

Civil Court of the City of New York

County of Kings

Housing Part D

Rama and Manjula, LLC
(A Corporation)

Petitioner

against

Christine Fye and John Doe
26 Bushwick Avenue Apt. 2Frt
Brooklyn, NY 11211

Respondents

Index Number LT: 70826/00

Hon. Marc Finkelstein

Date: 2000.09.07

**Affidavit in Support of
An Order to Show Cause
To Vacate Judgments
and
To Restore to the Calendar**

State of New York, County of Kings:

Robert Pollard ("John Doe"), being duly sworn, deposes and says:

1. **Party:** I am a tenant named as respondent in the above proceeding and am the husband of Christine Fye, who is the other tenant named as respondent and who concurs in this affidavit.
2. **Service and Answer:** We received the notice of Petition and Petition in this proceeding, and my wife filed an answer in the Clerk's Office and received a date for trial.
3. **Excuse:** On the initial date of trial before Judge Finkelstein a Judgment was entered, after Stipulation, but we - my wife and I - did not comply with the Order of the Court because on review of the Stipulation and the facts of the case, it became clear that there had been no proper legal basis for the Court to act on the initial Petition, and for that reason, as well as for other reasons that I have also presented to the Court in our Motions, it was necessary that the Stipulation be vacated as fatally defective.
 - a. **Initial Affidavit:** Following the initial Judgment in this proceeding, I filed an Affidavit in Support of an Order to show Cause to challenge the legal basis of the initial Judgment after Stipulation.
 - i. **Motions:** I also filed several Motions in conjunction with the initial Affidavit. These Motions provided the Court with substantial evidence to demonstrate that the Stipulation was fatally defective and to document a series of illegal actions by Petitioner.
 - b. **Failure to Obtain Satisfaction in Subsequent Hearings:** In a series of subsequent hearings before this Court, I respectfully submit that we have still failed to elicit a satisfactory response from the Court to the facts, issues and arguments that we have presented to the Court. I respectfully am reminded that on the first occasion that I was in the Honorable Judge's Court, he quoted - more than once, if my memory serves me correctly - part of a verse from the song *Satisfaction* by the Rolling Stones, as follows:

"You can't always get what you want
You can't always get what you want"

- i. I would respectfully remind the Honorable Judge of the final lines of this verse and respectfully submit that we have tried, and continue to try, to achieve justice in this case, and that is what we - and this Court - need:

"But if you try some time,
You just might find
You can get what you need"

- c. **Petitioner's Failure to Make Necessary Repairs:** Furthermore, Petitioner has still failed to make most of the repairs to the premises that were called for in the second Stipulation of Settlement. I respectfully note that the Honorable Judge made it clear during the hearing on July 5, 2000 that we would not have to make any payment until the repairs were made.
- d. **Court's Failure to Respond to Our Motions:** I respectfully submit that the Court has failed to adequately examine, address, and respond to, the substantial Motions - below - that we had properly filed in this case and served on Petitioner's attorney, and respectfully request that the Honorable Court give the substance of these Motions the thorough consideration that they deserve, and to which we believe that we are entitled.
 - i. **Motion to Vacate Stipulation of Settlement as Fatally Defective:** (hereinafter *Motion to Vacate*).
 - ii. **Motion for Recognition of John Doe's Competence to Represent Respondents as a pro se Attorney in this Case:** (hereinafter *Motion for Recognition*), and
 - iii. **Motion to Rescind Five Day Notice on the Grounds of Lack of Jurisdiction:** (hereinafter *Motion to Rescind*).
 - iv. **Motion to Permit Submission of Additional Counterclaims:** (hereinafter *Motion to Permit*).

4. **Defense:** I respectfully contend that we have a valid defense because:

- a. **Good Faith Efforts to Uphold the Administration of Justice and the Law:** While I respectfully recognize that the Honorable Judge may have interpreted some of our actions as a challenge to his authority and an attempt to evade the Judgments of this Court, I respectfully submit that our intention throughout this proceeding has been - in addition to upholding what we are convinced to be our lawful rights - to uphold the administration of justice and the law in this Court, and to correct shortcomings and inadequacies of this Court so that the Court can be strengthened in its ability to serve as an effective bastion for justice and the law, and to address more effectively the substantial challenges of upholding housing law in King County, New York.
 - i. **History of Commitment to Justice and the Law:** I respectfully draw the attention of the Honorable Judge to our *Motion to Recognize* in which we provided substantial details of my history, experience and commitment to the law and outlined some of the ways in which I have taken personal responsibility - much of it on a *pro bono* basis - to develop and implement remedies to shortcomings and inadequacies in the administration of justice and the law at local, national and international levels.

