

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

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JOHN MCFADDEN

NOTICE OF CROSS-MOTION

Respondent

Index No. 2008-1427 WC
2009-148 WC

-against-

DORIS SASSOWER

Respondent

ELENA SASSOWER

Appellant.

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MOTION BY: Respondent

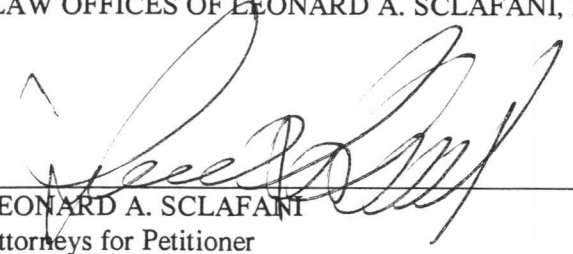
TIME DATE & PLACE OF MOTION: January 20, 2010 at 10:00 A.M.
Supreme Court, Appellate Term,
9th and 10th Districts
141 Livingston Street
Brooklyn, New York

SUPPORTING PAPERS: Affirmation of Leonard A. Sclafani, Esq.
Sworn to the 5th day of January, 2010

RELIEF REQUESTED: An order granting costs and sanctions as against
Appellant-Respondent Elena Sassower pursuant
to §730.3(g) of the Rules of the Appellate Division,
Second Department together with such other and
further relief as this Court deems just and equitable

Dated: January 5, 2010

THE LAW OFFICES OF LEONARD A. SCLAFANI, P.C.

BY: 
LEONARD A. SCLAFANI
Attorneys for Petitioner
2 Wall Street, 5th Floor
New York, NY 10005
(212) 696-9880

To: Elena Sassower
c/o Karmel
25 East 86th Street
New York, New York 10028

Doris L. Sassower
283 Soundview Avenue
White Plains, New York 10606

New York State Attorney General Andrew Cuomo
Att: Assistant Solicitor General Diana R. H. Winters
120 Broadway #4
New York, New York 10271

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

**Index #2008-1427-WC
#2009-148-WC**

Respondent

-against-

DORIS L. SASSOWER

Respondent

ELENA SASSOWER

**AFFIRMATION IN
OPPOSITION TO
MOTION FOR
DISQUALIFICATION
AND OTHER RELIEF
AND IN SUPPORT OF
CROSS-MOTION FOR
SANCTIONS**

Appellant.
-----X

Leonard A. Sclafani hereby affirms under penalty of perjury as follows:

1. I am an attorney duly admitted to practice law before the courts of the State of New York. I am counsel to John McFadden, petitioner-respondent in the above referenced appeals. As such, I am fully familiar with the facts and circumstances surrounding this matter and hereinafter set forth.

2. I submit this affirmation in opposition to the motion of Elena Sassower, respondent-appellant (hereinafter "Sassower") seeking disqualification of Justice Denise F. Molia and other relief. I also submit this affirmation in support of Mr. McFadden's cross-motion for sanctions and costs as against Sassower.

3. Sassower's motion is nothing short of a brazen, transparent and bad faith attempt to

intimidate this Court into granting her pending appeals and/or otherwise to frustrate, stall, delay and confuse the ultimate adjudication of the matters underlying those appeals.

4. That portion of Sassower's motion as seeks disqualification of Justice Molia places the Justice in the company of virtually every other Justice and Judge, state, federal or local, who ever came into contact with any of the cases and proceedings involving Sassower.

5. When all the froth is blown off Sassower's motion insofar as it seeks disqualification of Justice Molia, what is left is Sassower's claims that, because Justice Molia has been involved, in some capacity, in the adjudication of motions made by her in this Court in one or another of Sassower's instant appeals and/or, because Justice Molia did not question Sassower during oral argument on her instant appeals in the manner, and to the extent, that Sassower deemed necessary, Justice Molia demonstrated actual bias as against Sassower such that she must now be disqualified from sitting in adjudication of Sassower's appeals.

6. Sassower's motion is unsupported and unsupportable by any legal authority. It is, to say the least, patently frivolous.

7. That branch of Sassower's motion as seeks to an order "determining, with factual findings and conclusions of law, the issues presented as dispositive by appellant's prior motions" previously adjudicated by this Court's October 1, 2008, November 26, 2008 and June 22, 2009 decisions and orders is nothing more than a bald faced, bad faith attempt to

continue argument on the merits of her pending appeals notwithstanding that briefing and oral argument on the appeals have been concluded, at the same time that Sassower attempts improperly and untimely to appeal, to reargue and/or to relitigate her prior denied motions. This Court does not have jurisdiction to consider Sassower's motion insofar as it relates to her prior denied motions because she failed to file appeals or motions for reargument or renewal of the motions and/or the Court's decisions thereon in a timely manner, failed to identify her instant motion as one seeking renewal and/or reargument as the CPLR requires and failed to provide any legal basis for renewal and/or reargument.

