

June 24, 2009

CASES

No. 84
The People &c.,
Respondent,
v.
Jeremy Almeter,
Appellant.

Order reversed and case remitted to
Batavia City Court for further
proceedings in accordance with the
opinion herein.
Opinion by Chief Judge Lippman.
Judges Ciparick, Graffeo, Read, Smith,
Pigott and Jones concur.

2 No. 112
Lewis J. Bazakos,
Respondent,
v.
Philip Lewis,
Appellant,
et al.,
Defendants.

Order reversed, with costs, order of
Supreme Court, Nassau County,
reinstated and certified question
answered in the negative.
Opinion by Judge Smith.
Judges Ciparick, Graffeo and Read
concur.
Chief Judge Lippman dissents and votes
to affirm in an opinion in which Judges
Pigott and Jones concur.

1 No. 175 SSM 19
In the Matter of Manuel Gomez,
Respondent,
v.
Raymond W. Kelly, &c., et al.,
Appellants.

On review of submissions pursuant to
section 500.11 of the Rules, order,
insofar as appealed from, reversed,
with costs, and petition dismissed in
its entirety. We cannot say that "the
penalty . . . imposed by the
Commissioner shocks the judicial
conscience" (Matter of Kelly v Safir,
96 NY2d 32, 40 [2001]).
Judges Ciparick, Graffeo, Read, Smith,
Pigott and Jones concur.
Chief Judge Lippman took no part.

1 No. 114
MHR Capital Partners LP, et al.,
 Appellants,
 v.
Presstek, Inc.,
 Respondent,
Silver Acquisitions Corp., &c.,
 Defendant.

Order affirmed, with costs.
Opinion by Judge Graffeo.
Chief Judge Lippman and Judges
Ciparick, Read, Smith, Pigott and Jones
concur.

 No. 109
In the Matter of Faith Ann
Peaslee, et al.

George M. Reiber,
 Appellant,
 v.
GMAC, LLC, Ford Motor Credit
Company, General Motors
Acceptance Corporation, Sovereign
Bank, HSBC Auto Finance,
 Respondents.

Following certification of a question
by the United States Court of Appeals
for the Second Circuit and acceptance
of the question by this Court pursuant
to section 500.27 of the Rules of
Practice of the New York State Court of
Appeals, and after hearing argument by
counsel for the parties and
consideration of the briefs and the
record submitted, certified question
answered in the affirmative.
Opinion by Judge Pigott.
Judges Graffeo, Read and Jones concur.
Judge Smith dissents and votes to
answer the certified question in the
negative in an opinion in which Chief
Judge Lippman and Judge Ciparick
concur.

3 No. 110
In the Matter of Port Authority
Police Benevolent Association,
Inc., et al.,
 Appellants,
 v.
Laura L. Anglin, &c., et al.,
 Respondents.

Judgment affirmed, with costs, in a
memorandum.
Chief Judge Lippman and Judges
Ciparick, Graffeo, Read, Smith, Pigott
and Jones concur.

No. 177

Victor J. Runner,
Respondent,

v.

New York Stock Exchange, Inc., et
al.,

Appellants.

Certification of questions by the
United States Court of Appeals for the
Second Circuit, pursuant to
section 500.27 of this Court's Rules of
Practice, accepted and the issues
presented are to be considered after
briefing and argument.

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

MOTIONS

3 Mo. No. 2009-466
In the Matter of Suzanne Avery,
et al.,
 Appellants,
 v.
Sandra A. Aery, as Assessor of
the Town of Harrietstown, et al.,
 Respondents,
et al.,
 Respondents.

Motion for leave to appeal dismissed
as untimely (see CPLR 5513[b]).

3 Mo. No. 2009-614
The People &c.,
 Respondent,
 v.
Avery V. Baker Jr.,
 Appellant.

Motion for assignment of counsel
granted and Mitchell S. Kessler, Esq.,
63 Pike Creek Drive, Cohoes, NY 12047
assigned as counsel to the appellant
on the appeal herein.

