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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

IN THE MATTER OF GEORGE SASSOWER,  
AN ATTORNEY AND COUNSELOR-AT-LAW.

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GRIEVANCE COMMITTEE FOR THE :  
NINTH JUDICIAL DISTRICT, :  
 :  
Petitioner, :  
 :  
- against - :  
 :  
GEORGE SASSOWER, :  
 :  
Respondent. :  
 :  
-----x

October 7, 1981

60 Centre Street  
New York, New York

B E F O R E :

HONORABLE ALOYSIUS J. MELIA,  
Special Referee.

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

RICHARD E. GRAYSON, ESQ.  
Attorney for Grievance Committee  
for the Ninth Judicial District  
200 Bloomingdale Road  
White Plains, New York 10605  
and TIMOTHY BRENNAN, ESQ.,  
Of Counsel to the Committee.

GEORGE SASSOWER, ESQ.  
Pro Se  
(Appearing in Person)

*113 the Court*  
*Henry Ross*  
*Official Court Reporter*  
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HENRY ROSS, CSR  
Official Court Reporter

THE REFEREE: The matter is continued.

Mr. Charles Abuza is continued as a witness on cross-examination.

C H A R L E S      A B U Z A , having been previously duly sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION (Continuing)

BY MR. SASSOWER:

Q     Mr. Abuza, earlier you testified that your former firm was initially referred the Kelly Estate matter on behalf of Edward Kelly and his children in early January of 1974. Do you have any notes or memorandum or have you ever seen any notes or memoranda respecting such meeting or conversation with the Aaronson firm?

A     No.

Q     Was it not Samuel Schacter who acted on behalf of your former firm, since he was a friend of Aaronson?

A     Correct.

Q     Did you not also testify that it was Samuel Schacter who made it a practice of making such memoranda, and we have already seen some evidence of such practice

with respect to the February 15, 1974 motion.

A He very often made memoranda, but in this instance if a friend of his would call him on the phone to discuss a case, it would be unusual for him to make a memoranda. He would make memoranda of discussions with clients.

Q Now, were you at this meeting between Aaronson and your firm when this --

A I don't know if it was a meeting or just a phone call.

Q If it was a meeting, do you know if Edward Kelly was at that meeting?

A I have no idea.

Q Now, you testified, sir -- does the name Cosby ring a bell to you as being an employee of the Aaronson firm?

A Spell the name.

Q C-o-s-b-y.

A No. Male or female? Attorney or non-attorney?

Q Probably a non-attorney, as an employee of the Aaronson firm.

A I dealt only with attorneys.

Q Now since your former firm, and by former

firm I mean Schacter, Abuza and Goldfarb, had the stationery of the Aaronson firm for your use, how many other matters were you handling for the Aaronson firm in January of 1974?

A I have no idea.

Q Approximately.

A I have no idea.

Q Well --

A It varied from time to time. It could be no others. Some matters which are simply referred, and we did not use, continuing in their name, but solely our own name.

Q Well, how many other cases had your former firm been handling for the Aaronson firm during 1972 to 1974, and include thereon the cases that were referred to you by the Aaronson firm where you used your own stationery?

THE REFEREE: Is this relevant?

MR. SASSOWER: Yes, your Honor. It will show up on my case.

THE REFEREE: All right.

A I have no idea.

THE REFEREE: Well, as a minimum.

THE WITNESS: I just don't know, your Honor.

First of all, I have no records of that firm.

Q Well, would you say it was more than ten?

A Using their stationery, is that the question?

Q No, either using their stationery or cases referred to you where you used your own stationery?

A Oh, I would assume it's more than ten.

Q Can you give us a more approximate, educated estimate as to how many?

A I would have absolutely no recollection of how many cases were pending at that time.

Q Now during 1972 through 1974, were there any cases that the Aaronson firm and the Schacter firm handled different interests in the same estate or trust?

A No.

Q Were there any cases where you handled the beneficiaries or some beneficiaries, and Aaronson handled other beneficiaries or one handled the estate and one handled the beneficiaries?

A No, not that I recall.

Q Prior to January, 1974, did you know Peter Seraduke, or of him?

A Yes.

Q Was he not a member of the Aaronson firm in

or prior to 1974?

A I would have no idea the date of his employment. He was at some time during that period of time an attorney employed by the firm. He was not a member in the sense he was not a partner.

Q And approximately during what period would you say, and we understand that you don't have at hand the actual dates, but to give an educated idea, during what period of time would you roughly say he was employed by the Aaronson firm?

A I have no recollection. I know he was an employee of the firm.

Q You do know that while the Kelly matter was with the Aaronson firm, Peter Seraduke was a member of that firm, don't you?

A Again, I don't know when he was employed.

THE REFEREE: Well, at some period during the handling of the Kelly estate?

THE WITNESS: It could be. I never dealt personally with Seraduke on this matter.

MR. SASSOWER: I move to strike the last portion.

THE REFEREE: I'll let it stand.

Q You do know that Peter Seraduke thereafter became an employee of the Surrogate's Court, Suffolk County?

A Yes. Exactly when, I don't know.

Q You are aware that Peter Seraduke became involved in the Kelly matter while an employee of the Surrogate's Court, Suffolk County?

A I have no idea of his responsibilities with the Court.

Q That is not the question.

A I don't know whether he was on that case.

Q Well, sir, is it not a practice in Surrogate's Court, or some of them, that a law assistant would be assigned to a case?

A I have no idea what the practice is in Suffolk County.

Q Was there a law assistant assigned to the Kelly matter in Suffolk County Surrogate's Court at any time?

A I believe at one point the main person handling it for the Court was the Judge's law secretary, but I don't recall his name.

MR. SASSOWER: I move to strike out the answer.

THE REFEREE: Sustained.

Do you have any recollection of a law assistant at any time handling the Kelly case?

THE WITNESS: My recollection is there were several.

Q Do you have any recollection of Peter Seraduke ever being the law assistant on the Kelly case?

A Again, I have no recollection. I believe he was involved in a conference maybe. I'm not sure.

Q Well, do you have any recollection, sir, of Mr. Seraduke being removed from the Kelly case?

A No.

Q Do you have any recollection of an examination before trial of me in the Surrogate's Court, Suffolk County?

A Yes.

Q Do you recall if there was a conference that took place between myself, you and the Surrogate and others prior to that examination?

A There were several conferences.

Q And do you recall at one of these conferences -- I'm talking about a conference the same day, just prior to the examination before trial -- do you recall



a conference that day?

A No, I have no recollection of it. I don't dispute that it took place, though.

Q And do you recall my disclosing to the Court that after an investigation I had determined -- withdrawn.

Do you recall who the law assistant that was assigned to the Kelly case for that examination before trial and during that period, who that was?

A No.

Q Do you recall if Peter Seraduke was a part of that conference just prior to the examination before trial?

A I don't recall, but he may well have been there.

Q Sir, don't you have records of what transpired in Surrogate's Court?

A No, I don't have memorandums of conferences.

Q Do you recall who the law assistant was on a prior date, that is, July 7, 1976?

A I have no recollection.

Q I draw your attention to a transcript of the minutes of July 6, 1976, and if you would thumb through those proceedings, would you refresh your recollection

as to that particular conference?

THE REFEREE: In what respect? As to who was present?

MR. SASSOWER: As to who the law assistant was. Thank you.

THE REFEREE: Is it in there? Can't we stipulate?

MR. SASSOWER: Would you want to stipulate?

MR. GRAYSON: Do you want to point it out?

MR. SASSOWER: All right, we'll get to it in a different way.

Q Do you recall on the examination before trial a conference being held between myself, you and the Surrogate and others, wherein I disclosed that I had made an investigation, and regretfully had determined that Peter Seraduke was part of the Aaronson firm while the Kelly matter was there and that I thought that his existence on behalf of the Surrogate's Court was inappropriate? Do you recall?

A No, but I don't deny that you did. I have no personal recollection.

Q Let me ask you this, Mr. Abuza: Did you ever disclose to me prior to my disclosure to Surrogate's

Court, Suffolk County, of the relationship of Peter Seraduke, did you ever disclose to me that such relationship had in fact existed?

A What relationship?

THE REFEREE: That he was associated with the Aaronson firm during the period allegedly when the Kelly estate was being handled by them.

THE WITNESS: I had no reason to.

THE REFEREE: The answer is you didn't?

THE WITNESS: No.

Q Now let me ask you, you said you had no reason to. Did you not feel that you should disclose to -- withdrawn.

Did you disclose it to the Court, to Judge Signorelli or to Judge Hildreth of Seraduke's relationship with the Aaronson firm prior to him becoming associated with Surrogate's Court, Suffolk County?

A I would assume the Court knew where his former employment was.

THE REFEREE: You haven't answered the question, Mr. Abuza.

A No.

Q Did you ever advise Mr. Seraduke that he

should make such disclosure either to myself or to the Court?

MR. GRAYSON: Objection.

THE REFEREE: Sustained.

Q Now, when you say you had no reason to make such disclose either to myself or to the Court, did you feel you had no legal obligation or no ethical obligation or both?

A Both.

Q Was it your opinion at that time that an attorney who in private practice had handled a matter which was then pending in Court, and he then became an employee of that Court, do you not believe that he should disclose his prior employment and his association with the case?

MR. GRAYSON: Objection.

THE REFEREE: Overruled.

MR. GRAYSON: Your Honor, can I say something?

There is no evidence that Seraduke worked on this particular matter when he was with Aaronson.

MR. SASSOWER: I will give you the evidence, sir.

THE REFEREE: Whether he did or not.

THE WITNESS: I'm sorry, I lost the question.

(The pending question was read by the Court Reporter.)

A Number one, I did not know he had been associated with the case; and Number two, the Court knew where he had been formerly employed, and the Aaronson firm had been the attorney of record in this case. I had no reason to tell anything to anybody.

Q Well, how about to me? I did not know prior to investigation that Seraduke had been an employee of the Aaronson firm. Did you feel there was a legal obligation to inform me so I could make a decision?

A No, I had no idea that he handled the case or was involved in the case.

Q But merely being employed by -- withdrawn.

THE REFEREE: That is enough on that subject.

MR. SASSOWER: That's enough. All right.

Q Now, sir, there was a conference scheduled for, I believe, June 6, 1976 in Surrogate's Court, Suffolk County; is that correct? Do you want to look at your notes?

All right, in any event -- withdraw the question.

Do you recall a conference scheduled for

Surrogate's Court, Suffolk County for the early part of June, 1976?

A I have no immediate recollection, but I know there were conferences during that period of time.

MR. SASSOWER: By the way, if I may divert for a moment, up to this time, your Honor, we have been dealing with Charge No. 1. I am not skipping to Charge No. 3, so that the record is clear.

THE REFEREE: All right.

Q Do you recall that because of my illness, that the matter was adjourned to June 22, 1976?

A I have no immediate recollection, but I don't deny it.

Q Mr. Abuza, I ask you to remove from your file a copy of your affirmation of services, dated February 6, 1978, and refer you to Paragraph 13.

