

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Jonathan Lippman, Presiding Justice,
Peter Tom
Angela M. Mazzairelli
Richard T. Andrias
David B. Saxe, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

Giander Greene,
Defendant-Appellant.

M-1687
Ind. No. 4066/05
SCI. No. 4067/05

-----X

An appeal having been taken from the judgment of the Supreme Court, New York County, rendered on or about September 22, 2005,

Now, upon reading and filing the stipulation of the parties hereto, dated March 24, 2008, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present: Hon. Jonathan Lippman, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

-----X
The People of the State of New York,

Respondent,

M-1416

-against-

Ind. No. 9/05

Ricardo Calderon,

Defendant-Appellant.

-----X

An appeal having been taken to this Court from the judgment of the Supreme Court, New York County, rendered on or about December 27, 2006, and said appeal having been perfected for the September 2008 Term of this Court,

And the People having moved to strike defendant's appendix on appeal, brief and note of issue, and to remove the aforesaid appeal from this Court's calendar,

Now, upon reading and filing the papers with respect to the motion, and the correspondence from the People, dated March 26, 2008, and due deliberation having been had thereon, it is

Ordered that the People's motion is deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Jonathan Lippman, Presiding Justice,
Peter Tom
Milton L. Williams
Rolando T. Acosta, Justices.

-----X

The People of the State of New York,

Respondent,

-against-

M-1678
Ind. No. 4426/06

George Pineyro,

Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to perfect the appeal from the judgment of the Supreme Court, Bronx County, rendered on or about February 22, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the September 2008 Term.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Jonathan Lippman, Presiding Justice,
Angela M. Mazzairelli
Luis A. Gonzalez
John W. Sweeny, Jr., Justices.

-----X
JPMorgan Chase Bank, N.A.,
Plaintiff-Respondent,

-against-

M-1327
Index No. 117237/04

Rocar Realty Northeast, Inc.,
Defendant-Appellant,

Jefferson Valley Mall Limited Partnership,
Defendant-Respondent.

-----X

Plaintiff-respondent having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on January 8, 2008 (Appeal Nos. 2488-2488A),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present: Hon. Jonathan Lippman, Presiding Justice,
Richard T. Andrias
Milton L. Williams
James M. McGuire, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-773A
Ind. No. 1518/07

Demetrius Fuller,
Defendant-Appellant.
-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about December 20, 2007, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard upon the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, New York 10006, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record. (The order of this Court entered on March 20, 2008 [M-773], is hereby recalled and vacated.)

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the first Judicial Department in the County of New York on April 10, 2008.

Present: Hon. Jonathan Lippman, Presiding Justice,
David Friedman
James M. Catterson
Karla Moskowitz, Justices.

-----X
The People of the State of New York,
Respondent,

-against- M-1281
Ind. No. 3364/06

Jimmie Pugh,
Defendant-Appellant.
-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about October 3, 2006, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard upon the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York 10007, Telephone No. 212-402-4100, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT: Hon. Jonathan Lippman, Presiding Justice,
David Friedman
James M. Catterson
Karla Moskowitz, Justices.

-----X
Laura Mike,
Plaintiff-Respondent,

-against-

M-953
Index No. 25671/04

Riverbay Corporation,
Defendant-Appellant.
-----X

Defendant-appellant having moved for an order staying the trial in the above-entitled action pending hearing and determination of the appeal taken from the order of the Supreme Court, Bronx County, entered on or about August 29, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
Eugene Nardelli
John W. Sweeny, Jr., Justices.

-----X
In the Matter of

Aaliah W.,

A Dependent Child under the Age of Fourteen Years, Pursuant to §384-b of the Social Services Law of the State of New York.

- - - - -
Harlem Dowling Westside Center for Children and Family Services,
Petitioner-Respondent,

M-916
Docket No. A-5101/04

Armstrong W.,
Respondent-Appellant.

- - - - -
Steven Banks, Esq.,
Law Guardian for the Child.

-----X

Petitioner-respondent having moved for dismissal of the appeal taken from the order of the Family Court, Bronx County, entered on or about December 19, 2005,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
Eugene Nardelli
John W. Sweeny, Jr., Justices.

-----X
Tammy Belmore-Gaillard,
Plaintiff-Appellant,

-against-

M-967
Index No. 308986/93

Robert R. Gaillard, Jr.,
Defendant-Respondent.

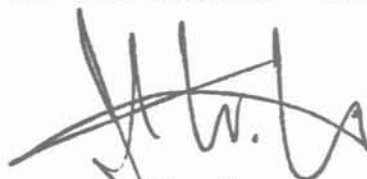
-----X

Plaintiff-appellant having moved for leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, New York County, entered on or about December 6, 2007 (mot. seq. no. 17), for leave to have the appeal heard on the original record and upon a reproduced appellant's brief; for consolidation of said appeal with the perfected appeal (Appeal No. 1494) taken from the order of said Court, entered on or about April 13, 2007 (mot. seq. no. 016), for a stay of all proceedings pending hearing and determination of the appeals, and related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal from the order of the Supreme Court, New York County, entered on or about December 6, 2007 to be heard on the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the attorney for respondent and file 10 copies of such brief, together with the original record, with this Court. Appellant is permitted to dispense with payment of the required fee for the subpoena and filing of the record. The motion is otherwise denied.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present - Hon. Peter Tom, Justice Presiding,
David B. Saxe
David Friedman
John T. Buckley, Justices.

-----X
Trump Plaza Owners, Inc.,
Plaintiff-Respondent,

-against-

Dorothea M. Weitzner,
Defendant-Appellant.

M-1090
Index No. 110351/03

Trump Plaza Owners, Inc.,
Plaintiff-Appellant,

-against-

Dorothea M. Weitzner,
Defendant-Respondent.

-----X

Defendant-appellant having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on January 24, 2008 (Appeal Nos. 2610N and 2610NA),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present: Hon. Peter Tom, Justice Presiding,
David B. Saxe
David Friedman
Luis A. Gonzalez
James M. McGuire, Justices.

-----X
Kweicena Korpah,
Petitioner-Appellant,

-against-

M-4482
Index No. 113281/06

New York City Department of
Education,
Respondent-Respondent.

-----X

Petitioner having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, entered on or about April 5, 2007 (mot. seq. no. 001),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted, the notice of appeal having been timely served (CPLR 5513[a]), and appellant is directed to file the notice of appeal within 30 days of the date of entry of this order.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Peter Tom, Justice Presiding,
David B. Saxe
Eugene Nardelli
Milton L. Williams, Justices.

