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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

----------X

Robert D. Patenaude,

Plaintiff-Respondent,

-against-

M-3316
Index No. 306647/08

Shawn M. Patenaude,

Defendant-Appellant.

----------X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about May 10, 2010,

Now, upon reading and filing the stipulation of the parties hereto, dated June 24, 2010, 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It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

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

Respondent,

-against-

M-3912
Ind. No. 508/09

Calvin Delorbe,

Defendant-Appellant.
----------X

An appeal having been taken from the judgment of the Supreme Court, New York County, rendered on or about September 25, 2009,

Now, upon reading and filing the stipulation of the parties hereto, dated August 2, 2010, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

ENTER:

David Apolony

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 September 28, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

----------X

Robert Thomas,
Plaintiff-Respondent,

-against-

M-3972X
Index No. 8805/07

Thierno A. Bah, et al.,
Defendants-Appellants.

----------X

An appeal having been taken from an order of the Supreme Court, Bronx County, entered on or about January 21, 2009,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" August 5, 2010, 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It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.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 September 28, 2010.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

----------X
Stewart Title Insurance Company,
Plaintiff-Appellant,

-against-

M-3973X
Index No. 601162/09

Liberty Title Agency, LLC, et al.,
Defendants-Respondents.
----------X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about September 22, 2009 (mot. seq. no. 002),

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" August 5, 2010, 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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

----------X

Evangelia Manios Zachariou,

Plaintiff-Appellant,

-against-

M-4279X
Index No. 601196/06

Vassilios Manios,

Defendant-Respondent.

----------X

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about March 4, 2010 (mot. seq. no. 008),

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" August 23, 2010, and due deliberation having been had thereon,

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

ENTER:

David Friedman

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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

----------X

Nuria Olmo,
Plaintiff-Respondent-Respondent,

-against-

M-3583X
Index No. 300162/08

Martha R. Cuelmo,
Defendant-Respondent-Appellant

-and-

Jan Bujak, et al.,
Defendants-Appellants-Respondents.

----------X

An appeal and cross appeal having been taken from an order of the Supreme Court, Bronx County, entered on or about April 22, 2010,

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" July 14, 2010, and due deliberation having been had thereon,

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

ENTER:

David Spolony

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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

Beryl Abubakar, et al.,
Plaintiffs-Respondents,

M-3976

-against-

Index No. 111595/07

Columbus 95th Street LLC.,
Defendant-Appellant.

- - - - - - - - - - -

Columbus 95th Street LLC.,
Third-Party Plaintiff-Respondent-Appellant,

-against-

Index No. 591018/07

Ferrindino and Sons, Inc.,
Third-Party Defendant-Appellant-Respondent.

An appeal and cross appeal having been taken from the order of the Supreme Court, New York County, entered on or about April 8, 2010,

Now, upon reading and filing the stipulation of the parties hereto, dated July 23, 2010, and due deliberation having been had thereon,

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

ENTER:

David Apolony

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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

----------X

Kimberly McGreal,
Plaintiff-Respondent,

-against-

156 East 37th Street LLC, et al.,
Defendants-Appellants,

M-4303
Index No. 115576/06

-and-

T&G Contracting,
Defendant-Respondent.

----------X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about February 18, 2010 (mot. seq. no. 005),

Now, upon reading and filing the stipulation of the parties hereto, dated August 19, 2010, and due deliberation having been had thereon,

It is ordered that the appeal, previously perfected for the September 2010 Term, 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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

----------X

In the Matter of

Cherie Odessa Toni C. and
Carlo Orlando Jesus C.,

Children under 18 Years of Age
Pursuant to §384-b of the Social
Services Law,

- - - - - - - - - - - - - - - - - - - -

Administration for Children's Services, et al.,
Petitioners-Respondents,

M-2554
DC #50
Docket Nos. B25717/04
B25716/04

Sherry Annette C.,
Respondent-Appellant.

- - - - - - - - - - - - - - - - - - - -

Ruth Ann Litsky, Esq., Law Guardian for
the Child, Cherie Odessa Toni C.,

Robert Himmelman, Esq., Law Guardian for
the Child, Carlo Orlando Jesus C.

----------X

Appeals having been taken by appellant from the orders of the Family Court, Bronx County, entered on or about February 6, 2008,

And said appeal not having been brought on for hearing pursuant to the provisions of the Rules of Practice of the Appellate Division, First Department,

And a calendar call having been held by the Clerk of the Court on May 13, 2010, pursuant to Rule 600.12(c) of said Rules of Practice, and there being no response thereto,

Now, upon the Court's own motion, it is

Ordered that the aforesaid appeals are dismissed.

ENTER:

David Friedberg

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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

----------X
In the Matter of the Application of

Maria Colon,
Petitioner,

For a Judgment, etc.,

M-2556
DC #53
Index No. 100518/08

-against-

New York Office of Children,
Respondent.
----------X

An Article 78 proceeding to review a determination of respondent having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about May 14, 2008 (mot. seq. no. 001),

And said proceeding not having been brought on for hearing pursuant to the provisions of the Rules of Practice of the Appellate Division, First Department,

And a calendar call having been held by the Clerk of the Court on May 13, 2010, pursuant to Rule 600.12(c) of said Rules of Practice, and there being no response by counsel and/or petitioner,

Now, upon the Court's own motion, it is

Ordered that the aforesaid proceeding is dismissed.

ENTER:

David Friedberg

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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Angela M. Mazzarelli
Richard T. Andrias
David B. Saxe, Justices.

----------X

In the Matter of

Jacob Evan R.,

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

- - - - - - - - - - - - - -

The Children's Aid Society, et al.,
Petitioner-Respondent,

M-2564
DC #61
Docket No. B24624/06

Natividad G.,
Respondent-Appellant.

- - - - - - - - - - - - - -

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

----------X

An appeal having been taken by appellant from the order of the Family Court, Bronx County, entered on or about July 8, 2008,

And said appeal not having been brought on for hearing pursuant to the provisions of the Rules of Practice of the Appellate Division, First Department,

And a calendar call having been held by the Clerk of the Court on May 13, 2010, pursuant to Rule 600.12(c) of said Rules of Practice, and there being no response thereto,

Now, upon the Court's own motion, it is

Ordered that the aforesaid appeal is dismissed.

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 September 28, 2010.

Present: Hon. Luis A. Gonzalez, 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-2517
DC #38
Ind. No. 2542/02

-against-

Sharma Ross,

Defendant-Appellant.
----------X

An appeal having been taken to this Court by defendant from the judgment of the Supreme Court, Bronx County, rendered on or about March 30, 2005,

And said appeal not having been brought on for hearing pursuant to the provisions of the Rules of Practice of the Appellate Division, First Department,

And a calendar call having been held by the Clerk of the Court on May 13, 2010, pursuant to Rule 600.12(c) of said Rules of Practice, and counsel for appellant having submitted an affirmation seeking an enlargement of time in which to perfect the appeal,

Now, upon the Court's own motion, it is

Ordered that appellant's time in which to perfect the appeal is enlarged to the January 2011 Term and counsel is directed to so perfect.

ENTER:

David Friedman

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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
John W. Sweeny, Jr.
Rolando T. Acosta
Dianne T. Renwick
Nelson S. Román, Justices.

Verizon Directories Corp.,
Plaintiff-Appellant,

-against-

Continuum Health Partners, Inc.,
Defendant-Respondent.

M-3811
Index No. 117782/05

Plaintiff-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on June 1, 2010 (Appeal No. 2948),

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:

David Friedman
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 September 28, 2010.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
John W. Sweeny, Jr.
Rolando T. Acosta
Dianne T. Renwick
Nelson S. Román, Justices.

----------X

Mercury Partners, Inc.,

Plaintiff-Appellant-Respondent,

-against-

M-3951
Index No. 600814/09

White Eagle Partners, LLC,

Defendant-Respondent-Appellant.

----------X

Plaintiff-appellant-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 June 1, 2010 (Appeal No. 2945),

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:

David Apolaro

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 September 28, 2010.

PRESENT: Hon. Peter Tom, Justice Presiding
Eugene Nardelli
John T. Buckley
James M. Catterson, Justices.

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

-against-

M-2851
Ind. No. 7805/98

Eric Paul,
Defendant-Appellant.
----------X

A decision and order of this Court having been entered on November 27, 2001 (Appeal No. 5247), unanimously affirming a judgment of the Supreme Court, New York County (Bruce Allen, J.), rendered on July 20, 1999,

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:

David Spolony
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 September 28, 2010.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
John W. Sweeny, Jr.
James M. Catterson
Leland G. DeGrasse
Sallie Manzanet-Daniels, Justices.

----------x

Julio Bobet,
Plaintiff-Respondent,

-against-

M-4325
Index No. 110819/04

Rockefeller Center, North, Inc., et al.,
Defendants-Appellants.
- - - - - - - - - - - - - - - -
[And other actions]

----------x

An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about March 23, 2009, and said appeal having been perfected,

And defendants-appellants having moved for leave to strike plaintiff-respondent's brief in connection with 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 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 September 28, 2010.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
John W. Sweeny, Jr.
James M. Catterson
Leland G. DeGrasse
Sallie Manzanet-Daniels, Justices.

----------X
Sidikat Kasumu,

Plaintiff-Respondent,

-against-

M-4137
Index No. 402030/04

The City of New York,

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, New York County, entered on or about September 22, 2009 (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.

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 September 28, 2010.

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

----------X

Angela Davido,
Plaintiff-Respondent,

-against-

M-3105
Index No. 306128/08

Jorge Salazar and JCV Trucking, LLC,
Defendants-Appellants,

Juda Construction, Ltd.,
Defendant.

----------X

Defendants-appellants having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, Bronx County, entered on or about August 17, 2009,

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 the appeal is dismissed.

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 September 28, 2010.

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

----------X

In the Matter of the Application of John Samuelsen, Individually and as President of Local 100, Transport Workers Union of Greater New York, Bertha Lewis and the Association of Community Organizations for Reform Now, Inc.,

Petitioners-Respondents,

M-3126
Index No. 105957/10

For an Order Pursuant to Article 78 of the Civil Practice Law and Rules and Section 1204 and 1205 of the Public Authorities Law,

-against-

Jay Walder, as Chief Executive Officer of the Metropolitan Transportation Authority and the New York City Transit Authority,

Respondents-Appellants.

----------X

Municipal respondents having taken an appeal to this Court from the judgment of the Supreme Court, New York County, entered on or about June 9, 2010,

And petitioners-respondents having moved for an order declaring that municipal respondents-appellants do not enjoy the automatic stay provisions of CPLR 5519(a) [1.] or in the alternative, an order vacating the aforesaid automatic stay,

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 September 28, 2010.

Present - Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
John W. Sweeny, Jr.
Helen E. Freedman
Nelson S. Román, Justices.

