UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GEORGE SASSOWER, individually and on behalf of others similarly situated,

Plaintiff,

82 Civ 4970 (MJL)

-against-

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

Defendants.

----------x

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

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

I am the plaintiff herein and submit this affidavit in opposition to defendants' motion dated October 22, 1982, returnable November 5, 1982.

All or Nothing:

The procedural posture of defendants' motion is that they are either entitled to a dismissal of plaintiff's complaint or nothing.

1. Defendants' notice of motion for Rule 12(b)[1], [2], and [6] relief is based "upon the summons and complaint".

2. Defendants' attorney's short moving affidavit unmistakably confirms that their motion is based exclusively on plaintiff's complaint for it states:

> "this motion is addressed solely to the face of this complaint and is not dependent on the existence of other proceedings."

3. Clearly, defendants' default in pleading was deliberate, wilful, arrogant, and contumacious; all of which is inexcusable in any jurisdiction.

Consequently, defendants must, and have, moved solely on jurisdiction grounds, since no other relief is available to them.

If this Court lacks jurisdiction, as defendants contend, the complaint must be dismissed. If this Court has jurisdiction, any pleas defendants might make must go unheeded by reason of their contemptuous conduct in this Court.

For defendants on this motion, it is all or nothing!

4. Defendants and their attorney's incredible performance (or rather non-performance) resulting in their default is, set forth, so that the record is clear:

a. The defendant, Appellate Division, Second Department admitted service of the Summons and Verified Complaint on July 30, 1982.

b. The last day for said defendant to appear and answer, plaintiff telephoned the Office of the Attorney General to remind it of such fact, only to be treated discourteously (Exhibit "A", ¶3).

c. When the Assistant Attorney General assigned to this case did not telephone deponent as promised (Exhibit "A", ¶4), plaintiff telephoned and spoke to Honorable IRVING N. SELKIN, Chief Clerk of the Appellate Division, Second Department, who, on information and belief, spoke to the Office of the Attorney General, regarding its default. This did not result in anything positive (Exhibit "A", ¶7).

d. Plaintiff then, on August 25, 1982 (Exhibit "A"), wrote to the Attorney General (with a copy to the Appellate Division, Second Department), describing the history of the default, and received no response from anybody.

e. Plaintiff wrote again to the Attorney General (with a copy to the Appellate Division, Second Department) [Exhibit "B"], also without response.

f. Defendant, The Appellate Division, Second Department was then, on September 7, 1982, served with a Notice of Default, as required by the Rules of this Court. Still no response!

g. On September 11, 1982, defendant, Appellate Division of the Supreme Court of the State of New York, Second Judicial Department was served with a Judgment with Notice of Settlement (Exhibit "C") for September 16, 1982 (Exhibit "D"). Even that did not elicit a response. The only reason that Judgment was not approved by the Clerk of this Court was that the original summons (with the admission of service) was with the U.S. Marshall.

h. Again, on September 23, 1982, defendant, Appellate Division of the Supreme Court of the State of New York, Second Judicial Department was served with a proposed Judgment with Notice of Settlement (Exhibit "E") for September 29, 1982. Still no response.

i. Because the notice was short by one day, the Clerk of the Court requested that I telephone Irving N. Selkin, Esq., and advise him that it was being made returnable the following day, which I did.

Nevertheless, the following day, the Appellate Division, Second Judicial Department again defaulted.

j. In due course, the proposed judgment was forwarded by the Court's personnel to Her Honor.

It is my understanding that Her Honor's office telephoned the Office of the Attorney General and was promised a written response by the following day with regard to its default. It is my understanding that this promise too was not kept; at least, I received no copy of any such communication.

The broken promise made to the Court was similar to that made to deponent (Exhibit "A", ¶4) and to Mr. Selkin (Exhibit "B").

k. In the meantime, the Appellate Division, First Department was served with the summons and complaint, and it also defaulted.

l. On October 6, 1982 the Appellate Division, First Department was served with a Notice of Default by mail (Exhibit "F"), and the following day, it was served with such notice by personal service (Exhibit "G").

Such Notices of Default, with an affidavit of service and admission of service, were filed with the Clerk of the Court.

Once more, no response from either defendants or their attorney.

m. Without any attempt to explain or justify its conduct, the Attorney General served his instant motion papers.

Under the aforementioned egregious circumstances, plaintiff respectfully suggests that any sua sponte relief to the defendants for their default only jeopardizes the concept of "equal treatment under the law". As litigants, defendants are not entitled, by reason of their position, to any greater rights than anyone else.

Nor should the draconian consequences routinely imposed by the defendants on other litigants be ignored for mere "law office errors", in matters presented to them for disposition. It would be sheer hypocrisy if the defendants, on the above record, were to be relieved from the consequences of their default (see NYLJ, October 27, 1982, p.1, col. 1t).

5. Defendants' short "Memorandum of Law" sets forth meritless and frivolous (if not knowingly false) contentions in support of their dismissal motion.

A. Defendants' attorney states (p. 1):

> "The 66 page complaint is an incomprehensible rambling summary of some of those proceedings full of slanderous accusations against persons not before this Court. These would themselves be grounds to dismiss this action."

Defendants do not set forth any authority for dismissal on their aforementioned asserted grounds, nor is deponent aware of any such authority (Warth v. Seldin, 422 U.S. 490, 501, 95 S.Ct. 2197, 2206-2207, 45 L.Ed.2d 343, 356). In any event, plaintiff's complaint does set forth judicial recognizable grounds for relief.

