

**Elena Ruth Sassower**

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

*E-Mail: elenaruth@aol.com*

*Tel. (646) 220-7987  
Fax (914) 428-4994*

BY FAX: 212-949-6310 (2 pages)

October 21, 2008

Leonard A. Sclafani, Esq.  
18 East 41<sup>st</sup> Street, Suite 1500  
New York, New York 10017

RE: Clarification of Your October 17, 2008 Notice of Entry of the Appellate Term's Recent Order and Decision and of Your October 20, 2008 Motion to Vacate the Appellate Term's Stay Pending Appeal  
*McFadden v. Doris L. Sassower & Elena Sassower*  
Appellate Term #2008-1427 WC  
White Plains City Court #SP-651/89 ("SP-2008-1474")

Dear Mr. Sclafani,

This is to request clarification of your October 17, 2008 notice of entry for the Appellate Term's recent order and decision, as well as clarification of your October 20, 2008 motion to vacate the Appellate Term's stay pending appeal – both annexing identical copies of the Appellate Term order and decision. The first page of your annexed order bears a date stamp of "OCT 01 2008", with the first page of your annexed decision bearing a handwritten date "10/1/08".

The copies of the order and decision sent me by the Appellate Term contained no such date stamp or handwritten date. Therefore, please advise whether these are your own additions – and, if so, the legal basis for your altering these documents in a fashion that is clearly material inasmuch as the Appellate Term's direction of payment to Mr. McFadden is "within 10 days of the date of this order".

Please further advise as to the factual and legal basis upon which your October 17, 2008 notice of entry states that the within "true copies" of the decision and order were "duly entered in the office of the clerk" of the Appellate Term – as I see no entry stamp or Clerk's signature on any of the four pages of the decision and order you have annexed. ¶3 of Mr. McFadden's October 20, 2008 affidavit supporting the motion to vacate the stay also asserts that the Appellate Term decision and order were "entered".

Similarly, please advise as to the factual and legal basis upon which Mr. McFadden's ¶3 asserts (as does your notice of motion) that a final judgment of eviction was "entered in the proceedings below on July 21, 2008". I am unaware that the White Plains City Court Clerk ever entered a final judgment of eviction<sup>1</sup> – and you never served same upon me.

Finally, with respect to the claim at ¶5 of Mr. McFadden's affidavit that I am

"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",

please advise when, if ever, Mr. McFadden contends that White Plains City Court determined that I owed him that \$60. As you well know, the issue of the \$60 was the subject of my July 20, 2007 letter to Judge Press – never adjudicated by him or any other judge.

As your October 20, 2008 motion to vacate the Appellate Term's stay pending appeal is returnable on October 24, 2008 – and I wish my opposition thereto to be accurate – please respond without delay.

Thank you.

Very truly yours,



ELENA RUTH SASSOWER

cc: Doris L. Sassower

---

<sup>1</sup> This was made known to you by my September 18, 2008 motion to compel Chief Clerk Lupi's compliance with her duties in office, which annexed my August 22, 2008 letter to Clerk Lupi, including the definition of "entry", as set forth in CPLR 5016, *to wit*, "A judgment is entered when, after it has been signed by the clerk, it is filed by him" (Exhibit K, pp. 2-3). My October 10, 2008 reply affidavit in further support of my motion again identified this lack of entry (at fn. 6). Such motion was decided by Judge Friia's October 15, 2008 decision & order – as to which you also sent me an October 17, 2008 notice of entry, although the copy of the October 15, 2008 decision & order annexed thereto shows no entry stamp or Clerk's signature.