

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 March 8, 2011.

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

-----X
Alison Boles,
Plaintiff-Respondent,

-against-

M-537X
Index No. 100331/07

Metropolitan Transit Authority (MTA),
et al.,
Defendants-Appellants,

-and-

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

-----X
[and a Third-Party action]
-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about July 16, 2010 (mot. seq. no. 002),

Now, after pre-argument conference and upon reading and filing the stipulation of the parties hereto, "so ordered" February 4, 2011, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

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 March 8, 2011.

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

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

Respondent,

-against-

M-601
Index No. 6882/06

Eugenio Cidron,

Defendant-Appellant.
-----X

An appeal having been taken from the judgment of the Supreme Court, New York County, rendered on or about January 3, 2008,

Now, upon reading and filing the stipulation of the parties hereto, filed February 9, 2011, and due deliberation having been had thereon,

It is ordered that the appeal is withdrawn in accordance with the aforesaid stipulation.

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 March 8, 2011.

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

-----X
Knolls Cooperative Section No. 2, Inc.,

Plaintiff-Appellant,

-against-

M-392
Index No. 307661/08

Howard Pianko,

Defendant-Respondent.
-----X

An appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about November 2, 2009,

Now, upon reading and filing the stipulation of the parties hereto, filed January 26, 2011, 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.

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 March 8, 2011.

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

-----X
Titan Capital ID, LLC,
Plaintiff-Appellant,

-against-

M-513
Index No. 105580/09

Houston Acquisition, et al.,
Defendants,

-and-

David King Real Properties Two, LLC,
Defendant-Respondent.
-----X

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about October 8, 2009,

Now, upon reading and filing the stipulation of the parties hereto, dated January 26, 2011, and due deliberation having been had thereon,

It is ordered that the appeal, previously perfected for the January 2011 Term, is withdrawn in accordance with the aforesaid stipulation.

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 March 8, 2011.

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

-----X
Katherine Hill,

Plaintiff-Respondent,

-against-

European Investors Incorporated, etc.,

Defendant-Appellant.
-----X

M-580
Index No. 602331/09

An appeal having been taken from the order of the Supreme Court, New York County, entered on or about July 6, 2010 (mot. seq. no. 002),

Now, upon reading and filing the stipulation of the parties hereto, filed February 8, 2011, and due deliberation having been had thereon,

It is ordered that the appeal, previously perfected for the January 2011 Term, is withdrawn in accordance with the aforesaid stipulation.

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 March 8, 2011.

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

-----X
Gerald Pounder, etc., et al.,
Plaintiffs-Appellants,

-against-

M-586
Index No. 8583/00

Best Realty Co., et al.,
Defendants-Respondents,

-and-

Joseph Lipson, et al.,
Defendants.

-----X

An appeal having been taken from the order of the Supreme Court, Bronx County, entered on or about October 28, 2009,

Now, upon reading and filing the stipulation of the parties hereto, filed February 8, 2011, and due deliberation having been had thereon,

It is ordered that the appeal, previously perfected for the January 2011 Term, is withdrawn in accordance with the aforesaid stipulation.

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 March 8, 2011.

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

-----X
A. Jones, etc., et al.,

Plaintiffs-Respondents-Appellants,

-against-

Roman Catholic Archdiocese of New York,
doing business as St. Paul's Catholic
School, et al.,

Defendants-Appellants-Respondents.
-----X

M-587
Index No. 100969/06

An appeal and cross appeal having been taken from the order of the Supreme Court, New York County, entered on or about October 15, 2010 (mot. seq. nos. 007, 008, 009),

Now, upon reading and filing the stipulation of the parties hereto, filed February 8, 2011, and due deliberation having been had thereon,

It is ordered that the appeal and cross appeal, previously perfected for the March 2011 Term, are withdrawn in accordance with the aforesaid stipulation.

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 March 8, 2011.

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

-----X
Sydelle Lazar, et al.,

Plaintiffs-Respondents,

-against-

Burger Heaven, et al.,

Defendants-Appellants.
-----X

M-303
Index No. 109336/08

Defendants-appellants 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 October 18, 2010,

Now, upon reading and filing the papers with respect to the motion, and correspondence from counsel for defendants-appellants, dated February 8, 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 March 8, 2011.

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-412
Ind. No. 1744/10

Rasheem Brown,
Defendant-Appellant.

-----X

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 January 7, 2011, 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 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

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

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. 212-577-3688, 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.

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 March 8, 2011.

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

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

-against-

M-413
Ind. No. 4542/08

Jeromie Cancel,
Defendant-Appellant.

-----X

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 December 22, 2010, 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 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of 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.

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 March 8, 2011.

