

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

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ELENA R. SASSOWER,

Claimant,

-against-

ANNA CAPELLEN,

Defendant.
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Index #: S.C. NY 187-2014

Affidavit in Support of
Order to Show Cause

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the *pro se* claimant in the above-entitled small claims action.
2. This affidavit is submitted in support of the relief requested by my accompanying order to show cause to vacate the Notice of Judgment, dated April 16, 2015, which, unaccompanied by any decision, robs me of a \$5,000 claim in rendering "Judgment in favor of defendant." (Exhibit A-1). Such Judgment by an arbitrator whose name is not printed and whose signature is illegible, is without basis in fact and law.
3. That the arbitrator has furnished no facts or law to support his "Judgment in favor of defendant" reflects his knowledge that it cannot be justified. Indeed, his Notice of Judgment, "dismiss[ing]" my claim, may be a retaliation for my complaining about him – which I did on April 16, 2015, at the time of the hearing.
4. According to the "Instructions to Claimant", which I received upon filing my small claims action on January 22, 2014 (Exhibit B-2), "volunteer Arbitrators...are thoroughly knowledgeable in the law." As I recollect, the script read by the Clerk at the outset of each small claims session similarly purports their competence and that the only difference between them and a judge is that arbitrators' decisions are not appealable.
5. Were it not for the purported competence of the arbitrators I would not have agreed to forfeit my right to a decision by a judge, with the further safeguard of a right of appeal therefrom.
6. This is a straight-forward contract case – fully supported by the February 2012 signed contract between myself and defendant (Exhibit C) and my fact-specific correspondence with her pertaining thereto, whose evidence includes bills and photos – and presents an account stated (Exhibit D, E, F).

7. The Notice of Judgment purports that the arbitrator's decision was "After Trial". At the April 16, 2015 "Trial", the arbitrator refused to read the February 2012 contract I furnished, refused to read the correspondence I furnished, asked questions reflecting ignorance of what an account stated is, ignored my protests on the subject, and stated, in response to my query as to whether, following the hearing, he would be reading the contract and correspondence, that he would not.
8. By contrast, defendant, represented by counsel,¹ did not hand up any documentary evidence either in opposition to my \$5,000 claim or in support of the bogus \$5,000 counterclaim she was allowed to interpose that very evening, and engaged in flagrant falsehoods – which I refuted.
9. So egregious was the arbitrator's conduct at the April 16, 2015 hearing that I was compelled to question his competence and request that he call a supervisor. With that, the arbitrator left the room and returned with the clerk who had called the calendar – Tom.
10. I recited to Tom the foregoing. His response, as he stood beside the arbitrator, was to assure me that the arbitrator would review whatever documentary evidence I wished to furnish in support of my claim, telling me, however, that I should only furnish what I had copies of.
11. I believe Tom remained in the hearing room while I handed the arbitrator the relevant substantiating documentation. These were, in the first instance:
 - (a) the signed February 2012 lease agreement between myself and defendant (Exhibit C);
 - (b) my May 17, 2013 letter to defendant (Exhibit D), sent by e-mail and certified mail, unresponded-to by her, itemizing the damages for which she was responsible pursuant to the lease agreement;
 - (c) my May 1, 2013 letter to defendant (Exhibit E-1), sent by e-mail and certified mail, unresponded-to by her, itemizing the utilities charges for which she was responsible pursuant to the lease agreement;
 - (d) my February 26, 2013 e-mailed letter to defendant (Exhibit E-2); my March 8, 2013 e-mail to her (Exhibit E-3); and my March 27,

¹ Defendant was represented by counsel from the outset. The case, filed on January 22, 2014, was first on the calendar on April 3, 2014 and then, a second time, on September 11, 2014. Unlike myself, defendant both lives and works in Manhattan. Nevertheless, on neither occasion did she appear. Rather, each time an attorney came in her stead and insisted that the case be heard by a judge – not an arbitrator. As a result, the case was put over to January 8, 2015. However, on January 7, 2015, defendant's counsel requested my consent to adjournment. The adjourned date – which was the fourth time the case was on the calendar – was April 16, 2015. Only then did defendant appear, this time with new counsel, who, stating that he had just been contacted by her that very day and that he was unfamiliar with the case, made an application for a \$5,000 cross-claim to my \$5,000 claim. At the hearing, the lawyer deferred to his client and was virtually silent.

