

Table of Contents

Affidavit in Opposition to motion for reconsideration or leave to appeal, 10/23/2000	
Exhibit 1 - Feb. 1st, 1999 trial court dismissal, Hon. Underwood, J.S.C.	7
Exhibit 2 - March 1st, 1999, Notice of Appeal	9
Exhibit 3 - October 23rd, 2000, Appellate Division Decision and Order	10
Exhibit 4 - Selected papers from Omnibus Petition made to Court of Appeals	12

Affidavit in Opposition to motion for reconsideration or leave to appeal, 10/23/2000

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

Docket No. 99-02065

-----x
ROBERT A. FICALORA as assignee of Montauk
Friends of Olmsted Parks, Inc., a not-for-profit
corporation established under the laws of the
State of New York,

**AFFIDAVIT IN
OPPOSITION**

Plaintiff-Appellant

- against -

The town board government of East Hampton

Defendant-Respondent,

- and -

Sunbeach Montauk II, Inc., as claimant fee title holder
to the Hither Plain Reservation and Bathing Reservation
properties in Montauk,

Defendants.

-----x

STATE OF NEW YORK)
 : ss.:
COUNTY OF SUFFOLK)

RICHARD C. CAHN, being duly sworn, deposes and says:

1. I am a member of the firm of Cahn Wishod & Knauer, LLP, attorneys for the Town Board of the Town of East Hampton (the "Town"), sued herein as "the town board government of East Hampton," Defendant-Respondent herein. I make this Affidavit in opposition to what is apparently intended to be a motion seeking reargument of this Court's October 23, 2000 Decision and Order or, alternatively, for leave to appeal to the Court of Appeals. The motion must be denied in all respects.

2. The plaintiff, Robert A. Ficalora, a non-attorney, once again seeks relief in this Court in his alleged capacity "as assignee of Montauk Friends of Olmstead Parks, Inc., a not-for-

profit corporation established under the laws of the State of New York” (“MFOP”). Mr. Ficalora, however benign his intentions, cannot represent a corporation without violating CPLR § 321(a), as both this Court and the Court of Appeals have repeatedly held. He attempts to avoid application of § 321(a), as applied by this Court and by the Court of Appeals, by submitting to the Court a purported new “Resolution of Assignment” dated November 7, 2000 which he has attached as Exhibit A to a proposed Order to Show Cause. However, a new assignment, even if it were now curative of the substantive law impediment to Mr. Ficalora’s representing a corporation, would in no manner retroactively cure the defect in his authority that existed in the lower court and in the prior proceedings in this Court.

3. The determination of the Supreme Court, Suffolk County appealed from is the Short Form Order of Supreme Court, Suffolk County (William L. Underwood, J.), dated February 1, 1999, filed February 3, 1999, which was reprinted at pp. 1-2 of the Record on Appeal and is attached as Exhibit 1. In that order, Justice Underwood denied Mr. Ficalora’s motion to disqualify him and granted the Respondent’s motion to dismiss, relying upon § 321(a).

4. Mr. Ficalora appealed that determination to this Court and the Notice of Appeal dated March 1, 1999 was reprinted at page 5 of the Record on Appeal and is attached as Exhibit 2. After full briefing and oral argument, this Court, by Decision and Order dated October 23, 2000 (attached as Exhibit 3), affirmed Justice Underwood on the ground that there was no basis to overturn Justice Underwood’s denial of the motion to disqualify, and upon the basis that Mr. Ficalora was not authorized under § 321(a) to represent the corporation.

5. This Court’s decision was in no manner extraordinary or exceptional. Indeed, Mr. Ficalora, on April 10, 2000, even before this Court heard oral argument on his appeal, moved in the Court of Appeals in this case and in three others to remove this case from this

Court and to hear his pleas in three other cases that he had brought in the same capacity. He also sought to reargue an earlier determination of the Court of Appeals that had disqualified him on § 321(a) grounds from representing MFOP. Copies of the initial pages of his Court of Appeals application and of that Court's denial of that application, dated June 20, 2000, together with the Court's February 24, 2000 decision denying his original motion for leave to appeal in a companion case, are attached as Exhibit 4.

6. Having twice litigated this issue in the Court of Appeals, Mr. Ficalora's may not now relitigate the issue, and certainly may not do so in this Court. He is precluded by the Court of Appeals' determinations from attempting without a law license to represent this corporation, whatever the nature of his purported "assignment."

