

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York (Joel M. Simon of counsel), for Newmark & Company Real Estate, Inc., appellant.

Herzfeld & Rubin, P.C., New York (Linda M. Brown of counsel), for Estate of Sol Goldman, 41-45 West 34, LLC, Midboro Holding Company, and Winoker Realty Co, respondents.

Geringer & Dolan, LLP, New York (John A. McCarthy of counsel), for Alliance Elevator Company, respondent.

Order, Supreme Court, Bronx County (Nelson S. Roman, J.), entered August 17, 2007, which granted motions by defendants Estate of Sol Goldman, 41-45 West 34, Midboro Holding Company, Winoker Realty Co. (collectively the Goldman defendants) and Alliance Elevator Company d/b/a Unitec Elevator Company s/h/a Unitek/North American Elevator Service for summary judgment dismissing the complaint as against them, unanimously affirmed, without costs. Order, same court and Justice, entered on or about January 18, 2007, which, to the extent appealed from, denied so much of the motion by defendant Newmark & Company Real Estate for summary judgment on its cross claim against Midboro Holding for contractual indemnification, unanimously reversed, on the law, without costs, that portion of the motion granted, and the matter remanded for further proceedings.

On February 6, 2004, plaintiff and another person named Mohammed Fofana were injured when they fell down the freight elevator hoistway from the fourth floor of a building located at 45 West 34th Street. The premises were net leased to Midboro

Holding at the time, and had been managed by Newmark. Plaintiff had a dispute with Fofana and the two engaged in a fight in a narrow hallway on the fourth floor. According to Fofana's deposition, plaintiff pushed him into the hoistway door. The complaint alleged negligence on the part of the building's owners, its managing agent and Alliance, the owners' elevator service contractor. Plaintiff testified that the hoistway door opened after Fofana stepped backward and came into contact with it. Plaintiff further swore that Fofana then clutched him in an effort to break his fall, causing both men to fall into the hoistway.

According to the affidavit of Patrick McPartland, P.E., the Goldman defendants' expert, the doors of the manually operated elevator in question consisted of two solid panels. The first panel opened by sliding right to left. The second panel was hinged to the wall. The sliding panel hung from a track by rollers, and was retained at the bottom by a six-inch guide which McPartland described as a "U" channel. Thomas Davies, a supervisor elevator inspector from the New York City Department of Buildings, inspected the site within 80 minutes after the accident. He testified that the sliding panel guide was bent and protruded into the hoistway in a manner indicating that a substantial horizontal force had been exerted against the sliding panel. In examining other parts of the building, Davies recorded

loose and missing hanger track bolts which rendered the 12th floor hoistway door ready to fall. Davies's report also noted that the rest of the hoistway doors were loose and poorly secured. McPartland opined that the damage to the guide could only have been caused by the application of the kind of force described by Davies in excess of 250 pounds. McPartland further opined that the applied force caused the sliding panel to swing out into the elevator shaft, creating the opening through which plaintiff and Fofana fell. Bernard Hughes, Alliance's elevator expert, who also inspected the elevator on the date of the accident, similarly concluded that a heavy horizontal blow from the direction of the hallway toward the hoistway significantly damaged the guide, causing the sliding door panel to deflect out of the guide and into the hoistway. Davies testified that the sliding doors were prevented from moving horizontally by an interlock. Both Davies and Hughes inspected the interlock and found it to be intact on the date of the accident. McPartland further opined that neither the hoistway door nor the elevator car could have been operated prior to the accident with the "U" channel in its bent condition. On this score, Lance Dixon and James Louallen, building employees who operated the freight elevator, testified there had been no problem with the fourth floor hoistway door before the accident occurred. Paul Reinert, an elevator mechanic employed by Alliance, stated in his

affidavit that he found nothing out of order with respect to the fourth floor hoistway door when he serviced the elevator on February 2 and 4, 2004, two days before the accident. Hank Krussman, a licensed elevator inspector, had conducted a Local Law 10 inspection of the elevator and the subject hoistway door five months before the accident, noting no problem with the hoistway door at that time. Based upon the foregoing, the Goldman defendants and Alliance have made a prima facie showing that the accident was not caused by any defect in the hoistway door.

Plaintiff countered with two affidavits in November 2006 by Patrick A. Carrajat, an elevator expert who inspected the site 16 months after the accident. Referring to Davies's report of defects in other hoistway doors, Carrajat opined that an insufficient "level of maintenance, repair and modernization" and "an advanced state of disrepair" of the elevator doors were the proximate causes of the accident. In this respect, Carrajat's opinion consisted of unfounded speculation, insufficient to raise a triable issue of fact as to the condition of the fourth floor hoistway door at the time of the accident (*see e.g. Avina v Verburg*, 47 AD3d 1188, 1189 [2008]). As noted above, Davies, McPartland and Hughes opined that the door guide was bent by a substantial horizontal force. Carrajat tried to refute these opinions with more speculation that freight door guides could

have been damaged by objects such as hand trucks or carts. However, Carrajat did not contradict McPartland's opinion that neither the hoistway door nor the elevator car could have been operated with the guide in its bent condition. Carrajat's affidavits were further flawed by their failure to address the findings by Davies and Hughes that the interlock, which secured the sliding door, was intact after the accident. Without identifying any relevant component part, Carrajat concluded one of his affidavits with the statement that the hoistway door was in an "advanced state of decay and deterioration." The other affidavit ended with the legal opinion that there are "many triable issues of fact" relating to defendants. These affidavits were insufficient to raise any triable factual issue because they are speculative and lacking in foundation (see *Santoni v Bertelsmann Prop., Inc.*, 21 AD3d 712, 715 [2005]). Accordingly, summary judgment was properly granted in favor of the Goldman defendants and Alliance.

Supreme Court, however, should have awarded Newmark contractual indemnification against Midboro, having found that Newmark, like the other defendants, did not create or have notice of any defect that could have caused the accident. Although an indemnification clause that purports to insulate the indemnitee from liability for its own negligence is void under General Obligations Law § 5-322.1, the statute does not apply where, as

here, the indemnitee is found to have been free of negligence
(*Crouse v Hellman Constr. Co., Inc.*, 38 AD3d 477, 478 [2007]).
The absence of a recitation in the clause that the obligation to
indemnify is limited to what the law allows does not dictate a
contrary conclusion (*id.*).