2013 e-mail to her (Exhibit E-4), containing the underlying particulars of the utility charges for which she was responsible pursuant to the lease agreement;

(e) my October 3, 2013 e-mail to defendant (Exhibit F), unresponded-to by her, reflecting her non-response to both my May 1, 2013 and May 17, 2013 letters.

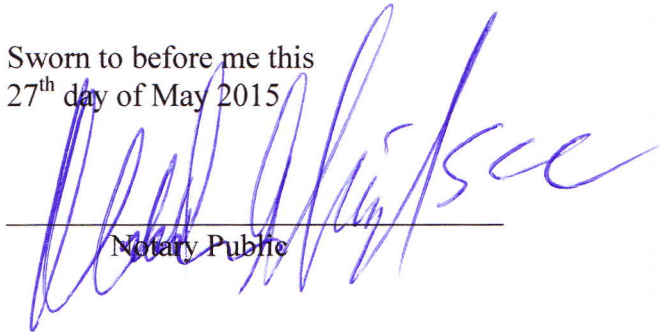
12. To additionally establish my claim – and the falsity of defendant’s assertions – I also furnished the arbitrator with documents I did not have copies of: (a) a large stack of photos substantiating the damages for which she was responsible, itemized by my May 17, 2013 letter (Exhibit D); and (b) the e-mail exchange between myself, defendant, and her housekeeper following defendant’s “vacating” the premises on April 2, 2013.
13. I had further documentation as well. This includes the lease agreement from April 2011 between myself and defendant, which defendant had not furnished, notwithstanding it was the basis for her bogus counterclaim. Only because the arbitrator stated that he was not interested in the earlier lease did I not hand ~~up~~ it up or the correspondence pertaining to it. I had brought both with me and I so-stated this.
14. Just as the Notice of Judgment dismisses my claim, without reasons, so too does it dismiss defendant’s counterclaim, without reasons (Exhibit A-1).
15. Upon information and belief, notwithstanding Tom’s assurance on April 16, 2015, in the presence of the arbitrator, that the arbitrator would read the documentary evidence I furnished in support of my claim, the arbitrator did not do so. Indeed, his Notice of Judgment is dated April 16, 2015 – the same date as the hearing. In other words, he would have had no time for studied review of the evidence I had provided, let alone to refresh himself as to black-letter law with respect to contracts and account stated.
16. The Notice of Judgment was mailed in an envelope bearing an April 22, 2015 postmark (Exhibit A-2) – and I received it on Friday evening, April 24, 2015. On Monday afternoon, April 27, 2015, I telephoned the small claims court, but Tom was gone for the day. I called back first thing Tuesday morning, April 28, 2015 and discussed the foregoing with him.
17. Tom told me that I could secure review and vacatur of the arbitrator’s Notice of Judgment by coming to small claims court and filling out a form for an order to show cause, which would be brought before a judge. Tom refused to give me his last name for purposes of this affidavit – or to give me the name of the arbitrator, whose signature is illegible on the Notice of Judgment (Exhibit A-1). He also told me that he believed that the arbitrator would have discarded what I had furnished at the April 16, 2015 hearing in support of my claim. I asked him to contact the arbitrator to ensure preservation of such documentary evidence, in the event it had not yet been discarded, but he refused.
18. In view of the seriousness of this matter and the possibility that it points to a pattern and practice of fraud and injustice in small claims court, I request that appropriate supervisory

and disciplinary steps be taken, consistent with §100.3D of the Chief Administrator's Rules Governing Judicial Conduct. This includes initiation of a formal complaint against the arbitrator.

19. No prior application for this or similar relief has been made.


ELENA RUTH SASSOWER

Sworn to before me this
27th day of May 2015



Notary Public