

**Elena Ruth Sassower**

*16 Lake Street, Apartment 2C  
White Plains, New York 10603*

*E-Mail: elenaruth@aol.com*

*Tel. (646) 220-7987*

BY FAX: 718-643-7889 (8 pages)

January 15, 2009

Appellate Term Chief Clerk Paul Kenny  
141 Livingston Street, 15<sup>th</sup> Floor  
Brooklyn, New York 11201-5079

RE: Enlargement of Appellant's Time for Reply Briefs  
& Clarification/Dismissals of Cross-Appeals:

*John McFadden v. Elena Sassower* [White Plains City Court #SP-1502/07]  
Appeal #2008-1433 WC [Judge Hansbury's 10/11/07 decision/order]  
Appeal #2008-1428 WC [Judge Hansbury's 1/29/08 decision/order]

Dear Mr. Kenny,

Pursuant to the Appellate Term's Rules 731.8(d)(2), 732.8(d)(2), or other applicable provisions, this is to request a 10-day enlargement of time for the filing of my reply briefs in my above-perfected appeals, currently due on January 21, 2009.

Such is necessitated by the fact that the two briefs filed on January 9, 2009 by Mr. Sclafani, each entitled "Brief of Petitioner-Respondent-Cross-Appellant" and numbering 57 and 17 pages, respectively, are, from beginning to end, based on flagrant falsification and omission of the material facts. Such requires extensive correction by me, lest the Appellate Term be misled as to what is before it. This includes Mr. Sclafani's false claim that "McFadden filed a notice of cross-appeal" for #2008-1428 WC, appearing at page 3 of his brief therein – a copy of which is enclosed for your convenience.

By copy of this letter to Mr. Sclafani, I hereby demand that he IMMEDIATELY substantiate the claim that "McFadden filed a notice of cross-appeal" for #2008-1428 WC by producing a copy of that notice of cross-appeal, his affidavit of service, and proof of filing with the White Plains City Court.

As for McFadden's cross-appeal in #2008-1433 WC, his brief therein was due on November 13, 2008, the date on which my appeal brief therein was also due. As a consequence, the cross-appeal for #2008-1433 WC perfected by the brief filed on January 9, 2009, is untimely.

SR A-1

Kindly advise whether the docket or other records of the Appellate Term's Clerk's Office reflect the untimeliness of Mr. McFadden's cross-appeal in #2008-1433 WC. Indeed, the cross-appeal should have been dismissed on December 9, 2008 "for lack of prosecution", pursuant to Appellate Term Rule 731.8(a) and 732.8(a) and consistent with its notice for #2008-1433 WC, which it mailed on or about August 8, 2008. For your convenience, a copy of the Appellate Term's notice for #2008-1433 WC is enclosed for purposes of such dismissal, which I herein request.

In that regard, I would note that your December 5, 2008 orders in #2008-1433 WC and #2008-1428 WC did not enlarge Mr. McFadden's time to perfect cross-appeals. Rather, each granted Mr. Sclafani's "written application dated DECEMBER 3, 2008 to ENLARGE THE TIME TO FILE A RESPONDENT'S BRIEF" (capitalization in your original orders). Indeed, no application to extend Mr. McFadden's time for his purported cross-appeals could then have been made, as such cross-appeals were already, by then, more than two weeks untimely.

Finally – and so that I may include such information in my reply briefs and the companion motion I intend to make against Mr. Sclafani and his co-conspiring client, Mr. McFadden, *inter alia*, for costs and sanctions pursuant to Appellate Term Rule 730.3(g) – I take the opportunity of this letter to also demand that Mr. Sclafani substantiate his false claim at page 8 of his brief in #2008-1433 WC that:

“all of the above discussed proceedings were either dismissed or withdrawn due to procedural matters that precluded them from advancing any further; (but not on the merits).”

A copy of the page is enclosed.

The “above discussed proceedings” – not identified by name or index number by Mr. Sclafani's brief, but the subject of his annexed Exhibit A: Judge Reap's January 25, 1989 “Consolidated Decisions”, and his annexed Exhibit B: Judge Reap's March 6, 1989 letter – are:

- #SP-434/88: *16 Lake Street Owners, Inc. v. John McFadden, George Sassower, and Elena Sassower*;
- #SP-500/88: *16 Lake Street Owners, Inc. v. John McFadden, George Sassower, and Elena Sassower*; and

- #SP-504/88: *John McFadden v. Doris L. Sassower and Elena Sassower.*

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower", with a long horizontal flourish extending to the right.

