SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-001333-23

ALFRED PETROSSIAN, Appellant, v. BOROUGH OF RUTHERFORD and FRANK NUNZIATO, In His Official Capacity As Mayor, Respondents.	ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, BEREGEN COUNTY HON. DARREN DIBIASI, J.S.C., (Sat Below).

APPELLATE BRIEF
FOR
APPELLANT ALFRED PETROSSIAN

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APPENDICES SUPPORTING THIS APPEAL

There are four appendices supporting this appeal, separately bound and accordingly labeled as Appendix A to D.

Per Rule 2:5-4(a) every page in the appendices was a paper filed below (excluding the letter to Presiding Judge **(Pa135)**).

Electronic copy of the Appendices emailed to the appellate clerk bears the original file dated stamp for given page on the top of each page, however JEDS stamp is invisible on printed copies presented to the Appellate Division.

Document supplied via appendices are on e-Courts under Docket No. BER-C-172-23 (excluding the said letter to the PJ).

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Abbreviation	
The Mother	The appellant's mother.
The Application	The application filed by the appellant's mother with the respondents in 2019, upon which she requested form them to designate a reserved handicapped parking for her in front of her house.
NJMVC	New Jersey Motor Vehicle Commission
NJCRD	New Jersey Civil Rights Division.
HUD	U.S. Department of Housing and Urban Development.
DOJ	U.S. Department of Justice.
OPRA	Open Public Records Act.

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PRELIMINARY STATEMENT

Per Rule 2:5-4(a) this appeal is solely based on the papers filed below seeking review based on harmful errors, which (1) resulted in unjust results, *State v. Mohammed*, 226 N.J. 71, 87 (2016), and (2) undermined fairness, *State v. Weaver*, 219 N.J. 131, 15 (2014).

This appeal questions the tyranny manifested below, as evidence was overlooked (turned blind eye to) to deny disability accommodation urgently needed for a 92 years old, as the trial judge, demonstrably, made key decisions without hearing and or in advance of conducting hearing. The prose appellant admits that he was less than proficient below, but his personal faults and or shortcomings should not have satisfied the bar for the manifested tyranny resulted below from *With Prejudice* disposal of the appellant's case.

PROCEDURAL HISTORY

On August 25, 2023 the appellant filed *Verified Complaint* and *R. 4:52 Motion For Order To Show Cause With Temporary Restraints As To Why An Order Compelling The Respondents To Designate A Handicapped Parking Space In Front Of His House Should Not Be Entered* **(Pa84)**. On August 30, 2023 the trial court file dated the proof service, signed and stamped by the respondents **(Pa104)**. On August 30, 2023, without a hearing or opposition, the trail court issued an Order, (1) denying the appellant's *R. 4:52 Motion* and (2) Ordering the

respondents to file their opposition by September 20, 2023 **(Pa106)**. On September 20, 2023 the trial court called the appellant and telephonically Ordered him to serve additional documents upon the respondents, when the respondents were in default **(Pa108)**. On September 24, 2023 appellant filed a brief with the trial court about the apparent ethical issues in the representation of the respondents' attorney **(Pa72)**. On October 02, 2023 respondents filed *Motion To Dismiss* **(Pa137)**. On October 20, 2023 the trial court conducted a hearing, granting the respondents' Motion to Dismiss, disposing of the appellant's case *With Prejudice* **(Pa111)**. On November 07, 2023 the appellant filed *R. 4:49-2 Motion for Reconsideration* **(Pa218)**. On November 26, 2023 the appellant filed *R. 4:12-2 Motion for Recusal* **(Pa226)**. On December 15, 2023 the trial court conducted a hearing **(2T)** and issued two Orders, (1) the denying the appellant's *Motion for Reconsideration* **(Pa112)** and (2) denying his *Motion for Recusal* **(Pa114)**. On January 04, 2024 the respondents filed *Motion for Sanctions* **(Pa159)**. On January 25, 2024 appellant filed response and opposition to the *Motion for Sanctions* **(Pa192)**. On February 02, 2024 the trial court conducted a hearing, gagging the appellant from arguing on the record and the court went ahead and issued a written Order, denying the respondents' *Motion for Sanctions* **(Pa116)**.

STATEMENTS OF THE MATTER

Judgments, Orders, and or Rulings being appealed are tabled **(p. iii)**.

Per *Rule 2:6-1(a)* appellant annexes hereto his *Complaint*, incorporating by reference statements made therein as if fully set forth within **(Pa84)**.

I.
DESPOTISM UPON WHICH RESPONDENTS DENIED DISABILITY ACCOMMODATION TO THE APPELLANT'S 92 YEARS OLD DISABLED MOTHER, BECAUSE OF HIM.

On February 15, 2019 pursuant to *C. 39:4-197.6.* and *C. 39:4-197.5* the appellant's then 87 years old mother ("**the Mother**") filed an application with the respondents ("**the Application**") and requested from them to place a reserved handicapped parking space in front of her house **(Pa6)**.

The Mother filed the Application based on her needs and qualification as a NJMVC recognized disabled driver **(Pa1)**.

The Application was materially supported by two notarized affidavits, which articulated factual basis of why she needed the reserved handicapped parking space **(Pa14 – Pa15)**.

The Mother filed the Application as she co-owned her house with the appellant, who lived independently on the second level of the dwelling.

On March 25, 2019 respondents' investigator, *P.O. Anthony Bachmann*, investigated the Application and stipulated in his official report, "I would recommend the installation of a handicapped parking space" **(Pa18)**.

On August 05, 2019 the respondents' police chief Russo ("**Russo**"), acting within the scope of his employment under the respondents obstructed the implementation of the said recommendation, as he stipulated via email to the respondents (their clerk), "I have determined to deny Mr. Petrossian's request" **(Pa19)**.

The Application was by and for an 87 years old disabled female, but it was denied in such way by Russo, because of the applicant's son, the appellant?

This was done, when the respondents own public records showed that they had liberally approved about seventy (70) similar applications **(Pa60)**.

This apparent arbitrary and capricious (discriminatory) act by Russo was done, when he had long history of abuse of power against the appellant, including (1) taking him to mental hospital under false pretenses and *Under Color of State Law* after he had called police as a victim, (2) orchestrating entrapments *Under Color of State Law* against the appellant to criminally implicate him, (3) mailing him false non-moving summonses (all dismissed via due process), and (4) attributing to his false conviction, which was reverse and remanded by the Appellate Division (Docket No. A-1775-08T4) **(Pa87)**.

On December 14, 2020, the Mother sent notice via certified mail to the respondents and informed them about the said abuses of power and discrimination against her executed under their authority **(Pa82)**.

In support, the Mother sent to the respondents the January 21, 2021 certification by her physician, which showed the medical basis of her need and qualification for such reserved handicapped parking **(Pa4)**.

In response, on December 28, 2020 the respondents' attorney, Ian Doris of *Keenan and Doris LLC* ("**Doris**"), send a harassing letter to the Mother, stipulating the following **(Pa35)**:

> "Please be advised that if you pursue a claim in State Court seeking relief '-' the Borough will deem such an action frivolous as set forth above and for any other reasons that further review will determine and will seek all appropriate sanctions and remedies pursuant to Court Rule."

In lieu of educating the respondents on laws and proprietors, Doris was orchestrator and an actor, who used his privileges as a member of the Bar to dissuade the 92 years old disabled from seeking disability accommodation.

Respondents did not even officially notify the Mother for the denial of the Application, which their own *Chapter 126 Code* required **(Pa39)**.

Proofs / records cited above came by way of about forty (40) OPRA-requests by the appellant from the respondents, who systematically and selectively obstructed release of key records.

II.
OFFICIAL ADMISSION TO RESPONDANTS DISCRIMINATION AND ABUSE OF POWER.

The Mother filed discrimination complaints with (1) NJCRD and (2) HUD against the respondents.

In responding to the said HUD complaint filed against them, each and every of the respondents' Borough Council members (apparently 10) signed and conceded to provide the Mother the disability accommodation wrongly denied to her by the respondents **(Pa20)**.

III.
PROCEEDINGS BEFORE OR INVOLVING FEDERAL AND STATE AGENCIES.

On January 14, 20220 NJDCR commenced discrimination action against the respondents on behalf of the Mother **(Pa52).**

NJDCR was coerced to withdraw its action, as it was assured that the matter had federal jurisdiction and shall be handled by federal agencies.

On July 14, 2020, within its statutory 100-days under *Title VIII Fair Housing Act*, HUD completed its investigations and referred the case to the DOJ and HUD stipulated this referral in writing via letter to the parties **(Pa37)**.

HUD made this referral, because the Mother opt-out of the **HUD** "*Voluntary Conciliation*" during the said 100-days, as the Mother "elected" to proceed to court and have a judge or magistrate to decide her case.

The Mother so elected, because in lieu of a reserved parking space the respondents (Doris) were offering her to place a handicapped parking space for the general public "NEAR" her house, which would have served the disabled tenants of the large apartment complex situated two doors away from her house.

After receiving the said referral, the DOJ shelved the case for the next about three years until November 13, 2023, when DOJ issued a letter, now, telling that the jurisdiction of the matter has been with the state **(Pa54)**?

The DOJ issued this letter per appellant's request, after the trial court disposed of his case on October 20, 2023.

Appellant obtained this letter from the DOJ for the trial judge, before whom the appellant's *R. 4:49-2 Motion To Alter Amend Judgment* and *R. 4:12-2 Motion For Recusal* were pending.

This DOJ letter was intended to clarify material misunderstandings of the trial judge that (1) his court (the local courts) had jurisdiction over the matter and (2) the following statements certified to him by the respondents (Doris) via their October 02, 2023 *Motion To Dismiss* were misrepresentations:

> " this case is currently pending with HUD and there has been no final determination made by that department" **(Pa68 –Pa71)**.
>
> "As recent as September 26, 2023 our office confirmed the HUD matter is still open pending the agencies final findings" **(Pa71)**.

You see__ in granting the respondents' *Motion To Dismiss*, the trial judge had accepted the aforesaid statements toward controlling decisions, i.e., the trial judge had formed the belief that there was a genuine compromise at work on the matter under federal jurisdiction (HUD), which offered the appellant the same relief, which he was seeking from the trial court.

This belief by the trial judge defied the reality, since on October 02, 2023 when the aforesaid statements were certified to him, there was NO such compromise at work and further there was no legally viable prospect thereof under *Title VIII*.

The proof that factual misunderstanding of the trial judge impacted his controlling decisions come by way of the following:

(A) In disposing of the case, the trial judge stated the following, directing the appellant to go to HUD and "sign" the non-existing agreement:

> " THE COURT: Mr. Petrossian, do you want to sign it by virtue of your power of attorney? Then we can get the space. Get conformance, get the space right in front of your house" **(1T10, 14-17)**.

This material misunderstanding by the trial judge that viable and existing "conciliation" was at work at HUD was so rooted in his mind that he repeated the same, over and over throughout the trial, **(1T06, 11-16)**, **(1T07, 8-15)**, and **(1T11, 6-8)**.

(B) In disposing of the case, the trial judge stated the following that, SOMEHOW, he "knew" that the respondents had a good faith compromise at work on the matter and the appellant was refusing to accept it:

> THE COURT: "And, Mr. Doris, if you want to explain that to Mr. Petrossian, you're free to have the floor. I know you're trying to work out a compromise with him, but it doesn't seem that he's open minded at this time," **(1T12, 20 - 23)**.

This "knowledge" by the trial judge defied material existing facts and evidence, as it was solely based on his blind reliance on the aforesaid statements certified to him by Doris, without apparent *Duty of Candor*.

The trial judge had such firm factual belief, yet he took NO interest in learning what the terms of the alleged "compromise" was, less to use his authority to mediate the matter toward a just end.

The said knowledge by the trial judge, further, defied the HUD letter before him, which stipulated that HUD had referred the case to the DOJ in 2020, relinquishing direct involvement over the matter **(Pa37)**.

On November 30, 2023, in reaction to aforesaid revelation/clarification by the DOJ **(Pa54)**, HUD issued its letter and administratively closing its case, citing as grounds that "DOJ has notified HUD that no further action is warranted" **(Pa55)**.

On November 30, 2023 HUD issued a second letter and stated the following, telling that the *With Prejudice* disposal of the appellant's case below has made the Mother's federal discrimination case *res judicata* **(Pa57)**:

> " this case has been administratively closed based upon the legal doctrine of *res judicata* preclusion, [because] the Superior Court of New Jersey, Chancery Division – Bergen County, entitled Alfred Petrossian v. Borough of Rutherford and Frank Nunziato '-' On October 20, 2023, the Court issued its decision on the case."

In another word__ HUD viewed that in disposing of the appellant's case on October 20, 2023, the trial court had jurisdiction and did adjudicate the factual and legal merits of the Mother's discrimination case.

IV.

