



We perceive no basis for reducing the proposed sentence. We have considered and rejected defendant's arguments for additional leniency.

The Decision and Order of this Court entered herein on November 27, 2007 is hereby recalled and vacated (see M-447 decided simultaneously herewith).

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

ENTERED: MARCH 20, 2008

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CLERK



Terminal in Manhattan. There is an issue of fact, based on the circumstances presented including Greyhound's use of the area, as to whether it created or contributed to the dangerous condition, and thus had a duty to warn or protect passengers (see *Kush v City of Buffalo*, 59 NY2d 26, 29-30 [1983]), even if such area was not within the boundaries of its leasehold.

The indemnification clause in Greyhound's lease, which it produced in discovery and relied on before the motion court, and which remained effective after expiration of the lease (see *City of New York v Pennsylvania R.R. Co.*, 37 NY2d 298, 300-301 [1975]), is enforceable in light of Greyhound's lease obligation to procure insurance, even if that clause does not limit recovery to the required coverage (see *Great N. Ins. Co. v Interior Constr. Corp.*, 7 NY3d 412, 418-419 [2006]), and despite the fact that the amount of damages in this case had not been reduced to a sum certain within required policy limits.

There should have been a conditional grant of summary judgment on the indemnification claim (see *Love v Dollar Tree Stores, Inc.*, 40 AD3d 264 [2007], *lv dismissed* 9 NY3d 891 [2007]; *Mangano v American Stock Exch.*, 234 AD2d 198 [1996]). Our

holding in *Iurato v City of New York* (18 AD3d 247 [2005], *lv dismissed* 6 NY3d 806 [2006]), that an attempt to dismiss an indemnification claim prior to a finding of liability was premature, is not to the contrary.

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

ENTERED: MARCH 20, 2008

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CLERK

Lippman, P.J., Andrias, Nardelli, Buckley, Acosta, JJ.

2845 Allstate Insurance Company, et al., Index 603776/03  
Plaintiffs-Appellants,

-against-

Alex Buziashvili, et al.,  
Defendants,

Moshe Fuld, Esq., et al.,  
Defendants-Respondents.

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Stern & Montana, LLP, New York (Sandra Patricia Burgos of  
counsel), for appellants.

Hoffman, Polland & Furman, PLLC, New York (Mark L. Furman of  
counsel), for respondents.

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Order, Supreme Court, New York County (Helen E. Freedman,  
J.), entered June 28, 2005, which, insofar as appealed from as  
limited by the briefs, granted the Fuld defendants' motion to  
dismiss the complaint as against them, unanimously affirmed, with  
costs.

In support of their claim for violation of the Racketeer  
Influenced and Corrupt Organizations Act (RICO), plaintiffs  
failed to set forth nonconclusory allegations that the attorney  
Fuld defendants participated in the "operation or management" of  
the allegedly corrupt enterprise (see *Reves v Ernst & Young*, 507  
US 170, 179, 182-185 [1993]; cf. *Jinanan Land Corp. v Shahbazi*,  
247 AD2d 263 [1998]). Because the substantive RICO claim was  
deficient, so was the conspiracy claim (*Crab House of Douglaston*,  
*Inc. v Newsday, Inc.*, 418 F Supp 2d 193, 212 [2006]; see

*generally Small v Lorillard Tobacco Co.*, 94 NY2d 43, 57 [1999]). Furthermore, dismissal of the common-law fraud cause of action was proper, where plaintiffs failed to sufficiently allege false representations or omissions by the Fuld defendants (*id.*; see CPLR 3016[b]); plaintiffs no longer challenge the dismissal of their General Business Law § 349 claim; and in view of the foregoing, plaintiffs' cause of action for injunctive relief as against the Fuld defendants must fail.

We have considered plaintiffs' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
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ENTERED: MARCH 20, 2008

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

2894 Maya Williams,  
Plaintiff-Appellant,

Index 101084/06

-against-

Reiss Eisenpress L.L.P., et al.,  
Defendants-Respondents.

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Robbins & Associates, P.C., New York (James A. Robbins of  
counsel), for appellant.

Gordon & Silber, P.C., New York (Eldar Mayouhas of counsel), for  
respondents.

