

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 February 10, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Richard T. Andrias
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
Gentry T. Beach, et al.,
Plaintiffs-Appellants,

-against-

Touradji Capital Management, LP,
et al.,
Defendants-Respondents.

M-42
Index No. 603611/08

-----X
[And other actions]
-----X

Defendants-respondents having moved for adjournment of the appeal from the 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 the correspondence from Sean R. O'Brien, Esq. of Arkin Kaplan Rice, LLP dated January 14, 2011, and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Angela M. Mazzairelli
John W. Sweeny, Jr.
Roselyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X
Morrison Cohen LLP,

Plaintiff-Respondent,

-against-

M-6206
Index No. 104100/09

David Fink,

Defendant-Appellant.
-----X

An appeal having been taken to this Court from the judgment of the Supreme Court, New York County, entered on or about January 12, 2010, and said appeal having been argued,

And defendant-appellant having moved for leave to withdraw 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. (See Appeal Nos. 3960-3960A, decided simultaneously herewith.)

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Richard T. Andrias
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

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

-against-

M-134
Case No. 62055C/07.

Augustin Norales,
Defendant-Appellant.

-----X

An appeal having been taken from a judgment of the Supreme Court, Bronx County, rendered on or about February 11, 2009,

And an order of this Court (M-1132) having been entered March 26, 2009, granting defendant appellant leave to prosecute the aforesaid appeal as a poor person, and related relief,

And the People having moved for an order directing the court reporter(s) to promptly make and file, with the criminal court, two transcripts of the minutes of the proceedings below from June 24, 2008, in the Supreme Court, Bronx County (Fabrizio, J.), which were not included in the minutes originally transcribed pursuant to the aforesaid order of this Court (M-1132) entered March 26, 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 directing the Clerk of the Supreme Court, Bronx County, to have transcribed the minutes of the proceedings herein as not yet transcribed, including those enumerated above, for inclusion in the record on appeal, within 30 days from the date of service upon the Clerk of Supreme Court of a copy of this order, which counsel is directed to serve upon the Clerk and the individual court reporter(s) within 10 days from the date of entry hereof. If the minutes are not available or do not exist, the Clerk of said court is directed to provide a statement to that effect. The appeal is adjourned to the June 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 February 10, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
David B. Saxe
James M. Catterson
Rolando T. Acosta, Justices.

-----X

The People of the State of New York,
Respondent,

-against-

M-5989
Ind. No. 5164/08

Alfonso Rodriguez,
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 November 15, 2009, 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, pursuant to CPLR 1101(a), setting forth facts sufficient to establish that defendant has no funds or assets with which to prosecute the appeal, including the amount and sources of his income and listing his property with its value. (The application shall include an affidavit of the source[s] of all funds utilized by defendant.)

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Richard T. Andrias
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
Rafael Mejias,
Plaintiff-Respondent,

-against-

M-6325
Index No. 309137/08

Mastic Associates of New York, LLC,
et al.,
Defendants,

Quality Building Construction, LLC,
sued herein as Quality Building
Contractor, Inc.,
Defendant-Appellant.

-----X

An appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about September 13, 2010,

And plaintiff-respondent having moved to strike defendant's record on appeal, to dismiss defendant's appeal, or, in the alternative for an extension of time in which to file a respondent's brief,

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

Ordered that the motion, to the extent it seeks an extension of time in which to file a respondent's brief, is denied, as academic. So much of the motion which seeks to strike defendant's record on appeal and to dismiss said appeal is denied, without prejudice to addressing the issues upon argument of 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 February 10, 2011.

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

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

-against-

M-5043
Ind. No. 5225/96

John Royster,
Defendant-Appellant.

-----X
Defendant-appellant having moved for reargument of the decision and order of this Court entered on September 25, 2007 (Appeal No. 1531), and for poor person relief and the assignment of counsel,

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

It is ordered that the motion, to the extent it seeks reargument, is dismissed, as untimely. So much of the motion which seeks poor person relief and the assignment of counsel is denied, as academic.

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 February 10, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
Angela M. Mazzarelli
John W. Sweeny, Jr.
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X
Raisa Rozina, et al.,

Plaintiffs-Appellants,

-against-

M-5454
Index No. 100617/09

Casa 74th Development LLC, et al.,

Defendants-Respondents.
-----X

Plaintiffs-appellants having moved for a stay of enforcement of the order of the Supreme Court, New York County, entered on or about September 7, 2010, pending hearing and determination of the appeal taken therefrom,

Now, upon reading and filing the papers with respect to the motion, and the stipulation of the parties dated November 24, 2010, and due deliberation having been had thereon,

It is ordered that the motion is deemed 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 February 10, 2011.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Angela M. Mazzairelli
Rolando T. Acosta
Nelson S. Román, Justices.

