STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

STEPHEN PHILLIP ROMINE
Plaintiff/Appellant,

-Against-

JAMES P. LAURITO and STEVEN V. LANT
Plaintiff/Respondents,

Albany County Clerk
Index No.: 528147

APPELLANTS REPLY

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***Note: Original appeal questions have been reworded and reframed by the defendants/respondents under objection of the plaintiff/appellant.**

IV- COUNTER STATEMENT OF FACTS

Reply-Brief
Page 4 paragraph ("p") 1:

Contrary to the defendants/respondents convenient framing of the narrative, as described on pages 4, 5, & 6 of their Reply-Brief ("RB"), RB begins by omitting the fact the plaintiff/appellant had no idea of said transmitting smart meter being on his home because no one, including Central Hudson (hereafter called "CenHud"), informed him that it was on his home (R494 p3, R501 p2). The plaintiff/appellant could not object previous to 2013 because he had no idea a new type of meter was installed that was broadcasting invisible toxic microwave radiation (R657-658). After installation the plaintiff/appellant developed over time worrisome symptoms of painful muscle cramps, severe neck pain and periodical heart palpitations living at 8 Fitzsimons lane Woodstock, New York (R498 p1, R740 p2), and his significant other, Nicole Nevin, immediately came down with classic microwave exposure symptoms of nausea, vertigo and headaches once moved in to his residence in 2013 (R494 p1, p2 & R500 p1, p2, p3) .The discovery was of the transmitting smart-meter on their home (R501 p2) and the research documenting

the harm from the emissions of digital transmitting smart utility meters can cause (R494, R501 (R689-702, R294-298, R575.5-576, R510-511) and no accommodation from CenHud under the leadership of the defendants/respondents (R501 p3, R502) made it become necessary to send out the lawful notices (R50 p1, R502, R494 p4, R496). The lawful notices were much more than just a "letter" judged by its format, structure, content and quantity (R660-668.5). Aside from the initial mailing, those lawful notices were accompanied by a letter which distinguished them from each other one being a letter with a standard signature (R315-316, R436-438, R460), and the other a lawful notice with signature notarized with legal declarations, terms and conditions (R660-671). Aforementioned lawful notices were sent multiple times (appeal-brief 16.5-17) directly to the defendants/respondents by name to their place of business which is the offices of CenHud at 284 Poughkeepsie NY 12601. The lawful notices made a demand, *inter-alia,* to remove the offending smart-meter and replace it with a time-tested-safe-analog-utility-meter that every one of the 8 neighbors at plaintiff/appellant's street (Fitzsimmons lane Woodstock, NY 12498) had on their homes and still have 7 years later (R422 p3). This fact has

not been disputed by the defendants/respondents in any of their paperwork.

The defendants/respondents failed to respond to the lawful notices by name or date, or even acknowledge they were sent. The plaintiff/appellant witnessed the traumatic experience of watching his significant other experience symptoms of stroke while she was standing 10 feet in front of the smart-meter, and on May 16, 2013 was forced to use his constitutionally guaranteed inalienable rights of defense (R680), removed the smart utility meter from his premises and replaced it with a time tested safe analog utility meter, mainly to protect his significant other from another, and possibly fatal, stroke (R496 p2,p3 & R504 p1). Plaintiff/appellant then notified defendants/respondents directly a second time undisputedly on May 16, 2013 with a certified letter (R16.5-17, R422) together with a second set of lawful notices attached, video of the smart meter removal and installation of analog meter, and the actual physical smart meter returned as recorded in the undisputed affidavit of fact of the plaintiff/appellant and the undisputed affidavit of fact of Nicole Nevin (R497 p2, & R504 p1, R505 p1).

CenHud's representatives, under the leadership and supervision of the defendants/respondents, terminated his electrical service knowing full

well that the plaintiff/appellant's significant other was recovering from a hospitalized stroke (R505 p1, R742 p1)). Rather than installing a temporary analog utility meter from their shop till the issue was resolved, the defendants/respondents, as CEO and President of CenHud, approved the course and policy to allow the plaintiff/appellant to be deprived of the basic human need in this modern world, electrical service, and did so for 6 tough years.

Contrary to defendants/respondents statements CenHud under the leadership of the defendants/respondents, initial response to resolving the issue was to demand that the plaintiff/appellant accept the same AMR smart transmitting utility meter that was on his home when his significant other had the stroke (R461 p2). The references the defendants/respondents cited (R-430.5 -432) in their "Counter Statement of Facts" do not support their assertion that a non-AMR meter was offered but those references support the plaintiff'/appellant's aforementioned assertions that an ERT transmitting AMR digital smart meter (R461 p2), was offered to attempt to resolve the issue and was obviously unacceptable.

