

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

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CENTER FOR JUDICIAL ACCOUNTABILITY, INC.
and ELENA RUTH SASSOWER, individually and
as Director of the Center for Judicial Accountability, Inc,
acting on their own behalf and on behalf of the People
of the State of New York & the Public Interest,

August 1, 2018

Plaintiffs-Appellants,

**Reply Affidavit in Further
Support of Appellants’ OSC,
with Preliminary Injunction
& TRO -- & for Additional
“Other & Further Relief”**

-against-

Albany Co. Index #5122-16

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, JOHN J. FLANAGAN in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, CARL E. HEASTIE, in his official capacity
as Assembly Speaker, THE NEW YORK STATE ASSEMBLY,
ERIC T. SCHNEIDERMAN, in his official capacity as Attorney
General of the State of New York, THOMAS P. DiNAPOLI,
in his official capacity as Comptroller of the State of New York,
and JANET M. DiFIORE, in her official capacity as Chief Judge of the
State of New York and chief judicial officer of the Unified Court System,

Defendants-Respondents.

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

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual plaintiff-appellant herein, fully familiar with all the facts, papers and proceedings heretofore had, and submit this affidavit in reply to Assistant Solicitor General Frederick Brodie’s July 23, 2018 letter requesting that the Court not sign appellants’ order to show cause (Exhibit T-2)¹ – which he then reiterated by a July 26, 2018 letter to the Court (Exhibit

¹ Exhibits A-U are annexed to my July 24, 2018 moving affidavit in support of appellants’ order to show cause, with preliminary injunction and TRO. The exhibits to this affidavit continue the sequence, beginning with V.

X), upon my furnishing the Court and serving him with the unsigned order to show cause on July 25, 2018.

2. On July 24, 2018 and July 27, 2018, I gave NOTICE to Attorney General Barbara Underwood of her duty to withdraw Assistant Solicitor General Brodie's July 23, 2018 letter "forthwith" because it was "materially false and deceitful" and that, absent her doing so, I would furnish the particulars to the Court and seek sanctions pursuant to 22 NYCRR §130-1.1 *et seq.*, as well as other relief (Exhibits W-1, Y-1). Having received no response from her, nor from any of her many supervisory/managerial attorneys to whom I also furnished the NOTICE – and receiving only insolent response from Assistant Solicitor General Brodie (Exhibits W-2, Y-2) – I was put to the burden of undertaking a "legal autopsy"/analysis of his July 23, 2018 letter, demonstrating it to be, from beginning to end and in virtually every line, a "fraud on the court", as that term is defined. I annex the "legal autopsy"/analysis as Exhibit Z and incorporate it by reference, as if more fully set forth, swearing to the accuracy of its factual and legal presentation.

3. Based on such "legal autopsy"/analysis – and my unresponded-to NOTICES to Attorney General Underwood and her supervisory/managerial attorneys that necessitated it – and the responses I received from Assistant Solicitor General Brodie, this reply affidavit EXPRESSLY seeks, pursuant to the seventh branch of appellants' unsigned order to show cause, which requests "such other and further relief as may be just and proper", the granting of an order:

(1) pursuant to 22 NYCRR §130-1.1 *et seq.*, imposing maximum costs and \$10,000 sanctions against Assistant Solicitor General Brodie, as well as against Attorney General Underwood and all complicit supervisory/managerial attorneys under her;

(2) pursuant to Judiciary Law §487(1), assessing penal law penalties against Assistant Solicitor General Brodie, as well as against Attorney General Underwood and all complicit supervisory/managerial attorneys under her, as well as such determination as would afford appellants treble damages against them in a civil action;

(3) pursuant to 22 NYCRR §100.3D(2), referring Assistant Solicitor General Brodie, as well as Attorney General Underwood and all complicit supervisory/managerial attorneys under her to:

(i) the Third Department’s Attorney Grievance Committee for their knowing and deliberate violations of New York’s Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 “Non-Meritorious Claims and Contentions”, Rule 3.3 “Conduct Before A Tribunal”; Rule 8.4 “Misconduct”; Rule 5.1 “Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers”; and Rule 5.2 “Responsibilities of a Subordinate Lawyer”;

