

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

----- X
In the Matter of GEORGE SASSOWER, :
an Attorney and Counsellor-at-Law: :

GRIEVANCE COMMITTEE :
FOR THE :
NINTH JUDICIAL DISTRICT, :

Petitioner, :

-against- :

GEORGE SASSOWER, :

Respondent. :

9th JUDICIAL DISTRICT
OCT 30 1981
GRIEVANCE COMMITTEE

----- X
October 16, 1981
New York, New York

B E F O R E :

HON. ALOYSIUS J. MELIA,
SPECIAL REFEREE

A P P E A R A N C E S :

DONALD E. HUMPHREY, ESQ.
200 Bloomingdale Road
White Plains, N.Y.
Attorney for Petitioner

BY: RICHARD E. GRAYSON, ESQ., of Counsel

GEORGE SASSOWER, ESQ.,
283 Soundview Avenue
White Plains, New York
Pro Se

Stanley N. Rutman, C.S.R.
Official Court Reporter

THE REFEREE: I believe, first of all, Mr. Grayson, the petitioner has completed its proof in specifications one and two?

MR. GRAYSON: Correct.

THE REFEREE: While Mr. Sassower had not completed his cross-examination of Mr. Abuza, he indicated that he was curtailing it with respect to specifications one and two; and he, I believe, made a motion to dismiss those specifications and made an argument in support thereof.

To set the record straight, first of all, I do not have the authority to dismiss a specification. However, I do have a right in my report to the Court to so recommend or not so recommend.

Now, Mr. Sassower, do you want to -- you gave some indication that you might want to supplement your remarks in support of your position, I say that because the Grievance Committee, petitioner herein, indicated they wish to make some remarks in connection with those that you have made; do you wish to supplement your remarks?

MR. SASSOWER: Yes, your Honor; but the remarks I make have some testimonial value, so before I

make those remarks may I be put under oath?

THE REFEREE: Well, you are under oath.

MR. SASSOWER: I didn't recall whether I was under oath or not.

THE REFEREE: Yes. The remarks that you made were taken both in context of testimony by the Respondent as well as argumentation.

MR. SASSOWER: Your Honor, first of all, I wish to thank your Honor for giving me the privilege of making a further statement with respect to charges one and two. I am cognizant of the fact that I made a partial statement at the last session and that I have not really given any direct testimony.

As this Court may be aware when I was asked if I wanted to make a statement last time, I was pretty much unprepared for such matter, and upon thinking about it I feel that there are some aspects of this case which this Court should be made aware of.

Now, in making this statement it also encompasses some of the factual material which is the basis of charge three, but since Mr. Grayson has indicated he does not intend to bring any live witnesses, with the possible exception of Judge Ernest Signorelli,

and that, of course does not include perfunctory witnesses like the Clerk of the Court that he may want to bring to authenticate documents or testify as to the completeness of the file.

I do not believe that I would be seriously prejudicing my case if I make certain remarks with regard to charge number three because you cannot extract the history of one and two from the history of three.

May I explain to this Court why accounting number one was written up the way it was written up? And why it was not typed out nicely and why it was not filed in the Court? And I am hoping that when I finish my explanation your Honor and the Appellate Division will feel that I acted very professionally, very ethically, very properly in this matter.

Now, I have one limitation, which I think the Court is aware of. I was the attorney for Eugene Paul Kelly. I was his attorney for many years. I was his friend for many years. Nevertheless, some of the information that I have available to me may fall into the area of a client-attorney privilege.

Generally, as I understand it, when a client makes a complaint to the Bar Association he waives that privilege. What we have in this situation is no complaint by Eugene Paul Kelly, so that I want your Honor to understand there is a line at which I must stop in giving the information.

Now, as I said with my prior statement, I have no objection -- in fact, I invite interruptions by your Honor or Mr. Grayson at any point if you desire more clarification or more detail on that particular point.

I am also making this statement in such a manner that it is supported by documentary evidence. I don't want this statement to be just my word and your Honor or Mr. Grayson or the Appellate Division to take it at face value. I have steered this statement in such a manner that it is supported by documents, by Court transcripts and other matters of great evidentiary value and, also, I am employing matters which are very well known to the family. There is no disagreement on it.

Now, your Honor --

THE REFEREE: When you talk about "family," you

are talking about the Kelly family?

MR. SASSOWER: The Kelly family.

As I said, your Honor, Eugene Paul Kelly was my close friend for many years. Since I am going to rely on documentation I asked your Honor to -- well, let me read the statement of January 23, 1974, this was a memo made by Sam Schacter as a result of his interview with Ed Kelly, and I quote:

"My --" meaning Ed Kelly "--relationship with my father-in-law was good at all times. He was a good father-in-law, a good employer and a good grandfather to my children right up to the time he died."

I am skipping some immaterial portion. He goes on further to say:

"He was tough as a businessman but good otherwise."

I would concur with that statement 100 per cent. But I would say that Eugene Paul Kelly was a man who would give, and I mean this literally, his shirt off his back to even a stranger. He was a good, good-hearted man.

In fact, if he had any faults he used to give away too much. He was very good natured.

He started his trucking business or his moving business from a G.I. loan and worked it up to a fairly successful business.

All the monies that he had when he died were because of the efforts of himself and his wife Helen Tully Kelly, who also worked in the business and may I say, that if it was just Eugene Paul Kelly, he would have made a lot of money, but he would have spent or given away as much as he made. The only one putting any reins on the finances was Helen Kelly who, as I said, worked also. She worked in the office, took care of the books, took care of a lot of things.

They had two daughters, and I don't think it was any secret but he was always more partisan towards his younger daughter Mary Kelly.

When she died of cancer in her 20's, leaving behind a husband and three children --

THE REFEREE: She was the wife of?

MR. SASSOWER: Of Edward Kelly. -- Eugene Paul Kelly changed. He became very bitter, very hard, and if I may say, particularly compared to what he was before, he became a miserable person. Not

miserable as people would ordinarily be miserable, but compared to what he was before, he just was bitter.

That bitterness really didn't show until he got emphysema and he had to retire from the business and they moved from Brooklyn to Bayshore. In Bayshore he knew no one, except his wife. His emphysema was a bad case and the only butt for his bitterness was his wife, and she took a lot from him.

I mean, when I say he had no friends when he died, with me as an exception, I don't think I am exaggerating the point. I do not know of one person who was friends with him, all emanating from the death of his daughter.

Helen Kelly was a good woman; good, honest, religious, worked hard, tended to his needs, but he just got worse and worse and she took it, and I really don't know how she took it.

In May of 1970 he had one of his moments, he put a gun to her head and she fled the house. Whether he was playing Russian Roulette with her, I don't know, but she just -- that was the last straw and she fled the house to the daughter Pat, the other daughter.

Gene Kelly wanted her to come back, come back very

much to tend to his needs, and she refused to come back.

He refused to pay her a dime. And, by the way, at this point the house was in both names, all assets were in the name of both Gene and Helen Kelly. When she fled the house he took out all the money and put it in his own name.

THE REFEREE: And put it what?

MR. SASSOWER: Put all the money in his name alone. Helen Kelly had nothing. All she had was a half interest in the equity of the house. In fact, she was so deprived financially she had to go on Welfare.

Now, I would like to mark in identification the Family Court proceedings in Suffolk County, Helen Kelly and Eugene Kelly for identification.

THE REFEREE: That is AF for identification.

(Whereupon, the above-referred to document was marked as Respondent's Exhibit AF for Identification)

MR. SASSOWER: And I draw the Court's attention to the remarks made by Mr. Rubin on the top of page 4:

"There were two incidents, one May 19th and

one May 26th, which one was the gun incident or both were the gun incident, I don't remember, but one or both was a gun incident."

MR. GRAYSON: What is the date of that?

MR. SASSOWER: The minutes are October 9, 1970.

I also would like to offer for identification the minutes of September 10, 1970 and October 9, 1970, your Honor.

THE REFEREE: October 9th is AF for identification.

AG will be September 10th.