ELENA RUTH SASSOWER, *Pro Se*

Enclosures

cc: Leonard Sclafani, Esq.

By Fax: (212) 949-6310

To be Argued by:  
LEONARD A. SCLAFANI  
(Time Requested: 15 Minutes)

Cal. No.: 2008-1428 WC

Westchester County Civil Court No. 1502/07

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# New York Supreme Court

Appellate Term—Second Department

9th & 10th Judicial Districts

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JOHN MCFADDEN,

*Petitioner-Respondent-Cross-Appellant,*

-- against --

ELENA SASSOWER,

*Respondent-Appellant-Cross-Respondent.*

---

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## BRIEF FOR PETITIONER-RESPONDENT- CROSS-APPELLANT

---

---

LEONARD A. SCLAFANI, P.C.  
*Attorneys for Petitioner-Respondent-  
Cross-Appellant*  
Two Wall Street, 5<sup>th</sup> Floor  
New York, New York 10005  
(212) 696-9880


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reargument of the October 11, 2007 decision and order or, in the alternative, for a stay pending determination of Sassower's appeal of the said decision and order. McFadden also sought reconsideration and/or reargument of the October 11, 2007 decision and order by way of cross-motion.

By its decision and order dated and entered on January 29, 2008, the White Plains City Court determined to grant renewal/reargument of both Sassower's and McFadden's applications but, ultimately, adhered to its original decisions. The court also denied Sassower's application for disqualification of Judge Hansbury but, at the same time, provided that Judge Hansbury would recuse himself from the case.

The court also denied Sassower's application for a stay pending her appeal of the October 11, 2007 order.

Thereafter, Sassower filed a notice of appeal of the January 29, 2008 decision and order and McFadden filed a notice of cross-appeal. It is Sassower's appeal and McFadden's cross-appeal that are the subjects of McFadden's within brief. 

As hereinafter more fully demonstrated, the court correctly refused to disqualify itself and, also, correctly refused to

**John Mcfadden**

**V**

**Elena Sassower**

Appellate Term Docket No. **2008-01433 W C**  
Lower Court Index No. **SP 1502/07**

Pursuant to Rule 731.8 (a) or 732.8 (a) of the Supreme Court, Appellate Term, if your appeal is not perfected by **NOVEMBER 13, 2008**, it will be dismissed on **DECEMBER 9, 2008** for lack of prosecution.

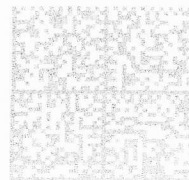
Enlargements of time may be requested either via stipulation between the parties, or by letter stating the reason for such request, addressed to the clerk of the court, with a copy sent to the other parties to the appeal.

If you have any questions, please call the Appellate Term Clerk's Office at (718) 643-5730.

\*See Reverse Side For Easy Opening Instructions\*



Supreme Court of the State of New York  
Appellate Term, Second Judicial Department  
141 Livingston Street, 15th Floor



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To be Argued by:  
LEONARD A. SCLAFANI  
(Time Requested: 15 Minutes)

Cal. No.: 2008-1433 WC

Westchester County Civil Court No. 1502/07

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*Attorneys for Petitioner-Respondent-  
Cross-Appellant*  
Two Wall Street, 5<sup>th</sup> Floor  
New York, New York 10005  
(212) 696-9880

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in the proceedings below.<sup>3</sup> Although Sassower appealed the "Consolidated Decisions" to the Appellate Term of the Supreme Court, she failed to perfect her appeal making the City Court's rulings final and binding as against her such that the doctrines of res judicata, collateral estoppel and issue preclusion precluded, and now preclude, Sassower from raising the same arguments and claims in the proceedings below and before this Court.

Ultimately, all of the above discussed proceedings were either dismissed or withdrawn due to procedural matters that precluded them from advancing any further; (but not on the merits).

#### The Proceeding Under Index #SP 651/89

It being clear from the March 6, 1989 letter decision of the Court below (Ex "B") that the City Court would not permit Mr. McFadden to proceed with his summary holdover proceeding under Index #504/88 which the Court had found remained viable as to Elena Sassower on the theory set forth in his petition absent

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<sup>3</sup> Following a traverse hearing upon the motion of Doris Sassower for dismissal of Mr. McFadden's summary proceeding against her under Index #504/89, the White Plains Cit Court determined that it lacked personal jurisdiction over Doris Sassower (but not Elena). It is for this reason that in summarizing the status of Mr. McFadden's holdover proceeding under Index #504/89, the City Court in its March 6, 1989 letter decision stated that the suit was viable only against Elena Sassower.



