

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Ruth Adjartey, Ismail Abdelhamed, Vesta)
Ballou, Mildred Collins, Jackeline)
Cucufate, Marjorie Evans, Matthew)
Griffin, Gerard Hughes, Donna Mejias-)
Berrios, Janet Montgomery, Elizabeth)
Norris, Luciano Oliveira, Mychelyne)
Oliveira, Susan Osborne, Daniel)
Peristere, Christy Raymond, Caitlin)
Ryals, John Schumacher, Myron Swanston)
Petitioner-Appellants)

Docket No. SJC-12380

v.)

Worcester Housing Court,)
Original Respondent-Appellee,)
Santander Bank, Midfirst Bank,)
Nationstar Mortgage LLC, MRH Sub LLC,)
Freddie Mac, Fannie Mae, U.S. Bank N.A.)
As Trustee Of J.P. Morgan Acquisition)
Trust 2006-WMC3, Lisa Y. Barron, HSBC)
Bank USA N.A. As Trustee For Nomura)
Asset Acceptance Corporation Mortgage)
Pass Through Certificates Series)
2005-AR3, HSBC Bank USA N.A., As Trustee)
On Behalf Of Fremont Home Loan Trust)
2006-C Mortgage-Backed Certificates)
Series 2006-C, Savers Co-Operative Bank,)
Deutsche Bank National Trust Co. Trustee)
For Ameriquest Mortgage Securities Inc.)
Asset-Backed Pass Through Certificates)
Series 2003-13, US Bank N.A. As Trustee)
For Bear Stearns Asset Backed Securities)
Trust 2004-Ac4, U.S. Bank Trust N.A.)
Trustee Of Volt 2012-NP11 Asset Holdings)
Trust)
Respondents-Appellees)

Petitioner's Reconsideration of SJC Decision of April 10, 2019
as to Necessary provisions of Audio in Some Circumstances

NOW COMES Petitioner Jackeline Cucufate and requests this

Honorable Court reconsider its decisions of April 10, 2019 in the *Adjartey v Worcester Housing Court* matter.

In case, This Honorable Court does not believe that expecting the Worcester Housing Court ("WHC") to be "reasonable" where this Petitioner and others similarly situated are concerned, please see attached affidavit. Given the eviction attempted with no notice to me and that started with the Constables messing with my locks so first I knew they were in my living room with me in my pajamas, *WAPT found out that the WHC Chief Judge and Clerk-Magistrate have been (i) communicating with the Worcester Chief of Police in his official capacity, (ii) having identified us as litigants in the WHC by our political affiliation and (iii) requested that our 1st amendment rights to association and for the purpose of redress of violations of our rights be violated.*

Petitioner reminds the Court and requests it include this Petitioner's 22C letter as to denial at all levels and each time requested from the very first Answer filed, to review the standing of Plaintiff in her Summary Process case.

Petitioner requests amendment of the decision to include certain circumstances where denial of a waiver for fees become non-discretionary - or, in the alternative, that they be not defined as "extra fees" in these circumstances.

There are circumstances within which the denial of a fee waiver on an audio recording is a clear denial of due process. While it may make sense in general for audio recording waivers to be seen as "an extra fee" and to land in the bucket of "discretionary" and "reasonableness" from a judge, it cannot always be true.

I and the co-petitioners that I have spoken with believe in the following circumstances that audio recordings must be granted. If, instead, even in the following circumstances such fees are to still be considered "extra" and discretionary, then a much stronger legal standard needs to be put out from this Court for determining and granting waiver of "extra fees" as to the audio recordings *in these situations*.

STANDARD OF REVIEW

Petitioner timely (given request for enlargement) requests modification of this Honorable Court's decisions of April 10, 2019 in *Adjartey v. Worcester Housing Court* and *Hilton v. Worcester Housing Court* under applicable rule:

"Appellate Procedure Rule 27: Motion for reconsideration or modification of decision

Within 14 days after the date of the decision of the appellate court, any party to an appeal may file a motion for reconsideration or modification of decision unless the time is shortened or enlarged by order. It shall state with particularity the points of law or fact which it is contended the court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present."

ARGUMENT

Provide Audio When Only Source of Judge's Order

The obvious circumstance when audios must not be discretionary is when a judge's ruling is only memorialized on the audio recording. In such circumstances, all litigants need to have access to the audios to comply with their legal obligations to meet an order from the court.

