

October 15, 2013

**CASES**

- 4                    No. 161  
Brightonian Nursing Home, et al.,  
    Respondents,  
    v.  
Richard F. Daines, M.D., Commissioner of  
Health, State of New York, et al.,  
    Appellants.
- Judgment appealed from and order of the Appellate  
Division brought up for review reversed, with costs,  
and judgment granted to defendants declaring that  
Public Health Law § 2808(5)(c) is constitutional to  
the extent challenged.  
Opinion by Chief Judge Lippman.  
Judges Graffeo, Read, Smith, Pigott, Rivera and  
Abdus-Salaam concur.
- 3                    No. 145  
In the Matter of Gaudenzia Hroncich,  
    Respondent,  
    v.  
Con Edison et al.,  
    Appellants,  
Special Disability Fund,  
    Respondent.  
Workers' Compensation Board,  
    Respondent.
- Order affirmed, with costs.  
Opinion by Judge Read.  
Judges Graffeo, Smith, Pigott, Rivera and Abdus-  
Salaam concur, Judge Pigott in a separate concurring  
opinion in which Judge Smith concurs.  
Chief Judge Lippman took no part.
- 2                    No. 147  
The People &c.,  
    Respondent,  
    v.  
Chadon Morris,  
    Appellant.
- Order affirmed.  
Opinion by Judge Abdus-Salaam.  
Judges Graffeo, Read and Pigott concur.  
Judge Rivera dissents in an opinion in which Chief  
Judge Lippman concurs.  
Judge Smith dissents in a separate opinion.

No. 167  
Alfred G. Osterweil,  
Appellant,  
v.  
George R. Bartlett, III,  
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 the affirmative.  
Opinion by Judge Pigott.  
Chief Judge Lippman and Judges Graffeo, Read, Smith, Rivera and Abdus-Salaam concur.

1 No. 151  
The People &c.,  
Respondent,  
v.  
Donald Perrington,  
Appellant.

Order reversed and a new trial ordered, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read and Rivera concur.  
Judge Pigott dissents and votes to affirm in an opinion in which Judge Smith concurs.  
Judge Abdus-Salaam took no part.

1 No. 170  
Nandkumar Ramkumar,  
Appellant,  
v.  
Grand Style Transportation Enterprises Inc.,  
et al.,  
Respondents.

Order reversed, with costs, and the complaint reinstated, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Pigott, Rivera and Abdus-Salaam concur.  
Judge Smith dissents in an opinion in which Judge Read concurs.

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Grand Style Transportation Enterprises Inc.,  
et al., Respondents,  
v.  
Georgina D. Castillo,  
Third-Party Respondent.

4                    No. 159  
The People &c.,  
    Respondent,  
    v.  
Carlos Santiago, Jr.,  
    Appellant.

Order modified by vacating the second felony offender adjudication and remitting to Monroe County Court for resentencing and, as so modified, affirmed, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

1                    No. 150  
The People &c.,  
    Respondent,  
    v.  
Omar Shabazz,  
    Appellant.

Order reversed and a new trial ordered, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read and Rivera concur.  
Judge Pigott dissents and votes to affirm in an opinion in which Judge Smith concurs.  
Judge Abdus-Salaam took no part.

## MOTIONS

1                    Mo. No. 2013-846  
45 Broadway Owner LLC,  
Appellant,  
v.  
NYS-ILA Pension Trust Fund,  
Respondent.

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

1                    SSD 57  
ACA Financial Guaranty Corp.,  
Appellant,  
v.  
Goldman, Sachs & Co.,  
Respondent,  
Paulson & Co., Inc. et al.,  
Defendants.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

4                    Mo. No. 2013-855  
Inez Bielecki,  
Appellant,  
v.  
Richard Bielecki,  
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.

1                    Mo. No. 2013-730  
Theodore Bohn,  
    Appellant,  
    v.  
176 W. 87th St. Owners Corp., &c., et al.,  
    Respondents,  
Paul Gottsegen, et al.,  
    Defendants.  
(And Other Actions.)

Motion, insofar as it seeks leave to appeal as against Steinhardt Management, Inc., dismissed upon the ground that as to that party the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order affirming Supreme Court's denial of appellant's disqualification motion and affirming Supreme Court's grant of nonparty respondent Robert Cantor's motion to quash a subpoena, dismissed upon the ground that such portion of the order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied. Judge Rivera took no part.

3                    Mo. No. 2013-813  
In the Matter of Thomas H. Cameron III,  
    Appellant,  
    v.  
Crooked Lake House et al.,  
    Respondents.  
Workers' Compensation Board,  
    Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2013-824  
Raymond Alberto Carreras, et al.,  
    Appellants,  
    v.  
Morrissania Towers Housing Company  
Limited Partnership, et al.,  
    Respondents,  
et al.,  
    Defendants.

Motion for leave to appeal denied.

