arthur Brown*, 141 A.D.2d 657 (2nd Dept. 1988), citing *People v. Moreno*, 70 N.Y.2d 403, 405 (1987); *Matter of Rotwein*, 291 N.Y.116, 123 (1943); 32 New York Jurisprudence §44, *Janousek v. Janousek*, 108 A.D.2d 782, 785 (2nd Dept. 1985): ‘The only explanation for the imposition of such a drastic remedy...is that...the court became influenced by a personal bias against defendant.’”

29. As demonstrated by my motion, without contest from Mr. Sclafani, my entitlement to dismissal of the Petition, summary judgment on my

Counterclaims, and ‘appropriate action’ against Mr. Sclafani and Mr. McFadden for fraud and deceit are matters of law. There is NO ‘explanation’ for Judge Hansbury’s denial thereof other than his bias – and Mr. Sclafani has offered none.” (capitalization and underlining in the original).

Sassower’s annotating footnote 11 pertaining to Sclafani’s inapplicable legal citations – equally true with respect to the identical legal citations in his Point I (at p. 6) – was as follows:

“I was unable to examine the second of Mr. Sclafani’s three cited cases, *People v. Byrne*, as his citation of ‘163 N.Y.S. 680’, is apparently incorrect. I have received no response to my November 21, 2007 faxed letter to him, alerting him to that fact (Exhibit LL). Suffice to say – particularly in light of Mr. Sclafani’s cited case of *Ortiz v. New York*, 518 N.Y.S. 2d 913 (1987), which, referring to ‘a lack of State law’ interpreting the language of the Chief Administrator’s Rules pertaining to disqualification, states that ‘discussion of Federal decisions is instructive’ and goes on to cite U.S. Supreme Court’s decisional law – the pertinent decision of the U.S. Supreme Court came nearly seven years later, *Liteky v. United States*, 510 U.S. 540 (1994). It was there that the Supreme Court articulated the ‘impossibility of fair judgment’ standard for judicial disqualification – clearly germane to the pattern of insupportable, fraudulent ‘judgment’ evinced by Judge Hansbury’s October 11, 2007 decision.”

Sclafani does not deny or dispute the applicability of *Liteky v. United States*, 510 U.S. 540 (1994) – nor any of the other legal argument from Sassower’s November 9, 2007 order to show cause, reiterated by her November 26, 2007 affidavit and encompassed by her Point I and Point II (at pp. 27-31), corresponding to her first and second “Questions Presented”.

As for Sclafani’s attempt to besmirch Sassower’s third “Question Presented” – to refer Judge Hansbury to disciplinary and criminal authorities pursuant to §100.3D(1) of the Chief Administrator’s Rules Governing Judicial Conduct – by characterizing Sassower as seeking

to have Judge Hansbury “referred it this Court’s Judiciary Committee for discipline based on what she asserts in a wild and conclusory manner, is Judge Hansbury’s bias, fraud, and deceit in connection with his adjudication of the parties’ previous motion and cross-motion” (at p. 5) – such is yet another deceit. There is nothing “wild and conclusory” in the fact-specific, law-supported demonstration of Judge Hansbury’s “bias, fraud, and deceit”, provided by either Sassower’s appellant’s brief or by her November 9, 2007 order to show cause on which it is based.

As with her other two Points (pp. 27-31) corresponding to her first two “Questions Presented”, Sassower’s Point III (pp. 31-34), corresponding to her third “Question Presented”, is entirely uncontested.

SCLAFANI’S FRIVOLOUS & FRAUDULENT POINT II
(pp. 7-10) (*Reargument & Renewal*)

Sclafani misleadingly titles his Point II “This Court Must Deny Sassower’s Application for Renewal and Reargument” (at pp. 7-10) – although the issue before the Court, presented by Sassower’s first “Question Presented”, is the legal sufficiency of her November 9, 2007 order to show cause for vacatur of Judge Hansbury’s October 11, 2007 decision upon his granting of reargument and renewal. Judge Hansbury granted reargument/renewal to Sassower by his January 29, 2008 decision, but thereupon adhered to his October 11, 2007 decision on the stated grounds that her “moving papers are supported by nothing more than conclusory and unsubstantiated assertions, falling short of the standards for a motion to reargue/renew” – a deceit verifiable from Sassower’s 30-page analysis of the

decision, embodied by her November 9, 2007 order to show cause (at pp. 5-35).

