

Case No. 2008-1427 WC
Case No. 2009-148 WC

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

APPELLATE TERM OF THE SUPREME COURT
NINTH & TENTH JUICIAL DISTRICTS

JOHN McFADDEN,

Respondent,

-against-

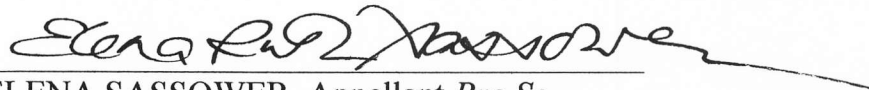
DORIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Appellant.

APPELLANT'S BRIEF*



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***Appeal 3: Judge Jo Ann Friia's July 3, 2008 Decision & Order
July 21, 2008 Judgment of Eviction
July 21, 2008 Warrant of Removal**

***Appeal 4: Judge Jo Ann Friia's October 14, 2008 Decision & Order**

(Westchester City Court #SP-651/89 & #SP-2008-1474)

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APPELLATE TERM OF THE SUPREME COURT
NINTH & TENTH JUICIAL DISTRICTS

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Respondent,

-against-

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ELENA SASSOWER,

Appellant.

STATEMENT PURSUANT TO RULE 5531 OF THE CPLR

1. The index number in the court below is #SP-651/89. However, 19 years later, an additional index number, SP-2008-1474, was assigned by the White Plains City Court Clerk, without notice or explanation.
2. The full names of the original parties are: John McFadden, Doris L. Sassower, and Elena Sassower.
3. The proceeding was commenced in White Plains City Court, Westchester County.
4. The Petition was served on April 4, 1989. The Answer was served on June 26, 1990.

5. The proceeding purports to be a landlord-tenant holdover proceeding to regain possession of the subject apartment.

6. Two separate appeals are presented by this consolidated brief:

A. The first appeal, which this Court has docketed as #2008-1427 WC, is from a July 3, 2008 decision & order of White Plains City Court Judge Jo Ann Friia, filed in the White Plains City Court Clerk's Office on that date (but not entered); her July 21, 2008 judgment of eviction (entry of which was backdated to that date by a fax that the White Plains City Court Clerk's Office sent to this Court's Clerk's Office on October 23, 2008), and Judge Friia's July 21, 2008 warrant of removal (not entered).

B. The second appeal, which this Court has docketed as #2009-148 WC, is from Judge Friia's October 14, 2008 decision & order, filed in the White Plains City Court Clerk's Office on October 15, 2008 (but not entered).

7. These appeals are on the original record pursuant to the rules of this Court.

A handwritten signature in cursive script, reading "Elena Ruth Sassower", written in black ink. The signature is fluid and extends to the right with a long, sweeping underline.

ELENA RUTH SASSOWER, *Pro Se*

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Certificate Pursuant to 22 NYCRR §130-1.1-a

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QUESTIONS PRESENTED FOR REVIEW

APPEAL 3: #2008-1427 WC

APPEAL 4: #2009-148 WC

1. Was #SP-651/89 closed for lack of prosecution during the approximately 15 years of its dormancy, divesting White Plains City Court Judge Jo Ann Friia of jurisdiction to render her July 3, 2008 decision & order?

Judge Friia's July 3, 2008 decision & order did not identify or determine the question of whether #SP-651/89 was open, gave a pretext for her decision that was materially false, and concealed that sometime in 2008 (and at her direction) the White Plains City Court Clerk assigned #SP-651/89 an additional docket number, #SP-2008-1474, without notice or explanation – presumably because #SP-651/89 was closed.

This Court cannot conclusively determine this question from the Clerk's Returns on Appeals for #SP-651/89 or #SP-2008-1474. Nor can it do so from the Clerk's Return on Appeal for #SP-1502/07, with which #SP-651/89 was allegedly consolidated and for which #SP-651/89 was purported to be the "original #". Available evidence supports the inference that #SP-651/89 was closed.

2. Does White Plains City Court have jurisdiction and supervisory responsibilities over its own Clerk and was appellant's September 18, 2008 motion sufficient, *as a matter of law*, to have required any fair and impartial tribunal to have granted:

(a) its first branch: to compel the White Plains City Court Clerk to provide this Court with proper Clerk's Returns on Appeals, as well as court records and other information necessary to determining the status of #SP-651/89 and related City Court proceedings;

(b) its second branch: to refer the White Plains City Court Clerk to disciplinary and criminal authorities, *inter alia*, for tampering with court records and false statements to Judge Friia as to the status of #SP-651/89 and related cases and/or her complicity in Judge Friia's misrepresentations as to their status;

(c) its third branch: for such other and further relief as may be just and proper – including sanctions and costs against the New York State Attorney

General and petitioner-respondent's counsel and their referral to disciplinary and criminal authorities?

Judge Friia's October 14, 2008 decision & order did not identify or adjudicate the motion's threshold assertion that she was disqualified for actual bias and "direct self-interest", did not address any of the facts, law, or legal argument appellant presented as to the City Court's jurisdiction and supervisory responsibilities over its own Clerk, and, without identifying or adjudicating the motion's second and third branches, denied the motion for lack of "subject matter jurisdiction".

3. Was appellant's July 18, 2008 order to show cause sufficient, *as a matter of law*: (a) for the granting of its requested relief:

(i) to stay enforcement of the July 3, 2008 decision & order pending determination of appellant's underlying motion or, alternatively, pending appeal;

(ii) to disqualify Judge Friia for demonstrated actual bias and interest based, *inter alia*, on her July 3, 2008 decision & order, to vacate same by reason thereof, for transfer, and, if denied, for disclosure;

(iii) for reargument and renewal of the July 3, 2008 decision & order and, upon the granting of same, vacating it;

(iv) to vacate the July 3, 2008 decision & order pursuant to CPLR §5015(a)(3) for "fraud, misrepresentation, or other misconduct of an adverse party", with imposition of maximum costs and sanctions against petitioner-respondent and his counsel;

(v) to vacate the July 3, 2008 decision & order pursuant to CPLR §5015(a)(4) for "lack of jurisdiction to render the judgment or order";

(b) for the granting of its requested "such other and further relief as may be just and proper" – and, specifically,

(i) summary judgment to appellant pursuant to CPLR §3212(b),

dismissing the Petition in #SP-651/89;

(ii) summary judgment to appellant in #SP-1502/07, dismissing the Petition therein, with summary judgment to appellant on her four Counterclaims?

Judge Friia made no determination as to the sufficiency of appellant's July 18, 2008 order to show cause for any of its requested relief. Instead, she denied it, without signing it, writing on its first page "All issues raised have been previously addressed by the Court. Appeal(s) may be taken to Appellate Court – no further action by City Court of White Plains to be taken".

In fact, appellant had never previously moved for reargument and renewal of the July 3, 2008 decision & order and had never moved for its vacatur pursuant to CPLR §5015(a)(3) and (4). As for that branch of appellant's motion as sought Judge Friia's disqualification, transfer, and disclosure, Judge Friia had never "previously addressed" these issues.

Based on appellant's July 18, 2008 order to show cause, any fair and impartial tribunal would have granted her summary judgment pursuant to CPLR §3212(b), dismissing the Petition in #SP-651/89 as rebutted by documentary evidence. Such tribunal would have also dismissed the Petition in #SP-1502/07 and granted appellant summary judgment on her four Counterclaims therein.

4. Is vacatur of Judge Friia's July 21, 2008 judgment of eviction & warrant of removal required, *as a matter of law* – and does Judge Friia's signing them, simultaneous with her not signing appellant's July 18, 2008 order to show cause, further manifest her pervasive actual bias for which appellant was entitled to her disqualification?

Judge Friia's July 21, 2008 judgment of eviction and warrant of removal, unchanged from the proposed judgment and warrant submitted by petitioner-respondent's counsel, do not comport with the form and content of such documents and materially diverge from her July 3, 2008 decision & order. Her signing them further manifests her pervasive actual bias, entitling appellant to her disqualification – and especially as appellant's July 18, 2008 order to show cause, which she simultaneously did not sign, provided her with a 51-page analysis establishing her July 3, 2008 decision & order to be "a judicial fraud" – indefensible in fact and law and knowingly so.

5. Do the course of these proceedings require this Court to discharge its mandatory “Disciplinary Responsibilities” under §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct by referring Judge Friia and the White Plains City Court Clerk to disciplinary and criminal authorities, as likewise petitioner-respondent’s counsel and the New York State Attorney General?

They surely do.

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CPLR §3019

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CPLR §3212

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§100.3C: Administrative Responsibilities

§100.3D: Disciplinary Responsibilities

§100.3E: Disqualification

§100.3F: Disclosure

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INTRODUCTION

This brief combines two appeals of appellant Elena Sassower [hereinafter “Sassower”]¹:

#2008-1427-WC: Sassower’s appeal of a July 3, 2008 decision & order of White Plains City Court Judge Jo Ann Friia, granting a 16-1/2 year old summary judgment motion of John McFadden [hereinafter “McFadden”] (Exhibit C-1), and the July 21, 2008 judgment of eviction and warrant of removal purportedly based thereon (Exhibits C-2, C-3); and

#2009-148-WC: Sassower’s appeal of Judge Friia’s October 14, 2008 decision & order, denying Sassower’s September 18, 2008 motion to ensure that this Court has the documents and information necessary for its appellate review, including proper Clerk’s Returns on Appeals, and to that extent granting, on jurisdictional grounds, the cross-motion of the New York State Attorney General (Exhibit D).

Both appeals arise from the same 1989 White Plains City Court case, *John McFadden v. Doris L. Sassower and Elena Sassower*, #SP-651/89 – to which, on or about May 30, 2008 – and at the instance of Judge Friia – the White Plains City Court Clerk assigned an additional number, #SP-2008-1474, without notice or explanation.

At that same time – May 30, 2008 – another case, *John McFadden v. Elena Sassower*, #SP-1502/07, was before Judge Friia in a posture requiring any fair and impartial judge to have dismissed McFadden’s Petition therein, *as a matter of law*, and to have granted summary judgment to Sassower on her four Affirmative Defenses therein, *as a matter of law*.

¹ This single brief has been authorized by a February 5, 2009 letter of this Court’s Clerk (Exhibit A-3), responding to a January 5, 2009 letter request by Sassower (Exhibit A-1). Both appeals herein are timely (Exhibit A-2, A-4, A-5). For the convenience of the Court, the relevant correspondence and other documents germane to these appeals are furnished in an accompanying Compendium of Exhibits.

Judge Friia, however, was not a fair and impartial judge. Rather, she was a judge intent on using her judicial office for ulterior retaliatory purposes. To that end, she wilfully and maliciously disregarded her duty to disqualify herself based upon the appearance and actuality of her bias and interest and to disclose facts pertinent thereto. As hereinafter demonstrated, Judge Friia's appealed-from decisions & orders and judgment and warrant are flagrant judicial frauds – being indefensible in fact and law and knowingly so. Such requires that this Court refer Judge Friia to disciplinary and criminal authorities pursuant to §100.3D(1) of the Chief Administrator's Rules Governing Judicial Conduct so that her corruption and those complicit and benefiting therefrom may be investigated and prosecuted.

Sassower has already perfected two separate appeals in #SP-1502/07, which she incorporates herein by reference as they are essential background. They are appeal #2008-1433-WC from a October 11, 2007 decision & order of White Plains City Court Judge Brian Hansbury and appeal #2008-1428-WC from Judge Hansbury's January 29, 2008 decision & order, each depriving Sassower of the dismissal and summary judgment to which she is there entitled, *as a matter of law*.

Prior to perfecting the instant two appeals, Sassower sought to dispose of them by motions before this Court, stating:

“11. No appellate court can uphold a decision awarding summary judgment to a petition alleging that respondents ‘entered in possession [of the subject premises] under a month to month rental agreement’ for which there is not only NO evidentiary proof, but which is rebutted by evidentiary proof. Nor can an appellate court uphold a warrant of removal that ‘completely falsifies’ the allegations of the petition for which summary judgment was given and

‘materially alters’ its caption. Nor can it allow a judgment of eviction that ‘materially diverges’ from the decision it purports to implement, including by omission of respondents’ Answer. All these are readily-verifiable from what is now before this Court, making the requested vacatur/dismissal relief of my motion not only immediately appropriate, but matters of elementary law. No appeal is necessary to resolve these straight-forward, documentarily-established issues. They can be resolved expeditious[ly], now.” (Sassower’s August 13, 2008 affidavit, underlining and capitalization in the original).

The record of these motions – Sassower’s August 13, 2008 vacatur/dismissal motion and her October 15, 2008 order to show cause for reargument/renewal & other relief – are also incorporated herein by reference, as they were, and are, dispositive.² Indeed, they furnished this Court with the dispositive documents from the record before Judge Friia:

(1) Sassower’s July 18, 2008 order to show cause for Judge Friia’s disqualification and vacatur of her July 3, 2008 decision & order (Exhibit N)³ containing a 51-page analysis of the decision & order; and

(2) Sassower’s October 10, 2008 opposition/reply affidavit (Exhibit O) containing a 12-page analysis of the cross-motion of the Attorney General that

² This Court’s October [1], 2008 decision & order denied Sassower’s August 13, 2008 vacatur/dismissal motion without reasons and without reciting any of the facts, law, or legal argument there presented. The Court’s November 26, 2008 decision & order denying Sassower’s October 15, 2008 order to show cause for reargument/renewal was also without reciting any of the facts, law, or legal argument pertaining thereto. Indeed, its “note” that “a motion to vacate an order must be addressed to the court that issued the order” was altogether inapplicable as Judge Friia had denied Sassower’s July 18, 2008 order to show cause for vacatur of her July 3, 2008 decision & order, without signing it, writing on its first page “All issues raised have been previously addressed by the Court/ Appeal(s) may be taken to Appellate Court – no further action by City Court of White Plains to be taken.” (Exhibit N).

³ Sassower furnished this original document to the Court on August 13, 2008 in support of her August 13, 2008 vacatur/dismissal motion and in further support of her July 30, 2008 order to show cause for a stay pending appeal. The copy of the July 18, 2008 order to show cause herein annexed (Exhibit N) does not include its voluminous substantiating exhibits. These primarily consist of Sassower’s June 27, 2008 and July 8, 2008 orders to show cause in #SP-1502/07 (with their substantiating exhibits), each of which Judge Friia denied, without signing, and Sassower’s July 9, 2008 letter to Judge Friia, to which she did not respond. These exhibits are summarized at pages 27-30, 40-47, *infra*, with the July 18, 2008 order to show cause summarized at pages 47-50, *infra*.

Judge Friia's October 14, 2008 decision & order thereafter granted to the extent of denying, on jurisdictional grounds, Sassower's September 18, 2008 motion to compel the White Plains City Court Clerk to provide this Court with the documents and information necessary for her appeals.⁴

STATEMENT OF THE CASE

The Re-Emergence of #SP-651/89 by a Trial Notice from the White Plains City Court Clerk Claiming it to be the "Original #" for #SP-1502/07

The 1989 case, *John McFadden v. Doris L. Sassower and Elena Sassower*, #SP-651/89, was dormant for approximately 15 years and likely dismissed by White Plains City Court for want of prosecution. From this hibernation, if not dismissal, the case popped onto the June 30, 2008 calendar for an "ALL DAY TRIAL" by a typewritten form notice from the White Plains City Court Clerk, dated May 30, 2008⁵. Such typewritten notice, not signed by the Clerk, was also not generated from the 1989 case, but from the separate 2007 case, *John McFadden v. Elena Sassower*, #SP-1502/07. Above its typewritten docket number "SP-2007-1502" was handwritten "SP651/89 (original #)". This handwritten addition was false.

#SP-651/89 is not the "original #" for SP-1502/07. This is immediately evident from their Petitions (Exhibits E, F). Not only do they bear different captions: the 1989 case involving an additional party, Doris L. Sassower, who is not a party to #SP-1502/07, but their Petitions are incompatible.

⁴ Sassower furnished a copy of her October 10, 2008 affidavit to the Court on November 3, 2008 to support her October 15, 2008 order to show cause for reargument/renewal & other relief. [See ¶24 of Sassower's November 3, 2008 reply affidavit therein].

⁵ The May 30, 2008 trial notice that Sassower received is Exhibit MM to her July 18, 2008 order to show cause (Exhibit N). Discussion of the trial notice appears at ¶¶15-20 thereof.

Thus, McFadden's March 27, 1989 Petition (Exhibit E), on a pre-printed form, purports (at ¶2) that Sassower and her mother, Doris L. Sassower, "entered in possession" of the subject apartment "under a month to month rental agreement", on no specified date, for no specified "rent", with no copy of the "rental agreement" annexed. The "term" of this "rent[al]" is purported (at ¶4) to have "expired on 11/30/88" pursuant to an annexed notice of termination, with "The facts on which this proceeding are based [] set forth in the annexed notice". No "facts" are therein set forth.

By contrast, McFadden's June 22, 2007 Verified Petition (Exhibit F)⁶ alleges (at ¶¶4-5) that Sassower "entered into occupancy and assumed possession initially" under an October 30, 1987 "written temporary occupancy agreement" that was "part of a contract for the sale to her and to her mother Doris L. Sassower" of the subject apartment. Without annexing a copy or quoting their language, the Petition purports that these "terminated" upon the refusal of 16 Lake Street Owners Co-Op to consent thereto (¶¶6-7) and that McFadden thereafter entered into an "oral agreement" with Sassower for her continued "possession and occupancy...as a subtenant of petitioner on a month to month basis" (¶8), with the "term" of the "rent[al]" "expir[ing]" on May 31, 2007" (¶¶9-11).

⁶ The June 22, 2007 Petition, under a Notice of Petition dated June 27, 2007, was signed by both McFadden and his counsel therein, Leonard A. Sclafani, Esq., with the verification dated June 23, 2007 by McFadden only, yet purporting to be by his "attorney in the place of the Petitioner or its representative...". (Exhibit F).

As the material allegations of the March 27, 1989 Petition are rebutted by the October 30, 1987 contract of sale and occupancy agreement which Doris and Elena Sassower [hereinafter “the Sassowers”] had annexed to their promptly-made April 24, 1989 dismissal motion⁷ – or possibly because the Petition had been dismissed as abandoned or for want of prosecution at some point during the past 15 years – McFadden’s June 22, 2007 Petition (Exhibit F) omitted any mention of that earlier proceeding. Likewise, his 2007 Petition omitted any mention of McFadden’s two other City Court proceedings involving the subject apartment: his identical December 5, 1988 Petition in #SP-504/88, *John McFadden v. Doris*

⁷ In pertinent part, the April 24, 1989 motion to dismiss for lack of subject matter jurisdiction stated:

“5. (a) **As shown by the annexed copies of the contract and occupancy agreement between the parties dated October 30, 1987 (Exhibit ‘C’)**, Respondents are contract vendees in possession under a pre-closing occupancy agreement. The contract does not require performance within 90 days of execution [and] respondents have not defaulted thereunder. Therefore, summary proceedings against them do not lie under RPAPL 713...

Moreover, contrary to Petitioner’s allegations, there is no landlord-tenant relationship based upon a ‘month to month rental agreement’, the Contract and Occupancy Agreement explicitly acknowledging that ‘in no way do the parties intend to establish a landlord/tenant relationship’.

Under these circumstances, any state remedies sought by Petitioner must be pursued in Supreme Court, and not in a court of limited jurisdiction, as is the City Court of White Plains. See Orange County Development Corp. v. Perez, 67 Misc.2d 980:

‘The court, on innumerable occasions have held that the proper remedy, in such case, is by ejectment or a foreclosure of the contract to secure possession.’ *Id* at 982. See also Barbanta v. Shilling, 111 AD2d 201 (2nd Dept. 1985).” (bold added).

The Clerk’s Return on Appeal for #SP-651/89 does not contain the original April 24, 1989 motion, but only a copy made from microfilm/microfiche **without its annexed exhibits, including its Exhibit “C” October 30, 1987 contract of sale and occupancy agreement**. [See p. 57, *infra*.]

The free-standing copy of the contract of sale and occupancy agreement in the Clerk’s Return on Appeal for #651/89 is not from the Sassowers’ April 24, 1989 dismissal motion or any other document in #SP-651/89. Rather, it is from Sassower’s Verified Answer in #SP-1502/07, as evidenced, *inter alia*, from the “Exhibit A-1” and “Exhibit A-2” designations thereon.

L. Sassower and Elena Sassower (Exhibit G), dismissed after a traverse, and his near-identical April 3, 1989 Petition in #SP-652/89, *John McFadden v. George Sassower* (Exhibit H) – each purporting that the Sassower respondents had “entered in possession” of the subject apartment “under a month to month rental agreement”, on no specified date, for no specified “rent”, with no copy of the “rental agreement” annexed, and whose annexed “notice” set forth no “facts”.

McFadden’s 2007 Petition also omitted the reason McFadden had brought these three prior City Court proceedings (Exhibits E, G, H), namely, to placate 16 Lake Street Owners, Inc. [hereinafter “the Co-Op”], which had sued him in its own two City Court proceedings to take away his proprietary lease because of the occupancy of the apartment by Sassower and her father, George Sassower, both also sued by the Co-Op in the same two identically-titled lawsuits, *16 Lake Street Owners, Inc. v. John McFadden, George Sassower, and Elena Sassower*, #SP-434/88 and #SP-500/88 (Exhibits I, J). These two lawsuits were also omitted from McFadden’s 2007 Petition (Exhibit F).

Additionally, McFadden’s 2007 Petition omitted the federal lawsuit commenced in August 1998 by McFadden as co-plaintiff with Doris and Elena Sassower against the Co-Op to enforce the contract of sale.⁸ This omission was key to his Petition’s false allegations that

⁸ The August 1988 complaint in the federal lawsuit was incorporated in the record of #SP-651/89 by the Sassowers’ April 24, 1989 dismissal motion (at ¶2) from their December 9, 1988 Verified Answer in #SP-500/88, where it was annexed as Exhibit 1. It is not contained in the Clerk’s Return on Appeal for #SP-651/89 [See p. 57, *infra*].