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

ENTERED: MAY 19, 2009

CLERK

Gonzalez, P.J., McGuire, Moskowitz, DeGrasse, Freedman, JJ.

4513N Mohammad Fofana,
 Plaintiff,

Index 1186/06

-against-

41 West 34th Street, LLC, et al.,
Defendants-Respondents,

Newmark & Company Real Estate, Inc.,
Defendant-Appellant,

Alliance Elevator Company, etc.,
Defendant.

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York
(Joel M. Simon and Marcia K. Raicus of counsel), for appellant.

Herzfeld & Rubin, P.C., New York (Linda M. Brown of counsel), for
respondents.

Order, Supreme Court, Bronx County (Nelson S. Roman, J.),
entered July 18, 2007, which, to the extent appealed from, denied
the motion by defendant Newmark, for summary judgment on its
purported cross claim for contractual indemnification against
defendant Midboro, unanimously affirmed, without costs.

In 2004, plaintiff and another individual named Haynes were
injured in a fall down the freight elevator shaftway of a
Manhattan building ground-leased to Midboro and managed by
Newmark. Plaintiff commenced the instant action in Supreme
Court, New York County, against Newmark and others, not including
Midboro. In May 2006, the action was transferred to Bronx County
for a joint trial with an action commenced by Haynes. In

February of that year, plaintiff had brought a separate action in New York County, naming Midboro as the only defendant. This appeal emanates from Newmark's motion, in August 2006, to consolidate this action with the action against Midboro, and grant Newmark "a defense and indemnification as against Midboro." Supreme Court denied as moot the motion insofar as Newmark sought consolidation, because by the time of the court's decision in July 2007, these actions had already been consolidated by order of Justice Tuitt in December 2006. With respect to Newmark's claim for indemnification, the court ruled that summary judgment could not be granted on a cross claim that at the time had yet to be asserted.

Summary judgment can only be awarded on an unpleaded claim if the proof supports such a claim and the opposing party has not been prejudiced (*Kramer v Danalis*, 49 AD3d 263 [2008]). Here, Midboro was not yet a party to this action when the motion was made. Consolidation did not occur until four months after Newmark sought summary judgment for indemnification.

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alleged meaning of portions of an incriminating letter he wrote while incarcerated pending trial. Although defendant asserts that he was entitled to testify as to what he intended to mean by certain phrases, the excluded questions did not call for such testimony, but essentially asked defendant to analyze or interpret the meaning of language that contained no codes or obscure terminology requiring an explanation. The interpretation called for in defense counsel's questions was in the nature of argument that would be appropriate if made by counsel in summation, but not by a witness on the stand. Since defendant never made a timely assertion of a constitutional right to give the excluded testimony, his present constitutional claim is unpreserved (*People v Lane*, 7 NY3d 888, 889 [2006]), and we decline to review it in the interest of justice. As an alternative holding, we also reject it on the merits (see *Crane v Kentucky*, 476 US 683, 689-690 [1986]). In any event, any error in the court's ruling was harmless under the standards for both constitutional and nonconstitutional error.

At the first trial, the court properly permitted the People to impeach their own witness with a prior inconsistent statement. In context, the witness's denial that defendant made an incriminating statement to her was affirmatively damaging to the

People's case (see CPL 60.35[1]; *People v Winchell*, 98 AD2d 838, 841 [1983], *affd* 64 NY2d 826 [1985]; compare *People v Fitzpatrick*, 40 NY2d 44, 51-52 [1976]). In any event, any error in this ruling was harmless.

The court properly denied defendant's CPL 330.30(2) motion to set aside the first verdict on the ground of jury misconduct. During the trial, the court and all parties learned that one or more news articles about a jailhouse fight between one of defendant's original codefendants and a defendant in a notorious unrelated case tangentially mentioned that the codefendant had pleaded guilty in this case. At that time, defendant's counsel declined the trial court's invitation to conduct an inquiry of the jurors, instead requesting that the court reiterate its admonition to the jurors to avoid reading news accounts about the trial. After the trial, it came to light that a juror had been aware of the codefendant's guilty plea, but had not discussed it with other jurors. Since counsel was aware, during the trial, of a potential danger of exposure of jurors to this information, but declined a remedy that would have obviated the need for postverdict proceedings or a new trial, the postverdict disclosure was not a basis for setting aside the verdict (*cf. People v Albert*, 85 NY2d 851 [1995]; *People v Kelly*, 11 AD3d 133, 146-147 [2004], *affd* 5 NY3d 116 [2005]).

The branch of defendant's motion to set aside the verdict

that alleged he was convicted on an improper theory was contrary to the rule precluding jurors from impeaching their verdict with regard to their deliberative processes (see *People v De Lucia*, 20 NY2d 275 [1967]).

The hearing court properly denied defendant's motion to suppress a letter he wrote from prison that was intercepted and copied by prison authorities. Since the interception met constitutional standards, defendant was not entitled to exclusion of the letter on the ground that prison authorities failed to comply with a Department of Correctional Services regulation (7 NYCRR § 720.03[e][1]) concerning the factual content of an authorization for interception (see *United States v Workman*, 80 F3d 688, 698-699 [2d Cir 1996], *cert denied*, 519 US 938 [1996]). The exclusionary rule applies to a violation of a statute only where the purpose of the statute is to effectuate to a constitutionally protected right (*People v Taylor*, 73 NY2d 683, 690-691 [1989]; see also *People v Patterson*, 78 NY2d 711, 716-717 [1991]). The regulation at issue appears to be a record-keeping requirement not directly implicating a constitutional right. Moreover, there does not appear to be any authority for suppression of evidence in a criminal case based on a violation of a mere administrative regulation rather than a statute. We note that in the civil context, a clear distinction is drawn between a statutory violation and a violation of a regulation,

which, "lacking the force and effect of a substantive legislative enactment," is merely some evidence of negligence (*Bauer v Female Academy of Sacred Heart*, 97 NY2d 445, 453 [2002]).

We have considered and rejected defendant's arguments regarding his second trial, his constitutional challenge to his persistent violent felony offender adjudication, and his pro se claims.

