SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : THIRD JUDICIAL DEPT.

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HYMAN RAFFE and GEORGE SASSOWER,
individually and on behalf of
PUCCINI CLOTHES, LTD.,

Petitioners,

-against-

THE SUPREME COURT OF THE STATE OF NEW
YORK, APPELLATE DIVISION, FIRST JUDICIAL
DEPARTMENT,

Respondent.

---------------------------------------x

S I R:

PLEASE TAKE NOTICE that upon the annexed petition of George Sassower, Esq., duly verified the 8th day of June, 1985, and all proceedings had herein, the undersigned will move this Court at a Stated Term of the Appellate Division of the Supreme Court, Third Judicial Department, held at the Courthouse thereof, Justice Building, South Mall, in the City of Albany, on 1st day of July, 1985, at 9:30 o'clock in the forenoon of that day or as soon thereafter as the undersigned can be heard for an Order vacating the respondent's order dated May 9, 1985 (23147N), together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, are to be served upon the undersigned at least seven (7) days before the return date of this motion, with an additional five (5) days if service is by mail.

Dated: June 8, 1985

Yours, etc.

GEORGE SASSOWER, Esq.
Attorney for petitioners
2125 Mill Avenue,
Brooklyn, New York, 11234
212-444-3403

To: Appellate Division, First Dept.
Hon. Robert Abrams
Kreindler & Relkin, P.C.
Lee Feltman, Esq.
Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : THIRD JUDICIAL DEPT.

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HYMAN RAFFE and GEORGE SASSOWER, individually and on behalf of PUCCINI CLOTHES, LTD.,

Petitioners,

-against-

THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT,

Respondent.

--x

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT:

THE petitioners complaining of the respondent respectfully set forth and allege:

1a. This proceeding seeks the nullification of an Order of the Respondent dated May 9, 1985 (23147N).

b. To the extent that this proceeding is interrelated with pending actions and proceedings in the United States District Court for the Southern District of New York, this proceeding is without prejudice to such federal pending actions and/or proceedings.

c. Indeed, the federal tribunal represents the preferred forum of the petitioners. This matter is submitted for state resolution solely to avoid a legal lacuna should federal jurisdiction be declined or held in abeyance.

2a. Initially, it is asserted and vigorously contended, that petitioner, George Sassower, Esq. ["Sassower"], was never disqualified from his representation of petitioner Hyman Raffe ["Raffe"] by any document entitled to lawful recognition (United States v. Throckmorton, 98 U.S. 61).

b. Instructively, the aforementioned Order reversed a nisi prius Order dated January 7, 1985, which requalified Sassower as Raffe's attorney in the underlying action, when (1) the respondent had no jurisdiction over the matter since that appellant was not legally "aggrieved" thereby; and (2) reversed "on the law, the facts, and in the exercise of discretion" without affording petitioners, Raffe and Sassower, procedural due process. Indeed, the respondent itself is charged with being a participant in an "extrinsic fraud", which nullifies the aforementioned Order.

3a. Petitioner Sassower having been allegedly disqualified as Raffe's attorney, because of a "perceived" conflict with the third party defendants, provided Raffe with an absolute right, of a constitutional magnitude, to his desired representation upon discontinuing such third party action with prejudice.

Neither the plaintiffs nor their attorneys, in the underlying action, were legally "aggrieved" by Raffe's choice of counsel, depriving the respondent of jurisdiction (Baltimore Mail v. Fawcett, 269 N.Y. 379, 388; Weinstein-Korn-Miller, ¶5511.08).

The respondent, as was nisi prius, while warranted in imposing whatever conditions it desired as a result of discontinuance, nonetheless, could not deny Raffe, under the circumstances, to the fundamental right to counsel of his choice Raffe (Abrams v. Anonymous, 62 N.Y.2d 183, 476 N.Y.S.2d 494).

b. Respondent did not permit petitioners to submit their documents responding to a falsely certified and many-fold enlarged "Record on Appeal", despite a representation by one of its Associate Justices on behalf of respondent, assigned for such purpose.

The entire Record on Appeal should have been twenty-four (24) pages, not one hundred ninety-nine (199), elusively selected pages, as falsely certified by adversary counsel.

c. The singular objection made by plaintiffs-appellants at nisi prius was that:

> "Referee Diamond promulgated rules ... requiring that no motion be made without a pre-motion conference before him."

