

of two interrelated real estate contracts with time of the essence clauses. The record evidence established that plaintiffs duly tendered the signed and notarized deed and other closing documents, while defendants-appellants failed to tender the requisite \$95 million for the Florida property, the closing of which was to take place simultaneously with the closing of certain real property in New York. This constituted a material breach of the contract entitling plaintiffs to retain the \$4.5 million deposit (see *New Colony Homes, Inc. v Long Island Property Group, LLC*, 21 AD3d 1072 [2005]; *Friedman v O'Brien*, 287 AD2d 311, 312 [2001]). The burden then shifted to appellants to raise a triable issue that plaintiffs failed to satisfy their obligations under the parties' agreements, thereby allowing them to terminate the agreements and receive the return of their contract deposit. Appellants failed to sustain this burden.

Appellants' position that they were excused from closing on the basis that plaintiffs breached their obligation to maintain the premises imposed by Section 4.4(a) of the Florida Property Contract, which section was reaffirmed in the 2006 Settlement Agreement, is not supported by the express language of the agreements. Appellants agreed to purchase the property in "as is" condition and, under Section 1 of the 2006 Settlement Agreement, waived any breaches that occurred prior to the execution of that agreement. Moreover, the pre-closing

maintenance covenant was not a condition precedent to appellants' obligation to close, and appellants otherwise failed to substantiate their claims concerning plaintiffs' alleged failure to maintain the property (see *Sikander v Prana-BF Partners*, 22 AD3d 242 [2005]). We next reject appellants' claim that plaintiffs failed to timely deliver all schedule 2 documents as required by the 2006 Settlement Agreement inasmuch as it contradicts the position taken by them before the motion court. In any event, the time of the essence provision contained in the Florida Property Contract concerning documents does not apply to the schedule 2 documents which were required to be produced for the first time as part of the 2006 Settlement Agreement. Regarding appellants' argument that plaintiffs breached the representation in Section 5.2(m) of the Florida Property Contract by entering into a renewed lease with Florida East Coast Railway, L.L.P., which required that a fence be installed by the Florida property owner, it was appellants who demanded that the lease be renewed, and appellants had ample opportunity prior to the time of the essence closing date to insist that plaintiffs erect the fence, but failed to do so.

The court properly awarded interest and prevailing-party attorneys' fees against all appellants since this action is premised upon a breach of the 2006 Settlement Agreement, which was signed by all appellants, and reaffirmed the interdependency

of the two real estate transactions, and the parties' obligations concerning attorneys' fees.

We have considered appellants' remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
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the merits. The police conduct was lawful at each stage of the encounter.

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Friedman, J.P., Gonzalez, McGuire, Moskowitz, JJ.

3167 Amy Lipman, Index 100155/07
Plaintiff-Appellant,

-against-

Gail Ionescu,
Defendant-Respondent.

Rottenberg Lipman Rich, P.C., New York (Harry W. Lipman of
counsel), for appellant.

Kelly, Rode & Kelly, LLP, Mineola (George J. Wilson of counsel),
for respondent.

Appeal from order, Supreme Court, New York County (Edward H.
Lehner, J.), entered July 24, 2007, which granted defendant's
motion to dismiss the complaint, deemed an appeal from judgment
(CPLR 5501[c]), same court and Justice, entered September 20,
2007; said judgment unanimously reversed, on the law, without
costs, the motion denied and the complaint reinstated.

The motion court erred when it viewed defendant's statements
as merely an unfavorable assessment of plaintiff's work
performance. In the context of informing parents of two- and
three-year-olds that the children's teacher has been terminated,
defendant's statements were reasonably susceptible to a
defamatory meaning and slanderous per se because they directly
implied that plaintiff had done something so egregious that it
made her unfit to practice her profession even one more day (see

People v Grasso, 21 AD3d 851 [2005]; *Chiaverelli v Williams*, 256 AD2d 111 [1998]).

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Friedman, J.P., Gonzalez, McGuire, Moskowitz, JJ.

3169 In re Damian Richard A., Jr.,

A Dependent Child Under the
Age of Eighteen Years, etc.,

Damian A., Sr.,
Respondent-Appellant,

Concord Family Services, Inc.,
Petitioner-Respondent.

Lisa H. Blitman, New York, for appellant.

Law Offices of James M. Abramson, PLLC, New York (Dawn M. Orsatti
of counsel), for respondent.

Order, Family Court, New York County (Sara P. Schechter,
J.), entered on or about June 1, 2006, which denied respondent
father's motion to vacate a dispositional order of the same court
and Judge, entered on or about May 12, 2006, which, upon his
default in appearing at the underlying fact-finding and
dispositional hearings, terminated his parental rights to the
subject child on grounds of permanent neglect and committed
custody and guardianship of the child to the petitioning agency
and the Commissioner of Social Services for the City of New York
for the purpose of adoption, unanimously affirmed, without costs.

Respondent failed to show either a reasonable excuse for his
failure to appear for the fact-finding and dispositional hearings
or a meritorious defense to the proceeding. His excuse that he
was "out of town" because it was Easter week is insufficient and

also does not explain why he failed to contact his attorney, the court, or the agency to advise of his unavailability (see *Matter of Laura Mariela R.*, 302 AD2d 300 [2003]; *Matter of Ashley Marie M.*, 287 AD2d 333 [2001]). In light of respondent's chronic failure to appear, the court properly went forward with the proceeding in his absence (see *Matter of Kristen Simone V.*, 30 AD3d 174 [2006]). Respondent's assertion that he visited the child on a regular basis was unsubstantiated. Furthermore, even if we credited his assertion that he began attendance at the required programs in June 2005, approximately four months before the filing of the petition, respondent failed to establish that he complied with the service plan during the statutorily relevant time frame.

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fulfill its "core responsibility" under *People v Kisoorn* (8 NY3d 129, 135 [2007]). There is no evidence that the court prevented counsel from knowing the specific contents of the notes, or from suggesting different responses than those the court provided (compare *People v Starling*, 85 NY2d 509, 516 [1995], with *People v Cook*, 85 NY2d 928 [1995]). Accordingly, we reject defendant's claim that there was a mode of proceedings error exempt from preservation requirements, and we decline to review this unpreserved claim in the interest of justice. As an alternative holding, we find no basis for reversal. The notes simply called for readbacks of portions of the court's charge, which the court provided, and any input by counsel would have been minimal. However, as the Court of Appeals stated in *Kisoorn*, "we underscore the desirability of adherence to the procedures outlined in *O'Rama*" (8 NY3d at 135).