MR. SASSOWER: I am sorry, your Honor, one date should be August 5, 1970.

THE REFEREE: I am confused now. You have three sets of minutes, is that right?

MR. SASSOWER: Right. The first minutes that I referred to was that of October 9th.

THE REFEREE: Right, they are marked.

MR. SASSOWER: The other two minutes are August 5, 1970 and September 10, 1970.

THE REFEREE: All right, September 10th will be AG and August 5th will be AH.

(Whereupon, the above-referred to documents were marked as Respondent's Exhibits AG and AH for

Identification)

MR. SASSOWER: Now, although they are marked for identification only, I have no hesitancy in permitting the Petitioner's attorneys from reading them, from looking at them, from making copies of them.

In any event -- let me go back. I did not want to represent Eugene Paul Kelly against his wife because I knew Helen Kelly too well. In fact, I knew Helen Kelly almost as well as I knew Eugene Kelly. But Eugene wouldn't pay his wife a penny, she was on welfare. He had all the money, she was on welfare, and he kept telling me "If you don't represent me I will never pay her a penny." So that my representation of him was primarily motivated by the fact that I did have this relationship with him and if anybody could extract any money from him for his wife I felt I could. In fact, he kept telling me "If I get another lawyer I will never pay Helen a penny."

We had battles, I tried to get him to pay money. In fact, the Family Court record will show I had conferences with the Court, and I tried to

prevail upon Eugene to pay Helen something, it was her money also, and he was adamant.

Now, there was one problem that I had with Eugene Paul Kelly which made it very, very difficult to argue with him. As I mentioned he had emphysema, and when he would chokeup he would have a canister which he used to press down and put into his mouth because he would be gasping for air, I don't know if you are familiar with people who have emphysema and who use that canister.

THE REFEREE: Yes.

MR. SASSOWER: And every time we used to argue he would start gasping for air and take this canister out and start pumping. I think it's oxygen or some medication, into his mouth and what you naturally do is either avoid arguments, or when you have an argument with him you back off because here you see a guy who is gasping for air. So, it made the situation extremely difficult.

To make a long story short -- oh, by the way, not only did Eugene Paul Kelly not forgive his wife for leaving the house, but he got it into his head that she was unfaithful. Anybody that knows

Helin Kelly knows she could not, wouldn't know how to be unfaithful. She is just not that type of person.

To prove to me, his friend, that she was unfaithful, he sent me this in the mail, and thereafter when I saw him he gave me the original card.

I would like to mark this for identification, or would you prefer it to be in evidence?

THE REFEREE: Yes, we can't be talking about things or reading from them if they are not in evidence basically.

MR. SASSOWER: My only reluctance, your Honor, with marking things of this nature into evidence is that in the event that my proceedings are made public for any reason whatsoever, I would not like some of this information or some of this evidence to be marked, that is my reluctance.

THE REFEREE: I understand. Rather than mark it, don't mark it at all but you can testify about it.

MR. SASSOWER: May the record show that I have shown it to Mr. Grayson. And I will show it to his Honor, it is an absolutely nonsensical memo to

the electrician and he got it into his head that she was having an affair with the electricianer, or the electrician's helper, and you just couldn't get it out of his head. And we fought about this and I told him he is out of his mind, not to confront a woman with something like this and have her explain it.

THE REFEREE: I will agree for the record this certainly is like an insane conclusion.

MR. SASSOWER: Now, I want to make one remark which I think will show -- will show while he had testamentary capacity, no question he had testamentary capacity, at this stage of his life he had a couple of screws loose as far as his wife was concerned.

The coup de grace as far as I was concerned was when he said he wouldn't give Helen a nickel because she wasn't a virgin when they got married about 35 years before.

And I said, "Gene, first of all, how can you tell me now that you are going to cut her off because she is not a virgin and, secondly, how do you know?"

THE REFEREE: All right, that is enough on that.

MR. SASSOWER: If I give you the next line you would see how cooky this thing was.

In any event, I read the riot act to him over a period of months and finally I was able to get \$20,000 for Helen Kelly from Eugene Paul Kelly.

I would like to offer into evidence my letter to Mr. Lipkind, attention of Mr. Rubin, and a letter written the same day to Eugene Paul Kelly explaining why I use certain words on my letter.

(Handed to Mr. Grayson)

MR. GRAYSON: No objection.

THE REFEREE: The letter to Mr. Rubin will be AI in Evidence.

The letter to Mr. Kelly will be AJ in Evidence. Both are dated October 20, 1971.

(Whereupon, the above-referred to documents were marked as Respondent's Exhibit AI and AJ in Evidence)

THE REFEREE: You are identifying Mr. Rubin as attorney for Mrs. Kelly?

MR. SASSOWER: Correct, your Honor.

I offer these four letters into evidence, your Honor.

(Handed to Mr. Grayson)

MR. GRAYSON: No objection.

THE REFEREE: I would suggest, Mr. Sassower, rather than putting these four letters in evidence and encumbering the record, if you could just summarize them.

First of all, we have a letter from Mr. Rubin, attorney for Mrs. Kelly, to Mr. Sassower, dated December 22, 1971 in connection with executing the agreement referred to in the prior exhibits, and referring to an executed memorandum of separation to be filed with the Suffolk County Clerk and acknowledging the receipt of the check for \$20,000 by Mrs. Kelly.

Then there is a letter of January 26, 1972, from Mr. Sassower to Mr. Rubin, forwarding documents, including an original and a copy of a deed, documents referred to in Mr. Rubin's letter, which I have just referred to.

Then there is a letter of February 1, '72, from Mr. Rubin to Mr. Sassower, again referring in a friendly way to the receipt of documents and the continued progress of the matter of separation and the payment.

Then there is a letter from Mr. Sassower to

Mr. Rubin on February 3, 1972, inclosing the check of \$20,000, it is an escrow check to be held until the separation agreement is fully complied with as part of this proceeding, and correct me if I am wrong, Mr. Sassower, Mrs. Kelly executed a deed releasing her interest in the house referred to, is that correct?

MR. SASSOWER: Correct, your Honor.

THE REFEREE: I think that fairly summarizes those?

MR. SASSOWER: I think so very well, your Honor, and thank you.

Also, Gene Kelly got into his head that his wife over the years had been taking money from the joint banking account. So, I got as part of the agreement an affidavit from Helen Kelly, which I really would like marked in evidence, and to prove to him that she had no money.

THE REFEREE: It will be marked AK in evidence.

(Whereupon, the above-referred to document was marked as Respondent's Exhibit AK in Evidence)

MR. SASSOWER: I also wish to introduce in evidence a letter from the Suffolk County Department

of Social Services showing that Helen Kelly was on welfare and as of that date she owed or welfare had given her just under \$1,000 in benefits.

(Handed to Mr. Grayson)

THE REFEREE: Any objection, Mr. Grayson?

MR. GRAYSON: No objection.

THE REFEREE: This is a letter of January 11, 1971. It will be AL in evidence.

(Whereupon, the above-referred to document was marked as Respondent's Exhibit AL in Evidence)

MR. SASSOWER: Now, what happened was that by the time I got this \$20,000 out of Gene Kelly, the welfare benefits that had been given to his wife Helen Kelly had come to over \$10,000, I think it was something like \$15,000 they had given her in welfare benefits. Or it was \$15,000 was the lawyer's fee and welfare benefits. But, in any event, by the time Helen Kelly got the money, she got very little. And until she got the \$20,000, less what she had to pay her lawyer and what she had to reimburse welfare for, she hadn't received anything from Gene, he absolutely refused to comply with any orders. He absolutely refused to comply

with anything and just wouldn't pay.

In fact, in one of the letters that your Honor read, the reason I put the \$20,000 in my escrow account was that he wasn't even paying bills. I mean, he just was acting unusual with respect to certain people and certain classes of people.