Referee Diamond was: (1) constitutionally and had a Judiciary Law §14 disqualification; (2) was never given jurisdiction at Trial Term XI, by the very terms of the Administrative Order, ex parte secured; and (3) it was the practice of Referee Diamond to unconstitutionally deny permission to make a motion that did meet his personal fancy (Eskridge v. Washington State Board, 357 U.S. 214; Lane v. Brown, 372 U.S. 477).

In any event it was within the sovereign right of a judge in trial part to determine whether he/she desired to follow "the phantom rules" of Referee Donald Diamond (Balogh v. H.R.B. Caterers, 88 A.D.2d 136, 452 N.Y.S.2d 220 [2d Dept.]; People v. Michele Pierce, NYLJ 2/18/, p. 9, Col. 1, per Evans, J.; Code of Judicial Conduct, Canon 1).

The procedural sovereignty of a trial jurist has always been given singular recognition, for good cause (Corsell v. Corsell, 80 A.D.2d 544, 439 N.Y.S.2d 677 [1st Dept.]; Blasi v. Boucher, 30 A.D.2d 674, 675, 291 N.Y.S.2d 960 [2d Dept.])

At the time Referee Diamond was a defendant in federal and state court for a variety of acts of misconduct including the destruction of legal papers including those intended for other jurists.

Respondent, after denying petitioners' motion to strike a Record on Appeal that had been unilaterally increased by a gross of eight-fold twelve days before submission date, thereafter refused to accept petitioners' controverting or explanatory documentation; and even petitioners' opposing brief was rejected, without articulated explanation.

Indeed, almost exclusively the respondent's opinion relied on the elusively selected material improperly inserted in a Record on Appeal.

Pouring salt on the wound, the respondent, based on this unilateral and pale submission, then reverses "on the facts and in the exercise of discretion", in addition to "the law".

Was and is this due process?

* * *

4a. The background involves the involuntary dissolution of Puccini Clothes, Ltd. ["Puccini"], a solvent domestic corporation, on June 4, 1980, wherein now, more than five (5) years later no accounting, final nor intermediate, has ever been rendered. Nor have all the financial books and records ever been made available to Raffe or to any other interested party not privy to this corruption.

b. The corruption at <u>nisi prius</u> has reached the level where the mere making of such application to have an inspection of all of Puccini's financial books and records since June 4, 1980, results in penal costs being imposed, in addition to the denial thereof.

c. Even the Attorney General's Office has been neutralized and emasculated by the judicial commandeering of Senior Assistant Attorney General David S. Cook, Esq., as its exclusive attorney in the Puccini matter: although theretofore he was and is the "one-man unit" assigned to vouchsafe the assets of involuntary dissolved corporations in the New York City area.

d. Petitioner, Sassower, is perceived to be the most knowledgeable person regarding the fraud and corruption in the Puccini matter, including its judicial involvement. This salient factor makes his exclusion of prime importance to Kreindler & Relkin, P.C. entourage.

5a. The four stockholders of Puccini had executed cross-guarantees with respect to its borrowings, which should have been without financial significance because of Puccini's solvency and ultimate liability for any obligations that it incurred.

b. The expected scenario went askew when, ex parte the petitioners attorneys, Kreindler & Relkin, P.C. ["K&R"] communicated with the designated receiver, induced him not to qualify, and thereupon "engineered" the massive larceny of Puccini's judicially-entrusted assets, giving significance to the personal cross-guarantees, since it was then asserted that liabilities exceeded assets.

6a. There were two actions commenced by K&R on behalf of its clients Jerome H. Barr, Esq. ["Barr"] and Citibank, N.A. ["Citibank"], as executors of the Estate of Milton Kaufman ["Kaufman"] based on such personal cross-guarantees wherein the legal relationships are exactly and precisely the same.

b. In action bearing Index No. 21208/1979, Sassower represented Raffe, Eugene Dann ["Dann"], Robert Sorrentino ["Sorrentino"], and Puccini.

Sassower at all material times has been Raffe's attorney, and still is in this litigation. He has been Raffe's personal attorney for about thirty years.

An appeal pends sub judice in this matter since January 31, 1985 (Barr v. Raffe, App. Div., First Dept., #667-669).