Defendant's claim that his counsel was ineffective for failing to object to the court's procedure in responding to the notes is unreviewable on direct appeal. The record does not establish that counsel did not have notice of the jury notes and an opportunity to be heard (see *People v Love*, 57 NY2d 998 [1982]).

We decline to invoke our interest of justice jurisdiction to dismiss the noninclusory concurrent count of fifth-degree

possession (see e.g. *People v Brown*, 298 AD2d 158 [2002], *lv denied* 99 NY2d 556 [2002]).

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Friedman, J.P., Gonzalez, McGuire, Moskowitz, JJ.

3176 In re Diwantie Seemangal,
Petitioner,

Index 112461/06

-against-

New York State Office of Children
and Family Services, et al.,
Respondents.

Warren S. Hecht, Forest Hills, for petitioner.

Andrew M. Cuomo, Attorney General, New York (Carol Fischer of
counsel), for respondents.

Determination of respondent New York State Office of
Children and Family Services dated May 17, 2006, after an
evidentiary hearing, to suspend and revoke petitioner's license
to operate a group family day care home, unanimously confirmed,
the petition denied and the proceeding brought pursuant to CPLR
article 78 (transferred to this Court by order of the Supreme
Court, New York County [Louis B. York, J.], entered January 26,
2007) dismissed, without costs.

Substantial evidence supports respondents' findings that
petitioner violated four Department of Social Services
regulations covering the management and administration of group
family day care homes (18 NYCRR 416.15[a][10] [refusal to
cooperate and allow access to the home]; 18 NYCRR 416.8[c][2]
[use of an unauthorized caregiver]; 18 NYCRR 416.15[a][4]

[exceeding authorized capacity]; and 18 NYCRR 416.4[f] [non-approved second egress]) and that such violations placed the health, safety and welfare of the children in imminent danger (see *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 179-180 [1978]).

Petitioner's due process rights were not violated by the issuance of the report by a person who did not preside at the hearing. The regulations specifically require that the decision after fair hearing be made by the Commissioner or his or her designee and that it be based "exclusively on the record of the hearing" (18 NYCRR § 413.5[m]; see *Matter of Pluta v New York State Off. of Children and Family Servs.*, 17 AD3d 1126, 1127 [2005], *lv denied* 5 NY3d 715 [2005]).

The determination to revoke petitioner's license does not shock the conscience (see *Matter of Featherstone v Franco*, 95 NY2d 550, 554 [2000]; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 232-234 [1974]).

We have considered petitioner's remaining arguments and find them without merit.

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Paswall to open a checking account in plaintiff's name, resulting in the conversion of checks payable to plaintiff.

The record establishes that Wachovia acted in a commercially reasonable manner in opening the subject account. Wachovia's vice-president identified the documents relied upon in opening the account, including a certificate of incorporation, a corporate resolution and a copy of Paswall's driver's license, and set forth that the bank's conduct was reasonable under the circumstances (*see Sybedon Corp. v Bank Leumi Trust Co. of N.Y.*, 224 AD2d 320 [1996]).

We have considered plaintiff's remaining contentions and find them unavailing.

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arguments concerning the resisting arrest conviction are without merit.

As defendant concedes, the fact that he interposed an agency defense permitted the People to introduce evidence of prior drug sales. We reject defendant's argument that the court permitted elicitation of excessive and prejudicial details about his prior drug sale conviction. The challenged evidence was highly probative to refute his agency defense, and that probative value outweighed the potential for undue prejudice (*see People v Castaneda*, 173 AD2d 349, 350 [1991], *lv denied* 78 NY2d 963 [1991]), which the court minimized by means of a limiting instruction. Moreover, defendant specifically opened the door to inquiry into the facts of his prior case when, on cross-examination, he testified that he was innocent of the prior crime notwithstanding his guilty plea in that case.

The court properly denied defendant's suppression motion. Defendant's generalized argument that the police lacked probable cause for his arrest failed to preserve his present contentions (*see People v Tutt*, 38 NY2d 1011 [1976]), and we decline to review them in the interest of justice. As an alternative holding, we also reject them on the merits. The hearing evidence warranted the conclusion that the arresting officer acted

lawfully, pursuant to the fellow officer rule (see *People v Ketcham*, 93 NY2d 416 [1999]; *People v Green*, 2 AD3d 279 [2003], *lv denied* 2 NY3d 740 [2004]).

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ENTERED: MARCH 27, 2008

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Friedman, J.P., Gonzalez, McGuire, Moskowitz, JJ.

3181 Eddie H. Valentin, Index 115500/04
Plaintiff-Respondent,

-against-

Melcar Garage, Inc.,
Defendant-Appellant,

Park Hill Tenants Corp., et al.,
Defendants.

Bivona & Cohen, P.C., New York (Kevin J. Donnelly of counsel),
for appellant.

Grossman & Grossman, P.C., New York (Brett M. Grossman of
counsel), for respondent.

Order, Supreme Court, New York County (Milton A. Tingling,
J.), entered June 21, 2007, which, in an action for personal
injuries sustained by a parking garage attendant in a parking
garage operated by defendant Melcar Garage, Inc. (Melcar), denied
Melcar's motion for summary judgment dismissing the complaint as
against it as barred by the exclusivity provisions of the
Workers' Compensation Law, unanimously affirmed, without costs.

Melcar's motion was properly denied for lack of
documentation showing, inter alia, exactly who paid plaintiff and
supervised his daily activities, and that such person or entity,
if not Melcar itself, is Melcar's alter ego (see *Hughes v*
Solovieff Realty Co., L.L.C., 19 AD3d 142, 143 [2005]). In view
of the foregoing, we need not reach Melcar's argument that

plaintiff's injuries are not "grave" within the meaning of the statute and that any common-law claims against it must therefore be dismissed.

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of a forged instrument in the second degree (Penal Law § 170.25) is not "nonexistent." Defendant is essentially claiming that the instrument he possessed, a bent MetroCard, did not satisfy the forgery statute. To the extent defendant is thus challenging the sufficiency of the evidence that was before the grand jury and would have been presented had he gone to trial, that claim is foreclosed by a guilty plea (*People v Taylor*, 65 NY2d 1 [1985]; *People v Thomas*, 53 NY2d 338 [1981]). To the extent defendant is challenging the sufficiency of his plea allocution, that claim is unpreserved and we decline to review it in the interest of justice; the narrow exception to the preservation rule explained in *People v Lopez* (71 NY2d 662, 665-666 [1988]) does not apply since defendant's factual recitation did not negate any element of the crime or cast significant doubt on his guilt.