**Elena Ruth Sassower**

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January 15, 2009

Appellate Term Chief Clerk Paul Kenny  
141 Livingston Street, 15<sup>th</sup> Floor  
Brooklyn, New York 11201-5079

RE: My Previous January 15, 2009 Letter to You – & Mr. Sclafani  
*John McFadden v. Elena Sassower* [White Plains City Court #SP-1502/07]  
Appeal #2008-1433 WC [Judge Hansbury's 10/11/07 decision/order]  
Appeal #2008-1428 WC [Judge Hansbury's 1/29/08 decision/order]

Dear Mr. Kenny,

Following up my earlier January 15, 2009 letter to you, to which Mr. Sclafani is an indicated recipient, please be advised that Mr. Sclafani's secretary hung up on me when I requested that she give me her name. This was after she also refused to give me an e-mail address for Mr. Sclafani so that I could e-mail the letter to him, after I had been unsuccessful in my repeated attempts to fax the letter to his fax #212-949-6310.

As I explained to Mr. Sclafani's secretary, my fax receipts indicate that his fax number is "BUSY/NO SIGNAL". She claimed, however, that the fax had not been busy and is in good working order, with ink and paper. Enclosed, for your verification, are three fax receipts – reflecting the three separate times I attempted to fax the letter, each time with an auto-redial – which makes six fax attempts in total.

Please be advised that this is not the first time that my faxes to Mr. Sclafani have not gone through upon my repeated attempts to fax him. I believe that on those prior occasions, as today, I had first notified his office that I would be faxing to it. The last time this happened was in October, in connection with my September 18, 2008 motion in White Plains City Court to compel Clerk Lupi to provide the Appellate Term with information and documents necessary for my appeals. The fax receipts kept indicating "BUSY/NO SIGNAL" until the following day, when my fax to Mr. Sclafani finally went through.

I do not know whether it is possible to tamper with a fax machine or fax line so that receipt of faxes can be blocked. However, tampering and manipulation would be consistent with the

EX A-2

grotesquely unprofessional conduct I have encountered from Mr. Sclafani and his office from the outset, as recited in my first letter to the White Plains City Court in #SP-1502/07, dated July 20, 2007. A copy of that letter, entitled "Safeguarding the Integrity of these Proceedings", is enclosed. It was part of the record in #SP-1502/07, annexed as Exhibit J to my September 5, 2007 cross-motion, whose fourth and fifth branches sought sanctions/costs against, and disciplinary/criminal referrals of, Mr. Sclafani and Mr. McFadden. My entitlement to that relief is now before the Appellate Term on my appeals #2008-1433 WC and #2008-1428 WC.

I will continue to try to fax Mr. Sclafani my previous January 15, 2009 letter – and this one, as well – and, if unsuccessful, I will read the contents of this letter to Mr. Sclafani's secretary.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elena Ruth Sassower". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

ELENA RUTH SASSOWER, *Pro Se*

Enclosures

cc: Leonard Sclafani, Esq.

By Fax: (212) 949-6310

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 \*\*\* ERROR TX REPORT \*\*\*  
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INCOMPLETE TRANSMISSION

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 141 Livingston Street, 15<sup>th</sup> Floor  
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 & Clarification/Dismissals of Cross-Appals;

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INCOMPLETE TRANSMISSION

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Tel. (914) 949-2169

Fax (914) 428-4994

July 20, 2007

Judge Eric Press  
White Plains City Court  
77 Lexington Avenue  
White Plains, New York 10601

RE: Safeguarding the Integrity of these Proceedings  
McFadden v. Sassower, White Plains City Court #SP-1502/07

Dear Judge Press,

This letter is written to safeguard the integrity of the proceedings in the above-entitled case, where at issue is my home of nearly two decades.

On the return date of the notice of petition, Monday, July 16, 2007, I brought to your attention that the verified petition of John McFadden, represented by Leonard Sclafani, Esq., was based on "flagrant falsification and omission of material fact." I expressed my belief that it would easily support imposition of sanctions and costs under 22 NYCRR §130-1.1 and identified my intention to make such application.

I do not yet have the stenographic transcript of the proceeding – which I immediately ordered. Suffice to say, upon my stating my intention to seek sanctions and costs under 22 NYCRR §130-1.1, I was cut off from continuing, while Mr. Sclafani was permitted to engage in a lengthy discourse. When finally permitted to reply, I stated that Mr. Sclafani's oral representations to the Court were materially false – and that if he believed them relevant to the case, they should have been contained in the petition, from which they were virtually absent.

