7/8/09 4:50 PM
Denied. The relief requested has either been previously addressed by the Court or is beyond the scope, authority or jurisdiction of this City Court. Any stay of the Court's July 3, 2008 Decision pending appeal is also denied.

CITY COURT OF THE CITY OF WHITE PLAINS
STATE OF NEW YORK: COUNTY OF WESTCHESTER

JOHN McFADDEN,

Petitioner (Overtenant),

Index #SP1502/07

ORDER TO SHOW CAUSE for Disqualification/Transfer/Disclosure Vacatur, Reargument/Renewal, Findings, & Other Relief, Including Interim Stay

-against-

ELENA SASSOWER,

Respondent (Subtenant)
16 Lake Street – Apt. 2C
White Plains, New York

FILED CITY COURT OF WHITE PLAINS, N.Y. 2008 JUL -9 P 4:53

Upon the annexed affidavit of the respondent *pro se* ELENA SASSOWER, duly sworn to on July 8, 2008, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had,

LET petitioner JOHN McFADDEN show cause before this Court at the White Plains City Courthouse at 77 South Lexington Avenue, White Plains, New York 10601, on the _____ day of July, 2008 at 9:30 a.m., or as soon thereafter as the parties or their counsel can be heard, why an order should not be granted:

(a) to disqualify White Plains City Court Judge Jo Ann Friia for demonstrated actual bias and interest pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14, and to vacate her June 30, 2008 from-the-bench rulings herein and her July 3, 2008 decision & order in *John McFadden v. Doris L. Sassower and Elena Ruth Sassower*, #651/89, and to transfer this proceeding and the record of the three

prior proceedings, #651/89, #434/88 and #500/88, the subject of respondent's First Affirmative Defense and embodied by her First Counterclaim, 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 Judge Friia's impartiality and for reconsideration of her June 30, 2008 rulings and July 3, 2008 decision, made without basis in fact and law;

(b) to vacate the January 29, 2008 and October 11, 2007 decisions & order of White Plains City Court Judge Brian Hansbury based on his recusal, without explanation, arising from the record of respondent's November 9, 2007 order to show cause;

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

(d) for findings of fact and conclusions of law as to respondent's entitlement to dismissal of the Petition and summary judgment on her Counterclaims, based on the record of her September 5, 2007 cross-motion and November 9, 2007 order to show cause; and

(e) for such other and further relief as may be just and proper, including, a stay of any and all proceedings in enforcement of Judge Friia's July 3, 2008 decision & order in #651/89 or judgment entered or to be entered thereon, pending the hearing and determination of this motion.

Alternatively, if all the foregoing relief is denied, for a stay of any and all proceedings in enforcement of Judge Friia's July 3, 2008 decision & order in #651/89, or judgment entered or to be entered thereon, pending determination of respondent's appeal thereof.

SUFFICIENT CAUSE APPEARING THEREFOR, let service of this order to show cause, together with the papers upon which it is based, be made personally or by overnight mail upon the office of petitioner's counsel, LEONARD SCLAFANI, P.C., 18 East 41st Street, Suite 1500, New York, New York 10017 on or before the _____ day of July 2008, be deemed good and sufficient service.

Dated: White Plains, New York
July 8, 2008

ENTER:

_____
Judge, White Plains City Court

CITY COURT OF THE CITY OF WHITE PLAINS
STATE OF NEW YORK: COUNTY OF WESTCHESTER

---------- x

JOHN McFADDEN,

Petitioner (Overtenant),

Index #SP1502/07

Respondent's Affidavit in Support of Motion for Disqualification/Transfer/ Disclosure, Vacatur, Reargument/ Renewal, Findings, & Other Relief, Including Interim Stay

-against-

ELENA SASSOWER,

Respondent (Subtenant)
16 Lake Street – Apt. 2C
White Plains, New York

---------- x

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

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the respondent *pro se*, a contract-vendee in possession, whose home of nearly twenty-one years is the subject of this proceeding. I am fully familiar with all the facts, papers, and proceedings heretofore had.

