To be argued by:
GEORGE SASSOWER

Supreme Court of the State of New York
Appellate Division—First Department

GEORGE SASSOWER,
Plaintiff-Appellant-Respondent,

-against-

ANTHONY MASTROIANNI, JOHN P. FINNERTY, ALAN CROCE, and ANTHONY GRYMALSKI,
Defendants-Respondents-Appellants,

-and-

ERNEST L. SIGNORELLI, HARRY E. SEIDELL, NEW YORK NEWS, INC. and VIRGINIA MATHIAS,
Defendants-Respondents.

Reply Brief of Plaintiff-Appellant-Respondent

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I N D E X

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PLAINTIFF'S REPLY BRIEF

THE SUFFOLK COUNTY DEFENDANTS

1a. Predictably, the Suffolk County ["S.C."] defendants abandoned their cross-appeal in the Appellate Division, Fourth Department, when, that tribunal directed the S.C. defendants to file their Brief and Appendix in March 1984.

b. Predictably, the S.C. defendants abandoned their appeals and cross-appeals in this Court, when the time arrived to perfect same.

2a. In the Fourth Department, the S.C. defendants appealed although they did not have an appealable or reviewable issue.

b. In this Court, the S.C. defendants appealed and cross-appealed although they did not have an appealable or reviewable issue.

3a. In the Fourth Department, the S.C. defendants abandoned their cross-appeals after plaintiff prepared the appropriate appendix for both parties and then the S.C. defendants refused to pay their proportionate costs for same.

b. In this Court, the S.C. defendants abandoned their appeals and cross-appeals after plaintiff prepared a full record for both parties, and then the S.C. defendants refused to pay one-half of the costs thereof, necessitating a motion for same, presently sub judice.

4a. The day following the denial, by Mr. Justice ARNOLD L. FEIN of an interim stay, and a direction that the S.C. defendants submit to an examination before trial, as repeatedly ordered by Special Term, the attorney for the S.C. defendants, based only on his own, patently incomplete and deceptive, affidavit moved for partial summary judgment [S.C. Appendix, Exhibit "C"], contending that its mere making triggered a CPLR 3214(b) automatic stay.

b. In denying said motion, without prejudice, Mr. Justice MARTIN B. STECHER, on April 6, 1984, in part stated:

> "The county attorney of Suffolk County acting on behalf of defendants ... moves for an order 'pursuant to CPLR 3212(e), granting partial summary judgment in favor of defendants... dismissing those portions of the amended complaint ...' .An order also is sought staying disclosure.
>
> This is one of the most frustrating sets of papers submitted to me in a considerable period of time. Quite obviously it is not the complaint which is being attacked but 'those portions' claimed to be barred by the doctrine of issue preclusion. The moving papers, several pounds in weight, contain a single 14-page attorney's affidavit which fails to identify the issues. The second paragraph reiterates that this is a motion 'dismissing those portions of the amended complaint .. which are barred by the res judicata effect ...'. It is followed by four pages entitled 'Background and Prior Proceedings;' by three pages entitled 'Collateral Litigation by Sassower;' four

pages involving application for a stay of proceedings and the balance of the affirmation is entitled 'Disclosure Proceedings' and 'Conclusion.' The memorandum of law, 57 pages in length, not only makes reference to the relief sought in the notice of motion for partial summary judgment but also makes reference to relief requested for pleading defects, another action pending and a determination to be made based on the Second Department decision other than the Federal determinations.

At page 13 of the memorandum, the author writes of a 'detailed analysis of the pleadings in each of the dismissed Federal actions and the present amended complaint. 'A careful reading of all 57 pages fails to identify which causes of action in the complaint under attack should be dismissed; which causes of action in the Federal pleadings they duplicate; and which portions of the Federal judgment necessarily make final decisions with respect to the present complaints' allegations.

I have no doubt that at some point all of these items are covered in the affidavit and the memorandum of law; and I appreciate the confidence in me demonstrated by the moving attorney in his assurance that if I look carefully enough I will be able to discover the grounds for dismissal of the yet to be identified portions of the present complaint.