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

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

Respondent,

-against-

M-414
Ind. No. 1681/97

Kenneth Demby,

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, entered on or about December 9, 2010, denying resentence, 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 copies of such brief, together with the original record, with this Court pursuant to Rule 600.11 of the Rules of this Court.

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. 212-577-3688, 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.

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 March 8, 2011.

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

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

-against-

M-415
Ind. No. 2975/09

Melissa Fonseca,
Defendant-Appellant.

-----X

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 December 7, 2010, 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 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

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

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. 212-577-3688, 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.

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 March 8, 2011.

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

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

-against-

M-417
Ind. No. 6192/09

Michael Gerard,
Defendant-Appellant.

-----X

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 September 14, 2010, 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 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of 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.

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 March 8, 2011.

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

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

-against-

M-420
Ind. No. 3546/10

Naim Jabbar,
Defendant-Appellant.

-----X

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 January 6, 2011, 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 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of 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.

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 March 8, 2011.

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

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

-against-

M-423
Ind. No. 3237/07

Nadine Panton,
Defendant-Appellant.

-----X

Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, Bronx County, rendered on or about December 21, 2010, 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 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of 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.

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 March 8, 2011.

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-424
Ind. No. 2306/10

Gregory Robertson,
Defendant-Appellant.

-----X

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 January 4, 2011, 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 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

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

Steven Banks, Esq., 199 Water Street, 5th Floor, New York, New York 10038, Telephone No. 212-577-3688, 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.

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 March 8, 2011.

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

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

-against-

M-425
Ind. No. 6480/08

Anthony Smith,
Defendant-Appellant.

-----X

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 January 5, 2011, 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 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of 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.

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 March 8, 2011.

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

-----X

Julio Nieves,

Plaintiff-Appellant,

-against-

The City of New York,

Defendant-Respondent.
-----X

M-108
Index No. 100118/06

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 April 22, 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 March 8, 2011.

Present - Hon. Luis A. Gonzalez, Presiding Justice,
David B. Saxe
James M. McGuire
Rolando T. Acosta
Sheila Abdus-Salaam, Justices.

-----X
Claude Williams,

Plaintiff-Respondent,

-against-

M-5991
Index No. 117924/04

Cindy Hooper, et al.,

Defendants-Appellants.
-----X

Plaintiff-respondent having moved for resettlement of the decision and order of this Court entered on November 9, 2010 (Appeal No. 2276),

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 deemed one for reargument and, upon reargument, the decision and order of this Court entered on November 9, 2010 (Appeal No. 2276) is recalled and vacated and a new decision and order substituted therefor. (See Appeal No. 2276, 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 March 8, 2011.

PRESENT: Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Dianne T. Renwick
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----X
JetBlue Airways Corporation,
Petitioner-Appellant-Respondent,

-against-

Robert M. Stephenson, et al.,
Respondents-Respondents-Appellants.

SEALED

M-469

Index No. 650691/10

-----X

An appeal and cross appeal having been taken from the order of the Supreme Court, New York County, entered on or about November 24, 2010,

And an order of this Court having been entered on January 11, 2011 (M-6042), granting petitioner-appellant relief in the nature of a preliminary appellate injunction, staying a certain arbitration on condition said appeal is perfected for the May 2011 Term, with related relief,

And the direct appeal having been so perfected,

And petitioner-appellant having moved to strike respondents' cross 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 March 8, 2011.

PRESENT: Hon. Peter Tom, Justice Presiding,
John W. Sweeny, Jr.
Dianne T. Renwick
Helen E. Freedman
Sallie Manzanet-Daniels, Justices.

-----X
Investec Trustee (Jersey) Limited,
Petitioner-Appellant,

-against-

Oppenheimer & Co., Inc.,
Respondent-Respondent.

M-527
M-606
Index No. 651040/10

-----X

An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about January 26, 2011, and said appeal having been perfected,

And petitioner-appellant having moved for a partial stay of certain arbitration proceedings pending hearing and determination of the appeal taken therefrom, and for preference in hearing said appeal (M-527),

And respondent-respondent having cross-moved for a stay of all arbitration proceedings and for an adjournment of the aforesaid appeal to the June 2011 Term (M-606),

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

It is ordered that the motion is denied, and the cross-motion is granted to the extent of staying the entire arbitration proceeding and adjourning said appeal 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 March 8, 2011.

Present: Hon. Peter Tom, Justice Presiding,
Richard T. Andrias
James M. McGuire
Sallie Manzanet-Daniels, Justices.