----------X

In re Andrew Arnold,
Petitioner-Appellant,

-against-

New York State Division of Human Rights,
Respondent,

M-3527
Index No. 260282/08

Beth Abraham Health Services, Inc., et al.,
Respondents-Respondents.

----------X

Petitioner-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on February 25, 2010 (Appeal No. 2250),

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:

David Friedman

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 September 28, 2010.

PRESENT: Hon. Richard T. Andrias, Justice Presiding
James M. Catterson
Dianne T. Renwick
Rosalyn H. Richter
Nelson S. Román, Justices.

----------X
In re Thomas Winston, et al.,
Petitioners-Appellants,

-against-

M-3124
Index No. 109389/08

Leslie Torres, Deputy Commissioner,
State of New York Division of Housing
and Community Renewal, etc.,
Respondent-Respondent.
----------X

Petitioners-appellants 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 May 13, 2010 (Appeal No. 2795),

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 September 28, 2010.

PRESENT - Hon. David B. Saxe, Justice Presiding
David Friedman
Eugene Nardelli
Karla Moskowitz
Rosalyn H. Richter, Justices.

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

-against-

M-3635
Ind. No. 3651/08

Vernon Sharp, also known as
Vernon Sharp III,
Defendant-Appellant.
----------X

An appeal having been taken to this Court by defendant from the judgment of the Supreme Court, New York County, rendered on or about May 11, 2010,

And defendant having renewed his motion for leave to prosecute said appeal as a poor person, for the assignment of 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 the motion is denied, with leave to renew upon defendant's submission of a detailed notarized affidavit, pursuant to CPLR 1101(a), setting forth facts sufficient to establish that defendant has no funds or assets with which to prosecute the 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 September 28, 2010.

Present - Hon. David B. Saxe, Justice Presiding,
David Friedman
Karla Moskowitz
Helen E. Freedman
Nelson S. Román, Justices.

----------x

Sarbjeet Kaur, etc.,
Plaintiff-Respondent,

-against-

Baker, McEvoy, Morrisey & Moskovitz, P.C.,
Defendant-Appellant,

M-4159
Index No. 117142/07

American Transit Insurance Company, et al.,
Defendants.

----------x

An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about January 5, 2010 (mot. seq. no. 003), and said appeal having been perfected,

And defendant-appellant having moved for an order granting leave to correct the record on appeal by substituting page 130 thereof with a true and correct copy of the document submitted to Supreme 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.

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 September 28, 2010.

Present: Hon. David B. Saxe, Justice Presiding,
David Friedman
Karla Moskowitz
Helen E. Freedman
Nelson S. Román, Justices.

----------X
Stevi Brooks Nichols,
Plaintiff-Appellant,

-against-

M-4388
Index No. 112297/08

W. Roberts Curtis, Esq., et al.,
Defendants-Respondents.
----------X

An appeal having been taken from the orders of the Supreme Court, New York County, entered on or about July 16, 2010 and July 19, 2010, respectively,

And plaintiff having moved for an order staying a certain referee hearing on sanctions 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 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 September 28, 2010.

PRESENT: Hon. David Friedman, Justice Presiding,
John W. Sweeny, Jr.
Karla Moskowitz
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

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

-against-

M-3215
Ind. No. 4265/07

Abraham Conde,
Defendant.
----------X

An order of this court having been entered on May 18, 2010 (M-1269) dismissing the appeal taken from the judgment of the Supreme Court, New York County, rendered on or about April 10, 2008,

And defendant having moved for reinstatement of the aforesaid 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 denied.

ENTER:

David Friedman

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 September 28, 2010.

Present - Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

----------x

Orlie Co.,

Plaintiff-Appellant,

-against-

M-3287
Index No. 110640/06

Update International, Inc., et al.,

Defendants-Respondents.

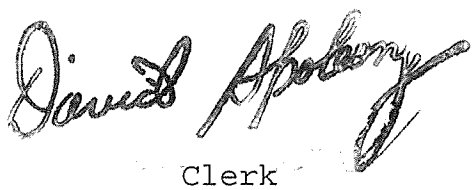
----------x

Defendant-respondent Empire Restaurant Supply, Inc. having moved for dismissal of the appeal from the order of the Supreme Court, New York County, entered on or about July 27, 2009 (mot. seq. no. 002), for failure to timely perfect,

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.

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 September 28, 2010.

Present - Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

De Hang Lin,

Plaintiff-Appellant,

-against-

M-3443
Index No. 119189/06

Ai Ping Zhang,

Defendant-Respondent.

Defendant-respondent having moved for dismissal of the appeal from the judgment of the Supreme Court, New York County, entered on or about February 13, 2009, for failure to timely perfect,

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.

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 September 28, 2010.

Present - Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

----------x
In the Matter of the Application of
Mayline Elizbeth Esposito,
Petitioner,

For an Order, etc., M-3477
Index No. 403150/09

-against-

New York City Housing Authority,
Respondent.
----------x

An Article 78 proceeding to review a determination of respondent having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about March 29, 2010,

And respondent New York City Housing Authority having moved for dismissal of the proceeding for failure to timely perfect the proceeding,

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 proceeding is dismissed.

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 September 28, 2010.

Present - Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

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

M-3414
-against- Ind. No. 4633/92

Isaac Hudson, also known as Richard Dickerson,
Defendant-Appellant.
----------X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the judgment of **resentence** of the Supreme Court, New York County, entered on or about May 18, 2010, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, and for related relief,

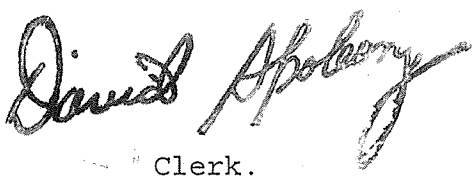
Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard upon the original record 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 **resentence**. 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 September 28, 2010.

Present - Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

The People of the State of New York,
Respondent,

-against-

M-3457
Ind. No. 5673/07

Joshua C. Trimiar,
Defendant-Appellant.

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about May 29, 2009, for leave to have the appeal heard upon the original record and 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 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 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, 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.

ENTER:

David Friedman

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 September 28, 2010.

PRESENT - Hon. David Friedman, Justice Presiding
James M. Catterson
Karla Moskowitz
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

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

-against-

M-3739
Ind. Nos. 475-77/00
482-484/00
4232/00

Bernard Brown,
Defendant-Appellant.
----------X

An order of this Court having been entered on July 13, 2010 (M-2988) granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about February 17, 2010, and assigning Steven Banks, Esq., as counsel to prosecute the appeal; and a motion having been made to relieve such 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 the motion is granted to the extent of striking the designation of assigned counsel Steven Banks, Esq., as counsel to prosecute defendant's appeal, and substituting, pursuant to Section 722 of the County Law, Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York 10007, Telephone No. (212)402-4100, as such counsel. The poor person relief previously granted is continued, and appellant's time in which to perfect the appeal is enlarged until 120 days from the date of this order or the filing of the record, whichever is later.

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 September 28, 2010.

Present - Hon. David Friedman, Justice Presiding,
Eugene Nardelli
Karla Moskowitz
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

----------X
Glencord Building Corp. and Giustizia Aggressivo, LLC, as Tenants-in-Common,
Petitioner-Landlord-Respondent,

-against-

Elena Strujan,
Respondent-Tenant-Appellant,

M-2381
Index No. 570466/09

-and-

"John Doe,"
Respondent-Undertenant.
----------X

Respondent-Tenant-Appellant having moved for leave to appeal to this Court 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 February 18, 2010, 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 denied in its entirety.

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 September 28, 2010.

Present - Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Sheila Abdus-Salaam, Justices.

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

Respondent,

-against-

M-3507
Ind. No. 571/02

Abdul Rauf,

Defendant-Appellant.
----------x

Defendant-appellant 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 January 15, 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 granted to the extent of enlarging the time in which to perfect the appeal to the January 2011 Term, with no further enlargements to be 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 September 28, 2010.

Present - Hon. David Friedman, Justice Presiding,
James M. Catterson
Karla Moskowitz
Sheila Abdus-Salaam, Justices.

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

-against-

M-2244
Ind. No. 3452/95

Julio Gomez,

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 June 1, 1995, 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 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 September 28, 2010.

PRESENT: Hon. Eugene Nardelli, Justice Presiding
James M. McGuire
Rolando T. Acosta
Helen E. Freedman
Nelson S. Román, Justices.

----------X

National Union Fire Insurancce Company of Pittsburgh, PA.,
Claimant-Appellant,

-against-

M-2962
Claim No. 106936

State of New York,
Defendant-Respondent.

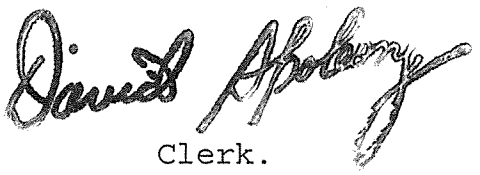
----------X

Claimant-appellant having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on April 29, 2010 (Appeal No. 2669),

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 September 28, 2010.

Present - Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------x
Diane Gantt, et al.,

Plaintiffs-Appellants,

-against-

M-3802
Index No. 104288/06

Roslyn Leasing, Inc., et al.,

Defendants-Respondents.
----------x

Defendants-respondents having moved for dismissal of the appeal from the order of the Supreme Court, New York County, entered on or about September 18, 2009, for failure to timely perfect,

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.

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 September 28, 2010.

Present - Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

In the Matter of the Application of
Cathy Gamble,
Petitioner,

For an Order, etc.,

M-3854
Index No. 400397/09

-against-

New York City Housing Authority,
Respondent.

An Article 78 proceeding to review a determination of respondent having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about October 7, 2009,

And respondent New York City Housing Authority having moved for dismissal of the proceeding for failure to timely perfect the proceeding,

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 proceeding is dismissed.

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 September 28, 2010.

PRESENT - Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

M-3557
Ind. No. 3441/09

Corey Williams,
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 June 9, 2010, 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 denied, with leave to renew upon defendant's submission of a detailed notarized affidavit, in compliance with CPLR 1101(a), setting forth the terms of defendant's retainer agreement with trial counsel, 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:

David Apolcyn

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 September 28, 2010.

PRESENT: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

The People of the State of New York,
Respondent,

-against-

M-3700
Ind. No. 1343N/06

Joe Mucetti,
Defendant-Appellant.

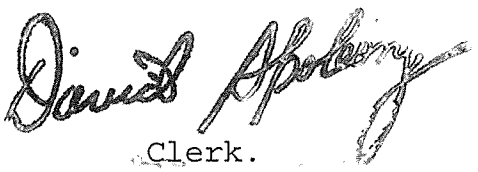
Defendant having moved for an extension of time in which to file a notice of appeal from the judgment of the Supreme Court, New York County, rendered on or about August 12, 2009, for leave to prosecute the appeal as a poor person, on the original record and upon a reproduced appellant's brief, and for 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 deeming the moving papers a timely filed notice of appeal.