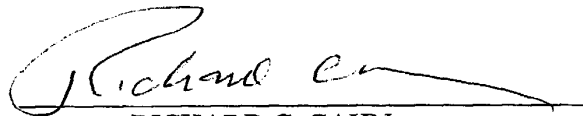
7. Moreover, this Court's consideration of this case was necessarily focused upon the applicability of § 321(a) to Mr. Ficalora's situation. The equal protection argument that he now presents for the first time could as easily have been advanced by him in Supreme Court and on the plenary appeal in this Court. Having failed to raise this constitutional issue in the prior proceedings, he is now precluded from doing so.

8. It should be noted that the central claim in this case, as well as in the other three cases which Mr. Ficalora has thus far sought unsuccessfully to bring before the Court of Appeals, is that neither the Town Board of the Town of East Hampton nor the State of New York possess jurisdiction over certain territory in Montauk. Throughout these proceedings for the last four years, Mr. Ficalora has apparently failed to understand the difference between the exercise of government authority and having title to real property. Because of certain proceedings that apparently occurred more than 150 years ago, which had to do with the delineation of property lines, Mr. Ficalora has concluded that the Town of East Hampton and the State of New York lack

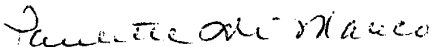
jurisdiction to govern those territories. The distinction between legal title and governmental authority, however, is elementary and his apparent failure to understand the difference is fatal to his request that this Court entertain the issuance of an Order to Show Cause enjoining the Town of East Hampton from exercising the governing powers that were conferred upon it over lands in Montauk, by the laws of the State of New York.

9. Moreover, the making of this very application, as well as the commencing of this action and the prior prosecution of this appeal, is unauthorized, as Mr. Ficalora is still not an attorney; not only this Court and the Supreme Court, but also the Court of Appeals, have applied § 321(a) to the circumstances of this very claim, and he is barred now to argue otherwise; his equal protection claim is unavailing because he failed to raise it in the lower court or upon the appeal in chief; and the substantive claim that Mr. Ficalora seeks to assert totally lacks merit. There is no showing that this Court overlooked or misapprehended any material fact or controlling principle of law, or that the question involved (whether a non-lawyer may represent a corporation) is so novel or important as to warrant review by the Court of Appeals.

10. For all of these reasons, the motion for reargument of this Court's October 23, 2000 Order or, alternatively, for leave to appeal to the Court of Appeals, should be in all respects, denied.


RICHARD C. CAHN

Sworn to before me this
30th day of November, 2000.


Notary Public

PAULETTE DI MARCO
NOTARY PUBLIC, State of New York
No. 01DI4910908
Qualified in Suffolk County
Commission Expires Nov. 02, 2001

4

CAHN WISHOD & KNAUER, LLP

ATTORNEYS AT LAW

425 BROADHOLLOW ROAD, SUITE 315
MELVILLE, NEW YORK 11747

(631) 752-1600

FAX: (631) 752-1555

E-MAIL: info@cahnwishod.com

RICHARD C. CAHN
EUGENE L. WISHOD
TODD A. KNAUER

BRIAN T. EGAN

November 30, 2000

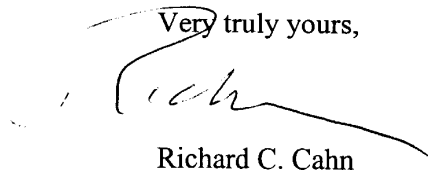
Mr. Robert A. Ficalora
P.O. Box 2612
Montauk, New York 11954

Re: Robert A. Ficalora v. The Town Board
Government of The Town of East Hampton
and Sunbeach Montauk II, Inc.
Docket No. 99-02065

Dear Mr. Ficalora:

We serve herewith Affidavit in Opposition in connection with your motion for leave to appeal to the Court of Appeals in connection with the above litigation.

Very truly yours,



Richard C. Cahn

RCC/pdm
Enclosure

Orders of Hon. William L. Underwood, J.S.C., 2/1/99

FILED
SHORT FORM ORDER

INDEX NO. 014806/1998

99 FEB -3 PM 2:13

SUPREME COURT - STATE OF NEW YORK
S.A.S. TERM. PART XIV - SUFFOLK COUNTY

EDWARD P. ROMAINE
PRESENT: CLERK OF
Hon. WILLIAM L. UNDERWOOD, JR.

