

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: NINTH & TENTH JUDICIAL DISTRICTS

----- x

JOHN McFADDEN,

Respondent,

#2008-1427-WC

#2009-148-WC

-against-

(White Plains City Court:
#SP-651/89 & SP-1474-2008)

DORIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Appellant.

-----x

Affidavit in Reply
to Opposing Affirmation of Leonard A. Sclafani, Esq.

-----x

JOHN McFADDEN,

Cross-Appellant/Respondent,

#2008-1433-WC

#2008-1428-WC

-against-

(White Plains City Court:
#SP-1502/07)

ELENA SASSOWER,

Appellant.

----- x

STATE OF NEW YORK)

COUNTY OF SUFFOLK) ss.:

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

1. I am the appellant *pro se* in the above four appeals and submit this affidavit in reply to the three May 4, 2010 affirmations of Leonard Sclafani, Esq.¹, counsel to John McFadden, in opposition to my April 25, 2010 motion to disqualify Justice Angela G. Iannacci, to vacate for lack of jurisdiction & fraud, for reargument/renewal, leave to appeal & other relief.

¹ Notwithstanding Mr. Sclafani's three opposing affirmations are dated May 4, 2010, they were not mailed to me until almost a week later. Annexed hereto (Exhibit X-1) is a copy of the envelope in which they were sent, bearing a May 10, 2010 date on the Pitney Bowes postal strip, as well as his affidavit of service (Exhibit X-2), secured from this Court's Clerk's Office, attesting to service by mail on May 10, 2010.

RECEIVED
APPELLATE TERM
CLERK'S OFFICE
MAY 17 PM 5:30

2. These three opposing affirmations – identical, except for their captions² – are no opposition *as a matter of law* to my motion’s six branches. Their identical 11 paragraphs do not deny or dispute ANY of the facts, law, or legal argument presented by my 49-page motion – NONE of which they even identify. As such, these opposing affirmations are frivolous *per se*, warranting imposition of costs and sanctions pursuant to this Court’s Rule 730.3(g), relief I herein request. This is additionally compelled because Mr. Sclafani’s affirmations are, from beginning to end, fraudulent, triggering this Court’s mandatory duty, pursuant §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct, to refer him to disciplinary and criminal authorities – relief I also herein request.

3. Under applicable legal principles which I have repeatedly brought to Mr. Sclafani’s attention since 2007 – and to this Court’s attention since 2008 –

“when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.” Corpus Juris Secundum, Vol. 31A, 166 (1996 ed., p. 339).

“It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party’s falsehood or other fraud in the preparation and presentation of his cause ... and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause’s lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.’ II John Henry Wigmore, Evidence §278 at 133 (1979).”

This affidavit is, consequently, also submitted in further support of my April 25, 2010 motion.

4. Mr. Sclafani’s affirmations begin by baldly proclaiming in his ¶¶3-5 that my

² The three different captions of Mr. Sclafani’s otherwise identical three affirmations are essentially taken from the Court’s February 19, 2010 and February 23, 2010 decisions on my appeals and like two of them bear incorrect index numbers. Most egregiously *John McFadden v. Elena Sassower* is NOT #SP-651/89.

motion's first branch for Justice Iannacci's disqualification is "frivolous" (§3) and has "no basis" (§5). He combines this with bald, inflammatory rhetoric that my disqualification branch is "consistent with [my] bad faith, frivolous litigation tactics throughout the course of this brutal litigation extending over twenty years" (§3) – for which he offers no specifics other than that:

“Justice Iannacci can take comfort in the fact that she has now been added to the ranks of every single judge, justice or jurist, (to say nothing of court clerks and court attorneys) city, state, or federal, in courts of original jurisdiction, limited jurisdiction or appellate jurisdiction, who have had any connection whatever with any application, motion, ruling or judgment, interlocutory or final, brought by, or against Sassower and who subsequently have faced charges leveled by Sassower of bias, ignorance, malfeasance and/or misfeasance, and/or who have been the subject of applications of Sassower for sanctions, criminal prosecution and/or disqualification.” (§4).