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Order, Supreme Court, New York County (Leland DeGrasse, J.),  
entered July 24, 2006, which granted defendants' motion for  
summary judgment dismissing the complaint, unanimously reversed,  
on the law, with costs, the motion denied and the complaint  
reinstated.

On a motion to dismiss, a complaint must be accorded every  
favorable inference (*see Sokoloff v Harriman Estates Dev. Corp.*,  
96 NY2d 409, 414 [2001]). Plaintiff avers, without  
contradiction, that she was a client of defendants prior to the  
execution of the revised separation agreement, even though the  
agreement contains an acknowledgment that she was not represented  
by counsel. Plaintiff alleges this language was inserted at the  
advice of her attorney, as protection in the event her husband  
sought to set aside the agreement, since he had appeared without

counsel. Under these circumstances, it was error to conclude as a matter of law that no attorney-client relationship existed. Finally, the complaint adequately alleged the facts underlying the claimed malpractice and the resulting damages.

THIS CONSTITUTES THE DECISION AND ORDER  
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ENTERED: MARCH 20, 2008

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CLERK

Tom, J.P., Saxe, Friedman, Gonzalez, Catterson, JJ.

2311            Francesca Diliberti, etc., et al.,            Index 8844/01  
                         Plaintiffs-Respondents,

-against-

The City of New York,  
Defendant-Appellant.

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Michael A. Cardozo, Corporation Counsel, New York (John Hogrogian of counsel), for appellant.

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

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Order, Supreme Court, Bronx County (Janice L. Bowman, J.), entered June 1, 2006, which denied defendant's motion for summary judgment, unanimously reversed, on the law, without costs, the motion granted and the complaint dismissed. The Clerk is directed to enter judgment accordingly.

Defendant established its prima facie entitlement to summary judgment by producing the 911 recording and Sprint Report, revealing a 30-second call that did not include any assurance by the operator that help was on its way, or any direction to the infant caller that she should not do anything, before the call was broken off (*see Doe v Town of Hempstead Bd. of Educ.*, 18 AD3d 600 [2005]). This shifted the burden to plaintiffs who, even after granting them all favorable inferences, failed to establish an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the infant plaintiff

(see *Laratro v City of New York*, 8 NY3d 79 [2006]; *Cuffy v City of New York*, 69 NY2d 255 [1987]). In this regard, we find the opinion of plaintiffs' expert speculative and conclusory, and thus insufficient to withstand summary judgment (see *Diaz v New York Downtown Hosp.*, 99 NY2d 542 [2002]).

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

ENTERED: MARCH 20, 2008

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CLERK

Andrias, J.P., Nardelli, Williams, McGuire, Acosta, JJ.

2725N

2725NA Rony Zodkevitch, M.D.  
Plaintiff-Respondent,

Index 601342/06

Rony Z, LLC,  
Plaintiff,

-against-

Igal Feibush, et al.,  
Defendants,

Steven Spiegel, Esq.,  
Defendant-Appellant.

- - - -

And a Third Party Action.

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Martin Clearwater & Bell, LLP, New York (Steven M. Berlin and Nancy A. Breslow of counsel), for appellant.

Rony Zodkevitch, M.D., respondent pro se.

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Order, Supreme Court, New York County (Richard B. Lowe, III, J.), entered August 15, 2007, which, insofar as appealed from as limited by the briefs, granted plaintiffs' motion for a preliminary injunction, inter alia, compelling defendant-appellant to deposit into a neutral escrow account the amount of funds he allegedly misappropriated, and to turn over to plaintiffs all papers and files he created or received in his representation of plaintiffs and certain entities, unanimously modified, on the law, to vacate the escrow directive, and otherwise affirmed, without costs. Order, same court and Justice, entered September 21, 2006, which, insofar as appealed

from, denied appellant's motion to renew the prior order's directive to turn over papers and files to plaintiffs, unanimously affirmed, without costs.