-----X
Federated Retail Holdings, Inc., et al.,
Plaintiffs-Respondents,

-against-

M-131
Index No. 604104/06

Weatherly 39th Street, LLC, etc.,
Defendant-Appellant.
-----X

A decision and order of this Court having been entered on October 28, 2010 (Appeal No. 1919 & M-5592), inter alia, unanimously reversing the order of the Supreme Court, New York County, entered on or about April 3, 2009,

And defendant-appellant having moved for an order clarifying the aforesaid decision and order of this Court,

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

Ordered that the motion is 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 March 8, 2011.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
Karla Moskowitz
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X
Sharon Mitchell, etc., et al.,

Plaintiffs-Appellants,

-against-

Daniel Huff and Albert Anderson,

Defendants-Respondents.
-----X

M-6153
Index No. 301230/07

Defendant-respondent Albert Anderson having moved for dismissal of the appeal taken from an order of the Supreme Court, Bronx County, entered on or about January 7, 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 and the appeal is dismissed.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on March 8, 2011.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
James M. Catterson
Karla Moskowitz
Nelson S. Román, Justices.

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

-against-

Wilfredo Rosario,
Defendant-Appellant.

M-286
Ind. Nos. 1830/08
5282/08

-----X

Defendant having renewed the motion for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about August 5, 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 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 nine reproduced copies of such brief, together with the original record, with this Court.

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

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

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 March 8, 2011.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
Karla Moskowitz
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

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

Respondent,

-against-

M-393
Ind. No. 5353/09

Richard Agudelo,

Defendant-Appellant.
-----X

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 October 15, 2010, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for other relief,

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

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serve one copy of such brief upon the District Attorney of said county and file copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) two transcripts of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed. Defendant-appellant's time in which to perfect the appeal is hereby 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 March 8, 2011.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
Karla Moskowitz
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X

The People of the State of New York,

Respondent,

-against-

Raynell Burgess,

Defendant-Appellant.

M-196
Ind. No. 5258/08

-----X

Defendant having renewed the motion for leave to prosecute, as a poor person, the appeal from the judgment of the Supreme Court, New York County, rendered on or about September 22, 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, 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.)

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 March 8, 2011.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
Karla Moskowitz
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X

The People of the State of New York,

Respondent,

-against-

Robert Parris,

Defendant-Appellant.

M-156
Ind. Nos. 905/09
4825/09

-----X

Defendant having moved for leave to prosecute, as a poor person, the purported appeal from an order of the Supreme Court, Bronx County, rendered on or about August 16, 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 (CPL §450.10; CPL §450.15).

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 March 8, 2011.

Present - Hon. Angela M. Mazzairelli, Justice Presiding,
Richard T. Andrias
James M. Catterson
Karla Moskowitz
Nelson S. Román, Justices.

-----X

The People of the State of New York,
Appellant,

-against-

M-278
Ind. No. 2052/00

Angel Cintron,

Defendant-Respondent.

-----X

The People having moved for an enlargement of time in which to perfect the appeal from an order of the Supreme Court, Bronx County, entered on or about May 26, 2010, and amended May 28, 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 March 8, 2011.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
James M. Catterson
Karla Moskowitz
Nelson S. Román, Justices.

-----X
In the Matter of the Application of
Daniel Z. Rapoport and Richard Nadelman,
executors of the Estate of Boris Lurie,
Petitioners-Respondents,

for a determination as to the validity,
construction and effect of the Last
Will and Testament of

M-164
Surrogate's Court
Index No. 666/08

Boris Lurie,
Deceased,

American Friends of New Communities
of Israel, Inc. (AFNCI), Amana and
Organization for Assistance and
Rehabilitation of the Refugees from
Gush Katif and Northern Shomron
(Gush Katif),
Proposed Intervenors-Appellants,

Attorney General of the State of
New York,
Respondent.

-----X

Appeals having been taken from the order and decree of
the Surrogate's Court, New York County, entered on or about
May 10, 2010,

And proposed intervenors-appellants having moved for an
enlargement of time in which to perfect 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
enlarging the time in which to perfect the appeals to on or before
July 11, 2011 for the September 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 March 8, 2011.

Present: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
Karla Moskowitz
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X
In the Matter of the Judicial Settlement
of the First and Final Account of
Proceedings of Jeffrey Scott Lasdon,
as Co-Trustee and Preliminary Executor
of the Estate of Gene S. Lasdon, deceased
Co-Trustee, of the Trust Created for the
Benefit of Michael B. Abrams Under
Article Fifth of the Last Will and
Testament of

M-32
Surrogate's Court
File No. 703-93

Stanley S. Ladson,
Deceased.

