

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

----- x
ELENA R. SASSOWER,

Claimant,

-against-

ANNA CAPELLEN,

Defendant.
----- x

Index #: S.C. NY 187-2014

Notice of Motion

PLEASE TAKE NOTICE that upon the annexed affidavit of the *pro se* claimant ELENA SASSOWER, sworn to on September 18, 2015, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had, claimant will make a motion in the Small Claims Court at 111 Centre Street, Room 353, New York, New York, on Thursday evening, October 15, 2015, at 6:10 p.m. or as soon thereafter as the parties or their counsel may be heard for an order:

- (1) granting reargument, pursuant to CPLR §2221, of Judge Cohen's August 20, 2015 decision/order and, upon the granting of same, vacating it and granting claimant's July 15, 2015 "Motion to Restore to Calendar, Vacate Arbitrator's 'Notice of Judgement', & Other Relief";
- (2) for such other and further relief as may be just and proper.

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 October 15, 2015 return date by e-mail and regular mail.

Dated: White Plains, New York
September 18, 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
COUNTY OF NEW YORK

----- x
ELENA R. SASSOWER,

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Affidavit in Support of
Motion

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

ELENA SASSOWER, being duly sworn deposes and says:

1. I am the *pro se* claimant in the above-entitled small claims action, fully familiar with all the facts, papers, and proceedings heretofore had. I submit this affidavit in support of the relief sought by my accompanying notice of motion.
2. This motion is being made to obviate the necessity of burdening the Appellate Term – and myself – with an appeal from a decision which cannot be justified and which no fair and impartial judge could render.
3. At issue is the August 20, 2015 decision/order of Manhattan Civil Court Judge David Cohen, hand-written on a pre-printed form (Exhibit A), and given to me on that date in the courtroom, by court personnel, shortly after oral argument of the motion it purports to deny. The decision does not identify that oral argument was had, who had been present, or what was said. Rather, after reciting “the papers considered in the review of this Motion”, *to wit*, a “Notice of Motion and Affidavits Annexed – Numbered 1”, in other words, ONLY my unopposed motion, the decision states:

“Upon the foregoing cited papers, the Decision/Order on this Motion to VACATE ARBITRATORS JUDGMENT is as follows:

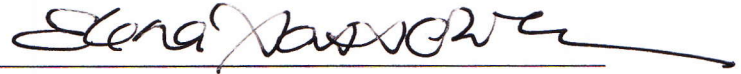
Claimant’s motion to vacate pursuant to CPLR §7511 is denied. By virtue of the fact that the arbitrator dismissed her claim (and the counterclaim) claimant contends that the arbitrator must have been bias (sic), partial and retaliating. In fact, there are no facts set forth in the motion which make out any showing of corruption, fraud, misconduct, excess of authority, failed to follow procedures, or acted in a partial manner by the arbitrator. Accordingly, the award is confirmed (CPLR §7511(e)).”

4. Such decision is a judicial perjury – readily-verified as such from my unopposed motion – and from my oral argument, wherein I recited directly to Judge Cohen the facts set forth by my motion. The decision recites NONE of the facts presented by the motion and, indeed, misrepresents the very relief it sought. That relief was not to “VACATE ARBITRATORS JUDGMENT”. Rather, it was to vacate the arbitrator’s “Notice of Judgment” because, as expressly stated by my notice of motion, by my supporting affidavit, and by my oral argument, there is “NO JUDGMENT”.
5. The absence of any judgment was the threshold issue presented by my motion and by my oral argument. Such issue requires vacatur of the “Notice of Judgment” and restoration of my small claims case to the calendar, *as a matter of law* – which is why Judge Cohen obliterates it. Indeed, he does not contest that the “Notice of Judgment” is not itself the judgment, instead falsely purporting that I am seeking to “VACATE ARBITRATORS JUDGMENT”, which I am not.
6. Similarly, because my motion’s factual recitation of the arbitrator’s corruption, fraud, misconduct, and retaliation OVERWHELMINGLY meets the standard for vacatur under CPLR §7511(e) – all of which I reiterated at the oral argument, stressing its dispositive nature, also entitling me to vacatur, *as a matter of law* – Judge Cohen’s decision conceals ALL my recited facts, flagrantly falsifying the motion by stating: “there are no facts set forth in the motion which make out any showing of corruption, fraud, misconduct, excess of authority, failed to follow procedures, or acted in a partial manner by the arbitrator. ...” (Exhibit A). This, where the motion presents an abundance of such facts – all uncontested – *to wit*:
 - that at the April 16, 2015 hearing before the arbitrator, I questioned the arbitrator’s competence and requested a supervisor be called because he refused to read the written contract on which my \$5,000 small claims action was based; refused to read the correspondence constituting an “account stated”; asked questions reflecting ignorance of what an “account stated” is, ignored my protests on the subject, and stated, in response to my query as to whether he would be reading the contract and correspondence after the hearing that he would not;
 - that at the April 16, 2015 hearing, respondent handed up no evidence to support her bogus \$5,000 counterclaim, which at the instance of her new counsel she interposed that very evening;
 - that the arbitrator’s April 16, 2015 “Notice of Judgment”, purporting to render judgment “in favor of defendant”, identifies no facts or law, is without basis in fact and law, cannot be justified, and is “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) – and, by reason thereof, is reasonably deemed a retaliation by the arbitrator against me for

complaining about him.