Supreme Court erred in directing appellant to place into an escrow account the funds he allegedly misappropriated since plaintiffs failed to make a clear showing that they would suffer irreparable injury unless that relief were granted, a necessary element on a motion for a preliminary injunction (see CPLR 6301; *Non-Emergency Transporters of N.Y. v Hammons*, 249 AD2d 124, 127 [1998]). Specifically, plaintiffs failed to demonstrate that an award of monetary damages would not adequately compensate them (see *U.S. Re Cos. v Scheerer*, 41 AD3d 152, 155 [2007]; *ERS Enters. v Empire Holdings*, 286 AD2d 206, 207-208 [2001]; *Non-Emergency Transporters of N.Y.*, *supra*; cf. *Sirius Satellite Radio v Chinatown Apts.*, 303 AD2d 261, 261-262 [2003]). At bottom, plaintiffs seek security for a potential money judgment against appellant, relief that should be sought under CPLR 6201 (attachment). In light of our conclusion that plaintiffs failed to make a clear showing that they would suffer irreparable injury unless appellant were directed to place the funds in escrow, we need not and do not pass on whether plaintiffs established a likelihood of success on the merits and a balancing of the equities in their favor.

With respect to the directive to turn over files, we reject

appellant's arguments that the court's prohibition against him holding himself out as the entities' attorney created a retaining lien over the files that did not previously exist and thus could not have been asserted on the original motion. In any event, appellant has turned over copies of his complete legal file to plaintiffs, losing whatever leverage a retaining lien affords a discharged attorney.

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bicycle and dance with his wife as a result of herniated discs of the cervical spine at C-3-C-4 through C-6-C-7, with nerve root impingement and resulting back and neck pain, he was never hospitalized, and neither had nor was expected to have surgery. He returned to work on light duty after six months but found he could not endure a regular work routine, and took a disability retirement for reasons unconnected with this incident.

While plaintiff's injuries are permanent in nature, under these circumstances the \$400,000 award for future pain and suffering over 20.9 years deviates materially from what is reasonable compensation to the extent indicated (*cf. Donlon v City of New York*, 284 AD2d 13 [2001]; *Martinez v Manhattan & Bronx Surface Tr. Operating Auth.*, 23 AD3d 302 [2005]). The \$200,000 award for past pain and suffering should not be disturbed.

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ENTERED: MARCH 20, 2008

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

3131 In re Charnel T.,

A Child Under Eighteen  
Years of Age, etc.,

- - - - -

Joyce T.,  
Respondent-Appellant,

Administration for Children Services,  
Petitioner-Respondent.

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Kenneth M. Tuccillo, Hastings-On-Hudson, for appellant.

Michael A. Cardozo, Corporation Counsel, New York (Susan Paulson  
of counsel), for respondent.

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Order of disposition, Family Court, New York County (Rhoda  
J. Cohen, J.), entered on or about March 21, 2007, placing the  
subject child in the custody of the Commissioner of Social  
Services based on a fact-finding determination of neglect,  
unanimously affirmed, without costs.

The finding of neglect is supported by a preponderance of  
the evidence (Family Ct Act § 1046[b][i]) showing that respondent  
inflicted excessive corporal punishment (Family Ct Act  
§ 1012[f][i][B]; *Matter of Adonis P.*, 33 AD3d 405 [2006]). The  
child's out-of-court statement that respondent hit him with an  
extension cord was sufficiently corroborated by the  
uncontroverted medical evidence of the child's injuries  
indicating linear abrasions and welts on his face, forearm, and  
back (see *Matter of S./C. Children*, 256 AD2d 88 [1998]). The

denial of respondent's applications pursuant to Family Court Act § 1028 for return of the child pending completion of neglect proceedings have been rendered moot by Family Court's subsequent fact-finding determination of neglect (*Matter of Jabarry W.*, 24 AD3d 218 [2005], *lv denied* 6 NY3d 711 [2006]). We have considered respondent's other arguments and find them unavailing.

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

ENTERED: MARCH 20, 2008

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CLERK

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

3132-

3132A Edward Carter,  
Plaintiff-Respondent,

Index 350185/02

-against-

Esther Yang Carter,  
Defendant-Appellant.

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Tuan & Cho, New York (Dean T. Cho of counsel), for appellant.

Adam Edelstein, New York, for respondent.

