SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: NINTH & TENTH JUDICIAL DISTRICTS

JOHN McFADDEN,

Respondent,

-against-

DORIS L. SASSOWER,

Respondent,

ELENA SASSOWER,

Appellant.

#2008-1427-WC
#2009-148-WC
(White Plains City Court: #SP-651/89 & SP-1474-2008)

Notice of Motion to Disqualify Justice Angela G. Iannacci, to Vacate for Lack of Jurisdiction & Fraud, Reargument/Renewal, Leave to Appeal, & Other Relief

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JOHN McFADDEN,

Cross-Appellant/Respondent

-against-

ELENA SASSOWER,

Appellant.

#2008-1433-WC
#2008-1428-WC
(White Plains City Court: #SP-1502/07)

PLEASE TAKE NOTICE that upon the annexed affidavit of appellant *pro se* ELENA SASSOWER, sworn to on April 25, 2010, the exhibits annexed thereto, and upon all the papers and proceedings heretofore had herein, appellant ELENA SASSOWER will make a motion at the Appellate Term of the Supreme Court of the Second Judicial Department (Ninth & Tenth Judicial Districts) at 141 Livingston Street, Brooklyn, New York 11201 on May 17, 2010 at 10:00 a.m., or as soon thereafter as the parties or their counsel can be heard, for an order:

1. disqualifying Justice Angela G. Iannacci for demonstrated actual bias and interest pursuant to §100.3E of the Chief Administrator's Rules Governing Judicial Conduct and Judiciary Law §14 based, *inter alia*, on her participation with Justice Denise Molia in the February 19, 2010 and February 23, 2010 decisions and orders herein and her conduct at the December 16, 2009 oral argument of the above four appeals and, if denied, disclosure, pursuant to

§100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon her fairness and impartiality;

2. vacating for lack of jurisdiction the February 19, 2010 and February 23, 2010 decisions and orders herein based on the sufficiency of appellant's January 2, 2010 motion for Justice Denise F. Molia's disqualification and the further evidence of her actual bias and interest and that of Justice Iannacci which these decisions and orders manifest;

3. vacating for fraud the February 19, 2010 and February 23, 2010 decisions and orders herein;

4. granting reargument and renewal pursuant to CPLR §2221 :

   a. of the two February 19, 2010 decisions and orders denying appellant's January 2, 2010 motion to disqualify Justice Molia & other relief, and vacating them;

   b. of the February 23, 2010 decision and order/judgment determining appellant's appeal #2009-148-WC of the October 14, 2008 decision/order of White Plains City Court Judge JoAnn Friia and vacating them;

   c. of the February 23, 2010 decision and order/judgment determining appellant's appeal #2008-1427-WC of the July 3, 2008 decision/order, July 21, 2008 judgment of eviction, and July 21, 2008 warrant of removal of White Plains City Court Judge JoAnn Friia and modifying them with findings of fact and conclusions of law based on appellant's July 18, 2008 order to show cause and her appellant's brief for #2008-1427-WC;

   d. of the February 23, 2010 decision and order/judgment determining appellant's appeals #2008-1433-WC and #2008-1428-WC of the October 11, 2007 and January 29, 2008 decisions/orders of White Plains City Court Judge Brian Hansbury and vacating them;

5. granting leave to appeal to the Appellate Division, Second Department of the aforesaid two February 19, 2010 decisions and orders and of the aforesaid three February 23, 2010 decisions and orders/judgments; and

6. granting such other and further relief as may be just and proper.

Pursuant to CPLR §2214(b), answering papers, if any, are required to be served at least seven days prior to the May 17, 2010 return date.

Dated: April 25, 2010
New York, New York

Yours, etc.

Elena Sassower, Appellant *Pro Se*
c/o Karmel
25 East 86th Street, Apt. 10G
New York, New York 10028
646-220-7987

TO: Leonard A. Sclafani, Esq.
Attorney for John McFadden
Two Wall Street, 5th Floor
New York, New York 10005

Doris L. Sassower, *Pro Se* [#2008-1427-WC; #2009-148-WC]
283 Soundview Avenue
White Plains, New York 10606

New York State Attorney General Andrew M. Cuomo
Attorney for Non-Party White Plains City Court Clerk Patricia Lupi [#2009-148-WC]
ATT: Deputy Solicitor General Benjamin N. Gutman
Assistant Solicitor General Diana R.H. Winters
120 Broadway, 25th Floor
New York, New York 10271

SUPREME COURT OF THE STATE OF NEW YORK
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JOHN McFADDEN,

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MOVING AFFIDAVIT

JOHN McFADDEN,

Cross-Appellant/Respondent,

-against-

ELENA SASSOWER,

Appellant.

#2008-1433-WC
#2008-1428-WC
(White Plains City Court: #SP-1502/07)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

1. I am the appellant *pro se* in the above-captioned four appeals and submit this affidavit in support of my accompanying notice of motion.

2. As hereinafter shown, the two unsigned February 19, 2010 decisions on my January 2, 2010 motion to disqualify Justice Molia & other relief are insupportable in fact and law – and knowingly so (Exhibit L-1, L-3)[1]. Even more so the two unsigned February 23, 2010 decisions on my three appeals #2009-148-WC, #2008-1433-WC, and #2008-1428-WC (Exhibits M-1, O-1). Only the unsigned February 23, 2010 decision on my appeal #2008-1427-WC

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[1] This motion continues the sequence of exhibits begun by my January 2, 2010 motion to disqualify Justice Molia & other relief, whose exhibits were from A-K.

(Exhibit N-1) bears some resemblance to the material facts in the record – and this to a degree so miserly as to demonstrate no less a corruption of this Court's judicial, administrative, and disciplinary responsibilities. With that exception, these five unsigned decisions – like the three unsigned decisions on my pre-appeal motions[2] – are judicial frauds and "so totally devoid of evidentiary support as to render [them] 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).

3. As such, these five most recent decisions (Exhibits L-1, L-3, M-1, N-1, O-1) establish, *prima facie*, my entitlement to Judge Iannacci's disqualification for demonstrated actual bias, if not interest[3], which I herein seek, and reinforce my entitlement to the disqualification of Judge Molia for demonstrated actual bias and interest, sought by my January 2, 2010 motion. As set forth in the record before this Court, the governing legal principal is that "bias or prejudice or unworthy motive" disqualify where they are "shown to affect the result".[4]

4. "Bias, prejudice, or unworthy motive" – including interest – are the ONLY

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[2] Annexed as Exhibits F-1, H-1, I-1 to my January 2, 2010 motion to disqualify Justice Molia & other relief.

[3] The actual bias demonstrated by these decisions is so brazen as to suggest interest. *Cf.* my memorandum of law accompanying my November 9, 2007 order to show cause for Judge Hansbury's disqualification, similarly describing (at p. 6) his October 11, 2007 decision – now affirmed by this Court (Exhibit O).

[4] See my appellant's brief in #2008-1428-WC, at p. 18, reiterated by my February 25, 2010 letter to this Court's Chief Clerk, Paul Kenny (Exhibit P, p. 6):

> "Although recusal on non-statutory grounds is 'within the personal conscience of the court', a judge's denial of a motion to recuse will be reversed where the alleged 'bias or prejudice or unworthy motive' is 'shown to affect the result', *People v. Arthur Brown*, 141 A.D.2d 657 (2nd Dept. 1988), citing *People v. Moreno*, 70 N.Y.2d 403, 405 (1987), *Matter of Rotwein*, 291 N.Y. 116, 123 (1943); 32 New York Jurisprudence §44; *Janousek v. Janousek*, 108 A.D.2d 782, 785 (2nd Dept. 1985): 'The only explanation for the imposition of such a drastic remedy…is that…the court became influenced by a personal bias against the defendant.'"

explanations for the five decisions that are the subject of this motion. The most stunning of these is the February 23, 2010 decision on my appeals #2008-1433-WC and #2008-1428-WC (Exhibit O-1). It not only affirms Judge Hansbury's October 11, 2007 decision/order – shown on those appeals to be factually and legally insupportable, and knowingly so, in denying my September 5, 2007 cross-motion for summary judgment/dismissal of Mr. McFadden's June 22, 2007 Petition, summary judgment on my Counterclaims, and costs/sanctions against, and disciplinary/criminal referrals of, Mr. McFadden and his counsel, Mr. Sclafani – but purports that upon "search[ing] the record" Mr. McFadden is entitled to summary judgment on his Petition, that Mr. Sclafani's motion to dismiss my Counterclaims should have been granted, and that Judge Hansbury did not abuse his discretion in imposing no sanctions on Mr. McFadden and Mr. Sclafani. This is a total perversion of ALL cognizable legal and adjudicative standards, first and foremost because Mr. McFadden's Petition is based on material falsification and omission, as proven by the record of my rebuttal to the Petition's material allegations presented by my September 5, 2007 cross-motion.

5. Like Judge Hansbury's now-affirmed October 11, 2007 decision[5], this Court's February 23, 2010 decision makes no findings of fact or conclusions of law as to my September 5, 2007 cross-motion rebuttal of the Petition's material allegations – although the rebuttal is reprinted *verbatim* in my appellant's brief for #2008-1433-WC (at pp. 14-23, 27-33) and highlighted by my Point I (at pp. 38-40) because it was – and is – dispositive of my right to summary judgment/dismissal of Mr. McFadden's Petition based on its falsity. Similarly, and again replicating Judge Hansbury's October 11, 2007 decision, the Court makes no findings of fact and conclusions of law with respect to my cross-motion's two branches for sanctions and costs against Mr. Sclafani and

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[5] Judge Hansbury's October 11, 2007 decision is Exhibit K-1 to my compendium of exhibits accompanying my appellant's brief in #2008-1427-WC & #2009-148-WC.

his co-conspiring client and their referral to disciplinary and criminal authorities, also reprinted *verbatim* in my appellant's brief for #2008-1433-WC (at pp. 23-27) and highlighted by my Point I (at pp. 39-40) because they were – and are – dispositive that his motion to dismiss my Affirmative Defenses and Counterclaims was fraudulent throughout and that I was entitled to dismissal of Mr. McFadden's Petition, *as a matter or law*. Indeed, had the Court made findings of fact and conclusions of law as to my cross-motion's two branches for sanctions/costs and disciplinary/criminal referrals, it could neither have awarded summary judgment to Mr. McFadden upon its supposed "search [of] the record", nor dismissed my Counterclaims.

6. This motion follows upon my correspondence with this Court's Chief Clerk, Paul Kenny, about these five decisions – and about the orders accompanying them sent to me by the Clerk's Office. Copies of my six letters to Mr. Kenny, dated February 25, 2010, March 1, 2010 (2 letters), March 4, 2010, March 5, 2010, and March 12, 2010, are annexed (Exhibits P, Q, R, S, T, U). To these, Mr. Kenny responded by a March 16, 2010 letter (Exhibit V), to which I responded by letters dated March 18, 2010 and March 23, 2010 (Exhibits W-1, W-2).[6] In the interest of economy I incorporate them herein by reference.

7. Among the questions raised by my correspondence with Mr. Kenny is whether my motions and appeals have been handled <u>not</u> by this Court's justices – but by court attorneys on whom the justices rely. My only direct contact with this Court's justices was at the December 16, 2009 oral argument of my four appeals, when Justice Nicolai recused himself, *sua sponte*, from the appellate panel whose remaining members were Justices Molia and Iannacci. The best that can be said of their conduct at the December 16, 2009 oral argument is that it reflected

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[6] On April 8, 2010, in the absence of any response from Mr. Kenny to my March 23, 2010 letter, I went to the Appellate Term where I spoke with him personally. The content of that conversation will be memorialized in a further letter, to be filed by the return date of this motion.

complete ignorance of the facts, law, and legal argument presented by my appeal briefs and established by the underlying record. The particulars of this are recited by my January 2, 2010 motion – and the accuracy of that recitation is undenied and undisputed by their two February 19, 2010 decisions denying the motion (Exhibits L-1, L-3), as it was prior thereto by Mr. Sclafani and Assistant Solicitor General Diana R.H. Winters, counsel to the non-party White Plains City Court Clerk Lupi, both present at the December 16, 2009 oral argument and, over my objection, permitted to argue.

8. Suffice to say that Justices Molia and Iannacci, by their three February 23, 2010 decisions on my four appeals (Exhibits M-1, N-1, O-1), have, with but one exception, replicated the same utter disregard of the record as I witnessed at the December 16, 2009 oral argument and summarized by my January 2, 2010 motion. Common to all three decisions is that they do not identify any of the facts, law, or legal argument presented by my appellant's briefs or by my reply briefs, with their decisions in #2008-1427-WC (Exhibit N-1) and #2008-1433-WC /#2008-1428-WC (Exhibit O-1) also not disclosing any of the reasoning or lack of reasoning in the appealed-from decisions of Judges Friia and Hansbury[7] or any of the material particulars of Judge Friia's appealed-from judgment and warrant. Consistent therewith, the Court does not identify any of the "Questions Presented" by my appellant's briefs – or any of the documents

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[7] The Court's decision in #2008-1427-WC (Exhibit N-1, pp. 1, 3) identifies Judge Friia's July 3, 2008 decision as having "granted landlord's motion in the 1989 proceeding for summary judgment" and awarding him "possession". Nothing about her stated basis for doing so.