The motion, to the extent that it seeks poor person relief, is denied, with leave to renew upon defendant's submission of a notarized affidavit, pursuant to CPLR 1101, setting forth facts sufficient to establish that defendant has no funds or assets with which to prosecute the 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 September 28, 2010.

PRESENT - Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------X

Anthony R. Daniele,
Plaintiff-Respondent,

-against-

M-3756
Index. No. 603336/08

Kimi C. Puntillo,
Defendant-Appellant.

----------X

Defendant-appellant pro se having moved for, inter alia, leave to prosecute as a poor person, the appeal from the order of the Supreme Court, New York County, entered on or about July 21, 2010 (mot. seq. no. 005), for leave to have the appeal heard on the original record and upon a reproduced appellant's brief; for a stay of all proceedings, an adjournment of said 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 so much of the motion which seeks leave to prosecute the appeal as a poor person is denied, with leave to renew upon submission of a detailed notarized affidavit, pursuant to CPLR 1101(a), setting forth facts sufficient to establish that plaintiff-appellant has no funds or assets with which to prosecute the appeal. 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 September 28, 2010.

PRESENT: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Roman, Justices.

NYCTL 1998-02 Trust and the Bank of New York, Collateral Agent and Custodian,
Plaintiffs-Respondents,

-against-

Norman Ackerman,
Defendant-Appellant.

M-4122
M-4346
Index No. 115924/01

Defendant-appellant having moved (M-4122) for leave to prosecute, as a poor person, the appeal from an order of the Supreme Court, New York County, entered on or about October 7, 2009 (mot. seq. no. 017), and for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for other relief,

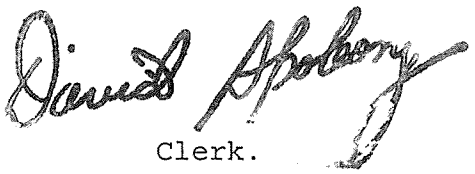
And plaintiffs-respondents having cross-moved(M-4346) to dismiss the aforesaid appeal,

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

It is ordered that the motion (M-4122) is granted to the extent of enlarging appellant's time in which to perfect the appeal to on or before November 8, 2010, for the January 2011 Term and 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 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.

It is further ordered that the cross-motion (M-4346) is denied, with leave to renew, should the aforesaid appeal not be perfected for the January 2011 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 September 28, 2010.

PRESENT: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------X

Avivith Oppenheim, et al.,
Plaintiffs-Appellants,

-against-

M-3633
Ind. No. 602408/06

Mojo-Stumer Associates Architects, P.C., etc., et al.,
Defendants-Respondents,

Joseph Viscuso,
Defendant.

----------X

Plaintiffs-appellants having moved for an enlargement of time in which to perfect the appeal from the decision and order of the Supreme Court, New York County, entered on or about September 21, 2009,

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 January 2011 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 September 28, 2010.

Present - Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------x

Avonia Beckford,

Plaintiff-Appellant,

-against-

M-3676
Index No. 16466/07

The New York City Housing Authority, et al.,

Defendants-Respondents.

----------x

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, Bronx County, entered on or about October 5, 2009,

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 January 2011 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 September 28, 2010.

PRESENT - Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

M-3831
Ind. No. 4895/07

Freddie Gonzalez,
Defendant-Appellant.
----------X

An appeal having been taken from the judgment of the Supreme Court, New York County, rendered on or about September 17, 2008,

And defendant-appellant having moved for an order enlarging the record on appeal to include, and granting the unsealing of the Darden hearing minutes and related paperwork herein, including the sealed portions of the Court's suppression decision below, and vacating any protective order precluding appellate counsel from access to such materials under New York County Ind. No. 4895/07,

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:

David Buckley

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 September 28, 2010.

PRESENT: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------X

Linda Merritt,
Plaintiff-Appellant,

-against-

M-3882
Index No. 603673/08

Michael V. Blumenthal, Esq.,
Brown Raysman Millstein Felder &
Steiner LLP and Thelen LLP,
Defendants-Respondents.

----------X

Plaintiff-appellant 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 September 10, 2009 (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 to the extent of enlarging the time in which to perfect the appeal to the January 2011 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 September 28, 2010.

PRESENT: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------X

Manuel Nunez and Rebecca Gomez, Individually and as Officers/Directors and Shareholders of 1005 Walton Ave LLC, 2338 University Ave LLC, 2847 Davidson Ave. LLC, 1170 Gerard Ave LLC, 5 East 196th St LLC, 3232 LLC & 1129 Lanz LLC,
Petitioners-Respondents,

-against-

M-3834
Index No. 260031/09

Luis A. Nunez and Guillermina Nunez, Individually and as Officers/Directors and Shareholders of 1005 Walton Ave LLC, 2338 University Ave LLC, 2847 Davidson Ave. LLC, 1170 Gerard Ave LLC, 5 East 196th St LLC, 3232 LLC & 1129 Lanz LLC,
Respondents-Appellants.

----------X

Respondents-appellants having moved for an enlargement of time in which to perfect the appeal from the order of the Supreme Court, Bronx County, entered on or about November 2, 2009,

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

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the March 2011 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 September 28, 2010.

PRESENT: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------X

Laurie Katz,
Plaintiff-Appellant,

-against-

M-3984
M-4088
Index No. 107821/07

Board of Managers, One Union Square East Condominium, New York, New York and American Insurance Company,
Defendants-Respondents.

----------X

Plaintiff-appellant having moved (M-3984) for an enlargement of time in which to perfect the appeal taken from the order of the Supreme Court, New York County, entered on or about November 9, 2009,

And defendants-respondents having cross-moved (M-4088) to dismiss the aforesaid appeal,

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 (M-3984) is granted to the extent of enlarging the time in which to perfect the appeal to the January 2011 Term, with no further enlargements to be granted. The cross-motion (M-4088) is dismissed for lack of service.

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 September 28, 2010.

Present - Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------x

Kolmar Americas, Inc.,

Plaintiff-Appellant,

-against-

M-4261
Index No. 602644/08

Marathon Petroleum Company LLC,

Defendant-Respondent.

----------x

An appeal having been taken to this Court from the judgment of the Supreme Court, New York County, entered on or about October 27, 2009,

And defendant-respondent having moved for leave to enlarge the record on appeal to include certain e-mail exchanges between the parties' counsel dated September 23, 2009 (Exhibit A to the moving papers), or for alternative 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 denied.

ENTER:

David Spolansky

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 September 28, 2010.

PRESENT: Hon. Leland G. DeGrasse, Justice Presiding
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

Manuel Mata,
Plaintiff-Appellant,

-against-

M-3488
Index Nos. 23055/03
84118/04
84730/05

The Park Here Garage, Corp. and
Jonathan & Gabrielle Parking, Inc.,
Defendants-Respondents.

The Park Here Garage Corp.,
Third-Party Plaintiff-Respondent,

-against-

Jonathan & Gabrielle Parking, Inc.
Third-Party Defendant-Respondent.

(And a Second Third-Party Action)

Defendant/third-party defendant/second third-party plaintiff Jonathan & Gabrielle Parking, Inc. having moved for a stay of trial pending hearing and determination of a motion for leave to appeal to the Court of Appeals, from the decision and order of this Court, entered on or about March 4, 2010 (Appeal No. 1674), 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 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 September 28, 2010.

PRESENT - Hon. Leland G. DeGrasse, Justice Presiding
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------X

Michael Rosen, James Garfinkel, Steven Lazarus, Bruce Montague, and Alan Dorfman,
Petitioners-Appellants,

-against-

M-3868
Index No. 104829/10

Jacob Joseph Lebewohl, also known as Jack Lebewohl, et al.,
Defendants-Respondents.

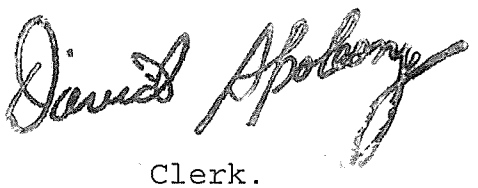
----------X

The above-named petitioners, in connection with the appeal taken from the order and judgment (one paper) of the Supreme Court, New York County, entered on or about July 28, 2010, having moved for an order in the nature of a preliminary appellate injunction pursuant to CPLR 5518 barring respondent trustees and officers of respondent Community Synagogue Center from, inter alia, taking any actions with respect to Synagogue membership, tenancies, bylaws and assets, except in the ordinary course of business, 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 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 September 28, 2010.

Present - Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------X

In the Matter of the Application of
Gotham City Partners, LLC,
Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

M-3964
Index No. 108257/10

-against-

New York State Liquor Authority,
Respondent.

----------X

An Article 78 proceeding to review a determination of respondent 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 28, 2010,

And petitioner having moved for an order staying and restraining respondent from enforcing the imposition of Civil Penalty and/or order of revocation dated July 30, 2010, pending hearing and determination of the aforesaid proceeding,

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

It is ordered that the motion is denied.

ENTER:

David Applebaum

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 September 28, 2010.

PRESENT: Hon. Leland G. DeGrasse, Justice Presiding,
Helen E. Freedman
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

----------X
Allen Baskerville,
Plaintiff-Appellant,

-against-

M-3704
Index No. 100257/06

Christ Temple of the Apostolic Faith, Inc.,
Defendant-Respondent.
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An appeal having been taken to this Court by plaintiff from the order of the Supreme Court, New York County, entered on or about March 2, 2010 (mot. seq. no. 003),

And retained counsel, Jacob Rabinowitz, Esq., having moved for an order relieving him as appellant's counsel, and for a stay of this action,

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 that counsel serves a copy of this order upon all parties within 10 days of the date of entry hereof. The action is stayed for a period of thirty days from the date of service of a copy of this order as indicated.

ENTER:

Clerk.

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

SEP 28 2010

Luis A. Gonzalez, Presiding Justice,
Peter Tom
Richard T. Andrias
Eugene Nardelli
Nelson S. Román, Justices.

In the Matter of Marc A. Bernstein
(admitted as Marc Alan Bernstein),
an attorney and counselor-at-law:

Departmental Disciplinary Committee for the First Judicial Department, Petitioner, — M-2671, M-2698

Marc A. Bernstein, Respondent.

Disciplinary proceedings instituted by the Departmental Disciplinary Committee for the First Judicial Department. Respondent, Marc A. Bernstein, 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 February 8, 1982.

Alan W. Friedberg, Chief Counsel, Departmental Disciplinary Committee, New York (Eileen J. Shields, of counsel), for petitioner.

Arthur L. Aidala, for respondent.