-----X
In the Matter of the Judicial Settlement
of the First and Final Account of
Proceedings of Jeffrey Scott Lasdon,
as Co-Trustee and Preliminary Executor
of the Estate of Gene S. Lasdon, deceased
Co-Trustee, of the Trust Created for the
Benefit of Daniel A. Abrams Under
Article Fifth of the Last Will and
Testament of

Stanley S. Ladson,
Deceased.

Jeffrey Ladson,
Petitioner-Appellant,

Michael B. Abrams and Daniel A. Abrams,
Objectants-Respondents.

-----X
(And other actions)

An appeal having been taken from the order of the Surrogate's Court, New York County, entered on or about November 1, 2010,

And objectants-respondents having moved for an order dismissing the aforesaid appeal,

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

Ordered that the motion is granted and the appeal from the aforesaid order entered on or about November 1, 2010, is dismissed, the appellant not having been aggrieved thereby (CPLR § 5511).

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 March 8, 2011.

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Richard T. Andrias
Karla Moskowitz
Rosalyn H. Richter
Sallie Manzanet-Daniels, Justices.

-----X
Harbhajan Singh, formally known as
Bhajan Rakkar,

Plaintiff-Appellant,

-against-

Actors' Equity Holding Corporation and
Newmark & Company Real Estate, Inc.,

Defendants-Respondents.
-----X

M-34
Index No. 114166/05

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 February 23, 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 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 March 8, 2011.

PRESENT: Hon. David B. Saxe, Justice Presiding,
David Friedman
Leland G. DeGrasse
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X
In the Matter of

Diashan W.,

A Person Alleged to be a Juvenile
Delinquent,

Respondent-Respondent,

Corporation Counsel of the City of
New York,

Petitioner-Appellant.
-----X

M-207
Docket No. D-2554/10

Petitioner-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Family Court, Bronx County, entered on or about April 21, 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 March 8, 2011.

PRESENT: Hon. David B. Saxe, Justice Presiding,
David Friedman
Leland G. DeGrasse
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X
In the Matter of a Proceeding
for Custody and/or Visitation Under
Article 6 of the Family Court Act.

Reynaldo M.,
Petitioner-Appellant,

M-280
Docket No. V19100/07

-against-

Violet F.,
Respondent-Respondent.
-----X

Petitioner-appellant having moved for an enlargement of time in which to perfect the appeal from an order of the Family Court, Bronx County, entered on or about April 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 March 8, 2011.

PRESENT: Hon. David B. Saxe, Justice Presiding,
David Friedman
Leland G. DeGrasse
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X
Accounting of the Chase Manhattan Bank and Lawrence Kalik as Co-Trustees under the Trust Indenture of Louis Wagman, Grantor, dated August 3, 1977, Louis Wagman and Lawrence Kalik as Co-Trustees f/b/o Loretta Wagman.

Surrogate's Court
File No. 1121/86

-----X
Accounting of Carl Wagman as Co-Trustee under the Trust Indenture of Louis Wagman, Grantor, dated August 3, 1977, Louis Wagman and Lawrence Kalik as Co-Trustees f/b/o Loretta Wagman.

M-5978

-----X
Loretta Wagman,
Plaintiff-Appellant,

-against-

Index No. 107856/98

Lawrence Kalik, etc., et al.,
Defendants-Respondents.

-----X
Carl Wagman having moved for an enlargement of time in which to perfect the appeal from the order of the Surrogate's Court, New York County, entered on or about January 2, 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 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 March 8, 2011.

Present: Hon. David B. Saxe, Justice Presiding,
David Friedman
Rolando T. Acosta
Leland G. DeGrasse
Rosalyn H. Richter, Justices.

-----X
Hudson Valley Federal Credit Union,
Plaintiff-Appellant,

-against-

M-301
M-463
Index No. 106732/09

New York State Department of Taxation
and Finance, et al.,
Defendants-Respondents.

United States Attorney for the
Southern District of New York,
Amicus Curiae,

Credit Union Association of New York,
(CUANY),
Amicus Curiae.

-----X

An appeal having been taken to this Court by the above-named plaintiff from the order of the Supreme Court, New York County, entered on or about May 20, 2010, and said appeal having been perfected for the April 2011 Term,

And the United States Attorney for the Southern District of New York, having moved for leave to file a brief amicus curiae in connection with the aforesaid appeal, and for leave to participate in oral argument (M-301),

And the Credit Union Association of New York, (CUANY) having also moved for leave to file a brief amicus curiae in connection with the aforesaid appeal, and for related relief (M-463),

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

It is ordered that the motions are granted to the extent of deeming the amicus curiae briefs submitted with the respective moving papers herein filed for the April 2011 Term, and the motions are otherwise denied, without prejudice to submission of a request by the amici to the Clerk of the Court for leave to participate in oral argument.

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 March 8, 2011.