ORIG. RETURN DATE: 07/09/98 & 07/13/98

FINAL RETURN DATE: 11/10/98

MTN. SEQ. #:001 - WDN

MTN. SEQ. #:002 - MD

MTN. SEQ. #:003 - CASEDISP

ROBERT A. FICALORA, as Assignee of
Montauk, Friends of Olmstead Parks, Inc., a not-
for-profit corporation established under the laws
of the State of New York,

Plaintiff,

-against-

The Town Board Government of East Hampton

-and-

Sunbeach Montauk II, Inc., as claimant fee title
holder to the Hither Plain Reservation and
Bathing Reservation properties in Montauk,

Defendants.

PLTF'S/PET'S ATTORNEY:

ROBERT A. FICALORA, *Pro Se*
P.O. Box 2612
Montauk, New York 11954

DEFT'S/RESP ATTORNEY:

ESSEKS, HEFTER & ANGEL, ESQS.
Attorneys for SUNBEACH MONTAUK TWO
108 East Main Street - P.O. Box 279
Riverhead, New York 11901

CAHN, WISHOD & LAMB, LLP
By: SCOTT M. KARSON, ESQ.
Attorneys for TOWN OF EAST HAMPTON
534 Broadhollow Road - CS 9034
Melville, New York 11747-9034

Upon the following papers numbered 1 to 19 read on this motion _____
for a discretionary order of disqualification of Justice; cross-motion to dismiss complaint
Notice of Motion/Order to Show Cause and supporting papers 1-4; Notice of Cross Motion and
supporting papers _____; Answering Affidavits and supporting papers 5-16; Replying Affidavits
and supporting papers _____; Other 17-19; (and after hearing counsel in support of and opposed
to the motion) it is,

ORDERED that plaintiff Robert Ficalora's motion for disqualification of this Court and
reassignment to another part is denied under the circumstances presented.

Orders of Hon. William L. Underwood, J.S.C., 2/1/99

FICALORA V. GUARNERI
INDEX NO. 014806/1998
PAGE TWO

Except in cases requiring mandatory disqualification, such as consanguinity with one of the parties, the question of recusal is left to the conscience of the Court (Judiciary Law Sec. 14; 22 NYCRR Sec.100.3[E]; *Brine v. Dubinsky*, 115 Misc.2d 572 [Spec. Term, NY Co., 1982]). A review of this Court's decisions in this matter fails to raise the slightest inference of bias or lack of impartiality (*People v. Greenfield Construction Company, Inc.*, 48 A.D.2d 765 [4th Dept., 1975]). Additionally, the plaintiff's motion papers fail to present any demonstrable proof which would justify recusal (*Curcio v. Kelly*, 193 A.D.2d 738, 739 [2nd Dept., 1993]). Therefore, the motion is denied.

Plaintiff's Order to Show Cause dated June 30, 1998 and returnable July 9, 1998, for injunctive relief was withdrawn by movant by Notice dated July 6, 1998.

Defendant's cross-motion for an order of dismissal is granted (CPLR 3211, 321[a]). In light of Mr. Ficalora's status as a non-attorney, his appearance on behalf of the corporate plaintiff is improper (CPLR 321[a]). Therefore, it is

ORDERED that plaintiff's complaint is dismissed.

Dated: February 1, 1999



WILLIAM L. UNDERWOOD, JR.
J.S.C.

Orders of Hon. William L. Underwood, J.S.C., 2/1/99

X2 DEEDS 4/24

State of New York, County of TOWNSEND

being duly sworn, deposes and says, that respondent is not a party to the action, is over 18 years of age and resides at

1999

That on the 1st day of March

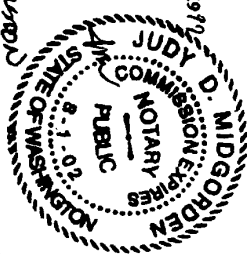
deponent served the within notice of appeal on CHAP. WISSECO, & LINDS, LLP attorney(s) for TOWN OF TOWNSEND herein, at his office at 534 Broad Street during his absence from said office NEWVILLE, N.Y. 13777