- b. **Failure to Register Building as Multiple Dwelling:** Petitioner had failed to register the Building as a Multiple Dwelling from the date Petitioner purchased the building - September, 1997 - until June 23, 2000 - very shortly after we had brought the absence of registration to the attention of Petitioner in our *Motion to Vacate* and our *Motion to Rescind*
- i. **Lack of Standing of Petitioner:** In consequence of the failure to register the building as a multiple Dwelling, Petitioner had no standing to bring a Petition for Non-Payment before the Housing Part of the Civil Court.
- ii. **Absence of Court's Authority to Issue a Judgment:** By virtue of Petitioner's lack of standing, the Court had no proper authority to issue a Judgment in this case, and that the disclosure of Petitioner's lack of standing constitutes grounds to vacate the Judgments in this case.
- c. **Pattern of Illegal Actions by Petitioner Amounting to Contempt for the Law:** Petitioner's unlawful action in seeking to use the force of the Court to act on the Petition for Non-Payment has been compounded by a substantial set of other illegal actions. Taken together, this pattern of illegal actions by Petitioner clearly amounts to such indifference and disregard for the law that in plain language it can best be described as contempt for the law - and for the legal obligations and responsibilities of a landlord. I respectfully submit that it is clear that Petitioner's Attorney has actively collaborated with Petitioner in the evasion of Petitioner's legal responsibilities and in Petitioner's indifference, disregard and contempt for the law.
- i. **Gross Failure to Maintain Warrant of Habitability:** Petitioner has exhibited gross failure to maintain a Warrant of Habitability, as described and documented in our *Motion to Vacate*, and to date has still failed to make most of the required repairs.
- ii. **Petitioner's Retaliatory Refusal to Renew Lease.** Petitioner's action in refusing to renew Respondent's lease was an illegal retaliation against Respondents for filing a complaint - resulting in a citation and fine against Petitioner - against Petitioner for failure to provide heat in the bitter cold in the middle of January 2000, following a persistent failure of Petitioner to provide adequate heat, despite Respondents' persistent and patient good faith efforts to request correction of the situation. (See *Motion to Vacate*, para 4 b, page 1, and paras 5 c & 5 d, pages 4-5, see also attached chronology of Petitioner's failure to provide heat and copy of the corresponding weather records from the National Weather Service at La Guardia Airport that Respondents obtained from the official World Wide Web site for the U.S. National Weather Service.
- (1) **Precipitating Factor in this Case:** I respectfully submit that this refusal - combined with Petitioner's continuing failure to provide adequate heat - was the precipitating factor in this case and led to our decision to withhold payment of rent.
- iii. **Improper Service of Petition:** Petitioner had failed to comply with the requirements for service of Petitioner's initial complaint to Respondents, and had submitted false information to the Court concerning the service of the complaint (*Motion to Vacate*, para 4 c, page 2-3).
- iv. **Illegal Conversion of Store and Garage:** Petitioner has illegally converted the use of the first floor store and garages into dwelling units (*Motion to Vacate*, para 4 i-iii, page 1), in violation of the Certificate of Occupancy. Petitioner's illegal conversion has been confirmed by an inspection by an officer of the Environmental Control Board of the

Department of Buildings and the Department of Buildings has scheduled a hearing date on the illegal conversion for September 11, 2000 (See the copy of the Certificate of Occupancy (filed with *Motion to Vacate* and *Motion to Rescind*) and attachments including photographic records of the premises, copy of a Notice of Violation and Hearing from the Environmental Control Board of the Department of Buildings of the City of New York, and copy of letter from the Department of Buildings of the City of New York, stating that:

"An inspection has been completed and the following results found: Occupancy contrary to DOB records. Garage and Store - change to living place. ... Hearing date is: 09/11/00"