B. Defendants "Memorandum" states (p.2-3):

> "because plaintiff sues only Courts acting in their judicial capacity, the precedents compel dismissal for lack of either subject-matter or personal jurisdiction and for failure to state a claim upon which relief can be granted."

a. Those precedents which "compel dismissal" are not cited by the Assistant Attorney General.

b. Significantly, research reveals that this Assistant Attorney General was involved in Morabito v. Blum (528 F. Supp. 252 [SDNY]), where Judge ROBERT J. WARD stated (p. 260):

> "Blum's [this Assistant Attorney General's client] subject-matter-jurisdiction argument [is] meritless. Equally meritless is defendant Blum's contention that plaintiffs' complaint must be dismissed under Rule 12(b)(1) for failure to state a federal claim. ... [I]t is well settled that such dismissals should be confined to cases where the complaint on its face, without resort to extraneous matter, is so plainly insubstantial as to be devoid of any merit, enabling the court to conclude that the claim asserted is patently frivolous or wholly insubstantial. Bell v. Hood, 327 U.S. 678, 681-82; Giulini v. Blessing, 654 F.2d 189, 192 [2d Cir.]."

In Giulini v. Blessing (supra), this Circuit stated (p. 192):

> "A complaint under 42 U.S.C. §1983 charging denial of constitutional rights by a state agency may not be dismissed for lack of jurisdiction unless it appears that the claim is patently frivolous or wholly unsubstantial (cases cited). For jurisdictional purposes the test is whether the complaint on its face, without resort to extraneous matter, is so plainly insubstantial as to be devoid of any merits and thus not presenting any issue worthy of adjudication.
>
> ... we are persuaded that the district court was obliged to entertain this action in which the complaint alleged the deprivation, under color of state law, of constitutional rights. Although success on the merits may be unlikely, appellants allege ... does not have any rational relationship to exercise by the state of its police power and was not enacted as part of any comprehensive land use plan. This is sufficient to confer jurisdiction.
>
> ... Heimbach v. Village of Lyons, 597 F.2d 344 [2d Cir.]) ..."

In Heimbach v. Village of Lyons (supra), this Circuit stated (p. 346-347):

> "Thus, while Justice Perry may have acted maliciously in signing a criminal warrant against appellant Heimbach ... the justice is nonetheless immune from suit for damages for his actions. The justice is not immune, however, from suit for injunctive relief and, accordingly, should not be dismissed from this action (cases cited)."

In Supreme Court of Va. v. Consumers Union (446 U.S. 719, 735, 100 S.Ct. 1967, 1976, 64 L.Ed.2d 641, 655), the Court stated:

> "... we have never held that judicial immunity absolutely insulates judges from declaratory or injunctive relief with respect to their judicial acts."

The Court then reveals that such relief is given in this and a few other circuits (n. 13) and took note of precedent and reason for such relief being granted (n. 14).

Clearly, this Assistant Attorney General has asserted a claim which she has been told by Judge WARD is "meritless".

Defendants' assertion that plaintiff sues defendants "only" in "their judicial capacity" is, nevertheless, a baseless, conclusory statement refuted by the mere reading of the complaint (Supreme Court of Va. v. Consumer's Union, supra).

C. Defendants then assert they are not suable because they are not "persons" under §1983.

a. If that argument had any merit the Supreme Court could not have granted any relief in Supreme Court of Virginia v. Consumers Union (supra, on remand 505 F. Supp. 822, app. dis. 451 U.S. 1012, 101 S.Ct. 2998, 69 L.Ed.2d 484).

b. Are the defendants arguing that the entire federal judicial hierarchy did not recognize that they did not have subject matter jurisdiction in Middlesex County Ethics Committee, etc, v. Garden State Bar Association, U.S. (102 S.Ct. 2515, 73 L.Ed.2d 116), whose more complete title appears at 643 F.2d 119 [3d Cir.] and reads "Middlesex County Ethics Committee, an agency established by the Supreme Court of New Jersey"? The Supreme Court knew that if the federal courts did not have jurisdiction they should have dismissed the claim (Nixon v. Fitzgerald, U.S. n. 23, 102 S.Ct. 2690, 2698, 73 L.Ed.2d 349, 359).

c. Even before Monell v. Department of Social Services (436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611), this circuit impliedly held in Person v. Association of the Bar (554 F.2d 534 [2d Cir.], cert. den. 434 U.S. 924, 98 S.Ct. 403, 54 L.Ed.2d 282), that the state courts and The Association of the Bar of the City of New York were "persons" within the purview of §1983.

d. There are other reported decisions which hold explicitly or implicitly that state courts, disciplinary agencies, and bar associations are "persons" within the meaning of §1983 (e.g. Fruchtman v. New York State Board of Law Examiners, 534 F. Supp. 692 [S.D.N.Y. - per Motley, J.]; Verner v. State of Colorado, 533 F. Supp. 1109 [Col.]; Rapp v. Committee on Professional Ethics, 504 F. Supp. 1092, [Iowa]).

e. In the pre-Monell case of Zuckerman v. Appellate Division (421 F.2d 625 [2d Cir.]), the Court stated:

> "In Monroe v. Pape ... it was held that a municipal corporation was not a 'person' within the meaning of that word in §1983. Since a municipal corporation is but a political subdivision of a state, it has been held that the state itself is also not subject to suit under §1983 (case cited). It follows that the Appellate Division, as part of the judicial arm of the State of New York, must also not be a 'person' within the purview of the section of the Civil Rights Act."

The authority for the Zuckerman holding was eroded by Person v. Association of the Bar (supra); Monell v. Dept. of Social Services (supra); and Turpin v. Mailet (579 F2d 152 [2d Cir.]); cf. N.A.A.C.P. v. State of Cal. (511 F. Supp. 1244, 1257 n. 10 [Cal.]).

f. The only post-Monell case cited by defendant is Louis v. Supreme Court of Nevada (490 F. Supp. 1174 [Nev.]), wherein the Court held that there was subject matter jurisdiction over the individual justices of the court, but not the court itself since it was not a "person". The court did not cite nor attempt to reconcile its holding with Monell v. Dept. of Social Services (supra).