-----X

The People of the State of New York,

-against-

M-1109
Ind. No. 2764/03

Jorge Adoms,

Defendant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, Bronx County, rendered on or about May 20, 2004,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied. (CPL 460.30 subd. 1.)

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Peter Tom, Justice Presiding,
David B. Saxe
Eugene Nardelli
Milton L. Williams, Justices.

-----X
In the Matter of the Application of
Ellen M. Duffy,
Petitioner-Appellant,

For a Judgment Pursuant to Article 78
of the CPLR,

-against-

M-1227
M-1463
Index No. 107719/05

The City of New York Department of
Housing Preservation and Development,
et al.,
Respondents-Respondents.
-----X

An Article 78 proceeding having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about July 19, 2006 (mot. seq. no. 001, to review a determination of respondent,

And respondent-respondent East Midtown Plaza Housing Company, Inc. having moved to dismiss the aforesaid proceeding,

And petitioner-appellant having cross-moved for an enlargement of time in which to perfect the proceeding,

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted and the proceeding is dismissed; the cross motion is denied.

E N T E R:


Clerk.

12

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon: Peter Tom, Justice Presiding,
David B. Saxe
Eugene Nardelli
Milton L. Williams, Justices.

-----X
Eleanor Capogrosso,
Plaintiff-Appellant,

-against-

M-1019
Index No. 103294/05

Metropolitan Dental Associates,
D.D.S., et al.,
Defendants-Respondents,

Lufty & Santora,
Non Party Attorneys-Respondents.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeals taken from the order of the Supreme Court, New York County, entered on or about February 26, 2007, with respect to non party attorneys respondents and the order of said Court entered on or about February 27, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied and, sua sponte, the appeals are dismissed.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Peter Tom, Justice Presiding,
David B. Saxe
John T. Buckley
Luis A. Gonzalez
James M. Catterson, Justices.

-----X
Geraldo Gomez and Rosa Vaca,
Plaintiffs,

-against-

M-6723
Index No. 23476/04

Sharon Baptist Board of Directors, Inc.,
Defendant,

-----X
Sharon Baptist Board of Directors, Inc.,
Third-Party Plaintiff-Appellant,

-against-

Index No. 84824/05

S.M. Construction Co.,
Third-Party Defendant-Respondent.

-----X

Defendant-third-party plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, Bronx County, entered on or about February 27, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the September 2008 Term.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present - Hon. Peter Tom, Justice Presiding,
David Friedman
Eugene Nardelli
James M. Catterson, Justices.

-----X
Alexander Breytman,
Plaintiff-Respondent,

-against-

M-192
Index No. 402940/04

Olinville Realty, LLC, et al.,
Defendants-Appellants.

- - - - -
Alexander Breytman,
Plaintiff-Appellant,

-against-

City of New York et al.,
Defendants-Respondents.

-----X

Plaintiff-respondent having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on December 27, 2007 (Appeal No. 2451),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr., Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-1426
Ind. No. 2170/03

Jerome Johnson,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, Bronx County (Robert Torres, J.) entered on or about December 13, 2007, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, for an enlargement of time in which to perfect the appeal, and for related relief,

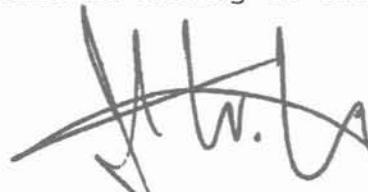
Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 10 reproduced copies of such brief, together with the original record, with this Court.

The Clerk of the Supreme Court shall expeditiously have made and file with the criminal court (CPL 460.70) two transcripts of the stenographic minutes of the SORA hearing and any other proceedings before Justice Torres as yet not transcribed. The Clerk shall furnish a copy of such transcripts to appellant's counsel, Steven Banks, Esq., without charge, the transcripts to be returned to this Court when appellant's brief is filed.

The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr., Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-1650
Ind. No. 2497/06

Jose Rosario,
Defendant-Appellant.
-----X

Counsel for defendant-appellant having moved for an enlargement of time in which to perfect the appeal from a judgment of the Supreme Court, New York County, rendered on or about November 21, 2006,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the September 2008 Term.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in in the County of New York on April 10, 2008.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
David Friedman
John W. Sweeny, Jr., Justices.

-----X
Lucy Bonano, also known as Luz
Bonano,
Plaintiff-Appellant,

M-1344

-against-

Index No. 400386/07

Coalition for the Homeless, L.P.,
et al.,
Defendants-Respondents.

-----X

An appeal having been taken from the order and judgment (one paper) of the Supreme Court, New York County, entered on or about February 6, 2008 (mot. seq. no. 001),

And plaintiff-appellant having moved for a stay of eviction, pending hearing and determination of the aforesaid appeal, and for poor person relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion, to the extent it seeks a stay of eviction is denied and the interim relief granted by an order of a Justice of this Court dated March 10, 2008, is vacated. So much of the motion which seeks poor person relief is granted to the extent of permitting the appeal to be heard upon the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the attorney for respondent and file 10 copies of such brief, together with the original record, with this Court. Appellant is permitted to dispense with payment of the required fee for the subpoena and filing of the record.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT: Hon. Angela M. Mazzairelli, Justice Presiding,
Richard T. Andrias
Luis A. Gonzalez
Rolando T. Acosta, Justices.

-----X
Yong Wong Park, et al.,
Plaintiffs-Appellants,

-against-

M-1527
Index No. 109090/06

Wolf and Samson, P.C., et al.,
Defendants-Respondents.
-----X

Plaintiffs-appellants having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, New York County, entered on or about June 12, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the September 2008 Term.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT: Hon. Angela M. Mazzaelli, Justice Presiding,
Richard T. Andrias
Luis A. Gonzalez
Rolando T. Acosta, Justices.

-----X
Gabriel Cerrone,
Petitioner-Appellant,

-against-

M-1201
Index No. 115764/05

Donald G. Drapkin, et al.,
Respondents-Respondents.
-----X

Respondent Oppenheimer & Co., Inc. having moved to dismiss the appeal from the order and judgment (one paper) of the Supreme Court, New York County, entered on or about June 12, 2006,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
Luis A. Gonzalez
Rolando T. Acosta, Justices.

-----x
In the Matter of Grace D.,
Petitioner-Respondent,

-against-

Ralph D.,
Respondent-Appellant.