-----X
Mt. McKinley Insurance Company,
formerly known as Gibraltar Casualty
Company, et al.,
Plaintiffs-Respondent,

-against-

M-6244
Index No. 602454/02

Corning Incorporated,
Defendant-Appellant,

AUI Insurance Company et al.,
Defendants-Respondents,

American Centennial Insurance
Company, et al.,
Defendants.

-----X

Appeals having been taken from orders of the Supreme Court, New York County, entered on or about March 2, 2010 and December 20, 2010, respectively,

And an order of this Court having been entered on January 18, 2011 (M-6266), enlarging the time to perfect the aforesaid appeals to the June 2011 Term,

And defendant-appellant Corning Incorporated having moved for leave to file certain documents listed in paragraph 7 of the affirmation of Edward Tessler, Esq. submitted in support of the instant motion and further described in Exhibits 4-7 to the instant motion under seal in a separate volume,

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 February 10, 2011:

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
Richard T. Andrias
Rolando T. Acosta
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

-----X
Casa de Meadows Inc. (Cayman Islands),
et al.,
Plaintiffs-Respondents,

-against-

Faith F. Zaman, et al.,
Defendants-Appellants,

Eurofinch Limited, et al.,
Defendants,

[And a Third-Party Action]

M-5399
Index Nos. 601685/07
590660/07

Casa de Meadows Inc. (Cayman Islands),
et al.,
Plaintiffs-Respondents,

-against-

Faith F. Zaman, et al.,
Defendants-Appellants,

Bel-Air Hotel Company, LLC, et al.,
Defendants.

Faith F. Zaman, et al.,
Third-Party Plaintiffs-Appellants,

-against-

Penigran Muda Abdul Hakeem, et al.,
Third-Party Defendants,

Cedar Swamp Holding, Inc.,
Third-Party Defendant-Respondent.

Casa de Meadows Inc. (Cayman Islands),
et al.,

Plaintiffs-Respondents,

-against-

Faith F. Zaman, et al.,
Defendants-Appellants,

Eurofinch Limited, et al.,
Defendants

[And a Third-Party Action]

-----X

Defendants/third-party plaintiffs-appellants Thomas W. Derbyshire, Faith Zaman Derbyshire and Arzie Zamarni having moved — for renewal of or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this Court entered on September 28, 2010 (Appeal Nos. 3267N/3268N/3269N),

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:

Susan Rojas
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 February 10, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
David B. Saxe
James M. Catterson
Rolando T. Acosta
Sallie Manzanet-Daniels, Justices.

-----x
Walter Pofeldt,

Plaintiff-Respondent,

-against-

M-5244
Index No. 3334/08

Mary Paliotta,

Defendant-Appellant.
-----x

Defendant-appellant having moved for a stay of the order pending hearing and determination of the appeal from the order of the Supreme Court, Bronx County, entered on or about June 29, 2010,

Now, upon reading and filing the papers with respect to the motion, and the stipulation of the parties dated October 21, 2010, and due deliberation having been had thereon,

It is ordered that the motion is deemed 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 February 10, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
David B. Saxe
James M. Catterson
Rolando T. Acosta
Sallie Manzanet-Daniels, Justices.

-----x
Bovis Lend Lease LMB, Inc., et al.,
Plaintiffs-Appellants,

-against-

M-5400
Index No. 107326/07

Virginia Surety Insurance Company, etc.,
et al.,
Defendants-Respondents.
-----x

Plaintiffs-appellants having moved for a stay of depositions pending hearing and determination of the appeal from the order of the Supreme Court, New York County, entered on or about September 19, 2010,

Now, upon reading and filing the papers with respect to the motion, and the correspondence from Newman Myers Krienes Gross Harris, P.C. (Howard B. Altman, of counsel), counsel for plaintiffs-appellants, dated November 9, 2010, and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
David Friedman
James M. Catterson
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

-----X
Susan Hanna,
Plaintiff-Respondent,

-against-

M-89
M-300
Index No. 301954/08

Madison Square Garden Center, Inc.,
et al.,
Defendants-Appellants.

-----X

___ An appeal having been taken to this Court from the order of the Supreme Court, Bronx County, entered on or about September 7, 2010, and said appeal having been perfected,

And plaintiff-respondent having moved (M-89) to strike certain portions of the record on appeal and for an enlargement of time in which to file a respondent's brief,

And defendants-appellants having cross-moved (M-300) for a stay of proceedings pending hearing and determination of 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-89) is granted to the extent of adjourning said appeal to the May 2011 Term, without prejudice to addressing the issues raised with respect to the record on appeal, in respondent's brief, and the motion is otherwise denied. The cross motion (M-300) is granted to the extent of staying the trial pending hearing and determination of the aforesaid appeal, and the cross 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 February 10, 2011.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
David Friedman
James M. Catterson
Dianne T. Renwick
Sheila Abdus-Salaam, Justices.