THE TRIAL COURT OVERLOOKED THAT THE APPELLANT HAD THREE SEPARATE MUTUALLY EXCLUSIVE CAUSES OF ACTIONS, STATUTE OF LIMITATIONS OF WHICH WAS NOT EXHAUSTED.

Appellant's complaint rested on the following causes of action ("CoA"):

CoA No.1: RESPONDENTS HAD IGNORED APPELLANT'S INDEPENDENT REQUEST FOR A HANDICAPPED PARKING SPACE AT HIS STREET FRONT.

Early in 2023 the appellant became the resident care provider for his Mother, who now at age 92 (1) could not walk without aids, (2) no longer operating a car, and (3) depended mainly on the appellant for transportation.

Appellant regularly had to find a vacant street parking space and have his mother walk with walking frame to and from such remote location, just to be able to access in and out of car, because (1) his driveway was too narrow (2) his house was two doors away from about 70 unit apartment complex, residents of which regularly used his street front parking space.

This posed eminent and undue risk of slipped and fell and bodily harm for the Mother, since she regularly had to do the same even in adverse weather.

Appellant was also a permanently disabled person **(Pa2)**.

In a nutshell__ in 2023 the absence of a reserved handicapped parking space manifested to harms and hardships upon the appellant.

The provisions of *C.39:4-197.6* and *C.39:4-197.5* entitled the appellant as (1) the resident care provider of his disabled mother and (2) a disabled person to seek a reserved handicapped parking space from the respondents.

As such, the appellant independently did the following:

A. Appalant independently obtained the June 29, 2023 physician certification from the Mother's physician for her **(Pa3)**, notwithstanding that he already had the January 19, 2021 physician certification attested to the same **(Pa4)**.

B. Appellant, *de novo* and independently submitted this newly obtained physician certification to the respondents, requesting from them to place a reserved handicapped parking space in front of his house **(Pa51)**.

C. In support, appellant annexed therewith his request selective pages from the Application, materially including the two notarized affidavits, which articulated the involved facts **(Pa41-Pa51)**.

The appellant commenced action, as the respondents ignored his said request for designation of a reserved handicapped parking space, just like they had ignored the Mother's Application.

CoA No.2: TO ENJOIN THE RESPONDENTS FROM STAGING ENTRAPMENTS AGAINST THE APPELLANT UNDER COLOR OF STATE LAW AND WITHOUT COURT ORDER.

During the about three years, from when the Application was filed by the Mother to the day the appellant's complaint was filed, respondents were leaving unmarked cars (decoy) parked in front of his house, sometimes for month(s), while they were conducting covert video recordings of his house and street front, 24/7.

These were entrapments by the respondents, Under Color of State Law and apparently without any court order, as the resolve of the respondents was to criminally implicate the appellant.

Through such entrapments the respondents were denying to appellant potentially available parking space in front of his house.

In another word__ by such orchestrated actions the respondents routinely were forcing the appellant to locate a remote street parking space and have his 92 years old mother walk with walking frame to and from such remote location, just to be able to access in and out of a car.

Respondents had ignored/obstructed the Application by the Mother, because granting disability accommodation to her would have jeopardized the respondents' entrapment schemes against the appellant.

These entrapments were ongoing when the appellant filed his complaint and after the trial court disposed of his case and denying him Discovery to secure evidence in his favor.

The appellant evidenced the said abuses of power by the respondents to the trial court and the respondents did not dispute his evidence, but argued that the statute of limitations for that particular evidentiary proof, was expired.

In disposing of his case, the trial judge stated the following, as he apparently accepted the said arguments by the respondents about expired statute of limitations **(1T23, 15-25)**:

> "Where the Court disagrees with the plaintiff is whether or not the statute of limitations in fact bars the causes of action presented in the plaintiff's complaint."

You see__ the respondents effectively had obstructed the appellant's OPRA access records, which could show the ongoing abuses of power by them.

Respondents had done this, by simply citing *N.J.S.A. 47:1A-3*, "ongoing criminal investigation" **(Pa29)** and or "confidentiality" **(Pa16)**, as response to the appellant's OPRA-requests for material public records.

By such scheme the respondents bought four (4) years' time with impunity, since statute for criminal investigation allowed them to hide records labeled criminal for four years, when the statute of limitation for the appellant to sue the respondents for their abuses of power was one or perhaps two years.

That shows why *Discovery* was critically needed below.

The proof presented below for the said abuses of power by the respondents was the fact that on July 12, 2019 respondents' detective Michael Garner (and sidekick) marched on the appellant's driveway (1) told him that he was being recorded by vest-cams, (2) disclosed to him all the aforesaid facts about entrapments, (3) showed him a portfolio of pictures of different 'decoys,' (4) pointed to him the cc-camera(s) hidden in the neighbor's tree recording his house and street front, and (5) subjected him to abuse and harassments.

The statute of limitations for this one act of entrapment perhaps was exhausted, but the same abuses of power and entrapments by the respondents

was continuing when the appellant filed his complaint and after the trial court disposed of his case *With Prejudice*.

The trail court denied the appellant *Discovery*, which was his only means to obtain evidence in his favor to prove that the said entrapments were ongoing regular occurrence, which was happening without court order and Under Color of State Law by the respondents.

By disposing of the appellant's CoA no. 2, the trial court essentially turned blind eye to the abuse of power by the respondents.

CoA No.3: TO RETRIEVE THE PUBLIC RECORDS, OPRA ACCESS TO WHICH RESPONDENTS HAD DENIED TO APPELLANT.

Appellant incorporates by reference facts told via his CoA No. 2 above as if fully set forth within.

Via his *Complaint* appellant pleaded for *Discovery*, as the respondents had obstructed his OPRA-access to public records, i.e., evidence in his favor.

These were not just the aforesaid evidence for ongoing entrapments, but also evidence of potential *libel* and *illegal search and seizure*:

Without the appellant's consent, upon apparent use of official powers the respondents had obtained the appellant's medical records or parts thereof and upon interpretation of his records as questionably educated laymen they had stigmatized the appellant as "delusional and crazy," officially defaming his reputation.

Evidence, prima facie, for the said was the police chief Russo's email of explanations to the respondents **(Pa17)**, upon which he apparently explained why he had disregarded the official recommendation **(Pa18),** in denying disability accommodation to the Mother, because of the appellant, stipulating "I have determined to deny Mr. Petrossian's request" **(Pa19)**.

This email was a material public record vital to the appellant's case, yet the respondents produced a fully redacted page in response to the appellant's OPRA-request **(Pa17)**.

It was Russo, who in his official capacity and upon false pretenses had taken the appellant to a mental hospital Under Color of State Law **(Pa87)**, yet in responding to the appellant's OPRA request for production of Russo's official reports and records, the respondents produced either fully redacted pages **(Pa16)** or cited confidentiality and refused to produce a document **(Pa83)**.

The said vanished key police and public records included (1) Russo's, (2) his accomplice partner Wilkinson's, and (3) his supervisor Lieutenant Moore, who came to the appellant's house the day after the incident and investigated the matter.

Discovery pleaded for via CoA no. 3 was eminently needed, since it was the only means for appellant to ascertain evidence in his favor.

ARGUMENT

Harmful errors below, which (1) resulted in unjust results, *State v. Mohammed*, 226 N.J. 71, 87 (2016), and (2) undermined fairness, *State v. Weaver*, 219 N.J. 131, 15 (2014), were the following:

(Point One)

THE TRIAL COURT ERRED AS IT DENIED R. 4:52 RELIEF TO APPELLANT, UNOPPOSED AND WITHOUT CONDUCTING HEARING

(Not raised below - Order (Pa106)).

Appellant motioned for injunctive relief via R. 4:52 for a reserved parking space in front of his house, because regularly he had no available parking space to accommodate transport needs of his disabled mother, as he rottenly had to locate a street parking and have his mother walk with walking frame to and from such remote location, just to access in and out of a car and that presented eminent risk of physical harm upon her due to slip and fell for the 92 year old, who relied on the appellant for transportation.

This urgent need for such reserve handicapped parking space was emerged for the appellant in 2023, when he became the resident care provider of his mother and sought the said relief from them **(Pa41)**.

There was no lucid reason why the Mother to endure such hardships and risks of physical harm, when *C.39:4-197.6* and *C.39:4-197.5* entitled her to

have a reserved handicapped parking space in front of her house, while also entitling the appellant as her care provider to seek the relief for her.

Further, the appellant himself was a disabled person entitled under the said laws in having a reserved handicapped parking space in front of his house.

On August 30, 2023 the trial court issued an Order and denied the sought *R. 4:52* relief, finding no need to conduct hearing or receive opposition papers from the respondents **(Pa106)**.

Appellant believes that in so doing the trial court erred.

(Point Two)

THE TRIAL COURT ERRED AS IT CIRCUMVENTED MEDIATION AND SHOWED NO INTEREST TO ARBITRATE

(Not raised below.)

Appellant incorporates by reference statements made through his point one as if fully set forth within.

In disposing of the appellant's case, the trial judge stated the following, stating that he knew that the respondents were attempting to work out a compromise with the appellant, but he was defiant **(1T12, 20-23)**:

> THE COURT: "Mr. Doris, '-' I know you're trying to work out a compromise with him, but it doesn't seem that he's open minded at this time."

The trial judge had such conviction and belief, yet he found no need to do any of the following:

a. To schedule the case for mediation (the mediation step was circumvented by the court's accord and initiative).

b. To take interest in learning what the terms of such alleged compromise was, less to use his power to arbitrate the matter.[1]

This Court may think that the trial judge's impression that the matter had federal jurisdiction prevented him from involvement, but that thinking shall be wrong, because the trial judge reminded unfazed after he was presented through reconsideration the DOJ's November 13, 2023 letter, which plainly stated that his court (local courts) had exclusive jurisdiction over the matter **(Pa54)**.

You see__ the aforesaid conviction by the trial judge about viable and pending HUD compromise at work, defied the July 14, 2020 HUD letter, which stated that **HUD** had referred the case to the **DOJ** back in 2020, relinquishing its involvement over the matter **(Pa37)**.

In a nutshell__ on October 20, 2023 when the trial judge granted the respondents' *Motion to Dismiss* (disposing of the appellant's case), contrary to

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[1] Papers filed by respondents in alleging the existence of such compromise were about 4 years old. These were the 2020 papers drafted by respondents and presented to HUD, in response to attempts by HUD to "conciliate" the matter during its 100 days time window under Title VIII. Yet the judge believed about ongoing comprise and terms thereof. Facts told via STATEMENTS §III.

his expressed belief, (1) there was no compromise at work and there was no legally viable prospect thereof by HUD under *Title VIII*, and (2) there was no evidence, less proof below showing the existence of such compromise, other than the misrepresentations certified by the respondents via the *Motion to Dismiss* **(Pa68- Pa71).**

This false factual conviction defying evidence by the trial judge can be reasonably extrapolated to his belief involving controlling decision that appellant's causes of actions were all frivolous and or had exhausted statute of limitations.

The apparent factual indifference by the trial judge appeared to stem from his rooted judicial philosophy, as the trial judge demonstrably showed pro police/authority bias against the appellant.

Appellant articulated below this factual indifference by the trial judge (1) to the trial judge via *Motion For Disqualification* **(Pa226)** and (2) to the Presiding Judge on apparent overlook of *Code of Judicial Conduct* by the trial judge **(Pa135).**

The said pro police bias shown by the trial judge against the appellant can be shown by the following:

a. Police chief Russo had stipulated "I have determined to deny Mr. Petrossian's request" **(Pa19),** in denying disability accommodation sought

by and for the appellant's 87 years old disabled mother based on her needs and qualifications.

b. In so doing, Russo had disregarded the recommendation by the respondents' own investigator, who had stipulated in his report "I would recommend the installation of a handicapped parking space" **(Pa18)**.

c. Russo had denied the Mother's application in such way, when the public records of respondents showed that he and respondents had liberally approved about seventy (70) similar applications **(Pa60)**.

Yet, the trial judge's findings of facts on the matter was the following **(1T19, 15-18)**:

> "chief of police denied this request in an e-mail dated August 5th , 2019, stating that the applicant had a significant driveway and that there was a handicapped parking space across the street."

In fact finding in such way, the trial judge overlooked (1) the picture before him, showing that there was NO significant driveway **(Pa5)** and (2) vivid statements in the appellant's complaint, which told that there was NO such handicapped parking space across the street **(Pa93, §G)**.

It appears that the trial judge held the view that it was reasonable for the 92 years old, who was unable to walk to hop across the county road (Park

Avenue) and traverse over 50 yards to access such non existing handicapped parking space, just to be able to access in and out of a car.

This factual indifference by the trial judge, suggests why the mediation and arbitration process were circumvented, altogether.

Appellant believes that by circumventing mediation and arbitration, altogether, the trial court erred.