M-1313
Docket Nos. V-490/04
V-491/04
V-491/04A
O-492/04

Michael DeMattio, Esq.,
Law Guardian for the Children
-Appellant.

-----x

Separate appeals having been taken to this Court from the amended order of the Supreme Court, Bronx County, Integrated Domestic Violence Part (IDV), entered on or about April 27, 2007,

And respondent-appellant father having moved for an enlargement of time in which to perfect his appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging respondent-appellant's time in which to perfect his appeal to the September 2008 Term. Appellant's counsel is directed to serve a copy of this order upon Steven Feinman, Esq., counsel for petitioner-respondent and Michael DeMattio, Esq., counsel for Law Guardian.

E N T E R:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon: Angela M. Mazzairelli, Justice Presiding,
Richard T. Andrias
Luis A. Gonzalez
Rolando T. Acosta, Justices.

-----X
In the Matter of

Glenn Storman,
Petitioner-Appellant,

-against-

M-1177
Index No. 118337/06

New York City Department of Education,
Respondent-Respondent.

-----X

Petitioner-appellant having moved to dismiss the appeal from the order of the Supreme Court, New York County, entered on or about November 13, 2007 (mot. seq. no. 001),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted without prejudice to further administrative proceedings and petitioner seeking appellate review of respondent's final order.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Angela M. Mazzarelli, Justice Presiding,
David B. Saxe
John T. Buckley
James M. McGuire, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-360
Ind. No. 1185/03

Gabriel Gonzalez,
Defendant-Appellant.
-----X

A decision and order of this Court having been entered on April 26, 2007 (Appeal No. 912), unanimously affirming a judgment of the Supreme Court, New York County (Budd Goodman, J.), rendered on March 11, 2004,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that said application is denied.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present - Hon. Angela M. Mazzairelli, Justice Presiding,
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X
Patricia Gary,
Plaintiff-Appellant,

-against-

M-1310
Index No. 105368/04

New York University, et al.,
Defendants-Respondents.
-----X

Plaintiff-appellant having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on February 5, 2008 (Appeal No. 2697),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Milton L. Williams
James M. Catterson
E. Michael Kavanagh, Justices.

-----X

In the Matter of the Guardianship of the Person and Custody of

Faith R., Karen B. and Shakkia B.,

Children Under 18 Years of Age Pursuant to § 384-b of the Social Services Law of the State of New York.

Family Support Systems Unlimited, Inc.,
et al.,

M-4692A
M-4693A
M-4694A

Petitioners-Respondents,

Docket Nos. B-9984/04
B-9985/04
B-9986/04

Ruth B., also known as Ruth Regina B.,
Respondent-Appellant.

Steven Banks, Esq., The Legal Aid Society, Juvenile Rights Division,
Law Guardian for the Children.

-----X

Assigned counsel to respondent in Family Court, Adam Brown, Esq., having moved on respondent-appellant's behalf for leave to prosecute, as a poor person, the appeals from the orders of the Family Court, Bronx County, entered on or about November 9, 2006, and for assignment of appellate counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Elisa Barnes, Esq., 350 Broadway, Suite 1100, New York, NY 10013, Telephone No. 212-693-2330, as counsel for purposes of prosecuting the appeals; (2) sua sponte consolidating the appeals with each other and with the appeal under Docket No. B-9983/04; (3) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings

April 10, 2008

held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor¹ **within 60 days of service of a copy of this order upon the Clerk;** (4) permitting appellant to dispense with any fee for transferring the record from the Family Court to this Court; and (5) enlarging the time to perfect this appeal until 120 days from the date of filing of the record. **Assigned counsel is directed to immediately subpoena the record from the Family Court and to serve a copy of this order upon the Clerk of the Family Court.** The orders of this Court entered on November 20, 2007 (M-4692/M-4693) and March 6, 2008 (M-4694) are hereby recalled and vacated. (See M-4691 entered on December 20, 2007)

ENTER:



Clerk

¹Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Richard T. Andrias, Justice Presiding,
John T. Buckley
James M. Catterson
Bernard J. Malone
E. Michael Kavanagh, Justices.

-----X
Victor Peri, Harvey Azru and Jose Peri,
Infants by their Mother and Natural
Guardian, Eribel Peri, and Eribel Peri,
Individually,
Plaintiffs-Respondents,

-against-

The City of New York,
Defendant-Appellant,

M-6391
Index No. 17701/97

-and-

LSL Services, Inc.,
Defendant-Appellant,

-and-

Anne Nebblett,
Defendant.

-----X

Defendant City of New York having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on October 23, 2007 (Appeal No. 1110),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted, and this Court, pursuant to CPLR 5713, certifies that the following question of law, decisive of the correctness of its determination, has arisen, which in its opinion ought to be reviewed by the Court of Appeals:

"Was the order of this Court which affirmed the order of the Supreme Court, properly made?"

This Court further certifies that its determination was made as a matter of law and not in the exercise of discretion. (See M-6717 decided simultaneously herewith).

ENTER:

A handwritten signature in black ink, appearing to be "H.W. La", written over a horizontal line. The signature is stylized and somewhat illegible.

Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Richard T. Andrias, Justice Presiding,
John T. Buckley
James M. Catterson
Bernard J. Malone
E. Michael Kavanagh, Justices.

-----X
Victor Peri, Harvey Azru and Jose Peri,
Infants by their Mother and Natural
Guardian, Eribel Peri, and Eribel Peri,
Individually,
Plaintiffs-Respondents,

-against-

The City of New York,
Defendant-Appellant,

M-6717
Index No. 17701/97

-and-

LSL Services, Inc.,
Defendant-Appellant,

-and-

Anne Nebblett,
Defendant.

-----X

Defendant LSL Services, Inc. having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on October 23, 2007 (Appeal No. 1110),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied (See M-6391 decided simultaneously herewith).

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Richard T. Andrias, Justice Presiding,
David Friedman
John T. Buckley
James M. Catterson
Rolando T. Acosta, Justices.

-----X
3657 Realty Co., LLC,
Petitioner-Landlord-Respondent,

-against-

M-1611
Index No. 570263/06

Ida Mae Jones,
Respondent-Tenant-Appellant,

"John Doe" and "Jane Doe",
Respondents-Undertenants-Appellants.