Sclafani does not deny or dispute the accuracy of this 30-page analysis, establishing the October 11, 2007 decision to be factually and legally unsupported and insupportable, warranting vacatur. Instead, his Point II argues that Sassower is not entitled to the reargument/renewal which Judge Hansbury granted her by his January 29, 2008 decision. Such is not before this Court, as Sclafani filed no notice of cross-appeal from the January 29, 2008 decision.

In any event, Sclafani's Point II argument – replicating, essentially *verbatim*, ¶¶25-29, 33-35, 37-41 of his November 15, 2007 affirmation – is without revealing this replication and that Judge Hansbury's January 29, 2008 decision had deemed these arguments, as originally-presented, to be “unpersuasive”.

Nor does Sclafani reveal that Sassower had rebutted his originally-presented Point II arguments by ¶¶30-54 of her November 26, 2007 affidavit. Her extensive presentation is equally applicable here:

“30. Mr. Sclafani's opposition to my reargument/renewal relief is set forth at ¶¶24-41 of his affirmation under a heading ‘Respondent's Application for Re-hearing and Renewal’, containing three subsections – each false and deceitful.

Mr. Sclafani's Subsection ‘a. Respondent's Motion is Procedurally Defective’ (¶¶24-30)

31. Mr. Sclafani's ¶¶24-29 purport that in seeking reargument and renewal of my ‘cross-motion for dismissal of the petition’, my ‘application’ has two procedural defects, requiring that it be denied.

32. The first alleged procedural defect, according to Mr. Sclafani's ¶¶25-27, is that I have 'failed' to 'separately identify and support' my request for reargument and renewal, as CPLR §3221(f) requires. This is false. ¶54 of my motion contains the following explicit prefatory language:

'By way of renewal, on October 23, 2007, the Westchester District Rent Office of the Division of Housing and Community Renewal sent me a notice...' (underlining added).

33. Perhaps it is to overcome this ¶54 pertaining to the first branch of my cross-motion to refer the Petition's disputed ¶13 to the Department of Housing and Community Renewal that Mr. Sclafani's ¶24 confines its opposition to my 'cross-motion for dismissal of the petition' – which is my cross-motion's second branch. I made no renewal request with respect to that branch as I had no new facts or intervening new law, as renewal requires.

34. Tellingly, Mr. Sclafani offers no interpretive caselaw that my explicitly identified and supported ¶54 renewal request does not suffice for purposes of satisfying CPLR §3221(f).

35. Nor does Mr. Sclafani claim any confusion created by the balance of my motion as to whether it is for reargument or renewal. It is plainly all reargument as it is 'based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but...not...any matters of fact not offered on the prior motion' (CPLR §2221(d)(2)). Indeed, Mr. Sclafani concedes as much by his subsection 'c. Respondent's application is a Rehash of the Issues raised on Her Cross-Motion', whose ¶¶33-39 assert that I have offered no new facts or intervening change in the law, as renewal requires, but have only reiterated and quoted from my prior papers.

36. The second alleged procedural defect, according to Mr. Sclafani's ¶28, is that my motion purportedly 'failed to include a copy of [my] original cross-motion and supporting papers as the law requires.' This is also false insofar as what 'the law requires'.

37. CPLR §2214(c), entitled 'Furnishing papers to the court', states: 'Each party shall furnish to the court all papers served by him. The moving party shall furnish at the hearing all other papers not already in the possession of the court necessary to the consideration of the questions involved. Where

such papers are in the possession of an adverse party, they shall be produced by him at the hearing on notice served with the motion papers. Only papers served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion, unless the court for good cause shall otherwise direct.’ (underlining added).

The interpretive commentary in McKinney’s Consolidated Laws of New York Annotated, C:2214:23 ‘Furnishing Papers to the Court’, by Professor David Siegel, could not be more explicit:

‘If any paper relied on is already in the court’s file, it need not be furnished again. In fact, it is often the practice for the clerk to send the whole file up to the judge for the motion. If that’s not the local practice, however, it may be a good idea to arrange in advance to have the item removed from the file and included with the moving (or opposing) papers being submitted to the court.’ (underlining added).

