

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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

**DETERMINATION**

JOSEPH TEMPERATO,

a Justice of the Avon Village Court,  
Livingston County.

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THE COMMISSION:

Honorable Thomas A. Klonick, Chair  
Honorable Terry Jane Ruderman, Vice Chair  
Honorable Rolando T. Acosta  
Joseph W. Belluck, Esq.  
Joel Cohen, Esq.  
Jodie Corngold  
Richard D. Emery, Esq.  
Paul B. Harding, Esq.  
Nina M. Moore  
Richard A. Stoloff, Esq.  
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Kathleen Martin, Of Counsel) for the Commission  
  
Reid A. Whiting for the Respondent

The respondent, Joseph Temperato, a Justice of the Avon Village Court,  
Livingston County, was served with a Formal Written Complaint dated November 28,

2012, containing two charges. The Formal Written Complaint alleged that respondent issued a warrant and judgment in an eviction proceeding notwithstanding that the notice of petition did not comply with statutory requirements and notwithstanding that he had been cautioned a month earlier for issuing a judgment that was inconsistent with the same statute. Respondent filed a verified Answer dated December 28, 2012.

On February 12, 2013, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On March 14, 2013, the Commission accepted the Agreed Statement and made the following determination.

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

As to Charge I of the Formal Written Complaint:

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

3. 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 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 Real Property Actions and Proceedings Law (RPAPL). On January 23, 2012, Mr. Schultz filed a verified Petition with the court.

4. 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.

5. 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 the Petition and notwithstanding that the Notice of Petition failed to comply with RPAPL Section 731.

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

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

As to Charge II of the Formal Written Complaint:

8. 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.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3(B)(1) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

Only a month after being cautioned for rendering a judgment against a tenant without a petition having been filed as required by law, respondent issued a warrant of eviction and a money judgment against a tenant based on a notice of petition that failed to comply with the requirements of the same statute. Respondent’s conduct was inconsistent with the obligation of every judge to avoid impropriety and to “be faithful to the law and maintain professional competence in it” (Rules, §§100.2[A], 100.3[B][1]).

The issuance of an eviction warrant is a significant exercise of discretion which should have prompted respondent to give careful scrutiny to the documents presented to him in the *Rinaldi* case to ensure that they were valid. The fact that the tenant named in the warrant is facing the potential loss of his/her home places a special

burden on a judge to make sure that the statutory requirements are met. By imposing the requirement that the notice of petition be signed by either an attorney, a judge or a court clerk (RPAPL §731), the statute signals the importance of having such a document endorsed by an officer of the court or an impartial person, not an interested party. Had respondent carefully scrutinized the documents presented to him, he might have ascertained that the notice of petition was defective in that it had been signed by the landlord's agent.

While an isolated or inadvertent legal error might not ordinarily rise to the level of judicial misconduct, respondent's lapse in *Rinaldi* cannot be overlooked in view of his receipt of a cautionary letter, only a month earlier, for rendering a judgment which was inconsistent with the same statute. The Letter of Dismissal and Caution should have prompted respondent to review the statute and ensure that his handling of such matters in the future was in strict compliance with the statutory requirements. The Court of Appeals has held that ignoring a prior cautionary warning is an aggravating factor on the issue of sanctions (*see, e.g., Matter of Assini*, 94 NY2d 26, 30 [1999] ["Rather than scrupulously following the letter and spirit of the Commission's caution," the judge continued to engage in the prohibited conduct, which militated in favor of a strict sanction]).

By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

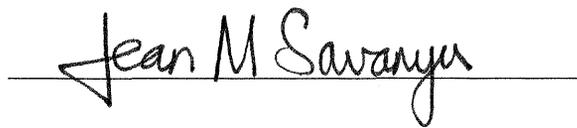
Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Ms. Moore, Mr. Stoloff and Judge Weinstein concur.

Mr. Belluck was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State  
Commission on Judicial Conduct.

Dated: March 20, 2013

A handwritten signature in black ink, reading "Jean M Savanyu", is written over a horizontal line. The signature is cursive and includes a stylized initial "J".

Jean M. Savanyu, Esq.  
Clerk of the Commission  
New York State  
Commission on Judicial Conduct