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

ENTERED: MAY 19, 2009

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four conferences, defendant duly made a motion on notice to plaintiff. Plaintiff failed to oppose the motion.

On the appeal plaintiff's counsel makes no claim of a failure to receive notice of the scheduled conferences.

Under the circumstances, *the* motion court should have, at a minimum, penalized plaintiff's counsel as above indicated.

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

ENTERED: MAY 19, 2009

CLERK

Andrias, J.P., Saxe, Sweeny, Nardelli, Freedman, JJ.

576 Kathleen Azzaro, Index 115949/05
Plaintiff-Appellant,

-against-

Super 8 Motels, Inc., et al.,
Defendants-Respondents.

Arnold E. DiJoseph, III, New York, for appellant.

Cascone & Kluepfel, LLP, Garden City (David F. Kluepfel of
counsel), for respondents.

Order, Supreme Court, New York County (Michael D. Stallman,
J.), entered November 13, 2007, which granted defendants' motion
for summary judgment dismissing the complaint, unanimously
affirmed, without costs.

During a July 9, 2005 stay at defendants' Super 8 Motel in
Cobleskill, New York, plaintiff stepped out of her motel room
shower onto the bath mat, slipped and fell, thereby sustaining
injuries to her left wrist. Plaintiff's complaint alleges that
both the tile floor of the bathroom area and the cotton floor mat
supplied by defendants were unreasonably dangerous because
neither had a nonskid surface.

The motion court properly found that defendants made a prima
facie showing that the accident was not attributable to a defect
in the floor or the bath mat. Plaintiff, in opposition, failed
to meet her burden of identifying any common law, statutory or
relevant industry standard imposing on hotel owners the duty to

supply non-skid surfacing in the bathtub area (see *Lunan v Mormile*, 290 AD2d 249 [2002]; *Portanova v Trump Taj Mahal Assoc.*, 270 AD2d 757 [2000], *lv denied* 95 NY2d 765 [2000]). Nor did plaintiff present any competent evidence of any defect in either the bathroom flooring material or in the bath mat (see *Murphy v Conner*, 84 NY2d 969, 971-972 [1994]). The affidavit from plaintiff's expert, who never visited the accident site or examined the bath mat, referred to industry standards which were inapplicable to the bathroom. Moreover, this affidavit, submitted solely in response to defendants' motion, was purely speculative and conclusory (see *DiSanza v City of New York*, 11 NY3d 766 [2008]; *Diaz v New York Downtown Hosp.*, 99 NY2d 542 [2002]; *Matos v Challenger Equip. Corp.*, 50 AD3d 502 [2008]).

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: MAY 19, 2009

CLERK

Andrias, J.P., Saxe, Sweeny, Nardelli, Freedman, JJ.

577 In re Jazmin A.,

A Person Alleged to be
a Juvenile Delinquent,
Appellant.

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Presentment Agency

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

Michael A. Cardozo, Corporation Counsel, New York (Norman Corenthal of counsel), for presentment agency.

Order, Family Court, Bronx County (Monica Drinane, J.), entered on or about April 16, 2008, which remanded appellant to a detention facility operated by the New York City Department of Juvenile Justice, unanimously reversed, on the law, without costs, and the order vacated.

Having issued an order of disposition placing appellant on probation, the Family Court lacked authority to remand her to detention in the absence of a violation of probation petition (see Family Ct Act §§ 360.2, 360.3[2][b]; *People ex rel. Silbert v Cohen*, 29 NY2d 12 [1971]). For purposes of a detention determination under Family Court Act § 320.5, a court appearance for the purpose of monitoring compliance with the terms of probation is not an adjournment of the "initial appearance" on the underlying juvenile delinquency petition (see Family Ct Act § 320.1), because that petition has already been adjudicated and a

dispositional order entered. After probation has been imposed, the detention provisions of section 320.5 do not become relevant until a violation of probation petition has been filed.

We review this issue, despite its mootness, under the exception to the mootness doctrine for substantial and novel issues likely to recur and evade review (see *Mental Hygiene Legal Servs. v Ford*, 92 NY2d 500, 505 [1998]). However, we do not decide the hypothetical questions of whether, assuming compliance with the procedural requirements of Family Court Act § 355.2, a motion under Family Court Act § 355.1 to stay, modify or terminate an order of probation based on change of circumstances would provide an alternate means of initiating proceedings to revoke probation, and whether detention would be authorized pending resolution of such a motion.

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

ENTERED: MAY 19, 2009

CLERK

Andrias, J.P., Saxe, Sweeny, Nardelli, Freedman, JJ.

578-

578A In re Samuel R.,

A Person Alleged to be
a Juvenile Delinquent,
Appellant.

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Presentment Agency

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

Michael A. Cardozo, Corporation Counsel, New York (Norman Corenthal of counsel), for presentment agency.

Orders, Family Court, Bronx County (Juan M. Merchan, J.), entered on or about April 18, 2008 and April 28, 2008, which remanded appellant to a detention facility operated by the New York City Department of Juvenile Justice, unanimously reversed, on the law, without costs, and the order vacated.

For the reasons stated in *Matter of Jazmin A.* (__AD3d__ [decided herewith]), we conclude that appellant was unlawfully remanded to detention in the absence of a violation of probation petition. Since there was no compliance with the procedural requirements of Family Court Act § 355.2, we similarly decline to

decide the hypothetical questions presented concerning Family
Court Act § 355.1.

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failure to immediately notify respondent of his arrest in violation of 38 RCNY 5-30(a) and (d), and failure to immediately voucher his second firearm in violation of 38 RCNY 5-30(f) (see *Matter of Papaioannou v Kelly*, 14 AD3d 459 [2005]; *Matter of Olivera v Kelly*, 23 AD3d 216 [2005], *lv denied* 6 NY3d 709 [2006]). We note petitioner's testimony that the reason he failed to immediately voucher his second firearm in response to respondent's directive was because he never used the second firearm and had forgotten about it. Such explanation, in the face of petitioner's licence application and four bi-annual renewals listing the second firearm, rationally supports respondent's reliance on petitioner's violation of 38 RCNY 5-30(f), notwithstanding the Hearing Officer's characterization of the explanation as "lame but not necessarily inaccurate." We have considered petitioner's arguments based on the Hearing Officer's other findings of credibility and her recommended penalty of only a suspension, and find them unavailing (38 RCNY 15-28). The penalty of revocation does not shock our conscience.