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Order, Supreme Court, New York County (Joan B. Lobis, J.), entered December 29, 2006, which, inter alia, granted plaintiff's motion to hold defendant in contempt of the amended judgment of divorce based on her failure to pay child support, and denied defendant's motion for a change in custody and a downward modification of her child support obligation, unanimously affirmed, without costs. Order, same court and Justice, entered August 30, 2007, which denied defendant's application for final decision-making authority over the education of the parties' child, unanimously affirmed, without costs.

As an initial matter, the order granting defendant poor person relief pertains only to the appeals taken from the orders entered December 29, 2006 and August 30, 2007. Since there is therefore no record properly before this Court with respect to the 16 additional orders from which defendant purports to appeal,

the additional orders are not reviewable (see *Insilco Corp. v Star Servs., Inc. of Del.*, 2 AD3d 343, 344 [2003]; *DiPasquale v Security Mut. Life Ins. Co. of N.Y.*, 293 AD2d 394, 395 [2002]).

In any event, defendant's claims are without merit. Her allegations concerning plaintiff's mental status and medical and educational neglect of the parties' child are without basis in the record. We reject the argument that plaintiff neglected the child's educational needs by keeping her enrolled at a public school on Staten Island that was described as a "failing school" under the federal No Child Left Behind Act. It was reasonable for plaintiff to keep the child close to home while seeking to have her admitted to one of the three top-performing schools on Staten Island.

The court properly found that the increased disability payments that defendant alleges were received by plaintiff did not change the income imputed to him during the divorce proceedings.

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

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rendering that aspect of the appeal moot (see e.g. *Matter of Citineighbors Coalition of Historic Carnegie Hill v New York City Landmarks Preserv. Commn.*, 2 NY3d 727 [2004]). The decision not to permit the student to retake the October test or to complete the questions he did not answer at that sitting was not arbitrary and capricious or an abuse of discretion.

This dispute is not appropriate for resolution in the judicial arena, since the "responsibility for resolving these questions is vested in a network of officials and boards, on both the local and State level" (*James v Board of Educ. of City of N.Y.*, 42 NY2d 357, 368 [1977]).

We have considered the remainder of petitioners' argument and find it unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
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ENTERED: MARCH 20, 2008

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CLERK



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

3136 Samuel Nazario,  
Plaintiff-Respondent,

Index 18779/06

-against-

Anthony L. Kohtio,  
Defendant-Appellant.

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Buratti, Kaplan, McCarthy & McCarthy, Yonkers (Jeffrey A. Domoto of counsel), for appellant.

Getz & Braverman, P.C., Bronx (Steven M. Zorowitz of counsel), for respondent.

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Order, Supreme Court, Bronx County (Howard R. Silver, J.), entered September 6, 2007, which denied defendant's motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

Summary judgment was properly denied in this action where plaintiff alleges he was injured when he was struck by defendant's motor vehicle while crossing the street. Defendant failed to make a prima facie showing of entitlement to judgment as a matter of law since there exist triable issues as to whether defendant exercised due care to avoid the collision (see Vehicle and Traffic Law § 1146), and whether plaintiff was comparatively negligent by failing to exercise due care while admittedly crossing the street at a point other than an

intersection or a crosswalk (see Vehicle and Traffic Law § 1152[a]; *Ryan v Budget Rent a Car*, 37 AD3d 698 [2007]).

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ENTERED: MARCH 20, 2008

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CLERK

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

3138 Susan Angel,  
Plaintiff-Appellant,

Index 350072/05

-against-

Christopher O'Neill,  
Defendant-Respondent.

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Advocate & Lichtenstein, LLP, New York (Jason A. Advocate of  
counsel), for appellant.

Wolf, Block, Schorr and Solis-Cohen LLP, New York (Charles B.  
Law, Jr. of counsel), for respondent.

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Order, Supreme Court, New York County (Harold B. Beeler,  
J.), entered October 11, 2007, which, in a separation action,  
after a hearing, granted defendant's motion to dismiss so much of  
the complaint as seeks to enforce a postnuptial agreement,  
unanimously affirmed, with costs.