Page 4 p 2:

The statement that the defendants/respondents were held liable by the plaintiff/appellant in his 2016 amended complaint is 'predicated" on their "past employ" is grossly inaccurate as the agreement/contract accepted by the defendants/respondents through acquiescence (R660-668.5), specifically named James P. Laurito and Steven V. Lant, , in the lawful notices, back in 2013. The lawful notices, warned of their potential liability (R660-671) if they continued down the path of turning a blind eye to and trespassing on the plaintiff/appellants fundamental human/constitutional/international rights (to not be experimented on with a known toxic substance) without his consent.

Page 5 p1

The causes of action were more than what the defendants/respondents portrayed as the actual list is abuse of right, violation of inalienable rights guaranteed by the U.S Constitution, negligence, private nuisance, breach of contract, trespass, violation of international human rights and fraud (R55-57).

Page 5 p2:

Plaintiff/appellant did in fact create an agreement/contract with the defendants/respondents in accordance with the legal precepts outlined in the classic legal reference Restatement of Law/Contracts chapter 69 "Acceptance by Silence," which gives the special conditions where that type of agreement/contract can occur.

The plaintiff/appellant did not receive any response from either of the defendants/respondents even though the lawful notices were addressed specifically to them by name and sent certified return receipt. Receipts (R660-R671) of those lawful notices mailed were received by the plaintiff/appellant verifying delivery and reception by their agents authorized to receive their mail (R667.5-668, R671).

Page 5 p3:

Plaintiff/appellant did receive a letter from CenHud Supervisor Daniel Harkenrider on April 1, 2013, who did not reference the lawful notices by name or date and did not object to the terms and conditions of the agreement/contract outlined in the lawful notices (R794-795). The fact is it cannot be considered a lawful response to a lawful notices if no mention of the lawful notices by name, date and terms and conditions

are ever mentioned nor was it a sworn reply to the declaratory statements made in that lawful notice.

Page 5 p4:

Plaintiff/appellant did file a complaint against CenHud and asked the NYS Public Service Commission ("PSC") (R672) to order the installation of an analog utility meter and have electrical service restored. The total dialogue between the plaintiff/appellant and Karen Anderson consumer affairs representative was a few brief phone calls with no hearing, discovery, opportunity to confront CenHud, cross examine witnesses and/or purported experts (R673-675). Nowhere in the PSC decision did Karen Anderson use the word "illegal" but used the word "unauthorized" (R675 p1). Plaintiff/appellant exercised his constitutionally protected inalienable right to protect his family and himself from a device emitting a known toxic substance he did not give consent to be there and not warned about (R494 p3).

Page 5 p5:

The PSC complaint decision regarding the plaintiff/appellant was an administrative one with no due process for the plaintiff/appellant

(R673-675) who then applied for an "Informal Hearing" with the PSC in an attempt to obtain due process (R676). His request was denied and was told the PSC does not have the authority to grant the relief the plaintiff/appellant was requesting (R677 p1).

Page 5 p6:

The PSC quote is only stating what type of meter CenHud "uses" not what is required by the PSC. The PSC has "no regulation, document, law or tariff" that bars the use of an analog meter or requires the use of a transmitting or non-transmitting digital meter (R785, R787, R789).

Page 6 p1:

The "appropriate meter" would be one that does not cause or affect a medical/health condition and could be a time tested safe analog utility meter, which the May 16, 2017 letters the defendants/respondent reference affirms. There is no regulation, document, law or tariff prohibiting such use (R785-790). CenHud's analog meters can service up to at least 200 amps. The plaintiff/appellant's home was only upgraded to 100 amp service (R512 #4).

Page 6 p2:

As seen in the aforementioned FOIL responses, the correct facts are refurbished analog utility meters that test accurate are not prohibited in NYS (R789), and can be supplied to their customer base as several other states, are doing (R783). The PSC so-called approved AMR ERT GE I-210 transmitting smart meter was approved without any public input and did not consider any peer-reviewed medical studies documenting its biological safety. It was only tested for accuracy and physical safety not biological safety (R80 to R83),(exhibit A).