-----X

Julio Alicea,
Plaintiff-Respondent-Appellant,

-against-

M-112
Index No. 20625/03

The City of New York, Manhattan and
Bronx Surface Transit Operating
Authority (MABSTOA) and the New
York City Transit Authority,
Defendants-Appellants-Respondents.

-----X

Appeals and a cross appeal having been taken from the amended judgment of the Supreme Court, Bronx County, entered on or about March 23, 2010, and the appeal of the Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) and the New York City Transit Authority having been perfected upon a joint appendix inclusive of the City of New York's appeal plaintiff's cross appeal,

And defendant-appellant the City of New York having moved for an enlargement of time in which to perfect its appeal,

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

It is ordered that the motion is granted to the extent of enlarging the time of defendant-appellant City of New York in which to perfect its appeal to the June 2011 Term. Sua sponte the perfected appeal and cross appeal are adjourned to said June 2011 Term. The Clerk is directed to calendar the appeals and cross appeal for hearing together on the same day on the June 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 February 10, 2011.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
John W. Sweeny, Jr.
Rolando T. Acosta
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X
Todd Pleeter and Sandi Harris-
Pleeter,
Plaintiffs-Appellants,

-against-

William Cole, M.D., et al.,
Defendants-Respondents,

-and-

New York University Medical Center,
et al.,
Defendants.

M-6277
Index No. 111415/07

-----X

Plaintiffs-appellants having moved for an enlargement of time in which to perfect the appeal from a judgment of the Supreme Court, New York County, entered on or about March 17, 2010,

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 June 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
John W. Sweeny, Jr.
Rolando T. Acosta
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X

Maria Ruiz,
Plaintiff-Appellant,

-against-

M-6315
Index No. 8847/05

The Summit Appliance Division, et al.,
Defendants,

-and-

3001 Valentine Realty LLC,
Defendant-Respondent.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from a judgment of the Supreme Court, Bronx County, entered on or about February 8, 2010,

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 June 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

PRESENT: Hon. Luis A. Gonzalez, Presiding Justice,
John W. Sweeny, Jr.
Rolando T. Acosta
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----x
255 West End Avenue Owners Corp.,
Plaintiff-Respondent,

-against-

M-6341
Index No. 113226/07

Peter Fernandez and Libby Crane,
Defendants-Appellants.

-----x
Appeals having been taken to this Court by defendants-appellant from orders of the Supreme Court New York County, entered on or about January 4, 2010 (mot. seq. no. 004) and December 14, 2010 (mot. seq. no. 007), respectively,

And defendants-appellants having moved for consolidation of the aforesaid appeals,

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 appellants to prosecute the appeals upon nine copies of one record and one set of appellant points covering the appeals. The attention of the parties is directed to 22 NYCRR § 600.11. The time in which to perfect the consolidated appeals enlarged to the June 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 February 10, 2011.

Present - Hon. Peter Tom, Justice Presiding,
David Friedman
James M. Catterson
Diane T. Renwick
Sallie Manzanet-Daniels, Justices.

-----x
RSB Bedford Associates LLC,

Plaintiff-Respondent,

-against-

M-4864

Index No. 602303/09

Ricky's Williamsburg, et al.,

Defendants-Appellants.
-----x

Defendants-appellants having moved for a stay of special referees hearing on damages pending hearing and determination of the appeal from the order of the Supreme Court, New York County entered on or about April 14, 2010,

Now, upon reading and filing the papers with respect to the motion, and the correspondence from Santamarina & Associates dated October 1, 2010, and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present - Hon. Peter Tom, Justice Presiding,
David Friedman
Leland G. DeGrasse
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----x
Shawn Mulholland,

Plaintiff-Appellant,

-against-

Bedford 44 Inc., et al.,

Defendants-Respondents.
-----x

M-4933
M-5067X
Index No. 602945/04

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from a judgment of the Supreme Court, New York County, entered on or about January 28, 2010 (M-4933),

Now, upon reading the correspondence from Michelstein & Associates PLLC (Richard A. Ashman, of counsel) dated October 12, 2010, and after pre-argument conference and filing the stipulation of the parties hereto, "so ordered" October 7, 2010 (M-5067X), and due deliberation having been had thereon,

It is ordered that the motion and appeal are withdrawn in accordance with the aforesaid correspondence and 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 February 10, 2011.

Present - Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

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

-against-

M-6187
Ind. No. 2378/04

Samuel Wood,
Defendant-Appellant.