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Plaintiff moved unsuccessfully to vacate the default. It then commenced a CPLR article 78 proceeding to challenge defendant's determination to deny its motion. In the petition, plaintiff stated that it was not submitting the constitutionality of the statute to the court but arguing that the constitutional infirmity of a statute constituted a meritorious defense in the administrative proceeding. Because the constitutional challenges plaintiff raises in the instant action arose out of the same transaction from which his article 78 claims arose, and plaintiff could have raised them in the article 78 proceeding, the constitutional challenges are barred by the doctrine of res judicata (see *O'Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]).

In any event, the statute does not impose unconstitutional restrictions on plaintiff's First Amendment rights but merely requires a license for dealing in second-hand articles (see *Matter of Irreplaceable Artifacts v City of N.Y. Dept. of Consumer Affairs*, 22 AD3d 410, 411-412 [2005]). Nor does it impose an excessive burden on interstate commerce (see *Pike v Bruce Church, Inc.*, 397 US 137, 142 [1970]) or disadvantage a suspect class or interfere with a fundamental right (see *San Antonio Ind. School Dist. v Rodriguez*, 411 US 1, 17 [1973]). Plaintiff was not prevented from practicing its chosen profession

by the licensing scheme (see *New York State Trawlers Assoc. v Jorling*, 16 F3d 1303, 1311 [2d Cir 1994]). The inspection of its property did not violate its Fourth Amendment rights (see *Matter of Glenwood TV v Ratner*, 103 AD2d 322 [1984], *affd* 65 NY2d 642 [1985]; see also *Donovan v Dewey*, 452 US 594, 598-599 [1981]).

We have considered plaintiff's remaining contentions and find them without merit.

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ENTERED: MARCH 27, 2008

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Friedman, J.P., Gonzalez, McGuire, Moskowitz, JJ.

3187N In re State Farm Mutual Automobile Index 16348/07
Insurance Company,
Petitioner-Respondent,

-against-

Sheldon Scott, et al.,
Respondents-Appellants.

Alpert & Kaufman, LLP, New York (Gary Slobin of counsel), for
appellants.

Order, Supreme Court, Bronx County (Lucindo Suarez, J.),
entered August 20, 2007, which granted petitioner insurer's
application to permanently stay a hit-and-run arbitration
demanded by respondents insureds, unanimously affirmed, without
costs.

There is no merit to respondents' argument that the
timeliness of the proceeding under CPLR 7503(c) should be
measured from service of their attorney's April 16, 2007 letter
notifying petitioner of their intention to arbitrate their
"uninsured motorist claims." That letter gave no indication
whether such claims were being brought under the lack-of-coverage
or hit-and-run provision of the uninsured motorist claim section
of the subject policy. Rather, timeliness should be measured
from service of respondents' May 30, 2007 demand to arbitrate.
That was the first notice given by respondents that their claims
were being brought under the hit-and-run provision, and thus when

petitioner first learned that it had a ground for seeking a stay of arbitration, namely, respondent passenger's statement to petitioner shortly after the accident that there was no physical contact with the offending vehicle (see *Matter of Prudential Prop. & Cas. Ins. Co. v Hobson*, 67 NY2d 19 [1986]; cf. *Matter of Allcity Ins. Co. [Jimenez]*, 78 NY2d 1054, 1056 [1991]). No hearing was required since the lack of physical contact was undisputed. We have considered respondents' other contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

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Friedman, J.P., Gonzalez, McGuire, Moskowitz, JJ.

3188N-

3188NA Tercida Martinez,
Plaintiff-Respondent,

Index 21346/04

-against-

Goldrose Management, Inc.,
Defendant-Appellant.

Kral, Clerkin, Redmond, Ryan, Perry & Girvan, LLP, New York
(Oliver W. Williams of counsel), for appellant.

Trolman, Glaser & Lichtman, P.C., New York (Michael T. Altman of
counsel), for respondent.

Order, Supreme Court, Bronx County (Alison Y. Tuitt, J.),
entered January 16, 2007, which, in an action for personal
injuries sustained in a fall on defendant's premises, granted
plaintiff's motion pursuant to CPLR 3126 to strike defendant's
answer to the extent of deeming the issue of notice resolved in
plaintiff's favor, unanimously reversed, on the facts, without
costs, the motion to strike denied, and the stricken portions of
the answer reinstated. Appeal from order, same court and
Justice, entered January 16, 2007, which adjourned plaintiff's
motion to strike and, insofar as appealed from, directed a
surreply from defendant's attorney, unanimously dismissed,
without costs.

The order resolving against defendant the issue of notice
was unwarranted. Plaintiff did not show that defendant's delay
in complying with her demand for the last known home address of

one of defendant's former employees, who had already been deposed by plaintiff while still in defendant's employ, was part of a pattern of deliberate, contumacious delay (see *Tsai v Hernandez*, 284 AD2d 116, 117 [2001]). The second order on appeal does not affect a substantial right and is not otherwise appealable as of right (see *Marriott Intl. v Lonny's Hacking Corp.*, 262 AD2d 10, 11 [1999]).

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his evidentiary burden by using a police officer's statement that the property in question was seized from his person.

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Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

3190 Josh Segal, individually and Index 102768/07
derivatively on behalf of Lighthouse
Real Estate Advisors, L.L.C.,
Plaintiff-Respondent,

-against-

Paul Cooper, et al.,
Defendants-Appellants.

Mark L. Lubelsky and Associates, New York (Mark L. Lubelsky of
counsel), for appellants.

Michael T. Sucher, Brooklyn, for respondent.

Order, Supreme Court, New York County (Milton A. Tingling,
J.), entered November 23, 2007, which denied defendants' motion
to dismiss the amended complaint, unanimously modified, on the
law, to strike plaintiff's demands for punitive damages, and
otherwise affirmed, without costs.