Page 6 p3:

Plaintiff/appellant disputes the application of the doctrine of primary jurisdiction, collateral estoppel, failure to exhaust administrative remedies and statute of limitations in summary judgment decision. Plaintiff/appellant affirms the defendants/respondents are liable for what they agreed to through acquiescence (R668.5-671), what they ordered to be done through company policies under their supervision, what they failed to do as the top executives in leadership positions and the perpetuation of fraud against the plaintiff/appellant. The SJ Order was improper and should be reversed or vacated

V- POINTS OF ARGUMENTS

"Federal law and Supreme Court cases apply to state court cases"
[Howlett v. Rose, 496 U.S. 356 (1990)]

POINT I

Whether The Lower Court Prematurely Granted Summary Judgment

The defendants/respondents are in error stating no *"factual discovery is required"*(RB 7 p4). The plaintiff/appellant has claimed fraud on the part of the defendants/respondents (R57 #8) and is entitled to obtain information and documents to prove his case but was denied interrogatories and depositions that could have exposed that. The summary judgment ("SJ") order prevented plaintiff/appellant from uncovering information and documents requested in the interrogatories and proposed depositions to substantiate the fraud he has asserted in his complaint (R13 p3, R14).

"a party should be afforded a reasonable opportunity to conduct discovery prior to the determination of summary judgment (Harvey v. Neals 61 AD3d 935 [2009] so "there should be no doubt the plaintiff can prove no set of facts in support of his claim" (Haines v. Kramer et al. 404 519,92 s, CT 594,30L. Ed, 2D 652 d).

Regarding RB7 p5, p6, the plaintiff/appellant was also denied ability to take depositions, which he could have asked the defendants/respondents very specific questions tailored to the answers he received from his interrogatory questions, but was denied by the premature SJ order.

Regarding defendants/respondents statements on page RB 7 p6, the claim that the plaintiff/appellant must first show "*how further discovery would reveal the existence of essential and/or material facts*" does not apply as the plaintiff/appellant had no previous discovery to have further discovery. Furthermore putting conditions on the plaintiff/appellant to obtain discovery that the defendants/respondents were not required to meet to obtain discovery violates "*fundamental fairness.*"

(Wardius v. Oregon 412, U.S. 470 (1973).

Regarding RB7 p7, the defendants/respondents response does not indicate in any way that anything is preventing CenHud from issuing a good used analog meter obtained from its customer base and issued to a person with medical and/or health needs for a time-tested-safe-analog-meter and as such are liable for allowing such customers to suffer when an alternative to current meter policy is possible and permitted by the PSC and the tariff (R785-790).

Regarding RB p8, the fact that the GE I-210 transmitting smart meter was approved by the PSC does not protect against biological effects when no peer-reviewed medical studies were reviewed or discussed in the approval report (R80-83) (exhibit A), thereby validating the importance of the relevance of the undisputed exhibits of affidavits, letters of health professionals and the articles written by world expert, Dr. Carpenter, and co-signed by 52 medical professionals, and peer reviewed medical studies (R494, R496, R498, R500-503, R515-521, R575-R576, R689-702, R771-777, R799-810).

Plaintiff/appellants chapters V, VI, VI & X, addressed completely defendants/respondents statements in their last paragraph of point I.

POINT II

Whether Denying Plaintiff/Appellant Demands For Discovery Violated His Due Process And Equal Protection Rights

Regarding RB9 p1, the lower court did in fact violate plaintiff/appellants due process rights as indicated in U.S. Supreme Court case:

Wardius v. Oregon 412 U.S. 1973 470, 471, 475 93 St, 2208 (1973)

that discussed violations of due process rights by not granting *"reciprocal discovery"* held: *"discovery must be a two-way street"*.

The lower Court not allowing "*reciprocal discovery*" is a violation of the fourteenth amendment that guarantees equal protection under the law.

Regarding RB9 p2, the defendants/respondents or the lower court did not and could not consider unrevealed deposition questions that would have exposed fraud.

In spite of the defendants/respondents purported *"legal grounds"* (RB9 p1), plaintiff/appellants appeal-brief chapters V, VI, VI & X controverts those erroneous and fraudulent claims completely.

U.S. Supreme Court and New York case law cited in appeal-brief document the lower court violated the plaintiff/appellants 14 amendment rights of due process and equal protection under the law.

POINT III

Whether The Trial Court Was Biased Towards Plaintiff/Appellant

First of all, the question the plaintiff/appellant put before this Honorable Court was as follows:

"Did Ulster County Supreme Court Err And Give The Appearance of Bias Against Plaintiff/Appellant Stephen Phillip Romine And Favor Defendants/Respondents James P. Laurito and Steven V. Lant"

The defendants/respondents reply-brief reframes plaintiff/appellant's original question changing the context and eliminating the important element to consider which is "the appearance of bias."

