

**Elena Ruth Sassower**

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

E-Mail: [elenaruth@aol.com](mailto:elenaruth@aol.com)

Tel. (914) 949-2169

Fax (914) 428-4994

FILED CITY COURT OF  
WHITE PLAINS, N.Y.

2008 JUN 24 P 4: 21

BY HAND

June 24, 2008

City Court Judge Jo Ann Friia  
White Plains City Court  
77 Lexington Avenue  
White Plains, New York 10601

RE: Respecting the Appearance & Actuality of Fair & Impartial Justice  
John McFadden v. Elena Sassower, White Plains City Court #SP-1502/07

Dear Judge Friia,

Are you aware of my two June 13, 2008 letters to City Court Clerk Patricia Lupi in the above-entitled matter that she improperly noticed for a June 30, 2008 trial before you? It is now 11 days since I hand-delivered these two letters to the Clerk's Office, without response from her, you, or anyone else.

Copies of these two unresponded-to June 13, 2008 letters are enclosed, for your convenience.<sup>1</sup> As you can see, I had requested that if Ms. Lupi did not vacate the trial notices she had sent, based on the facts and law recited by my letters, that she bring the letters to your attention so that you could exercise your authority both as trial judge and Chief Judge of White Plains City Court to strike the trial notices and make the further determinations warranted by the record, including transferring the case from White Plains City Court to ensure the appearance and actuality of impartial justice. I stated that I would otherwise have no choice but to bring an order to show cause, whose first relief would be for your disqualification and transfer of the case, and, if denied, for disclosure.

So that I may know how to proceed, please advise whether and when Ms. Lupi furnished you with my June 13, 2008 letters and what is your response.

A copy of this letter will be faxed to petitioner's counsel, Leonard Sclafani, Esq. I have received no response from him to my June 6 and June 13, 2008 letters to Ms. Lupi concerning her trial notices herein and assume the Court has likewise received none. Please confirm.

<sup>1</sup> Non-substantive, typographic errors and omissions have been corrected. Among the omissions: page references for my entitlement, *as a matter of law*, to the second and third branches of my September 5, 2007 cross-motion for dismissal and summary judgment. The page references are 13-18 of my moving affidavit in support of my November 9, 2007 order to show cause.

Ex-SS-1

Judge Jo Ann Friia

Page Two

June 24, 2008

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

ELENA RUTH SASSOWER, *Pro Se*

Enclosures

cc: Leonard Sclafani, Esq.

**Elena Ruth Sassower**

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

E-Mail: [elenaruth@aol.com](mailto:elenaruth@aol.com)

Tel. (914) 949-2169

Fax (914) 428-4994

FILED CITY COURT OF  
WHITE PLAINS, N.Y.

BY HAND

2008 JUN 24 P 4: 21

June 13, 2008

Patricia Lupi, Chief Clerk  
White Plains City Court  
77 Lexington Avenue  
White Plains, New York 10601

FILED CITY COURT OF  
WHITE PLAINS, N.Y.  
2008 JUN 13 P 3: 17

RE: Request for Clarification of Ms. Rodriguez' June 9, 2008 Letter  
John McFadden v. Elena Sassower, White Plains City Court #SP-1502/07

Dear Ms. Lupi,

I am at a loss to understand the June 9, 2008 letter of Court Assistant Jacqueline Rodriguez responding to my June 6, 2008 letter to you.

My June 6<sup>th</sup> letter to you enumerated three simple questions:

- “(1) the name of the judge before whom SP-1502/07 is scheduled for trial [on June 30, 2008];
- (2) whether it was that judge who decided to schedule SP-1502/07 for trial and, if so, whether he/she reviewed the pleadings, motions, and decisions in the case prior thereto;
- (3) whether it was that judge who decided to add “SP 651/89” to the trial notice and the reason for doing so inasmuch as it is not the “(original #)”, has a different premise, has a different caption with an additional party, and is only one of three open proceedings.”

Rather than answer directly, Ms. Rodriguez' letter states:

“the answers are in a decision that you received on or about October 11, 2007.  
As a courtesy, the pertinent answers to your questions have been highlighted.”

