

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

----- X  
ELENA R. SASSOWER,

Claimant,

-against-

Index #: S.C. NY 187-2014

Notice of Motion to Restore  
to Calendar, Vacate  
Arbitrator's "Notice of  
Judgment", & Other Relief

ANNA CAPELLEN,

Defendant.

----- X

PLEASE TAKE NOTICE that upon the annexed affidavit of the *pro se* claimant ELENA SASSOWER, sworn to on July 15, 2015, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, claimant will make a motion before the judge presiding in the Small Claims Court at 111 Centre Street, Room 353, New York, New York 10013, on Thursday evening, August 20, 2015, at 6:30 p.m. or as soon thereafter as the parties or their counsel may be heard for an order:

- (1) restoring claimant's small claims action to the calendar, pursuant to CPLR §7511, because there is no Judgment and vacating the arbitrator's April 16, 2015 "Notice of Judgment" because there is no Judgment;
- (2) vacating the arbitrator's April 16, 2015 "Notice of Judgment", pursuant to CPLR §7511, because it is the product of demonstrated actual bias and prejudice, being insupportable, factually and legally;
- (3) for such other and further relief as may be just and proper, including referring the arbitrator to supervisory and disciplinary authorities, pursuant to §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, as requested by complainant's uncontested typewritten May 27, 2015 affidavit.

15 JUL 29 PM 12:42  
NEW YORK COUNTY  
CIVIL COURT  
*[Signature]*

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served by on the *pro se* claimant ELENA SASSOWER five days before the August 20, 2015 return date by e-mail and regular mail.

Dated: White Plains, New York  
July 15, 2015



ELENA SASSOWER, Claimant *Pro Se*  
10 Stewart Place, Apartment 2D-E  
White Plains, New York 10603  
914-421-1200

TO: Andrew Squire, Esq.  
Attorney for Defendant Anna Capellen  
379 Decatur Street  
Brooklyn, New York 11233

CIVIL COURT OF THE CITY OF NEW YORK  
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----- X  
ELENA R. SASSOWER,

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ANNA CAPELLEN,

Defendant.  
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Index #: S.C. NY 187-2014

Affidavit in Support of  
Motion

STATE OF NEW YORK                    )  
COUNTY OF WESTCHESTER        ) ss:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the *pro se* claimant in the above-entitled small claims action in which an arbitrator, against whom I had complained for incompetence and misconduct, purported to dismiss my \$5,000 claim, without furnishing any facts or law in explanation and in face of a written contract and correspondence constituting an “account stated”.
2. This affidavit is submitted in support of the relief requested by my accompanying notice of motion.
3. On June 11, 2015, I came to the Clerk’s Office of Small Claims Court (Room 322) to review the case file and discovered there was NO JUDGMENT.
4. Annexed hereto is a copy of the “Case Record Card”, both front and back (Exhibit 1). The backside contains a Section II consisting of two parts:
  - Part A, “Consent to Arbitration”, requires the signature of the parties in submitting “this controversy” to the arbitrator. It is signed by myself as claimant, by Anna Capellen, as defendant, and by defendant’s attorney, Andrew Squire, Esq., and gives consent to arbitration by Avi A. Naveh, Esq.
  - Part B, “Arbitrator’s Finding and Award”, requires the arbitrator to identify his determination with respect to the claimant’s claim and affix the date and his signature. It is completely blank.
5. According to Joe Minogue, Principal Clerk of the Civil Part, who came to the Small Claims Clerk’s Office on June 11, 2015 to respond to my inquiries, Part B, “Arbitrator’s Finding and Award”, is the Judgment – and the fact that it is blank is a “fatal defect, in and of itself” entitling me to move to restore the case to the calendar.