8. More importantly, were the Court to overlook the procedural deficiencies in Sassower's motion, it would be compelled to deny the motion as patently frivolous.

9. Giving new meaning to the concept of frivolous litigation is that branch of Sassower's motion as seeks to refer unnamed Appellate Term court attorneys who Sassower presumes handled her three prior denied motions and who Sassower now presumes will be handling her four appeals "to appropriate authorities for investigation and dismissal". Her arguments in summary is: The only conceivable explanation for the denial of her prior motions and for the denial of her pending appeals (were they to be denied) is that the court and all of its personnel are corrupt or incompetent or both.

10. The only purpose or intent that could rationally be divined from this branch of Sassower's motion is the purpose and intent to intimidate the Court and all those in it,

justices, clerks and legal secretaries alike, from determining Sassower's appeals in favor of Mr. McFadden and/or to further stall, delay, obfuscate, and confuse the ultimate adjudication of these matters.

11. That branch of Sassower's motion as seeks an order directing a subpoena to White Plains City Court Clerk Patricia Lupi fails to recognize the current status of the instant litigations among other factual and legal considerations necessitating the denial of Sassower's motion.

12. Again Sassower cites no legal or factual basis for this branch of her motion; nor does any basis exist

13. Lastly, that aspect of Sassower's motion as seeks the imposition of "maximum costs and sanctions against [your affiant], his client John McFadden and the Assistant Solicitor General Diane R. H. Winters and her client White Plains City Court Clerk Patricia Lupi, as well as against supervising attorneys in the Attorney General's office...and referring them to disciplinary and criminal authorities" is a rehash of claims, arguments and prayers for relief already denied by this Court, actually pending on the appeals herein and is, like the balance of Sassower's motion, both frivolous and calculated to intimidate this Court and/or to stall, delay, confuse and obfuscate the ultimate conclusion of the pending matters.

14. On the basis of the foregoing, Sassower's motion and each of its various parts must

be denied.

McFadden's Cross-Motion

15. There is one part of Sassower's motion in which Sassower accurately states the law applicable to some aspects of her motion.

16. At paragraph "37" of her affidavit in support of her within motion, Sassower correctly states that:

On September 17, 2008, the Appellate Division, Second Department promulgated amendments to its Appellate Term Rules. Among these, a new provision §1730.3(g):

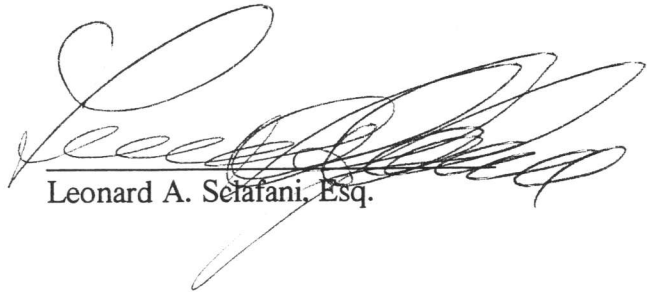
Any attorney or party to a civil appeal who, in the prosecution or defense thereof, engages it's frivolous conduct as the term is defined in 22 NYCRR Subpart 130-1.1(c), shall be subject to the imposition of such costs and/or sanctions as authorized by 22 NYCRR Subpart 130-1 as the court may direct.

17. Your affirmant on behalf of Mr. McFadden respectfully submits that Sassower's instant motion satisfies all of the elements of the above quoted rule and requires this Court to impose costs and sanctions as authorized by 22 NYCRR Subpart 130-1 to the maximum extent as is permitted thereunder in favor of Mr. McFadden and against Ms. Sassower.

WHEREFORE, your affirmant on behalf of John McFadden respectfully requests that

Sassower's within motion, and each of its parts, be denied, that John McFadden's within cross-motion be granted awarding to him costs and sanctions in the maximum amount authorized by 22 NYCRR Subpart 130-1 as against Sassower and that he be granted such other and further relief as this Court deems just and equitable.

Dated: January 5, 2010
New York, New York



Leonard A. Seifani, Esq.

Appellate Term: Index #2008-14278 WC

Index #2009-148 WC

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERMS: NINTH & TENTH JUDICIAL DISTRICT

JOHN MCFADDEN,

Respondent

-against-

DORIS L. SASSOWER

Respondent

ELENA SASSOWER

Appellant

NOTICE OF CROSS-MOTION

**THE LAW OFFICES
OF
LEONARD A. SCLAFANI, P.C.**

Attorneys for Respondent John McFadden

Office and Post Office Address, Telephone

2 Wall Street – 5th Floor
New York, N.Y. 10005
(212) 696-9880

Pursuant to 22NYCRR 1301.1a the undersigned, an attorney admitted to practice in the courts of New York State, certifies that upon information and belief, and after reasonable inquiry, the contentions contained in the annexed documents(s) are not frivolous:

Leonard A. Sclafani

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for