The proceeding ended with Mr. Sclafani requesting that I be required to pay his client occupancy for the subject apartment. To this, I responded that I had sent Mr. McFadden occupancy payments for June and July and that the assertion in his verified petition<sup>1</sup> (at ¶14) that "no part" had been "received" was false.

As a result of the Court's questioning of Mr. Sclafani, he was forced to concede that Mr. McFadden had received payments from me for June and July. Indeed, Mr. Sclafani admitted that he had told Mr. McFadden to return my checks to me and that his client had done so. Upon my advising the

<sup>1</sup> The petition, dated June 22, 2007, was signed by Mr. McFadden and Mr. Sclafani. The verification, though purporting to be by Mr. Sclafani pursuant to R.P.A.P.L, §741, is signed by Mr. McFadden and notarized on June 23, 2007. The notice of petition is dated June 27, 2007. These were filed with the Court on July 2, 2007, but not served upon me until July 9, 2007, when I found them, upon my return home at approximately 6 p.m., affixed to my door.

ESJ

Court that I had not received the return of either the June or July checks, the Court did not request that Mr. Sclafani get a sworn statement from his client on the subject. Rather, the Court placed the burden on me by its instruction that I should go to the bank to stop my checks and then send new checks to Mr. McFadden.

As I believe it highly unlikely that both of the two checks that Mr. McFadden separately returned to me got lost in the mail, I waited until after the mail arrived on Wednesday afternoon, July 18<sup>th</sup> to see if Mr. McFadden might belatedly return to me the checks, thereby obviating my having to go to the bank to stop them. When no envelopes arrived containing the checks, I went to the bank and was told that it would cost \$30 to stop each check.

The next day – yesterday, July 19<sup>th</sup> – after again waiting to see if the checks might arrive in the mail, which they did not – I telephoned Mr. Sclafani (212-696-9880) to inform him that if his client wanted to save \$60, he should return to me the checks, as otherwise I would be deducting \$30 from each of the new checks I would be sending Mr. McFadden. The woman who answered the phone, after putting me “on hold”, told me that Mr. Sclafani had instructed her to tell me that he would not speak to me because “everything must be in writing”. The woman refused to give me her name, but answered affirmatively when I asked if she was Mr. Sclafani’s secretary. She further refused my request that she relay to Mr. Sclafani my message about the \$60 cost of stopping the checks, stating that Mr. Sclafani would refuse to allow her to relay any phone message from me. Each time I repeated the message I wished her to relay to Mr. Sclafani – which was two, if not three, times – she purported she had not heard what I was saying. Indeed, she was not ashamed to identify the reason, *to wit*, she was putting me “on hold” to block out the message content because “everything must be in writing”.

When I further told her that she should tell Mr. Sclafani that I was aware that he had telephoned Steve Lesh on Monday afternoon, but that Mr. Lesh was not representing me and that his communications should be with me directly, she also responded that I must “put it in writing” – to which I replied that I would “put it in writing to the Court”.

I believe it appropriate for the Court to know that immediately upon the conclusion of the July 16<sup>th</sup> proceeding, Mr. Sclafani walked over to Mr. Lesh for no reason other than to hand him an internet print-out of a February 2005 Village Voice article about me, stating words to the effect that he wanted Mr. Lesh to know the kind of person he was getting involved with. It would appear that Mr. Sclafani’s telephone call to Mr. Lesh later that day – rather than to me – imparting to him certain information was similarly motivated by a desire to poison and prevent any professional relationship between myself and Mr. Lesh. Certainly, if Mr. Sclafani was uncertain as to whether I had retained Mr. Lesh to represent me, he could have as easily called me.

For the record, until the July 16<sup>th</sup> court proceeding, there had never been any communication between Mr. Sclafani and myself, either orally or in writing. My only knowledge of him was by Mr. McFadden’s inclusion of Mr. Sclafani’s name as his one and only “cc” on letters to me unilaterally increasing my monthly occupancy from the \$1,000 fixed by the October 30, 1987 occupancy agreement which was part of a contract of sale. The first of these letters was dated November 10, 2001 – and I paid that increase, as likewise every other, without raising a single question, until the

last increase, which Mr. McFadden unilaterally announced in an October 1, 2006 letter, as to which I corresponded extensively with Mr. McFadden.<sup>2</sup> In short, Mr. Sclafani has absolutely no basis for his unprofessional, scurrilous conduct toward me. Indeed, prior to representing Mr. McFadden in this malicious and harassing summary proceeding, he took no steps to see if there might be some amicable resolution of matters – although he had reason to know from his client that I was amenable to same and had repeatedly expressed myself on that subject in my correspondence, to which Mr. McFadden – presumably on Mr. Sclafani’s advice – has not responded. Illustrative are my last two letters to Mr. McFadden, dated May 31, 2007 and June 30, 2007, transmitting my checks for the June and July occupancy. Copies are enclosed.