The \$20,000 that was paid to Helen Kelly's attorney was about two months before he died. It became apparent to me that with his wife cut out from the will and with the separation agreement where they each waived their right to take each others estate, that you would have a big tax bite. So, here you have a situation where the government was going to get, as turned out, just the Federal Government got close to \$50,000. The State Government was going to get some money. Helen Kelly, whose money this really was, I mean if anybody was entitled to any money it was Helen Kelly. Helen Kelly was getting nothing.

Now, there were only two ways to avoid or minimize paying taxes. One, if you had a trust that was more than three years old. But the trust was less than three years old, and under the I.R.S. Code

any transfers made within three years are included in the estate of the deceased.

Do you follow me, your Honor?

THE REFEREE: Yes.

MR. SASSOWER: Secondly, the trust was never a good trust because Gene Kelly never turned over the trust to me. He never carried through. He and "Barnovsky" collected the money, so that even if more than three years had expired it still would not have rendered an exemption.

The only other way that Helen Kelly could get any money if she elected to take exception against the will.

Now, there were two ways that she could have elected, she could have gotten an attorney, tried to prove that the separation agreement was induced by duress, and I thought she had a valid case there because she was literally starving, she was living in one room, in a hot-plate room, no cooking facilities, just an electric burner.

THE REFEREE: She was no longer living with her daughter?

MR. SASSOWER: She was no longer living with

the daughter. And she took the \$20,000 because \$20,000 was better than nothing and Gene wouldn't even go for the \$20,000, the \$20,000 she got because I got it from him. And she knew she couldn't get any more.

So, if she got a lawyer and she got a good lawyer and he would have set aside the separation agreement, which I thought he had a chance of doing, she would have a right of election, gotten her intestate share, she would have been ahead, and the only one who would have lost was Uncle Sam. And there was nothing illegal about it, it was perfectly legal.

The still better way of doing this was if all the parties sat down with or without their lawyers and made an agreement whereby she would file a notice of election, they would compromise the thing, give Helen Kelly 40 or \$50,000 or such amount as would vitiate the taxes, so she would have the money that would go to the State and Federal Government, and she would be ahead by over \$50,000 and the other beneficiaries would still have the same amount of money. But, in order to do this you

had to have people and lawyers sit down and talk to each other.

Unfortunately what happened here was, and I will only give you one incident, and it's the most memorable incident that I remember, was the wake. Some members of the family wanted to bury him like a Cardinal, and some members of the family wanted to throw him in a ditch. And who has to make the choice? Me, the executor.

Well, how was I supposed to make a choice between these two competing factions and, of course, there were people who were in between.

Tom Kelly wanted more whiskey at the wake.

Ed Kelly, I don't know if it was his wife at the time or fiance, "Why spend our money for more --" I mean, there was just fighting all over the place.

It was only at 1975 that I was able to get these people to talk, to sit at the same table.

THE REFEREE: When did he die?

MR. SASSOWER: He died in 1972, April of 1972.

I had another problem before he died, I represented all of them, I had represented his wife, I had represented Pat and her husband, I had represented her children, I represented Ed Kelly,

I represented Grace DuBois, I represented Hucke.

THE REFEREE: Who is Grace DuBois?

MR. SASSOWER: Grace DuBois was the sister; he had two sisters, Grace DuBois and Hucke. They were Eugene Paul Kelly's sisters.

THE REFEREE: They were his sisters?

MR. SASSOWER: Yes.

Hucke made a claim against the estate, I couldn't represent her. She used to call me up, I used to tell her "I can't represent you, get an attorney."

Ed Kelly would call me up because of Hucke's claim and for other matters, and I said, "I can't represent you, get an attorney."

Pat Galbraith would call me up, she was practically left out of the will, given a nominal amount, I think, of \$500. All I could tell her --

THE REFEREE: That is his daughter, Eugene Paul Kelly's daughter?

MR. SASSOWER: Right.

I said, "I can't pay you any more and I can't even represent you, you will have to get an independent attorney."

So, I sent them all out to fetch their independent attorneys, and they all did fetch their independent attorneys, except Helen Kelly. Helen Kelly is a good, decent person, if I must repeat it, and I don't want to repeat it too often, who says, this is life and this is what she accepts as life. And she is the one that really needed the attorney more, and if there was any way that I could have represented her I would really have represented her.

To make a long story short, came January of 1974, I was almost sure the trusts were no good for tax purposes, but I would be the first one to say that I am not the expert in the field. With the information that I had in my hand in January of 1974, it started in 1972 when Eugene Paul Kelly died, as far as my records were concerned.

Now, if I had filed an accounting, as Mr. Abuza would like to say, a formal typewritten accounting, I would have started it in 1972 when he died. Well, if I filed that accounting in Court immediately everybody would see that there was no trust in effect, and I would be defeating a

possible way of arguing that a trust existed.

So, I spoke to Schacter and I said, "Look, this is the problem. I don't have the information, if I file an accounting starting in 1972 it becomes a public document and it would be immediately apparent that it was not a 1970 trust," although I say now even if it was a 1970 trust it still would not have been allowed as a deduction because it was less than three years.

THE REFEREE: I am sorry, I lost something there.

MR. SASSOWER: Yes?

THE REFEREE: I didn't understand the point you made about '72 and '70.

MR. SASSOWER: Okay. I was pretty certain in 1972 that the trust was invalid for estate purposes because it was less than three years.

THE REFEREE: I think I can short circuit my problem. You said if you started an accounting from '72 that would become obvious?

MR. SASSOWER: Right.

THE REFEREE: In '72 why couldn't you start the accounting from '70?

MR. SASSOWER: Because I didn't have the information from '70 to '72.

THE REFEREE: If you will explain that?

MR. SASSOWER: Right. I didn't have the information. I did not really enter into my duties as trustee between '70 and '72. I mean, I asked Gene Kelly if you want to make a valid trust the money has to come to me, I open up a special account, a trust account, I keep the books and records or we will have Barnovsky keep the books and records, but it has to come to the trustee, checks have to be signed by the trustee so that after three years you have a valid trust.

Now, in 1972, and I must repeat myself, I was pretty certain that because less than three years had expired it didn't make any difference, but I didn't want to take any chances.

THE REFEREE: How long after he signed the trust agreement did he die?

MR. SASSOWER: Two years after. Less than two years after. About a year and nine months.

THE REFEREE: All right.

MR. SASSOWER: But, not being an expert in the field, I didn't want to say that if the trust

started in 1970 you couldn't get any deductions. So, I spoke to Schacter and I said, "Look, Schacter, this is the problem I have here. We have a 1970 trust, I didn't really start collecting the monies until 1972, although I had many arguments with Gene Kelly about it, because I told him it is a paper trust and if anybody looks at it they will not give you a deduction. So, file an accounting now, it will show up as starting in 1972 and any leverage you may have with I.R.S. will be completely gone."

I spoke to him, I said, "Look, let me try to get the records from Barnovsky so that when I do file an accounting I can start from 1970. If you can get any deduction from I.R.S., fine. If you can't, but why kill your own case?"

And I thought Schacter was agreeable to that. The next thing I know, I am sorry, that's when I got the papers on the order to show cause and that was a discussion about the adjournment because I figured in two weeks we would sit down, we would see the problem, we would analyze the problem and work something out.

THE REFEREE: Now, which order to show cause?

MR. SASSOWER: The first one.

THE REFEREE: That is Judge Sarafite?

MR. SASSOWER: Judge Sarafite's order.

And I did speak to him and I told him we had a problem and he recognized we had the problem.

Now, when Judge Sarafite entered the order and I had sixty days to account, I spoke to Schacter several times and, finally, Schacter said to me:

"Look, why don't you send me the information you have and we will work from there and we will see how we can work out this problem."

Which is what I did, and I sent him accounting number one. I wasn't going to file that in Court. First of all, the way it was drawn up in handwriting, not the best handwritten thing, I sent it only for Schacter's purposes so that we could use that as a basis to see what we can do to save taxes for the estate.

When I did get information from Barnovsky as to income received between 1970 and 1972, that I wasn't afraid to file, so I filed accounting number two, which started in 1970.

If you will notice accounting number two started in 1970, I included figures for 1970, 1971 and all of '72, so I wasn't prejudicing anybody.

