

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

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In the Matter of

GEORGE SASSOWER, an attorney and counselor
at Law

Respondent.

GRIEVANCE COMMITTEE for the NINTH JUDICIAL
DISTRICT,

Petitioner

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Special Referee Unit
60 Centre Street
New York, N.Y.

December 4, 1981

B e f o r e:

HON. ALOYSIUS J. MELIA, Special Referee.

A p p e a r a n c e s:

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MILLCENT ANGIULLI
SENIOR COURT REPORTER

December 3, 1981

THE REFEREE: Let us proceed.

Mr. Sassower is continued on cross examination.

MR. GRAYSON: I am ready to proceed.

MR. SASSOWER: Your Honor, before we continue cross examination, I would like to offer into evidence my brief to the Court of Appeals with respect to Charge Ten to show that I had a good and meritorious cause of action, and that I urged --

MR. GRAYSON: Your Honor, unless Mr. Sassower also offers the brief of the party on other side, I would object to that as self serving.

MR. SASSOWER: I don't have the brief of the other side.

THE REFEREE: I will take it.

MR. SASSOWER: I have no objection if you can get copies of the brief of the other side, even over the weekend or the early part of next week or if I find them I certainly will forward them to you and we can introduce them.

THE REFEREE: That is defendant's exhibit CP in evidence .

G E O R G E S A S S O W E R, having

been previously sworn, resumed:

CROSS EXAMINATION (cont'g)

BY MR. GRAYSON:

Q On March 27, 1975, you were required to file your accounting in the State proceedings within 30 days after service. Is that correct?

A Correct, sir.

Q You admitted you were served with notice of entry on March 28, 1975, correct?

A Approximately.

Q So that --

A I don't deny it. I don't recall when I was served, but if it's asserted I was served on that day, I don't deny it.

Q So that would have been, let's say, April 30th?

A You have three days for mailing. I would say the beginning of May would be a more appropriate date.

Q All right, the beginning of May. In fact, you didn't file your accounting by the middle of May, did you?

A No, sir. I was on trial before Mr. Justice Tyler for almost the entire month of May.

Q And in fact, on May 1st your secretary sent a letter to the Surrogate requesting a ten day extension. Is that correct?

A Correct, sir.

MR. GRAYSON: That is exhibit 29.

THE COURT: What charge is this?

MR. GRAYSON: This is charge three.

Q Within ten days of this May 1st request you had not filed the accounting?

A I was still on trial before Judge Tyler.

Q But you had not filed the accounting?

A Correct.

Q And on May 14th your secretary sent another letter to the Surrogate requesting in essence an open-ended extension, didn't you?

A Pretty much so.

Q That is exhibit thirty.

A Because I was still on trial.

Q When did that trial end?

A YOU asked me that question. It ended, I think, a few days or a week before Decoration Day. The only way I can get the exact date is through the micro --

THE REFEREE: That was a few days before
May 30th?

THE WITNESS: Yes.

Q The end of, by?

A Right.

Q And within a few weeks of the termination of that trial you had not filed the accounting?

A Correct, sir.

Q Then your next contact with the Surrogates Court was not until October 18th, which is exhibit 31, and on that day you requested an adjournment of the motion to have you held in contempt for failing to file. Isn't that correct?

A If you would add the word written, it's correct. There was some contact with Surrogates Court in the interim.

Q What type of contact?

A The accounting clerk -- I have the June 6th transcript. I met the accounting clerk. June 6, 1976.

Q I have a July 6th.

A LeVanda. I met Mr. LeVanda at a Brooklyn College Reunion and we discussed the matter and he in sum and substance said well, as far as Judge Hildreth is concerned, as long as you are working on a matter, you are not sleeping on it, everything is okay.

THE REREREE: This is June '70?

THE WITNESS: No, I met him in June of '75, June or September of '75 at a Brooklyn College Reunion.

He said as long as you are working on the case and you are trying to wrap it up, don't worry about Judge Hildreth, and I had experience with Judge Hildreth, all he wants you to do is work on the matter and not sleep on the matter. So the answer to your question is yes, if you use the word written.

Q Did you inform Mr. Abuza that you were working on this matter in the summer of '75?

A Mr. Schacter. I had no contact with Mr. Abuza or very minimal contact with Mr. Abuza by phone, except for the lost checks and starting in '76. All my contacts were with Mr. Schacter over the phone. That is not to say I did not speak to Mr. Abuza once or twice; I did, but basically my entire relationship by phone was with Mr. Schacter.

Q Now, the Court did not receive anything in writing from you between May and October of '75, correct?

A Whatever the date is that we --

Q May and October.

A If that is the date, then I accept those dates.

Q So the Court had no idea that you were allegedly working on the estate when the Court received Kelly's petition to have you held in contempt for failing to file the accounting. Isn't that correct?

A I spoke to Mr. LeVanda. In fact, I spoke to him about two or three times over the phone.

Q But there was nothing in the Court's file that would in essence --

A These letters that were written to the Court asking for an adjournment, these are not in the Court's file either. Those are not documents -- when you ask a Judge for a two-week extension or three-week extension, that is not something that the Court puts in the file. Those exhibits where Kelly asked for an extension of time never found themselves into the Court's file.

