

October 17, 2013

**CASES**

4                    No. 148

The People &c.,  
Respondent,

v.

Donny P. Beaty,  
Appellant.

Order affirmed, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott, Rivera and Abdus-Salaam concur.

1                    No. 149

In the Matter of Samuel Belzberg,  
Appellant,

Doris Lindbergh, et al.,  
Petitioners,

v.

Verus Investments Holdings Inc.,  
Respondent.

Order reversed, with costs, petition to permanently  
stay the arbitration as to petitioner Samuel Belzberg  
granted and cross petition to compel Belzberg to  
arbitrate denied.

Opinion by Judge Rivera.

Chief Judge Lippman and Judges Graffeo, Read,  
Smith and Pigott concur.

Judge Abdus-Salaam took no part.

4                    No. 141

The People &c.,  
Respondent,

v.

Scott F. Doll,  
Appellant.

Order affirmed.

Opinion by Judge Graffeo.

Chief Judge Lippman and Judges Read, Smith, Pigott  
and Abdus-Salaam concur.

Judge Rivera concurs in result in an opinion.

No. 156  
Georgitsi Realty, LLC,  
Appellant,  
v.  
Penn-Star Insurance Company,  
Respondent.

Following certification of questions by the United States Court of Appeals for the Second Circuit and acceptance of the questions by this Court pursuant to section 500.27 of this Court's Rules of Practice, and after hearing argument by counsel for the parties and consideration of the briefs and the record submitted, certified questions answered in accordance with the opinion herein.

Opinion by Judge Smith.

Chief Judge Lippman and Judges Graffeo, Read, Pigott and Rivera concur.

Judge Abdus-Salaam dissents in part in an opinion.

4 No. 155  
The People &c.,  
Respondent,  
v.  
John G. Glynn,  
Appellant.

Order affirmed.

Opinion by Judge Pigott.

Chief Judge Lippman and Judges Graffeo, Read and Smith concur.

Judge Abdus-Salaam dissents and votes to reverse in an opinion in which Judge Rivera concurs.

2 No. 252 SSM 25  
The People &c.,  
Respondent,  
v.  
Robert Kordish,  
Appellant.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Second Department, for further proceedings in accordance with the memorandum herein.

Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

1                    No. 146  
In the Matter of Paul Murphy,  
    Respondent,  
    v.  
New York State Division of Housing and  
Community Renewal,  
    Appellant,  
SouthBridge Towers, Inc.,  
    Respondent.

Order affirmed, with costs.  
Opinion by Chief Judge Lippman.  
Judges Graffeo, Smith and Rivera concur.  
Judge Read dissents and votes to reverse in an  
opinion in which Judges Pigott and Abdus-Salaam  
concur.

1                    No. 169  
The People &c.,  
    Respondent,  
    v.  
Reyes Rodriguez,  
    Appellant.

Order reversed and indictment dismissed, in a  
memorandum.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott and Rivera concur.  
Judge Abdus-Salaam took no part.

1                    No. 157  
Ayodele Sandiford,  
    Respondent,  
    v.  
City of New York Department of Education,  
et al.,  
    Appellants,  
The Research Foundation, et al.,  
    Defendants.

Order affirmed, with costs, and certified question  
answered in the affirmative, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott, Rivera and Abdus-Salaam concur.

## MOTIONS

2 Mo. No. 2013-911  
The People &c. ex rel. Carl Allen,  
Appellant,  
v.  
Evelyn Maribel, &c.,  
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2013-1014  
Maria Auqui, &c., et al.,  
Respondents,  
v.  
Seven Thirty One Limited Partnership, et al.,  
Appellants.

Motion by Defense Association of New York, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

1 Mo. No. 2013-1028  
Maria Auqui, &c., et al.,  
Respondents,  
v.  
Seven Thirty One Limited Partnership, et al.,  
Appellants.

Motion by Federation of Defense and Corporate Counsel for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed.

1 Mo. No. 2013-1029  
Maria Auqui, &c., et al.,  
Respondents,  
v.  
Seven Thirty One Limited Partnership, et al.,  
Appellants.

Motion by New York State AFL-CIO et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

1                    Mo. No. 2013-1030  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by County of Suffolk for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

1                    Mo. No. 2013-1031  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by New York State Bar Association for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

1                    Mo. No. 2013-1032  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by Workers' Injury Law & Advocacy Group for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

1                    Mo. No. 2013-1046  
Maria Auqui, &c., et al.,  
    Respondents,  
    v.  
Seven Thirty One Limited Partnership, et al.,  
    Appellants.

Motion by Real Estate Board of New York et al. for leave to appear amici curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

1                    Mo. No. 2013-905  
Bayerische Landesbank, &c.,  
    Respondent,  
    v.  
45 John Street LLC, et al.,  
    Appellants,  
My Jamie Joseph Only, Inc.,  
et al.,  
    Defendants.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

3                    Mo. No. 2013-895  
The People &c.,  
    Respondent,  
    v.  
Joseph J. Belile,  
    Appellant.

Motion for leave to appeal denied.