A My affirmation of legal services? Is that the question?

Q Yes. To save time, I give you a copy. Does this look like a copy of your affirmation of services?

(Handed to the witness.)

Q Look at Paragraph 13, sir.

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A Paragraph 13?

Q Yes.

A You speak there of the refusal of the Court to adjourn a conference scheduled for June 22, 1976.

Is that correct?

Q Just as a general topic, is that the subject of Paragraph 13?

A The Court refused to adjourn it again.

Q I didn't ask you.

MR. SASSOWER: Strike that out.

THE REFEREE: Strike it out.

Q Is that the subject of Paragraph 13?

A I would like to hear what you said the subject was.

Q The subject was the refusal of the Court to adjourn a conference on June 22, 1976. Is that the subject of that paragraph?

A Just part of it.

Q All right. Now, I show you the affirmations and affidavits of myself and my wife dated May 16, June 2nd, June 11th and June 17, 1976, and just cursorily look at those affidavits and affirmations, and ask you if it refreshes your recollection?

(Handed to the witness.)

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THE REFEREE: As to what?

MR. SASSOWER: As to my physical condition  
on June 22, 1976.

A I would have no idea what your physical condition  
was.

THE REFEREE: As to the alleged --

Q Alleged.

A Alleged.

Q Did you recall those affidavits, in any event,  
Mr. Abuza?

A Wait, I'm reading them.

Q Mr. Abuza, were you aware in June of 1976  
that I purportedly was ill?

A I assumed, yes. I also would call your attention  
to your affidavit you gave me of June 23rd, which  
states that you were in Court, and that's why you  
weren't able to appear. It says nothing about illness.

Q That is my wife's affidavit, not my affidavit.

A I'm sorry, that is correct.

Q But on June 22, 1976 --

MR. GRAYSON: Your Honor, I object to the  
line of questioning. The respondent is bringing  
of June of '76, and the last date in Charge 3



is on or about April 15th of '76.

MR. SASSOWER: I'm going besides Charge -- I didn't mean only Charge 3. I meant other charges also, and they are all inter-related.

THE REFEREE: All right, go ahead.

Q But you were there on June 22, 1976 in Surrogate's Court?

A Yes.

Q Now, before you went to Surrogate's Court and made that trip, did you have a conversation with anyone associated with the Court that you recall?

THE REFEREE: You mean that day?

MR. SASSOWER: Or a prior day.

A I have no recollection, but I would imagine it had.

Q No, no imagining. Do you recall?

A I don't recall, but it is possible that I did.

Q Okay. I'll refer you to Page 37 of a transcript of proceedings in Surrogate's Court on July 6, 1976, and ask you if this is the response you gave to that Court in my presence:

"Mr. Abuza: The reason I was here" -- and we are referring to June 22, 1976 -- "despite receiving Mr. Sassower's affidavit, was because

Mr. Seraduke told me to be here."

Do you recall making that statement?

A If it's in the transcript, I made it.

Q And Mr. Seraduke says:

"That is correct."

THE REFEREE: Is it stipulated and agreed that such a statement appears in the official Court transcript for that day?

MR. SASSOWER: 3738.

MR. GRAYSON: Yes, I will stipulate.

MR. SASSOWER: I will continue reading, and we can continue the stipulation.

"Mr. Sassower: Mr. Seraduke, you knew I wasn't going to be here at this time.

"Mr. Seraduke: You said you weren't going to come and I told you that you were directed to come. That is what I told you."

Q Do you recall that portion of the transcript?

A I don't recall it, but that's what it says.

Q And you knew at the time, that I was not coming to Court because I was hospitalized and paralyzed, was that not true?

A I did not have any evidence of your physical

condition other than your allegation.

THE REFEREE: Well, were you aware of an allegation by Mr. Sassower in one form or another at that time he was hospitalized?

THE WITNESS: I didn't know. I knew the allegation.

THE REFEREE: You were aware of the allegation?

THE WITNESS: And I presumed that the reason the discussion there --

MR. SASSOWER: Move to strike.

THE REFEREE: Sustained.

Q Well, did you call the hospital? Did you call my office? Did you investigate in any way to see whether in fact I was ill at that time?

A I had no reason to.

THE REFEREE: The question is, did you?

THE WITNESS: No.

Q So there was no reason at that time, or no evidence that you had at that time to dispute my affidavits, my wife's affirmations, that at the time I was hospitalized and paralyzed?

A I never denied your affidavits.

Q Okay. Nevertheless, upon receipt of those affidavits and knowing, obviously, if I'm paralyzed, I could not go to Suffolk County, you called up Mr. Seraduke, and Mr. Seraduke, the former employee of the Aaronson firm --

THE REFEREE: Don't recap.

MR. SASSOWER: Okay.

Q So it was Mr. Seraduke who on behalf of the Court told you to come on June 22, 1976, even though he and you knew that I could not be there at that time? Yes or no?

A Yes, I didn't want to drive down to Suffolk if I didn't have to.

Q But you did drive out?

A I was directed by the Court.

Q You-were directed by Mr. Seraduke.

A Speaking for the Surrogate.

Q Now, do you believe that Mr. Seraduke, speaking for the Surrogate, that you had an obligation to tell me at that time that Mr. Seraduke possibly should not speak for the Surrogate, because he was a former employee of the Aaronson firm?

MR. GRAYSON: Objection.

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THE REFEREE: Sustained.

Q Mr. Abuza, the first time you and I met wherein your words were transcribed was on July 6, 1976; is that not correct?

A I have no recollection.

Q Do you recall at any time that you ever spoke in my presence where a Court Reporter was present?

THE REFEREE: Prior to?

MR. SASSOWER: Prior to July 6, 1976.

A I don't recall.

Q Do you recall your opening remarks to the Court on that first occasion?

A No.

Q Reading from Page 8:

"Mr. Abuza: I ask nothing. I know nothing about Mr. Sassower's illness. I certainly have tried to be here whenever we have been directed."  
That's Page 8, Page 9.

Now, I ask you, sir, on July 7, 1976, when you told the Court that you knew nothing about Mr. Sassower's illness, was that a true or false statement?

A It was a true statement. I don't know whether you were actually sick. I had an allegation. I never

denied it.

THE REFEREE: Well, that seems to be a pretty thin line, Mr. Abuza. If you are telling the Court that you knew nothing about Mr. Sassower's illness --

THE WITNESS: I don't remember the context of the statement, your Honor. It may have been in response to a question. I don't know.

THE REFEREE: That is true.

Q Okay. Here is Page 8. Your statement appears on the bottom of Page 8. If you think it has been taken out of context, you are so at liberty to advise his Honor.

A I think you have to read the entire section to understand the context of my statement. My statement as it stands is correct.

THE REFEREE: That may be.

Q The statement is correct insofar as that you made it.

A Absolutely.

Q Whether it's a correct statement is for his Honor to decide.

THE REFEREE: Argumentative.

MR. SASSOWER: Right.

Q Mr. Abuza, when you saw me there on July 6, 1976, and you had seen me on prior occasions, did I look any different? Did I walk any differently? Did I act any differently?

THE REFEREE: Physically?

MR. SASSOWER: Physically.

A I don't recall.

MR. SASSOWER: Your Honor, I would like to offer into evidence either as one exhibit or two exhibits, whatever your Honor desires, my wife's affirmation or a copy of my wife's affirmation dated June 2, 1976, sent to certified mail to Surrogate's Court on June 2, 1976, and my affidavit of June -- my affirmation of June 17, 1976, sent by certified mail to Surrogate's Court, both of which relate to my illness that I was then suffering under.

THE REFEREE: Mr. Grayson?

MR. SASSOWER: You have a copy of it.

MR. GRAYSON: No objection.

THE REFEREE: They will be received as Y and Z in evidence in chronological order.

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(Two papers marked respectively Respondent's Exhibits Y and Z in evidence.)

Q Mr. Abuza, was it not a fact that the only purpose of appearing in Surrogate's Court on July 22, 1976, at which time I did not appear, and July 6, 1976, was to advise the Court on the status of jurisdiction with respect to the citation for an accounting?

A I don't recall what the purpose was.

Q Would you look at your file as to what the purpose was? Would you for time, and convenience, would you accept for the moment that the only purpose we were in Court was to advise the Surrogate as to the service of citations on the accounting matter, and if you find it is different, you will come back and you will advise the Court of such fact. Okay?

A Again, I don't recall, but I don't dispute what you said.

#2 Q Now, Mr. Abuza, did you not feel that you had a legal and ethical obligation towards a fellow member of the bar to say or to hold in sum and substance that since the only purpose of the conference on June 22, 1976 was to advise the Court as to the status of jurisdiction, and since your fellow member



of the bar was then paralyzed, paralyzed as far as his hands were concerned, and paralyzed as far as his legs were concerned, did you feel it incumbent to consent to an adjournment or to advise the Court that you had no objection to an adjournment, or to advise the Court that possibly we could take care of this informative function by letter or by affidavit?

A Mr. Sassower, I was directed to be there by the Court. I had no choice but to be there. Furthermore, you have to realize that this is not an isolated thing, trying to get you to account for a period of time.

MR. SASSOWER: Move to strike. We are going to come to that soon.

THE REFEREE: I'll leave it stand.

Q You were, in fact, when you say the Court, you were in fact directed by Mr. Seraduke, or so you contend?

THE REFEREE: Is that correct?

THE WITNESS: Yes.

Q I would appreciate in your answer, sir, with the permission of the Court --

THE REFEREE: Let me interrupt. Did you object to an adjournment?

THE WITNESS: I was not asked.

THE REFEREE: But you were in Court on June 8th?

THE WITNESS: No. That adjournment had been granted by the Court.

Q Because I was ill?

THE REFEREE: Argumentative.

MR. SASSOWER: All right.

Q Well, was not an application made to adjourn the June 8th matter for several months because on June 8, 1976, I had paralyzed hands and legs in New Rochelle Hospital, with Guillan-Barre Syndrome? Wasn't the reason it was adjourned on June 8, 1976, was because I was paralyzed, my hands and legs?

A I had no idea of your medical condition. I don't know why the Court granted you an adjournment.

THE REFEREE: Well, referring to Respondent's Exhibit Z, isn't that the claim made by Mr. Sassower in his affirmation?

THE WITNESS: Absolutely. I said I don't question that. I never questioned it. I never denied his illness. It should also be noted that his wife was appearing as his attorney at

the time and the Court just wanted to get somebody in there.

MR. SASSOWER: Move to strike, your Honor.

THE REFEREE: Sustained. Strike it out.

Did you ever see Mrs. Sassower in Court on this matter?

THE WITNESS: Not that I recall. Her name was on the papers, and her affirmations are --

THE REFEREE: Those are two different things, because in connection with that statement, I would like the record to reflect now, and I think Mr. Grayson will agree, it is stipulated and agreed that on no occasion did Mrs. Sassower ever appear in Surrogate's Court in connection with this matter.

MR. GRAYSON: Stipulated.