The federal complaint is most conveniently accessible from (1) Sassower’s September 2, 2008 affidavit to this Court in further support of her August 13, 2008 vacatur/dismissal motion, where it is annexed

the contract of sale and occupancy agreement “terminated” upon the Co-Op’s rejection of the purchase (Exhibit F, ¶¶6, 7). In fact, they remained viable and binding on the parties by reason of the federal lawsuit and the language of the occupancy agreement.⁹

These five prior City Court proceedings (Exhibits E, G, H, I, J) and the federal lawsuit – all omitted from McFadden’s June 22, 2007 Verified Petition (Exhibit F), as likewise the language of the occupancy agreement – were material to Sassower’s August 20, 2007 Verified Answer where they were embodied in several of her ten Affirmative Defenses and four Counterclaims.¹⁰ Her First Affirmative Defense entitled “Open Prior Proceedings” was as follows:

“FOURTH: The Petition materially omits that petitioner brought two prior eviction proceedings against respondent in White Plains City Court under index numbers 504/88 and 651/89, the latter of which remains open. The Petition also materially omits that petitioner himself, as well as respondent, are both respondents in prior proceedings against them in White Plains City Court brought by 16 Lake Street Owners, Inc. under index numbers 434/88 and 500/88, the former open as to petitioner, and the latter open as to both petitioner and respondent, wherein 16 Lake Street Owners seeks to terminate petitioner’s proprietary lease and evict respondent.

FIFTH: By reason of these open proceedings, petitioner is barred from

as Exhibit F; and (2) Sassower’s September 5, 2007 cross-motion in #SP-1502/07, where it is annexed as Exhibit Q.

⁹ The language of the occupancy agreement is analyzed in Sassower’s July 18, 2008 order to show cause (Exhibit N, pp. 17-20). Such analysis was replicated at ¶¶34-36 of her August 13, 2008 vacatur/dismissal motion to this Court (at ¶¶34-36) and was first set forth at ¶¶167-172 of her September 5, 2007 cross-motion in White Plains City Court for summary judgment in #SP-1502/07. These dispositive paragraphs are reproduced at pages 19-20 of Sassower’s appellant’s brief in #2008-1433-WC – and their accuracy is completely undenied there, as previously.

¹⁰ Sassower’s Verified Answer in #SP-1502/07 is annexed to her reply brief in #2008-1433-WC as Exhibit B.

commencing the instant proceeding and the petition must be dismissed.”

Her First Counterclaim entitled “Prior Proceedings” stated:

“EIGHTY-FIRST: Respondent repeats, realleges, and reiterates paragraphs FIRST through EIGHTIETH, as if fully set forth herein, and especially paragraphs SIXTEENTH through TWENTY-SECOND.

EIGHTY-SECOND: Respondent and her mother, Doris L. Sassower, as contract-vendees of the subject premises, had a meritorious federal action against the Co-Op and other defendants, which petitioner knowingly and deliberately compromised, undermined, and sabotaged, both while he was their co-plaintiff therein and after his withdrawal. Such included collusion with the Co-Op both with respect to his initiation and pursuit of eviction proceedings against them in White Plains City Court, timed to be the most prejudicial, and his wilful and repeated failure to assign his shareholder rights to respondent and her mother so as to maintain their corporate non-compliance causes of action.

EIGHTY-THIRD: Respondent seeks compensatory and punitive recovery from respondent for all ensuing damages, including, but not limited to, the legal fees, costs, and disbursements expended by her and her mother in the aforesaid federal action, as well as in defending against petitioner’s harassing City Court proceedings during the pendency thereof.”

Her culminating Fourth Counterclaim, entitled “Ensuring the Integrity of the Judicial Process”, read:

“NINTY-FIRST: Respondent repeats, realleges, and reiterates paragraphs FIRST through NINETIETH, as if fully set forth herein.

NINTY-SECOND: The Petition is based on falsification and omission of material facts, requiring dismissal by reason thereof, imposition of \$10,000 sanctions and maximum costs under 22 NYCRR §130-1.1 *et seq.* against petitioner and his attorney, Leonard Sclafani, Esq., both of whom signed it, and, additionally, disciplinary referral of attorney Sclafani pursuant to this Court’s mandatory ‘Disciplinary Responsibilities’ under §100.3D(2) of the Chief Administrator’s Rules Governing Judicial Conduct.”

McFadden did not file a reply to Sassower's four Counterclaims, each incorporating the fact-specific allegations of her ten Affirmative Defenses.¹¹ Rather, his response, by his attorney, Leonard Sclafani, Esq. [hereinafter "Sclafani"], was an August 23, 2007 motion for a default judgment against Sassower or, alternatively, to dismiss her Affirmative Defenses, and Counterclaims. In moving to dismiss Sassower's First Affirmative Defense, Sclafani ignored entirely the existence of the Co-Op's proceedings under #SP-434/88 and #SP-500/88 (Exhibits I, J), not denying or disputing that they were open, and equivocated as to whether #SP-651/89 (Exhibit E) was open.¹²

On September 5, 2007, Sassower cross-moved for summary judgment. Based on her Answer and Affirmative Defenses, she sought dismissal of McFadden's June 22, 2007 Petition and the granting of her Counterclaims. Additionally, she sought sanctions and costs against Sclafani and McFadden pursuant to 22 NYCRR §130-1.1 *et seq.*, with referral of Sclafani:

"to the appropriate Grievance Committee authorities for his knowing and deliberate violation of New York's Disciplinary Rules of the Code of Professional Responsibility, including 22 NYCRR §1200.3 (DR 1-102: 'Misconduct') and §1200.33 (DR 7-102: 'Representing a Client Within the

¹¹ Cf., CPLR §3011: "There shall be a reply to a counterclaim..." CPLR §3012(a): "Service of an answer or reply shall be made within twenty days after service of the pleading to which it responds." 6 Carmody Wait §32:1 (2004): "In civil actions, there must be a reply to a counterclaim denominated as such...Instead of serving a reply to a counterclaim, a party may move to dismiss the counterclaims."

¹² See ¶¶33-38 of Sclafani's August 23, 2007 affirmation in #SP-1502/07— also misrepresenting the Petition in #SP-651/89 as having "sought eviction of respondent as a holdover under a written occupancy agreement contained in a contract of sale for the subject premises"(¶35). This is false, McFadden's Petition in #SP-651/89 is based on the "month to month rental agreement" by which the Sassowers are alleged to have "entered in possession" of the subject premises (Exhibit E).

Bounds of the Law'), as well as to the Westchester District Attorney's Office for criminal prosecution under the Penal Law for perjury and under Judiciary Law, §487(1) for 'deceit, with intent to deceive the court'".

In support, Sassower presented a 63-page moving affidavit demonstrating the fraud and deceit permeating virtually every line of Sclafani's August 23, 2007 motion,¹³ with the law applicable to such fraud and deceit.¹⁴

Sclafani opposed by a September 5, 2007 affirmation, endorsed by an accompanying six-sentence affidavit of McFadden. Once again, Sclafani ignored the existence of the Co-Op's two proceedings under #SP-434/88 and #SP-500/88 (Exhibit I, J) and equivocated as to whether #SP-651/89 (Exhibit E) was open. Nevertheless, in response to ¶¶154-156 of Sassower's cross-motion, reciting that McFadden had made two summary judgment motions in #SP-651/89, Sclafani now requested, by his affirmation¹⁵, that the Court grant McFadden summary judgment in #SP-651/89. In support, he appended the December 19, 1991 decision of White Plains City Court Judge James Reap which had reserved decision on McFadden's November 25, 1991 summary judgment motion pending decision by the Second Circuit Court of Appeals on the Sassowers' then-being-perfected appeal of the federal lawsuit. In so doing Sclafani concealed that ten months after this December 19, 1991 decision, McFadden made

¹³ Sclafani's deceit as to Sassower's First Affirmative Defense was detailed at ¶¶48-58 of Sassower's September 5, 2007 affidavit

¹⁴ See ¶¶185-189 of Sassower's September 5, 2007 affidavit under the section heading "My Entitlement to Costs & Sanctions Under 22 NYCRR 130-1.1 & to 'Appropriate Action' by this Court Pursuant to 100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct".

¹⁵ See ¶¶38-54 of Sclafani's September 5, 2007 affirmation in #SP 1502/07 – also misrepresenting (at ¶52) "the temporary occupancy agreement" as being "at issue" in #SP-651/89, which is false.

an October 20, 1992 summary judgment motion, concealing as well all the facts pertinent thereto. Among these:

(i) that McFadden's October 20, 1992 summary judgment motion had provided Judge Reap with the Second Circuit Court of Appeals decision;

(ii) that the Sassowers had filed opposition to this second summary judgment motion;

(iii) that Judge Reap had rendered a December 29, 1992 decision thereon, giving the Sassowers a further opportunity to respond;

(iv) that the Sassowers responded by a January 19, 1993 affidavit for reargument, renewal, and reconsideration – as to which there had been no decision.¹⁶

By a 35-page September 11, 2007 reply affidavit, Sassower detailed the fraud and deceit pervading Sclafani's September 5, 2007 opposing affirmation, endorsed by McFadden's six-sentence affidavit. Based thereon, she sought additional costs and sanctions pursuant to 22 NYCRR §130-1.1 *et seq.* and now criminal referral of McFadden along with Sclafani. Her ¶¶54-79 analyzed Sclafani's opposition to her First Affirmative Defense and his attempt to have the Court grant McFadden summary judgment in #SP-651/89 *via* #SP-1502/07. In pertinent part she stated:

“63. Mr. Sclafani provides no legal authority for how such long-dormant proceedings, involving additional parties, may be activated, but surely it cannot be done summarily – let alone by the summary granting of a 14-year old summary judgment motion therein – without a formal motion made under the

¹⁶ The Clerk's Return on Appeal for #SP-651/89 contains copies of all these documents – although not the referred-to exhibits. [See p. 57, *infra*, summarizing Sassower's August 22, 2008 letter to Clerk Lupi.

index number of such proceedings, giving notice to the affected parties. Such affected parties would be my mother, a respondent in open proceeding 651/89, and the Co-Op, the petitioner in open proceedings 434/88 and 500/88.”

By decision & order dated October 11, 2007, Judge Hansbury denied both McFadden’s August 23, 2007 motion and Sassower’s September 5, 2007 cross-motion (Exhibit K-1). The decision omitted all the facts, law, and legal argument Sassower had presented – not even referring to Sassower’s Answer with its Affirmative Defenses and Counterclaims, let alone ordering a reply to the Counterclaims.¹⁷ It made no findings with respect thereto, as, for instance, the status of McFadden’s #SP-651/89 (Exhibit E) and the Co-Op’s #SP-434/88 and #SP-500/88 (Exhibits I, J) upon which her First Affirmative Defense rested. Instead, the decision ended with the following paragraph:

“Last, the Court has reviewed ‘Decision on Motion’ dated December 19, 1991 under Index No. 651/89 and notes the following: The Hon. James B. Reap is retired. Since the Order ‘reserved decision’ it does not fall within the ambit of CPLR 9002. Additionally, to the extent a prior action remains pending, the Court is not required to enter an order of dismissal under CPLR 3211 (a) (4). Rather, the Court will consolidate any prior pending action with the instant proceeding to avoid duplicative trials and promote judicial economy (*see Toulouse v. Chandler*, 5 Misc.3d 1005 [A], FN. 9).”

Thereupon, White Plains City Court Clerk Patricia Lupi, by a form notice, dated October 19, 2007, signed by her assistant, Jacqueline Rodriguez, calendared #SP-1502/07 for a November 20, 2007 “TRIAL”¹⁸.

¹⁷ Unified City Court Act §901: “Pleadings between plaintiff and defendant shall consist of complaint and answer and, when ordered, a reply. Such order may be made by motion on notice or by the court on its own motion.”

¹⁸ The October 19, 2007 trial notice is annexed to Sassower’s November 9, 2007 order to show cause in

Sassower responded on November 8, 2007 with an order to show cause for an interim stay of the trial pending adjudication of a 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 §14 based on his October 11, 2007 decision & order and to vacate the decision & order by reason thereof, and, if denied, for disclosure, pursuant to §100.3F of the Chief Administrator’s Rules Governing Judicial Conduct, by him or such other judge as is determining this motion, of any facts bearing upon their impartiality; and

(b) for reargument and renewal of the October 11, 2007 decision & order pursuant to CPLR §2221 and, upon the granting of same, vacating the decision and order.

(c) granting such other relief as may be just and proper, including transfer of this proceeding to another court to ensure the appearance and actuality of impartial justice.

Alternatively, if all the foregoing relief is denied, for a stay pending determination of respondent’s appeal thereof – and of the October 11, 2007 decision & order – to the Appellate Term of the Appellate Division, Second Department.” (underlining in the original).

In addition to an accompanying memorandum of law devoted exclusively to her entitlement to Judge Hansbury’s disqualification for demonstrated actual bias and interest and, if denied, to disclosure by him or by any other judge adjudicating the motion of facts bearing upon their impartiality, Sassower’s moving affidavit presented a 30-page, line-by-line, record-based analysis of the October 11, 2007 decision¹⁹, prefaced by the following

#SP-1502/07 as Exhibit GG.

¹⁹ Sassower’s November 9, 2007 order to show cause, with its 30-page analysis of Judge Hansbury’s October 11, 2007 decision & order, is annexed to Sassower’s reply brief in #2008-1433-WC as Exhibit C.

statement:

“4. As hereinafter demonstrated, absent rank incompetence, no fair and impartial tribunal could have rendered the October 11, 2007 decision & order [hereinafter ‘decision’], as it flagrantly violates controlling legal and adjudicative standards and falsifies the factual record to deprive me of relief to which I am entitled, *as a matter of law*. That relief, which would have obviated a trial – and which must properly do so upon this motion – is the granting of my [September 5, 2007] cross-motion to dismiss the Petition, for summary judgment on my Counterclaims, and for costs and sanctions against, and disciplinary and criminal referrals of, petitioner, John McFadden, and his attorney, Leonard A. Sclafani, Esq., for fraud and deceit. The decision denies all such dispositive relief without identifying ANY of the facts, law, or legal argument presented by my cross-motion, and without citing ANY applicable law.” (italics, underlining, and capitalization in the original).

The analysis opened by highlighting the decision’s omission of any reference to Sassower’s Answer with Affirmative Defenses & Counterclaims, as to which Sassower’s affidavit had made the further prefatory statement:

“5. ...based on the decision’s concealment of my ‘Affirmative Defenses & Counterclaims’ and failure to make even the most rudimentary determinations with respect thereto, I believe Judge Hansbury will not only deny me a jury trial, but will maneuver to exclude from the trial my ‘Affirmative Defenses & Counterclaims’, as they are decisive of my entitlement to dismissal of the Petition and recovery of substantial compensatory and punitive damages from petitioner.”

As for the decision’s final paragraph pertaining to consolidation, the analysis stated:

“28. Such bizarre, out-of-sequence paragraph not only fails to identify my First Affirmative Defense, but replicates Mr. Sclafani’s misconduct in connection therewith:

(a) by failing to affirmatively acknowledge Mr. McFadden’s open prior proceeding;

(b) by concealing entirely the Co-Op's prior proceedings, also open; and

(c) by citing Judge Reap's December 19, 1991 decision, notwithstanding such is not the last document 'under Index No. 651/89' from which the status of that proceeding would be determined....

29. As for *Toulouse v. Chand[ler]*, whose correct citation is 5 Misc. 3d 1005A; 798 N.Y.S.2d, it is NOT authority for this Court's *sua sponte* consolidation of open proceedings it has NOT even identified. In *Toulouse*, the court found that a plaintiff and defendant simultaneously filed actions in a 'race to the courthouse' – and the plaintiff there cross-moved for consolidation. Such sharply contrasts to the case at bar, where Mr. McFadden filed his Petition in face of the Co-Op's still-open 18-1/2 year-old proceedings against him and me under 434/88 and 500/88 and his own still-open 18-year-old proceeding against me and my mother under 651/89. Nor was his response to my First Affirmative Defense a motion for consolidation. Rather, his dismissal motion concealed the Co-Op's prior proceedings and game-played as to the status of his own prior proceeding, as to which the Court has done likewise.

30. CPLR §602 is entitled 'Consolidation' and specifies that such is 'upon motion'. No motion was made by either me or Mr. Sclafani for consolidation, let alone a motion with notice to the parties in the open prior proceedings who are not parties herein – the Co-Op in 434/88 and 500/88 and my mother in 651/89 – each having a right to be heard with respect thereto^[fn]. It is blackletter law that it is improper for a court to order consolidation *sua sponte* – and such will be reversed on appeal, *AIU Insurance Company, v. ELRAC*, 269 A.D.2d 412 (2nd Dept. 2000); *Lazich v. Vittoria & Parker*, 196 AD2d 526, 530 (2nd Dept. 1993); *Singer v. Singer*, 33 AD2d 1054, 1055 (2nd Dept. 1970). Here, the Court not only acted *sua sponte*, but (i) without even specifying the open proceedings it was purporting to consolidate; (ii) without giving notice to the parties in those proceedings; and (iii) without making the necessary changes to the caption, consistent with consolidation. This, although it is also blackletter law that 'Upon consolidation the action takes on one caption and culminates in one judgment which pronounces the rights of all parties (Siegel, NY Prac, §127, p 156)', *Scigaj v. Welding*, 478 N.Y.S.2d 211 (2nd Dept. 1984). As such, the decision's purported 'consolidation' is not just

legally unauthorized, but sham.” (capitalization and underlining in the original).

On November 9, 2007, Judge Hansbury signed the order to show cause, making it returnable on November 16, 2007. He did not preside on that return date, however. Judge Friia did.

November 16, 2007 was not Judge Friia’s first contact with #SP-1502/07, as she had presided on the September 6, 2007 return date of Sassower’s September 5, 2007 cross-motion²⁰. Now, however, Judge Friia admitted familiarity with #SP-651/89:

Exhibit L²¹: p. 27, lns. 5-18:

Friia: “Listen to me I am going to scare myself right now but as you are speaking I actually remember [#SP-651/89].

Sclafani: Yes.

Friia: Did I decide that case?

Sassower: No.

Sclafani: I don’t believe so, Judge.

Friia: Judge Riffen (phonetic). [Judge Reap did]

²⁰ The September 6, 2007 date had been fixed by Judge Hansbury, who presided on August 27, 2007. The transcript of that proceeding is annexed as Exhibit CC-2 to Sassower’s September 11, 2007 reply affidavit in further support of her September 5, 2007 cross-motion. The transcript of the September 6, 2007 proceeding at which Judge Friia presided is Exhibit BB thereto.

²¹ No stenographer was present for the November 16, 2007 proceeding, which was electronically recorded. Sassower secured its transcription for these appeals from a CD obtained from the White Plains City Court Clerk’s Office. The labeling on the CD – made on or about August 14, 2008 for the November 16, 2007 proceeding – not only misspelled Sassower’s first name in the caption for #SP-1502/07, but included the caption for #SP-651/89, adding “SP1474/08” beneath it in parenthesis (Exhibit L).

Sclafani: I don't believe so, Judge. That was Judge Riffen. [Reap]

Sassower: Judge –

Friia: I inherited his cases. Alright there you go that is why this is sounding familiar to me.” (underlining added).

Without stating what she had done with #SP-651/89 and her other “inherited” cases from Judge Reap or who would be ruling on the motion underlying Sassower’s November 9, 2007 order to show cause, or on Sclafani’s November 15, 2007 cross-motion for “re-argument and/or consolidation”²² – to which Sassower had not yet had an opportunity to respond – Judge Friia vacated the trial notice, giving Sassower until November 26, 2007 to respond to Sclafani’s cross-motion.

On November 26, 2007, Sassower filed a 35-page affidavit in opposition to Sclafani’s November 15, 2007 cross-motion and in further support of the motion underlying her November 9, 2007 order to show cause, requesting imposition of further sanctions and costs against Sclafani and McFadden pursuant to 22 NYCRR §130-1.1 *et seq.* She demonstrated, now for the third time, and again, with line-by-line precision, the unremitting fraud and deceit of Sclafani’s cross-motion, including his attempt, by his affirmation, to have the Court grant McFadden summary judgment in #SP-651/89 – which she particularized by her ¶¶11-13. As for the fraud and deceit of his cross-motion branch for consolidation, Sassower

²² Notwithstanding Sclafani’s November 15, 2007 cross-motion sought consolidation, he argued against consolidation at the November 16, 2007 proceeding (Exhibit L), stating, *inter alia*, “The problem is there are other parties in that case and they weren’t given notice.” (p. 5, lns. 20-22) – a problem he proposed be solved by granting McFadden summary judgment in #SP-651/89 (p. 6, lns. 1-19; p. 27, lns. 1-4).

particularized it at her ¶¶55-61, stating:

“57. ...[it] is fashioned from a litany of already-demonstrated falsehoods and deceptions. Yet, quite apart from these perjuries, Mr. Sclafani’s requested consolidation must be denied, *as a matter of law*. Quite simply, there is NO legal authority that would countenance a consolidation motion that fails to identify the specific case to be consolidated and fails to give the parties therein notice so that they might be heard – and Mr. Sclafani cites none.” (at ¶57, italics, capitalization, and underlining in the original).

This was reiterated by her affidavit’s final paragraph:

“61. Mr. Sclafani still provides NO legal authority in pressing for the Court to render summary judgment in #651/89, without notice to the parties therein – much as he provides no legal authority for purporting to move for consolidation, without notice to the parties in the to-be-consolidated cases he does not even specify.” (at ¶61, capitalization in the original).

Although on the November 16, 2007 return date Judge Friia had stated “we have to address the threshold question which is whether or not Judge Hansbury is the proper Judge to hear [the motion]” (Exhibit L: p. 6, ln. 24 – p. 7, ln. 3)– which she varyingly reiterated “I think the threshold question is whether or not Judge Hansbury should recuse himself in any event” (p. 7, ln. 23 – p. 8, ln. 2); “number one we have to decide the issue of Hansbury proper[ly] presiding over these cases” (p. 28, lns. 13-15), as likewise that she herself was and would be reviewing that question and the motion with court attorney William O’Shea²³ and

²³ “the motion seeks to have Judge Hansbury disqualified so I have asked my law...I have Mr. Shea (sic), who is our court attorney to look into the propriety of that. Ordinarily this would go back to Judge Hansbury but given the nature of it he feels that maybe I should review it as the senior Judge. We haven’t made a decision on that. He and I will speak when we are finished with this morning’s calendar again.” (Exhibit L: p. 4, ln. 20 – p. 5, ln. 5, underlining added);

“Ms. Rodriguez is going to hand deliver this with a wheelbarrow to Mr. O’Shea and he is going to work on it and give it his best effort and I am going to sit with him as he needs my help...” (Exhibit L: p. 13, lns. 16-20, underlining added);

“...at this point I just want to read here what everybody has to say on the issues because I think they

that an appropriate, well-written decision would follow (“Remember not only does it have to be researched and thoughtfully written but it has to be typed and served by the clerk” (Exhibit L: p. 11, lns. 6-8), including as to consolidation (“This is something that our Court attorney and my research has got to really look at” (p. 25, lns. 2-4); “Mr. O’Shea and myself are going to be looking at all of these issues raised...” (p 28, lns. 7-8)), the skimpy 12-sentence decision rendered on January 29, 2008 – more than two months after Sassower had filed her November 26, 2007 opposition affidavit – was by Judge Hansbury (Exhibit K-2), granting reargument to both Sassower and McFadden and adhering to his October 11, 2007 decision. In so doing, and in denying that branch of Sassower’s motion for his disqualification, Judge Hansbury cited no law and identified none of the facts, law or legal argument Sassower had presented, including Sassower’s request that if he did not disqualify himself, he make disclosure of any facts bearing upon his impartiality. Nor did he recite any facts, law, or legal argument in baldly asserting: “The proceedings shall remain consolidated.”, which he then followed by an unexplained declaration:

“The undersigned hereby recuses himself and directs the Clerk of the Court to assign this matter to another judge of the White Plains City Court.”.