M-2671, M-2698 (May 28, 2010)

IN THE MATTER OF MARC A. BERNSTEIN, A SUSPENDED ATTORNEY

Per Curiam

Respondent Marc A. Bernstein was admitted to the practice of law in the State of New York by the First Judicial Department on February 8, 1982, under the name Marc Alan Bernstein. At all times relevant herein, respondent has maintained an office for the practice of law within the First Judicial Department.

By order entered April 23, 2009, this Court immediately suspended respondent from the practice of law pursuant to 22 NYCRR 603.4(e)(1)(i), (ii) and (iii), based upon his failure to cooperate with the lawful demands of the Departmental Disciplinary Committee and his substantial admission under oath that he converted clients' settlement funds to his personal use, and other uncontested evidence of professional misconduct (*Matter of Bernstein*, 63 AD3d 87 [2009]).

In May and July 2009, respondent was charged in two separate indictments filed in Supreme Court, New York County, with nine counts of grand larceny in the second degree (Penal Law § 155.40[1]), a class C felony, seven counts of grand larceny in the third degree (Penal Law § 155.35), a class D felony, one count of scheme to defraud in the first degree (Penal Law § 190.65[1][a]), and two counts of scheme to defraud in the first degree (Penal Law § 190.65[1][b]), both class E felonies, for

stealing funds from escrow accounts. In March 2010, respondent was charged in an indictment filed in Supreme Court, New York County, with criminal tax fraud in the second degree (Tax Law § 1805), a class C felony, offering a false instrument for filing in the first degree (Penal Law § 175.35), a class E felony, and three counts of repeated failure to file income and earnings taxes (Tax Law § 1802[a]), a class E felony.

On April 5, 2010, respondent pleaded guilty to the felony charges in the first two indictments, as adjusted.[1] As to the March 2010 indictment, he pled guilty to offering a false instrument for filing in the first degree, and two counts of repeatedly failing to file State income tax returns for the years 2003 through 2007.

Specifically, respondent admitted that between 2006 and 2009, he stole settlement and escrow funds from 16 medical malpractice and personal injury clients and a $900,000 deposit he was holding in escrow for a real estate purchaser. He also schemed to defraud approximately 13 additional clients in which he obtained property with a value in excess of $1,000. The total amount of his theft is believed to be approximately $2.2 million. Respondent also admitted that his filed New York State income tax return for 2008 contained material false information and

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[1] Count 6 of the July 2009 indictment (3553/09), alleging scheme to defraud in the first degree was dismissed.

statements by which he understated and underpaid the taxes due on the money he stole by more than $50,000, and that he repeatedly failed to file State personal income tax returns from 2003 through 2007. Respondent was ordered to pay a minimum of $200,000 in restitution by June 3, 2010, his scheduled sentencing date, at which time a restitution hearing was to be held to determine the total amount of restitution to be ordered.

By petition dated May 12, 2010, the Disciplinary Committee seeks an order striking respondent's name from the roll of attorneys pursuant to Judiciary Law § 90(4)(a) and (b), upon the ground that he was automatically disbarred upon his conviction of a felony as defined by Judiciary Law § 90(4)(e) (*see Matter of Caro*, 46 AD3d 136 [2007]; *Matter of Szegda*, 42 AD3d 193 [2007]). Respondent's counsel was served with this motion but no response has been submitted.

Respondent's conviction of New York felonies constitutes grounds for automatic disbarment under Judiciary Law § 90(4)(*see Matter of Cherry*, 51 AD3d 119 [2008][automatic disbarment based upon conviction of grand larceny in the second and third degree]; *Matter of DeGrasse*, 44 AD3d 107 [2007][automatic disbarment based upon conviction of grand larceny in the second degree]). For the purposes of automatic disbarment, conviction occurs at the time of plea or verdict (*Matter of Sheinbaum*, 47 AD3d 49 [2007]; *Matter of Ramirez*, 7 AD3d 52 [2004]). Accordingly, the

Committee's motion to strike respondent's name from the roll of attorneys and counselors-at-law, pursuant to Judiciary Law § 90(4)(b), should be granted, and respondent's name stricken from the roll of attorneys and counselors-at-law, nunc pro tunc to April 5, 2010, the date of his plea.

By separate motion dated May 13, 2010, the Committee requests an order pursuant to 22 NYCRR 603.13(g) appointing an attorney to inventory respondent's files and to take such action as seems indicated to protect the interests of his clients on the ground that respondent has "stonewalled" every effort to return client files to those from whom he stole settlement funds. The clients need documents from their files to prove how much they are entitled to receive in restitution and to support their claims with the Lawyers' Fund for Client Protection.

The Committee advises that beginning in early 2009, after it sought respondent's interim suspension, and continuing through the fall of 2009, it has received a "steady stream of complaints" from respondent's clients alleging that, not only did he fail to disburse their settlement funds to them but that he completely stopped communicating with them. In March/April 2009, the Committee was contacted by Jordan Hecht, Esq., from whom respondent had subleased an office in the Hecht law firm's suite, reporting that respondent's clients were coming to the office to get their files but he could not release them because the files

did not belong to him. By June 2009, Mr. Hecht informed the Committee that respondent had removed his files from the office but left no instructions for contacting him.

During this same time period (March 2009), the District Attorney's Office endeavored to assist the complainants in obtaining their files so they could prove respondent's thefts, and aided them in filing claims with the Lawyers' Fund for Client Protection. According to an affidavit of ADA Keith, in September 2009, Judge Carruthers ordered respondent to produce all client files to the District Attorney's Office for return to his former clients, but respondent produced only 15 files. On March 19, 2010, Judge Carruthers ordered respondent to produce an inventory of his files by March 30, 2010, but he has not yet complied. ADA Keith further states that Archive Systems, Inc., has a storage facility in New Jersey at which respondent has placed dozens of boxes of files, yet respondent has not paid for the storage space and Archive's collection department is seeking payment. Based upon her conversation with the representative at Archive, ADA Keith states that "it seems clear that it will take a court appointed receiver or some other mechanism of the courts to get access to the client files locked in the New Jersey storage facility." In addition, respondent's attorney in the criminal proceeding informed ADA Keith that respondent handed over to a successor law firm the few cases and client files he considered

viable, ongoing matters and it is unclear if the affected clients were given notice of such transfer. Ms. Keith hopes that a receiver may be able to obtain the proper return of the complainants' property (their files) which they need for a restitution hearing.

The Committee adds that respondent's files in the storage facility are in danger of being destroyed and respondent's conduct has, in effect, obstructed the remaining clients from accessing their own files. Staff counsel notes that it is in respondent's own interest not to return said files so that his clients cannot prove their losses, thereby reducing the amount of restitution ordered by the court as well as the reimbursement he will owe to the Lawyers' Fund.

Accordingly, the Committee's petition to appoint an attorney pursuant 22 NYCRR 603.13(g) to inventory the client files of respondent, Marc A. Bernstein, Esq., and to take such action as seems indicated to protect the interests of his clients should be granted.

All concur.

Order filed.

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

SEP 28 2010

Peter Tom, Justice Presiding,
Richard T. Andrias
David Friedman
Eugene Nardelli
Rosalyn H. Richter, Justices.

In the Matter of Alireza Dilmahani,
an attorney and counselor-at-law:

Departmental Disciplinary Committee for the First Judicial Department, Petitioner, M-5210 M-5718

Alireza Dilmaghani, Respondent.

Disciplinary proceedings instituted by the Departmental Disciplinary Committee for the First Judicial Department. Respondent, Alireza Dilmaghani, was admitted to the Bar of the State of New York at a Term of the Appellate Division of the Supreme Court for the Third Judicial Department on April 15, 1997.

Alan W. Friedberg, Chief Counsel, Departmental Disciplinary Committee, New York (Naomi F. Goldstein, of counsel), for petitioner.

Richard M. Maltz, for respondent.

M-5210 and M-5718 - December 29, 2009

IN THE MATTER OF ALIREZA DILMAGHANI, AN ATTORNEY

PER CURIAM

Respondent was admitted to the practice of law in the State of New York by the Third Judicial Department on April 15, 1997, and at all times relevant to this matter has maintained an office for the practice of law within the First Judicial Department.

Although admitted in 1997, respondent did not begin to practice law until October 2003, when he became an associate at the Furman Law Firm, which concentrated in post-conviction motion practice in criminal matters. The principal of the Furman Law Firm was Daniel Furman, who employed as an associate, in addition to respondent, Antoinette Wooten, an attorney admitted only in New Jersey. Upon Mr. Furman's death in March 2004, respondent became the attorney for his estate, and formed his own law firm, variously named the New Furman Law Firm, Furman Law Offices, or Furman Law Firm, consisting only of himself.

In June 2008, the Departmental Disciplinary Committee (Committee) served respondent with a notice of 19 disciplinary charges against him, to which a 20th charge was added by pre-hearing stipulation. The charges against respondent relate to his dealings with 13 clients of the Furman Law Firm and their cases after Mr. Furman's death. The charges involve allegations that respondent made misrepresentations to a Federal Magistrate Judge and the Committee, disregarded a court order, neglected

legal matters, undertook legal matters he was not competent to handle, interacted with clients and colleagues in an abusive manner, charged excessive fees, charged non-refundable retainers, disseminated deceptive advertising, and failed to keep records, in violation of 10 Disciplinary Rules: DR 1-102(A)(4), (5), and (7); 2-101(A); 2-106, 2-110(A)(3), 6-101(A)(1) and (3); 7-101(A); and 7-106(A).

The Referee, after receiving evidence, sustained 9 of the 20 charges, and recommended a sanction of public censure. The Hearing Panel disagreed to the extent of sustaining 19 charges and recommending a sanction of an 18-month suspension. The Committee now moves to confirm the Hearing Panel's findings of misconduct and its recommendation that an 18-month suspension be imposed. Respondent cross moves to confirm the Referee's report and his recommendation that respondent be publicly censured; in the event that this Court sustains any or all of the charges the Referee dismissed, respondent requests a 3-month suspension.

The 19 charges sustained by the Hearing Panel (the Committee no longer pursues charge 17) may be summarized as follows:

The Baron Erby Matter (Charges 1-5)

Charge 1 alleges that, by failing to file a reply to the People's opposition to Erby 's federal habeas corpus petition, and belatedly filing a motion to hold the petition in abeyance, when he had been specifically retained on the petition,

respondent failed to seek the lawful objectives of the client (DR 7-101[A]).

Charge 2 alleges that respondent's failure to advise the Magistrate presiding over the Erby matter of his change of address caused delay while the court tried to locate him, which was prejudicial to the administration of justice (DR 1-102[A][5]).

Charge 3 alleges that respondent's statement to the Magistrate that Erby had not retained him was false (DR 1-102[A][4]).

Charge 4 alleges that, by representing Erby on the habeas petition when he knew he was not competent to handle it without associating with an experienced attorney, respondent violated DR 6-101(A)(1).

