

Present: HON. JO ANN FRIIA  
CITY COURT JUDGE

-----X  
JOHN MCFADDEN,

Petitioner,

-against-

DORIS L. SASSOWER and ELENA SASSOWER,

Respondents.  
-----X

**DECISION ON MOTION**

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.

INDEX NO.: SP 1474/08  
MOTION DATE: 9/26/08

The following papers numbered 1 to 7 read on this motion by respondent.

- |  |   |
|--|---|
| Notice of Motion                       | 1 |
| Affidavit of Elena Ruth Sassower       | 2 |
| Exhibits A - L                         | 3 |
| Notice of Cross-Motion                 | 4 |
| Affirmation of Dian Kerr McCullough    | 5 |
| Reply Affidavit of Elena Ruth Sassower | 6 |
| Exhibits M - Q                         | 7 |

FILED CITY COURT OF  
WHITE PLAINS, N.Y.  
2008 OCT 15 A 9:12

Upon the foregoing papers the Court finds and decides as follows:

Although denominated a "notice of motion," the relief sought therein is, in essence, the subject of an Article 78 proceeding, in the nature of mandamus, seeking to compel the Chief Clerk to produce records in connection with a pending appeal before the Appellate Term, Second Department. The City Court is without subject matter jurisdiction to entertain respondent's application (CPLR § 7804 [b]).

Accordingly, respondent's motion is denied. Cross-motion granted to the extent that the City Court is without subject matter jurisdiction to entertain respondent's application.

EX C-5

**THIS DECISION CONSTITUTES THE ORDER OF THE COURT**

Dated: White Plains, New York  
October 14, 2008



HON. JO ANN FRIA  
CITY COURT JUDGE

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