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BY HAND

March 1, 2010

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

RECEIVED  
APPELLATE TERM  
CLERK'S OFFICE  
10 MAR - 1 AM 10:34

RE: Quality Control at the Clerk's Office:  
Request for Clarification: February 23, 2010 Decision & Order/Judgment  
*John McFadden v. Doris L. Sassower & Elena Sassower*  
Appellate Term #2009-148-WC  
(White Plains City Court #SP-651/89; #SP-2008-1474)

Dear Mr. Kenny,

I have received from the Appellate Term two documents, unsigned by any judge, that purport to adjudicate my appeal from Judge Friia's October 14, 2008 order, without identifying the grounds of my appeal or any of the facts, law, or legal argument I presented in support. Copies of these two documents, stamped February 23, 2010, are enclosed for your convenience.

Please advise whether these two documents are consistent with the form and normal and customary procedures followed by the Appellate Term when it adjudicates appeals of other litigants.

The first document, unsigned, appears to be a decision. However, it bears the title "DECIDED", not "DECISION" – and unlike the Appellate Term's previous five unsigned decisions on my motions<sup>1</sup> – is double-spaced, with a decretal sentence between its two-paragraph text:

"ORDERED that the order is affirmed with \$10 costs." (capitalization in the original).

The second document, with no title, appears to be an order and judgment by its single-sentence determination:

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<sup>1</sup> These are the Appellate Term's undated [October 1, 2008] decision, November 26, 2008 decision and June 22, 2009 decision – annexed as Exhibits F-1, H-1, and I-1 to my January 2, 2010 motion – and the two February 19, 2010 decisions deciding that motion – annexed to my February 25, 2010 letter to you.

**“ORDERED AND ADJUDGED** that the order is affirmed with \$10 costs.” (capitalization and bold in the original).

However, it does not conform with CPLR §2219(b):

“an order of an appellate court must be signed by a judge thereof, except that upon written authorization by the presiding judge, it may be signed by the clerk or, in his or her absence or disability, by a deputy clerk.”, See New York Jurisprudence 2d, §15 “Signing of order”.

Certainly, it contains no judge’s signature. As for your signature (which is perhaps a stamp), it appears to be affixed for entry purposes by its positioning to the right of the word “ENTER:” at the bottom of the page after a recipient list. If this is not correct and you have, in fact, signed the order/judgment, please furnish the “written authorization” of the “presiding judge” who, pursuant to CPLR §2219(b), authorized you to do so.

In any event, the fact that no judge signed either the decision or order/judgment underscores the question as to whether the decision was written by a judge or, as I have previously suggested, by some court attorney who is either grossly incompetent or corrupt<sup>2</sup>, and whose document entitled “DECIDED” and untitled order/judgment may be drafts.

The decision’s concluding words, echoed by the order/judgment, are:

“Molia and Iannacci, JJ., concur.  
Nicolai, P.J., taking no part.”

Isn’t the usual meaning of judges who “concur” in a decision that they did not write it, but are agreeing in the decision of another judge? Palpably, there is no other judge, if “Nicolai, P.J.” took “no part”.

Here, too, the form departs from the Appellate Term’s past decisions and orders, where, on two separate occasions, a judge had taken “no part”.<sup>3</sup> In neither instance did the decision and order identify the two participating judges as “concur[ring]”. Rather, each identified only the judge “taking no part” – it being understood that the two judges whose names were printed with the third as “PRESENT:” in the heading of the

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<sup>2</sup> See, *inter alia*, my January 2, 2010 motion for Justice Molia’s disqualification & other relief: ¶¶4, 44-46; and my February 25, 2010 letter to you, pp. 7-8.

<sup>3</sup> These are the Appellate Term’s June 22, 2009 decision and order (Rudolph, Molia, with Scheinkman “taking no part”) and its first February 19, 2010 decision and order (Nicolai “taking no part”, Molia, Iannacci).

decision, and in the heading of the order, were in agreement.

The order/judgment also materially diverges from the decision by its misrepresentation that Judge Friia's appealed-from order is "dated and entered on OCTOBER 14, 2008", when the decision refers to the appealed-from order as "dated October 14, 2008", correctly reflecting that it is not "entered".