Charge 5 alleges that respondent's overall handling of the Erby matter adversely reflects on his fitness to practice law DR 1-102[A][7]).

The Nancy Schmelzer Powers Matter (Charges 6-8)

Charge 6 alleges that, by failing to file a response to the People's answer to Powers's federal habeas corpus petition, respondent neglected a legal matter (DR 6-101[A][3]).

Charge 7 alleges that, by failing to inform the United States District Court for the Western District of New York of his admission status in that district, as directed, he disregarded a

ruling of a tribunal (DR 7-106[A]).

Charge 8 alleges that respondent's statements to the Committee that he never committed to representing Powers and that he did not have her file were false (DR 1-102[A][4]).

The Lentworth A. Brown Matter (Charge 9)

Charge 9 alleges that respondent's telling Brown that he did not know who he was and had nothing to do with his case, after filing a brief on his behalf and inviting Brown to retain him after Furman's death, adversely reflected on his fitness to practice law (DR 1-102[A][7]).

The Moses James Matter (Charges 10-12)

Charge 10 alleges that, by failing to complete his representation of James, respondent neglected a legal matter (DR 6-101[A][3]).

Charge 11 alleges that respondent's letter to James insisting that he had nothing to do with his case adversely reflects on his fitness to practice law (DR 1-102[A][7]).

Charge 12 alleges that respondent's failure to retain any documentary evidence that he had returned James's file, as he had committed to do, also adversely reflected on his fitness to practice law (DR 1-102[A][7]).

The Edward Guzman, Veronica Sullivan, Luis Burgos-Santos, and Susano Pagan Matters (Charge 13)

Charge 13 alleges that respondent's failure to account for the disposition of the files of the above-listed clients

adversely reflects on his fitness to practice law (DR 1-102[A][7]).

The Terrance Scott, Daniel McQueen, Javier Pacheco, and Marcus Telesford Matters (Charges 14-16)

Charge 14 alleges that respondent charged Scott an excessive fee, in violation of DR 2-106(B), by charging $7,575 over and above the $4,500 retainer already paid, and by failing to maintain any time records to justify the fee.

Charge 15 alleges that respondent's denial to the Committee that he represented Scott was false (DR 1-102[A][4]).

Charge 16 alleges that the non-refundable retainer agreements with Scott, McQueen, Pacheco, and Telesford adversely reflected on respondent's fitness to practice law (DR 1-102[A][7]) and contravened DR 2-110(A)(3), which requires the return of unearned fees.

Advertising (Charge 18)

Charge 18 alleges that respondent violated DR 1-102(A)(4) (prohibiting "conduct involving dishonesty, fraud, deceit, or misrepresentation") by engaging in false advertising. Specifically, he promulgated -- only six months after he started practicing law, and one month after he started a solo practice -- a form letter making the following statements:

> "My team of attorneys has hundreds of years of combined experience . . . . My team is made up of trial lawyers and includes former prosecutors. Over the years we have worked on every type of criminal and civil case you can imagine. We know every trick in the book that

was used to convict you."

In addition, from 2005 to May 2006, respondent maintained a website on which he claimed to be an "expert" in state and federal post-conviction motions who had "handled at least one hundred criminal cases," and asserted that "[f]ew attorneys have spent as much time in the courtrooms of this city" as he had.

Totality of Conduct (Charge 19)

Charge 19 alleges that all of the other charges evinced a pattern of conduct that adversely reflects on respondent's fitness to practice law (DR 1-102[A][7]).

The Jose Vaello Matter (Charge 20)

Charge 20 concerns respondent's communications with assigned appellate counsel for Vaello, whom respondent and Wooten (respondent's associate at the Furman Law Firm) had represented at the trial that resulted in Vaello's conviction for rape and other crimes. After Vaello's conviction, his appellate counsel (Claudia Trupp and Robert Dean of the Center for Appellate Litigation) moved to vacate the judgment on the ground that respondent and Wooten had rendered ineffective assistance of counsel at trial; the motion was ultimately granted. The charge alleges that respondent's letters and messages directed to Trupp and Dean, protesting their claim that he had rendered Vaello ineffective assistance of counsel at trial, adversely reflect on

his fitness to practice law (DR 1-102[A][7]).[1]

By pre-hearing stipulation, respondent conceded the material facts underlying the charges, but contested liability, arguing that he had not acted with the intent required to render his conduct violative of the disciplinary rules. On the Committee's motion to confirm, respondent concedes liability on the nine charges sustained by the Referee (charges 1, 4, 6, 7, 11, 14, 16, 18 and 20), and contests liability on the ten charges rejected by the Referee but sustained by the Hearing Panel (charges 2, 3, 5, 8, 9, 10, 12, 13, 15, and 19). We confirm the Hearing Panel's finding of liability against respondent on each of these remaining contested charges.

Respondent contends that charge 2 should be dismissed

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[1]The particulars of charge 20 are as follows. Upon reviewing Trupp's affirmation in support of the motion to set aside Vaello's conviction, respondent wrote her a letter stating that he intended to sue her for defamation and to report her to the Committee, concluding with the following warning: "I will further fully cooperate with the DA to destroy your stupid and deceitful argument about my representation of Mr. Vaello. In my humble opinion, you are truly not only an incompetent lawyer, but a liar as well. Further, you may very well have committed [perjury]." The following day, respondent left five voice messages on Trupp's answering machine, telling her that she was in "deep trouble" because he would sue her for defamation and civil rights violations and report her to the Committee; he also stated that his father was a "wealthy man" who had "access to the very best lawyers in this town." Respondent also sent a letter to, and left a voicemail message for, Trupp's supervisor, Robert Dean, threatening him, Trupp, and the Center with "millions of dollars" of litigation, criminal proceedings, and disciplinary action, and accusing Dean of "stupidity and . . . lack of authority and supervision over [his] incompetent staff attorneys."

because his failure to notify the Magistrate of his change of address was inadvertent, and therefore was not prejudicial to the administration of justice (DR 1-102[A][5]). Intent is not an element of that Disciplinary Rule, although it may be considered in mitigation of a sanction (*see Matter of Berger*, 1 AD3d 83 [2003]), and the failure to notify a court of a change of address is prejudicial to the administration of justice (*cf. Matter of Fletcher*, 58 AD3d 254 [2008] [failure to inform OCA of address change within 30 days, pursuant to Judiciary Law § 468-a, is prejudicial to administration of justice]). Moreover, respondent's failure to update his address caused delays in the case and wasted judicial resources as the court tried to locate him.

Respondent argues that the Panel should have deferred to the Referee's credibility determinations that he did not intentionally mislead anyone regarding his professional obligations to Erby, Powers, or Scott (charges 3, 8, and 15, respectively; DR 1-102[A][4]). According to respondent, he subjectively believed, when queried by the Magistrate, that Erby had hired the Furman Law Firm (primarily to pursue state remedies) and he agreed only to help out on a pro bono basis. The Panel properly drew the opposite inference from the

documentary evidence.[2] With respect to Powers, respondent filed her habeas petition and asked the court to serve him with any response. He told Powers that he had spent 10 days working on that matter. His statement to Powers that he "had to use the Party in Interest format" because he "could find no one willing to act as local counsel," could support the interpretation that he used that "format" because of the geographical distance or because he was not admitted in that jurisdiction. Having, by his own admission, worked on Powers's state filings as attorney of record and at least in an advisory capacity on her federal application, respondent cannot truthfully blame his failure to return her files on Furman's filing system; in fact, he contradictorily states that all client files were returned. As to Scott, respondent's charging Scott an initial retainer fee, writing regarding the case, and billing for additional legal research after he was terminated belies his claim that he never represented Scott and communicated with him only briefly "as

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[2]Among other things, the documentary evidence concerning Erby's case establishes the following: (1) Erby's wife paid a retainer after Furman died and specifically for "federal litigation 2254" (referring to 28 USC § 2254); (2) respondent personally wrote to Erby welcoming him to the firm and stating that once the "client intake forms" were fully executed he could "begin the investigative process, and [the] crafting of a collateral attack plan"; (3) respondent petitioned the court "to substitute him in place of [Erby], who [was] acting pro se"; and (4) Erby repeatedly wrote to respondent inquiring as to the status of his habeas petition and expressing his own belief that respondent had "tak[en] over as counsel."

probate counsel" for Furman's estate.

Accordingly, the evidence supports the Panel's determinations regarding charges 3, 8, and 15, based on DR 1-102(A)(4). Furthermore, the Panel was not confined to the "cold record," as respondent asserts, but had an opportunity to assess his credibility when he appeared before the Panel for a hearing.

In dismissing charge 5 (alleging that respondent's handling of the Erby matter adversely reflects on his fitness to practice law), the Referee stated that the shortcomings of respondent's performance in that matter reflected inexperience, as opposed to incompetence, and therefore did not adversely reflect on his fitness to practice law (DR 1-102[A][7]). Although inexperience alone is not objectionable, taking on a matter one is not capable of handling is a disciplinary infraction, as respondent concedes. Moreover, charge 5 was not premised on alleged incompetence, but on the totality of respondent's misconduct in the Erby matter (failure to seek his client's lawful objectives, accepting representation on a case he was not cable of handling, making a misrepresentation to the court, and failing to notify the court of his change of address). Accordingly, the Hearing Panel correctly sustained charge 5.

Charge 9 arose from respondent's sending Brown a letter addressed to "all clients of the Daniel C. Furman Law Firm,"

stating that respondent was merely "the probate attorney for the Estate of Daniel C. Furman" and, as such, had nothing to do with the recipients' cases and did not know who they were. Respondent sent this form letter to Brown notwithstanding that respondent had filed a brief with the Second Department on Brown's behalf, had corresponded with him about the case, and had received from Brown an executed representation agreement. Even if respondent's sending the form letter was the result of poor office management, as the Referee concluded, running an office in a disorganized manner adversely reflects on a lawyer's fitness to practice in violation of DR 1-102(A)(7) (*see Matter of Ioannou*, 47 AD3d 65 [2007]). Moreover, the tone of the letter, stating that any client who wished to speak to respondent would have to make an appointment and pay for it, and those without an appointment would be "uninvited guest[s] and .. handle[d] accordingly," lacked civility and professionalism. Accordingly, the Panel properly sustained charge 9.

Contrary to the Referee's implication, DR 1-102(A)(7) (conduct adversely reflecting on fitness to practice) does not require intent, and respondent's failure to return client files to James, Guzman, Sullivan, Burgos-Santos, and Pagan, and to account for the disposition of any other file, adversely reflected on his fitness to practice, even if the conduct was the result of his poor office management skills (*see Ioannou*, 47 AD3d

65). Accordingly, the Panel properly sustained charges 12 and 13.