-----X

Respondent-tenant-appellant having moved for a stay of eviction pending hearing and determination of the appeal taken from the decision and order of the Appellate Term, entered in the office of the Clerk of the Supreme Court, New York County on or about January 23, 2008,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted on condition appellant pays use and occupancy in the amount of the last legal rent for the unit on or before the 1st day of each month, and that the appeal is perfected for the September 2008 Term, to which Term the appeal is adjourned. Upon failure to so perfect an order vacating the stay may be entered ex parte, provided that petitioner-landlord-respondent serves a copy of this order upon appellant within 10 days from the date of entry hereof. Should appellant fail to timely pay use and occupancy, respondent may move on notice to vacate the stay.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. David B. Saxe, Justice Presiding,
John W. Sweeny, Jr.
James M. McGuire
Rolando T. Acosta, Justices.

-----X
The People of the State of New York,

-against-

M-952
Case No. 58008C/04

Anthony Aikens,
Defendant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, Bronx County, rendered on or about November 1, 2006,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied. (CPL 460.30 subd. 1.)

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. David B. Saxe, Justice Presiding,
John W. Sweeny, Jr.
James M. McGuire
Rolando T. Acosta, Justices.

-----X
The People of the State of New York,
Appellant,

-against-

M-1154
Ind. No. 6876/06

Raheem Mayo,
Defendant-Respondent.
-----X

The People having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, New York County, rendered on or about May 3, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the September 2008 Term.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Luis A. Gonzalez, Justice Presiding,
Milton L. Williams
James M. Catterson
Karla Moskowitz, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-830
Ind. No. 5276/00

Steven Kim,
Defendant-Appellant.

-----X

The People having moved to dismiss the appeal from the judgment of the Supreme Court, New York County, rendered on or about March 20, 2001,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the appeal is dismissed.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Luis A. Gonzalez, Justice Presiding,
Eugene Nardelli
John T. Buckley
James M. Catterson, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-1307
Ind. No. 2210/04

Edgar Morales,
Defendant-Appellant.
-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, Bronx County, rendered on or about December 10, 2007, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for other relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serve one copy of such brief upon the District Attorney of said county and file ten reproduced copies of such brief, together with the original record, with this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed. Defendant-appellant's time in which to perfect the appeal is enlarged until 120 days from the date of filing of the record. So much of the motion which seeks the assignment of pro bono counsel Debevoise & Plimpton, LLP is denied as unnecessary.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Luis A. Gonzalez, Justice Presiding,
Eugene Nardelli
John T. Buckley
James M. Catterson, Justices.

-----X
Carolyn Gaskin,
Petitioner-Appellant,

For a Judgment Pursuant to Article 78 M-1586
of the CPLR, Index No. 406954/07

-against-

West Bourne Associates, L.P.,
New York State Human Rights Commission,
Defendants-Respondents.
-----X

Petitioner-appellant having moved for leave to prosecute, as a poor person, the appeal from an order of the Supreme Court, New York County, entered on or about February 13, 2008 (mot. seq. no. 001), and for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for other relief,

Now, upon reading and filing the papers with respect to said motion, and due deliberation having been had thereon,

It is ordered that said motion is granted to the extent of permitting the appeal to be heard on the original record and upon a reproduced appellant's brief, on condition that appellant serve one copy of such brief upon the attorney for respondent and file ten copies of such brief, together with the original record, with this Court. Appellant is permitted to dispense with payment of the required fee for the subpoena and filing of the record.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Luis A. Gonzalez, Justice Presiding,
Eugene Nardelli
John T. Buckley
James M. Catterson, Justices.

-----X
Lee A. Goldberg,
Petitioner-Respondent,

-against-

M-1495
Index No. 650164/07

Thelen Reid Brown Raysman &
Steiner, LLP and Brown Raysman
Millstein Felder & Steiner, LLP,
Respondents-Appellants.

-----X

An appeal having been taken from the order and judgment of the Supreme Court, New York County, entered on or about October 17, 2007,

And respondents-appellants having moved for an order sealing, all documents and exhibits originally designated as confidential pursuant to an order dated February 5, 2007 issued by the arbitrator in the underlying proceeding; all documents subsequently filed in the Supreme Court, New York County in connection with the proceedings relative to the arbitration award; and all documents contained in the Record on Appeal, volume two, being filed in connection with the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, including the stipulation between the parties dated March 14, 2008 and due deliberation having been had thereon,

It is ordered that the motion is granted.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Luis A. Gonzalez, Justice Presiding,
Eugene Nardelli
John T. Buckley
James M. Catterson, Justices.

-----X
In the Matter of the Commitment of

Johnny G., Jr.,

Pursuant to §384-b of the Social Services Law of the State of New York.

- - - - -
MercyFirst,
Petitioner-Respondent,

M-1417
Docket No. B4258/05

Johnny G., Sr., also known as
G., Johnny Willie, also known as
G. Willie, also known as G.,
Johnny,
Respondent-Appellant.

- - - - -
Steven Banks, Esq., The Legal Aid
Society, Juvenile Rights Division,
Law Guardian for the Child.

-----X

Counsel for respondent-respondent having moved for leave to prosecute, as a poor person, the appeal from an order of the Family Court, Bronx County, entered on or about August 30, 2007, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Joseph V. Moliterno, Esq., 670 White Plains Road, Suite 207, Scarsdale, New York 10583, Telephone No. 914-722-6922, as counsel for purposes of prosecuting the appeal; (2) **directing the Clerk of said Family Court to have transcribed within 60 days of service of a copy of this order upon the Clerk,** the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof

to be charged against the City of New York from funds available therefor¹ **within 60 days of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for transferring the record from the Family Court to this Court; and (4) enlarging the time to perfect this appeal until 120 days from the date of filing of the record. **Assigned counsel is directed to immediately subpoena the record from the Family Court and to serve a copy of this order upon the Clerk of the Family Court.**

ENTER:



Clerk

¹Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

(There is
no 52)

53

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Luis A. Gonzalez, Justice Presiding,
Eugene Nardelli
John T. Buckley
James M. Catterson, Justices.

-----X

In the Matter of

Ladon S.,

A Person Alleged to be a Juvenile
Delinquent,

M-1379
Docket No. D11498-06/07A

Respondent-Appellant.

-----X

Appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Family Court, Bronx County, entered on or about August 27, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the September 2008 Term.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Luis A. Gonzalez, Justice Presiding,
Eugene Nardelli
John T. Buckley
James M. Catterson, Justices.