THE REFEREE: At the same time, they go hand in hand. It is also stipulated and agreed that on the papers, Mrs. Sassower appeared as attorney for Mr. Sassower in the matter.

MR. GRAYSON: Stipulated.

THE REFEREE: So stipulated, Mr. Sassower?

MR. SASSOWER: So stipulated, and also

stipulated, sir, that there is one affirmation which I did not make part of the record, but which because of the statements I think should be made part of the record, and that is my wife's affirmation of June 23, 1976, showing of three other engagements for June 22, 1976, and may I parenthetically, while I was ill, obviously my wife was covering my other work.

THE REFEREE: This is testimony.

MR. SASSOWER: I didn't read her testimony.

THE REFEREE: I said you are giving testimony.

MR. SASSOWER: You are right. I'm sorry.

THE REFEREE: Is it also stipulated and agreed, Mr. Grayson, and Mr. Sassower, that Mrs. Sassower, while her name appeared on the papers as attorney of record, she never in fact filed a notice of appearance in this proceeding? So stipulated, Mr. Grayson?

MR. GRAYSON: Yes.

THE COURT: So stipulated, Mr. Sassower?

MR. SASSOWER: So stipulated.

Any objection?

THE REFEREE: Mark this AA in evidence.

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(A paper was marked Respondent's Exhibit AA in evidence.)

MR. SASSOWER: Mr. Grayson, any objection to this document being offered in evidence, only for the purpose to show that Seraduke notarized a Kelly matter on a particular date, and it comes from the file of Surrogate's Court, Suffolk County, and only for that purpose.

THE REFEREE: Notarized it in what capacity?

MR. SASSOWER: As a notary.

THE REFEREE: As an employee of the Court, or as an employee of the Aaronson firm?

MR. SASSOWER: As an employee of the Aaronson firm, your Honor.

MR. GRAYSON: It doesn't say that. You can't tell in what capacity he notarized the document.

THE REFEREE: Well, at this point, you have no objection, I take it, from what you said, Mr. Grayson, to this being received in evidence without a designation of what capacity Mr. Seraduke was employed in at that time; is that correct?

MR. GRAYSON: Yes, I only object -- that's right.

MR. SASSOWER: Let me withdraw it at this time. Whatever your Honor wants.

THE REFEREE: Not after having gone this far. All right. BB in evidence.

\*\*\* (Document marked Respondent's Exhibit BB in evidence.)

THE REFEREE: I want to correct the record. I said March 5, '73, that's the date it was filed. It was executed on February 6, 1973, and I might note for the record that this Exhibit BB was sworn to in New York County, State of New York, County of New York. That was the locale of the Aaronson firm, was it not, Mr. Abuza, in '73?

THE WITNESS: Yes, your Honor.

Q Mr. Abuza, your office prepared the proposed order for Surrogate's Court which eventually became the order of March 9, 1976, is that correct?

A Which order was that, sir? Yes.

Q Now, that order was based upon a decision rendered by Mr. Justice Signorelli, is that not correct?

A Yes.

Q Do you have a copy of that decision?

THE REFEREE: Of Judge Signorelli's decision?

MR. SASSOWER: Right.

A I don't readily see that decision. I have a copy of the order, but not the decision.

Q All right. In any event, did your office receive a copy of that decision?

A Either we received a copy of it or we saw it in the Law Journal.

Q At any time, did you send a copy of that decision to me?

A I don't recall, but there is no obligation to do so.

Q Mr. Abuza, you've prepared many orders, I assume, for many Courts in your practice?

A Oh, yes.

Q And you are generally familiar with how to prepare an order?

A Yes.

Q And is it not correct that when you prepare an order, you generally recite the papers upon which the Court made its disposition?

A Usually, yes.

Q And has it been your experience that when you leave out a particular affidavit or communication

which the Court has used in rendering its decision, that the Clerk of the Court will generally insert the omitted paper that is left out?

A Not necessarily. I've seen it happen and I've seen it not happen.

Q In any event, when you prepared an order, you always insert those papers which were submitted to the Court?

A Not necessarily. Sometimes there is a whole string, and you say, "upon all the papers and proceedings had herein."

Q No, you are thinking, sir, of a notice of motion or order to show cause, but in an order, don't you recite --

A In Surrogate's practice, you don't necessarily recite every order. You don't have to. You do either one. I'm not saying one is right.

Q How do you take an appeal? How does the Appellate Division or the Court of Appeals know upon which papers the decision had been rendered if it doesn't see in the order appealed from what papers have been recited?

A Again, you don't necessarily have to do it, and



if the other side objects to it, they can submit a counter-order.

Q Mr. Abuza, do you know of any other -- do you have any other case, any other order, in Surrogate's Court, where an order is entered and the papers upon which -- I'm sorry, on all the papers upon which the order is entered is not recited?

A Yes.

THE REFEREE: Argumentative.

Q Could you also give us the affirmation of Samuel Schacter, January 9, 1976?

MR. SASSOWER: By the way, your Honor, Mr. Grayson, if I may go off on a tangent for a moment, I think it is pertinent, I will ask Mr. Grayson to stipulate that he has received from Surrogate's Court, Suffolk County, files, together with an affirmation or affidavit that those files contain all of the papers contained in the files are the original files in Surrogate's Court, Suffolk County?

MR. GRAYSON: I will do better than that, I will pull out the affidavit so that we can get the wording correct.

MR. SASSOWER: Okay.

(Handed to Mr. Sassower.)

MR. SASSOWER: Now, by such affidavit -- I do not accept that affidavit.

MR. GRAYSON: I will offer that.

MR. SASSOWER: I will not accept that, your Honor. I have told the Court that I will not accept that affidavit which was executed in Suffolk County, for reasons I've made known, but the only purpose right now, Mr. Grayson, will you stipulate whenever you can that Exhibit -- will you stipulate that not included in the papers sent to you was Y and Z?

MR. GRAYSON: I won't stipulate to that.

MR. SASSOWER: All right. Would your Honor suggest a way? Y and Z is not included in the Surrogate's Court file.

THE REFEREE: So stipulated?

MR. GRAYSON: No.

MR. SASSOWER: All they have is an affidavit--

MR. GRAYSON: I won't stipulate that it wasn't in the file.

THE REFEREE: You are stipulating it's not

in the file you received?

MR. GRAYSON: Mr. Sassower wants me to stipulate it was not in the file I received. I will not stipulate as to that.

MR. SASSOWER: At your convenience, I'm not asking you to do it right now. At some time I want a stipulation that it is not in the file, or if it is in the file, then it's in the file.

THE REFEREE: Well, now we are wasting time at this point.

Q Mr. Abuza, these three affirmations dated January 20th, 22nd and 24th came from your file; is that correct?

A Yes.

Q And do they all relate to the matter which was the subject of the order of March 9, 1976?

A Yes.

Q And is it not true that you did not include in that order any one of these three affirmations?

A I've got to look at the order.

Q Would you please?

A I would also note --

Q Just answer that.

THE REFEREE: Are they included in the order?

THE WITNESS: As to one of those documents, there is an explanation why it would not be.

THE REFEREE: That may be. The only question is, are they included, rightly or wrongly?

THE WITNESS: No.

THE COURT: Now, you may give your explanation, so it will cut down on redirect.

THE WITNESS: As to my affirmation, sir, reply affirmation of January 22, 1976, your Honor, this is the original in my file. It was never filed with the Court.

Q But a copy was served upon me?

A Yes, it was, and some time thereafter a decision was made or not made, I don't remember, not to file with the Court.

Q How about Mr. Schacter's affidavit or affirmation of January 9, 1976? Was that filed in the Court?

A Yes.

Q That also was not included in the order of --

THE REFEREE: The answer is that none of the three were included?

MR. SASSOWER: This is a fourth one.

THE REFEREE: I'm sorry. You are right.

Was that included in the order?

THE WITNESS: That affirmation, if I am correct, was in support of the order to show cause.

Q It was not. Look at your order and you will see which affirmation was used in support of an order to show cause. This was a supplemental affirmation made by Mr. Schacter after you received my December 1975 accounting.

A No, this is not listed.

Q So of the four affirmations that were just mentioned, all of January, 1976, none of the four were included in your proposed order?

THE REFEREE: He has answered that.

Q And none of the four were added by the Clerk of the Court to the order as signed.

A One had never been filed with the Court.

Q We understand that. None of them were included as part of the order.

A Apparently not.

MR. SASSOWER: I'm going to ask Mr. Grayson, at his convenience, to stipulate that notwithstanding

the certification or the representations of the Surrogate's Court, Suffolk County, that not contained in the file as transmitted to him is my affirmation of January 24, 1976, my affirmation of January 20, 1976, and obviously, with the explanation give by Mr. Abuza, his affirmation of January 22, 1976, and I would like these three affirmations marked for identification and kept within the jurisdiction of the Court, unless copies can be made.

THE REFEREE: Well, do you stipulate to that?

MR. GRAYSON: I won't stipulate to it until I review the file.

THE REFEREE: All right, fine. These are three affirmations. We will mark them CC for identification collectively.

MR. SASSOWER: May we mark them separately, because one is going into evidence?

THE REFEREE: All right. I was afraid we might run out of letters. January 20th is CC. January 22nd is DD and January 24th is EE.

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(Documents marked respectively Respondent's Exhibits CC, DD and EE for identification.)

THE REFEREE: They're all for identification.

MR. SASSOWER: For bookkeeping purposes, can we mark as FF the affirmation of Samuel Schacter of January 9, 1975 -- '76, I'm sorry.

THE REFEREE: That is for identification also?

MR. SASSOWER: Also.

THE COURT: All right.

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(Document marked Respondent's Exhibit FF for identification.)

THE REFEREE: We will take a ten-minute recess.

(Recess.)

(After recess.)

THE REFEREE: Whenever you're ready, Mr. Sassower.

MR. SASSOWER: Thank you, your Honor.

Q Mr. Abuza, prior to April of 1974 and with respect to the Kelly estate, what did your firm do for which you have written evidence?

THE REFEREE: What do you mean by written evidence?

MR. SASSOWER: A memorandum, an affidavit, anything.

Q You were retained in January of 1974. I'm saying from up to April of 1974, does your file have anything, a letter, an agreement, an affidavit, a memorandum, anything for which you have written evidence in your file?

THE REFEREE: What is the relevancy of that to this proceeding?

MR. SASSOWER: It all ties in, your Honor. I told your Honor I assure this Court --

THE REFEREE: Okay. I will take it on faith. All right.

Mr. Abuza?

A I'd have to look at the file.

Q Would you please? In fact, to save time, I would ask you to take out everything and anything that your file has between January of '74 and the end of September, 1974.

THE REFEREE: That the firm did?

MR. SASSOWER: That the firm did.

A My file indicates --

Q No, let's get everything together.

A Well, this is the legal work. You want papers in my file from the Aaronson firm as well?



Q Everything that you have in your file, written evidence of what you did.

A You had an affirmation of services. I don't seem to find my copy of it.