7. None of the foregoing was disputed by respondent's counsel, who appeared without his client.
8. Suffice to note that at the oral argument, Judge Cohen recognized that by my complaining about the arbitrator at the April 16, 2015 hearing and requesting a supervisor, the arbitrator might reasonably retaliate against me. Judge Cohen's words were that I could hardly expect a decision in my favor as a result. My response was that the arbitrator's retaliation was misconduct entitling me to vacatur pursuant CPLR §7511 and was reinforced by the absence of any fact or law justifying the "Notice of Judgment", which could not be justified, and which was a wholly unlawful, unconstitutional impairment of my contract.
9. Judge Cohen's decision furnishes no facts or law to substantiate the "Notice of Judgment" he has allowed to stand – and there are none.
10. As Judge Cohen's handwritten decision is fairly indecipherable, his law secretary, Saul Stein, read it to me. Following his doing so, and my advising him that the decision was a judicial fraud, I asked whether the oral argument had been recorded. Mr. Stein went up to the bench and, upon returning, told me it was not.
11. I thereupon went to the Small Claims Clerk's Office to file a notice of appeal, but was unable to do so, as service upon defendant was first required.
12. The next day, August 21, 2015, I telephoned the chambers of Supervising Judge Tanya Kennedy, leaving a voice mail message as to Judge Cohen's fraudulent decision and the need for oversight, identifying myself as not only a litigant, victimized by his misconduct, but as director of the nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. On August 24, 2015 and August 27, 2015, I left two further voice mail messages requesting information about the recording of proceedings in Small Claims Court. I received no return calls. Only in telephoning Judge Kennedy's chambers a fourth time, on August 31, 2015, did I reach a live person: Judge Kennedy's law secretary, Nyiela Barrett. I stated that if there was no audio recording of the August 20, 2015 oral argument, I would set forth what had transpired in an affidavit that I would include in a reargument motion so that, on appeal, my record would include, in addition to my unopposed motion, my further reinforcing recitation of what had transpired at the August 20, 2015 oral argument.
13. Ms. Barrett connected me with Manhattan Civil Court Clerk Serina Springle, who told me that there is no policy of automatic recording of Small Claims proceedings – and that the recording system is manually turned on and off. She told me that she would verify with Judge Cohen if my oral argument before him was recorded and would call me back the next day. She did call me back the next day, stating that Judge Cohen was on vacation and she would get back to me in a week or so. In a phone call to her yesterday, she confirmed that my oral argument before Judge Cohen was not recorded and that, although trials are recorded, motions and applications are not.

14. Were there an audio recording, it would reveal not only hostile behavior by Judge Cohen during the oral argument, especially inappropriate to a small claims proceeding, but his peculiar question, to the effect of didn't I have many lawsuits? – a question evincing improper *dehors* the record knowledge Judge Cohen had and wanted. Although I responded that this is my only lawsuit – and, indeed, it is the only lawsuit I have in Small Claims Court, I do have, currently, two open lawsuits, both brought in the public interest on behalf of the People of the State of New York. One is in limbo, sitting on a shelf, in the Clerk's Office in Supreme Court/New York County, after having been transferred from Supreme Court/Bronx County (#302951/12: *Center for Judicial Accountability, et al v. Cuomo et al.*). The other, now being litigated, is in Supreme Court/Albany County (#1788-14: *Center for Judicial Accountability, Inc., et al v. Cuomo, et al.*). Each involve, *inter alia*, the fraudulent, statutorily-violative, and unconstitutional 27% judicial pay raises recommended by the 2011 Report of the Commission on Judicial Compensation, of which Judge Cohen and his judicial brethren are beneficiaries.



ELENA SASSOWER

Sworn to before me this
18th day of September 2015

Notary Public

Civil Court of the City of New York

County of NEW YORK

Part

Index Number 187-2014

Motion Cal. # _____ Motion Seq. # _____

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Order to Show Cause and Affidavits Annexed....	_____
Answering Affidavits	_____
Replying Affidavits.....	_____
Exhibits	_____
Other.....	_____

ELENA R. SASSOWER,

Claimant(s)/Plaintiff(s)/Petitioner(s)
against

ANNA CAPELLEN,

Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to VACATE

ARBITRATORS JUDGMENT

is as follows:

Claimant's motion to vacate pursuant to CPLR § 7511 is denied. By virtue of the fact that the arbitrator dismissed the claim (and the counter claim) claimant contends that the arbitrator must have been biased, partial and retaliating. In fact, there are no facts set forth in this motion which make out any showing of corruption, fraud, misconduct, excess of authority, failure to follow procedures, or acted in a partial manner by the arbitrator. Accordingly, the award is confirmed (CPLR § 7511(e)).

8-20-2015

Date

[Signature]

Judge, Civil Court

[Signature]

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

----- X

ELENA R. SASSOWER,

Claimant,

Index #: S.C. NY 187-2014

-against-

ANNA CAPELLEN,

Defendant.

Claimant's Motion for Reargument & Other Relief

Elena Ruth Sassower, Claimant *Pro Se*
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