

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

JOSEPH TEMPERATO,

A Justice of the Avon Village Court,
Livingston County.

**AGREED
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

IT IS HEREBY STIPULATED AND AGREED by and between

Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and
Honorable Joseph Temperato ("respondent"), who is represented in this proceeding by
Reid Whiting, Esq., that further proceedings are waived and that the Commission shall
make its determination upon the following facts, which shall constitute the entire
record in lieu of a hearing.

1. Respondent is not an attorney. He has been a Justice of the Avon
Village Court, Livingston County, since 2006. Respondent's current term expires on
March 31, 2014.

2. Respondent was served with a Formal Written Complaint dated
November 28, 2012. Respondent filed an Answer on December 28, 2012.

As to Charge I

3. *Pebble-Avon Associates v Lucy M. Rinaldi* was a 2012 summary eviction proceeding in respondent's court.

4. On January 16, 2012, Curtis R. Schultz of Schultz Properties, Inc., the agent for a landlord, Pebble-Avon Associates, served an undated Notice of Petition and an unverified Petition to Recover Real Property (Petition), upon Lucy M. Rinaldi, a tenant in one of Pebble-Avon's apartments in Avon, New York. The Notice of Petition was signed by Mr. Schultz and not by an attorney, a clerk of the court, or a judge, as required by Section 731 of the RPAPL. Mr. Schultz filed, on January 23, 2012, a verified Petition with the court. A copy of the Notice of Petition and Petition is attached as Exhibit 1. A copy of the Affidavit of Service is attached as Exhibit 2.

5. On January 16, 2012, Ms. Rinaldi signed a lease on a new apartment in Perry, New York. On January 17, 2012, Ms. Rinaldi vacated the apartment in Avon, leaving the door open, but taking her belongings.

6. On January 23, 2012, respondent issued a Warrant of Eviction and rendered a Judgment in the amount of \$1,040 against Ms. Rinaldi, without adequately reviewing the Notice of Petition and Petition and notwithstanding that the Notice of Petition failed to comply with RPAPL Section 731. A copy of the Warrant of Eviction, dated January 23, 2012, is attached as Exhibit 3. A copy of the Transcript of Judgment, dated March 27, 2012, is attached as Exhibit 4.

7. Ms. Rinaldi did not appear at the summary proceeding on January 23, 2012.

8. The Warrant of Eviction was never executed because Ms. Rinaldi had vacated the property.

9. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety in that he failed to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules.

As to Charge II

10. Respondent improperly rendered judgment against the tenant in *Pebble-Avon Associates v Lucy M. Rinaldi* on January 23, 2012, as indicated above, notwithstanding that he had been issued a Letter of Dismissal and Caution from the Commission dated December 13, 2011, *inter alia* for improperly rendering judgment against the tenant in *C. Thomas Moran v Robert and Raymond Fairbank*, without a Petition ever having been filed and without the requirements of RPAPL Section 731 having been met. The Letter of Dismissal and Caution is attached as Exhibit 5.

11. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety in that he failed to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

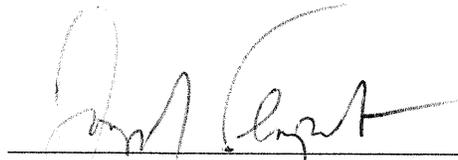
IT IS FURTHER STIPULATED AND AGREED that respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is a public Admonition based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Admonition without further submission of the parties, based solely upon this Agreed Statement. If

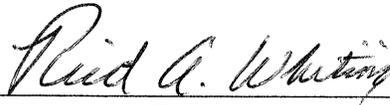
the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the respondent, or the Administrator and Counsel to the Commission.

Dated: 2/4/13



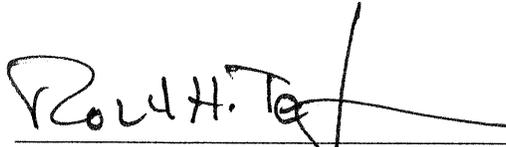
Honorable Joseph Temperato
Respondent

Dated: 2/4/13



Reid Whiting, Esq.