4                    Mo. No. 2013-875  
The People &c.,  
    Respondent,  
    v.  
Stanley Bethune,  
    Appellant.

Motion for leave to appeal denied.

3                    Mo. No. 2013-863  
In the Matter of Board of Education of the  
Rondout Valley Central School District,  
    Respondent,  
Rondout Valley Federation of Teachers,  
    Appellant,  
et al.,  
    Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4                    Mo. No. 2013-944  
In the Matter of Deborah Burns  
et al.,  
          Appellants,  
          v.  
Carlos Carballada, &c. et al.,  
          Respondents.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that no substantial  
constitutional question is directly involved.  
Motion for leave to appeal denied.

3                    Mo. No. 2013-915  
In the Matter of Donald C. Campbell,  
          Appellant,  
          v.  
Brian Fischer, &c.,  
          Respondent.

Motion for leave to appeal denied.

                    Mo. No. 2013-1034  
Marcia L. Caronia, et al.,  
          Appellants,  
          v.  
Philip Morris USA, Inc.,  
          Respondent.

Motion by Product Liability Advisory Council, Inc.  
for leave to file a brief amicus curiae on  
consideration of the certified questions herein  
granted and the proposed brief is accepted as filed.  
Three copies of the brief must be served and an  
original and nine copies filed within seven days.

                    Mo. No. 2013-1035  
Marcia L. Caronia, et al.,  
          Appellants,  
          v.  
Philip Morris USA, Inc.,  
          Respondent.

Motion by American Chemistry Council et al. for  
leave to appear amici curiae on consideration of the  
certified questions herein granted only to the extent  
that the proposed brief is accepted as filed. Three  
copies of the brief must be served and an original  
and nine copies filed within seven days.

Mo. No. 2013-1036  
Marcia L. Caronia, et al.,  
Appellants,  
v.  
Philip Morris USA, Inc.,  
Respondent.

Motion by Business Council of New York State, Inc. et al. for leave to appear amici curiae on consideration of the certified questions herein granted only to the extent that the proposed brief is accepted as filed.

Mo. No. 2013-1040  
Marcia L. Caronia, et al.,  
Appellants,  
v.  
Philip Morris USA, Inc.,  
Respondent.

Motion by American Legacy Foundation et al. for leave to file a brief amici curiae on consideration of the certified questions herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

2 Mo. No. 2013-782  
In the Matter of Carlos Colon,  
Appellant,  
v.  
Michelle Sawyer,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

4 Mo. No. 2013-942  
In the Matter of John Colvin, &c.,  
Respondent,  
v.  
Ronnie Covington,  
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2013-873  
In the Matter of Harold George  
et al.,  
Appellants,  
v.  
New York State Department of Corrections  
and Community Supervision,  
Respondent.

Motion for leave to appeal dismissed upon the ground that the issues presented have become moot.

2                    Mo. No. 2013-888  
Holt Construction Corp.,  
    Respondent,  
    v.  
Grand Palais, LLC, et al.,  
    Appellants,  
et al.,  
    Defendants.  
(And a Third-Party Action.)

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4                    Mo. No. 2013-839  
Donnell Jefferson,  
    Appellant,  
    v.  
Joshua Stubbe,  
    Respondent.

On the Court's own motion, appeal dismissed, without costs, upon the ground that no substantial constitutional question is directly involved. Motion for leave to appeal denied.

4                    Mo. No. 2013-1015  
Herbert Kolbe, et al.,  
    Appellants,  
    v.  
Christine J. Tibbetts, &c.,  
et al.,  
    Respondents.

Motion by Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

4                    Mo. No. 2013-1023  
Herbert Kolbe, et al.,  
    Appellants,  
    v.  
Christine J. Tibbetts, &c.,  
et al.,  
    Respondents.

Motion by New York State School Boards Association for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and nine copies filed within seven days.

3 Mo. No. 2013-880  
In the Matter of Jose Lanfranco,  
Appellant,  
v.  
Brian Fischer, &c.,  
Respondent.

Motion for leave to appeal dismissed as untimely  
(see CPLR 5513[b]; Eaton v State of New York, 76  
NY2d 824 [1990]).  
Motion for poor person relief dismissed as academic.

4 Mo. No. 2013-920  
Deirdre Loy,  
Respondent,  
v.  
Louis L. Loy,  
Appellant.

Motion for leave to appeal dismissed upon the  
ground that the order sought to be appealed from  
does not finally determine the action within the  
meaning of the Constitution.

4 Mo. No. 2013-872  
Eugene Margerum, et al.,  
Appellants-Respondents,  
v.  
City of Buffalo, et al.,  
Respondents-Appellants.

Motions for leave to appeal granted.