The Court's decision in #2008-1433-WC and #2008-1428-WC (Exhibit O-1, p. 2) identifies Judge Hansbury's October 11, 2007 decision as having "denied both parties their requested relief and consolidated the instant proceeding with 'any prior pending action.' Nothing about his stated basis. Nor does the Court's decision state the basis of Judge Hansbury's January 29, 2008 decision, identified as having "granted tenant leave to reargue and renew her prior cross motion, granted landlord leave to reargue his prior motion, adhered to its prior decision, and recused itself." (at p. 10).

asserted therein and reiterated by my January 2, 2010 motion (at ¶¶7-8, 12) as dispositive of my appeals:

- My July 18, 2008 order to show cause[8] to disqualify Judge Friia and vacate her July 3, 2008 decision/order in #SP-651/89 containing a 51-page analysis of the July 3, 2008 decision/order – highlighting (*inter alia*, at ¶¶65-66) that her fraudulent granting of summary judgment to Mr. McFadden on his 1989 Petition, was to circumvent my entitlement in #SP-1502/07 to dismissal of his 2007 Petition and summary judgment on my Counterclaims;

- My October 10, 2008 opposition/reply affidavit[9] containing a 12-page analysis of the Attorney General's cross-motion, thereafter granted by Judge Friia's October 14, 2008 decision/order to the extent of denying, on jurisdictional grounds, my September 18, 2008 motion in #SP-651/89 to compel Clerk Lupi to provide this Court with the documents and information essential for my appeals.

- my November 9, 2007 order to show cause[10] to disqualify Judge Hansbury and vacate his October 11, 2007 decision/order in #SP-1502/07, containing a 30-page analysis of the October 11, 2007 decision/order – detailing the state of the record with respect to my September 5, 2007 cross-motion entitling me, *as a matter of law*, to dismissal of Mr. McFadden's 2007 Petition, summary judgment on my Counterclaims, and sanctions/costs against, and disciplinary/criminal referrals of, Mr. McFadden and Mr. Sclafani.

9. These three documents, whose threshold issue is the disqualification of Judges Friia and Hansbury for actual bias and interest based on their decisions, suffice to establish the fraudulence of the Court's three February 23, 2010 decisions on my appeals, each obliterating the disqualification issue as if it does not exist and concealing the particulars of the appealed-from decisions. Such will be obvious upon the Court's making findings of fact and conclusions of law with respect to the analyses they contain, as the Court was duty-bound to do in

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[8] Annexed as Exhibit N in the compendium of exhibits accompanying my April 17, 2009 appellant's brief in #2008-1427-WC & #2009-148-WC.

[9] Annexed as Exhibit O in the compendium of exhibits accompanying my April 17, 2009 appellant's brief in #2008-1427-WC & #2009-148-WC.

[10] Annexed as Exhibit C to my March 6, 2009 reply brief in #2008-1433-WC.

determining my appeals and now in determining this motion. Indeed, just as these three documents were dispositive of my entitlement on my appeals, so they are now dispositive of my entitlement to all branches of this motion.[11]

10. For the convenience of the Court, a Table of Contents follows:

TABLE OF CONTENTS

* * *

THIS COURT'S VIOLATIVE, UNFOUNDED, AND QUESTIONABLE ORDERS ACCOMPANYING ITS DECISIONS

11. The particular respects in which the orders accompanying this Court's February 19, 2010 and February 23, 2010 decisions (Exhibits L-2, L-4, M-2, N-2, O-2) are violative,

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[11] The branch of my motion for vacatur of the Court's decisions/orders/judgments on jurisdictional grounds is based on the treatise authority Judicial Disqualification: Recusal and Disqualification of Judges by Richard E. Flamm, quoted at pages 24-25 of my appellant's brief in #2008-1427-WC & 2009-148-WC, that orders and judgments by judges who should have recused themselves, but did not, are void or voidable for lack of jurisdiction. This is over and beyond the citation in my appellant's brief for #2008-1433-WC (at p. 46), taken from my memorandum of law that accompanied my November 9, 2007 order to show cause for Judge Hansbury's disqualification for interest under Judiciary Law §14 that:

> "It is long-settled that a judge disqualified by statute is without jurisdiction to act and the proceedings before him are void, *Oakley v. Aspinwall*, [3 NY 547(1850) 549, *Wilcox v. Arcanum*, 210 NY 370, 377 (1914), *Casterella v. Casterella*, 65 A.D.2d 614 (2nd Dept. 1978),

unfounded, and raise reasonable questions as to whether they are the workproduct of this Court's attorneys, without the knowledge of Justices Molia and Iannacci, are set forth by my annexed correspondence with Clerk Kenny, which, in the interest of judicial economy, is incorporated herein by reference (Exhibits P, Q, R, S, T, U, W-2).

12. Suffice to say that their falsification of the record as to the entry status of the appealed-from decision/orders, judgment, and warrant – repeatedly brought to the Court's attention by my motions, by my briefs, and by my oral argument – are a microcosm of the falsification and material disregard of the record that pervade its decisions.

THE COURT'S TWO FEBRUARY 19, 2010 DECISIONS DETERMINING MY JANUARY 2, 2010 MOTION TO DISQUALIFY JUSTICE MOLIA & OTHER RELIEF

13. This Court has denied my January 2, 2010 motion for Justice Molia's disqualification & other relief by two February 19, 2010 decisions (Exhibits L-1, L-3). Neither identify any of the facts, law, or legal argument presented by my motion – whose accuracy they do not deny or dispute in any respect. Nor do they identify my January 19, 2010 affidavit in reply and opposition to Mr. Sclafani's January 5, 2010 cross-motion for costs and sanctions against me pursuant to 730.3(g) of this Court's rules, demonstrating it to be not only frivolous, but fraudulent, and seeking maximum costs and sanctions against him and his client under 730.3(g) based on the express definition of 22 NYCRR §130.1-1(c) on which it rests.[12]

14. The first February 19, 2010 decision, purportedly by Justices Molia and Iannacci, with Justice Nicolai purportedly "taking no part" (Exhibit L-1), is three-sentences. Its first

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1A Carmody-Wait 2nd §3:94."

12 "Frivolous conduct shall include the making of a frivolous motion for costs and sanctions...."

sentence severs, *without reasons*, my motion's first branch for Justice Molia's disqualification and refers it to Justice Molia "for determination"'. Its second sentence denies, *without reasons*, the balance of my motion. Its third sentence denies, *without reasons*, Mr. Sclafani's cross-motion.

15. The second February 19, 2010 decision, purportedly by Justice Molia alone (Exhibit L-3), is two-sentences. Its first sentence denies, *without reasons*, my motion's disqualification branch and conceals its alternative request, that if disqualification were denied, that Justice Molia disclose facts bearing upon her fairness and impartiality, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct. No disclosure is made. Its second sentence begins "it is noted that a party" and has no stated relevance. In fact, it is irrelevant, except that its single cited case, *Petkovsek v. Snyder*, 251 AD2d 1086 (1998), introduced with an inferential "see"[13], establishes the "error" of the joint decision severing my disqualification branch for Justice Molia's sole "determination".[14]

16. The Court's failure to give reasons in these two decisions is in face of my motion's citation to *Nadle v. L.O. Realty Corp*, 286 AD2d 130, 735 NYS2d 1 (2001) – approvingly cited by the Appellate Division, Second Department in *Hartford Fire Insurance Co. v. Cheever Development Corp*, 289 A.D.2d 292; 734 N.Y.S.2d 598 (2001):

"'...we now take this opportunity to explain the basis for our insistence on the

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[13] According to The Blue Book: A Uniform System of Citation (Harvard Law Review Association, 17th edition, 200), "*see*" before a legal citation means that there is "an inferential step between the authority cited and the proposition it supports". In other words, "the proposition is not directly stated by the cited authority" (at pp. 22-23).

[14] As noted by my February 25, 2010 letter to Mr. Kenny (Exhibit P, p. 5), this is because my January 2, 2010 motion *expressly* invoked "interest under Judiciary Law §14" – determination of which – unlike bias – is not within "'the discretion and personal conscience of the Justice whose recusal is sought'", *Petkovsek v. Snyder*, quoting *Matter of Card v. Siragusa*, 214 A.D.2d 1011, 1023 (1995).

inclusion of the reasoning underlying a ruling. First of all, as the Third Department has had occasion to note:

> Written memoranda assure the parties that the case was fully considered and resolved logically in accordance with the facts and law. Indeed, written memoranda may serve to convince a party that an appeal is unlikely to succeed or to assist this court when considering procedural and substantive issues when appealed.

(*Dworesky v. Dworesky*, 152 A.D. 2d 895, 896.) In addition to the potential benefits to the litigants, the inclusion of the court's reasoning is necessary from a societal standpoint in order to assure the public that judicial decision making is reasoned rather than arbitrary.'" (p. 9 of my motion).

17. It is also in face of the standard I articulated as appropriately governing judicial disqualification motions:

> "Adjudication of a motion for a court's disqualification must be guided by the same legal and evidentiary standards as govern adjudication of other motions. Where, as here, the motion details specific supporting facts, the court, as any adversary, must respond to those facts, as likewise the law presented relative thereto. To fail to do so would subvert the motion's very purpose of resolving the 'reasonable questions' warranting disqualification." (¶19 of my motion).[15]

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[15] See also the recusal reform advocacy of the Brennan Center for Justice, in collaboration with the Justice at Stake Campaign, accessible from the Justice at Stake website, www.justiceatstake.org [state court issues], including the following:

> "*All disqualification decisions should be in writing and should explain the grounds for the decision.*
>
> It is critically important – for litigants, for the courts, and for the public at large – that disqualification decisions offer transparent and reasoned decision-making. As explained in the Brennan Center's recusal report [Fair Courts: Setting Recusal Standards], a failure to explain recusal decisions 'allows judges to avoid conscious grappling with the charges made against them' and 'offends not only a basic tenet of legal process, but also a basic tenet of liberal democracy – that officials must give public reasons for their actions in order for those actions to be legitimate.'[fn] Such a failure often makes it far more difficult for those reviewing a specific disqualification decision to understand the underlying rationale or facts, and denies other judges, justices, and courts both precedent for use in other cases and the chance to build on this precedent in developing a more refined body of disqualification jurisprudence. Finally, in a state in which judges or justices are subject to election or re-election, a failure to explain disqualification decisions deprives the public of valuable information concerning how those judges or justices address challenges to a central component of their judicial fitness: their impartiality." (July 31, 2009 letter to the Clerk of the Michigan Supreme Court, at p. 5).

Also see the Brennan Center's referred-to recusal report from 2008, Fair Courts: Setting Recusal

18. The reason the Court gives no reasons for denying the five branches of my January 2, 2010 motion is obvious upon examination of my 26-page motion. There is no legitimate reason that can be fashioned. As for the Court's denial of Mr. Sclafani's cross-motion, *without reasons*, such conceals that his cross-motion was frivolous, indeed fraudulent, entitling me to sanctions and costs against Mr. Sclafani and his client, as demonstrated and sought by my January 19, 2010 affidavit in opposition thereto.

19. Had the Court's February 19, 2010 decisions (Exhibits L-1, L-3) confronted the facts, law, and legal argument presented by my motion and my reply/opposing affidavits in further support – as was its duty to do – it could not, four days later, have rendered its three February 23, 2010 decisions on my four appeals (Exhibits M-1, N-1, O-1), each further actualizing the bias and interest my motion particularized. As illustrative:

The first branch of my motion highlighted (at ¶¶11-20) that Justice Molia's disqualification for demonstrated actual bias and interest, arising from her three decisions on my prior motions and her failure to make disclosure, would prevent her from confronting, on appeal, my overarching appellate issue of the disqualification of Judges Hansbury and Friia for

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Standards, at p. 32:

> "*Transparent and Reasoned Decision-Making*
>
> Judicial disqualification in many jurisdictions is something of a black box: there is no systematic record of how disqualifications are decided or on what grounds.[fn] The failure of many judges to explain their recusal decisions, and the lack of a policy forcing them to do so, offends not only a basic tenet of legal process, but also a basic tenet of liberal democracy – that officials must give public reasons for their actions in order for those actions to be legitimate.[fn] The lack of public reason-giving also creates less abstract problems: it stymies and distorts the development of precedent, it deprives appellate courts of materials for review, and it allows judges to avoid conscious grappling with the charges made against them. To remedy these problems, all judges who rule on a disqualification motion should be required to explain their decision in writing or on the record, even if only briefly."

demonstrated actual bias and interest, arising from their decisions, and their failure to make disclosure – as well as confronting the other appellate issues presented by my prior motions, denied without reasons or by scant reasons that were false by panels on which she had participated.