More than five months would elapse before Sassower heard further from White Plains City Court. During this period, no judge directed McFadden to file a reply to Sassower’s

are of course important issues and remember in any event we are going to be preserving the issues in the event of an appeal... So whether it be me or Hansbury so we are just really preserving a record...” (Exhibit L: p. 22, ln. 16 - p. 23, ln. 2, underlining added).

four Counterclaims and no reply was served and filed by him.²⁴ Nor did he serve and file a notice of entry for the January 29, 2008 order or a notice of appeal.

By notice dated May 30, 2008, Clerk Lupi, whose name was again signed by Ms. Rodriguez, advised the two “parties” to #SP-1502/07 – McFadden and Sassower – that an “ALL DAY TRIAL” was scheduled for June 30, 2008, at which they were required to be “present and ready to proceed”. No trial judge was identified. Accompanying this notice was a second notice whose only difference was the handwritten notation “SP651/89 (original #)” inscribed above the printed docket number “SP-2007-1502”.²⁵

**Sassower’s Letters for Clarification & Correction of the Clerk’s Trial Notice –
Ignored by the Clerk & Judge Friia**

Sassower promptly responded to Clerk Lupi’s two May 30, 2008 notices by hand-delivering a June 6, 2008 letter to Clerk Lupi²⁶, requesting:

- “(1) the name of the judge before whom SP-1502/07 is scheduled for trial;
- (2) whether it was that judge who decided to schedule SP-1502/07 for trial and, if so, whether he/she reviewed the pleadings, motions, and decisions in the case prior thereto;
- (3) whether it was that judge who decided to add ‘SP 651/89’ to the trial notice and the reason for doing so inasmuch as it is not the ‘(original #)’, has a

²⁴ 6 *Carmody Wait*, §32:31: “When a plaintiff fails to reply to a denominated counterclaim...the counterclaim or defense statements are taken as true, the matters in the counterclaim being deemed admitted by the plaintiff...”; *Smith v. Snowber*, 198 A.D. 820, 822 (App. Div. 1st Dept, 1921): “the allegations of fact contained in the counterclaim if not put in issue by a reply stand admitted for the purposes of the trial”.

²⁵ Both May 30, 2008 notices are Exhibit MM to Sassower’s July 18, 2008 order to show cause.

²⁶ Sassower’s June 6, 2008 letter to Clerk Lupi is annexed as Exhibit PP-1 to her July 18, 2008 order to show cause

different premise, has a different caption with an additional party, and is only one of three open proceedings.”

Clerk Lupi did not respond. Rather, Ms. Rodriguez sent Sassower an enigmatic June 9, 2008 letter²⁷ that the answers were contained in Judge Hansbury’s October 11, 2007 decision, a copy of which she enclosed with three portions highlighted, including the final paragraph pertaining to consolidation of “any pending action”.

On June 13, 2008, Sassower hand-delivered two letters addressed to Clerk Lupi. The first of these was entitled “Request for Clarification of Ms. Rodriguez’ June 9, 2008 Letter”.²⁸ It asked in bold-faced type:

“Please advise as to what Ms. Rodriguez’ letter means – not the least reason being because Judge Hansbury recused himself by a January 29, 2008 decision & order, stating:

‘The undersigned hereby recuses himself and directs the Clerk of the Court to assign this matter to another judge of White Plains City Court.’” (at p. 2, bold in the original)

Noting that Judge Hansbury had not directed the case for trial, but for “assignment to ‘another Judge of White Plains City Court’”, the letter stated that such new judge was “free to make such determinations as were appropriate, based on the record of the case” and then asked, also in bold-faced type:

²⁷ Ms. Rodriguez’ June 9, 2008 letter to Sassower is annexed as Exhibit PP-2 to Sassower’s July 18, 2008 order to show cause.

²⁸ Sassower’s first June 13, 2008 letter to Clerk Lupi is annexed as Exhibit QQ to Sassower’s July 18, 2008 order to show cause. [Also annexed to Exhibit SS].

“Did you assign the case to ‘another Judge of White Plains City Court’, as Judge Hansbury directed? If so, what was the date on which you made the assignment – and who was the judge? Was it that judge who decided to schedule the case for trial – and is the June 30th trial to be before him/her? Did that judge also decide to add only a single additional docket number, #651/89, to the trial notice – and to represent it as ‘(original #)’” (at p. 2, bold in the original).

Sassower’s letter thereupon summarized that no fair and impartial judge assigned to #SP-1502/07 and reviewing its pleadings, motions, and decisions could schedule it for trial – or rely on Judge Hansbury’s October 11, 2007 decision because:

“...the fraudulence of that decision – including with respect to its last paragraph pertaining to consolidation of ‘any prior pending action’ is resoundingly established by my November 9, 2007 order to show cause to disqualify Judge Hansbury for actual bias and interest. Such motion additionally sought vacatur of the October 11, 2007 decision, whether directly by reason of Judge Hansbury’s disqualification or upon the granting of reargument.^{fn1}

Sassower noted that her November 9, 2007 order to show cause had presented a 30-page analysis of the decision, accompanied by a memorandum of law exclusively devoted to disqualification and disclosure, which had stated:

“Should Judge Hansbury not disqualify himself and vacate the October 11, 2007 decision based on the factual and legal showing in respondent’s accompanying affidavit, he must – consistent with his ethical duty – disclose the facts bearing upon the appearance and actuality of his bias and interest. Likewise, such duty of disclosure falls on any other judge who, based on respondent’s motion herein, does not deem Judge Hansbury to be disqualified and allows his October 11, 2007 decision to stand.” (pp. 1-2, underlining

^{fn1} The fraudulence of the decision’s last paragraph concerning consolidation is detailed at pages 18-22 of my moving affidavit in support of my November 9, 2007 order to show cause under the subtitle heading ‘As to my First Affirmative Defense (*‘Open Prior Proceedings’*)’.”

added).

Sassower then recounted:

“On November 16, 2007, Judge Friia granted the stay of trial that my November 9, 2007 order to show cause had requested pending determination of the motion. Two and a half months later, Judge Hansbury determined the motion by his January 29, 2008 decision, recusing himself, without explanation – but only after denying ALL my motion’s substantive relief, again in a conclusory and demonstrably fraudulent fashion, citing NO law, identifying NONE of the facts, law, or legal argument I had presented, and concealing or obscuring most of my requested relief, including disclosure and vacatur”. (June 13, 2008 letter, p. 4, capitalization in the original).

Stating that only “a few minutes” comparison of the January 29, 2008 decision with her November 9, 2007 order to show cause was needed to verify the decision’s “flagrant deceit”, Sassower’s letter further asserted that by reason of the “legal sufficiency” of her order to show cause, Judge Hansbury had “NO jurisdiction to do anything by his January 29, 2008 decision other than to disqualify himself and vacate the October 11, 2007 decision”. In support, she cited and quoted (at pp. 5-6) the treatise Judicial Disqualification: Recusal and Disqualification of Judges, by Richard E. Flamm (Little, Brown and Company, 1996): “§22.4 Actions by Disqualified Judge”:

“§22.4.1 *Void Orders*

When a judge presumes to take substantive action in a case despite having recused himself from it, or after he should have recused himself but did not, any such action is often considered a nullity and any orders issued by such a judge are considered absolutely void for want of jurisdiction.

Generally, void orders or judgments are subject to reversal and redetermination and may be set aside by the court on its own motion. Such orders may also be subject to collateral attack upon application, whenever they are brought into question at any time prior to final judgment.

§22.4.2 *Voidable Orders*

Though in many jurisdictions orders that have been rendered by a disqualified judge are deemed to be void, some courts in other jurisdictions have indicated that constitutional provisions, statutory provisions, and court rules pertaining to judicial disqualification do not necessarily render the actions and orders of a disqualified judge void in any fundamental sense. At most, such actions or orders are rendered voidable if objections to the disqualified judge acting in the case are raised by an interested party in a court that has subject matter jurisdiction in a proper and timely fashion.

Unlike void orders, which are usually considered to be absolute nullities, voidable orders are generally deemed to be binding on the parties unless and until they have been vacated by the trial court or reversed by an appellate court. Such orders are ordinarily not susceptible to collateral attack. (pp. 651-653, footnotes omitted)” (underlining added by Sassower’s letter).

She also quoted “§22.5 Retroactive Disqualification”:

“The mere fact that a judge has been disqualified or has opted to recuse himself from presiding over a matter does not mean that he was actually biased in it. Unless the complaining party can make a showing of actual bias on the part of the disqualified judge, there is no reason to presume that the decisions rendered by that judge were in any way tainted.

...those decisions that have been rendered by a disqualified judge after the filing of a justified judicial disqualification motion will ordinarily be vacated upon the request of an adversely affected party; where a disqualified judge took actions prior to the filing of the disqualification motion or his decision to voluntarily step down, such actions ordinarily need not be set aside. Such actions, however, may be reconsidered and possibly vacated or amended by a successor judge upon a proper motion.” (pp. 656-657, footnotes omitted)” (underlining added by Sassower’s letter).

Sassower stated that vacatur of Judge Hansbury’s October 11, 2007 and January 29, 2008 decisions was also compelled because his without-explanation recusal was in face of her legally-sufficient order to show cause to disqualify him not only for actual bias, but interest under Judiciary Law §14. She then quoted (at p. 6) her memorandum of law for the legal

principle:

“It is long-settled that a judge disqualified by statute is without jurisdiction to act and the proceedings before him are void, *Oakley v. Aspinwall*, [3 N.Y. 547, 549 (1850)], *Wilcox v. Arcanum*, 210 NY 370, 377 (1914), *Casterella v. Casterella*, 65 A.D.2d 614 (2nd Dept. 1978), 1A *Carmody-Wait* 2nd §3:94”.

She asserted:

“Upon vacatur of Judge Hansbury’s aforesaid two decisions, be it for actual bias or interest, I am entitled to findings of fact and conclusions of law with respect to the second and third branches of my September 5, 2007 cross-motion for dismissal and summary judgment.^{fn2} Such will establish the truth of what I stated to Judge Friia on November 16, 2007....:

‘...the only trial warranted herein is as to the amount of compensatory and punitive damages due me on my Counterclaims – since, *as a matter of law*, I am entitled to the granting of the second and third branch of my September 5, 2007 cross-motion: dismissal of the Petition and summary judgment on those Counterclaims.’....” (p. 6, underlining and italics in the original).

Sassower then closed her letter to Clerk Lupi by stating:

“If, as it appears, you did not assign this case to ‘another judge of White Plains City Court’, as Judge Hansbury directed by his January 29, 2008 decision & order, please advise why and confirm that you will rescind your May 30, 2008 notice of trial and assign the case to ‘another judge of White Plains City Court’ forthwith. Otherwise, please answer my questions...in boldfaced type – beginning with my request that you explain the meaning of Ms. Rodriguez’ June 9th letter and furnish the name of the judge to whom you assigned the case pursuant to Judge Hansbury’s January 29, 2008 decision & order and the date thereof.” (p. 6).

^{fn2} My entitlement, *as a matter of law*, to the second and third branches of my September 5, 2007 cross-motion for dismissal and summary judgment was particularized at pages 7-18 of my moving affidavit in support of my November 9, 2007 order to show cause.”

Sassower's second June 13, 2008 letter to Clerk Lupi, entitled "My Yesterday's Visit to the Clerk's Office & Our Conversation Together"²⁹, was an update and supplement to the first letter, reflecting their in-person conversation the previous day. In pertinent part, it stated:

"...you initially represented to me that you were unaware that Judge Hansbury had rendered any written decision subsequent to his October 11, 2007 decision. You stated your belief that Judge Hansbury's recusal had been oral, during proceedings in open court.

This is incorrect. By written decision & order dated January 29, 2008, Judge Hansbury recused himself and expressly directed you 'to assign this matter to another judge of the White Plains City Court'.

You appeared to concede that you had made no such assignment – and that no White Plains City Court judge had instructed that you send your May 30, 2008 notices to the parties, requiring their appearance for a June 30, 2008 trial. You told me that Judge Friia would be the trial judge for the case, but that this was simply because she was scheduled to preside on June 30, 2008 as part of standard rotation, not because you had assigned the case to her prior thereto or because she had thereafter instructed you to notice the case for trial.

I told you that Ms. Rodriguez would not provide me with a copy of the docket in the case, claiming that the City Court Clerk's Office did not have any docket recording the papers filed and judicial or administrative actions taken. You did not contradict same or furnish me with a copy.

...

If you do not rescind your May 30, 2008 trial notice based on your failure to assign this case to 'another judge of the White Plains City Court', as directed by Judge Hansbury's January 29, 2008 decision, and your corresponding failure to await that judge's instructions, I request that you bring this letter and my accompanying letter to Judge Friia so that she can exercise her authority both as trial judge and Chief Judge of White Plains City Court to strike your trial notice and take further appropriate action. This includes transferring the

²⁹ Sassower's second June 13, 2008 letter to Clerk Lupi is annexed as Exhibit RR to her July 18, 2008 order to show cause. [It is also annexed to Exhibit SS.]

case from White Plains City Court based on the record and the additional facts known to her bearing upon the appearance that neither she nor the Court are a fair and impartial tribunal. Should she disagree that transfer is the appropriate course, her obligation is to disclose the disqualifying facts known to her, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct. Absent same and her failure to strike the trial notice, I will present such facts as I know to support an order to show cause to stay the June 30, 2008 trial pending determination of my formal motion for the following relief:

(a) to disqualify White Plains City Court Judge Jo Ann Friia and White Plains City Court for actual bias and interest pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14 and to transfer this proceeding to another Court to ensure the appearance and actuality of impartial justice – and, if denied, for disclosure pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct of facts bearing on the Court's impartiality;

(b) vacating Judge Hansbury's January 29, 2008 and October 11, 2007 decisions & orders based on his without-explanation recusal, arising from the record of my November 9, 2007 order to show cause to disqualify him for actual bias and interest;

(c) for reargument and renewal of Judge Hansbury's January 29, 2008 decision & order pursuant to CPLR §2221 and, upon the granting of same, vacating its denial of the substantive relief sought by my November 9, 2007 order to show cause;

(d) for findings of fact and conclusions of law as to my entitlement to dismissal of the Petition and summary judgment on my Counterclaims based on the record of my September 5, 2007 cross-motion and November 9, 2007 order to show cause – no such findings of fact and conclusions of law having been made by the October 11, 2007 and January 29, 2008 decisions & orders ^[fn 2];

Alternatively, if all the foregoing relief is denied, for a stay pending determination of my appeal thereof – and of Judge Hansbury's January 29, 2008 decision & order – to the Appellate Term of the Appellate Division, Second Department.

I would appreciate your response as soon as possible, and likewise a response from Judge Friia, so that I may know how to proceed.” (pp. 1-3, first underlining added, underlining in prospective order to show cause in the original).

Sassower’s footnote 2, annotating that branch of her prospective order to show cause for “findings of fact and conclusions of law” as to her entitlement to summary judgment on her four Counterclaims, was as follows:

“It must be noted that petitioner filed no answer to my four Counterclaims (CPLR §3019(d), CPLR §402). Such Counterclaims not only contain specific factual allegations, but incorporate the highly particularized factual allegations of my ten Affirmative Defenses.”

Neither Clerk Lupi nor Judge Friia responded to these two June 13, 2008 letters. Consequently, Sassower wrote and hand-delivered a June 24, 2008 letter to Judge Friia³⁰, transmitting copies and asking:

“So that I may know how to proceed, please advise whether and when Ms. Lupi furnished you with my June 13, 2008 letters and what is your response.” (underlining in the original).

Two days later, with no response from Judge Friia, Sassower telephoned the White Plains City Court Clerk’s Office and spoke to Deputy Clerk Lynn Ward, who stated she would follow up. Sassower faxed her the unresponded-to letters under a June 26, 2008 coverletter³¹ stating:

³⁰ Sassower’s June 24, 2008 letter is annexed as Exhibit SS to her July 18, 2008 order to show cause. [Also, Sassower’s June 25, 2008 letter to Judge Friia, annexed as Exhibit TT.]

³¹ Sassower’s June 26, 2008 coverletter is annexed as Exhibit UU to her July 18, 2008 order to show cause.

“Consistent with the facts and law set forth by these letters, the trial notice must be rescinded. Otherwise, I will have no choice but to bring the order to show cause therein described.

Please advise so that I may know how to proceed.”

Again, there was no response.

**Sassower’s June 27, 2008 Order to Show Cause –
Which Judge Friia Denied Without Signing It**

On June 27, 2008, in the absence of any response from Judge Friia or from the Clerk and Deputy Clerk, Sassower was burdened with bringing an order to show cause to stay the June 30, 2008 trial and for the other relief specified by her letters, copies of which she annexed.³² Thereupon, and without signing the order to show cause, Judge Friia denied it, writing on the top of its first page:

“10:50 AM Denied. The matter is scheduled for proceedings on Monday, June 30, 2008 @ 9:30 AM (Part B) – The subject application can be made on the record at that time. June 27, 2008. Jo Ann Friia JCC”.

The Clerk’s Office then returned to Sassower the original order to show cause, with Judge Friia’s denial written on its face.

The June 30, 2008 Court Proceeding before Judge Friia

On June 30, 2008, Judge Friia commenced the court proceeding by announcing:

“This is the matter of John McFadden – the matter of John McFadden and Elena Sassower on Docket SP 1474 of 2008 and separately the matter of John McFadden against Doris L. Sassower and Elena Sassower on Docket SP 651 of ’89. Okay. I will ask the parties to please have a seat. Some paperwork was left on my desk this morning I know what it is, it is likely

³² Sassower’s June 27, 2008 order to show cause is annexed as side-tab Exhibit 1 to her July 18, 2008 order to show cause.

requisition for the original case that was in on microfiche because of its age...”
(Exhibit M: p. 2, lns. 6-14).

Although Sassower answered, “I’m the respondent in the only case that is entitled John McFadden against Elena Sassower Index SP 1502/07.” (Exhibit M: p. 3, lns. 7-9), Judge Friia did not thereafter identify where her announced docket number “SP 1474 of 2008” had come from.³³

As for Sassower’s “subject application” pertaining to Judge Friia’s disqualification for demonstrated actual bias and interest, and if denied, for disclosure – which was the first branch of her June 27, 2008 order to show cause – Sassower was unable to present it as Judge Friia walked off the bench and out of the room while Sassower was in the midst of requesting that she disclose facts bearing upon her fairness and impartiality (Exhibit M, p. 40, lns. 4-6). This, after concealing her relevant prior contact with #SP-651/89 and #SP-1502/07³⁴, dissembling how she came to be handling #SP-1502/07³⁵, making a succession of

³³ When the court stenographer transcribed the June 30, 2008 proceeding 2-1/2 weeks later (Exhibit M), upon its being ordered by Doris Sassower, her coverpage placed the additional number “1474-08” in parenthesis next to “SP 651-89” and alongside *John McFadden v. Doris L. Sassower and Elena Sassower*, rather than – as would have been consistent with what Judge Friia said at the outset of the June 30, 2008 proceeding – alongside *John McFadden v. Elena Sassower*, which is #SP-1502/07.

³⁴ Compare transcript of November 16, 2007 court proceeding (Exhibit L) where Judge Friia – in addition to revealing that she had “inherited” #SP-651/89 from Judge Reap – repeatedly represented that she would be extensively involved in the adjudication of Sassower’s November 9, 2007 order to show cause. [*see* fn. 23, *supra*].

³⁵ Initially Judge Friia gave the impression that her assignment to #SP-1502/07 was random and recent and that her assignment to #SP-651/89 resulted therefrom by virtue of Judge Hansbury’s consolidation of the two cases (Exhibit M: p. 3, ln. 25- p. 5, ln. 5). By the end, Judge Friia reversed the sequence. She stated that pursuant to Judge Hansbury’s October 11, 2007 and January 29, 2008 decisions & order, Clerk Lupi ascertained that there was only one open prior case – #SP-651/89 – whose “file” she “then directed” to Judge Friia as “the successor in interest, being the senior judge, to Judge James Reap who was the senior judge in

legally-indefensible rulings, and cutting off Sassower as she stated: “it is because this Court doesn’t want to give me the protection of the law, doesn’t want to adhere to [the] rule of law, that this Court...purports that it is bound by decisions demonstrated to be fraud by...” (Exhibit M, p. 39, lns. 15-19).

Among Judge Friia’s legally-indefensible rulings, her inconsistency as to whether Judge Hansbury’s October 11, 2007 and January 29, 2008 decisions & orders (Exhibit K-1 K-2) had consolidated #SP-1502/07 and #SP-651/89— and apparent readiness to modify such consolidation³⁶, while nonetheless baldly claiming that she was bound to defer to those decisions unless reversed on appeal. This, in open disregard of the treatise Judicial Disqualification: Recusal and Disqualification of Judges, which Sassower cited and quoted to her that acts of disqualified judges are void and/or are voidable by successor judges and entitle an aggrieved party to move for vacatur by reason thereof. Judge Friia’s claim of deference also disregarded the remedy of reargument/renewal pursuant to CPLR §2221. In so claiming, and ignoring Sassower’s assertion that Judge Hansbury had not ruled on her Affirmative Defenses and Counterclaims (Exhibit M: p. 24, ln. 14 - p. 25, ln. 5; p. 39, lns. 10-15), Judge Friia constructively rejected the second, third, and fourth branches of the motion underlying her June 27, 2008 order to show cause (Exhibit M: p. 29, lns. 2-17; p. 35,

1989 immediately prior to his retirement”, which meant, by virtue of the consolidation, that because of Judge Hansbury’s recusal from #SP-1502/07, Judge Friia got #SP-1502/07 as well (p. 29, ln. 1- p. 32, ln 14).