A fair interpretation of the evidence supports the hearing  
court's finding, largely one of credibility, that the notary  
signature under the jurat purporting to certify defendant's  
acknowledgment of the subject agreement is a forgery (see  
*Thoreson v Penthouse Intl.*, 80 NY2d 490, 495 [1992]). Such  
evidence includes the notary's testimony that the subject  
signature is not hers, and the obvious differences between the  
subject signature and the same notary's admittedly genuine  
signature under the jurat certifying plaintiff's acknowledgment.  
Absent a proper written acknowledgment, the parties' postnuptial

agreement is unenforceable (Domestic Relations Law § 236[B][3]; *Matisoff v Dobi*, 90 NY2d 127, 137-138 [1997]). It does not avail plaintiff to argue that defendant ratified the agreement through word or conduct (see *id.* at 131, 133-134).

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driving, it is difficult to imagine that forfeiture of an automobile for such a crime could ever be excessive" (*County of Nassau v Canavan*, 1 NY3d 134, 140 [2003]), certainly not here given defendant's plea of guilty to driving while impaired (Vehicle and Traffic Law § 1192[1]) less than three years before his arrest in connection with the instant matter.

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for the street detention was a constitutionally insufficient description of himself. He therefore argues that the victim's showup identification and other fruits of the street detention should be suppressed as ultimate fruits of the allegedly illegal lobby encounter. However, while at the hearing defendant challenged the legality of the lobby encounter, he conceded that the second set of officers lawfully stopped him on the basis of his description as a robbery suspect, and never argued that his detention hinged on the pedigree information. Accordingly, his present arguments in this regard are unpreserved and we decline to review them in the interest of justice. As an alternative holding, we find there was nothing illegal about the police conduct in the lobby.

Defendant contends that the incident in the lobby of the victim's apartment building constituted a level-three seizure under *People v De Bour* (40 NY2d 210 [1976]) and its progeny. This argument is unavailing. Initially, the situation was a level one request for information. A radio run indicating a call for help from a particular building, plus the fact that defendant was leaving that building, gave the police the right to ask defendant where he was coming from. Defendant gave an answer that the officer immediately knew to be false, in that defendant said he was coming from apartment 4A when the listing of apartments in the vestibule indicated no such apartment, and this

elevated the situation to a level-two common-law inquiry (see e.g. *Matter of William J.*, 274 AD2d 343, 345 [2000]). The fact that the officers simply stood their ground when defendant tried to sneak between them did not transform the situation into a level-three seizure (see *People v Grunwald*, 29 AD3d 33, 38-39 [2006], *lv denied* 6 NY3d 848 [2006]; *People v Cherry*, 30 AD3d 185, 185-186 [2006], *lv denied* 7 NY3d 811 [2006]). The officers properly asked defendant for identification, and as defendant handed over an identity card, the officers heard a woman screaming and ran up the stairs, allowing defendant to flee. Accordingly, the information on the identification card was lawfully obtained. Therefore, the street detention of defendant by the second set of officers was lawful, irrespective of whether or not it was based in part on that information.

The two police officers who had encountered defendant in the lobby drove the victim to the showup location. After the victim identified defendant, one officer remarked that defendant was the same person whom the police had stopped at the victim's building, and the other officer agreed. Assuming, *arguendo*, that this constituted a showup identification by the police officers, it was not unduly suggestive (see *People v Wilburn*, 40 AD3d 508, 509 [2007], *lv denied* 9 NY3d 883 [2007]).

After being taken to the precinct and given *Miranda* warnings, defendant was interviewed by a detective for about ten

minutes. When the detective started to inquire about an unrelated crime, defendant said he did not want to answer any more questions. This "desire to avoid certain areas of inquiry" was not "an unequivocal assertion of [defendant's] right to remain silent" (*People v Morton*, 231 AD2d 927, 928 [1996], *lv denied* 89 NY2d 944 [1997]). Therefore, there is no need to suppress any of defendant's subsequent statements. In any event, even if defendant invoked his right to silence, the confession that defendant made to a second detective, after a fresh set of *Miranda* warnings, about six hours later was sufficiently attenuated to be admissible.

