

March 24, 2011

**CASES**

1                   No. 36  
In the Matter of Madeline Acosta,  
                  Respondent,  
                  v.  
New York City Department of  
Education, et al.,  
                  Appellants.

Order modified, without costs, by  
granting the motion of Cooke Center for  
Learning and Development to dismiss the  
petition as against it, and, as so  
modified, affirmed. Certified question  
answered in the negative.  
Opinion by Chief Judge Lippman.  
Judges Ciparick, Graffeo, Pigott and  
Jones concur.  
Judge Smith dissents and votes to  
reverse in an opinion in which Judge  
Read concurs.

2                   No. 53  
The People &c.,  
                  Respondent,  
                  v.  
Lamont Beasley,  
                  Appellant.

Order affirmed.  
Opinion by Judge Ciparick.  
Chief Judge Lippman and Judges Graffeo,  
Read, Pigott and Jones concur.  
Judge Smith concurs in result in an  
opinion.

1                   No. 32  
In the Matter of Mercedes Casado,  
et al.,  
                  Respondents,  
                  v.  
Marvin Markus, &c., et al.,  
                  Appellants.

Order reversed, with costs, and  
petitions dismissed.  
Opinion by Judge Smith.  
Chief Judge Lippman and Judges Graffeo,  
Read and Pigott concur.  
Judge Ciparick dissents and votes to  
affirm in an opinion in which Judge  
Jones concurs.

4                   No. 119 SSM 61  
The People &c.,  
                  Appellant,  
                  v.  
Barak Cornell,  
                  Respondent.

On review of submissions pursuant to  
section 500.11 of the Rules, order  
affirmed, in a memorandum.  
Chief Judge Lippman and Judges  
Ciparick, Graffeo, Read, Smith, Pigott  
and Jones concur.

2                   No. 50  
Arthur Goldenberg,  
                  Appellant,  
          v.  
Westchester County Health Care  
Corporation, &c., et al.,  
                  Respondents.

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

2                   No. 58  
The People &c.,  
                  Respondent,  
          v.  
Robert Kelly,  
                  Appellant.

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

                  No. 7  
Penguin Group (USA) Inc.,  
                  Appellant,  
          v.  
American Buddha,  
                  Respondent.

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

1                    No. 44  
The People &c.,  
                  Appellant,  
                  v.  
Freddy Rodriguez,  
                  Respondent.

Order reversed and case remitted to the  
Appellate Division, First Department,  
for consideration of the facts and  
issues raised but not determined on the  
appeal to that court.  
Opinion by Judge Pigott.  
Judges Graffeo, Read, Smith and Jones  
concur.  
Chief Judge Lippman dissents in part  
and votes to modify in an opinion.  
Judge Ciparick dissents and votes to  
affirm in an opinion.

**MOTIONS**

2                    Mo. No. 2011-278  
In the Matter of AAA Carting and  
Rubbish Removal, Inc.,  
                    Appellant,  
                    v.  
Town of Southeast, et al.,  
                    Respondents,  
Sani-Pro Disposal Services Corp.,  
&c.,  
                    Respondent.

Motions to strike portions of  
appellant's brief granted to the  
extent of deeming stricken Addendum 1  
and Addendum 2 to appellant's brief  
and references thereto in that brief.

2                    Mo. No. 2010-1257  
Cesar Alvarado, &c.,  
                    Respondent,  
                    v.  
Giovanni Culotta,  
                    Appellant,  
et al.,  
                    Defendants.

Motion for leave to appeal denied.

3                    Mo. No. 2011-291  
The People &c.,  
                    Respondent,  
                    v.  
Jeffrey Aubrey,  
                    Appellant.

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

2                    Mo. No. 2011-62  
In the Matter of Jeffrey Baker,  
                    Respondent,  
                    v.  
Poughkeepsie City School  
District, et al.,  
                    Appellants.

Motion for leave to appeal granted.

2                   Mo. No. 2011-134  
In the Matter of Jeffrey Baker,  
                    Respondent,  
                    v.  
Poughkeepsie City School  
District, et al.,  
                    Appellants.

