Respondent's September 5, 2007 cross-motion affidavit

evidence as Mr. Sclafani has produced, which is limited to the six federal decisions and orders comprising his Exhibit E, of which he has no personal knowledge.

89. Tellingly, Mr. Sclafani does not profess that his assertions and implications with respect to the federal action are based on any knowledge of the litigation files therein. Such is particularly significant as footnote 3 of my July 26, 2007 letter to the Court (Exhibit K-1) put Mr. Sclafani on notice that those litigation files would establish the "material falsity" of his July 17, 2007 letter (Exhibit N)[18] which had transmitted to the Court five of those six decisions and orders so as to besmirch me and mislead the Court.

90. In substantiation of that footnote 3 – as likewise my assertions in open court on July 16th denying Mr. Sclafani's false claims about the federal litigation (Exhibit I-1, pp. 3-11) – annexed hereto are the key submissions that I and my mother filed with the U.S. Supreme Court – our petition for a writ of certiorari, filed February 22, 1993 (Exhibit R), our petition for rehearing, filed May 14, 1993 (Exhibit S), and our supplemental petition for rehearing, filed June 1, 1993 (Exhibit T) – as these concisely summarize the true facts of the federal case and our appropriate prosecution of it during its odyssey through the U.S. District Court and Second Circuit Court of Appeals[19], whose fraudulent judicial decisions are readily verifiable from the case file. Also annexed is my article, "*Without Merit: The Empty Promise of Judicial Discipline*", published in The Long Term View (Massachusetts School of Law), Vol, 4, No. 1

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[18] Perhaps it is the "material falsity" of his July 17, 2007 letter which explains why Mr. Sclafani has not annexed it to his motion. Nor for that matter has he repeated his bald pretense therein that the transmitted federal court decisions and orders "dismissed on their merits" "the claim of Elena Sassower and her mother, Doris Sassower, involving the events, facts and circumstances underlying and precipitating the instant proceeding".

[19] Our petition to the Second Circuit for rehearing and rehearing *en banc* of its August 13, 1992 decision was Exhibit A to the November 11, 1992 joint affidavit of myself and my mother, filed in opposition to Mr. McFadden's summary judgment motion in his #651/89 proceeding against us. The affidavit with that petition is Exhibit Z-1 herein.

Exhibit S

(summer 1997) (Exhibit U), which, under the heading "Direct, First-Hand Experience" (pp. 95-97), describes our post-litigation efforts to secure redress of the fraudulent District Court and Circuit Court decisions. Illustrative of these efforts: our June 9, 1993 impeachment complaint to the House Judiciary Committee (Exhibit V-1) and our July 14, 19931 letter to the National Commission on Judicial Discipline and Removal (Exhibit V-2). Virtually all of the mountain of our other correspondence, complaints, formal testimony and written statements pertaining to the federal lawsuit is posted on the website, www.judgewatch.org,[20] which belongs to the national, non-partisan, non-profit citizens organization Center for Judicial Accountability, Inc. (CJA) that I and my mother co-founded in 1993, in part based on our nightmarish experience in the federal suit.

91. Finally, insofar as Mr. Scalfani's ¶92 baldly purports that my Fifth Affirmative Defense "is also barred by CPLR §213 as set forth hereinafter", his "hereinafter" consists of a single paragraph – his ¶94 – purporting that the "acts and actions" I have ascribed to petitioner "occurred almost twenty years ago" and, therefore, "barred by the applicable statute of limitations; to wit, CPLR §213". Such is deceitful and frivolous. Aside from the fact that the "acts and actions" identified by my Answer are described as a knowing and intentional course of conduct spanning to the present year, the statute of limitations of CPLR §213 expressly pertains to time within which an action may be brought. It has no application to the assertion of affirmative defenses – and Mr. Sclafani offers no citation of law to the contrary.

92. Consequently, dismissal is warranted pursuant to CPLR §3211(a)1 based on the undisputed specific allegations of my Fifth Affirmative Defense, to whose truth I have sworn and herein buttressed with documentary evidence.