38. At bar, all the papers on which my motion relied were in the Court’s file. Indeed, this Court’s ‘local practice’, whereby the Court’s Clerk provides the file to the judge, was evident on the November 16, 2007 return date of the order to show cause. The voluminous file was physically before Judge Friia, who commented on its volume – stating words to the effect that a wheel barrel would be necessary to haul it away to be reviewed.

39. Mr. Sclafani’s cross-motion does not identify any paper not readily-accessible to the Court from its file of this case.

40. Were parties to be required to annex all prior papers, previously filed with the Court, necessary for the Court’s adjudication – and to do so notwithstanding such prior papers had been recently submitted and were readily-accessible from the Court’s file – would mean that with every motion, the parties would potentially have to replicate the entire file contents. The results would overwhelm the Court and parties with needless paper.

41. Indeed, were such to be required – which it is not – Mr. Sclafani’s own August 23, 2007 default/dismissal motion would be procedurally defective for failing to annex my ‘VERIFIED ANSWER with Affirmative Defenses & Counterclaims’. Plainly such document was

absolutely ‘necessary to consideration of the questions involved’ on his motion.

42. Finally, as Mr. Sclafani’s ¶30 makes evident, he has no defense to my requested reargument/renewal motion ‘on its merits’ – a fact further evident from the deceits upon which he fashions his Subsection c, as demonstrated by ¶¶48-54 herein.

Mr. Sclafani’s Subsection ‘b. The Omission of Respondent’s ‘Answer and Counterclaims From the Order’ (¶¶31-32)

43. Mr. Sclafani’s ¶31 purports that since, by my own admission, my ‘Anser and Counterclaim’ (sic) was not an exhibit to my September 5, 2007 cross-motion, ‘the Court was not obliged to consider it’. He provides no legal authority for this proposition – and it is frivolous and deceitful.

44. As the above commentary to CPLR §2214(c) makes clear, I was not required to annex my ‘VERIFIED ANSWER with Affirmative Defenses & Counterclaims’ to my cross-motion, as it was already in the Court’s file, readily accessible to Judge Hansbury.

45. Nor could the Court have decided my cross-motion as its October 11, 2007 decision did without the benefit of my ‘VERIFIED ANSWER with Affirmative Defenses & Counterclaims’ – and Mr. Sclafani makes no showing, either factual or legal, as to how Judge Hansbury could have done so.

46. Also without legal authority, frivolous, and deceitful is Mr. Sclafani’s ¶32, claiming:

‘to the extent that the Court did, in fact, consider respondent’s Answer and Counterclaims, all that is necessary is for the Court, now, to issue an amended order including respondent’s Answer and Counterclaims as one of the documents considered.’

47. Mr. Sclafani seemingly implies that the Court can *sua sponte* issue an ‘amended order’ – blithely ignoring a reargument/renewal motion pursuant to CPLR §2221 – a rule entitled ‘Motion affecting prior order’. As stated by my ¶11:

‘upon reargument/renewal, this Court must clarify whether or not it read my ‘VERIFIED ANSWER with Affirmative Defenses & Counterclaims’ and, if so, include same in its recitation of the ‘papers read’...’

Mr. Sclafani’s Subsection ‘c. Respondent’s Application is a Rehash of the issues raised on Her Cross-Motion’ (¶¶33-41)

48. Mr. Sclafani’s ¶33 purports that I have no basis for renewal as I offer no supervening additional facts or change in law. This is false – ignoring that my ¶53 expressly provides ‘By way of renewal,’ the supervening additional fact of the October 23, 2007 notice of the Westchester Office of the Division of Housing and Community Renewal Office, germane to Judge Hansbury’s October 11, 2007 denial of the first branch of my cross-motion.