-----X

The People of the State of New York,
Respondent,

-against-

M-1194
Ind. No. 569/01

Sean Walker, also known as Sean Barker,
also known as Seon Barker,
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from the judgment of resentence of the Supreme Court, Bronx County, rendered on or about January 3, 2008, for leave to prosecute the appeal as a poor person, upon the original record and upon a reproduced appellant's brief, and for assignment of counsel,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted only to the extent of deeming the notice of appeal timely filed.

The motion, insofar as it seeks poor person relief, is denied, with leave to renew upon defendant's submission of a notarized affidavit, in compliance with CPLR 1101(a), setting forth the terms of defendant's retainer agreement with trial counsel, Goldstein & Weinstein, as well as the amount and sources of funds for trial counsel's fee and an explanation as to why similar funds are not available to prosecute this appeal. (The application shall include an affidavit of the source[s] of all funds utilized by defendant.)

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present - Hon. Luis A. Gonzalez, Justice Presiding,
Eugene Nardelli
Milton L. Williams
James M. Catterson, Justices.

-----X
Mark Mehlman,
Plaintiff-Respondent,

-against-

M-291
Index No. 27036/02

592-600 Union Avenue Corp.,
Defendant-Appellant.
-----X

Plaintiff-respondent having moved for reargument of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on December 18, 2007 (Appeal Nos. 1397, 1398 and 1398A),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

E N T E R:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Luis A. Gonzalez, Justice Presiding,
Eugene Nardelli
John T. Buckley
James M. Catterson, Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-1336
Ind. No. 7221/01

Ruben Soto,
Defendant-Appellant.

-----X

Defendant-appellant having moved for an enlargement of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about December 11, 2007,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the moving papers a timely filed notice of appeal.

ENTER:


Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present: Hon. Luis A. Gonzalez, Justice Presiding,
Milton L. Williams
James M. Catterson
Karla Moskowitz, Justices.

-----X
The People of the State of New York,

Respondent,

M-1191

-against-

Ind. No. 6628/01

Michael Brenman,

Defendant-Appellant.
-----X

Assigned counsel having moved for an order dismissing defendant's appeal from the judgment of the Supreme Court, New York County, rendered on or about October 7, 2002, without prejudice to reinstatement at such time appellant again becomes amenable to the jurisdiction of this Court,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the appeal withdrawn.

ENTER:


Clerk.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST JUDICIAL DEPARTMENT

BEFORE: Hon. James M. Catterson
Justice of the Appellate Division

-----X
The People of the State of New York,

M-936
Ind. No. 6747/01

-against-

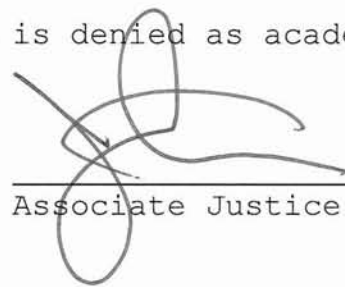
CERTIFICATE
DENYING LEAVE

James Jenkins

Defendant.

-----X

I, James M. Catterson, a Justice of the Appellate Division, First Judicial Department, do hereby certify that, upon application timely made by the above-named defendant for a certificate pursuant to Criminal Procedure Law, sections 450.15 and 460.15, and upon the record and proceedings herein, there is no question of law or fact presented which ought to be reviewed by the Appellate Division, First Judicial Department, and permission to appeal from the orders of the Supreme Court, New York County, dated November 15, 2007, is hereby denied. So much of the motion which seeks poor person relief, assignment of counsel and an enlargement of time is denied as academic.



Associate Justice

Dated: April 1, 2008
New York, New York

ENTERED APR 10 2008

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding
David B. Saxe
David Friedman
Eugene Nardelli
Milton L. Williams, Justices.

-----X
In the Matter of Attorneys Who Are
in Violation of Judiciary Law Section
468-a:

Departmental Disciplinary Committee M-1617
for the First Judicial Department,
Petitioner,

Rachel M. Heald,
admitted on 2-2-1998, at a
Term of the Appellate Division,
First Department,
(OCA Atty. Reg. No. 2876738)
Respondent.

-----X

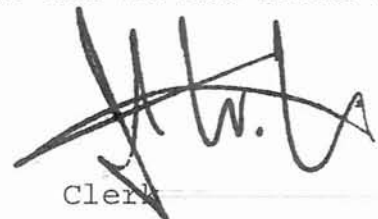
An order of this Court having been entered on February 5, 2008 [M-5901.385], inter alia, suspending the above-named respondent from practice as an attorney and counselor-at-law in the State of New York, effective March 6, 2008, and until the further order of this Court, for failure to comply with Judiciary Law §468-a,

And respondent having moved for an order granting reinstatement as an attorney and counselor-at-law in the State of New York,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, and it appearing that respondent complied with Judiciary Law §468-a on or about March 6, 2008, subsequent to the effective date of the aforesaid order,

It is ordered that the motion is granted and respondent is reinstated as an attorney and counselor-at-law in the State of New York, effective the date hereof.

E N T E R:


Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding
David B. Saxe
David Friedman
Eugene Nardelli
Milton L. Williams, Justices.

-----X
In the Matter of Attorneys Who Are
in Violation of Judiciary Law Section
468-a:

Departmental Disciplinary Committee M-1723
for the First Judicial Department,
Petitioner,

William B. Doniger,
admitted on 4-29-1992, at a
Term of the Appellate Division,
Second Department,
(OCA Atty. Reg. No. 2450120)
Respondent.

-----X

An order of this Court having been entered on October 12, 2006 [M-3061.772], inter alia, suspending the above-named respondent from practice as an attorney and counselor-at-law in the State of New York, effective November 13, 2006, and until the further order of this Court, for failure to comply with Judiciary Law §468-a,

And respondent having moved for an order granting reinstatement as an attorney and counselor-at-law in the State of New York,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, and it appearing that respondent complied with Judiciary Law §468-a on or about March 3, 2008, subsequent to the effective date of the aforesaid order,

It is ordered that the motion is granted and respondent is reinstated as an attorney and counselor-at-law in the State of New York, effective the date hereof.

E N T E R: 
Clerk

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Milton L. Williams
John T. Buckley
James M. Catterson
E. Michael Kavanagh, Justices.

-----x

In the Matter of Hersy Jones, Jr.,
an attorney and counselor-at-law:

Departmental Disciplinary Committee
for the First Judicial Department, M-4291
Petitioner,

Hersy Jones, Jr.
(OCA Atty. Reg. No. 2156081),
Respondent.

