

rec'd 10/21/08

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

- - - - -X

JOHN MCFADDEN

Index No. 2008-1427 WC

Petitioner

Lower Ct. No. SP-651/89

SP 2008-1471

-against-

NOTICE OF MOTION

DORIS SASSOWER and
ELENA SASSOWER

Appellants-Respondents.

- - - - -X

MOTION BY: Petitioner

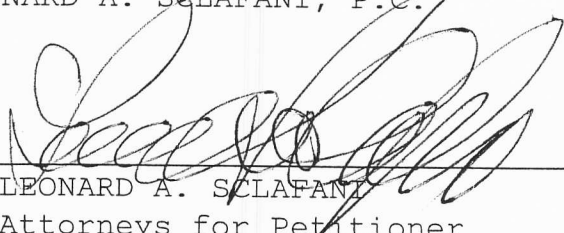
TIME DATE & PLACE OF MOTION: October 24, 2008 at 10:00 A.M.
Supreme Court, Appellate Term,
2nd & 11th, 9th and 10th Districts
141 Livingston Street
Brooklyn, New York

SUPPORTING PAPERS: Affidavit of John McFadden
Sworn to the 20th day of October, 2008

RELIEF REQUESTED: An order vacating the stay of
enforcement of the final judgment of
eviction entered in the proceedings
below on July 21, 2008 in accordance
with the terms of this Court's October
1, 2008 Decision and Order together with
such other and further relief as this
Court deems just, proper and equitable.

Dated: October 20, 2008

LEONARD A. SCLAFANI, P.C.

BY: 

LEONARD A. SCLAFANI
Attorneys for Petitioner
18 East 41st Street 15th Floor
New York, NY 10017
(212) 696-9880

To: Elena Sassower
16 Lake Street - Apt 2C
White Plains, New York 10603

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

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JOHN MCFADDEN

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DORIS SASSOWER and ELENA SASSOWER

AFFIDAVIT

Appellants-Respondents.

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John McFadden, being first duly sworn, deposes and says:

1. I am the petitioner in the underlying summary holdover proceeding and respondent in the appeal of Elena Sassower in the above captioned. As such, I am fully familiar with the facts and circumstances surrounding this matter and hereinafter set forth.

2. I submit this affidavit in support of my within motion for vactur of the stay hereinafter described.

3. By decision and order of this Court made and entered on October 1, 2008, a copy of which is annexed hereto as Exhibit "A", the Court, inter alia, granted the motion of Elena Sassower seeking in effect to stay enforcement of the final judgment of eviction entered against her in White Plains City Court on July 21, 2008. The Court directed that enforcement of the said final judgment was stayed pending hearing and determination of Ms.

Sassower's appeal on condition that Ms. Sassower perfect her appeal on or before December 5, 2008.

4. However, by its Order, the Court also directed Ms. Sassower to pay your affiant any and all arrears in rent/and or use and occupancy at the rate most recently payable within ten days from the date of the said Order, failing which the Court, on its own motion, could vacate the stay, or your affiant could move to vacate the stay on three day's notice.

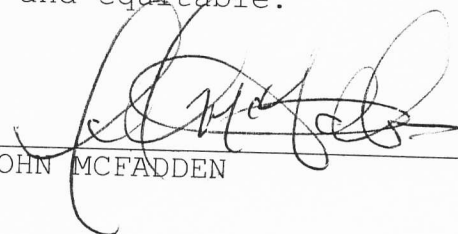
5. As of the date of the said Order, Ms. Sassower was in arrears in the payment of use and occupancy of \$1,660.00 per month (that sum being the monthly sum that was most recently payable as use and occupancy), for the months of August, September and October, 2008. Ms. Sassower was also in arrears in the sum of \$60.00, having failed to pay \$30.00 of the use and occupancy that was due as directed by the White Plains City Court in each of the months of July and August, 2007.

6. Accordingly, as of the date hereof, Ms. Sassower owes use and occupancy in the sum of \$5,040.00.

7. As of the date hereof, your affiant has received no part of

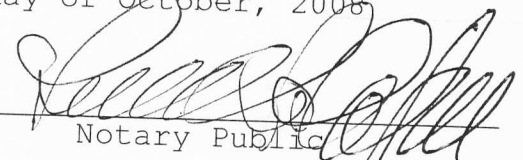
that said sum despite that more than ten days has elapsed since the date of the October 1, 2008 Order.

8. Accordingly, petitioner respectfully requests that his within motion be granted and that the stay of enforcement of the final judgment above described be vacated together with such other relief as this Court deems just and equitable.



JOHN MCFADDEN

Sworn to before me this 20
day of October, 2008



Notary Public

LEONARD A. SCLAFANI
Notary Public, State of New York
Notary No. 00120579
Qual. in Westchester County
Commission Expires December 20, 2008