"the existence of bias is irrelevant when an appearance of impropriety has been created Loembruno v Leoumbruno, 150 A.D. 2d 925, 926 (3rd Dept. 1989), In re Estate of Wiggins,218, A.D.2d 902, 904, 630, N.Y.S. 2d 155.156, (3rd.Dept. 1993).

By not responding to the plaintiff/appellants original question, defendants/respondents have elected to remain silent, voicing no opposition (*qui tacet consentit)* to the proposition of the appearance of bias in the SJ order/decision. New York case law affirms when affidavits or facts go unrebutted (see pages 61 to 63 of appeal-brief) they become facts admitted

on the record as true, so to with the appearance of bias being present in the lower courts responses to the plaintiff/appellant.

Regarding RB10 p1, p2, digital meters are not mandated by the PSC to be installed on power consumer's homes, nor are analogs barred as stated by the PSC (R785). The claim refurbished analog meters are not approved for NY is fraudulent (R789). Remanufacturing is a type of manufacturing and there are at least two remanufacturers producing refurbished/remanufactured analog meters (R905-921, R922). Nowhere in defendants/respondents reply-brief extra-record exhibit "A" is it stated analog meters are barred or digital meters are mandated and is why defendants/respondents supply no page numbers to support their argument.

Regarding RB10 p3, the PSC decision (exhibit "A") most certainly did not address all the plaintiff/appellants questions in this motion as they could not address the questions of fraud, breach of contract, appearance of bias, collateral estoppel, etc. as it not in their jurisdiction to comment on.

Regarding RB 10 p4, the PSC supplied no peer-reviewed medical studies in any of their decisions around the issue of the biological safety of digital utility meters (Exhibit "A"). Again they have supplied no page numbers to support their argument.

Regarding statements on RB11 p2, P3 & p4, they are false and fraudulent. The PSC clearly states CenHud refurbished/remanufactured analog meters that use no aftermarket parts do not need to be re-approved and are permitted by the PSC (R789). In retrospect defendants/respondents supply no page numbers in their extra-record exhibit "A" to support their argument.

RB11 p5, is addressed in detail in chapter V pages 39, 40 & 41, of this reply.

POINT IV

Whether The Lower Court Was Touched By Fraud When It Granted Summary judgment

The defendants/respondents reply-brief fails to dispute any of the facts contained in the plaintiff/appellants exhibits located between the covers of the record on appeal supporting plaintiff/appellants claim the lower court was touched by fraud. Facts not disputed become evidence admitted as true on the record:

"Facts appearing in the movant's papers which the opposing party does not controvert may be deemed to be admitted. Laye v. Shepard, 48 Misc. 2d 478 affd 25 AD2d 498 (1966): Mckinneys Cons. Laws of New York Book 78, CPLR 3212 16, p. 437

Furthermore defendants/respondents use of extra-record material in exhibit "A" in chapter III, did not dispute any of the plaintiff/appellants exhibits, not one, in the record on appeal and is why defendants/respondents cite no page numbers to support their arguments when referencing Exhibit "A" in their reply-brief. Fraud was most certainly documented.

"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments"
UNITED STATES v. THROCKMORTON 98 U.S. 61 **(**, 25 L.Ed. 93**)**

POINT V

Whether The Lower Court Properly Determined that Primary Jurisdiction For The Plaintiff/Appellants Claims Was More Properly Before The Public Service Commission

Defendants/respondents have once again changed the context of the plaintiff/appellants question by reframing what was originally asked in the appeal brief in this chapter, did the lower court "err in citing primary jurisdiction."

The defendants/respondents state on RB13 p1:

"The PSC is an administrative agency vested with the authority to investigate and adjudicate disputes involving billing, service or termination of utility service."

The PSC quote does not say it has jurisdiction of trespassing violations, private nuisance violations, breach of contract violations, constitutional rights violations, or international rights violations. Over these claims of the plaintiff/appellant, the PSC has no jurisdiction, let alone primary jurisdiction.

Regarding RB 13 p2, CenHud operations being regulated by the PSC, it should be noted here that the PSC has stated they have no "regulation, documents, law or tariff" that prevents CenHud from issuing a used CenHud analog meter to a customer who requests one for a special need, nor is there any regulation, document, law or tariff prohibiting the issue of a CenHud refurbished analog meter, nor is there any regulation, document, law or tariff

mandating a digital meter must be used to meter power consumers residences (R785).

Regarding RB13 p3, plaintiff/appellant only concedes that a few brief phone calls (R673 p1) with purported consumer specialist, Karen Anderson, resulted in an administrative decision without due process of law and without "actual litigation" (R430.5-432).