When I got Judge Asch's first order, or actually which was order number two, which reinstated Judge Sarafite's order, but gave me 30 days to file an accounting, I mean I just saw I had no alternative and I had to file accounting number three, although I had misgivings because I had to start it from 1972.

THE REFEREE: You had to start it from '72?

MR. SASSOWER: Right, on assets. I didn't have those records from '70 to '72, all I had was income from '70 to '72.

Now, let me explain what I did with Barnovsky. Barnovsky was a nice fellow, I don't want anybody to get the wrong impression, and Barnovsky liked Gene very much. The last couple of years after Mary Kelly died, he was just lousy to everybody. If there was one exception, it was me. Me he always was nice to, right to the very last minute before he died. He was lousy to Barnovsky, he was

lousy to everybody, so when he died everybody had this bitter taste in his tongue, everybody forgot what caused Gene to become that bitter, they all remembered the last couple of years after Mary died and after he retired how lousy he was to them. He didn't pay them, he cussed them out, he was a different man.

That I think explains the accountings. Did I explain the reasons why I did not file accounting number one, your Honor?

THE REFEREE: Yes, you did.

MR. SASSOWER: Okay, now let's go to the estate because --

THE REFEREE: You were telling me something that I was interested in.

MR. SASSOWER: Yes?

THE REFEREE: The problem with Barnovsky, now I understand the reason for it, but what happened?

MR. SASSOWER: On Barnovsky, there was only one way that I know of trying to resolve a situation such as existed with Barnovsky. If you throw him a summons or a petition for turnover, you are going to get no cooperation with him. None whatsoever.

And Gene had been in business for about 30 years and nobody could decipher those books better than Barnovsky, who had been his accountant throughout. So, to start a proceeding against Barnovsky to compel him to turn over the books -- first of all, you are not even assured you are going to get all the books, you are not assured that you are going to get them without the pages mixed up. You know, when people get hit with a summons and if he would have to hire a lawyer, he would still be angry with you.

I couldn't pay Barnovsky what he wanted because part of his bill was for the storage of Eugene Kelly's books. We will bring that into evidence. Part of his bill was not for accounting services, but for the storage of his books.

THE REFEREE: For the storage of his books with Barnovsky?

MR. SASSOWER: Yes.

THE REFEREE: How much was his bill?

MR. SASSOWER: \$1,500. Which was not really that extravagant an amount.

But, what I did was ask Schacter, and later on Abuza, "Look, I am sure he will take less, but give

me an amount that I can offer Barnovsky with your approval." Because they represented 90 per cent of the trust, it was their money.

They would tell me constantly, as they did with everything, "You are the executor, you are the trustee, you do what you want to do and if we are not satisfied when it comes to final accounting we will put in objections."

I said, "Look, first of all, even if the objections are overruled, I don't want to go to Court just trying to justify paying \$1,000 to an accountant or \$1,500 to an accountant or paying a funeral bill or anything else. I am asking you how much would you agree to pay Barnovsky in settlement? How much would you be willing to pay Barnovsky to draw up a statement? He has the books."

The answer was always the same, as Mr. Abuza admitted, I make the decisions even though it's their money, but if they don't like the decision using 20/20 hindsight when it comes to final accounting they object. And this was not only with Barnovsky, this was on a sale of the house. "How much should I

ask for?" I had two bills from two doctors which represented the magnificent sum of \$110. I asked them, "I can't disprove that these doctors did not render \$110 worth of services, but it will cost many times \$110 to gith the case, is it all right if I pay \$110?"

In fact, just to serve them with citations would cost about \$35. I would get the same reply.. "You are the executor. You are the trustee. You do what you want and if we don't like it we are going to object."

And I said, "How can I pay two doctors \$110 when I have no evidence or proof that they have rendered that service?" And I said, "And I don't want to be met at a final accounting where I paid \$110 to two doctors, you putting in objections why I paid \$110 when I had no confirmation for the \$110."

Just to show your Honor how irrational a bunch I was dealing with, and when I say "a bunch," I mean Schacter and Abuza, when it was agreed that Patricia Galbraith would get \$3,500 to withdraw her objections and she would call me up and say

"Why is it taking so long for the "Siben" firm and the Aaronson firm to draw up papers? I am losing interest."

Do you know what I said to Pat Kelly?

"I'll tell you, Pat, so that you don't lose interest I will take --"

THE REFEREE: Wait a minute. You are confusing it. You are talking about Pat Galbraith, Pat Kelly is the same person, and I assume Siben was her attorney?

MR. SASSOWER: Right. She said they are taking so long to draw up settlement papers. So, I said to Patricia Galbraith, "I will tell you what I will do so that your are not prejudiced by the delay of your attorney and Ed Kelly's attorney, I will take the \$3,500, I will put it into a separate account, George Sassower in trust for Patricia Kelly, and when the settlement is finally consummated I will send you the bankbook and a withdrawal slip so that you will have \$3,500 plus accrued interest."

Do you follow me?

THE REFEREE: Yes.

MR. SASSOWER: Would you not believe that I got a protest from Mr. Abuza and he put in an

objection why I took out \$3,500 and gave it additional interest? Don't forget interest at that time at the bank was five or five and a half per cent, you are talking about a big 30, \$40, because it was about a three month or four month lapse of time, why I gave Patricia Galbraith 20 or 30 or \$40 extra in interest when that interest should have been with the estate. We are talking about a big forty bucks here.

THE REFEREE: Let me interrupt you and ask:

I take it that some of these matters that you are referring to now, particularly when you make reference to Mr. Schacter and Mr. Abuza, that these are items about which you would have cross-examined Mr. Abuza, except for the agreement entered into between you and Mr. Grayson?

MR. SASSOWER: Absolutely. And I thought I had gone far enough with Mr. Abuza and I was conscious of the time. But he admitted to some of this.

I asked him: "Did I ask you how much we should sell the house for?" "That was up to you." Everything was up to me.

When it came to mowing the lawn -- Judge, I was

taking care of the house out in Bay Shore. That's about 100 miles from my house. I used to get called to mow the lawn. A Congressman used to call me up that the lawn is too high and his constituents are complaining because it looked like an abandoned house.

I used to get called up I had to order the oil, if there was a leak.

If it snowed, it had to be shoveled.

I would call up Mr. Abuza and I said, "Look, it's your money essentially, your client's money, why don't you get Ed Kelly to shovel the walk there, to cut the lawn, to take care of it."

"Oh, no, that's your responsibility. You are the executor."

I would call up Pat Galbraith and ask her to do those things for me, and she did it as a personal favor. But, after a month or two she said, "Look, why should I do these things? Why should I do these things when I have been left out of the will? I am taking care of the house for Ed Kelly."

I mean, I was dealing with an irrational situation, with irrational people who would not

talk to each other. And what was hurting me more than anything else was that this good woman, Helen Kelly, hadn't seen her grandchildren, who she used to see at least two, three times a week before, she hadn't seen her grandchildren for about a year and a half, two years because of the fighting she didn't want to go over there. She didn't want to get involved in the fighting. So, she got no money, she didn't see the grandchildren. She was really left out in the cold.

Now, I did all the work, every stitch of work, all the papers on the Pat Galbraith compromise only because I couldn't get Siben to do it and I couldn't get Aaronson to do it. To both of them this was a very, very small matter. Siben and Siben is the biggest law firm out in Suffolk County if your Honor is not aware.

THE REFEREE: No.

MR. SASSOWER: It is a tremendous firm.

The Aaronson firm is a tremendous firm in New York City. And they don't want to bother with a \$3,000 case.

So, I used to make calls, God how many calls

I used to make to try to get them, to push them.

And, finally, after making call after call after call, and I couldn't get them to do anything with any promptness, I wound up doing the papers myself.

Now, here they had Mr. "Lazarous" in Siben and Siben's office, who is the big estate man there, he is an expert on it. You have the Aaronson firm, who are the big experts on estates, on Surrogate's Court in New York, and me, who hardly knew of the practice, I was drawing up the papers. I mean, this was absolutely insane. The only paper I did not draw up is the final papers to approve the compromise.