Significantly, it has never been contended Sassower was disqualified in the action wherein he once represented Puccini, Dann and Sorrentino!

c. Action bearing Index No. 16792/1980, wherein Sassower represented Raffe:

In late 1981, judicially submitted papers were "substituted", "switched", and "changed" by Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C. ["ANBL&K"] who represented the third party defendants, Dann, Sorrentino and Puccini. They thus transmogrified Sassower's opposing papers from "sense" to "nonsense", caused his disqualification in the third party action.

d. This was affirmed on appeal (94 A.D.2d 988), without any hearing on the matter.

7a. This disqualification cross-motion by ANBL&K had been immediately preceded by Sassower's private reading of the "riot act", which included demand for return of all Puccini's assets to its June 4, 1980 status quo ante.

b. Sassower, albeit with the absence of "hard evidence", was convinced that Puccini's judicially entrusted assets had been the subject of larceny. He expressed vocal and written skepticism of the perjurious affidavits, affirmations, and statements of K&R and its clients.

8. The unabashed brazeness, corruption and arrogance of K&R and its clients in all aspects of this litigation, can be best judged by its perjurious submissions viewed against the massive, all-embracing larceny that took place.

a. Barr's affidavit of July 21, 1981. Notably, Barr was also an associate of K&R. In a judicially submitted and filed affidavit, Barr swore:

> "Unfortunately, it is necessary to correct some of the incredible misstatements and outright falsehoods contained in the Raffe affidavits.
>
> The Estate of Kaufman has received no monies from Puccini Clothes, Ltd. ... [He and Citibank] do not have any access to it['s assets], nor have they received any monies from Puccini."

Recently, this false and perjurious affidavit was confessed to having been prepared by Relkin, the senior partner in K&R.

Citibank, N.A., Barr's co-plaintiff, submitted a state judicially-filed affidavit, verified July 29, 1981, which swore:

> b. "Raffe claims that the plaintiffs and the third party defendants have entered into some unspecified agreement ... and pursuant to which the 'assets [of Puccini] have been dissipated for the benefit of plaintiffs'. Once again, no documentary evidence has been submitted in support of this groundless assertion. ... The unsupported and baseless charge that the Estate [of Milton Kaufman] has dissipated the assets of Puccini Clothes, Ltd. is totally false. The Estate has received no monies whatsoever from Puccini Clothes, Ltd."

Recently, this false and perjurious affidavit was also confessed to having been prepared by Relkin.

9a. Despite the clear documented assertion that petitioner Sassower was disqualified in the third party action by reason of an extrinsic fraud which rendered it a nullity, until November 1983, petitioners had nothing more of a dramatic material nature, to set forth for renewal.

b. In November of 1983 some documents were received revealing ANBL&K's participation in such larceny and thus a motive for cross-moving for Sassower's disqualification, although Sassower's position inured to the benefit of ANBL&K's clients.

c. It was on June 6, 1984, D-Day, when petitioners received a photocopy of a check for $6,200 made by ANBL&K in favor of Rashba & Pokart in payment of an invoice to K&R. These monies were unlawfully taken from Puccini's judicially entrusted assets, "laundered", and ANBL&K had kept $3,800 as a "laundering fee".

10a. By this time Donald Diamond, by his "phantom" ukase, had firmly shut tight the doors of the state courthouse to the petitioners for any relief, no matter how compelling.

b. Consequently, petitioners were unable to qualify Sassower, except by self-help.

c. The factual recitation based upon on one-sided presentation is misleading, if not totally false.

Thus, in the absence of adversarial presentation, the respondent overlooked the fact that Mr. Justice Sinclair, Jr., was ill and unavailable from Labor Day 1984 to about May of 1985.

There is nothing in the Administrative Order which states that there was "extensive motion practice", nor was that a fact.

There is nothing in the Administrative Order which states that motions to renew or reargue must be brought on by:

> "order to show cause, signed by the justice who had rendered the original determination."

Certainly there was nothing in the Administrative Order which mandated such requirement when the original jurist was unavailable.

Clearly there was nothing in the Administrative Order which precluded one from his absolute right to appeal based upon newly discovered evidence of perjury, fraud, and corruption, involving as a central participant the court's own agent (CPLR 5015(a)[c]; Universal v. Root, 328 U.S. 575; Hazal-Atlas v. Hartford, 322 U.S. 328).