5. This is a deceit. The record before this Court is devoid of any “bad faith, frivolous litigation tactics” on my part. With respect to judicial disqualification, the record shows that I made a legally-sufficient November 9, 2007 order to show cause to disqualify Judge Hansbury for demonstrated actual bias and interest³ and a legally-sufficient July 18, 2008 order to show cause to disqualify Judge Friia for demonstrated actual bias and interest⁴ – which my four appeals highlighted as dispositive and which Justices Iannacci and Molia have concealed, without adjudication, by their three February 23, 2010 decisions thereon (Exhibits M-1, N-1, O-1)⁵. This is set forth at §§9, 19 (at p. 12), 20, 22, 31, 33-34, 36, 37, 40-46 of my April 25, 2010 motion. I also made a legally-sufficient January 2, 2010 motion to disqualify Justice Molia for demonstrated actual bias and interest, which Justice Molia's February 19, 2010 decision denied,

³ Annexed as Exhibit C to my March 6, 2009 reply brief in #2008-1433-WC.

⁴ Annexed as Exhibit N to the compendium of exhibits accompanying my April 17, 2009 appellant's brief in #2008-1427-WC & 2009-148-WC.

⁵ Annexed to my April 25, 2010 motion.

without reasons (Exhibit L-3). This is set forth at ¶¶15-19 of my April 25, 2010 motion.

6. As for court clerks and court attorneys, the record shows that I particularized their misconduct and collusion, *inter alia*, by my January 2, 2010 motion and my appeals #2008-1427-WC & #2009-148-WC – as to which this Court’s February 19, 2010 and February 23, 2010 decisions thereon (Exhibits L-1, M-1, N-1) made no findings and denied, without reasons, the relief to which findings would entitle me, including referrals to disciplinary and criminal authorities. This is set forth at ¶¶19 (at pp. 14-16 & pp. 17-18), 25, 36-37 of my April 25, 2010 motion.

7. Tellingly, Mr. Sclafani does not mention “charges [I have] leveled” against him and his client for their litigation fraud, seeking costs/sanctions against them and their referral to disciplinary/criminal authorities, *inter alia*, by my January 2, 2010 motion and appeals, as to which the Court’s decisions (Exhibits L-1, M-1, N-1, O-1) made no findings in denying me relief, without reasons. This is set forth at ¶¶4-5, 19 (at pp. 16-17), 29-33, 36-37 of my April 25, 2010 motion, including with the following statement pertaining to the Court’s decision on my appeals #2008-1433-WC and #2008-1428-WC (Exhibit O-1), identified by my ¶4 as “the most stunning” of the five decisions which are the subject of my motion:

“the Court makes no findings of fact and conclusions of law with respect to my [September 5, 2007] cross-motion’s two branches for sanctions and costs against Mr. Sclafani and his co-conspiring client and their referral to disciplinary and criminal authorities, also reprinted *verbatim* in my appellant’s brief for #2008-1433-WC (at pp. 23-27) and highlighted by my Point I (at pp. 39-40) because they were – and are – dispositive that his motion to dismiss my Affirmative Defenses and Counterclaims was fraudulent throughout and that I was entitled to dismissal of Mr. McFadden’s Petition, *as a matter or law*. Indeed, had the Court made findings of fact and conclusions of law as to my cross-motion’s two branches for sanctions/costs and disciplinary/criminal referrals, it could neither have awarded summary judgment to Mr. McFadden upon its supposed ‘search [of] the record’, nor dismissed my

Counterclaims.” (¶5 of my April 25, 2010 motion, underlining and italics in the original).⁶

8. As for Mr. Sclafani’s bald claim that the branch of my April 25, 2010 motion for Justice Iannacci’s disqualification is frivolous, such is without identifying that I had specified the disqualification as being for demonstrated actual bias and interest, which I had substantiated by fact-specific, law-supported analyses of the four decisions she is purported to have jointly rendered with Justice Molia on my January 2, 2010 motion and four appeals.