-----X

An order of this Court having been entered on May 30, 2006 (M-2621), inter alia, assigning Steven Banks, Esq., as counsel to prosecute defendant's appeal from a judgment of the Supreme Court, Bronx County, rendered on January 12, 2006,

And assigned counsel having moved for an order abating the appeal by reason of appellant's death, remanding the matter to the trial court to vacate the judgment of conviction, and dismissing the indictment,

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 dismissing the appeal because of appellant's death on February 8, 2009, and remanding the matter to the Supreme Court, Bronx County, for proceedings to vacate the judgment of conviction and to dismiss the indictment. (See *People v Matteson*, 75 NY2d 745; *People v Mintz*, 20 NY2d 753, 770.)

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
David Friedman
Dianne T. Renwick
Leland G. DeGrasse, Justices.

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

-against-

M-6274
SCID No. 30092/10

Robert Watson,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, New York County (Cassandra Mullen, J.) entered on or about November 15, 2010, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, for an enlargement of time in which to perfect the appeal, and for related relief,

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

Ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

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

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

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present - Hon. Peter Tom, Justice Presiding,
Angela M. Mazzarelli
Dianne T. Renwick
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

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

Appellant,

-against-

M-20
Ind. No. 2438/09

Eduardo Rodriguez,

Defendant-Respondent.
-----X

Defendant-respondent having moved for leave to respond, as a poor person, to the People's appeal from an order of the Supreme Court, New York County, entered on or about March 9, 2010, and for assignment of counsel,

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

It is ordered that the motion is granted to the extent of (1) permitting movant to respond to the appeal upon a reproduced respondent's brief, on condition that one copy of such brief be served upon the attorney for the People and 8 copies thereof are filed with this Court, and (2) assigning, pursuant to Section 722 of the County Law, Andrew Freifeld, Esq., 30 Versey Street, 6th Floor, New York, New York 10007, Telephone No. (212) 240-9406, as counsel for purposes of responding to the appeal.

It is further ordered that the appeal is adjourned to the May 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

PRESENT: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzairelli
Dianne T. Renwick
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----X
Ellen Teixeira,
Plaintiff-Appellant,

-against-

M-6336
Index No. 116021/02

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

-and-

New York City Department of
Transportation,
Defendant.

-----X
[and a third-party action]
-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, New York County, entered on or about March 17, 2010 (mot. seq. no. 004),

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 June 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present: Hon. Peter Tom, Justice Presiding,
Angela M. Mazzaelli
Dianne T. Renwick
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----X
Cynthia Warren,

Plaintiff-Appellant,

-against-

M-6362
Index No. 104197/06

New York Presbyterian Hospital,

Defendant-Respondent.
-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from a judgement of the Supreme Court, New York County, entered on or about October 23, 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 on or before March 21, 2011 for the June 2011 Term, with no further enlargements to be granted.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present - Hon. Peter Tom, Justice Presiding,
David B. Saxe
David Friedman
John W. Sweeny, Jr.
Sheila Abdus-Salaam, Justices.

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

Respondent,

-against-

M-5063
Ind. No. 2246/07

William Steele,

Defendant-Appellant.
-----x

An order of this Court having been entered on January 7, 2010 (M-5442), granting defendant leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, Bronx County, rendered on or about October 22, 2009, and assigning Richard M. Greenberg, Esq., as counsel to prosecute the appeal,

And defendant-appellant pro se having moved for an order relieving counsel and assigning other counsel to prosecute the appeal,

Now, upon reading and filing the papers with respect to the motion, and the correspondence from the Office of the Appellate Defender dated October 28, 2010, and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

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

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

Carlos Santiago,
Petitioner-Appellant,

-against-

M-6055
Index No. 260559/08

New York City Transit Authority,
Respondent-Defendant.

-----X

An order of this Court having been entered on September 30, 2010 (M-3845), consolidating the appeals taken from orders of the Supreme Court, Bronx County, entered on or about July 30, 2009, May 14, 2010 and June 30, 2010, respectively, and enlarging the time in which to perfect the consolidated appeals to the January 2011 Term,

And petitioner-appellant having moved for an enlargement of time in which to perfect the aforesaid consolidated appeals,

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 time in which to perfect the consolidated appeals is enlarged to the June 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

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

-----X
James Coleman,

Plaintiff-Respondent,

-against-

M-6110
Index No. 24930/05

City of New York,

Defendant-Appellant.
-----X

Plaintiff-respondent having moved for dismissal of the appeal from the order of the Supreme Court, Bronx County, entered on or about December 8, 2009, for failure to prosecute,

Now, upon reading and filing the papers with respect to the motion, and the correspondence from the Law Offices of Lawrence P. Biondi dated December 28, 2010, and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011:

Present - Hon. Richard T. Andrias, Justice Presiding,
James M. Catterson
Karla Moskowitz
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

-----x
In the Matter of the Application of
The Board of Managers of the Alfred
Condominium,
Plaintiff-Appellant,

For an Order and Judgment, etc.,

M-4747

Index No. 114990/09

-against-

The City of New York, et al.,
Respondents-Respondents.
-----x

An appeal having been taken to this Court from the order and judgment (one paper) of the Supreme Court, New York County, entered on or about August 19, 2010 (mot. seq. nos. 001, 002 & 003),

And respondent-respondent Fordham University having moved for expedited hearing of the aforesaid appeal, and for other relief,

Now, upon reading and filing the papers with respect to the motion, and the stipulation of the parties dated October 26, 2010, and due deliberation having been had thereon,

It is ordered that the motion and appeal are deemed 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 February 10, 2011.

Present - Hon. Richard T. Andrias, Justice Presiding,
David Friedman
James M. Catterson.
Dianne T. Renwick
Leland G. DeGrasse, Justices.

-----x
Elyaho Malekan,
Plaintiff-Appellant,

-against-

M-6063
Index No. 601166/08

Isak Sakai, et al.,
Defendants-Respondents.

-----x
Sakai Antiques and Isak Sakai,
Plaintiffs-Respondents,

-against-

Index No. 401763/09

Elyaho Malekan,
Defendant-Appellant.

-----x
Appeals having been taken to this Court by the plaintiff/defendent-appellant from the judgments of the Supreme Court, New York County, both entered on or about May 27, 2010 (mot. seq. no. 006) and June 3, 2010 (mot. seq. no. 001), respectively,

And plaintiff/defendent-appellant having moved for consolidation of the aforesaid appeals,

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 appellant to prosecute the consolidated appeals upon nine copies of one record and one set of appellant points covering the consolidated appeals. The attention of the parties is directed to 22 NYCRR § 600.11. The time to perfect the consolidated appeals is enlarged to the June 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
John W. Sweeny, Jr.
Karla Moskowitz
Leland G. DeGrasse
Sheila Abdus-Salaam, Justices.

-----X
In Re East 51st Street Crane
Collapse Litigation

John Della Porta and Debra Della Porta,
Plaintiffs-Appellants,

-against-

East 51st Street Development Company, LLC,
Defendant-Respondent,

-and-

Reliance Construction Group, et al.,
Defendants.

-----X
(And a Third-Party Action)
-----X

M-6263
Consolidated Index No.
769000/08
Index Nos. 108449/09
113949/08
113965/08
108131/08
104427/08

Appeals having been taken to this Court by defendant-respondent East 51st Street Development Company, LLC from orders of the Supreme Court New York County, entered on or about July 29, 2010 (mot. seq. nos. 001, 002, 003, 004 & 012) in the matters consolidated for discovery and pre-trial proceedings under consolidated Index No. 769000/08,

And defendant-respondent having moved for consolidation of the aforesaid appeals,

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 appellant to prosecute the appeals upon nine copies of one record and one set of appellant's points covering the appeals and enlarging the time in which to perfect the consolidated appeals to the June 2011 Term. The parties' attention is directed to 22 NYCRR 600.11.

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 February 10, 2010.

Present - Hon. Richard T. Andrias, Justice Presiding,
John W. Sweeny, Jr.
Karla Moskowitz
Leland G. DeGrasse
Sheila Abdus-Salaam, Justices.

-----x
Ian Gavigan,
Plaintiff-Respondent-Appellant,

-against-

M-6252
Index No. 109761/06

The City of New York,
Defendant-Appellant-Respondent,

-and-

Petrocelli Electric Company, Inc.,
et al.,
Defendants.

-----x
An appeal and cross appeal having been taken from the order of the Supreme Court, New York County entered on or about December 15, 2009 (mot. seq. nos. 001, 002),

and defendant-appellant-respondent having moved for an enlargement of time in which to perfect the direct appeal,

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

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal and cross appeal to the June 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

PRESENT: Hon. Richard T. Andrias, Justice Presiding,
John W. Sweeny, Jr.
Karla Moskowitz
Leland G. DeGrasse
Sheila Abdus-Salaam, Justices.

-----X
In the Matter of the Application of
The State of New York,
Petitioner-Respondent,

-against-

M-6349
SCID No. 30215/08

Gregory F.,
Respondent-Appellant,

For Civil Confinement Pursuant to
Article 10 of the Mental Hygiene Law.
-----X

Respondent-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, New York County, entered on or about April 19, 2010,

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 October 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present: Hon. David B. Saxe, Justice Presiding,
Karla Moskowitz
Rosalyn H. Richter
Sallie Manzanet-Daniels
Nelson S. Román, Justices.