With regard to charge 10, although respondent sent the relatives of Moses James a letter stating that he was working on the case and would inform James of an attack plan within six weeks, eight weeks later respondent sent James a letter advising that the Furman Law Firm had ceased to exist, that James was now unrepresented, and that respondent would return the client's file. When James inquired, respondent sent him the same form letter discussed in connection with charge 9, stating that respondent was merely a probate attorney, did not know who James was, and had no involvement in his case. Those communications support the Panel's inference that respondent neglected the client matter (charge 10, DR 6-101[A][3]).

Finally, the totality of respondent's conduct, involving multiple clients, several acts of dishonesty, and continuous incivility towards clients and other attorneys, adversely reflects on his fitness to practice (DR 1-102[A][7]), and therefore the Panel properly sustained charge 19.

With respect to sanction, respondent maintains that he should not be held accountable for "unjust and unsupportable claims by inmates who would allege anything." He asserts that he was merely an inexperienced attorney who "did the best he could" in attempting to clean up the mess allegedly left by Furman, "who

was dishonest and incompetent." Respondent claims that he now keeps times sheets of his activities and a "very careful filing system." He says that he only takes on simple cases and refers matters he does not feel capable of handling. He represents that he now realizes that once he appears in a case he is responsible for every aspect, and promises to refund any unearned fees. In addition, he asserts that he is trying to deal with his anger-management problem, and, henceforth, will always comport himself in a professional manner, no matter how much he is provoked. He recognizes that, rather than threatening Trupp and Dean in the Vaello matter (the basis of charge 20), it would have been preferable to file a disciplinary complaint if (as he believed) their claims of the ineffectiveness of his performance as trial counsel were unjustified (although their motion to vacate the conviction based on his ineffectiveness was ultimately granted). He submitted letters of support from three attorneys, none of whom claimed to know him well or to have substantial familiarity with his legal practice or professional reputation.

The Hearing Panel noted that respondent's character witnesses had no knowledge of his professional career, and that no attorney confirmed his contention that he seeks advice from others in matters where he lacks experience. The Panel also noted that respondent failed to produce the time records he claimed to now keep. The Panel found respondent's expression of

remorse to be inadequate, in that he attempted to blame his conduct on his clients' "'creating a bad environment,'" and he failed to "appreciate the anguish that he caused the incarcerated prisoners and their families." His demeanor at the hearing before the Panel did not denote sincere remorse, and the Panel credited him "at best . . . for recognizing that he should have handle[d] things differently." Under all the circumstances, including the multiple charges, "numerous inconsistencies" in respondent's testimony, his "complete lack of professionalism," his "dubious" expression of contrition and remorse, the Panel recommended a suspension of 18 months "to communicate to Respondent the seriousness of his conduct." The Panel further "strongly recommend[ed]" that respondent seek professional help to control his anger, and that he be required to submit proof on that issue if he applies for readmission.

Like the Hearing Panel, we are not entirely persuaded by respondent's claims of contrition and intention to change. His continued attempts to blame his clients and Furman, at least partially, for his own misconduct supports the Hearing Panel's finding that he lacks sincere remorse or insight into his deficiencies. His lack of experience as a lawyer does not excuse his hostile language toward Trupp and Dean or his cavalier attitude regarding the maintenance and return of client files. Respondent's claims of selfless pro bono work are undermined by

his bills for fees and his assertion that his only obligation toward nonpaying clients was to file their court papers and mail their files. In light of his inability to substantiate that he returned client files, the Panel rightfully drew an adverse inference from his failure to submit proof that he now keeps time sheets and file records or attends some form of anger management therapy.

In considering the appropriate sanction for respondent's misconduct, we also take cognizance of a pro se supplemental memorandum he has submitted to this Court (without his counsel's knowledge) in opposition to the Committee's motion and in support of his cross motion. In this submission, respondent admits to "making a few unintentional errors which were due to his inexperience," but complains that the Committee has "conduct[ed] an unrelenting witch-hunt in attempting to create misconduct where none exists and to exploit such fabricated misconduct by exacting a cruel punishment which would be inconsistent with the established facts and with all norms of discipline necessary to protect the public." He accuses the Committee of "hypocrisy, betrayal of the public trust, double-standards, in showing preferential treatments to its cronies in its 'old boy network', while engaging in ethnic animus toward those who are of ethnic minorities or not well connected, and flagrant miscarriages of justice." These inflammatory claims are not supported by

respondent's references to other disciplinary cases. Further, respondent's bizarre, unsubstantiated arguments, as well as his call for the prosecution of the Committee staff attorney assigned to respondent's case, belie his representations that he is addressing his manifest shortcomings in the area of anger-management and his promise to comport himself henceforth in a professional manner. In sum, respondent's pro se supplemental memorandum highlights the need for the imposition of a serious disciplinary sanction.[3]

As a general rule, suspension is imposed on an attorney who fails to return the unearned portion of a fee and engages in other misconduct (*see Matter of Corcoran*, 243 AD2d 86, 88 [1998]). Similarly, suspension is generally the appropriate sanction for neglect coupled with additional misconduct (*see Matter of Danas*, 236 AD2d 44 [1997]). Under either of those general rules, respondent's request for public censure should be rejected. The suspensions ordered in cases involving numerous

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[3]After respondent filed his pro se supplemental memorandum, his counsel directed a letter to this Court, clarifying that counsel "did not draft, review or participate in [the] submission" of this document, of which counsel did not "learn[] . . . [until] after it was filed with the Court." Counsel's letter purports "to withdraw that submission and ask that it be returned, expunged or destroyed before it is accepted by the Court as a submission." We decline this request, as the pro se submission is relevant to this proceeding in its adverse reflection on respondent's current fitness to practice law, and in the light it casts on respondent's need to learn to exercise greater self-control if he is to resume the practice of law.

instances of nonvenal misconduct approximating respondent's range from one to three years. Although the Committee seeks only an 18-month suspension, we find -- considering all of respondent's misconduct, his continued attempts to place blame for his failings on his clients and his deceased former employer, his lack of sincere remorse, and his apparent failure to take effective corrective actions regarding his office operations and volatile temper -- that a three-year suspension is the appropriate sanction in this case (*see Matter of Moore*, 197 AD2d 254 [1994] [neglect of eight legal matters, failure to satisfy a judgment to return client fees, failure to promptly return unearned fees, and attempt to dissuade clients from testifying before the Committee]; *Matter of Sorote*, 196 AD2d 339 [1994] [13 disciplinary violations, including neglect and failure to return an unearned fee]).

Accordingly, the Committee's motion should be granted to the extent of confirming the Hearing Panel's findings of fact and conclusions of law and sustaining charges 1-16 and 18-20 against respondent, and respondent is suspended from the practice of law for a period of three years, effective 30 days after the date hereof and until further order of this Court. Respondent's cross motion is denied.

All concur.

Order filed.

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

SEP 28 2010

Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
Eugene Nardelli
James M. Catterson
James M. McGuire, Justices.

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In the Matter of Karen Jaffe
(admitted as Karen Jaffe-Nierenberg),
an attorney and counselor-at-law:

Departmental Disciplinary Committee for the First Judicial Department,
Petitioner,

Karen Jaffe,
Respondent.

M-1370

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Disciplinary proceedings instituted by the Departmental Disciplinary Committee for the First Judicial Department. Respondent, Karen Jaffe, was admitted to the Bar of the State of New York at a Term of the Appellate Division of the Supreme Court for the Fourth Judicial Department on June 24, 1982.

Alan W. Friedberg, Chief Counsel, Departmental Disciplinary Committee, New York (Stephen P. McGoldrick, of counsel), for petitioner.

Linda F. Fedrizzi, for respondent.

M-1370 (May 17, 2010)

IN THE MATTER OF KAREN JAFFE, AN ATTORNEY

PER CURIAM

Respondent Karen Jaffe was admitted to the practice of law in the State of New York by the Fourth Judicial Department on June 24, 1982 under the name Karen Jaffe-Nierenberg. At all times relevant to this proceeding, she has maintained an office for the practice of law within this Department.

The Departmental Disciplinary Committee now seeks an order, pursuant to 22 NYCRR 603.3, imposing reciprocal discipline on respondent, predicated on an order of the U.S. Court of Appeals for the Second Circuit publicly reprimanding and removing her (disbarring her), or in the alternative sanctioning her as this Court deems appropriate. Respondent seeks dismissal of the petition, or in the alternative a hearing on liability, or at least on sanctions.

This is the second time that respondent has been the subject of reciprocal disciplinary proceedings before this Court. The first proceeding followed the Second Circuit's suspension of respondent in May 2006 for 30 days for having falsely advised the Court, on two occasions, that she was too ill to attend oral arguments, when in fact she was attending hearings in another court. Based on that order, the Board of Immigration Appeals suspended her for 30 days from practice before that court, the

Immigration Courts, and the Department of Homeland Security, and this Court publicly censured her (40 AD3d 96 [2007]).

During respondent's Federal suspension, the Second Circuit, in an effort to assist her in planning to manage her caseload of pending matters, assigned the former chair of the immigration law committee of the New York City Bar Association to help her. Second Circuit staff also met with her. Nevertheless, in what the Second Circuit termed a "remedial order," dated July 13, 2006, the court relieved respondent from all cases before that court in which she had not yet submitted a brief, and limited her to no more than 30 cases at any one time, due to her "chronic failure to meet briefing deadlines, often despite numerous extensions, and her frequent submission of briefs that do not conform to the Rules of Appellate Procedure and that are of minimal competence." That order also directed respondent to provide the names and addresses of clients in cases identified by the court, so that they could be notified respondent was no longer representing them.

In December 2006, the Second Circuit referred for a hearing the issue of the suspicious filing of briefs in three cases on which respondent had been relieved as counsel. A special master determined that two other people were responsible for the fraudulent briefs, but not respondent. The Second Circuit accepted that conclusion in an August 2007 order.

By order dated April 2, 2008, the Second Circuit referred respondent to its Committee on Admissions and Grievances (CAG) to investigate and report on whether she should be subject to disciplinary measures. The order was based on: (1) the dismissal of 12 of her appeals for failure to comply with briefing schedules; (2) orders in 14 of her appeals warning that continued failure to comply with the Federal Rules of Appellate Procedure could result in sanctions; (3) her continued submission of deficient briefs in two appeals, despite repeated warnings, and her failure to attempt to file revised briefs; and (4) her failure to timely respond to Court orders pertaining to the previous "remedial order."

After conducting a hearing at which respondent and her counsel appeared, and accepting all of her submissions, the CAG, in a December 2008 report, found her guilty by clear and convincing evidence of misconduct and recommended disbarment if she failed to resign within 60 days.