Q Mr. Abuza, from the papers that you have given me, which I gave to Mr. Grayson, and you can look at it and correct any misstatement I make, the only evidence of anything that your firm did prior to April of 1974, of which you gave me, is a letter, a letter signed by Joseph T. Aaronson, and dictated, J.T.A. That obviously did not come from your office, is that correct?

A This was done by my office.

THE REFEREE: You say it was not done?

THE WITNESS: It was. My secretary initialed it.

Q And on whose stationery was it done?

A Mr. Aaronson's.

MR. SASSOWER: May we mark this for identification, if your Honor please?

THE REFEREE: A letter dated April 3, 1974, GG for identification.

for identification.)

Q I show you on legal paper a memorandum.  
Whose handwriting is that?

A Mine.

Q And it is dated January 23, 1974?

A Correct.

Q And was it a conference with somebody?

A I think it's just a memorandum that I made as to what the will -- a review of the will, and whatever other papers that I may have looked at.

MR. SASSOWER: Mark that for identification,  
if your Honor please?

THE REFEREE: This will be HH for identifica-  
tion.

\*\*\* (Paper marked Respondent's Exhibit HH for  
identification.)

Q And this memorandum was drawn up by whom?

A I would say Mr. Schacter.

MR. SASSOWER: May we mark that for identi-  
fication, if your Honor please?

THE REFEREE: II for identification.

\*\*\* (Document marked Respondent's Exhibit II  
for identification.)

Q So between January and April, outside of these two memos, all your office did was send this one letter out; is that correct?

A No, we had conferences. We discussed -- we prepared the papers.

Q For which you have written evidence? I don't care what you did. For which you have written evidence, the only thing you did besides drawing up two memos, which deal both with the trust and the estate, the only thing you did was to send out that one letter which is --

THE REFEREE: GG.

Q -- GG for identification. Is that correct? Yes or no?

A That has been found so far.

Q Well, you have your entire file here.

A No, sir, I've said before that some of the files from the early days were left with the Schacter firm. I don't know what is missing. I have no idea.

Q Let me ask you this, sir: There came a time when the firm of Schacter, Abuza and Goldfarb split up; is that correct?

A Yes.

Q And at that time, certain cases you took over, certain cases I assume, Mr. Schacter took over and I assume certain cases Mr. Goldfarb took?

A It wasn't quite as easy as that. There was litigation involved between Mr. Schacter and myself, and there were some problems.

Q In which Court?

A Not in a Court. It was -- it didn't get to Court.

Q Well, in any event, when it was terminated, did not you turn over all papers to Mr. Schacter for files that Mr. Schacter handled?

A Quite frankly, what happened was I went on vacation. When I came back from vacation, Mr. Schacter had taken all the files out of my office, and so that there was never a question that I had any files to give him, and what he gave me back, I have no idea whether they were complete.

Q Could you tell us what you did with respect to the estate in April of 1974, for which you have written evidence?

A We apparently prepared the proposed --

Q Just give it to me.

A I believe we prepared the petition approving the

compromise, the various supporting documents, such as waivers of citations, and consents. Sent them out, or Mr. Aaronson sent them out at our instructions, his office, not him personally. We prepared the order approving the compromise.

Q Give us the papers, sir.

A Here.

Q Give me just those papers.

A I also believe there is a letter in there that reflects we sent waivers and petitions to Mr. Aaronson's office.

Q Would you give us that?

MR. SASSOWER: May we mark this as one exhibit, your Honor?

THE REFEREE: The whole group?

MR. SASSOWER: Yes, your Honor.

THE COURT: Describe for the record what we are marking for identification.

MR. SASSOWER: Certain legal papers testified by the witness that his office prepared, together with a memo dated April 2, 1974 from Samuel Schacter, as testified by the witness, to the Aaronson firm so that they should send out various

documents to the attorneys in the estate.

THE REFEREE: This will be JJ collectively for identification.

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(Group of papers marked Respondent's Exhibit JJ for identification collectively.)

Q Now, with respect to JJ, that is not only April of 1974, but months after April of 1974?

A It took a while to get all these papers together.

Q I understand that, but that does not represent only work done in April. This is work done from April until September?

A Correct.

Q Is there anything else that your firm did from April until September?

A There was nothing we had to do.

MR. SASSOWER: Move to strike.

THE REFEREE: Strike it. The answer is no.

THE WITNESS: No.

THE REFEREE: I would like the record to reflect that JJ contains 11 documents.

Q Now, all correspondence that went out to me with regard to those papers and to the other attorneys interested in the estate, they all went out on

Aaronson's stationery?

A Correct.

Q And would you say that up to October, 1974, the other attorneys interested in the estate received no correspondence with your firm's letterhead on it?

A I presume that is correct.

Q And would you also presume that it is correct that the other attorneys did not know of your existence in the Kelly matter?

A Correct.

Q And would you also concede that on all papers and documents prior to October of 1974, the Court was only aware of the Aaronson firm?

A Correct, they were the attorney of record.

Q Would you also concede that the Court did not know that you were of counsel, if that is a correct term, for the Aaronson firm from January until October of 1974?

A That is correct.

Q Now, I draw your attention to my letter to you, or your firm, of July 18, 1974, which is Exhibit L, and your order to show cause secured 11 days later, which is Exhibit 18, and that portion of your testimony

wherein you stated that you did not believe my letter, based upon my conduct with you in the estate matter, and ask you what, based upon the documentation you have produced in the estate matter, caused you to come to your conclusion of this belief?

MR. SASSOWER: And, your Honor, may I have Exhibit L?

THE REFEREE: I'm sorry. I wasn't able to follow that at all.

MR. SASSOWER: Would you want the stenographer to read it?

THE REFEREE: I don't think it will help. I think there is something missing there.

MR. SASSOWER: All right. Let me break it up. May I have exhibit L, if your Honor please?

(Handed to Mr. Sassower.)

MR. SASSOWER: And Exhibit 18.

(Handed to Mr. Sassower.)

Mr. Abuza, with respect to the citation issued by the Court in order to approve the compromise, the fact that I admitted personal service of process, and I show you a copy of Exhibit C in order to refresh your recollection?



A Yes.

Q And so, you didn't have to serve me with the citation; is that correct?

A I assume so, I don't recall.

Q All right. Now, so on July 1st, insofar as that was concerned, you had received my cooperation?

A As to that, yes.

Q In fact, the correspondence in the Aaronson firm reveals that it was my suggestion that you not serve me, but send me the citation by mail, and I will admit service; is that correct?

A It could be.

Q Now, on July 18th -- sorry, on July 19th, you received my letter of July 18th, wherein I stated that I expected to see the former accountant of Eugene Paul Kelly on July 23rd, and at that time hoped to either get the books and records of the deceased and his corporation, or to get some more information so as to give you a better accounting. Do you recall that? What correct, sir?

And notwithstanding the receipt of Exhibit L 4 days later, or 10 days later, you secured an order

to show cause to hold me in contempt for failure to render an accounting in a trust matter?

THE REFEREE: My recollection is this is all repetitious.

MR. SASSOWER: Right, I'm breaking up the question in two pieces.

Q Do you recall that?

A I'd have to refresh my recollection. The documents speak for themselves.

Q Now, his Honor asked you, or I asked you why in view of Exhibit L, where I said I'm going to try to get the information from the accountant, did you go and get an order to show cause to hold me in contempt? Do you recall that question being asked by his Honor or by myself?

A You are talking now about the trust. Before you were talking about the estate.

Q About the trust. I'm talking about the trust now.

A Okay.

Q Do you recall that question being asked?

A Yes.

Q And do you recall that your answer was that

because of Mr. Sassower's conduct in the estate matter, you didn't believe what I said in Exhibit L. Do you recall that testimony?

A That is correct.

Q Now, I am asking you what in the documents you have produced in the estate matter caused you to disbelieve Exhibit L?

A Your whole pattern of conduct prior to that time. We had to prepare --

MR. SASSOWER: Move to strike. Non-responsive.

THE REFEREE: Well, Mr. Sassower is asking you for specifics now.

THE WITNESS: We had to prepare those papers that we just referred to that went in collectively as an exhibit, because of your failure as a proponent of the will to proceed to prepare the various papers needed to probate the will. You had not cooperated with anybody in terms of trying to sell the house. You had done nothing.

Q Excuse me, I'm talking in terms of papers produced. Do you have any letter in there of any demand, request, for me to prepare those papers? Yes or no? Yes or no?

A No.

Q Do you have any correspondence, any memoranda of any agreement that I made with the Aaronson firm as to who was to prepare what papers?

A Not that I know of.

Q Do you know who prepared the compromise papers for Surrogate's Court?

A I believe Mr. Aaronson.

Q The compromise papers that were -- but you don't know?

A No, I don't recall.

Q And you don't know who prepared all the other papers that are not included in Exhibit --

A I had no interest in it at the time.

Q So you --

A When we came in --

Q Sir, sir, there is no question before you. Did you ever call me up, sir, your office, or write to me, and ask me to prepare those particular papers? Yes or no?

A No.

Q So the question is, sir: Based upon the documentation that you have produced, what specifically

in the estate matter, during July and August of 1974, caused you, as you testified, to disbelieve what I stated in Exhibit L?

A Your whole prior conduct in this.

THE REFEREE: In the document?

THE WITNESS: Nothing in the document, no.

THE REFEREE: That's the question.

THE WITNESS: I'm sorry.

Q Mr. Abuza, in Surrogate's Court when preliminary letters are issued, and thereafter permanent letters are issued, the temporary letters are revoked, is that correct?

A Correct.

Q And could you tell us when the permanent letters were issued to me?

A I don't recall. I believe it is part of the record.

Q It is not part of the record. Could you tell us?

THE WITNESS: Do you have the document, to save time.

Q I show you this photostatic copy --

THE REFEREE: Show him the document. Does that refresh your recollection as to when permanent letters were issued?

(Handed to the witness.)

THE WITNESS: September 9, 1974.

MR. SASSOWER: May we offer this in evidence, your Honor?

Q Is this a photostatic copy of letters of testamentary issued by Surrogate's Court generally?

A Yes.

MR. SASSOWER: Offered in evidence.

MR. GRAYSON: Your Honor, we will stipulate that those letters were issued on September 9, 1974.

MR. SASSOWER: I would like the document to go into evidence. It is going to go in for another reason also.

MR. GRAYSON: I have a problem with the date that this document was executed on.

MR. SASSOWER: I will accept the stipulation.

THE REFEREE: What is the stipulation?

MR. SASSOWER: That letters were issued.

THE REFEREE: All right.

Q Now, when permanent letters were issued on September 9, 1974, did you ever at that point request that I account for my stewardship under temporary letters of administration, or temporary letters

testamentary?

A I believe we had. Not in writing, but in phone conversations, discussions.

Q Well, do you have a memorandum of any phone conversation?

A No.

Q This is a very --

MR. SASSOWER: I'm sorry, your Honor.

Q This is a very serious proceeding. Do you think or do you know --

MR. SASSOWER: I'm sorry, your Honor.

THE REFEREE: Lower the decibels.