³⁶ “...the matter is scheduled today to consolidate two files, two matters before the Court, and that was done by my colleague, Judge Hansbury, by his decision and order dated January 2, (sic) 2008.” (Exhibit M: p. 3, lns. 19-22); “...the two matters that he consolidated was a matter from 1989” (p. 4, lns. 12-13). See also p.

ln. 19- p. 39, ln. 19).

With similar disregard for cognizable procedure and due process, Judge Friia announced the status of the prior City Court cases:

Exhibit M: p. 29, ln. 18- p. 30, ln. 9:

Judge Friia: "...our chief clerk sought to retrieve the file from 1989, and in so doing, ascertained that that is the only other open case in this matter.

Reference has been made today to other proceedings that might have been filed and occurred throughout the years, referring specifically to the last 17, 18 years in this city court between Mr. McFadden, Elena and/or Doris L. Sassower, and/or a certain cooperative housing corporation which may be a real party in interest here, I don't know that, but may be a real party in interest here, sounds like they are for the moment since we are not addressing the facts, just the procedure, those are all closed files, okay.

The only open file from the past historically here is 651 of '89. Okay..."

Exhibit M: p. 34, ln. 5 – p. 35, ln. 16:

Sassower: "...I made , I have ten affirmative defenses here and my first one relates to open proceedings.

I read the pertinent portion into the record today. I said there are three open proceedings. This is what I determined based upon reviewing the file last summer as well as my own copy of the file."

Judge Friia: "I understand. That statement disagrees with what I have just said. Do you have another application to the Court?"

Sassower: "Well, with all respect, I understood you to say that you are, you are resting on Chief Clerk Lupi telling you that the other two proceedings of the co-op brought by the co-op, which I identified in my first affirmative defense to be open, she has represented to you, not on papers, not in a letter, not in my commun – she has represented to you as being closed."

Judge Friia: "No, that's not what I said, Ms. Sassower. What I said is that a

review of the file for the last 18 years, I asked her to go back one year prior to 1990, just to make sure we have the full span, only confirms that is the only open matter in this court. All other files are closed.”

Sassower: “That is not correct, your Honor.”

Judge Friia: “I’m telling you that. I’m telling you that is not what Ms. Lupi told me. That is what the records of the White Plains City Court indicate.”

Sassower: “Can she put this in a sworn statement.”

Judge Friia: “No. I’m telling you that is what the records shows. No one is putting anything into a sworn statement.”

Sassower: “I reviewed the records and —”

Judge Friia: “As I said, you can disagree with what I have said here today....”

Additionally, and notwithstanding Judge Friia purported that because the record of #SP-651/89 was so old and on microfiche, she had reviewed only Judge Reap’s December 19, 1991 decision therein (Exhibit M: p. 4, ln. 11- p. 5, ln. 5; p. 15, lns. 2-9), she nonetheless adopted Sclafani’s importunings that she decide McFadden’s summary judgment motion underlying that decision and do so without notice to the additional party in #SP-651/89, Doris Sassower (p. 32, lns. 17-19, p. 22, lns. 9-13).³⁷

³⁷

Sclafani stated:

“...So, my client asks the Court to decide the motion for summary judgment that should have been decided 17 years ago...

...We don’t need a trial in that case. It isn’t trial ready because there is an outstanding motion for summary judgment.

Now, there is a problem...that my adversary raised. She said there are other parties in [#SP-651/89] they are not here, they weren’t given notice. She’s right, but they don’t need to be given notice for the court to decide a motion that it has on its docket now for 17 years. What the Court needs to do is decide that motion.

All of the papers are submitted, as Judge Reap indicates in his [December 19, 1991]

In face of Sassower's statement that Sclafani had made "so many misrepresentations" (Exhibit M: p. 23, ln. 12) —for which Judge Friia gave Sassower two minutes to respond (p. 23, lns. 13, 7-8) — Judge Friia also stated "the Court will accept no new papers, okay, no new papers on that" (p. 33, lns. 7-9) thereby preventing submissions that would have obviated such material "errors" as her materially-false assertion:

"For the record, from what I can ascertain, the first notification this court received from the parties regarding the status of the federal Court action, to wit, the Federal Court decision, came by way of the motion papers that were filed under Docket SP 1502 of '07". (Exhibit M: p. 32, lns. 4-9).

In fact, as Judge Friia would have known from "inheriting" #SP-651/89 from Judge Reap, the record therein contained the "Federal Court decision", as McFadden had annexed it to his October 20, 1992 summary judgment motion ten months after Judge Reap's December 19, 1991 decision on McFadden's first summary judgment motion. However, in his oral advocacy before Judge Friia, Sclafani concealed this second summary judgment motion. Likewise he concealed Judge Reap's December 29, 1992 decision thereon and that this was the subject of a January 19, 1993 affidavit by the Sassowers for reargument/renewal and reconsideration, as to which there had been no adjudication. Similarly, he concealed that McFadden had been a co-plaintiff with the Sassowers in the federal lawsuit.

Sclafani also misrepresented McFadden's Petition in #SP-651/89 (Exhibit E), falsely claiming that it was based on McFadden and the Sassowers having:

decision, because additional papers, the right to file additional papers were sought and denied in the case. And the case was accepted, that motion was accepted and it remains open on this docket..." (Exhibit M: p. 18, ln. 14- p. 19, ln. 8).

“signed an occupancy agreement as part of the contract of sale for an apartment, a co-op apartment, and that agreement provided for a month-to-month tenancy in the event there was no sale.” (Exhibit M: p. 13, lns. 15-22);

and that

“at that time the petition sought eviction based on the proposition that the month-to-month tenancy that was created by the occupancy agreement had terminated, and was terminated.” (Exhibit M: p. 14, lns. 19-22).

He then exacerbated this falsehood by juxtaposing Sassower’s Answer in #SP-1502/07³⁸:

“in her answer...she basically says over and over again that she is in possession under the original occupancy agreement, an agreement that was set forth in 651.” (Exhibit M: p. 20, ln. 19- p. 21, ln. 2, underlining added);

“...if Ms. Sassower wants to take the position that she took in her answer, that there has been no change of circumstance, that there’s been no new agreement, that she’s in pursuant to the occupancy agreement and has been paying use and occupancy under the occupancy agreement, then that’s what 651 says. Please decide it.

There is a summary judgment motion. We don’t need the second proceeding.” (Exhibit M: p. 22, lns. 16-22, underlining added).

Sclafani thereby fostered the false inference that McFadden’s 1989 and 2007 Petitions were

“essentially the same”, which he made explicit in the context of falsely describing Sassower’s

First Affirmative Defense:

“What she argued in her answer in this case [#SP-1502/07] is that, is there is a prior open proceeding, and she named 651 and one other case in which she is not the petitioner or – she’s none of the – petitioner is not my client, it is a case brought by the co-op board and I believe it’s closed or it should be because I think there was a determination in that case that at least one of the necessary indispensable respondents was not properly served, so the only case she cited as an open case in her answer was 651. She said, you don’t have to try this

³⁸

Sassower’s Answer in #SP-1502/07 is annexed to her reply brief in #2008-1433-WC as Exhibit B.

2007 case, you can't, because there's this open case. You have to dismiss this one because it is essentially the same case. That's what she said." (Exhibit M: p. 20, Ins. 5-18, underlining added).

After Judge Friia announced that she would "consider [McFadden's] summary judgment motion filed under 651 of '89, de novo and render a decision accordingly" (Exhibit M: p. 32, Ins. 17-19), she stated: "we'll simply be adjourning docket 1502 of '07 until you receive in the mail a written decision in the mail from me on the pending motion" (p. 33, Ins. 17-20) and that her "written decision" would be "in four to six weeks" (p. 39, ln. 25-p. 40, ln. 1). It came three days later – on July 3, 2008.

Judge Friia's July 3, 2008 Decision & Order

Judge Friia's July 3, 2008 decision (Exhibit C-1), which used the caption and docket number of #SP-651/89 only, made no reference to its consolidation with #SP-1502/07 pursuant to Judge Hansbury's October 11, 2007 and January 29, 2008 decisions (Exhibits K-1, K-2) – neither of which it even mentioned. Nor did it state that #SP-651/89 was the "original #" for #SP-1502/07 – or identify that #SP-651/89 had been placed on the June 30, 2008 trial calendar by a notice for #SP-1502/07 claiming that it was. The allegations of neither Petition were identified nor compared, other than, inferentially, that the 2007 proceeding named a single respondent, Elena Sassower, whereas the 1989 proceeding named Doris L. Sassower in addition to Elena Sassower.

The decision referred to #SP-1502/07 as commenced by McFadden "approximately fifteen (15) years and eight (8) months after" Judge Reap's December 19, 1991 decision on

McFadden's November 25, 1991 motion for summary judgment in #SP-651/89, inferring that there was no activity in the case thereafter. It then purported that "In motion papers filed in connection with #SP 1502/07, the City Court has now been provided with the information which the Hon. James Reap deemed necessary in his decision to reserve on petitioner's motion for summary judgment" – identifying this information as the Second Circuit's 1992 decision in the federal action, for which certiorari was denied in 1993.

Without specifying "the parties" before the court on June 30, 2008 – or revealing that Doris Sassower was not among them – the decision stated that on June 30, 2008 "the parties" were advised that "this Judge would consider [McFadden's] motion for summary judgment *de novo*, supplemented only by the Second Circuit decision cited above." The decision cited no legal authority for this, did not disclose that such was upon Sclafani's importuning and that Sassower had objected thereto or the basis for her doing so. Nor did the decision state or demonstrate that Judge Friia had, in fact, undertaken *de novo* review or present any law as to the standards governing summary judgment. Thus, the decision:

(a) did not identify anything about the content of McFadden's summary judgment motion – other than its date: November 25, 1991 – and made no finding as to its legal sufficiency and fidelity to the record;

(b) falsely made it appear that McFadden's November 25, 1991 summary judgment motion was unopposed³⁹ – and did not discuss the content of the opposition that it did not identify;

(c) did not identify anything about the allegations of the March 27, 1989 Petition for which McFadden's November 25, 1991 motion was seeking

³⁹ See, *inter alia*, its prefatory listing of papers read on the motion (Exhibit C-1).

summary judgment;

(d) did not show how the federal lawsuit and the Second Circuit decision therein had any relation to the allegations of McFadden's March 27, 1989 Petition that it did not identify.

Nevertheless, and after additionally,

(e) not identifying anything about the Sassowers' April 24, 1989 motion other than that Judge Reap's September 18, 1989 decision had denied "those branches of the motion which sought dismissal of the proceeding based upon lack of subject matter jurisdiction and inadequate notice" – and without asserting nor demonstrating the soundness of that decision;

(f) not identifying anything about the Sassowers' Answer to McFadden's Petition, other than a wrong filing date "June 6, 1990" – and falsely implying that their Answer was untimely by eight months;

(g) not identifying that at the June 30, 2008 proceeding Judge Friia had announced that she was "adjourning" #SP-1502/07 pending her decision in #SP-651/89 – and not disclosing when and how it would be resumed now that her decision in #SP-651/89 had been rendered,

the July 3, 2008 decision concluded:

"Upon the credible evidence, petitioner has established his entitlement to judgment as a matter of law. In view of the results of respondents' federal law suit, and having considered the defenses raised in this proceeding, respondents have failed to raise a material triable issue of fact. Accordingly, summary judgment is granted. A judgment of possession and warrant to remove shall issue forthwith, with a statutory stay of execution.

Submit judgment for signature.

THIS CONSTITUTES THE ORDER OF THIS COURT"

**Sassower's July 8, 2008 Order to Show Cause –
Which Judge Friia Denied Without Signing It**

On July 8, 2008, Sassower brought an order to show cause in #SP-1502/07⁴⁰, whose first branch was:

“(a) to disqualify White Plains City Court Judge Jo Ann Friia for demonstrated actual bias and interest pursuant to §100.3E of the Chief Administrator’s Rules Governing Judicial Conduct and Judiciary Law §14, and to vacate her June 30, 2008 from-the-bench rulings herein and her July 3, 2008 decision & order in *John McFadden v. Doris L. Sassower and Elena Ruth Sassower*, #651/89, and to transfer this proceeding and the record of the three prior proceedings, #651/89, #434/88 and #500/88, the subject of respondent’s First Affirmative Defense and embodied by her First Counterclaim, to another Court to ensure the appearance and actuality of impartial justice – and, if denied, for disclosure pursuant to §100.3F of the Chief Administrator’s Rules Governing Judicial Conduct of facts bearing on Judge Friia’s impartiality and for reconsideration of her June 30, 2008 rulings and July 3, 2008 decision, made without basis in fact and law”

Its fifth branch – “for such other and further relief as may be just and proper” – specified:

“a stay of any and all proceedings in enforcement of Judge Friia’s July 3, 2008 decision & order in #651/89 or judgment entered or to be entered thereon, pending the hearing and determination of this motion.” (underlining added).

and was followed by an alternative request,

“for a stay of any and all proceedings in enforcement of Judge Friia’s July 3, 2008 decision & order in #651/89, or judgment entered or to be entered thereon, pending determination of respondent’s appeal thereof.” (underlining added).

The second, third, and fourth branches replicated the corresponding branches of Sassower’s unsigned June 27, 2008 order to show cause in seeking:

⁴⁰

Sassower’s July 8, 2008 order to show cause is annexed as side-Exhibit A to her July 18, 2008 order to

“(b) to vacate the January 29, 2008 and October 11, 2007 decisions & order of White Plains City Court Judge Brian Hansbury based on his recusal, without explanation, arising from the record of respondent’s November 9, 2007 order to show cause;

(c) to grant reargument and renewal of Judge Hansbury’s January 29, 2008 decision & order pursuant to CPLR §2221 and vacating its denial of the substantive relief sought by respondent’s November 9, 2007 order to show cause;

(d) for findings of fact and conclusions of law as to respondent’s entitlement to dismissal of the Petition and summary judgment on her Counterclaims, based on the record of her September 5, 2007 cross-motion and November 9, 2007 order to show cause”.

In support of all this relief, Sassower presented a 23-page affidavit, summarizing Judge Friia’s refusal to sign the June 27, 2008 order to show cause and the succession of rulings Judge Friia had made at the June 30, 2008 court proceeding “indefensible in fact and law”. Describing her July 3, 2008 decision as a further manifestation of Judge Friia’s actual bias, Sassower stated:

“3. ...Such decision is an outright judicial fraud – and tellingly, it cites no law to support its factual recitation, whose material falsity and incompleteness is readily-verifiable from the record of #651/89 and this proceeding [#SP-1502/07]. Insofar as the decision purports to be based on consideration of ‘defenses raised’ in #651/89 [], it does not identify any of those defenses – including those I raised on June 30, 2008, the date the decision purports Mr. McFadden’s November 25, 1991 summary judgment motion, returnable on “12/17/91”, was ‘reassigned and resubmitted’ and the ‘parties’ were before the Court [].

4. As this affidavit was already fully-drafted as of the July 3, 2008 date of the Court’s decision in #651/89^[fn], I will separately particularize that decision’s fraudulence by a supplemental affidavit so as to reinforce that

show cause.

branch of this order to show cause as seeks this Court's disqualification for demonstrated actual bias..." (underlining in the original).

The concluding section of Sassower's affidavit, entitled "The Court's Wilful Disregard of its Duty to Make Disclosure of Facts Bearing Upon its Fairness & Impartiality – and the Necessity of Transfer of these Proceedings", was as follows:

"30. Should the Court not disqualify itself based on the showing herein of its biased and legally-unfounded conduct – its duty is to respond, with facts and law, justifying the rulings and other actions and inactions described herein – as well as explain its failure to respond to my June 24, 2008 letter, including its failing to disclose, at that time, the facts of which it is aware bearing upon its fairness and impartiality, as was its obligation to do pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct.

31. As to disclosure, it should be obvious that this Court has a close working relationship, if not a personal one, with Judge Hansbury, who is one of only three other White Plains City Court judges. Such closeness has clearly interfered with the Court's ability to discharge its professional duties – which, pursuant §100.3D(1)^{fn9} of the Chief Administrator's Rules Governing Judicial Conduct, requires it to refer Judge Hansbury for disciplinary, if not criminal investigation and prosecution by reason of his corruption in office, as documentarily-established by the record in this case.

32. Not only has this Court not done this, it has permitted Judge Hansbury's misconduct to continue to infect this case by 'deferring' to decisions it knows to be frauds from the record it has 'reviewed'. Additionally, it has disregarded its supervisory responsibilities under §100.3(C)(2)^{fn10}, as well as the Unified Court System's commitment to

^{fn9} 'A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.' (underlining added)."

^{fn10} 'A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of official duties.' (underlining added)."

‘Quality Service’^{fn11}, by ignoring the misconduct of Chief Clerk Lupi and the Clerk’s Office, brought to its direct attention by my June 24, 2008 letter and subsequent June 27, 2008 order to show cause.^[fn] This includes Chief Clerk Lupi’s false designation of #651/89 as the ‘original #’ of this case – a predicate for the Court’s activity therein.

33. In view of the small size of White Plains City Court and the fact that this Court sat on this case, with the record before it, at critical junctures – on September 6, 2007 and on November 16, 2007 – it is not unreasonable to surmise that Judge Hansbury’s misconduct herein by his October 11, 2007 and January 29, 2008 decisions, as likewise the misconduct of Chief Clerk Lupi and the Clerk’s Office, has been with this Court’s knowledge, or even consultation. Such would explain why this Court will not discharge its supervisory and disciplinary responsibilities pursuant to §§100.3C and D of the Chief Administrator’s Rules Governing Judicial Conduct – as disciplinary and criminal investigation would reveal the Court’s role in their actions.

34. Although I had no contact with this Court prior to this case, my mother has. On June 30, 2008, in asking the Court to disclose facts bearing on its fairness and impartiality, it was my intention to myself present the facts of which I had learned from my mother. Such concerned this Court’s misconduct in a case involving my mother wherein she had not only repeatedly sought the Court’s disqualification, but presented a statement to the Mayor and White Plains Common Council in opposition to any intended reappointment of the Court to the bench. In substantiation, my mother had given me her December 4, 2006 statement (Exhibit 6-a) as to the Court’s ‘knowing and deliberate disrespect for the Rule of Law’, making it ‘a menace to those who are directly or indirectly affected by [its] decisions, as well as the public at large, especially municipal taxpayers who pay the freight for [its] incontrovertible malfeasance.’ My mother had also provided me with some of the letters she and assisting counsel had written to the Court prior thereto, dated May 16, 2006, August 4, 2006, and November 28, 2006 (Exhibits 6-b, 6-c, 6-d) – reflective of a pattern of conduct by the Court that has been repeated herein. This includes the Court’s wilful refusal to allow a proper record to be made as

^{fn11} Such commitment is the subject of a large placard at the Clerk’s Office window, which urges ‘Let Us Know How We’re Doing!’ and provides – for that purpose – brochures stating that it is ‘the responsibility of all court personnel to fulfill the public’s right to justice in a fair and efficient manner’ and enclosing a ‘Comment Card’. I made mention of this during the June 30, 2008 proceedings.”

to threshold jurisdictional and other legal issues and refusal to rule on same.

35. Due to my mother's present hospitalization [], I am unable to furnish an affidavit from her setting forth her direct, personal experience as to the Court's misconduct therein. Hopefully, she will be able to supply same in the near future – one which will additionally recite background facts that may have impelled the Court's lawless conduct in that case – as, likewise, in this case. These background facts pertain to former White Plains City Court judges, including Judge Reap^[fn], as well as the more powerful judges of the Ninth Judicial District and the politics that puts them on the bench and elevates them – reinforcing the necessity that this proceeding be transferred to ensure the appearance and actuality of fair and impartial justice.

36. Finally, in further support of transfer of this proceeding, it was my intention, on June 30, 2008, to make mention of the fact that there was a criminal case against me in White Plains City Court in or about January 25, 1993 (#93-0260) for alleged resisting arrest and obstructing government, which was transferred to North Castle Town Court. To the best of my recollection, this transfer was made by White Plains City Court, *sua sponte*, without any motion, request – or even a court appearance – by me, in recognition of the fact that there were grounds upon which to question the impartiality and fairness of White Plains City Court.

37. Based on the date of transfer – February 5, 1993 – I believe the reason Judge Reap made no decision on the January 19, 1993 joint affidavit I filed with my mother in #651/89 (Exhibit Z-4) – which is the last document in the record therein ^{fn14} – is because he recused himself.” (underlining and capitalization in the original).

Without signing the order to show cause, Judge Friia denied it, writing on the top of

its first page:

^{fn14} The Court's July 3, 2008 decision [] ignores that Judge Reap's December 19, 1991 decision is NOT the last document in the record – a fact I stated to the Court on June 30, 2008, when I pointed out that Mr. McFadden had made a second summary judgment motion, subsequent to Judge Reap's December 19, 1991 decision. This is omitted from the July 3, 2008 decision.”

“7/8/08. 4:50 p.m. Denied. The relief has either been previously addressed by the Court or is beyond the scope, authority, or jurisdiction of this City Court. – Any stay of the Court’s July 3, 2008 Decision pending appeal is also denied.”

Once again, the Clerk’s Office returned the original order to show cause to Sassower.

**Sassower’s July 9, 2008 Letter to Judge Friia –
Ignored by Her**

The following day, Sassower delivered to the Clerk’s Office a July 9, 2008 letter for Judge Friia⁴¹, particularizing – by citation to specific paragraphs of her July 8, 2008 order to show cause – that Judge Friia had never “previously addressed” any of the relief it sought with the possible exception of its second branch to vacate Judge Hansbury’s January 29, 2008 decision & order based on his recusal, without explanation. Sassower thereupon specified the paragraphs of her order to show cause rebutting the claim that Judge Friia had made at the June 30, 2008 proceeding that coordinate judges are “bound to follow each other’s decisions”, “unless reversed”, and therefore that she had to “defer” to Judge Hansbury’s decisions (Exhibit M: p. 29, ln. 1-17, p. 35, ln. 19 – p. 39, ln. 23) – those paragraphs quoting Judicial Disqualification: Recusal and Disqualification of Judges which Judge Friia had not “previously addressed”, including on June 30, 2008.

The letter further asserted (at p. 2) that none of the relief sought by the July 8, 2008 order to show cause was “beyond [Judge Friia’s] scope, authority, or jurisdiction” and requested that Judge Friia specify what she was talking about in purporting the contrary.

⁴¹ The letter is included in the accompanying Compendium of Exhibits as part of Exhibit B-1 (Exhibit G thereof). Additionally, it is annexed to Sassower’s July 18, 2008 order to show cause as side-Exhibit B.