11. The Record on Appeal should have included only the following:

a. The Pre-Argument Statement [1-4].

b. The Notice of Appeal [9].

c. The Order appealed From [10].

d. Defendant's Notice of Motion and supporting papers [12-18].

e. Plaintiffs' opposing affidavit and exhibits [19-28]. (The decision of October 16, 1981 [29] was defendant's exhibit).

f. Plaintiffs' CPLR 2105 certification [199].

Nothing more!!!!

g. The entire Record on Appeal should have been twenty-four (24) pages, not one hundred ninety-nine (199) pages.

h. How can one be expected to respond to appellants arguments which should have been based upon four (4) pages in a properly certified Record, when it is unilaterally increased, under a perjurious certification to a carefully selected one hundred and seventy-nine (179) pages, a net increase of 1,790%!

i. The respondent not only denies petitioners' motion to strike, but disallows him oral argument, and a documentary submission on oral argument, repudiating the representation of its own Associate Justice in the process!

j. Even petitioners' (respondents') brief is rejected, which was served and filed within a few days after the determination of petitioners' motion to strike.

12a. By some analogy known to be false by anyone who ever tried to put toothpaste back in the toothpaste tube or any person who ever argued that legal "aggrievement" was reciprocal or reversible (Nicolaysen v. D'Apice, 62 N.Y.2d 976, 479 N.Y.S.2d 342; Ten Hoeve v. Board of Education, 62 N.Y.2d 883, 478 N.Y.S.2d 865, 866), the respondent concludes that the doctrine of laches is applicable, albeit an absence of prejudice.

b. Had the other portion of the evidence been before the respondent, it may have concluded that petitioners moved with expedition!

13a. In any event, the constitution does not exclude children nor attorneys from its due process protection (Matter of Gault, 387 U.S. 1).

b. There can be no factual or discretionary finding or conclusion when due process has not been afforded.

14a. Both Raffe and Sassower proceed on behalf of and include Puccini because in the base ethical environment that exists in this litigation, the Receiver is permitted to betray his judicial trust; the Assistant Attorney General, the statutory watchdog, has been commandeered to represent adverse interests; and *nisi prius* concern is that Puccini's carrion satisfy the insatiable appetites of judicial favorites.

b. Every constitutional person, including Puccini, deserves legal representation, particularly when it has been made imcompetent by judicial action (Anders v. California, 386 U.S. 738).

WHEREFORE, it is respectfully prayed that this proceeding be granted, with costs, together with such other, further, and/or different relief as may seem just and proper in the premises.

Dated: June 8, 1985

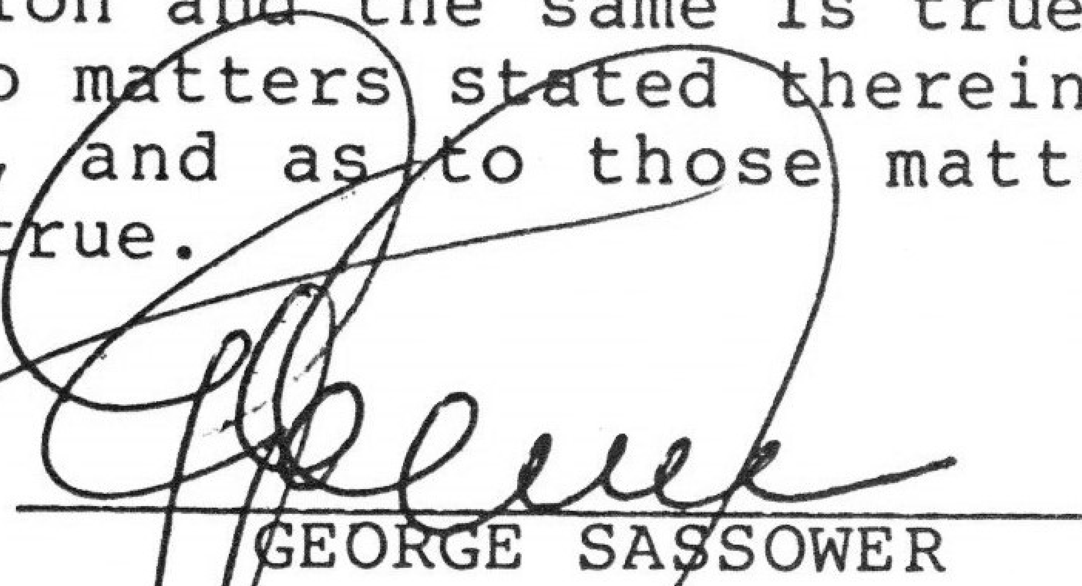
Respectfully submitted,

GEORGE SASSOWER, Esq.
Attorney for petitioners

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF KINGS)