There were three highlighted portions on the decision she enclosed:

Ex SS-2

On the first page, the machine stamp:

“FILED CITY COURT OF  
WHITE PLAINS, N.Y.  
2007 OCT 11 P 12:22”

On the second page, the final paragraph:

“Last, the Court has reviewed ‘Decision on Motion’ dated December 19, 1991 under Index No. 651/89 and notes the following: The Hon. James B. Reap is retired. Since the Order ‘reserved decision’ it does not fall within the ambit of CPLR 9002. Additionally, to the extent a prior action remains pending, the Court is not required to enter an order of dismissal under CPLR 3211 (a) (4). Rather, the Court will consolidate any prior pending action with the instant proceeding to avoid duplicative trials and promote judicial economy (*see Toulouse v. Chander*, 5 Misc.3d 1005 [A], FN. 9).”

And on the third page, the identification of the judge who has signed the decision:

“HON. BRIAN HANSBURY  
CITY COURT JUDGE”

**Please advise as to what Ms. Rodriguez’ letter means – not the least reason being because Judge Hansbury recused himself by a January 29, 2008 decision & order, stating:**

**“The undersigned hereby recuses himself and directs the Clerk of the Court to assign this matter to another judge of White Plains City Court.”**

In so doing, Judge Hansbury did not direct this case for trial. He directed it for assignment to “another Judge of White Plains City Court”, who was then free to make such determinations as were appropriate, based on the record of the case.

**Did you assign the case to “another Judge of White Plains City Court”, as Judge Hansbury directed? If so, what was the date on which you made the assignment – and who was the judge? Was it that judge who decided to schedule the case for trial – and is the June 30<sup>th</sup> trial to be before him/her? Did that judge also decide to add only a single additional docket number, #651/89, to the trial notice – and to represent it as “(original #)”**

No fair and impartial judge assigned to this case and reviewing its pleadings, motions, and decisions could schedule it for a trial – or rely on Judge Hansbury’s October 11, 2007

decision. Indeed, the fraudulence of that decision – including with respect to its last paragraph pertaining to consolidation of “any prior pending action” is resoundingly established by my November 9, 2007 order to show cause to disqualify Judge Hansbury for actual bias and interest. Such motion additionally sought vacatur of the October 11, 2007 decision, whether directly by reason of Judge Hansbury’s disqualification or upon the granting of reargument.<sup>1</sup> As ¶4 of my moving affidavit therein stated:

“4. As hereinafter demonstrated, absent rank incompetence, no fair and impartial tribunal could have rendered the October 11, 2007 decision & order [hereinafter “decision”], as it flagrantly violates controlling legal and adjudicative standards and falsifies the factual record to deprive me of relief to which I am entitled, *as a matter of law*. That relief, which would have obviated a trial – and which must properly do so upon this motion – is the granting of my [September 5, 2007] cross-motion to dismiss the Petition, for summary judgment on my Counterclaims, and for costs and sanctions against, and disciplinary and criminal referrals of, petitioner, John McFadden, and his attorney, Leonard A. Sclafani, Esq., for fraud and deceit. The decision denies all such dispositive relief without identifying ANY of the facts, law, or legal argument presented by my cross-motion, and without citing ANY applicable law.” (italics, underlining, and capitalization in the original).

The referred-to demonstration of my moving affidavit then spanned 30 pages (pp. 5-35), all under the capitalized title heading,

“THE OCTOBER 11, 2007 DECISION MANIFESTS THE COURT’S ACTUAL BIAS REQUIRING VACATUR UPON THE COURT’S DISQUALIFICATION OR UPON THE GRANTING OF REARGUMENT & RENEWAL”.

Indeed, my accompanying memorandum of law described the October 11, 2007 decision as:

“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).” (p. 1)

and stated:

---

<sup>1</sup> The fraudulence of the decision’s last paragraph concerning consolidation is detailed at pages 18-22 of my moving affidavit in support of my November 9, 2007 order to show cause under the subtitle heading “As to my First Affirmative Defense (‘*Open Prior Proceedings*’)”.

“Should Judge Hansbury not disqualify himself and vacate the October 11, 2007 decision based on the factual and legal showing in respondent’s accompanying affidavit, he must – consistent with his ethical duty – disclose the facts bearing upon the appearance and actuality of his bias and interest. Likewise, such duty of disclosure falls on any other judge who, based on respondent’s motion herein, does not deem Judge Hansbury to be disqualified and allows his October 11, 2007 decision to stand.” (pp. 1-2).