(Point Three)

THE TRIAL COURT ERRED IN VIEWING THAT THE APPELLANT'S CAUSE OF ACTION WAS THE APPLICATION FILED BY HIS MOTHER WITH THE RESPONDENTS IN 2020

(Raised below through *Reconsideration*: 2T12; Pa221-Pa222; Pa203 –Pa205).

Appellant incorporates by reference statements made via his points one and two as if fully set forth within.

Appellant independently obtained the June 29, 2023 certification from the mother's physician **(Pa3)**, notwithstanding that he already had the January 19, 2021 physician certification **(Pa4)**, which attested to the same.

He did this upon the intent to make his cause of action de novo and independent, but he relied on the Application filed by the Mother, because it plainly painted the factual picture, upon which his first *Cause of Action* in seeking a reserved handicapped parking space was based.

Further, in submitting the said new physician certification to the respondents he independently requested from them to place a reserved handicapped parking at his street front **(Pa41-Pa51)**.

And, the respondents ignored his *de novo* request just like they ignored the Application by the Mother about four years before **(Pa6-Pa15)**.

As such, the appellant cause of action against the respondents for a reserved handicapped parking space was *de novo*, materially, his said *CoA* was NOT based on the Application filed by the Mother with the respondents.

Yet, in disposing of the appellant's case the trial court stated the following, holding the view that the Application filed by the Mother in 2019 was the cause of his action, statute of limitations for which was exhausted **(1T23, 15-25)**:

> "Where the Court disagrees with the plaintiff is whether or not the statute of limitations in fact bars the causes of action presented in the plaintiff's complaint."

Appellant believes that in so viewing the trial court materially erred.

(Point Four)

THE TRIAL COURT ERRED AS IT RELIED ON FALSE FACTS TOWARD MATTERS OF CONTROLLING DECISIONS.

(Raised below: (1T12, 20-23); via *Reconsideration*: (Pa226); (Pa218); (Pa192))

Appellant incorporates by reference statements made through his points one to three as if fully set forth within.

In granting respondents' *Motion To Dismiss*, the trial judge stated the following, expressing his belief that the respondents were trying to work out an out of court compromise on the matter with the appellant, but he was defiant:

> THE COURT: "Mr. Doris, '-' I know you're trying to work out a compromise with him, but it doesn't seem that he's open minded at this time," **(1T12, 20-23).**

This expressed belief by the trial judge defied evidence before him, as the following show:

a. The July 14, 2020 HUD-letter presented to the trial judge **(Pa37)** showed that in 2020, within its statutory 100 days under *Title VIII* HUD, after conducting the "voluntary conciliation," HUD referred the case to the DOJ, yet the trial judge somehow had the belief that after about four years the matter at HUD and a compromise was being worked out between parties.

b. The said belief by the trial judge, further, defied the letter by the DOJ **(Pa54)**, which told (1) trial court had ultimate jurisdiction over the matter and (2) the following material statements certified to the trial court via respondents' *Motion to Dismiss*, were material misrepresentations:

> "this case is currently pending with HUD and there has been no final determination made by that department" **(Pa68).**

> "As recent as September 26, 2023 our office confirmed the HUD matter is still open pending the agencies final findings"**(Pa70)**.

This shows that the trail judge had material misunderstanding of material existing facts toward matters of controlling decisions.

Appellant believes that in so doing the trial court erred.

(Point Five)

THE TRIAL COURT ERRED AS IT CHERRY PICKED FACTS TO SUPPORT ITS OPINION, SHOWING ITS BIAS AGAINST APPELLANT

((1T19,15-18); Raised below via *Reconsideration*: Pa226; Pa218; Pa192; 2T; *Letter to PG* (Pa135))

Appellant incorporates by reference statements made through his points one to four as if fully set forth within.

Undisputable proofs of *Discrimination* by and *Abuse of Power* by and or under the respondents against the appellant included the following:

a. Disability accommodation sought by and for the 78 years old Mother was denied under the authority of the respondents by their employee Russo, because of the appellant **(Pa19)**, against the recommendation of the investigator, who stipulated in his report "I would recommend the installation of a handicapped parking space" **(Pa18)**.

b. This was done, when the public records of respondents showed that they had liberally approved about seventy (**70**) similar applications **(Pa60)**.

c. Respondents Council members, unanimously and officially, had recognized the wrongfulness of the denial of disability accommodation by to the Mother **(Pa20)**.

Yet, the trial judge's findings of facts on the matter and the record to be reviewed above was the following **(1T19, 15-18)**:

> "chief of police denied this request in an e-mail dated August 5th , 2019, stating that the applicant had a significant driveway and that there was a handicapped parking space across the street."

This cherry picking of facts by the court was done in disregard of evidence and law, as the following explain:

a. Under state and federal laws a minimum width for accessible parking spaces for disabled person is eight feet with five feet aisle

b. Via his *Complaint* the appellant had materially told the trial court, "Plaintiff's driveway is about ten feet wide and is bound from two sides by tall concrete retaining walls, which prevent passenger side doors of car from opening to any such extend to accommodate a disabled person like the Mother," picture **(Pa85, ¶5)**, supporting the said with picture of his driveway **(Pa5)**.

c. Via his *Complaint* the appellant had informed the trial court that the handicapped parking space alluded by the trial judge in his opinion was removed, stipulating "this designated handicapped parking space magically vanished in or about August of 2023, after Plaintiff made clear to the Defendants that he shall seek court injunction against them" **(Pa93, §G)**.

d. Further, appellant supported pictures to the trial court, showing that the said handicapped parking space, when in place, was a regularly parking space for respondent Nunziato and other public officials **(Pa31 - Pa34)**.

Yet, in his findings of fact on the matter, the trial judge cited that (1) the appellant had significant driveway and (2) there was an available handicapped parking space across the street, viewing that it was reasonable for the 92 years old Mother unable to walk to hop across the street and traverse over 50 yards to access such NON existing handicapped parking space, when the provision of *C. 39:4-197.6.* and *C. 39:4-197.5* entitled her to have a reserved handicapped parking space in front of her house **(1T19, 15-18)**.

This cherry picking of facts by the trial judge shows his bias, which attributed to the unjust results, *State v. Mohammed*, 226 N.J. 71, 87 (2016), and undermined fairness, *State v. Weaver*, 219 N.J. 131, 15 (2014), below.

Appellant believes that in so doing the trial judge erred.

(Point Six)

THE TRIAL JUDGE ERRED AS HE SCHEDULED A HEARING, THE OUTCOME OF WHICH HE HAD AREADY DECIDED.

(Raised Below: (2T); (2T3, 22-25); (2T8, 19-24))

Appellant incorporates by reference statements made through points one to five as if fully set forth within.

On November 26, 2023 appellant motioned and sought consideration for recusal from the trial judge **(Pa226).**

Appellant sought this consideration, because the aforesaid made the appellant believed that he will be preclude from a fair and unbiased hearing and judgment in the pending *Motion To Alter Amend Judgment*.

Yet, the trial judge scheduled the hearings for (1) the motions *To Recuse* and (2) To *Alter Amend Judgment* together, showing that he had decided to deny the appellant's *Motion to Recuse* before hearing it.

The following pleadings done by the appellant reveal, prima facie:

> " Your Honor, I sought recusal. And the fact that you have scheduled two motions together for a hearing, it appears that you have already decided the recusal," **(2T3, 22-25).**
>
> " Your Honor, I have sought recusal and stay in separating these two cases, but it appears that the cases are adjoined. I respectfully object at that, and I seek these two cases to be separated. Can you grant me that? THE COURT: "I'm hearing both motions today," **(2T8, 19-24).**

In moot, the appellant pleaded below in length why it was unjust and unfair that the trial judge had already decided the *Motion For Recusal* before hearing it **(2T3-8)**. Please see the transcript.

Appellant believes that by deciding the appellant's motion, before hearing it the trial judge erred.

(Point Seven)

THE TRIAL JUDGE ERRED AS HE DENIED DISQUALIFICATION ASKED FROM HIM

(Raised Below: (2T3- 8); Pa226; Order (Pa114)).

Appellant incorporates by reference statements made via his points one to six as if fully set forth within.

Impartiality of a judge as a right to trial was guaranteed upon the appellant, not only by the *6th Amendment* in criminal proceedings, but as well by the *14th Amendment* and perhaps the *Due Process Clause* of the 5th Amendment in civil proceedings.

Appellant believes that the trial judge erred as he denied the disqualification asked from him.

(Point Eight)

THE TRIAL COURT ERRED AS IT UNDERMINED RULES OF CIVIL PROCEDURE

(Raised via brief (Pa108); not raised otherwise).

On August 30, 2023 the trail court file dated the proofs of the services for the appellant's complaint carried out upon each respondent, who officially signed and stamped acknowledging the service **(Pa104 – Pa105)**.

After file dating the proof of service for the said, the trail court issued an Order and give the respondents twenty (20) days to file their opposition to the appellant's complaint **(Pa106)**.

The trial court served this Order upon the parties, as the appellant received his copy via email and U.S. mail.

Respondents knowingly and purposefully chose to ignore the appellant's complaint, because their attorney, Doris, had advised them to do so.

Proof of this is the December 28, 2020 letter, which Doris sent to the Mother and the appellant, stipulating the following **(Pa35 – Pa36)**:

> "Please be advised that if you pursue a claim in State Court seeking relief '-' the Borough will deem such an action frivolous as set forth above and for any other reasons that further review will determine and will seek all appropriate sanctions and remedies pursuant to Court Rule."

As such, respondents knowingly and purposefully ignore the appellant's *Complaint*, as they were advised by their attorney to do so.

On September 20, 2023, respondents were in *Default*, when the trial court called the appellant (did not email, did not write, but telephonically issued the

order) and orally ORDERED him to serve additional document upon each respondent and upload proofs thereof to JEDS.

This was a court order and appellant complied and noted the said facts on the cover page of his compliance uploaded to JEDS **(Pa108 –Pa110).**

Appellant believes that in so doing the trial court undermined the *Rules of Civil Procedure* and erred.

(Point Nine)

THE TRIAL COURT ERRED AS IT TURNED BLIND EYE TO DUTY OF CANDOR

(Raised below via Brief (Pa72); not orally raised below).

Appellant incorporates by reference statements made via his points one to eight as if fully set forth within.

The respondents' attorney, Doris, had long history of ethically and legally questionable actions and or involvements against the appellant.

These ethically and legally questionable involvements were to such extent that he could be named as a party and as such he was no longer ethically riches to be able to merely represent the respondents.

Appellant articulated this to the trial court via format brief **(Pa72–Pa81),** through which he cited *United States of America v. Bruce Cutler*, 58 F.3d 825 (2d Cir.) 1995, in pleading with the trial court to bar Doris from representing the respondents in the matter.

In so doing the appellant told the following to the trial court **(Pa73)**:

> "Rooted involvements of Doris in the matter are so ethically and legally questionable that allowing him to continue to represent the Defendants in the matter undermines the interest of justice, see United States of America v. Bruce Cutler."

Please see the December 28, 2020 letter, which Doris had sent to the Mother to dissuade the 90 years old disabled from pursuing rightful disability accommodation **(Pa35 –Pa36)**.

Doris, who had ethical obligation in educating the respondents about legal proprieties, because of financial incentives had made himself an ethically compromised attorney and an instrument of oppression, blind of laws and his ethical obligations under Bar.

After finessing the case disposal below, Doris filed One Hundred Fifty Four (154) page *Motion For Sanctions* against the appellate for ten(s) of thousands of dollars in compensatory damages for having sought desperately needed disability accommodation for his 92 years old resident mother **(Pa159)**.

Please see the appellant's response to this *Motion* **(Pa192)**.[2]

[2] The trial court gaged the appellant at the haring of this *Motion*, preventing him from articulating in his defense the errors below, including the blind eye shown by the trial court for need to uphold Duty of Candor against respondents' attorney. The trail court went ahead and dismissed the motion.

The following show how the ethical shortcomings by Doris materially attributed to (1) unjust results, *State v. Mohammed*, 226 N.J. 71, 87 (2016), and (2) undermined fairness, *State v. Weaver*, 219 N.J. 131, 15 (2014), below:

a. In disposing of the appellant's case, the trial judge stated the following, expressing his belief that Doris was trying to work out a compromise on the matter, but the appellant was defiant **(1T12, 20-23)**:

> THE COURT: "Mr. Doris, '-' I know you're trying to work out a compromise with him, but it doesn't seem that he's open minded at this time."

b. This belief by the trial judge, apparently, was based on the misrepresentations certified to him by Doris via *Motion to Dismiss* **(Pa137)**, certifying the following statement as being true:

> "this case is currently pending with HUD and there has been no final determination made by that department," **(Pa68)**.
>
> "As recent as September 26, 2023 our office confirmed the HUD matter is still open pending the agencies final findings" **(Pa70)**.

c. Letters by HUD **(Pa37)**, DOJ **(Pa54)**, HUD **(Pa55)** prove that the said statements by Doris were material misrepresentations.