- v. **Evasion of Rent Stabilization Regulations:** Through the illegal conversion of the store and garage, Petitioner has gained all the benefits of a building with six Dwelling Units while evading the legal requirements of the Rent Stabilization Regulations of the City of New York. I respectfully submit that if Petitioner receives the benefits of the rent from six dwelling units, that Petitioner should rightfully be subject to *de facto* Rent Stabilization requirements.
 - vi. **Obstruction of Justice:** In the course of this proceeding, it has become clear that Petitioner's Attorney has engaged in a pattern of obstruction of justice, through diversionary, evasive and untruthful statements before the Court - documented below - and through other efforts to place substantial obstacles to our opportunity to present the full facts of the case before the Honorable Judge.
- d. **Denial of 14th Amendment Rights to Indigent Tenants not able to be Represented by an Attorney:** In the course of our participation in this proceeding, it has become clear that the administration and procedures of the Court substantially fail to satisfy the requirement on States, as required by the 14th Amendment to the U.S. Constitution that States not "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".
- i. **Inadequacy of Resources and Facility of this Court:** It has become clear that a principal contributing factor to the Court's inability to comply with the requirements of the 14th Amendment is a direct result of the extent of the Court's caseload, combined with the allocation of inadequate resources and facilities to adequately accommodate the caseload.
 - (1) **Lack of Resources Does Not Excuse States from Requirements of the Constitution:** The Constitution does not appear to make any provision for exempting States from their obligations to uphold the requirements of the 14th Amendment.
 - (2) **Parallels with my Experience at Baltimore City Jail:** I am reminded of the fact that, during the thirteen years that I was an employee at Baltimore City Jail (see *Motion to Recognize*, para 3b, pages 3-5, for additional details) that the administration of the Jail was under the terms of a Federal Consent Decree, in which the inadequacy of the facilities and administration of the Jail due to substantial overcrowding was the major precipitating factor of the Consent Decree.
 - ii. **Deprivation of Tenancy; Tenancy as Property:** Given my understanding that property is not a "thing" but a set of legal rights, it is clear that tenancy is also rightfully construed as property, and embodies a substantial subset of the rights of ownership - and thus the Court's deprivation of our tenancy without what we contend is adequate due process of

law - including the rights to reasonable and timely notification of the nature of our rights and of the nature of the procedures and rules of this Court - constitutes deprivation of our property.

- iii. **Unequal Access to Reasonable Knowledge of the Rules and Procedures of this Court:** It has become clear to me - and I respectfully submit that it is self-evident - that there are two distinct classes of people who appear before the Court - those who know the rules and procedures, and those for whom the experience is not unlike being in a complex and confusing maze, and who are substantially unaware of the nature of the rules and the proceedings. I respectfully submit that this condition is clear indication of the Court's failure to uphold equal protection under the law.
- iv. **Failure to Provide Reasonable and Timely Notification to Respondents of their Rights:** I respectfully submit that the brief oral description of the procedures of the Resolution Part of this Court that the Honorable Judge makes at the beginning of each session in his Court Room does not constitute a reasonable and timely notification and fails to afford Respondents due opportunity to understand the rules and procedures of the Resolution Part of this Court, the full implications of the terms and conditions of a Stipulation of Settlement - especially the meaning and implication of conversion to a holdover proceedings - as well as of their rights to a trial and of the rules and procedures for trial - in sufficient time that Respondents may adequately prepare a defense.
- v. **Inadequacy of Standard Forms:** I respectfully submit that there are serious shortcoming in the design and use in many of the standard forms used by this Court, and I will be happy to provide both details of the shortcomings - including lack of adequate directions for use of the forms - and recommendations for proposed improvement to the forms that I have been developing in the course of my participation in these proceedings.
- vi. **Inconsistent Procedures for Submitting Attachments to Affidavit in Support of Order to Show Cause:** I have experienced substantial inconsistency in procedures on the several occasions that I have sought to submit an attachment to an Affidavit in Support of an Order to Show Cause. One time, a single copy of my attached Motions (with an accompanying Certificate of Service) was accepted; on one occasion, a single copy of an attachment was not accepted; on one occasion, four copies of an accompanying affidavit were accepted; on the next occasion, four copies of an accompanying affidavit were not accepted.
 - (1) **Affidavits not Duly Sworn:** On no occasion when submitting an Affidavit in Support of an Order to Show Cause has the Court employee accepting the Affidavit required that I be duly sworn and I have not observed that any other Respondents filing such Affidavits were required to be duly sworn.
- vii. **Inadequacy of Court's Information System:** As documented in our *Motion to Vacate* and *Motion for Recognition*, I have observed that there are substantial shortcomings and inadequacies in this Court's computerized information system that, *inter alia*, substantially inhibit timely and reliable access to relevant information concerning cases before this Court. I am also happy to present to the Court some specific remedies - including the effective use of a World Wide Web site - that I have also been designing and developing in response to the existing shortcomings and inadequacies.
- e. **Respondents' Submission to an Unjust Stipulation in the Face of Threats of Immediate Eviction.** In respect of our challenge to the Stipulation of Settlement on July 5, 2000,

I respectfully submit that we had submitted to the stipulation in the context of a hearing in which:

i. **Failure to Provide Effective Opportunity to Consider Our Arguments and Evidence:** The Honorable Court had failed to afford us an effective opportunity to bring forward the substantial and weighty arguments and evidence that we had properly submitted to this Honorable Court, and to have the full facts of the case heard.

ii. **Impatience and Threat of Immediate Eviction:** The Honorable Judge had adopted a prejudicial attitude - precipitated by his impatience - towards us that culminated in threats of immediate orders of eviction if we refused to accept a Settlement of Stipulation on terms that failed to address many of the key issues in the case:

"In 60 seconds I am going to deny your motion, and you can move out right away, because you are not really doing this in a fair way, and I have run out of patience."¹

iii. **Second Threat of Immediate Eviction:** The initial threat of immediate eviction was followed shortly afterwards by a second threat:

"If you don't want to agree that's fine, I will make my ruling on whether this stipulation applies. If it does, then I am going to deny the motion outright, so you can be evicted immediately."

iv. **No Reasonable Choice but to Sign Stipulation:** Faced with these threats, with a very clear indication that the Honorable Judge had become unwilling to provide us with an opportunity to present any more of our principal objections to the original stipulation, and with the recognition that the Honorable Judge would be making a ruling that would fail to be based on many of the key facts in the case - as they had not been heard by the Honorable Judge - and with what we humbly contend had evolved into a prejudicial attitude of the Honorable Judge, I respectfully contend that we had no reasonable choice but to enter into the stipulation.

(1) **Need to Vacate Second Stipulation:** I therefore respectfully submit that the Stipulation of July 5 should be vacated on the grounds that it was coerced and that the Court had failed to consider with due diligence the documentation and evidence that we had provided in the Motions we had filed.

¹ This quote and the others that follow are from our unofficial transcript of the tape of the Court hearing on July 5. Respondents note that due to inaccurate information provided by the Court as to the tape number, and subsequent delays in receiving the correct information after the August 7 hearing, Respondents were not able to listen to the tape until Monday, August 14, and were only permitted to listen to the tape for one hour.

We have made a transcript of the audible sections of the recording, based on a copy of the tape recorded onto our personal micro-cassette recorder - having been denied the opportunity to use the tape duplicating facilities of the Court's cassette tape player that would have allowed us to have access to a clearer copy of the recording.

We would respectfully like to draw the Court's attention to the inadequacy of the Honorable Court's recording facilities, which result in many of the statements of the parties to the case being inaudible, and recommend that this Honorable Court to ensure that the recording of proceedings before this Honorable Court is enhanced through more effective use and or placement of the microphones that are on the tables in the Court Room for the parties.

- f. **Our Inability to Present the Full Facts of the Case on July 5, 2000.** I respectfully submit that when this case was heard on July 5, 2000, we were not able to present the full facts of the case to this Honorable Court.
- i. **Failure to Request an Adjournment.** I concede that I may have erred in not asking for an adjournment when the Honorable Judge revealed - at a very early point in the hearing - that he had not examined our Motions, when he said:

"Rather than my sitting here and reading all this over ... Why don't you summarize what your problems with this case are?"

- (1) **My Effort to Summarize the Problems.** I acknowledge that I may have erred in their response to this request from the Honorable Judge by beginning to describe the precipitating factor in the case - namely, Petitioner's retaliatory refusal to renew our lease - rather than by presenting an overview of the entire pattern of Petitioner's illegal conduct. An examination of the tape recording of the July 5 hearing shows that we were not afforded any subsequent opportunity to present the whole picture of the case as the Honorable Judge had immediately focused on the question as to why Christine Fye had signed the initial Stipulation, and I was unable to find an opportunity to complete my summary of the problems with the case.
- (2) **Thorough Preparation of Written Motions, Evidence and Documentation.** I had spent many long days and nights in preparing the Motions we had filed and the documentation of Petitioner's illegal actions and conduct in this case - including failure to maintain a warrant of habitability - and in researching relevant aspects of the law. We had provided comprehensive and detailed documentation of many of the illegal actions of Petitioner (*Motion to Vacate*, paras 3 and 4, pages 1-3), of Petitioner's failure to maintain a warrant of habitability (*Motion to Vacate*, para 5, pages 3-6), and of shortcomings in this Honorable Court's computerized information system (*Motion to Vacate*, para 5, pages 6-7 and paras 12 & 13, pages 9-10; and *Motion for Recognition*, para 2 d, page 2)
- (3) **Our Expectation that Our Motions Would Have Been Reviewed by the Court.** When we appeared in Court on July 5, 2000, it was with the expectation that our four Motions would have been examined by the Honorable Court. In light of the extent, specificity and details of the problems that we had raised concerning the case - the fact that there had been no prior examination of Respondents' contentions placed us at a disadvantage that we had not anticipated.
- (a) **Source of My Frustration and Judge's Impatience.** I respectfully contend that the lack of opportunity to have the full facts of their case heard was a significant source of frustration for us, and was the principal reason that I had persisted - unsuccessfully - in seeking to bring out these facts, frequently prefacing my remarks with "But ..." a pattern that led to the growing impatience of the Honorable Judge.
- (4) **Our Perception of the Fairness on the Honorable Judge.** However, we had been impressed by the fair way in which the Honorable Judge had treated the cases before him, and we had no reason to expect that he would act any differently toward them.