Dated: 2/12/2013



Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
(**Kathleen Martin**, Of Counsel)

Court

Avon Village Court

Livingston County

State of New York

Pebble -Avon Associates

14 Elm St.

Bloomfield, NY 14469

Petitioner(Landlord)

-vs-

**Notice of Petition to Recover
Real Property**

Lucy Rinaldi

3 Genesee St. #32

Avon, NY 14414

Respondent(Tenant)

To the Respondent(s) above named and described in possession of the premises hereafter described or claiming possession thereof: 3 Genesee St. Avon, NY 14414

Take Notice that hearing on the annexed petition to recover possession of the said premises will be held on the 23rd day of JANUARY, 2012 at 4 pm. before the above named court at 23 Genesee St. Avon, NY 14414

Take Further Notice that at the above time and place you may answer the petition either orally or in writing.

Take further notice that the demand is made in the petition herein for the judgment against you, the Respondent Tenant, for rent and late charges due for the amount of \$ 1020.00, together with legal fees and court costs in the sum of \$ 20.00.

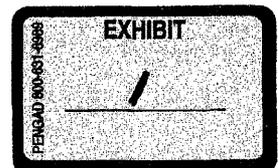
Take Further Notice that if you fail to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

Important to tenant- If you are dependent upon a person in the Military Service of the United States or of the State of New York, advise the court at the hearing, in order to protect your rights.

Dated:

1/12/2012

Schultz Properties Inc., Curtis R. Schultz
Agent for Pebble-Avon Associates
14 Elm St.
Bloomfield, NY 14469



Avon Village Court
County of Livingston State of New York

Pebble-Avon Associates
14 Elm St.
Bloomfield, NY 14469

Petitioner(Landlord)

-vs-

Petition to Recover
Possession of Real
Property - Non-Payment

Lucy Rinaldi
3 Genesee St. #32
Avon, NY 14414 Respondent(Tenant)

Petitioner, for Pebble Avon Associates, through it's manager, Curtis R. Schultz, respectfully alleges as follows:

1. The undersigned is the duly authorized agent of the petitioner, a domestic corporation.
2. The premises for which removal is sought is described as follows: said premises known as Pebble - Avon Associates, which premises is situated within the territorial jurisdiction of this court.
3. Respondents Lucy Rinaldi is/are the tenants of said premises who entered in possession thereof under written rental agreement made on or about 9/1/11 between respondents and the landlord for a term from month to month, wherein Respondents promised to pay to the Landlord as rent \$ 400.00 each month in advance on the 1st day of the month. A copy of the lease is attached hereto as "Exhibit A".
4. Respondent was served on 1/13/2012 with a Three (3) Day Notice to Pay rent or Vacate. A copy of the 3 day notice to pay rent or vacate is attached hereto as "Exhibit B"
5. Respondents remain in possession of said premises.
6. At the present time Respondents hold over and continue to be in possession of the premises without Landlord's permission after the termination of the lease and in violation of the Three day notice to pay rent or vacate.

7. That pursuant to the terms of the lease, the Respondents are indebted to the Petitioner herein for rent together with the late fees for 1020.00 as set forth in the rent roll attached hereto as "Exhibit C".

Wherefore, Petitioner requests that the final judgment be made awarding to the petitioner possession of the premises and that a warrant be issued to remove Respondent from possession of the premises; a judgment for rent and late fees against Respondent tenant for the sum of \$ 1020.00,
together with up to date fees in the amount of \$ 0.00,
and court fees in the amount of \$ 20.00,
Totaling \$ 1040.00.

Dated: _____

Yours, etc.
Curtis R. Schultz
Schultz Management Inc.
14 Elm St.
Bloomfield, NY 14469

State of New York, County of Livingston ss:

The undersigned

- Agent for Petitioner _____ of Petitioner (Petitioner is a corporation)
Being duly sworn states that deponent has read (heard) the petition.
 the contents of the petition are true to deponents own knowledge except as to those matters which are alleged on information and belief. As to them deponent believes them to be true.
 the information stated above is from the books and records of the Petitioner
 the material allegations are within the personal knowledge of deponent.

Curtis R. Schultz

Sworn to before me this
____ day of _____, 20____

Notary Public

Landlord: Pebble-Avon Assoc.

vs.