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

-against-

M-6265
Ind. No. 669/08

John Blum,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, Bronx County (John Moore, J.) entered on or about October 21, 2010, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, for an enlargement of time in which to perfect the appeal, and for related relief,

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

Ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

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

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

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present: Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. Catterson
Rolando T. Acosta
Rosalyn H. Richter, Justices.

-----X
Amy Stuart Wells,
Plaintiff-Respondent,

-against-

M-5686
Index No. 310427/09

Todd W. Serman,
Defendant-Appellant.
-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about October 15, 2010 (mot. seq. no. 004),

And defendant having moved for a stay of enforcement of an attorney fee award pending hearing and determination of the appeal,

Now, upon reading and filing the papers with respect to the motion, and the stipulation of the parties, dated January 10, 2011, and due deliberation having been had thereon, it is

Ordered that the stay of enforcement of an attorney fee award 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 February 10, 2011.

Present: Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. Catterson
Rolando T. Acosta
Rosalyn H. Richter, Justices.

-----X
In the Matter of the Application of
the State of New York,
Petitioner-Respondent,

M-36
Index No. 341104/08

For a Judgment Pursuant to Article 10
of the Mental Hygiene Law,

-against-

C.B.,
Respondent-Appellant.

-----X
Respondent-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, Bronx County, entered on or about August 24, 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 June 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

PRESENT: Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. Catterson
Rolando T. Acosta
Rosalyn H. Richter, Justices.

-----X
James A. Clarke,
Plaintiff-Appellant,

-against-

M-6236
Index No. 115178/07

Catamount Ski Area, et al.,
Defendants-Respondents.

-----X
Zack Lang and Cari Lang,
Plaintiffs-Respondents, ___

-against-

Index No. 103470/08

Catamount Ski Area, et al.,
Defendants-Respondents.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, New York County, entered on or about June 10, 2010 (mot. seq. no. 005),

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 June 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present - Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. Catterson
Rolando T. Acosta
Rosalyn H. Richter, Justices.

-----X
In the Matter of

Michael R.,

A Person Alleged to be a
Juvenile Delinquent,
Respondent-Appellant.

M-6337
Docket. No. D565/09

-----X

Respondent-appellant having moved for an enlargement of time in which to perfect the appeal from the order of the Family Court, New York County, entered on or about March 23, 2010,

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 June 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

PRESENT: Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. Catterson
Rolando T. Acosta
Rosalyn H. Richter, Justices.

-----X
QBE Insurance Corporate, et al.,
Plaintiffs-Respondents-Appellants,

-against-

Travelers Indemnity Company, etc.,
Defendant-Appellant-Respondent,

Investors Insurance Company of
America and Thunderbird Contractors,
Inc.,
Defendants-Appellants-Respondents,

M-15
Index No. 111665/07

-and-

Triborough Bridge and Tunnel
Authority, et al.,
Defendants.

-----X

Appeals and cross appeals having been taken from the order and judgment of the Supreme Court, New York County, entered on or about March 17, 2010,

And defendant-appellant Travelers Indemnity Company having moved on behalf of all appellants for an enlargement of time in which to perfect the aforesaid appeals and cross appeals,

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 appeals and cross appeals to the September 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 February 10, 2011.

PRESENT: Hon. David B. Saxe, Justice Presiding,
David Friedman
James M. Catterson
Rolando T. Acosta
Rosalyn H. Richter, Justices.

-----X
Tower Insurance Company of New York,
Plaintiff-Appellant,

-against-

M-55
Index No. 103282/08

458 E. 144th Street Realty Corp.,
et al.,
Defendants-Respondents.

-----X

Plaintiff-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, New York County, entered on or about March 15, 2010,

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

It is ordered that the motion is granted to the extent of enlarging the time in which to perfect the appeal to the September 2011 Term.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

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

-----x
In the Matter of the Application of
Anthony Peterson,
Petitioner,

-against-

M-2884
Ind. No. 4374/08

Hon. Robert Torres, J.S.C., etc.,
et al.,
Respondents.

-----x
Petitioner having moved for relief in the nature of a writ of mandamus against Hon. Robert Torres with respect to a certain motion made pro se by petitioner in the matter *People v Anthony Peterson* (Bronx Co. Ind. No. 4374/08),

Now, upon reading and filing the papers with respect to the motion, the correspondence from The Legal Aid Society (Mara Moradoff, of counsel), counsel for petitioner dated July 28, 2010, and the correspondence from the Office of the District Attorney, Bronx County (Justin J. Braun, of counsel), counsel for respondents dated August 31, 2010, and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

Present - Hon. David B. Saxe, Justice Presiding,
Rolando T. Acosta
Helen E. Freedman
Rosalyn H. Richter
Sheila Abdus-Salaam, Justices.