The letter also asserted (at p. 2) that Judge Friia certainly knew that she had never “previously addressed” Sassower’s request to stay enforcement of her July 3, 2008 decision & order in #651/89 and any judgment entered or to entered thereon...”, that this, too, was not “beyond [her] scope, authority, or jurisdiction”, and that her denial of a stay was a “further demonstration of [her] pervasive actual bias, indeed, [her] malevolence^[fn]” – which she should justify with reasons. In that connection, Sassower’s letter pointed out that:

“[Judge Friia’s] refusal to grant a stay – indeed, [her] direction by [her] July 3, 2008 decision & order that ‘a judgment of possession and warrant to remove shall issue forthwith, with a statutory stay of execution’ – is all the more egregious as [Sassower’s] occupancy rights are NOT disposed of by #651/89”

and then furnished the substantiating particulars:

“at the June 30, 2008 proceedings, Mr. Sclafani reiterated what he had previously emphasized in his papers before the Court, namely, that the instant proceeding rests on an “oral agreement” which Mr. McFadden made with [Sassower] for [her] continued occupancy.⁴²

Sassower thereupon resubmitted her original July 8, 2008 order to show cause with

⁴² Sassower’s record references were to Sclafani’s September 5, 2007 affirmation, whose ¶¶38-39 she quoted:

“38. ...any prior proceedings between the parties that remain open as of today’s date proceed on facts and grounds other than those that petitioner herein relied upon.

39. Here, petitioner relies in support of his petition upon a state of facts; to wit, an oral agreement, that had been modified over the course of the last fourteen or so years, on several occasions, pursuant to which petitioner agreed to respondent’s possession and occupancy of the premises at issue in exchange for monthly payments of rent. This state of fact was, and is, different than and occurred subsequent to, the alleged events supporting the prior proceedings referred to by respondent.”

Additionally, Sassower referenced Sclafani’s August 23, 2007 affirmation (at ¶¶35-7) and his November 15, 2007 cross-motion affirmation (¶48).

her July 9, 2008 letter to assist Judge Friia in her response. There has never been any response.

**Sassower's July 18, 2008 Order to Show Cause
– Which Judge Friia Denied Without Signing It**

The following week, in the absence of a response from Judge Friia to the July 9, 2008 letter, Sassower telephoned the Clerk's Office and was informed by Clerk Lupi that Judge Friia had not seen it before leaving that day for a vacation from which she would not be returning until July 21, 2008. Clerk Lupi also informed Sassower that a proposed judgment of eviction had been submitted by Sclafani, also awaiting Judge Friia's return. Sassower recounted this at the outset of her 60-page July 18, 2008 affidavit in support of an order to show cause in #SP-651/89 (Exhibit N), which she delivered to the Clerk's office on July 18, 2008.

As with her July 8, 2008 order to show cause, Sassower's July 18, 2008 order to show cause sought a stay of enforcement of any judgment of eviction entered or to be entered on the July 3, 2008 decision pending determination of the motion, or alternatively, pending appeal. However, Sassower now sought relief she had never previously requested, other than by her first branch – and this first branch Judge Friia had never addressed:

(1) to disqualify Judge Friia for demonstrated actual bias and interest pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14, based, *inter alia*, on her July 3, 2008 decision & order & to vacate same by reason thereof, and to transfer this proceeding, the proceeding *John McFadden v. Elena Sassower*, #1502/07, and the record of #434/88 (*16 Lake Street Owners, Inc. v. John McFadden, George Sassower and Elena Sassower*), #500/88 (*16 Lake Street Owners, Inc. v. John*

McFadden, George Sassower and Elena Sassower), #504/88 (*John McFadden v. Doris L. Sassower and Elena Sassower*), and #652/89 (*John McFadden v. George Sassower*), to another Court to ensure the appearance and actuality of impartial justice; and, if disqualification/transfer are denied, for disclosure by Judge Friia, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon her fairness and impartiality and that of White Plains City Court".

The other branches – with their never-before-requested relief – were:

“(2) for reargument and renewal of Judge Friia’s July 3, 2008 decision & order pursuant to CPLR §2221 and, upon the granting of same, vacating the decision & order;

(3) for vacatur of Judge Friia’s July 3, 2008 decision & order pursuant to CPLR §5015(a)(3) for ‘fraud, misrepresentation, or other misconduct of an adverse party’, with imposition of maximum costs and sanctions pursuant to NYCRR §130-1.1 *et seq.* against Petitioner, John McFadden, and his attorneys herein, Lehrman, Kronick, & Lehrman, as well as Leonard Sclafani, Esq., his attorney in #1502/07;

(4) for vacatur of Judge Friia’s July 3, 2008 decision & order pursuant to CPLR §5015(a)(4) for ‘lack of jurisdiction to render the judgment or order’”.

In support of these three branches of never-before-requested relief, as well as the first branch for disqualification/vacatur, transfer, and disclosure and a final branch:

“(5) for such other and further relief as may be just and proper, including \$100 motion costs pursuant to CPLR §8202”,

Sassower’s affidavit presented a 51-page analysis of the July 3, 2008 decision & order (at pp. 8-59), examining it – line-by-line – and demonstrating it to be:

“‘a knowing and deliberate fraud by the Court’, completely unsupported by law and insupportable by law, and “‘so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause’ of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961);

Thompson v. City of Louisville, 362 U.S. 199 (1960).” (Exhibit N, at p. 6, underlining in the original).

In addition to a “Table of Contents” prefacing the analysis (at p. 8), with section headings reflecting its content, Sassower’s affidavit highlighted (at pp. 6-7) the key paragraphs of her analysis germane to her requests for: (1) renewal pursuant to CPLR §2221; (2) vacatur pursuant to CPLR §5015(a)(3) based on “fraud, misrepresentation, or other misconduct of an adverse party”; and (3) vacatur pursuant to CPLR §5015(a)(4) for ‘lack of jurisdiction to render the judgment or order’ – all relief never previously sought. She stated:

“12. Insofar as I have moved for renewal of the Court’s July 3, 2008 decision, ‘the new facts not offered on the prior motion’ and the ‘reasonable justification for the failure to present such facts on the prior motion’ (CPLR §2221(e)) are set forth at ¶¶25, 73, 74-77, 80-81, 85, 91-92, *infra*. As therein shown, Mr. McFadden’s November 25, 1991 summary judgment motion is insufficient, including by its failure to annex a copy of his Petition, and is materially false and deceitful, including as to the allegations of his Petition. These ¶¶25, 73, 74-77, 80-81, 85, 91-92, *infra*, are separate and apart from Mr. McFadden’s pretense, by his motion, that the federal action was over and not the subject of appeal – the falsity and deceit of which were particularized by respondents’ December 16, 1991 responding affidavits [], whose ¶3 expressly stated:

‘...Respondents reserve their right to address Petitioner’s other material factual allegations – all of which are vigorously denied and disputed’ – by appropriate response at a later date, should the instant motion not be dismissed in accordance with Respondents’ position.’

Respondents’ ‘reasonable justification for the failure to present such facts’ by their December 16, 1991 responding affidavits was set forth therein: namely, that Mr. McFadden had made answering papers due on his motion on ‘the precise day’ that was respondents’ deadline for filing their appellate brief and appendix in the Second Circuit Court of Appeals in the federal action – a fact made known to Mr. McFadden before he made his motion.

13. These two prongs of CPLR §2221(e), additionally, constitute grounds to vacate for ‘fraud, misrepresentation, or other misconduct of an adverse party’, pursuant to CPLR §5015(a)(3). As for vacatur, pursuant to CPLR §5015(a)(4) for ‘lack of jurisdiction to render the judgment or order’, such is based on the indisputable, documentary fact that respondents did not ‘enter in possession [of the subject apartment] under a month to month rental agreement’, as falsely alleged by Mr. McFadden’s March 27, 1989 Petition. Rather, they entered into possession – and have remained in possession – pursuant to an occupancy agreement that was part of a contract of sale, expressly stating ‘in no way do the parties intend to establish a landlord/tenant relationship’ – as to which this Court is without jurisdiction. [See ¶¶25, 28-31, *infra*]. Additionally, this Court is without jurisdiction by virtue of the sufficiency of this motion for its disqualification for pervasive actual bias and interest.” (underlining in the original).

On July 21, 2008, Judge Friia denied the order to show cause– again, by refusing to sign it and by writing on its first page:

“2nd Request

7/21/08 Denied. All issues raised have been previously addressed by the Court / Appeal(s) may be taken to Appellate Court. No further action by City Court of White Plains to be taken.” (Exhibit N, p. 1).

The Clerk’s Office then returned to Sassower the original order to show cause on which Judge Friia’s denial was written.

Judge Friia’s July 21, 2008 Judgment of Eviction & Warrant of Removal

Simultaneous with Judge Friia’s refusal to sign Sassower’s July 18, 2008 order to show cause, she signed Sclafani’s proposed judgment of eviction and warrant of removal, without change (Exhibits C-2, C-3)⁴³.

⁴³ Sclafani submitted his proposed judgment of eviction and warrant of removal to Judge Friia under a July 9, 2008 coverletter stating that a consent to change attorneys was enclosed as “Mr. McFadden and his former counsel have long since parted ways”. The consent for #SP-651/89, dated July 10, 2008, does not appear to have been signed by McFadden – and the verification of his signature is by Sclafani.

The judgment of eviction (Exhibit C-2) materially diverged from the July 3, 2008 decision & order by (i) changing the caption, (ii) falsely making it appear that Doris and Elena Sassower had filed no Answer to McFadden's 1989 Petition; (iii) falsely making it appear that Judge Friia had continuity with #SP-651/89 from its beginning; and (iv) falsely making it appear that Judge Friia's knowledge that was the basis for her deciding McFadden's November 25, 1991 summary judgment motion derived from #SP-651/89 rather than #SP-1502/07.

The warrant of removal (Exhibit C-3), in addition to altering the Petition's caption and falsely making it appear that Judge Friia had continuity with #SP-651/89 from its beginning, completely falsified the Petition's allegations by transmogrifying the March 27, 1989 Petition into the June 22, 2007 Petition (with the exception of its allegation of a "subsequent oral agreement") by purporting that:

"on or about the 30th day of October 1987, [petitioner McFadden] granted possession to respondents of the premises known as Unit 2C in the building known as 16 Lake Street situate (sic) in the City of White Plains, State of New York; under a written occupancy agreement incident to a contract made by petitioner with respondents for the sale to respondents of petitioner's interest in the said premises for a term commencing on the 30th day of October 1987 which said term ended in May, 1988, which term has expired..."

Sclafani may have thereafter signed McFadden's name to McFadden's October 28, 2008 affidavit to this Court in opposition to Sassower's October 15, 2008 order to show cause for reargument/renewal & other relief. This was so-stated by Sassower's November 3, 2008 affidavit to this Court (at p. 2, fn.3), which annexed a photocopy of the affidavit's signature page "for comparison with the signature pages of Mr. McFadden's prior affidavits".

**Sassower's Notices of Appeal from Judge Friia's July 3, 2008 Decision & Order
& July 21, 2008 Judgment of Eviction & Warrant of Removal**

On July 23, 2008, Sassower filed a notice of appeal in White Plains City Court "from each and every part" of Judge Friia's July 3, 2008 decision & order. Simultaneously, in #SP-1502/07, she filed a notice of appeal from Judge Hansbury's January 29, 2008 decision & order "denying her the relief sought by the motion underlying her November 9, 2007 order to show cause". These were Exhibits A to her order to show cause to this Court for a stay pending appeal, which Sassower brought on July 30, 2008.

On August 14, 2008, Sassower filed a further notice of appeal in White Plains City Court

"from each and every part of the Judgment of Eviction and Warrant of Removal, signed by...Judge...Friia on July 21, 2008, as well as each and every part of her July 3, 2008 Decision & Order on which they purport to be based." (underlining added)⁴⁴

⁴⁴ This Court's Clerk's Office incomprehensibly returned this August 14, 2008 notice of appeal to Sassower by a September 29, 2008 coverletter stating, in pertinent part:

"Enclosed herewith please find what appears to be the original Notice of Appeal...
The original Notice of Appeal must be filed in the trial court, where it will become part of the record on appeal. The trial court will then forward your entire record to us when it is complete."

Such was detailed at ¶¶39-42 of Sassower's October 15, 2008 order to show cause as "a further basis for renewal, if not reargument" of the Court's October [1], 2008 decision & order, whose reliance on the July 23, 2008 notice of appeal by its citation to *Neuman v. Otto*, 114 AD2d 791 (1985) was shown to be inapplicable and prejudicial, as that case held that where "the final judgment ministerially implements the order granting summary judgment...the appeal from the order should be deemed an appeal from the subject judgment in which the order was subsumed". As stated at ¶38B of Sassower's October 15, 2008 order to show cause:

"B. Here, the final judgment does NOT 'ministerially implement[]' the order. Indeed, my August 13, 2008 vacatur/dismissal motion is explicitly grounded on their material divergence." (capitalization and underlining in the original).

In such fashion her notice of appeal reflected the divergence between Judge Friia's July 3, 2008 decision & order (Exhibit C-1) and her July 21, 2008 judgment and warrant (Exhibits C-2, C-3). Again, simultaneously, Sassower filed a notice of appeal from Judge Hansbury's January 29, 2008 decision & order.

**Sassower's Correspondence with Clerk Lupi Subsequent to
Judge Friia's July 3, 2008 Decision & July 21, 2008 Judgment of Eviction
& Warrant of Removal**

On July 30, 2008, Sassower hand-delivered a letter of that date addressed to Clerk Lupi, requesting "File Access, Copies of the Docket Sheets, & Other Information"⁴⁵. It stated:

"This follows up our conversation together at the Clerk's Office on July 21, 2008 – at which time you refused to provide me with a copy of the judgment of eviction and warrant of removal that you told me Judge Friia had signed that day in the proceeding *John McFadden v. Doris L. Sassower and Elena Sassower*, #651/89. You also refused to give me any information as to how I could obtain a stay pending appeal from the Appellate Term – Judge Friia having refused to sign my order to show cause for a stay, which was before her when she instead signed the judgment of eviction and warrant of removal

On that day – now more than a week ago – I requested access to the microfilm/microfiche of #651/89. I told you that access was essential because the collection of papers that your assistant Jacqueline Rodriguez gave me and represented as a full copy of the microfilmed/microfiched file of #651/89 was MATERIALLY INCOMPLETE. Among the missing documents: respondents' December 17, 1991 responding affidavits opposing petitioner's November 2[5], 1991 motion for summary judgment.

Additionally, please confirm, in writing, what you and Ms. Rodriguez have stated to me, including on July 21, 2008, *to wit*, that the Clerk's Office has NO docket sheet for #651/89 – and also has NO docket sheets for the following

⁴⁵ Sassower's July 30, 2008 letter is annexed as Exhibit H to her September 18, 2008 motion.

related City Court proceedings involving the subject apartment, all of which I have previously requested, including when I spoke with you by phone on July 14, 2008:

- (1) *16 Lake Street Owners, Inc. v. John McFadden, George Sassower, and Elena Sassower*, #434/88;
- (2) *16 Lake Street Owners, Inc. v. John McFadden, George Sassower, and Elena Sassower*, #500/88;
- (3) *John McFadden v. Doris L. Sassower and Elena Sassower*, #504/88;
- (4) *John McFadden v. George Sassower*, #652/89.

Upon confirming that the Clerk's Office has NO docket sheets for any of these five cases, please state the reason and whether such comports with the Clerk's Office's duties, under law.

By this letter, I also request access to the microfilm/microfiche of the above four White Plains City Court proceedings. This is likewise essential. On June 30, 2008, Judge Friia asserted in open court that you had 'ascertained that [#651/89] is the only other open case in this matter' (Tr. 29, lns. 18-21); that she had asked you to undertake a 'review of the files for the last 18 years' (Tr. 34, lns. 23-25) and that 'the records of the White Plains City Court indicate' that the only open prior City Court proceeding is #651/89 (Tr. 35, lns. 6-7) and that 'All other files are closed' (Tr. 35, ln. 3). Such is NOT consistent with what I found last August when I came to the Clerk's Office to review what Ms. Rodriguez purported to me to be the files of these cases, as copied by the Clerk's Office from the microfilm/microfiche. I found two open cases in addition to #651/89, these being #434/88 and #500/88. I have recently realized that #652/89 is a further open case.

Plainly, examination of the microfilm/microfiche of these cases should provide information as to their status. However, please additionally furnish me with such specific documents or entries in the 'files' and 'records' of White Plains City Court as led you to represent to Judge Friia that prior City [C]ourt proceedings, except for #651/89, are closed and upon which she has relied, to my prejudice (Tr. 29-30, 34-35).

As you know, on July 21, 2008, when you arbitrarily limited me to ½ hour to review the copy of the microfilmed/microfiched files of the five prior City Court proceedings – from which, initially, Ms. Rodriguez had withheld #651/89 – I found two unfamiliar pages in the collection of papers she belatedly gave me as constituting the file of #651/89. At my request, you made me a copy of each – and I enclose a further copy of both pages to refresh your recollection.

The first page I found was a printed trial notice, dated May 30, 2008, for a proceeding having the same caption as #651/89, but docketed as ‘SP-2008-1474’, with #651/89 penned in. In pertinent part, the notice states, ‘The Court has adjourned the above mentioned matter to June 30, 2008 at 10:00 AM (Part B) for ALL DAY TRIAL 651/89.’.

Upon my asking you about this document, you confirmed that ‘SP-2008-1474’ was an additional docket number that you had assigned to #651/89. You refused to tell me when you had done this and you did not deny or dispute my immediate assertion that you would have had no reason to do so unless #651/89 had been closed.

I believe you stated that Judge Friia had directed the new docket number. Please confirm that this is what you told me – or otherwise identify at whose instance docket number ‘SP-2008-1474’ was assigned to #651/89, the date this was done, and the reason therefore. Please further identify what notice, if any, was given to the parties of this new docket number. Such should be reflected on the docket sheet for ‘SP-2008-1474’ – a copy of which I request, as likewise I request access to the file of ‘SP-2008-1474’ so that I may inspect its contents.

Please also advise as to your knowledge of the second page I found in the file of #651/89 and which you copied for me. Such is a form notice of appearance, filled in by Leonard Sclafani, Esq, which he dated ‘6/30/08’. He identified himself as ‘Attorney for: John McFadden’ in an action he entitled ‘*John McFadden v. Elena Sassower John Doe*’, for which he furnished no index number. On what basis then was this notice placed in the file of #651/89 and why does it bear no file and date stamp of the Clerk’s Office?

For purposes of completeness, I also reiterate my request for the docket sheet of #1502/07, *John McFadden v. Elena Sassower*. Additionally, I request access to the file of that proceeding, which – because it is recent and ongoing –

is not on microfilm or microfiche.

Finally, please confirm that you have refused to provide me with the date of Judge Reap's retirement and the names of the other White Plains City Court judges serving at that time and immediately thereafter, as requested by my July 8, 2008 letter to you.

Thank you.” (capitalization, underlining, and italics in the original).

On August 7, 2008, in the absence of any response, Sassower hand-delivered a follow-up letter for Clerk Lupi, identifying that her answers were needed for Sassower's order to show cause to this Court for a stay pending appeal.⁴⁶ Clerk Lupi's response, by an August 7, 2008 letter, ignored all the requests made in Sassower's July 30, 2008 letter, except for her request for access to the file of #SP-1502/07, which Clerk Lupi implicitly denied.⁴⁷ This was detailed by Sassower's hand-delivered August 22, 2008 letter to Clerk Lupi, reiterating those requests, as well as summarizing the deficiencies of her Clerk's Returns on Appeals transmitted to this Court for Sassower's appeals in #SP-651/89 and #SP-1502/07.⁴⁸ Among the deficiencies:

(1) Clerk Lupi's failure to sign the Clerk's Returns on Appeals for #SP-651/89 and #SP-1502/07, both signed by her assistant Jacqueline Rodriguez;

(2) misrepresenting in the Clerk's Returns on Appeals for #SP-651/89 and #SP-1502/07 that “The within case and exceptions are settled” – when they were not;

⁴⁶ Sassower's August 7, 2008 letter is annexed as Exhibit I to her September 18, 2008 motion.

⁴⁷ Clerk Lupi's August 7, 2008 letter is annexed as Exhibit J to Sassower's September 18, 2008 motion.

⁴⁸ Sassower's August 22, 2008 letter is annexed as Exhibit K to her September 18, 2008 motion. The Clerk's Returns on Appeals for #SP-651/89 and #SP-1502/07 are annexed to the motion as Exhibits F & G. [They are also included in Sassower's accompanying Compendium of Exhibits as part of Exhibit B-1].

(3) misrepresenting in the Clerk's Return on Appeal for #SP-651/89 that "originals...of all papers" were being furnished – when the Return consisted virtually entirely of copies, mostly from the microfilm/microfiche of #SP-651/89 which was not itself transmitted for such comparison as this Court might see fit to do;

(4) the omission from the Clerk's Return on Appeal for #SP-651/89 of any "entry" for Judge Friia's July 3, 2008 decision & order or for her July 21, 2008 judgment of eviction and warrant of removal – with the judgment and warrant being copies from documents that were not only never entered but never file-stamped by the Clerk's Office after Judge Friia signed them;

(5) the omission from the Clerk's Return on Appeal for #SP-651/89 of the following "material documents":

(i) the exhibits annexed to the Sassowers' April 24, 1989 motion to dismiss McFadden's March 27, 1989 Petition;

(ii) the August 1988 complaint in the federal action, incorporated by reference in the Sassowers' April 24, 1989 motion and annexed to their Answer in the related City Court proceeding under #SP-500/88;

(iii) the exhibits to McFadden's first and second summary judgment motions, dated November 25, 1991 and October 20, 1992, respectively;

(iv) the exhibits to the Sassowers' responding affidavits opposing McFadden's two summary judgment motions;

(v) the opposition papers of George Sassower to McFadden's first and second summary judgment motions;

(vi) the exchange of correspondence between Judge Reap and the attorneys – including Judge Reap's April 12, 1990 letter extending the Sassowers' time to answer the Petition until June 27, 1990.