About four hours later, defendant spoke to a third detective; that interview ended when defendant said he did not want to talk to that detective. Three hours after that, defendant was taken to the District Attorney's office and given yet another set of *Miranda* warnings, at which time he made a videotaped confession. Even if defendant's statement to the third detective constituted an invocation of his right to remain silent, there was sufficient attenuation to make the videotape admissible (see e.g. *People v Rodriguez*, 231 AD2d 477, 478 [1996], *lv denied* 89 NY2d 1099 [1997]).

Defendant's contention that his confession to the second detective was not voluntary because that detective used trickery

is unpreserved, and we decline to review it in the interest of justice. As an alternative holding, we also reject it on the merits.

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pretrial identification procedure such as a lineup, was unduly suggestive" (*id.*). The creation of the sketch itself was not an identification procedure (*People v Pagan*, 248 AD2d 325 [1998], *affd* 93 NY2d 891 [1999]). There is no indication that the sketch was created on the basis of anything other than information supplied by the victim, or any reason to believe the process of creating a sketch impaired the fairness of the subsequent lineup. We find nothing in *People v Maldonado* (97 NY2d 522 [2002]), a case dealing with the hearsay implications of admitting a sketch at trial, that supports defendant's present position. The photographs of the lineup show that the characteristics of the participants were reasonably similar, and any differences were not sufficient to create a substantial likelihood that defendant would be singled out for identification (*see Chipp*, 75 NY2d at 336; *People v Holmes*, 291 AD2d 247 [2002], *lv denied* 98 NY2d 676 [2002]); defendant's assertion that he was the only participant who fit the victim's description is without merit. We have considered and rejected defendant's remaining arguments concerning the suppression hearing and the court's determination.

None of the evidence relating to DNA violated defendant's right to confront the witnesses against him (*see People v Rawlins*, \_\_ NY3d \_\_, 2008 NY Slip Op 1420 [Feb 19, 2008]).

By failing to object, by making general objections, and by failing to request further relief after an objection was

sustained, defendant did not preserve his present challenges to the People's summation and we decline to review them in the interest of justice. As an alternative holding, we also reject them on the merits (see *People v Overlee*, 236 AD2d 133 [1997], *lv denied* 91 NY2d 976 [1998]).

The court properly imposed consecutive sentences for the five sexual offenses because they were "separate and distinct acts, notwithstanding that they occurred in the course of a continuous incident" (*People v Wynn*, 35 AD3d 283, 284 [2006], *lv denied* 8 NY3d 928 [2007]). Each of the sex crimes was a separate "act" within the meaning of Penal Law § 15.00(1) and § 70.25(2), and nothing in the Penal Law requires any type of interval or interruption in a continuous attack in order for the individual acts to qualify as separate for sentencing purposes (see e.g. *People v Brathwaite*, 63 NY2d 839, 843 [1984][two victims killed by separate shots fired in single incident]).

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*Mercer v City of New York*, 88 NY2d 955 [1996]; *Kelly v Berberich*, 36 AD3d 475, 476-477 [2007]), and the claim that said defendants failed to maintain the garage sign that was purportedly the instrumentality that resulted in the injury is not sufficient for this purpose. Plaintiffs also failed to raise an issue of fact regarding notice of the condition, since their sole opposition was hearsay (see *Wertheimer v New York Prop. Ins. Underwriting Assn.*, 85 AD2d 540, 541 [1981]). In view of the dismissal of the instant action, we need not address the arguments on plaintiffs' cross appeal for spoliation sanctions. We note, however, that plaintiffs' position is lacking given the long period of inaction by their attorneys in this action in failing to avail themselves of the opportunity to seek third-party discovery.

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rationaly based upon the findings that she suffered from left ventricular hypertrophy and had elevated blood pressure. When arriving at its determination, respondents were entitled to rely on the conclusions of respondent Department of Sanitation's medical director even in the face of conflicting opinions from petitioner's physicians (see *McCabe v Hoberman*, 33 AD2d 547 [1969]; *Matter of Winnegar v County of Suffolk*, 13 AD3d 382 [2004]).

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attorney-client relationship (*see Klagsbrun v Klagsbrun*, 192 AD2d 306 [1993], *lv dismissed* 82 NY2d 846 [1993]).