2 Mo. No. 2009-497
In the Matter of Joan Barcellos,
 Appellant,
 v.
Dorretta Warren-Kidd,
 Respondent.

Motion for leave to appeal denied.

3 Mo. No. 2009-485
In the Matter of Rosevelt Beal,
 Appellant,
 v.
Virginia Levine et al.,
 Respondents.

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

2 Mo. No. 2009-513
Mammud Rashid Beretey, &c.,
 Appellant,
 v.
New York City Health & Hospitals
Corporation (Elmhurst Hospital
Center),
 Respondent.

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

4 Mo. No. 2009-408
Arthur Berry,
 Appellant,
 v.
Utica National Insurance Group,
 Respondent,
et al.,
 Defendants.

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

2 Mo. No. 2009-510
BLF Associates, LLC,
 Respondent,
 v.
Town of Hempstead, et al.,
 Appellants.

Motion for leave to appeal denied.

4 Mo. No. 2009-645
The People &c.,
 Respondent,
 v.
Eric D. Carr,
 Appellant.

Motion for assignment of counsel granted and David C. Schopp, Esq., Legal Aid Bureau of Buffalo, 237 Main Street, Suite 1602, Buffalo, NY 14203 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2009-486
The People &c.,
 Respondent,
 v.
Nathaniel Cherry,
 Appellant.

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

4 Mo. No. 2009-487
In the Matter of Claudia Childs,
 Appellant,
 v.
New York State Division of Human Rights and Buffalo Police Department,
 Respondents.

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

2 Mo. No. 2009-469
Joseph Corsi et al.,
 Appellants,
 v.
Town of Bedford,
 Respondent,
et al.,
 Defendants.

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

2 Mo. No. 2009-686
The People &c.,
 Respondent,
 v.
John Covington,
 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.

1 Mo. No. 2009-515
Craig Crawford,
 Appellant,
 v.
Liz Claiborne, Inc., et al.,
 Respondents.

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

4 Mo. No. 2009-521
The People &c. ex rel. Charles A.
Dingle,
 Appellant,
 v.
James T. Conway, &c.,
 Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2009-495
In the Matter of Fairport Baptist
Homes,
 Appellant,
 v.
Richard F. Daines, M.D.,
Commissioner of Health, State of
New York,
 Respondent.

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

2 Mo. No. 2009-438
Enrico Ferdico, et al.,
 Respondents,
 v.
Joel Zweig,
 Respondent,
Brian Mullen et al.,
 Appellants,
et al.,
 Defendant.

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

2 Mo. No. 2009-636
The People &c.,
 Respondent,
 v.
Vincent Fiammegta,
 Appellant.

Motion for assignment of counsel granted and Lynn W.L. Fahey, Esq., Appellate Advocates, 2 Rector Street, 10th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2009-432
Carl Gambino, et al.,
 Respondents,
 v.
City of New York,
 Appellant.

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

1 Mo. No. 2009-519
David Goldstein,
 Appellant,
 v.
Massachusetts Mutual Life
Insurance Company,
 Respondent.

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

3 Mo. No. 2009-524
In the Matter of Shawn Green,
 Appellant,
 v.
Keith Dubray, &c.,
 Respondent.

Motion for reargument denied.

4 Mo. No. 2009-394
In the Matter of Carl A. Gutzmer,
 Appellant,
 v.
Myriam L. Santini,
 Respondent.

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

4 Mo. No. 2009-522
The People &c.,
 Respondent,
 v.
Edward W. Hardy, Jr.,
 Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2009-514
IDT Corporation,
 Respondent,
 v.
Morgan Stanley Dean Witter & Co.
et al.,
 Appellants.

Motion for reargument denied with one hundred dollars costs and necessary reproduction disbursements. Chief Judge Lippman took no part.

4 Mo. No. 2009-481
In the Matter of Kaseem J. et al.

Monroe County Department of Human
Services,
 Respondent;
Jamal J.,
 Appellant.

Motion for leave to appeal denied.