6. Mr. Minogue also told me that the “Notice of Judgment”, dated April 16, 2015 – which is what I had received by mail (Exhibit 2) – is not itself the Judgment, but, literally, only the “Notice of Judgment”. This is reinforced by the fact that the “Notice of Judgment” was not among the documents I was furnished as constituting the casefile. Indeed, according to Mr. Minogue, the “Notice of Judgment” is not preserved in the files of small claims actions, either the original or a copy.
7. To assist me in making this application, Mr. Minogue provided me with a print-out of CPLR §7511 (Exhibit 3), entitled “Vacating or modifying award”, applicable to my securing vacatur, both because there is no Judgment and by reason of the facts set forth by the typewritten affidavit I brought to the Small Claims Clerk’s Office on May 27, 2015 in support of an order to show to vacate the “Notice of Judgment” (Exhibit 4).
8. The casefile contains three documents pertinent to the vacatur sought by my May 27, 2015 typewritten affidavit (Exhibit 4) – all three of which are forms:
  - (1) the pre-printed order to show cause, which staff at the Small Claims Clerk’s Office filled out, setting an August 20, 2015 return date, with service by June 3, 2015. Such bears a stamp, but no signature, of “Hon. Jose A. Padilla, Jr.” – and crosses out the calendaring, relief, and service (Exhibit 5).
  - (2) the pre-printed affidavit, which staff at the Small Claims Clerk’s Office filled out and to which I was requested to make pertinent inserts, swear to, and sign on May 27, 2015 (Exhibit 6);
  - (3) the pre-printed “Decision and Order”, declining to sign the order to show cause, modified to add the handwritten names of the parties and the index number (in blue ink), and a listing of papers: “1A OSC” and “; 1B Affidavit in support of osc” (in black marker), and bearing a stamp of “Hon. Jose A. Padilla, Jr.”, his initials, and the date “5-28-15” (Exhibit 7-2).
9. According to the decision’s pre-printed, boiler-plate language, the reason Judge Padilla did not sign the order to show cause was that:

“Movant has failed to establish that the arbitrator was biased or prejudiced or engaged in misconduct.”
10. Such assertion – for which the pre-printed form decision provides not the slightest elaboration – is utterly unfounded and flies in the face of the facts sworn to by my typewritten affidavit (Exhibit 4), as well as the summary to which I also swore in the pre-printed affidavit (Exhibit 6) – which because the Judge declined to sign the order to show cause were entirely uncontested in the record before him
11. Under no theory is an arbitrator’s refusal to read the written contract which is the basis for

the claim – and refusal to read the correspondence constituting an “account stated” with respect thereto (sidetab Exhibits B, C, D, E, F) – not engaging in “misconduct”. And even greater misconduct is an arbitrator’s misuse of his powers to retaliate against a complainant, which is certainly also “bias” and “prejudice”. As stated at ¶3 of my typewritten affidavit:

“That the arbitrator has furnished no facts or law to support his ‘Judgment in favor of defendant’ reflects his knowledge that it cannot be justified. Indeed, his Notice of Judgment, ‘dismiss[ing]’ my claim, may be a retaliation for my complaining about him – which I did on April 16, 2015, at the time of the hearing.” (Exhibit 4, underlining added).

12. Because the uncontested testimonial evidence furnished by my affidavits is sufficient for the vacatur relief sought under the very standard recited by the pre-printed, form decision and order, I endeavored to verify that Judge Padilla had actually read my affidavits – and that it was he who put his initials to the decision and order declining to sign the order to show cause. To that end, I left three voice messages on the voice mail of his chambers seeking confirmation of same (#646-386-5219). These were on June 1, 2015 (12:20 p.m.); on June 5, 2015 (10:22 a.m.), and on June 11, 2015 (10:06 a.m.). I received no return calls.
13. I do not know whether such voice mail messages on the subject – and my phone calls to Tom at the Small Claims Clerk’s Office, to Civil Court Clerk Sarina Springle, and to the chambers of Supervising Judge Tanya Kennedy – prompted record tampering to make it appear that the pertinent documents were before Judge Padilla in purportedly initialing the decision. Two versions of the decision and order were furnished me. The first version was faxed by Tom on the same May 28, 2015 date as the decision was rendered and contains no listing of papers (Exhibit 7-1). By contrast, the decision I was furnished on June 11, 2015 contains a listing – “1A OSC” and “1B Affidavit in support of osc” – handwritten in black marker (Exhibit 7-2)<sup>1</sup>.
14. Absent defendant’s rebuttal of the facts set forth by my typewritten May 27, 2015 affidavit (Exhibit 4) and of the facts herein set forth, I am entitled to the relief sought by my notice of motion, *as a matter of law*. Indeed, the issue before this Court is a “Notice of Judgment” (Exhibit 2) “so totally devoid of evidentiary support as to render it 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).

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<sup>1</sup> Consistent therewith, the pre-printed form order to show cause (Exhibit 5) was marked “IA” and my typewritten May 27, 2015 affidavit (Exhibit 4) marked “IB”.

*Elena Ruth Sassower*

ELENA RUTH SASSOWER

Sworn to before me this  
15<sup>th</sup> day of July 2015

*[Signature]*

Notary Public