Present - Hon. David B. Saxe, Justice Presiding,
David Friedman
Leland G. DeGrasse
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----X
The People of the State of New York,
ex rel. Aubrey Gibson,
Petitioner-Appellant,

-against-

M-6346
Index. No. 75171/07

Warden, George Motchan Detention
Center, etc., et al.,
Respondents.

-----X

An order of this Court having been entered on May 6, 2008 (M-1735), 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 10, 2008, inter alia, dismissing a petition for a writ of habeas corpus,

And 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 aforesaid appeal as moot because of appellant's death on March 22, 2008, and the motion is otherwise denied.

E N T E R:


CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on March 8, 2011.

Present - Hon. John W. Sweeny, Jr., Justice Presiding,
Karla Moskowitz
Dianne T. Renwick
Leland G. DeGrasse
Nelson S. Román, Justices.

-----X
William D. Rotblut, et al.,

Plaintiffs-Appellants,

-against-

150 East 77th Street Corp.,

Defendant-Respondent.
-----X

M-178
Index No. 602854/07

Plaintiffs-appellants having moved for reargument of the decision and order of this Court entered on December 14, 2010 (Appeal No. 3874), 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.

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 March 8, 2011.

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

-----X
Kahir Moronta El, et al.,

Plaintiffs-Appellants,

-against-

M-30
Index No. 114147/07

573 W. 192 Street LLC, et al.,

Defendants-Respondents.
-----X

Plaintiffs-appellants having moved for leave to prosecute, as a poor person, the appeal from an order and judgment (one paper) of the Supreme Court, New York County, entered on or about January 15, 2010 (mot. seq. nos. 004, 005), and for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for other relief,

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

It is ordered that said motion is denied in its entirety, and the appeal is dismissed.

E N T E R:


CLERK

MAR 8 2011

Luis A. Gonzalez, Presiding Justice,
Angela M. Mazzairelli
David B. Saxe
David Friedman
James M. Catterson, Justices.

-----X

In the Matter of Alexis Ravitch
(admitted as Alexandra S. Radushkevich),
an attorney and counselor-at-law:

Departmental Disciplinary Committee
for the First Judicial Department,
Petitioner,

M-2485
M-3102

Alexis Ravitch,
Respondent.

-----X

Disciplinary proceedings instituted by the Departmental
Disciplinary Committee for the First Judicial Department.
Respondent, Alexis Ravitch, was admitted to the Bar of the
State of New York at a Term of the Appellate Division of
the Supreme Court for the Second Judicial Department on
March 15, 1995.

Jorge Dopico, Chief Counsel, Departmental
Disciplinary Committee, New York
(Stephen P. McGoldrick, of counsel), for petitioner.

Michael S. Ross, for respondent.

In the Matter of Alexis Ravitch, an Attorney

PER CURIAM

Respondent Alexis Ravitch was admitted to the practice of law in the State of New York by the Second Judicial Department on March 15, 1995 under the name Alexandra S. Radushkevich. At all times relevant to this proceeding, she maintained an office for the practice of law within the First Judicial Department.

On February 28, 2005, respondent pled guilty to soliciting business on behalf of an attorney in violation of Judiciary Law § 479, an unclassified misdemeanor, and was sentenced to a conditional discharge. This conviction arose out of a sting operation targeting a medical clinic called the Medical Arts Center, in Queens County, whose manager, Arthur Bogoraz, ultimately pled guilty to enterprise corruption based on an insurance fraud scheme. The incident that led to respondent's guilty plea occurred when a staff member at the medical clinic telephoned respondent and informed her that the clinic had a patient who had sustained potentially serious injuries, but who had declined the clinic staffer's suggested referral to respondent. Respondent then instructed her paralegal to seek out and persuade that patient to retain her law firm. The purported patient was actually an undercover officer, and respondent was charged with violations of Judiciary Law sections 479 and 482,

resulting in her plea of guilty to the charge under section 479.

Respondent reported the conviction to the Departmental Disciplinary Committee, and the Committee sought and obtained an order of this Court deeming the conviction a "serious crime" within the meaning of Judiciary Law § 90(4)(d), and referring the matter for a hearing on the appropriate sanction. After the hearing, the Hearing Panel issued its report recommending that respondent be publicly censured; one member of the Panel dissented, and recommended disbarment.

The Committee now moves, pursuant to 22 NYCRR 603.4(d) and 605.15(e)(2), for an order disaffirming in part the determination of the Hearing Panel and suspending respondent from the practice of law for a period of no less than 18 months. Respondent opposes the motion and cross-moves for an order affirming the Panel's report and imposing a public censure.