In a nutshell__ Doris attributed to misrepresentations of material existing facts used below toward matters of controlling decisions.

Appellant believed that the trial court erred as it turned blind eye to *Duty Of Candor*.

REASON THE CASE SHOULD BE REVERSED

Despotism by public officials undermines the sacrosanct fundamentals of justice and the appellant's pleadings below was for relief against such despotism by the respondents, but the trial court disposed of the appellant's case overlooking material evidence.

Appellate review of this case is in the public interest, since reversal and remand of this case shall send a signal below and to the public officials that the bar for rights and privileges of the unprivileged, the elderly , and the disabled remains *The Equal Protection Of The Laws*.

CONCLUSION

For all of the forgoing reasons, the case should be reversed and remanded.

Respectfully submitted,

Alfred Petrossian

Dated: August 27, 2024

ALFRED PETROSSIAN ***, Plaintiff-Appellant(s),*** v. BOROUGH OF RUTHERFORD and FRANK NUNZIATO, in his official capacity as Mayor ***, Defendant-Respondent(s).***	Superior Court of New Jersey APPELLATE DIVISION Appellate Division Docket No.: A-1333-23 Civil Action ON APPEAL FROM: Superior Court of New Jersey Chancery Division-Bergen County Docket No.: BER-C-172-23 SAT BELOW: Hon. Darren T. DiBiasi, J.S.C.

BRIEF of DEFENDANT-RESPONDENTS BOROUGH OF RUTHERFORD and FRANK NUNZIATO

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Date Submitted: September 30, 2024

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PRELIMINARY STATEMENT

This matter arises primarily out of an appeal by Plaintiff-Appellant, Alfred Petrossian (hereinafter "Plaintiff" or "Mr. Petrossian"), of the Trial Court's Order dismissing Plaintiffs' Complaint with prejudice for failure to state a claim upon which relief can be granted. Plaintiff is further appealing the Orders entered by the Trial Court denying his Motion for Reconsideration and Motion to Recuse.

In or about February 2019, Plaintiff's mother, Rozik Petrossian (hereinafter "Ms. Petrossian"), with the assistance of Plaintiff, submitted an application to Defendants, Borough of Rutherford and Mayor Frank Nunziato (hereinafter collectively "Rutherford" or "Borough"), seeking a designated handicap parking space in front of Ms. Petrossian residence located at 393 Park Avenue in Rutherford, New Jersey. Ms. Petrossian's application was denied, with incontrovertible evidence that notification was provided to Plaintiff, on or before August 5, 2019. The denial of Ms. Petrossian's application would spark years of threats of litigation, forum shopping complaints filed with various entities such as the United States Department of Housing and Urban Development, and (frivolous) litigation before the Superior Court of New Jersey.

Ultimately, Plaintiff's Verified Complaint and Order to Show Cause filed

with the Superior Court would be dismissed in their entirety with prejudice by the Court Below. The Trial Court factually determined that Plaintiff's causes of action were time barred by the applicable Statutes of Limitations. The date of accrual regarding legal action on the handicap parking application was determined to be on August 5, 2019, *i.e.*, the date of denial of Ms. Petrossian's handicap application. The date of accrual regarding legal action on Plaintiff's Open Public Records Act requests was determined to be in or about April and May 2021, *i.e.*, the respective dates of Rutherford's responses to Plaintiff's requests. Accordingly, Plaintiff's Verified Complaint and Order to Show Cause, filed on **August 25, 2023**, were excessively beyond the applicable Statutes of Limitations as determined by the Court Below and thus properly dismissed with prejudice as time barred.

Since Plaintiff was fully cognizant of his ability to file ***his own*** application for a handicap parking space designation the dismissal should have been the end of this matter. Instead, Plaintiff filed this utterly frivolous appeal seeking relief to which Plaintiff ***has already been provided*** by way of his ***approved*** handicap parking space application. Plaintiff is hellbent and willfully continuing litigation to which he knows the relief has already been provided. Plaintiff is not seeking justice, but rather seeking to inflict harm upon Rutherford for the illusory wrongs Plaintiff has concocted.

In the matter at bar, as set forth at length below, the Trial Court properly, appropriately, and based upon the respective applicable legal standards (1) dismissed this matter with prejudice; (2) denied Plaintiff's Motion for Reconsideration; and (3) denied Plaintiff's Motion to Recuse. Accordingly, this Court should AFFIRM the Court Below so as to finally bring to a close the Plaintiff's abusive use of the Courts and the courtesies extended to a *Pro Se* litigant in this vindictive, frivolous exercise of commencing and continuing litigation for improper purposes and an apparent intent to cause harm to the Borough.

PROCEDURAL HISTORY

On August 25, 2023, Plaintiff filed a Verified Complaint pursuant to Court Rule 4:52 improperly seeking an Order to Show Cause (hereinafter "OTSC") why the designation of a handicap parking space in front of 393 Park Avenue, Rutherford, New Jersey, *i.e.*, Ms. Petrossian's and Plaintiff's Residence, should not be ordered by the Court. (See Pa084-Pa099; see also Da001-Da002).

Plaintiff's Verified Complaint further appears to allege causes of action for (1) civil rights violation pursuant to 42 U.S.C. §1983 and the New Jersey Civil Rights Act; and (2) violations of the Open Public Records Act. (See Pa084-Pa099). Plaintiff's Verified Complaint is difficult at best to decipher; however,

these are the causes of action the Court Below was able to determine existed. (See generally 1T).

On August 30, 2023, the Court Below entered an amended OTSC, denying Plaintiff's request for temporary restraints and setting forth an initial return date. (See Pa106-Pa107).

On October 2, 2023, Rutherford filed a Motion to Dismiss pursuant to Court Rule 4:6-2(e) for failure to state a claim upon which relief can be granted. (See Pa137-Pa158 and Pa233-Pa300). On October 12, 2023, Plaintiff filed opposition to Rutherford's Motion to Dismiss. (Da012) On October 16, 2023, Rutherford filed a reply to Plaintiff's opposition and in further support of Rutherford's Motion to Dismiss.

On October 20, 2023, the Court Below entered an Order dismissing Plaintiff's Verified Complaint with prejudice for the reasons set forth on the record. (See Pa111; see also 1T).

On or about November 6, 2023, Plaintiff filed a Motion for Reconsideration. (See Pa218-Pa225). On November 21, 2023, Rutherford filed opposition to Plaintiff's Motion for Reconsideration. (See Da020-Da023).

On November 26, 2023, Plaintiff filed a Motion seeking Judge DiBiasi recuse himself from the proceedings below. (See Pa226-Pa232). On November

29, 2023, Rutherford filed opposition to Plaintiff's Motion seeking recusal of Judge DiBiasi. (See Da024-Da027).

On December 7, 2023, Plaintiff filed a reply in further support of his Motion for Reconsideration. (See Da028-Da033).

On December 15, 2023, the Court Below entered two (2) Orders: the first denying Plaintiff's Motion for Reconsideration (see Pa112-Pa113) and the second denying Plaintiff's Motion to Recuse (see Pa114-Pa115). The Court Below set forth its reasoning on the record. (See generally 2T).

On January 4, 2024, Rutherford filed a Motion for Sanctions against Plaintiff for the pursuit of this frivolous litigation. (See Pa159-Pa191). On January 25, 2024, Plaintiff filed opposition to Rutherford's Motion for Sanctions. (See Pa192-Pa217). On January 29, 2024, Rutherford filed a reply in further support of its Motion for Sanctions.

On February 2, 2024, the Court Below denied Rutherford's Motion for Sanctions. (Pa116).

This appeal followed.

STATEMENT OF FACTS

On or about February 15, 2019, Rozik Petrossian, mother of the Plaintiff, and, upon information and belief, with the assistance of Plaintiff Alfred

Petrossian, filed an application with Rutherford seeking a reserved handicap parking space at 393 Park Avenue, Rutherford, NJ 07070. (See Pa006-Pa015).

On or about **August 1, 2019**, Plaintiff **was informed** that the February 2019 Application was denied. (See Pa087; see also Da011 and Da015). Accordingly, this is the date of accrual, and thus the two (2) year Statute of Limitations began to run on any legal action regarding same.

On or about **August 5, 2019**, Plaintiff was provided with specific reasoning for the denial including that Plaintiff possessed a "significant driveway" in which to park a vehicle. (See Pa019; Pa052; Pa194; Pa240; Pa242; Pa268; Pa27; Pa282; see also Da015). The denial of Ms. Petrossian's application would ultimately spark years of, in Rutherford's opinion, frivolous litigation before the United States Department of Housing and Urban Development (hereinafter "HUD") and then the New Jersey Superior Court by Plaintiff culminating in this Appeal.

Utilizing either date – August 1 or August 5, 2019 – as the date of accrual means that Plaintiff was required to file a Complaint with the Superior Court on or before August 5, 2021 to be within the applicable Statute of Limitations. That did no occur. (See Pa084-Pa099; see also Da001-Da002).

In or about January 2020, Rozik Petrossian, filed a complaint with HUD alleging improper denial of a reasonable accommodation, *i.e.*, a handicap parking space, by the Borough. (See Pa279-Pa283).

On or about February 7, 2020, Rutherford, under the auspices of the HUD Conciliation Process, was willing to provide Rozik Petrossian with a handicap designated parking area at the nearest available location to 393 Park Avenue. (See Da037-Da046). This area is located at 389 Park Avenue and is literally (when viewed from Park Avenue) the next property over to the right. (See Da035). Therefore, the requested handicap parking space would have been at most a ***de minimis*** distance, if not exactly the same distance, to the left instead of the right when coming from Ms. Petrossian's front door.

This litigation could have resolved amicably ***over four (4) years ago*** in or about February 2020 had Plaintiff simply been willing to, upon information and belief, *allow* his mother to sign the Conciliation Agreement or to sign it himself as his mother's power of attorney. (See Da057-Da060; see also Da037-Da046). However, Plaintiff simply appears entirely unwilling to compromise and wanted nothing more than to extract a pound of flesh instead of providing his own mother with the handicap parking space at that time. (See generally Da020-Da027)

In or about March 2021, Plaintiff filed multiple Open Public Records Act requests seeking various documents from Rutherford. (See Pa092; see also Pa029, Pa083, Pa093 and Pa133).

Responses to these requests where respectively provided to Plaintiff on **March 10, 2021** (see Pa029, Pa083 and Pa093) and **March 29, 2021** (see Pa133). Accordingly, if Plaintiff was unsatisfied with these responses, the time in which to file a Complaint in the Superior Court was 45-days from either March 10 or March 29, 2021 respectively.

To file a Complaint with the Superior Court for the March 10, 2021 Open Public Records Act response, Plaintiff was required to file **on or before April 26, 2021**.

To file a Complaint with the Superior Court for the March 29, 2021 Open Public Records Act response, Plaintiff was required to file **on or before May 13, 2021**.

Years later, on **August 25, 2023**, instead of signing the Conciliation Agreement which languished for over three (3) years at that point and, more importantly, *was over two (2) beyond the applicable Statutes of Limitations*, Plaintiff under his own name (although based upon the application of his mother) filed an Order to Show Cause and Verified Complaint in the Chancery

Division seeking to overturn the denial by Rutherford. (See Pa084-Pa099; see also Da001-Da002).

Rutherford ultimately moved to have Plaintiff's Complaint dismissed with prejudice as time barred per the applicable Statutes of Limitations. An Order was entered by the Trial Court to that effect on October 20, 2023. (See Pa111).

On or about February 5, 2024, subsequent to filing this Appeal, Plaintiff filed his own handicap parking space application in his own name, albeit again relying upon the same facts and circumstances related to Ms. Petrossian's 2019 Application. (See Da047-Da054).

On or about March 11, 2024, Plaintiff's application was granted thereby designating a handicap parking space as close as practicable to 393 Park Avenue. (See DaDa055-Da056). This is exactly the same designated area, *i.e.*, relief, Mr. Petrossian could have had years ago if he had simply signed the Conciliation Agreement as power of attorney for his mother and/or if Ms. Petrossian had signed the agreement herself. (Compare Da055-Da056 with Da036-Da046).

Since the basis for Plaintiff's Verified Complaint no longer exists, *i.e.*, the relief sought thereunder for a Court ordered handicap parking area, and such area has now been so designated by the Borough, Plaintiff's Appeal is moot. (See Pa084-Pa099; see also Da055-Da056).

LEGAL ARGUMENT

I. STANDARDS OF REVIEW.

A. Standard of Review for a Motion to Dismiss.

Motions pursuant to Court Rule 4:6-2(e) for failure to state a claim upon which relief can be granted are reviewed *de novo*. See, e.g., Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019)). "A reviewing court must examine 'the **legal sufficiency of the facts alleged** on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.' Id. (citing Dimitrakopoulos, 237 N.J. at 107 (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989))) (emphasis added). "The complaint must be searched thoroughly 'and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.'" Id. (citing Printing Mart, 116 N.J. at 746 (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957))). "**Nonetheless, if the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action *should* be dismissed.**" Id. (quoting Dimitrakopoulos, 237 N.J. at 107) (emphasis added).