Now, why was I dragging my heels on that? I admit to his Honor I was dragging my heels. I did not want that last paper to come in --

THE REFEREE: Do you mean the Galbraith compromise?

MR. SASSOWER: No, the compromise that Abuza said that he prepared under Aaronson's name.

THE REFEREE: The Galbraith compromise.

MR. SASSOWER: The order approving the compromise.

THE REFEREE: Approving the Galbraith compromise?

MR. SASSOWER: Right.

THE REFEREE: Okay.

MR. SASSOWER: I think it is Decedent's Estate Law Section 18 provides -- and again, I am not an expert on this -- provides that a wife's right of election starts to run from the time letters testamentary are issued.

Now, the longer it takes to issues letters of testamentary the more time you have for Helen Kelly to file her notice of election. There was no prejudice. I was able to do everything, almost everything under the preliminary letters that I was able to do under permanent letters, with one exception, and since I had no buyer for the house, there was no difference.

I wanted time so that I could sit down with these people and get them to talk and get them to look at figures and show them that they are paying the Government a lot of money when that money could go to Helen Kelly, who was still on welfare.

The break came in 1975 when Ed Kelly called me directly and Abuza protested like mad in letters, and they are going to be introduced. Ed Kelly called me and in sum and substance said, "Can't we settle this matter? Can't we --" I knew Ed Kelly very well because I had been Gene's attorney from before the time he married his daughter.

So, I took the bull by the horn and I said, "Ed, call up your lawyer and tell him I am taking you and Helen Kelly out to dinner. I will not sit at your table, I just want you to sit down and talk."

I didn't make it a place convenient to me. I made it at a place convenient to them. We went to West Fall.

THE REFEREE: In Suffolk County?

MR. SASSOWER: No, in Queens County.

Ed Kelly lived in Queens County and I got somebody to drive Helen Kelly in.

Ed Kelly -- and this is confirmed by the E.B.T. of -- of my E.B.T. where Ed Kelly agrees with it, and I am going to introduce that in evidence because, as I said, your Honor, most of what I say I am going

to support by documentary evidence or by words out of Mr. Abuza's mouth.

I got Helen Kelly to sit down. I got Ed Kelly to sit down. I went to a hospital close by to visit a friend of mine and I said, "I will be back in an hour and a half, I want you people when I come in to be talking. I want you to talk. I don't care what kind of an agreement you come to, but try to come to an agreement. But one thing I do want, I want Helen Kelly to start seeing her grandchildren again."

I went to a nearby hospital, I forgot what it is, St. something, visited a client of mine who had been involved in an automobile accident.

I came back, I told them I don't want to know what you have agreed upon, but I want Ed Kelly, I want you to speak to your lawyer and see if something could be worked out. And I understood from them that the conversation went very, very well.

So, I enlarged the next meeting, Ed Kelly, Helen Kelly, Hucke, DuBois and Hucke's husband.

And, by the way, I picked up the bill out of my own personal funds, not the estate, my own personal funds.

They sat around a second time. This time I had no friends in a hospital, so I took a table at the far end of the restaurant. After saying hello to everybody I told them to eat whatever they want to eat, I will pick up the bill, but I want them to talk.

And they had a friendly conversation and we almost -- when I say "we," I don't mean me, they almost agreed as to a settlement figure for Hucke's claim for \$10,000.

Now, that I will go forward in my testimony later on and show you that it fell through, through no fault of mine. I mean, Hucke just changed her mind about the agreement.

What I was interested in doing is settling the whole thing. I would have preferred to have settled it whereby the Government doesn't get as much taxes as they did, but I wanted to settle it amicably and, your Honor, I got -- if I had one ounce of cooperation, one ounce of cooperation from the Abuza firm, we would not be here today. This mess would never be here today. I got absolutely no cooperation, as I will show you on my direct case, your Honor, by documents, letters.

All I got from the Abuza firm was petitions for compulsory accounting, orders to show cause to hold me in contempt.

I will tell you something, your Honor, this is not a case of neglect, I will introduce into this trial many documents, and this doesn't even begin to start it, letters galore. I was writing to everybody, I was taking care of the oil. I was taking care of the mowing of the lawn. I was taking care of the renting of the house. I was taking care of everything with regard to everybody.

I used to get a call almost every night -- they used to know I used to get home very, very late. I used to get home 11 o'clock, 11:30. I had a call from somebody. They knew I used to leave very early, 6:30 in the morning, I had a call from another member of the family. They got no cooperation from their attorneys, too small a case, me they picked on.

Judge, this is not a case of neglect. This is a case where I put in -- in a \$10,000,000 estate I would not have this amount of work.

And the pathetic thing about it is that I had to waste a lot of time answering petitions for accountings, orders to show cause to hold me in contempt, and do you know what I got out of it? I got blasted by the Appellate Division. The newspapers ran stories on me. They killed my practice. I lost probably 80 per cent of my clients because of the Appellate Division and Judge Asch because all the newspapers picked it up. I am known as the guy who defies court orders, who draws up incomprehensible accountings. To this day I meet people in the street, lawyers, "How are you doing out in Suffolk County?"

What Judge Signorelli did to me by writing me up in the Law Journal, complete, complete lies. Complete lies.

THE REFEREE: I think it would be better if you continued chronologically as you were doing to this point.

Do you know where we are leaving off?

MR. SASSOWER: Judge, I am pretty much finished. The rest I am going to put in by way of documentary evidence.

And my daughter is here and she knows it, when it comes to blaming somebody I will always blame myself first. That is the way my mother is, that is the way I am. I never look for scapegoats. But, as I look through these documents in these files I can only say one thing, and that is what Lincoln said: If things turn out wrong it doesn't matter if 50 angels said you did the right thing, it doesn't help.

I think if there were 50 angels they might say, I hope they would say, I did the right thing. But it didn't turn out right, your Honor.

All I can say is that I think I am blameless and if anybody finds fault with me after reviewing the evidence, not like Judge Asch, and I am not trying to blame Judge Asch, I know what used to go on in Special 1 before they made Special -- there were 400 motions on a calendar.

I know what goes on in the Appellate Division, or at least I think I know. I mean, they have too many appeals.

THE REFEREE: Let's take a short break.

(Whereupon a short recess was had, after which the trial continued)

MR. SASSOWER: Your Honor, it's hard to condense five years in a few hours and try to get an accurate picture, but I went through, I must say, your Honor, despite the other obligations I had, and I was very busy at this time, I was on trial every year from around November to May, eight week trials, six week trials, three month trials, but I made calls and wrote letters on this matter and I really didn't neglect it.

And do you know, how can you tell a Court in an affidavit what you are going through here? And on top of it I am going to say this honestly, your Honor, I went into the hospital and they told me if I lived it will be three months before I am well, and then my muscles will have atrophied and it will take me a while. I got out of the hospital in three weeks.

THE REFEREE: Can you date this?

MR. SASSOWER: I went into the hospital completely paralyzed.

THE REFEREE: When?

MR. SASSOWER: In May of 1976, because I had court obligations and the last day that I was in

court on a Monday I had to finish up a matter, I was absolutely fully paralyzed at the time and I still came to court.

THE REFEREE: When did you say this was?

MR. SASSOWER: May of 1976.

And one of the reasons that I signed myself out of the hospital, although I was still paralyzed, was they were bothering me, they were bothering me about the house, they were bothering me about the plumbing matters.

Judge Signorelli's Court was bothering me to come out there, and my wife had enough on her shoulders at that time without undertaking this additional burden.

THE REFEREE: How long were you in the hospital?

MR. SASSOWER: I was in the hospital about three weeks, your Honor. But when I went out of the hospital I was still paralyzed. But there is nothing they can do for Guillant-Barre Syndrome, which at that time was unknown.