9. These analyses, spanning virtually the entirety of my 49-page motion, establish that the four jointly-rendered decisions and Justice Molia’s additional decision denying the first branch of my January 2, 2010 motion for her disqualification are the product of “bias, prejudice, or unworthy motive”, being, with one exception, insupportable in fact and law and knowingly so. As stated at the very outset of my April 25, 2010 motion:

“2. As hereinafter shown, the two unsigned February 19, 2010 decisions on my January 2, 2010 motion to disqualify Justice Molia & other relief are insupportable in fact and law – and knowingly so (Exhibit L-1, L-3)^[fn]. Even more so the two unsigned February 23, 2010 decisions on my three appeals #2009-148-WC, #2008-1433-WC, and #2008-1428-WC (Exhibits M-1, O-1). Only the unsigned February 23, 2010 decision on my appeal #2008-1427-WC (Exhibit N-1) bears some resemblance to the material facts in the record – and this to a degree so miserly as to demonstrate no less a corruption of this Court’s

⁶ The Court’s protectionism of Mr. Sclafani and Mr. McFadden by its decisions, germane to its disqualification for actual bias, also has disciplinary and criminal consequences – as reflected by ¶36 of my April 25, 2010 motion:

““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...” *Matter of Bolte*, 97 A.D. 551, 568 (1st Dept. 1904), italics in the original.

‘...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequences as if the judicial officer received and was moved by a bribe.’, *Matter of Bolte*, at 574.’”, underlining added.

judicial, administrative, and disciplinary responsibilities. With that exception, these five unsigned decisions – like the three unsigned decisions on my pre-appeal motions^{fn.2} – are judicial frauds and ‘so totally devoid of evidentiary support as to render [them] 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).

3. As such, these five most recent decisions (Exhibits L-1, L-3, M-1, N-1, O-1) establish, *prima facie*, my entitlement to Judge Iannacci’s disqualification for demonstrated actual bias, if not interest^{fn.3}, which I herein seek, and reinforce my entitlement to the disqualification of Judge Molia for demonstrated actual bias and interest, sought by my January 2, 2010 motion. As set forth in the record before this Court, the governing legal principal is that ‘bias or prejudice or unworthy motive’ disqualify where they are ‘shown to affect the result’.^{fn.4}

4. ‘Bias, prejudice, or unworthy motive’ – including interest – are the ONLY explanations for the five decisions that are the subject of this motion.’ (underlining and italics in my original April 25, 2010 motion).

10. Mr. Sclafani’s affirmations do not contest the accuracy of the analyses of the five decisions which my April 25, 2010 motion presents– or the legal standard that “bias, prejudice, or unworthy motive” disqualify when they affect the result. Nor does Mr. Sclafani claim, even baldly, that the five decisions are correct.

11. Although my April 25, 2010 motion comprehensively analyzes and seeks relief

^{fn.2} Annexed as Exhibits F-1, H-1, I-1 to my January 2, 2010 motion to disqualify Justice Molia & other relief.

^{fn.3} The actual bias demonstrated by these decisions is so brazen as to suggest interest. *Cf.* my memorandum of law accompanying my November 9, 2007 order to show cause for Judge Hansbury’s disqualification, similarly describing (at p. 6) his October 11, 2007 decision – now affirmed by this Court (Exhibit O).

^{fn.4} See my appellant’s brief in #2008-1428-WC, at p. 18, reiterated by my February 25, 2010 letter to this Court’s Chief Clerk, Paul Kenny (Exhibit P, p. 6):

‘Although recusal on non-statutory grounds is ‘within the personal conscience of the court’, a judge’s denial of a motion to recuse will be reversed where the alleged ‘bias or prejudice or unworthy motive’ is ‘shown to affect the result’, *People v. Arthur Brown*, 141 A.D.2d 657 (2nd Dept. 1988), citing *People v. Moreno*, 70 N.Y.2d 403, 405 (1987), *Matter of Rotwein*, 291 N.Y. 116, 123 (1943); 32 New York Jurisprudence §44; *Janousek v. Janousek*, 108 A.D.2d 782, 785 (2nd Dept. 1985): ‘The only explanation for the imposition of such a drastic remedy...is that...the court became influenced by a personal bias against the defendant.’”