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

ENTERED: MAY 19, 2009

CLERK

Andrias, J.P., Saxe, Sweeny, Nardelli, Freedman, JJ.

582-

582A Deborah Anne Smith,
Plaintiff-Respondent,

Index 6677/04

-against-

Clifford C. Vohrer, et al.,
Defendants-Appellants,

Daniel Sotomayor, et al.,
Defendants.

Costello, Shea & Gaffney LLP, New York (Steven E. Garry of
counsel), for appellants.

Kim I. McHale & Associates, New York (John C. Naccarato of
counsel), for respondent.

Order, Supreme Court, Bronx County (Mark Friedlander, J.),
entered April 9, 2008, which, after a jury trial, denied the
motion pursuant to CPLR 4404 of defendants Clifford C. Vohrer and
Lease Plan USA to set aside the verdict and enter judgment
notwithstanding the verdict, or, in the alternative, to grant a
new trial, and order, same court and Justice, entered April 10,
2008, which, after a jury trial, denied the motion, pursuant to
CPLR 4404 of defendants Sotomayor and La Manada Auto Corp. to set
aside the verdict, unanimously affirmed, without costs.

Plaintiff provided sufficient evidence from her treating
surgeon, which included evidence that she suffered a torn
meniscus as a result of the accident, to sustain a claim of

serious injury under Insurance Law 5201(d) (see *Noriega v Sauerhaft*, 5 AD3d 121, 122 [2004]). Moreover, the surgeon's testimony that further treatment after the surgery was not necessary provided a sufficient explanation of the gap in treatment to send the case to the jury (*Pommells v Perez*, 4 NY3d 566, 574 [2005]). Given the evidence that other cars in the intersection had to make way for defendant, and that the car he hit was pushed a block in the direction defendant was traveling, the jury reasonably concluded that defendant's speeding through a crowded intersection was the main cause of the accident (*Gomez v 192 E. 151st St. Assoc., L.P.*, 26 AD3d 276 [2006]).

Plaintiff's single passing reference to letters from insurance companies, adduced by defendant's counsel, did not require a mistrial (see *Siegfried v Siegfried*, 123 AD2d 621, 622 [1986]). While it would have been preferable for plaintiff to disclose the report of the final examination by her surgeon (who testified at trial), in light of the other discovery defendant had, it was not necessary to preclude the testimony, nor was defendant deprived of meaningful cross-examination (see *Mendola v Richmond Ob/Gyn Assocs.*, 191 Misc 2d 699, 701 [2002]). Nor did the surgeon's passing reference to possible future surgery require a new trial, as it was not intentionally elicited, and, in context, was a reference to the future functional limitations

of the injury (*see Shehata v Sushiden Am., Inc.*, 190 AD2d 620 [1993]).

Defendant was not prejudiced by the charge on aggravation of existing injury, despite the fact that it was not submitted at the charging conference. The issue of aggravation was in the bill of particulars, and was argued by defendant's own expert. Moreover, defendant failed to ask for supplemental summations (*see Afghani v City of New York*, 227 AD2d 305 [1996]).

The award of \$435,000 for multiple tears of the meniscus did not deviate from reasonable compensation (*see Feliciano v Ford Motor Credit Co.*, 28 AD3d 221 [2006]). Nor did the jury have to find on the evidence submitted that had plaintiff worn a seat belt, her injury would have been mitigated (*see Berk v Schenck*, 122 AD2d 823, 825 [1986]).

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alternative holding, we also reject it on the merits (see *People v Taranovich*, 37 NY2d 442 [1975]).

The court properly denied defendant's motion to suppress a showup identification made at the scene of the crime. While the transcript of the hearing is apparently lost, we conclude, based on the hearing court's detailed findings, that the showup was not unduly suggestive. Defendant's sole argument is that the arresting officer "whispered" something to the victim prior to the identification. However, the hearing court's findings indicated that the officer merely asked the victim whether she could identify the person who assaulted her.

Defendant's procedural challenges to his persistent violent felony offender adjudication are unpreserved and we decline to review them in the interest of justice. As an alternative holding, we also reject them on the merits.

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valid waiver of his right to appeal. In any event, we perceive no basis to reduce the two-year term of post-release supervision.

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OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 19, 2009

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Andrias, J.P., Saxe, Nardelli, Freedman, JJ.

586 Boris Kagan, et al.,
Plaintiffs-Appellants,

Index 106905/03

-against-

BFP One Liberty Plaza, et al.,
Defendants-Respondents.

[And a Third-Party Action]

Arnold E. DiJoseph, III, New York, for appellants.

Mendes & Mount, LLP, New York (Robert J. Brown of counsel), for
respondents.

Judgment, Supreme Court, New York County (Jane S. Solomon,
J.), entered April 14, 2008, inter alia, dismissing the
complaint, unanimously affirmed, without costs.

Plaintiffs failed to raise an issue of fact whether
defendants either created or caused the condition complained of
or exercised supervision or control over the work performed by
the injured plaintiff and had actual or constructive notice of
the condition so as to sustain the Labor Law § 200 and common-law
negligence claims (*see Buckley v Columbia Grammar & Preparatory*,
44 AD3d 263, 272 [2007], *lv denied* 10 NY3d 710 [2008]). The dust
and debris that accumulated in the office building in which
plaintiff performed fine cleaning resulted not from any act or
omission of defendants but from the terrorist attacks that caused
the Twin Towers of the World Trade Center to collapse. Nor, by

submitting an affidavit by plaintiff that contradicts his prior sworn testimony, did plaintiffs raise a genuine issue of fact whether defendants, rather than plaintiff's employer, third-party defendant Triangle Services, Inc., supervised or controlled his work (see *Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 352 [1998]; *Lupinsky v Windham Constr. Corp.*, 293 AD2d 317, 318 [2002]). In any event, the fact that representatives of defendants gave general instructions as to what needed to be done and performed monitoring and oversight of the timing and quality of the work is insufficient to support these claims (see *Dalanna v City of New York*, 308 AD2d 400, 400 [2003]). As to the issue of notice, defendants' duty to reasonably inspect the air quality in the building was satisfied by their consultant's report that the samples analyzed for airborne toxins were all within acceptable levels. Plaintiffs' expert's conclusory opinion that the consultant's monitoring and testing were inadequate and that the indoor environment of the building was hazardous and unsafe is of no probative value since it is based entirely on his review of documents and fails to indicate that he conducted any testing during the relevant time period (see *Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]; *Machado v Clinton Hous. Dev. Co., Inc.*, 20 AD3d 307, 307-308 [2005]).