49. His ¶¶34-35, 37-38 then purport that I have not met the standard for reargument. This is also false – accomplished by his concealing what that standard for reargument affirmatively is and substituting instead what it is not, which he contends is what I have done. Thus, he purports that I have merely offered ‘a rehash of the arguments that [I] had previously presented through the cross-motion that the Court denied’ (¶34), that I ‘address claims and issues precisely the same as those that were litigated, and that the Court decided, in the prior motion practice that the Court determined by its October 11, 2007 Order’ (¶38), but that ‘A motion to re-argue (or to renew) a prior motion may not be utilized to authorize the unsuccessful party to argue again the precise issues previously determined’, for which unexceptional proposition he cites two cases (¶37).

50. The standard for reargument, which CPLR §2221(d)(2) itself sets forth, is that it:

‘shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.’

51. This is precisely what my reargument motion does – meticulously demonstrating that Judge Hansbury denied my cross-motion by wilfully and deliberately ‘overlook[ing] or misapprehend[ing]’ the uncontested, documentary facts in the record before him, as likewise black-

letter law, also uncontested and in the record before him – all entitling me to the granting of my cross-motion, *as a matter of law*.

52. Mr. Sclafani's concealment of the true nature of my reargument motion – namely, that it presents a line-by-line analysis of Judge Hansbury's October 11, 2007 decision, demonstrating its denial of my September 5, 2007 cross-motion to be factually and legally insupportable, with material deceptions as to the grounds for denying Mr. Sclafani's August 23, 2007 default/dismissal motion, permits the further flagrant deception of his ¶39:

'Each of respondent's arguments were addressed in petitioner's moving papers on his prior motion for dismissal of respondent's various 'affirmative defenses' and 'counterclaims' and in petitioner's opposition to respondent's prior cross-motion for dismissal of the petition.'

53. Obviously, Mr. Sclafani's August 23, 2007 dismissal motion and September 5, 2007 opposition to my cross-motion, which his ¶¶40-41 annex and ask the Court to consider 'as part of petitioner's opposition to respondent's instant application', do not address ANY aspect of my showing that Judge Hansbury's October 11, 2007 decision cannot be justified by the facts or law.

54. That Mr. Sclafani blithely places these two prior submissions before the Court – notwithstanding my instant motion highlights how resoundingly my September 5, 2007 cross-motion and my September 11, 2007 reply affidavit had established their fraudulence, from beginning to end – only underscores the pathology of Mr. Sclafani's conduct." (underlining, capitalization, and italics in the original).

SCLAFANI'S FRIVOLOUS & FRAUDULENT POINT III
(pp. 10-11) (*Consolidation*)

Sclafani's misleadingly entitles his Point III "The Court Did Not Err in Directing the Consolidation of the Proceedings Below with Those Cases Pending in the City Court Between the Same Parties that Sassower Alleged Remain 'Opened'" (pp. 10-11). Judge Hansbury's January 29, 2008 decision – the subject of this appeal – did not "direct"

consolidation, but, rather, affirmatively stated: “The proceedings shall remain consolidated”, implying it had already been done. Nor is this a “Question Presented” by Sassower’s appeal herein. Tellingly, Sclafani’s Point III does not even refer to the January 29, 2008 decision, let alone its declaration pertaining to consolidation, which his brief nowhere mentions.

Sclafani’s Point III begins by asserting (at p. 10):

“Sassower argues that the White Plains City Court erred in its October 11, 2007 decision and order when it, *sua sponte*, directed that the case below be consolidated with that case between the parties; to wit, 651/89 together with any other open cases ‘between the parties involving the same subject matter’, of which there were, and are, none. If was not. (sic).”

This is multiply deceitful. Sassower does not “argue[]” what Sclafani purports: not in any of her three Points of her appellant’s brief (pp. 27-34) – none of which pertain to consolidation – nor in her “Statement of the Case” (pp. 9-11) which quotes that portion of her November 9, 2007 order to show cause as analyzed the final paragraph of Judge Hansbury’s October 11, 2007 decision directing consolidation.

As clear from that analysis (at pp. 9-11) – and the language of the final paragraph of Judge Hansbury’s October 11, 2007 decision which Sassower’s analysis quotes – Sassower does not argue that Judge Hansbury *sua sponte* directed consolidation of “the case below” with #SP-651/89. She argues precisely what the language of the decision said: “the Court will consolidate any prior pending action with the instant proceeding” – with no affirmative assertion that #SP-651/89 was one such “prior pending action”.