Accepting as true the facts as alleged in the complaint,
according plaintiff the benefit of every favorable inference, and
determining only whether the facts as alleged fit within any
cognizable legal theory (*Sokoloff v Harriman Estates Dev. Corp.*,
96 NY2d 409, 414 [2001]), we find that plaintiff's causes of
action were adequately alleged. As to fraud, whether plaintiff's
reliance upon defendants' alleged misrepresentations was
reasonable is a factual issue not to be resolved on a motion
directed at the pleadings (*see generally Brunetti v Musallam*, 11
AD3d 280 [2004]). The adequacy of the breach of contract cause

of action is gleaned from the complaint as a whole (see *Dulberg v Mock*, 1 NY2d 54, 56 [1956]). Plaintiff's allegations that, on behalf of the business venture he entered into with the individual defendants to market certain properties, he actively marketed the properties, and commissions were generated and paid to defendants, who ultimately diverted them, depriving him of his share of the commissions, adequately state a cause of action for unjust enrichment (see *Wiener v Lazard Freres & Co.*, 241 AD2d 114, 119-121 [1998]). Moreover, contrary to defendants' contention, that cause of action need not be dismissed merely because it "contradicts the underlying theory" of the breach of contract cause of action (see *Cohn v Lionel Corp.*, 21 NY2d 559, 563 [1968]; *Limited v McCrory Corp.*, 169 AD2d 605, 607 [1991]; CPLR 3014). As to the unjust enrichment cause of action asserted derivatively, plaintiff alleged with sufficient particularity that a majority of the controlling members of the limited liability company were interested in the challenged transactions and that therefore a demand to initiate a lawsuit would have been futile (see *Marx v Akers*, 88 NY2d 189, 198 [1986]).

Plaintiff's demand for punitive damages should have been struck since his primary claim is contract-based and there is no allegation that defendants' conduct was directed at the public generally (see *Gilban v Murphy*, 73 NY2d 769 [1988]). Nor do the allegations indicate that defendants' conduct in the transactions

involved a high degree of moral turpitude (see *Gamiel v Curtis & Riess-Curtis, P.C.*, 16 AD3d 140 [2005]).

We have reviewed defendants' remaining arguments and find them without merit.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

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Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

3191 Orlando Coombs,
Plaintiff-Respondent,

Index 24451/03

-against-

Izzo General Contracting, Inc.,
Defendant-Appellant,

Twins Electric Corp.,
Defendant.

Carol R. Finocchio, New York (Marie R. Hodukavich of counsel),
for appellant.

Nicholas C. Harris, New York, for respondent.

Order, Supreme Court, Bronx County (Sallie Manzanet-Daniels,
J.), entered February 5, 2007, which, insofar as appealed from,
upon reargument, vacated so much of its prior order granting
defendant-appellant's motion for summary judgment dismissing
plaintiff's Labor Law § 240(1) and § 241(6) causes of action and
denying plaintiff's cross motion for summary judgment on the
causes of action as against appellant, and granted plaintiff's
cross motion, unanimously reversed, on the law, without costs,
plaintiff's cross motion denied and defendant-appellant's motion
for summary judgment dismissing the Labor Law § 240(1) and
§ 241(6) causes of action granted.

Plaintiff, a superintendent of a building that was
undergoing demolition and construction, is not within the class

of persons entitled to invoke the protection of Labor Law § 240(1) and § 241(6). Although an individual need not actually be engaged in physical labor to be entitled to coverage under the Labor Law, plaintiff did not perform work integral or necessary to the completion of the construction project, nor was he “a member of a team that undertook an enumerated activity under a construction contract” (*Prats v Port Auth. of N.Y. & N.J.*, 100 NY2d 878, 882 [2003]). As superintendent of the building, plaintiff was responsible for maintaining the building, keeping it clean, supervising the building staff, and watching for unsafe conditions. Although the demolition and construction work made his job more difficult insofar as it affected the portion of the building that was not under construction, plaintiff was not responsible for inspecting the areas of the building under construction. Nor was he responsible for performing any work related to the construction, and his job duties did not change after the project commenced (*Spadola v 260/261 Madison Equities Corp.*, 19 AD3d 321, 322-323 [2005], *lv denied* 6 NY3d 770 [2006]; *Blandon v Advance Contr. Co.*, 264 AD2d 550, 551-552 [1999], *lv denied* 94 NY2d 754 [1999]).

M-453 - Coombs v Izzo General Contracting, Inc., et al.

Motion seeking leave to enlarge time to file
an appellant's brief denied and consolidated
appeal of Twins Electric Corp. dismissed.

THIS CONSTITUTES THE DECISION AND ORDER
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ENTERED: MARCH 27, 2008

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Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

3192 In re Joshua S.,

 A Person Alleged to be
 A Juvenile Delinquent,
 Appellant.
 - - - - -
 Presentment Agency

Tamara A. Steckler, The Legal Aid Society, New York (John A. Newbery of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York (Ronald E. Sternberg of counsel), for presentment agency.

Order of disposition, Family Court, Bronx County (Alma Cordova, J.), entered on or about February 2, 2007, which adjudicated appellant a juvenile delinquent, upon a fact-finding determination that he committed acts which, if committed by an adult, would constitute the crimes of attempted gang assault in the first degree, assault in the second degree (two counts), assault in the third degree and menacing in the second and third degrees, and placed him on probation for a period of up to 18 months, unanimously modified, on the law, to the extent of vacating the findings as to assault in the second degree under count 6 and assault in the third degree under count 10 and dismissing those counts of the petition, and otherwise affirmed, without costs.

The court's fact-finding determination was based on legally sufficient evidence and was not against the weight of the

evidence (*see People v Danielson*, 9 NY3d 342, 348-349 [2007]). There is no basis for disturbing the court's determinations concerning identification and credibility. The testimony of the victim and eyewitness provided ample evidence to support the inference that appellant was a participant in the crimes and not a bystander.

As the presentment agency concedes, the finding as to felony assault (Penal Law § 120.05[6]) should be vacated because there was no underlying felony other than the assault itself, and the third-degree assault finding should be vacated as a lesser included offense under the remaining second-degree assault count.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

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Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

3193 Fatima Pareja,
 Plaintiff-Appellant,

Index 26771/01

-against-

The City of New York,
Defendant,

New York City Transit Authority, et al.,
Defendants-Respondents.

The Breakstone Law Firm, P.C., Bellmore (Jay L.T. Breakstone of counsel), for appellant.

Steve S. Efron, New York, for respondents.

Judgment, Supreme Court, Bronx County (Norma Ruiz, J.), entered November 13, 2007, dismissing the complaint after a jury verdict in defendants' favor, unanimously affirmed, without costs.