It is the Committee's position that respondent's professional misconduct extends beyond the undisputed act of client solicitation for which she was prosecuted. Relying in part on the testimony of Arthur Bogoraz, and the views of the dissenting member of the Hearing Panel, the Committee asserts that "in all likelihood" respondent engaged in other acts of improper solicitation of clients. It further contends that an important factor in aggravation is respondent's admission that on a number of occasions she simultaneously represented the driver

and passenger of automobiles in personal injury matters, in violation of the then-governing Disciplinary Rule, DR 5-105, and the ruling in *Pessoni v Rabkin* (220 AD2d 732 [1995]).

Initially, notwithstanding the Committee's, and the dissenting Panel member's, asserted belief that respondent must have engaged in other acts of client solicitation, the credible evidence fails to justify such a finding that respondent engaged in other acts of client solicitation beyond that for which she was prosecuted. Before this Court may impose penalties for attorney misconduct, that misconduct must be established by evidence, not merely by belief.

What the testimony of both respondent and Arthur Bogoraz does establish is that respondent engaged in a practice that has repeatedly been described to this Court as standard among personal injury attorneys who accept referrals of patients from medical clinics; that is, they pay a substantial, standard sum to these clinics for each patient referred to them, ostensibly to pay for the clinic's providing a package of documents called a narrative report, relating the patient's diagnosis, treatment, and prognosis (see *Matter of Rudgayzer*, __ AD3d __, 2010 NY Slip Op 9091 [1st Dept, December 9, 2010]; *Matter of Meyerson*, 46 AD3d 141 [2007]). Even though it is permissible for attorneys to accept clients referred by medical establishments, and it is similarly permissible for attorneys to pay medical providers the

market price for copies of documents needed to prosecute claims on behalf of those clients, both *Rudgayzer* and *Meyerson* illustrate the potential for impropriety inherent in this established system, by which clinics refer patients to attorneys, and receive, in turn, a payment from the attorney for the clinic's narrative reports on those patients.

In *Meyerson*, in which this Court imposed a public censure, the respondent attorney originally pled guilty to employing an individual to illegally solicit clients in violation of Judiciary Law § 482, based on his paying the owner of a medical clinic for patient referrals. Before the Hearing Panel, the respondent testified that he had agreed to pay the clinic \$800 for the narrative medical report of any patient the clinic referred to him whom he accepted as a client, and during a five-month period in 2003, paid for approximately 11 narrative reports. Notably, when two of the referred patients decided against pursuing lawsuits, the clinic owner refunded the cost of those reports, and when the respondent referred two of his clients to the clinic for treatment, the clinic did not charge for their narrative reports. The latter particulars justified this Court's characterization of the respondent's arrangement with the clinic as a "quid pro quo arrangement" and the remark that "his arrangement with the clinic for client referrals under the apparent guise of paying for narrative reports was unethical and

illegal" (46 AD3d at 144). Parenthetically, in *Meyerson*, as in the matter now before us, the respondent was not shown to have been a party to the clinic's criminal insurance fraud enterprise; he did not participate in submitting inflated or false claims to insurers.

Notably, this Court's reasoning in *Meyerson* did not hold it to be unethical and illegal for an attorney to accept client referrals and to pay market rates for narrative reports. Rather, it was the nature of the prior agreement with the clinic's owner, creating a "quid pro quo" arrangement (*id.* at 145), that warranted the imposition of attorney discipline.

In *Rudgayzer*, the respondent pled guilty to a violation of Penal Law § 175.30, based on his filing a closing statement "indicating that his firm paid \$500 for a medical narrative in a client matter when the payment was 'also an inducement paid to [the clinic] to refer additional accident vehicle clients to [him]' and constituted 'something of value for the solicitation of clients.'" The evidence presented to the Hearing Panel in *Rudgayzer* further indicated that the respondent accepted a total of approximately 150 referrals from three medical clinics, purchasing narrative medical report packages in each of those cases for a fee of \$500-\$1000, and that in addition, he had agreed to represent some 10 to 15 clients that he did not want to represent, paying for narrative reports in each matter, "in order

to keep referrals flowing." In imposing a two-month suspension, this Court's opinion emphasized the respondent's own recognition that accepting those 10 to 15 cases that he would have preferred not to handle was "akin to a bribe" and thus, constituted solicitation. The opinion goes on to remark that payments of the market price for the clinics' narrative reports in those 10 to 15 cases that the respondent did not want was "less egregious" than the cash payments paid to a hospital employee for client referrals in *Matter of Ehrlich* (252 AD2d 73 [1998]), "since the 'market price' was paid for the narratives, those documents are useful in prosecuting soft-tissue motor vehicle accident claims, and they represent work actually performed by the Clinics in preparing the reports." By focusing on only those 10 to 15 cases, this Court implicitly concluded that there was nothing improper in the respondent's acceptance of the referrals and his paying for narrative reports in the remaining 150 cases.