Likewise, false, is Sclafani’s quotation marks around the phrase “between the parties

involving the same subject matter” (at p. 10). This is not part of the wording of Judge Hansbury’s October 11, 2007 decision, as Sclafani’s use of the quotation marks would reasonably imply.

Although Sclafani thereupon quotes (at p. 11)– without quotation marks – the wording of CPLR §3211(a)(4) that where “there is another action pending between the same parties for the same cause of action...the court need not dismiss upon this ground but may make such order as justice requires – citing *Thompson v. Thompson*, 103 A.D2d 752, 477 N.Y.S. 2nd 405 (2nd Dept., 1984) for the proposition that this includes consolidation – he does not claim that the consolidation directed by Judge Hansbury’s October 11, 2007 decision conformed with the legal prerequisites for either CPLR §3211(a)(4) or consolidation. That it did not is evident from Sassower’s analysis of Judge Hansbury’s October 11, 2007 decision, at pages 9-11 of her appellant’s brief, showing his *sua sponte* consolidation to be wholly violative of due process¹⁰, reversible, *as a matter of law*, as well as sham. Such analysis – whose accuracy Sclafani does not deny or dispute in any respect – is additionally featured in Sassower’s Point III of her brief in #2008-1433 WC (pp. 42-44), corresponding to her third

¹⁰ Compare *Kent Development Co. v. Liccione*, 37 N.Y.2d 899 (1975), where the Court of Appeals, interpreting CPLR §3211(a)(4) stated,

“Although [it] contains a provision that ‘the court need not dismiss upon this ground [another action pending] but may make such order as justice requires’ and although it appears that a joint trial might be appropriate (see *Stewart-Scott Constr. Corp. v. Schaefer Brewing Co.*, 41 AD2d 788), it would be unjust to direct same since it does not appear that all parties to both actions have been properly notified (see CPLR 602, subd [a]; Siegel, Practice Commentaries, McKinney’s Cons Law of NY, Book 7B, CPLR 3211.19, pp. 25-26).”

At bar, no notice of consolidation was given to Doris Sassower, a party in #SP-651/89, but not herein.

“Question Presented” for her appeal therein, which pertains to consolidation. Tellingly, Sclafani’s brief in #2008-1433 WC has no opposing Point on consolidation, leaving Sassower’s presentation there, as here, unopposed.

Although not a “Question Presented” herein, Sclafani seeks to dispose of “[t]he question of consolidation” of #SP-651/89 with this case, stating (at p. 11):

“At this point, it should be noted that, by decision and order dated July 3, 2008, the White Plains City Court granted summary judgment to McFadden on his holdover petition in the proceedings under Index No. 651/89, the only case that the White Plains City Court determined was still open and involved the same parties and subject matter as the case herein. The question of consolidation of the two cases was, thereby, rendered moot.”

There is no mootness – as would be evident had Sclafani identified that the only basis upon which #SP-651/89 was placed on the June 30, 2008 calendar by White Plains City Court – which was by a form trial notice generated for this case – was its pretense that #SP-651/89 had been consolidated with this case pursuant to Judge Hansbury’s October 11, 2007 decision and that #SP-651/89 was the “original #” of this case.¹¹ Both are false, as likewise Judge Friia’s oral declaration on June 30, 2008, not reduced to any written document and not corroborated by the White Plains City Court Chief Clerk, that #SP-651/89 was the only prior open case – and that the other two cases, #SP-434/88 and #SP-500/88, identified as open by

¹¹ The facts pertaining to the calendaring of #SP-651/89 with this case are particularized at ¶¶15-20 of Sassower’s July 18, 2008 order to show cause for Judge Friia’s disqualification and vacatur of her July 3, 2008 decision – which she refused to sign. This original, unsigned order to show cause is in this Court’s possession, having been filed by Sassower on August 13, 2008, in further support of her July 30, 2008 order to show cause for a stay pending appeal and her August 13, 2008 vacatur/dismissal motion. [See fn. 3 of Sassower’s appellant’s brief (at p. 26)].

