

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

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ELENA RUTH SASSOWER and DORIS L. SASSOWER,
Individually and as Director and President, respectively,
of the Center for Judicial Accountability, Inc., and
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.,
Acting *Pro Bono Publico*,

Plaintiffs-Appellants,

App. Div. #: 2012-00126

App. Div. #: 2012-05360

App. Div. #: 2013-05353

- against-

Suffolk Co. # 10-12596

GANNETT COMPANY, INC., The Journal News, LoHud.com
HENRY FREEMAN, CYNDEE ROYLE, BOB FREDERICKS,
D. SCOTT FAUBEL,

Defendants-Respondents,

REPLY AFFIDAVIT

KEITH EDDINGS and DOES 1-10,

Defaulting/Non-Appearing Defendants.

----- x
STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says, under penalties of perjury:

1. I am the first-named individual plaintiff-appellant herein, fully-familiar with all the facts, papers, and proceedings heretofore had, and submit this affidavit in reply to the October 11, 2013 "Brief in Opposition" of Satterlee, Stephens, Burke & Burke, LLP, counsel to defendants-respondents, and in further support of plaintiffs-appellants' September 23, 2013 motion.¹

¹ The motion, originally returnable on October 18, 2013, was adjourned to November 1, 2013 (Exhibit A). Satterlee's "Brief in Opposition", which was required to be served by October 11, 2013, was not received by me until Friday, October 18, 2013, when the served copy arrived by mail. Satterlee made no service on appellant Doris Sassower, who, with me, signed the notice of motion.

2. Once again – and as appellants repeatedly stated below and reiterated at the outset of their October 19, 2012 reply brief to this Court, invoking the Court’s mandatory “Disciplinary Responsibilities” under §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct and 22 NYCRR §130-1.1 *et seq.* –

“It is simply impossible to litigate – and for this Court to properly adjudicate – when the judicial forum is, as here, flooded with falsehood. Consequently, the threshold issue before this Court is the integrity of these proceedings and fundamental litigation standards.”

3. As hereinafter shown, Satterlee’s “Brief in Opposition” is no opposition, *as a matter of law*. Indeed, from beginning to end, it is a “fraud on the court”² – reinforcing appellants’ entitlement to all the relief sought by their motion, consistent with fundamental legal principles:

“‘when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.’ Corpus Juris Secundum, Vol 31A, 166 (196 ed., p. 339);

‘It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party’s falsehood or other fraud in the preparation and presentation of his cause...and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause’s lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.’ II John Henry Wigmore, Evidence §278 at 133 (1979).” [R-454; R-546]

4. As the “Brief in Opposition” is yet another instance of Satterlee’s frivolous conduct, sanctionable under 22 NYCRR §130-1.1 *et seq.* , it warrants yet another imposition of maximum

² “Fraud on the court” is defined by Black’s Law Dictionary (7th ed. 1999) as:

“A lawyer’s or party’s misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding.” [R-

costs and \$10,000 sanctions, beyond the request in the motion's fifth branch. Consequently, this affidavit is also submitted in support of the motion's seventh branch for "such other and further relief as may be just and proper" – this now being, explicitly, a further imposition of maximum costs and \$10,000 sanctions against Satterlee pursuant to 22 NYCRR §130-1.1 *et seq.*, as well as appropriate disciplinary and criminal referrals of its culpable attorneys consistent with §100.3D of the Chief Administrator's Rules Governing Judicial Conduct. As throughout this litigation, Satterlee's misconduct is a manifestation of its disqualifying conflict of interest as a defendant DOE – a status it has never denied.

5. Satterlee's "Brief in Opposition" bears the name of two attorneys on its cover and signature page, both of whom are partners in the firm: Mark A. Fowler, Esq. and James Regan, Esq. (Exhibit B). Each well knows, as a matter of elementary law, that the factual assertions in their "Brief in Opposition", on which their law and argument rest, are of no probative value, being unsworn, in addition to conclusory – and their knowledge of this is reinforced by the law repeatedly cited by appellants in the underlying record:

"[The affidavit] is 'the foremost source of proof on motions', Siegel, New York Practice 205 (1999 ed., p. 324) [R-551];

"...if answering affidavits are not produced, the facts alleged in the movant's affidavits will usually be taken as true.