Plaintiffs' Labor Law § 241(6) claim fails because the injured plaintiff was not "engaged in duties connected to the

inherently hazardous work of construction, excavation or demolition" (*Nagel v D & R Realty Corp.*, 99 NY2d 98, 101 [2002]). Plaintiffs also failed to raise an issue of fact whether the injuries were proximately caused by a violation of an applicable Industrial Code or other regulation that sets forth a specific standard of conduct rather than a general statement of common-law principles (see *Padilla v Frances Schervier Hous. Dev. Fund Corp.*, 303 AD2d 194, 196 [2003]). Plaintiffs have conceded that the regulations they relied on in the motion court are either nonexistent or inapplicable. To the extent that they allege violations of arguably applicable Industrial Code violations for the first time on appeal, these provisions have no basis in the record and cannot be considered as predicates for the Labor Law § 241(6) cause of action (*compare Padilla*, 303 AD2d at 196 n 1 [considering violations first raised by plaintiff in opposition to motion to dismiss]). In any event, these provisions do not avail plaintiffs. Industrial Code (12 NYCRR) § 23-1.7(g) is inapplicable to the facts of this case since it expressly applies to work in any "unventilated *confined area*" (emphasis added), such as a sewer, pit, tank, or chimney, "where dangerous air contaminants may be present or where there may not be sufficient oxygen to support life," and the provisions of 12 NYCRR part 12, standing alone, are not sufficiently specific to support a cause

of action under Labor Law § 241(6) (*Nostrom v A.W. Chesterton Co.*, 59 AD3d 159 [2009]).

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

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

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or any assignment thereof was not triggered by the transaction in the merger agreement, and thus appellants were not entitled to a commission (see *Far Realty Assoc., Inc. v RKO Del. Corp.*, 34 AD3d 261 [2006]). Furthermore, contrary to appellants' contention, there was no basis for permitting discovery based on their conjecture as to the possibility that a third party performed brokerage services (see e.g. *Turbel v Societe Generale*, 276 AD2d 446 [2000]).

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

ENTERED: MAY 19, 2009

CLERK

Andrias, J.P., Saxe, Sweeny, Nardelli, Freedman, JJ.

591N-

591NA Youssef Tokko,
Plaintiff-Appellant,

Index 107918/04

-against-

Consolidated Edison Co.,
Defendant-Respondent.

John F. McHugh, New York, for appellant.

Mary K. Schuette, New York (Richard A. Levin of counsel), for
respondent.

Order, Supreme Court, New York County (Richard F. Braun,
J.), entered October 26, 2007, which, to the extent appealed
from, denied plaintiff's motion to restore the first, second and
fifth causes of action asserted in the complaint, unanimously
affirmed, without costs. Order, same court and Justice, entered
November 6, 2008, which, to the extent appealed from, denied
plaintiff's motion for leave to amend the complaint, unanimously
affirmed, without costs.

Plaintiff, a general utility worker employed by defendant,
asked certain questions about manhole safety that an instructor
at defendant's Learning Center deemed suspicious and reported to
his manager. Defendant's security official thereafter notified
the police department, which in turn sent a report to a Joint
Terrorist Task Force. The Task Force investigated the concerns

about plaintiff and found them unsubstantiated. Plaintiff claims that he suffers from post-traumatic stress disorder (PTSD) as a result of this incident and consequently has been unable to pass the practical examination required to advance to the next level, Mechanic B. He alleges that he was discriminated against on the basis of his race (Arab), national origin (Lebanese), and religion (Islam), in violation of the New York State Human Rights Law (Executive Law § 296) and Administrative Code of the City of New York § 8-107.

Plaintiff's motion to restore the action was properly denied since plaintiff failed to allege that the Mechanic B test had a disparate impact on a group of which he was a member (see *Becker v City of New York*, 249 AD2d 96, 98 [1998]); he does not contend otherwise on appeal. To the extent plaintiff predicates his claim on the fact that he was reported to the authorities by defendant's instructor, it does not avail him because that report is protected by the Freedom to Report Terrorism Act (Penal Law § 490.00 *et seq.*). Plaintiff pleads no facts indicating that the report was made maliciously (see Penal Law § 490.01[3]). In any event, he failed to offer adequate proof that the circumstances give rise to an inference of discriminatory intent. There is no evidence in the record that plaintiff was reported to the authorities because of his race, national origin or religion; the

evidence shows that his questions were deemed suspicious because they were unusual, especially for a new, entry-level employee. Plaintiff's claim of hostile work environment fails because the instructor's report of suspicious behavior was a protected communication (see Penal Law § 490.01). While the report triggered the subsequent law enforcement investigation, no action whatsoever was taken thereafter with regard to plaintiff at his place of employment. Defendant's security officer closed the file upon being informed by law enforcement authorities that any concerns about plaintiff had not been substantiated and had not been found to be credible. Plaintiff was not subjected to harassing remarks or treated poorly in any other manner at his workplace.

Plaintiff's motion for leave to amend the complaint was properly denied to the extent he alleges intentional tort and discrimination and hostile work environment in violation of Administrative Code § 8-107. To the extent his claim is predicated on disability, however, his allegations that he suffers from PTSD and that he experiences panic attacks whenever he is required to go to the Learning Center adequately state a cause of action based on failure to accommodate his known disability (see Administrative Code § 8-107[15]). However, as the motion court noted, plaintiff has commenced another action in

Supreme Court in which he is pressing his disability claim, as well as other claims, which effectively renders the motion to amend academic.

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

ENTERED: MAY 19, 2009

CLERK

Andrias, J.P., Saxe, Sweeny, Nardelli, Freedman, JJ.