Regarding RB13 p4, the requested upgrade did not ask for a transmitting digital meter, nor was it required by the PSC (R785).

Regarding RB 13 p6, plaintiff/appellant removed a transmitting digital smart meter emitting toxic pulses of microwave radiation every few seconds, that was placed on his home without his informed consent or foreknowledge. Plaintiff/appellant first requested for utility to remove it and replace it with a CenHud analog meter, because of adverse health effects being experienced by himself, and his significant other, as documented in their undisputed affidavits of fact (R494 p1, p4, R498 p1, R500 p1, p2, R501 p1, R502). Plaintiff/appellant then demanded smart meter be removed with lawful notices sent certified mail. Plaintiff/appellant only removed CenHud's meter when his significant other had a mini-stroke standing near the smart-meter and needed to protect his family from any more serious harm (R496 p1, p2, R502 p3-R503 p3).

Regarding RB 13 point 7, plaintiff/appellant was initially demanded to accept a transmitting ERT smart meter or else have no electrical service. Reference defendants/respondents cite does not support their statement that a non-transmitting meter was offered but in fact supports what the plaintiff/appellant has just stated (R426 p2, R675 p2).

CentHud could have supplied one of their own used analog meters as a temporary solution till the problem with the plaintiff/appellant was figured out, or even as a permanent solution. Nothing prevented them from doing so as demonstrated earlier in this chapter.

Regarding RB 14 p1, reviewing the aforementioned administrative determination purportedly requiring an article 78 review, defendants/respondents conveniently fail to mention that a request for an Informal Hearing was filed after the PSC administrative decision of July 16, 2013 with the PSC (R676) to review the PSC determination (R673-675) but was officially denied a hearing (R677-679). Officer Ramona Munoz, as an agent of the PSC, wrote in her official letter to the plaintiff/appellant that the PSC is not the proper agency to deal with and his "concerns" would be "better *addressed to either the FCC or his local government*" as the PSC did not have *"the power to grant the relief requested."* That all being stated the PSC was initially approached to handle the matter raised, and in an official

capacity their quasi-judicial officer declared the PSC does not have the authority to grant the relief requested and directed the plaintiff to go elsewhere. Primary Jurisdiction ended when PSC officer Munoz admitted in their final decision the PSC does not have the authority to deal with this matter (R677 p1). Plaintiff/appellant had no good reason to believe otherwise.

Regarding RB14 p3-p5, they are moot because of the aforementioned exception to administrative remedies of the plaintiff/appellant.

Regarding RB14 p6, plaintiff/appellant previously demonstrated most of the claims of the plaintiff/appellant are not in the jurisdiction of the PSC so defendants/respondents statements are not inaccurate. As for an analog meter not being an "available option" it is so because CenHud under the past leadership and supervision of the defendants/respondents, made it that way. Nothing presented so far contained between the covers of the record on appeal, the defendants/respondents reply-brief or their extra-record material in exhibit "A" support why one good used analog meter could not have been provided to plaintiff/appellant to alleviate a medical need and why deprived of electricity for 6 years was necessary.

The lower court applying "primary jurisdiction" as one of the reasons for granting the SJ decision/order was improper.

POINT VI

Whether the Lower Court Properly Found That Plaintiff/Appellant Failed to Exhaust his Administrative Remedies

Regarding RB 15 p2, defendants/respondents fail to mention that the lower court turned a blind eye to the statements of Informal Hearing officer Ramona Munoz, in an official letter dated March 13, 2014 (R677 p1), as they and the lower court both ignored what the PSC official stated as follows: " *I am denying your request for an informal hearing in accordance with 16NYCRR 12.5(2)(a) because the relief you seek is beyond the power of an informal hearing officer to provide.* "

This official answer of a PSC officer happens to be one of the exceptions to the "exhaustion of administrative remedies" requirement need not be followed.

(Coleman v. Danes 79 A.D. 3d 554, 913 N.Y. 2d 83, 2010

"The exhaustion rule, however, is not an inflexible one. It is subject to important qualifications. It need not be followed, for example, when an agency's action is unconstitutional or wholly beyond its grant of power, or when resort to an administrative agency would be futile, or when pursuit of it could cause irreparable injury" Watergate II Apts. V. Buffalo Sewer Auth. 426NY2d 52, 57)

Furthermore Officer Munoz stated: "your concerns would be better addressed to the FCC or your local government" directing the plaintiff/appellant away from the PSC (R678 p1).