3                    Mo. No. 2013-828  
In the Matter of Sean A. Casarotti,  
                         Respondent,  
                         v.  
Mary W. Casarotti,  
                         Appellant.

Motion for leave to appeal denied.

3                    SSD 56  
In the Matter of Marcus CC.,  
                         Appellant,  
                         v.  
Erica BB.,  
                         Respondent.

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that the two-justice dissent  
at the Appellate Division is not on a question of law  
(CPLR 5601[a]).

(Proceeding No. 1.)

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In the Matter of Maria DD.,  
                         Respondent,  
                         v.  
Marcus CC.,  
                         Appellant,  
et al.,  
                         Respondent.

(Proceeding No. 2.)

2                    Mo. No. 2013-807  
In the Matter of Rickey Clark,  
                         Appellant,  
                         v.  
Philip Heath, &c.,  
                         Respondent.

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

3                    Mo. No. 2013-564  
In the Matter of Lavar Davis,  
                  Appellant,  
          v.  
Albert Prack,  
                  Respondent.

Motion, insofar as it seeks leave to appeal from the Appellate Division judgment, dismissed as untimely (see CPLR 5513[b]; Eaton v State of New York, 76 NY2d 824 [1990]); motion, insofar as it seeks leave to appeal from the Appellate Division order denying reargument and reconsideration, dismissed upon the ground that such order does not finally determine the proceeding within the meaning of the Constitution.

1                    Mo. No. 2013-892  
In the Matter of Michael Donovan,  
                  Respondent,  
          v.  
Robert D. LiMandri, &c., et al.,  
                  Appellants.

Motion for leave to appeal denied.

2                    Mo. No. 2013-838  
In the Matter of Foreclosure of Tax Liens,  
&c.

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

Dutchess County,  
                  Respondent,  
          v.  
The Putnam County National Bank of  
Carmel,  
                  Appellant.

2                    Mo. No. 2013-851  
In the Matter of Sam Esposito,  
                  Appellant,  
          v.  
Raymond Kelly, &c. et al.,  
                  Respondents.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution and is not an order of the type provided for in CPLR 5602(a)(2).

3 Mo. No. 2013-687  
The People &c.,  
Respondent,  
v.  
George F. Fazio,  
Appellant.

Motion for leave to appeal granted.

1 Mo. No. 2013-857  
In the Matter of John Gil,  
Respondent,  
v.  
New York City Department of Buildings, et  
al.,  
Appellants.

Motion for leave to appeal denied.

3 Mo. No. 2013-799  
Thomas Haire,  
Appellant,  
v.  
Robert Bonelli, Jr.,  
Defendant,  
The Pyramid Companies, et al.,  
Respondents.

Motions for leave to appeal denied.

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Stephen Silk, et al.,  
Appellants,  
v.  
Robert Bonelli, Jr.,  
Defendant,  
The Pyramid Companies,  
et al.,  
Respondents.

4                    Mo. No. 2013-852  
Lee T. Hendryx et al.,  
    Appellants,  
    v.  
Richard M. Payne, et al.,  
    Respondents,  
et al.,  
    Defendant.  
(And a Third-Party Action.)

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

3                    Mo. No. 2013-809  
Theadora Hines,  
    Appellant,  
    v.  
Double D and S Realty Management  
Corporation,  
    Respondent,  
et al.,  
    Defendant.

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

4                    Mo. No. 2013-827  
Maria L. Jaoude,  
    Appellant,  
    v.  
Matthew E. Hannah, et al.,  
    Respondents.

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

2                    Mo. No. 2013-861  
In the Matter of Zeena Jenkins-Moore,  
    Respondent,  
    v.  
James Smith,  
    Appellant.

Motion for leave to appeal denied.

2                    Mo. No. 2013-801  
In the Matter of Shawn Khouri,  
                          Appellant,  
                          v.  
William Lee, &c.,  
                          Respondent.

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

3                    Mo. No. 2013-862  
In the Matter of Edward Koehl,  
                          Appellant,  
                          v.  
Brian Fischer, &c.,  
                          Respondent.

On the Court's own motion, appeal dismissed, without costs, upon the ground that the order appealed from does not finally determine the proceeding within the meaning of the Constitution. Motion for poor person relief dismissed as academic.

3                    Mo. No. 2013-802  
David Loret,  
                          Appellant,  
                          v.  
State of New York,  
                          Respondent.

Motion for leave to appeal denied.

2                    Mo. No. 2013-829  
In the Matter of Aaron McRae,  
                          Appellant,  
                          v.  
Suffolk County Clerk's Office,  
                          Respondent.

Motion for leave to appeal denied.

3                    SSD 59  
In the Matter of Suarna Mehulic,  
                          Appellant,  
                          v.  
State Board for Professional Medical  
Conduct,  
                          Respondent.

Appeal dismissed without costs, by the Court *sua sponte*, upon the ground that it is untimely (see CPLR 5513[a]).