2. This affidavit is submitted in support of the relief sought by my accompanying order to show cause. Such is necessitated by the Court's walking off the bench and out of the room on Monday, June 30, 2008 while I was in the midst of requesting that it disclose facts bearing upon its fairness and impartiality. This, with knowledge that my request for disclosure was a prelude to an application for its

disqualification after it had made a succession of rulings, indefensible in fact and law.[1] Among these, that the parties not file anything further in the case – which it did *sua sponte*, without reason, and without citation to legal authority. Such ruling has no purpose other than to prevent me from setting forth the facts pertaining to the Court's demonstrated actual bias and wilful failure to make disclosure – and from bringing a notice of motion to secure the Court's disqualification and the other legally-compelled relief I had sought by a June 27, 2008 order to show cause, which the Court refused to sign (Exhibit 1).[2]

3. Since the June 30, 2008 proceedings, this Court's actual bias has been further manifested – and dispositively so – by a July 3, 2008 decision & order in *McFadden v. Doris L. Sassower and Elena Ruth Sassower*, #651/89 (Exhibit 2), granting a nearly 19-year-old summary judgment motion made by Mr. McFadden and awarding him "a judgment of possession and warrant to remove [me]...forthwith, with a statutory stay of execution." Such decision is an outright judicial fraud – and tellingly, it cites no law to support its factual recitation, whose material falsity and

---

[1] In the interest of judicial economy, I incorporate by reference my November 9, 2007 memorandum of law, devoted exclusively to disqualification and disclosure. The law and argument is equally applicable here.

[2] The following is a table for previous exhibits: (1) My Exhibits A-G are annexed to my August 20, 2007 "VERIFIED ANSWER with Affirmative Defenses & Counterclaims". (2) My Exhibits H-AA are annexed to my September 5, 2007 Notice of Cross-Motion; (3) My Exhibits BB-FF are annexed to my September 11, 2007 Affidavit in Reply to Petitioner's Opposition to my Cross-Motion; (4) My Exhibits GG-II are annexed to my November 9, 2007 Order to Show Cause for a Stay of Trial, etc.; (5) My Exhibits JJ-LL are annexed to my November 26, 2007 Affidavit in Opposition to Petitioner's Cross-Motion, etc.; (6) My Exhibits MM-UU are annexed to my June 27, 2008 Order to Show Cause for a Stay of Trial, etc.

incompleteness is readily-verifiable from the record of #651/89 and this proceeding. Insofar as the decision purports to be based on consideration of "defenses raised" in #651/89 (Exhibit 2, at p. 3), it does not identify any of those defenses – including those I raised on June 30, 2008, the date the decision purports Mr. McFadden's November 25, 1991 summary judgment motion, returnable on "12/17/91", was "reassigned and resubmitted" and the "parties" were before the Court. (Exhibit 2, at pp. 1, 2).

4. As this affidavit was already fully-drafted as of the July 3, 2008 date of the Court's decision in #651/89[3], I will separately particularize that decision's fraudulence by a supplemental affidavit so as to reinforce that branch of this order to show cause as seeks this Court's disqualification for demonstrated actual bias. Suffice to say that the fraudulence of the July 3, 2008 decision is established by the fact-specific, law-supported defenses I raised in this proceeding, *inter alia*:

- ¶¶63-79 of my September 11, 2007 affidavit in support of my September 5, 2007 cross-motion (Exhibit 3);
- ¶¶59-61 of my November 26, 2007 affidavit in support of my November 9, 2007 order to show cause (Exhibit 4); and
- ¶¶89-90, 123-131 of my September 5, 2007 cross-motion (Exhibit 5).

As for the defenses I orally presented to the Court on June 30, 2008 – which themselves suffice to establish the fraudulence of the Court's July 3, 2008 decision

---

[3] My drafted affidavit identified that I was annexing an affidavit from my mother, Doris L. Sassower, pertaining to this Court's disqualification and the disqualification of Judge Reap and White Plains City Court. Such identification has now been removed because my mother is not in a position to supply such affidavit, as she has been in White Plains Hospital since the morning of July 3rd, when she was taken there by ambulance.

– they are recited herein at ¶¶21-24, 37 and footnote 14.

5. For the convenience of the Court, a Table of Contents follows:

TABLE OF CONTENTS

* * *

THE COURT'S ACTUAL BIAS, AS DEMONSTRATED BY ITS CONDUCT RELATING TO THE JUNE 30, 2008 TRIAL NOTICES & THE COURT PROCEEDINGS ON THAT DATE

6. The very fact that the Court held proceedings on June 30, 2008, ostensibly for purposes of holding a trial on that date, was a manifestation of its actual bias. No fair and impartial tribunal would have failed to withdraw the Chief Clerk's trial notices for June 30, 2008. The improper calendaring of the case for an "ALL DAY TRIAL" by Chief Clerk Lupi was the subject of two separate letters from me to the Chief Clerk, dated June 13, 2008, which requested, if she did not withdraw the notices based on the facts and law recited, that she deliver the letters to the Court for

response so that I would know whether to proceed by order to show cause. Neither the Chief Clerk nor the Court responded – and by letter dated June 24, 2008, I wrote directly to the Court, inquiring if it was aware of my letters to the Chief Clerk and requesting the Court's response as to whether I should proceed by order to show cause. Still, the Court did not respond – thereby burdening me with bringing an order to show cause on Friday, June 27, 2008 to protect my rights. All the relief therein sought – and the basis therefore – had been identified by my unresponded-to June 13, 2008 letters, which my order to show cause annexed along my other unresponded-to letters to the Clerk's Office and the Court relating thereto. The Court refused to sign the order to show cause, thereby requiring the parties to prepare and appear for the scheduled June 30, 2008 trial.