-----X
In the Matter of the Application of
Atlantic Mutual Insurance Company,
Petitioner-Appellant,

-against-

M-4657
Index No. 260056/10

Michael Reingold,
Respondent-Respondent,

-and-

Shane A. Taylor, et al.,
Proposed Additional Respondents.

-----X

Petitioner-appellant having moved for a stay of arbitration pending hearing and determination of the appeal from the order of the Supreme Court, Bronx County, entered on or about June 10, 2010,

Now, upon reading and filing the papers with respect to the motion, and the correspondence from Wilson, Elser, Moskowitz, Edelman & Dicker LLP (Patrick J. Lawless, of counsel) dated September 30, 2010, and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn in accordance with the aforesaid correspondence.

ENTER:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on February 10, 2011.

PRESENT: Hon. John W. Sweeny, Jr., Justice Presiding,
Karla Moskowitz
Leland G. DeGrasse
Helen E. Freedman
Rosalyn H. Richter, Justices.

-----X

170 Second Avenue Owners Corp.,
Petitioner-Appellant,

M-31

Index Numbers

-against-

203681/97, 204277/98

200410/99, 206935/00

The Tax Commission of the City of
New York and the Commissioner of
Finance of the City of New York,

203987/01, 202016/02

251612/03, 250748/04

250188/05, 251883/06

Respondents-Respondents.

-----X

Appeals having been taken to this Court by petitioner-appellant from orders and judgments of the Supreme Court, New York County, entered on or about March 1, 2010,

And plaintiff-appellant having moved for consolidation of the aforesaid appeals,

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 appellant to prosecute the appeals upon nine copies of one record and one set of appellant's points covering the appeals and enlarging the time in which to perfect the consolidated appeals to the June 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 February 10, 2011.

Present: Hon. John W. Sweeny, Jr., Justice Presiding,
Karla Moskowitz
Leland G. DeGrasse
Nelson S. Román, Justices.

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

-against-

M-5585
Ind. No. 815/08

Terry Chapman,
Defendant-Appellant.

-----X

Orders of this Court having been entered on October 13, 2009 (M-3845) and on July 2, 2009 (M-2628) granting defendant leave to prosecute, as a poor person, the appeals from the judgment of the Supreme Court, New York County, rendered on or about March 23, 2009 and from the judgment of Supreme Court, Bronx County, rendered on or about May 12, 2009, and assigning Steven Banks, Esq., as counsel for defendant-appellant for the purposes of prosecuting the appeals simultaneously,

And defendant-appellant, pro se, having moved for an order relieving Steven Banks, Esq., as assigned counsel for defendant and to substitute other counsel to prosecute defendant's appeals,

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

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

BEFORE: Hon. Rolando T. Acosta
Justice of the Appellate Division

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

-against-

John Ramos,
Defendant-Appellant.
-----X

M-4938
Ind. No. 3846/03
5973/03
CERTIFICATE
GRANTING LEAVE

I, Rolando T. Acosta, a Justice of the Appellate Division, First Judicial Department, do hereby certify that in the proceedings herein questions of law or fact are involved which ought to be reviewed by the Appellate Division, First Judicial Department, and, pursuant to Section 460.15 of the Criminal Procedure Law, permission is hereby granted to the above-named defendant to appeal to the Appellate Division, First Judicial Department, from the order of the Supreme Court, New York County, entered on or about July 24, 2009.¹

Dated: December 20, 2010
New York, New York



Hon. Rolando T. Acosta
Associate Justice

ENTERED FEB 10 2011

NOTICE: Within 15 days from the date hereon, an appeal must be taken, and this certificate must be filed with the notice of appeal. An appeal is taken by filing, in the Clerk's office of the criminal court in which the order sought to be appealed was rendered, a written notice in duplicate that appellant appeals to the Appellate Division, First Judicial Department (Section 460.10, subd. 4, CPL), together with proof that another copy of the notice of appeal has been served upon opposing counsel. The appeal (or consolidated appeals; see footnote) must be argued within 120 days from the date of the notice of appeal, unless the time to perfect the appeal(s) is enlarged by the court or a justice thereof.

¹In the event defendant has an existing (direct) appeal from a judgment, such appeal shall be consolidated with the appeal from the aforesaid order; and any poor person relief granted with respect to the appeal from the judgment shall be extended to cover the appeals so consolidated.

SUPREME COURT, APPELLATE DIVISION
FIRST JUDICIAL DEPARTMENT

FEB 10 2011

Peter Tom, Justice Presiding,
Richard T. Andrias
David B. Saxe
James M. McGuire
Sallie Manzanet-Daniels, Justices.

