

SUPREME COURT OF THE STATE OF NEW YORK

FIRST JUDICIAL DEPARTMENT

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In the Matter of GEORGE SASSOWER,
an Attorney and Counselor-at-law

Grievance Committe for
Ninth Judicial District,

Petitioner,

-against-

GEORGE SASSOWER,

Respondent.

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November 4th, 1981

60 Centre Street,
New York, N.Y.

BEFORE: HON. ALOYSIUS J. MELIA,

Referee.

(Appearances as heretofore noted.)

Albert Cohen, CSR,
Official Court Reporter.

THE REFEREE: Proceed.

MR. GRAYSON: The Grievance Committee in an effort to complete the direct testimony of its various witnesses contacted certain other parties who might have knowledge about the facts underlying this disciplinary proceeding.

I spoke with the decedent's wife Helen Kelly, K-e-l-l-y, who is a resident of Suffolk County. She advised me that she would not come in and testify today because she has no ride into New York City, but she said that her testimony would not be worthwhile. When I asked her what she meant by this latter phrase, she said that her testimony against the respondent would not enable her to obtain any distribution under the will. She also told me that she has not seen or spoken to the respondent in approximately ten years.

I also made an attempt to contact the accountant, Mr. Albert Baranosky, B-a-r-a-n-o-s-k-y. I spoke with his wife on November 2nd and was informed that he passed away in July of 1981. When I asked his wife what happened to the papers he was holding in the estate of Eugene Paul Kelly, she told me that her husband had given those documents

to Mr. Sassower a long time ago.

I also made an attempt and did contact Mr. Vincent Berger, Jr., attorney for the Suffolk County Public Administrator. From the inception of this case Mr. Berger told me that he would prepare an affidavit concerning his involvement in this matter.

THE REFEREE: As I understand it, it was agreed between you and Mr. Sassower that Mr. Sassower would consent to an affidavit?

MR. SASSOWER: After I saw it, yes.

MR. GRAYSON: Yes. So beginning sometime in August, 1981, I expect^{ed} to receive an affidavit from Mr. Berger. Between August and November 2nd, I did speak with Mr. Berger on several occasions and he advised me that he would be sending an affidavit -- strike that.

Make that between August and October 30th.

At about 4:30 on the afternoon of October 30th, I spoke with the other assistant counsel of the Grievance Committee, Mr. Timothy Brennan, B-r-e-n-n-a-n. Mr. Brennan told me the substance of a conversation he had with Mr. Berger earlier on October 30th. And in that conversation Mr. Berger said that he had previously told me that he would not submit an

affidavit to the Committee.

When I was in my office on Saturday, October 31st, I prepared and sent a two-page letter to Mr. Berger advising him that he had never told me he would not send an affidavit, and pointing out to him that the Committee desired his testimony to be heard today, Wednesday, November 4th.

This latter point was also made to Mr. Berger by Mr. Brennan during a 'phone conversation of October 30th.

On Monday, November 2nd, I spoke with Mr. Berger, who again reiterated to me that he would not prepare an affidavit, and when I spoke to him about testifying on Wednesday, November 4th, he told me that he was going to be in a trial that would run the rest of this week.

THE REFEREE: That he was going to start the trial on Wednesday.

MR. GRAYSON: That he was going to start the trial on Wednesday. He also told me that he deemed his trial, a negligence case, more important to him than this Appellate Division proceeding and that even if he was served with an Appellate Division subpoena

to testify today, he would not come and testify.

Let me correct something that I misstated a minute or so ago.

On Friday, October 30th, Mr. Brennan advised Mr. Berger that the latter's testimony would be taken on Thursday, November 5th. Mr. Berger told Mr. Brennan that he had a trial beginning November 4th. So my letter to Mr. Berger on Saturday, October 31st, acknowledged that he was beginning a trial on Wednesday and pointed out that rather than break his trial in half, his testimony today would only delay his trial by one day.

On Monday, November 2nd, I prepared an Appellate Division subpoena and had it signed in the Appellate Division, First Department, and sent to the Committee's process server.