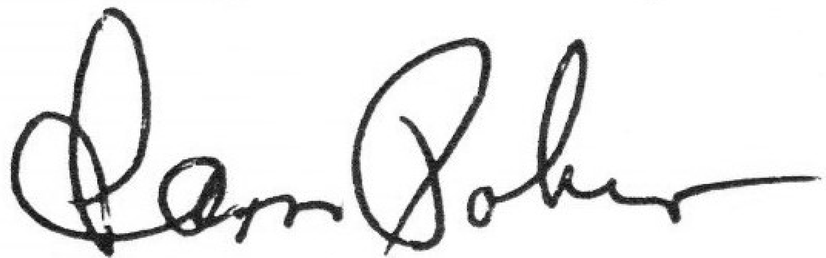
GEORGE SASSOWER, Esq., first being duly sworn, deposes, and says:

I am one of the petitioners herein and have read the foregoing petition and the same is true of my own knowledge except as to matters stated therein to be on information and belief, and as to those matters deponent believes them to be true.



GEORGE SASSOWER

Sworn to before me this
8th day of June, 1985



NOTARY PUBLIC
My Commission Expires March 30, 1987
Qualified in New York County

Form B

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on May 9, 1985

Present—Hon. Francis T. Murphy, Presiding Justice
Theodore R. Kupferman
Joseph P. Sullivan
Bentley Kassal
Ernst H. Rosenberger, Justices.

- -x

Jerome H. Barr and Citibank, N.A., as Executors of the Will of Milton Kaufman,
Plaintiffs-Appellants, :
-against-
Hyman Raffe,
Defendant-Respondent. :
- - - -
Hyman Raffe, 23147N
Third-Party Plaintiff, :
-against-
Puccini Clothes, Ltd., Eugene Dann & Robert Sorrentino, :
Third-Party Defendants.

- -x

An appeal having been taken to this Court by the plaintiffs-appellants from an order of the Supreme Court, New York County (Ethel Danzig, J.), entered on or about January 7, 1985, which granted defendant-respondent's motion to remove a prior, 1982 disqualification of George Sassower, as his attorney,

And said appeal having been argued by Donald B. Relkin of counsel for appellants; and due deliberation having been had thereon, and upon the memorandum decision of this Court filed herein,

It is unanimously ordered that the order so appealed from be and the same hereby is reversed, on the law, the facts, and in the exercise of discretion, and the motion denied. Appellants shall recover of respondent $50 costs and disbursements of this appeal.

ENTER:

HAROLD J. REYNOLDS
Clerk.

Murphy, P.J., Kupferman, Sullivan, Kassal, Rosenberger, JJ.

23147N Jerome H. Barr, et al., as Executors of Will of Milton Kaufman,
Plaintiffs-Appellants, D.B.Relkin
-against-
Hyman Raffe,
Defendant-Respondent.
- - - - - - -
Hyman Raffe,
Third-Party Plaintiff,
-against-
Puccini Clothes, Ltd., et al.,
Third-Party Defendants.

Order, Supreme Court, New York County (Ethel B. Danzig, J.), entered on or about January 7, 1985, which granted defendant Raffe's motion to remove a prior, 1982 disqualification of George Sassower, as his attorney, unanimously reversed, on the law, the facts and in the exercise of discretion, with costs and disbursements, and the motion denied.

The record reflects that Sassower had been disqualified by order of Justice Sinclair, entered February 1, 1982, which was unanimously affirmed on appeal (94 A.D.2d 988). In directing disqualification, Special Term referred to the fact that Sassower had previously represented the third party defendants, thus posing a clear conflict of interest in terms of his representing defendant-third party plaintiff Raffe against his former clients. Thereafter, plaintiffs obtained summary judgment on liability and an immediate assessment was directed, which assessment has never been held, in part as a result of overwhelming, extensive and exhaustive motion practice in this and collateral actions. It is asserted that, despite the disqualification, Sassower continued to represent Raffe by appearing at conferences and arguments and in preparing papers, albeit Raffe gave the impression he was proceeding _pro se_. The extensive motion practice ultimately led to an order from the Administrative Judge which directed that any further applications to reargue or renew may only be brought on by order to show cause, signed by the justice who had rendered

the original determination.