-----x

In the Matter of Alexander P. Rosenberg
(admitted as Alexander Peter Rosenberg),
an attorney and counselor-at-law:

Departmental Disciplinary Committee M-3411
for the First Judicial Department,
Petitioner,

Alexander P. Rosenberg,
Respondent.

-----x

Disciplinary proceedings instituted by the Departmental
Disciplinary Committee for the First Judicial Department.
Respondent, Alexander P. Rosenberg, 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 25, 1974.

Jorge Dopico, Chief Counsel, Departmental
Disciplinary Committee, New York
(Raymond Vallejo, of counsel), for petitioner.

Hinshaw & Culbertson LLP. (Hal R. Lieberman),
for respondent.

M-3411 (August 16, 2010)

IN THE MATTER OF ALEXANDER P. ROSENBERG, AN ATTORNEY

PER CURIAM

Respondent Alexander Peter Rosenberg was admitted to the practice of law in the State of New York by the First Judicial Department on February 25, 1974. At all times relevant herein, respondent has maintained an office for the practice of law within the First Department.

By order entered December 16, 2009, this Court deemed the offense of which respondent had been convicted to be a serious crime and referred the matter to a Hearing Panel for a sanctions hearing. The Departmental Disciplinary Committee (Committee) seeks an order, pursuant to 22 NYCRR 603.4(d) and 605.15(e)(2), confirming the recommendation of the Hearing Panel and suspending respondent from the practice of law for 18 months, on the ground that respondent failed to file New York State personal income tax returns for taxable years 2002 through 2006, in violation of Section 1801(a) of the New York Tax Law, a class A misdemeanor, an offense to which respondent has pleaded guilty. Respondent asks for a public censure, or, at most, a suspension of no more than three months.

In March 2008, respondent was contacted by the Nassau County District Attorney's Office about his failure to file state tax returns for the period 2002 through 2006. He did not make any

estimated state tax payments during those years, nor did he pay his federal taxes. Respondent retained counsel and within approximately two weeks, prior to his arraignment, he filed his New York State tax returns for 2002 through 2006 and paid \$97,511 in outstanding taxes; on December 22, 2008, he paid New York penalties and interest of \$55,574. In July 2008, respondent paid the Federal government approximately \$1.2 million in taxes, penalties and interest covering the same time period. Respondent testified, "[t]he state taxes I had the money, it was available in the bank, and the federal taxes, which were considerably larger...came from two sources - one from a refinancing of our home ... [and the other] was covered by withdrawing money from the pension plan." Respondent has filed all subsequent tax returns on time.

The Panel noted, however, that "Respondent did nothing to rectify his tax situation until he was caught red-handed and without a glimmer of a defense to felony charges." In aggravation, the Panel commented on respondent's intent:

Respondent's failure to pay taxes was no accident. Nor was it the result of economic distress. Respondent's annual income during the years when he chose not to pay taxes ranged from \$363,992 to \$597,989. Respondent acknowledged that this failure to file his tax returns and pay his taxes was not the result of an inability to pay.

Respondent knowingly and intentionally did not file returns and pay taxes. He received notices from the IRS, he read them, but he "just didn't do anything further with them." The decade-long pattern of filing

for extensions with which he did not . . . comply, the calculated nature of Respondent's actions, and the fact that, when he was caught, he was able to come up with the money in very short order - because it was tucked away in the bank, in the equity in his home and in his pension account - speak to a greater culpability here than in other failure-to-pay cases.

The Panel concluded that the evidence of mitigation in this case was not substantial while the evidence of aggravation was substantial, and recommended an 18-month suspension as appropriate for respondent's "willful and unexcused failure" to file five years' worth of returns.

The Hearing Panel's recommendation that respondent be suspended for 18-months is disaffirmed. While the Panel seemed to criticize him for promptly paying the money he owed and treating his charitable contributions of \$160,000 as aggravation, both of those circumstances could also be seen as mitigation, at least in part. Moreover, respondent has practiced law for 36 years without blemish, he fully cooperated with all investigating authorities, he accepted responsibility for his actions and expressed remorse, he took corrective actions to ensure his nonpayment never happens again, and he has continued with counseling. A suspension from the practice of law for one year is appropriate under the circumstances (*see Matter of Howley*, 70 AD3d 218 [1st Dep't 2009]; *Matter of Goldman*, 71 AD3d 9 [1st Dep't 2009]).

Accordingly, the Committee's petition to confirm the recommendation of the Hearing Panel should be denied, and respondent is suspended from the practice of law for one year and until further order of this Court.

All concur.

Order filed.