592N Charles Christiano, et al., Index 8881/00
Plaintiffs-Respondents, 81997/00
83531/03

-against-

Solovieff Realty Co., L.L.C., et al.,
Defendants-Appellants.

Nastasi White, Inc.,
Defendant.

- - - - -

McClier Corporation,
Third-Party Plaintiff-Appellant,

-against-

Theodore Williams Construction Company,
Third Party Defendant-Appellant.

- - - - -

Solovieff Realty Co., L.L.C.,
Second Third-Party Plaintiff-Appellant,

-against-

Bank of America Corp.,
Second Third Party Defendant-Appellant.

Callan, Koster, Brady & Brennan, LLP, New York (Eric L. Shoikhetman of counsel), for appellants.

Jasper & Jasper, P.C., New York (Michael H. Zhu of counsel), for respondents.

Order, Supreme Court, Bronx County (Stanley Green, J.), entered December 4, 2008, which granted plaintiffs' motion to restore the action to the trial calendar, unanimously reversed, on the law, without costs, the motion denied and the complaint dismissed. The Clerk is directed to enter judgment accordingly.

Plaintiffs failed to meet the criteria for vacating an automatic dismissal pursuant to CPLR 3404 (*see Aguilar v Djonvic*, 282 AD2d 366 [2001]). Their affidavit of merit was conclusory, they offered no reasonable explanation for their failure to proceed with discovery for nearly two years, they failed even to address the issue of prejudice to defendants, and their lack of activity between the time the case was struck from the calendar and their court-ordered motion to restore fails to rebut the presumption of abandonment.

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it on the merits (see *People v Freycinet*, 11 NY3d 38, 42 [2008];
People v Rawlins, 10 NY3d 136, 153-60 [2008]).

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ENTERED: MAY 19, 2009

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

595 In re Glenda G.,
 Petitioner-Respondent,

-against-

 Mariano M.,
 Respondent-Appellant.

Dora M. Lassinger, East Rockaway, for appellant.

Julian A. Hertz, Larchmont, for respondent.

Andrew H. Rossmer, Bronx, Law Guardian.

Order, Family Court, Bronx County (Alma Cordova, J.),
entered on or about August 1, 2007, which declared respondent to
be the father of the subject child, unanimously affirmed, without
costs.

The record demonstrates that respondent had a long standing
sexual relationship with petitioner, including during the time of
conception. Respondent acknowledged that the child, who is now
14 years old, calls him "Dad" and that he spoke to the child
about his future. Respondent saw the child every few months and
bought him clothing and he never attempted to dissuade the child
from believing he was the father. Furthermore, the court
interviewed the child, who informed the court that he knew
respondent as his father and that he wished to have a closer
relationship with him; there is no evidence or claim that any
other person could be the father of the child.

Under these circumstances, where respondent assumed the role of a parent, albeit somewhat limited, and led the child to believe he was his father, the court properly concluded that the best interests of the child required that respondent be estopped from denying paternity (see *Matter of Sarah S. v James T.*, 299 AD2d 785 [2002]). Respondent's reason for demanding a DNA test, to remove his doubts as to whether he was the father, is not a sufficient basis for ordering a DNA test, almost 13 years after the child's birth (see *Matter of Shondel J. v Mark D.*, 7 NY3d 320, 331-332 [2006]). While the court should have reduced its decision to writing at the time (Family Ct Act § 418[a]), its reasoning had to have been clear to respondent, who was present when the court made its fact-finding on the record (see *Matter of Tanesha H. v Phillip C.*, 57 AD3d 403 [2008]).

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

ENTERED: MAY 19, 2009

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the first occasion that defendant's family informed assigned counsel that it had decided to look for a private attorney. There is nothing in the record to indicate what efforts the family made to hire an attorney or whether they had the means to do so, and no evidence that any private attorney ever appeared or contacted the court (*see, People v O'Kane*, 55 AD3d 315 [2008], *lv denied* 11 NY3d 928 [2008]). We note that the following day, assigned counsel indicated that he and defendant had resolved any differences they might have had, and defendant concurred.

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ENTERED: MAY 19, 2009

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"defendants' arguments could not have been submitted at an earlier juncture because of the indefiniteness of plaintiff's initial pleading" (*Held v Kaufman*, 91 NY2d 425, 430 [1998]; see also *Home Ins. Co. v Leprino Foods Co.*, 7 AD3d 471 [2004]). Indeed, not only did plaintiff's expert raise a new theory of medical malpractice in the opposing affirmation, but did so in disregard of clear medical evidence that plaintiff did not suffer from that condition (see *Moore v New York Med. Group, P.C.*, 44 AD3d 393, 395-396 [2007], *lv dismissed* 10 NY3d 740 [2008]).

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

ENTERED: MAY 19, 2009

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remember the precise details of her fall, there is sufficient evidence to permit a reasonable inference, based on "the logic of common experience," that either defendant or the boiler contractor working for defendant was negligent in failing to guard, barricade or warn against the open vault, and that such negligence was a proximate cause of the accident (*Schneider v Kings Hwy. Hosp. Ctr.*, 67 NY2d 743, 744-745 [1986] [internal quotation marks omitted]; see *Podlaski v Long Is. Paneling Ctr. of Centereach, Inc.*, 58 AD3d 825, 827 [2009]).

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

ENTERED: MAY 19, 2009

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Tom, J.P., Catterson, Moskowitz, Renwick, JJ.

603 Renee McCrae, etc., et al.,
Plaintiffs-Respondents,

Index 108238/05

-against-

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

Kaplan, Inc.,
Defendant-Appellant.

Shafer Glazer, LLP, New York (Timothy M. Wenk of counsel), for
appellant.

Peters Berger Koshel & Goldberg, P.C., Brooklyn (Marc A. Novick
of counsel), for Renee McCrae, respondents.

Michael A. Cardozo, Corporation Counsel, New York (Drake A.
Colley of counsel), for municipal respondents.

Order, Supreme Court, New York County (Eileen A. Rakower,
J.), entered August 22, 2008, which, upon renewal of defendant
Kaplan, Inc.'s motion to strike the answer of the municipal
defendants (collectively the City) and the City's cross motion
for summary judgment dismissing the complaint and all cross
claims as against it, adhered to its original determination
denying the motion and granting the cross motion, unanimously
affirmed, without costs.