Four days after denying this first branch, *without reasons and with no disclosure*[16] (Exhibit L-3), the Court's three February 23, 2010 decisions on my four appeals (Exhibits M-1, N-1, O-1) ignored my overarching appellate issue that Judges Hansbury and Friia were disqualified, concealing that I had even raised an issue as to their disqualification either before them or on appeal, thereby effectively denying me appellate review of that issue[17], as likewise of

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[16] The Brennan Center and Justice at Stake has also advocated for "Enhanced Disclosure": see recusal report, at pp. 27-28; joint letter, at p. 10.

[17] As to the importance of independent appellate review of a judge's determination of a challenge to his own impartiality, the position of Brennan Center and Justice at Stake is as follows:

> "*If a challenged justice is permitted to decide his or her own disqualification motions, there should be a mechanism to review such decisions* de novo *and in a timely manner.*
>
> Permitting a judge whose objectivity is challenged to decide his or her own disqualification motions may undermine public confidence in the impartiality and legitimacy of the judicial process. On the other hand, a challenged judge may possess the best knowledge of the facts at issue.
>
> In light of these tensions, ...several... states require that motions for disqualification be independently adjudicated.[fn] We believe that such an approach enhances procedural integrity and fosters increased public trust in the judicial system. In those states,...where a judge is permitted to decide his or her own recusal challenge, it is important that alternative safeguards against partiality be put in place to achieve those same goals.
>
> One such safeguard is to ensure that every decision denying disqualification be reviewed by a disinterested judge...
>
> Review of a disqualification decision by a disinterested judge or justice may offer little genuine protection against partiality if that review is conducted under a perfunctory abuse-of-discretion standard. *De novo* review of disqualification decisions...thus represents another important means by which to ensure the integrity of the adjudicative process for litigants and the public at large.
>
> Finally, the benefits of *de novo* review of disqualification decisions will be illusory if the review process itself does not proceed in a timely manner...", joint letter, *supra*, at pp. 6-7.

The discussion of this issue in the Brennan Center's recusal report (at p. 31) is as follows:

the issue of their failure to make disclosure. The Court also ignored, with one exception, every appellate issue my prior motions had presented – effectively denying me appellate review of those issues as well.

The second branch of my motion highlighted (at ¶¶21-25) that:

> "The best way for any fair and impartial tribunal to demonstrate whether the issues identified by my prior motions are 'dispositive' – as I have again and again asserted them to be – is to confront them." (at ¶21).

Four days after denying this second branch, *without reasons* (Exhibit L-1), the Court's three February 23, 2010 decisions on my four appeals (Exhibits M-1, N-1, O-1) ignored every dispositive issues identified by my prior motions, except for the falsity of Mr. McFadden's March 27, 1989 Petition, requiring its dismissal, *as a matter of law* (Exhibit N-1) – which it concealed I had raised by motion and on my appeal.

Among the dispositive issues of my pre-appeal motions that the Court continued to ignore: that White Plains City Court lacked subject matter jurisdiction over both Mr. McFadden's 1989 and 2007 Petitions[18] – the proof of which was my analysis of the 1987

> "*Independent Adjudication of Disqualification Motions*
>
> The fact that judges in many jurisdictions decide their own recusal challenges, with little to no prospect of immediate review,[fn] is one of the most heavily criticized features of United States disqualification law – and for good reason. Recusal motions are not like other procedural motions. They challenge the fundamental legitimacy of the adjudication…
>
> Allowing judges to decide on their own recusal motions is in tension not only with the guarantee of a neutral decision-maker, but also with the explicit commitment to objectivity in this area. 'Since the question whether a judge's impartiality 'might reasonably be questioned' is a 'purely objective' standard' – a standard that virtually every state has adopted – 'it would seem to follow logically that the judge whose impartiality is being challenged should not have the final word on the question whether his or her recusal is 'necessary' or 'required.'[fn]"

[18] *Cf.* McKinney's Consolidated Laws of New York Annotated, Book 7B: C3211:47 "Immediate Trial of Fact Issue." (2005), by Professor David Siegel: "The courts have approved the principle that a 'substantial…jurisdictional question should be disposed of by the Court expeditiously at the threshold of the litigation'…See Usher v. Usher, 41 A.D.2d 368, 343 N.Y.S.2d 212 (3d Dep't 1973)."

occupancy agreement, first presented to the Court by my August 13, 2008 vacatur/dismissal motion. This analysis highlighted the express language of the occupancy agreement, denominating the parties "Sellers" and "Purchasers" and stating "in no way do the parties intend to establish a landlord-tenant relationship" and additionally interpreted its other language to show that the contract of sale, of which the occupancy agreement was part, did not end and terminate with the Co-Op's rejection of the purchase – as Mr. McFadden's 2007 Petition falsely alleged.

Four days after the Court's *without reasons* denial of this second branch of my motion(Exhibit L-1), its February 23, 2010 decisions on Mr. McFadden's 1989 and 2007 Petitions (Exhibits N-1, O-1) denominated Mr. McFadden as "landlord" and myself (and my mother) as "tenants", with its decision on the 2007 Petition (Exhibit O-1) granting Mr. McFadden summary judgment by concealing both the occupancy agreement's express language and my Third Affirmative Defense to the 2007 Petition based thereon[19], as likewise concealing its other language, as interpreted by my analysis whose accuracy was completely uncontested in the record before the Court, as it was in the record before Judge Hansbury on my September 5, 2007 cross-motion for summary judgment/dismissal of the 2007 Petition.

The third branch of my motion highlighted (at ¶¶26-36) that as a result of the Court's decisions on my pre-appeal motions – all indefensible in fact and law – it did not have proper Clerk's Returns on Appeals for my four appeals and lacked the documents and information essential for its appellate review. Based thereon, this third branch sought a subpoena to the

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[19] My Third Affirmative Defense, to dismiss Mr. McFadden's 2007 Petition for lack of subject matter jurisdiction, was identified in the first footnote of my January 2, 2010 motion (at p. 2) in the context of my reciting Mr. Sclafani's admission at the December 16, 2009 oral argument, in response to questioning, that there "never was a tenancy" – an admission whose accuracy was undenied and undisputed by his January 5,

White Plains City Court Clerk for:

> "(a) the documents and/or entries in the files and records of White Plains City Court which formed the basis of Clerk Lupi's alleged representation to Judge Friia that only Mr. McFadden's 1989 proceeding against me was open, #SP-651/89, but not the Co-Op's two cases against him to take away his proprietary lease, #SP-434/88 and #SP-500/88 – upon which Judge Friia asserted she was relying in purporting to consolidate #SP-651/89 with #SP-1502/07;
>
> (b) the documents and/or entries in the files of the White Plains City Court pertaining to Clerk Lupi's opening a new index number for #SP-651/89, *to wit*, #SP-2008-1474, and especially reflecting the date, the reason for doing so, at whose instance it was done, and what notice, if any, was given to the parties; and
>
> (c) an explanation for her failure to respond to my August 22, 2008 letter to her, including its itemization of the deficiencies of her Clerk's Returns on Appeals for #SP-651/89 and #SP-1502/07[fn17]." (¶34 of my January 2, 2010 affidavit, & notice of motion).

The indicated footnote 17 was that:

> "Pages 56-58 of my appellant's brief for #2008-1427-WC & 2009-148-WC summarize my August 22, 2008 letter to Clerk Lupi, including as to the deficiencies of her Clerk's Return on Appeals."

Among these deficiencies, that the appealed-from decisions/orders, judgment, and warrant were all unentered and that the Clerk's Returns on Appeal contained

> "not a single document, entry, or other record that would enable the Appellate Term to rule as to the status of the prior City Court proceedings, including #651/89".

Upon denying this branch, *without reasons* (Exhibit L-1), the Court's accompanying February 19, 2010 orders falsely represented entry of Judge Friia's July 3, 2008 and October 14, 2008 decision/orders and her July 21, 2008 judgment and warrant (Exhibit L-2, L-4). Four days later, the same misrepresentations as to entry were repeated in the Court's February 23, 2010 orders for #2009-148-WC and 2008-1427-WC (Exhibits M-2, N-2), though not its decisions

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2010 cross-motion and so-noted by my January 19, 2010 affidavit in reply & opposition (at its fn. 4).

therein (Exhibits M-1, M-2), with both its decision and order on my appeals in #2008-1433-WC and #2008-1428-WC misrepresenting the entry status of Judge Hansbury's October 11, 2007 and January 29, 2008 decision/orders (Exhibits O-1, O-2).

Having deprived itself of proper Clerk's Returns on Appeals and other documents and information necessary for its appellate review by denying my subpoena request, the Court then also deprived itself of these by its February 23, 2010 decision on my appeal #2009-148-WC (Exhibit M-1), whose fraudulence is hereinbelow detailed (at ¶¶20-25). Simultaneously, in its decision on my appeal #2008-1427-WC (Exhibit N-1) – perfected by the same brief as #2009-148-WC – the Court ignored my first appellate as to whether the underlying case #SP-651/89 was closed and the status of the Co-Op's two cases against Mr. McFadden, #SP-434/88 and #SP-500/88 – thereby covering up the collusion between Judge Friia and Clerk Lupi in falsifying court records – the same result as it achieved by its simultaneous appellate decision in #2009-148-WC (Exhibit M-1) and, four days earlier, by its *without reasons* denial of this third branch (Exhibit L-1). Simultaneously, too, its decision on my appeals #2008-1433-WC and #2008-1428-WC (Exhibit O-1), purported, without citation to any evidence, that #SP-651/89 had "remained dormant" with "no activity" for 14 years (at pp. 4, 6) and made no assertion as to the status of the Co-Op's cases #SP-434/88 and #SP-500/88, whose very existence it ignored so as to rule (at p. 11) that Judge Hansbury's ordered consolidation of "any pending action" was "moot" by reason of the Court's simultaneous decision in #2008-1427-WC, dismissing Mr. McFadden's Petition in #SP-651/89.

The fourth branch of my motion highlighted (at ¶¶37-43) the fraudulence of Mr. Sclafani's briefs for Mr. McFadden, in #2008-1433-WC and #2008-1428-WC and of Assistant Solicitor General Winters' brief for the non-party Clerk Lupi in #2009-148-WC, the particulars

of which I had demonstrated by my reply briefs in support of my requests therein for sanctions/costs against them pursuant to 22 NYCRR §130-1.1 and this Court's rule 730.3(g) and for their referral to disciplinary and criminal authorities. This fourth branch formalized those requests, adding a further request for sanctions against Mr. Sclafani and Assistant Solicitor General Winters for their frivolous opposition to my appeals at the December 16, 2009 oral argument, to the extent this Court's rule 730.3(g) was applicable to oral advocacy.

Four days after denying this branch, *without reasons* (Exhibit L-1), the Court determined my four appeals (Exhibits M-1, N-1, O-1), with no mention of my reply briefs, the express requests therein for costs/sanctions & disciplinary/criminal referrals, and without adjudicating my entitlement thereto. The Court thereby put its imprimatur to the fraudulent advocacy of Mr. Sclafani and Assistant Solicitor General Winters on my appeals and concealed what my three reply briefs had demonstrated and my January 2, 2010 motion reiterated[20]: that my appeals, *as a matter of law*, were not only unopposed, but were reinforced by the fraudulence of Mr. Sclafani's and Assistant Solicitor General Winters' briefs.

The fifth branch of my motion highlighted (at ¶¶44-46) that, to the extent the justices were relying on court attorneys, "IMMEDIATE supervisory oversight [was] required" as their workproduct was "below ANY acceptable standard", necessitating investigation and their dismissal. As to these anonymous court attorneys, I sought their names or at least information as to whether those handling my prior motions and drafting its decisions and orders therein were the same as those involved on my appeals who had "prepped" the justices for the oral argument.

As hereinafter shown, four days after denying this branch, *without reasons* (Exhibit L-1),

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[20] See ¶5 and the "Introduction" and "Conclusion" sections of my three reply briefs which my January 2, 2010 motion annexed as Exhibits B-2, C-2, and D-2.

the Court's decisions and orders on three of my appeals (Exhibits M, O), unsigned by any judge, were as indefensible, factually and legally, as its decisions and orders on my motions – with its unsigned decision and order on my fourth appeal (Exhibit N) being an indefensible cover-up of the corruption before it, violative of its mandatory "Disciplinary Responsibilities" under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct, expressly invoked by my appellant's brief for #2008-1427-WC in its fifth "Question Presented" (p. ix); "Introduction" (p. 2); "Point V" (pp. 92-96); "Conclusion" (at p. 97), all concealed by the decision (Exhibit N-1).