D. Defendants contend that they have immunity and cite:

a. Zuckerman v. Appellate Division (supra). As above noted, that case merely held that the defendants were not suable since they were not "persons", but significantly acknowledged that a bar association was an agency of the state (at p. 626).

b. Erdmann v. Stevens (458 F.2d 1205 [2d Cir.] holds contrary to defendants' claim, since it states (1208, 1210):

> " ... no sound reason exists for holding that federal courts should not have the power to issue injunctive relief against the commission of acts in violation of a plaintiff's civil rights by state judges acting in their judicial capacity. Accordingly, we conclude that jurisdiction exists and proceed to the merits. ... 'the power of the States to control the practice of law cannot be exercised so as to abrogate federally protected rights' ".

Any possible jurisdictional question was resolved in Person v. Association of the Bar (supra) wherein the Court stated (p. 537):

> "We hold further that this suit for declaratory relief is maintainable against defendants-appellants under 42 U.S.C. §1983. ... the immunity of judges has been held in a number of cases not to extend to actions for injunctive relief."

The Person decision was approvingly cited by the Supreme Court in Supreme Court of Va. v. Consumers Union (supra at n. 15, 736, 1977, 656).

c. Since this is not an action for money damages, defendants reference to Stump v. Sparkman (435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331) and Pierson v. Ray (386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288) is clearly inappropriate.

d. As heretofore noted, the court in Louis v. Supreme Court of Nevada (supra) held that it had subject matter jurisdiction.

e. Although relief on the merits was denied in Pettit v. Gingerich (427 F. Supp. 282 [Md]), the Court did not deny that it had jurisdiction to decide the controversy.

f. In a post-Monell, Second Circuit situation, defendants' citation of pre-Monell Moity v. Louisiana State Bar (414 F. Supp. 180 [La]), aff'd without opinion, 537 F.2d 1141 is unpersuasive and unauthoratative . It should further be noted that this was one of the cases in which the Louis tribunal relied on in its definition of "person".

g. County of Lancaster v. Philadelphia Electric (386 F. Supp. 934 [Pa]) is another pre-Monell decision relied upon by the Louis tribunal for its definition of "person" under §1983.

E. As their final argument, the defendants contend that (p. 6) "Rooker (or Tang) and its (their) progeny" compel dismissal.

a. In Friarton v. City of New York (525 F. Supp. 1250 [S.D.N.Y], Judge BRIEANT stated (p. 1258):

> "However, by its terms, Rooker applies only if 'the judgment was responsive to the issues' ... . Accordingly, Rooker does not bar district court actions brought on issues not previously determined on the merits by the state court."

b. Similarly in Gresham Park v. Howell (652 F.2d 1227, 1234 [5th Cir.]), the Court, discussing the Rooker -Tang doctrine, stated:

> " If, instead, the plaintiffs had prayed for an injunction enjoining enforcement of the judgment, then under this theory, Rooker would not have relied on the district court's lack of appellate jurisdiction. The difference, obviously, is that in the former situation, but not the latter, the district court was asked to vacate the state judgment, an exclusive appellate act."

Examination of plaintiff's complaint reveals that Tang v. Appellate Division (487 F.2d 138 [2d Cir], cert. den. 416 U.S. 906, 94 S.Ct. 1611, 40 L.Ed.2d 111) does not present an obstacle to relief.

The issue on defendants motion is not whether this Court should grant relief to plaintiff, but whether it has the jurisdiction to do so. It is a question of power, rather than propriety.

Whether the federal judiciary should abstain in this case, is a possible issue for another day.

6. In view of the frivolous nature of defendants' instant motion, it is interesting to note that every disciplinary charge against plaintiff was either withdrawn by the Grievance Committee or dismissal was recommended by the Referee.

On two of the four charges that the Grievance Committee moved to disaffirm, it contended that I engaged in "frivolous procedures", an accusation rejected by the Referee.

a. I was charged with filing a federal complaint which allegedly did not comply with the "case and controversy" requirement of Article III of the United States Constitution, when in fact, my complaint did comply with the "case or controversy" condition.

The Grievance Committee's contention was so absurd that:

> "it cannot produce a statement from any past or present federal judge, any knowledgeable attorney in federal practice, or any case or authority supporting its assertion (regarding the 'case or controversy' requirement). In short, petitioner (Grievance Committee) is fully aware that its contention is false and contrived." (p. 3, plaintiff's affidavit of September 15, 1982).

To repeat -- deponent was charged with filing a federal complaint which did not contain a "case or controversy", when there was no question that it did set forth a "case or controversy!

b. The Grievance Committee also moved to disaffirm the Referee's Report because I made a motion to recuse Surrogate Signorelli. That motion was essential since I wanted his decisive testimony on the subject. Despite repeated judicial decisions (even by the Supreme Court of the United States, that a judge does not have immunity from testifying), the Grievance Committee seeks to punish deponent for exercising the right to pursue such testimony from a material judicial witness.

Annexed hereto (Exhibit "H") is a copy of my affidavit of September 15, 1982. One need not wonder the draconian penalties that would have been requested against me had I asserted the frivolous contentions asserted by the Grievance Committee or the Assistant Attorney General in this motion.

I shudder at the disciplinary penalties that would have been sought to be imposed upon me, had I ever conducted myself in the neglectful and contumacious manner the Assistant Attorney General conducted herself in this action.

Deponent respectfully prays that this Court, in its decision, enunciate in a voice loud and clear, that there are no lesser or greater breeds before the law, and that in a democratic society, unlike the game of chess, "rank" does not count.

WHEREFORE, plaintiff respectfully prays that defendants' motion be denied in all respects, with maximum sanctions.

/S/

GEORGE SASSOWER

Sworn to before me this
4th day of November, 1982

Melvise Krupka.
Not. Public State of Ny.
Qualin West Co.
Com exp 3/30/84

GEORGE SASSOWER
ATTORNEY AT LAW
914 [illegible]-0460

283 SOUNDVIEW AVENUE
WHITE PLAINS, N. Y. 10606

August 25, 1982

Honorable Robert Abrams
Attorney General of the State of New York
2 World Trade Center,
New York, New York, 10047

Re: Geo. Sassower v. Appellate Division

Honorable Sir:

With respect to the above matter, I telephoned your office last week, as a courtesy, to remind the Assistant handling the matter, that it was your last day in order to interpose an answer.

