

Elena Ruth Sassower

16 Lake Street, Apartment 2C
White Plains, New York 10603

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Tel. (646) 220-7987

Fax (914) 428-4994

BY FAX: 212-949-6310 (2 pages)

October 7, 2008

Leonard A. Sclafani, Esq.
18 East 41st Street, Suite 1500
New York, New York 10017

RE: McFadden v. Doris L. Sassower & Elena Sassower
White Plains City Court #SP-651/89 ("SP-2008-1474")
Appellate Term #1427 WC

Dear Mr. Sclafani,

Reference is made to your September 25, 2008 affirmation in opposition to my September 18, 2008 motion in White Plains City Court to compel compliance by its Chief Clerk, Patricia Lupi, with the duties of her office & other relief. Your ¶¶9-11 state:

“9. Ms. Sassower bases a good portion of her motion on an ex-parte conversation that she claims to have had with the Chief Clerk of the Appellate Term, Paul Kenny.

10. Your affirmant called Mr. Kenny and inquired as to whether the substance of his conversation with Ms. Sassower was as Ms. Sassower reported it.

11. I read to Mr. Kenny that portion of Ms. Sassower’s moving papers as purport to report the substance of her conversation with him and he assured me that Ms. Sassower had not accurately reported his conversation and that he did not give her the advice or counsel that she claims to have received from him.”

Presumably, the “portion of [my] moving papers” that you read to Mr. Kenny was my ¶4, as it is the only paragraph of my eight-paragraph moving affidavit pertaining to my communications with the Appellate Term’s Clerk’s Office and Mr. Kenny. It reads as follows:

EX Q -1

“4. This motion is made on advice of the Clerk’s Office of the Appellate Term, which received from the Clerk’s Office of White Plains City Court a July 30, 2008 “Clerk’s Return on Appeal” for #651/89 (Exhibit F-1) and a July 31, 2008 “Clerk’s Return on Appeal” for #1502/07 (Exhibits G-1) – each deficient, *as a matter of law*, and materially false. Likewise deficient were the listings of “Papers Forwarded to Appellate Term” (Exhibits F-2, G-2), accompanying each “Clerk’s Return on Appeal”. According to Appellate Term Chief Clerk Paul Kenny, the preferred procedure is for me to make a motion in this Court prior to seeking relief from the Appellate Term, including for its so-ordering of a subpoena to Chief Clerk Lupi for the documents and information I requested from her by letters dated July 30, 2008 (Exhibit H) and August 22, 2008 (Exhibit K).” (*italics in the original*).

As your opposing affirmation is devoid of ANY particulars as to what Mr. Kenny stated was “not accurately reported” by my ¶4 – and as I myself read such paragraph to Mr. Kenny and reviewed with him the contents of my July 30, 2008 and August 22, 2008 letters before filing my motion – please specify what you purport Mr. Kenny told you so that I might appropriately reply in the affidavit I am required to file by Friday, October 10, 2008.

Thank you.

Very truly yours,



ELENA RUTH SASSOWER

cc: Paul Kenny, Clerk/Appellate Term of the Second Judicial Department

LEONARD A. SCLAFANI, P.C.

COUNSELLORS-AT-LAW
18 E. 41ST STREET
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October 9, 2008

Elena Ruth Sassower
16 Lake Street, Apt 2C
White Plains, New York 10603

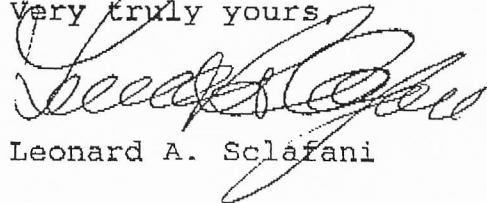
RE: McFadden v. Doris L. Sassower & Elena Sassower
White Plains City Court #SP-651/89 ("SP-2008-
1474") Appellate Term #1427WC

Dear Ms. Sassower:

I am in receipt of your October 7, 2008 fax. It is not my purpose or intent to litigate with you through the mails. You are free to presume whatever you wish from your reading of the papers that I submitted in opposition to your motion; however, neither I nor my client are bound by your presumptions. My affirmation in opposition to your motion is written in plain English. It says what it says and I am not required to amend, modify, explain, add to, subtract from or supplement any aspect of it; nor will I do so. You are free to reply to my client's opposition to your motion in any manner that you see fit. Neither I nor my client agree to, or acquiesce in, the truth, accuracy or propriety of your characterizations, presumptions and interpretations of my client's opposition papers.

Please guide yourself accordingly.