Plaintiff was allegedly injured when the bus on which she was a passenger hit a pillar on White Plains Road. At trial, the bus driver testified that he swerved to avoid an oncoming car that cut in front him.

There is no evidence that the offensive summation remarks of defense counsel cited by plaintiff improperly affected the verdict (*cf. Kohlmann v City of New York*, 8 AD2d 598 [1959]). Moreover, these remarks were brief and, after a 12-day trial with numerous witnesses, were unlikely to have affected the outcome. We nonetheless observe that the remarks of defense counsel were

uncalled for. There is no justification for attacking the credibility of opposing counsel. The veracity of counsel is simply not a subject for summation.

There was nothing improper about admitting into evidence plaintiff's verified bill of particulars (*see Owen A. Mandeville, Inc. v Zah*, 38 AD2d 730 [1972], *affd* 35 NY2d 769 [1974]) to demonstrate her alleged failure to provide notice of prior injuries. Statements and allegations in pleadings are always admissible as evidence, and may be used for any legitimate purpose at trial (*Holmes v Jones*, 121 NY 461 [1890]).

There was no requirement to charge sections of the Vehicle and Traffic Law that have no relevance or reasonable connection to the manner in which the accident is said to have occurred (*see Sutton v Piasecki Trucking*, 59 NY2d 800 [1983]; *Vail-Beserini v Rosengarten*, 267 AD2d 812 [1999]). The sections cited by plaintiff were not relevant to this accident.

We have reviewed the balance of plaintiff's argument and find it without merit.

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determinations (see *People v Prochilo*, 41 NY2d 759, 761 [1977]), including its rejection of defendant's testimony that he told the police he was represented by counsel on an unrelated charge and requested the presence of his attorney at a lineup. Defendant's other arguments concerning the lineup are without merit.

THIS CONSTITUTES THE DECISION AND ORDER
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ENTERED: MARCH 27, 2008

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Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

3195 In re 62nd & 1st LLC doing business Index 116887/06
 as Cigar Lounge @ Merchants NY,
 Petitioner-Respondent,

-against-

New York City, et al.,
Respondents-Appellants.

Michael A. Cardozo, Corporation Counsel, New York (Elizabeth S. Natrella of counsel), for appellants.

Richard L. Cohn, New York, for respondent.

Judgment, Supreme Court, New York County (Alice Schlesinger, J.), entered May 1, 2007, granting the petition and vacating the determination of respondent New York City Department of Health and Mental Hygiene to deny petitioner's application for registration as a tobacco bar, unanimously affirmed, without costs.

Petitioner's nominal predecessor, 1125 First LLC, began operating a cigar bar in 1997, on the lower level of premises where, several months earlier, it had begun operation of a restaurant on the upper level. In December 2001, ostensibly for estate planning purposes, 1125 First LLC became petitioner 62nd & 1st LLC. The officers and members remained the same, as did the percentages of their membership interests. In 2003, following amendment of the New York City Smoke-Free Air Act (Administrative Code of City of N.Y., title 17, chapter 5) and the promulgation

of rules for implementing the provisions thereof (Rules of the City of New York Department of Health and Mental Hygiene [24 RCNY] § 10-01 et seq.), petitioner sought to register with respondent as a grandfathered "tobacco bar" exempt from the ban on smoking in enclosed areas within public places (see Administrative Code § 17-503[a][20]; 24 RCNY 10-07]). Tobacco bar is defined as:

"a bar that, in the calendar year ending December 31, 2001, generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the department of health and mental hygiene in accordance with the rules of such agency. Such registration shall remain in effect for one year and shall be renewable only if: (i) in the preceding calendar year, the previously registered tobacco bar generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors; and (ii) the tobacco bar has not expanded its size or changed its location from its size or location as of December 31, 2001" (Administrative Code § 17-502 [jj]).

Respondent denied petitioner's application on the ground, inter alia, that the change in ownership caused the automatic revocation of petitioner's Food Service Establishment (FSE) permit (see 24 RCNY 5.11) and that therefore petitioner had not shown, as required, that it operated a tobacco bar pursuant to an FSE permit "since the calendar year ending December 31, 2001" (24 RCNY 10-07[a]). However, there is no question that the current

owners are precisely the same as the former owners, no suggestion that petitioner intended to violate the FSE permit requirement, and no evidence of prejudice to the public interest. In these circumstances, the penalty imposed by respondent is wholly disproportionate to the offense and constitutes an abuse of discretion (see *Matter of Shore Haven Lounge v New York State Liq. Auth.*, 37 NY2d 187, 190-191 [1975]; *Matter of Circus Disco v New York State Liq. Auth.*, 51 NY2d 24, 32-33 [1980]; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 232-234 [1974]).

Respondent denied the application on the additional ground that petitioner failed to include the upper-level restaurant in its calculation of gross sales from tobacco, despite the restaurant's and cigar bar's single owner, single premises, single FSE permit, single entrance through which patrons could proceed to either the upper or lower level, and single tax returns filed in 2001 and 2002. This determination was arbitrary and capricious. Respondent denied petitioner's application for a new FSE permit without explanation, thus allowing only one permit for both the restaurant and the cigar bar. More importantly, respondent does not deny that it has issued single permits to owners of separate businesses. Nor does it deny that separate businesses owned by a single owner, even at different locations,

may file consolidated tax returns. The factors proved by petitioner, that the restaurant and cigar bar began operations at different times and maintained separate records, separate menus, separate hours, separate restroom facilities, separate ventilation systems and, most importantly, separate liquor licenses, outweigh the factors of single ownership and a consolidated tax return.

None of respondent's remaining reasons for denying petitioner's application justified the drastic penalty of shutting down petitioner's business.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

CLERK

Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

3196 Teresa Mercedes Gomez,
 Plaintiff-Respondent,

Index 106848/04

-against-

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

Empire City Subway, Inc.,
 Defendant-Appellant.

Conway, Farrell, Curtin & Kelly, P.C., New York (Darrell John of
counsel), for appellant.

Fotopoulos, Rosenblatt & Green, New York (Alexander D. Fotopoulos
of counsel), for respondent.