MR. SASSOWER: You are absolutely correct.

THE REFEREE: The question is what?

Q When, where, by what means, did you personally have any conversation with me prior to subsequent to September 9, 1974 asking me to account for my stewardship as a temporary, under the temporary letters?

A I would not have asked you to account as preliminary executive, but to account in general.

Q Do you have any memorandum in your file?

A No.

Q Do you have any letter in your file?

A No.

Q Do you have any memorandum of any telephone conversation?

A No.

Q Did you ever have any letter making any such demand?

A No.

Q Did you ever have any memorandum of any such conversation?

THE REFEREE: The answer is no.

Q No letter, but any memorandum?

THE REFEREE: That's no, too.

MR. SASSOWER: Okay.

Q Sir, particularly, would you call this a modest sized estate?

A Yes.

Q And particularly, in a modest sized estate, is there not usually only one accounting covering the entire estate from beginning to end where there is only one executor throughout?

Yes or no?

A Yes.

Q And does not each additional accounting



entail additional expense to the estate and to the parties interested?

A Yes.

THE REFEREE: The additional expense, is it fair to say, includes counsel fees on both sides?

THE WITNESS: It could, your Honor.

Q Now, you then went to Surrogate's Court and asked for a compulsory accounting, is that correct?

A Correct.

Q When did you secure a petition for such compulsory accounting from your client?

A I believe in October.

Q Would you produce that petition, sir?

MR. GRAYSON: I believe that is Exhibit 27.

MR. SASSOWER: I'm sorry.

Q Now, Mr. Abuza, the reason that preliminary letters were issued initially with the estate of Eugene Paul Kelly was due to the fact that Patricia Galbraith, one of the daughters of the deceased, objected to the admission of the will into probate, will and codicil, I should say. Is that correct?

A Yes, I presume so.

Q Now, until she withdrew her objections, or until her objections were ruled to have no value,

permanent letters could not be issued; is that correct?

A Correct.

Q And from 1972 until January of 1974, or prior thereto, you know there were negotiations going on in order to compromise and settle those objections; is that true?

A Not to my own knowledge. I was not a party to it.

Q But you were told that?

A Yes.

Q But you do not, you do not know where the stumbling block came in?

A No.

Q Now, when you filed Exhibit 27 in evidence, and by the way, will you agree that nowhere in 27 in evidence does your client allege that he made any demand or request that I file an accounting?

A It's not required.

Q Sir --

THE REFEREE: Did he?

THE WITNESS: No.

Q Sir, you drew up that document, didn't you?

A May I look at it?

Q Sure.

A Yes, I presume I drew up this.

Q And sir, in the normal course of events, if you had made a demand for an accounting, and it had been ignored, or it had been refused, wouldn't you more likely have set that forth in a petition?

A No, that follows a prescribed form with the Surrogate's Court which does not -- a printed form which does not refer to any demands.

MR. SASSOWER: I move to strike that out, your Honor.

THE REFEREE: I will let it stand. That is his explanation.

Q Now, when you received the citation, based upon that petition from Surrogate's Court --

THE REFEREE: Excuse me, I don't like to interject, did it not occur to you that if you had made a demand and it had been ignored and not complied with, that an allegation to that effect in your petition would buttress your position?

THE WITNESS: It's not necessary in Surrogate's Court. May I explain the procedure?

THE REFEREE: Mr. Abuza, my question is not addressed to whether it is necessary or not. As a

matter of practicality, as a matter of good tactics, would it not buttress your position?

THE WITNESS: No, your Honor. May I explain?

THE REFEREE: Yes.

THE WITNESS: You don't have to make any such allegation in the Surrogate's Court, because any person interested in the estate proceeding can demand an accounting at any time, according to the statute, and it is basically a pro forma petition and a pro forma order that results. Normally, it is 30, 60 days to account. That's all.

THE REFEREE: I know that.

THE WITNESS: There is no requirement to make any --

THE REFEREE: I know that.

Q Well, Mr. Abuza, let me ask you this: At the time you made this petition for a compulsory accounting, you knew that there was a claim by Eugene Paul Kelly's sister for \$10,000 against the estate?

THE REFEREE: Is that correct?

Q Is that correct?

A I don't know when I knew of it. I know that, but I can't say that I knew it exactly at that moment.

Q And you knew there were other matters that had to be taken care of before the estate could be cleaned up when you made your motion for a compulsory accounting?

A That is correct.

Q Well, didn't you at that time suggest or write or advise your client that perhaps it be a lot more economical if we wait a reasonable amount of time to see if we can clean up the entire estate and thereby have one accounting rather than more than one accounting? Did you or did you not?

A The purpose of the accounting --

THE REFEREE: No, did you do that?

THE WITNESS: No, there was no reason.

MR. SASSOWER: Move to strike out the "no reason."

THE REFEREE: STRIKE it.

Q By the way, when you sent, and I assume you sent this petition-to Edward Kelly to sign for a compulsory accounting, did you have a covering letter, and may I see it, sir?

Well, pull it out during lunchtime, Mr. Abuza.

A I see no letter of transmittal in the file. It

could well be that Mr. Kelly came to the office, something like that. I don't know.

Q Well, it was executed in Queens. All right, in any event, Mr. Abuza, would you say that your fee in this matter depended to some extent on the amount of work that you performed?

A Possibly, yes.

Q May I get a better answer? You weren't on a contingent basis in this case, is that right?

A No.

Q And one of the elements, no matter how large or how small that element was in determining what your fee was, was the amount of work you had to do?

A Certainly.

Q Okay. Now, when you got a citation as a result of the petition for compulsory accounting, did you send that citation to a process server for personal service or did you call me up and ask me if I would accept service by mail?

A I believe it was sent to a process server.

Q Well, Mr. Abuza, there is the practice that where attorneys are involved, or other professionals, that if for no other reason than as a matter of

courtesy, you request that they admit service, rather than being served by a process server. Are you aware of such practice?

A Yes.

Q Well, when you received the citation, did you write me or call me and ask me would I accept a citation by mail rather than being served by a process server?

A No.

Q And would you agree that serving by mail is a less expensive process than giving it to a process server?

A Normally, yes.

Q And would you agree that in this case there was prior experience that I did accept citations when sent to me by mail?

A One instance where it was in your -- well --

Q How many times prior to this compulsory accounting proceeding was it necessary to serve me?

A I have no idea.

Q Do you know of any instance except that one instance and on that one instance I suggested, in fact, if you will look at the correspondence, I suggested to

the Aaronson firm, send it to me and I will accept service by mail?

A Mr. Sassower, because you did that once does not mean that I could make a judgment that you would do it again. I made a judgment on how to serve papers.

THE REFEREE: But you didn't call and ask him if he would do it one more time?

THE WITNESS: Well, there is obviously a reason why I didn't.

THE REFEREE: Obviously that wasn't my question.

THE WITNESS: I know that. That's why I can't say.

THE REFEREE: My question was, did you do that?

THE WITNESS: No.

THE REFEREE: All right.

Q You gave it to a process server?

THE REFEREE: Repetitious.

Q And a report came back to you that they did not serve me, yes or no?

A I believe so.

Q At that point, when the process server came back with the report that they did not serve me, did



you call me and write me and ask me would I accept service?

A No.

Q But instead, you filed another application to Surrogate's Court wherein you had to state why you needed a second application; is that correct?

A Correct.

Q And the application was based, the reason you gave, was that I was "avoiding service"; is that correct?

A That's what I was told by my process server.

Q I don't care what you were told by your process server; did you allege to the Surrogate's Court that I was avoiding service?

A Yes.

Q And this was based upon how many visits by your process server to my home, as you understood it?

A I don't recall. His affidavit is part of the file.

Q Mr. Abuza, did there thereafter come to your attention letters sent to the Surrogate, copies of which were sent to you, that I was engaged for five months every day on trial?

A I don't recall. If you say there were --

MR. SASSOWER: May I see Exhibit 29 and 30,

your Honor?

Q Mr. Abuza, when your process server came back with the citation, or when you got a second citation, did you call my office and say where can we serve Mr. Sassower with the citation?

A No.

Q Well, you didn't expect me to stay home waiting for your process server to come, did you?

A Mr. Sassower, I gave it to a process server.

Q Mr. Abuza, let me come directly to an issue. In any event, did there come a time when the Honorable Surrogate Hildreth, directed that I account within, I think, 30 days, is that correct?

A Yes.

Q And did there come a time where I wrote Surrogate Hildreth, as set forth in Exhibit 30 in evidence, and this came, I think, from your file, a copy of which was sent to you; is that correct?

A Yes.

Q And the sum and substance of this letter was that I was on the fifth day of a trial in Supreme Court, New York County, right?

A That's what it says.

Q You had no reason to disbelieve what I had said here; is that correct? Is that true?

A I neither believed it or disbelieved it.

Q Okay, and you had no reason to believe that the trial Judge said we're going to work to midnight every day if we don't finish that week. Did you have any reason to disbelieve that?

A I would have no idea.

Q Tell his Honor what you did when you received the letter of May 14, 1975?

THE REFEREE: That is 30 in evidence?

MR. SASSOWER: Right.

Q Tell his Honor what you did.

A I don't recall. I'd have to look at the file.

Q Would you look at your file or would you want me to refresh your recollection?

A What was the date on that?

THE REFEREE: May 14, 1975, and I would like to correct the record. I think that you, in referring to this letter, Mr. Sassower, said that you were in your fifth day of trial.

MR. SASSOWER: Fifth week.

Q Tell us what you did when you received that

letter, or within a few days after you received that letter, or would you want me to save some time?

A I presume I brought a proceeding to hold you in contempt for not complying with Judge Hildreth's order to account.

MR. SASSOWER: Would your Honor want to ask the witness some questions at this point?

I was stunned. I am still stunned.

THE REFEREE: That's what you did?

THE WITNESS: I presume so. I would have to look. My exhibits are there. It has been pulled out and I don't know the exhibit number.

THE REFEREE: But on receipt of this letter, you moved?

THE WITNESS: I don't think that letter had anything to do with it.

THE COURT: Was it after the receipt of this, shortly thereafter?

THE WITNESS: Since Mr. Sassower seems to be leading in this indication, I presume it was.

THE REFEREE: Then what would be the date?

MR. SASSOWER: The chronological list helps us at this point. May 19, 1975.

THE REFEREE: Is that the date of your petition?

MR. SASSOWER: No.

THE WITNESS: No, the date I see here in May 7th. Again, I don't have the original.

Q Let me ask you this question, Mr. Abuza: I show you Exhibit 29, which is a letter written by my secretary dated May 1, 1975.

A Yes.

Q Where I asked for an extension of ten days, where I tell the Court and you that I'm heavily engaged on trial. I have three cases that have to be argued in the Appellate Division and all I want is ten days so I can re-check the figures, and are you telling the Court that despite that letter, you went to Surrogate's Court with a petition to hold me in contempt, contending -- have you got a copy of the petition, sir?

A Yes.

MR. SASSOWER: By the way, for the record, that May 1st letter was Exhibit 29 in evidence.