7. Annexed is a copy of my unsigned June 27, 2008 order to show cause for a stay of the June 30, 2008 trial pending determination of the underlying motion (Exhibit 1), whose first relief was:

> "(a) to disqualify White Plains City Court Judge Jo Ann Friia for demonstrated 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, <u>if denied</u>, for disclosure pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct of facts bearing on her impartiality and that of the White Plains City Court Clerk's Office" (underlining in the original);

and whose further relief was:

> "(b) to vacate the January 29, 2008 and October 11, 2007 decisions & orders of White Plains City Court Judge Brian Hansbury

based on his recusal, arising from the record of respondent's November 9, 2007 order to show cause;

(c) to grant reargument and renewal of the January 29, 2008 decision & order pursuant to CPLR §2221 and vacating its denial of the substantive relief sought by respondent's November 9, 2007 order to show cause;

(d) for findings of fact and conclusions of law as to respondent's entitlement to dismissal of the Petition and summary judgment on her Counterclaims, based on the record of her September 5, 2007 cross-motion and November 9, 2007 order to show cause; and

(e) for such other and further relief as may be just and proper.

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

8. The Court's handwritten notation, on the June 27, 2008 order to show cause, was:

"10:50 AM Denied. The matter is scheduled for proceeding on Monday, June 30, 2008 at 9:30 a.m. (Part B) – The subject application can be made on the record at that time June 27, 2008. Jo Ann Fria, CC" (underlining in the original).

9. Yet, on June 30, 2008, the Court cut me off from making the "subject application...on the record", by its leaving the bench, with no inquiry as to whether I had completed my "subject application", which I plainly had not.

The Court's Wilful Disregard of my Rights to Vacatur of Judge Hansbury's October 11, 2007 and January 29, 2008 Decisions

10. In addition to the Court's barring further filings herein, designed to insulate the Court and the October 11, 2007 and January 29, 2008 decisions of Judge

Hansbury from necessary and appropriate legal challenge[4], the Court ruled that it would "defer" to those two decisions. According to the Court, such deference is required because judges "must follow decision and orders of each other, unless reversed" and they are "bound to follow each other's decisions".

11. This is a flagrant deceit. Deference to the decisions of a coordinate judge has NO applicability where that judge has recused himself, without explanation, in face of a legally-sufficient motion for his disqualification for demonstrated actual bias and interest. The decisions of such judge are void or voidable and are properly vacated by his successor, either *sua sponte*, or upon application of the affected party. The Court may be presumed to know this – quite apart from the extensive legal presentation on the subject by my June 13, 2008 letters to Chief Clerk Lupi, underlying my June 24, 2008 letter to the Court, then embodied by my June 27, 2008 order to show cause.[5] As I there stated:

> "...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:

---

[4] These decisions are annexed to my unsigned June 27, 2008 order to show cause. The January 29, 2008 decision is Exhibit OO. The October 11, 2008 decision is part of Exhibit PP-2.

[5] See my June 13, 2008 letter to Chief Clerk Lupi entitled "Request for Clarification of Ms. Rodriguez' June 9, 2008 Letter" (at pp. 5-6) – annexed to the order to show cause as Exhibit QQ & SS-2.

"§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 (2nd Dept. 1978), 1A Carmody-Wait 2nd §3:94' (p. 3)."

12. During the June 30, 2008 proceeding, I cited the relevant treatise authority, Judicial Disqualification: Recusal and Disqualification of Judges, by Richard E. Flamm, which I held up. Nonetheless, the Court did not address this or any other law or treatise authority pertaining to decisions of a disqualified judge. Nor did it address any of the facts which my June 13, 2008 letters summarized as to the readily-verifiable fraudulence of Judge Hansbury's October 11, 2007 and January 29, 2008 decisions, neither decision identifying ANY of the facts, law, or legal argument presented by my September 5, 2007 cross-motion and November 9, 2007 order to show

cause. Rather, the Court interrupted me when I spoke of Judge Hansbury's decisions as judicial frauds by him and cut me off as I sought to provide an immediately-verifiable illustrative example.