Answering affidavits, in addition to complying with the formal requisites of the affidavits supporting the motion, should meet the traversable allegations of the latter. Undenied allegations will be deemed to be admitted. Answering affidavits not based on personal knowledge are of little, if any, probative value and for that reason may be deemed insufficient to traverse the allegations in the movant's affidavits.", 2 Carmody-Wait 2d §8:66 (2008 ed.)" [R-550].

6. Yet, to avoid the penalties of perjury for factual assertions they know to be utterly false³, they have furnished no affidavit or affirmation with their “Brief in Opposition”.

7. The signature on their “Brief in Opposition” is that of Mr. Regan. Inasmuch as the threshold and overarching issue on the motion, germane to all its branches of relief, involves what took place at the May 6, 2013 oral argument of these appeals, it was incumbent upon Mr. Regan to have furnished an affidavit or affirmation, on personal knowledge, sworn to under penalties of perjury, as he was the Satterlee attorney who argued before this Court on May 6, 2013 – a fact his “Brief in Opposition” does not reveal.⁴

8. Nowhere does Mr. Regan’s signed “Brief in Opposition” reveal that appellants’ motion is supported by a sworn affidavit, which I have signed – or that it is virtually entirely devoted to what occurred at the May 6, 2013 oral argument and the Court’s August 21, 2013 decision with respect thereto (¶¶5-8, 12-29, 30-31, 34, 36-38, 40). Mr. Regan’s signed “Brief in Opposition” does not dispute the accuracy of any of my affidavit’s particularized recital – making its opposition to the motion frivolous, *per se*. Indeed, the Regan-signed “Brief in Opposition” only passingly references

³ Penal Law §210.10 pertaining to perjury, makes it a felony for a person to swear falsely when his false statement is:

“(a) made in a subscribed written instrument for which an oath is required by law, and (b) made with intent to mislead a public servant in the performance of his official functions, and (c) material to the action, proceeding or matter involved.”

“Those who make affidavits are held to a strict accountability for the truth and accuracy of their content.”, 2 Carmody-Wait 2d §4:12, citing *In re Portnow*, 253 AD 395 (2nd Dept. 1938). [R-458]

⁴ I believe Mr. Regan failed to identify himself at the May 6, 2013 oral argument – and it is for this reason that appellants’ September 23, 2013 motion did not identify him by name. However, in an October 16, 2013 phone conversation with me, he responded in the affirmative to my question as to whether he was the attorney who had argued.

the oral argument in four places, none mentioning the facts presented by my affidavit as dispositive.⁵

9. Mr. Regan's response to essentially all the facts and law presented by my affidavit pertaining to the May 6, 2013 oral argument and the Court's August 21, 2013 decision is to conceal them all. This includes the most threshold and overarching facts concerning the disqualification of the panel, set forth at ¶¶5-8 of my affidavit, with pertinent law, as follows:

“5.the four panel justices...had before them a timely and sufficient application for disqualification and disclosure, which I presented at the May 6, 2013 oral argument of the appeals...”

6. Treatise authority holds:

‘As a general rule...once a challenged judge has...been made the target of a timely and sufficient disqualification motion, he immediately loses all jurisdiction in the matter except to grant the motion and in some circumstances to make those orders necessary to effectuate the change.’, §22.1, Judicial Disqualification: Recusal and Disqualification of Judges, Richard E. Flamm, Little, Brown & Company.

7. *As a matter of law*, the panel justices were without jurisdiction to decide the appeals without ruling on appellants' application that they disqualify themselves or make disclosure. What they did, instead – reflective of their knowledge that they could not address these issues without conceding them – was to conceal the application in their August 21, 2013 decision and then make manifest the actual bias and interest that was its subject.