Based on the foregoing, I respectfully request that the Court direct that Mr. Sclafani submit an attorney’s affirmation and Mr. McFadden, an affidavit, concerning the representation in ¶14 of the verified petition that “no part” of the monthly occupancy charge had been “received” and, additionally, that they recite the particulars as to Mr. Sclafani’s instructions to Mr. McFadden to return the two checks to me and Mr. McFadden’s alleged return of them, as represented by Mr. Sclafani on July 16<sup>th</sup>. Additionally, I request the Court’s confirmation that I may deduct the \$60 cost of stopping the checks from the new checks I will send to Mr. McFadden pursuant to the Court’s July 16<sup>th</sup> directive.

Thank you.

Very truly yours,



ELENA RUTH SASSOWER

Enclosures

cc: Leonard Sclafani, Esq.  
John McFadden  
Steven Lesh, Esq.

---

<sup>2</sup> The petition omits any and all recitation of these material facts, as likewise the basis for Mr. McFadden’s supposed termination of my “tenancy”. Nor does the petition identify that the \$2,200 which ¶14 purports to be “The fair market value of [my] use and occupancy” is a whopping \$425 more than the occupancy charge demanded by Mr. McFadden’s (undisclosed) October 1, 2006 letter, to which it claims “no part...[Mr. McFadden] has received”.



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 \*\*\* TX REPORT \*\*\*  
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 TIME USE 01'34  
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EX A-3

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TRANSMISSION COMPLETED

TX/RX NO 0434  
DESTINATION NUMBER 12129496310  
DESTINATION ID  
ST. TIME 01/15 15:40  
TIME USE 01'14  
PAGES SENT 8  
RESULT OK

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Appellate Term Chief Clerk Paul Kenny  
141 Livingston Street, 15<sup>th</sup> Floor  
Brooklyn, New York 11201-5079

RE: Enlargement of Appellant's Time for Reply Briefs  
& Clarification/Dismissals of Cross-Appeals:

*John McFadden v. Elena Sassower* [White Plains City Court #SP-1502/07]

Appeal #2008-1433 WC [Judge Hansbury's 10/11/07 decision/order]

Appeal #2008-1428 WC [Judge Hansbury's 1/29/08 decision/order]

Dear Mr. Kenny,

Pursuant to the Appellate Term's Rules 731.8(d)(2), 732.8(d)(2), or other applicable provisions, this is to request a 10-day enlargement of time for the filing of my reply briefs in my above-perfected appeals, currently due on January 21, 2009.

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Such is necessitated by the fact that the two briefs filed on January 9, 2009 by Mr. Sclafani, each entitled "Brief of Petitioner-Respondent-Cross-Appellant" and numbering 57 and 17 pages, respectively, are, from beginning to end, based on flagrant falsification and omission of the material facts. Such requires extensive correction by me, lest the Appellate Term be misled as to what is before it. This includes Mr. Sclafani's false claim that "McFadden filed

At a term of the Appellate Term of the Supreme Court  
of the State of New York for the 9<sup>th</sup> & 10<sup>th</sup> Judicial Districts

JAN 23 2009

-----X  
JOHN MCFADDEN,

Respondent,

-against-

ELENA SASSOWER,

Appellant.  
-----X

CLERK'S ORDER

2008-01428 W C

Lower Court #  
SP 1502/07

The above named appellant having appealed to this court from an **ORDER** of the **CITY COURT, WHITE PLAINS, WESTCHESTER COUNTY** entered on **JANUARY 30, 2008**, and the **APPELLANT** having moved this court by **written application** dated **JANUARY 15, 2009** to **ENLARGE THE TIME TO FILE A REPLY BRIEF** and said application having been duly considered;

Now, on reading the application and no papers having been filed in opposition thereto, and due deliberation having been had thereon, it is,

ORDERED that the application is granted, and the appellant shall cause said brief to be served and file it by February 2, 2009.



PAUL KENNY  
CHIEF CLERK  
Appellate Term

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