Nonetheless, I find it to be the attorney's obligation to make that analysis, first, so that the Court may be informed of the precise claims made and, second, so that the adversary may be in a position to respond.

> If the motion seeking stay of disclosure heretofore ordered is related to the summary judgment motion and insofar as disclosure has heretofore been ordered by other Judges with a denial of a stay by the Appellate Division, the stay requested of me is likewise denied."

c. Additionally, in the S.C. Attorney's hereinabove motion for partial summary judgment, he (a) omitted the disposition of Mr. Justice JAMES A. GOWAN, on a similar and more probative set of papers; (b) omitted the Opinion and Order of Mr. Judge LAWRENCE W. PIERCE; (c) omitted the Opinion and Order of Mr. Justice THOMAS J. O'TOOLE; and (d) omitted mention of the Report of Hon. ALOYSIUS J. MELIA, confirmed by Order of this Court.

d. Despite the very excoriating remarks of Hon. ARNOLD L. FEIN, the day before to the same attorney, on the very same subject, and with personal knowledge of the resounding vindication of plaintiff on a matter not in issue or relevant in this action, in an obvious attempt to prejudice the proceedings before Hon. MARTIN B. STECHER, the said attorney stated (S.C. Appendix, Exhibit "C"):

> "We point out that civil contempt judgments in New York County against Mr. Sassower, arising out of trust aspects of the same estate, have previously been upheld by the Appellate Division, First Department (see Kelly v. Sassower, 78 A.D.2d 502)" [2]

"As noted before, Mr. Sassower's civil contempt conviction in New York County, arising out of his failure to file an accounting concerning trust aspects of the estate, has been upheld in the Appellate Division, First Department (Kelly v. Sassower, 78 A.D.2d 502)." [6]

"He may well be convicted anew, as his prior civil contempt judgment in New York suggests (Kelly v. Sassower, 78 A.D.2d 502)." [12]

Obviously, in his Brief to this Court, the S.C. Attorney does not refer to Kelly v. Sassower (78 A.D.2d 502), since he knows and recognizes that this Court, as Mr. Justice ARNOLD L. FEIN strongly intimated to the S.C. Attorney, there is information which casts doubt as to the validity of such decision of this Court.

At Special Term, when the Assistant S.C. Attorney made a disparaging reference to plaintiff, citing Kelly v. Sassower (supra) [84], plaintiff responded:

"[The Assistant S.C. Attorney's] reference is likewise indecent, as he has been informed, plaintiff's accusor was found to have repeatedly lied to various courts, including the Appellate Division [First Department]. Here again plaintiff was resoundingly vindicated and his accusor condemned.

On withdrawing the charges, the attorney for the Grievance Committee stated (which the Referee explicitly adopted as part of his report - p. 12):

> 'To attempt to catalogue and analyze every false and misleading statement to a document prepared by the Schacter firm in connection with these two trusts would be a Herculean task and would only belabor the point'.

The Referee said in His Report many things regarding Mr. Abuza including:

> 'Now really, I find it difficult to believe anything that Mr. Abuza said ... His testimony is replete with falsehoods, half truths and misleading statements, and is true of the papers that he submitted to the various courts. The foregoing conclusions of Mr. Grayson and myself are capsulized. The instances of deception and evasion are too numerous to chronicle here.' " [199-200]

"There has been a matter that I have strongly and openly faulted [the Assistant S.C. Attorney], and that is his several attempts to gain unsportmanship mileage out of [an] irrelevant matter.

As [the Assistant S.C. Attorney] (and the Appellate Division) now recognize, the holding and words in Kelly v. Sassower (78 A.D.2d 502), has been completely refuted after extensive investigation and examination as a complete fraud upon various courts and judges.

In throwing in the sponge, before the completion of cross-examination the attorney for the Grievance Committee stated: ...