- (5) **Our Conference with Court Attorney.** Furthermore, our confidence in just treatment of our arguments had been strengthened as a result of a brief conference that we had held with Court Attorney Meryl Strassner - at the initiative of Petitioner's attorney, at which Ms. Strassner clearly indicated her agreement with our contention on the issue of jurisdiction.
- ii. **Burdens of Responsibility.** I acknowledge that in the hearing on this case on August 7, 2000, we had sought to place the primary burden of responsibility for this failure on the Honorable Judge, and had failed at that time to appreciate or acknowledge the additional contributing role of Petitioner's attorney, of our lack of training, skill and experience in adversarial Courtroom strategy, or of the extent of the burdens faced by the Honorable Judge.
- (1) **Our Review of the Tape Recording of July 5 Hearing** However, after our review of the audible sections of the tape recording of the hearing of July 5, 2000, we now recognize more clearly two factors that contributed to the Honorable Judge's frustration and impatience with our statements:
- (2) **Diversionary, Evasive and Untruthful Statements by Petitioner's attorney.** I respectfully contend that Petitioner's attorney had been successful - through a series of diversionary, evasive and untruthful statements - in undermining our efforts to present the true facts of the case before the Honorable Court, and in diverting the attention of the Honorable Judge from the true facts of the case.
- (3) **Our Unfamiliarity with, and Lack of Experience and Training in, Adversarial Courtroom Strategy.** As tenants proceeding on a *pro se* basis, I acknowledge our lack of training and experience in adversarial Courtroom strategy and tactics, and respectfully contend that this was a significant factor in my inability to present the facts of the case, in the context both of the tactics of Petitioner's attorney and of having been thrown off balance by my discovery that the Honorable Judge had not examined the Motions we had filed.
- (4) **Extent of Burdens on the Court:** During one of the most recent occasions I was in the Court, the Honorable Judge had made reference to the fact that this Court has a caseload of over 400,000 cases per year. It is clear that the magnitude of this annual caseload is the source of major burdens on this Court - and on each of the Honorable Judges - and that this burden must inevitably undermine the task of doing justice to each of the cases in a facility that was clearly not designed with the capacity to accommodate such a caseload.
- (a) **Lack of Time for Adequate Review** In particular, it appears clear that the extent of the caseload faced by the Honorable Judge was the primary reason that he had not had the opportunity to review the nature and details of the contentions and arguments that we had presented to the Court concerning the facts and issues of law that we had presented in our Motions.
- iii. **Honorable Judge's Defense of Petitioner's Attorney.** The Honorable Judge vigorously defended the reputation of Petitioner's attorney, taking strong exception to Christine Fye' statements describing the conduct of Petitioner's attorney and asserting that she had called Petitioner's attorney a liar:

"Ok. I will tell you categorically that you just told an absolute disgusting lie. This gentlemen is not an aggressive - whatever word you want to use. He is one of the calmer

landlords' attorneys that I have seen. I don't agree with what you said, I think it is really unfair for you to say that. You know what, if I was him sitting there, I would have jumped up fifteen times already and got really upset. He has been quiet the whole time. I would have said "What do you mean by calling him Savage?" I mean you did it a second time, when you knew that was wrong and then you said he is a liar. [inaudible] but he is the one who is terrible. He has been called a liar, and Mr. Savage twice and you knew that was wrong. And then you said he was a liar ... But he's the one that's been an aggressive and obnoxious lawyer. That's pretty amazing. [inaudible] happening. That is not what is happening."

- (1) **Forms of Aggressive Behavior.** I humbly submit that there are many forms of aggressive behavior, and that superficial appearances of calm and polite behavior can serve as an effective mask for very forceful behavior - as exemplified by the phrase "iron fist in a velvet glove".

- iv. **Judge's Defense of an Attorney.** The Honorable Judge continued in his passionate defense of Petitioner's attorney to say:

"Oh but I know him better than you. You know him from one case. I know him from dozens of cases. I have never seen one instance where he talked over somebody, where he was obnoxious, where he was pushy."

- (1) **Different Demeanor and Attitudes of an Attorney.** However, I respectfully submit that the Honorable Judge apparently did not consider the possibility that an attorney could possibly present a different demeanor and attitude towards a presiding Judge than he or she does towards a *pro se* tenant in informal negotiations. Neither did the Honorable Judge appear to entertain the possibility that the polite and apparently respectful demeanor of an attorney towards a presiding Judge might serve to conceal other, less worthy, traits.
- (2) **Judge's Lack of Knowledge of Respondents:** I also respectfully submit that the Honorable Judge does not know us, the Respondents, well, having only had the occasion to interact with us in the trying conditions of a complex case in which we have been seeking - to the best of our ability - to defend our home against a substantial series of illegal actions by Petitioner, and without having had the time to review the thoroughly prepared documentation we had submitted, or without the opportunity to observe us in our normal habitat.