THE REFEREE: Yes, with copies to Mr. Abuza's firm.

Q And in that petition to Surrogate's Court,

dated and verified May 7, 1975, you stated -- or your client stated, but you prepared the petition, am I correct?

A Correct.

Q "Nine: The respondent, George Sassower, has refused and has willfully neglected to obey such order of this Court."

And by such order, you meant the accounting order, right?

A That is correct.

THE REFEREE: At the time you prepared that, you were in receipt of this letter of May 1st?

THE WITNESS: No, your Honor. I have here my letter of transmittal to Mr. Kelly sending him the petition to sign, which is dated May 1st. I had prepared that before I ever got any of those letters.

Q All right, so when you got this back on May 8th or May 9th, in view of that letter, did you not believe that another statement by you in an annexed affirmation might not have been appropriate?

A Mr. Sassower, you had not accounted.

Q Yes or no?

A I had no reason to change anything.

#4 THE REFEREE: Mr. Abuza, at the time that you got this affidavit back from Mr. Kelly, you were in receipt of a letter in which Mr. Sassower said, rightly or wrongly, that he requested ten additional days for the reasons stated. Yet, in the petition you said he had refused, when you were now in possession of a letter that says he will account if he gets ten days more.

THE WITNESS: Technically, that's correct, your Honor. We had just gotten no cooperation from him, and we saw no reason to change the papers. He kept saying he was going to account and he never did.

THE REFEREE: As Mr. Sassower has just read, you stated to the Court that Mr. Sassower has refused.

THE WITNESS: At the time that was drawn, he had refused.

THE REFEREE: At the time you submitted that to the Court, you were in receipt of this letter which says that he would do so if he got ten more days.

THE WITNESS: That's correct, but he still never did file it.

MR. SASSOWER: Excuse me, we are going to come to that.

THE WITNESS: I would have withdrawn the letter to show cause had he filed it.

THE REFEREE: Mr. Abuza, you are avoiding my question. You are answering other questions that I'm not asking. What I'm saying is that when you submitted that document, the petition to the Court in which you said, or your client said, under your direction, as I gather it, that Mr. Sassower has refused, at that time you were in receipt of this letter in which he says, in substance, if he gets ten more days he will file it.

Now, you have a right to believe or disbelieve what he said, but what I'm calling to your attention is your right or lack of right to tell the Court that he has refused under these circumstances. Here he is saying he will.

THE WITNESS: As of the date of the petition he had not.



THE REFEREE: As of the date that you filed the petition he had.

THE WITNESS: He had sent that letter, yes.

THE REFEREE: So, I'm saying, this is an incorrect statement to the Court.

THE WITNESS: Not as of the date it was prepared. As of the date it was filed.

THE REFEREE: Now, Mr. Abuza, now look, don't play those kind of games with me. . As of the date that you filed it, the petition is incorrect, isn't it?

THE WITNESS: Yes.

THE REFEREE: All right.

THE WITNESS: As a result of that letter.

THE REFEREE: Yes, so you made an incorrect statement to the Court, is that not so?

THE WITNESS: I don't consider it so.

THE REFEREE: Well, if you don't, then we don't speak the same language.

We don't speak the same language at all. Neither legally, linguistically, nor ethically. Next question.

Q You also say in Paragraph 10 that it is

almost impossible to serve papers personally upon me,  
is that correct?

A Yes.

Q And what date did you receive the citation  
or submit this to the Court in order to get a citation  
against me?

A I don't recall. The date of the citation would  
probably tell me the date it was submitted.

MR. SASSOWER: Your Honor, may we recess  
for lunch? But before we recess for lunch, I  
would like to take up one or two matters with  
the Court.

THE REFEREE: We will recess until two o'clock  
and we will discontinue at 3:30 due to the holiday.

(The witness leaves the hearing room.)

MR. SASSOWER: Your Honor, nothing that I  
say now or at any time, should the Court feel or  
believe that I have not received the full coopera-  
tion of the Grievance Committee attorneys, which  
I have had, nor do I mean to imply that they have  
not used reasonable efforts to obtain information  
which they should have gotten, perhaps I would  
have been a little stronger than they have been.

In any event, since before this proceeding commenced before your Honor, we have tried, and the Grievance Committee has tried to get certain documentation from Surrogate's Court, Suffolk County. Some of it has come in in dribs and drabs. I should say, a little has come in, but even that in dribs and drabs.

I know the Grievance Committee attorneys do not want me to prejudice myself, and I'm sure your Honor does not want me to prejudice myself, but there comes a point when I must insist, or must request that they get all their documents from Suffolk County and that be it.

THE REFEREE: I'm sorry, what was the last statement you made?

MR. SASSOWER: There comes a time when I must insist or request from your Honor that they get all their documents from Surrogate's Court, Suffolk County, or the Public Administrator, and that be it. Not tomorrow, next week. It was mailed out last week. It was mailed out yesterday, and nonsense of that nature which I have received from the Grievance Committee attorneys, which is not

of their manufacture, but of the manufacture of other parties.

THE REFEREE: Mr. Grayson?

MR. SASSOWER: One more thing, and I will finish. The latest thing that I received was, two days ago they finally receive the micro-fiche. The micro-fiche had a minimum of several thousand pages missing from it.

THE REFEREE: Several thousand?

MR. SASSOWER: Several thousand pages missing. In fact, from Surrogate Hildreth, the micro-fiche has six plates, I believe, five plates are all, are proceedings before Surrogate Hil dreth. The last plate has a couple of -- the first five, as your Honor can see, are filled up. These are all with Surrogate Hildreth. Before Surrogate Signorelli, where there were thousands of pages, I have one plate, which I call the Western Plate, because it has got plains all over it, wide open spaces, and this is what I've gotten.

Their letter, the affidavit for the Public Administrator still hasn't come in. I've gotten promises and promises. I've jumped all around

this morning from Charge 1 to another charge, because I have consistently told the Grievance Committee attorneys that on Charge 1, I want to go to a certain point, and I will not go, or I prefer not to go any further until I get all the Surrogate's Court matter in.

Now, I'm interested in moving this along. I'm certain the Grievance Committee is interested in moving this thing along, and I say nothing further.

THE REFEREE: Mr. Grayson?

MR. GRAYSON: Yes, there are several points I would like to make.

One, I was advised yesterday afternoon that the affidavit of the Public Administrator would be delivered to this room today. As of ten o'clock when we began, apparently it had not been delivered. I don't know if it is sitting out there now.

Another point, on the microfilm, micro-fiche, I was advised by the Clerk of the Court that they do not microfilm everything, and this entire file in fact was not reduced to microfilm or micro-fiche, and the certified film that was given to me was

copied from the original papers in their file, as is noted on the affidavit.

MR. SASSOWER: I've got five affidavits already admitted for identification, or in evidence to this Court, which are not either on the micro-fiche or in the files.

MR. GRAYSON: That is your claim. I have not checked those five against the file or against the micro-fiche.

MR. SASSOWER: Okay. Well, Mr. Grayson, there comes a point where you've got to check it. You've got to do something, but I'm not going to be met with this kind of a situation.

THE REFEREE: My suggestion is, Mr. Grayson, that you serve a subpoena on the necessary parties now out there in Suffolk County, bring them in here either with the document or for examination, and their explanation or whatever so Mr. Sassower can examine them.

Now, I have been very patient with them. This is going on for at least a month, to my knowledge, probably longer from your standpoint, Mr. Grayson, but you tell them you are serving those subpoenas

refresh your recollection, the Court said the application was granted to the extent that the examination be conducted in Riverhead. Do you recall that?

A Yes.

Q And do you remember that motion on June 8th, that matter was argued in the courtroom?

A I believe so, yes.

Q And you argued on behalf of your clients, and I argued on behalf of myself; is that correct?

A To the best of my recollection.

Q Now, do you recall, if there was a stenographer present at that time, was it a male or female?

A I have no idea.

MR. SASSOWER: Would you excuse us, Mr. Abuza, please?

(The witness leaves the hearing room.)

MR. SASSOWER: I think I worked out with Mr. Grayson a situation which will not only save time, but will save people their time and their trouble.

THE REFEREE: Good.

MR. SASSOWER: Thus far, relevant to this proceeding, there are five affidavits or affirmations which have either been marked in evidence or

marked for identification, which my search reveals were not in the original Surrogate's Court file, and was transmitted to the Grievance Committee, photostatic copies. Rather than have the Chief Clerk of Surrogate's Court come here with the original file and testify those five affidavits are not part of the original file, or that they are part of the original file, whatever the case may be, I worked out with Mr. Grayson that he will call up the Surrogate's Court, Suffolk County, set forth the affidavits. They will tell him by phone, which I will accept, whether those affidavits are presently in the file of the Surrogate's Court.

I will accept that. If they are there, they will send copies. If they are not there, Mr. Grayson will represent to the Court that they have represented to him those five affidavits are not in the file.

THE REFEREE: If they say they are there, you don't need him to send anything, because you have the copies.

MR. SASSOWER: Except they are marked up. That will present no real problem.



THE REFEREE: All right. So far agreed?

MR. GRAYSON: Yes. Now, in order to clarify the dates, I want Mr. Sassower to tell me the dates.

MR. SASSOWER: Y and Z, your Honor. What dates are they?

THE REFEREE: June 2, '76 and June 17, '76.

MR. SASSOWER: We also have my affirmation of January 24, '76, my affirmation of January 20, 1976, and you have an affirmation of Charles Abuza, which he said he did not file, but check on it anyway, of January 22, 1976.

THE REFEREE: That is four documents.

MR. SASSOWER: Five, together with an affidavit. They've got to find the transcript of July 8, 1977.

MR. GRAYSON: June 8th.

MR. SASSOWER: June 8, 1977.

MR. GRAYSON: Now on that point, I believe we had discussions in the past after I called up the Surrogate's Court to locate that transcript. Surrogate's Court gave me the name of the stenographer who was on that day. I spoke with that stenographer. She reviewed her notes and said she has no notes of that proceeding that day.

MR. SASSOWER: If she doesn't have it, then get an affidavit from her. What can I tell you? I will accept that.

MR. GRAYSON: Okay.

MR. SASSOWER: Unless the Judge has some private notes. If the Judge has some private notes on what was said on that day, get the private notes.

THE REFEREE: Or could they be in error about the stenographer?

MR. GRAYSON: Well, she told me she keeps everything. She is a very elderly lady who worked out there for quite some time, apparently, and what I will do, I will telephone her again and ask her to check and to give me an affidavit on her situation with her notes.

THE REFEREE: All right. Have we finished the housekeeping?

MR. SASSOWER: Yes.

THE REFEREE: All right.

MR. SASSOWER: Judge, Mr. Grayson acknowledged that under the circumstances, he doesn't feel, nor do I see the necessity at this point to subpoena

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anybody.

THE REFEREE: All right. That's great.  
After 3:30 today, we will resume at ten Friday  
morning.