(ii) criminal authorities such as Albany County District P. David Soares and the United States Attorney for the Northern District of New York for their penal law violations and for prosecution, including pursuant to Penal Law §496 ‘Corrupting the government’ [“The Public Trust Act”];

(4) pursuant to the Court’s inherent power to protect itself, the judicial process, and the public from corruption and fraud, directing Attorney General Underwood – if she has not appeared at the August 2, 2018 oral argument of the TRO – to appear before the Court and/or to immediately furnish the Court with a sworn statement setting forth her answers to each of the five paragraphs of appellant Sassower’s July 24, 2018 moving affidavit under the title heading “Appellants’ Entitlement to a TRO and Preliminary Injunction” (¶¶44-49), beginning with its final two paragraphs, cited by Assistant Solicitor General Brodie’s July 23, 2018 letter for the proposition:

“Although she attempts to shift the burden to respondents (*e.g.* Sassower Aff. ¶¶47-48), the burden of establishing her case rests solely on Ms. Sassower – as plaintiff, as appellant, and as the movant seeking emergency relief.”

4. As identified by my “legal analysis”/autopsy of the July 23rd letter (Exhibit Z, pp. 9-11), Assistant Solicitor General Brodie’s inference that appellants have not met their burden in “seeking emergency relief”:

“conceals and falsifies the true facts – which are that appellants have met their burden of establishing their entitlement to a TRO and preliminary injunction. This is OBVIOUS from the cited ¶¶47-48 of appellant Sassower’s affidavit, which became ¶¶48-49 in her finalized affidavit. They read:

48. Suffice to say, with respect to the requested TRO and preliminary injunction pertaining to the commission-based judicial salary increases –

and the district attorney salary increases based thereon – Attorney General Underwood must demonstrate that Judge Hartman’s dispositions of appellants’ sixth, seventh, and eight causes of action [R.109-112 (R.187-201), R.112-114 (R.201-212), R.114 (R.212-213)], are defensible, which, based on the facts and law in the record before her – highlighted by the brief (at pp. 9-10, 14-17, 20, 26-27, 35-36, 37-38, 42, 44, 50-69) – she cannot do.

49. Indeed, in light of the enclosures to my May 16, 2018 NOTICE (free-standing Exhibit I (eye)), Attorney General Underwood should be expected to produce, at the oral argument of this TRO – at minimum:


- her findings of fact and conclusions of law as to the respects in which the Commission on Judicial Compensation’s August 29, 2011 report, on its face, violates Chapter 567 of the Laws of 2010 – itemized by appellants’ executive summary to their October 27, 2011 opposition report [See appellants’ November 29, 2011 corruption complaint to public integrity bureau; March 2, 2012 letter: Exhibit A; March 30, 2012 order to show cause for a stay with TRO in declaratory judgment action];
- her findings of fact and conclusions of law as to the respects in which the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation [R.1083-1105], on its face, violates Chapter 60, Part E, of the Laws of 2015 [R.1080-1082] – summarized by appellants’ 12-page ‘Statement of Particulars’ and itemized by the fifteenth cause of action of their March 23, 2016 verified second supplemental complaint in the prior citizen-taxpayer action [R.212-213] on which the eighth cause of action of their September 2, 2016 verified complaint rests [R.114]. [See appellants’ March 6, 2018 misconduct complaint against Albany District Attorney Soares, Exhibits B & C].’

The above-quoted ¶¶48-49 of appellant Sassower’s moving affidavit – together with her three predecessor paragraphs, ¶¶44-47, all under her section heading ‘Appellants’ Entitlement to a TRO and Preliminary Injunction’ – reflect the true facts. Appellants have met their burden – and the burden now shifts to respondents to respond. This, respondents completely fail to do in the balance of Assistant Solicitor General Brodie’s letter – and most relevant to this are his sections A and B, each fraudulently purporting that ‘Appellant Has Not Shown, and Cannot Show...’ – without identifying, let alone confronting, the showing that appellants have made.” (underlining in the original)

5. According to Assistant Solicitor General Brodie’s July 24, 2018 e-mail to me (Exhibit W-2), he “doubt[s] that any such ‘findings of fact and conclusions of law’ [as my ¶49 has requested]