As we noted on Kaplan's prior appeal, the documentary
evidence establishes prima facie that the City was under no duty

to provide security at the time and place of the incident (44 AD3d 370 [2007]). Kaplan's argument that the documentary evidence is ambiguous was improperly raised for the first time on its motion to renew, and we decline to consider it (see *Matter of Weinberg*, 132 AD2d 190, 210 [1987], *lv dismissed* 71 NY2d 994 [1988]). Were we to consider the argument, we would reject it. As we noted on the prior appeal, the Cost of Services provision of the Extended Use of Schools Procedure did not require the City to provide security personnel to be paid for by Kaplan but rather required Kaplan to reimburse the City for performing background security checks of security personnel hired by Kaplan. The new evidence Kaplan submitted on its motion to renew fails to show that the City made any promises or engaged in any actions that would raise an issue of fact whether it assumed a duty to provide security at the time and place of the incident (see *Cuffy v City of New York*, 69 NY2d 255, 260-261 [1987]).

Kaplan failed to establish that the City's noncompliance with discovery requests and four discovery orders was willful, contumacious or in bad faith (see *Guzetti v City of New York*, 32 AD3d 234 [2006]; *Simpson v Sinha*, 246 AD2d 361 [1998]). The City substantially complied with court-ordered discovery requirements. Nor are costs and sanctions warranted since the record does not

indicate that the City made false or meritless arguments or deliberately prolonged the action (*see Llantín v Doe*, 30 AD3d 292 [2006]).

THIS CONSTITUTES THE DECISION AND ORDER
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ENTERED: MAY 19, 2009

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firearm (see *Matter of Trimis v New York City Police Dept.*, 300 AD2d 162 [2002], *lv denied* 100 NY2d 503 [2003]; Penal Law § 400.00[1]; 38 RCNY 5-02). Petitioner failed to abide by his obligations to notify the License Division of a domestic incident report and the issuance of temporary orders of protection against him in September 2002 and November 2002 (see 38 RCNY 5-30). He also omitted the issuance of the temporary orders of protection on his applications to renew his premises residence license, and for a carry business license, notwithstanding that application questions specifically requested such information.

We have considered petitioner's remaining arguments, including that the hearing officer who presided over his license revocation hearing was biased against him, and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
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ENTERED: MAY 19, 2009

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also reject them on the merits.

We perceive no basis for reducing the sentence.

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

ENTERED: MAY 19, 2009

CLERK

to the statutory exemption (*Van Amerogen v Donnini*, 78 NY2d 880, 882-83 [1991]).

Defendants demonstrated their prima facie entitlement to judgment as a matter of law with evidence establishing that they fell within the exemption. Their evidence established that the certificate of occupancy for the house stated that it was a two-family dwelling, and that they intended to use it as a one-family dwelling, as did the prior owners. It also established that they did not direct or control the work. The fact that defendants hired an architect to draw plans for portions of the work and to periodically check to see if the quality of the work was reflective of her plans does not constitute personal direction and control by defendants (see *Boyd v Lepera & Ward P.C.*, 275 AD2d 562, 563-564 [2000]). Moreover, plaintiff confirmed that he never spoke with defendants until deposition. Plaintiff admittedly received his daily orders from his foreman and the general manager of the contractor, provided his own tools or received them from his employer, fell from a scaffold built by a coworker and was ordered by his foreman to mount the scaffold on the occasion of his injury.

The burden thus shifted to plaintiff to demonstrate the existence of a triable issue of material fact. Plaintiff failed to discharge his burden, offering no cogent evidence in

opposition. Regarding the occupancy of the house, the fact that the prior owners were permitted to stay in the house for several months after closing was clearly an accommodation and served no commercial purpose. The number of kitchens in the house was also irrelevant, given the evidence of the prior owners' occupancy and defendants' intended occupancy (see *Stejskal v Simons*, 3 NY3d 628, 629 [2004]). While plaintiff argues that defendants insured the subject dwelling under a "renter's policy," that policy provided the coverage for defendants' primary residence, an apartment, and the subject dwelling was added under optional coverage. Plaintiff's contentions regarding direction and control of the work were equally unavailing. Although defendants consulted with the architect before the job began and kept abreast of the work through e-mails and photographs, they made only a few visits to the site, and their conferences with the general contractor were largely to gauge progress and discuss aesthetic details. Such activities do not constitute the type of active involvement that would remove defendants from the statutory exemption (see *Duda v Rouse Constr. Corp.*, 32 NY2d 405, 409 [1973]).

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: MAY 19, 2009

CLERK

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

607N Paul Garcia,
Plaintiff-Appellant,

Index 106895/06

-against-

Berns DeKajlo & Castro, et al.,
Defendants,

DeKajlo Law Offices, et al.,
Defendants-Respondents.

Schwartz & Ponterio, PLLC, New York (John Ponterio of counsel),
for appellant.

Sweetbaum & Sweetbaum, Lake Success (Marshall D. Sweetbaum of
counsel), for respondents.

Order, Supreme Court, New York County (Debra A. James, J.),
entered April 18, 2008, which denied plaintiff's motion for a
default judgment and inquest, unanimously affirmed, without
costs.

Defendants demonstrated a reasonable excuse for their
defaults.

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

ENTERED: MAY 19, 2009

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Cohen's defense that Lassoff was barred from recovering a portion of the contingency fees because he did not file retainer statements with the Office of Court Administration ("OCA") as required by 22 NYCRR § 603.7, was not raised in his answer or before the Surrogate when she granted the Public Administrator's application from the bench, and it is not preserved for our review. Further, Cohen argues only that he "has never been informed or advised" that Lassoff filed retainer agreements. In any event, given Lassoff's age and infirmities, his estate would likely be permitted to file the retainer agreements nunc pro tunc, to preserve its right to recover the fees (see *Matter of Estate of Abreu*, 168 Misc 2d 229, 234 [1996]; compare *Fishkin v Taras*, 54 AD3d 260 [2008]).

Cohen's claims that the estate's recovery should be based on quantum meruit due to Lassoff's death is not persuasive. The estate is not seeking to collect the contingency fee from the client. Rather, the estate is seeking to enforce its agreement with Cohen, under which it was to receive 50% of the net contingency fee. As noted above, Cohen did not raise the issue of the enforcement of that agreement before the Surrogate.