Not knowing who was handling the matter, I spoke to Stephen Jacoby, Esq., who was handling a related matter and advised him of the purpose of my call.

Instead of being appreciative of the reminder, he treated me very discourteously, refused to identify the Assistant who was handling the matter, and told me that such Assistant would call me later that day.

I have not heard from anyone from your office since that incident, and have not received any answer to the complaint.

Considering that your client, routinely imposes draconian penalties on mere "law office errors", it would be interesting if this matter came before your client for decision.

As almost all attorneys, I almost invariably grant additional time on mere request, without more. Nevertheless, my experience in this and other matters has been that your office just blithely ignores judicial mandates and rules of practice.

In this matter, rather than request relief by default, I telephoned Mr. Selkin and advised him of same. I am reasonably certain that he also communicated with your office with respect thereto. Nevertheless, I still have not heard from your office.

Exhibit "A"

It would not be unreasonable for me or anyone else to conclude that your office believes itself to be a "breed above the law".

Respectfully yours,

GEORGE SASSOWER

GS/bh

cc: Hon. Irving N. Selkin

GEORGE SASSOWER
ATTORNEY AT LAW
—
914 328-0440

283 SOUNDVIEW AVENUE
WHITE PLAINS, N. Y. 10606

September 2, 1982

Honorable Robert Abrams
Attorney General of the State of New York
2 World Trade Center,
New York, New York, 10047

Re: Geo. Sassower v. Appellate Division

Honorable Sir:

I spoke to Honorable Irving N. Selkin, Clerk of the Appellate Division, Second Department, on Friday, August 27, 1982 and he advised me that the above matter was being handled by Amy Juvilier, Esq. of your office.

He also advised me that he had been informed that either she had called me or was going to call me.

I advised Mr. Selkin that if the representation to him was that the said attorney or anyone else had telephoned or written me, such information was incorrect.

In any event, since that time, as before, I have not received any telephone call, any letter, motion, or answer from your office of any kind or nature.

I therefore intend to proceed accordingly.

Respectfully yours,

GEORGE SASSOWER

GS/bh

cc: Hon. Irving N. Selkin

Exhibit "B"

DORIS L. SASSOWER, 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 September 11, 1982, I served a copy of the within Judgment with Notice of Settlement on The Appellate Division of the Supreme Court, Second Judicial Department, 45 Monroe Place, Brooklyn, New York addressed to said co-defendant at its last known addresses by depositing a true copies of same enclosed in a post-paid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

Dated: September 11, 1982

DORIS L. SASSOWER

No. 923605

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO: Appellate Div. 2d. Dept.
STREET AND NO.: 45 Monroe Place.
P.O. STATE AND ZIP CODE: Brooklyn, N.Y. 11201

POSTMARK OR DATE

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered — 15¢
With restricted delivery — 65¢
2. Shows to whom, date and where delivered — 35¢
With restricted delivery — 85¢

RESTRICTED DELIVERY — 80¢
SPECIAL DELIVERY (extra fee required)

PS Form 3800 Aug. 1975 — NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL — (See other side)

☆ GPO 1975-O 391-452

Exhibit "C"

Index No. 82 Civ. 4970 Year 19 (MJL)

U.S.D.C.:SOUTHERN DIST. N.Y.

GEORGE SASSOWER, etc.

Plaintiff,

-against-

THE APPELLATE DIVISION OF THE SUPREME COURT, etc.

Defendants.

JUDGMENT with NOTICE OF SETTLEMENT

GEORGE SASSOWER

Attorney for plaintiff.

Office and Post Office Address, Telephone

283 SOUNDVIEW AVENUE

WHITE PLAINS, N. Y. 10606

(914) 328-0440

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

Sir:—Please take notice

☐ NOTICE OF ENTRY

that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

☐ NOTICE OF SETTLEMENT

that ~~an order~~ a Judgment of which the within is a true copy will be presented for
settlement to the HON. MARY JOHNSON LOWE one of the judges
of the within named court, at Foley Square,
on September 16th, 1982 19 at 9:30 A. M.

Dated, September 11, 1982

Yours, etc.
GEORGE SASSOWER

Attorney for plaintiff-pro se.

Office and Post Office Address
283 SOUNDVIEW AVENUE
WHITE PLAINS, N. Y. 10606

To Appellate Division, Second Department

~~XXXXXXXXX~~ co-defendant.

Index No. 82 Civ. 4970 Year 19 (MJL)

U.S.D.C.: SOUTHERN DIST. N.Y.

GEORGE SASSOWER, etc.

Plaintiff,

-against-

THE APPELLATE DIVISION OF THE SUPREME COURT, etc.

Defendants.

JUDGMENT with NOTICE OF SETTLEMENT

GEORGE SASSOWER

Attorney for plaintiff.

Office and Post Office Address, Telephone

283 SOUNDVIEW AVENUE

WHITE PLAINS, N. Y. 10606

(914) 328-0440

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

Sir:—Please take notice

☐ NOTICE OF ENTRY

that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

☒ NOTICE OF SETTLEMENT

that ~~an order~~ a Judgment of which the within is a true copy will be presented for settlement to the HON. MARY JOHNSON LOWE one of the judges of the within named court, at Foley Square on September 29th 1982 at 2:00 P.M.

Dated, September 23, 1982

Yours, etc.
GEORGE SASSOWER

Attorney for plaintiff

Office and Post Office Address
283 SOUNDVIEW AVENUE
WHITE PLAINS, N. Y. 10606

To Appellate Division, Second Dept.

Attorney(s) for co-defendant

Exhibit "F"

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

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

I am over the age of 21 and reside at 739 East 88th Street, Brooklyn, New York.