MR. GRAYSON: Your Honor, one point, Mr.  
Brennan reminded me that he has another disciplinary  
proceeding scheduled for Tuesday, October 13th, and  
if there is going to be any questioning on the  
charges that he has been handling, he would like  
to be here.

THE REFEREE: I think we can better go into  
that on Friday.

MR. GRAYSON: All right.

(Mr. Abuza returns to the hearing room.)

BY MR. SASSOWER:

Q Mr. Abuza, there was a notice of examination  
before trial which I told you to put on the side. Have  
you got that?

Mr. Abuza, I show you from your file a notice to  
take deposition upon oral examination by your office  
with an admission of service by me July 6, 1976, and  
is this a document you caused to be served upon me?

A Yes.

MR. SASSOWER: I offer this document in evidence.

THE COURT: KK in evidence.

\*\*\* (Document marked Respondent's Exhibit KK in evidence.)

Q Now, that KK in evidence is in regard to the estate matter, is that correct?

A Yes.

Q And did you not testify earlier at this trial that as an expert in Surrogate's Court matters that all examinations emanating, or which have as their venue Surrogate's Court, Suffolk County, the examination must be held out in Riverhead?

A That is correct.

Q And nevertheless, you made the examination returnable in Manhattan, is that correct?

A Yes. Actually, it took place in Suffolk County, yes.

Q That's where you made the notice of examination returnable?

A Yes.

Q Was there any objection by me to have the examination in Manhattan?

A I don't recall. Not that I remember.

Q Now, by the way, we were talking before about June 8, 1977, and that was my motion to your motion to vacate or modify my notice of examination before trial, is that correct?

A I believe so, yes.

Q In fact, I had made a motion against you because of your client's failure to attend an examination before trial in Queens County, which was the residence of Edward Kelly; is that correct?

A That's correct.

Q Now, do you recall that at that hearing the Judge fixed the examination date to be June 13, 1977?

A I believe so. I know he fixed a date.

Q And do you recall what, if anything, I said to the Judge about that date at that time?

A I don't recall.

Q Well, did I tell the Judge that I would be available that day?

A I don't recall. Do you have a transcript of that?

Q Did I tell you after the hearing as to whether I would be available on that date?

A I don't recall.

Q Do you have any recollection of me telling you that I was scheduled to be at the Court of Appeals, and from there I was going to Massachusetts?

A You may well have. I did not set that date. The Court set it.

Q But you don't recall me telling the Court that I have a prior appointment at the Court of Appeals?

A You may well have. I don't deny that you did.

Q In the actual course of your legal profession, hasn't it been your experience that an appointment at the Court of Appeals takes priority or precedence over a particular date for an examination before trial?

MR. GRAYSON: Objection.

THE REFEREE: Sustained.

Q Mr. Abuza, I draw your attention to a statement I made in my petition of May 18, 1981 with regard to my accounting.

THE REFEREE: Your petition of May 18, 1981?

Q In regard to my accounting: "If, in fact, the recipients" -- and you were one of the recipients -- "reasonably desire further clarification or explanation, upon request prior to the return date of this motion, I will comply so that this matter may finally be

resolved."

My question to you is: Have I not on some instances in my motion papers with respect to my accountings, made similar remarks?

MR. GRAYSON: Objection.

THE REFEREE: Sustained. They speak for themselves.

Q Well, it is a fact, Mr. Abuza, that throughout these proceedings, starting in early 1974, your office has never asked me for any explanation, clarification with respect to any of my accountings; is that correct?

MR. GRAYSON: Repetitious.

THE REFEREE: Repetitious.

MR. SASSOWER: All right.

Q Mr. Abuza, I draw your attention to Defendant's Exhibit II --

THE REFEREE: For identification.

MR. SASSOWER: For identification.

Q -- which was taken from your file in this matter and ask you when for the first time did you see same, and it refers to a conference held on January 23, 1974 with Edward Kelly?

A May I see it?

(Handed to the witness.)

A I did not prepare this. I assume I saw it sometime in the file after it was typed. When it was typed, you know I can't tell.

Q In any event, within a month or two after you had seen it?

A I would assume so.

Q Now, I draw your attention to this paragraph, and speaking about Eugene Paul Kelly: "He had an accountant who was still on the payroll by the name of Albert Barnowski, who is located in Bayside from January 23rd onward."

THE REFEREE: That is the end of the quote?

MR. SASSOWER: That is the end of the quote.

Thank you, your Honor.

Q From that time onward, did your office ever write to Barnowski and ask him for information?

A No.

Q Did your office ever call Barnowski?

THE REFEREE: This is repetitious, Mr.

Sassower.

Q It says here, also, "We must get a statement from the accountant."



Did you ever get such statement from the accountant?

A No.

Q Did you ever make efforts to get any statement from the accountant?

A I previously testified, I believe, that Mr. Kelly told us that the accountant was not cooperating because he was waiting to get some money.

Q It further states here: "We must prepare in the name of Aaronson's firm a decree admitting the will to probate, subject to the compromise agreement and settle it on account."

THE REFEREE: Close quote.

MR. SASSOWER: Close quote.

Q And then continuing, "We will then make an application to compel him to file his account."

So back in January of 1974 when you first met with Edward Kelly, Mr. Schacter had already put on his memo an intention to compel me to account, before there was any knowledge by your firm that I was going to cooperate, was not going to cooperate. Is that not true, sir? Would you look at that memorandum?

A It is true, we had knowledge.

THE REFEREE: I will let you explain. Go ahead.

THE WITNESS: We were told that Mr. Sassower had been for some time the preliminary executor of the estate. As preliminary executor of the estate --

MR. SASSOWER: Excuse me, may I interpose my objection. "We had been told." I don't know who told him, and it is absolute hearsay.

THE REFEREE: Yes, but this is an explanation for that statement.

MR. SASSOWER: This is Schacter's statement, if your Honor pleases.

THE REFEREE: Well, this is the same firm.

MR. SASSOWER: May the explanation not be received for the truth thereof?

THE REFEREE: Yes. State of mind as to his reason for making this.

THE WITNESS: Mr. Sassower was the preliminary executor of the decedent's estate. As preliminary executor, he had the authority to act in every way that a full executor does, except to distribute the assets. As such, he had not taken steps, and we were so advised by the family, by Mr. Kelly, that nothing had been done to protect the estate, and

this is why we had every intention to compel him to account so that we could get this problem before the Surrogate's Court.

#5

THE REFEREE: But at the same time in that same memorandum, there is a reference made to the fact that there apparently was some difficulty with getting the accountant to provide the necessary information, isn't that so?

THE WITNESS: There were two aspects of this, your Honor, that's true, as to, you know, records of the decedent, but we were very concerned at that time, because we were told, and the facts bore this out --

THE REFEREE: Told by whom?

THE WITNESS: By Edward Kelly, and also by Professor Aaronson that the property was sitting there, wasting. Assets were being wasted, and we were trying to move on that account.

THE REFEREE: You couldn't do that until the will was admitted to probate?

THE WITNESS: Yes, we could. He was the preliminary executor. He had full authority to do anything except distribute.

THE REFEREE: All right.

Q Have you ever seen as an expert preliminary letters of admission? Yes or no?

A Preliminary letters of admission?

Q Or testamentary.

A Testamentary?

Q Testamentary.

A Yes.

Q Are these the preliminary letters testamentary in the estate of Eugene Paul Kelly?

A I have never seen them before. I assume they are.

Q They look like a normal, regular order?

A I've never seen this form. The Surrogate's Courts in the city do not use this form.

Q How about Suffolk County? You've had experience in Suffolk County?

A Never with preliminary letters.

Q Well, I will make the representation they were taken off the micro-fiche.

MR. SASSOWER: May I offer it in evidence, your Honor?

THE COURT: Mr. Grayson?

MR. GRAYSON: No objection.

THE REFEREE: Received. LL in evidence.

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(Document marked Respondent's Exhibit LL  
in evidence.)

MR. SASSOWER: I draw the attention of the  
Court --

THE REFEREE: I read the document.

MR. SASSOWER: It is hard to read, sir.

THE REFEREE: I have read it.

MR. SASSOWER: May I just read the bottom,  
your Honor? It is two lines.

"The preliminary executor is restricted from  
making any sale or other disposition of any real  
property without order of the Court."

Q Mr. Abuza, with objections having been inter-  
posed as to the validity of the will and codicil, could  
I have disposed of any property, since under intestici,  
the property would go to different people than it would  
go under the will and codicil?

A Yes.

THE REFEREE: He could dispose of the  
property?

THE WITNESS: All you'd have to do in a case  
like that is if you are sitting there with a piece

of real estate that is not income producing or wasting, if you have a bona fide purchaser, you petition the Court for approval of the sale. It is done all the time.

Q Let's talk about the personal property. Let's say under the will and codicil the personal property goes to Person A --

THE REFEREE: No, wait a minute. I think at the moment we are only interested in real property.

MR. SASSOWER: We'll take the real property.

THE REFEREE: Yes.

Q Mr. Abuza, now again, I'm not restricting you to either the estate or the trust, but did I ever ask your advice about disposing of the house?

A Not that I know of.

Q Did I ever ask you your advice or at what price I should sell the house for?

A Not that I recall.

Q Did you ever tell me what price or minimum price that I should sell the house for?

A I don't recall.

Q Mr. Abuza, is it not a fact that you have told the Grievance Committee attorneys that that decision

was for me to make as executor?

A What decision?

THE REFEREE: As to what price to sell the house.

THE WITNESS: Absolutely.

Q And was it my decision to make as to whether we should pay, or whether I should pay Barnowski, again forgetting whether we are talking about the trust or the estate, was it my decision to make as to whether we should pay Barnowski?

A Yes.

Q Did I ever ask you your advice as to whether we should pay Barnowski?

A Not that I recall.

Q Did you ever give me your advice as to whether we should pay Barnowski?

A Not that I recall.

Q Well, sir, since you were so interested in getting an accounting, did it ever occur to you to call up and say, "Well, let's pay Barnowski, or let's pay him so much, and let's get the information"?

A It was your responsibility to do something.

THE REFEREE: The question is, did you do that?

THE WITNESS: No.

Q Did I ever call you up and ask you about paying the funeral home?

A I don't recall.

Q Did I ever call you up and ask you about paying certain doctors?

A I have no recollection.

Q Would you say those also were my responsibilities?

A Absolutely.

Q And was taking care of the house, whether it be mowing the lawn, taking care of the plumbing, taking care of everything, was that my responsibility also?

A Yes.

Q Did I ever call you up and tell you or ask you that since your client has such a major interest in the house that he should try to do some of the maintenance, try to do some of the caretaking work?

A I don't recall.

Q Did you tell the Grievance Committee attorneys that these were all decisions that I had to make about caring for the house, selling the house, who to pay, how much to pay?



A Yes.

Q That's what you told the Grievance Committee attorneys?

A I don't know whether they specifically asked that question.

Q What did they ask you and what did you tell them?

THE REFEREE: About paying expenses?

MR. SASSOWER: About paying expenses, taking care of property, selling property.

A I'm not sure they asked me any specific questions about that.