These assertions, on the first page of my memo of law, were repeated at the memo’s end:

“Should Judge Hansbury not disqualify himself based on this motion, he must justify his October 11, 2007 decision by confronting and addressing, with specificity, the facts and law which the motion presents. Only by so doing can he demonstrate that there are no grounds on which his impartiality might ‘reasonably be questioned’. In such circumstance, he must make disclosure as to the facts bearing upon his impartiality. Likewise, any other judge of this Court who adjudicates this motion.” (p. 6).

On November 16, 2007, Judge Friia granted the stay of trial that my November 9, 2007 order to show cause had requested pending determination of the motion. Two and a half months later, Judge Hansbury determined the motion by his January 29, 2008 decision, recusing himself, without explanation – but only after denying ALL my motion’s substantive relief, again in a conclusory and demonstrably fraudulent fashion, citing NO law, identifying NONE of the facts, law, or legal argument I had presented, and concealing or obscuring most of my requested relief, including disclosure and vacatur: Indeed, Judge Hansbury’s January 29, 2008 decision denied my requested substantive relief on the pretext that

“respondent’s moving papers are supported by nothing more than conclusory and unsubstantiated assertions, falling short of the standards for a motion to reargue/renew, and offer no basis in fact or law for the disqualification of the undersigned Judge. The balance of respondent’s motion is denied in its entirety.”

It takes no more than a few minutes’ comparison of these sentences with my November 9, 2007 order to show cause to establish the flagrant deceit of Judge Hansbury’s January 29, 2008 decision – further demonstrating his disqualification for actual bias. Moreover, by reason of the legal sufficiency of my November 9, 2007 order to show cause in establishing Judge Hansbury’s actual bias and the fraudulence of his October 11, 2007 decision, he had NO jurisdiction to do anything by his January 29, 2008 decision other than to disqualify himself and vacate the October 11, 2007 decision.

Applicable treatise authority includes Judicial Disqualification: Recusal and Disqualification of Judges, Richard E. Flamm (Little, Brown and Company, 1996). Under the title heading, “§22.4 Actions by Disqualified Judge”, is the following:

§22.4.1 *Void Orders*

“When a judge presumes to take substantive action in a case despite having recused himself from it, or after he should have recused himself but did not, any such action is often considered a nullity and any orders issued by such a judge are considered absolutely void for want of jurisdiction.

Generally, void orders or judgments are subject to reversal and redetermination and may be set aside by the court on its own motion. Such orders may also be subject to collateral attack upon application, whenever they are brought into question at any time prior to final judgment.

§22.4.2 *Voidable Orders*

Though in many jurisdictions orders that have been rendered by a disqualified judge are deemed to be void, some courts in other jurisdictions have indicated that constitutional provisions, statutory provisions, and court rules pertaining to judicial disqualification do not necessarily render the actions and orders of a disqualified judge void in any fundamental sense. At most, such actions or orders are rendered voidable if objections to the disqualified judge acting in the case are raised by an interested party in a court that has subject matter jurisdiction in a proper and timely fashion.

Unlike void orders, which are usually considered to be absolute nullities, voidable orders are generally deemed to be binding on the parties unless and until they have been vacated by the trial court or reversed by an appellate court. Such orders are ordinarily not susceptible to collateral attack.” (pp. 651-653, footnotes omitted, underlining added).

Also applicable is the section entitled “§22.5 Retroactive Disqualification”, which states:

“The mere fact that a judge has been disqualified or has opted to recuse himself from presiding over a matter does not mean that he was actually biased in it. Unless the complaining party can make a showing of actual bias on the part of the disqualified judge, there is no reason to presume that the decisions rendered by that judge were in any way tainted.

...those decisions that have been rendered by a disqualified judge after the filing of a justified judicial disqualification motion will ordinarily be vacated upon the request of an adversely affected party; where a disqualified judge took actions prior to the filing of the disqualification motion or his

decision to voluntarily step down, such actions ordinarily need not be set aside. Such actions, however, may be reconsidered and possibly vacated or amended by a successor judge upon a proper motion." (pp. 656-657, footnotes omitted, underlining added).

Vacatur of both Judge Hansbury's October 11, 2007 and January 29, 2008 decisions is additionally compelled as his without-explanation recusal was in face of my November 9, 2007 order to show cause for his disqualification not only for actual bias, but for interest pursuant to Judiciary Law §14. As stated by my memo of law:

"It is long-settled that a judge disqualified by statute is without jurisdiction to act and the proceedings before him are void, *Oakley v. Aspinwall*, *supra*, 549, *Wilcox v. Arcanum*, 210 NY 370, 377 (1914), *Casterella v. Casterella*, 65 A.D.2d 614 (2<sup>nd</sup> Dept. 1978), 1A *Carmody-Wait 2<sup>nd</sup>* §3:94." (p. 3).