On October 6, , 198 2 , I served the within

Notice of Default

upon defendant, Appellate Division of the Supreme Court of the State of New York, First Judicial Department, 25th Street & Madison Avenue New York, New York, 10010

by depositing a true copy of same in a properly addressed envelope, post-paid in a post office box controlled by the United States Postal Service within the State of New York, addressed to the last known address of the persons or firms involved.

Pat Gomez
PAT GOMEZ
License No. 776192

Sworn to before me this
6th day of October , 198 2

Barbara Tatesure

BARBARA TATESURE
Notary Public State of New York
No. 24-4760746
Qualified in Kings County
Commission Expires March 30, 1984

Exhibit "F"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

GEORGE SASSOWER, individually and on behalf of others similarly situated,

Plaintiff,

-against-

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

Defendants.

82 Civ 4970 (MJL)

----------x

To the Clerk of the Court:

Upon the filed proof of service by the United States Marshall upon the defendant, THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT, and in accordance with Rule 55(b)(1) of the Federal Rules of Civil Procedure, demand is hereby made that the default of said defendant be noted and entered.

Dated: October 6, 1982

Yours, etc.,

RECEIVED
OCT - 7 1982

GEORGE SASSOWER, Esq.
Attorney for plaintiff
283 Soundview Avenue,
White Plains, N.Y. 10606
914-328-0440

To: Appellate Division, First Judicial Dept.

Exhibit "G"

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

In the Matter of George Sassower, an Attorney and Counsellor-at-Law:

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner,

-against-

GEORGE SASSOWER,

Respondent.

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

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

I am the respondent in the above matter and submit this affidavit with respect to the Notice of Motion of the petitioner, to confirm and disaffirm, dated March 19, 1982.

1. This affidavit is submitted without prejudice to my position that the moving papers should be rejected outright since, after due deliberation, no attorney has been willing to place his or her name on petitioner's "Memorandum", or assume any responsibility for same.

Exhibit "H"

It was made eminently clear at a conference with a Law Assistant of this Court on June 18, 1982, that RICHARD E. GRAYSON, Esq., Assistant Counsel for the petitioner, does not wish to assume responsibility for or place his name on such Memorandum. Analysis of said Memorandum makes the reason for such reluctance painfully clear.

2. This affidavit is also submitted without prejudice to my pending cross-motions and the action I commenced on July 30, 1982 in the United States District Court for the Southern District of New York (File No. 4970 Civ. 1982).

3. In view of the aforementioned, I will only briefly comment as to those charges which petitioner seeks to disaffirm.

CHARGE TEN

Petitioner, in its Memorandum, claims that I "commenced (two) frivolous federal actions" which (1) did not comply with the "case or controversy" requirement of Article III of the United States Constitution, and (2) the second action was commenced, although barred by the doctrine of res judicata.

1. On the contrary, both my federal actions, unquestionably complied with the "case and controversy" requirement, since both demanded substantial monetary damages.

a. Except when nominal damages are sought, a money damage demand eliminates any "case or controversy" obstacle (Federal Practice & Procedure, Wright - Cooper - Miller, §3533 p. 272-273).

Petitioner has actual knowledge of such fact, since I personally gave its counsel a copy of Clements v. Logan, U.S. n. 3, 102 S.Ct. 284, 286, 70 L.Ed.2d 461, 465 (Rehnquist, J. - Chambers), shortly after it was rendered. See also Gibson v. DuPree (664 F.2d 175, 177 [8th Cir.]).

Petitioner, incredibly, asserts its erroneous position, knowing that it cannot produce a statement from any past or present federal judge, any knowledgeable attorney in federal practice, or any case or authority supporting its assertion. In short, petitioner is fully aware that its contention is false and contrived.

Petitioner's attorney was also given a copy of Signorelli v. Evans 637 F.2d 853 [2d Cir.], clearly supporting the proposition that even if my federal complaints did not claim money damages, the "case or controversy" requirement had been met.

Petitioner, with cynical assurance, charges me with presenting "frivolous" claims because they did not meet the constitutional "case or controversy" criteria, knowing all the while that, in fact, my complaints did so comply!

Who is asserting a frivolous position, petitioner or respondent?

b. Significantly, that portion of my federal complaints which the federal courts held did not reveal concrete likelihood of future injury (and there is no requirement that each and every aspect of a complaint reveal a "case or controversy" [Powell v. McCormack, 395 U.S. 486, 496-497, 89 S.Ct. 1944, 1950-1951, 23 L.Ed.2d 491, 502], did in fact, result in far greater injury than even respondent envisioned at the time he filed his federal complaints.

On June 24, 1982, a panel at the Appellate Division of the Supreme Court, Second Judicial Department heard about the events of June 10, 1978, when my attorney-wife was incarcerated for presenting a Writ of Habeas Corpus directing my immediate release, along with my daughter, who was also incarcerated for having merely accompanied her.

Associate Justice MOSES A. WEINSTEIN, addressing Assistant Suffolk County Attorney, Erick F. Larsen, Esq., stated that these were serious charges, and asked Mr. Larsen what he had to say with respect to them.

Following is an almost haec verba recitation of Mr.Larsen's response:

> "When I [Erick F. Larsen, Esq., Assistant Suffolk County Attorney] was informed that the Sheriff had succeeded in capturing Mr. Sassower, I immediately proceeded to Jail in Riverhead. Now I have processed thousands of applications by illiterates, but this Writ of Habeas Corpus was executed by one of the most illiterate persons I have ever seen."

The law does not require that only directions from "literate" judges be obeyed, nor does it empower the Suffolk County officials to be the ex parte arbiters of the literacy of the judiciary in another judicial district of their department. Any doubt as to the literateness of the Supreme Court Justice who endorsed and signed the Writ of Habeas Corpus directing my immediate released, is rebutted by mere examination of the writ, (Exhibit "A") which is clear, legible, and evidences use of the legal language in a perfectly proper way.