Sassower's First Affirmative Defense to the Petition herein, were closed. Such is the subject of Sassower's upcoming two appeals in #SP-651/89 – the first being from Judge Friia's July 3, 2008 decision & order and her July 21, 2008 judgment of eviction and warrant of removal [#2008-1427 WC], and the second being from Judge Friia's October 14, 2008 decision & order denying Sassower's motion to compel the White Plains City Court Chief Clerk to provide this Court with documents and information necessary for these appeals, including as to the status of #SP-651/89, #SP-434/89, and #SP-500/89 [#2009-148 WC].

Finally, Sclafani conceals his role as originator of the ploy that White Plains City Court consolidate this case with #SP-651/89 so as to thereupon grant the summary judgment in #SP-651/89 which he now self-interestedly purports moots "[t]he question of consolidation". Presumably, this is why Sclafani's brief so readily acknowledges (at pp. 2, 10) that Judge Hansbury's consolidation, as directed by his October 11, 2007 decision, was "sua sponte", omitting any reference to Judge Hansbury's January 29, 2008 decision, whose adherence to consolidation was on a record containing Sclafani's November 15, 2007 cross-motion for consolidation – laying out the ploy that Judge Friia would thereafter adopt.

SCLAFANI'S FRIVOLOUS & FRAUDULENT POINT IV
(pp. 12-16) ("Cross-Appeal" to Strike Affirmative Defenses & Counterclaims)

Sclafani's Point IV "The Court Below Erred in Refusing to Reverse Itself on Its Decision to Deny McFadden's Motion to Strike Sassower's Defenses and Counterclaims" (at pp. 12-16) is his purported "cross-appeal".

Although there is no "cross-appeal" in fact, a response is herewith provided so as to enable the Court to recognize that the purported "cross-appeal" is founded on a mountain of deceptions, over and beyond the threshold deceit (at p. 3) that "McFadden filed a notice of cross-appeal".

Here, too, Sclafani does not disclose that his "cross-appeal" is virtually a *verbatim* replication of ¶¶9-19 of his November 15, 2007 affirmation. The outright perjury and fraud of these paragraphs was fully exposed by ¶¶15-16 of Sassower's November 26, 2007 reply affidavit – without any adjudication by Judge Hansbury.

As Sassower's 5-1/2 page rebuttal is equally applicable to Sclafani's near-identical repetition in his Point IV, it is herein set forth:

"15. As for Mr. Sclafani's reargument of the denial of that branch of his August 23, 2007 motion as sought dismissal of my Affirmative Defenses and Counterclaims – the subject of his ¶¶7-19 – such is based on a myriad of perjuries and deceptions, all arising from his failure to identify, let alone confront, ANY of the facts, law, and legal argument presented by my OSC affidavit. This includes my ¶¶56-65 appearing under the title heading 'The Decision's Grounds for Denying Mr. Sclafani's Motion Conceal its Demonstrated Perjuriousness & Condone its Flagrant Legal Baselessness'...

16. Because Judge Hansbury predicated his denial of Mr. Sclafani's August 23, 2007 dismissal motion on its legal insufficiency, completely

ignoring the perjury and fraud I had documented, Mr. Sclafani bases his reargument on its legal sufficiency, purporting that Judge Hansbury ‘misunderstood’ and ‘overlooked’ such fact. In so doing, he likewise ignores my showing of perjury and fraud by him and his client and embarks on a new set of perjuries in support of his legal sufficiency claim.

A. Mr. Sclafani purports to having ‘personal knowledge of the facts regarding several of [my] ‘affirmative defenses’ and ‘counterclaims’”(¶8) and ‘personal knowledge of facts necessary for the Court to have dismissed [my] affirmative defenses and counterclaims’ (¶11). This is false.