Regarding RB15 p3, as previously stated the extra-record material in exhibit "A" does not address all the questions of this appeal as it is a PSC decision and does not deal with appearance of bias, breach of contract, fraud or collateral estoppel and is why the defendants/respondents do not cite any page number of their exhibit to support their argument.

The lower court applying " failure to exhaust administrative remedies" was improper.

POINT VII

Whether The Lower Court Properly Found That Plaintiff/Appellant Was Collaterally Estopped From Raising These Claims Against Defendants/Respondents

Regarding RB 16 p1, the defendants/respondents state:

"It is equally as well settled that the doctrine of collateral estoppel affords conclusive effects to the quasi-judicial determinations of an administrative agency when rendered to the adjudicatory authority of that agency."

What the defendants/respondents exclude is that the July 16, 2013 PSC decision was decided by a consumer specialist without the elements of due process and was not a quasi-judicial decision (R673-675). When the plaintiff/appellant requested a quasi-judicial decision through the PSC's informal hearing process, which is touted as being a quasi-judicial department of the PSC, that request was denied and the PSC admitted it did not have authority grant the relief requested (RB677-679). The defendants/respondents cite Ryan v. New York Telephone Co. 62 N.Y. A.D. 2d 494 [1984] to support their claim to collateral estoppel, but turn a blind eye to the very first sentence of that decision:

"whether the doctrine of collateral estoppel precludes this action by reason of a prior administrative determination after a full hearing." Id.

The key word is "*full hearing*", The plaintiff/appellant only had some email exchanges and a few brief phone calls between December 27, 2013 to July 16, 2014 with Karen Anderson PSC "consumer specialist" (R740-764) who also stated it was" difficult decision" (R764).

The defendants/respondents failed to grasp what their own referenced case law stated as follows:

"At the outset, it should made clear that the doctrines of res judicata and collateral estoppel are applicable to quasi-judicial determinations of an administrative agency" (Matter of Evans v, Monaghan 306 N.Y. 312, 323, 324; Parklane Hosiery Co, v. Shore, 439 U.S. 322 99 Ct.645; 1953 see also Restatement, Judgments 2d section 83),

Furthermore Staatsburg Water Co. v Staatsburg Fire Dist. (72 NY2d 147 [1988]) states as follows:

"While issue preclusion may arise from the determinations of administrative agencies, in that context the doctrine is applied more flexibly, and additional factors must be considered by the court. These additional requirements are often summed up in the beguilingly simple prerequisite that the administrative decision be 'quasi-judicial' in character" (id. at 276)

Regarding RB 16 p2, p3, the July 16, 2013 PSC decision was an administrative decision rendered by consumer specialist Karen Anderson, who was not a quasi-judicial officer rendering a quasi-judicial determination and was not a "full hearing" and most certainly was not "litigated." To say a few emails and phone calls qualifies as "litigation" and should not be "re-litigated " is an intentional misrepresentation and fraud.

Regarding RB 16 p4, the approved meter underwent no consideration for biological effects as no medical peer-reviewed studies were considered (R80-83); and that the public was not aware of the proceedings so could not object (R80, R303, R512, R633, R635-658). Aforementioned references in previous sentence all affirm the color of law was used to deploy subject meter without informed consent of the plaintiff/appellant and the public. The lower court turned a blind eye to all the information in the plaintiff/appellant's exhibits. Citing the doctrine of collateral/estoppel, or for that matter res judicata, when it does not apply to the issues or claims the plaintiff/appellant brought before the lower court, and now this Honorable Appellate Court, when no previous litigation occurred, was improper.

POINT VIII

Whether The Lower Court Properly Found That Alleged Breach of Contract Against the Defendants/Respondents Was Not an Actionable Claim

First of all, the question the plaintiff/appellant put before this Court was as follows:

"Whether Ulster County Supreme Court Gave The Appearance of Bias By Overlooking The Evidence Of Breach Of Contract and Liability Of The Defendants/Respondents"

The defendants/respondents reply-brief once again reframes plaintiff/appellant's question changing the context and eliminating an important elements such, 'The Appearance of Bias" and "Liability".

Lundberg v. State of New York 25 NY2d 467 (1969)
Sutter v. New York Tribune 305 N.Y. 442 113 N.E. 2d 790 (1953)
Gifford v. Haller 273 A.D.2d 751710 N.Y.S.2d 187 (2000)

Defendants/respondents also chose once again to remain silent and voiced no opposition to the proposition of the appearance of bias, enacting the principle "*qui tacet consentit*" employed in New York case law when affidavits or facts go unrebutted (see pages 61 to 63 of appeal-brief).