While "dismissals under *Rule* 4:6-2(e) are ordinarily without prejudice…a **dismissal with prejudice is 'mandated** where the factual allegations are

palpably insufficient to support a claim upon which relief can be granted,' [] or if 'discovery will not give rise to such a claim[.]' See Mac Property Group LLC & The Cake Boutique LLC v. Selective Fire and Cas. Ins. Co., 473 N.J. Super. 1, 17 (App. Div. 2022) (quoting Rieder v. State, 221 N.J. Super. 547, 552 (App. Div. 1987) and Dimitrakopoulos 237 N.J. at 107)) (emphasis added).

B. Standard of Review for a Motion for Reconsideration.

Motions for reconsideration pursuant to Court Rule 4:49-2 are reviewed for an abuse of discretion. See, e.g., Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). "An abuse of discretion arises when a decision is made without [(1)] a rational explanation, [(2)] inexplicably departed from established policies, or [(3)] rested on an impermissible basis." See, e.g., Kornbleuth v. Westover, 241 N.J. Super. 289, 301 (App. Div. 2020) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 261, 571 (2002)) (internal quotations omitted); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2022).

C. Standard of Review for a Motion to Recuse.

Motions for recusal are "entrusted to the sound discretion of the judge and are subject to review for abuse of discretion." See State v. McCabe, 201 N.J. 34, 45 (2010) (citing Panitch v. Panitch, 339 N.J. Super. 63, 66 (App. Div. 2001)).

II. THE COURT BELOW DID NOT ERR BY DETERMINING PLAINTIFF'S COMPLAINT WAS TIME BARRED BASED UPON THE APPLICABLE STATUTES OF LIMITATIONS. (1T11-1T12)

On August 25, 2023, Plaintiff filed with the Chancery Division, Bergen County, a meandering, invective of allegations of wrongdoing against the Borough in the form of a Verified Complaint and OTSC. It is difficult to discern from the Plaintiff's Complaint exactly what the causes of action are, however, it appears that they are (A) for alleged civil rights violations pursuant to 42 U.S.C. §1983 and/or the New Jersey Civil Rights Act, N.J.S.A. 10:6-1, *et seq*; and (B) related to the Open Public Records Act. Each are separately addressed below, however, in sum Plaintiff was time barred from bringing these claims as they were filed **more than two (2) years *beyond*** the applicable Statutes of Limitations.

A. Plaintiff's Claims Pursuant to 42 U.S.C. § 1983 and/or the New Jersey Civil Rights Act are Time Barred by the Statute of Limitations.

"Federal law determines when a § 1983 cause of action accrues. A cause of action under that statute accrues when the plaintiff **knows or should know that his or her constitutional rights have been violated.**" 3805 Kennedy Realty Co. v. Tax Assessor of the City of Jersey City, 287 N.J. Super. 318, 323 (App. Div. 1996) (citations omitted) (internal quotations removed) (emphasis added). Therefore, our Appellate Division, citing to the Supreme Court of the

United States, held that "[e]very § 1983 claim is subject to the statute of limitations applicable to personal injury claims in the state where the cause of action arose." Heyert v. Taddese, 431 N.J. Super. 388, 435 (App. Div. 2013) (citing Wilson v. Garcia, 471 U.S. 261, 266-267 (1985)); see also Cito v. Bridgewater Twp. Police Dep't, 892 F.2d 23, 25 (3d. Cir. 1989). "In New Jersey, that statute is *N.J.S.A.* 2A:14-2, which requires that a suit for personal injury be commenced **within two years from the accrual of the cause of action.**" Heyert at 435 (citing 3805 Kennedy Realty Co., 287 N.J. Super. at 323 (citing Cito, 892 F.2d at 25))) (italics in original) (emphasis added). Accordingly, Plaintiff had two (2) years from when he knew or should have known that a violation of his Constitutional rights occurred to file a Complaint. That did not happen in this instance matter.

Plaintiff ***admits*** that an application for a handicap parking space was filed with the Borough on or about February 19, 2019. (See Pb3; see also Pa006-Pa015). Plaintiff further ***admits*** that on or before August 5, 2019 Chief of Police Russo denied Plaintiff's handicap parking space application. (See Pb4; see also Pa019; Pa052; Pa194; Pa240; Pa242; Pa268; Pa27; Pa282). In fact, in the Complaint Plaintiff admits:

> On August 01, 2019 the Borough's Clerk, Margaret Scanlon ("Scanlon"), responding to Plaintiff's inquiry on th e [sic] matter emailed him, "per the chief of police this request is denied," (080a), while refusing to mail a letter of denial thereof.

(Pa087 (underline in original); see also Da011). Therefore, the indisputable date of accrual, and *notice* of same, was the denial of Plaintiff's application, which occurred on or prior to August 5, 2019. Thus, Plaintiff had until August 5, 2021 to file a Complaint alleging deprivation of his civil rights. Plaintiff **did not** file his Complaint until **August 25, 2023**, over two (2) years *after* the expiration of the Statute of Limitations. Accordingly, Plaintiff's claims pursuant to 42 U.S.C. § 1983 were properly dismissed with prejudice by the Court Below as time barred.

Similarly, the Statute of Limitations for claims made pursuant to the New Jersey Civil Rights Act is two (2) years. See, e.g., Smith v. Datla, 451 N.J. Super. 82, 99 (App. Div. 2017) ("We find that claims…brought under LAD, NJCRA, and Section 1983…are subject to a two-year statute of limitations."). This comports with New Jersey law which states in pertinent part:

> …every action at law for an **injury to the person** caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years next after the cause of any such action shall have accrued…

N.J.S.A. 2A:14-2(a) (emphasis added); see also N.J.S.A. 10:6-2(a) ("If a person…subjects or causes to be subjected any other person…"). Accordingly, since the New Jersey Civil Rights Act has a two (2) year Statute of Limitations Plaintiff was again required to file his Complaint on or before August 5, 2021.

Plaintiff failed to do so and thus his Complaint was properly dismissed by the Court Below as time barred.

B. Plaintiff's Claims Pursuant to the Open Public Records Act are Time Barred by the Statute of Limitations.

In the seminal case Mason v. City of Hoboken, 195 N.J. 51 (2008), our Supreme Court set forth the Statute of Limitations for actions pursuant to the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1, *et seq*. The Mason Court held that:

> [R]equestors who choose to file an action in Superior Court to challenge the decision of an OPRA custodian **must do so within 45 days**.

Mason at 70 (emphasis added); see also N.J.S.A. 47:1A-6 ("A person who is denied access to a government record by the custodian of the record, at the option of the requestor who is accurately identified by name, may, **within 45 days of the date of denial**...") (emphasis added).

The OPRA Requests at issue in this appeal are for requests made by Plaintiff in or about March 2021. (See Pb14). Plaintiff received multiple correspondence responsive to his OPRA Requests from the Borough dated March 10, 2021 (Pa029; Pa83; see also Pa093) and March 29, 2021 (Pa133). Accordingly, Plaintiff was required to file a Complaint with the Law Division on or before April 24, 2021 and/or May 13, 2021, respectively. Plaintiff filed his complaint on August 25, 2023, well over two (2) years after the expiration

of the Statute of Limitations. Accordingly, Plaintiff's Complaint was properly dismissed by the Court Below as time barred.

III. THE COURT BELOW DID NOT ERR BY DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION. (2T21)

Plaintiff brought his Motion for Reconsideration pursuant to R. 4:49-2 which states in pertinent part:

> The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or as to which it has erred…

R. 4:49-2. Thus, reconsideration "is a matter to be exercised in the trial court's sound discretion." See, e.g., Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) (citation omitted). Our Supreme Court has described a Motion for Reconsideration as an opportunity for the party seeking reconsideration to convince the Court that:

> 1) it has expressed its decision based upon a palpably incorrect or irrational basis, or
>
> 2) it is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence.

See Kornbleuth, 241 N.J. at 301 (2020) (quoting Guido v. Duane Morris LLC, 22 N.J. 79, 87-88 (2010)). However, "[a] litigant **should not** seek reconsideration merely because of dissatisfaction with a decision of the [c]ourt." Asterbadi at 310 (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div.

1990)) (emphasis added); see also Guido at 87-88. The Asterbadi Court stated that:

> Reconsideration should be utilized **only for those cases** . . . that fall within that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.

Asterbati at 310 (emphasis added). Plaintiff, in his Motion papers, proffered none of the required "palpably incorrect or irrational" basis/es or evidentiary oversights necessary to convince the Court Below of a need to reconsider the prior determination. Plaintiff simply disagreed with the Court Below and sought another opportunity to reassert his prior "evidence" and arguments.

In fact, Plaintiff even admits that the basis for his entire Complaint is the Application filed on February 15, 2019. (See Pa221 ("It is true that Plaintiff's relies on the Application in support of his Complaint[.]"); see also Pb22). Therefore, Plaintiff himself has admitted to the basis upon which the Court Below made its determination, *i.e.*, the denial of the 2019 application was the date of accrual and the starting point for the running of the applicable Statute of Limitations. (See 1T23:9-25 and 1T24:1-13). Thus, the Court Below need not consider any other irrelevant evidence and no new evidence was provided.

Plaintiff ***did not*** present one single iota of new or overlooked evidence to the Court Below because there is no such evidence. Plaintiff further ***did not***

assert that the Court Below was incorrect in its determination that (or that same was irrationally based upon) the simple fact that the applicable Statutes of Limitations had run and Plaintiff's Complaint was time barred. Instead, Plaintiff sought an additional bite at the apple and reasserted the exact same legal arguments and evidence already presented to the Court Below in opposition to the Borough's Motion to Dismiss. Therefore, having reviewed the submissions, the Court Below tersely held that "[t]he Court does find that it did not base its October 20th decision upon an incorrect basis and that the Court did not fail to consider the significance of probative evidence. It stands by its decision." (See 2T22:10-14).

In fact, Plaintiff was so dissatisfied with the Court Below's correct decision that Plaintiff's Complaint was time barred, Plaintiff sought to have Judge DiBiasi recuse himself in addition to seeking reconsideration of the Court's Order dated October 20, 2023. (See infra Point IV). Plaintiff then, as he is doing now, sought to reargue his entire case by presenting the exact same (irrelevant) evidence to the Court, while refusing to even address the basis for the Borough's Motion, *i.e.*, the simple fact that Plaintiff's Complaint was filed years *beyond* the applicable Statutes of Limitations.

Accordingly, the decision of the Court Below regarding the Plaintiff's Motion for Reconsideration is palpably *correct*; rests on a *rational* basis; and

the Court Below *considered* and *appreciated* the significance of probative, competent evidence prior to rendering a decision to dismiss Plaintiff's Complaint with prejudice. Therefore, the Court Below's determination regarding denial of reconsideration should be AFFIRMED.

IV. THE COURT BELOW DID NOT ERR BY DENYING PLAINTIFF'S MOTION TO DISQAULIFY JUDGE DIBIASI. (2T20)

Plaintiff brought his Motion for Recusal pursuant to the Court Rules which allow for any party, by way of Motion, to set forth their reasons why the sitting Judge is disqualified and should therefore recuse themself. See R. 1:12-2. Specifically, Plaintiff brought his Motion alleging that Judge DiBiasi was disqualified by the causes set forth in R. 1:12-1(e) and (g) which are set forth in pertinent part as follows:

> The judge of any court shall be disqualified on the court's own motion and shall not sit in any matter, if the judge
>
> ...
>
> (e) is interested in the event of the action;
>
> ...
>
> (g) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so.
>
> Paragraphs (c), (d) and (e) **shall not prevent a judge from sitting because of having** given an opinion in another action in which the same matter in controversy came in question or **given an opinion on any question in controversy in the pending action in the course of previous proceedings therein,** or because the board of chosen freeholders of a county or the municipality in which the

> judge resides or is liable to be taxed are or may be parties to the record or otherwise interested.

See R. 1:12-1 (emphasis added). While "judges must avoid acting in a biased way or in a manner that may be *perceived* as partial", DeNike v. Cupo, 195 N.J. 502, 514 (2008) (italics in original), "[i]t is **improper** for a judge to withdraw from a case upon a mere suggestion that he is disqualified 'unless the alleged cause of recusal is known by him to exist or is shown to be true in fact'", Panitch, 339 N.J. Super. at 66-67 (quoting Hundred East Credit Corp., v. Eric Schuster, 212 N.J. Super. 350, 358 (App. Div. 1986), cert. denied 107 N.J. 60 (1986)) (emphasis added). In this instant matter, to put it simply, Plaintiff was incensed because the Court Below dismissed his Complaint and then Plaintiff improperly asserted entirely unfounded, nonexistent, and untrue allegations against Judge DiBiasi.