Upon vacatur of Judge Hansbury's aforesaid two decisions, be it for actual bias or interest, I am entitled to findings of fact and conclusions of law with respect to the second and third branches of my September 5, 2007 cross-motion for dismissal and summary judgment.<sup>2</sup> Such will establish the truth of what I stated to Judge Friia on November 16, 2007 – and reiterated by my November 26, 2007 affidavit, which was the last submission in the record of my November 9, 2007 order to show cause:

"...the only trial warranted herein is as to the amount of compensatory and punitive damages due me on my Counterclaims – since, *as a matter of law*, I am entitled to the granting of the second and third branch of my September 5, 2007 cross-motion: dismissal of the Petition and summary judgment on those Counterclaims." (§7, underlining and italics in the original).

If, as it appears, you did not assign this case to "another judge of White Plains City Court", as Judge Hansbury directed by his January 29, 2008 decision & order, please advise why and confirm that you will rescind your May 30, 2008 notice of trial and assign the case to "another judge of White Plains City Court" forthwith. Otherwise, please answer my questions on page two in boldfaced type – beginning with my request that you explain the meaning of Ms. Rodriguez' June 9<sup>th</sup> letter and furnish the name of the judge to whom you assigned the case pursuant to Judge Hansbury's January 29, 2008 decision & order and the date thereof.

---

<sup>2</sup> My entitlement, *as a matter of law*, to the second and third branches of my September 5, 2007 cross-motion for dismissal and summary judgment was particularized at pages 13-18 of my moving affidavit in support of my November 9, 2007 order to show cause.



Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower". The signature is written in a cursive style with a long horizontal flourish extending to the right.

ELENA RUTH SASSOWER, *Pro Se*

cc: Leonard Sclafani, Esq.

**Elena Ruth Sassower**

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

E-Mail: [elenaruth@aol.com](mailto:elenaruth@aol.com)

Tel. (914) 949-2169  
Fax (914) 428-4994

FILED CITY COURT OF  
WHITE PLAINS, N.Y.

2008 JUN 24 P 4: 21

BY HAND

June 13, 2008

Patricia Lupi, Chief Clerk  
White Plains City Court  
77 Lexington Avenue  
White Plains, New York 10601

RE: My Yesterday's Visit to the Clerk's Office & Our Conversation Together  
John McFadden v. Elena Sassower, White Plains City Court #SP-1502/07

FILED CITY COURT OF  
WHITE PLAINS, N.Y.  
2008 JUN 13 P 4: 17

Dear Ms. Lupi,

This follows up my visit to the Clerk's Office yesterday, in which I discussed my already drafted letter to you, responding to Ms. Rodriguez' June 9, 2008 letter to me. I had waited to finalize the letter until I reviewed the file in the above-numbered case, which I did yesterday. The now finalized letter is enclosed.

My enclosed finalized letter makes only grammatical improvements to the draft. It does not recite the particulars of what occurred during my yesterday's visit. Such recitation would substantiate my entitlement to transfer of this case from White Plains City Court – and I reserve same for such motion as I will make should the Court does not transfer the case *sua sponte* so that a fair and impartial tribunal might make findings of fact and conclusions of law as to my entitlement to dismissal and summary judgment. As I stated to you yesterday in your office, reiterating what I had told Judge Friia at the November 16, 2007 oral argument of my November 9, 2007 order to show cause to disqualify Judge Hansbury and to vacate his October 11, 2007 decision & order:

“...the only trial warranted herein is as to the amount of compensatory and punitive damages due me on my Counterclaims – since, *as a matter of law*, I am entitled to the granting of the second and third branch of my September 5, 2007 cross-motion: dismissal of the Petition and summary judgment on those Counterclaims.” (¶7 of my November 26, 2007 affidavit in further support of the motion underlying my November 9, 2007 order to show cause).

Suffice to say that you initially represented to me that you were unaware that Judge Hansbury had rendered any written decision subsequent to his October 11, 2007 decision. You stated your belief that Judge Hansbury's recusal had been oral, during proceedings in open court.

ESS-3

This is incorrect. By written decision & order dated January 29, 2008, Judge Hansbury recused himself and expressly directed you “to assign this matter to another judge of the White Plains City Court”.