(6) the worthlessness of the inventory of "Papers Forwarded to Appellate Term", accompanying the Clerk's Return on Appeal for #SP-651/89 which was not in conformity with the transmitted documents;

(7) the omission from the Clerk's Return on Appeal for #SP-651/89 of any document identifying that a new docket number – "2008-1474" – had been opened for #SP-651/89 or the reasons therefor;

(8) the omission from the Clerk's Return on Appeal for #SP-1502/07 of any "entry" for Judge Hansbury's October 11, 2007 decision & order or for his January 29, 2008 decision & order (Exhibits K-1, K-2);

(9) the omission from the Clerk's Return on Appeal for #SP-1502/07 of the records of related prior City Court proceedings which Clerk Lupi purportedly examined in thereafter allegedly representing to Judge Friia that #SP-651/89 was the only "open" case for consolidation with #SP-1502/07 pursuant to Judge Hansbury's October 11, 2007 decision & order.

In challenging the adequacy of the Clerk's Return on Appeal for #SP-651/89, Sassower's August 22, 2008 letter noted that the docket sheet of #SP-651/89 was critical – as without it Clerk Lupi had no way of certifying her transmittal of the complete record. Sassower stated that her own original file contained documents not transmitted. As for the Clerk's Return on Appeal for #SP-1502/07, Sassower noted that it contained:

"not a single document, entry, or other record that would enable the Appellate Term to rule as to the status of the prior City Court proceedings, including #651/89".

Sassower's letter closed by reiterating that Clerk Lupi's response was germane to submissions that Sassower would be making to this Court and requesting her response by August 28, 2008. On August 28, 2008, in the absence of any response, Sassower hand-delivered a follow-up letter for Clerk Lupi⁴⁹, to which there was no response.

⁴⁹ Sassower's August 28, 2008 letter is annexed as Exhibit L to her September 18, 2008 motion.

Sassower's September 18, 2008 Motion to Compel Compliance
by Clerk Lupi & Other Relief

On September 18, 2008 – and after consultation with staff in this Court's Clerk's Office, including with Chief Clerk Paul Kenny, as to how to rectify the deficiencies of the Clerk's Returns on Appeals for #SP-651/89 and #SP-1502/07 in light of Clerk Lupi's failure to respond to Sassower's August 22, 2008 and August 28, 2008 letters – Sassower brought a motion in White Plains City Court for an order:

“(1) requiring that White Plains City Court Chief Clerk Patricia Lupi furnish the Appellate Term of the Supreme Court's Second Judicial Department with:

(a) a proper ‘Clerk's Return on Appeal’ for the above-entitled case docketed by the White Plains City Court Clerk's Office as #651/89 and #2008-1474;

(b) the docket sheets for #651/89 and #2008-1474;

(c) the microfilm/microfiche of #651/89 and the file of #2008-1474;

(d) a proper ‘Clerk's Return on Appeal’ for #1502/07, *John McFadden v. Elena Sassower* – a case for which the Clerk's Office purported #651/89 to be the ‘original #’ and which was purportedly consolidated with #1502/07 on the representation of Chief Clerk Lupi that it was the only prior related case still open;

(e) the docket sheet for #1502/07;

(f) the docket sheets, record entries, and microfiche/microfilm that Chief Clerk Lupi reviewed in representing to Judge Jo Ann Friia that there were no other open prior related cases to #1502/07, to wit, #434/88 (*16 Lake Street Owners, Inc. v. John McFadden, George Sassower and Elena Sassower*), #500/88 (*16 Lake Street Owners, Inc. v. John*

McFadden, George Sassower and Elena Sassower), #504/88 (*John McFadden v. Doris L. Sassower and Elena Sassower*), and #652/89 (*John McFadden v. George Sassower*) – and upon which Judge Friia expressly relied on June 30, 2008 at the court proceedings on #651/89-#2008-1474 and #1502/07;

(g) an explanation for her failure to respond to Respondent ELENA SASSOWER's hand-delivered August 22, 2008 and August 28, 2008 letters – and requiring her responses to those letters;

(2) referring Chief Clerk Lupi for disciplinary and criminal investigation and prosecution for official misconduct, obstruction of justice, and other crimes involving violation of her oath of office, including tampering with court records and false statements to Judge Friia as to the status of #651/89 and related cases and/or her complicity in Judge Friia's misrepresentations as to those cases;

(3) for such other and further relief as may be just and proper, including \$100 motion costs, pursuant to CPLR 8202."

Sassower's moving affidavit opened by identifying that her motion was:

"3. ...without prejudice to my contention that White Plains City Court judges are disqualified for pervasive actual bias and interest and are without jurisdiction by reason thereof. Such contention was previously presented by my legally-sufficient July 18, 2008 order to show cause for Judge Friia's disqualification, for transfer of this case and of #1502/07, as well as of the record of all related cases, and, if denied, for disclosure, which Judge Friia refused to sign^[fn] Among the document-based allegations of that order to show cause (at ¶10) is that Judge Friia 'collud[ed] with the Clerk's Office [of the White Plains City Court] in improperly putting #651/89 on the Court's calendar for an 'ALL DAY TRIAL' on June 30, 2008, on the pretext that the case was consolidated with #1502/07 and that #651/89 was the 'original #' for #1502/07'. Such collusion is further evidenced by the transcript of the June 30, 2008 proceedings (Exhibit [M], pp. 29-30, 34-35), wherein Judge Friia not only purported that Chief Clerk Patricia Lupi had reviewed court records and found that only #651/89 was open and that all other prior related cases were closed, but denied my reasonable request for 'a sworn statement' from Chief Clerk Lupi as to her review and determination of the status of #651/89 and the

other cases. Such gives Judge Friia a direct self-interest in denying the relief herein sought, as granting it would expose the true facts pertaining to these case records and Chief Clerk Lupi.” (Sassower’s September 18, 2008 affidavit, at ¶3, capitalization in the original).

Judge Friia presided on the September 26, 2008 return date of Sassower’s motion. She granted the request of Assistant Attorney General Dian Kerr McCullough on behalf of New York State Attorney General Andrew Cuomo, appearing as counsel for Clerk Lupi, for an adjournment to file a cross-motion to dismiss. She then gave Sassower until October 10, 2008 to respond to it and to Sclafani’s already-submitted September 25, 2008 affirmation opposing Sassower’s motion.

On October 10, 2008, Sassower filed a 20-page opposition/reply affidavit (Exhibit O) in further support of her September 18, 2008 motion, reiterating, at the outset:

“3. This affidavit is without prejudice to my contention that the judges of White Plains City Court – and none more so than Judge Friia – are disqualified for pervasive actual bias and interest, as set forth at ¶3 of my motion. Such disqualification divests Judge Friia, who presided on the September 26, 2008 return date of the motion and who presumably will be retaining it, of jurisdiction to proceed.”^{fn3}

4. This motion, seeking procedural, rather than substantive relief, was made in White Plains City Court only because of advice I received from the Clerk’s Office of the Appellate Term, including its Clerk, Paul Kenny...

5. In light of the Court’s disqualification – and its lack of jurisdiction resulting therefrom – this motion should be transferred to the Appellate Term, where, in any event, I will appeal an adverse decision of this Court, including one failing to refer Ms. McCullough, her supervisors in the Attorney General’s Office, Mr. Sclafani, as well as Clerk Lupi, to disciplinary

^{fn3} Judge Friia’s self-interest in this proceeding, born of her complicity in Clerk Lupi’s misconduct, creates an absolute disqualification.” (underlining in the original).

and criminal authorities, as compelled by the record herein.”

Sassower asserted (at ¶¶7-8) that the Attorney General’s appearance on behalf of Clerk Lupi was unlawful, as Clerk Lupi was not a party to the proceeding for which representation was available to her under Public Officers Law §18. Nor was her challenged conduct “in the interest of the state”, nor even alleged to be – the predicate for representation under Executive Law §63.1.⁵⁰ Sassower then demonstrated that it was to conceal the unlawfulness of the Attorney General’s representation of Clerk Lupi that Ms. McCullough’s cross-motion was fashioned on “materially contradictory and misleading claims and falsehoods and on NO APPLICABLE LAW.” Sassower showed (at ¶¶12-14) that the cross-motion, pursuant to CPLR §3211(a)(2), had to be denied, *as a matter of law*, as there was no complaint or petition with causes of action that could be “dismissed” for lack of subject matter jurisdiction, nor “denied” as Ms. McCullough thereafter sought by an amended notice.

Sassower highlighted (at ¶15) that the Attorney General had not purported that the City Court did not have jurisdiction over its own Clerk and could not order her compliance with the relief requested by Sassower’s motion within the landlord-tenant proceeding, as opposed to an Article 78 proceeding. Moreover, after demonstrating (at ¶¶18-23) that the

⁵⁰ Footnote 4 of Sassower’s October 10, 2008 affidavit (Exhibit O: p. 4) summarized her attempt to ascertain the basis for the Attorney General’s representation of Clerk Lupi – appending her FOIL correspondence with the Attorney General’s Office. The Attorney General answered that a response would be “forthcoming”. As such “forthcoming” response did not issue until October 28, 2008, it could not be appended to Sassower’s October 10, 2008 affidavit. It is now furnished in the accompanying Compendium of Exhibits as Exhibit P-1, followed by the subsequent exchange of correspondence thereon: Sassower’s November 5, 2008 appeal and further FOIL request (Exhibit P-2); the Attorney General’s April 7, 2008 letter (Exhibit P-3); and Sassower’s April 8, 2008 letter (Exhibit P-4). These further evidence the unlawfulness of the Attorney General’s representation of Clerk Lupi.

Court had jurisdiction to order Clerk Lupi to furnish this Court with the items enumerated by her motion's first branch, Sassower demonstrated (at ¶24) its jurisdiction as to her second branch: to refer Clerk Lupi for disciplinary and criminal investigation and prosecution.

Finally, just as Sassower's October 10, 2008 affidavit particularized (at ¶¶7-25) the fraud and deceit of the Attorney General's cross-motion, so likewise it particularized (at ¶¶26-38) the fraud and deceit of Sclafani's September 25, 2008 opposing affirmation, entitling Sassower to sanctions and costs against them pursuant to 22 NYCRR §130-1.1 *et seq.*, as well as their referral to disciplinary and criminal authorities pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct – relief she expressly requested (at ¶2).

Judge Friia's October 14, 2008 Decision & Order

On October 14, 2008 Judge Friia rendered a four-sentence "Decision on Motion" (Exhibit D), utilizing the docket number "SP1474/08", without #SP-651/89. Completely omitted from the decision was any mention of Sclafani's September 25, 2008 opposing affirmation, including from the listing of "papers...read on this motion".⁵¹

The decision denied Sassower's motion and granted the Attorney General's cross-motion "to the extent that the City Court is without subject matter jurisdiction" to entertain

⁵¹ Sclafani is the first indicated recipient of the decision & order, identified (at p. 2) as "Attorney for Petitioner" – followed by "Lawrence J. Glynn, Esq., Attorney for Respondent". This is wrong. Mr. Glynn was attorney for the Petitioner Co-Op in #SP-434/88 and #SP-500/88 (Exhibits I, J) – a fact pointed out by Sassower's July 18, 2008 order to show cause (Exhibit O: p. 54 (fn. 14)).

“the relief sought [by the notice of motion] is, in essence, the subject of an Article 78 proceeding, in seeking to compel the Chief Clerk to produce records in connection with a pending appeal before the Appellate Term, Second Department.”

In so purporting, the October 14, 2008 decision ignored all of the facts, law, and legal argument presented by Sassower’s motion – none of which it identified; ignored and failed to identify the motion’s second branch for disciplinary and criminal referral of Clerk Lupi, ignored and failed to identify its third branch for “such other and further relief as may be just and proper” or Sassower’s express request, by her October 10, 2008 opposition/reply affidavit (Exhibit O: ¶¶2-5), for sanctions and costs against the Attorney General and Sclafani and their referral to disciplinary and criminal authorities, and ignored and failed to identify Sassower’s assertion that Judge Friia was “absolutely disqualified”, based on her actual bias and direct self-interest, divesting her of jurisdiction.

**Sassower’s Notice of Appeal from Judge Friia’s October 14, 2008 Decision & Order
& Clerk Lupi’s Clerk’s Return on Appeal**

On October 20, 2008, Sassower filed a notice of appeal “from each and every part” of Judge Friia’s October 14, 2008 decision & order. However, the White Plains City Court Clerk’s Office did not transmit it to this Court nor furnish a “Clerk’s Return on Appeal” – a fact Sassower discovered in early January 2009 when she sought to ascertain from this Court’s Clerk’s Office the docket number it had assigned that appeal and the procedures for consolidating her appellant’s brief therein with her appellant’s brief for #2008-1427 WC

Sassower’s July 18, 2008 order to show cause (Exhibit O: p. 54 (fn. 14)).

(Exhibits A-1, A-2). As a result of these inquiries, this Court's Clerk's Office communicated with the White Plains Clerk's Office, which transmitted the notice of appeal and Clerk's Return on Appeal. Though the Clerk's Return on Appeal was dated January 8, 2009, this Court's Clerk's Office did not receive it until on or about January 28, 2009.⁵²

As with the two Clerk's Returns on Appeals which were the subject of Sassower's September 18, 2008 motion, this third Clerk's Return on Appeal was not signed by Chief Clerk Lupi, but by Ms. Rodriguez. It falsely purported that "The within case and exceptions are settled", identifying "Justice's Minutes of Testimony". No "Justice's Minutes of Testimony" were enclosed – although the accompanying listing of "Papers Forwarded to Appellate Term" included as its item #1 "Settled Minutes". Not included in this list of "Papers Forwarded" was the October 14, 2008 decision & order – and neither a copy nor the original was included among the transmitted "Papers". Also not listed or included in the Clerk's Return on Appeal was Sclafani's September 25, 2007 affirmation in opposition to the motion.

By letter to this Court's Clerk, Paul Kenny, dated March 13, 2009 (Exhibit B-1), Sassower set forth these deficiencies, requesting to know how its Clerk's Office would correct them so as to secure a proper Clerk's Return on Appeal for her appeal of Judge Friia's October 14, 2008 decision & order.

Sassower's letter also alerted Clerk Kenny to a further deficiency in the Clerk's

⁵² A copy of this Clerk's Return on Appeal, as likewise the two previous Clerk's Returns on Appeals, are

Return on Appeal for #SP-651/89, beyond those which were the subject of her September 18, 2008 motion, denied by Judge Friia's October 14, 2008 decision & order. Missing from the Clerk's Return was Sassower's July 18, 2008 order to show cause which Judge Friia had denied without signing it.

Additionally, Sassower inquired whether Clerk Kenny had ascertained the whereabouts of the transcript of the June 30, 2008 court proceeding that had been part of the Clerk's Return for #SP-1502/07, but which was missing.⁵³

Finally, Sassower asked Clerk Kenny to confirm – based on his own inspection of the Clerk's Returns on Appeals that in #SP-651/89 (#SP-1474/08) – that Judge Friia's July 3, 2008 decision & order is not entered (Exhibit C-1), her July 21, 2008 warrant of removal is not entered (Exhibit C-3), and her October 14, 2008 decision & order is not entered (Exhibit D) and that, likewise, in #SP-1502/07, neither Judge Hansbury's October 11, 2007 decision & order, nor his January 29, 2008 decision & order are entered. Indeed, Sassower stated that only Judge Friia's July 21, 2008 judgment of eviction is entered – and that was not done until October 23, 2008 when this Court's Clerk's Office received from the White Plains City Court Clerk's Office a fax of the judgment of eviction with a handwritten entry, backdated to July

annexed to Exhibit B-1 in the accompanying Compendium of Exhibits.

⁵³ Sassower sent a copy of her March 13, 2008 letter to Sclafani, asking that he identify “whether he ever requisitioned any of the Appellate Term's files – especially that of #SP-1502/07 – and saw the transcript of the June 30, 2008 court proceeding.” (Exhibit B-1: p. 4). Neither she nor the Appellate Term received a response.

21, 2008 (Exhibit C-4).⁵⁴ This, after this Court's Clerk's Office had informed it that the unentered judgment was unacceptable.⁵⁵

Clerk Kenny responded by an April 2, 2009 phone conversation in which he assigned Senior Court Clerk Julio Mejia to assist in addressing Sassower's March 13, 2009 letter. The outcome of which Sassower memorialized by an April 14, 2009 letter to Clerk Kenny (Exhibit B-2).

ARGUMENT

Judge Friia's July 3, 2008 decision & order, her July 21, 2008 judgment of eviction and warrant of removal purportedly based thereon, and her October 14, 2008 decision & order (Exhibits C, D) are void *ab initio*. They are the products of a demonstrably-biased, self-interested judge, who unlawfully refused to address the issues of her disqualification and to make any disclosure of facts bearing upon her impartiality, while simultaneously violating the most fundamental legal and adjudicative standards, including by pervasively falsifying the factual record. Judge Friia did this to deprive Sassower of the summary judgment and other relief to which she is entitled, *as a matter of law*, both herein and in #SP-1502/07 – and to deprive Doris Sassower of her own *matter of law* summary judgment entitlement herein

⁵⁴ This Court's Clerk's Office did not retain the October 23, 2008 fax coversheet from the White Plains City Court Clerk's Office transmitting the backdated "entered" judgment of eviction. Such coversheet, however, was in the White Plains City Court file for #SP-2008-1474, to which Sassower secured access on March 23, 2009, obtaining a copy of the coversheet at that time (Exhibit C-4).

⁵⁵ Sassower's letter also noted that there is no original of the judgment of eviction with its handwritten "entry" in this Court's file of the Clerk's Return for #2008-1427-WC. Nor is there an original of the "unentered" judgment of eviction.

without a figment of due process.

They are also void *ab initio* for a further reason: #SP-651/89 was closed during its 15 year dormancy – as is reasonably inferred from the evidence before this Court, including Judge Friia’s October 14, 2008 decision & order, depriving this Court of the means to conclusively determine the status of #SP-651/89 and other related City Court proceedings.⁵⁶

POINT I

The Inference Reasonably Drawn From the Evidence Before this Court is that #SP-651/89 was Closed During its Decade and a Half of Dormancy – Divesting Judge Friia of Jurisdiction to Have Rendered her July 3, 2008 Decision & Order

Judge Friia’s July 3, 2008 decision (Exhibit C-1) makes no finding and fails to state – even baldly – that #SP-651/89, dormant for 15 years, was still open.⁵⁷ Such is a telling omission – amplified by the decision’s omission of the relevant “Procedural History” from #SP-1502/07. Among this relevant “Procedural History”: that Sassower had raised a First Affirmative Defense to the Petition therein based on “Open Prior Proceedings” – #SP-651/89 being one of three – as to which Judge Hansbury made no findings: his October 11, 2007 decision & order stating “to the extent a prior action remains pending, the Court is not required to enter an order of dismissal under CPLR 3211(a)(4)” and ruling “the Court will

⁵⁶ Pursuant to CPLR §5501, this Court’s “Scope of Review” is of both “questions of law and questions of fact.”

⁵⁷ Based on the lawlessness of White Plains City Court, evidenced by the record in #SP-651/89 (#SP-2008-1474) and #SP-1502/07, there is no reason to believe that it would have been constrained by technical limitations and requirements of CPLR §3404 and §3216 pertaining to dismissal of “abandoned cases” and dismissal for “want of prosecution”.

consolidate any prior pending action with the instant proceeding” (Exhibit K-1, underlining added). His January 29, 2008 decision thereafter baldly declared “The proceedings shall remain consolidated”, following which he recused himself, without explanation (Exhibit K-2).

If #SP-651/89 was open – as Sassower’s First Affirmative Defense asserted – the written decisions of Judge Hansbury and Judge Friia should have directly stated. The inference reasonably drawn from their failure to do so is that it was closed. This is reinforced by the dissembling use of Judge Reap’s December 19, 1991 decision by both Judge Friia and Judge Hansbury, each of whom knew from the record before them that the status of #SP-651/89 was NOT discernible from that decision, as it was neither the last event in the case nor Judge Reap’s last decision therein.⁵⁸ It was followed, a year later, by Judge Reap’s December 29, 1992 decision on McFadden’s October 20, 1992 second summary judgment motion, to which the Sassowers filed a January 19, 1993 affidavit for reargument, renewal, and reconsideration.

The questions needing to be answered, threshold, by any fair and impartial tribunal, were:

(a) whether Judge Reap or any successor judge ruled on this January 19, 1993 affidavit;

⁵⁸ See Sassower’s September 5, 2007 cross-motion (¶¶155-156); Sassower’s September 11, 2007 affidavit (¶¶67, 73-75); Sassower’s November 9, 2007 order to show cause (¶28(c)); PLUS – & directly to Judge Friia – the June 30, 2008 court proceeding (Exhibit M: p. 25, lns. 13-21), as well as Sassower’s July 8, 2008 order to show cause (¶23) and July 18, 2008 order to show cause (Exhibit N: ¶¶45-49).

(b) if not, why not; and

(c) whether during the decade and a half of dormancy thereafter, the case had been deemed abandoned or closed for want of prosecution.

The record shows that Sassower believed that there had been no adjudication of the January 19, 1993 affidavit. She also suggested the reason – setting it forth by her September 11, 2007 affidavit in further support of her September 5, 2007 cross-motion in #SP-1502/07:

“75. Upon information and belief, Judge Reap – and the other judges of White Plains City Court – subsequently recused themselves from cases involving my mother.^[fn7] This would have included Mr. McFadden's open proceeding against me and my mother under 651/89 as to which no decision had been rendered on Mr. McFadden's October 20, 1992 summary judgment motion.”

The annotating footnote 7– thereafter prominently highlighted by Sassower’s November 9, 2007 order to show cause (at ¶8) – was:

“I herein request that the Court make disclosure, pursuant to §100.3F of the Chief Administrator’s Rules Governing Judicial Conduct, of any facts bearing upon its ability to be fair and impartial – or otherwise disqualify itself pursuant to §100.3E thereof and Judiciary Law §14 – so that this important and substantial case is decided on the facts and law.”

Judge Friia had reason to know what had become of the Sassowers’ January 19, 1993 affidavit, as well as #SP-651/89 and the other related City Court proceedings that were then open, as she came to the White Plains City Court bench on or about January 1993. Indeed, at the November 16, 2007 oral argument of Sassower’s November 9, 2007 order to show cause, Judge Friia admitted that #SP-651/89 sounded familiar to her because she had “inherited

[Judge Reap's] cases.” (Exhibit L: p. 27, ln. 16)⁵⁹. Eight months later, however, on June 30, 2008, Judge Friia did not repeat this candid admission. Instead, she made it appear as if she had no previous contact with #SP-651/89 and that it had only recently come to her by virtue of Judge Hansbury's recusal because she was the “senior judge”, sitting the longest, and “successor in interest to Judge Reap who was the senior judge in 1989 immediately prior to his retirement” (Exhibit M: p. 30, lns. 18-21).