Motion by the New York State School  
Boards Association, Inc. for leave to  
file a brief amicus curiae on the  
motion for leave to appeal herein  
granted and the brief is accepted as  
filed, and for leave to file a brief  
amicus curiae on the appeal herein  
granted, three copies of the brief to  
be served and an original and 19  
copies filed within 30 days.

1                   Mo. No. 2010-1393  
In the Matter of Zachary M.  
Berman,  
                    Appellant,  
                    v.  
State of New York Division of  
Housing and Community Renewal,  
                    Respondent.

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

2                   Mo. No. 2010-1379  
The People &c.,  
                    Respondent,  
                    v.  
Stephen Blackman,  
                    Appellant.

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

2                   Mo. No. 2011-33  
Lisa Humbertson Brady, &c.,  
                    Appellant,  
                    v.  
Village of Malverne, et al.,  
                    Respondents,  
et al.,  
                    Defendants.

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

2                    Mo. No. 2011-188  
In the Matter of Afton C.  
(Anonymous).

Dutchess County Department of  
Social Services,  
                  Appellant;  
James C. (Anonymous), et al.,  
                  Respondents.  
(And Four Other Proceedings.)

Motion by Saratoga County Department  
of Social Services et al. for leave to  
file a brief amici curiae on the  
appeal herein granted and the proposed  
brief is accepted as filed.

2                    Mo. No. 2011-271  
In the Matter of Afton C.  
(Anonymous).

Dutchess County Department of  
Social Services,  
                  Appellant;  
James C. (Anonymous), et al.,  
                  Respondents.  
(And Four Other Proceedings.)

Motion to strike portions of the  
briefs of respondent James C. and the  
child Trevor C. denied.

1                    Mo. No. 2010-1355  
Jose Caride, et al.,  
                  Respondents,  
                  v.  
Alejandro Alonso, et al.,  
                  Appellants.  
(And a Third-Party Action.)

Motion, insofar as it seeks leave to  
appeal from that portion of the  
Appellate Division order that affirmed  
the judgment of Supreme Court, denied;  
motion for leave to appeal otherwise  
dismissed upon the ground that the  
remaining portions of the Appellate  
Division order sought to be appealed  
from do not finally determine the  
combined action and proceeding within  
the meaning of the Constitution.

Mo. No. 2011-205  
Commodity Futures Trading  
Commission,  
Respondent,  
v.  
Stephen Walsh, et al.,  
Defendants,  
Janet Walsh,  
Appellant.

Motion by Elliott Scheinberg, Esq. et al. for leave to appear amici curiae on consideration of the certified questions herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served and 24 copies filed within seven days.

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Securities and Exchange  
Commission,  
Respondent,  
v.  
WG Trading Investors, L.P.,  
et al.,  
Defendants,  
Robin Greenwood,  
Defendant,  
Janet Walsh,  
Appellant.

3 Mo. No. 2010-1351  
In the Matter of Beth E. Covert,  
Appellant,  
v.  
Schuyler County,  
Respondent.

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

1 Mo. No. 2011-48  
Dustin Dibble,  
Appellant,  
v.  
New York City Transit Authority,  
Respondent.

Motion for leave to appeal granted.

1                    Mo. No. 2011-247  
Gloria Doomes, &c.,  
                    Appellant,  
                    v.  
Best Transit Corp., et al.,  
                    Defendants,  
Warrick Industries, Inc., &c.,  
                    Respondent.

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Ana Jiminian, &c.,  
                    Appellant,  
                    v.  
Best Transit Corp., et al.,  
                    Defendants,  
Warrick Industries, Inc., &c.,  
                    Respondent.

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Kelli Rivera,  
                    Appellant,  
                    v.  
Best Transit Corp., et al.,  
                    Defendants,  
Warrick Industries, Inc., &c.,  
                    Respondent.

2                    Mo. No. 2011-40  
Federal Insurance Company,  
                    Respondent,  
                    v.  
International Business Machines  
Corporation, et al.,  
                    Appellants.

3                    Mo. No. 2011-16  
In the Matter of John L. Fochi,  
                    Appellant,  
                    v.  
New York State Comptroller  
et al.,  
                    Respondents.

Motion by American Bus Association,  
Inc. for leave to appear amicus curiae  
on the appeal herein granted only to  
the extent that the proposed brief is  
accepted as filed.

Motion for leave to appeal granted.