This is most obvious, for instance, in the Ballou case, where written on the margin order by the judge themselves is that defendant was to do as ordered "in the hearing." (See facts already in Case Record).

If the Defendant does not know or remember what the exact wording of the order was, it is impossible for defendants to comply with the court's order. Presumably opposing parties would too need the audio in those situations but they are not generally indigent and can do whatever they want.

For the Ballous, retroactive justice is deserved. See also, Abdelhamed story.

Provide Audio When Key Evidence of Discriminatory Behavior

Additionally, Petitioner believes that in a situation where what is on the audio is sought as evidence of clear and explicit discrimination by the judge in question, the judge denying that audio denies the litigant in question the very evidence they need to appeal or bring an independent action in another court (as this court recommends). It is in the direct interest of the

judge deciding whether to remove the financial barrier, to deny the audio; and even if not meant maliciously, most discrimination is done by those unaware of their differential privilege and may well be minimized or simply unrecognizable to the discriminating party. A judge aware that they may be vulnerable to a claim of discrimination is not likely to be able to reasonably weigh the right to the audio.

For instance, Evans attempted to bring a single justice appeal based on the dressing down and rampant and intimate violation of information regarding her disability perpetrated by Chief Judge Horan. She was not only eventually denied the audio but misled by the Clerks that the denial of her audio had already occurred. Given the only 7 day window to file with the Appeals Court single justice, not only was she denied the very evidence she needed but the procedural shenanigans (denying her the timely information that she didn't have the audio) limited her being able to produce a detailed affidavit as to what had been said. She had done her best but without the audio it was unpersuasive to the single justice.

In such a situation the denial of the audio is the denial of the very evidence that would allow one to prosecute the issue in another venue as this court repeatedly claims is the correct action by a litigant specifically if they are facing discrimination under the ADA. Nor did the court write down its

findings in denying the various disability reasonable accommodations requested in the Evans case; it did not write down the basis of those denials even though it was specially told of that duty under its legal obligation under *McDonough*, the *Petitioner*.

Nor is it reasonable to put forward a "reasonableness" standard of assessing whether an audio is needed or not where a judge knows that an audio is wanted because the litigant believes they have been discriminated. If the litigant has a basis for that it is no longer appropriate, even for a judge who practices impartiality well, to be expected to see reasonable the production of evidence that may show that they violated the requirements of their bench.

**Necessary to Access Audio Where Evidence of Non-Frivolous is on
Only on the Audio**

Further, this Honorable Court says that if one is indigent and the purpose of the audio is non-frivolous then one should be given it. Where the proof of the non-frivolousness is in the audio itself this is a tautological standard by which critical information will regularly be denied.

Of course, the litigant is asking for the audio at a time when they believe that somebody who could afford to buy the audio would do so, so they believe the need for the audio is non-frivolous.

How does "reasonableness" standard work if the litigant believes it is a non-frivolous and the proof of why they believe it is non-frivolous is on the audio; they need the audio itself because they don't know exactly what happened but they have an instinct about it. How are they to persuade the judge that it would be reasonable to give it to them in that circumstance?

The situation described by Petitioner Adjartey was exactly this situation in front of Judge Theophilis. She needed the cd because she had frozen in Court that morning and could not think due to bullying she had just experienced. She was then sharply questioned by the Judge about what she needed that was on the cd. She told the Judge that was why she needed it. She was denied and then asked for the tape of the denial and was denied again. And then was incapacitated and later decided for her health, she probably over pushed herself given the outcome of trying to get the cd.

Petitioner herself had requested her audio (see next example) and when denied, immediately requested the audio of that - what she maintains - was unfair and was immediately denied again.

Audio Necessary for a Hearing Missed for Disability

If the request for the audio is accompanied by not just the fact that one missed the hearing but if one missed the hearing for a medically necessary reason there is no way to recapture

the information lost by not having the full record of the hearing including tone etc. (that one only gets from an audio recording).

Since the hearing was missed because of a medically necessary situation, here the request for the audio is not only reasonable under the indigency standard but because it is part of a reasonable accommodation which is protected by MERA and the ADA that situation as well.

Petitioner herself was in exactly this situation and could never properly refute what happened in the hearing she missed. Because the Court allowed her to be heard as to reconsideration, it might be argued that it did not matter that she never heard the other sides argument as to Summary Judgment but it was a double blow. The Court having denied her to be heard in opposition, then counted her opposition as a reconsideration and then claimed when she put in for true reconsideration that she had filed too many reconsiderations! She was procedural penalized.