Order, Supreme Court, New York County (Eileen A. Rakower,
J.), entered February 26, 2007, which, insofar as appealed from
in this action for personal injuries, denied the motion of
defendant Empire City Subway, Inc. (Empire) to dismiss the
complaint as against it, and deemed that the proposed amended
complaint was served and filed nunc pro tunc to July 19, 2006,
unanimously reversed, on the law, without costs, the motion
granted and the complaint dismissed as against Empire. The Clerk
is directed to enter judgment accordingly.

Although the filing of plaintiff's motion for leave to amend
the complaint to name Empire as a defendant, along with the
proposed amended pleadings, was sufficient to toll the statute of
limitations, it was not itself the interposition of the claim

within the meaning of CPLR 203(a) (*see Perez v Paramount Communications*, 92 NY2d 749, 754-756 [1999]). Because plaintiff never served Empire after having received leave of the court to do so, the court never obtained personal jurisdiction over Empire, and thus, it was without power to grant relief nunc pro tunc (*see Louden v Rockefeller Ctr. N.*, 249 AD2d 25 [1998]), even in the absence of surprise or prejudice to Empire (*see Luis v New York City Hous. Auth.*, 309 AD2d 719 [2003]).

We have considered plaintiff's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

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is without merit (see *People v Holman*, 89 NY2d 876 [1996]). As an alternative holding, we also reject defendant's suppression claims on the merits.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

CLERK

Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

3198-

3198A International Strategies Group, Index 601604/04
 Ltd, etc.,
 Plaintiff-Respondent-Appellant,

-against-

ABN AMRO Bank N.V.,
 Defendant-Respondent,

First Merchant Bank OSH Ltd.,
 Defendant-Appellant.

Morrison Cohen LLP, New York (Malcolm I. Lewin of counsel), for appellant.

Liddle & Robinson, LLP, New York (Blaine H. Bortnick of counsel), for respondent-appellant.

Zuckerman Spaeder LLP, New York (C. Evan Stewart of counsel), for respondent.

Order, Supreme Court, New York County (Karla Moskowitz, J.), entered February 1, 2007, which, inter alia, denied plaintiff's motion for leave to amend its complaint so as to include a cause of action against defendant-respondent for aiding and abetting defendant-appellant's fraud, and denied defendant-appellant's cross motion to dismiss plaintiff's cause of action against it for fraud, unanimously affirmed, without costs. Appeal from order, same court and Justice, entered June 5, 2005 unanimously dismissed, without costs, as superseded by the appeal from the February 1, 2007 order.

The motion court correctly applied an actual knowledge

standard in deciding that plaintiff's allegations are insufficient to state a cause of action against defendant-respondent for aiding and abetting defendant-appellant's alleged fraud (see *National Westminster Bank v Weksel*, 124 AD2d 144, 149 [1987], *lv denied* 70 NY2d 604 [1987]; see also *JP Morgan Chase Bank v Winnick*, 406 F Supp 2d 247, 252, n 4 [SD NY 2005]; cf. *Williams v Sidely Austin Brown & Wood, L.L.P.*, 38 AD3d 219, 220 [2007]). We reject defendant-appellant's argument that the documentary evidence conclusively establishes that plaintiff's assignor was aware of the alleged fraud more than three years prior to institution of the action, and that the action is therefore barred by California's statute of limitations. We have considered the parties' other arguments for affirmative relief and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

CLERK

sentence defendant as a second felony drug offender whose prior conviction is for a violent felony (see *People v Alcequier*, 43 AD3d 699 [2007]). *People v Winthrow* (38 AD3d 323 [2007]) is not to the contrary, since it deals with a different procedural situation that is addressed by CPL 400.21(8).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

CLERK

Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

3204-

3204A

Benedict P. Morelli &
Associates, P.C., etc.,
Petitioner-Appellant,

Index 604172/04

-against-

Sybil Shainwald, et al.,
Respondents-Respondents.

Morelli Ratner, P.C., New York (Rory Lancman of counsel), for
appellant.

Krauss PLLC, White Plains (Geri S. Krauss of counsel), for
respondents.

Judgment, Supreme Court, New York County (Herman Cahn, J.),
entered February 1, 2007, which confirmed the arbitration award
and awarded respondents the total sum of \$77,731.66, unanimously
affirmed, with costs. Appeal from order, same court and Justice,
entered January 25, 2007, which denied petitioner's application
to vacate the arbitration award and granted respondents' cross
motion to confirm the award, unanimously dismissed, with costs,
as subsumed in the appeal from the judgment.

The record does not support appellant's contention that the
arbitrators' allocation of arbitration fees, appointment of an
accountant at appellant's expense and denial of appellant's claim
for disbursements were punitive. Such claim is speculative in
this case. Assuming that a "punitive" award would have been
improper, the "mere possibility" that the award was punitive is

not a basis for disturbing it (see *Matter of West Side Lofts [Sentry Contr.]*, 300 AD2d 130 [2002]). Indeed, an award should be vacated on this ground "only where the damages are genuinely intended to be punitive" (*Board of Educ. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston & Cambria v Niagara-Wheatfield Teachers Assn.*, 46 NY2d 553, 558 [1979]).

Appellant's claim that the inclusion in the award of cost allocations was outside the scope of the arbitrators' authority is unpreserved, and we decline to review it. Were we to consider this claim, we would find it without merit. The arbitrators' issuance of their decision in two parts was well within their discretion, as was their decision to apportion the arbitration fees, expenses, and compensation between the parties as they found appropriate. Arbitrators are free to shape a remedy with unrestrained flexibility in order to achieve a just result (*Matter of Board of Educ. of Norwood-Norfolk Cent. School Dist. [Hess]*, 49 NY2d 145, 152 [1979]). Moreover, the Commercial Arbitration Rules of the American Arbitration Association, which apply herein, permit the arbitrator to make interim rulings and awards in addition to a final award (R-43[b]) and to apportion fees, expenses, and compensation among the parties in amounts deemed appropriate (R-43[c]).

We have considered the parties' remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

CLERK

Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

3205N B.J. Hoppe,
Plaintiff-Respondent,

Index 105393/06

-against-

The Board of Directors of the
51-78 Owners Corp., et al.,
Defendants-Appellants.

Michael B. Kramer & Associates, New York (Rubin Jay Ginsberg of
counsel), for appellants.

Herrick, Feinstein LLP, New York (Marni J. Galison of counsel),
for respondent.

Order, Supreme Court, New York County (Rolando T. Acosta,
J.), entered June 25, 2007, which granted plaintiff's motion to
amend the complaint, unanimously reversed, on the law, with
costs, and the motion denied.