Very truly yours,



Leonard A. Sclafani

LAS:rw

EX-2

Elena Ruth Sassower

16 Lake Street, Apartment 2C
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E-Mail: elenaruth@aol.com

Tel. (646) 220-7987
Fax (914) 428-4994

BY FAX: 718-643-7889 (3 pages)

October 7, 2008

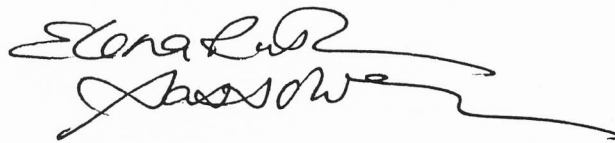
TO: Paul Kenny, Chief Clerk/Appellate Term

RE: McFadden v. Doris L. Sassower & Elena Sassower
White Plains City Court #SP-651/89 ("SP-2008-1474")
Appellate Term #1427 WC

This follows up my many phone messages for you since September 26, 2008, urgently requesting to speak with you.

Enclosed is my letter of today's date to Leonard Sclafani, Esq. – to which you are an indicated recipient.

Thank you.

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower". The signature is written in a cursive style with a long, sweeping underline.

Enclosure

*** TX REPORT ***

TRANSMISSION COMPLETED

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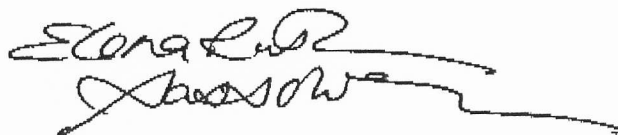
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October 10, 2008

TO: Paul Kenny, Chief Clerk/Appellate Term

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White Plains City Court #SP-651/89 ("SP-2008-1474")
Appellate Term #1427 WC

Enclosed is a copy of Mr. Sclafani's faxed October 9, 2008 letter to me – not indicating you as a recipient. As you can see, Mr. Sclafani refuses to elaborate on what his September 25, 2008 affirmation claims you told him.

The pertinent portion of the affidavit that I am filing today in White Plains City Court in support of my September 18, 2008 motion to compel Clerk Lupi's compliance with the duties of her office, beginning with "a proper Clerk's Return on Appeal" for the above appeal, is as follows:

"33. As for Mr. Sclafani's assertion (at ¶9) that 'a good portion of [my] motion' is based on 'an ex-parte conversation' that I 'claim[]' to have had with the Appellate Term's Clerk Paul Kenny, only one of my motion's eight paragraphs, pertains to that conversation. Such is my motion's ¶4 – quoted hereinabove at ¶4. For the convenience of the Court – and in view of its importance – it is:

'4. This motion is made on advice of the Clerk's Office of the Appellate Term, which received from the Clerk's Office of White Plains City Court a July 30, 2008 'Clerk's Return on Appeal' for #651/89 (Exhibit F-1) and a July 31, 2008 'Clerk's Return on Appeal' for #1502/07 (Exhibits G-1) – each deficient, *as a matter of law*, and materially false. Likewise deficient were the listings of 'Papers Forwarded to Appellate Term' (Exhibits F-2, G-2), accompanying each 'Clerk's Return on Appeal'. According to Appellate Term Chief Clerk Paul Kenny, the preferred procedure is

EX Q-4

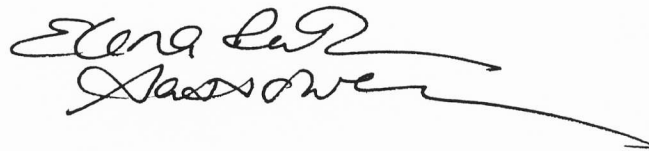
for me to make a motion in this Court prior to seeking relief from the Appellate Term, including for its so-ordering of a subpoena to Chief Clerk Lupi for the documents and information I requested from her by letters dated July 30, 2008 (Exhibit H) and August 22, 2008 (Exhibit K).’ (italics in the original).’

34. Mr. Sclafani purports (at ¶¶10-11) that he read this to Mr. Kenny, who ‘assured [him] that [I] had not accurately reported his conversation and that he did not give me the advice or counsel that [I] claim[] to have received from him.’ Notably, Mr. Sclafani provides no particulars.

35. By letter faxed to Mr. Sclafani on October 7, 2008 (Exhibit Q-1), to which Mr. Kenny was an indicated recipient (Exhibit Q-3), I called upon Mr. Sclafani to particularize so that I might respond appropriately by this affidavit. His October 9, 2008 faxed letter to me – indicating no copy for Mr. Kenny (Exhibit Q-2) – declined to elaborate. I herein reiterate the truth of what my ¶4 asserts.” (underlining in the original).

This letter will now be inserted as Exhibit Q-4 to my October 10, 2008 affidavit.

Thank you.

A handwritten signature in black ink, appearing to read "Elena Lupi" followed by a long, sweeping horizontal line that extends to the right.

Enclosure

cc: Leonard Sclafani, Esq.

*** TX REPORT ***

TRANSMISSION COMPLETED

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