THE COURT'S FEBRUARY 23, 2010 DECISION DETERMINING APPEAL #2009-148-WC: (Judge Friia's October 14, 2008 decision/order)[21]

20. My threshold appellate issue in #2009-148-WC – perfected by a single appellant's brief with #2008-1427-WC – was Judge Friia's disqualification for actual bias and interest, rendering her October 14, 2008 decision/order void *ab initio* and requiring its vacatur, *as a matter of law*. Such was highlighted by the "Introduction" and "Argument" of my appellant's brief (at pp. 2, 67) and was based on three grounds of her disqualification:

> (a) the legal sufficiency of my July 18, 2008 order to show cause for her disqualification for actual bias and interest;
>
> (b) her direct interest in the subject matter of my September 18, 2008 motion, whose granting would expose her complicity with Clerk Lupi in record tampering and the fraud that Mr. McFadden's prior case against me, #SP-651/89 was open, but not #SP-434/88 and #SP-500/88, the Co-Op's two cases against Mr. McFadden to take away his proprietary lease; and
>
> (c) the further manifestation of her actual bias and interest by her October 14, 2008 decision/order, insupportable in fact and law – and knowingly so, as established by my October 10, 2008 opposition/reply affidavit, whose dispositive significance was identified at page 3 of my appellant's brief.

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[21] Judge Friia's October 14, 2008 decision/order is annexed as Exhibit D to my compendium of exhibits accompanying my April 17, 2009 appellant's brief for #2008-1427-WC & #2009-148-WC

21. Point II of my appellant's brief (at pp. 74-79), corresponding to my second "Question Presented" (at pp. vi-vii), highlighted the two-fold significance of my October 10, 2008 opposition/reply affidavit in establishing (i) the fraudulence of Judge Friia's October 14, 2008 decision, manifesting her disqualification, and (ii) my entitlement to sanctions and costs against, and disciplinary and criminal referrals of, the Attorney General and Mr. Sclafani.

22. The Court's affirmance of the October 14, 2008 decision is without identifying the existence of either my October 10, 2008 opposition/reply affidavit or my appellate issue of Judge Friia's disqualification. Instead, its February 23, 2010 decision (Exhibit M-1) simply parrots back the October 14, 2008 decision, in paraphrase:

> "As noted by the City Court, the relief sought was in the nature of mandamus under article 78 of the CPLR, and the court was without jurisdiction to entertain appellant's application (CPLR 7804[b])."

23. The decision's sole support for this paraphrase is its characterization of my underlying September 18, 2008 motion to make it appear that an Article 78/mandamus proceeding was required in that it sought "to compel Patricia Lupi, the Chief Clerk of the City Court of White Plains to perform various official duties" and "compelling the Chief Clerk of the City of White Plains to discharge certain official duties." (Exhibit M-1, underlining added). The decision does not reveal what these "official duties" are – even to the limited extent of duplicating Judge Friia's description in her October 14, 2008 decision: "to compel the Chief Clerk to produce records in connection with a pending appeal before the Appellate Term, Second Department".

24. The Court thereby conceals that what my September 18, 2008 motion sought, *to*

wit, proper Clerk's Returns on Appeals and documents and information essential to the Court's appellate review, did NOT require a mandamus/Article 78 proceeding because a court has jurisdiction and supervisory responsibilities over its own clerk. This elementary proposition was explicitly stated by me at the December 16, 2009 oral argument, repeating the proposition foreshadowed by my October 10, 2008 opposing/reply affidavit (at ¶15) and raised by the second "Question Presented" of my appellant's brief (at pp. vi-vii): "Does White Plains City Court have jurisdiction and supervisory responsibilities over its own Clerk…?" – with argument by my corresponding Point II (at pp. 75-76, 62-64) and reply brief (pp. 15-16). The Court's obliteration of this elementary proposition – uncontested in the record before it and whose accuracy it does not dispute – is reflective of the fact that it can muster no opposing argument because it is true and correct. Were it otherwise, the Court would have identified and confronted it.

25. As for the Court's final statement, "We find no merit to appellant's request for a referral of the matter for 'disciplinary and criminal investigation'" (Exhibit M-1), its decision not only fails to give reasons for so-finding, but fails to identify where the request was made and against whom it was sought.

(a) If the referred-to request for "'disciplinary and criminal investigation'" is the second branch of my September 18, 2008 motion:

> "referring Chief Clerk Lupi for disciplinary and criminal investigation and prosecution for official misconduct, obstruction of justice, and other crimes involving violation of her oath of office, including tampering with court records and false statement to Judge Friia as to the status of #651/89 and related cases and/or her complicity in Judge Friia's misrepresentation as to those cases" (underlining added),

the decision's vagueness is not surprising. Identifying it would have exposed Judge Friia's direct interest in the motion, precluding the Court from rendering any determination other than reversing, if not vacating, her October 14, 2008

decision/order.[22]

(b) If the referred-to "request for a referral of the matter for 'disciplinary and criminal investigation'" is from my October 10, 2008 opposition/reply affidavit, it pertains to the Attorney General and Mr. Sclafani and seeks additionally sanctions and costs against them – the merit of which is fully demonstrated by my October 10, 2008 opposition/reply affidavit, without contest by either the Attorney General or Mr. Sclafani and with no findings of fact and conclusions of law by the Court.

(c) If the referred-to "request for a referral of the matter for 'disciplinary and criminal investigation'" is to Point V of my appellant's brief (at pp. 92-96)[23], corresponding to my fifth "Question Presented" (at p. ix), it pertains to Judge Friia, Clerk Lupi, the Attorney General, Mr. Sclafani and Mr. McFadden – entitlement to which was fully demonstrated by my 92-page appellant's brief, without contest by either the Attorney General or Mr. Sclafani and with no findings of fact and conclusions of law by the Court.

THE COURT'S FEBRUARY 23, 2010 DECISION DETERMINING APPEAL #2008-1427-WC: (Judge Friia's July 3, 2008 decision/order, July 21, 2008 judgment of eviction, and July 21, 2008 warrant of removal)[24]

26. This Court's decision on my appeal from Judge Friia's July 3, 2008 decision/order, July 21, 2008 judgment of eviction, and July 21, 2008 warrant of removal, #2008-1427-WC (Exhibit N-1), is its ONLY decision bearing some resemblance to the record by its dismissal of Mr. McFadden's 1989 Petition based on the falsity of its material allegation that I and my mother entered into possession "under a month to month rental agreement".

27. In so doing, the Court does not reveal that this narrow issue was first presented to

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[22] The Court's accompanying order (Exhibit M-2) further manifests its concealment of record-tampering by Clerk Lupi and Judge Friia pertaining to the status of #SP-651/89 – as it bears that number and not the index number that appears on Judge Friia's October 14, 2008 decision, *to wit*, #SP-2008-1474 – opened by Clerk Lupi without explanation or notice (and at Judge Friia's instance), presumably because #SP-651/89 was closed.

[23] See pertinent extract at ¶36, *infra*.

[24] Judge Friia's July 3, 2008 decision/order, July 21, 2008 judgment of eviction, and July 21, 2008 warrant of removal are annexed as Exhibit C to my compendium of exhibits accompanying my April 17, 2009 appellant's brief for #2008-1427-WC & #2009-148-WC.

it by my August 13, 2008 vacatur/dismissal motion and then, again, by my October 15, 2008 reargument order to show cause, each for the stated purpose of obviating an otherwise unnecessary appeal – which the Court refused to do, initially *without reasons* by its October 1, 2008 decision and, thereafter, by scant reasons which were *incomplete and false* by its November 26, 2008 decision, as particularized, without contest, by pages 7-12 of my January 2, 2010 motion to disqualify Justice Molia & other relief.

28. All the facts upon which the February 23, 2010 decision on this appeal relies (Exhibit N-1, pp. 2-3) were in the record before the Court on my August 13, 2008 vacatur/dismissal motion. Indeed, they were most readily accessible to the Court from my July 18, 2008 order to show cause for Judge Friia's disqualification and other relief, which Judge Friia had denied, without signing it – the original of which I furnished the Court with my August 13, 2008 vacatur/dismissal motion and incorporated by reference.[25]

29. The Court's decision (Exhibit N-1) – notwithstanding favorable to me – is wholly inadequate now, as it would have been if rendered on my August 13, 2008 vacatur/dismissal motion. This, because it only passingly reproaches Judge Reap by its single sentence (at p. 3) "In our view, tenants' motion to dismiss the March 27, 1989 petition should have been granted." and offers no reproach at all to Judge Friia for granting summary judgment to Mr. McFadden on that Petition. Nor does it in any way reproach Mr. McFadden for his false Petition. To the contrary, the Court actually suggests that its "defects" might have been "amended" (p. 4).

30. As such, the decision completely covers up what my July 18, 2008 order to show

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[25] Compare the Court's recitation at pp. 2-3 of its decision with my July 3, 2008 order to show cause: (1) as to the falsity of Mr. McFadden's March 27, 1989 Petition: ¶¶25, 91; (2) as to our [April 24, 1989] dismissal motion: ¶¶29, 93; (3) as to Judge Reap's September 18, 1989 decision: ¶¶30, 31; (4) as to Mr. McFadden's summary judgment motion: ¶¶12, 25, 76; (5) as to Judge Reap's [December 19, 1991] decision

cause meticulously chronicled: heinously biased, oppressive, and fraudulent conduct by Judges Reap and Friia, facilitating a pattern of perjury and fraud by Mr. McFadden and his past and present counsel, including by the March 27, 1989 Petition, whose false allegations Mr. McFadden and his counsel concealed and transmogrified in summary judgment motions before Judge Reap and advocacy before Judges Hansbury and Friia – for which my July 18, 2008 order to show cause sought, by its first branch, to disqualify Judge Friia for demonstrated actual bias and interest and, by its third branch, to vacate her July 3, 2008 decision/order "pursuant to CPLR §5015(a)(3) for 'fraud, misrepresentation, or other misconduct of an adverse party', with imposition of maximum costs and sanctions pursuant to NYCRR §130-1.1 *et seq.*, against Petitioner… and his attorneys".

31. Indeed, so total is the Court's cover-up that its decision obliterates the very existence of my July 18, 2008 order to show cause. Thus, its procedural recitation of the case (Exhibit N-1, pp. 2-3) skips from Judge Friia's having "granted landlord's motion in the 1989 proceeding for summary judgment" to "ent[ry of] a final judgment in favor of landlord" – as if the July 18, 2008 order to show cause never existed and had not been denied by Judge Friia, simultaneous with her signing the judgment.

32. Nor does the decision disclose that Judge Friia's denial of my July 18, 2008 order to show cause, without signing it, and Mr. McFadden's fraudulent opposition to my July 30, 2008 order to show cause to this Court for a stay pending appeal, specifically with respect to the allegations of his 1989 Petition, were the predicates for my August 13, 2008 vacatur/dismissal motion, whose first vacatur relief was pursuant to CPLR §5015(a)(3), for "fraud,

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¶85; (6) as to Judge Friia's [July 3, 2008] decision: my 51-page analysis thereof at pp. 8-59 of my July 18, 2008 order to show cause.

misrepresentation, or other misconduct of an adverse party" based on Mr. McFadden's fraudulent 1989 Petition, with concluding relief, based on Mr. McFadden's fraudulent advocacy before this Court, particularized as follows:

> "(a) referring Petitioner and his counsel, Leonard A. Sclafani, Esq., for disciplinary and criminal investigation, as likewise, Judge Friia, consistent with this Court's mandatory 'Disciplinary Responsibilities' under §100.3(D) of the Chief Administrator's Rules Governing Judicial Conduct;
>
> (b) imposing monetary sanctions and costs upon Petitioner and his counsel for litigation misconduct as proscribed by 22 NYCRR §130-1.1 *et seq*., and;
>
> (c) assessing damages against Petitioner's counsel for deceit and collusion proscribed under Judiciary Law §487(1) as a misdemeanor and entitling Respondents to treble damages."

33. The decision's obliteration of my July 18, 2008 order to show cause, whose sufficiency for vacatur of the July 3, 2008 decision/order on four separate grounds was the subject of my third "Question Presented" (pp. vii-viii) and corresponding Point III (at pp. 79-87), impliedly admits that these are the grounds upon which the Court should have properly vacated the July 3, 2008 decision/order, not its reach-back 21 years to Judge Reap's September 18, 1989 decision wrongfully denying the April 24, 1989 dismissal motion made by myself and my mother, the details of which my July 18, 2008 order to show cause recited (at ¶¶28-31).

