

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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December 21, 2015

TO: Commission on Legislative, Judicial and Executive Compensation

FROM: Elena Ruth Sassower, Director/Center for Judicial Accountability, Inc. (CJA)

RE: Assisting the Commission in discharging its statutory duty of “tak[ing] into account all appropriate factors” as to “adequate levels of compensation and non-salary benefits”

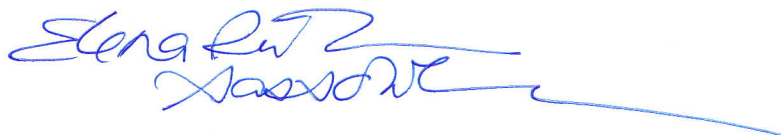
On December 8, 2015 – the day after the Commission’s December 7, 2015 public meeting at which each of its seven members collusively ignored my evidence-supported November 30 2015 testimony and December 2, 2015 supplemental statement so as to unanimously endorse judicial salary increases that each Commissioner knew, from that evidence, to be fraudulent, statutorily-violative, and unconstitutional – a decision was entered in a small claims case in Civil Court/New York County in which I am the plaintiff.

Such decision – and the record of my small claims case on which it sits – is further evidence of “the lawlessness and non-accountability that reigns in New York’s judicial branch”, to which I testified at the November 30, 2015 hearing as not only an “appropriate factor” for the Commission’s consideration, disintitling the judiciary to any salary increases, but a “factor” of constitutional magnitude.

Enclosed is my letter of today’s date to Civil Court/New York County Supervising Judge Tanya Kennedy regarding her “Undischarged Supervisory/Disciplinary Responsibilities” with respect to the record of my small claims case. Two other witnesses who testified before you on November 30, 2015 and furnished you with written submissions are also indicated recipients of the letter: Chief Administrative Judge Marks and Civil Court Judge/Acting Supreme Court Justice Lebovits, who is President of the Board of Judges of the Civil Court of the City of New York. As my small claims case is utterly straight-forward and the record is very slim, they can easily corroborate what my letter describes about the case. This, prefatory to furnishing you with findings of fact and conclusions of law with respect to the evidence I presented by my November 30, 2015 testimony, *to wit*, CJA’s October 27, 2011 Opposition Report and the record of the three litigations based thereon, all accessible *via* the prominent link for the Commission on CJA’s website, www.judgewatch.org, “NO PAY RAISES FOR NEW YORK’S CORRUPT PUBLIC OFFICERS: The Money Belongs to Their Victims!”.

As Chief Administrative Judge Marks and New York City Civil Court Board President Lebovits doubtless have, or can readily obtain, e-mail addresses for the other judges and judicial pay raise advocates who testified at your November 30, 2015 hearing or furnished written submissions, I request that they forward this letter to them so they can all assist you in discharging your statutorily-mandated duty of “tak[ing] into account all appropriate factors” as to “adequate levels of compensation and non-salary benefits”.

Thank you.



cc: All recipients of enclosed December 21, 2015 letter

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Elena Ruth Sassower, Director

BY EXPRESS MAIL

December 21, 2015

New York County Civil Court Supervising Judge Tanya R. Kennedy
111 Centre Street, Room 838
New York, New York 10013

RE: Your Undischarged Supervisory/Disciplinary Responsibilities – & the Record of Civil Court/NY County #SC-187-2014, further substantiating CJA's testimony at the November 30, 2015 hearing of the Commission on Legislative, Judicial and Executive Compensation as to "the lawlessness and non-accountability that reigns in New York's judicial branch"

Dear Supervising Judge Kennedy,

This follows my repeated phone calls to your chambers, beginning at the end of May 2015, continuing at the end of August, and then again on Monday and Tuesday of last week, requesting your supervisory oversight of Avi Naveh, Esq., an arbitrator in Small Claims Court, whose misconduct and fraud in my above-numbered small claims action, robbing me of \$5,000, has been covered-up and perpetuated by judges in the Small Claims Court, first by Civil Court Judge Jose Padilla and then by Civil Court Judge/Acting Supreme Court Justice David B. Cohen, without discernable oversight by you.

The particulars of Arbitrator Naveh's misconduct and fraud are not in dispute. I detailed them by a fact-specific, evidence-substantiated May 27, 2015 affidavit in support of an order to show cause to vacate his April 16, 2015 "Notice of Judgment". My affidavit stated that the "Notice of Judgment" was unsupported by any decision, unsupported by any facts and law, insupportable in fact and law – and likely retaliation against me for complaining about him, at the April 16, 2015 "trial" before him – which I did because, in this small claims action based on a written contract and correspondence establishing an account stated, Arbitrator Naveh:

"refused to read the...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." (May 27, 2015 affidavit, at ¶7, underlining in the original).