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[20] See sidebar panel: "Searching for Champions-Federal", which leads to links for the National Commission on Judicial Discipline and Removal, House Judiciary Committee, Administrative Office of the United States Courts, etc.

impossible" (¶114); and that it "must be dismissed as patently frivolous" (¶115).

119. Here, again, Mr. Sclafani does not identify any of the allegations of my defense, let alone deny or dispute them – because the 34 paragraphs thereof, as likewise the substantiating documentary proof annexed as Exhibits F-1 to F-28 and Exhibits G-1 to G-14 – establish my Tenth Affirmative Defense, resoundingly.

120. That Mr. Sclafani's ¶114 additionally asserts

> "Assuming arguendo that all of the allegations set forth in the respondent's pleadings were true, such would only evidence that respondent was a difficult tenant who failed and refused to act reasonably."

shows how brazen a liar he is. There is nothing in my Answer – and most assuredly, nothing in my Tenth Affirmative Defense, spanning nearly half of my Answer – that evidences anything other than that I am fair and reasonable in every respect.

121. Consequently, dismissal is warranted pursuant to CPLR §3211(a)1 based on the undisputed specific allegations of my Ninth Affirmative Defense, to whose truth I have sworn and herein buttressed with documentary evidence.

Ms. Sclafani's Deceit as to my First Counterclaim
(Prior Proceedings)

122. My good and meritorious First Counterclaim, titled "Prior Proceedings", is set forth at ¶¶EIGHTY-FIRST through EIGHTY-THIRD of my Answer.

123. Mr. Sclafani's flimsy two-sentence argument at ¶¶116-17 of his affirmation does not identify any allegation of the Counterclaim except that it is "premised on the proposition that petitioner had 'a meritorious federal action against the coop and other defendants".

124. Mr. Scalfani's purports (at ¶117) that such Counterclaim is "baseless" – relying, exclusively (at ¶116), on the "determination of the United States District Court for the Southern District of New York" that the "claim was frivolous", affirmed by the United States Court of

Appeals for the Second Circuit.

125. The baselessness of these decisions, factually and legally, is particularized by the appellate submissions that I and my mother filed – going up to the U.S. Supreme Court (Exhibits R, S, & T) – and, thereafter, in impeachment complaints to the U.S. House Judiciary Committee (Exhibit V-1), judicial misconduct complaints to the Second Circuit Court of Appeals (Exhibit V-3), criminal complaints to the U.S. Justice Department's Public Integrity Section, in correspondence to the National Commission on Judicial Discipline and Removal (Exhibit V-2), the Administrative Office of the United States Courts, among others, and in formal testimony and written statements to the Long Range Planning Committee of the Judicial Conference (December 1993), the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts (November 1995), the Commission on Structural Alternatives for the Federal Courts of Appeals (April 1998), and the U.S. House Judiciary Committee (June 1998). The mountain of these correspondence, complaints, formal testimony and written statements is mostly posted on the Center for Judicial Accountability's website, www.judgewatch.org. [*see also* ¶90 *supra*]. Because the best evidence of the merit of the case, at its outset, is the original complaint filed in 1988 in the U.S. District Court for the Southern District of New York, a copy is annexed hereto as Exhibit Q.

126. Mr. Sclafani's ¶¶116-117 conspicuously omits that the federal action was commenced with Mr. McFadden as a co-plaintiff. Likewise, he omits that the basis of Mr. McFadden's liability, asserted by my First Counterclaim, is that he "knowingly and deliberately compromised, undermined, and sabotaged [the case], both while he was [our] co-plaintiff therein and after his withdrawal" – as to which the Counterclaim gives the following examples:

> "collusion with the Co-Op both with respect to his initiation and pursuit of eviction proceedings against [myself and my mother] in White Plains City Court,

timed to be the most prejudicial, and his wilful and repeated failure to assign his shareholder rights to [me] and [my] mother so as to maintain [our] corporate non-compliance causes of action." [¶EIGHTY-SECOND]