Needless to say, when my wife and daughter recently moved to strike the affirmative defenses of these Suffolk County officials and for summary judgment, no substantive objections were interposed by those defendants (Supreme Court, Westchester County, Index No. 3607-1979).

2. Petitioner claims that my second federal action, although based on facts arising after dismissal of my first action, was barred by the doctrine of res judicata.

a. By definition and rudimentary logic, res judicata can never apply to subsequently arising events, (petitioner itself has admitted that the sequence of events described in its Memorandum is incorrect [Exhibit "B"]).

b. Cohen v. Board of Education (84 A.D.2d 536, 537, 443 N.Y.S.2d 170, 172 [2d Dept.]) is clearly decisive against petitioner.

In short, petitioner charges me with presenting a claim barred by res judicata, when res judicata was manifestly inapplicable!

Who is asserting a frivolous position, petitioner or respondent?

3a. Even more compelling -- subsequent to the disposition of my actions, the federal courts adopted my precise reasoning (Gomez v. Toledo, 446 U.S. 635, 100 S.Ct. 1920, 64 L.Ed.2d 572; Dennis v. Sparks, 449 U.S. 24, 101 S.Ct. 183, 66 S.Ct. 185; Lopez v. Vanderwater, 620 F.2d 1229 [7th Cir.], cert dis. 449 U.S. 1028, 101 S.Ct. 601, 66 L.Ed.2d 491; Rankin v. Howard, 633 F.2d 844 [9th Cir.], cert den. 451 U.S. 939, 101 S.Ct. 2020, 68 L. Ed.2d 772; Beard v. Udall, 648 F.2d 1264 [9th Cir.]).

b. Presumably, petitioner's position is that I violated DR 7-102(A)(1), which provides:

> " ... [A] lawyer shall not file a suit, assert a position ... or take other action ... when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another."

As a matter of law, there is absolutely no basis for this charge against me.

I respectfully request that petitioner be required to justify its position on this charge, since the evidence reveals that petitioner, not respondent, is advancing a frivolous legal position.

I respectfully suggest that it is because everyone associated with petitioner so well knows its position on this charge is specious and frivolous, that no attorney will place his name or assume responsibility for its Memorandum.

CHARGE SIX

Petitioner claims that by moving to disqualify Surrogate Ernest L. Signorelli, I "engaged in frivolous litigation".

1. Petitioner admits that a litigant has a right to have a judge testify (Dennis v. Sparks, supra; U.S. v. Hastings, 681 F.2d 706, 710-712 [11th Cir.]. The doctrine of "judicial immunity" is concerned only with potential liability for monetary damages and is unrelated to a judge's duty to testify as a witness on competent issues (cf. Jade v. C.I.T., 87 A.D.2d 564, 448 N.Y.S.2d 194 [1st Dept.]).

Petitioner states in its Memorandum (p.7):

> " The Grievance Committee is cognizant that testimony and documentary evidence point to the fact that respondent was, in fact, thought of (by most, if not all of the attorneys and the Surrogate involved) as the executor ..."

Surrogate Signorelli admitted that on October 21, 1976 (seven months after my alleged removal), he "directed me to culminate the sale of the deceased's real property" (Testimony by Surrogate Signorelli on Oct. 30, 1981, SM 11).

Obviously, Surrogate Signorelli made such direction in clear recognition that I was the executor at the time. Yet, four months following, i.e., on March 17, 1977, after I entered into a contract of sale pursuant to his earlier direction, he incredibly stated that I had no authority to do so and nullified the transaction (Oct. 30, 1981, SM 13).

As the Referee, Hon. ALOYSIUS J. MELIA, found (Report p. 61):

> " Indeed, in this period, on October 21, 1976, on the record, the Surrogate ordered the respondent to sell the house. He could only do so as executor. (Ex. BP)
>
> The respondent prepared and entered into a contract to sell on December 2, 1976. The Surrogate then aborted the deal.
>
> More than a year later, after paying additional taxes, the Public Administrator sold the house to the same party for the same price."

As the Referee also found (Report p. 60-61):

> " The Public Administrator was not named to replace the respondent until 1 year later, on March 25, 1977. (Ex. 24)
>
> In the intervening year, court transcripts of proceedings before the Surrogate, amply demonstrate that participants in the proceedings considered the respondent to still be the executor.

Abuza so testified here. Though he was the one who brought the motion to have respondent removed, he believed, that when the respondent filed an accounting within the 30 day period, that he had been restored as executor as well, and acted accordingly.

Wruck, a special guardian and others, so referred to the respondent on several occasions in the record of proceedings before the Surrogate.

...

On July 6, 1976, papers were prepared by the respondent in the court room, by court personnel, and signed by the Surrogate. These papers purportedly still recognized the respondent as executor. (Ex. CD) (Ex. AR)"

Respondent wanted Surrogate Signorelli disqualified so that he could be compelled to testify as a witness for the proposition that he had recognized me as an executor for a period of one year after the contrived thereafter removal fiction and that he had expressly directed me, as executor, to sell the real property.

Surrogate Signorelli refused to recuse himself because he knew if he did, he would then have no excuse for not testifying under oath and his misdeeds exposed thereby.

The Surrogate persisted in his refusal until February 1978, when, as a result of repondent's application in federal court, he was virtually forced to disqualify himself.

There was no motion pending for decision when Signorelli published his diatribe of February 24, 1978 (see Matter of Haas, 33 A.D.2d 1, 304 N.Y.S.2d 930 [4th Dept.], app. dis. 26 N.Y.2d 646, 307 N.Y.S.2d 671). The publication was intended to defame respondent and his wife, prejudice other judicial proceedings, and compel petitioner to proceed with a previous complaint against respondent filed by one of his appointees.

Surrogate Signorelli was replaceable in the event he disqualified himself, and had no "duty to sit" (Laird v. Tatum (409 U.S. 824, 837, 93 S.Ct. 7, 15, 34 L.Ed.2d 50, 60). Ironically, it was his own publicly disseminated and vindictively inspired disciplinary proceedings, which finally compelled him to testify, thereby exposing his duplicity.