Lucy Rinaldi, tenant
3 Geneva ST #32
AVON NY 14414

**Affidavit of Service
of Notice of Petition
and Petition
under RPAPL Article 7**

State of New York
County of Livingston ss:

CHRISTIE SCHULTZ (server), being duly sworn, deposes and says: that deponent is over 18 years of age and resides at Livonia New York.

That on 1/16, 2012, at 4:30 am/pm, deponent served the within notice of petition and petition on Lucy Rinaldi (tenant) therein named, at 3 Geneva ST #32 AVON NY 14414.

1. () INDIVIDUAL by delivering a true copy of the notice of petition and petition to said tenant personally; deponent knew the person so served to be the person described as said defendant therein.

2. () SUITABLE AGE PERSON to _____ a person of suitable age and discretion. Said premises is tenant's actual place of abode within the state.

3. AFFIXING TO DOOR, etc. by affixing to the door of said premises- by placing under the entrance door of said premises a true copy of said notice of petition and petition which premises are the usual place of abode within the state.

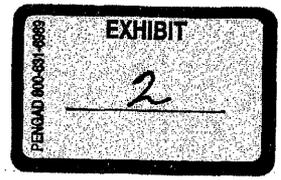
MAILING use with 2&3 Deponent also enclosed copies of the said notice of petition and petition in postpaid sealed wrappers properly addressed to the tenant at the premises at 3 Geneva ST #32 AVON NY 14414 and deposited said wrappers in a post office-official depository under the exclusive care and custody of the United States Postal Service with in the state of New York for delivery by both regular first class mail and by registered - certified mail on 1/17/2012, 2012.

() DESCRIPTION use with 1&2 Deponent describes the individual served as follows:
() Male () white skin () brown hair () white hair () 14-20 yrs () under 5' () under 100lbs
() Female () black skin () black hair () balding () 21-35 yrs () 5'- 5'6" () 100-130 lbs
() yellow skin () blond hair () beard () 36-50 yrs () 5'6"- 6' () 131-160 lbs
() brown skin () gray hair () mustache () 51-60yrs () 6' plus () 160-200lbs
() red hair () glasses () over 65 () over 200lbs
Other identifying features: _____

Sworn to before me on the 18 day of Jan, 2012
Kim A. Brewer
Notary Public

[Signature]
Signature
CHRISTIE R. SCHULTZ
Print name

KIM A. BREWER
Notary Public, State of New York
Ontario County Reg. #01BR6223158
Commission Expires 06/07/2014



Livonia Court
Livingston County State of New York

Pebble- Avon Associates
14 Elm St.
Bloomfield, NY 14469

Petitioner(Landlord)

-vs-

WARRANT OF EVICTION

Lucy Rinaldi
3 Genesee St. #32
Avon, NY 14414

Respondent(Tenant)

To the Sheriff of Livingston County:

Final judgment for petitioner having been rendered in the above entitled proceeding on January 23rd 2012, awarding to said petitioner the delivery of possession of the premises hereinafter described.

Therefore, you are hereby commanded to remove all persons from the following premises: 3 Genesee St. #32 Avon Livingston County, State of New York, 14414, and to put said petitioner in full possession thereof.

Dated: JANUARY 23, 2012

Signed: [Signature]

Hon: JOSEPH TEMPELARO
AVON VILLAGE Court Justice

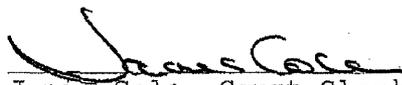


Transcript of Judgement

JUDGEMENT DEBTOR LUCY RINALDI 3 GENESEE STREET APT 32 AVON, NY 14414	JUDGEMENT CREDITOR PEBBLE-AVON ASSOC. 14 ELM STREET BLOOMFIELD, NY 14469
AMOUNT OF JUDGEMENT Damages: \$ 1040.00 Costs: \$ 0.00 Interest: \$ 0.00 Total: \$ 1040.00	JUDGEMENT RENDERED Hon. Joseph Temperato Avon Village Court County of Livingston State of New York Hearing: 01/23/2012 04:00PM Docketed: 01/23/2012 5:00PM
REMARKS	ATTORNEY FOR JUDGEMENT CREDITOR

I, Janis Cole, Court Clerk of the Avon Village Court, County of Livingston, hereby certify that the above is a true and correct TRANSCRIPT from the docket of judgments in my office. In testimony whereof, I have hereunto set my name and affixed my official seal.