⁵ These four instances are as follows: (1) on page 3: “Oral arguments were held on May 6, 2013...”. This is simply confirmatory of the fact of oral argument on that date; (2) on page 9: “Nor can bias be based on the Panel's failure to ask questions or to permit rebuttal, see Motion at 8...” This is a deceit. Page 8 of my affidavit identifies the “disparate fashion in which the panel handled oral argument of my appeals” and that “oral argument of my appeals was qualitatively different”. Mr. Regan does not deny or dispute this – or that “the Panel's failure to ask questions or to permit rebuttal” was a manifestation of its invidiousness, furnishing grounds for disqualification for actual bias; (3) on page 13, truncating the quote from ¶38 of my affidavit, so as to remove the explanation as to why it was “frivolous and sanctionable *per se*” for Mr. Regan to even appear at the May 6, 2013 oral argument, and, certainly, to replicate argument from Satterlee's brief in opposition to appellants' appeals, *to wit*, the opposition brief had been thoroughly discredited by appellants' reply brief. Tellingly, Mr. Regan does not deny or dispute that his May 6, 2013 oral argument was a repeat of Satterlee's already-discredited opposition brief; (4) on page 11, simply quoting from ¶34 of my affidavit that “the panel ‘overlooked and misapprehended’ the entirety of what was before it in the record, in the briefs, and at oral argument” – without disputing the truth of that statement.

8. By this motion, appellants seek adjudication of the unadjudicated disqualification/disclosure application, now supplemented by the facts presented by this affidavit and its annexed exhibits, incorporated herein by reference. Among these exhibits is appellants' 13-page analysis of the August 21, 2013 decision, establishing, *prima facie*, the panel's pervasive actual bias, corrupting any semblance of appellate process to produce a decision:

‘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).’”

10. Thus, the Regan-signed “Brief in Opposition”:

- nowhere mentions the material fact of my application for the panel's disqualification and disclosure, made at the May 6, 2013 oral argument (Exhibit D);
- nowhere mentions the material fact that the panel not only failed to adjudicate my May 6, 2013 application for its disqualification and disclosure, but concealed it from its August 21, 2013 decision (Exhibit A);
- nowhere mentions the material contention that my May 6, 2013 disqualification/disclosure application was timely and sufficient – or the law establishing that it divested the panel of jurisdiction to render the August 21, 2013 decision;
- nowhere mentions the material fact that the instant motion supplements the May 6, 2013 disqualification/disclosure application so as to now move for the panel's disqualification for “pervasive actual bias”;
- nowhere mentions the 13-page analysis of the panel's August 21, 2013 decision that the motion presents as establishing “pervasive actual bias” (Exhibit G);
- nowhere mentions the material fact that the motion seeks disclosure by the four panel's justices, in the event they do not disqualify themselves.

11. This concealment, which is fraud, is then compounded by material falsifications.

Illustrative is the following:

“The present motion seeking recusal of the four-judge appellate panel that heard Elena Sassower's appeal asserts bias and/or interest on the

same generalized grounds (applicable to essentially every Judge in New York) as formed the basis for Plaintiffs recusal motion at the trial court level...”⁶ (at p. 4, underlining added).

12. This is utterly fraudulent. Appellants’ motion seeks the disqualification of the four-judge panel on grounds applicable only to the panel:

- its invidious treatment of these appeals at the May 6, 2013 oral argument (¶¶17-21);
- its denial of the purported “post argument submission” – this being the copy of my written May 6, 2013 oral argument, furnished by appellant Doris Sassower (¶¶23-25); and
- its fraudulent August 21, 2013 decision as established by my May 6, 2013 oral argument and by appellants’ 13-page analysis of the decision (¶¶27-28).