Judge Friia thus declined to reveal her own personal knowledge as to the status of #SP-651/89 and the other City Court cases, which she could readily have done. Nor did she purport to herself have reviewed the court records, as she also could readily have done. Instead, she made Clerk Lupi “the fall guy” by purporting that Clerk Lupi had reviewed them and had ascertained, based thereon, that only #SP-651/89 was open, the others closed. In face of Sassower's objection that such contradicted her First Affirmative Defense which, based on her own review of the files, had specified three open City Court cases, Judge Friia rejected Sassower's proper and reasonable request for a sworn statement from Clerk Lupi, “That is what the records of the White Plains City Court indicate... I'm telling you that is what the records shows. No one is putting anything into a sworn statement”. (Exhibit M: p. 29, ln. 18- p. 30, ln. 13; p.34. ln. 4 - p. 35, ln. 15).

⁵⁹ Sassower's July 18, 2008 order to show cause noted (Exhibit N: p. 31, fn. 12) that Judge Friia's campaign literature in her bid to become a Westchester County judge had identified her as having been “a White Plains City court Judge since 1993 and the Senior Judge since 1997.”

Judge Friia's July 3, 2008 decision does not repeat – as “Procedural History” – her June 30, 2008 oral assertion that “the records shows” that #SP-651/89 was open and that the other related City Court cases closed. Nor has Clerk Lupi been willing to corroborate Judge Friia's claim. Rather, Clerk Lupi wilfully ignored Sassower's request for the “specific documents or entries in the ‘files’ and ‘records’ of White Plains City Court” that led her to allegedly “represent to Judge Friia that prior City [C]ourt proceedings, except for #651/89, are closed.”

It is inconsistent that only #SP-651/89 remained open for 15 years, but not the two other related cases identified by Sassower's First Affirmative Defense, #SP-434/88 and #SP-500/88 (Exhibits I, J), or the further related case #SP-652/89 (Exhibit H) that Sassower subsequently realized was open. If these three related City Court cases were closed – presumably as abandoned or for want of prosecution – #SP-651/89 (Exhibit E) was reasonably also closed.

The status of #SP-651/89 and the other City Court cases should be ascertainable from their docket sheets and/or the City Court's original files of these cases. As reflected by Sassower's correspondence with Clerk Lupi, appended to her September 18, 2008 motion and summarized at pages 53-58, *supra*, Clerk Lupi has orally represented to Sassower that there are no docket sheets for any of the prior City Court cases, ignoring Sassower's requests that she so-confirm “in writing”. Nor has she been willing to “state the reason and whether such comports with the Clerk's duties under law”. She has also not provided Sassower – or

this Court – with the original files of these cases – which apparently no longer exist, as they were converted to microfilm/microfiche, itself suggestive that the cases were closed. Additionally, she has ignored Sassower’s requests to view the microfilm/microfiche, which she has also failed to transmit to the Court for such examination as it sees fit to do. Such behavior suggests that Clerk Lupi cannot corroborate Judge Friia’s claim – based on Clerk Lupi’s supposed representation – that #SP651/89 was the only prior case that was open.

Even more incriminating is the new docket number, #SP-2008-1474, that Clerk Lupi assigned to #SP-651/89, without notice or explanation. Had #SP-651/89 actually been open, such assignment would have been unnecessary – and this was so-stated by Sassower directly to Clerk Lupi on July 21, 2008, without contradiction by her. Sassower recounted this in her July 30, 2008 letter to Clerk Lupi, as likewise her recollection that Clerk Lupi had told her that Judge Friia had directed the assignment of such additional docket number (p. 55, *supra*).

Despite Sassower’s request, by her July 30, 2008 letter, that Clerk Lupi confirm that this is what she told Sassower “or otherwise identify at whose instance docket number ‘SP-2008-1474’ was assigned to #651/89, the date this was done, and the reason therefore”, Clerk Lupi has not done so. Nor has she identified “what notice, if any, was given to the parties of this new docket number”. Nor would she provide Sassower with the docket sheet for #SP-2008-1474 or access to the file, as Sassower requested.⁶⁰

⁶⁰ While drafting this appellant’s brief, Sassower made a final effort to obtain the date on which #SP-2008-1474 was assigned to #SP-651/89 by requesting access to four consecutive City Court files, #2008-1474 among them (Exhibit Q-3). Based on this sequence of cases that Sassower reviewed on March 23, 2009, it appears that #2008-1474 was assigned on or about May 30, 2008. This was the same date that the Clerk’s

Clerk Lupi's grossly unprofessional conduct, preventing Sassower – and this Court – from verifying whether #SP-651/89 was closed, as Sassower concluded it was on July 21, 2008 upon discovering the assignment of #SP-2008-1474, has been endorsed by Judge Friia. Her demonstrably fraudulent October 14, 2008 decision & order (Exhibit D) deprives this Court of the means to conclusively determine the status of #SP-651/89 – which is Sassower's first "Question Presented". Such decision underscores the inference reasonably drawn that if all the other prior City Court cases were closed, so was #651/89. As such, Judge Friia was without jurisdiction to render her July 3, 2008 decision & order.

POINT II

White Plains City Court has Jurisdiction and Supervisory Responsibilities over its Own Clerk and a Fair & Impartial Judge Thereof Would Have Granted the Relief Requested by Sassower's September 18, 2008 Motion

The facts and law pertaining to Sassower's September 18, 2008 motion are summarized at pages 53-63, *supra*, and particularized by her October 10, 2008 opposition/reply affidavit (Exhibit O). As reflected therein, the purpose of Sassower's September 18, 2008 motion, brought under #SP-651/89 and #SP-2008-1474, was two-fold: (a) to ensure that this Court had the documents and information necessary to adjudicate

Office calendared #SP-2008-1474 for trial by a notice that Sassower discovered in the City Court file for #SP-651/89 on July 21, 2008, as recounted by her July 30, 2008 letter to Clerk Lupi (*see* p. 55, *supra*). Sassower also discovered a one-page printed "Docket" for #SP-2008-1474, in which #SP-1989-651 is penned in (Exhibit Q-4), and whose scant information is largely erroneous and misleading, as, for instance, the date of "1st Paper Filed: 11-05-1989"; the absence of any information as to an "Answer"; and the date of "Judgment/Warrant Signed: 07-31-2008".

Sassower's appeals herein, as likewise her appeals in #SP-1502/07, with which #SP-651/89 was purportedly consolidated pursuant to Judge Hansbury's October 11, 2007 decision & order; and (b) to secure the proper functioning of the Clerk's Office.

No fair and impartial tribunal could deny Sassower's September 18, 2008 motion – or grant the Attorney General's cross-motion. This is what Judge Friia did by her October 14, 2008 decision & order (Exhibit D), which failed to identify any of the facts, law, or legal argument Sassower presented, including that her "self-interest in the proceeding, born of her complicity in Clerk Lupi's misconduct, create[d] an absolute disqualification", divesting her of jurisdiction, and that the motion should be transferred to this Court for determination in the first instance (Exhibit O: ¶¶3, 5). Judge Friia's disqualification is the threshold issue underlying Sassower's second "Question Presented", with her insupportable October 14, 2008 decision & order further evidencing her self-interest and actual bias, disqualifying her.

As pointed out at ¶15 of Sassower's October 10, 2008 affidavit (Exhibit O), the Attorney General did not purport that the City Court did not have jurisdiction over its own Clerk or that it could not order her compliance with the relief requested by Sassower's motion within this landlord-tenant proceeding. Nor did Judge Friia's October 14, 2008 decision make such claim in asserting that because the requested relief could be sought by way of Article 78, therefore "The City Court is without jurisdiction to entertain respondent's application", citing CPLR §7804(b).⁶¹ Such is wholly inapplicable as Sassower's

⁶¹ CPLR §7804(b) entitled "Where proceeding brought" reads:

“application” was not by Article 78 – nor did it have to be.

A court has jurisdiction over its own clerk’s office, which exists to serve it by handling its administrative needs and responsibilities. Indeed, it is a cause for discipline for a judge to fail “to supervise his court clerk and otherwise administer the court in an appropriate manner, resulting in, among other things, poor record keeping and poor case management”, *Matter of McDonnell*, Determination of the NYS Commission on Judicial Conduct, February 5, 2009, at pp. 3, 7, citing §100.3(C) of the Chief Administrator’s Rules Governing Judicial Conduct.⁶²

§100.3C(2) of the Chief Administrator’s Rules Governing Judicial Conduct states:

“A judge shall require staff, court officials and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.”

Sassower’s October 10, 2008 affidavit (Exhibit O) cited §100.3(C)(2) of the Chief Administrator’s Rules in its ¶¶24-25 pertaining to the jurisdiction of White Plains City Court

“A proceeding under this article shall be brought in the supreme court in the county specified in subdivision (b) of section 506 except as that subdivision otherwise provides.”

⁶² As stated by the Commission in *Matter of McDonnell*:

“The record also indicates a pervasive failure to maintain complete and accurate records of cases, making it difficult to reconstruct case histories and status reports as to the matters. Sections 107 and 2019 of Uniform Justice Court Act require a judge to keep legible and suitable records of all civil and criminal proceedings. Section §200.23 of the Recordkeeping Requirements for Town and Village Courts (22 NYCRR §200.23) requires the court to maintain case files that *inter alia* include papers filed, minutes or notes made by the court...[The judge’s] disregard of these record-keeping requirements is a violation of administrative responsibilities and, standing alone, constitutes misconduct.”

judges over Clerk Lupi. This includes with respect to the second branch of Sassower's motion, to refer Clerk Lupi for disciplinary and criminal investigation, *inter alia*, for

“tampering with court records and false statements to Judge Friia as to the status of #651/89 and related cases and/or her complicity in Judge Friia's misrepresentations as to those cases”,

additionally citing §100.3D, requiring a judge who “receives information indicating a substantial likelihood” that another judge or lawyer has violated professional standards of conduct “shall take appropriate action”. Irrespective of whether Clerk Lupi is a lawyer, her failure to give notice and explanation of her assignment of #SP-2008-1474 to #SP-651/89, and her subsequent dishonesty and non-response to Sassower's correspondence flagrantly violate professional standards – and certainly those “of fidelity and diligence that apply to the judge” pursuant to §100.3C(2) of the Chief Administrator's Rules Governing Judicial Conduct.

¶25 of Sassower's October 10, 2008 affidavit (Exhibit O) stated that the facts particularized by her correspondence with Clerk Lupi, annexed to her September 18, 2008 motion, “triggered” the Court's mandatory administrative and disciplinary responsibilities, warranting “referrals not only to disciplinary authorities, but to criminal ones” – quoting “relevant provisions of the Penal Law” in support:

1. Penal Law §195.00. Official misconduct;
2. Penal Law §175.20. Tampering with public records in the second degree;

3. Penal Law §175.40. Issuing a false certificate;
4. Penal Law §175.30. Offering a false instrument for filing in the second degree;
5. Penal Law §200.20. Rewarding official misconduct in the second degree;
6. Penal Law §200.25. Receiving reward for official misconduct in the second degree;
7. Penal Law §195.05. Obstructing governmental administration in the second degree.

It is precisely because of the relevance of these provisions – and the applicability of §§100.3C(2) and D of the Chief Administrator’s Rules Governing Judicial Conduct to the uncontested facts particularized by Sassower’s correspondence with Clerk Lupi – that Judge Friia’s October 14, 2008 decision (Exhibit D) makes no ruling as to the motion’s second branch.⁶³

Nor does Judge Friia’s decision rule as to the third branch of Sassower’s motion: “for such other and further relief as may be just and proper”. The most important of this relief was requested by Sassower’s October 10, 2008 affidavit (Exhibit O: ¶2), which explicitly sought – based on its showing that the Attorney General’s cross-motion and Sclafani’s opposing affirmation were fashioned on fraud and deceit – sanctions and costs pursuant to 22 NYCRR §130-1.1 *et seq.* and their referral to disciplinary and criminal authorities” pursuant

⁶³ As a result of Judge Friia’s failure to adjudicate Sassower’s entitlement to an order referring Clerk Lupi for disciplinary and criminal investigation and prosecution, Clerk Lupi has continued her misconduct, obstructing verification of the status of this case and the other City Court cases. Such may be seen from her wilful failure to respond to Sassower’s October 17, 2008 and December 1, 2008 letters to her, each entitled “Your Mandatory Duties under Judiciary Law §§255 and 255-b” (Exhibits Q-1, Q-2) – duties discussed in

to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct. Such would also have been granted by any fair and impartial tribunal.

POINT III

Sassower's July 18, 2008 Order to Show Cause was Sufficient, as a Matter of Law, to Mandate the Granting of All its Requested Relief, & for the Granting of Summary Judgment to Sassower, Dismissing the Petition Herein, as well as in #SP-1502/07, with Summary Judgment on her Four Counterclaims Therein

Judge Friia did not rule on the sufficiency of Sassower's July 18, 2008 order to show cause for any of its requested relief. Instead, and, without signing it, she purported to deny it, writing, on its first page "All issues raised have been previously addressed by the Court", to which she then added "Appeal(s) may be taken to Appellate Court – no further action by City Court of White Plains to be taken" (Exhibit N). In fact, and as summarized at pages 47-49, *supra*, Sassower had never previously sought the relief requested by the third and fourth branches of her underlying motion: vacatur pursuant to CPLR §§5015(a)(3) and (4). Nor had these or any of the other "issues raised" ever been "previously addressed by the Court". This includes, first and foremost, the issue of Judge Friia's disqualification for pervasive actual bias and interest, and for disclosure by her.

The sufficiency of Sassower's order to show cause for all its requested relief is obvious from the most cursory review of Sassower's 60-page moving affidavit – 51 of these pages comprising a line-by-line, record-based analysis of the July 3, 2008 decision,

Sassower's October 10, 2008 affidavit (Exhibit O: ¶20).

demonstrating it to be:

“a knowing and deliberate fraud by the Court’, completely unsupported by law and insupportable by law, and “so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause’ of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960).” (Exhibit N: ¶11, underlining in the original).

The following are among the decision’s material omissions and falsifications particularized by those 51 pages:

(a) omitting all information about the June 30, 2008 calendaring of #SP-651/89, *thereby concealing that the calendaring was improper, accomplished via #SP-1502/07, and that Doris Sassower—who is a party in #SP-651/89, but not #SP-1502/07 — was not before the Court* (¶10, 15-20, 51-52);

(b) omitting any opposition to McFadden’s [November 25, 1991] summary judgment motion in its listing of “papers”, *thereby falsely making it appear that the summary judgment motion was unopposed*, and violating CPLR §2219(a) by its conclusory itemization “Filed Papers: All papers on file”, *thereby additionally concealing whether these included #SP-1502/07, with which #SP-651/89 was purportedly consolidated* (¶¶21-24);

(c) omitting all the allegations of McFadden’s March 27, 1989 Petition, *thereby concealing that the Petition had to be dismissed, as a matter of law, with costs and sanctions under 22 NYCRR §130-1.1 et seq., inter alia, because its material allegation that Doris and Elena Sassower had “entered in possession [of the subject apartment] under a month to month rental agreement” was documentably false and so-established by the October 30, 1987 contract of sale, occupancy agreement, and August 1988 federal complaint* (¶¶25, 73);

(d) omitting all the facts and law upon which the Sassowers based their April 24, 1989 motion to dismiss the Petition for “lack of subject matter jurisdiction and inadequate notice”; omitting the basis upon which Judge Reap’s September 18, 1989 decision denied it; and omitting any analysis thereof, *thereby concealing that Judge Reap’s September 18, 1989 denial was*

factually and legally insupportable (§§26-38);

(e) omitting that the Sassowers' April 24, 1989 motion had requested Judge Reap's disqualification and making no evaluation thereof, including by analysis of his decisions, *thereby concealing the Sassowers' good and sufficient grounds for seeking his disqualification and transfer of the case from White Plains City Court* (§§26-38);

(f) omitting the existence of the three predecessor City Court cases – #SP-504/88, #SP-434/88, and #SP-500/88 – omitting that Judge Reap's September 18, 1989 decision had deemed them "companion cases" to #SP-651/89; and omitting any analysis of Judge Reap's January 25, 1989 decision pertaining to these "companion cases", *thereby concealing the Sassowers' entitlement to summary judgment in #504/88– and in the materially identical #SP-651/89* (§§32-38);

(g) falsely making it appear that the Sassowers' Answer to the March 27, 1989 Petition was eight-months untimely – when it was not – and omitting everything about its content, including its Affirmative Defenses, *thereby concealing that the Sassowers' Answer precluded the granting of summary judgment to McFadden's Petition* (§§38-40);

(h) falsely making it appear that only Elena and Doris Sassower brought the federal lawsuit against the Co-Op to enforce the contract of sale, rather than with McFadden as their co-plaintiff, *thereby concealing the continued viability of the contract of sale and occupancy agreement binding the parties* (§§41; 56(b), 31 (at pp. 17-20, including fn. 7));

(i) expurgating the grounds of the federal lawsuit to delete its corporate non-compliance causes of action, including its violation of Co-Op policies, procedures, and guidelines, *thereby concealing that these were never decided by the jury due to McFadden's withdrawal from the federal lawsuit and the District Court's granting of the Co-Op's eve-of-trial motion to assert a defense based on lack of standing* (§§41, 42; 56(c));

(j) omitting everything about the content of McFadden's November 25, 1991 summary judgment motion – and making no findings as its sufficiency and fidelity to the record, *thereby concealing that it was legally insufficient in failing to annex the Petition (and Answer) and that it materially misrepresented the Petition and the course of the proceedings* (§§43-44, 75-

90);

(k) omitting that McFadden's November 25, 1991 summary judgment motion was opposed, *thereby concealing the sufficiency and merit of the filed opposition* (§§21-23, 43-44, 79-83, 79);

(l) giving a materially incomplete description of Judge Reap's December 19, 1991 decision, *thereby concealing its violative and insupportable nature* (§§44, 56(a), 85-86);

(m) omitting McFadden's October 20, 1992 summary judgment motion, the opposition thereto; Judge Reap's December 29, 1992 decision thereon; and the January 19, 1993 affidavit of Doris and Elena Sassower to which there was no adjudication, *thereby concealing that these precluded the granting of McFadden's November 25, 1991 summary judgment motion* (§§45-49, 53E, 56e);

(n) falsely implying that not until "motion papers filed in connection with SP 1502/07" was White Plains City Court provided with "the information which the Hon. James Reap deemed necessary" to his December 19, 1991 decision, *thereby concealing that such "information" – the Second Circuit Court of Appeals decision on the Sassowers' appeal of their federal case – was provided to Judge Reap by McFadden's October 20, 1992 summary judgment motion* (§§ 45, 69);

(o) omitting all relevant facts pertaining to #SP-1502/07, including the allegations of McFadden's Petition therein, the existence and content of Sassower's Answer with Affirmative Defenses and Counterclaims, the nature of the "motion papers filed in connection with SP 1502/07" and Judge Hansbury's decisions thereon, *thereby concealing that McFadden's Petition in #SP-1502/07 documentarily rebutted his Petition in #SP-651/89; that Sassower's Answer contained a First Affirmative Defense based on "Open Prior Proceedings" -- #SP-651/89 among them; that Sclafani had twice unsuccessfully sought to have White Plains City Court use #SP-1502/07 to grant summary judgment to McFadden in #651/89 based on Judge Reap's December 19, 1991 decision – twice denied by Judge Hansbury – and that the record of #SP-1502/07 established that Sassower was entitled to dismissal of McFadden's Petition therein and to summary judgment on her Counterclaims, as a matter of law* (§§58-71);

(p) falsely implying that Judge Reap's retirement "in or about December 1992" explains why – for 15 years – there was no final disposition in #SP-651/89, *concealing that Judge Reap's cases had been taken over by other judges and that she was one, and failing to address Sassower's stated belief – in the record of #SP-1502/07 – that the reason there had been no adjudication of the Sassowers' January 19, 1993 affidavit was because Judge Reap and other White Plains City Court judges had recused themselves* (§53);

(q) omitting that during the previous 15 years it was McFadden's burden, if he believed himself entitled to summary judgment, to have sought same from the City Court and the legal consequences of his failing to do so, *thereby concealing this powerful evidence supporting Sassower's Seventh Affirmative Defense for "Implied Contract, Detrimental Reliance, & Fraud" in #SP-1502/07, so-stated by Sassower's "motion papers filed in connection with SP 1502/07"* (§§53E & F);

(r) falsely making it appear that Judge Friia's announcement to "the parties" on June 30, 2008 that she "would consider petitioner's motion for summary judgment *de novo*, supplemented only by the Second Circuit decision" was *sua sponte – thereby concealing that it was based upon Sclafani's importuning, which Sassower had opposed with reasons why summary judgment could not be given on McFadden's November 25, 1991 motion and Judge Reap's December 19, 1991 decision thereon* (§§54-57, 72);

(s) omitting that following Judge Friia's June 30, 2008 announcement to "the parties", she walked off the bench as Sassower was in the midst of requesting that she disclose facts bearing upon her fairness and impartiality, *thereby also preventing Sassower from making her application for Judge Friia's disqualification for actual bias and interest, which she had originally presented by a June 27, 2008 order to show cause that Judge Friia had refused to sign* (§53B);

(t) omitting any statement that McFadden's November 25, 1991 summary judgment motion was actually reviewed "de novo" – *reflective of the fact that no de novo review was undertaken by Judge Friia* (§§74-90, also §§67-73);

(u) falsely purporting that McFadden had established his entitlement to summary judgment as a matter of law based upon "the credible evidence", *disregarding such indisputable documentary evidence as the contract of sale*

and occupancy agreement annexed to the Sassowers' April 24, 1989 dismissal motion, as well as the federal complaint against the Co-Op, in which McFadden was co-plaintiff, rebutting the material allegation of his Petition that they had "enter[ed] in possession [of the subject apartment] under a month to month rental agreement" (§§91, 25,73);

(v) falsely purporting that based on "the results of [the] federal law suit" and consideration of "the defenses raised", the Sassowers "had failed to raise a material triable issue of fact", *disregarding the Sassowers' April 24, 1989 dismissal motion, their June 26, 1990 Answer, their December 17, 1991 opposition to McFadden's first summary judgment motion, their several affidavits in opposition to McFadden's second summary judgment motion – the last being on January 19, 1993 for reargument, as to which there had been no decision – as well as Sassower's opposition at the June 30, 2008 court proceeding* (§92).

Any number of these are sufficient, in and of themselves, to have required Judge Friia to have vacated her July 3, 2008 decision & order, as *a matter of law*, whether upon her disqualification, or upon the granting of reargument and renewal, or based on CPLR §§5015(a)(3) and (4). Quite simply, and as particularized by Sassower's July 18, 2008 order to show cause (Exhibit N), there is no basis in fact or law for granting McFadden summary judgment.