Dated: March 27, 2012



 Janis Cole, Court Clerk

This is to certify that there are no pending income executions, or garnishee executions, outstanding in the above entitled action.

Dated: _____
 Judgment Creditor





NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

HON. THOMAS A. KLONICK, CHAIR
HON. TERRY JANE RUDERMAN, VICE CHAIR
HON. ROLANDO T. ACOSTA
JOSEPH W. BELLUCK
JOEL COHEN
RICHARD D. EMERY
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JEAN M. SAVANYU, CLERK

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NEW YORK, NEW YORK 10006

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TELEPHONE FACSIMILE
www.scjc.state.ny.us

ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

December 13, 2011

CONFIDENTIAL

Honorable Joseph Temperato
Avon Village Justice
Avon Village Court
23 Genesee Street
Avon, New York 14414-1048

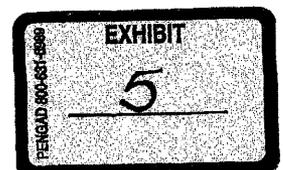
LETTER OF DISMISSAL AND CAUTION

Dear Judge Temperato:

The Commission on Judicial Conduct has completed its investigation of a complaint alleging that in presiding over the summary proceeding in *C. Thomas Moran v. Robert and Raymond Fairbank*, you (1) issued a judgment against the tenant and arranged his departure from the leasehold without a Petition ever having been filed and without the requirements of the Real Property Actions and Proceedings Law having been met and (2) were discourteous to the defendant/tenants' attorney. After considering your response to the allegations, the Commission has determined not to institute formal charges.

In accordance with Section 7000.3(c) of the Commission's Operating Procedures and Rules, the Commission has dismissed the complaint with this letter of dismissal and caution.

You are cautioned to adhere to Section 100.1 of the Rules Governing Judicial Conduct ("Rules"), which requires a judge to observe high standards of conduct so that the integrity and independence of the judiciary will be preserved; Section 100.2(A) of the Rules, which requires a judge to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and



impartiality of the judiciary; and Section 100.3(B)(1) of the Rules, which requires a judge to be faithful to the law and maintain professional competence in it.

You acknowledge that Section 731 of the Real Property Actions and Proceedings Law requires that an eviction proceeding be commenced by both a Petition and Notice of Petition. Your issuance of a judgment for the plaintiff in *Moran v. Fairbank*, and your arranging for the defendant/tenants' departure from the leasehold, even though you knew that a Petition had not been filed, were inconsistent with the above-cited law and Rules.

In accordance with the Commission's policy, you may either accept this letter of dismissal and caution or request a formal disciplinary hearing. If you choose to accept this letter of dismissal and caution, no further action will be taken. If you request a hearing, the Commission may authorize a Formal Written Complaint against you pursuant to Judiciary Law Section 44(4) and designate a referee to hear and report findings of fact and conclusions of law. If a hearing is held, the Commission may then decide to dismiss the complaint, issue a letter of caution to you, or file a determination pursuant to Judiciary Law Section 44(7) that you be publicly admonished, publicly censured, or removed from office.

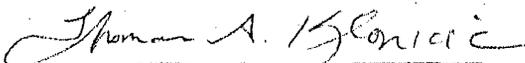
The letter of dismissal and caution is a confidential disposition of the current complaint but may be used in a future disciplinary proceeding pursuant to Section 7000.4 of the Commission's Operating Procedures and Rules (22 NYCRR §7000.4).

Please advise the Commission in writing no later than 10 days after your receipt of this letter if you choose not to accept this letter of dismissal and caution and wish to have a hearing on formal charges. If we do not hear from you requesting a formal hearing within 10 days, the letter shall be final.

A copy of the Commission's rules is enclosed for your information.

Very truly yours,

COMMISSION ON JUDICIAL CONDUCT

By: 

Honorable Thomas A. Klonick
Chair

Enclosure

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

RE: File No. 2011/R-0144