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Further a "dispute, claim or controversy" must be arbitrated "upon the demand of the customer" provided the dispute is (1) "eligible for submission under [Rule 10101]," (2) is "between a customer and a member and/or associated person," and (3) "aris[es] in connection with the business of such member or in connection with the activities of such associated persons" (Rule 10301). The claims with respect to the individual accounts were not between a customer and a member as the decedent had no individual customer relationship with petitioner; she dealt only with the two European companies, which were not NASD members. While the broker for the three European accounts was an "associated person" of petitioner, this was only when acting in connection with petitioner's accounts, not in connection with the three European accounts. The trading in these European accounts came within the purview of the European regulators.

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*Corcoran v Peat, Marwick, Mitchell & Co.*, 151 AD2d 443 [1989]).  
Indeed, work-product issues are pending in connection with a  
subpoena duces tecum (see 46 AD3d 323 [2007]).

We perceive no basis to disturb the denial of respondents'  
motion for sanctions under the Rules of the Chief Administrator  
of the Courts (22 NYCRR) § 130-1.1.

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**THE FOLLOWING MOTION ORDERS**  
**WERE ENTERED AND FILED ON**  
**MARCH 20, 2008**

Lippman, P.J., Andrias, Williams, McGuire, JJ.

M-585        People v Sarr, Babacar  
  
              Appeal deemed withdrawn.

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

M-861        East 40th LLC assignee of PL Cornerstone LLC v  
              Kenyon Realty Co.

              Motion and appeal deemed withdrawn; interim order of a  
Justice of this Court, dated February 13, 2008, vacated.

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

M-834        People v Robinson, Kesha

M-835        People v Smith, Robert, also known as Bowman, Robert

M-865        People v Young, Roberto

M-963        People v Codina, Angie

M-964        People v Ferguson, Ricardo

M-968        People v Mohammed, Hasan

M-970        People v Sanon, Jean

M-972        People v Smith, Robert

M-990        People v Nelson, Leroy

              Leave to prosecute appeals as poor persons granted, as  
indicated.

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

M-926 People v Bryant, Jamaine Charles

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

Lippman, P.J., Andrias, Williams, McGuire, JJ.

M-589 People v Rosario, Edward

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

Lippman, P.J., Andrias, Williams, McGuire, JJ.

M-773 People v Fuller, Demetrius

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

Lippman, P.J., Andrias, Williams, McGuire, JJ.

M-790 People v Parson, Karl

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

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

M-447 People v Reyes, Anthony

Reargument granted and, upon reargument, the decision and order of this Court, entered on November 27, 2007 (Appeal Nos. 2112-2113), recalled and vacated and a new decision and order substituted therefor. (See Appeal Nos. 2112-2113, decided simultaneously herewith).

Lippman, P.J., Mazzairelli, Saxe, Nardelli, Buckley, JJ.

M-1101 Estate of John Burr - Burr v Abrams

Substitution of administratrix and other relief denied, as indicated; appeal adjourned to the September 2008 Term.

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

M-755 People v Watson, Barry

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

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

M-893 In the Matter of Pelaez v New York City Housing Authority

Leave to prosecute appeal as a poor person denied.

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

M-896 Lowe v Kelly

Leave to prosecute appeal as a poor person denied.

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

M-810       Gaines v Loews Cineplex Theatres, Inc.

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

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

M-881       Cohen v Medical Malpractice Insurance Pool of  
              New York State

              Time to perfect appeal enlarged to the September 2008  
Term.

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

M-897       In the Matter of Z., Susan Elizabeth, also known as Z.,  
              Elizabeth; Z., Kayla Mary, also known as Z., Kayla; A.  
              Priscilla Rose, also known as A., Priscilla - Catholic  
              Guardian Society

              Time to perfect appeal enlarged to the September 2008  
Term.

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

M-813       Lee v Kaye

              Reinstatement denied.

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

M-1184      Bykowsky v Eskenazi

              Stay of trial granted on condition appeal perfected for  
the September 2008 Term.

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

M-1060 People ex rel Sidney Baumgarten on behalf of  
Ray, Lawrence v Horn

Writ of habeas corpus denied.