Respondent conceded that the 12 dismissed appeals identified in the order of referral had been dismissed due to her failure to comply with court briefing schedules, which constituted neglect and conduct prejudicial to the administration of justice. With respect to the quality of her work, the CAG reviewed her submissions in three matters and found them "to be of very poor quality." Specifically:

> "Facts are asserted without citations to the record. The argument section is paltry. The petition is sloppily presented, replete with typographical errors. The table of authorities for each of the three different cases is the same, all containing the same errors ..., and none matches the presentation of cases in the petition. In one petition, none of the cases listed in the table appear in the petition; in another, fewer than half the cases and decisions listed appear in the petition."

As an excuse, respondent maintained that law students had written many of the briefs she signed and filed, without reading them.

The CAG further determined that respondent had not offered an adequate excuse for her failure, despite numerous extensions, to fully comply with court directives to provide information for the purpose of notifying clients that she had been relieved from representation by the July 2006 "remedial order." The CAG also made a finding that respondent had made false statements to the court (the subject of the prior disciplinary proceeding), and treated her prior sanction (suspension of 30 days) as a mitigating factor. The CAG expressed its concern that respondent:

> "did not take heed of the Court's warnings concerning her deficient briefs. Nor did she attempt to file corrected briefs even after acknowledging that many of the briefs she filed were drafted by law students without her supervision. [Respondent] did not seek permission to file briefs out of time on behalf of the clients whose cases were dismissed because of defaults on the scheduling orders. While she could not keep up with the cases she had on her docket, she continued to take on new matters."

Aggravating factors identified by the CAG were:

> "(1) the prior disciplinary offenses; (2) a pattern of misconduct involving non-compliance with the Court's briefing schedules, orders, and defective briefing; (3) the multiple offenses; (4) the vulnerability of [respondent's] immigrant clients, many of whom do not speak English; and (5) [respondent's] substantial experience in the practice of law."

Mitigating factors were respondent's remorse and cooperation in the proceedings, as well as "personal problems with her own illness and a family member's illness around the time of the March 22, 2007 order," issued upon her failure to provide all the information requested in the July 2006 "remedial order."

In light of respondent's pattern of neglect, repeated failure to follow court orders, the aggravating and mitigating factors, and her assertion that she no longer wished to practice before the Second Circuit, the CAG recommended that she be given the opportunity to resign from the Second Circuit Bar, along with a public reprimand; however, if she failed to withdraw, then the CAG recommended disbarment.

By order dated October 19, 2009, the Second Circuit adopted the factual findings of misconduct and the aggravating and mitigating circumstances, but declined to permit a resignation, and ordered respondent publicly reprimanded and removed (disbarred) (585 F3d 118 [2009]).

The Court acknowledged that "most of [respondent's] briefs were filed within a limited period of time," but noted that:

> "she did not request leave to file amended briefs after being put on notice, and, after being advised of her briefing deficiencies as early as December 1, 2005 ..., she filed at least three deficient briefs after that date .... Furthermore, her related argument that her briefs were not deficient ... renders doubtful the suggestion that she might have improved her briefing in later cases had she been given earlier notice of the deficiencies."

With respect to a brief respondent proffered in support of her argument that her work was not deficient, the court observed:

> "Fully half of the Statement of the Case is irrelevant since its last three paragraphs are duplicated verbatim from an entirely different case concerning a different petitioner and different facts."

The Second Circuit also rejected respondent's argument that she had already been disciplined for the same conduct and therefore new sanctions were precluded by res judicata or double jeopardy. First, the court noted, she had never been disciplined for some of the conduct, such as filing briefs written by law students without reviewing them. Even though respondent had been criticized for deficient performance in orders issued during the course of particular cases, those orders, the court observed, "did not suggest that the criticism (or other adverse action) was a final 'sanction' for that misconduct." The court also stated that, "even if an attorney already has received ... a final sanction for each of several instances of misconduct, we may nonetheless impose further discipline if the individual instances of misconduct are found to be part of a sanctionable pattern that

has not itself been addressed." The court specifically stated that it was not disciplining respondent again for discrete misconduct for which she had already been sanctioned. The court further stated, "even if the previously sanctioned misconduct were ignored entirely, or treated as aberrational, [it] would nonetheless find that [disbarment was] warranted by the remaining misconduct."

Finally, the court:

> "ma[d]e it clear that the deficiencies of [respondent's] conduct, in the aggregate, bespeak of something far more serious than a lack of competence or ability. They exhibit an indifference to the rights and legal well-being of her clients, and to her professional obligations, including the obligation of candor, to this Court."

In a proceeding seeking reciprocal discipline pursuant to 22 NYCRR 603.3[c], an attorney is precluded from raising any defenses except: (1) a lack of notice or opportunity to be heard constituting a deprivation of due process; (2) an infirmity of the proof presented to the foreign jurisdiction; or (3) that the misconduct for which the attorney was disciplined in the foreign jurisdiction does not constitute misconduct in this state.

Here, respondent, represented by counsel, actively participated in the Second Circuit disciplinary proceedings, and thus there was no deprivation of due process. Both the CAG and the Second Circuit cited to specific New York disciplinary rules, thereby satisfying the third prong of the test. Indeed,

respondent concedes the sufficiency of the proof, with the exception of the charge relating to her failure to comply with court directives, which she claims was an unintentional consequence of her involvement in a car accident and her responsibilities in connection with her ailing father. However, she was not found guilty of willfully disobeying a court order, but only neglect, based on her own admission that the matter slipped her mind, and her injuries and father's illness were acknowledged as mitigating circumstances. In any event, that charge was not the most serious one, and respondent's principal argument is that the Second Circuit had previously disciplined her for all of the same misconduct, and she should not be sanctioned twice.

As to this argument, we note that the Second Circuit observed that the issue of respondent's submission of law student briefs without reading them had never been addressed in any prior disciplinary order. Indeed, rather than stating that respondent's disciplinary record of a prior suspension for making false statements to the court was an aggravating factor, the Second Circuit found her guilty of making the false statements, but credited her with a mitigating circumstance for the sanctions previously imposed for those statements. Notwithstanding this, the Second Circuit expressly declared that it was not disciplining respondent "again ... for that discrete misconduct"

(585 F3d at 122).

The balance of respondent's misconduct as found in the order at issue, dismissal of 12 appeals for failure to comply with briefing schedules and the filing of at least 16 grossly inadequate briefs, does appear to have been considered in the Second Circuit's July 2006 order. The Court referred to that order as "remedial," rather than disciplinary. The order was not the result of a formal disciplinary proceeding, and apparently respondent was not given an opportunity to contest the findings therein. The conditions imposed by that order were certainly intended as remedial, and not a sanction. However, the only pertinent factor is that *this* Court has never previously sanctioned respondent for the misconduct outlined in the instant petition. Accordingly, the Second Circuit's October 2009 order, considered alone or in conjunction with the July 2006 "remedial order," provides a predicate for reciprocal discipline.

Insofar as respondent asserts that the Second Circuit punished her because it "was disappointed Judge Keenan could not implicate [her] in any wrongdoing" with respect to the unproven allegation that respondent filed fraudulent briefs, the court specifically stated that her "cooperation and affirmative efforts to expose fraudulent conduct [by the two attorneys who were responsible] were commendable, and are considered mitigating factors" (585 F3d at 122).

As a general rule, this Court accords significant weight to the discipline imposed by the jurisdiction where the charges were originally brought, even if greater or lesser sanctions have been imposed in New York for similar conduct (*Matter of Jarblum*, 51 AD3d 68, 71 [2008]). This Court departs from that principle only with "reluctance" (*Matter of Lowell*, 14 AD3d 41 [2004], *lv denied* 5 NY3d 708 [2005]), primarily where the sanction in the originating jurisdiction deviates materially from this Court's precedent (*Matter of Whitehead*, 37 AD3d 86 [2006]).

This Court has previously held that, where an attorney has "engaged in a pattern of neglect of client matters and failed to comply with court orders, disbarment is warranted" (*Matter of Hatton*, 44 AD3d 49, 52 [2007] [reciprocal disbarment based on Southern District of New York disbarment]). Here, respondent neglected numerous client matters, and failed to even attempt to address her deficiencies, despite warnings and opportunities to do so. At least as late as the most recent Second Circuit disciplinary proceeding, respondent even maintained that her work was competent. She has not evinced any insight into the impropriety, and resultant harm, of submitting law student work product without review, and even tries to invoke that misconduct as a mitigating factor. The pervasiveness of respondent's neglect is compounded by the vulnerability of her immigrant clients. Her prior disciplinary history (of making false

statements) and her accusations of base motives by the Second Circuit are further aggravating circumstances. Because the sanction of disbarment imposed by the Court of Appeals for the Second Circuit is in accord with this Court's precedents involving similar misconduct, we adopt that sanction.

Accordingly, the Committee's petition should be granted, respondent's request for a hearing should be denied, and respondent should be disbarred and her name stricken from the roll of attorneys and counselors-at-law in the State of New York.

All concur.

Order filed.

SEP 28 2010

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

David B. Saxe, Justice Presiding,
David Friedman
John W. Sweeny, Jr.
Eugene Nardelli
Richard T. Andrias, Justices.

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In the Matter of Leonard Liebowitz,
an attorney and counselor-at-law:

Departmental Disciplinary Committee for the First Judicial Department,
Petitioner,

M-2719

Leonard Liebowitz,
Respondent.

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Disciplinary proceedings instituted by the Departmental Disciplinary Committee for the First Judicial Department. Respondent, Leonard Liebowitz, 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 December 13, 1965.

Alan W. Friedberg, Chief Counsel, Departmental Disciplinary Committee, New York (Mady J. Edelstein, of counsel), for petitioner.

Respondent pro se.

M-2719 - July 6, 2009

In the Matter of Leonard Leibowitz, an Attorney

Per Curiam

Respondent Leonard Leibowitz was admitted to the practice of law in the State of New York by the First Judicial Department on December 13, 1965. At all times relevant to these proceedings, respondent has maintained an office for the practice of law within the First Judicial Department, although he currently resides in Florida.

In August 2008, the staff of this Court's Departmental Disciplinary Committee (the Committee) served respondent with a notice of charges that he had violated DR 5-104(A) ("Transactions Between Lawyer and Client") based on 47 instances, from July 1997 to April 2005, in which he took a "loan" against his monthly retainer from client funds under his control. During the period in question, respondent withdrew and paid to himself, by 47 checks, a total of $368,570.61 in loans from the checking account he maintained for the client in question, the Independent Artists of America (IAA), a labor organization representing ballet dancers. The Committee charged that, although the IAA's vice president had orally authorized respondent to take such loans before he commenced doing so, the loans were taken without the full disclosure to the client required by DR 5-104(A) in 1997, and without written disclosure to the client and documentation of

the transactions required by DR 5-104(A) as amended in 1999.[1]

The Committee's notice set forth four charges, to wit: (1) that respondent entered into an improper business transaction with a client under DR 5-104(A) by initially requesting the IAA's permission to take the loans "without proper disclosure of essential terms of repayment, of his financial status, or advising his client to seek independent counsel"; (2) that he entered into a similarly improper business transaction with a client "[b]y continuing to withdraw funds from his client's

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[1]In 1997, when the transactions at issue commenced, DR 5-104(A) provided: "A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless the client has consented after full disclosure."