13. Such fraud is continued in Mr. Regan’s Point I entitled “There Is No Basis for Disqualification”. In purporting that I have “offered no facts warranting disqualification”, either for bias or interest, pursuant to 22 NYCRR §100.3(E) or Judiciary Law §14, he falsely states:

“Elena Sassower suggests that the panel’s alleged ‘bias’ is evidenced by their application of the law to the facts alleged, resulting in an Order with which she disagrees. *See* Motion at 3. Of course, disagreement with a court’s legal reasoning is not grounds for disqualification...” (at p. 8, underlining added).

14. The referred-to page 3 of suggests nothing of the sort – and the prior and subsequent pages of my moving affidavit make absolutely clear that at issue is not an Order with which appellants “disagree” in its “application of the law to the facts alleged”, but one which is “a judicial

⁶ The continuation of the quote reads:

“...namely, that the Justices on the panel are biased and interested in this action due to (a) Plaintiffs’ prior efforts at recusal and sanctions against other judges with whom the Justices may have professional relationships, and (b) the fact that Plaintiffs have publicly opposed judicial pay raises. *Cf.* Motion at 11 *and* R-592-595.” (at p. 4, italics in original).

This is essentially repeated at page 9 of the “Brief in Opposition”, quoted and discussed at ¶15 herein.

fraud”, whose “flagrantly false conclusory assertions” (at ¶2) – “without a single substantiating fact” – are “outright lies, readily-verifiable from the most cursory examination of the record” (at ¶3) and “totally devoid of evidentiary support” (at ¶8). This, of course, is proven by the fact-filled 13-page analysis of the decision “examining its material paragraphs, line-by-line (Exhibit G), so as to demonstrate the willfulness with which the panel jettisoned all cognizable adjudicative standards to render a decision that is a judicial perjury.” (at ¶27).

15. Mr. Regan also falsely purports that the “relationships and interests” which the motion raises are:

“primarily based on Plaintiffs’ prior efforts at recusal and sanctions against other judges, and the Plaintiffs’ public opposition to judicial pay raises. *See* Motion at p. 11. Needless to say, such allegations arguably apply with equal force to any state judge daring to dismiss claims brought by Elena Sassower...” (at p. 9).

16. In fact, the referred-to page 11 of my affidavit particularizes the “relationships and interests” for disclosure by the panel judges should they not recuse themselves. Yet the Regan-signed “Brief in Opposition” conceals that disclosure is even sought by the motion – and conceals the specified “relationships and interests” that would not “arguably apply with equal force to any state judge...”, as for instance the first:

“the justices’ ‘personal and professional relationships with appellate judges who – like defendant Journal News – covered up the corruption of White Plains City Court Judge Brian Hansbury, readily-verifiable from the City Court record of the landlord/tenant case *McFadden v. Elena Sassower*’ – among these Justice Skelos, heading an appellate panel that included Justice Randall Eng, now this Court’s Presiding Justice.” (moving affidavit, at p. 11).

17. With respect to appellate panel Presiding Justice Peter Skelos’ disqualifying interest, Mr. Regan falsifies the facts presented by my affidavit establishing it. Referring to pages 11 and 12 of my affidavit, he purports that the disqualification rests on Justice Skelos being involved:

“in a prior action brought by Plaintiffs. But prior adverse decisions by a Judge cannot create a basis for disqualification. *See Greenman v. Greenman*, 175 A.D.2d 360 (3rd Dep’t 1991) (‘Defendant initially contends that the Trial Judge erred in refusing the recuse himself from the case on the basis that the Judge had presided over another unrelated matter involving defendant. This is not a ground warranting a legal disqualification.’) (internal citations omitted); *see also People v. Collins*, 136 A.D.2d 722 (3d Dep’t 1998). Nor can Elena Sassower be permitted to demand disqualification of Justice Skelos based on the fact that she has separately targeted his brother, Dean Skelos (along with the Governor, Chief Judge, Attorney General and others), in unrelated proceedings. *See* Motion at 12.” (at p. 10, underlining added).