34. Judge Friia's disqualification for actual bias and interest was the first of the four vacatur grounds in my July 18, 2008 order to show cause – as it was on my appeal. Yet, the Court's decision (Exhibit N-1) conceals that I ever raised an issue of Judge Friia's disqualification, either before her or on appeal, let alone by my July 18, 2008 order to show cause – the centerpiece of my appeal – whose 51-page analysis of her July 3, 2008 decision was highlighted by my brief (at p. 3) as dispositive.

35. Likewise, the Court's vacatur of Judge Reap's September 18, 1989 decision and

granting of the April 24, 1989 dismissal motion it had denied conceals that the relief sought by that motion included Judge Reap's disqualification – and that my entitlement thereto was borne out by his subsequent decisions, including on Mr. McFadden's summary judgment motions, analyses of which my July 18, 2008 order to show cause also presented (¶¶27-37, 44, 46-49, 76, 80-85).

36. Consistent with the Court's concealment of my July 18, 2008 order to show cause – focally presented by my third and fourth "Questions Presented" (at pp. vii-viii) and corresponding Points III and IV (at pp. 79-92) – the decision conceals the culminating fifth "Question Presented" of my appellant's brief (at p. ix) whose corresponding Point V (at pp. 92-96) entitled:

> "The Course of These Proceedings Requires this Court to Discharge its Mandatory 'Disciplinary Responsibilities' under §100.3D of the Chief Administrator's Rules Governing Judicial Conduct by Referring Judge Friia, the White Plains City Court Clerk, as well as the Complicit Attorneys and McFadden, to Disciplinary and Criminal Authorities",

stated, in pertinent part:

> "Sassower's July 18, 2008 order to show cause [] provided Judge Friia with irrefutable record references and legal authority establishing her July 3, 2008 decision & order [] to be a 'judicial fraud', being factually and legally baseless – and knowingly so. This is serious misconduct, warranting removal from office and was so-highlighted by pages 3-4 of Sassower's memorandum of law pertaining to disqualification and disclosure, submitted in support of her November 9, 2007 order to show cause:
>
> > 'A single decision nor judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...', *Matter of Capshaw*, 258 A.D. 470, 485 (1st Dept 1940), with italics added by the Appellate Division, First Department in quoting from *Matter of Droege*, 129 A.D. 866 (1st Dept. 1909).
> >
> > 'A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for willfully making a wrong

> decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another...' *Matter of Bolte*, 97 A.D. 551, 568 (1st Dept. 1904), italics in the original.
>
> '...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequences as if the judicial officer received and was moved by a bribe.', *Matter of Bolte*, at 574.'

Indeed, Judge Friia's favoritism of McFadden and Sclafani by her unabashed cover-up of their flagrant and unremitting litigation fraud and perjury, would itself justify her criminal prosecution for official misconduct and corruption.

Any judge respecting her oath of office and judicial function would have recognized her obligation to confront the 'chapter and verse' specifics of Sassower's [July 18, 2008 order to show cause and her two prior June 27, 2008 and July 8, 2008 orders to show cause] detailing the state of the record and her willful and deliberate misconduct with respect thereto, entitling Sassower to her disqualification and transfer to another court to ensure the appearance and actuality of impartial justice. Judge Friia refused to recognize this obligation, instead engaging in further 'judicial fraud' and 'protectionism' not only of McFadden and Sclafani, but of Clerk Lupi, whose manipulations and concealment of court records – apparently at Judge Friia's direction – Sassower comprehensively chronicled by the correspondence annexed to her September 18, 2008 motion. Judge Friia then permitted the Attorney General to unlawfully represent the non-party Clerk Lupi and interpose a cross-motion to dismiss, whose deceit she adopted in denying the motion.

No functioning judicial system can tolerate fraud by its judges – as here by Judge Friia's July 3, 2008 decision & order [], by her July 21, 2008 judgment of eviction and warrant of removal [], and by her October 14, 2008 decision & order [] – thereby burdening this Court with two unnecessary appeals: #2008-1427-WC and #2009-148-WC, as well as additional unnecessary appellate burdens as a consequence thereof, including #2008-1433-WC and #2008-1428-WC."

37. Faced with the exhaustive, record-based recitation in my appellant's brief as to Judge Friia's misconduct in #SP-651/89, including the three orders to show cause for her disqualification she refused to sign, the Court's decision identifies only a single fact about what Judge Friia did: that she "granted landlord's motion in the 1989 proceeding for summary judgment" (Exhibit N-1, at p. 3).

38. As for the Court's concluding observation (at p. 5):

> "We incidentally note that 'a summary proceeding may [not] be permitted to languish off calendar indefinitely, leaving the threat of eviction hanging over the respondents for years without resolution' (Matter of Henriques v. Boitano, NYLJ, July 17, 2002 [Civ Ct. NY County]. Moreover, as found in the companion appeal (McFadden v. Sassower, ___ Misc 3d ____, ____, NY Slip Op _____ [Appeals Nos. 2008-1428 W C, 2008-1433 WC], decided herewith) involving the 2007 holdover summary proceeding commenced by landlord against only Elena Sassower to recover the subject premises, a month-to-month tenancy was created subsequent to the commencement of this proceeding, thus vitiating the 1988 notice of termination. ",

the decision offers no evidence that this summary proceeding had "languish[ed] off calendar indefinitely", as opposed to being closed. Indeed, it deliberately misleads by its reference, two pages earlier, that I "had asserted that prior summary proceedings remained pending" (at p. 3) in response to Mr. McFadden's 2007 Petition. As recounted by my appellant's brief (pp. 55, 73-74), not until July 21, 2008 did I became aware of credible evidence establishing that #SP-650/89 had been closed, *to wit*, Clerk Lupi's assignment of an additional index number #SP-1474-2008 to #SP-651/89, without notice or explanation, and at Judge Friia's direction. This and other credible evidence was the subject of Point I of my appellant's brief (pp. 68-74), corresponding to my first "Question Presented" (p. vi), entirely concealed by the Court's decision.

39. As for the Court's reference to its decision in my "companion appeal" relating to Mr. McFadden's 2007 proceeding, they are two appeals, #2008-1433 WC and #2008-1428 WC – and the fraudulence of its February 23, 2010 decision thereon (Exhibit O-1), including as to the supposed "month-to-month tenancy created subsequent to [the 1989] proceeding", is detailed below.

THE FEBRUARY 23, 2010 DECISION
DETERMINING APPEALS #2008-1433-WC & #2008-1428-WC
(Judge Hansbury's October 11, 2007 and January 29, 2008 decisions/orders) [26]

40. The Court *sua sponte* combines my appeal from Judge Hansbury's October 11, 2007 decision/order, #2008-1433-WC, and my appeal from Judge Hansbury's January 29, 2008 decision/order, #2008-1428-WC, in a single decision (Exhibit O-1), which, without identifying any of the facts, law, or legal argument presented by either of my two appellant's briefs or my two reply briefs, not only affirms Judge Hansbury's October 11, 2007 decision[27], but goes further: it awards Mr. McFadden summary judgment on his Petition based on the Court's supposed "search [of] the record" and, additionally, dismisses my Counterclaims. This is an utter fraud by the Court – and the decision is replete with fraud throughout, beginning with its concealment of the overarching issue on both my appeals: my entitlement to Judge Hansbury's disqualification for demonstrated actual bias and interest and vacatur of his October 11, 2007 and January 29, 2008 decisions by reason thereof – as to which the dispositive documents are:

- my November 9, 2007 order to show cause for Judge Hansbury disqualification on those grounds and for reargument/renewal, whose 30-page analysis of his October 11, 2007 decision establishes how completely it violates controlling legal and adjudicative standards and falsifies the factual record to deprive me of relief to which I am entitled *as a matter of law*: dismissal of Mr. McFadden's 2007 Petition, summary judgment on my Counterclaims, and costs/sanctions against, and disciplinary/criminal referrals of, Mr. McFadden and Mr. Sclafani;

- Judge Hansbury's January 29, 2008 decision/order purporting that my November 9, 2007 order to show cause presented:

> "nothing more than conclusory and unsubstantiated assertions,

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[26] Judge Hansbury's October 11, 2007 and January 29, 2008 decisions/orders are annexed as Exhibits K-1 and K-2 to my compendium of exhibits accompanying my April 17, 2009 appellant's brief for #2008-1427-WC & #2009-148-WC.

[27] According to the decision (Exhibit O-1, at p. 3), the Court's affirmance is "insofar as [it] reviewed" [my appeal] – language replicated in its order (Exhibit O-2", at p. 1).

falling short of the standards for a motion to reargue/renew, and...
no basis in fact or law for [his] disqualification".

41. All three of the "Questions Presented" by my appellant's brief for #2008-1428-WC (pp. iv-v, pp. 27-34) rested on my November 9, 2007 order to show cause. The first pertained to the sufficiency of the November 9, 2007 order to show cause for all its requested relief; the second pertained to the legal consequences of its sufficiency for Judge Hansbury's disqualification; the third pertained to this Court's mandatory "Disciplinary Responsibilities" under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct to refer Judge Hansbury to disciplinary and criminal authorities based on the November 9, 2007 order to show cause and his adjudication thereof by his January 29, 2008 decision.

42. As for my appellant's brief for #2008-1433-WC, it identified (at p. 36) the November 9, 2007 order to show cause as dispositive of all four of my "Questions Presented" therein and reproduced, essentially *verbatim*, a substantial portion of its content – a fact it expressly identified (at fn. 10, 13, 15). A copy of the November 9, 2007 order to show cause was also annexed to my reply brief in #2008-1433-WC as its Exhibit C.

43. It is in face of this – and the further emphasis given to my November 9, 2007 order to show cause by my appellant's brief for #2008-1427-WC[28] and by my January 2, 2010 motion (at ¶¶8, 12) – that the decision not only conceals that any issue of Judge Hansbury's

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[28] See pages 14-45, including (at pp. 28, 41) its descriptions of my June 27, 2008 and July 8, 2008 orders to show cause for Judge Friia's disqualification, whose other relief included vacatur and reargument/renewal of Judge Hansbury's January 29, 2008 decision/order based on the record of my November 9, 2008 order to show cause, with a further branch for:

> "findings of fact and conclusions of law as to my entitlement to dismissal of [Mr. McFadden's] Petition and summary judgment on my Counterclaims based on the record of my September 5, 2007 cross-motion and November 9, 2007 order to show cause – no such findings of fact and conclusions of law having been made by the October 11, 2007 and January 29, 2008 decisions & orders[fn]",

disqualification was ever raised by me, either before him or on appeal, but makes it appear as if Judge Hansbury's recusal, by his January 29, 2008 decision, was unprompted by any application. Thus it states:

> "By order entered January 30, 2008, the City Court granted tenant leave to reargue and renew her prior cross motion, granted landlord leave to reargue his prior motion, adhered to its prior decision, and recused itself. All the provisions of the order entered January 30, 2008, other than the provision in which the court recused itself, are stricken because, upon recusal, the court should not have heard and determined the parties' pending motions (see Friends of Keuka Lake v. DeMay, 206 AD2d 850 [1994]). In view of our disposition of the appeal and cross-appeal from the order entered October 11, 2007, the motion by tenant, which, in essence, merely sought reargument and did not properly constitute a motion for leave to renew (see CPLR 2221 [e]), and the cross-motion by landlord have been rendered academic." (Exhibit O-1, pp. 10-11).

44. The referred-to "motion by tenant" is my November 9, 2007 order to show cause, whose first branch was for Judge Hansbury's disqualification and, if denied, for disclosure – and as to which there was nothing "merely" about its second branch for reargument, supported, as it was, by my 30-page analysis of Judge Hansbury's October 11, 2007 decision under the capitalized, bold-faced title heading:

> **"THE OCTOBER 11, 2007 DECISION MANIFESTS THE COURT'S ACTUAL BIAS REQUIRING VACATUR UPON THE COURT'S DISQUALIFICATION OR UPON THE GRANTING OF REARGUMENT & RENEWAL"**

45. As for the Court's claim that my motion "did not properly constitute a motion for leave to renew", citing with an inferential "see" CPLR 2221(e), such is devoid of specifics because it is false. The basis for renewal – identified at ¶53 of my November 9, 2007 order to show cause – and altogether proper under CPLR 2221(e) – was the notice I received from the Westchester District Rent Office of the Division of Housing and Community Renewal Office, six weeks after my September 5, 2007 cross-motion, apprising me that it could not act upon the

complaint I filed with it in view of the pendency of the proceeding in White Plains City Court, but would do so if the Court so-requested.

46. It is by this three-fold fraud that the Court's decision addresses no aspect of my November 9, 2007 order to show cause: not the first branch for Judge Hansbury's disqualification, which it does not mention; not the branch for "merely...reargument", because of its "disposition of the appeal and cross-appeal from the order entered October 11, 2007"; and not renewal.

47. As for the "disposition of the appeal and cross-appeal from the order entered October 11, 2007" – the Court's pretext for why my "merely...reargument" motion is "academic" – such is a further flagrant fraud.