-----x

The Departmental Disciplinary Committee for the First Judicial Department, by Alan W. Friedberg, its Chief Counsel (Jun Hwa Lee, of counsel) having petitioned this Court on October 15, 2007, for an order pursuant to Judiciary Law § 90 and 22 NYCRR 603.3, disbarring respondent (who was admitted to practice as an attorney and counselor-at-law in the State of New York at a Term of the Appellate Division of the Supreme Court for the First Judicial Department on November 2, 1987) from the practice of law in the State of New York, pursuant to the doctrine of reciprocal discipline, predicated upon similar discipline imposed upon respondent by the Supreme Court of Louisiana on March 30, 2007 or, in the alternative, sanctioning respondent as this Court deems just and appropriate in the circumstances,

And respondent pro se having submitted an answer in opposition to the petition and seeking dismissal of the matter in its entirety upon defenses to such action enumerated in 22 NYCRR § 603.3(c) or, in the alternative, that the matter be referred to the Departmental Disciplinary Committee for a hearing,

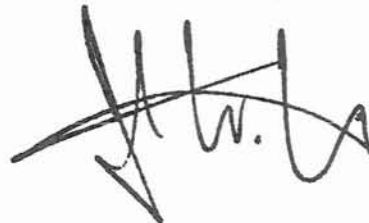
And the Committee having submitted an affirmation in reply to the answer in opposition to the petition,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, and upon the Opinion Per Curiam filed herein, it is unanimously,

Ordered that the petition is granted and respondent is disbarred and his name is stricken from the roll of attorneys and counselors-at-law in the State of New York, effective the date hereof, and it is further

Ordered that respondent is commanded to desist and refrain from the practice of law in any form, either as principal or agent, clerk or employee of another; that respondent is forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority; that respondent is forbidden to give to another an opinion as to the law or its application or any advice in relation thereto; and that respondent is directed to fully comply with the provisions of Title 22, Section 603.13, of the Rules of this Court, a copy of which is annexed hereto and made a part hereof, all effective the date hereof.

ENTER:

A handwritten signature in black ink, appearing to be 'J.W.L.', written over a horizontal line.

Clerk

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

APR 10 2008

Angela M. Mazzairelli, Justice Presiding,
Milton L. Williams
John T. Buckley
James M. Catterson
E. Michael Kavanagh, Justices.

-----X

In the Matter of Hersy Jones, Jr.,
an attorney and counselor-at-law:

Departmental Disciplinary Committee M-4291
for the First Judicial Department,
Petitioner,

Hersy Jones, Jr.,
Respondent.

-----X

Disciplinary proceedings instituted by the Departmental
Disciplinary Committee for the First Judicial Department.
Respondent, Hersy Jones, Jr., was admitted to the Bar of
the State of New York at a Term of the Appellate Division
of the Supreme Court for the First Judicial Department on
November 2, 1987.

Alan W. Friedberg, Chief Counsel, Departmental
Disciplinary Committee, New York
(Jun Hwa Lee, of counsel), for petitioner.

Respondent pro se.

M-4291

October 15, 2007

IN THE MATTER OF HERSY JONES, JR., AN ATTORNEY

Per Curiam

Respondent Hersy Jones, Jr. was admitted to the practice of law in the State of New York by the First Judicial Department on November 2, 1987; he has been delinquent in his New York attorney registration since 1997. Respondent resides in Louisiana where he was admitted to practice law in 1995.

On March 30, 2007, the respondent was disbarred from the practice of law by the Supreme Court of Louisiana. Pursuant to Judiciary Law § 90(2) and 22 NYCRR 603.3, the Departmental Disciplinary Committee now petitions this Court to disbar respondent from the practice of law in New York or, in the alternative, sanctioning respondent as this Court deems appropriate.

Respondent argues against reciprocal disbarment raising the defenses of due process violations and an infirmity of proof establishing his misconduct.

Respondent's disbarment in Louisiana resulted from multiple offenses, including, inter alia, respondent's knowing and intentional conversion of more than \$9,000 of his client's funds, falsely endorsing his client's name to a check and the direct solicitation of clients at a funeral home following the death of

their son.

Specifically, the Louisiana Office of Disciplinary Counsel (ODC) filed two sets of formal charges against respondent. In the first set of charges, the hearing committee concluded that the respondent failed to deposit fees into his trust account while two fee disputes were pending, he failed to communicate the right to arbitrate the fee disputes to each of his clients, he failed to account for and refund the unearned portion of the fees, if any, and he failed to return a file to one of his clients in violation of Rules of Professional Conduct 1.4, 1.5 and 1.16. After considering factors in aggravation and mitigation the committee recommended respondent be suspended for two years, fully deferred, and placed on probation for two years, during which he was to submit the fee disputes to arbitration and complete certain CLE courses. Notably, respondent did not file an objection to the hearing committee's recommendation.

The second set of charges included what the Supreme Court found to be respondent's "most egregious actions". A second hearing was conducted at which respondent appeared pro se and testified. One of the charges involved a dispute between respondent and his client over whether respondent was entitled to a contingency fee. Notwithstanding the existence of a fee dispute, respondent endorsed his client's signature and deposited a \$9,000 check made payable to both respondent and his client

into his operating account instead of his trust account. The hearing committee determined, among other things, that respondent improperly attempted to assert a contingency fee over the action, that respondent acted improperly when he failed to deposit the \$9,000 check into his trust account, and that respondent converted the funds because he was not entitled to the full amount.

Another charge involved the respondent's transgression in approaching grieving parents at a funeral home while they were making burial arrangements for their son. Subsequently the parents met with respondent and signed a general power of attorney which allowed respondent to investigate the killing of their son. When respondent learned that the victim was survived by a daughter, he contacted the daughter's mother. The hearing committee determined respondent's direct solicitation of the victim's family to be highly improper.

The ODC had filed a pre-hearing memorandum recommending disbarment. After considering evidence in aggravation and mitigation, the committee recommended that respondent be suspended for two years and attend the State Bar's ethics school. Respondent did not file an objection to the committee's recommendation.

Following the submission of both reports submitted by two committees, the proceedings were consolidated for oral argument

before the Disciplinary Review Board (DRB). Once again the ODC filed a brief suggesting the appropriate sanction was disbarment. The DRB issued a report adopting the committees' findings, determining that their factual findings were not "manifestly erroneous" (the standard of review). The DRB found that disbarment was warranted for respondent's collective misconduct.