13. No fair and impartial tribunal – comparing Judge Hansbury's October 11, 2007 decision to the record on my September 5, 2007 cross-motion and comparing his January 29, 2008 decision to the record on my November 9, 2007 order to show cause – could give ANY deference to these decisions, as each of them is:

> "so totally devoid of evidentiary 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. 191 (1960)."

14. The Court surely knows this – having purported to have "reviewed" the record of the case during the weekend before the Monday, June 30, 2008 proceeding. I stated as much to the Court. To my recollection, the Court did not deny or dispute my assertion that Judge Hansbury's two decisions were factually and legally unsupportable. Nor did it deny or dispute such other gross deficiencies as I identified, as, for instance, that Judge Hansbury's October 11, 2007 decision makes no mention of my ten Affirmative Defenses to Mr. McFadden's Petition and my four Counterclaims – which his October 11, 2007 and January 29, 2008 decisions do not adjudicate, let alone with findings of fact and conclusions of law. The Court also did not deny or dispute my assertions that such Affirmative Defenses and Counterclaims entitle me to dismissal and summary judgment, *as a matter of law* – and that this is established by the record of my September 5, 2007 cross-motion, whose second and third branches are for dismissal

and summary judgment. Indeed, my unresponded-to June 24 and June 25, 2008 letters to the Court each alerted it to the pages from my November 9, 2007 order to show cause laying out the state of the record on my September 5, 2007 cross-motion, with those very pages thereafter annexed to my unsigned June 27, 2008 order to show cause as Exhibit NN-1.

The Court's Wilful Disregard of my Rights with Respect to my First Affirmative Defense & Prior Open City Court Proceedings

15. The Court's disregard for evidence-based adjudications and due process was further evidenced by its June 30, 2008 ruling that there was only one open prior City Court proceeding, #651/89. This, it insisted on in face on my objection that my First Affirmative Defense entitled "*Open Prior Proceedings*", which I read aloud, asserted that there were three open prior City Court proceedings, as to which (like my other Affirmative Defenses) Judge Hansbury had made neither findings of fact nor conclusions of law. I told the Court that I had personally reviewed the files of these three proceedings – #651/89, #434/88, and #500/88 – and that I was ready to testify about them under oath. The Court not only rejected this by stating that it was relying on information it had received from the Chief Clerk, but refused my request that Chief Clerk Lupi furnish a written statement.

16. As I pointed out to the Court, the final paragraph of Judge Hansbury's October 11, 2007 decision had stated "the Court will consolidate any prior pending action with the instant proceeding". Such was not limited to #651/89. Nor did the October 11, 2007 decision state that #651/89 is the "original #" for this proceeding, as

falsely claimed by the hand-written addition on the second of Chief Clerk Lupi's trial notices.

17. To my recollection, the Court made no ruling that #651/89 is the "original #" of this proceeding. Nor could it properly do so without comparing the caption of that case and allegations of Mr. McFadden's Petition therein with the caption of this case and allegations of his Petition herein. The Court itself conceded that it did not review the record of #651/89 because, due to its age, it was available only from microfilm or microfiche or was in storage.

18. Nonetheless, the Court ruled that it would hold this proceeding in abeyance while it determined, "*de novo*", Judge Reap's nearly 17-year old "reserved decision" in #651/89 by his December 19, 1991 "Decision on Motion". Even Judge Hansbury, who cited such "reserved decision" in the last paragraph of his October 11, 2007 decision for purposes of indicating, but not stating, that #651/89 remained open, did not suggest that a decision be rendered thereon – let alone, as the Court announced, unaided by submissions from the parties herein and from the additional party therein, my mother, Doris L. Sassower. The Court's pretext for so-ruling was that it now had the decisions in the federal case that Judge Reap did not have – decisions which Mr. McFadden had never furnished in #651/89, but which his counsel, Leonard Sclafani, Esq., put before the Court in this proceeding for defamatory and misleading purposes.[6]

---

[6] The factual and legal baselessness of the decisions of the U.S. District Court and Second Circuit Court of Appeals that Mr. Sclafani put before the Court – germane to this Court's July 3, 2008 decision relying on those federal decisions – is particularized at ¶¶89-90 and ¶¶123-131 of my September 5, 2007 cross-motion (Exhibit 5), with substantiating documents appended and

19. There is no law permitting the Court to do what it announced it would do in #651/89 – and what it has done by its July 3, 2008 decision – as #651/89 has been dormant for more than 15 years – and is properly deemed abandoned. The only basis for the Court's activity in #651/89 is the purported consolidation, pursuant to Judge Hansbury's October 11, 2007 decision, to which his January 29, 2008 decision adhered, in wilful disregard of the legal authority and argument presented by my November 9, 2007 order to show cause, which he ignored. This included the following:

> "30. CPLR §602 is entitled 'Consolidation' and specifies that such is 'upon motion'. No motion was made by either me or Mr. Sclafani for consolidation, let alone a motion with notice to the parties in the open prior proceedings who are not parties herein – the Co-Op in 434/88 and 500/88 and my mother in 651/89 – each having a right to be heard with respect thereto.[fn] It is blackletter law that it is improper for a court to order consolidation *sua sponte* – and such will be reversed on appeal, *AIU Insurance Company, v. ELRAC*, 269 A.D.2d 412 (2nd Dept. 2000); *Lazich v. Vittoria & Parker*, 196 AD2d 526, 530 (2nd Dept. 1993); *Singer v. Singer*, 33 AD2d 1054, 1055 (2nd Dept. 1970). Here, the Court not only acted *sua sponte*, but (i) without even specifying the open proceedings it was purporting to consolidate; (ii) without giving notice to the parties in those proceedings; and (iii) without making the necessary changes to the caption, consistent with consolidation. This, although it is also blackletter law that 'Upon consolidation the action takes on one caption and culminates in one judgment which pronounces the rights of all parties (Siegel, NY Prac, §127, p 156)', *Scigaj v. Welding*, 478 N.Y.S.2d 211 (2nd Dept. 1984). As such, the decision's purported 'consolidation' is not just legally unauthorized, but sham." (p. 22 of my moving affidavit in support of my November 9, 2007 order to show cause, underlining in the original)

20. This Court was fully alerted to the pages of my November 9, 2007 order to show cause pertaining to consolidation: first by my June 13, 2008 letters to Chief

---

referenced as accessible *via* the Center for Judicial Accountability's website, www.judgewatch.org. Neither Mr. Sclafani nor his client has denied or disputed the accuracy of these corroborating documents in any respect.

Clerk Lupi, and second by my June 24, 2008 letter to the Court. On top of that, my June 27, 2008 order to show cause (Exhibit 1) annexed these very pages as Exhibit NN-2.

21. The Court's June 30, 2008 ruling that it would summarily adjudicate a proceeding dormant for more than 15 years – for which it cited no law or authority other than that it was the "successor in interest" to Judge Reap, who, in 1989, was the senior judge, as the Court is now – followed upon Mr. Sclafani's importuning that the Court should and could summarily grant Mr. McFadden's summary judgment motion underlying Judge Reap's December 19, 1991 "Decision on Motion". Mr. Sclafani provided no law or other authority for this request. Rather, and, as is his custom, he inundated the Court with a deluge of assertions which were not only false, but which Mr. Scalfani knew to be false from the record of this case. This included his endorsement of Judge Reap's materially erroneous December 19, 1991 decision that the loss of the federal lawsuit against the Co-Op would entitle Mr. McFadden to summary judgment in #651/89 under doctrines of res judicata, collateral estoppel, and issue preclusion and, further, that all papers necessary for the determination of the motion in #651/89 had been submitted.

22. My response to the Court on June 30, 2008 largely focused on the fact that res judicata, collateral estoppel, and issue preclusion would not apply, contrary to Judge Reap's claim, endorsed by Mr. Sclafani. This, because Mr. McFadden had bailed out of the federal lawsuit, in which he had been a co-plaintiff, and because he had

thereafter failed to assign to myself and my mother his shareholder rights, as a consequence of which we had been forced to withdraw our causes of action based on the Co-Op's non-compliance with its rules, procedures, and policies – as to which there had been no adjudication of them in federal court.

23. Additionally I stated that subsequent to Mr. McFadden's first summary judgment motion, to which Judge Hansbury's December 19, 1991 decision had "reserved decision", he had made a second summary judgment motion, as to which there had been no decision.

24. The Court did not respond to what I said – nor ask for Mr. Sclafani's response. Rather, it granted Mr. Sclafani's request – based on nothing more than his flagrantly false and inflammatory deceits before the Court.

25. If the Court is actually familiar with the record herein, it knows – but failed to acknowledge – that what it actually did on June 30, 2008 and by its July 3, 2008 decision was to grant Mr. Sclafani reargument of what Judge Hansbury's October 11, 2007 and January 29, 2008 decisions had denied him. As I recollect, Mr. Sclafani did not identify to the Court that he had unsuccessfully sought the identical relief from Judge Hansbury.