18. This paragraph contains both explicit and implicit falsehoods, verifiable from pages 11-12 of my moving affidavit and the referred-to May 6, 2013 oral argument:

- First, Justice Skelos’ disqualification for interest is not based on “adverse decisions” – let alone in an “unrelated matter”. Rather, it is based on his corrupt decisions as presiding justice of an appellate panel in the related landlord-tenant case, *McFadden v. Sassower*, “whose record establishes the corruption of White Plains City Court Judges Hansbury and Fria and the knowing falsity and defamation of the Gannett article which is the subject of these appeals”;
- Second, because the instant appeals involve identical appellate issues pertaining to the integrity of court proceedings and judicial disqualification and disclosure as those that were before Justice Skelos in *McFadden v. Sassower*, he has a further disqualifying interest because any fair and impartial determination of these appeals would require articulating and applying standards and fundamental principles of judicial conduct, attorney conduct, and disqualification – which he could not do without exposing his pivotal role in the corruption of those standards and principles in *McFadden v. Sassower*;
- Third, Dean Skelos is not just Justice Skelos’ brother, he is New York’s Temporary Senate President. And he was not “separately targeted...in unrelated proceedings”. To the contrary, it was Justice Skelos’ misconduct in *McFadden v. Sassower*, bearing upon the judicial pay raise issue in which Temporary Senate President Skelos had an express statutory role, that brought plaintiffs-appellants into contact with Temporary Senate President Skelos, thereafter developing into the lawsuit, *Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.*, in which Temporary Senate President Skelos is a named defendant, sued for corruption and whose verified complaint identifies the record in *McFadden v. Sassower* – as likewise herein and *Sassower v. The New York Times* – as establishing “a corrupted judicial process”.

19. All of the foregoing material facts, concealed and/or falsified by the Regan-signed “Brief in Opposition”, enable the further falsehood with which Point I concludes:

“As the allegations of bias and/or interest as (sic) without basis, there is equally no merit to Elena Sassower’s novel request that the Appellate Order be vacated pursuant to CPLR 5015(a)(4), based [upon] the panel’s alleged ‘lack of jurisdiction’ due to their ‘disqualification for interest.’” (at p. 10).

In fact, the fact and law detailed by my moving affidavit in support of these branches of relief is dispositive and is all either uncontested in fact or *as a matter of law*.

20. Similarly predicated on concealment and falsification is Mr. Regan’s Point II “Neither Reargument or (sic) Leave to Appeal is Warranted” (at pp. 11-12).

- With respect to reargument, Mr. Regan falsely claims that appellants “fail[] to identify any specific points or issues, nor cite any specific portion of the record or briefs” (at p. 11) – accomplishing this by expurgating from the quoted sentence of my affidavit:

“At bar, the panel ‘overlooked or misapprehended’ the entirety of what was before it in the record, in the briefs, and at oral argument – ”

its continuation:

“— and appellants’ accompanying analysis of the decision more than meets the standard for reargument – and for vacating the decision, upon the granting of same.” (moving affidavit, ¶34).

Mr. Regan does not deny the truth that appellants’ 13-page analysis (Exhibit G) more than meets the standard for reargument and vacatur – and, because he cannot, truncates the sentence he quotes, to remove it.

- With respect to leave to appeal to the Court of Appeals, Mr. Regan falsely purports that appellants’ proposed questions of law “plainly do not merit review by the Court of Appeals.” (at pp. 11-12). In so doing, he characterizes them as relating to “Elena Sassower’s baseless

arguments concerning disqualification and bias” (at p. 12), but does not quote or otherwise identify what they say. This is a further fraud. The first question embodies the threshold dispositive facts pertaining to the May 6, 2013 oral argument and the panel’s August 21, 2013 decision, all expunged from the Regan-signed “Brief in Opposition”:

“Whether it is misconduct, *per se*, for a judge to rule on a case without adjudicating an application before him for his disqualification and for disclosure of relationships and interests bearing upon his impartiality – indeed by concealing the very existence of such application in his written decision?” (moving affidavit, ¶40).

As for appellants’ further question for which leave to appeal to the Court of Appeals is sought, it is:

“Whether this motion is sufficient, *as a matter of law*, to establish the disqualifying actual bias and interest of the appellate panel – and its duty to disqualify itself and vacate same?”