48. Thus, the decision purports, unsupported by any law, that "The outcome of this proceeding is dependent upon the relationship between the parties with respect to the subject apartment" (Exhibit O-1, p. 5). This is false – and the legal proposition establishing that falsity is set forth by the Court's simultaneous decision on my appeal in #2008-1427-WC, dismissing Mr. McFadden's 1989 Petition because:

> "a petition which contains 'fundamental misstatements and omissions' will be dismissed (*Jeffco Mgt. Corp. v. Local Dev. Corp. of Crown Hgts.*, 22 Misc 3d 141[A], 2009 NY Slip Op 50455[U] [App Term, 2d, 11th and 13th Jud Dists 2009])." (Exhibit N-1, p. 4)

49. The same legal proposition applies here. "The outcome of this proceeding" is dependent, in the first instance, on whether Mr. McFadden's June 22, 2007 Petition "contains fundamental misstatements and omissions" – as I immediately asserted on the July 16, 2007 return date of the Petition, and thereafter particularized by my August 20, 2007 Verified

Answer[29], and further demonstrated by my September 5, 2007 cross-motion in support of summary judgment by a rebuttal to the Petition's material allegations – all highlighted by my appellant's brief for #2008-1433-WC (at pp. 3-6, 9-12, 14-26).

50. Moreover, determination of whether Mr. McFadden's 2007 Petition "contains fundamental misstatements and omissions" itself settles "the relationship between the parties with respect to the subject apartment", as this "relationship" was the gravamen of the Petition's ¶¶6, 7, 8, 9, 10, 11, 13, 14 – whose truthfulness was denied by my Answer and established as false by my cross-motion rebuttal thereto.

51. So significant – and dispositive – is my cross-motion's rebuttal to the Petition's ¶¶6, 7, 8, 9, 10, 11, 13, 14 that my appellant's brief reproduced the rebuttal (at pp. 15-23), *verbatim*, and likewise reproduced (at pp. 27-33), *verbatim*, the portion of my September 11, 2007 reply affidavit in further support of my cross-motion which recapted the state of the record with respect to this rebuttal and set forth the standards governing summary judgment. Yet, the decision makes <u>no</u> findings of fact or conclusions of law as to the Petition's "fundamental misstatements and omissions". Indeed, the decision falsely makes it appear (at pp. 7-9) as if my cross-motion for summary judgment was predicated on affirmative defenses alone, not rebuttal of the Petition's material allegations – the existence of which it does not even identify.

52. Nor does the Court disclose what Judge Hansbury's October 11, 2007 decision had to say concerning "the relationship between the parties with respect to the subject apartment" in denying my cross-motion, *to wit*, that there were "triable issues of fact with respect to the nature and terms of [my] tenancy", for which reason he was "declin[ing] to treat [my cross-]motion to dismiss as an application for summary judgment"– deceits fully exposed by my November 9,

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[29] My August 20, 2007 Verified Answer is annexed as Exhibit B to my reply brief in #2008-1433-WC.

2007 order to show cause (at ¶¶13-20) and excerpted, largely *verbatim*, at pages 36-39 of my appellant's brief for #SP-1433-WC. Instead, the Court baldly asserts:

> "While the parties agree that tenant entered into possession pursuant to the occupancy agreement, we find that tenant's right to possession pursuant to said agreement terminated long before the instant proceeding was commenced in 2007. The contract of sale was unambiguous as to the effect of the cooperative corporation's refusal to approve the sale: the contract would be cancelled. The stated purpose of the occupancy agreement was to accommodate the parties prior to closing. The occupancy agreement set forth specific circumstances under which tenant could maintain possession of the premises, none of which apply to the facts of this case. Accordingly, we find that tenant's right to possession pursuant to the occupancy agreement terminated, at the latest, when the federal litigation regarding the cooperative corporation's refusal to approve the sale had been resolved in the cooperative corporation's favor." (Exhibit O-1, pp. 5-6, underlining added).

53. In so asserting, the Court does not cite any law pertaining to interpretation of contracts – reflective of its knowledge that what it is doing is completely violative of the most basic interpretive tenets. Illustrative of what the Court has not furnished is the following caselaw of the New York Court of Appeals:

> "When interpreting contracts, we have repeatedly applied the 'familiar and eminently sensible proposition of law [] that, when parties set down their agreement in a clear, complete document, their writing should...be enforced according to its terms' (*W.W.W. Assoc. v. Giancontieri*, 77 N.Y.2d 157, 162...[1990]; *see Reiss v. Financial Performance Corp.*, 97 N.Y.2d 195...[2001]...
>
> In the absence of ambiguity, we look solely at the language used by the parties to discern the contract's meaning.", *Vermont Teddy Bear* co., Inc. v. 538 Madison Realty Company, 1 NY3d 470, 475 (2004).

> "It is well settled that '[a] contract is unambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion'' (*Greenfield v. Philles Records*, 98 NY2d 562, 569, 780 N.E.2d 166, 750 N.Y.S.2d 565 [2002] [brackets in original], quoting *Breed v. Insurance Co. of N. Am.*, 46 NY2d 351, 355, 385 N.E.2d 1280, 413 N.Y.S2d 352 [1978], *rearg denied* 46 NY2d 940, 415 N.Y.S2d 1027 [1979])." *White v. Continental Cas. Co.* (9 NY3d 264, 267 (2007).

"The courts have declared on countless occasions that it is the responsibility of the court to interpret written instruments (4 Williston, Contracts 601, *supra*). The problem of analysis of the instrument is to determine 'what is the intention of the parties as derived from the language employed' (id., 600, at p. 280). Thus, where a question of intention is determinable by written agreements, the question is one of law, appropriately decided by an appellate court (see *Rentways, Inc., v. O'Neill Milk & Cream Co.*, 308 N.Y. 342, supra), or on a motion for summary judgment. Only where the intent must be determined by disputed evidence or inferences outside the written words of the instrument is a question of fact presented (*O'Neill Supply Co. v. Petroleum Heat & Power Co.*, 280 N.Y. 50, 56) Restatement, 2nd, Contracts, T.D. No. 5, 238 esp. Comment *d.*)"., *Mallad Construction Corp. v. County Federal Savings and Loan Association*, 32 N.Y.2d 285 (1973):

"A contract should be read as a whole to ensure that undue emphasis is not placed upon particular words and phrases (see *South Rd. Assoc., LLC v. International Bus. Machs. Corp.*, 4 NY3d 272, 277, 826 N.E.2d 806, 793 N.Y.S.2d 835 [2005], citing *Matter of Westmoreland Coal Co. v. Entech, Inc.*, 100 NY2d 352, 358, 794 N.E.2d 667, 763 N.YS.2d 525 [2003]). Courts 'may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing' (*Vermont Teddy Bear*, 1 NY3d at 475, quoting *Reiss v. Financial Performance Group.*, 97 NY2d 195, 199, 764 N.E.2d 958, 738 N.Y.S.2d 658 [2001])."., *Consedine v. Portville Central School District*, 12 NY3d 286, 293 (2009).

54. Although the Court concedes that "The occupancy agreement set forth specific circumstances under which tenant could maintain possession of the premises" (Exhibit O-1, at p. 6), the decision does not quote its language, notwithstanding its typewritten text controls over the preprinted form contract of sale:

"It is a fundamental principle of contract interpretation that when a handwritten or typewritten provision conflicts with the language of a preprinted form document, the former will control, as it is presumed to express the latest intention of the parties' (*Kratzenstein v. Western Assur. Co.*, 116 NY 54, 57, 22 N.E. 221 [1881]).' (Home *Fed. Sav. Bank v. Sayegh*, 250 AD2d 646, 671 N.Y.S2d 698 [2d Dept 1998]). (See *Poel v. Brunswick-Balke-Collender Co. of New York*, 216 NY320, 322, 110 N.E. 619 [1915]; *Dazzo v. Kilcullen*, 56 AD3d 415, 866 N.Y.S2d 747 [2d Dept. 2008])." *447 Clinton Avenue LLC v. Clinton Rising, LLC*, 22 Misc. 3d 1104A, 880 N.Y.S2d 223 (2009).

55. As for the Court's one and only quote from the preprinted contract of sale form, set forth 3 pages earlier in its decision as follows:

> "Paragraph 6 of the contract of sale states, 'This sale is subject to the approval of the directors or shareholders of the Corporation as provided in the Lease or the corporate by-laws" (Exhibit O-1, p. 3, underlining added),

the Court makes no findings that the Co-Op's rejection of the apartment sale was consistent with its corporate by-laws – which, *as a matter of law*, it cannot make. As set forth by my Sixth Affirmative Defense ("Detrimental Reliance": ¶¶SIXTEENTH - NINETEENTH), Mr. McFadden himself contended that the Co-Op's rejection of the apartment sale violated its corporate by-laws by the federal lawsuit he commenced with me and my mother against the Co-Op – as to which there was never any federal determination because I and my mother were forced to drop the complaint's corporate non-compliance causes of action at trial as a result of Mr. McFadden's refusal to assign us his rights with respect thereto after withdrawing from the suit.

56. The pertinent facts pertaining to the contract of sale and occupancy agreement were detailed by my September 5, 2007 cross-motion rebuttal to the Petition's material allegations. It pointed out that Mr. McFadden's own Petition had not quoted the language of either, nor annexed a copy in support of its bald ¶6 allegation that the occupancy agreement was "to end and terminate upon the failure of respondent Elena Sassower and Doris Sassower of (sic) close" on the contract of sale and its bald ¶7 allegation that as a result of the Co-Op's failure to consent to the occupancy and purchase, our rights under the occupancy agreement "to possession and occupancy…terminated" – and that his Petition omitted the subsequent federal lawsuit.

By contrast, my Answer had supported its denials of the Petition's ¶¶6 and 7 by annexing the contract of sale and occupancy agreement as Exhibit A and had extensively detailed the federal action, including by its Sixth Affirmative Defense ("Detrimental Reliance"). My cross-motion rebuttal to the Petition also quoted and interpreted the operative language of the

occupancy agreement, supplying further relevant facts, including as follows:

"167. The language of the October 30, 1987 occupancy agreement [], which expressly states that 'in no way do the parties intend to establish a landlord/tenant relationship' (¶1G), contains no provision terminating the right of occupancy where the Purchasers – myself and my mother – had elected to purchase the apartment. Rather, its language was as follows:

> 'If they have elected to purchase, they shall have the right to continue in occupancy to the date of closing.' (¶1A).

168. The October 30, 1987 occupancy agreement additionally states:

> 'The parties agree that if the Purchasers fail to close as provided for in the Contract of Sale or on any adjourned date consented to by the parties, or if the Purchasers elect to cancel the contract as provided the Purchasers shall be allowed to continue occupancy on a month to month basis as provided herein.' (¶1F, underlining added).

169. The 'month to month' occupancy applicable to the first described situation where 'the Purchasers fail to close as provided for in the Contract of Sale or on any adjourned date consented to by the parties' obviously spans to the eventual 'date of closing'. Both with respect to it and to the second described situation where 'the Purchasers elect to cancel the contract', the occupancy agreement specifies payment of $1,000.00 per month for use and occupancy of the premises' (¶1G).

170. Because of this express language and the fact that Mr. McFadden 'consented to' an 'adjourned date' of the 'date of closing' when he became a co-plaintiff with myself and my mother in the federal lawsuit, the Petition omits both that language and the fact that Mr. McFadden was a co-plaintiff in the federal lawsuit. Indeed, the Petition omits any allegation about the lawsuit, whose existence it entirely conceals.

171. The federal lawsuit in which Mr. McFadden was a co-plaintiff with myself and my mother constituted a written agreement – if not an implied contract – between the parties to maintain and enforce the contract of sale and occupancy so as to effectuate a 'date of closing'.

172. Tellingly, Mr. Sclafani's [August 23, 2007] affirmation [supporting his motion to dismiss my Affirmative Defenses and Counterclaims], forced to confront the existence of the federal lawsuit by my Fifth, Sixth, and Seventh Affirmative Defense (¶¶TWELFTH through THIRTY-THIRD) and First Counterclaim (¶EIGHTY-FIRST through EIGHTY-THIRD), conceals that the

lawsuit was commenced with Mr. McFadden as co-plaintiff (his ¶¶75, 80, 84-87, 97, 102, 104, 109, 116). In so doing, Mr. Sclafani effectively concedes the legal implications of same *vis-à-vis* the occupancy agreement and contract of sale.