Q They would go into a correspondence file.

A They are not in the correspondence file. You don't see them in the correspondence file in the Surrogates Court.

Q The Surrogates Court correspondence file contains those letters.

A No, it does not, at least not the correspondence file that you turned over to me. These letters are not put on the docket sheet. They are not put in the file. They are not even put into the correspondence file. These were letters that were sent by me and were sent by Edward Kelly. In fact, while you are looking, one of the exhibits by Edward Kelly says himself I cannot file my accounting until I clear up some of these

objections, and that we are working on it.

Q You are right, they are not in the correspondence file.

A By the way, I must say this, Your Honor, there may have been other correspondence, but to ask me in 1980 or 1981 for correspondence that I sent out or my office might have sent out in 1975 -- there may have been other correspondence, but you are asking me in 1981 about something in 1975, and while I try to keep a decent record and I try to keep my papers in order, you know there are times that papers are lost.

THE COURT: Next question. Don't go astray.

Q You don't have any recollection of any additional letters other than the exhibits you pulled out of your file?

A I have recollection of other correspondence. Can I put my hands on that correspondence, no, sir.

Q Your contact with LeVanda, who is the accounting clerk, was not contact with the Surrogates Court, was it?

A Yes, it was. He is the accounting clerk. He took care of this.

Q But as for the legal issues concerning the petition to have you held in contempt, LeVanda was not the

Clerk to the Judge.

A It was either Woodward or Simon or Cipilano.

Q No, the accounting clerk was not the clerk who would review the petition to have you held in contempt.

A I don't know who would review that, but it was in the accounting department, and the head of the accounting department was Mr. LeVanda, and I don't remember meeting him at a Brooklyn College Reunion. That was my first contact with him.

Q You claim that the Surrogate ignored your affidavits of January 20th and 24th of 1976, which are exhibits CC and EE, correct?

A This is what the Surrogate said, and they are not in the file. Those affidavits I pulled out of Mr. Abuza's file.

Q You claim he ignored them and he admits he didn't pay any attention to them?

A Right.

Q You recall the return date of that motion?

A The return date of that motion, if I recall, was approximately January 12, 1976. When I received Sam Schacter's affidavit of January 9, 1976, I immediately wrote a letter. I was on trial before Mr. Justice Gumet in this Courthouse on a case of Ifcher. I immediately wrote a letter to Surrogates Court asking them for ten days or two weeks to put in my affidavit with that motion because Mr. Schacter told me that now that he

had received my accounting the motion was going to be withdrawn. When his affidavit of January 9, 1976 came in and he wanted costs, and that is the only thing he wanted, costs, then I wanted a time to put in an affidavit, and I wrote to Surrogates Court and asked them for ten days or two weeks to put in such affidavit, which I did. By the way, that letter also is not in the Surrogates Court correspondence file because apparently they don't keep those letters.

THE REFEREE: But you found that letter in Abuza's file?

THE WITNESS: I found that letter in Abuza's file, because what I did was all the papers that I had on the Kelly matter I shipped them out to the public administrator's office.

Q Now, this motion was originally on in October, correct?

THE REFEREE: October '75?

MR. GRAYSON: Yes.

A If you say so. It's approximately then.

Q Then it was adjourned at your request to November 0--

A No, it was adjourned at Ed Kelly's request. You see, we had, throughout the summer and fall, until December, we had

negotiations going on. It was with, I won't say with his blessing, but with his knowledge and consent, and all of a sudden in the middle of negotiations Abuza comes in with this order to show cause, in the middle of negotiations, and it was Ed Kelly himself who said we won't file an accounting until we finish off some of these objections.

MR. GRAYSON: Your Honor, could I see exhibits 31 through 33?

THE REFEREE: Yes.

Q The adjournment request was made by you and Kelly jointly?

A Absolutely.

Q That was adjourned to November and then to December, then was marked submitted on January 12th?

A Without my knowledge until I got Sam Schacter's affidavit. I thought the motion was going to be withdrawn. He told me it was going to be withdrawn.

Q Unfortunately Mr. Schacter is not with us.

A That is unfortunate because if I may make a statement, I am being prejudiced because of the delay in bringing this proceeding. If the Grievance Committee, if I had known that this was going to be the subject to a charge, if I had known that the Grievance Committee didn't have or didn't interview

Schacter, never got a statement from Schacter, I certainly would have. The first time that I knew that this was going to be the subject of a charge was in October of this year when you amended your petition.

Q October of last year.

A Of this year, because your original petition charged me with violating paragraph 35. When you amended it to charge me with violating paragraph 33, only a month and a half ago, that was the first knowledge that I had that I was being charged with this.

Q It was one accounting. You were charged with neglecting to file timely. It is the same accounting in March of 1975 as it is in March of 1976.

A Sir, I looked at your pleadings. Let's say even --

THE REFEREE: Hold it, this is argumentative.

Next question.

Q Let's move a few more months into the future and get to the order of April 28, 1977. Now, that order --

A Direction.