The record reflects that, since 1982, 10 separate motions were made to vacate the disqualification, each of which was denied. On December 21, 1984, which was three days prior to the return date of the motion, the subject of this appeal, jury selection was about to commence on the assessment of damages trial. Once again, Raffe moved, this time before Justice Kuffner, to vacate the disqualification of Sassower. In support of the application, defendant pointed to the fact that, on the eve of trial, he had discontinued the third party action with prejudice, thus eliminating the original conflict of interest claim, and, thereby, Sassower should be reinstated as his attorney. This motion was likewise denied.

There is no dispute that the motion before Justice Danzig sought the identical relief previously denied by Justice Kuffner and, under the circumstances, CPLR 2221 required that the application, which was essentially one for reargument, be made before the same Justice who had decided the original motion. Further, the motion violated the directive contained in the order of the Administrative Judge, that the application be to the Justice who had made the original determination, in this case Justice Sinclair, who had disqualified Sassower three years earlier, in October 1981.

While, on the surface, the discontinuance of the third party action would appear to have eliminated the original basis of a conflict of interest, on review of the record and all of the circumstances in this and the related collateral proceedings, we

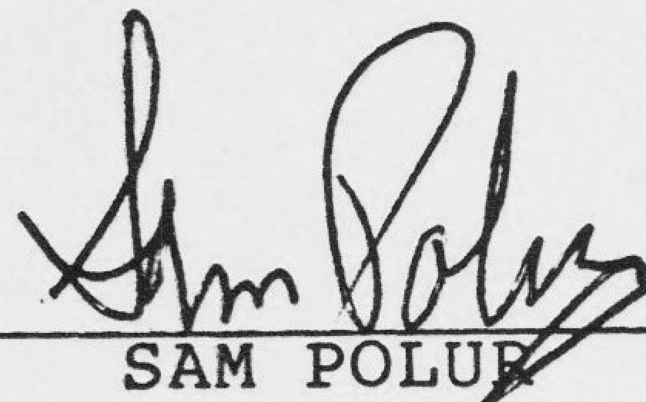
take into account that more than 3 years had elapsed between the time of the original disqualification and the discontinuance of the third party action. The equitable doctrine of laches has been held applicable where there was an inordinate and inadequately explained delay in moving for disqualification (see Lewis v. Unigard Mutual Insurance Company, 83 A.D.2d 919, 920; Thomas Supply & Equip. Co. v. White Fathers of Africa, 53 A.D.2d 607; Packer v. Rapoport, 275 App. Div. 820, revg 88 N.Y.S.2d 118). Under all of the circumstances, and the lengthy history of this litigation, we conclude that the same equitable considerations apply to bar the relief sought on behalf of this attorney, namely, the vacatur of his prior disqualification. In reaching this result, we have taken into account the unnecessary burden imposed upon the court by the repeated motions for the same relief, the failure to adhere to appropriate procedure and the right of plaintiff to have an immediate determination of the damages issue.

Order filed.

SAM POLUR, Esq., an attorney, admitted to practice law in the courts of the State of New York, does hereby affirm the following statement to be true under penalty of perjury:

On June 10, 1985, I served a copy of the within Notice of Petition and Petition upon the Office of Hon. Robert Abrams, the purported attorney for respondent personally at 2 World Trade Center, New York, New York..

Dated: June 16, 1985



SAM POLUR

STATE OF NEW YORK)
CITY OF NEW YORK)ss.:
COUNTY OF KINGS)

PAT GOMEZ, first being duly sworn, deposes, and says:

I am over the age of 21, reside at 739 East 88th Street, Brooklyn, New York, 11236 and not a party to this action.

That on the 10th day of June, 1985, I served a copy of the within Notice of Petition and Petition on The Appellate Division, First Dept.; Kreindler & Relkin, P.C.; Feltman, Karesh & Major, Esqs.; and Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C., by depositing copy of same in a Post Office Box in the State of New York, addressed to it at their last known addresses.

Pat Gomez
PAT GOMEZ

Sworn to before me this
16th day of June, 1985

Sam Poler Attorney at Law
Notary Public
Qualified in New York County
My Commission Expire March 1987