Particularly significant is the following portion of the statement of Hon. Aloysius J. Melia, in agreeing with the dismissal of the charges, wherein His Honor stated:

> 'Now really, I find it difficult to believe anything that Mr. Abuza said, I hate to say that, and I only do it because I think it is necessary to do so, because this is a very, very strange case. ...
>
> Now, I find great difficulty -- I found great difficulty with that from a factual and a legal standpoint, particularly when it is certainly true that the Justices involved here, <u>including the Appellate Division</u>, were all fine, eminent, able men. But, hearing the testimony, however, it is clear to me that for the most part they did not have the benefit of all that is before me. ...
>
> In addition, and as part of this whole patchquilt,we have Mr. Abuza admitting that in many instances there were false statements in papers submitted by him to these various judges, which, indeed, would tend to excite them.' (p. 13-14)" [228-229]

e. The S.C. Attorney has two (2) other favorite topics, also irrelevant, which the S.C. Attorney believes merits repeated reference to the various courts.

1. Plaintiff was convicted of criminal contempt (a) without benefit of any accusation; (b) without any notification of a trial or hearing; (c) a trial; (d) conviction; (e) sentence, all in absentia.

Such mock conviction was adjudicated a nullity and the repeated references to same by the S.C. Attorney is manifestly intended to unfairly prejudice plaintiff (because to respond he must attack other members of the judiciary or the judicial system) and this obscures the issues involved.

Former Assistant District Attorney, former County Court Judge, Acting Supreme Court Justice, and Surrogate Ernest L. Signorelli, in his overpublished sua sponte diatribe referred to the aforementioned basic constitutional requirements as "technical", a view obviously shared by the S.C. Attorney's Office and Archie Bunker.

In any event, it took nothing less than a verbal gun-to-the-head edict to terminate four (4) days of hearings, and convince the Suffolk County officialdom, that "technical" or otherwise the aforementioned procedures did not comply with constitutional guarantees, as almost every child who watches television knows!

2. To ensure that plaintiff is labelled a pariah, once again plaintiff was (a) tried; (b) convicted; and (c) and sentenced in absentia, because the first time a matter is on the trial calendar plaintiff was engaged in the midst of a trial in Supreme Court, Bronx County.

In Suffolk County [per Gowan, J.], being in the midst of a trial in a higher court in Bronx County is a conscious, voluntary, and deliberate waiver of the constitutional right to be present at a trial, conviction, and sentence for criminal contempt, as a matter of law, so as to dispense completely with the necessity of a habeas corpus hearing!

In Suffolk County, plaintiff was supposed to risk a contempt proceeding in Supreme Court, Bronx County, by abandoning a trial in its midst and prejudice his client's cause in order to appear in Suffolk County!

Without disclosing the underlying facts or the Suffolk County Code of Star Chamber Procedures, in order to prejudice plaintiff's cause, the S.C. Attorney, in his moving affidavit to Hon. MARTIN B. STECHER (S.C. Appendix, Exhibit "C"), prepared and executed only one day after being excoriated by Hon. ARNOLD L. FEIN, falsely stated:

> "This, and a multitude of related action which have been brought by attorney-plaintiff George Sassower, against public officials, judges and justices of the courts, attorneys for the various parties herein, and others, all arise out of Mr. Sassower's efforts to set aside the criminal contempt sanctions imposed against him by the Suffolk County Surrogate's Court. That contempt proceeding, which resulted in a judgment of conviction which has never been overturned, stemmed from charges that Mr. Sassower failed to account for the assets or records of an estate probated in the Suffolk County Surrogate's Court ..." (emphasis supplied) [1-2]

> "By that habeas corpus proceeding, Mr. Sassower is attempting to undo his presently unreversed criminal contempt conviction in the Suffolk County Surrogate's Court. Unless Mr. Sassower is successful in so doing, or unless upon a retrial, Mr. Sassower is successful in overturning his adjudication for criminal contempt before the Surrogate's Court, wholesale portions of the amended complaint herein will further be dismissable upon res judicata principles." [3]

"... Mr. Sassower's appeal therefrom has been ordered 'held in abeyance' ... pending a remand to Justice Gowan upon the question of whether or not Mr. Sassower's default in appearing at his criminal contempt trial was excusable, entitling him to defend that criminal contempt proceeding anew." [4]