Examination of the motion shows the answer to be a resounding YES – warranting the granting of disqualification and vacatur by the panel justices themselves.

21. Also predicated on concealment and falsification is Mr. Regan’s Point III entitled “Elena Sassower’s Allegations of Fraud and Request for Sanctions against Defense Counsel are Frivolous” (at pp. 12-15) . Among its deceits, that the motion:

“offers no specifics other than reference to her equally vague allegations asserted in the briefs on appeal. See Motion at 14. Thus, it still remains unclear what precisely is the nature of the fraud or misconducted perpetrated by Satterlee” (at p. 13, underlining added);

“[that there is no] evidence to suggest fraud, much less, ‘clear and convincing evidence’ of fraud” (at p. 13, underlining added); and

“case law wholly supports Satterlee’s arguments and briefing in this action.” (at 14).

22. This, too, is fraudulent. There is nothing “vague” or “unclear” about the devastating presentation in appellants’ October 19, 2012 reply brief, furnishing overwhelming *prima facie* evidence of litigation fraud by Satterlee permeating the entirety of its September 24, 2012 brief for defendants-respondents – a brief signed by Satterlee partner Mark Fowler, but bearing Mr. Regan’s name as well. Indeed, just as Mr. Regan replicated, at the May 6, 2013 oral argument, some of the deceptions already exposed by appellants’ October 19, 2012 reply brief, so his instant “Brief in Opposition” likewise replicates its deceptions. For example, the “Brief in Opposition” purports (at p. 3) that Justice Cohalan’s September 22, 2011 order “granted Defendants’ Motion in its entirety”, which is false, and additionally that his April 23, 2012 order “denied Appellant’s motion in its entirety”, which is false – and each of these falsehoods, evident from the face of the orders, was highlighted by appellants’ reply brief (at pp. 15-16, 17-18).

23. Mr. Regan’s Point III concludes (at p. 15) with the deceit that this motion constitutes frivolous conduct on my part, for which “this Court should follow the lead of prior courts and enjoin [me] ‘from instituting any further actions or proceedings relating to the issues decided herein’”. There is nothing remotely frivolous about the motion – as Mr. Regan well knows by concealing virtually the entirety of its content. Indeed, it is because he has no substantiation for his false characterizations of the motion that he seeks to buttress them by purporting that the motion is part of:

“Plaintiffs’ pattern and practice to seek to disqualify Judges who have issued adverse rulings against them, and to allege ‘fraud’ and seek sanctions against any attorney who has advocated against them.” (at pp. 1-2).

This supposed “pattern and practice” is a central theme in Mr. Regan’s “Brief in Opposition” and he devotes a whole section to it (at pp. 4-7), under a heading entitled “Relevant Background” (at p. 2). This is another falsehood. There is nothing “Relevant” about decisions in other cases about

plaintiffs' motions for disqualification and sanctions in those cases – as plaintiffs' motion herein, which is what is before the Court, is fully substantiated by fact and law, essentially none of it addressed by Mr. Regan.

24. Needless to say, were Mr. Regan to have submitted an affidavit or affirmation, he would have had to identify his knowledge of the record of the cases underlying the judicial decisions to which he cites and quotes, *as if they are true*. He also would have had to attest to his knowledge of the record in this case – a record containing my sworn statements about most of those other cases, made on personal knowledge. Suffice to quote from my November 29, 2010 affidavit in opposition to Satterlee's dismissal motion and in support of appellants' cross-motion, which under the title heading "The False and Deceitful Decisions Included in Satterlee's Memorandum of Law to Besmirch Plaintiffs and Mislead the Court" [R-251], stated:

"20. Satterlee's memo of law (at fn. 2, p. 2; pp. 3-5) cites to and/or quotes various cases involving myself and my mother to wrongfully besmirch us and mislead the Court. Unlike Satterlee, I have direct, first-hand knowledge of all but one case – and as to that one, *Sassower v. Signorelli*, have sufficient knowledge to attest to the fraudulence of the cited decision, 99 A.D.2d 358, 472 N.Y.S.2d 702 (2d Dep't 1984). As to the other cases, I can attest to the fraudulence of the judicial decisions therein of my own personal knowledge – and have documented same, including as to the decisions Satterlee cites: *Sassower v. Field*, 973 F.2d 75 (2d Cir. 1992); *Sassower v. Mangano*, 927 F. Supp. 113 (S.D.N.Y. 1996); *Wolstencroft v. Sassower*, 234 A.D.2d 540 (2d Dep't 1996); *Sassower v. Commission on Judicial Conduct*, 289 A.D.2d 119 (1st Dep't 2001); and the unpublished July 5, 2006 decision in *Sassower v The New York Times*.

21. Each of these decisions obliterate the most fundamental adjudicative standards, omitting, where not falsifying and distorting, the material facts, and citing law that is either inapplicable by reason thereof or materially distorted. This is verifiable from the record of those cases^[fn]..."

The appended footnote was as follows:

“As recognized by the law review article, ‘*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*’, 73 Albany Law Review 1 (2009), by Gerald Caplan, the legitimacy of judicial decisions can only be determined by comparison with the record (‘...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like...’ (p. 53)).”

25. The proposition that “the legitimacy of judicial decisions can only be determined by comparison with the record” is indisputable. Certainly, Mr. Regan has not disputed that appellants’ 13-page analysis of the August 21, 2013 decision (Exhibit G) – whose opening paragraph is:

“This analysis constitutes a ‘legal autopsy’ of the Appellate Division, Second Department’s August 21, 2013 decision & order, consistent with what is proposed in ‘*Legal Autopsies: Assessing the Performance of Judges and Lawyers Through the Window of Leading Contract Cases*’, 73 Albany Law Review 1 (2009), by Gerald Caplan, recognizing that the legitimacy of judicial decisions can only be determined by comparison with the record (‘...Performance assessment cannot occur without close examination of the trial record, briefs, oral argument and the like...’ (p. 53))” (at p. 1, underlining in the original) –

is such a record-based comparison.

26. Appellants’ analysis of the panel’s August 21, 2013 decision (Exhibit G) is dispositive of both their entitlement to all the relief their motion seeks and the further sanctions and disciplinary action that this affidavit seeks against Satterlee for Mr. Regan’s “Brief in Opposition” (¶4, *supra*). In and of itself, the analysis resoundingly puts the lie to Mr. Regan’s unsworn assertions to the Court with respect to appellants’ motion:

“...the allegations of bias, fraud, and sanctionable conduct are unsupportable. There is simply no basis to seek disqualification of the appellate panel, no basis for vacating this Court’s Order on the grounds of ‘lack of jurisdiction’ due to the panel’s bias, no basis for vacating the Court’s Order based on any alleged ‘fraud’ of defense counsel, and no basis for sanctions against defense counsel. Further, as Elena Sassower does not identify any law or facts actually misapprehended or overlooked by the appellate panel, there is no

grounds for reargument, and no reason this Court should grant leave to appeal to the Court of Appeals.” (at p. 2).


ELENA RUTH SASSOWER

Sworn to before me this
1st day of November 2013


Notary Public

BELINDA HAUGHTON
Notary Public, State of New York
No. 01HA6179682
Qualified in Westchester County
Commission Expires Dec. 24, 2015

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

----- X
ELENA RUTH SASSOWER and DORIS L. SASSOWER,
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AFFIDAVIT IN REPLY & IN FURTHER SUPPORT
OF PLAINTIFFS-APPELLANTS' MOTION

TO DISQUALIFY THE APPELLATE PANEL FOR DEMONSTRATED ACTUAL BIAS
& INTEREST, DISCLOSURE, VACATUR, REARGUMENT, SANCTIONS/COSTS,
LEAVE TO APPEAL TO THE COURT OF APPEALS

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