173. My Seventh Affirmative Defense stated, at its outset:

> 'Notwithstanding the federal suit ended in 1993, adverse to respondent, petitioner did not then or thereafter seek her eviction by reason thereof or otherwise clarify the basis of her occupancy, as he readily could have.' (¶TWENTY-THIRD)

174. Such is true and correct and Mr. Sclafani's [August 23, 2007 motion [to dismiss my Affirmative Defenses and Counterclaims] presents no documentary evidence or even specific allegation to the contrary. Nor has he come forward with any affidavit from Mr. McFadden, notwithstanding it is Mr. McFadden – not Mr. Sclafani – who has personal knowledge of the relevant facts. Consequently, the contract of sale and its occupancy agreement – the documents which were the subject of the federal lawsuit and on which Mr. McFadden contentedly relied in maintaining my occupancy – did not end or terminate." (my September 5, 2007 cross-motion, underlining in the original).

57. The foregoing excerpt from my cross-motion rebuttal to Mr. McFadden's Petition – reproduced at pp. 19-20 of my appellant's brief for #2008-1433-WC – suffices to establish the deceit of the Court's conclusory claim that the contract of sale was "unambiguous" and that although "[t]he occupancy agreement set forth specific circumstances under which tenant could maintain possession of the premises, none…apply to the facts of this case." (Exhibit O-1, p. 6, underlining added).

58. That the decision falsely makes it appear (at p. 4) as if Mr. McFadden had no connection to the federal lawsuit brought by myself and my mother against the Co-Op following its rejection of our purchase of the apartment when, in fact, he was our co-plaintiff, seeking to enforce the contract – as focally highlighted by my Sixth Affirmative Defense ("Detrimental Reliance"), my cross-motion, my briefs[30], and my pre-appeal motions – is a further fraud by the

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[30] See, in particular, my appellant's brief for #2008-1427-WC: (at pp. 7-8), which expressly stated:

Court and implicitly admits the correctness of my interpretation of the occupancy agreement in my cross-motion – and the falsity of ¶¶6 and 7 of Mr. McFadden's Petition.

59. The decision also conceals all the particulars set forth by my Seventh Affirmative Defense ("Implied Contract, Detrimental Reliance & Fraud") and established by the record of my cross-motion showing that Mr. McFadden's actions following conclusion of the federal lawsuit, were not consistent with termination of the occupancy agreement and contract of sale, but consistent with their viability. This includes with respect to "the amounts of the monthly payments" for use and occupancy which the Court deceitfully purports (at p. 6) were "increased from time to time pursuant to implicit or express agreements" and, therefore, "particularly" support the proposition that "a month-to-month tenancy was created" after "tenant's right to possession under the occupancy agreement terminated". Aside from the fraudulence of the Court's assertion that the occupancy agreement terminated, as hereinabove demonstrated, the facts pertaining to the "monthly payments" are particularized by my Seventh Affirmative Defense as corroborative of Mr. McFadden maintaining the contract of sale and occupancy

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"McFadden's 2007 Petition omitted the federal lawsuit commenced in August 19[88] by McFadden as co-plaintiff with Doris and Elena Sassower against the Co-Op to enforce the contract of sale.[fn] This omission was key to his Petition's false allegations that the contract of sale and occupancy agreement 'terminated' upon the Co-Op's rejection of the purchase []. In fact, they remained viable and binding on the parties by reason of the federal lawsuit and the language of the occupancy agreement.[fn9]

The annotating fn. 9 then provided the record substantiation:

"The language of the occupancy agreement is analyzed in Sassower's July 18, 2008 order to show cause ([]pp. 17-20). Such analysis was replicated at ¶¶34-36 of her August 13, 2008 vacatur/dismissal motion in this Court (at ¶¶34-36) and was first set forth at ¶¶167-172 of her September 5, 2007 cross-motion in White Plains City Court for summary judgment in #SP-1502/07. These dispositive paragraphs are reproduced at pages 19-20 of Sassower's appellant's brief in #2008-1433-WC – and their accuracy is completely undenied there, as previously."

agreement intact – and not controverted by the Court.

60. Certainly, had Mr. McFadden believed that "the occupancy agreement terminated" once the "federal litigation...had been resolved in the cooperative corporation's favor" – as the decision falsely purports – his Petition would have alleged such fact, which it did not. Instead – and evincing Mr. McFadden's belief that the contract of sale and occupancy agreement remained viable – his Petition's ¶8 claims an "oral agreement" between us for my tenancy on "a month-to-month basis" – a perjury that would have otherwise been unnecessary. The decision refers to this alleged "oral agreement" (Exhibit O-1, at p. 4) – but not the proof establishing its falsity, fully detailed at ¶¶150-163 of my cross-motion rebuttal to the Petition and quoted by my appellant's brief for #2008-1433-WC (at pp. 15-18).

61. Having baselessly purported that the contract of sale and occupancy agreement "terminated" and a month-to-month tenancy created, in disregard of the contrary record on my cross-motion rebuttal to the Petition's allegations as to "the relationship between the parties with respect to the subject apartment", the decision continues, with similar disregard of the record on my cross-motion, to determine, in Mr. McFadden's favor, ¶13 of his Petition that the apartment is exempt from the Emergency Tenant Protection Act and, simultaneously, to cover up how Judge Hansbury's October 11, 2007 decision had ruled on ¶13.

62. Thus, without revealing the basis upon which my cross-motion's first branch had sought referral to the Department of Housing and Community Renewal (DHCR) – or that Judge Hansbury's disposition thereof was the subject of the second "Question Presented" and Point II of my appellant's brief (pp. iv, v, 40-42) – the Court states:

> "Tenant has argued that there is a question as to the rent regulatory status of the apartment and that it should be referred to DHCR. We find that the subject apartment is exempt from the ETPA under the resolution [of the White Plains

> Common Council passed on September 9, 1992] (see Harding v. Engle, 184 Misc 2d 630 [App Term, 9th & 10th Jud Dists 2002] [construing the same resolution])." (Exhibit O-1, p. 7).

This is a further fraud. As detailed by my cross-motion[31] and Point II of my brief (pp. 40-42), the coverage question involves factual issues such as whether the necessary paperwork had ever been filed with DHCR removing the apartment from coverage. This is not denied or disputed by the Court, making its disposition of the Petition's ¶13 insupportable, *as a matter of law*.

63. The decision then proceeds to reject (at pp. 7-8) what I "argued", my "position", and my "claims", without identifying where I had so-"argued", taken such "position", and made such "claims". It was by my September 5, 2007 cross-motion, in the portion chronicling the fraudulence of Mr. Sclafani's August 23, 2007 motion to dismiss my Affirmative Defenses and, simultaneously, my entitlement to dismissal of Mr. McFadden's Petition based on those Defenses and sanctions/costs against and disciplinary/criminal referrals of Mr. Sclafani and his co-conspiring client. However, the decision does not identify that it is addressing my cross-motion or my Affirmative Defenses, thereby concealing that it is not addressing – even passingly – three of my ten Affirmative Defenses:

- my Third Affirmative Defense for "Lack of Subject Matter Jurisdiction" (¶¶EIGHTH - NINTH), whose basis is the express language of the occupancy agreement, stating "in no way do the parties intend to establish a landlord-tenant relationship" – language which is unambiguous and clearly germane to the Court's purported interpretation of the contract of sale and occupancy agreement;

- my Eighth Affirmative Defense for "Extortion & Malice" (¶¶THIRTY-FOURTH – THIRTY-EIGHTH), whose concluding assertion is that Mr. McFadden's Petition is "knowingly false and misleading in all material respects"; and

- my Ninth Affirmative Defenses for "Breach of Covenant of Good Faith & Fair

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[31] See my September 5, 2007 cross-motion affidavit: ¶¶5, 182; my September 11, 2007 reply affidavit: ¶¶26-35.

Dealing"(¶¶FORTHIETH - FORTY-SIXTH), detailing facts as to Mr. McFadden's dissembling, from 2003-2005 with respect to his true intentions concerning the contract of sale.

64. As for those Affirmative Defenses which the decision can be construed as addressing, the Court disposes of them with no citation of law as to the standards governing their dismissal and by conclusory assertions that are either devoid of any of the specifics presented by those Affirmative Defenses or that omit and misrepresent the material specifics and the record.

- To the extent the decision can be construed as rejecting my Fifth Affirmative Defense ("Equitable Estoppel and Unjust Enrichment"), my Sixth Affirmative Defense ("Detrimental Reliance"), my Seventh Affirmative Defense ("Implied Contract, Detrimental Reliance & Fraud"), and my Tenth Affirmative Defense ("Fraud; Retaliatory Eviction; & Intentional Infliction of Emotional Distress") (Exhibit O-1, pp. 8-9), it does so without identifying or confronting ANY of the particularized facts set forth by those Defenses and by my cross-motion (at ¶¶44-121). Rather, it baldly asserts that I "failed to explain how any of these claims form the basis for a defense", that "the facts alleged in [my] answer do not support a finding of equitable estoppel or fraud, and do not support [my] defense of retaliatory eviction", and, with respect to "unjust enrichment", purports that because Mr. McFadden commenced prior proceedings against me, I failed to show that he was unjustly enriched, disregarding the record showing that Mr. McFadden commenced his prior proceedings because forced to do so by the Co-Op, whose two proceedings against him under #SP-434-88 and #SP-500/88 sought to terminate his proprietary lease for failing to evict me and my father, as well as the specifics of my Fifth Affirmative Defense, undenied in the record, *inter alia*, that he would otherwise have been "forced to sell the apartment during the real estate slump of 1988 and the many years thereafter" or to have "pa[id] charges on a vacant apartment". As for the Court's bald claim that I "received the benefit of living in the apartment", the record does not support a claim that my "living in the apartment" was a benefit to me, let alone in the circumstances at bar, except as a contract-vendee in possession;

- To the extent the decision can be construed as rejecting my Second Affirmative Defense ("Petitioner's Receipt of Use and Occupancy") (Exhibit O-1, p. 8), it accomplishes this in two sentences that materially falsify both the defense and the record as follows:

> "Contrary to tenant's position, landlord was not required to allege in the petition that tenant had tendered, and landlord had returned, checks for use and occupancy after landlord had served the notice of termination. Nor, on the record presented, which indicates that tenant subsequently stopped payment on the checks, is there a triable issue as to whether landlord reinstated the tenancy by retaining tenant's rent checks." (Exhibit O-1, p. 8).

This is fraudulent. The gravamen of my Second Affirmative Defense is NOT – as the decision falsely makes it appear (at p. 8) – omissions in Mr. McFadden's Petition. Rather, it is the falsity of the Petition's ¶14 in purporting that Mr. McFadden had received from me "no part" of use and occupancy following termination of my "tenancy"– when, in fact, he had received two checks subsequent thereto, neither of which I received in return – and which his ¶14 did not allege to have been returned. As for the "record presented", which could not be clearer[32], it establishes that I "stopped payment on the checks" NOT of my own volition – as the decision falsely implies – but because, upon objecting to the falsity of the Petition's ¶14 on the July 16, 2007 return date of the Petition in White Plains City Court, I was directed to "stop[] payment on the checks" by the judge presiding, which I thereafter did only because of intimidation by Mr. Sclafani and Judge Hansbury[33], preserving my rights by denying ¶14 in my Answer and establishing my entitlement to summary judgment/dismissal on that ground by my September 5, 2007 cross-motion.

- To the extent the decision can be construed as rejecting my First Affirmative Defense ("Open Prior Proceedings) (at pp. 7-8), it accomplishes this by concealing that that Defense did not itself rest on CPLR §3211(a)(4) (at pp. 7-8) and misrepresenting that my entitlement to dismissal thereunder was predicated on "several summary proceedings...commenced against [me] many years earlier [which] remain[] pending" (underlining added). In fact, two of the three summary proceedings which my First Affirmative Defense alleged to be open were the Co-Op's two proceedings against Mr. McFadden to terminate his proprietary lease – #SP-434/88 and #SP-500/88 – which, if open and determined in the Co-Op's favor, would bar the Court from awarding Mr. McFadden possession of the apartment, as its decision has done.

- To the extent the decision can be construed as rejecting my Fourth Affirmative Defense ("Failure to Join Necessary Parties") (at p. 8), it accomplishes this in a single sentence that disregards the specifics set forth by that Defense and accepts as true Mr. McFadden's Petition, without regard to the denials of my Answer, substantiated by my cross-motion.

65. Having disregarded and falsified the entire record of my cross-motion, the decision asserts:

> "In view of the foregoing, tenant has shown no merit to the branches of her motion to dismiss and for summary judgment. Indeed, as we have found that a month-to-month tenancy existed and was terminated by service of the notice of termination, and that no triable issue has been

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32 See, *inter alia*, my appellant's brief in #2008-1433-WC, at pp. 6-7, 9, 12, 23.

33 See my September 5, 2007 cross-motion (¶¶10-29) and my September 11, 2007 reply affidavit (¶¶39-51).

> raised by tenant, we search the record and determine that landlord is entitled to summary judgment awarding him a final judgment of possession (see CPLR 3212[b])." (Exhibit O-1, p. 9).