4 Mo. No. 2013-951  
Eugene Margerum, et al.,  
Appellants-Respondents,  
v.  
City of Buffalo, et al.,  
Respondents-Appellants.

Motion by National Association of Hispanic  
Firefighters for leave to file a brief amicus curiae on  
the motion by defendants for leave to appeal herein  
granted and the brief is accepted as filed.

4 Mo. No. 2013-962  
Eugene Margerum, et al.,  
Appellants-Respondents,  
v.  
City of Buffalo, et al.,  
Respondents-Appellants.

Motion by Lawyers' Committee for Civil Rights  
Under Law, insofar as it seeks to file a brief amicus  
curiae on the motion by defendants for leave to  
appeal herein, granted and the proposed brief is  
accepted as filed; motion, insofar as it seeks leave for  
movant to appear amicus curiae on the appeal herein,  
denied as premature (see Rules of Ct of Appeals [22  
NYCRR] § 500.23[a][3]).

4                    Mo. No. 2013-971  
Eugene Margerum, et al.,  
    Appellants-Respondents,  
v.  
City of Buffalo, et al.,  
    Respondents-Appellants.

Motion by International Municipal Lawyers Association, et al., insofar as it seeks to file a brief amici curiae on the motion by defendants for leave to appeal herein, granted and the proposed brief is accepted as filed; motion, insofar as it seeks leave for movants to appear amici curiae on the appeal herein, denied as premature (see Rules of Ct of Appeals [22 NYCRR] § 500.23[a][3]).

1                    Mo. No. 2013-878  
In the Matter of Kuriakose Mathew,  
    Appellant,  
v.  
Coler Goldwater Specialty Hospital and  
Nursing Facility, et al.,  
    Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

1                    Mo. No. 2013-869  
In the Matter of New York Statewide  
Coalition of Hispanic Chambers of  
Commerce, et al.,  
    Respondents,  
v.  
The New York City Department of Health  
and Mental Hygiene, et al.,  
    Appellants.

Motion for leave to appeal granted.  
Judge Rivera took no part.

2                    Mo. No. 2013-1024  
The People &c.,  
    Respondent,  
v.  
Anthony Oddone,  
    Appellant.

Motion by Innocence Project, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

2                    Mo. No. 2013-998  
Town of Oyster Bay,  
    Appellant,  
    v.  
Lizza Industries, Inc.,  
    Respondent.  
(And Other Actions.)

Motion by DRI - The Voice of the Defense Bar for leave to file a brief amicus curiae on the appeals herein granted and the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

4                    Mo. No. 2013-1033  
The People &c.,  
    Appellant,  
    v.  
Dwight R. DeLee,  
    Respondent.

Motion by Lambda Legal Defense and Education Fund, Inc. et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed.

1                    Mo. No. 2013-871  
Wilson Padilla,  
    Appellant,  
    v.  
Edison Transport, Inc. et al.,  
    Defendants,  
Tremont Dispatching Corp.,  
et al.,  
    Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2                    Mo. No. 2013-929  
In the Matter of Selena S. (Anonymous), &c.  
  
Administration for Children's Services et al.,  
    Respondents;  
Edward J.B. (Anonymous), &c.,  
    Appellant.  
(And Another Proceeding.)

Motion for leave to appeal denied.

1 Mo. No. 2013-886

Jennifer Sarasky,  
Appellant,

v.

Law Enforcement Training and Consulting  
Services, Inc. et al.,  
Respondents.

(And a Third-Party Action.)

Motion for leave to appeal denied.

2 Mo. No. 2013-993

The People &c.,  
Respondent,

v.

Johnny Shorter,  
Appellant.

Motion for an extension of the time within which to  
apply for permission to appeal pursuant to CPL  
460.20 granted and motion papers treated as a timely  
CPL 460.20 application.

3 Mo. No. 2013-707

In the Matter of Patrick Sorrentino,  
Appellant,

v.

Brian Fischer, &c.,  
Respondent.

Motion for leave to appeal granted.

1 Mo. No. 2013-885

Peter Voutsas,  
Appellant,

v.

Ralph R. Hochberg, et al.,  
Respondents.

Motion for leave to appeal denied with one hundred  
dollars costs and necessary reproduction  
disbursements.  
Judge Rivera took no part.

3 Mo. No. 2013-884

In the Matter of John White,  
Appellant,

v.

Brian Fischer, &c.,  
Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2013-1018  
William J. Jenack Estate Appraisers and  
Auctioneers, Inc.,  
                  Appellant,  
          v.  
Albert Rabizadeh,  
                  Respondent.

Motion by Sotheby's, Inc. et al. for leave to appear  
amici curiae on the appeal herein granted only to the  
extent that the proposed brief is accepted as filed.  
Three copies of the brief must be served and an  
original and nine copies filed within seven days.

4                    Mo. No. 2013-887  
The People &c.,  
                  Respondent,  
          v.  
Russell Young,  
                  Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.