Motion for leave to appeal denied.

4                    Mo. No. 2011-230  
The People &c.,  
                    Respondent,  
                    v.  
Rudy Hernandez,  
                    Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 dismissed as untimely.

1                    Mo. No. 2010-1364  
Tammy D. Johnson &c., et al.,  
                    Appellants,  
                    v.  
City of New York, et al.,  
                    Respondents.  
(And Another Action.)

Motion for reargument denied with one hundred dollars costs and necessary reproduction disbursements.

3                    Mo. No. 2011-221  
In the Matter of Johnson City  
Professional Firefighters Local  
921 et al.,  
                    Respondents,  
Village of Johnson City,  
                    Appellant.  
(And Another Proceeding.)

Motion by Professional Fire Fighters Association, I.A.F.F., AFL-CIO for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served and 24 copies filed within seven days.

4                    Mo. No. 2010-1369  
In the Matter of Steven L.  
  
Felicia H.,  
                    Appellant;  
Steven H.,  
                    Petitioner;  
Erie County Department of Social  
Services,  
                    Respondent.  
Brian L. et al.,  
                    Respondents.

Motion for leave to appeal denied.

3                   Mo. No. 2011-308  
The People &c.,  
                    Respondent,  
                    v.  
Darnell Leader,  
                    Appellant.

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

3                   Mo. No. 2011-331  
The People &c.,  
                    Respondent,  
                    v.  
Alicia Lewie,  
                    Appellant.

Motion by District Attorneys Association of the State of New York for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Two copies of the brief must be served and 24 copies filed within seven days.

2                   Mo. No. 2011-34  
NYCTL 1998-2 Trust, et al.,  
                    Plaintiffs,  
                    v.  
Andrea Ellen Sack,  
                    Appellant,  
Jules Bender, et al.,  
                    Defendants;  
Guila Feinberg,  
                    Nonparty-Respondent.

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

2                   Mo. No. 2011-203  
Louis F. Ortiz,  
                    Appellant,  
                    v.  
Varsity Holdings, LLC., et al.,  
                    Respondents.

Motion by New York State Trial Lawyers Association for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and 24 copies filed within seven days.

1 Mo. No. 2011-242  
The People &c.,  
Respondent,  
v.  
Sergio Rodriguez,  
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2011-258  
In the Matter of Carlos Rueda,  
M.D., Chairman, Department of  
Psychiatry, Montefiore North  
Medical Center,  
Respondent,  
v.  
Charmaine D.,  
Appellant.

Motion by New York State Psychiatric Association, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and 24 copies filed within seven days.

1 Mo. No. 2011-281  
In the Matter of Carlos Rueda,  
M.D., Chairman, Department of  
Psychiatry, Montefiore North  
Medical Center,  
Respondent,  
v.  
Charmaine D.,  
Appellant.

Motion by New York City Health and Hospitals Corporation for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.

1 Mo. No. 2011-216  
The People &c.,  
Respondent,  
v.  
Nydia Santiago,  
Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

1 Mo. No. 2011-244  
Christopher Scott,  
Appellant,  
v.  
Rockaway Pratt, LLC,  
Respondent.

Motion for poor person relief granted.

1                   Mo. No. 2011-293  
The People &c.,  
                    Respondent,  
                    v.  
Anthony Steward,  
                    Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

3                   Mo. No. 2011-11  
In the Matter of Viscount  
Washington,  
                    Appellant,  
                    v.  
Brian Fischer, &c.,  
                    Respondent.

Motion for leave to appeal denied.

1                   Mo. No. 2011-301  
In the Matter of World Trade  
Center Bombing Litigation.  
Steering Committee, et al.  
                    Respondents,  
                    v.  
The Port Authority of New York  
and New Jersey,  
                    Appellant.

Motion by Defense Association of New York, Inc. for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed.  
Chief Judge Lippman took no part.

1                   Mo. No. 2011-292  
The People &c.,  
                    Respondent,  
                    v.  
Nafis Wright,  
                    Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 74 Trinity Place, 11th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

1                   Mo. No. 2011-29  
April Zimmerman et al.,  
                    Appellants,  
                    v.  
The City of New York et al.,  
                    Respondents.

Motion for leave to appeal denied.