"Following rulings by Surrogate Signorelli that Sassower failed adequately to account for the assets of the estate, the Suffolk County Surrogate's Court ordered Sassower removed as executor, and appointed the Public Administrator (Anthony Mastroianni) in his stead. When, the Surrogate concluded, Sassower had repeatedly failed to comply with an order directing the turnover of books, records and estate property to the Public Administrator, Sassower was cited for contempt, and adjudged in summary criminal contempt by Surrogate Signorelli, and apprehended and jailed by deputies of the Suffolk County Sheriff's Office." (emphasis supplied) [4]

"Thereafter, formal criminal contempt proceedings were initiated on behalf of the Public Administrator (defendant Mastroianni) against Sassower, based upon claims of Sassower's continued failure to comply with the Surrogate's turnover order." [5]

"Following the second criminal contempt conviction ... (the first conviction having been set aside), Sassower was again apprehended and imprisoned by Suffolk County deputy Sheriffs. [6]

"We point out that Mr. Sassower has sued repeatedly ... seeking to challenge every aspect of the proceedings against him, and to recover damages for assault resulting from his arrest and incarceration, and for defamation stemming from the ultimate reporting of these events in the various news media. He has indiscriminately sued the judges, his jailers and the reporters of these proceedings against him as well." [9-10]

> "He has repeatedly sought the disqualification of justices, heaped calumny upon them, and attempted to depose the courts, and its personnel, seeking, among other things, depositions of Appellate Division Justices Mollen, Gulotta, Chief Appellate Division Clerk Irving Selkin, and others. ... He has sued, or threatened to sue, his lawyer-adversaries, and repeatedly moved to depose and disqualify the lawyers opposing his actions." [10]

> "As matters presently stand, plaintiff George Sassower has already been adjudicated in criminal contempt ... following an evidentiary trial (albeit, one at which Sassower defaulted in appearing)." [11]

4a. About as important as anything done or stated by Judge Melia was to give perspective to the charges. In His Honor's report to this Court he stated [at p. 2].

> "It is important to note at the outset that none of these charges involve acts of moral turpitude. There is no claim that the [plaintiff] siphoned off a client's assets nor was guilty of overreaching, nor any similar impropriety."

b. Assuming, arguendo, plaintiff was wrong in asserting the 5th Amendment, when the confessed facts reveal he was completely innocent of the charge, does this justify the incarceration of his wife and daughter for merely serving a writ of habeas corpus?

Assuming, arguendo, plaintiff seriously erred in judgment and should have abandoned his client in Supreme Court, Bronx County in order to attend a criminal contempt proceeding, the first time it was on for trial, does this warrant physical assaults upon his person while handcuffed by two Deputy Suffolk County Sheriffs?

Assuming, arguendo, plaintiff committed each and every act alleged by Surrogate Signorelli, in and out of Surrogate's Court, does this justify recruitment by Signorelli and his entourage, of the "stringer" for the Daily News for a private interview to be published the morning that plaintiff's writ of habeas corpus was returnable, with the overt attempt to deprive plaintiff of a fair trial?

5a. The point is where the S.C. Attorney has capitulated in every respect to the relief sought against him and his clients, abondoned his own appeals, must plaintiff run this gauntlet of untruths, half-truths, misleading statements, and outright sewerage in seeking vindication of his alleged rights.

b. Obviously, the excoriating remarks of Mr. Justice ARNOLD L. FEIN to the Assistant Suffolk County , was nothing more than "water off a duck's back".

c. Is not a litigant entitled to the protection of the Courts for such continuing outrageous conduct?

Absolutely false, as the Suffolk County Attorney knows, is the statement that plaintiff criminal contempt conviction "stemmed from charges that [he] failed to account for the assets".

This entire campaign of vilification was a patent attempt to discredit plaintiff in the event he attempted to expose Signorelli and his court.

Ironically, Signorelli was hoisted by his own petard during his own inspired disciplinary proceedings where he was compelled to testify!

d. For whatever it is worth, and to plaintiff it is worth everything, plaintiff's idealistic children are very proud of their father and the way he conducted himself in refusing to succumb to this tyranny.