In the matter now before us, the Committee suggests that the testimony of Arthur Bogoraz establishes that in addition to the one undisputed act of misconduct, respondent here did more than merely accept the clinic's referrals and pay for narrative reports. Indeed, Bogoraz did testify that it was his practice to have clinic staff fax police reports of accidents to a list of seven or eight attorneys, including respondent, and see which of the attorneys "bid" more for the "right of first refusal" to

these cases. He indicated that the amount respondent would pay for such a right of first refusal "went up from \$700 to \$800," although if the insurance company wasn't "good," the fee might be only \$400. He also said that he believed cash payments were sometimes made. However, neither Bogoraz nor the Committee provided documentation supporting his claim that the clinic accepted the highest bid from lawyers for each case; in fact, the documents presented, including checks that were all in the same range of amounts, indicated to the contrary. Bogoraz also directly contradicted himself, testifying that respondent "paid what every other lawyer paid to basically every other clinic." While the Committee referred in its motion papers to extensive evidence of surreptitious payments by respondent to Bogoraz, the only evidence of any surreptitious payments by respondent was Bogoraz's vague, contradictory, and entirely unsupported testimony.

Given Bogoraz's outright contradictions and his purported failures of memory, our own independent reading of the hearing transcript and review of the evidence, as well as the deference we ordinarily give to the credibility finding of the Panel, warrant the conclusion that, as the Hearing Panel found, Bogoraz's testimony was "so lacking in coherence and consistency as to be wholly unworthy of belief." As the Panel observed, his testimony "on its face [was] insufficient to support a finding of

additional payments or a finding that the payments made for narrative reports were, in fact, at least in part, referral fees." The evidence offered by the Committee documenting respondent's payments to the Medical Arts Center establishes only that she paid the prevailing market rate for its narrative reports, which were necessary for effective representation of the referred clients.

We reject the Committee's contention that an aggravating factor is established by respondent's simultaneously representing drivers and passengers in automobile collision cases. Respondent acknowledged that on a number of occasions over the years she had represented both drivers and passengers in the same accident, but explained that she only did so after (1) ascertaining that there was no viable cross-claim for negligence on the driver's part and that therefore the clients' interests were not adverse, (2) orally advising the clients of the nature of the potential conflict and the benefits and disadvantages of dual representation, and (3) having them sign a waiver form. Given the Hearing Panel's finding that respondent was credible, which we perceive no basis to dispute, we accept this assertion. It is the Committee's position that nevertheless the conflict created by such a situation is non-waivable under *Pessoni v Rabkin* (220 AD2d 732), and that in any event the waiver forms respondent used were insufficient. However, *Pessoni* concerned an attorney who

"clearly anticipated that a cross claim would be interposed" against his driver client, but nevertheless also undertook to represent the driver's passenger (*id.* at 732). It does not stand for as broad a proposition as that suggested by the Committee. Neither *Pessoni* nor the then-applicable Disciplinary Rule, DR 5-105(A), categorically preclude the possibility of a proper waiver where there is no viable cross-claim against the driver. Nor does *LaRusso v Katz* (30 AD3d 240 [2006]) support the Committee's position; there, too, the attorneys "were aware of the potential conflict" and yet failed to advise the clients of the conflict (*id.* at 244).

As to the Committee's contention that the conflict waiver form that respondent had her clients sign was insufficient to avoid a violation of DR 5-105, no particular waiver form was required under the Disciplinary Rule at the time, and there was no requirement that such a form recite the full contents of counsel's oral explanation regarding potential conflicts.

However, although we adopt the findings of the Hearing Panel, in our view, the undisputed misconduct for which respondent was convicted, her use of an agent to solicit a potential client who has already explicitly declined a referral to counsel, warrants a suspension rather than the censure proposed by the Hearing Panel.

Respondent's misconduct is more egregious than that

considered in *Meyerson* or *Rudgayzer*, in which the attorneys entered into essentially implicit agreements with a medical provider to make payments which, while ostensibly for narrative reports, were at least partially in exchange for continued patient referrals. This matter is more analogous to those cases in which attorneys have knowingly and purposefully entered into explicit arrangements in which they paid third parties in exchange for referrals of injured potential clients; in such cases, suspensions have often resulted, in those instances where the attorney was experienced enough to know better. In *Matter of Ehrlich* (252 AD2d 73 [1998]), the attorney made cash payments to a hospital employee for referrals of over 30 patients during a two-year period, and a three-month suspension was imposed. In *Matter of Santalone* (301 AD2d 265 [2002]), this Court imposed a three-month suspension where the respondent was only shown to have engaged in one incident in which he paid a fee to a third party for referring a personal injury client. Suspension, rather than censure, was warranted because the acts constituted knowing and willful misconduct by attorneys who understood the impropriety.