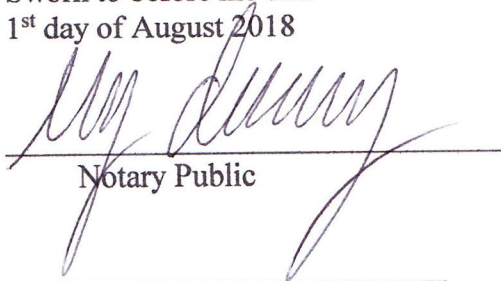
exist”. That is outrageous and indefensible – and the Court must demand an explanation from him and from his superiors at the attorney general’s office, including Attorney General Underwood, with a demand that such “findings of fact and conclusions of law” be made IMMEDIATELY by New York’s “department of law”, headed by “the attorney-general” (NYS Constitution, Article V, §4) and produced forthwith – and not only with respect to facial statutory violations, but as to the mountain of other statutory violations, as well as violations of constitutional provisions and legislative rules for which – as the record shows – appellants furnished the rock-solid, *prima facie* EVIDENCE, covered up by Judge Hartman’s fraudulent judicial decisions. As stated by my “legal autopsy”/analysis:

“The dispositive facts and law were always verifiable, readily – often within minutes – as they still are. Certainly, it takes no more than minutes to verify that the fifth sub-cause of appellants’ sixth cause of action was disposed of on a LIE, concocted by the attorney general’s office and adopted by Judge Hartman – or that Judge Hartman’s *sua sponte*, two-sentence dismissal of appellants’ seventh and eighth causes of action, unsupported by any law, is indefensible. These suffice for the Court’s granting of the TRO and preliminary injunction, on the spot, *as a matter of law.*” (at pp. 31, capitalization, italics, and underlining in the original)



Elena Ruth Sassower

Sworn to before me this
1st day of August 2018



Notary Public

MARY DUNWOODY
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01DU6356781
Qualified in Westchester County
Commission Expires April 03, 2021

TABLE OF EXHIBITS

- Exhibit V-1: Appellant Sassower's July 24, 2018 e-mail to Appellate Division, Third Department Chief Motion Attorney Edward Carey
- Exhibit V-2: Chief Motion Attorney Carey's July 25, 2018 e-mail
- Exhibit W-1: Appellant Sassower's July 24, 2018 e-mail to Attorney General Barbara Underwood (3:22 pm) – "CJA v. Cuomo – NOTICE TO ATTORNEY GENERAL UNDERWOOD: your duty to withdraw Assistant Solicitor General Brodie's letter to the Appellate Division & to appear personally, or by a high-ranking deputy, at the oral argument of the TRO – Friday, July 27th"
- Exhibit W-2: Assistant Solicitor General Brodie's July 24, 2018 e-mail (5:01 pm) – "RE: CJA v. Cuomo – NOTICE TO ATTORNEY GENERAL UNDERWOOD..."
- Exhibit X: Assistant Solicitor General Brodie's July 26, 2018 e-mail (9:41 am), with attached July 26, 2018 letter to Court Clerk Robert Mayberger
- Exhibit Y-1: Appellant Sassower's July 27, 2018 e-mail to Attorney General Underwood (4:54 pm) – "CJA v. Cuomo – NOTICE TO ATTORNEY GENERAL UNDERWOOD: The Attorney Misconduct, for which you are Liable, & your Duty to Appear at the Oral Argument of the TRO – Thursday, Aug 2"
- Exhibit Y-2: Assistant Solicitor General Brodie's July 27, 2018 e-mail (5:12 pm)
- Exhibit Z: Appellant Sassower's "legal autopsy"/analysis of Assistant Solicitor General July 23, 2018 letter to Court Clerk Mayberger
- Exhibit AA: July 20, 2018 letter from Third Department Attorney Grievance Committee Chief Attorney Monica Duffy – "Re: Notice of Declination to Investigate a Complaint" (sent by mail only)

Appellate Division Docket #

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ELENA RUTH SASSOWER, Unrepresented Plaintiff-Appellant,
individually & as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York & the Public Interest

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