6a. The pre-trial discovery which the S.C. finally consents to is now, more than one (1) year too late, and only the imposition of a substantial penalty will cause this action to proceed expeditiously.

b. A eunuch-like posture by this Court will only encourage, frivolous objections, motions to overrule same, notices of appeal, motions to vacate the statutory stay, motions to dismiss for lack of prosecution, and eventually, a substantial time later, the abandonment of the appeals by the S.C. Attorney.

c. This very scenario was predicted in plaintiff's motion to nisi prius, when he requested that $10,000 costs be assessed against the S.C. defendants.

7. The S.C. defendants should be ordered to expeditiously comply with plaintiff's notice for an examination before trial, ordered to comply with plaintiff's demand for discovery and inspection, assessed $10,000 costs, made to bear the costs and disbursements of this appeal, punished for false, misleading, prejudicial statements, and warned that repetition may cause further penalties.

THE NEW YORK NEWS

The News, also desires to supplement the Record, like the Suffolk County Attorney, with a partial documentation and only a partial statement:

A. WAIVER:

1. In applying for a stay at the Appellate Division, Second Department, the attorney for the News stated:

> "12. The News appeals on the ground that the Court below erred in granting plaintiff's motion to strike because the information sought in plaintiff's interrogatories to which the News is required to respond under the order is privileged under Section 79-h of the New York Civil Rights Law and the attorney-client privilege.
>
> 13. In light of plaintiff's appeal and defendant's cross-appeal of the grant of plaintiff's motion to strike the News' answer, any proceedings instituted by plaintiff to enforce the order to strike the News' answer unless the News' responds to said interrogatories should be stayed until the appeal and cross-appeal have been determined. If a stay is not granted and the Appellate Division reverses the grant of plaintiff's motion to strike, or in any way modifies the requirement that the News will have been forced to relinquish privileged information. To permit the plaintiff's appeal and motion and the News' cross-appeal to be fully adjudicated, this Court should enter an order staying all proceedings to enforce the order striking the News' answer."

2. Based upon such application an interim stay was granted by Mr. Associate Justice VINCENT D. DAMIANI on October 28, 1982, thereafter continued by Order of the Appellate Division, Second Department on November 9, 1982 [E.B.T. Exhibit 10].

3. When plaintiff immediately perfected his appeal, in order to compel the News to perfect its cross-appeal, the attorneys for the News wrote [E.B.T. Exhibit 11]:

> "The News has determined not to perfect its cross-appeal. Therefore, pursuant to the order of the Supreme Court, Suffolk County, dated September 29, 1982, we will serve answers to interrogatories 5, 6, 14, 15, 16, 19 and 20 no later than February 14, 1983."

The News was clearly following the tactics of the S.C. Attorney by forcing plaintiff to expend substantial sums of monies perfecting the appeals, only to have the respondent abandon their appeals or cross-appeals, and not contributing to the cost thereof.

B. ART PENNY:

1. By letter dated March 17, 1983 plaintiff wrote [E.B.T. Exhibit 4]:

> "Zoe Mandes, Esq.
> Paterson, Belknap, Webb & Tyler, Esqs.
> 30 Rockefeller Plaza
> New York, New York, 10112
>
> Sassower v. News.
>
> Dear Ms. Mandes,
>
> This is to confirm our telephone conversation of the 15th inst., wherein you advised me that you do not represent Mr. Art Penny.
>
> I shall accordingly make my own arrangements to depose him as a witness in accordance with the recent Order of the Court.

As I further advised you under such circumstances you will not be permitted to interpose any objections on Mr. Penny's behalf or act and be recognized as his attorney.

Very truly yours,

/s/
GEORGE SASSOWER

GS/bh
cc: Mr. Art Penny"

2. It was after such confirmatory letter, that the attorney for the News -- not the News, volunteered to tell Penny that the News would give him an attorney, gratis, if he so desired.

It was an offer made by an attorney, not by the client, which compelled acceptance by Penny. It was an optionless offer by the Patterson firm which could not be realistically refused by Penny or anyone else in that position.

After the compelled acceptance by Penny, the attorney for the News, crowned herself, not an independent attorney, as such attorney for Penny.

Penny was not offered, at the expense of the News, an attorney of his own choosing, or told by the Patterson firm that there might be a conflict in interest, or that the Patterson firm had the prime responsibility in this joint representation of protecting the News' interests, not Penny's!