127. With respect to the corporate non-compliance causes of action, the particulars are set forth at ¶¶EIGHTEENTH and NINTEENTH of my Sixth Affirmative Defense – specifically repeated, realleged, and reiterated by ¶EIGHTY-FIRST. They are as follows:

> "EIGHTEENTH: As a result of petitioner's withdrawal from the federal lawsuit, the Co-Op raised a lack of standing defense in an eve-of-trial motion to amend their answer, granted by the federal judge, thereby forcing respondent and her mother to drop their causes of action for corporate non-compliance, the merit of which they had already demonstrated by a motion for summary judgment.
>
> NINETEENTH: On repeated occasions before and after defendants' eve-of-trial motion to amend, respondent and her mother sought from petitioner an assignment of rights, which he failed to provide, even after they had furnished him with a copy of their summary judgment motion on the corporate non-compliance causes of action."

128. Annexed hereto is correspondence establishing Mr. McFadden's "wilful and repeated failure to assign his shareholder rights to [me] and [my mother] so as to maintain [our] corporate non-compliance causes of action: an August 8, 1990 letter (Exhibit W-1); a December 24, 1990 letter (Exhibit W-2); a February 1, 1990 letter (Exhibit W-3); a March 7, 1991 letter, enclosing a previously-prepared stipulation for signature (Exhibit W-4).

129. Also annexed is the U.S. District Court's March 20, 1991 Judgment reflecting the result of Mr. McFadden's prejudicial conduct. On March 14, 1991, we "withdrew causes of actions 2 through 8 and 10" – the causes of action based on corporate non-compliance (Exhibit X).

130. Attached to the Judgment is the "special verdict form" of the jury determining that the Co-Op board had not adopted and resolved to use guidelines with respect to apartment purchases and sublets by single women and minority applicants. Such substantiates my incorporated ¶TWELFTH, which stated:

"Petitioner's withdrawal also compromised respondent's discrimination causes of action, which relied on written guidelines that petitioner and his attorney for the apartment sale – who was also the Co-Op's attorney – had represented to respondent had been approved and disseminated as part of the purchase application package, but which the Co-Op disavowed as ever having been approved and disseminated. The jury made an express finding that the guidelines had not been adopted by the Co-Op board."

131. With respect to Mr. McFadden's "initiation and pursuit of eviction proceedings against me in White Plains City Court, timed to be the most prejudicial", his three separate proceedings against me, my co-occupant father, and my mother (index numbers 504/88, 651/89, 652/89) were instituted and pursued during the crucial opening months of the federal lawsuit, while he was our co-plaintiff. Following our loss of the case after trial in March 1991, it was he – not the victorious Co-Op – who made motions in City Court for summary judgment by reason thereof, disregarding, again and again, our unexhausted rights of appeal through the federal system. His misconduct and that of his lawyer in connection therewith were the subject of our opposing affidavits rightfully seeking sanctions, dated December 16, 1991 (Exhibit Y), November 11, 1992 (Exhibit Z-1), November 25, 1992 (Exhibit Z-2), and December 16, 1992 (Exhibit Z-3), and January 19, 1993 (Exhibit Z-4).

Mr. Sclafani's Deceit as to my Second Counterclaim
(Fraud from April 2003 Onward & Extortion)

132. My good and meritorious Second Counterclaim, titled "Fraud from April 2003 Onward & Extortion", is set forth at ¶¶EIGHTY-FOURTH through EIGHTY-SEVENTH of my Answer.

133. Mr. Sclafani's flimsy three-sentence argument at ¶¶118-120 of his affirmation is deceitful and frivolous. Without identifying any of the allegations of my Second Counterclaim, his ¶119 states that my Counterclaim is "nothing more than a rehash of the same claims that respondent asserts to support her various affirmative defenses of 'fraud'" – as to which his ¶120