Of my TEN Affirmative Defenses, Mr. Sclafani has personal knowledge only as to the second (*Petitioner’s Receipt of Use and Occupancy*). Mr. Sclafani’s ¶12 cites only this Second Affirmative Defense, falsely introducing it with the phrase ‘for example’. Moreover, as to this Second Affirmative Defense, Mr. Sclafani’s personal knowledge does NOT support his motion to dismiss it, for which he seeks reargument. This he conceals by the careful phrasing in his ¶12: ‘petitioner’s counsel did have personal knowledge of the facts relevant to respondent’s claim’ – hiding that this ‘relev[ance]’ proves, rather than disproves, my claim’s factual basis. Thus, in purporting that it was he who ‘actually returned’ to me the checks for June and July 2007 use and occupancy,^{NOTE} Mr. Sclafani concedes the falsity of the Verified Petition’s ¶14 that ‘no part’ had been ‘received’ by Mr. McFadden. Such falsity is the gravamen of my Second Affirmative Defense, along with the Petition’s omission of any allegation that my purportedly not-received checks had been returned to me. As I have asserted, time and again, they were not.

Of my FOUR Counterclaims, Mr. Sclafani cites no ‘example’ of his personal knowledge. This, notwithstanding he does have a degree of personal knowledge as to the Verified Petition, which he signed with Mr. McFadden – and which is the subject of my Fourth Counterclaim (*Ensuring the Integrity of the Judicial Process*). Yet here, too, his personal knowledge as to the Petition’s ¶14 does NOT support his motion to dismiss such Counterclaim, for which he seeks reargument.

^{NOTE} This claim that Sclafani “actually returned” the checks – which his Point IV repeats (at p. 13) *verbatim* from ¶12 of his November 15, 2007 cross-motion – seemingly contradicts his statement in open court on the July 16, 2007 return date of the Petition that the checks were returned “on [his] direction”, with its implication that McFadden had returned them. [See July 16, 2007 transcript, p. 17, lns. 5-6, annexed as Exhibit I-1 to Sassower’s September 5, 2007 cross-motion].

Mr. Sclafani then further deceives as to his personal knowledge by his ¶13:

‘to the extent that there were any allegations of fact in petitioner’s counsel’s affirmation about which counsel had no personal knowledge, petitioner also submitted the affidavit of petitioner, himself, who did have personal knowledge of those facts.’ (underlining added for emphasis).

As he well knows, ‘the extent’ of his testimonial incapacity with respect to my Affirmative Defenses and Counterclaims is nearly total.

B. Mr. Sclafani conceals (¶¶8, 13, 14, 19) the pertinent facts pertaining to Mr. McFadden’s affidavit:

(i) it was NOT part of his August 23, 2007 dismissal motion, but submitted only after my September 5, 2007 cross-motion had identified and shown that Mr. Sclafani’s motion was legally insufficient because of the absence of any affidavit from Mr. McFadden attesting to the facts of which he – not Mr. Sclafani – had personal knowledge;

(ii) it was a pitiful five-sentences long, failed to attest that Mr. McFadden had read my cross-motion or even my Answer, and failed to come forward with critical information, including as to the purported basis of this proceeding: the supposed ‘oral agreement’ of a month-to-month tenancy, alleged by ¶8 of his Petition and denied by my Answer’s ¶SECOND, with substantiating proof presented by ¶¶150-163 of my cross-motion in support of summary judgment^[fn];

(iii) its endorsement and adoption of Mr. Sclafani’s August 23, 2007 moving affirmation, put Mr. McFadden’s imprimatur to Mr. Sclafani’s perjury therein, already exposed by my 63-page September 5, 2007 affidavit supporting my cross-motion, with its endorsement and adoption of Mr. Sclafani’s comparably perjurious accompanying opposing/reply affirmation thereafter exposed by my 35-page September 11, 2007 reply affidavit.

C. Mr. Sclafani purports (¶8) that ‘petitioner’s verified petition’ also supported the dismissal motion. This is false. Mr. McFadden’s skimpy Verified Petition, whose material allegations were vague and conclusory, was

insufficient, *as a matter of law*, to support dismissal of my particularized and documented ‘VERIFIED ANSWER with Affirmative Defenses & Counterclaims’, which denied those allegations. This was so-demonstrated and reinforced by my September 5, 2007 cross-motion – including its ¶¶149-184, appearing under the section heading ‘My Entitlement to Summary Judgment’, establishing the perjuriousness of the Petition’s material allegations and my entitlement to dismissal/summary judgment based on my Answer, Affirmative Defenses, and Counterclaims.