- v. **Diversionary, Evasive and Untruthful Statements by Petitioner's Attorney and by Petitioner.** I further respectfully contend that Petitioner's attorney made a number of specific false and/or evasive statements to the Court on July 5. Specifically, Petitioner's attorney stated:

"I don't think they are alleging that it is an illegal multiple [dwelling]"

- (1) **Full Knowledge of Allegations.** I respectfully submit that Petitioner's attorney knew full well that we had clearly contended that the building was illegal - both in the sense of not being registered as a Multiple Dwelling and in violation of the Certificate of Occupancy for the building. both from two of the Motions that we had filed and on the basis of several conversations that I had held with Petitioner's Attorney - one of which was in the presence and office of Court Attorney Meryl Strassner.

- (2) **Direct Questions on Illegal Building** I respectfully note that the tape recording of the July 5 hearing shows that the Honorable Judge went on to ask two direct questions of Petitioner's attorney:

*"One is: is it illegal in the sense of it being it being a two family house being used as three four or five? **And that is as bad as you can get.**" (emphasis added)*

"Second question: is it a multiple dwelling that is not registered as a multiple dwelling?"

- (3) **Evasive Answer of Attorney.** I respectfully note that Petitioner's attorney succeeded in avoiding the first question, responding to the second question as follows:

"At this point it we are not sure whether it was at the time."

- (a) **Full Knowledge of Status of Registration.** However, I contend that Petitioner's Attorney knew full well from our *Motion to Vacate* and *Motion to Rescind* and from several negotiations with me that the building had not been registered as a Multiple Dwelling since Petitioner purchased the building, and that it had not been registered until June 23 - after we had drawn attention to the absence of registration in our *Motion to Vacate* - served on June 17 - and our *Motion to Rescind* - served on June 22.

- (4) **Untruthful Response of Attorney.** Petitioner's attorney subsequently stated, in response to the Honorable Judge's question as to the prior registration:

"We are under the impression and are still under the impression that it was registered"

- (a) **Full Knowledge of the Truth.** Again, I respectfully submit that Petitioner's attorney knew full well that was not the truth.

- vi. **Judge's Annoyance at My Concern with the Rights of Tenants.** The Honorable Judge took vigorous exception to my insistence on our rights as tenants, stating angrily to me:

"You know how many tens of thousands of tenants I have represented in my whole life. Stop lecturing to me about the rights of tenants; I know the rights of tenants sir. I got to this position even though I only represented tenants, because I am supposed to be fair."

- (1) **Question as to Pro Se Representation.** I respectfully question, however, whether the Honorable Judge was ever in a position of representing himself in this Honorable Court as an indigent tenant on a *pro se* basis, without the benefit of formal legal training.
- (2) **Different Between Pro Se and Attorney.** I respectfully submit that to represent oneself on a *pro se* basis is to face a very different situation than when one represent tenants as an attorney - particularly in terms of access to knowledge of the rules, procedures and language of this Honorable Court.
- (3) **Reputation of Respondent.** I humbly submit that I have got to the positions that I occupy or have occupied - some of which are cited in our *Motion for Recognition* (para 3, pages 3-8) - as a result of a widely-held reputation at local, national and international levels that I have acquired for rigor in the compilation, organization,

management and presentation of information, as well as for my rigorous concern for and insistence on upholding due process in decision-making, and in upholding rights of access to information and the law.

- vii. **Prejudicial Prediction.** I also humbly submit that the Honorable Judge demonstrated that he had become prejudiced against my testimony by the following statement - made towards the end of the first occasion on July 5 when the case was being heard:

"And now I am going to predict. I know what is happening right now. She just said something. Watch. you are going to contradict your own wife. Because she just said everything is fine with the time, everything is fine with the money. Just give me four repairs. And instead of your saying ok, you are going to say something. What are you going to say? 'But, but, I think, er, under the United Nations Convention on Landlords they should have to do something else."