Regarding RB 17, p1, defendants/respondents are attempting to deceive this court as plaintiff/appellant has continually provided support for his claim of breach of contract with Restatement of Law/Contracts, chapter 69 "Acceptance by Silence" and to say there is no support is an intentional misrepresentation (appeal-brief 33, 53, 59, 65, 66).

Regarding RB 17 p 2, p3, defendants/respondents statement:

"*Plaintiff/appellant received a response from Daniel Harkenrider, service supervisor and Paul A. Colbert, associate general counsel*:"

Plaintiff/appellant did indeed receive letters from Daniel Harkenrider, and Paul A. Colbert. Neither of their letters mentioned the lawful notices by name or date, or objected to the proposed contract/agreement that stipulated they would be agreeing with it if they remained silent and they didn't dispute it's terms and conditions (R308 #22, R312 #1). Furthermore Daniel Harkenrider's letter heading was: re: *"concerns about installation of smart meters"* and not any mention of the lawful notice or objections to proposed contract/agreement and its terms and conditions (R794-795).

Paul A. Colbert's letter was dated September 20, 2013 (R460), 6 months after the March 21, 2013 Notice of Demand lawful notices (R660-668) was sent and whose heading was: Re: *"Letter dated September 12, 2013."*

Mr. Colbert may have written a letter to the plaintiff/appellant but obviously it was not regarding the March 21, 2013 lawful notice, and he made no

objection to the contract/agreement then in place as 6 months had passed and having already acquiesced. Furthermore Paul A. Colbert made no mention of the name of lawful notices, their term and conditions nor did he object to it. To say that Colbert's September 20, 2013 letter is somehow a response to the March 21, 2013 Notice of Demand is an intentional misrepresentation. Bottom line is one can't be said to have responded to a proposed contract/agreement when purported response does not mention it by name, its terms and conditions and declares no objections to said agreement. Defendants/respondents and their agents/representatives clearly remained silent about the lawful notices.

Furthermore discovery devices don't contain proposed contract/agreements in them. A lawful notice proposing such an agreement is not a discovery device.

Regarding RB 17 p5, Central Hudson, under the leadership and supervision of the defendants/respondents, had installed a device that emits toxic-pulsing-microwave-radiation into plaintiff/appellant 's private home environment without his informed consent or foreknowledge. This was done with a tariff/agreement that the plaintiff/appellant never saw or agreed to but is claimed by the defendants/respondents to be bound by (R145 p2, p3), having not objected to it or rather purportedly acquiesced to through silence.

Central Hudson colluding with the New York Public Service Commission set the precedent that confirmation of a contract/agreement by acquiescence is acceptable (R80 p1, R145 p3, R512, R791 p2, R633, R635-656, R791 p2). Restatement of Law/Contracts 2nd chapter 69 "Acceptance by Silence" states as follows:

"a course of dealing between the parties gives the offeror reason to understand silence will constitute acceptance" and "where the offeror has stated that assent may be manifested by silence or inaction".

Regarding RB 17 p4, the defendants/respondents citing:

Gray v. Kaufman Ice Cream Co. 162 N.Y. 188 {1900], the issue discussed is entirely different in context. This issue in Gray and Kaufman is that the recipient did not respond to a letter that did not warn the recipient that failure to do so would imply acceptance of the offer and that the recipient had no mentioned dealings with the sender previously where silence or failure to object was acknowledged as agreeing to what was proposed.
In the case of the defendants/respondents, they supervised a company that deployed microwave-emitting devices on people's homes without their informed consent or foreknowledge what would be taking place. This deployment was ratified by the PSC upon the acquiescence of the public who did not know deliberations were taking place and voiced no objections (R512, R633, R635-659). The same acquiescence and silence of the public

allowed ratification of the Tariff/contract that the public is purportedly bound to (R145 p2, p3) with stipulations that purportedly frees CenHud executives from any liability of their "devices" which includes transmitting and non-transmitting digital utility meters (R98 p1).

Regarding RB 17 p5, CenHud executives in collusion with PSC executives created the prerequisite expounded on in chapter 69 of aforementioned Restatement of Law volume, with contracts they claim bind uniformed power consumers (R633, R512 #1,2,3, R635-659) to tariff agreements and transmitting utility meter deployment agreements through acquiescence because they did not object. Conversely plaintiff/appellant, created a contract that binds CenHud executives to an agreement through acquiescence by their failing to object, to an agreement/contract they have undisputedly been informed of [Henry v. Allen 151 1 (1896)] on many occasions (R660, R668.5, R422, R436, R460) and failed to object to (appeal-brief p16.5 bottom of page). In spite of all the undisputed facts just stated that support the plaintiff/appellants claims of breach of contract, the lower court granted summary judgment for the defendants/respondents giving the appearance of bias.