Our Supreme Court, interpreting R. 1:12-1(g) (formerly R. 1:12-1(f)), has set forth the standard as follows: "Would a reasonable, fully informed person have doubts about the judge's impartiality?" See DeNike, 195 N.J. at 517. "However, before the court may be disqualified on the ground of an appearance of bias, the belief that the proceedings were unfair must be objectively reasonable." State v. Presley, 436 N.J. Super. 440, 448 (App. Div. 2014) (quoting State v. Marshall, 148 N.J. 89, 279 (1997)). Thus, the standard is objective reasonableness and not matters of appearance.

The Court Below, in a well-reasoned oral opinion on the record, set forth the "objective and subjective bases" for the Court Below's decision. Panitch at 67 (quoting Magill v. Casel, 238 N.J. Super. 57, 65 (App. Div. 1990)). Specifically, the Court Below cited first to the Court Rules regarding judicial disqualification (see 2T20:1-7); then the discretionary standard set forth in McCabe (see 2T20:8-10); and then the objective DeNike standard (see 2Tt20:11-17). The Court Below further noted that actual prejudice need not be proved, but rather the "mere appearance of bias" may require disqualification. (See 2T20:11-12); see also DeNike at 517. After setting forth the applicable legal standard the Court found as follows:

> Here, I find that a reasonable person should not have any doubts about my impartiality. When you look at the factors set forth in 1:12-1, the plaintiff has not set forth any proofs that satisfy those factors.
>
> Prior to my decision on October 20th, I had not given an opinion in this matter. I have no interest in the outcome of this matter. And there's no other reason which might preclude a fair and unbiased hearing or which, again, might lead either counsel or the plaintiff to conclude that I am not fully impartial.
>
> I do not know Mr. Petrossian. I do not know the Rutherford officials. I do not certainly know the chief of police. And I do not know defendant's counsel. I have no connection at all to this matter.

(See 2T20:18-25 and 2T21:1-8). The Court Below specifically set forth all facts relevant to a determination on Plaintiff's Motion. In sum, they clearly show that

Judge DiBiasi had no improper interest in nor participation in this matter. They further show that the Judge acted in an unbiased manner.

In fact, it is worth noting that the Court Below conferenced this matter prior to/during oral argument on the Borough's Motion to Dismiss in an attempt to amicably resolve this dispute. (See generally 1T1 to 1T15). The Court even went so far as to affirmatively ask on the record that the Borough maintain an open-mind with regards to the settlement (which was left sitting unsigned by Plaintiff for years) even *after* a determination was made by the Court Below. (See 1T14:23-25 and 1T15:1-4). There can be no doubt that the Court Below showed empathy and patience in the face of Plaintiff's intransigence and unwillingness to compromise, only thereafter ruling on the merits of the Borough's Motion to Dismiss.[1] Thus, Plaintiff has absolutely no basis upon which to rest these entirely baseless accusations against the Trial Judge. Plaintiff was extended every courtesy and instead leveled unfounded accusations of bias against the Court Below all because Plaintiff seemingly cannot comprehend the law and was disappointed with the determination to dismiss Plaintiff's Complaint with prejudice as time barred. See Marshall, 148 N.J. at 186("[B]ias

[1] A review of the hearing transcript (see generally 1T) shows that Judge DiBiasi had nothing but empathy for, and showed courtesy and patience to, the Plaintiff. Thus, while ***not*** asserting this argument, the only party which has a basis to argue an "appearance of bias" would be the Borough.

is not established by the fact that a litigant is disappointed in a court's ruling on an issue.").

Plaintiff's Motion to Recuse was entirely misplaced and inappropriate. Plaintiff presented nothing to the Court Below that warranted recusal. Plaintiff simply alleged bias without presenting any sort of evidence of same seemingly because the Court Below determined Plaintiff's Complaint should be dismissed on Statute of Limitations grounds. No other conclusion can be deduced from Plaintiff's maneuvering except that Plaintiff simply disagreed with the Court Below and sought to "Judge shop" in some sort of Machiavellian-esque scheme for a more favorable disposition. Accordingly, the decision of the Court Below regarding the Plaintiff's Motion for Recusal is soundly rested upon the legal principles and objective standard for recusal and therefore should be AFFIRMED.

V. PLAINTIFF'S APPEAL IS MOOT AS THE RELIEF SOUGHT HAS ALREADY BEEN PROVIDED. (Raised by way of Motion to Dismiss Appeal Filed by the Borough)

While the New Jersey Constitution does not restrict the exercise of our Courts' judicial power to cases and controversies, our Supreme Court has instructed our Courts to "refrain[] from rendering advisory opinions or exercising [] jurisdiction in the abstract." See De Vesa v. Dorsey, 134 N.J. 420, 428 (1993). In keeping with this well-reasoned exercise of the judicial power,

"our courts normally **will not** entertain cases when a controversy no longer exists and the disputed issues have become moot." Ibid. (citation omitted) (emphasis added). To that end, our Supreme Court defines moot as follows:

> A case is technically moot **when the original issue presented has been resolved**, at least concerning the parties who initiated the litigation.

Ibid. (citation omitted) (emphasis added). Said another way, "[a]n issue is 'moot when [the Court's] decision sought in a matter, when rendered, **can have no practical effect on the existing controversy.**'" Redd v. Bowman, 223 N.J. 87, 104 (2015) (quoting Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 221-222 (App. Div. 2011)) (emphasis added). This is precisely what has occurred in this instant matter.

A designated handicap parking area was precisely the issue upon which Plaintiff filed his Verified Complaint. (See Pa084-Pa099; see also Da001-Da002). That relief sought by Plaintiff in his Verified Complaint has been provided, *i.e.*, a handicap parking area has been designated by Rutherford. (Compare Da001-Da002 with Da055-Da056). Therefore, the "original issue presented has been resolved" and Plaintiff's Appeal is thus rendered moot and should therefore be dismissed. There is nothing left to determine in this matter and any ruling by this Court would have no practical effect on the existing controversy.

VI. PLAINTIFF'S ARGUMENTS DO NOT ADDRESS THE ISSUE BEFORE THE COURT AND ARE WITHOUT MERIT. (Raised in Plaintiff's Brief)

While relying upon the aforementioned arguments in this Brief, each of Plaintiff's meritless arguments are succinctly addressed below so as to preserve the Borough's rights and not waive opposition thereto.

A. Plaintiff's Argument that the Court Below Did Not Hold a Hearing on the Verified Complaint or Review Briefing is Without Merit. (Pb17-18).

Plaintiff's argument in Point One of his Brief is frankly ridiculous. How Plaintiff can even make such an argument when the transcript of that hearing, which took place on October 20, 2023, is before this Court (see generally 1T) as well as the papers in support and opposition of Rutherford's Motion to Dismiss (see generally Pa137-Pa158, Pa233-Pa300; Da012-Da019) defies all logic and is entirely without evidentiary support. Accordingly, Plaintiff's "procedural" argument is entirely baseless and without merit.

B. Plaintiff's Argument Regarding the Trial Court Not Mediating or Otherwise Employing Some Type of Alternative Dispute Resolution Proceeding is Without Merit. (Pb18-Pa22).

Plaintiff's argument in Point Two is also ridiculous. The Trial Court is under no obligation to mediate or otherwise order alternative dispute resolution proceedings unless otherwise required. See R. 1:40-6(a). In this particular instance there is no such requirement. This is especially true when the litigation

at issue is the subject of a pre-Answer Motion to Dismiss for failure to state a claim upon which relief can be granted. That being said, a review of the October 20, 2023 hearing transcript clearly shows that the Court sought to amicably resolve this litigation, *i.e.*, mediate, prior to ruling on the merits of Rutherford's Motion. (See 1T3 through 1T12; see also 1T14:23-25, 1T15:1-14). It was in fact Plaintiff who refused to engage in such mediation efforts by the Trial Court based upon his own seeming intransigence and misplaced odium against Rutherford. Plaintiff's argument is again entirely without evidentiary support and is thus without merit.

C. The 2019 Application of Ms. Rozik Petrossian is the Underlying Basis of Plaintiff's Complaint. (Pb22-Pb23).

Plaintiff, bizarrely, and contrary to his own Complaint (see Pa087), now alleges that the 2019 Application of Ms. Rozik Petrossian is not the underlying basis of his Complaint. If that is true then upon what basis does Plaintiff rest this litigation seeking judicial relief in overturning the denial of Rutherford and for designation of a handicap parking space?

Ms. Petrossian filed only a single, solitary application for a handicap parking space in February 2019. (See Pa006-Pa015). Up until February 5, 2024, Plaintiff had not filed his own application for a handicap parking space. (See Da047-Da054). Thus, Plaintiff oddly now appears to be arguing that he did not have standing as a *pro se* litigant to bring such an action on behalf of his mother

and/or that this matter was not ripe for disposition at the time of filing the Verified Complaint.

Considering that Plaintiff is the one appealing the Court Below, it is curious as to why Plaintiff would make such an argument that would also require dismissal. This argument is even more inexplicable given that Plaintiff admits in his papers that he relied upon the 2019 Application of Ms. Rozik Petrossian as the underlying basis of his Verified Complaint. (See Pb22).

Plaintiff's incomprehensible argument aside, there was one application which was denied on or about August 5, 2019 (see Pa019; Pa052; Pa087; Pa194; Pa240; Pa242; Pa268; Pa27; Pa282; Da011; Da015) and one application which was granted on or about March 11, 2024 (see Da055-Da056). There were no other applications for a handicap parking space at or about 393 Park Avenue relevant to this matter. Submission of materials months after the denial of an application does not revive the application nor make it anew without following the appropriate procedures. Accordingly, the Court Below was correct in its interpretation of the facts relevant to this matter and should thus be affirmed. (See supra Point II).

D. There are No Misrepresentations, Material or Otherwise, Upon Which the Court Below Relied. (Pb23-Pb25).

Point Four of Plaintiff's brief appears to be arguing that counsel for Rutherford made misrepresentations to the Court. Simply put, this is not true

and patently offensive. Communications between counsel's office and HUD officials confirm that the matter of Ms. Rozik Petrossian's complaint seeking a handicap parking space was still pending before HUD. (See Da061-Da064). These communications further indicate that the United States Department of Justice had determined not to pursue this matter and thus it was transferred back to HUD for disposition regarding "Section 504 (Rehabilitation Act of 1973)[.]" (See Da063). In fact, shortly after the aforementioned communications HUD restarted the Conciliation process, which had been languishing, by contacting Plaintiff and proposing a "new" Conciliation Agreement. (See Da061). Therefore, the statements complained of by Plaintiff and made by counsel for Rutherford are true. Furthermore, these statements have no bearing upon the underlying legal issues in this matter, *i.e.*, whether or not Plaintiff's Verified Complaint was time barred. Accordingly, Plaintiff's argument lacks any basis in fact and is therefore without merit.

E. The Court Below Properly Relied Upon the Facts Relevant to the Legal Questions at Issue. (Pb25-Pb27).

Plaintiff in Point Five is asserting that the Court Below did not utilize the proper facts in its ultimate determination to dismiss Plaintiff's Verified Complaint. This is again untrue. The Court's recitation of the facts Plaintiff complains of have no bearing on the legal question in this matter. Whether or not the term "significant driveway" is an appropriate descriptor was not before

the Court Below.[2] Furthermore, Plaintiff appears to forget that at the time of decision, *i.e.*, denial on or about **August 5, 2019**, the statements made were accurate. As time moves forward, with regards to this instant matter over four (4) years past since the date of accrual as of the time of Rutherford's Motion to Dismiss, things and circumstances may change. However, **at the time of decision** those statements were truthful and are the probative facts relevant to the issue before the Trial Court and now this Court.[3]

The issues before the Court Below were questions of (1) standing and (2) timing; the issues *were not* whether or not the Borough had arbitrarily, capriciously or unreasonably denied the 2019 application. The issue of timing, *i.e.*, whether or not Plaintiff ran afoul of the respective Statutes of Limitations, was the reason for which the Court Below properly dismissed Plaintiff's Verified Complaint. (See 1T23:15 through 1T25:8). This nitpicking by Plaintiff of the Court's generalized recitation of the facts gleaned from the record before the Trial Court in this case is an absurd argument. The probative evidence contain the only necessary facts in that the date of accrual was on or prior to August 5, 2019 with respect to the handicap parking relief and April and May

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[2] It should be noted that the record before this Court and the Trial Court confirm that the quoted language on page 26 of Plaintiff's Brief was in fact part of the record. (Compare Pb26 with Pa019).

[3] Plaintiff specifically notes that in or about **August 2023** the handicap space referred to by Chief Russo had since been removed. (See Pb27; see also Pa093 at n. 6).

of 2021, respectively, for the OPRA issues. This argument advanced by Plaintiff therefore has no effect on the matter at hand nor its ultimate determination.