This morning I spoke with the process server, who said that he went to Mr. Berger's office in Suffolk County yesterday, Election Day, and saw one of Mr. Berger's automobiles in the parking lot of his office. The process server related to me that the hood of the automobile was warm which led him to believe that Mr. Berger was in the office. However, when the process server went into the office

the secretary said she did not know where Mr. Berger was and did not know if he would positively be in the office on Tuesday.

I've directed the process server to return the subpoena to the Committee along with his affidavit of diligence.

Again, on Monday, November 2nd, when I spoke with Mr. Berger, I told him if he wanted to I could serve him with a subpoena and at the end of the conversation, after he made it clear that he would ^{not} come in regardless, I advised him that I would attempt to have him served with a subpoena to compel his testimony today.

Mr. Berger did advise me on Monday that he would be more amenable to testifying in this matter in December.

The Committee plans to obtain another Appellate Division subpoena and have Mr. Berger served to compel his testimony when we next return in December.

THE REFEREE: That will be December 2nd at 10:00 o'clock.

MR. GRAYSON: Concerning another witness, Mr.

Edward Kelly, the son-in-law of the decedent, I spoke with Mr. Kelly's wife on Friday, October 30th, and explained to her that I would like him to come in and testify. During our first conversation she said that she thought he couldn't come in because he would lose a day of work and that previously, a week or so earlier, he was on jury duty and was not paid by his company for the time he spent on jury duty. After she checked with her husband and I spoke with her a second time on Friday and she told me positively that he could not come in because he would lose a day's pay.

In an effort to learn if the law firm of Siben & Siben had any connection with the charges in this petition, I spoke with Mrs. Hucke's attorney from Siben & Siben, Mr. Wolinsky, W-o-l-i-n-s-k-y.

Mr. Wolinsky advised me that his firm was retained only to handle Mrs. Hucke's \$10,000.00 claim against the estate, and the firm had no other connection with the will or with any of the trusts.

Your Honor, that concludes my statement as to other potential witnesses.

THE REFEREE: With respect to Mr. Kelly, what

would be your offer of proof on Mr. Kelly?

MR. GRAYSON: Charge 7 concerns respondent's failure to appear at the EBT that he had arranged for Mr. Kelly. The respondent admits not appearing but the charge also is that he did not inform the Court, Mr. Kelly or Mr. Kelly's attorney that he would not so appear.

MR. SASSOWER: Well, respondent admits that he did not inform Kelly, Mr. Kelly, but asserts that he informed Kelly's attorney.

In fact, Kelly's attorney, Mr. Abuza, said it could well have been that I informed him.

THE REFEREE: Is that all you wanted Mr. Kelly for?

MR. GRAYSON: I would also have asked Mr. Kelly about the condition of the house and the possessions in the house, since Mr. Kelly apparently was the beneficiary who removed the possessions from the house after being given permission to do so by the respondent.

Is that correct?

MR. SASSOWER: Correct.

THE REFEREE: Are you saying that's not in

dispute, Mr. Grayson, that Mr. Kelly did remove items?

MR. GRAYSON: Well, he did remove items and he could also testify to the condition of the house.

THE REFEREE: Is there any dispute that the house was vandalized and burglarized?

MR. GRAYSON: No, there isn't, your Honor.

MR. SASSOWER: It wasn't really vandalized. It was burglarized to the extent of two -- one refrigerator and two window airconditioners, plus a little mess that comes about when you do that type of -- I mean, it wasn't vandalized as such.

THE REFEREE: Is there any dispute about that, Mr. Grayson?

MR. GRAYSON: No, there isn't, your Honor.

THE REFEREE: Is that the extent of Mr. Kelly?

MR. GRAYSON: That would have been the extent of Mr. Kelly.

THE REFEREE: What's your offer of proof with respect to Mr. Berger?

MR. GRAYSON: Mr. Berger had virtually all of the contacts with Mr. Sassower in his representation

of the Public Administrator's office. I believe Mr. Sassower told me that he met Mr. Mastoianni, the Public Administrator, on only one occasion.

MR. SASSOWER: That's my recollection. Once to say hello to him, that's about all.

MR. GRAYSON: And the letters that are in the court file from Mr. Berger -- to respondent requesting he turn over books and documents, are letters from Mr. Berger and not from Mr. Mastroianni.

MR. SASSOWER: I concede those letters.

THE REFEREE: That's not in dispute, is it, Mr. Grayson?