(a) by them and those leaving a true copy of the same with

his clerk, postpaid, person having charge of said office (b) and said office being closed, by depositing a true copy of same, enclosed in a sealed wrapper directed to said attorney(s), in the office letter box or box (the address of which is)

Sworn to before me this 1st day of March

Judy D. Midgorden



State of New York, County of TOWNSEND

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

1999

That on the 1st day of March

deponent served the within notice of appeal on ESSEX, THE FINE & ANNE, ESQ. attorney(s) for SUBURBAN NEWARK, INC. at 604 274 Rutherford St 1991

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office - official depository under the exclusive care and custody of the United States Postal Service within New York State.

Sworn to before me, this 1st day of March

Judy D. Midgorden



Index No. 14806/1998

ROBERT A. FICHERA, AS ASSAULT
OF HOLSTINE FURNACE OF QUASTED
PACKS, INC., & D.F.P. CORP. ESTABLISHED
UNDER THE LAWS OF THE STATE OF N.Y.
- PLAINTIFF -

THE TOWN BOARD OF TOWN OF TOWNSEND
PLAINTIFF
VS
ROBERT A. FICHERA, JR. AS CHAIRMAN
OF THE BOARD OF THE TOWN
OF TOWN OF TOWNSEND
DEFENDANT

Notice of Appeal

ROBERT A. FICHERA, JR. AS

PLAINTIFF

Office and Post Office Address

604 274 Rutherford St, 1991 (Suburban)

6753 Bellevue Pike NW

OLYMPIA, WA 98502 (Quast)

Service of a notice of appeal of which the within is a copy admitted this 19 day of

Attorney(s) for Respondent:

October 23, 2000

FICALORA v TOWN BOARD GOVERNMENT OF EAST
HAMPTON

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

2843B

U/hu

AD2d Argued - September 5, 2000

LAWRENCE J. BRACKEN, J.P.

LEO F. McGINITY

DANIEL F. LUCIANO

SANDRA J. FEUERSTEIN, JJ.

1999-02065

DECISION & ORDER

Robert A. Ficalora, etc., appellant, v Town Board Government of
East Hampton,

respondent, et al., defendant.

Robert A. Ficalora, Montauk, N.Y., appellant pro se.

Cahn Wishod & Knauer, LLP, Melville, N.Y. (Richard C. Cahn of counsel), for respondent.

In an action, inter alia, for a judgment declaring that the title to certain property held by the defendant Sunbeach Montauk II, Inc., is invalid, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Underwood, J.), dated February 1, 1999, which denied his motion for the court to recuse itself, and granted the cross motion of the defendant Town Board Government of East Hampton to dismiss the complaint .

ORDERED that the order is affirmed, with costs.

Absent a legal disqualification under Judiciary Law § 14, a Trial Judge is the sole arbiter on the issue of recusal (see, *People v Moreno*, 70 NY2d 403, 405; *Fisk v Slye*, 234 AD2d 983; see also, *Colburn v Blum*, 233 AD2d 890). The plaintiff failed to demonstrate that the Supreme Court erred in refusing to recuse itself from the case. The plaintiff's dissatisfaction with the Supreme Court's act of striking two provisions for temporary restraining orders contained in a previous order to show cause, standing alone, is insufficient to demonstrate a basis for recusal.

The Supreme Court also properly dismissed the complaint. CPLR 321(a) provides, with exceptions not applicable here, that a corporation or voluntary association shall appear by an attorney. A corporation can validly assign a claim, even if the assignment is undertaken to circumvent the statutory prohibition against a corporation appearing for itself (see, *Traktman v City of New York*, 182 AD2d 814, 815; *Medical Facilities v Pryke*, 172 AD2d 338). In this case, however, there was no valid assignment, as the complaint expressly stated that the plaintiff, who is not an attorney, was designated to represent the corporation before the court for the purposes for which the corporation was established (see, CPLR 321 [a]; see also, *Montauk Friends of Olmstead Parks v Brooklyn Historical Socy.*, 95 NY2d 821; *Matter of Ficalora v Planning Bd. of Town of E. Hampton*, 94 NY2d 891; *Hilton Apothecary v State of New York*, 89 NY2d 1024).

BRACKEN, J.P., MCGINITY, LUCIANO and FEUERSTEIN, JJ.,
concur.