Obviously, in billing the News for their representation of Penny, it was justified on the basis that such efforts benefited the News!

The litmas test is that every objection interposed by the News' attorney, inured not to Penny, but to the News.

JUDICIAL ESTOPPEL

1. In view of the representations of the attorneys for the News to the Appellate Division, Second Department, in seeking and obtaining a stay, it is now judicially estopped from claiming that its answers to plaintiff's interrogatories did not implicate the Shield Law or the attorney-client privilege.

2a. In soliciting its own representation on behalf of the News, the Patterson firm was not acting in a traditionally legal capacity, but as a lay representative.

b. Like many of its other activities, the Patterson, like the Townley, firm was acting as part of the News' corporate empire.

A newspaper cannot staff itself with members of a law firm and then claim that the routine information obtained by them in the usual course of business is privileged!

Completely absent from the Record is any assertion that either Penny or the Townley or the Patterson firm received the story concerning plaintiff under an express or implied agreement of confidentiality or that it was received for the purpose of giving legal advice.

c. Particularly in view of the assertion that the News and Penny destroyed all their back-up material for the publication of these articles, these firms should be subject to pre-trial discovery.

THE ATTORNEY-GENERAL

1. The happenstance representation of a party to this action, not involved in these motions or appeal, has been employed by the Attorney General's Office to assert its opposition to plaintiff's application for the pre-trial discovery of various members of the judiciary, including Surrogate Ernest L. Signorelli, on matters wherein privilege is not asserted.

2. Here again, the Attorney General has crowned himself with the authority, without asking those he purports to represent, whether they wish to testify.

a. It may be that Presiding Justice Milton Mollen believes that having testimonial knowledge on a matter it is his duty to set forth same!

It may be that Presiding Justice Milton Mollen would prefer that the allegations of his transactional involvement come from his own tongue, rather than have his involvement made the subject of scuttlebutt!

The very fact that the following assertions are deemed admitted by the S.C. defendants in the action by Doris L. Sassower and Carey A. Sassower v. Ernest L. Signorelli, et. el., in and of itself, warrants such pre-trial discovery.

The following are some of the items in the Notice to Admit deemed admitted by the S.C. defendants:

"13. On June 10, 1978, Ernest L. Signorelli was informed by ... that George Sassower, Esq. had been arrested.

14. On June 10, 1978, Ernest L. Signorelli ... was informed that a Writ of Habeas Corpus had been served directing the release of George Sassower, Esq.

15. On June 10, 1978, Ernest L. Signorelli or someone on his behalf communicated with Presiding Justice Milton Mollen or someone on his behalf with respect to the Writ of Habeas Corpus that had been served with respect to George Sassower, Esq.

16. On June 10, 1978, Ernest L. Signorelli or someone on his behalf was advised that Presiding Justice Milton Mollen had communicated with Supreme Court Justice Anthony J. Ferraro with respect to such Writ issued for the release of George Sassower, Esq.

17. At the time that communication was made by or on behalf of Ernest L. Signorelli to Presiding Justice Milton Mollen, Presiding Justice Milton Mollen was not advised that George Sassower, Esq., had been tried, convicted, and sentenced in absentia.

18. At the time that communication was made on or behalf of Ernest L. Signorelli to Presiding Justice Milton Mollen, the Presiding Justice was not informed that plaintiffs (Doris L. Sassower [plaintiff's spouse] or Carey A. Sassower [their daughter] had been incarcerated."

Since this was a Notice to Admit, the assertions were conservatively stated [see 29-30] [134-135]. Papers in the Second Department reveal that plaintiff has made every attempt to be discreet outside the Second Department and should not be penalized as a result thereof.

Interestingly, June 10, 1978, was almost four (4) months after Signorelli recused himself [after plaintiff requested such relief in federal court], and for the aforementioned non-judicial conduct after recusal, the Second Department held that Signorelli had judicial immunity, as a matter of law!

Judicial immunity, according to the Second Department, as a matter of law, includes physical assaults on a prisoner after recusal, malicious prosecution after recusal, dispatching Deputy Sheriff's beyond their bailiwick after recusal, holding a knowing mock trial, holding a prisoner incommunicado.