In 1999, DR 5-104(A) was amended to provide as follows:

> "A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless:
>
> 1. The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;
>
> 2. The lawyer advises the client to seek the advice of independent counsel in the transaction; and
>
> 3. The client consents in writing, after full disclosure, to the terms of the transaction and to the lawyer's inherent conflict of interest in the transaction."

business account . . . without proper prior notice or permission from his client [in each instance], and without a writing"; (3) that he entered into a similarly improper business transaction with a client in November 2006 (after the loans had ceased) by presenting the IAA with a promissory note, contract and confession of judgment to document the loans after-the-fact, again without full disclosure and without advising the client to seek independent counsel; and (4) that, through all of the above conduct, he engaged in conduct adversely reflecting on his fitness to practice law in violation of DR 1-102(A)(7).

Respondent's answer admitted the underlying facts on which the charges were based and that he had violated DR 5-104(A) and DR 1-102(A)(7) as charged, although he raised an issue as to the amount he still owed on the loans and "denie[d] that [he] did not disclose fully the reason for, and meaning of, the documents" he sent the client in November 2006.

As respondent admitted to the facts underlying each of the charges, the Referee, after a hearing, sustained all four charges and recommended the sanction of a public censure, rejecting both the Committee's request for a three-year suspension and respondent's request for an admonition. The Hearing Panel agreed with the Referee's findings and the censure recommendation.

The undisputed facts as found by the Referee and the Hearing Panel may be briefly summarized. In 1993, respondent formed the

IAA on behalf of the dancers of the American Ballet Theatre, whom he had represented since 1979. He continued as counsel to the IAA based on a monthly retainer fee, which was $2,500 until 2005, when it was increased to $3,500. Respondent was given possession of the IAA's checkbook for its non-interest-bearing business checking account, on which he was a signatory.

In July 1997, respondent, who was facing personal financial difficulties, asked the IAA's vice president, Lori Wekselblatt, for permission to borrow funds from the union's checking account. Shortly thereafter, Ms. Wekselblatt informed respondent by telephone that he could borrow funds from the checking account. In these conversations, respondent did not specify the amount or terms of the anticipated loan, nor did he advise Ms. Wekselblatt or any IAA officer that his interest differed from that of the union, that he could not give the union advice concerning the loan due to the conflict of interest, or that they should consult with independent counsel concerning the transaction. Respondent also failed to prepare any writing to document the loan or its terms.

From July 1997 until April 2005, respondent drew 47 checks payable to himself on the IAA's business checking account, withdrawing a total of $368,570.61. Although the loan agreement was not reduced to writing, the loans were disclosed in the IAA's annual tax returns and Labor Department filings. Those documents

stated that the respondent would repay the loans by foregoing his monthly retainer, which he last drew in September 1998.

In November 2006, after another attorney alerted him to the requirements of DR 5-104(A), respondent sent Ms. Wekselblatt a loan agreement and promissory note for her signature, which stated that he then owed the IAA $145,348.53, together with five percent annual compound interest on unpaid balances. Ms. Wekselblatt did not sign the documents, telling respondent that she did not agree that he owed interest. As at the inception of the loans, respondent failed in proffering the after-the-fact loan documentation (which also included a payment schedule and a confession of judgment) to advise the IAA that a conflict of interest existed and that the union should consult independent counsel.

In May 2007 (about two years after the last loan was taken), the IAA formally discharged respondent as its counsel. At the request of the Hearing Panel in these proceedings, respondent executed a loan agreement and promissory note, dated May 11, 2009, committing himself to repay the principal amount of $67,500, with interest thereon of $47,277.53. Although the IAA has declined to sign this document, the Hearing Panel deemed it to constitute "an undertaking by [r]espondent to repay the amounts due according to the schedule provided and subject to the penalties offered."

The Committee now moves to confirm the findings of fact and conclusions of law of the Hearing Panel, but to reject the recommended sanction of public censure and instead to suspend respondent from the practice of law for three years. Respondent asks that he be publicly censured. For the following reasons, we conclude that respondent should be publicly censured.

Respondent plainly committed a serious error of judgment in entering into the oral loan agreement with his client, and thereafter withdrawing funds from the client's checking account pursuant to that agreement, without advising the client of the conflict of interest inherent in the transaction and that the client should seek independent counsel, and without documenting the transactions. However, we see no basis for disturbing the conclusion of the Referee and the Hearing Panel that respondent's culpability is mitigated by the absence of any evidence that his conduct involved fraud, deceit, dishonesty or misrepresentation. His dealings with his client were honest, albeit imprudent, self-serving and contrary to the applicable ethical rules. Courts have generally held public censure to be the appropriate sanction where an attorney is found to have entered into a business transaction with a client in violation of DR 5-104(A) but did so without engaging in fraud or dishonesty (*see Matter of Fendick*, 31 AD3d 17 [2006]; *Matter of Cohen*, 12 AD3d 29 [2004]; *Matter of Moench*, 222 AD2d 31 [1996]; *Matter of Creaser*, 214 AD2d 201

[1995]; *cf. Matter of Leff*, 275 AD2d 135 [2000] [three-year suspension for attorney who induced client to lend him money by misrepresenting purpose of the loan and gave testimony lacking in candor]; *Matter of Brown*, 180 AD2d 150, 155 [1992] [two-year suspension for attorney who solicited a loan from his client and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, as well as other misconduct).

Further, we agree with the Referee and the Hearing Panel that weight should be given to respondent's previously unblemished 43-year legal career, to his forthright admission of the underlying facts, his expression of genuine remorse for his missteps, his prior repayment of most of the borrowed funds, and his demonstrated intention to repay the remaining outstanding balance with interest. We also take cognizance of the character evidence provided by respondent's colleagues, as well as prominent figures from the world of the performing arts, who attest to respondent's reputation for honesty and his high-standing in his field of specialization within the law.

Accordingly, the Committee's motion should be granted to the extent of confirming the findings of fact, conclusions of law and recommendation of the Hearing Panel, and respondent should be publicly censured.

All concur.

Order filed.

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

SEP 28 2010

Angela M. Mazzarelli, Justice Presiding,
Karla Moskowitz
Leland G. DeGrasse
Sheila Abdus-Salaam
Sallie Manzanet-Daniels, Justices.

In the Matter of Louis W. Zehil
(admitted as Louis William Zehil),
an attorney and counselor-at-law:

Departmental Disciplinary Committee for the First Judicial Department,
Petitioner,

Louis W. Zehil,
Respondent.

M-2321

Disciplinary proceedings instituted by the Departmental Disciplinary Committee for the First Judicial Department. Respondent, Louis W. Zehil, 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 March 25, 1996.

Alan W. Friedberg, Chief Counsel, Departmental Disciplinary Committee, New York
(Raymond Vallejo, of counsel), for petitioner.

Respondent pro se.

M-2321 (May 24, 2010)

IN THE MATTER OF LOUIS W. ZEHIL, AN ATTORNEY

PER CURIAM

Respondent Louis William Zehil was admitted to the practice of law in the State of New York by the First Judicial Department on March 25, 1996. At all times relevant herein, respondent has maintained an office for the practice of law within the First Department. According to OCA records, respondent is delinquent in his attorney registration for the biennial periods 2008/09 and 2010/11.

On March 15, 2010, respondent was convicted, upon his plea of guilty, in the United States District Court for the Southern District of New York, of conspiracy to commit securities fraud, in violation of 18 USC § 371, and securities fraud, in violation of 15 USC §§ 78j(b) and 78ff, 17 CFR 240.10b-5. Respondent admitted that between January 2006 and February 2007, he had participated in a securities fraud scheme in which he knowingly used his role as counsel to several companies who were attempting to raise capital via private investment in public equity ("PIPE") transactions, to defraud those clients by illegally acquiring shares of the PIPE transactions, before anyone else, through the use of front companies, reaping millions of dollars in illegal sales.

In light of respondent's felony conviction, the Departmental Disciplinary Committee (Committee) seeks an order, pursuant to

Judiciary Law § 90(4)(b), striking respondent's name from the roll of attorneys.

Respondent does not oppose the motion and consents to the Committee's request to strike his name from the rolls since he has already admitted to the allegations set forth in the information and petition, and would like to express remorse for his conduct.

Since respondent was convicted of an offense that would constitute a felony under the laws of this State (*see* Judiciary Law § 90(4)(e); *Matter of Gansman*, 73 AD3d 1 [2010] [federal securities fraud statute defined by 15 USC § 78j(b) and § 78ff is essentially similar to New York's GBL § 352-c(5) and (6), which proscribes and criminalizes fraud in the sale of securities in this State]), he ceased to be an attorney by operation of law upon entry of his guilty plea and his name should be stricken from the roll of attorneys pursuant to Judiciary Law § 90(4).[1] Accordingly, the Committee's petition should be granted and respondent's name stricken from the roll of attorneys and counselors-at-law in the State of New York, *nunc pro tunc* to March 15, 2010, the date of his conviction.

All concur.

Order filed.

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[1]For purposes of disbarment, conviction occurs at the time of plea (*see Matter of Chilewich*, 20 AD3d 109 [2005]).

PM ORDERS

ENTERED

SEPTEMBER 23, 2010

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 September 23, 2010.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
John W. Sweeny, Jr.
James M. Catterson
Leland G. DeGrasse
Sallie Manzanet-Daniels, Justices.

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In the Matter of the Application of
Robert M. Scarano, Jr.,
Petitioner,

For a Judgment, etc.,

M-4379
Index No. 103455/10

-against-

City of New York, et al.,
Respondents.
- - - - - - - - - - - - - - -
AIA New York State, Inc., the Bronx Chapter of the AIA, AIA Brooklyn Chapter, the Long Island Chapter of AIA, the Staten Island Chapter of the AIA, The New York Society of Architects, the Society of American Registered Architects and the Architects Council of New York City, Inc.,
Amici Curiae.
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An Article 78 proceeding to review a determination of respondents having been transferred to this Court, pursuant to CPLR 7804(g), by order of the Supreme Court, New York County, entered on or about June 15, 2010, and said proceeding having been perfected,

And the proposed amici movants having moved for leave to file a brief amicus curiae in connection with the aforesaid proceeding (Exhibit A to the moving papers),

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 movants are directed to file 10 copies of the brief as amici curiae forthwith.

ENTER:

Clerk.