Respondent failed to file a timely objection to the DRB's recommendation and the matter was submitted to the Supreme Court of Louisiana. After respondent finally retained counsel, he filed an "out-of-time" objection with the Supreme Court. Although the court denied that motion, it permitted him and the ODC to file briefs without oral argument.¹

In a decision and order dated March 30, 2007, the Supreme Court stated that in order to determine whether the alleged misconduct had been proven by clear and convincing evidence, it conducted an independent review of the record and considered the briefs submitted. The court found that there was no "manifest error" in the factual findings made by the hearing committees. The court concluded that there was "no basis to deviate from the baseline sanction of disbarment" and directed respondent to furnish accountings and full restitution of all unearned legal

¹ The court also allowed respondent to file two supplemental exhibits which included documentation that he had deposited \$9,000 into his trust account representing the disputed fee in one of the matters; and that he had submitted the other fee disputes to a fee arbitration program.

fees to each of the clients involved in the underlying fee disputes.²

Thereafter, respondent moved for a rehearing on the ground that there was an appearance of impropriety due to the fact that a member of both hearing committees worked for a law firm that was involved in litigation concerning the foreclosure of respondent's home. That motion was denied by order dated May 11, 2007 (Matter of Jones, 955 So.2d 1270 [La. 2007]).

In light of the foregoing, the Departmental Disciplinary Committee launched a proceeding premised upon reciprocal discipline to similarly have the respondent barred from the practice of law in New York.

Respondent raises two defenses under 22 NYCRR 603.3[c]. First, he asserts that he was denied due process of law. The Committee asserts that respondent is precluded from raising a defense pursuant to 22 NYCRR 603.3(c)(1) since he was given ample notice and opportunity to be heard in the Louisiana proceeding.

Respondent, pro se, argues in opposition that he was denied due process because he was not told the true nature of the proceedings, namely, that it was a disbarment proceeding. He contends that neither hearing committee recommended disbarment. He further argues that because the Supreme Court Rules are vague

² A lawyer who is disbarred in Louisiana must wait five years before applying for readmission.

he was never on notice that his decision to place the \$9,000 check made payable to himself and his client into his operating account while there was a fee dispute would result in disbarment. Additionally, he argues that the Supreme Court never informed him that he had to file objections to the DRB report within 20 days; that he was denied the opportunity for a "hearing" before the Supreme Court once he filed objections; and his objections were never considered by the court. We disagree.

The record clearly demonstrates that respondent actively participated and defended himself in the Louisiana proceeding including answering the charges (one of which included a charge of conversion), testifying at the hearings, examining and cross-examining witnesses, and filing submissions to contest the allegations of professional misconduct. Additionally, respondent was advised to familiarize himself with the Louisiana Supreme Court Rules, specifically Rule 19 which applies to disciplinary proceedings and which lists disbarment as a possible sanction. Moreover, while the hearing committees may not have recommended disbarment as the appropriate sanction respondent was first put on notice of that possibility during the second disciplinary proceeding when the ODC filed a pre-hearing memorandum with the hearing committee suggesting disbarment. Furthermore, like this Court, the Louisiana Supreme Court has original jurisdiction and while it can consider the sanction recommendations of the

committees and DRB, it is the final decision maker as to sanction.

Equally without merit is respondent's claim that he was not informed of the right to file objections and request a hearing before the Supreme Court within 20 days. First, it should be noted that respondent failed to file objections following both hearing committee reports, and then he failed to file a timely objection to the DRB's report which recommended disbarment. Second, contrary to respondent's assertion, the Supreme Court promptly notified him that the findings and recommendations of the DRB had been filed with the court. At that point, it was up to respondent to look to Rule 19 §11(G)(1) for guidance as to the timing to file objections; apparently he did not. In any event, after respondent retained counsel he filed an "out-of-time objection" to the DRB report. Although the court denied that motion it allowed respondent and the ODC to file briefs without oral argument. Respondent's attorney submitted a brief (and supplemental exhibits) which challenged the findings and recommendations made in the proceedings. Contrary to respondent's claim that the court did not consider his objections, the Supreme Court of Louisiana specifically referred to the fact that it considered the briefs and cited to the exhibits respondent was permitted to submit to supplement the record. Thus, the respondent was properly heard.

Nor is there merit to respondent's claim that the Rules of Professional Misconduct under which respondent was charged are vague and thereby violated his due process rights. Respondent attacks Rule 1.15 which outlines the duties and responsibilities of an attorney in safekeeping client or third party funds in his possession. He claims that the hearing committee found only that he failed to deposit disputed funds into his trust account, not that he "converted" the \$9,000 check, and that even the ODC did not prosecute the case as a conversion case since disciplinary counsel argued that respondent may have had a reasonable basis to keep the money.

While it is true that the hearing committee did not use the word "conversion" in its report when describing respondent's misconduct, it did sustain that charge which specifically alleged that "respondent did not deposit the \$9,000 check into his trust account, but instead endorsed the client's name to the check without authority or permission and converted the funds to his own use in violation of Rule 1.15". Moreover, the DRB referred to Rule 1.15 and described respondent's taking of the money as "conversion" as did the Supreme Court.

Respondent's final contention is that he was denied a fair hearing because of a conflict of interest involving a committee member who sat on both hearing committees. Respondent states that around the time of the second hearing, for which the member

served as the committee chairman, one of his law firm partners was instituting foreclosure proceedings against respondent. Respondent claims he did not raise this issue because the Louisiana Rules do not explicitly provide for the right to remove a member as the burden is placed on the committee member to voluntarily "refrain" from serving. Also, he did not want to further antagonize the committee.

While there may have been an appearance of impropriety it was respondent's responsibility to raise such an objection. Moreover, when respondent finally did raise the issue in his motion and memorandum for a rehearing following the Supreme Court's order of disbarment, it was rejected. In any event, the committee member recommended suspension not disbarment.

The second defense raised by the respondent is that the proof submitted was insufficient to support the findings of misconduct. We find that respondent has no defense under 22 NYCRR 603.3(c)(2) inasmuch as respondent's current challenge to the factual findings has taken the form of an attempt to re-litigate the issues already addressed and fully litigated in Louisiana.

With regard to the determination of an appropriate sanction, we note that the state where respondent practiced law at the time of the offense has the greatest interest in the issue of sanction (see Matter of Hatton, 44 AD3d 49 [1st Dept. 2007]; Matter of

Hovell, 39 AD3d 107 [1st Dept. 2007]; Matter of Reiss, 119 AD2d 1 [1st Dept. 1986]), and deference is even more appropriate where the misconduct occurred in that state (Matter of Anschell, 11 AD3d 56 [1st Dept. 2004]). In any event, the sanction imposed by Louisiana is consistent with this Court's precedent of disbarring attorneys who convert client funds absent any unusual mitigating circumstances (see Matter of Bernstein, 41 AD3d 49 [1st Dept. 2007]; Matter of Pape, 31 AD3d 156 [1st Dept. 2006]).