Violating Judiciary Law § 479 and § 482, by directing a non-attorney employee to attempt to wrest a retainer out of a clinic patient who had already specifically declined an attorney referral, is equally serious to arranging for an agent to refer

presumably interested and willing clients. Consequently, it warrants a similar sanction. We conclude that a three month suspension is appropriate here.

Accordingly, the Committee's motion is granted in part, insofar as it seeks to disaffirm the Hearing Panel's recommendation of the penalty of censure; instead, we impose a suspension for a period of three months. Respondent's cross-motion is denied.

All concur.

Order filed.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on March 8, 2011.

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

-----X
Vilson Demaj,

Plaintiff-Respondent,

-against-

Pelham Realty, LLC,

Defendant-Appellant.
-----X

M-5977
Index No. 7357/07

Defendant-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 August 12, 2010,

Now, upon reading and filing the papers with respect to the motion, and correspondence from counsel for defendant-appellant, 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

PM ORDERS
ENTERED ON
MARCH 8, 2011

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 March 8, 2011.

Present: Hon. Richard T. Andrias, Justice Presiding,
David B. Saxe
Karla Moskowitz
Rolando T. Acosta
Helen E. Freedman, Justices.

-----X
Christopher Henry,

Plaintiff-Respondent,

-against-

Marisa Soto-Henry,

Defendant-Appellant.

Michael Pottinger and Hilma Gray,

Non-Party Purchasers.

-----X

M-484
M-622
Index No. 302635/09

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

And an order of this Court having been entered on December 14, 2010 (M-5663), granting defendant's motion to stay the issuance of any warrant or order of eviction in the related proceeding in Civil Court of the City of New York (L&T Index No. 10N091543) without prejudice to proceedings for use and occupancy in said Civil Court, and on condition defendant perfects the appeal on or before January 31, 2011 for the April 2011 Term, with related relief,

And defendant-appellant having moved for an enlargement of time in which to perfect the aforesaid appeal (M-484),

And non-party purchasers having moved for, inter alia, reargument of the aforesaid order of this Court entered on December 14, 2010 (M-5663),

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

It is ordered that defendant-appellant's motion (M-484) is granted to the extent of continuing the stay of the issuance of any warrant or order of eviction on the same terms stated in the aforesaid order of this Court entered December 14, 2010 (M-5663), and on condition that defendant perfects the appeal on or before July 11, 2011 for the September 2011 Term. Non-party purchasers motion (M-622) is denied without prejudice to further proceedings for use and occupancy in Civil Court.

ENTER:

A handwritten signature in black ink, appearing to read "Susana Rios". The signature is fluid and cursive, with a large initial "S" and "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 March 8, 2011.

Present: Hon. Luis A. Gonzalez, Presiding Justice,
Peter Tom
Rolando T. Acosta
Rosalyn H. Richter
Nelson S. Román, Justices.

-----X
Elizabeth Cherry,

Plaintiff,

-against-

Bennett Storage, Inc.,

Defendant.
-----X

M-855
Index No. 251594/10

Plaintiff having moved, pursuant to CPLR 5704(a), for an order of this Court granting certain relief denied by a Justice of the Supreme Court, Bronx County, on or about February 4, 2011,

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 March 8, 2011.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
David B. Saxe
David Friedman
Rolando T. Acosta
Helen E. Freedman, Justices.

-----x
Angel Rivera, Jr., etc., et al.,

Plaintiffs-Respondents,

-against-

M-593

Index No. 22318/94

The City of New York, 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 December 9, 2009, and said appeal having been perfected,

And plaintiffs-respondents having moved for a stay of trial pending hearing and determination of the aforesaid appeal,

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

It is ordered that the motion is granted.

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 March 8, 2011.

Present - Hon. Angela M. Mazzarelli, Justice Presiding,
John W. Sweeny, Jr.
Leland G. DeGrasse
Helen E. Freedman
Sheila Abdus-Salaam, Justices.

-----x
Juan Reyes, M.D.,

Plaintiff-Respondent,

-against-

Rafael Sequeira, M.D., et al.,

Defendants-Appellants.
-----x

M-402
Index No. 24634/03

Plaintiff-respondent having moved for a stay of trial herein pending hearing and determination of the appeal from the order of the Supreme Court, Bronx County, entered on or about December 3, 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 denied.

ENTER:



Clerk