ENTER:

James Edward Pelzer

Clerk

Opening Statement

This Omnibus of Motions and Petition is made by Robert A. Ficalora, *pro se*, both individually and as acting president and assignee of the Montauk Friends of Olmsted Parks corporation (MFOP), claimant successor of the Montauk Trustee corporation established at chapter 139 of the laws of 1852. Movant/petitioner comes before this court with clean hands and honorable purposes and does pray that the court finds him at their service.

This court's February 24th order in the matter of Ficalora, &c v. Planning Board, et. al. & Ficalora &c v. Guarneri, et al. proclaiming that "*Robert A. Ficalora is not the legal representative of the Montauk Friends of Olmsted Parks corporation*" impacts not only that proceeding and action but all of the other actions brought with this Omnibus of Motions & Petition. Movant/petitioner asserts that the order is in conflict with the laws of the State of New York and, therefore, seeks reargument of that order.

This Omnibus also brings a motion for leave to appeal the decision and order the Appellate Division dismissing the matter of the MFOP, inc., v. the Brooklyn Historical Society for abandonment when the matter was perfected but refused by the clerk on the ground of non-representation by attorney. Further, a petition is made for removal of the case of Robert A. Ficalora as assignee of the Montauk Friends of Olmsted Parks, Inc., v. the town board government of East Hampton on the grounds of collateral estoppel, possible bias and judicial efficiency.

Movant apologizes for the significant disruption caused by these actions. The Town of East Hampton has no legal or constitutional claim of jurisdiction over Montauk. Under the Constitution and the law, Montauk is a Township.

- Att. F - CPLR 2105 certification (per 22 NYCRR 670.10(g)) 43
- Att. G - Record on Appeal stamped “Fee Paid” & “Received 99 NOV 15” 44
- Att. H - Papers Rejection Notice, “See Order, 10/27/99” 45
- Att. I - Affidavit in Opposition to Motion for Reargument, 11/16/99 46
- Att. J - Reply to Opposition to Motion for Reargument, 50
- Att. K - Appellate Division order denying reargument, 2/15/2000. 55
- Att. L - Dismissal for failure to timely perfect, 2/15/2000 56
- Att. M - Notice of Entry, 3/2/2000 58
- Petition for Removal and Judgment 60**
- Motion for Allotment and Facilities, 11/8/1999 63
- Att. A - Resolution of Assignment, 10/26/1999 70
- Att. B - Sept. 6. 1851 Order of Nathan B. Morse, J.S.C. 71
- Opposition to Motion for Allotment and Facilities, 11/11/1999 74
- Order denying motion for Allotment and ejection, 2/17/2000 78
- Closing Statement 80**
- Appendix 81**
- The Journal of the Assembly, January 4th, 1961 vote upon Constitutional Repeals . . . 81
- Summons, 12/30/98. 84
- Notice, 12/30/98 85
- Affidavit of Service, 12/30/98 86
- NY Law Journal, Decisions, MFOP v BHS, 11/3/1999 88
- Listing of attachments. 89

Table of Contents

Opening Statement 1
Statement pursuant court rule 500.11. 2

Historical Background

Montauk and the origins of New York Sovereignty 6

Motions & Petition

Introduction 11
Motion for Re-argument - Ficalora/MFOP v. Planning Board & Building Department of the Town of East Hampton 12

- Attachment A - Decision, N.Y. Court of Appeals, Ficalora v. Planning Board, et. al., 2/24/2000 15
- Attachment B. - Resolution of Assignment, 10/28/97 16
- Attachment C. - Resolution of Assignment, 6/5/98. 17
- Attachment D. - Resolution of Assignment, 10/26/99 18

MFOP, inc. v. Brooklyn Historical Society, inc., A.D.#s 99-04460, 99-04461 19

- Att. A - Motion to Certify the Record as a non-attorney, 10/1/99 22
- Att. B. - Cross Motion in Opposition, 10/12/99 25
- Att. C. - Order requiring attorney by 11/29/99, 10/27/99 33
- Att. D. - Motion for reargument, 11/8/99. 34
- Att. E - Affidavit of Service perfecting Appeal, 11/8/1999 42