Who is kidding who?

Ernest L. Signorelli:

1. Since the News is relying on the private interview solicited by Ernest L. Signorelli as its source for its publication, such witness is manifestly examinable!

2. Since the S.C. defendants are relying on the instructions of Signorelli as a defense, such witness is manifestly examinable!

To say more on the need or justification for Signorelli to give pre-trial testimony would be supererogatory in the case at bar.

Kelly v. Sassower (supra) - Revisited:

Assuming, arguendo, that plaintiff had "problems in preparing and filing a proper accounting" which this Court found "incomprehensible and unacceptable" [see Attorney General's Brief, p. 3], what does that have to do with this action or pre-trial disclosure?

While this Court may have had difficulty understanding plaintiff's accountings, neither Abuza, nor any of the Kelly clan, nor the Grievance Committee Attorneys, nor Judge Melia have any such difficulty!

The important point is, as Judge Melia repeatedly found, plaintiff was very cooperative throughout the transactions and if anyone had asked plaintiff to explain the accountings he would have done so.

As stated by the Grievance Committee Attorney, as incorporated in Judge Melia's Report:

> "[Abuza] had not informed [plaintiff] of any objections he had to the accountings. ... Rather than not supply enough information [plaintiff's] error this time, perhaps, was in supplying too much information. It was not until this disciplinary proceeding that [the Grievance Committee] could comprehend what actually happened. Therefore, it is not surprising that the Court found [plaintiff's] accounting to be 'incomprehensible and unacceptable'. ... Invariably to the former, Mr. Abuza would state that the [plaintiff] says too much and to the latter that the [plaintiff] says too little. It was never argued by Abuza that the information was not correct or that [plaintiff] refused to account. Abuza claimed only that the accountings were 'not proper'. It was clearly proven that neither Abuza nor his firm took any steps toward resolving whatever it was that made the accountings not proper accountings." [Report 10-12]

In addition to agreeing with the Grievance Committee Attorney, Judge Melia stated:

> "A further word is necessary here about the 'accountings' ...
>
> First, the [plaintiff] had difficulty amassing necessary information. For a time, Albert Barnovsky, the deceased's accountant would not cooperate. The [plaintiff] sought Abuza's assistance in this regard but Abuza did nothing. Edward Kelly, Abuza's client, admittedly tried to enlist Barnovsky's cooperation but was also unsuccessful. ...
>
> Secondly, between the three accountings filed, they contained all of the relevant facts extant.

Third, Judge Asch was misled in numerous respects by Mr. Abuza, both in papers filed and in the [plaintiff's] non-appearance in court. ...

The [plaintiff] claims that he had an agreement with Schacter to adjourn the matter before Judge Asch and was therefore not in attendance. Abuza denied that there was such an agreement. However the Grievance Committee found a Schacter memo in his file which tends to confirm such an understanding.

Abuza proceeded to obtain relief from Judge Asch in the [plaintiff's] absence and without advising the court of the [plaintiff's] situation both with respect to the [plaintiff's] difficulty in obtaining requisite information and communications about an adjournment." [Report 15-16]

SPECIAL TERM

Unfortunately, Special Term stated [14]

The opposing affidavit of [the Assistant S.C. Attorney] has annexed to it an exhibit indicating that the plaintiff is no stranger to the Appellate Division (Kelly v. Sassower, 78 App. Div. 2d 502). That officially reported writing does not aid plaintiff's cause.

CONCLUSION

THE RELEVANCY OF KELLY v. SASSOWER IN THIS ACTION SHOULD BE RESOLVED BY THIS COURT, IN ADDITION TO THE RELIEF REQUESTED BY PLAINTIFF

If the Attorney General's Office, the Office of the Suffolk County Attorney, Signorelli, Abuza, or anyone else wants a rerun of these matters in the City of New York, a mere request will suffice.

Such replay, and more, is ensured, everytime the subject is asserted by my adversaries, or anyone else.

Dated: May 1, 1984

Respectfully submitted,

GEORGE SASSOWER, Esq.
Attorney for plaintiff