Have you read my May 27, 2015 affidavit? The facts it particularizes are entirely uncontested by defendant, her attorney – and by Judges Padilla and Cohen. Their fraudulent decisions denying vacatur of the April 16, 2015 “Notice of Judgment”, do not even claim, let alone show, that the “Notice of Judgment” is defensible, nor disclose a single fact recited by my affidavit or its penultimate paragraph, based upon those facts, that:

“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.D of the Chief Administrator’s Rules Governing Judicial Conduct. This includes initiation of a formal complaint against the arbitrator.” (at ¶18).

Indeed, the particulars of the misconduct and fraud of Judges Padilla and Cohen, covering up for Arbitrator Naveh, are also not in dispute. They are established by my subsequent motion papers:

- (1) my July 15, 2015 motion, unopposed by defendant and her counsel, detailing the fraudulence of Judge Padilla’s May 28, 2015 decision declining to sign my May 27, 2015 order to show cause and requesting:

“refer[ral of] the arbitrator to supervisory and disciplinary authorities pursuant to §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct, as requested by [my] uncontested typewritten May 27, 2015 affidavit.” (notice of motion, ¶3, underlining in the original).

- (2) my September 18, 2015 motion, unopposed by defendant and her counsel, detailing the fraudulence of Judge Cohen’s August 20, 2015 decision denying my July 15, 2015 motion and requesting reargument. Its recitation also suffices to establish the fraudulence of Judge Cohen’s December 3, 2015 decision disposing of the motion.

The Court’s file of my small claims case is readily available to you. From it, you can swiftly verify the foregoing – and just as swiftly confirm that the reason the decisions of Judges Padilla and Cohen conceal ALL the facts presented by my May 27, 2015 affidavit is because those facts are dispositive of my entitlement to BOTH vacatur of Arbitrator Naveh’s “Notice of Judgment” and to his referral to disciplinary authorities – as Judges Padilla and Cohen each know.

To further assist you in taking belated disciplinary steps – not only against Arbitrator Naveh, but against Judges Padilla and Cohen, consistent with your mandatory disciplinary responsibilities pursuant to §§100.3(D)(1) and (2) of the Chief Administrator’s Rules Governing Judicial Conduct¹ --

¹ Chief Administrator’s Rules Governing Judicial Conduct, §100.3(D) “Disciplinary Responsibilities”

“(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.

I have constructed a webpage on the Center for Judicial Accountability's website, www.judgewatch.org, posting the record of my small claims case. It is accessible *via* CJA's prominent homepage link "NO PAY RAISES FOR NEW YORK'S CORRUPT PUBLIC OFFICERS: The Money Belongs to their Victims!". That is the link I created for the Commission on Legislative, Judicial and Executive Compensation, before which I testified at its November 30, 2015 public hearing, stating: "Cases are perfect paper trails. There's a record. So it's easy to document judicial corruption". As I am furnishing a copy of this letter to the Commission in further support of my testimony, the record of my small claims case will be posted, with this letter, on its webpage.

In testifying at the November 30, 2015 hearing, I stated, both orally and by my written statement²:

"New York's judiciary is not discharging its constitutional function to render fair and impartial justice, according to law. Rather, it is pervasively corrupt, from trial levels up through appellate and supervisory levels, 'throwing' cases by fraudulent judicial decisions that falsify and omit the controlling facts and obliterate the most basic adjudicative and due process standards."

That certainly describes the slim record of my small claims case, except that the appellate process is yet untested by my unperfected September 18, 2015 notice of appeal from Judge Cohen's fraudulent August 20, 2015 decision, in part because I have yet to receive any acknowledgment of the notice of appeal.

Also testifying at the November 30, 2015 hearing – indeed testifying on your behalf – was the President of the Board of Judges of the Civil Court of the City of New York, Acting Supreme Court Justice/Civil Court Judge Gerald Lebovits. His description of Civil Court judges as possessed by "a profound desire to serve the public, to do justice for the People of the great State of New York" compels me to send a copy of this letter to him so that he can reconcile those assertions with the record herein. Certainly, I cannot find in the record any trace of the qualities he identified in his November 18, 2015 written statement to the Commission as essential to a judge: "...acumen, attention, common sense, independence, integrity, scholarship, temperament and wisdom"³

(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."