Indeed, based on the record of McFadden's November 25, 1991 summary judgment motion before Judge Friia on her "de novo" review, Sassower was herself entitled to summary judgment pursuant to CPLR §3212(b).

CPLR §3212(b), which bears the title "Supporting proof; grounds; relief to either party", states, in pertinent part:

"...If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity

of a cross-motion.”⁶⁴

As highlighted by Sassower’s July 18, 2008 order to show cause (Exhibit N: ¶¶25-34), McFadden’s Petition was documentarily rebutted by the October 30, 1987 contract of sale and occupancy agreement, and by the August 1988 federal complaint – all part of the record of #SP-651/89. Consequently, and consistent with the final branch of Sassower’s July 18, 2008 order to show cause “for such other and further relief as may be just and proper”, any fair and impartial tribunal would have granted the Sassower respondents summary judgment pursuant to CPLR §3212(b) and dismissed McFadden’s March 27, 1989 Petition.⁶⁵

Indeed, a fair and impartial tribunal would have granted the additional “just and proper” relief of summary judgment to Sassower in #SP-1502/07, dismissing McFadden’s June 22, 2007 Petition therein with an award of summary judgment on her four Counterclaims. Sassower’s entitlement to this relief, *as a matter of law*, was the subject of a section in her July 18, 2008 order to show cause (Exhibit N: ¶¶58-66), which detailed that, to circumvent this legal entitlement, Judge Friia’s July 3, 2008 decision omitted all the material

⁶⁴ “CPLR 3212(b) permits the court to search the record where there is a pending motion for summary judgment, and then to award judgment where it is warranted in favor of a non-moving party as to a cause of action that has been placed in issue by the papers (*see Dunham v Hilco Constr. Co.*, 89 N.Y.2d 425, 429-430, 676 N.E.2d 1178, 654 N.Y.S.2d 335).”, *Santagata v Vinegar Hill Group*, 41 A.D.3d 576 (App. Div. 2nd Dept. 2007); “There is some indication, even though the language of CPLR 3212 is permissive, that a searching of the record on a summary judgment motion may be mandatory.”, *New York Practice*, Siegel, §282: “Searching the Record”.

⁶⁵ “...this Court is authorized by CPLR 3212(b) to search the record and grant summary judgment to a nonmoving party with respect to an issue that was the subject of the motion before the court (*see Dunham v Hilco Constr. Co.*, 89 N.Y.2d 425, 429, 654 N.Y.S.2d 335, 676 N.E.2d 1178; *Merritt Hill Vineyards v Windy Hgts. Vineyard*, 61 N.Y.2d 106, 472 N.Y.S.2d 592, 460 N.E.2d 1077; *Image Clothing v State Natl. Ins. Co.*, 291 A.D.2d 377, 736 N.Y.S.2d 885).”, *Selter v. MCM Distributors, Inc.*, 299 A.D.2d 332 (2nd Dept. 2002).

facts about #SP-1502/07 and its posture. In pertinent part Sassower stated:

“65. The Court has been repeatedly made aware of the record of my September 5, 2007 cross-motion: (a) on November 16, 2007, when I appeared before the Court at the oral argument of my November 9, 2007 order to show cause; (b) by my unresponded-to June 13, 2008 letters to the Chief Clerk []; (c) by my unresponded-to June 24-25, 2008 letters to the Court []; (d) by my June 27, 2008 order to show cause, which the Court refused to sign []; (e) by my presentation, in open court, on June 30, 2008, emphasizing that there had been no findings of fact or conclusions of law as to my Affirmative Defenses or Counterclaims and that such were dispositive of my rights; (f) by my July 8, 2008 order to show cause, which the Court refused to sign []. The Court has never denied nor disputed that the record of my September 5, 2007 cross-motion is dispositive of my rights – and the most cursory examination of that record readily confirms that it is.

66. It was to avoid granting me the relief to which that September 5, 2007 cross-motion entitles me, *as a matter of law* – and as to which my unsigned June 27, 2008 and July 8, 2008 orders to show cause had expressly sought:

‘findings of fact and conclusions of law as to respondent’s entitlement to dismissal of the Petition and summary judgment on her Counterclaims, based on the record of her September 5, 2007 cross-motion and November 9, 2007 order to show cause’.
(side-tabs Exhibit A & Exhibit 1, osc, p. 2),

that the Court, without citation to ANY legal authority, purports to have *sua sponte* adjudicated Mr. McFadden’s nearly 17-year old summary judgment motion in a case dormant for almost a decade and a half. Such is presumably a prelude to a similarly lawless and fraudulent decision in #1502/07, which, without examining the differences between Mr. McFadden’s Petition in #651/89 and his Petition in #1502/07 – indeed, without remarking on the fact that Mr. McFadden’s Petition in #1502/07, with its allegations about the contract of sale and occupancy agreement, DOCUMENTARILY REBUTS his Petition in #651/89 – will doubtlessly dismiss his Petition in #1502/07 as moot, ignoring my Counterclaims that independently entitle me to summary judgment.” (Exhibit N: ¶¶65-66, underlining and capitalization in the original).

In fact – and further manifesting Judge Friia’s actual bias – Judge Friia took no action with respect to #SP-1502/07. To date, more than nine months after Judge Friia “adjourn[ed]” #SP-1502/07 pending her decision in #SP-651/89 (Exhibit M: p. 33, lns. 15-20), #SP-1502/07 remains open, with no judgment either as to McFadden’s Petition therein or as to Sassower’s four Counterclaims.⁶⁶

POINT IV

Judge Friia’s July 21, 2008 Judgment of Eviction and Warrant of Removal Must Be Vacated, as a Matter of Law – and Judge Friia’s Signing Them, Simultaneous with her Not Signing Sassower’s July 18, 2008 Order to Show Cause, Further Manifests her Pervasive Actual Bias for which Sassower was Entitled to her Disqualification

As demonstrated by Sassower’s July 18, 2008 order to show cause (Exhibit N: ¶¶12, 73-78), McFadden’s November 25, 1991 summary judgment motion was both legally

⁶⁶ Judge Friia’s July 3, 2008 decision & order cannot properly serve as a basis to dismiss the Petition in #SP1502/07 because of the irreconcilable divergence between McFadden’s Petition in #SP-1502/07 (Exhibit F) and his Petition in #SP-651/89 (Exhibit E) – as well as its ¶8 allegation of a subsequently-made “oral agreement”. As for Sassower’s Counterclaims, they exist separate from the Petition, as reflected by caselaw pertaining to CPLR §3019(d) and treatise authority:

“CPLR §3019(d) provides, in pertinent part, that ‘[a] cause of action contained in a counterclaim *** shall be treated, as far as practicable, as if it is contained in a complaint’. Thus, in cases where the plaintiff’s action against a defendant is dismissed on the merits, the court may still adjudicate counterclaims against the plaintiff” (*see*, 3 Weinstein-Korn-Miller, NY Civ Prac para. 3019.32; Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C3019.20, at 230; *cf.*, *Brennan v. Mead*, 73 AD2d 926), *Ballen v. Aero Mayflower Transit Co.*, 144 A.D.2d 407 (2nd Dept 1988).

See also LEXSTAT NEW YORK CIVIL PRACTICE: P3019.32 “Counterclaim or Cross Claim May Be Adjudicated Despite Dismissal of Original Complaint”: “If the original action is dismissed or otherwise disposed of preliminarily...the court should retain jurisdiction and adjudicate the counterclaim...”, citing cases including *Ballen*. “The fact that the main action has been dismissed, either on the merits or voluntarily, does not prevent an adjudication on the counterclaim.”, *Carinha v. Carinha*, 178 Misc. 2d 635; 679 NYS2d 901 (Westchester S.Ct), citing *Ballen* and treatises.

insufficient and materially false. No fair and impartial tribunal could have granted it, let alone upon a supposed “de novo” review. Such requires vacatur of the July 3, 2008 decision & order, *as a matter of law* – with vacatur of the July 21, 2008 judgment and warrant by reason thereof.

Additionally, the judgment and warrant must be vacated, *as a matter of law*, because they materially diverge from the form and content mandated for judgments and warrants, as well as from the July 3, 2008 decision & order on which they purport to be based.⁶⁷

The judgment of eviction (Exhibit C-2) deviates dramatically from the form for judgments in NY CLS RPAPL §747 (Matthew Bender/LexisNexis, 2008, pp. 19-20), as the form dictates recital of “the grounds for the proceeding” as set forth in the petition, whether an answer was filed, and, if so, “the nature of the issue raised”. Likewise, it dramatically deviates from the forms in Rasch’s Landlord & Tenant (§45.16: Forms of Decision and Judgment) for a “Tenant holding over” – as purportedly at bar – reciting the date on which the petitioner leased the premises, the period of the lease, and that it was under this agreement that the tenant “entered into possession”.

The warrant of removal (Exhibit C-3) deviates from RPAPL §749 in that it is not “directed to the marshal of the city”. Additionally, it deviates dramatically from the forms for warrants as these do not recite the course of the proceedings, including the content of the petition (NY CLS RPAPL §749 (Matthew Bender/LexisNexis, 2008, p. 23); Rasch’s

Landlord & Tenant , §46.5: Form of Warrant).

As for the material divergence of the judgment of eviction and warrant of removal from the July 3, 2008 decision & order, they are as follows:

The judgment of eviction (Exhibit C-2) materially diverges from the July 3, 2008 decision & order by:

- (1) changing the caption;
- (2) falsely making it appear that Doris and Elena Sassower had filed no Answer to McFadden's 1989 Petition;
- (3) falsely making it appear that Judge Friia had continuity with #SP-651/89 from its beginning; and
- (4) falsely making it appear that Judge Friia's knowledge that was the basis for her deciding McFadden's November 25, 1991 summary judgment motion derived from #SP-651/89 rather than #SP-1502/07.

The warrant of removal (Exhibit C-3) materially diverges from the July 3, 2008 decision & order by:

- (1) changing the caption;
- (2) falsely making it appear that Judge Friia had continuity with #SP-651/89 from its beginning; and
- (3) completely falsifying the Petition's allegations so as to essentially transmogrify the March 27, 1989 Petition in #SP-651/89 into the June 22, 2007 Petition in #SP-1502/07.

⁶⁷ See pages 19-21 of Sassower's September 2, 2008 memorandum of law in further support of her August 13, 2008 vacatur/dismissal motion.

More than 90 years ago, in *Lamphere v. Lang*, 213 N.Y. 585, 588 (1915), the Court of Appeals stated:

“The law on the subject is clear. ‘Pleadings and a distinct issue are essential to every system of jurisprudence, and there can be no orderly administration of justice without them. If a party can allege one cause of action and then recover upon another, his complaint would serve no useful purpose.’ (*Romeyn v. Sickles*, 108 N. Y. 650, 652.) ‘The rule that judgment should be rendered in conformity with the allegations and proofs of the parties, ‘*secundum allegata et probata*,’ is fundamental in the administration of justice. Any substantial departure from this rule is sure to produce surprise, confusion and injustice.” (*Day v. Town of New Lots*, 107 N. Y. 148, 154; *Northam v. Dutchess Co. Mut. Ins. Co.*, 177 N. Y. 73.)” Also quoted in *Cohen v. City Company of New York et al.*, 283 N.Y. 112, 117; 27 N.E.2d 803 (1940).

A similar statement of the law, even more relevant, appears in *Gordon v. Ellenville and Kingston Railroad Company*, 119 A.D. 797, 802 (3rd Dept., 1907):

“...to permit a recovery would be to allow the plaintiff to allege one cause of action and recover upon another. The effect would be not only to change the action from one cause to another and different ground of action, but it would authorize a recovery upon evidence which disproves the cause of action alleged in the complaint.”

That is precisely what happened here. The warrant of removal (Exhibit C-3) predicates recovery on a Petition alleging that “on or about the 30th day of October, 1987”, McFadden granted possession of the subject premises to the Sassowers “under a written occupancy agreement incident to a contract of sale”. This “disproves the cause of action alleged” in the Petition in #SP-651/89 (Exhibit E), *to wit*, that the Sassowers “entered in possession...under a month to month rental agreement”, on no specified date and for no specified rent.

“The burden of proving jurisdiction rests with the party asserting it. *Preferred Electric & Wire Corp. v. Duracraft Products, Inc.*, 114 AD2d 407, 494 N.Y.S.2d 131 (2d Dept. 1985)”, *Certain Underwriters at Lloyd's of London v Bellettieri, Fonte & Laudonio, P.C.*, 19 Misc. 3d 1136A (Westchester S.Ct./Justice Scheinkman 2008). McFadden never met that burden. His Petition herein (Exhibit E) contained none of the requisite substantiating details about the “month to month rental agreement” by which the respondents allegedly “entered in possession” of the subject premises and was insufficient on its face, in addition to being a flagrant fraud concocted to bootstrap jurisdiction, which McFadden knew he did not have by reason of the October 30, 1987 contract of sale, the express language of the occupancy agreement, and the August 1988 complaint in the federal action, which his Petition dishonestly concealed.

The threshold relief sought by Sassower’s July 18, 2008 order to show cause (Exhibit N) was to “stay[] enforcement of the judgment of eviction and warrant of removal entered or to be entered on the July 3, 2008 decision & order” pending determination of the underlying motion or, alternatively, pending appeal. That Sassower was entitled to the granting of the underlying motion, *as a matter of law*, and to a successful appeal based thereon, *as a matter of law*, would have been evident to any fair and impartial tribunal examining the July 18, 2008 order to show cause. Such tribunal would have promptly signed it so as to have McFadden and his counsel – past and present – respond to its 51-page analysis of the July 3, 2008 decision & order, showing it to be indefensible, factually and legally, *inter alia*, because

McFadden's March 27, 1989 Petition (Exhibit E) is materially fraudulent, as likewise his legally-insufficient summary judgment motion, which the decision & order granted. That Judge Friia did not sign the July 18, 2008 order to show cause (Exhibit N), but instead signed, unchanged, Sclafani's proposed judgment and warrant (Exhibits C-2, C-3) with its grotesque deviations in form and content and divergence from the July 3, 2008 decision & order (Exhibit C-1), materially transforming the Petition in #SP-651/89 (Exhibit E) to the Petition in #SP-1502/07 (Exhibit F) – effectively rewarding McFadden and his counsel for their fraud and misconduct – only underscores her pervasive actual bias, reinforcing Sassower's entitlement to her disqualification.

POINT V

The Course of These Proceedings Requires this Court to Discharge its Mandatory “Disciplinary Responsibilities” under §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct by Referring Judge Friia, the White Plains City Court Clerk, as well as the Complicit Attorneys and McFadden, to Disciplinary and Criminal Authorities

This Court's judges – as likewise all of the judges of the Unified Court System – are obligated to ensure the integrity of the judicial process. This is reflected by Part 100 of the Chief Administrator's Rules Governing Judicial Conduct which, pursuant to Article VI, §§20 and 28(c) of the New York State Constitution, has constitutional force. §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, entitled “Disciplinary Responsibilities”, states:

“(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take

appropriate action.

(2) 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.

(3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties." (underlining added).

Such mandatory "Disciplinary Responsibilities" are all the greater for this Court's judges, whose higher position embraces an obligation to provide lower court judges with a role model example of adherence to codes of judicial conduct. "*The Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession*", John M. Levy, 22 Santa Clara Law Review, pp. 95-116 (1982).

The record before this Court constitutes more than "information" of "a substantial likelihood" of "a substantial violation" of Part 100 of the Chief Administrator's Rules and the Code of Professional Responsibility by Judge Friia and the White Plains Clerk over whom she has supervisory responsibilities, as well as by Sclafani and the New York State Attorney General. It is the hard evidence of the "substantial violations" themselves – violations demonstrated to be knowing, deliberate, and recurring.

Sassower's July 18, 2008 order to show cause (Exhibit N) provided Judge Friia with irrefutable record references and legal authority establishing her July 3, 2008 decision & order (Exhibit C-1) to be a "judicial fraud", being factually and legally baseless – and knowingly so. This is serious misconduct, warranting removal from office, and was so-highlighted by pages 3-4 of Sassower's memorandum of law pertaining to disqualification

and disclosure, submitted in support of her November 9, 2007 order to show cause:

“A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...”, *Matter of Capshaw*, 258 A.D. 470, 485 (1st Dept 1940), with italics added by the Appellate Division, First Department in quoting from *Matter of Droege*, 129 A.D. 866 (1st Dept. 1909).

“A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for willfully making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another...” *Matter of Bolte*, 97 A.D. 551, 568 (1st Dept. 1904), italics in original.

“...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe.”, *Matter of Bolte*, at 574.

Indeed, Judge Friia’s favoritism of McFadden and Sclafani by her unabashed cover-up of their flagrant and unremitting litigation fraud and perjury, would itself justify her criminal prosecution for official misconduct and corruption.

Any judge respecting her oath of office and judicial function would have recognized her obligation to confront the “chapter and verse” specifics of Sassower’s three orders to show cause detailing the state of the record and her wilful and deliberate misconduct with respect thereto, entitling Sassower to her disqualification and transfer to another court to ensure the appearance and actuality of impartial justice. Judge Friia refused to recognize this obligation, instead engaging in further “judicial fraud” and “protectionism” not only of McFadden and Sclafani, but of Clerk Lupi, whose manipulations and concealment of court

records – apparently at Judge Friia’s direction – Sassower comprehensively chronicled by the correspondence annexed to her September 18, 2008 motion. Judge Friia then permitted the Attorney General to unlawfully represent the non-party Clerk Lupi and interpose a cross-motion to dismiss, whose deceit she adopted in denying the motion.

No functioning judicial system can tolerate fraud committed by its judges – as here by Judge Friia’s July 3, 2008 decision & order (Exhibit C-1), by her July 21, 2008 judgment of eviction and warrant of removal (Exhibits C-2, C-3), and by her October 14, 2008 decision & order (Exhibit D) – thereby burdening this Court with two otherwise unnecessary appeals: #2008-1427-WC and #2009-148-WC, as well as additional unnecessary appellate burdens as a consequence thereof, including #2008-1433-WC and #2008-1428-WC.

Based on the clear and unambiguous record herein, it is this Court’s duty to refer Judge Friia as well as the complicit lawyers of McFadden and the Attorney General’s office to disciplinary and criminal authorities. Such is compelled by §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct, by the new Rules of Professional Conduct for Attorneys, approved by New York’s Chief Judge and the Appellate Division Presiding Justices – effective April 1, 2009⁶⁸ – and by the New York Court of Appeals’

⁶⁸ Of particular relevance: Rule 3.1 “Non-Meritorious Claims and Contentions”, which subjects an attorney to discipline for frivolous conduct as defined by 22 NYCRR §130.1.1 *et seq*, as well as Rule 3.3 “Conduct Before a Tribunal”, whose significance was highlighted in the December 16, 2008 press release of the New York State Unified Court System as follows:

- “Rule 3.3 requires a lawyer to correct a false statement of material fact or law previously made to the tribunal by the lawyer or the client and to take necessary remedial measures, including disclosure of confidential client information.

February 12, 2009 decision in *Amalfitano v. Rosenberg*, 12 N.Y.3d 8,14, recognizing “the evident intent” of Judiciary Law §487 “to enforce an attorney’s special obligation to protect the integrity of the courts and foster their truth-seeking function”.

CONCLUSION

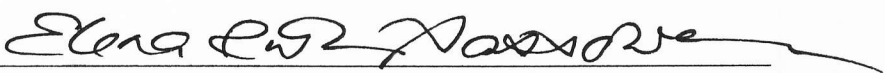
WHEREFORE, *as a matter of law*, Judge Friia’s July 3, 2008 decision & order and her July 21, 2008 judgment of eviction and warrant of removal must be vacated, as likewise her October 14, 2008 decision & order. Also, *as a matter of law*, McFadden’s March 27, 1989 Petition must be dismissed, with costs and maximum sanctions imposed on McFadden and his counsel pursuant to 22 NYCRR §130-1.1 *et seq.*, as well as their referral to disciplinary and criminal authorities for fraud and perjury. Additionally, costs and maximum sanctions must be imposed on the Attorney General and Sclafani and their referral to disciplinary and criminal authorities for their fraudulent and perjurious opposition to Sassower’s September 18, 2008 motion.

As for #SP-1502/07 – with which #SP-651/89 was allegedly consolidated – such case, in limbo since the June 30, 2008 court proceeding, must be transferred to a fair and impartial tribunal outside White Plains and the Ninth Judicial District for determination of the amount of compensatory and punitive damages due Sassower on her four Counterclaims, as it is the

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- Rule 3.3 requires a lawyer who knows that a person intends to, is or has engaged in criminal or fraudulent conduct related to the proceeding to take reasonable remedial measures, including disclosure of confidential client information.”

only issue remaining therein after this Court dismisses McFadden's June 22, 2007 Petition and grants summary judgment to Sassower on her four Counterclaims, relief to which she is entitled, *as a matter of law*, as demonstrated by her appeals #2008-1433-WC and #2008-1428-WC of Judge Hansbury's October 10, 2007 and January 29, 2008 decisions & orders in #SP-1502/07.

Consistent with this Court's mandatory "Disciplinary Responsibilities" under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, Judge Friia must be referred to disciplinary and criminal authorities for investigation and prosecution for her wilful and deliberate perversion of her judicial office for ulterior, vindictive purposes. Likewise, Clerk Lupi must be referred to disciplinary and criminal authorities for her unprofessional conduct, including tampering with court records and/or collusion in such tampering by Judge Friia.


ELENA RUTH SASSOWER

Dated: New York, New York
April 17, 2009

Case No. 2008-1427 WC

Case No. 2009-148 WC

APPELLATE TERM OF THE SUPREME COURT
NINTH & TENTH JUICIAL DISTRICTS

JOHN McFADDEN,

Respondent,

-against-

DORIS L. SASSOWER,

Respondent,

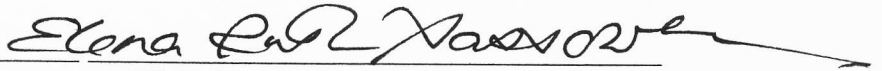
ELENA SASSOWER,

Appellant.

CERTIFICATION PURSUANT TO 22 NYCRR §130-1.1-a

I hereby certify pursuant to 22 NYCRR §130-1.1-a, as well as 22 NYCRR §730.3(g), that to the best of my knowledge, information and belief, after inquiry reasonable under the circumstances, that the contents of my appellant's brief is not frivolous.

Dated: April 17, 2009
New York, New York


ELENA RUTH SASSOWER