F. The Court Below Appropriately Scheduled the Motions and Made Proper Determinations in Accordance with the Court Rules. (Pb28-Pa29).

Per the Rules of Court, Motions are briefed well in advance of any oral argument which is scheduled at the discretion of the Court. See R. 1:6-3(a); see also R. 1:6-2(d). Oral argument is an opportunity for a party to highlight their argument and to answer any of the questions that the Court may have. On rare occasions oral argument is an opportunity to provide the Court with additional information that was not available prior to Motion papers being submitted. Oral argument is *not* an opportunity to formulate entirely new legal reasoning or present surprise facts and circumstances; in fact, the Court Rules discourage such gamesmanship. See R. 1:6-5 ("Briefs may not be submitted after the time fixed by this rule or by court order, including the pretrial order, without leave of court, which may be applied for ex parte.").

If the Court hears nothing of note at oral argument and the Court has already considered the issues for which papers were previously submitted then it is ready to make its decision and more time would be entirely unnecessary. If the Court does hear something of note, then the Court is entitled to make a decision at a later date after further consideration. Either way the Court, would

be well versed in the positions of the parties per the Motion papers, including briefs, filed with the Court and may make a decision on the return date, *i.e.*, date of oral argument, if the Court so chooses.

As discussed above, Motions for recusal are appropriately directed to the discretion of the Judge against whom recusal is sought. (See supra Point I). It is for that Judge to make a determination within the confines of the Court Rules and caselaw whether or not to remain with the litigation or to recuse. Judge DiBiasi properly determined that recusal was unwarranted in this matter. (See supra Point IV). Following that determination, the Court Below made a determination on Plaintiff's Motion for Reconsideration. Plaintiff's Motion for reconsideration did not present a single iota of new information or new caselaw for the Court's consideration. (See supra Point III). Plaintiff is not entitled to his own interpretation of the law or Court Rules when they suit him or when he believes they are necessary. The Court Below did nothing untoward and its rulings should not be disturbed by this Court on the basis of this argument nor any others advanced by Plaintiff.

G. The Court Below Did Not Violate the Court Rules. (Pb29-Pb31).

As to exactly what Plaintiff is arguing in Point Eight of Plaintiff's Brief counsel for Rutherford is mystified. Orders to Show Cause, after being executed by the Court, and other attendant documents are to be served in the manner

prescribed by R. 4:4-3 and R. 4:4-4 at least 10 days before the Return Date. See R. 4:52-1(b). On August 30, 2023, Plaintiff filed with the Court a proof of service which **did not include** the Order to Show Cause executed by the Court Below. (Da003). Not being privy to the conversation between Plaintiff and the Court Below, which it can be fairly assumed was most likely a simple courtesy to Plaintiff as a *pro se* litigant regarding his obligations under the Court Rules, Rutherford is intuiting that Plaintiff was informed that he needed to serve the docketed Order to Show Cause upon Rutherford and to further file a proof of service of same with the Court. Plaintiff did so on September 20, 2023. (Da006). Since the OTSC was provided less than "10 days before the return date" the Court Below properly adjourned the date to October 4, 2023 pursuant to the Court Rules. (Da009-Da010). Accordingly, Plaintiff's argument has no basis in law nor fact and is thus without merit.

H. Plaintiff's Baseless Ad Hominem Attacks are Entirely Without Merit and Inappropriate. (Pb31-Pb34).

Plaintiff appears to be once again advancing some sort of preposterous conspiracy theory regarding Rutherford's counsel in Point Nine of Plaintiff's Brief. Plaintiff throughout this litigation has leveled such types of baseless *ad hominem* attacks not only against counsel for Rutherford, but also against the Court Below, the Borough, and its employees. These specious attacks are

unworthy of comment, however, must be addressed so as to preserve the aforementioneds' rights.

As Rutherford argued before the Court Below, Plaintiff's baseless attacks appear to be based upon a clear misunderstanding of the difference between private retention and assignment from the Joint Insurance Fund insuring Rutherford. Furthermore, Plaintiff is taking issue with responsive correspondence (see Pa035-Pa036) to correspondence of Ms. Rozik Petrossian, upon information and belief with the assistance of Plaintitt, sent to the Borough advising of possible legal liability and action (see Da014-Da015). Rutherford had every right to send the aforementioned responsive correspondence to Plaintiff. There was absolutely nothing problematic in the conduct complained of by Plaintiff. In fact, these baseless attacks are potentially defamatory and libelous as there is not even a whiff nor scintilla of proof of any sort of impropriety.

Plaintiff's uncouth behavior is nothing more than a tantrum borne of a willful inability to comprehend the law, the Rules of Court, and the facts and circumstances of the matter at bar. Accordingly, Plaintiff's *ad hominem* attacks must cease and should have no bearing on the matter at bar wherein the Court Below properly dismissed Plaintiff's Verified Complaint with prejudice.

CONCLUSION

For the reasons set forth above Defendant-Respondent, Hoboken Housing Authority, respectfully submits that this Court should AFFIRM the decision of the Trial Court.

Respectfully submitted,

KEENAN & DORIS, LLC
Attorneys for Defendant-Respondents
Borough of Rutherford and Frank Nunziato

David F. Scheidel II, Esq.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-001333-23

ALFRED PETROSSIAN, Appellant, v. BOROUGH OF RUTHERFORD and FRANK NUNZIATO, In His Official Capacity As Mayor, Respondents.	ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, BEREGEN COUNTY HON. DARREN DIBIASI, J.S.C., (Sat Below).

REPLY BRIEF
FOR
APPELLANT ALFRED PETROSSIAN

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INDEX OF ABBREVIATIONS

Abbreviation	
The Mother	The appellant's 92 years old mother.
The Application	The application filed by the appellant's mother with the respondents in 2019, upon which she requested form them to designate a reserved handicapped parking for her in front of her house.
HUD	U.S. Department of Housing and Urban Development.
DOJ	U.S. Department of Justice.
OPRA	Open Public Records Act.
CoA	Cause of Action.

TABLE OF AUTHORITIES

TABLE OF APPENDIX E

OTHER APPENDICES SUPPORTING REPLY BRIEF**

This Reply Brief additionally relies upon the following appendices supplied to the Appellate Division in support of the appellant's Appellate Brief:

*) This was not a paper filed below.

**) Reply Brief relies on the Appendices A-D, which were previously supplied.

The appellant Replies to the September 30, 2024 Response Brief by the respondents ("**the Response**").

The matter at bar comes by way of the May 31, 2024 ORDER by *Hon. Jessica R. Mayer, P.J.A.D.* **(Pa301)**, which Denied the respondents' *Motion to Dismiss*, compelling them to file the Response.

Hon. Mayer denied the said motion, after the appellant filed opposition brief and exposed how the respondents' motion (1) violated *Rule 2:5-4(a)* and (2) misrepresented material existing facts upon lack of *Duty of Candor*.

And now__ the Response is an unfazed continuance upon the same.

STATEMENTS

I.
VIOLATION OF RULE 2:5-4.(a)

The Response violates *Rule 2:5-4(a)*, which requires the record on appeal to consist of papers on file in the court below, as the following shows:

1. The last order and consideration below was on February 02, 2024 **(Pa116)**,[1] after which date NO further paper was filed with and NO pending matter remained at the trial court.

2. Yet__ the Response has materially relied upon the March 05, 2024 application filed by the appellant, annexing copy thereof in its appendix **(Da048-Da053)**,[2] which was NOT a record or a paper on file below.

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[1] The disposal of the appellant's case was on October 20, 2023 **(Pa111)**.

[2] This application is in the appellant's Appendix-E **(Pa302-Pa307)**.

3. And, upon citing the said application the Response told this Court the following falsehoods, false basis of which is explained below in §II(D).

> " On or about March 11, 2024, Plaintiff's application was granted," p. 9, and hence " plaintiff's appeal is moot as the relief sought has already been provided, " p. 23.

II.
CORRECTION OF MISSTATED FACTS

A. THE RESPONSE MISSTATES THAT THE STATUTE OF LIMITATIONS FOR THE APPELLANT'S CAUSE OF ACTION BELOW WAS EXHAUSTED.

Via its *Statements*, pp. 5-9, the Response materially misstates that the February 15, 2019 application ("**the Application**")**(Pa6)** filed by the appellant's mother ("**the Mother**") was the cause of action ("**CoA**") below for his 1st claim

Appellant's 1st claim below was for a handicapped parking space and it was NOT based on the Application, but his July 01, 2023 independent request from the respondents to place a reserved handicapped parking space at his street front **(Pa51)**, which request was grounded upon his independently obtained June 29, 2023 physician certification **(Pa3)** and notarized affidavits taken from the Application **(Pa49-50)**.

The fact that the appellant obtained the June 29, 2023 physician certification **(Pa3)**, when he already had the exact same certification dated January 19, 2021 **(Pa4)** proves his observance of the *Statute of Limitation* (raised via *CoA No.1*, pp. 10-12, and *Point Three*, pp. 22-23, of *Appellate Brief*).

B. THE RESPONSE MISSTATES THE LEGAL POWERS HELD AND DISCRETIONS EXECUTED THEREOF BY APPELLANT.

Via its pp. 6-7, the Response misstates how the appellant rejected the respondents' terms and offers, while he was the *Attorney in Fact* for the Mother.

You see__ the Mother at all-times has been in a sound mind and the appellant has NEVER been her guardian and the *Power of Attorney* granted to him by her does NOT allow him to act contrary to her wishes or will.

The Application **(Pa6)** was by and for the Mother based on her needs and qualification as a disable driver **(Pa1, Pa12, Pa14)**, who rejected the respondents' terms through HUD "*Voluntary Conciliation*," because in lieu of a reserved parking space their offer was to place a handicapped parking space for the general public "NEAR" her house, which would have served the disabled tenants of about 70-units apartment complex two doors away from her house (raised via §III, pp. 6-7, of Appellate Brief.).

C. THE PRIMA FACIE LACK OF *DUTY OF CANDOR* UPON WHICH THE RESPONDENTS' RESPONSE IS GROUNDED.

Prima facie proof of the Disingenuousness of the Response can come from *Hon. Joseph F. Lisa, P.J.A.D.(retired)*, who conducted the April 11, 2024 and May 02, 2024 mediation hearings, who offered the respondents the bare-bones terms of (1) to install a reserved a handicapped parking space and (2) to pay the filing fees, which the respondents categorically rejected.

Hon. Lisa, in moot, even reasoned with the respondents' attorney that "the appeal may take a year '-', it will be far more costly '-', and most likely '-'it will be [remanded] for additional fact findings."

Ironically__ it is the same attorney, who upon lack of *Duty of Candor* stipulates via the Response "Plaintiff is not seeking justice, but rather seeking to inflict harm upon Rutherford for illusory wrongs Plaintiff has concocted," p. 2.

D. THE RESPONSE MISSTATES THAT THE APPEAL IS MOOT BECAUSE THE RELIEF SOUGHT HAS BEEN GRANTED AND IN SO DOING ALSO VIOLATES R. 2:5-4.(a).

Appellant incorporates by reference statements told via §I above about violation of *Rule 2:5-4(a)* by the Response as if fully set forth within.

The Response has relied on the March 05, 2024 application filed by the appellant with the respondents **(Da048-Da053)**, which was not a record or a paper on file below to tell this Court the following material FALSEHOODS:

> " On or about March 11, 2024, Plaintiff's application was granted," p. 9, and hence " plaintiff's appeal is moot as the relief sought has already been provided, " p. 23.

You see__ the October 20, 2023 *With Prejudice* ruling below against the appellant barred him from relying on past records to pursue justice, in seeking desperately needed parking accommodation he and the Mother needed.

Hence, pursuant to *C.39:4-197.6* and *C.39:4-197.5* the appellant filed the March 05, 2024 application with the respondents **(Pa302-307)**.

Via this application **(Pa302)**, the appellant requested from the respondents to designate a reserved handicapped parking space at his street front, explaining to them why the grant of a reserved parking space was critical (**Pa303**) due to the proximity of the appellant's house to the aforesaid large apartment complex two doors away from his house, which housing large numbers of elderly and disabled persons.

In response to his said application, the respondents placed a handicapped parking space for the general public near the appellant's house, refusing to mark it a reserved parking space for the appellant's residence.

In so refusing to mark the said space a reserved space for the appalan's residence, the respondents undermined *C. 39:4-197.6* and existing local precedents, which show that they have granted such reserved handicapped parking spaces to others (**Pa309 - Pa311**).[3]

E. THE RESPONSE MISSTATES THAT THE APPELLANT'S CLAIMS STEMMING FROM OPRA ARE TIME BARRED BY THE STATUTE OF LIMITATIONS.

You see__ pursuant to *Continuing Violation Doctrine,* when the denial of public records or the failure to provide requested information constitutes an ongoing or continuous violation, then the statute of limitations does not bar the claim.