² Both the video of my testimony and my written statement are accessible from the Commission on Legislative, Judicial and Executive Compensation's website, www.nyscommissiononcompensation.org, as, likewise, from CJA's website, www.judgewatch.org.

³ Judge Lebovits' November 18, 2015 written statement is posted on the Commission's website.

Judge Cohen, who is an acting Supreme Court justice, in addition to being a Civil Court judge, is paid \$174,000 a year. Judge Padilla, as a Civil Court judge, is paid \$159,900. You yourself, as both a Civil Court judge and acting Supreme Court justice, are paid \$174,000 a year. According to Judge Lebovits' written statement, these salaries are meagre and pitiful and New York taxpayers – of which I am one – should be immediately paying each of you \$252,463 a year for your “herculean work successfully resolving hundreds of thousands of cases”. How is it then that you, Judge Padilla, and Judge Cohen – three Civil Court judges – could not “successfully resolve” my simple, straightforward, small claims case, where the \$5,000 due me is established by a written contract and correspondence constituting an account stated?

Will it be necessary for me to spend another \$30 on the filing of another notice of appeal, this time from Judge Cohen's fraudulent December 3, 2015 decision? Or does the December 3, 2015 decision leave open the possibility that Arbitrator Naveh, upon being furnished the file by the Clerk – presumably containing my three unopposed motions and my unperfected notice of appeal – will “complete his Finding and Award on the Case Record Card” – consistent NOT with his indefensible “Notice of Judgment”, but with the ONLY documentary evidence that was before him in the case, *to wit*, the documentary evidence I furnished at the April 16, 2015 “trial”, as particularized by my May 27, 2015 affidavit (¶¶8, 11, 12). And where is that evidence? Did Arbitrator Naveh destroy it? – as Tom, the Small Claims Part Clerk, believed when I spoke with him by phone on April 28, 2015 (¶17). If so, when was it destroyed – and was that proper? And was it proper for Tom to refuse to contact Arbitrator Naveh so as to ensure that the evidence would be preserved, in the event he had not discarded it (¶17)?

Needless to say, your sixth-month failure to take discernable supervisory steps in my small claims case suggests actual bias and interest on your part. You plainly have a financial interest in the judicial salary increases I have been publicly opposing since 2011, as well as personal, professional, and political relationships with judges and former judges whose corruption is exposed by my 25-year judicial accountability advocacy upon which that opposition rests. Doubtless, too, those judicial and other relationships were invaluable to you in securing and winning an uncontested election last month to be a Supreme Court justice.

Among your relationships: Barry Cozier, himself so well-connected that Chief Judge Lippman not only appointed him, on March 30, 2015, to be vice-chair of his Commission on Statewide Attorney Discipline, but, on June 30, 2015, appointed him to be one of his two appointees to the Commission on Legislative, Judicial and Executive Compensation – and then, on August 10, 2015, upon the resignation of Chief Administrative Judge Prudenti, appointed him to chair the Commission on Statewide Attorney Discipline.⁴

⁴ The Office of Court Administration's press releases are posted on its website: <http://www.nycourts.gov/press/index.shtml>.

You were Mr. Cozier's principal law clerk from May 1999 when he was a Supreme Court justice and, in March 2001, when he was promoted to the Appellate Division, Second Department, you continued as his principal law clerk until you yourself were elected to the Civil Court in November 2005.⁵ Were you unaware of my substantial correspondence to your boss in November 2003 pertaining to the Appellate Division, Second Department's corruption of the attorney disciplinary system, involving its most senior and powerful justices and the Commission on Judicial Conduct – and my hand-delivery to his Westchester chambers of two boxes of casefile proof as to the flagrant unconstitutionality of New York's attorney disciplinary law, *as written and as applied*– boxes that remained in his possession from November 2003 to January 20, 2005.

At the November 30, 2015 hearing of the Commission on Legislative, Judicial and Executive Compensation, I identified Mr. Cozier's "utter disregard for casefile evidence of judicial corruption, particularly as relates to the Commission on Judicial Conduct and the court-controlled attorney disciplinary system, whose corruption [he] perpetuated". I then furnished the particulars by a December 2, 2015 supplemental statement (at pp. 3-5), whose starting point was my hand-delivery of those two boxes and my November 2003 correspondence pertaining thereto – in other words, the period in which you were his principal law clerk at the Appellate Division, Second Department.⁶

I do not know the significance, if any, of the December 3, 2015 date of Judge Cohen's decision determining my reargument motion – not entered into the records of the Small Claims Clerk's Office until December 8, 2015, the day after the Commission's first deliberative meeting, wherein its criminal disregard of my November 30, 2015 testimony and December 2, 2015 supplemental statement was manifest. However, by December 3, 2015, Judge Cohen may be presumed to have read the front-page December 1, 2015 New York Law Journal article about the Commission's November 30, 2015 hearing, "*OCA Asks Pay Commission for Parity With US Judges*", whose description of my testimony was as follows:

"The proposed pay increases was not without its critics, who challenged the quality of the state bench and said no raise was deserved.