A few months later it became a very well-known disease because if your Honor recalls Guillant-Barre was the Sine Flu vaccination, and when that hit and

they came out with Guillart-Barre I was the biggest authority on the illness that existed. I had read all the medical --

THE REFEREE: We don't need this.

MR. SASSOWER: But, in any event -- I say, your Honor, it is very hard to condense five years in a couple of hours. I think, I hope, I have drawn somewhat of a broad picture of the problems I faced.

And the biggest problem I faced was the recognition that not only was I not getting any cooperation, but whatever I was trying to do I was impeded.

THE REFEREE: Have you finished?

MR. SASSOWER: I have finished and if your Honor has any criticism of what I did or Mr. Grayson has any criticisms, I will accept it like a man.

THE REFEREE: There is one aspect that I find troublesome, and that is the failure, if there was a failure, to acquaint the various courts with what was going on. That is, the Court says "File an accounting." The next Court says, "I will hold you in contempt if you don't

file an accounting." And the Court says, "You are held in contempt for not obeying this order and that order." And another Court says, "You are held in contempt for failing to obey this order or that order and not filing an accounting."

I have an impression, without going over all of these papers in detail, which I will ultimately have to do, that you failed to communicate to these various courts what you have communicated here.

MR. SASSOWER: Well, your Honor, what I will do is I will over the weekend garner all my affidavits, and with the permission of His Honor, and with the permission of Mr. Grayson, will come in prepared at our next session and just hand His Honor the various documents I filed with the Court saying that I filed an accounting. I was filing accountings and I told the Court that I filed accountings.

THE REFEREE: Well, that I am not familiar with.

MR. SASSOWER: Let me say this:

In all deference, and with the greatest respect to the Courts, there are two periods of time. There is a period of time between January of 1974 until

May of 1975, there were three motions; Judge Sarafite's order which was rendered without opposition, which we have gone into.

There was Judge Asch's order, which just merely said file an accounting.

And there was that order or the decision in the middle of 1975 which called my accountings incomprehensible, that I didn't file an accounting.

THE REFEREE: That was Judge Asch's second order?

MR. SASSOWER: The second order.

Now, on that motion I showed Judge Asch I had filed two accountings in court which nobody complained about. And I showed clearly, concisely, positively that I had filed two accountings.

Now, what happened after that --

THE REFEREE: Well, before you get to after that, did you file affidavits before Judge Asch about the situation?

MR. SASSOWER: No. Again, I thought that motion, and I was very busy at the time, I thought the motion was ludicrous. Here a man is making a

motion to hold me in contempt for failing to file an accounting when I had filed two of them. All I did was submit an 11 line affidavit saying: "This motion has no merit. I have filed two accountings. Nobody has complained about the accountings. Nobody has asked me to explain about the accountings. Nobody has rejected the accountings. Everything is satisfactory."

And I attached, if I may, your Honor, and I attached the cover sheets of accounting number two and the cover sheet of accounting number three, both of them having the County Clerk's stamp on, and I must say this, your Honor: The Grievance -- if the Grievance Committee were not withdrawing its charges I would have this Court request Judge Asch to appear on my behalf with his file to see what went wrong with the judicial machinery whereby Judge Asch came forth with such a draconian order.

I have one more thing to add to that. We appeared before Mr. Justice Steuer on a conference on a pre-argument conference which Mr. Abuza says he doesn't recollect. This is on the appeal from Judge Asch's order.

THE REFEREE: This is from Judge Asch's order?

MR. SASSOWER: Right. And I am still under oath. Mr. Abuza doesn't want to remember that conference because primarily it was a disaster for him because, I don't know if you are familiar with the pre-trial conferences that Mr. Justice Steuer used to have and now Mr. Justice Capozzoli holds, but you come in and he says, "What is this all about?"

And I know Mr. Justice Steuer since he was sitting in City Court, I tried cases before him, and I showed him the accountings and he looks at Mr. Abuza and he says, "What's wrong with these accountings, Mr. Abuza?"

And Mr. Abuza says, "Well, he includes beneficiaries who I am not interested in."

And Mr. Justice Steuer looks at him and says, "Do you read the Times? You don't read every article that is in the Times. You read only those articles which interest you. Just read the lines that pertain to your client."

And he said that that time his client had a ten per cent interest. And I had an accounting

for the whole trust. And Mr. Justice Steuer said to him, "If he accounted for the whole trust, all you have to do is add the decimal point over one place and you have the entire accounting for your client. What kind of nonsense is this?"

And he practically, and I don't want to use, because Mr. Justice Steuer doesn't act that way, but he dismissed Mr. Abuza and he said, "Is this what you are wasting the Court's time on?"

And he said, "The man has filed an accounting, if you are not satisfied with the accounting ask Mr. Sassower what additional information you want, I am sure Mr. Sassower will give it to you."

And I said to Mr. Justice Steuer; "Of course I would. Not only that, he is at liberty to look at the books, and if he doesn't want to come up to New Rochelle to look at the books, I will even bring down the books to him and he can look at them in his office."

And, your Honor, I was flabbergasted by Judge Asch's decision. My wife was horrified.

When the Appellate Division came down with its decision, I have three daughters, I was a math major, none of my daughters are mathematicians,

none of them are bookkeepers, I went over to them and I said, "Do you understand these accountings?" And I explained it to them in five minutes. I don't understand the decision. To this day I don't understand it.

Now, there is a second phase, the second phase happened after Justice Asch's decision because every motion that Mr. Abuza made after Judge Asch's decision he will always start off, always reiterate and always affix Judge Asch's decision and the Appellate Division decision, so when it would go before Judge Gellinoff or it went before Judge Evans or it went before Judge Sutton, right away they were hit, before they even saw my papers, with the fact that I drew up incomprehensible accountings, that I was defying numerous court orders and I was met with this outrageous lie; and what should I say in my papers in opposition? The Appellate Division doesn't know what it's talking about? Judge Asch made a mistake? He made a gross mistake. I was hitting my head against the wall.

So, there was only one way I could vindicate

myself and that was by a plenary hearing, either before going to jail or at a Grievance Committee hearing, and I wanted this Grievance Committee hearing so for one time I can show somebody that I did file; that I did do my best; that I did do a conscientious job.

I don't blame Mr. Grayson, I don't blame the Grievance Committee. But I really thank the Court for this opportunity.

THE REFEREE: Do you have any questions?

MR. GRAYSON: Can we go off the record?

THE REFEREE: Yes.

(Discussion off the record)

THE REFEREE: Are you ready to make your statement?

MR. GRAYSON: Yes. Your Honor, after extensive consultation among the Grievance Committee staff and with our Chairman Frank Connelly, Jr., the Grievance Committee joins in the motion to dismiss charges one and two for the following reasons:

The thrust of those two charges is that the Respondent failed to comply with successive orders

of the Supreme Court, New York County, in that he failed to file the accountings concerning two trusts for which he was the trustee.

Certain facts are uncontroverted. The Respondent was the trustee for two trusts created by Eugene Paul Kelly in July of 1970.

Trust Number One was established for the benefit of three adults, Edward Kelly, Grace BuBois and Winifred Hucke. This trust terminated on January 2, 1974.

The second trust was established for the benefit of three infants, John Kelly, Karen Kelly and Susan Kelly. This trust is to terminate on December 25, 1988, or on the death of any of the named beneficiaries; all of these beneficiaries are still alive.

There was also established a third trust but it is not involved in this disciplinary proceeding.

The corpus of these trusts consisted of all of the stock of Eugene Kelly Moving & Storage Company, Inc.

In or about January of 1974, Edward Kelly

retained the law firm of Schacter, Abuza & Goldfarb to represent his interest in Trust Number One, which is the adult trust.

On or about January 23rd of 1974, the Schacter firm prepared a motion for an order compelling the trustee, Mr. Sassower, to account for this trust.

Testimony at this disciplinary proceeding revealed that no demand for an accounting was made by the Schacter firm prior to making this motion.

Testimony also revealed that the Schacter firm had a letter in its file indicating that the accountant for Eugene Paul Kelly, Mr. Barnovsky, was not cooperating with Respondent concerning the information he, meaning Barnovsky, possessed about the Kelly Moving & Storage Company.