- (1) **Knowledge - or Interpretation.** I respectfully submit that the Honorable Judge did not "know" what was happening, but that he had arrived at an unwarranted and inadequately considered interpretation as to what was happening. Had the Honorable Judge taken the time to examine our Motions, he would have been aware that several of our key contentions had still not been addressed.
- (2) **Nature of Our Agreement.** I respectfully submit that my wife and I had been clear as to our agreement as to the contention of the importance of the issue of the lack of jurisdiction and of Petitioner's other illegal activities, and that I was being true to that agreement - and to my wife - in my unwillingness to accept an unjust settlement of the case.
- (3) **Basis in New York Law.** Furthermore, I respectfully note that our primary contentions - Petitioner's retaliatory refusal to renew Respondents' lease, the lack of Petitioner's right to use the Court deriving from Petitioner's failure to register the building as a Multiple Dwelling, Petitioner's illegal conversion of the ground floor units of the building into dwelling units, and Petitioner's failure to maintain a warrant of habitability - are all firmly grounded in laws of the State and/or City of New York.
- (4) **United Nations, Freshwater and Energy.** Secondly, I respectfully submit that had the Honorable Judge examined our Motions, he would have been aware that our introduction of the Agenda 21 agreement from the 1992 Earth Summit and the Habitat Agenda from the 1996 United Nations Conference on Human Settlements was principally in reference to the heating and hot water systems of the premises - systems that are exceptionally wasteful of finite freshwater and energy resources.
 - (a) **Commitment to Responsible Use of Earth's Resources.** I respectfully submit that for more than fourteen years, I have been led by a deep and abiding concern for the natural environment - including particular concerns for freshwater and energy - and for the adoption of practices and procedures that, *inter alia*, redress the wasteful and irresponsible use of the Earth's resources. In particular, I respectfully submit that for the past eleven years my concern for the natural environment - combined with a concern for justice and peace - through my, largely *pro bono*, work at the United Nations has been the primary commitment of my life.

- g. **Necessity to Vacate Stipulations of May 19 and July 5, 2000.** I respectfully submit that the two Stipulations of Settlement in this case are fatally defective, and that they must be vacated in order to enable a just and equitable resolution of this case.
- i. **Conditions of Signing Stipulation.** I respectfully submit that throughout the hearing on July 5, 2000, the Honorable Judge, and Petitioner's Attorney repeatedly made reference to Christine Fye having "willingly" signed the initial Stipulation of Settlement. However, I respectfully submit that no adequate opportunity was afforded to examine - from an impartial perspective - the conditions under which Christine Fye submitted to the Stipulation.
- ii. **Lack of Awareness that Petitioner had no Right.** In particular, I respectfully contend that no adequate opportunity was provided for consideration of the simple truth that the principal reason that Christine Fye felt any compulsion - at the insistence of Petitioner's attorney - to sign the Stipulation on May 19 was that she had not been aware that Petitioner had no legal right to seek redress in this Honorable Court - as a result of Petitioner's failure to register the building as a Multiple Dwelling Unit, and that she believed Petitioner's arguments that we would be unable to obtain satisfactory resolution from this Honorable Court of our complaints about Petitioner's actions.
- (1) **Signature Prior to Judgment.** I respectfully note that by the time Respondent Christine Fye did appear before the Honorable Judge on May 19, she had already been persuaded by Petitioner's attorney to sign the Stipulation.
- (2) **Unsound Practice.** I respectfully submit that the practice in this Honorable Court by which parties sign a Stipulation **before** the Honorable Judge reviews the Stipulation is an unsound practice, and places Respondents who have signed a Stipulation against their better judgment at a decided moral and psychological disadvantage.
- iii. **Right to Renew Lease.** I respectfully submit that we have not wanted to give up our right to maintain our tenancy of the apartment, indeed, we continue to insist that the precipitating issue in this case was Petitioner's illegal retaliatory refusal to renew our lease, and intend to insist on the renewal of our lease as part of a true and just settlement of this case.
- h. **Judge's Acknowledgment that Petitioner's Case Should Have Been Dismissed.** I respectfully note that the Honorable Judge clearly acknowledged the essential validity of our contention that Petitioner had no right to make use of this Honorable Court to pursue their claims when he stated:
- "If she had raised it [the lack of registration] at the time, clearly it would have to have been dismissed."*
- i. **Significance of Illegal Conversions.** Furthermore, the Honorable Judge also clearly acknowledged the significance of our contention that Petitioner has illegally converted the first floor store and garage into dwelling units in his statement that:
- "One is: is it illegal in the sense of it being it being a two family house being used as three four or five? **And that is as bad as you can get.**" (emphasis added)*
- (1) **Failure to Examine.** I respectfully note that the Honorable Judge had failed to examine our contention that the building was - and still is - being operated in violation of the Certificate of Occupancy