4                    Mo. No. 2013-710  
The People &c.,  
    Respondent,  
    v.  
Dwight Moss,  
    Appellant.

Motion for leave to appeal granted.

3                    SSD 61  
In the Matter of Kenneth Myers,  
    Appellant,  
    v.  
Brian Fischer, as Commissioner of  
Corrections and Community Supervision, et  
al.,  
    Respondents.

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that no substantial  
constitutional question is directly involved.

2                    Mo. No. 2013-843  
Charmaine Nicholas,  
    Respondent,  
    v.  
C & F Trading Company et al.,  
    Appellants.

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

1                    Mo. No. 2013-858  
In the Matter of Nicholas F. Nuziale,  
    Respondent,  
    v.  
Robert D. LiMandri, &c. et al.,  
    Appellants.

Motion for leave to appeal denied.

1                    Mo. No. 2013-805  
In the Matter of Michael O'Dette,  
    Appellant,  
    v.  
New York State Unified Court System,  
    Respondent.

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

4                    Mo. No. 2013-844  
In the Matter of Emmanuel Patterson,  
                          Appellant,  
                          v.  
Andrea W. Evans, &c. et al.,  
                          Respondents.

Motion, insofar as it seeks leave to appeal from the Appellate Division order denying reargument or leave to appeal to this Court, dismissed upon the ground that such order does not finally determine the proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied.  
Motion for poor person relief dismissed as academic.

2                    Mo. No. 2013-823  
Josefina Phillips,  
                          Appellant,  
                          v.  
City of New York,  
                          Respondent.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed Supreme Court's dismissal of the complaint, denied; motion for leave to appeal otherwise dismissed upon the ground that the remaining part of the Appellate Division order does not finally determine the action within the meaning of the Constitution.

3                    SSD 62  
The People &c.,  
                          Respondent,  
                          v.  
James R. Pine,  
                          Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no civil appeal lies from the order entered in this criminal proceeding (see NY Const, art VI, § 3[b]; CPLR 5601; CPL 450.90).

1                    Mo. No. 2013-672  
In the Matter of Ruth Marie Pollack,  
                  Appellant,  
          v.  
Clerk of the Court Matthew G. Kiernan, &c.,  
et al.,  
                  Respondents.

Motion, insofar as it seeks leave to appeal from the April 2013 Appellate Division order dismissing the proceeding, denied; motion, insofar as it seeks leave to appeal from the remaining five orders, dismissed upon the ground that the Court of Appeals does not have jurisdiction to entertain it (see NY Const, art VI, § 3; CPLR 5602).  
Motion for ancillary relief dismissed as academic.  
Chief Judge Lippman and Judge Abdus-Salaam took no part.

3                    Mo. No. 2013-812  
In the Matter of Patrick Proctor,  
                  Appellant,  
          v.  
Brian Fischer, &c.,  
                  Respondent.

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

3                    Mo. No. 2013-836  
The People &c.,  
                  Respondent,  
          v.  
Jeffrey R. Roberts,  
                  Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2013-853  
In the Matter of Christopher Robles,  
                  Respondent,  
          v.  
Robert D. LiMandri, &c. et al.,  
                  Appellants.

Motion for leave to appeal denied.

3                    Mo. No. 2013-832  
Frans Sital,  
    Appellant,  
    v.  
State of New York,  
    Respondent.

Motion for leave to appeal denied.

3                    SSD 58  
In the Matter of Victor Sowell,  
    Appellant,  
    v.  
Brian Fischer, as Commissioner of  
Corrections and Community Supervision,  
    Respondent.

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that no substantial  
constitutional question is directly involved.

1                    Mo. No. 2013-756  
Constantine Spathis,  
    Respondent,  
    v.  
Alina Dulimof-Spathis,  
    Appellant.

Motion, insofar as it seeks leave to appeal from that  
part of the Appellate Division order that affirmed the  
April 2012 Supreme Court order, dismissed upon the  
ground that such portion of the Appellate Division  
order does not finally determine the action within the  
meaning of the Constitution; motion for leave to  
appeal otherwise denied.  
Motion for poor person relief dismissed as academic.  
Judge Abdus-Salaam took no part.

2                    Mo. No. 2013-840  
The People &c.,  
    Respondent,  
    v.  
Jose Vere,  
    Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2013-808  
In the Matter of Wagner & Stoll, LLC,  
Respondent,  
v.  
City of Schenectady et al.,  
Respondents.  
Schenectady City School District,  
Proposed Intervenor-Appellant.  
(And Another Related Proceeding.)

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

3 Mo. No. 2013-850  
In the Matter of Charles Watson,  
Appellant,  
v.  
New York State Department of Corrections  
and Community Supervision,  
Respondent.

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

1 Mo. No. 2013-837  
Ying Jing Yan,  
Respondent,  
v.  
Ke-En Wang,  
Appellant.

Motion for leave to appeal denied.