POINT IX

Whether The trial Court Failed To Take Into Account Societal Interests When Granting Summary Judgment

Regarding RB 18 p1, defendants/respondents statement on the lower court considering societal interests: "This is not the standard by which the decision should be reviewed" flies in the face of the US Supreme Court case: *Kennedy v. Silas Mason Co,* 334 U.S. 257 (1968) cited in chapter IX of appeal brief, which is why the defendants/respondents cited no case law to support their erroneous statement. Societal interests are always a factor in any judicial proceeding even if it's just about not wasting the courts time and resources.

Regarding RB 17 p2, the meter being approved has been adequately addressed in this reply in chapters I, VII & X (31 p1, 17 p4, 18, item #1).

The defendants/respondents argument for primary jurisdiction was thoroughly addressed in chapter III & V.

POINT X

Whether Plaintiff/appellant Was a Victim of Defendants/Respondents alleged Fraud Upon The Court

Regarding RB 19 p1, the defendants/respondents stated as follows:

" Fraud was not committed against the lower court, fraud was not committed against the plaintiff/appellant. "

When defendants/respondents assert the subject transmitting and non-transmitting digital utility meter has been approved by the PSC, implying biological safety while never actually saying it is "biologically safe", and no peer-reviewed medical studies were reviewed when approving subject meter (R80-83) & (exhibit A), fraud is being committed against the plaintiff/appellant and the lower court, especially when world famous radiation experts are saying electronic meters are potentially a hazard (R510-511, R575-576).

When defendants/respondents are saying defendant James P. Laurito left CenHud for other employment and can't access information for plaintiff/appellants discovery requests, while Mr. Laurito's new employment is as a vice president of Fortis Inc., the parent company of CenHud (R32 p3), and fails to disclose he has remained as a member of CenHud's Board of

Directors (exhibit-B), fraud is being committed against the plaintiff/appellant and the lower court.

When defendants/respondents claim analog meters are not available because new ones are not manufactured anymore and don't disclose information that good used Central Hudson analog meters are accessible and PSC approved; or state refurbished analog meters are not PSC approved when official PSC letters say only refurbished analog meters that use aftermarket parts need re-approval, they are committing fraud against the plaintiff/appellant and the lower court (R787, R789).

Defendant/respondents have not disputed the facts detailing fraud outlined in chapter IV & X of appeal-brief and those facts become fact on the record and admissible (case law page 61-63 appeal-brief).

When fraud is a contributing factor to a court rendering a decision, depriving the plaintiff/appellant a fair trial, that is fraud on the court and that court's decision/order is "vitiated, " therefore the SJ Decision/Order should be reversed/vacated.

[U.S. v. Throckmorton, 98 U.S. 61 (1878). Boyce's Executors v. Grundy, 28 U.S. 3 Pet. 210 (1830), Nudd v, Burrows 91 U.S. 426.

CONCLUSION

U.S. Supreme Court has held regarding granting summary judgment:

"no doubt the plaintiff can prove no set of facts to support his claim" Haines v, Kerner, et al. 404 U.S. 519, 92 s, Ct. 594, 30 L. 2d 652 (1972)

And:

"*We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears 'beyond reasonable doubt that the plaintiff can prove no set of facts to support his claim which would entitle him to relief'* " Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

The plaintiff/appellants appeal-brief & reply is replete with tri-able issues of fact that support the plaintiff/appellants claims and controvert defendants/respondents reply-brief arguments, warranting this Appellate Division, Third Judicial Department Court to reverse or vacate the February 14, 2018 Summary Judgment Decision/Order of New York State Supreme Court of Ulster County.

I, Stephen Phillip Romine, flesh and blood person, pro-se, pro per, sui juris, plaintiff, litigant and affiant, do hereby swear under the pain and penalty for perjury, do declare that everything I have stated in this reply document, is true to the best of my knowledge, understanding and belief.

Stephen Phillip Romine — March 18, 2020

Stephen Phillip Romine — Date

Notary — 3/14/20

Notary — Date

ZACHARY DERNISON
Notary Public, State of New York
Reg. #01DE6292736
Qualified in Ulster County
Commission Expires 1-4-21

ON 3/14/20 BEFORE ME CAME Stephen Romine
To me known to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.