The return date of that motion was February 15th of 1974. Prior to the return date Respondent spoke with the late Samuel Schacter concerning the motion. Respondent requested an adjournment of the motion until March 1, 1974 --

THE REFEREE: What is your basis for that

statement?

MR. GRAYSON: The memo that was produced from the Abuza file. In fact, I believe there were two memos.

MR. SASSOWER: Two memos -- may I inject something?

MR. GRAYSON: Yes.

MR. SASSOWER: There were two memos, one of them showed an agreement to adjourn it for two weeks. And the second memo showed that Mr. Schacter was in Court where the court service asked for March 1st and he had his secretary thereafter call on February 28th the Court to see if it was going to be on for March 1st.

Both of them, I think, pretty well establish that there was an agreement to adjourn it for March 1st.

And then you have my confirming letter which they had received and the court service report that it was adjourned to March 1st.

MR. GRAYSON: Schacter did not refuse this request for an adjournment.

However, on February 15, 1974, Schacter appeared

in Court on this motion.

Respondent had his court service appear and enter an adjournment of the motion until March 1, 1974.

Schacter, without any further discussion with Respondent, and without advising the Court of its conversation with Respondent concerning his request for an adjournment, caused the motion to be marked submitted.

Furthermore, Schacter did not subsequently advise Respondent that the matter was marked submitted.

The Court service advised Respondent that the matter was adjourned.

A decision on this motion was rendered on March 4, 1974, without opposition. There was no evidence introduced indicating that Respondent was served with a copy of the decision.

Thereafter, on April 23, 1974, an order of Mr. Justice Sarafite was signed. This order directed that Respondent file an accounting within 60 days of the entry of the order. The order was entered on April 25, 1974.

On July 9th of 1974 the Schacter firm received

a tentative accounting from Respondent, this accounting, which in the testimony is called Accounting Number One, was rejected by letter dated July 9, 1974 from Schacter to the Respondent.

In addition to general objections as to form and substance, Schacter requested that Respondent perform certain other tasks concerning this matter, including seeking a judicial settlement of the account.

These tasks went beyond the direction in Judge Sarafite's order.

The manner and extent of communication between Schacter and the Respondent during this period of time are not well documented. However, it appears clear that the Schacter firm was aware of certain problems with the Respondent concerning this matter -- strike that. Aware of certain problems with the accountant concerning this matter.

Respondent advised Schacter that he planned to meet with the accountant before the end of July in an effort to obtain further information.

During this same period Schacter's only efforts to obtain information from the accountant

were through his client Ed Kelly, and they had also been unsuccessful.

THE REFEREE: Several of these matters that you mentioned, Mr. Grayson, are supported by documentary evidence here, isn't that so?

MR. GRAYSON: Yes.

THE REFEREE: Rather than the judgment that you are independently making, and I think where your statement is supported by documentary evidence you should so indicate.

MR. GRAYSON: Yes, your Honor.

It was at this juncture that an order to show cause was prepared to hold Respondent in contempt for failure to comply with Judge Sarafite's order.

Charles Abuza testified that Respondent was uncooperative with his law firm and that that was the reason the contempt order was prepared.

However, on cross-examination Abuza could not specify a single instance in which Respondent was uncooperative.

On the contrary, it appears from the testimony and exhibits that Respondent was attempting to comply with the order and had, in fact, rendered

a tentative accounting.

The order to show cause was served on Respondent and the return date of this order was August 13th of 1974.

On July 29th of 1974, Respondent filed another accounting, this has been denominated in the testimony as Accounting Number Two.

THE REFEREE: When you say "filed an accounting," do you mean in Court or on Abuza?

MR. GRAYSON: This accounting was filed in Court. Is that correct?

MR. SASSOWER: And served on Mr. Abuza, as he admitted, but he stated he did not get the cover page which just had the title.

THE REFEREE: All right.

MR. GRAYSON: Abuza further testified that this was not a quote proper, closed quote, accounting.

However, certain facts are indisputable. One, this accounting provided more information than the tentative accounting, which is Accounting Number One.

Two, together with the tentative accounting this made the matters in the trust intelligible.

And, three, Abuza did not make his objections known to the Respondent.

The order to show cause and supporting affidavit was closely scrutinized during this cross-examination in the disciplinary proceeding.

The Schacter firm's affidavit alleged that, one, the trust involved infants.

Two, the Respondent refused to account.

And, three, the Respondent wilfully failed to comply with the previous Court order.

These three elements are each of substantial nature and consequence.

As for the allegation that the trust involved infants, Abuza testified that this is admittedly false. This allegation creates an entirely different problem for the Court if infants rights are involved.

In fact, no judicial settlement of the adult trust would be necessary because the adult beneficiaries on their own could agree to accept an accounting without Court approval.

By interjecting the allegation that infants are involved, the Schacter firm misled the Court

as to the nature of the proceeding.

The second allegation, that being that the Respondent refused to account is also false and misleading.

In fact, Respondent had sent a tentative accounting to the Schacter firm, which was received by that firm on July 9, 1974, prior to the order to show cause.

Subsequently, Respondent filed another accounting with the Court and served a copy on the Schacter firm.

Abuza testified that his firm did not advise the Court that it had received any accountings from the Respondent.

THE REFEREE: That is true of every affidavit he made in these various proceedings, isn't it?

MR. GRAYSON: I believe that that is true, yes, your Honor.

THE REFEREE: It was my recollection that in each instance he used language to the effect that the Respondent failed to obey Court orders and did not file an accounting. When actually his position, as he testified to here, is that he did

receive these documents which he said the Respondent labeled accountings, but he did not deem them to be such.

However, he failed to call the attention of the Court to the filing of these documents and that was a judgment for the Court to make whether or not it was an accounting rather than a conclusion to be arrived at by Mr. Abuza.

MR. GRAYSON: That's correct, your Honor.

The allegation that Respondent wilfully failed to comply with the prior order was also established to be untrue.

Abuza testified that he knew of the problem with the accountant, he had received two accountings before the return date of the order to show cause and had not made this known to the Court.

In addition, he had not informed the Respondent of any objections he had to the accountings.

The cross-examination up to this point revealed what was to become the pattern of behavior by the Schacter firm toward Respondent.

In sum and substance, that firm would, one, fail to seek any settlement of the account outside

of litigation.

Two, repeatedly made false and misleading statements to the Court.

And, three, failed to extend even common courtesy to Respondent.

By order of the Court dated November 7, 1974, Judge Asch presiding, Respondent was directed to comply with the April 23, 1974 order.

On January 2 of 1975, Respondent filed still another accounting with the Court and sent a copy of the cover sheet of this accounting to the Schacter firm.

The response to this latest accounting was another order to show cause to hold Respondent in contempt.

During this latest order to show cause, the tactics of the Schacter firm continued to degenerate. This time it involved misrepresenting accountings one and two as the only accountings that Respondent had submitted.

However, in fact, the only two accountings on file with the Court were accountings two and three.

Accounting number two was an income accounting

that supplemented tentative accounting number one.

Accounting number three involved the entire trust corpus for trusts one, two and three.

Rather than not supply enough information Respondent's error this time, perhaps, was in supplying too much information.

It was not until this disciplinary proceeding that Petitioner could comprehend what had actually happened. Therefore, it is not surprising that the Court found Respondent's accounting to be "incomprehensible and unacceptable."

The testimony by Abuza concerning this matter was evasive and self-serving. He admitted that he had not checked the New York County Supreme Court file to determine whether or not any accountings had been filed by Respondent prior to this order to show cause.

He admitted not making his objections known to Respondent.

He admitted that many of the statements contained in the documents prepared by his firm and submitted to the Court were false and misleading.

He continued to state that all the Respondent

had to do was file a "proper account," although he, meaning Abuza, could not explain what a proper account consisted of.

At least seven accountings were introduced into evidence at this hearing. Some accounting for the entire trust corpus. Some for Edward Kelly's share only.