against five decisions, Mr. Sclafani's affirmations identify only a single decision: the joint decision of Justices Iannacci and Molia on my appeal #2008-1427-WC. This is described by his ¶6 as having "reversed the judgment of the City Court against [me] in City Court #SP-651/89", with his ¶¶7-9 thereupon flagrantly misrepresenting the basis of the reversal so as to purport that the Court should grant my motion's reargument branch so as to "reinstate the said judgment". Thus, he states:

“7. Mr. McFadden did not allow the case ‘to languish’ as the Court found. As noted above, he made no less than three applications to the Court requesting that it grant him judgment.

8. While promising to do so, the Court did nothing but sit on its hands and refuse to decide the motions on their merits. No doubt it did so for fear of retribution from Sassower.

9. It is respectfully submitted that it was erroneous for the Court to lay blame for the lack of activity of this case on Mr. McFadden or to allow the delay of the City Court in properly resolving the matters that he brought before that Court on due motions to work to his prejudice.”

12. This is brazen deceit. The Court's decision did not “find” that Mr. McFadden had “allow[ed] the case “to languish”. Nor did it “blame[]” him “for the lack of activity” in #SP-651/89 (Exhibit N-1, p. 5)⁷. Rather, it reversed the judgment based on its finding that Mr. McFadden's March 27, 1989 petition “contained fundamental misstatements and omissions”, necessitating its dismissal, *as a matter of law* (Exhibit N-1, p. 4) – a fact pointed out at ¶48 of my April 25, 2010 motion. That Mr. Sclafani conceals this so as to urge the Court that upon its granting of reargument of the decision on my appeal #2008-1427-WC⁸, it award Mr. McFadden judgment on his March 27,

⁷ The extent of what it said on the subject was its single sentence – quoted at ¶38 of my April 25, 2010 motion:

“We incidentally note that ‘a summary proceeding may [not] be permitted to languish off calendar indefinitely, leaving the threat of eviction hanging over the respondents for years without resolution’ (Matter of Henriques v. Boitano, NYLJ, July 17, 2002 [Civ Ct. NY County]).”

⁸ As to the reargument sought by my April 25, 2010 motion, it is for modification of the decision by “findings of fact and conclusions of law based on [my] July 18, 2008 order to show cause and [my] appellant's brief for #2008-1427-WC”. (notice of motion, ¶4c).

1989 petition is now the latest demonstration of his deceit as to that fraudulent petition, of which this Court has a mountain. As set forth at ¶¶30, 32, 33, 36 of my April 25, 2010 motion, the fraudulence of Mr. McFadden's March 27, 1989 petition and Mr. Sclafani's deceit with respect thereto were chronicled by my July 18, 2008 order to show cause for Judge Friia's disqualification, the original of which I furnished this Court with my August 13, 2008 vacatur/dismissal motion, seeking disciplinary and criminal referral against both Mr. McFadden and Mr. Sclafani for fraud, as well as an award of sanctions and costs against them for litigation misconduct pursuant to 22 NYCRR §130-1.1 and assessment of damages against Mr. Sclafani for his deceit and collusion pursuant to Judiciary Law §487(1).