2. There were other reasons for the disqualification of Surrogate Signorelli, including a manifest, extraneous bias.

Surrogate Signorelli knew that the reasons set forth by respondent in his disqualifying affidavit were true. Consequently, he set about to destroy or secrete such judicially filed affidavit and other public documents exculpatory to respondent. The Referee believed that respondent's disqualifying affidavit was sufficiently significant to publish it in haec verba, as part of His Honor's Report (p. 68-72). Surrogate Signorelli also must have found it sufficiently significant so as to warrant its destruction.

Here too, as a matter of law, there is not a shred of factual or legal basis for this charge against respondent.

Once again, I respectfully request, that petitioner be compelled to justify its position on this charge, since the evidence indicates that it is the petitioner who belongs in the dock (with Ernest L. Signorelli), not respondent, for advocating a frivolous legal position.

I respectfully reiterate that everyone associated with petitioner knows its position on this charge is specious and frivolous, and hence refuses to append his name to its Memorandum or assume responsibility therefor.

Charge Eight

Petitioner, in its Memorandum, claims that respondent was "contemptuous of the Suffolk County Surrogate's Court and of the Surrogate" because (p. 9):

> " As Surrogate Signorelli testified on October 22, 1981 at this disciplinary proceeding, the respondent '... stated he would not obey the order.' (P. 31)."

Respondent knows that everyone (except for Surrogate Signorelli), who has read the transcript, as set forth in Paragraph 54 in petitioner's amended petition, has concluded that I did not state I would disobey. I venture to add that even Surrogate Signorelli has come to the same conclusion, but he, nonetheless, apparently feels compelled to lie about this fact also.

There is not a member of petitioner's committee or its counsel's office willing to assert that such transcript states I "would not obey the order".

The fact is, on June 15, 1978, the very day of the colloquy, immediately upon its termination, which is only partially transcribed, I did obey the Signorelli's order.

Petitioner, in its Memorandum, in moving to confirm Charge Four states (p. 5):

> " Anthony Mastroianni (Suffolk County Public Administrator), testified ... that the material he (thereafter) received ... appeared to duplicate what he already had (already received from me on June 15, 1977). ... Fatal to this charge is Mastroianni's testimony ... that he does not know if there are any missing documents."

Petitioner's position on this Charge is based solely, and knowingly, on Surrogate Signorelli's false and contrived reading of the transcript.

As a matter of law, not a scintilla of truth attaches to this charge against me.

Once again, I respectfully request that petitioner be compelled to justify its position on this charge, since the evidence indicates that it is the petitioner (with Ernest L. Signorelli), who should have faced charges for advancing a frivolous legal position, not respondent.

I respectfully suggest that everyone associated with petitioner knows its position on this charge too is contrived and deceitful, and thus, consequently no one desires to place his name or assume responsibility for its Memorandum.

Petitioner is playing "fast and loose" with this Court when it bases its motion to disaffirm, not on what I said, but on what Signorelli testified I said, all the while knowing that the testimony of Signorelli is false.

Charge Three

Petitioner contends in its Memorandum, that I "failed to file promptly (my) accounting".

A. The basic facts underlying this charge are undisputed:

1. From the very outset, Charles Z. Abuza, Esq., had in his possession a copy of my letter to a third party revealing that I was having difficulty obtaining the needed information from the decedent's accountant, who claimed a lien on the records and would not supply the required information because of monies allegedly due him from the testator.

2. Charles Z. Abuza, Esq., through his client, who personally knew the accountant, tried to obtain information from him, but was also unsuccessful.

3. Any and all information that I had, I gave to Charles Z. Abuza, Esq. He never requested an explanation of the information that I gave him or ever requested any further information that I actually had.

4. Charles Z. Abuza, Esq. refused to agree to the payment of any sum of money to the accountant in order to resolve this impasse.

5. Nevertheless, knowing that I could not comply because of the aforesaid, Charles Z. Abuza, Esq., made motions to compel me to account, by gross misrepresentations to the Courts.

6. Employing some diplomacy and patience, I was able to obtain the needed information, albeit about five months after the accounting was due. During this period Mr. Abuza's client, consented to the extension of time and wrote to the court confirming same (Report 48-49). During much of this period Mr. Abuza's client generally cooperated with respondent in trying to resolve the outstanding disputes by various claimants and in the attempts to obtain information from the accountant.

7. A copy of the accounting was given to Charles Z. Abuza's firm within one day after the information was received from the accountant and the original sent to Surrogate's Court.

8. There was no legitimate need for this accounting in the first place, and it represented a needless effort.

9. There was no prejudice to anyone in any respect.

Decisive is that no one, including petitioner, has ever suggested, any feasible or better alternative route that I might have employed, given the conceded circumstances.

A resume of this subject by Hon. ALOYSIUS J. MELIA, in his Report is as follows:

1. The statement by petitioner's counsel regarding the activities of Charles Z. Abuza, Esq., concludes as follows (p. 12):

> " To attempt to catalogue and analyze every false and misleading statement to a document prepared by the Schacter [Charles Z. Abuza, Esq.] firm ... would be a Herculean task and only belabor the point."

2. The comments by His Honor, capsulized, follows (p. 13-15):

> "I find it difficult to believe anything that Mr. Abuza said ... Mr. Sassower was cooperative and was always willing to be. ... Mr. Abuza admitting here that in many instances there were false statements in papers submitted by him to these judges, which, indeed, would tend to excite them. ... [Mr. Abuza's] testimony is replete with falsehoods, half truths and misleading statements, and that is true of the papers that he submitted to the various courts. ... A further word is necessary here about the 'accountings' referred to, because they also relate to charge three.
>
> First, the respondent had difficulty amassing necessary information. For a time ... the deceased's accountant would not cooperate. The respondent sought Abuza's assistance in this regard but Abuza did nothing. Edward Kelly, Abuza's client, admittedly tried to enlist [the accountant's] cooperation but was also unsuccessful."