Accordingly, Committee's petition should be granted to the extent of disbarring respondent from the practice of law in the State of New York pursuant to 22 NYCRR 603.3, effective immediately (see Matter of Harris, 37 AD3d 90 [1st Dept. 2006]; Matter of Anschell, supra ; compare Matter of Gardner, 246 AD2d 215 [2d Dept. 1998] [disbarment imposed where attorney commingled and converted clients' funds in Louisiana]).

All concur.

Order filed.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. Jonathan Lippman, Presiding Justice,
Peter Tom
Milton L. Williams
Rolando T. Acosta, Justices.

-----X

Tremaine C.,
Petitioner-Respondent,

-against-

Nicola M.,
Respondent-Appellant.

-----X

M-958

Docket Nos. V20764-01/05C
V20764-01/05D

IDV No. 2005 00118

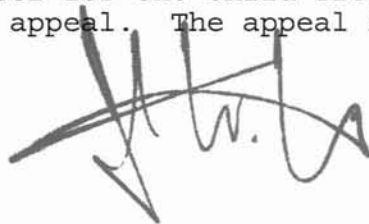
An appeal having been taken to this Court by respondent-appellant mother from the order of the Supreme Court, Bronx County, Integrated Domestic Violence Court (IDV), entered on or about December 4, 2006,

And Carol Ann Ferraro, Esq., law guardian for the child Tremaine C., Jr. having moved to be relieved as law guardian with respect to the aforesaid child and to substitute other counsel to respond to the appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of striking the designation of Carol Ann Ferraro, Esq. as law guardian on the appeal with respect to the child Tremaine C., Jr. and substituting, pursuant to Article 18b of the County Law and Section 1120 of the Family Court Act, Frederic P. Schneider, Esq., c/o Gilman & Schneider, Esqs., 40 Wall Street, 28th Floor, New York, New York 10005, Tel. No. 646-512-5730, as counsel for the child Tremaine C., Jr. for purposes of responding to the appeal. The appeal is adjourned to the September 2008 Term.

E N T E R:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT: Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
Milton L. Williams
John W. Sweeny, Jr., Justices.

-----X
In Re: New York City Asbestos Litigation

James Horne and Louise Horne,
Plaintiffs-Respondents,

M-1752
M-1753

-against-

A. O. Smith Water Products, et al.,
Defendants-Appellants.

Action No. 1
Index No. 102473/07

-----X
In Re: New York City Asbestos Litigation

This Document Relates To:

Carl Bergstrand,
Ronald Bona,
James Horne,
John Pluchino,
John Vidal,
Anthony White,
Plaintiffs-Respondents,

Action No. 2
Index Nos. 105890/07
104800/07
102473/07
100521/07
102833/07
107225/07

-against-

Amchem Products, Inc., et al.,
Defendants-Appellants.

-----X

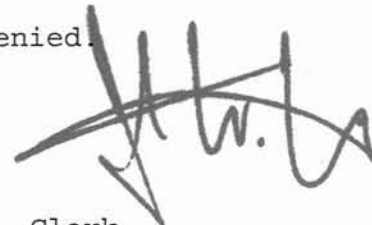
Appeals having been taken by appellant(s) in Actions No. 1 and 2 from the order of the Supreme Court, New York County, entered on or about March 28, 2008 (mot. seq. nos. 004 and 005),

And defendant-appellant Georgia-Pacific, LLC, formerly known as Georgia-Pacific Corporation (Action No. 1) [M-1752] and defendant-appellant Kentile Floors, Inc. (Action No. 2) [M-1753] having moved for an order staying all proceedings herein including joint trial pending hearing and determination of the respective appeals,

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motions are denied.

E N T E R:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

PRESENT - Hon. David B. Saxe, Justice Presiding,
David Friedman
John W. Sweeny, Jr.
Karla Moskowitz, Justices.

-----X
Parker & Waichman,
Plaintiff,

-against- M-1700

Paul J. Napoli, et al., Index No. 605388/01
Defendants-Respondents.

Napoli Kaiser Bern & Associates LLP,
on behalf of themselves and on behalf of
the Clients Allegedly Retained by
Parker & Waichman,
Third-Party Plaintiffs-Respondents,

-against- Index No. 591271/04

Jerrold Parker, et al.,
Third-Party Defendants,

-and-

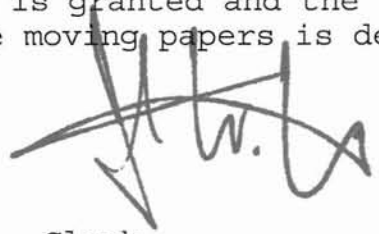
Trief & Olk, LLP, et al.,
Third-Party Defendants-Appellants.
-----X

Third-party defendants-appellants, in connection with an appeal taken from the order of the Supreme Court, New York County, entered on or about November 7, 2007, having moved for leave to file a supplemental record,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted and the supplemental record submitted with the moving papers is deemed filed for the May 2008 Term.

E N T E R:



Clerk.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on April 10, 2008.

Present - Hon. Luis A. Gonzalez, Justice Presiding,
Eugene Nardelli
John T. Buckley
James M. Catterson, Justices.

-----X
Robert J. A. Zito,
Plaintiff-Respondent,

-against-

M-1598
Index No. 602308/04

Fischbein Badillo Wagner Harding,
et al.,
Defendants-Respondents,

Nimkoff Rosenfeld & Schechter, LLP,
Outgoing Attorney-Appellant.

-----X

An appeal having been taken from the orders of the Supreme Court, New York County, entered on or about March 11, 2008 and March 17, 2008 (mot. seq. no. 052), respectively,

And plaintiff's outgoing counsel having moved for a stay of file turnover, pending hearing and determination of the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of staying all proceedings herein on condition appellant perfects the appeal for the September 2008 Term. Upon failure to so perfect an order vacating the stay may be entered ex parte, provided that respondent(s) serve a copy of this order upon appellant within 10 days from the date of entry hereof. Plaintiff-respondent may move to vacate the stay upon posting of an undertaking in the amount of \$50,000 to secure appellant's disbursements.

E N T E R:



Clerk.