---

[3] This evidence annexed in the Appendix E was not a paper filed below.

Under the *Continuing Violation Doctrine* each day the records are withheld may be considered a new violation, effectively restarting the statute of limitations period each time.

The requisite elements of ongoing and continuing violations are shown via "CoA No.2" and CoA No.3 of the appellant's Appellate Brief, pp. 12-16, which summarily show the following:

1. The respondents cited *NJSA 47:1A-3* to categorically deny to the appellant OPRA access to the records of their entrapments against him **(Pa29)**, as they continued their entrapments against him even after he sued them.

2. The respondents arbitrarily cited "confidentiality" and produced fully redacted memorandum **(Pa16)**, which memorandum was the explanations of police chief Russo to the respondents for causing the denial of the Application, upon stipulating "I have determined to deny Mr. Petrossian's request" **(Pa19)**, as Russo suppressed the official recommendation which had recommended the grant of the Application **(Pa18).**

ARGUMENT

The following are point–by-point counter arguments to the arguments of the Response:

I.

LEGAL CITATIONS OF THE RESPONSE ARE DEFICIANT.

Via its *Standard of Review,* pp. 10-11, the Response presents elaborate citations, in arguing that the decisions below should be affirmed.

The said citations appear to be a copy and paste search results from "Lexis+AI" for "New Jersey standards of appellate review," which fail to satisfy the bar to legally exonerate the *Harmful Errors* below.

To show this, the appellant incorporates by reference the statements made via his *Appellate Brief*, pp. 17-34, as if fully set forth within, which show the manifested (1) unjust results, *State v. Mohammed*, 226 N.J. 71, 87 (2016), and (2) undermined fairness, *State v. Weaver*, 219 N.J. 131, 15 (2014), below against the appellant.

II.
PLAINTIFF'S COMPLAINT WAS NOT TIME BARRED BY STATUTES OF LIMITATIONS.

A. APPELLANT'S CLAIMS BELOW WERE NOT TIME BARRED BY STATUTE OF LIMITATIONS.

Via its §A, pp. 12-15, the Response argues that "the plaintiff's claims '-' were time barred by the *Statute of Limitations*."

Appellant had three claims below resting on a mutually exclusive CoA:

His 1st claim was for a reserved handicapped parking space, which was pursuant to his independently obtained June 29, 2023 physician certification **(Pa3)**, which supported his July 01, 202 indecent requested from the respondents to place a handicapped parking space at his street front **(Pa51)**.

(This is raised via (1) *CoA No1,* pp. 10-12, and (2) *Point Three*, pp. 22-23 of *Appellate Brief*).

As such, his 1st claim was not barred by the *Statue of Limitations.*

Arguments about why the appellant's 2nd and 3rd claims below were not barred by the *Statute of Limitations* are through the following (below in §B):

B. APPELLANT'S CLAIMS STEMMING FROM OPRA ARE NOT TIME BARRED BY THE STATUTE OF LIMITATIONS.

Via its §B, pp. 15-16, the Response argues that "plaintiff's claims pursuant to the Open Public Records Act are time barred by the statute of limitations."

Pursuant to *Continuing Violation Doctrine*, when the denial of public records or the failure to provide requested information constitutes an ongoing or continuous violation, then the *Statute of Limitations* does not bar the claim.

Under the *Continuing Violation Doctrine*, each day the records are withheld may be considered a new violation, effectively restarting the statute of limitations period each time.

See *Davis v. City of Newark*, 2006 WL 2038430 (N.J.Super.A.D.), which recognized that the failures by a governmental entity to comply with public records requests could potentially invoke the *Continuing Violation Doctrine*.

Here, the elements of ongoing and continuing violations centrally grounded the appellant's 2nd and 3rd claims.

Appellant showed his 2nd and 3rd claims via CoA No.2 and CoA No.3 of his *Appellate Brief*, pp. 12-16, which centrally show the following:

1. Appellant's second claim was to enjoin the respondents from staging entrapments against him, after they cited *NJSA 47:1A-3* to deny him OPRA access to the records of their entrapments against him **(Pa29)**, as they continued their entrapments against him until after he sued them.

(Raised via *CoA No.2* of the *Appellate Brief*, pp. 12-15.)

> You see__ the legal key point here is that by such denial of records the respondents bought four **(4)** years with impunity, since statute for criminal investigation allowed them to hide records labeled criminal for four years, when the statute of limitation for the appellant to sue them was one or perhaps two years.

2. The appellant's third claim was for leave to conduct Discovery, in retrieving such public records, OPRA access to which the respondents had denied to him, e.g., respondents cited "confidentiality" and produced fully redacted memorandum of explanations by police chief Russo's, **(Pa16)** about why he denied the Application upon stipulating "I have determined to deny Mr. Petrossian's request" **(Pa19)**.

> You See__ the key legal point here is that the respondents also denied his subsequent OPRA request to produce unreacted copy of the said record(s).

(Raised via *CoA No.3* of *Appellate Brief*, pp. 15-16)

As such, pursuant to *Continuing Violation Doctrine* the appellant's 2nd and 3rd claims were not time barred by the *Statute of Limitations*.

III.
THE DENIAL OF RECONSIDERATION WAS A HARMFUL ERROR BELOW.

The Response via its §III, pp. 16-19, argues that the Denial of the appellant's *Motion for Reconsideration* below was not an error.

Please see the *Notice of Cease and Desist* **(Pa317)**, which the appellant had to serve upon the respondents' attorney to stop his harassments, threats, and intimidations, intended to (1) dissuade the appellant from pursuing reconsideration and (2) obstruct the appellant's *Due Process* rights.

Via the *Reconsideration* appellant filed the DOJ's letter **(Pa54)** to show that the following material statements certified below by the respondents' attorney ("**Doris**") via his *Motion to Dismiss*, were misrepresentations of material existing facts:

> " this case is currently pending with HUD and there has been no final determination made by that department" **(Pa68 –Pa71)**.
>
> "As recent as September 26, 2023 our office confirmed the HUD matter is still open pending the agencies final findings" **(Pa71)**.

As the following shows, the trial judge was materially influence by and had formed a judicial opinion upon the said misrepresentations:

> " THE COURT: Mr. Petrossian, do you want to sign it by virtue of your power of attorney? Then we can get the space. Get conformance, get the space right in front of your house" **(1T10, 14-17)**.
>
> THE COURT: "And, Mr. Doris, if you want to explain that to Mr. Petrossian, you're free to have the floor. I know you're trying to work out a compromise with him, but it doesn't seem that he's open minded at this time," **(1T12, 20 - 23)**.

You see__ the aforesaid bamboozles by Doris had influenced the trial judge to such an extent that he had blind eye to evidence before him, e.g., the HUD written stipulation **(Pa37)**, which showed that in 2020 HUD had relinquished its direct involvement in the matter, as it had officially referred the matter to the DOJ.

The said belief by the trial judge remained unfazed even after he was presented with the DOJ letter **(Pa54)**, which showed that (1) there was NO compromise at work at HUD and (2) the trial court had exclusive jurisdiction.

Further, via the reconsideration appellant also filed the HUD letters **(Pa55, Pa57)**, in showing the unjust harms of the *With Prejudice* case disposal below told by HUD via the following:

> " this case has been administratively closed based upon the legal doctrine of *res judicata* preclusion, [because] the Superior Court of New Jersey, Chancery Division – Bergen County, entitled Alfred Petrossian v. Borough of Rutherford and Frank Nunziato '-' On October 20, 2023, the Court issued its decision on the case" **(Pa57)**.

(Raised via §III, pp. 6-10 and *Point Four*, pp. 23-25, of *Appellate Brief*.)

As such, contrary to arguments of the Response, the denial of the appellant's *Motion for Reconsideration* was a *Harmful Error* below.

IV.
THE DENIAL OF MOTION TO DISQUALIFY WAS A HARMFUL ERROR BELOW.

Via its §IV, pp. 19-23, the Response argues that the denial of the appellant's *Motion for Recusal* was not an error below.

The demonstrated partiality or appearance thereof by the trial judge against the appellant was apparent from the following:

1. The trial judge cherry picked facts to support its opinion, showing its bias (raised via *Appellate Brief, Point Five*, pp. 25-27).

2. The trial judge formed the following beliefs by being receptive to facts misrepresented to him by the appellant's adversary:

> " THE COURT: Mr. Petrossian, do you want to sign it by virtue of your power of attorney? Then we can get the space. Get conformance, get the space right in front of your house" **(1T10, 14-17)**.
>
> THE COURT: "And, Mr. Doris, if you want to explain that to Mr. Petrossian, you're free to have the floor. I know you're trying to work out a compromise with him, but it doesn't seem that he's open minded at this time," **(1T12, 20 - 23)**.

And, in forming such belief, the trial judge overlooked the HUD letter **(Pa37)**, which showed that HUD ceased its direct involvement in 2020.

(Raised via *§III*, pp. 6-10, and *Point Four*, pp. 23-25, of *Appellate Brief*.)

3. The trial judge decided the appellant's *Motion for Recusal*, before hearing it and denied his *R. 4:52* Motion without a hearing or opposition papers (raised via *Appellate Brief*, *Point One*, pp. 17-18 and *Point Six*, pp. 28-29).

4. The trial judge turned blind to demonstrated lack of *Duty of Candor* by the respondents' attorney, which materially tainted the proceedings below against the appellant (raised via Appellate Brief, *Point Nine*, pp. 31-34.)

It was incumbent upon the trial judge to disqualify himself, because of the following legal reasons:

- Due Process and the Equal Protection Clauses of 14th Amendment guarantees judicial impartiality.
- Article VI, § VI, of the New Jersey Constitution emphasizes the importance of an independent judiciary.
- N.J.S.A. 2B:13-2 permits judicial disqualification, not just for financial interest in the outcome, but when the judge's impartiality is reasonably questioned.
- *Canon 2* and 3 of *Code of Judicial Conduct* directs judge to avoid even appearance of impropriety.
- The New Jersey Supreme Court *Code of Judicial Conduct* emphasizes impartiality and integrity essential for maintaining public trust in the judiciary.

V.
THE RELIEF SOUGHT VIA APPEAL UNEQUIVOCALLY HAS NOT BEEN GRANTED.

Via its §V, pp. 23-24, the Response argues that "plaintiff's appeal is moot," because "the relief sought has already been provided."

This argument is materially flawed, because (1) it violates Rule 2:5-4.(a) and (2) is grounded upon misrepresentations of material existing facts:

A. VIOLATION OF RULE 2:5-4(a)

This is explained via *Violation of Rule* 2:5-4(a) of §I above, pp. 1-2.

B. MISREPRESENTS OF MATERIAL EXISTING FACTS

This was explained via §II(D) of *Correction of Misstated Facts*, pp. 4-5.

VI.
APPALANT'S ARGUMENTS DO ADDRESS THE ISSUE BEFORE THE COURT AND ARE WITH MERIT.

The Response via its §VI, pp. 25-33, presents a hodgepodge of arguments alleges that "plaintiff's arguments do not address the issue before the court."

Please see the signed Conclusion of the Response on its page-34, following the said arguments, as it even misstated the identity of the respondents as being Hoboken Housing Authority.

To counter this argument, the appellant incorporates by reference pleadings made by him via his *Appellate Brief* as if fully set forth within.

CONCLUSION

For all of the forgoing reasons, the case should be reversed and remanded.

Respectfully submitted,

Alfred Petrossian

Dated: November 05, 2024

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

ALFRED PETROSSIAN, Appellant, v. BOROUGH OF RUTHERFORD and FRANK NUNZIATO, In His Official Capacity As Mayor, Respondents.	DOCKET NO. A-001333-23 **CERTIFICATION**

I, ALFRED PETROSSIAN, of full age, hereby certify:

1. I have personal knowledge of all the facts told via my Reply Brief.
2. My statements are true to the best of my knowledge and belief.
3. Documents presented to the Court via my appendices are genuine to the best of my knowledge and belief.

I certify that the foregoing statements are true. I am aware that if any statement made herein is willfully false, I am subject to punishment.

Alfred Petrossian

DATED: November 05, 2024

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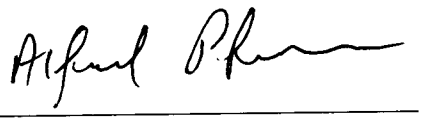
SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

ALFRED PETROSSIAN, Appellant, v. BOROUGH OF RUTHERFORD and FRANK NUNZIATO, In His Official Capacity As Mayor, Respondents.	DOCKET NO. A-001333-23 **CERTIFICATE OF SERVICE**

I, Alfred Petrossian caused service of my reply brief and appendix, upon respondents' attorney, to:

Ian C. Doris, Esq./ 022481993
Keenan & Doris, LLC
71 Union Avenue, Suite 105
Rutherford, New Jersey 07070

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by law.



Alfred Petrossian

DATED: November 05, 2024