Supreme Court of the State of New York - Court of Appeals

ROBERT A. FICALORA, both *pro se* and as acting president of the Montauk Friends of Olmsted Parks, inc., a not-for-profit corporation established under the Laws of the State of New York.
Petitioner-Appellant
- against -

The PLANNING BOARD AND BUILDING DEPARTMENT of the town board government of the Town of East Hampton.
Respondents
Suffolk Index No. 97-23205

MONTAUK FRIENDS OF OLMSTED PARKS, INC., a not-for-profit corporation established under the laws of the State of New York
Plaintiff
- against -

THE BROOKLYN HISTORICAL SOCIETY, INC., a not-for-profit corporation established under the laws of the State of New York (formerly the Long Island Historical Society) and MS. IRENE TICHENOR, as director thereof
Defendants
Suffolk County Index No. 97-14067

ROBERT A. FICALORA, both *pro se* and as acting president of the Montauk Friends of Olmsted Parks, inc., a not-for-profit corporation established under the Laws of the State of New York.
Plaintiff-Appellant
- against -

JOSEPH & JOANNE GUARNERI, owners in fee of Suffolk County tax lot number 47-1-6.1 situate at the interchange of Route 27 and the old Montauk highway (Cliff Drive),
- and -
THE TOWN BOARD GOVERNMENT OF THE TOWN OF EAST HAMPTON, 159 Pantigo Road, East Hampton, 11937.
Respondents
Suffolk Index No. 97-17016

Robert A. Ficalora as assignee of MONTAUK FRIENDS OF OLMSTED PARKS, INC., a not-for-profit corporation established under the laws of the State of New York
Plaintiff
- against -

The town board government of East Hampton
- and -
Sunbeach Montauk II, inc., as claimant fee title holder to the Hither Plain Reservation and Bathing Reservation properties in Montauk.
Defendants.
Suffolk County Index No. 99-02065

Omnibus of Motions and Petition

Return date:
April 10th, 2000

Robert A. Ficalora
pro se and assignee
Montauk Friends of Olmsted Parks, inc.
Box 2612 Montauk, NY 11954
(516) 668-2525 (Summer)

Cahn, Wishod & Knauer, LLP
Attorneys for Town of East Hampton
Twomey, Latham, Shea & Kelley
Attorneys for defendants Guaneri
Theilen, Reed & Priest, LLP
Attorneys for Brooklyn Historical Society
cc: Edward P. Romain
Clerk, Suffolk County
cc: Alexander Treadwell
Secty of State, State of New York

706 N.Y.S.2d 78 (Mem)

(Cite as: 94 N.Y.2d 891, 727 N.E.2d 575, 706 N.Y.S.2d 78)

Page 1

_KeyCite Historye

Court of Appeals of New York.

In the Matter of Robert A. FICALORA,
Appellant,

v.

**PLANNING BOARD OF TOWN OF EAST
HAMPTON et al., Respondents.**

Robert A. Ficalora, Appellant,

v.

Joseph Guarneri et al., Respondents.

Feb. 24, 2000.

Reported below, 262 A.D.2d 277, 691
N.Y.S.2d 778; 262 A.D.2d 320, 691 N.Y.S.2d
538.

Motion, insofar as Robert A. Ficalora seeks
leave to appeal purportedly on behalf of
Montauk Friends of Olmsted Parks, Inc.,
dismissed upon the ground that Robert A.
Ficalora is not the authorized legal
representative of said movant; motion for
leave to appeal by Robert A. Ficalora on his
own behalf denied.

END OF DOCUMENT

State of New York,
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the twentieth day
of June 2000

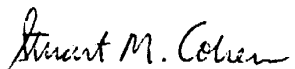
Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

2-11 Mo. No. 398
In the Matter of the Dismissal of
Causes for Failure to Perfect -
January 2000 Calendar

Montauk Friends of Olmsted Parks,
Inc., &c.,
Appellant,
v.
Brooklyn Historical Society,
Respondent.

A motion for leave to appeal to the Court of Appeals in
the above cause having heretofore been made by Robert A.
Ficalora, purportedly on behalf of Montauk Friends of Olmsted
Parks, Inc., and papers having been submitted thereon and due
deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is
dismissed upon the ground that Robert A. Ficalora is not the
authorized legal representative of said movant (see, CPLR
321[a]).


Stuart M. Cohen
Clerk of the Court