

Case No. 2008-1428 WC

To be Argued by:  
Elena Sassower  
(15 minutes requested)

APPELLATE TERM OF THE SUPREME COURT  
NINTH & TENTH JUICIAL DISTRICTS

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JOHN McFADDEN,

Respondent,

-against-

ELENA SASSOWER,

Appellant.

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APPELLANT'S REPLY BRIEF\*



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**\*Appeal 2: Judge Brian Hansbury's January 29, 2008 Decision & Order  
(Westchester City Court #1502/07)**

SC-2

## INTRODUCTION

This reply brief of appellant Elena Sassower [Sassower] is submitted in response to the brief of the respondent and purported “cross-appellant” John McFadden [McFadden], signed and presumably written by his counsel, Leonard Sclafani, Esq. [Sclafani].

As hereinafter demonstrated, Sclafani’s brief is no opposition to Sassower’s appeal, as a matter of law. Like Scalfani’s simultaneously-filed 57-page brief in #2008-1433 WC, to which he refers the Court (at p. 4) as “set[ting] forth in detail” “[t]he facts surrounding and leading up to the appeal and cross-appeal addressed herein”, Sclafani’s 17-page brief for #2008-1428 WC is, from beginning to end, fashioned on flagrant omissions, falsifications, and deceptions – further reinforcing the merit of Sassower’s appeal and the worthlessness of the “cross-appeal” under applicable legal principles.<sup>1</sup>

Indeed, the purported “cross-appeal” is itself a brazen fraud on this Court. Contrary to Sclafani’s assertion in his brief (at p. 3) that “McFadden filed a notice of cross-appeal” from Judge Hansbury’s January 29, 2008 decision & order, he has failed to substantiate same by producing a copy of that notice of cross-appeal, his affidavit of service, and proof of filing with the White Plains City Court.<sup>2</sup> This Court’s Clerk’s Office has no record of a notice of

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<sup>1</sup> See, Corpus Juris Secundum, Vol. 31A, 166 (1996 ed., p. 339) and II John Henry Wigmore, Evidence §278 at 133 (1979), quoted at page 14 of Sassower’s appellant’s brief in #2008-1433 WC from ¶4 of Sassower’s September 5, 2007 cross-motion. These authorities have repeatedly been brought to Sclafani’s attention.

<sup>2</sup> Attached hereto (Exhibit A-1) is a copy of Sassower’s January 15, 2009 letter to this Court’s Chief Clerk, which she faxed to Sclafani on that date (Exhibit A-4), stating:

cross-appeal for #2008-1428 WC.

Consequently, there is “no cross-appeal” and Sclafani’s attempt to manufacture one, combined with the other pervasive deceits of his brief, entitle Sassower to imposition of maximum costs and sanctions against him and his co-conspiring client pursuant to this Court’s rule 730.3(g)<sup>3</sup> and to their referral to disciplinary and criminal authorities pursuant to the Court’s mandatory “Disciplinary Responsibilities” under §100.3D(2) of the Chief Administrator’s Rules Governing Judicial Conduct<sup>4</sup>.

To assist this Court in upholding the integrity of the appellate process, Sassower’s reply brief herein furnishes the Court with a virtual line-by-line demonstration of the fraud that has been visited upon it by Sclafani’s brief, to be passed on to disciplinary and criminal authorities to support their prosecutions of Sclafani and McFadden.

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“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 appeal, his affidavit of service, and proof of filing with the White Plains City Court.” (p. 1, capitalization in the original)

Sassower received no response from Sclafani to this January 15, 2009 letter – nor to her subsequent January 15, 2009 letter (Exhibit A-2), also faxed to Sclafani on that date (A-3). This Court’s Clerk also apparently received no response from Sclafani – as reflected by his January 23, 2009 order herein (Exhibit B-1). Such order implicitly recognizes that there is no cross-appeal in #2008-1428 WC, identifying McFadden only as “respondent” in the order’s caption – in contrast to the captioning, etc. in his order in #2008-1433 WC, also dated January 23, 2009 (Exhibit B-2).

<sup>3</sup> “Any attorney or party to a civil appeal who, in the prosecution or defense thereof, engages in frivolous conduct as that term is defined in 22 NYCRR subpart 130-1.1(c), shall be subject to the imposition of such costs and/or sanctions as authorized by 22 NYCRR subpart 130-1 as the court may direct.”

<sup>4</sup> “A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.”

As stated by Sassower's incorporated-by-reference reply brief in #2008-1433 WC and equally true here –

“based on the showing herein that Scalfani is virtually incapable of telling the truth in anything he says – replicating his conduct in White Plains City Court, as well as previously before this Court in opposing Sassower's July 30, 2008 order to show cause for a stay pending appeal; her August 13, 2008 vacatur/dismissal motion, and her October 15, 2008 order to show cause for reargument/renewal, & other relief, all arising from #SP-651/89, and docketed herein as #2008-1427 WC – this Court should consider including a request to disciplinary authorities that they order that Scalfani be medically examined, as his behavior is clearly pathological.”

**SCLAFANI'S OPPOSITION TO SASSOWER'S APPEAL IS NON-RESPONSIVE, FRIVOLOUS PER SE, AND DEMONSTRABLY FRAUDULENT**

Unlike Scalfani's brief in #2008-1433 WC, which is completely non-responsive to Sassower's appellant's brief therein, Scalfani's brief herein gives a pretense of responsiveness to Sassower's appellant's brief. Here, too, however, Scalfani does not deny or dispute any of the facts, law, or legal argument summarized and detailed by Sassower's “Questions Presented” (pp. iv-v); her “Introduction” (pp. 1-2); her “Statement of the Case” (pp. 2-26); and her “Argument” (pp. 26-34). This includes the particularized facts, law, and legal argument detailed by Sassower's November 9, 2007 order to show cause – a substantial portion of which her appellant's brief both quotes and summarizes (at pp. 2-20). Such makes Scalfani's opposition to Sassower's appeal frivolous *per se*.

Notwithstanding Sassower's November 9, 2007 order to show cause is the foundation document on which all three of her “Questions Presented” rest, Scalfani fails to identify any

CONCLUSION

WHEREFORE, *as a matter of law*, Sclafani's opposition to Sassower's appeal is no opposition in fact, and, by its material omissions, falsifications, and deceit, reinforces the merit of Sassower's appeal.

Sclafani's purported "cross-motion" is a nullity, quite apart from its being a demonstrated fraud on the Court. Pursuant to this Court's rule 730.3(g) and §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, this Court's duty is to impose maximum costs and sanctions on Sclafani and his co-conspiring client McFadden and to refer them to disciplinary and criminal authorities.

  
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ELENA RUTH SASSOWER

Dated: New York, New York  
February 2, 2009