Invariably to the former, Mr. Abuza would state that the Respondent says too much and to the latter that the Respondent says too little. Some were detailed accountings, some were income accountings only.

It was never argued by Abuza that the information was not correct or that Respondent 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.

The balance of the testimony and exhibits on Charge One, as well as Charge Two, continues in the same vein. To attempt to catalogue and

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. It has been satisfactorily established to Petitioner during the course of this disciplinary proceeding that Respondent's conduct in Charges One and Two is not violative of any applicable disciplinary rule.

Petitioner therefore joins in the motion to dismiss Charges One and Two.

Thank you, Your Honor.

THE REFEREE: Thank you, Mr. Grayson.

I subscribe to everything that you have said, Mr. Grayson, and I think it was obvious from the few questions that I put to Mr. Abuza that I agree with your conclusion.

Now, I think that Mr. Abuza was -- I know that he testified for a period of at least seven days, it was at least seven, and one-half of that being direct-examination, the rest cross-examination. It was clear to me, because we are covering -- the cross-examination basically would have to cover a period of about eight years, that from all of the

items involved here that it might take almost eight years of cross-examination to cover them all, but Mr. Sassower curtailed his cross-examination because of the indication he had from the Grievance Committee that they would adopt a course of action that they now have with respect to Charges One and Two.

Certainly I believe that there has been a failure to prove bad faith.

Contrarywise, I find what I would consider indications of bad faith by the Schacter and Abuza firm in many, many instances.

Mr. Grayson, you have stated conclusions to that effect and specific examples of it on the record, but direct admissions from Mr. Abuza himself and by documentation that was here certainly substantiates that.

Am I correct in this, Mr. Grayson, that you asked Mr. Abuza to turn over his complete file in this matter, is that correct?

MR. GRAYSON: Yes, we did.

THE REFEREE: Did he, in fact, initially turn over the complete file?

MR. GRAYSON: I believe he did. The files for Charges One and Two were turned over to Mr. Brennan before we put Mr. Abuza on the stand. He turned over his files on the Surrogate's matter to me a week or so after that. I think it developed during the cross-examination that some of the pertinent documents were in the Surrogate's Court file, which were in my possession, which I was using to prepare him for the Surrogate's questions. And, therefore, some of those documents might not have come to the attention of Mr. Brennan or the Respondent before they were offered into evidence here.

THE REFEREE: I see.

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. I had factual and legal difficulty emanating from from the fact that there were numerous court orders where judges ordered Mr. Sassower to do certain things and they found that they were not done. There had been a holding of Mr. Sassower in contempt

on the charges made and the orders on which those contempts were predicated were not complied with.

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, including the Appellate Division, 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. Indeed, it has taken at least ten days of testimony so far for me to get to the point that we are now at.

I go back to my statement that I find it difficult to believe that anything that Mr. Abuza says, unless I find it corroborated in the documents. He brought these various motions, admittedly, without attempting to get Mr. Sassower's cooperation, either by letter or by telephone. I found this very strange. But his answer to that was that there was really no point in asking for Mr. Sassower's cooperation because they had a considerable experience over a period of some time in which he

did not cooperate and, in fact, was uncooperative.

Now, he made that statement ad nauseum and ad infinitum. Yet, he was never able to indicate one single instance where that was true.

Indeed, I do not believe it to be true because there is documentation that supports the contrary view that, indeed, Mr. Sassower was cooperative and was always willing to be.

There are too many instances of this in the record to detail here and I think it is unnecessary. The conclusion is inescapable.

In addition, and as part of this whole patchquilt, we have Mr. Abuza admitting here that in many instances there were false statements in papers submitted by him to these various judges, which, indeed, would tend to excite them. And when I asked him how did it happen that he made such a statement he said, "Oh, well, I made a mistake."

Well, as I indicated, I can understand one mistake, but he made many, many "mistakes" as he termed them.

I am not satisfied that they were simple

mistakes. If they were, at no time did he ever attempt to rectify those mistakes by calling any court's attention to the fact that those statements were untrue.

His testimony is replete with falsehoods, half truths and misleading statements, and that is true of the papers that he submitted to the various courts.

Another aspect I just want to touch upon and that is, as I have indicated to Mr. Sassower at least twice, that I was considerably troubled by, the fact that good Courts and good Judges had entered these orders, and my concern was that apparently those Courts were not aware of the information that is before me, and I am still somewhat concerned about this as to whether Mr. Sassower took sufficient efforts to acquaint the Court with the facts as I now know them.

Be that as it may, the facts seem to be as indicated by you, Mr. Grayson, and to which I subscribe.

Still, we have these various court orders referred to in specifications one and two. Now,

those orders are the law of the case, so to speak. Those orders stand in the proper structure of the judicial process, and that must be so. A remedy -- if a person thinks an order is improper, a remedy is appeal.

In some instances those orders were appealed, and they were unanimously affirmed. So, from a legal standpoint that was of some concern to me. But I think that there are two legal answers to that problem:

One. The orders themselves -- or, rather, the charge is not that the Respondent was held in contempt of court, that contempt of court matter, that has been adjudicated and that is the law of the case, but the charge before me on one and two basically is that there was a wilfull and deliberate failure to obey the order of the court, so, this is a separate proceeding.

Based upon the evidence here and your statement, Mr. Grayson, I agree that that does not appear to be so, that the specific charges one and two have not been proven.

In addition, with respect to the findings of

contempt and a finding by a Court of a failure to comply with an order, that Court left to its own devices as to what to do about that.

The question remains whether in this proceeding we can go outside that order to determine whether there was a disciplinary violation, and the question is: Is this tribunal required simply to automatically put an ipse dixit on the bottom line and say, in effect, the whole matter was res adjudicata, the matter has been determined? I do not think that is so. In a way you are running into the doctrine of collateral estoppel.

Now, on that proposition the Court of Appeals has recently written in "Hilberg" against Barbieri at 441 N.Y. supp. 2nd 49, and in reading from page 51 of that opinion the Court said:

"The point of the inquiry, of course, is not to decide whether the prior determination should be vacated but to decide whether it should be given conclusive effect beyond the case and which it was made."

The Court noted, in effect, that the Schwartz

case was, to a similar effect, 24 N.Y. 2nd at page 72, and the Court here in "Gilberg" said in connection with the Schwartz case said:

"That when collateral estoppel is in issue, the question as to whether a party had a full and fair opportunity to litigate a prior determination involves a practical inquiry into the realities of litigation. A comprehensive list of the various factors which should enter into a determination whether a party has had his day in court would include such considerations as --" And I will omit some of those considerations as not being appropriate here but "would include such considerations as the forum of the prior litigation, the use of initiative, the extent of the litigation, the availability of new evidence."

Now, certainly, we have here the new evidence. Based upon that I conclude that I am not required to give effect automatically to the prior orders and decisions herein entered.

So, for that reason I will join in Mr. Grayson's recommendation to the Appellate Division to dismiss Charges One and Two.

Off the record.

(Discussion off the record)

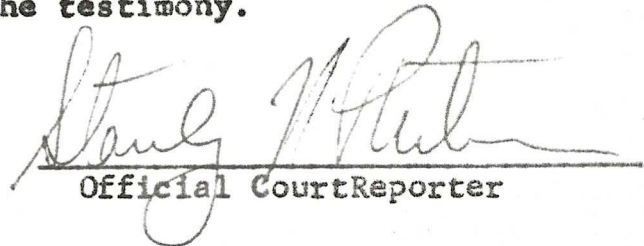
THE REFEREE: Mr. Grayson is unable to say at this time when we can have Judge Signorelli appear, he is unable to contact him until next Monday. So, Mr. Grayson will notify Mr. Sassower and myself what date is agreed upon. All dates are open and available except for October 23rd.

Let the record further reflect that I am turning over at Mr. Grayson's request and Mr. Sassower's request all of the exhibits in this case to Mr. Grayson.

So, we are adjourned sine die.

- - - -

The above is certified to be a true and correct transcript of the testimony.


Official Court Reporter