The court improperly granted plaintiff's motion to amend the
complaint in this dispute between plaintiff shareholder and
defendants cooperative corporation and its board of directors in
connection with defendants' denial of plaintiff's proposed
alterations to her two units. Although leave to amend a pleading
is freely granted (CPLR 3025[b]), such leave should "not be
granted upon mere request, without appropriate substantiation"
(*Brennan v City of New York*, 99 AD2d 445, 446 [1984]). Here, the
proposed amended complaint seeks to include a breach of fiduciary
duty claim against various past and present members of defendant
board, yet ascribes no independent tortious conduct to any

individual director (see *Messner v 112 E. 83rd St. Tenants Corp.*, 42 AD3d 356, 357 [2007], *lv dismissed* 9 NY3d 976 [2007]; *DeCastro v Bhokari* 201 AD2d 382, 383 [1994]). Insofar as plaintiff alleges that one of the board members endeavored to coerce a settlement of the instant action, a review of the allegations contained in the proposed amended complaint reveals that the misconduct alleged was occasioned by the board acting in its corporate capacity, or by the board member acting within the scope of his corporate duties (see *Konrad v 136 E. 64th St. Corp.*, 246 AD2d 324, 325-326 [1998]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

CLERK

Gonzalez, J.P., Williams, Catterson, Moskowitz, JJ.

3245N Lifsha Spira, Index 100266/06
Plaintiff-Respondent,

-against-

New York City Transit Authority,
Defendant-Appellant.

Wallace D. Gossett, Brooklyn (Lawrence Heisler of counsel), for appellant.

Law Office of Herschel Kulefsky, New York (Ephrem J. Wertenteil of counsel), for respondent.

Order, Supreme Court, New York County (Robert D. Lippmann, J.), entered October 6, 2006, which granted plaintiff's motion for a default judgment, unanimously reversed, on the law, the facts and in the exercise of discretion, without costs, and the motion denied on condition that defendants pay \$5,000 to plaintiff's attorneys within 30 days of service of a copy of the order.

Under the circumstances, it was an improvident exercise of discretion to grant the default judgment. While defendant's excuse for its default, i.e., law office failure by reason of understaffing, is not particularly compelling, it constitutes "good cause" nonetheless (*Casiano v City of New York*, 245 AD2d 244 [1997]), especially since there is no evidence that plaintiff was prejudiced; on the other hand, defendant will be severely prejudiced if the motion is granted. Moreover,

defendant showed an intent to defend, with its proffer of a stipulation seeking to extend the time to answer before the period expired, and its belated (six months late) service of an answer with a meritorious defense. In our view, this is not an appropriate case for departure from this State's preference for resolving controversies upon the merits.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 27, 2008

CLERK

THE FOLLOWING MOTION ORDERS
WERE ENTERED AND FILED ON
MARCH 27, 2008

Lippman, P.J., Tom, Williams, Acosta, JJ.

M-1040 Magidson v Otterman

 Time to perfect appeal enlarged to the September 2008
Term, as indicated.

Lippman, P.J., Tom, Williams, Acosta, JJ.

M-1166 Murataj v Dream Dragon Productions, Inc.

 Time to perfect appeal enlarged to the October 2008
Term.

Lippman, P.J., Tom, Williams, Acosta, JJ.

M-1017 Time Warner Cable of New York City v Hylan Datacom &
M-1099 Electrical, Inc. - New Hampshire Insurance Company -
 Diamond State Insurance Company

 Appeals consolidated; time to perfect same enlarged to
the September 2008 Term, as indicated.

Lippman, P.J., Tom, Williams, Acosta, JJ.

M-1051 People v Jamison, Randolph

 Substitution of counsel denied.

Lippman, P.J., Tom, Buckley, Moskowitz, JJ.

M-1155 Hangartner-Schuchmann v Hangartner

Time to perfect appeal enlarged to the September 2008 Term, as indicated.

Lippman, P.J., Tom, Buckley, Moskowitz, JJ.

M-1164 Jenel Management Corp. v Pacific Insurance Company

Appeals consolidated; time to perfect appeal from the order entered February 15, 2007, and the consolidated appeals, enlarged to the September 2008 Term, as indicated.

Lippman, P.J., Mazzarelli, Saxe, Williams, Buckley, JJ.

M-995 People v Boateng, Osei

Leave to prosecute appeal as a poor person granted, as indicated.

Lippman, P.J., Gonzalez, Sweeny, Catterson, JJ.

M-937 Adamowicz v Fauchon, Inc. (US)

Time to perfect appeal enlarged to the September 2008 Term.

Tom, J.P., Andrias, Nardelli, Sweeny, JJ.

M-820 People v Garrett, Marquis

Notice of appeal deemed timely filed; leave to prosecute appeal as a poor person denied, with leave to renew, as indicated.

Tom, J.P., Saxe, Friedman, Williams, JJ.

M-944 People v Mendez, Pedrito

Leave to prosecute appeal as a poor person granted, as indicated.

Tom, J.P., Andrias, Nardelli, Sweeny, JJ.

M-939 People v Mejias, Pedro

Notice of appeal deemed timely filed; leave to prosecute appeal as a poor person granted, as indicated.

Tom, J.P., Andrias, Nardelli, Sweeny, JJ.

M-1089 In the Matter of Bikman v New York City Loft Board

Time to perfect appeal enlarged to the September 2008 Term.

Tom, J.P., Andrias, Nardelli, Sweeny, JJ.

M-1021 People v De La Cruz, Randal, also known as Olivares, Randal Delacruz

Time to perfect appeal enlarged to the September 2008 Term.

Tom, J.P., Friedman, Nardelli, Catterson, Moskowitz, JJ.

M-905 Santiago v The City of New York

Time to perfect appeal enlarged to the October 2008 Term.

Tom, J.P., Saxe, Nardelli, Williams, JJ.

M-1348 Unique Laundry Corp. v Hudson Park NY LLC

M-1473

Clerk directed to calendar for hearing together the perfected appeal from the order entered September 18, 2007 with the appeal from the order entered February 22, 2008, for the September 2008 Term, to which Term appeal from the order entered September 18, 2007 adjourned; stay previously granted continued, as indicated.

Mazzarelli, J.P., Andrias, Williams, Buckley, Acosta, JJ.

M-808 In the Matter of Hicks v New York State Division of Housing and Community Renewal

Time to perfect appeal enlarged to the September 2008 Term.