- (a) **Subsequent Determination of Illegal Conversions.** I respectfully submit that subsequent to the July 5 hearing an Inspector of the Environmental Control Board of the Department of Buildings of the City of New York determined - on July 27, 2000 - that occupancy of the building is in violation of the Certificate of Occupancy and a Hearing has been scheduled for September 11, 2000 (documentation attached).
- (2) **Worse Case Scenario.** I further respectfully submit that the presence of illegal conversions alone is not "*as bad as you can get*", in that it is surely significantly worse if Petitioner's illegal activity in respect of the Certificate of Occupancy has been compounded with a series of other illegal actions by Petitioner, including retaliatory refusal to renew Respondents' lease, failure to register the premises as a Multiple Dwelling, improper service, and gross failure to maintain a warrant of habitability.
- ii. **Inherently Invalid Agreement.** I respectfully contend that any stipulation entered into in the absence of the jurisdiction of the Court - and hence on the basis of improper use of the force of the Court - is inherently invalid as a contract or agreement and must be vacated if challenged.
- (1) **Not Willingness but Surrender to Illegal Force.** I respectfully submit that a stipulation entered into under such circumstances has clearly been entered into on the basis of false premises - and that a superficial appearance of willingness must properly be recognized for what it was, namely surrender to an illegal use of a force that one has not had the power, skill or knowledge to resist.
- (2) **Need for Decisive Case Law.** I respectfully submit that if there is not yet any case law that upholds this principle, the Honorable Judge now has the opportunity to correct such an absence of case law by issuing a clear decision to Vacate a Stipulation of Settlement in a case where the Petitioner has failed to register the building as a Multiple Dwelling.
5. **Request:** I request that the Court take the following actions to provide a lawful and just remedy in this proceeding:
- a. **Vacate Stipulations of Settlement:** For the reasons cited above, I respectfully request that the Honorable Judge vacate both Stipulations of Settlement in this case.
- b. **Dismiss Petitioner's Claims:** I also request that Petitioner's claims be dismissed, on the grounds that Petitioner had no right to use this Court to pursue his initial Petition.
- c. **Require Petitioner to Withdraw Refusal to Allow us to Renew our Lease:** I respectfully request that Petitioner be required to withdraw the retaliatory refusal to renew our lease
- d. **Require Petitioner to Establish and Maintain Warrant of Habitability:** Petitioner has still failed to establish a Warrant of Habitability, and to date has demonstrated a combination of indifference and - I respectfully submit - lack of competence to providing a Warrant of Habitability, and that the Judgment in this case require Petitioner to make good the failure to maintain a Warrant of Habitability.
- e. **Issue a Remedial and Punitive Judgment Against Petitioner:** I also respectfully request that the Honorable Judge issue a remedial and punitive judgment against Petitioner - in recognition of the substantial burden that Petitioner has created for us and in response to Petitioner's consistent pattern of illegal actions and indifference and disregard for the law -

and require that Petitioner repay us \$20,000 - a little less than the full amount of rent that we have paid since Petitioner purchased the building at the end of September 1997. Such a Judgment would give a clear message to Petitioner - and to other landlords - that the abuse of the force of the law and of this Court can not be tolerated.

- f. **Refer the Conduct of Petitioner's Attorney to Attorney Grievance Commission:** I also respectfully request that the Honorable Judge advise the Attorney Grievance Commission - or other such appropriate body - of the conduct of Petitioner's Attorney in this case.
- g. **Deny Petitioner's Request for Partial Rent Payment as Condition for Further Hearing:** I also respectfully request that the Honorable Judge deny the request made by Petitioner's Attorney - at the end of the hearing on August 25, 2000 - that partial payment of rent be required if we are to be allowed a further hearing. I respectfully submit that such a requirement would effectively pre-judge our contention that Petitioner had no right to submit the original Petition for Non-Payment, and that Petitioner's welfare would not be substantially affected by being required to wait until our contentions have been adequately addressed.
- h. **Initiate Remedies for the Court's Denial of Equal Protection Under the Law:** I also respectfully request that the Honorable Judge recognize the unequal protection that this Court provides to tenants - with particular attention to tenants who are unable to afford or obtain the services of an attorney - and initiate appropriate remedies, including, but not necessarily limited to:
 - i. **Provide for Adequate and Timely Notification to Respondent of Rights**
 - ii. **Establish and Make Available Clear, Consistent and Understandable Rules and Procedures**
 - iii. **Develop Improved and Corrected Forms**
 - iv. **Establishment of an Effective and Adequate Information System for this Court**
- i. **Provide for a Hearing that allows Adequate Time to Address the Full Issues and Facts of this Case:** I respectfully submit that that the lack of adequate time during the hearings - in the context of the burden of the caseload of the Honorable Judge and of the Court - has been a major factor in the Court's inability to do justice to the arguments and issues in this case, and respectfully request that the Court schedule a hearing at a time that will provide adequate opportunity for thorough consideration of the issues addressed in this affidavit.

Sworn to before me this 7th day of September 2000

Signature of Respondent

Signature of Court Employee and Title