3. Specifically with respect to Charge Three, His Honor reported (p. 46-51):

> " The respondent undertook and carried out his responsibilities. Over a period of time several objections to probate were settled and the will was admitted to probate on September 9, 1974. Full letters testamentary were issued to the respondent. ...
>
> On November 13, 1974, Edward Kelly, by counsel [Charles Z. Abuza, Esq.] filed a petition for a compulsory accounting.

It is crystal clear, from petitioner's witnesses, concessions and documentary evidence, that [Ed] Kelly and his counsel [Abuza] knew that the respondent could not intelligently account until he had the cooperation of ..., the deceased's long time accountant. Indeed Kelly himself sought [the accountant's] aid, at the respondent's urging, but was also unsuccessful. Abuza, too, admittedly was aware of this problem but did nothing to aid.

He [Abuza] resorted to a motion for a compulsory accounting. The sin charged is that the respondent did not provide information which they knew he did not have. (emphasis supplied) ...

However, prior to May 1, 1975 [when the accounting was due], Mr. Abuza, had already sent an affidavit for Kelly's signature, seeking to hold the respondent in contempt for failure to file the accounting and requesting his removal as executor. ...

The respondent filed the accounting on December 20, 1975.

It does not appear that the delay caused prejudice or loss to anyone other than legal expenses for petitioner's counsel [Abuza]. Indeed, in the interim, the respondent settled 5 claims and gained [the accountant's] limited cooperation. He was thereby enabled to account to some extent.

Parenthetically, it should be noted that, Anthony Mastroianni, the Public Administrator, replaced the respondent on March 29, 1977. He did not file any accounting until April 1980, though he had no more information in 1980 than he did in March 1977. ...

Mr. Abuza complained here that during this period, the respondent did nothing about selling the house. Documentary evidence destroys this claim.

As earlier set forth, Mr. Abuza was aware, both from knowledge obtained from his own client and from the respondent, that [the accountant] was uncooperative and that the respondent was endeavoring to settle claims of creditors and difference(s) between the parties.

However, Mr. Abuza takes the position that the respondent should have haled [the accountant] into court and forced him to divulge the requisite information.

The respondent countered that such action would have been costly to the estate, estranged the most knowledgeable person about the estate assets, occasioned delay and thwarted the respondent's efforts to woe [the accountant]. In these efforts he ultimately prevailed.

The respondent takes the position that it is not customary to file intermediate accountings in 'small' estates such as this one, absent unusual circumstances. None such existed here. The better practice was to file only a final accounting. This procedure, he argues would save court time, lawyers' fees and benefit legatees.

This argument was not seriously challenged here by anyone. Nor were unusual circumstances demonstrated. The genesis for an accounting arose from adversarial attorneys with no showing for need, other than a clamor for an accounting. This, despite the fact that all had knowledge of the practical problems facing respondent in this regard. ...

Under all of the facts and circumstances, I do not believe that it can be said, as a matter of ethical concern, that the filing of the report was not prompt and timely. If so, ethically, it is excusable.

According, it is respectfully recommended that this charge be dismissed."

I repeat, petitioner has never and does not now advance any practical, alternative route that I should or could have taken.

B. Petitioner blithly ignores the Report of the Referee (p. 48-49) and the written confirmatory documentary evidence (Exhibits 31-33), which caused His Honor to further state (p. 49):

"So Kelly and his counsel acquiesced in the delay."

On November 13, 1975, Edward Kelly himself wrote to Surrogate's Court and stated (Exhibit 33):

"Due to the fact that another matter has to be settled before an accounting can be made by Mr. George Sassower, it is my desire that the above motion be adjourned for one month."

In a private postcript to the copy he sent to his attorneys, and taken from Mr. Abuza's own file, Mr. Edward Kelly added (Exhibit 33):

"... We need more time in order to take care of a few more details before an accounting can be made."

This charge, like the prior ones, is a hoax, a sham, in sum, an utter imposition on the Court and myself, as a matter of law, it should be dismissed.

I again respectfully request that petitioner be compelled to justify its position on this charge, since the evidence indicates that it is the petitioner, who belongs in the dock (with Charles Z. Abuza, Esq.) for advancing a frivolous legal position, not respondent.

As to this charge also, everyone associated with petitioner knows that, at best, as His Honor stated, the offense charged is that I did not supply information that Abuza and petitioner knew I did not have.

Likewise, once more the facts reveal the reason no one associated with petitioner desires to place his or her name on its "Memorandum".

Conclusion

I am unaware of any area wherein this Court has been granted such non-reviewable, extensive, exclusive, judicial, executive, legislative, and prosecutorial power. The federal courts have articulated a policy of unmatched restraint in this field, more compatible with abdication, than abstention.

Were this Court to employ its powers to the fullest, it could still not begin to compensate me for the horrendous loss of time, money, and human emotion which this matter has cost, and continues, to cost me and my family.

I leave to this Court to fashion the remedy to redress the enormous wrong done. It must be remembered that the charges as to which I have been already been vindicated (and which petitioner moves to confirm), and more, were published in violation of Judiciary Law §90[10], compounding the damage.

In the event I am completely vindicated (as recommended by His Honor), the law -- if it takes it prescribed course -- would have such exoneration confidential, while the accusation is irretrievably in the public domain.

The meritless nature of the four charges petitioner seeks to disaffirm speaks volumes for the lack of quality of the other ten charges which petitioner abandoned, or moves to confirm.

WHEREFORE, I respectfully pray for an Order and Judgment according to law and to this Court's good conscience.

GEORGE SASSOWER

Sworn to before me this
15th day of September, 1982

MURIEL GOLDBERG
Notary Public, State of New York
No. 60-4515474 Westchester County
Commission Expires March 30, 1983