MR. GRAYSON: Mr. Sassower stipulated that as of the last letter he had not so turned over books, documents and records. I believe the last letter was December, 1978.

MR. SASSOWER: That I did not turn over "all" -- the all is in quotes. But since that time I have.

MR. GRAYSON: Mr. Berger could testify to any 'phone requests he made to the respondent to turn over documents. He could testify --

MR. SASSOWER: If there were any such.

MR. GRAYSON: He could testify to what occurred with the respondent on June 15, 1977. The transcript that I believe is in evidence of that date in the Surrogate's Court, or was it the week later, in which Judge Signorelli gives one version of what he was told by Mr. Berger, appears to be to some extent at variance with Mr. Berger's letter to the respondent dated June 17, 1977. So Mr. Berger could be the one to clear up that discrepancy.

THE REFEREE: What was the discrepancy?

MR. GRAYSON: You were there.

MR. SASSOWER: I'm talking about what I heard.

Judge Signorelli testified in sum and substance that I turned over certain documents to Mr. Berger and then left the courthouse, rushed out of the courthouse.

THE REFEREE: That's what he was told by Mr. Berger?

MR. SASSOWER: By Mr. Berger. That is not what the letter of Mr. Berger which was dated two days after this particular incident states.

THE REFEREE: Mr. Grayson, have you had any conversation with Mr. Berger that would shed light on that problem?

MR. GRAYSON: I did not ask him that specific question. Initially, I thought that question would be handled in his affidavit, but I did not realize he would not send an affidavit until October 30th. In fact, in Mr. Mastroianni's affidavit which is notarized October 6th, 1981, paragraph 43, he wrote, "I am informed that my attorney Vincent G. Berger, Jr. is also submitting an affidavit which will more specifically deal with the legal aspects of the events relating to the estate."

So since October 30th I have not discussed with Mr. Berger the specifics of that discrepancy.

THE REFEREE: I'm wondering as a practical matter -- well, is there anything else from Mr. Berger that you are interested in?

MR. GRAYSON: The estate was charged interest by the IRS and by New York State, and I would like to elicit from Mr. Berger if this interest charge was traceable to the respondent's failure to turn over the books, documents and records when he was ordered to.

MR. SASSOWER: We already stipulated that. You asked Mr. Berger if there were any documents that I could have turned over which would have helped

him with the tax proceeding and he said "No".

MR. GRAYSON: I asked him about books or records that he could have turned over that would have refuted the tax.

MR. SASSOWER: Right.

MR. GRAYSON: I'm questioning the interest on that tax. I believe there's about \$4,000.00 interest.

MR. SASSOWER: If there was any interest paid, the interest income received by the estate because of the bank accounts more than offset what the government charges interest. By delaying payment at that time to the Federal government you get more interest from the bank than you actually pay.

THE REFEREE: What rate of interest did the government charge?

MR. SASSOWER: I believe I was told six per cent.

THE REFEREE: And what rate of interest did you receive on the estate account?

MR. SASSOWER: I don't know what interest the Public Administrator received. The Public Administrator could testify as to that. I know when I had it you would account approximately eight per cent interest.

THE REFEREE: Anything else from Mr. Berger?

MR. GRAYSON: I wish to ask Mr. Berger about his being made a party to any actions brought by the respondent.

MR. SASSOWER: I so concede. And we were unable to serve Mr. Berger; and a sheriff was unable to serve Mr. Berger.

MR. GRAYSON: And what was the result of those actions?

MR. SASSOWER: Never proceeded against Mr. Berger.

MR. GRAYSON: I was advised by the Public Administrator that he was informed by his attorney that they were unable to obtain bank records from you --

MR. SASSOWER: Let the Public Administrator testify to this. The Public Administrator will be here.

MR. GRAYSON: If he can't though, your Honor, Mr. Berger would be the one to testify.

THE REFEREE: As to what?

MR. GRAYSON: As to the inability to obtain bank records from the respondent.

MR. SASSOWER: The file will indicate that they

have subpoenas out, they got all the records from all the banks.

THE REFEREE: What about that, Mr. Grayson?