Mazzarelli, J.P., Andrias, Williams, Buckley, Acosta, JJ.

M-814 In the Matter of The Port Authority of New York and New Jersey v The Port Authority Employment Relations Panel

Time to perfect appeal enlarged to the October 2008 Term.

Mazzarelli, J.P., Andrias, Williams, Buckley, Acosta, JJ.

M-882 Savage v Bartha

Time to perfect appeal enlarged to the December 2008 Term.

Mazzarelli, J.P., Andrias, Williams, Buckley, Acosta, JJ.

M-684 People v De La Rosa, Wander Duran

Dismissal of appeal denied, as indicated.

Mazzarelli, J.P., Andrias, Williams, Buckley, Acosta, JJ.

M-685 People v De La Rosa, Carlos Duran

M-1015

Dismissal of appeal denied; counsel relieved and substitution of counsel denied, as indicated.

Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

M-992 In the Matter of Lassiter v New York City Housing Authority

Appeal dismissed unless perfected for the September 2008 Term, as indicated.

Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

M-860 People v Hamlett, John

M-866 Greeman, Edward

M-965 Gilmore, Steven

M-966 Green, Ronald

M-1029 Traore, Djene

Leave to prosecute appeals as poor persons denied, with leave to renew, as indicated.

Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

M-969 People v Pena, Juan, also known as Richardo, Fernando

Leave to prosecute appeal as a poor person denied, with leave to renew, as indicated.

Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

M-895 Daiuto v Lubicz

Time to perfect appeal enlarged to the September 2008 Term, as indicated.

Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

M-978 Grant - Quantum Service Partners, Inc. v Rattoballi

Time to perfect appeal enlarged to the September 2008 Term, as indicated.

Mazzarelli, J.P., Saxe, Buckley, Catterson, JJ.

M-984 People v Raso, Michael

Notice of appeal amended, as indicated.

Andrias, J.P., Saxe, Sweeny, McGuire, JJ.

M-912 People v Stevenson, Wallace

Leave to prosecute appeal as a poor person denied, with leave to renew, as indicated.

Saxe, J.P., Sweeny, McGuire, Acosta, JJ.

M-1189 Lopez v New York City Transit Authority

Time to perfect appeal enlarged to the September 2008
Term.

Gonzalez, J.P., Williams, Catterson, Moskowitz, JJ.

M-1062 B., Mary v B., Miguel

Appeal deemed withdrawn.

Gonzalez, J.P., Williams, Catterson, Moskowitz, JJ.

M-1124 Run Spot, Inc. v American Society for the Prevention of
Cruelty to Animals ("ASPCA")
(And third-party/fourth-party actions)

Time to perfect appeal enlarged to the September 2008
Term.

Gonzalez, J.P., Williams, Catterson, Moskowitz, JJ.

M-950 Tahari v Rosen - Link Theory Holdings Co., Ltd. - Fast
M-951 Retailing Co., Ltd.

Stay granted on condition appeals perfected for the
October 2008 Term, as indicated. Clerk directed to calendar
defendants' appeals with appeal taken by plaintiff from order
entered June 22, 2007 for hearing together in said October 2008
Term, as indicated.

Gonzalez, J.P., Williams, Catterson, Moskowitz, JJ.

M-1009 Yeger v E*Trade Securities LLC

M-1202

Leave to file supplemental record denied (M-1009).
Appeal adjourned to the June 2008 Term; respondent's brief
stricken and respondent directed to file revised brief for the
June 2008 Term, as indicated (M-1202).

Williams, J.

M-215 People v Lopez, Eliot

Leave to appeal to this Court denied.

Williams J.

M-758 People v Shaw, Steven

Leave to appeal to this Court and other relief denied.

Mazzarelli, J.P., Saxe, Friedman, Nardelli, Williams, JJ.

In the Matter of Attorneys Who Are in Violation
of Judiciary Law Section 468-a:

M-1312 Deborah Ann De Jesus, admitted on 7-12-1993,
at a Term of the Appellate Division,
First Department

Respondent reinstated as an attorney and counselor-at-
law in the State of New York, effective the date hereof. No
opinion. All concur.

Mazzarelli, J.P., Saxe, Friedman, Nardelli, Williams, JJ.

In the Matter of Attorneys Who Are in Violation
of Judiciary Law Section 468-a:

M-1589 Peter David Close, admitted on 7-18-1983,
at a Term of the Appellate Division,
First Department

Respondent reinstated as an attorney and counselor-at-
law in the State of New York, effective the date hereof. No
opinion. All concur.

The following orders were entered and filed on March 25, 2008:

Lippman, P.J., Tom, Mazzarelli, Andrias, Saxe, JJ.

M-1432 People v Sarr, Babacar

Motion dismissed, as indicated.

Lippman, P.J., Friedman, Catterson, Moskowitz, JJ.

M-1367 Rivas v Raymond Schwartzberg & Associates, PLLC
(And a third-party action)

Stay of trial granted.

Tom, J.P., Andrias, Friedman, Gonzalez, Williams, JJ.

M-673 In the Matter of I., Syeda; I., Syed; A., Syeda - New
York City Administration for Children Services

Leave to prosecute appeal as a poor person granted, as
indicated.

Tom, J.P., Saxe, Nardelli, Williams, JJ.

M-1464 Fiala v Metropolitan Life Insurance Company

Enlargement of record on appeal and other relief granted, as indicated; appeal adjourned to the June 2008 Term.

Mazzarelli, J.P., Andrias, Gonzalez, Acosta, JJ.

M-1513 Lamasa v Bachman

Time to perfect appeal enlarged to the June 2008 Term; respondents directed to serve and file respondent's brief on or before May 2, 2008 and appellant's reply brief, if any, to be filed on or before May 6, 2008, as indicated.

Andrias, J.P., Nardelli, Williams, Catterson, Moskowitz, JJ.

M-6741 In the Matter of A., Fidelinia; A., Virginia - New York City Administration for Children's Services

Counsel substituted; appeal adjourned to the June 2008 Term. (See M-998, decided simultaneously herewith).

Saxe, J.P., Buckley, Gonzalez, Acosta, JJ.

M-998 In the Matter of A., Fidelinia; A., Virginia - New York City Administration for Children's Services

Leave to respond to appeal as a poor person granted, as indicated; appeal adjourned to the June 2008 Term. (See M-6741, decided simultaneously herewith).