Q Mr. Abuza, did I not in sum and substance tell you on at least one occasion that I thought the accountant's claim was excessive?

A You may well have.

Q And did I, speaking of Edward Kelly and the children, they were the beneficial owners of 90 percent of the trust; is that correct?

A Yes.

Q Now, when I called you up and I said that the accountant wants what I consider to be an excessive sum of money, don't you think that you as a representati

of 90 percent --

THE REFEREE: Your question is pregnant with a conclusion that has not been established.

MR. SASSOWER: Then I withdraw it. He said he may have.

THE REFEREE: May have.

MR. SASSOWER: Right.

Q Well, what does may have mean? You don't recall or it sounds familiar?

A It sounds familiar, but I don't recall the exact words.

Q Forgetting about the exact words, just the thrust, did I not in sum and substance tell you that it was my opinion that the accountant was demanding an excessive sum of money, in sum and substance?

A I seem to recall.

Q And did I not in sum and substance say: "Look, Mr. Abuza, in sum and substance, you represent a 90 percent interest. What do you want me to do?" And did you not tell me that is my decision to make?

A Yes, I presume I said that. I don't recall the exact conversation.

Q Now, let's go one step further, and did I ask

you that if I paid the accountant what I considered an excessive -- by the way, did you agree that his claim was excessive also?

A I don't believe I knew what his claim was.

THE REFEREE: Did Mr. Sassower tell you?

THE WITNESS: I don't recall.

THE REFEREE: Well, did Kelly tell you?

THE WITNESS: No, your Honor.

THE REFEREE: Did you ask him?

THE WITNESS: I don't believe Kelly knew.

Q In any event, Mr. Abuza, if I had paid the accountant what I considered an excessive claim, without your approval, I would be subject to surcharge, would I not?

A Only if the Court deemed it to be unreasonable and only if one objected to it on the accounting.

Q Did I ask you, do you object to it, and you said that's my decision, right?

A That's correct.

Q And that left you the option to object to it at the final accounting?

A Yes.

Q So whether the Court thought it was reasonable

or thought it was unreasonable, it was a chance that I was taking, is that so?

A It could be deemed that, yes.

Q I mean, I had no guarantee that the Court --

THE REFEREE: That's his answer.

MR. SASSOWER: Okay.

Q Now, did we also pursue that conversation and you suggested to me, well, I could get the books and records by a Court order. Does that sound familiar?

A I may well have said that.

Q Now, did I also tell you that if I got the books and records via a Court order, to get new accounts, to start from scratch, and even if they gave me a very, very conservative charge, their charge would probably be much higher than what Barnowski wants, because these guys would have to start from scratch. Is that not correct?

MR. GRAYSON: Objection.

THE REFEREE: Overruled.

A I don't recall that.

Q Does it sound familiar?

A I don't remember.

Q Well, if I had gotten --

THE REFEREE: But that would be a practical effect, would it not?

THE WITNESS: Oh, naturally, I believe so.

Q So that if I paid Barnowski what he wanted --

THE REFEREE: Repetitious.

MR. SASSOWER: It is leading up to a question.

THE REFEREE: All right.

Q If I paid Barnowski what he wanted, or paid new accountants a greater amount, in either event, it would be up to the Court to determine whether I should be surcharged or not?

A Only if objections were filed, and you refused at that time to give your consent representing 90 percent?

THE REFEREE: With infants involved, whether you objected or not would be subject to surcharge, isn't that so?

THE WITNESS: Well, it could mean that a guardian ad litem might object for the infants.

THE REFEREE: The Court on its own motion with infants involved can impose a surcharge?

THE WITNESS: A Court normally --

THE REFEREE: We're not talking about normally.

THE WITNESS: There is that possibility on its own, yes.

Q So, Mr. Abuza, I was really between, as they say, between a fire and a frying pan.

THE REFEREE: This is argumentative.

Q Mr. Abuza, continuing on Defendant's II for identification -- by the way, was this the first conference you had with Ed Kelly, as appears by the memorandum in the file?

A It would seem so. When you say me, you mean my firm?

Q You or Schacter.

"The first step will be to submit the order to compel an accounting in the inter vivos trust proceedings in Supreme Court, New York County."

And that is actually what you did?

A We did institute a proceeding, ys.

Q That was the first thing you did, without making a demand, without making a request, without doing anything, that was the first order of business, according to this memo, and that was in fact what you did; isn't that true?

A Yes.

MR. SASSOWER: Your Honor, we will leave it for identification for the moment.

Q Mr. Abuza, when was the first time that you examined the file in Surrogate's Court, Suffolk County, approximately?

A I don't recall.

Q I show you something taken off the microfiche. It is an exhibit to my preliminary petition for temporary letters testamentary, and ask you when for the first time did you ever see this document?

(Handed to the witness.)

A I don't think I've ever seen it.

Q Did you at any time examine the file in Surrogate's Court, Suffolk County?

A I had no reason.

THE REFEREE: You didn't?

THE WITNESS: No, not the probate file.

Are we talking now about the probate file?

Q Well, in order to prepare your papers to approve a compromise, to offer the will and codicil in evidence, didn't you at least, whether you or some member of your firm, look at the file and see what it contains?

A I didn't need to , no.

Q Mr. Abuza, when for the first time, if ever, did you learn that the so-called \$70,000 bond, as listed in the trust accounting, where the \$70,000 in certificates on deposit, payable by Chemical Bank?

A I'm not sure, possibly at the examination, the examination before trial of you, in Surrogate's Court.

Q In 1976?

A That's correct.

MR. SASSOWER: May I offer, your Honor, for identification, these two documents? They will later be introduced into evidence.

THE REFEREE: Well, if you are going to introduce them in evidence, put them directly in.

MR. SASSOWER: I offer them in evidence.

MR. GRAYSON: Whose file did this come from?

MR. SASSOWER: That is my file. The other one came from the Surrogate's file, \$70,000, as inventoried by the State Tax Commission.

MR. GRAYSON: Is this dated?

Q Mr. Abuza, when a person dies in New York State and you have to open up a safe deposit box, must



the representative of the State Tax Commission be present

A Yes.

THE REFEREE: We've gone through that.

Q Is this the form they use? It's called a TTS. Is this the form they use in order to write out the inventory?

A It's the back side of the form.

Q Used by the State Tax Commission?

A Yes.

Q And they fill out what is in the safe deposit box?

A Yes.

MR. SASSOWER: May I offer these two documents?

MR. GRAYSON: No objection.

MR. SASSOWER: One as an exhibit and one was with an "a" attached to it, or A-1.

THE REFEREE: Well- I think for the record we have to identify this inventory. It was stipulated and agreed that this is the inventory filed by the State Tax Commission in the Surrogate's file in Suffolk County in connection with the Kelly matter. That's your position?

MR. SASSOWER: Correct.

THE REFEREE: Do you agree?

MR. GRAYSON: If that's what he says, I will go along.

THE REFEREE: And you say this came out of the file?

MR. SASSOWER: Except with one minor correction. It was filed by me. It was given to me by the State Tax Commission and I filed it.

THE REFEREE: All right. That will be MM.

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(Document marked as Respondent's Exhibit MM in evidence.)

THE REFEREE: For your guidance, Mr. Grayson, Exhibit NN, a letter, indicates that the safe deposit box will be opened up on June 1, '72.

MR. GRAYSON: All right.

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(Document marked Respondent's Exhibit NN in evidence.)

MR. SASSOWER: May I have Exhibit 4, your Honor.

THE REFEREE: Yes.

Q You gave the attorneys for the Grievance Committee your objections to the accountings that were served or filed by me; is that correct?

A Yes.

Q Let's talk about what we call Accounting No. 1, which is Exhibit No. 4. The first objection you have is:

"State the value of the assets placed in trust at the time the trust was created."

Obviously on Exhibit 4, if I did not have the information, I could not so indicate; is that correct?

THE REFEREE: Isn't this repetitious?

MR. SASSOWER: Well, I want to go through, your Honor --

THE COURT: We did go through it.

MR. SASSOWER: Mr. Abuza, will you excuse us for a moment? I think we may waste or save a lot of time, which may be clarified in a few-minute discussion.

THE REFEREE: All right.

(The witness leaves the hearing room.)

MR. SASSOWER: Now, I want to examine on what I consider an extremely important issue. I want to examine and think out loud what seems to me is or may be an extremely important issue.

At this juncture, this Court has received

into evidence, either by documents or by pleadings, the opinion, what I like to call the extra-judicial opinion of Mr. Justice Ash, and the Appellate Division. Whether I will be able to cross-examine his Honor, Judge Ash, or the Appellate Division, I don't know at this point. Assuming for the moment that I cannot, for whatever reason, then the next step that I can follow to destroy that opinion is to ask the opinion of Mr. Abuza to find out what the objections of the accountants were.

Now, if I am foreclosed from asking Mr. Abuza --

THE REFEREE: The only reason I stopped you, I thought that we had gone through that. I could be wrong. I think we went over this, but I thought you may have something additional.

MR. SASSOWER: I want to go through it. Let me explain to your Honor what I want to do. You are absolutely correct, your Honor. In a very cursory manner I have hit one or two items.

What I want to do with Mr. Abuza is go through every allegation that he contends was incorrect, incomplete, improper, in any respect in every one of my accountings, and let us see.

THE REFEREE: Well, actually, I thought that we did that. Do you agree?

MR. GRAYSON: I thought that we went over that also.

THE REFEREE: Yes.

MR. SASSOWER: But not completely, not completely. Let me say this, your Honor: I think it is such an important point --

THE REFEREE: Yes, it is important.

MR. SASSOWER: That even if I go over it or some of it a second time, I don't think I will be wasting too much time. At least I will try to be brief. If Mr. Abuza will cooperate in his answers, I think we can go through the four accountings, of which you have given me specifications in a rather short time. At least, I will try to make it short.

THE REFEREE: Well, that being so, and I certainly do not want to curtail you in the least, only to avoid an unnecessary repetition, I certainly will accept your judgment on that, because that is an important issue.

Having said that, however, and I note we only have about seven minutes to go, I wonder if we

should stop or you want to go on to something else for seven minutes?

MR. SASSOWER: No, we can stop.

THE COURT: You are not going to do this in seven minutes?

MR. SASSOWER: May I make a suggestion and ask Mr. Abuza, this is the next line of questions that I am going to ask, and try to keep his answers brief, concise and to the point so we can go through the four accountings in a very short time, and I am going to ask him about the other accountings also. Let me find out what is wrong with these accountings.

THE REFEREE: Now, do you want these exhibits again?

MR. SASSOWER: The new ones I think we would like.

MR. GRAYSON: We're not going to have -- how about if we take all of them back.

MR. SASSOWER: Just take the new ones. They get lost.

MR. GRAYSON: They don't get lost in our office.

THE REFEREE: All right.

MR. SASSOWER: They don't?

THE REFEREE: All right, ten o'clock Friday.

(Whereupon, the hearing was adjourned to  
October 9, 1981 at ten o'clock A.M.)

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