13. With comparable deceit Mr. Sclafani disposes of the balance of my April 25, 2010 motion. His concluding ¶¶10-11 purport that "it seeks nothing but to rehash the same baseless, frivolous arguments as were already addressed on the appeals herein." and "is not a proper ground for reargument and reconsideration." This, too, is flagrant fraud as my April 25, 2010 motion could not have been more explicit in detailing that the Court's subject five decisions do not address the facts, law, and legal argument I presented on my appeals – and, most importantly, the documents identified by my briefs and reiterated by my January 2, 2010 motion (at ¶¶7-8, 12) as dispositive:

(a) my July 18, 2008 order to show cause to disqualify Judge Friia, containing a 51-page analysis of her July 3, 2008 decision/order;

(b) my October 10, 2008 opposition/reply affidavit⁹ pertaining to my September 18, 2008 motion in White Plains City Court to compel its Chief Clerk to provide this Court with the documents and information essential for my appeals, containing a 12-page analysis pertinent to Judge Friia's October 14, 2008 decision/order; and

⁹ Annexed as Exhibit O in the compendium of exhibits accompanying my April 17, 2009 appellant's brief in #2008-1427-WC & #2009-148-WC.

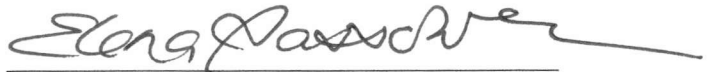
(c) my November 9, 2007 order to show cause to disqualify Judge Hansbury, containing a 30-page analysis of his October 11, 2007 decision/order.

As to these, ¶9 of my April 25, 2010 motion stated:

“These three documents, whose threshold issue is the disqualification of Judges Friia and Hansbury for actual bias and interest based on their decisions, suffice to establish the fraudulence of the Court’s three February 23, 2010 decisions on my appeals, each obliterating the disqualification issue as if it does not exist and concealing the particulars of the appealed-from decisions. Such will be obvious upon the Court’s making findings of fact and conclusions of law with respect to the analyses they contain, as the Court was duty-bound to do in determining my appeals and now in determining this motion. Indeed, just as these three documents were dispositive of my entitlement on my appeals, so they are now dispositive of my entitlement to all branches of this motion.^[fn].”, (underlining in the original).

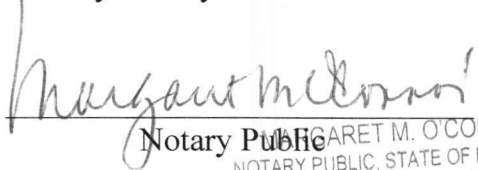
14. It is a fitting conclusion to reiterate the dispositive significance of these three documents for all branches of my April 25, 2010 motion – undenied by Mr. Sclafani – as likewise this Court’s duty to make findings of fact and conclusions of law with respect to the analyses they contain.

WHEREFORE, based on the record herein, including the three dispositive documents hereinabove identified, the relief sought by my notice of motion is compelled, *as a matter of law*, with imposition of costs and sanctions against Mr. Sclafani pursuant to this Court’s Rule 730.3(g), as well as his referral to disciplinary and criminal authorities pursuant §100.3D of the Chief Administrator’s Rules Governing Judicial Conduct.



ELENA SASSOWER

Sworn to before me this
17th day of May 2010



Notary Public MARGARET M. O'CONNOR
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN SUFFOLK COUNTY
REG. NO. 01OC6132954
MY COMMISSION EXPIRES AUG. 29, 2013

139

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: NINTH & TENTH JUDICIAL DISTRICTS**

----- X
JOHN McFADDEN,
Respondent,
#2008-1427-WC
#2009-148-WC
(White Plains City Court:
#SP-651/89 & SP-1474-2008)
-against-
DORIS L. SASSOWER,
Respondent,
ELENA SASSOWER,
Appellant.

----- X
----- X
JOHN McFADDEN,
Cross-Appellant/Respondent
#2008-1433-WC
#2008-1428-WC
(White Plains City Court:
#SP-1502/07)
-against-
ELENA SASSOWER,
Appellant.

----- X

Appellant's Affidavit in Reply
to Opposing Affirmation
of Leonard A. Sclafani, Esq.
& in Further Support of Appellant's Motion
to Disqualify Justice Angela G. Iannacci,
to Vacate for Lack of Jurisdiction & Fraud, Reargument/Renewal,
Leave to Appeal, & Other Relief

Elena Sassower, Appellant *Pro Se*
c/o Karmel
25 East 86th Street, Apt. 10G
New York, New York 10028
Tel: 646-220-7987