Who is the author or signator of the order/judgment to whom responsibility can be affixed for misrepresenting Judge Friia's appealed-from order as "entered", as well as for its more sweeping fraud of "due deliberation having been had" on my appeal – standard verbiage whose falsity is resoundingly proven by the appellate record. Indeed, insofar as the order/judgment recites, by bold-faced, capitalized type, that the appeal was "**argued**" by me "**IN PERSON**" – implying a significance not possessed by my briefs, which are not mentioned – the decision identifies nothing I said, "**IN PERSON**", except, perhaps inferentially, by its assertion "We find no merit to appellant's request for a referral of the matter for 'disciplinary and criminal investigation'" – as to which the decision gives no reasons.

As you were present at the December 16, 2009 oral argument – which the order/judgment characterizes as the "DECEMBER 16, 2009 TERM – you were witness to the good and sufficient grounds for my appeal and request for "disciplinary and criminal investigation". I stated these, based on my appellant's brief and reply brief, emphasizing the proposition that a court has jurisdiction over its own clerk, by reason of which there was no necessity for me to bring a mandamus/Article 78 proceeding to secure from White Plains City Court a direction to its own Clerk, Patricia Lupi, to furnish the Appellate Term with proper Clerk's Returns on Appeals and other documents and information critical to its appellate review.<sup>4</sup> I further stated that my motion for this relief in White Plains City Court was based on advice I had received from the Appellate Term's Clerk's Office – including you – that this was how to proceed.<sup>5</sup> The unsigned decision conceals all this, as likewise the threshold issue of Judge Friia's disqualification for demonstrated actual bias and interest, precluding, *as a matter of law*, any determination other than reversal, if not vacatur, of her October 14, 2008 order,<sup>6</sup> which is what I stated.

You also heard me object, on December 16, 2009, to argument by "**LEONARD A. SCLAFANI, ESQ.**", who had not submitted a brief, and to argument by "**DIANA R.H.**

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<sup>4</sup> See my appellant's brief, *inter alia*: second "Question Presented": p. vi: "Does White Plains City Court have jurisdiction and supervisory responsibilities over its own Clerk..."; pp. 62-64, p. 75-79; my reply brief, *inter alia*: pp. 15-18.

<sup>5</sup> See, *inter alia*, my appellant's brief: p. 59.

<sup>6</sup> See, *inter alia*, my appellant's brief: p. 67, 96.

**WINTERS, ESQ.**”, whose non-party opposing brief on behalf of Clerk Lupi was demonstrated by my reply brief to be not only unauthorized, but frivolous and no opposition, *as a matter of law*, by reason of its failure to confront any of the facts, law, or legal argument of my appellant’s brief, compounded by its demonstrably fraudulent advocacy. The recitation in the order/judgment, in bold-faced and capitalized type, that each of them “**argued**” – to give the appearance that my appeal was opposed, when, *as a matter of law* and as I so-stated, it was not<sup>7</sup> – tellingly conceals that Ms. Winters is not some private attorney, but is an Assistant Solicitor General in the Attorney General’s Office – a concealment also appearing in the recipient list in the order/judgment.

Finally, I note that neither the decision and order/judgment identify the index number appearing on Judge Friia’s appealed-from October 14, 2008 order – “SP1474/08” – or the facts pertaining thereto – yet have created a new caption, adding the name “PATRICIA LUPI”, who is designated as “Non-party Respondent”, and changing the designation of my mother, “DORIS L. SASSOWER”, from “Respondent” to “Tenant”.

Please identify the basis for this. Neither I nor my mother were ever “tenants”, for which reason we moved for dismissal, in 1989, of #SP-651/89, the case to which, on or about May 30, 2008, Clerk Lupi assigned an additional index number, “SP1474/08”, without notice or explanation and at Judge Friia’s direction, presumably because #SP-651/89 was closed.

I await your expeditious response to the foregoing so that I may be guided accordingly in safeguarding my continuously trampled rights – and, in conjunction therewith, those of my mother, Doris L. Sassower.

Thank you.

Very truly yours,



ELENA RUTH SASSOWER

Appellant *Pro Se*

Enclosure: February 23, 2010 decision and order/judgment

cc: Leonard A. Sclafani, Esq.

Doris L. Sassower

New York State Attorney General Andrew Cuomo

ATT: Deputy Solicitor General Benjamin N. Gutman

Assistant Solicitor General Diana R.H. Winters

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<sup>7</sup> See my January 2, 2010 motion for Justice Molia’s disqualification & other relief, ¶¶5-9.