You appeared to concede that you had made no such assignment – and that no White Plains City Court judge had instructed that you send your May 30, 2008 notices to the parties, requiring their appearance for a June 30, 2008 trial. You told me that Judge Friia would be the trial judge for the case, but that this was simply because she was scheduled to preside on June 30, 2008 as part of standard rotation, not because you had assigned the case to her prior thereto or because she had thereafter instructed you to notice the case for trial.

I told you that Ms. Rodriguez would not provide me with a copy of the docket in the case, claiming that the City Court Clerk’s Office did not have any docket recording the papers filed and judicial or administrative actions taken. You did not contradict same or furnish me with a copy.

As discussed, a docket should reflect whether Judge Hansbury’s January 29, 2008 decision & order was entered by the Clerk’s Office and whether my adversary filed a notice of entry, with an affidavit of service upon me. I received from him no notice that the January 29, 2008 decision & order had been entered and saw none in the court file which Ms. Rodriguez belatedly produced for me following my complaint to you as to her initial deficient production of what she had purported to be the file. Consequently, and consistent with the notice appearing on the face of Judge Hansbury’s January 29, 2008 decision<sup>1</sup>, my time to appeal has not begun to run. Likewise my time for reargument and renewal has not begun to run.

If you do not rescind your May 30, 2008 trial notice based on your failure to assign this case to “another judge of the White Plains City Court”, as directed by Judge Hansbury’s January 29, 2008 decision, and your corresponding failure to await that judge’s instructions, I request that you bring this letter and my accompanying letter to Judge Friia so that she can exercise her authority both as trial judge and Chief Judge of White Plains City Court to strike your trial notice and take further appropriate action. This includes transferring the case from White Plains City Court based on the record and the additional facts known to her bearing upon the appearance that neither she nor the Court are a fair and impartial tribunal. Should she disagree that transfer is the appropriate course, her obligation is to disclose the disqualifying facts known to her, pursuant to §100.3F of the Chief Administrator’s Rules Governing Judicial Conduct. Absent same and her failure to strike the trial notice, I will present such facts as I know to support an order to show cause to stay the June 30, 2008 trial

---

<sup>1</sup> Such notice on the decision, prominently affixed alongside the case title, states: “TO COMMENCE THE STATUTORY TIME PERIOD FOR APPEALS AS OF RIGHT (CPLR 5513[a]) YOU ARE ADVISED TO SERVE A COPY OF THIS ORDER, WITH NOTICE OF ENTRY, UPON ALL PARTIES.”

pending determination of my formal motion for the following relief:

(a) to disqualify White Plains City Court Judge Jo Ann Friia and White Plains City Court for actual bias and interest pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14 and to transfer this proceeding to another Court to ensure the appearance and actuality of impartial justice – and, if denied, for disclosure pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct of facts bearing on the Court's impartiality;

(b) vacating Judge Hansbury's January 29, 2008 and October 11, 2007 decisions & orders based on his without-explanation recusal, arising from the record of my November 9, 2007 order to show cause to disqualify him for actual bias and interest;

(c) for reargument and renewal of Judge Hansbury's January 29, 2008 decision & order pursuant to CPLR §2221 and, upon the granting of same, vacating its denial of the substantive relief sought by my November 9, 2007 order to show cause;

(d) for findings of fact and conclusions of law as to my entitlement to dismissal of the Petition and summary judgment on my Counterclaims based on the record of my September 5, 2007 cross-motion and November 9, 2007 order to show cause – no such findings of fact and conclusions of law having been made by the October 11, 2007 and January 29, 2008 decisions & orders<sup>2</sup>;

Alternatively, if all the foregoing relief is denied, for a stay pending determination of my appeal thereof – and of Judge Hansbury's January 29, 2008 decision & order – to the Appellate Term of the Appellate Division, Second Department.

I would appreciate your response as soon as possible, and likewise a response from Judge Friia, so that I may know how to proceed.

Thank you.

---

<sup>2</sup> It must be noted that petitioner filed no answer to my four Counterclaims (CPLR §3019(d), CPLR §402). Such Counterclaims not only contain specific factual allegations, but incorporate the highly particularized factual allegations of my ten Affirmative Defenses.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Elena Ruth Sassower', written in a cursive style.

ELENA RUTH SASSOWER, *Pro Se*

Enclosure

cc: Leonard Sclafani, Esq.

(also enclosing Ms. Rodriguez' June 9, 2008 letter to me,  
as it did not indicate that she was sending a copy to him)