D. Mr. Sclafani purports (¶8) that ‘other admissible documentary evidence’ also supported his dismissal motion. This is false. His ‘other evidentiary proof’, specified at ¶¶15-16, is either irrelevant, insufficient, or substantiates my denials of material allegations of the Verified Petitions and my Affirmative Defenses and Counterclaims.

- Mr. Sclafani’s first item: ‘affidavits and other proofs of service of the notice of petition and petition on respondent in this matter’, annexed to his dismissal motion, is wholly irrelevant, as my Affirmative Defenses did not contest service;
- Mr. Sclafani’s second item: ‘correspondence from petitioner’s counsel to respondent evidencing the return to respondent of her rent checks for the period following the expiration date of her tenancy...’, annexed to his dismissal motion, corroborates my denial of the Verified Petition’s ¶14 and my Second Affirmative Defense [as ¶¶31-33 of my OSC affidavit itself highlights];
- Mr. Sclafani’s third item: ‘the opinions, and the Decisions and Orders...in the [federal] case of *Sassower v. Field et al*’, annexed to his dismissal motion, corroborate my Fifth Affirmative Defense and my Sixth Affirmative Defense, and even my First Counterclaim [see ¶¶89-90, 123-131 of my cross-motion and the substantiating proof it annexed];
- Mr. Sclafani’s fourth item: ‘true copies of his stock and lease for his apartment’, annexed to his September 5, 2007 opposition/reply affidavit, substantiate my denial of the Verified Petition’s ¶8 of ‘an oral agreement’ creating a month-to-month tenancy [see fn. 5, at p. 13 of my September 11, 2007 reply affidavit];
- Mr. Sclafani’s fifth item: ‘a Decision of this Court in the case of

McFadden v. Sassower, Index #651/89 pursuant to which this Court held in abeyance a determination of a motion for summary judgment that petitioner had made in that case pending the outcome of the above cited federal litigation’, substantiates my Seventh Affirmative Defense [see ¶¶76-78 of my September 11, 2007 reply affidavit].

E. Mr. Scalfani also claims that my ‘own averments’ support his dismissal motion (¶8) and that ‘the facts necessary for the Court to have adjudicated petitioner’s motion on its merits were admitted by [me] and/or were not in dispute’ (¶18). This is false – and Mr. Scalfani conspicuously specifies none of my so-called ‘averments’ or ‘admi[ssions]’ supporting his dismissal motion. As for the single ‘example’ he does provide, ‘that branch of petitioner’s motion as sought dismissal of respondent’s defense of ‘equitable estoppel’ on the ground that the facts as respondent alleged them to be failed to support the defense as a matter of law.’ (¶18), he is presumably referring to my Fifth Affirmative Defense (*‘Equitable Estoppel and Unjust Enrichment’*). Mr. Scalfani’s deceit in moving to dismiss this affirmative defense was particularized by ¶¶79-92 of my September 5, 2007 cross-motion – the accuracy of which was not denied or disputed by Mr. Scalfani’s September 5, 2007 opposing/reply affidavit (see ¶¶64-65 thereof).

F. Mr. Scalfani also claims that ‘applicable law’ and ‘cited legal authorities’ (¶¶8, 17) support his dismissal motion. However, as demonstrated by my cross-motion, his relatively few ‘cited legal authorities’ were INAPPLICABLE to the material pleaded allegations of my ten Affirmative Defenses, for which reason, the allegations were flagrantly falsified and omitted by his dismissal motion.

17. Consequently, Mr. Scalfani’s cross-motion for reargument must be denied, *as a matter of law.*” (capitalization, underlining, and italics in the original).

CONCLUSION

WHEREFORE, *as a matter of law*, Sclafani's opposition to Sassower's appeal is no opposition in fact, and, by its material omissions, falsifications, and deceit, reinforces the merit of Sassower's appeal.

Sclafani's purported "cross-motion" is a nullity, quite apart from its being a demonstrated fraud on the Court. Pursuant to this Court's rule 730.3(g) and §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, this Court's duty is to impose maximum costs and sanctions on Sclafani and his co-conspiring client McFadden and to refer them to disciplinary and criminal authorities.


ELENA RUTH SASSOWER

Dated: New York, New York
February 2, 2009