26. The pertinent facts are as follows:

- Mr. Sclafani's June 22, 2007 Verified Petition herein, signed by him and Mr. McFadden, concealed the existence of the prior City Court proceedings and the federal action.[7] By contrast, my August 20, 2007 Verified Answer included both in Affirmative

[7] The Petition was verified only as to Mr. McFadden, the following day, June 23, 2007. Mr. Sclafani's Notice of Petition is dated June 27, 2007 – and was served upon me on July 9, 2007.

August 20, 2007 Verified Answer included both in Affirmative Defenses and Counterclaims, beginning with my First Affirmative Defense entitled "Open Prior Proceedings", identifying that #651/89 is one of three open prior proceedings – the other two being – #434/88 and #500/88 – and my First Counterclaim entitled "Prior Proceedings".

- Mr. Sclafani made an August 23, 2007 motion to dismiss my Affirmative Defenses and Counterclaims, equivocating (at ¶¶33-34) as to whether #651/89 is open and omitting any mention of #434/88 and #500/88. This was pointed out by my September 5, 2007 cross-motion (at ¶¶49, 56), which recited, in support of dismissal of the Petition and summary judgment on my Counterclaims (at ¶¶131, 154-156), that Mr. McFadden had made two deceitful and harassing summary judgment motions in #651/89. The first was in 1991 while we were perfecting our appeal to the Second Circuit Court of Appeals, and the second was in 1992, while we were working on our petition for a writ of certiorari to the U.S. Supreme Court.

- Mr. Sclafani's September 5, 2007 affidavit in support of his cross-motion continued to equivocate (at ¶¶38-54) as to whether #651/89 was still open and continued to ignore #434/88 and #500/88. However, based on Judge Reap's December 17, 1991 decision, which Mr. Sclafani now annexed as his Exhibit E, he sought to have the Court grant Mr. McFadden summary judgment in #651/89 – to which I gave extensive opposition by my September 11, 2007 affidavit (at ¶¶63-79).

- Judge Hansbury's October 11, 2007 decision did not grant Mr. Sclafani the summary judgment he had sought.

- Thereafter, in response to my November 9, 2007 order to show cause, Mr. Sclafani again ignored #434/88 and #500/88, equivocated as to whether #651/89 was still open, yet nonetheless sought to have the Court grant summary judgment therein, a request he made by his November 15, 2007 affidavit (at ¶¶42-48). I opposed by my November 26, 2008 affidavit (at¶¶59-61).

- Judge Hansbury's January 29, 2008 decision did not grant Mr. Sclafani the summary judgment he had sought.

27. Annexed are the pertinent pages of my two rebuttals to Mr. Sclafani's aforesaid two prior attempts to secure summary judgment in #651/89, neither embodied in any notice of motion or cross-motion by him, let alone under that index number, with notice to the affected parties:

- ¶¶63-79 of my September 11, 2007 reply affidavit (Exhibit 3);
- ¶¶59-61 of my November 26, 2008 opposing affidavit (Exhibit 4).

Such showing, as likewise my showing at ¶¶89-90, 123-131 of my September 5, 2007 cross-motion (Exhibit 5), demonstrates that there is no basis, in fact or law, for what the Court did on June 30, 2008 in adjourning this case so as to determine "*de novo*" Mr. McFadden's entitlement to summary judgment in #651/89 – or for granting summary judgment to him. As stated by me in my September 11, 2007 affidavit, incorporated by my November 26, 2007 affidavit, and as true from then to the present –

> "63. Mr. Sclafani provides no legal authority for how such long-dormant proceedings, involving additional parties, may be activated, but surely it cannot be done summarily – let alone by the summary granting of a 14-year old summary judgment motion therein – without a formal motion made under the index number of such proceedings, giving notice to the affected parties. Such affected parties would be my mother, a respondent in open proceeding 651/89, and the Co-Op, the petitioner in open proceedings 434/88 and 500/88.
>
> 64. However, were Mr. Sclafani to make a properly-noticed motion therein, Mr. McFadden would still not be entitled to summary judgment on his 14-year old undecided motion for summary judgment. Indeed, Mr. Sclafani's glib representation at ¶46 that 'All the papers necessary for the disposition of the motion had been submitted' – for which he relies on Judge Reap's December 19, 1991 decision (at ¶49), as he likewise relies on it for his false claims that the outcome of the federal action against me entitles Mr. McFadden to summary judgment based on *res judicata*, collateral estoppel and issue preclusion (his ¶¶47-48) – violates both fundamental due process and black-letter law. Mr. Sclafani

can be presumed to know this from my cross-motion's Exhibit Y, as well as from elementary rules governing application of *res judicata*, collateral estoppel, and issue preclusion, set forth in caselaw and treatise authority."