2 Mo. No. 2009-480
Tara Khanal,
 Respondent,
 v.
Dave Sheldon, &c.,
 Appellant,
et al.,
 Defendants.

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

1 Mo. No. 2009-281
Kinder Morgan Energy Partners,
L.P., et al.,
 Appellants,
 v.
Ace American Insurance Company,
 Respondent.

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

4 Mo. No. 2009-391
The People &c. ex rel. Gerald A.
Lanfair,
 Appellant,
 v.
Michael Corcoran, &c.,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2009-529
Carey Lovelace,
 Respondent,
 v.
Eugene Krauss, et al.,
 Appellants.

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

2 Mo. No. 2009-453
Mago, LLC,
 Respondent,
 v.
Amrit Joy Singh,
 Appellant.

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

4 Mo. No. 2009-684
The People &c.,
 Respondent,
 v.
Peter J. Maliszewski,
 Appellant.

Motion for assignment of counsel
granted and Mary Davison, Esq. c/o
Davison Law Office, PO Box 652,
Canandaigua, NY 14424 assigned as
counsel to the appellant on the appeal
herein.

1 Mo. No. 2009-423
The People &c.,
 Respondent,
 v.
Luis Mangual,
 Appellant.

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

4 Mo. No. 2009-490
Theresa Milea et al., &c.,
 Appellants,
 v.
City of Syracuse, et al.,
 Respondents.

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

4 Mo. No. 2009-680
The People &c.,
 Respondent,
 v.
Robert Mothersell,
 Appellant.

Motion for assignment of counsel
granted and Gerald T. Barth, Esq.,
Frank H. Hiscock Legal Aid Society,
351 South Warren Street, Syracuse, NY
13202 assigned as counsel to the
appellant on the appeal herein.

2 Mo. No. 2009-511
Jodi A. Norman,
 Appellant,
 v.
City of New York et al.,
 Respondents.

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

4 Mo. No. 2009-526
In the Matter of O'Connell
Machinery Co., Inc.,
 Appellant,
 v.
City of Buffalo Zoning Board of
Appeals, et al.,
 Respondents.

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

1 Mo. No. 2009-488
110 Amity Associates, LLC,
et al.,
 Appellants,
 v.
Grubb & Ellis New York, Inc.,
et al.,
 Respondents.

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

4 Mo. No. 2009-476
In the Matter of Amoni P.,
et al.,

Oneida County Department of
Social Services,
 Appellant;
Darryl P.,
 Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2009-414
Polar International Brokerage
Corp., et al.,
 Appellants,
 v.
Benjamin S. Richman, et al.,
 Defendants,
Associated Financial Corporation,
et al.,
 Respondents.

Motion for leave to appeal denied.

3 Mo. No. 2009-493
In the Matter of William Pride,
 Appellant,
 v.
Thomas G. Eagen, &c.,
 Respondent.

Motion for leave to appeal denied.

4 Mo. No. 2009-492
The People &c. ex rel. Walter J.
Roache,
 Appellant,
 v.
S.A. Connell, &c.,
 Respondent.

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

2 Mo. No. 2009-648
The People &c.,
 Respondent,
 v.
Steve Rosado,
 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.

1 Mo. No. 2009-458
Kevin Tejada, &c., et al.,
 Respondents,
 v.
Woodycrest Realty, L.L.C.,
 Appellant.

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

2 Mo. No. 2009-658
The People &c.,
 Respondent,
 v.
Derrick Tigner,
 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.

1 Mo. No. 2009-647
The People &c.,
 Respondent,
 v.
Jose Tolentino,
 Appellant.

Motion for assignment of counsel granted and Steven Banks, Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

2 Mo. No. 2009-482
Tyrone Worrell,
 Appellant,
 v.
Parkway Estates, LLC,
 Defendant,
1299 Eastern, LLC,
 Respondent.

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.

2 Mo. No. 2009-618
The People &c.,
 Appellant,
 v.
Patrick Zephrin,
 Respondent.

Motion for assignment of counsel granted and Lynn W.L. Fahey, Esq., Appellate Advocates, 2 Rector Street, 10th Floor, New York, NY 10006 assigned as counsel to the respondent on the appeal herein.