MR. SASSOWER: By the way, I don't admit that they didn't get those records from me. They certainly did get those records from me. Not only did they get the records from me but I have the sworn testimony of Mr. Wruck, who is now the attorney for the Public Administrator, that he went through the books and records and found them in order, all financial books and records.

THE REFEREE: Is this sworn testimony going into evidence?

MR. SASSOWER: Sworn testimony.

THE REFEREE: Is it going into evidence here?

MR. SASSOWER: I'll put it in evidence as part of my case.

You want the pages?

MR. GRAYSON: Yes.

MR. SASSOWER: Page 69, page 52, page 50 and 51, page 102.

THE REFEREE: You are familiar with that testimony, Mr. Grayson?

MR. GRAYSON: To a certain extent. I haven't

read it in the last week or so. But that is at variance from what I was told by Mr. Mastoianni. And Mr. Mastroianni was the one charged with the responsibility for obtaining this information so that he could prepare an accounting of the estate.

THE REFEREE: But Mr. Wruck's counsel --

MR. GRAYSON: Mr. Wruck was the guardian ad litem for the children.

MR. SASSOWER: Now, he is the attorney for the Public Administrator is my understanding.

By the way, this was all said in the presence of Mr. Berger and I believe in front of Mr. Mastroianni also. Although he is not listed there I think was present on January 25, 1978.

THE REFEREE: You can ask Mr. Mastroianni about that this afternoon?

MR. GRAYSON: Yes, I will, your Honor.

THE REFEREE: Anything else? It would seem, in any event, that if Mr. Wruck, the guardian ad litem for the infant, was aware of this information and indicated that it was had, that as a practical matter this was available to the other parties as well.

MR. GRAYSON: Mr. Berger can also testify to an arrangement that the respondent alleges he made around June 22nd --

MR. SASSOWER: 21st.

MR. GRAYSON: 21st. To meet with Mr. Berger and give him the remaining information.

MR. SASSOWER: I have Mr. Berger's sworn testimony to that effect, your Honor.

THE REFEREE: To what effect?

MR. SASSOWER: That I called his office on June 21st to come -- in fact, the letter of June 17th stated that his office was available for me to come over to photostat the records.

I called him on June 21st in order to come over so that he could photostat all the records and I have his sworn testimony to that effect.

THE REFEREE: Did he do it?

MR. SASSOWER: He never called me back. Instead, he went to court the next day and that was when the contempt was issued against me.

MR. GRAYSON: Where is the sworn testimony to that effect?

THE REFEREE: Are you putting that sworn testimony in evidence?

MR. SASSOWER: I will put part of it.

THE REFEREE: I'm talking about the part we are talking about?

MR. SASSOWER: Yes, your Honor.

THE REFEREE: You have it there?

MR. SASSOWER: Yes, I do, your Honor.

THE REFEREE: Anything else, Mr. Grayson?

MR. GRAYSON: What date?

MR. SASSOWER: June 27th, 1977.

MR. GRAYSON: Page?

MR. SASSOWER: Page 106 on.

MR. GRAYSON: I believe that is the essence of the questions I would ask Mr. Berger.

THE REFEREE: Now, this is our fifteenth session. Based on your offer of proof as to Mr. Kelly it would seem that his testimony is of little or no importance to the context of this entire case.

As to Mr. Berger, first of all, it's not an edifying stance that he takes as a member of the Bar.

Secondly, as former, if not present, counsel to the Public Administrator to have told the Grievance Committee that he would ignore an Appellate

Division subpoena and in addition to the present state of the record and the other offer of proof with respect to Mr. Berger, I think most of it is either supplied by documents now in evidence or is refuted by a written record under oath by parties, including Mr. Berger, or other parties on his side of the fence so to speak.

So, accordingly, it's my suggestion to you, Mr. Grayson, and I think it probably is unnecessary to adjourn this matter further for Mr. Berger's presence, particularly in view of Mr. Sassower's representation as to the sworn record that he is going to put into evidence.

Now, having said that, Mr. Grayson, what is your view?

MR. GRAYSON: Can we go off-the-record for a minute?

THE REFEREE: Yes. Go ahead.

(Discussion off the record.)

MR. GRAYSON: Your Honor, in view of our discussion concerning Mr. Berger's testimony, I will attempt to speak with him on the 'phone today because his office was instructed to have him call