The Court's Wilful Disregard of my Rights to Reargument & Renewal of Judge Hansbury's January 29, 2008 Decision

28. Further reflective of the actual bias of the Court's June 30, 2008 rulings is that in purporting that it had to "defer" to Judge Hansbury's October 11, 2007 and January 29, 2008 decisions, it did not identify that a motion for reargument and renewal, if timely, would furnish a means by which the Court could easily reconsider Judge Hansbury's decisions. This, with knowledge – provided by my unresponded-to correspondence and unsigned order to show cause[8] – that my time to reargue and renew Judge Hansbury's January 29, 2008 decision has not begun to run.

29. As identified by my June 27, 2008 order to show cause (Exhibit 1, ¶12), Judge Hansbury's recusal, without explanation, by his January 29, 2008 decision, is the new fact for which I am entitled to renewal. As to the basis for reargument, my annexed June 13, 2008 letters summarize the readily-verifiable fraudulence of Judge Hansbury's January 29, 2008 decision. Upon the granting of reargument and renewal, any fair and impartial tribunal must reverse Judge Hansbury's denial of the first branch of my November 9, 2008 order to show cause. Such would provide an additional vehicle for vacating Judge Hansbury's fraudulent October 11, 2007 decision – and to adjudicate, *de novo*, the issue of my September 5, 2007 cross-motion for dismissal of

---

[8] See my June 13, 2008 letter to Chief Clerk Lupi entitled "My Yesterday's Visit to the Clerk's Office & Our Conversation Together" (at p. 2) – annexed to the order to show cause as Exhibit RR & SS-3.

Mr. McFadden's Petition and summary judgment on my Counterclaims, based on the record therein. *De novo* adjudication of my September 5, 2007 cross-motion is threshold – and will summarily dispose of this case, as likewise #651/89.

The Court's Wilful Disregard of its Duty to Make Disclosure of Facts Bearing Upon its Fairness & Impartiality – and the Necessity of Transfer of these Proceedings

30. Should the Court not disqualify itself based on the showing herein of its biased and legally-unfounded conduct – its duty is to respond, with facts and law, justifying the rulings and other actions and inactions described herein – as well as explain its failure to respond to my June 24, 2008 letter, including its failing to disclose, at that time, the facts of which it is aware bearing upon its fairness and impartiality, as was its obligation to do pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct.

31. As to disclosure, it should be obvious that this Court has a close working relationship, if not a personal one, with Judge Hansbury, who is one of only three other White Plains City Court judges. Such closeness has clearly interfered with the Court's ability to discharge its professional duties – which, pursuant §100.3D(1)[9] of the Chief Administrator's Rules Governing Judicial Conduct, requires it to refer Judge Hansbury for disciplinary, if not criminal investigation and prosecution by reason of his corruption in office, as documentarily-established by the record in this case.

---

[9] "A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action." (underlining added).

32. Not only has this Court not done this, it has permitted Judge Hansbury's misconduct to continue to infect this case by "deferring" to decisions it knows to be frauds from the record it has "reviewed". Additionally, it has disregarded its supervisory responsibilities under §100.3(C)(2)[10], as well as the Unified Court System's commitment to "Quality Service"[11], by ignoring the misconduct of Chief Clerk Lupi and the Clerk's Office, brought to its direct attention by my June 24, 2008 letter and subsequent June 27, 2008 order to show cause.[12] This includes Chief Clerk Lupi's false designation of #651/89 as the "original #" of this case – a predicate for the Court's activity therein.

33. In view of the small size of White Plains City Court and the fact that this Court sat on this case, with the record before it, at critical junctures – on September 6, 2007 and on November 16, 2007 – it is not unreasonable to surmise that Judge Hansbury's misconduct herein by his October 11, 2007 and January 29, 2008 decisions, as likewise the misconduct of Chief Clerk Lupi and the Clerk's Office, has been with

---

[10] "A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of official duties." (underlining added).

[11] Such commitment is the subject of a large placard at the Clerk's Office window, which urges "Let Us Know How We're Doing!" and provides – for that purpose – brochures stating that it is "the responsibility of all court personnel to fulfill the public's right to justice in a fair and efficient manner" and enclosing a "Comment Card". I made mention of this during the June 30, 2008 proceedings.

[12] The Court's disregard of its supervisory obligations over Chief Clerk Lupi and her office staff is additionally reflected by its failure to inquire as to the referred-to additional conduct that would "substantiate my entitlement to transfer of this case from White Plains City Court" (Exhibit RR, p. 1; Exhibit SS-3, p. 1). Such included Chief Clerk Lupi's castigating me, immediately upon my arrival in the Clerk's office, for my request to review the file because I had already reviewed it – such being ten months earlier, in August 2007.

this Court's knowledge, or even consultation. Such would explain why this Court will not discharge its supervisory and disciplinary responsibilities pursuant to §§100.3C and D of the Chief Administrator's Rules Governing Judicial Conduct – as disciplinary and criminal investigation would reveal the Court's role in their actions.