Among them was Elena Sassower, the director and co-founder of the Center for Judicial Accountability. She said judges '...and judicial pay raise advocates tout the excellence and high quality of the judiciary – implicitly recognizing that judicial salary increases are predicated on judges discharging their constitutional function of rendering justice.'

⁵ You were apparently undeterred by the supposedly pitiful salary that Civil Court judges were then being paid, \$125,600, which was a nearly \$20,000 jump from your \$105,895 final salary as Appellate Division Justice Cozier's principal law clerk.

⁶ The Commission's website posts my December 2, 2015 supplemental statement. The evidence supporting it – including the two boxes and the November 2003 correspondence – is posted on CJA's website, here: <http://www.judgewatch.org/web-pages/judicial-compensation/2015/dec-2-2015-supplemental-statement.htm>.

Sassower said, ‘they need a reality check if they are actually unaware of the lawlessness and unaccountability that reigns in New York’s judicial branch.’”

Suffice to note that the final paragraph of my September 18, 2015 reargument motion – whose accuracy Judge Cohen’s December 3, 2015 decision does not contest – stated:

“14. Were there an audio recording [of the August 20, 2015 oral argument], it would reveal not only hostile behavior by Judge Cohen during the oral argument, especially inappropriate to a small claims proceeding, but his peculiar question, to the effect of didn’t I have many lawsuits? – a question evincing improper *dehors* the record knowledge Judge Cohen had and wanted. Although I responded that this is my only lawsuit – and, indeed, it is the only lawsuit I have in Small Claims Court, I do have, currently, two open lawsuits, both brought in the public interest on behalf of the People of the State of New York. One is in limbo, sitting on a shelf, in the Clerk’s Office in Supreme Court/New York County, after having been transferred from Supreme Court/Bronx County (#302951/12: *Center for Judicial Accountability, et al v. Cuomo et al.*). The other, now being litigated, is in Supreme Court/Albany County (#1788-14: *Center for Judicial Accountability, Inc., et al v. Cuomo, et al*). Each involve, *inter alia*, the fraudulent, statutorily-violative, and unconstitutional 27% judicial pay raises recommended by the 2011 Report of the Commission on Judicial Compensation, of which Judge Cohen and his judicial brethren are beneficiaries.”

To assist you in effecting the belated supervision that is your duty – or in disqualifying yourself – a copy of this letter is being furnished to Chief Administrative Judge Marks so that he can assist in enforcing the Chief Administrator’s Rules Governing Judicial Conduct. These are the very rules handed out at the December 14, 2015 meeting of the Commission on Legislative, Judicial and Executive Compensation by former Court of Claims Judge/former Senate Judiciary Committee Chairman James Lack, who is a Commissioner. In Commissioner Lack’s words, these rules, Part 100, “ha[ve] to be followed...behavior by members of the judiciary is very carefully controlled. There is absolutely no political involvement allowed; there is absolutely nothing allowed that would demean judicial office.” (Tr. 5-6).

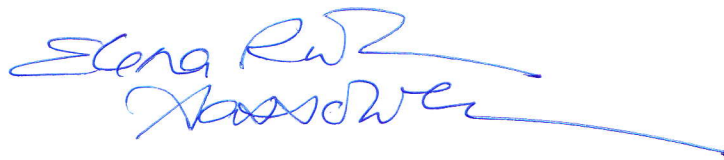
The disciplinary standard applicable to the misconduct herein – whose most obvious, if only, explanation is as retaliation against me – was enunciated more than a century ago by the Appellate Division, First Department in *Matter of Bolte*, 97 A.D. 551 (1904):

“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...” (at 568, bold 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.” (at 574).

Under the circumstances, referrals to the Commission on Judicial Conduct are warranted – and I so-request they be made.

Thank you.



cc: Commission on Legislative, Judicial and Executive Compensation
Acting Supreme Court Justice/Civil Court Judge Gerald Lebovits
President, Board of Judges of the Civil Court of the City of New York
Chief Administrative Judge Lawrence Marks, Office of Court Administration
New York County Civil Court Judge Jose Padilla
New York County Civil Court Judge/Supreme Court Justice David B. Cohen