If, in these circumstances, this Honorable Court will not make the requirement of waving the fee a mandate by rule then the Court needs to put down some standard that is more meaningful than a "reasonableness" standard of review. A


standard that would make denial almost impossible must apply in at least these 4 circumstances.

CONCLUSION

For all of the above reasons petitioner hereby requests this Honorable Court reconsider the blanket application of the "extra fee" rules and procedures to audio recording at least in the above circumstances.

Further Petitioner believes that at least for these circumstances where denials cannot have been reasonable, this Honorable Court has the evidence before it. This Honorable Court should give redress in the specific situations here defined for those Petitioners whose requests fell in these particular categories. The Court could order remand for re-decision in at least Petitioners' cases with these circumstances.

Respectfully Submitted,



Jackeline Cucufate
19 Kingsbury St.
Worcester, MA 01610

Date

5-8-2019

CERTIFICATE OF SERVICE

I, the below signed, hereby certify that a true and correct copy of the above and foregoing has been furnished to all opposing parties by pre-paid First Class Mail, U.S.P.S.

Worcester Housing Court's Attorney

Maryanne Reynolds

Assistant Attorney General

Government Bureau

Office of the Attorney General

10 Mechanic St., Suite 301

Worcester, MA 01608

774-214-4407

508-795-1991 (fax)

Maryanne.reynolds@state.ma.us

Re: Docket# 16H85SP001387, Barron, Lisa Y. v. Montgomery

Henry Raphaelson, Esq.

Raphaelson & Raphaelson

430 Main St.

Worcester, MA 01608

Re: Docket #16H85SP004125, MRII Sub I, LLC v. Cucufate

Tracey A Kish, Esq.

Korde & Associates

900 Chelmsford St. Suite 3102

Lowell, MA 01851

Re: Docket#14H85SP000710, U.S. Bank National Association Trustee
of J.P. Morgan Mortgage Acquisition Trust v. Berrios

Adam M. Hamel, Esq.

Andrew Hamilton, Esq.

Shiva Karimi, Esq.

McLane Middleton Professional Association

300 Trade Center Suite 7000

Woburn, MA 01801

Re: Docket#16H85SP000150, Nationstar Mortgage, LLC v. Ballou

Neil W. Heiger, Esq.

Shechtman Halperin Savage, LLP

1080 Main St.

Pawtucket, RI 02860

Re: Docket #16H85SP002533, HSBC Bank, USA, National Association
v. Oliveira, et al

Andrew B. Delory, Esq.

Law Office of Paul A. Delory

365 Broadway

Everett, MA 02149

Re: Docket #16H85SP000940, Savers Co-operative Bank D/B/A Savers
Bank v. Peristere

Howard B. D'Amico, Esq.

Howard B. D'Amico, P.C.

33 Waldo St.

Worcester, MA 01608

RE: Docket #16H85CV000234, Norris, Elizabeth v. HSBC Bank USA,
National Association as Trustee

Re: Docket #10H85SP001207, U.S. Bank, N.A. as Trustee v.
Schumacher

K & L Gates, LLP

Michael Robert Murphy, Esq.

Morgan T. Nickerson, Esq.

State Street Financial Center

One Lincoln Street

Boston, MA 02111-2950

Re: Docket #15H85SP004099, Federal Home Loan Corporation v.
Evans Patrick Beaton

Doonan, Graves & Longoria

100 Cummings Center, Suite 225D

Beverly, MA 01915

Re: Docket #16H85SP002415, Fannie Mae A/K/A Federal National
Mortgage Association v. Hughes

William Lawson

McCarter & English

265 Franklin Street

Boston, MA 02110

Re: Docket #15H85SP003985, Santander Bank, N.A. v. Adjarthey,

Re: Docket #16H85SP001313 MidFirst Bank v. Abdelhamed,

Re: Docket #16H85SP004400 MidFirst Bank v. Raymond,

Re: Docket #15H85SP003287, #15H85SP003288, #16H85SP003289,

U.S. Bank Trust, N.A. Trustee of VOLT 2012-NPL1 Asset Holdings
Trust v. Swanston,

Re: Docket # 14H85SP000755 Fannie Mae v. Osborne,


Re: Docket #13H85CV000283, Fannie Mae v. Griffin

Steven Michael Stoehr, Esq.

Orlans Moran PLLC

PO Box 540540

Waltham, MA 02454



Jackeline Cucufate
19 Kingsbury St.
Worcester, MA 01610

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