34. Although I had no contact with this Court prior to this case, my mother has. On June 30, 2008, in asking the Court to disclose facts bearing on its fairness and impartiality, it was my intention to myself present the facts of which I had learned from my mother. Such concerned this Court's misconduct in a case involving my mother wherein she had not only repeatedly sought the Court's disqualification, but presented a statement to the Mayor and White Plains Common Council in opposition to any intended reappointment of the Court to the bench. In substantiation, my mother had given me her December 4, 2006 statement (Exhibit 6-a) as to the Court's "knowing and deliberate disrespect for the Rule of Law", making it "a menace to those who are directly or indirectly affected by [its] decisions, as well as the public at large, especially municipal taxpayers who pay the freight for [its] incontrovertible malfeasance." My mother had also provided me with some of the letters she and assisting counsel had written to the Court prior thereto, dated May 16, 2006, August 4, 2006, and November 28, 2006 (Exhibits 6-b, 6-c, 6-d) – reflective of a pattern of conduct by the Court that has been repeated herein. This includes the Court's wilful refusal to allow a proper record to be made as to threshold jurisdictional and other legal issues and refusal to rule on same.

35. Due to my mother's present hospitalization (fn. 3, *supra*), I am unable to furnish an affidavit from her setting forth her direct, personal experience as to the Court's misconduct therein. Hopefully, she will be able to supply same in the near future – one which will additionally recite background facts that may have impelled the Court's lawless conduct in that case – as, likewise, in this case. These background facts pertain to former White Plains City Court judges, including Judge Reap[13], as well as the more powerful judges of the Ninth Judicial District and the politics that puts them on the bench and elevates them – reinforcing the necessity that this proceeding be transferred to ensure the appearance and actuality of fair and impartial justice.

36. Finally, in further support of transfer of this proceeding, it was my intention, on June 30, 2008, to make mention of the fact that there was a criminal case against me in White Plains City Court in or about January 25, 1993 (#93-0260) for alleged resisting arrest and obstructing government, which was transferred to North Castle Town Court. To the best of my recollection, this transfer was made by White

---

[13] Judge Reap handled all three of the open prior proceedings. My mother placed objections on the record, in open court, for his disqualification from any matter involving her or her family. That was on December 28, 1988 – in the first case brought by 16 Lake Street Owners, Inc., #434/88 (Exhibit 7-a). Prior thereto, on December 12, 1988, a motion was made in the no-longer existing case, #504/88, by my attorney, whose multi-branch relief included "disqualifying the City Court of White Plains from hearing this matter and directing its reassignment to another Court." (Exhibit 7-b). Judge Reap denied the motion for his disqualification, without reasons, in consolidated decisions, dated January 25, 1989 (Exhibit 7-c).

It must be noted that at the outset of #651/89, my attorney made reference to and reiterated the aforesaid on-the-record objections in #434/88. This, by his affidavit (at ¶4) in support of the motion, jointly filed with my mother on April 24, 1989. This motion is referred-to by Judge Friia's July 3, 2008 decision as having requested "various forms of relief" (Exhibit 2, p. 1).

Two and a half years after that motion, my mother's own December 16, 1991 affidavit in opposition to Mr. McFadden's first summary judgment motion was expressly "without prejudice to a motion for recusal, change of venue" (Exhibit Y, ¶2).

Plains City Court, *sua sponte*, without any motion, request – or even a court appearance – by me, in recognition of the fact that there were grounds upon which to question the impartiality and fairness of White Plains City Court.

37. Based on the date of transfer – February 5, 1993 – I believe the reason Judge Reap made no decision on the January 19, 1993 joint affidavit I filed with my mother in #651/89 (Exhibit Z-4) – which is the last document in the record therein[14] – is because he recused himself.

ELENA RUTH SASSOWER

Sworn to before me this
8th day of July, 2008

Notary Public

BELINDA HAUGHTON
Notary Public, State of New York
No. 01HA6179682
Qualified in Westchester County
Commission Expires Dec. 24, 20 11

[14] The Court's July 3, 2008 decision (Exhibit 2) ignores that Judge Reap's December 19, 1991 decision is NOT the last document in the record – a fact I stated to the Court on June 30, 2008, when I pointed out that Mr. McFadden had made a second summary judgment motion, subsequent to Judge Reap's December 19, 1991 decision. This is omitted from the July 3, 2008 decision.