Again, fraudulent. The referred-to "foregoing" disposition does not determine my cross-motion for dismissal/summary judgment based on the falsity of the Petition's material allegations, established by my rebuttal. Nor does it determine, even baldly, at least three of my ten Affirmative Defenses and my entitlement to dismissal of the Petition based thereon. Indeed, the only part of this paragraph remotely true is that I raised "no triable issue" – and this because my cross-motion established my entitlement, *as a matter of law*, to dismissal/summary judgment of Mr. McFadden's Petition based on its falsity, quite apart from my entitlement to its dismissal based on my Affirmative Defenses. Any "search [of] the record" would have reinforced this – as likewise Judge Hansbury's duty to have granted the two branches of my cross-motion to impose costs and sanctions on Mr. McFadden and Mr. Sclafani and refer them to disciplinary and criminal authorities for fraud, for which my appellant's brief set forth (at pp. 23-26) the controlling legal authority, reprinted, *verbatim*, from my September 5, 2007 cross-motion.

66. As for my Counterclaims – for which a "search [of] the record" would have revealed that there is a "triable issue", that being the amount of damages due me – the Court states:

> "Landlord has also appealed from the denial of the branch of his motion seeking to dismiss tenant's counterclaims. In light of our finding that the contract of sale was cancelled upon the cooperative corporation's refusal to approve it, tenant had no rights to enforce under the contract of sale and occupancy agreement. To the extent that tenant's counterclaims seek to enforce such rights, they should have been dismissed. Moreover, as noted above, tenant failed to allege sufficient facts to support a cause of action for fraud or retaliatory eviction, and the facts alleged by tenant in support of her first three counterclaims fail to state any cause of action upon which relief could be granted. Accordingly, landlord's motion to dismiss the first three counterclaims should have been granted." (Exhibit O-1, pp. 9-10).

This, too, is fraudulent. As hereinabove demonstrated, the Court's predicate for dismissing my first three counterclaims, *to wit*, its "finding that the contract of sale was cancelled upon the cooperative corporation's refusal to approve it", is belied by my rebuttal to the Petition's ¶¶6-7 – and not addressed by the Court. Likewise, my supposed failure "noted above" to "allege sufficient facts to support a cause of action for fraud and retaliatory eviction" and my supposed failure "to state any cause of action upon which relief could be granted", are belied by the specificity of my Counterclaims, including by their incorporation of the particulars set forth by my Affirmative Defenses, culminating in my Tenth Affirmative Defense ("Fraud; Retaliatory Eviction; & Intentional Infliction of Emotional Distress") and corroborated by the exhibits annexed to my Answer and further elaborated upon and documented by my cross-motion, also not addressed by the Court.

67. Nor could Mr. Sclafani's August 23, 2007 motion to dismiss my counterclaims ever be granted, *as a matter of law*, it being established as frivolous and fraudulent by the record on my cross-motion, as likewise by my reply brief in opposition to his cross-appeal in #2008-1433-WC for which, additionally, I was entitled to sanctions/costs and disciplinary/criminal referrals, as therein sought.

68. Finally, as to my Fourth Counterclaim, the decision states:

> "Tenant's fourth counterclaim sought the imposition of costs and sanctions against landlord and his attorney, as well as disciplinary referral of landlord's attorney. New York does not recognize a separate cause of action for sanctions (Ocean Side Institutional Indus., Inc. v. Superior Laundry, 15 Misc 3d 1123[A], 2007 NY Slip Op 50822[U] [Sup Ct, Nassau County 2007]). Accordingly, landlord's motion to dismiss the fourth counterclaim should have been granted. Tenant also sought this relief in her motions. We find that the City Court did not improvidently exercise its discretion in declining to award this relief." (Exhibit O-1, p. 10).

69. Tellingly, the Court tellingly does not identify what my Fourth Counterclaim specifies to be the basis for "imposition of costs and sanctions against landlord and his attorney, as well as disciplinary referral of landlord's attorney." That basis was stated as the Petition's "falsification and omission of material facts, requiring dismissal by reason thereof, imposition of $10,000 sanctions and maximum costs under 22 NYCRR §130-1.1 *et seq.*", and, additionally, referral of Mr. Sclafani to disciplinary authorities "pursuant to this Court's mandatory 'Disciplinary Responsibilities' under §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct".

70. As for New York "not recogniz[ing] a separate cause of action for sanctions", the Court's one and only citation is *Ocean Side Institutional Industries, Inc. v. Superior Laundry*, a decision of the Nassau County Supreme Court (2007), whose two legal citations for that proposition are prefaced by the inferential "See".

The first of these citations is *Aurora Loan Services, LLC v. Cambridge Home Capital, LLC, 12 Misc. 3d 1152A, 819N.Y.S.2d 208* (2006), also a Nassau County Supreme Court case. In *Aurora*, the Court noted that 22 NYCRR §130-1.1(d) provides for costs and sanctions "upon motion…or upon the court's own initiative" and stated:

> "The very language of the rule contemplates a motion made in the context of a pending action and not an independent cause of action. This view seems to be shared by other Courts which have addressed this issue (See ***Yankee Trails, Inc. v. Jardine Ins. Brokers, Inc.***, *145 Misc 2d 282, 546 N.Y.S.2d 534*; ***Jaliman v. Selendy***,*7 Misc. 3d 1007A, 801 N.Y.S.2d 235(A)*; ***Murphy v. Smith***, *4 Misc. 3d 1029A, 798 N.Y.S.2d 346*; ***Entertainment Partners Group, Inc. v. Davis***, *155 Misc 2d 894, 590 N.Y.S.2d 979*)."

In other words, the premise upon which 22 NYCRR §130-1.1 does not create "a recognized cause of action" is the language of subsection (d). However, by its terms, 22 NYCRR §130-

1.1(d) enables a court to grant the same relief as sought by a counterclaim by the expedient of its "own initiative", where no motion has been made in the pending action.

The second citation is *Yankee Trails, Inc. v. Jardine Ins. Brokers, Inc., supra,* (1989), in which the Rensselaer County Supreme Court stated: "An assertion that plaintiff's entire pleading is frivolous may be tested upon a summary judgment motion to dismiss the complaint." At bar, I made such a "summary judgment motion" by my September 5, 2007 cross-motion, rebutting the Petition's material allegations as false –as to which Judge Hansbury's October 11, 2007 decision expressly declined to rule – a fact this Court's decision conceals, while itself making no ruling on my entitlement to summary judgment on that ground.

71. Insofar as the decision asserts (at p. 10):

> "Tenant also sought this relief by her motions. We find that the City Court did not improvidently exercise its discretion in declining to award this relief",

This is false and fraudulent both. Firstly, I made no "motions" in White Plains City Court seeking sanctions/costs and disciplinary referral based on the Petition's falsification and material omission". Rather, my "motions" were addressed to Mr. Sclafani's subsequent fraudulent filings on behalf of his client:

> (a) his August 23, 2007 motion, *inter alia*, to dismiss the Affirmative Defenses and Counterclaims of my August 20, 2007 Verified Answer, for which the fourth and fifth branches of my September 5, 2007 cross-motion sought sanctions/costs and disciplinary/criminal referrals[34];
>
> (b) his September 5, 2007 opposition to my September 5, 2007 cross-motion, for which my September 11, 2007 reply affidavit sought additional sanctions/costs and disciplinary/criminal referrals[35];

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[34] See my appellant's brief for #2008-1433-WC: pp. 12-26.

[35] See my appellant's brief for #2008-1433-WC: pp. 26-33.

(c) his November 15, 2007 cross-motion to my November 9, 2007 order to show cause, for which my November 26, 2007 opposition/reply affidavit sought additional sanctions/costs and disciplinary/criminal referrals[36].

As to these, I resoundingly demonstrated my entitlement to "costs and sanctions against landlord and his attorney, as well as disciplinary referral of landlord's attorney" – summarizing same by my appellant's briefs – which is why the Court fails to make any findings of fact or conclusions of law with respect thereto or to even identify the basis of my seeking such relief.[37]

72. Finally, the Court abdicates its responsibilities by asserting (at p. 10) that "New York does not "not recognize a separate cause of action for sanctions", when the only case it has offered is a lower court case – whose citations are to lower court cases. In other words, the Court offers no appellate rulings on the subject. Presumably, too, the Court is aware that the law evolves, with new causes of action emerging, *Brown v. State of New York*, 89 N.Y.2d 172, 181-2 (1996).

73. The decision concludes with a "note" (at p. 11) that Judge Hansbury's October 11, 2007 decision/order "consolidated 'any prior pending action" with the instant proceeding to avoid duplicative trials and promote judicial economy", but that:

> "Any argument that tenant has raised against this part of the order is moot in light of the foregoing, and in light of the court's dismissal of the March 27, 1989 petition in McFadden v. Sassower (___ Misc 3d ___, ___ NY Slip Op ____ [Appeal No. 2008-1427 WC], decided herewith)."

This, too, is fraudulent – beginning with the Court's pretense of "Any argument that tenant has raised". I did raise an "argument": the third "Question Presented" by my appellant's brief for

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[36] See my appellant's brief for #2008-1428-WC: pp. 20-24.

[37] Just as the Court's decision does not disclose the basis for my Fourth Counterclaim, so it does not disclose the basis for my cross-motion's branches for "(4) costs and sanctions, and (5) the referral of landlord's attorney to the Grievance Committee" (Exhibit O-1, p. 2).

#2008-1433-WC and its corresponding Point III (at pp. v, 42-44) entitled:

> "Judge Hansbury's *Sua Sponte* & Without Notice Consolidation of 'Any Prior Pending Action' with this Case is Contrary to Law and Reversible, *As A Matter of Law*".

74. Nor is my "argument" pertaining to consolidation "moot". Like every other aspect of Judge Hansbury's October 11, 2007 decision, it is legally indefensible and manifests his actual bias and interest, so-demonstrated by my November 9, 2007 order to show cause (at ¶¶27-30), from which my Point III (pp. 42-44) is expressly taken (see fn. 15 thereof). Moreover, the "any prior pending action[s]" consolidated by Judge Hansbury are, if open, #SP-434/88 and #SP-500/88, the Co-Op's two proceedings against Mr. McFadden to take away his proprietary lease and remove me from possession of the apartment. Because determination of #SP-434/88 and #SP-500/88, in the Co-Op's favor, would bar the Court from granting Mr. McFadden's 2007 Petition, awarding him the apartment[38] , its decision – like Judge Hansbury's decisions and Mr. Sclafani in his advocacy – conceals their existence.

75. This Court makes no determination as to whether the Co-Op's proceedings #SP-434/88 and #SP-500/88 are open or closed. Nor can it make such determination, as it has willfully deprived itself of proper Clerk's Returns on Appeals and documents and information essential for its appellate review, as hereinabove described.

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[38] Indeed, only through the Co-Op's proceedings can there be adjudication as to whether its disapproval of the apartment sale followed its corporate by-laws, absent which the record is uncontested that it did not.

WHEREFORE, it is respectfully prayed that for the reasons herein particularized, relief be granted in accordance with my accompanying notice of motion.

ELENA SASSOWER

Sworn to before me this
25th day of April 2010

Notary Public

MITCHELL LINDAUER
Attorney-At-Law, State of New York
Notary Public, No. 02LI4824404
Qualified in New York County
Commission Expires ~~February 28, 2007~~
August 22, 2011

TABLE OF EXHIBITS

Exhibit R: Sassower's March 1, 2010 letter to Chief Clerk Kenny – "RE: Request for Clarification: February 23, 2010 Decision & Order/Judgment"

Exhibit S: Sassower's March 4, 2010 letter to Chief Clerk Kenny – "RE: Quality Control at the Clerk's Office: Request for Clarification: (1) February 23, 2010 Decision & Order/Judgment in #2008-1427-WC; (2) February 23, 2010 Decision & Order/Judgment in #2008-1433-WC & #2008-1428-WC"

Exhibit T: Sassower's March 5, 20o10 letter to Chief Clerk Kenny – "RE: Quality Control at the Clerk's Office: Request for (1) Copies of Original October 1, 2008 Decision & Order and any Other Signed Appellate Term Orders Denying my Motions; and (2) Certification Pursuant to Judiciary Law §255 Where Signed Orders Cannot be Found"

Exhibit U: Sassower's March 12, 2010 letter to Chief Clerk Kenny – "RE: Quality Control at the Clerk's Office & Appellate Term Procedures/Staffing"

Exhibit V: Clerk Kenny's March 16, 2010 letter to Sassower

Exhibit W-1: Sassower's March 18, 2010 letter to Chief Clerk Kenny – "RE: Motion to Reargue/Leave to Appeal"

Exhibit W-2: Sassower's March 23, 2010 letter to Chief Clerk Kenny – "RE: Clarifying your March 16, 2010 Letter – Including by Certifications Pursuant to Judiciary Law §255"