We have considered Cohen's other arguments and find them unavailing.

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

ENTERED: MAY 19, 2009

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

609

[M-1548] In re Rodney R. Roberts,
Petitioner,

Index 340852/08

-against-

Hon. Harold Adler, etc.,
Respondent.

Rodney R. Roberts, petitioner pro se.

Andrew M. Cuomo, Attorney, General, New York (Andrew H. Meier of
counsel), for respondent.

Application for an order pursuant to article 78 of the Civil
Practice Law and Rules denied and the petition dismissed,
without costs or disbursements. All concur. No opinion. Order
filed.

Saxe, J.P., Sweeny, McGuire, Renwick, Freedman, JJ.

4136-

4137 Jemrock Realty Co. LLC,
Petitioner-Respondent,

Index 570593/06

-against-

Jay Krugman,
Respondent-Appellant.

Barry J. Yellen, New York, for appellant.

The Abramson Law Group, PLLC, New York (Jeff Bodoff of counsel),
for respondent.

Order of the Appellate Term, First Department, entered on or
about December 4, 2007, affirmed, without costs.

Opinion by McGuire, J. All concur except Renwick and
Freedman, JJ. who dissent in an Opinion by Renwick, J.

Order filed.

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

M-1884 People v Littlejohn, Dwight

M-1885 People v Santiago, William

M-1886 People v Swinton, Timothy

M-1887 People v Rosenfeld, Ira

M-1888 People v Hargrove, David

M-1892 People v McDonald, Koran

M-1893 People v Emeribe, Charles

M-1896 People v Ducret, Manuel

M-1929 People v Cruz, Wilfredo

M-1955 People v Wilson, James

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

Gonzalez, P.J., Buckley, Catterson, McGuire, Renwick, JJ.

M-1543 In the Matter of G., Kaheem

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

Gonzalez, P.J., Tom, Sweeny, Catterson, Renwick, JJ.

M-1123 Chang v Zapson - 207 Second Ave. Realty Corp.

Time to perfect appeal enlarged to the September 2009
Term, as indicated.

Gonzalez, P.J., Mazzairelli, Buckley, Renwick, Abdus-Salaam, JJ.

M-2219 R² Investments, LDC v Icahn

CPLR 5704(a) relief denied.

Gonzalez, P.J., Mazzairelli, Buckley, Renwick, Abdus-Salaam, JJ.

M-1821 People v Faulk, Alfonso

Enlargement of record on appeal and related relief denied.

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

M-1767 People v Torres, Miguel

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

Tom, J.P., Saxe, Sweeny, Acosta, Freedman, JJ.

M-822 In the Matter of N., Shavenon, also known as N.,
M-823 Baby Boy - Administration for Children's Services;
In the Matter of L-M., Bibianamiet and N., Jonathan -
Administration for Children's Services

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

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

M-1777 People v Doyle, Thomas A., also known as Doyle,
Thomas

Transcription of minutes directed, as indicated.

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

M-1855 In the Matter of the Petition of Puerto Rican Home
Attendants Services, Inc. v Doar

Reargument denied.

Mazzairelli, J.P., Saxe, Nardelli, Renwick, Freedman, JJ.

M-1562 Gal-Ed v 153rd Street Associates, LLC

Time to perfect appeal enlarged to the September 2009
Term, as indicated.

Andrias, J.P., Saxe, Sweeny, Nardelli, Freedman, JJ.

M-1714 People v Padilla, Richard

Counsel substituted.

Andrias, J.P., Saxe, Sweeny, Nardelli, Freedman, JJ.

M-1856 People v Pena, Eddy

Time to perfect appeal enlarged to the November 2009
Term.

Andrias, J.P., Friedman, Buckley, Acosta, DeGrasse, JJ.

M-1733 In the Matter of Scales v New York City Housing
Authority Lehman Village

Proceeding dismissed unless perfected for the November
2009 Term, as indicated.

Friedman, J.P., Sweeny, Nardelli, Acosta, Richter, JJ.

M-1664 In the Matter of S., Alicia Monique, also known as
S., Alicia - Leake & Watts Services, Inc.

Time to perfect appeal enlarged to the September 2009
Term.

McGuire, J.P., Acosta, DeGrasse, Richter, Abdus-Salaam, JJ.

M-1779 People v Murrell, Dominique, also known as Gonzalez,
Javier

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

McGuire, J.P., Acosta, DeGrasse, Richter, Abdus-Salaam, JJ.

M-1778 People v Hunter, Fermin

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

McGuire, J.P., Acosta, DeGrasse, Richter, Abdus-Salaam, JJ.

M-1793 People v Garner, Joseph

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

McGuire, J.P., Acosta, DeGrasse, Richter, Abdus-Salaam, JJ.

M-1818 People v Scott, David

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

McGuire, J.P., Acosta, DeGrasse, Richter, Abdus-Salaam, JJ.

M-1739 Herrera v Cragswold, Inc., initially sued herein as Cragsworld, Inc.

Time to perfect appeal enlarged to the September 2009 Term.

McGuire, J.P., Acosta, DeGrasse, Richter, Abdus-Salaam, JJ.

M-1906 Morelli & Gold, LLP v Altman; Altman v Morelli & Gold, LLP

Appeals consolidated; time to perfect same enlarged to the December 2009 Term.

Mazzarelli, J.

M-851 People v Brown, Alton C.
Reargument denied.

Renwick, J.

M-1973 People v Stewart, Andre
Leave to appeal to this Court granted, as indicated.

Gonzalez, P.J., Tom, Sweeny, Buckley, Acosta, JJ.

M-402 In the Matter of Stephen J. Katz,
(admitted as Stephen Joshua Katz),
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, effective nunc
pro tunc to July 7, 2008. Opinion Per Curiam. All concur.

The following order was entered and filed on May 14, 2009:

Andrias, J.P., Nardelli, Catterson, Acosta, DeGrasse, JJ.

M-1882 People v Cepeda, Felix, Correa, Edgard and Mack, Allen
Amicus curiae brief submitted with moving papers deemed
filed.