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

M-852 In the Matter of R., Jeremiah - Catholic Home Bureau  
for Dependent Children

Dismissal of appeal denied, with leave to renew, as  
indicated.

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

M-700 People v Pack, Adrian

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

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

M-828 Continental Casualty Company v Pricewaterhousecoopers  
LLP; Eagle Partners, LLP v Pricewaterhousecoopers LLP;  
Jones v Pricewaterhousecoopers

Consolidation of appeals granted to the extent  
indicated.

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

M-781 In the Matter of W., Omar

Time to perfect appeal enlarged to the September 2008 Term.

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

M-847 In the Matter of Cuccio v Kelly

Time to perfect appeal enlarged to the September 2008 Term.

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

M-878 Owens v The City of New York

Time to perfect appeal enlarged to the October 2008 Term. (See M-879 and M-880, decided simultaneously herewith).

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

M-879 Dantzler v The City of New York

Time to perfect appeal enlarged to the October 2008 Term. (See M-878 and M-880, decided simultaneously herewith).

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

M-880 Lugo v The City of New York

Time to perfect appeal enlarged to the October 2008 Term. (See M-878 and M-879, decided simultaneously herewith).

Andrias, J.P., Friedman, Buckley, McGuire, Moskowitz, JJ.

M-570 People v Armstrong, Edward, also known as  
M-650 Armstrong, Ed

Counsel substituted, as indicated; new counsel directed to perfect appeal for the September 2008 Term. Saunders/Anders brief deemed withdrawn; motion otherwise denied.

Andrias, J.P., Friedman, Buckley, McGuire, Moskowitz, JJ.

M-885 Shmueli v NRT New York, Inc. doing business as  
The Corcoran Group

Motion to be relieved as co-counsel for plaintiff-respondents denied, as indicated.

Friedman, J.P., Nardelli, Buckley, Sweeny, Malone, JJ.

M-2673A People v Barrow, David

Leave to prosecute appeal as a poor person and related relief granted; Clerk of the Supreme Court shall expeditiously have made and filed with the criminal court two transcripts of the SORA hearing and other proceedings, as indicated. The order of this Court entered on June 21, 2007 (M-2673) recalled and vacated.

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

M-1081 P.J.P. Mechanical Corp. v Commerce and Industry  
Insurance Company

Time to perfect appeal enlarged to the September 2008 Term.

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

M-1141 Medina v Chile Communications, Inc.

Time to perfect appeal enlarged to the September 2008  
Term.

Sweeny, J.

M-671 People v Velez, Michael

Leave to appeal to this Court and other relief denied.

Moskowitz, J.

M-552 People v Bunting, Johnnie

Leave to appeal to this Court denied.

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

M-6355 In the Matter of Steven G. Schulman  
(admitted as Steven Gary Schulman),  
an attorney and counselor-at-law:

Respondent's name stricken from the roll of attorneys  
and counselors-at-law in the State of New York, nunc pro tunc to  
October 9, 2007. Opinion Per Curiam. All concur.

**The Following Orders Were Entered and Filed on March 18, 2008**

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

M-1133      Karr v Black

Enlargement of record on appeal granted, as indicated.

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

M-1008      Cook v Consolidated Edison Company of  
New York, Inc. - E Plus E LLC - Madison 55th  
Restaurant, Inc. - Burger Heaven

\_\_\_\_\_ Stay of trial granted.

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

M-1213      Nederlander v Nederlander

Stay denied.

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

M-1123      Martinez v South Beach Car Service, Ltd.

M-1126

Stay of trial denied; cross appeal deemed withdrawn.

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

M-1161      Velez v Division Nine Holding Corp.  
              (And third-party/second third-party actions)  
              Division Nine Holding Corp. v Tully Construction  
              Co. Inc.

Defendant Tully directed to re-file appellant's brief on or before March 24, 2008 for the June 2008 Term, to which Term appeal adjourned, as indicated; respondent's brief to be served and filed on or before April 9, 2008; and reply brief, if any, to be served and filed on or before May 2, 2008.

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

M-1162      109th and First Avenue Corp. v 2113 First Avenue  
              (And a third-party action)

Enlargement of record on appeal granted, as indicated.