Q That order directed you to turn over papers, correct?

A It was not an order, it was a direction. An order is a result of a motion --

THE REFEREE: This is repetitious.

Q You appealed that on April 30, 1977, isn't that correct?

A I filed a notice of appeal.

Q Two days after it was served on you you filed a notice of appeal?

A Correct, sir.

Q And five days later a letter was sent out to you by Mr. Berger, which is exhibit 60. Isn't that correct?

A If you say so.

Q Now, that letter in essence asked you to turn over the documents, and that letter followed the language of the order?

A Let me look at exhibit 60 -- All right, if you say so, I will accept it. I would just assume that I received the letter.

Q Now, this order directed you to turn over documents by May 5th, didn't it?

A If you use the word directs, I will say so; no, no. It was a direction.

Q By May 5th you had not turned them over, had you?

A No, sir.

Q And on that date Mr. Berger wrote you a letter asking you to do so, didn't he?

A Apparently. There is a letter marked as an exhibit here

THE REFEREE: That is argumentative.

A By the way, because it's marked as an exhibit doesn't mean I received it. Do I remember receiving it, no. I assume I received it. If he makes the assumption that he said he mailed out the letter, I just assume that I received it.

Q Then on June 15, 1977, you appeared in the Surrogates Court and you admitted to the Surrogate you had not yet turned over the documents. Isn't that correct?

A I would accept that as a general statement.

Q And the result is that you and Berger went to the Public Administrator's Office and you turned over some documents to be copied by a secretary in that office. Is that correct?

A I turned over all documents.

Q Now, you had two suitcases there, didn't you?

A Two brief cases.

Q And you heard Berger testify that one of the brief cases contained what appeared to him to be bank records?

A No, one brief case --

THE REFEREE: No, what Berger said.

THE WITNESS: I understand that.

A It had, among other things, checks, some bank books, accountings, appraiser's report. It was not one brief case filled with checks. Most of the important, what I consider the important documents were in one brief case.

Q But you heard Berger testify that he saw in one brief case what appeared to be bank records, didn't you?

A Yes.

Q And didn't you hear him testify that when he asked you for them you said later?

A No, I did not.

THE REFEREE: You heard him say that, but you are saying he didn't say that?

THE WITNESS: To save time, Your Honor, I had all the records in folders --

THE REFEREE: The question is did you hear him say it?

THE WITNESS: Did I hear him say; yes.

THE REFEREE: Did you say to him later?

THE WITNESS: No.

THE REFEREE: Next question.

THE WITNESS: To save time. I had them in folders and I wanted to take one folder at a time,

photostat one folder at a time and put it back in that folder and not mix them up, so I got them in a certain order, just don't go from this folder to that folder to this folder. If that you construe as later, well, that is your construction, but I wanted it kept in order.

THE REFEREE: Let me interrupt you for a minute. Exhibit 60, letter from Mr. Berger to you, it says here, "I am also informed there is a certain outstanding bond or promisory note in a substantial amount which constitutes a receipt of the estate."

THE WITNESS: No such thing.

THE REFEREE: There wasn't any?

THE WITNESS: No.

Q Didn't you hear Berger testify that you hurriedly left the building without advising him and you took with you this brief case containing the bank records that you had previously said you would get to later?

A No, I did not.

Q Did you hear him testify to that?

A I wouldn't say that was the thrust of his testimony.

Q Well --

A I heard some testimony on that subject. That I

hurriedly left the building, yes, I stayed to the last minute so I could catch the last train to New York.

Q And you claim you gave him everything on June 15th?

A No, I did not claim that, sir.

Q What did you not give him on June 15th?

A He had and he photostated, I would say most of the important papers.

THE REFEREE: What didn't you give him?

That was the question.

A Copies of my notices of motion, copies of my correspondence, what I termed here improperly, excuse the language, the garbage, what he had copies of already. The most important papers he had photostated, and those that he had not photostated I left behind. I left behind because I wanted to catch a train and the clerk at that time said I cannot finish this by 5:00 o'clock. I left that behind. There was no reason for me to remain.

Q Could I have exhibit PP, please.

A By the way, Your Honor, may I interject, because it's in response to your question. The bonds he is talking about possibly are the trust bonds. It had nothing to do with the estate.

Q You mean the certificates of deposit?

A The certificates of deposit, so that when Your Honor asked me a question were there any bonds, there were certificates of deposits for the trust, not for the estate.

THE REFEREE: So it is possible there is some confusion as to that?

THE WITNESS: Quite possible.

Q You claim that you gave everything to Berger on that June 15th except for copies of Court papers?

A Right.

Q Which you described as garbage?

A I didn't describe it. It's described as garbage because they had copies of it. They were in the Court file.

THE REFEREE: This has been testified to extensively.

A The word garbage is an improper word.

Q And two days later on June 17th Berger sent you another letter, which is exhibit PP, didn't he?

A I know I received that on June 21st.

Q And in that letter he says in essence thanks for leaving the papers on the 15th, I will deliver copies to you on the 22nd, but what you left was helpful, but leaves much to

be desired. That is his phrase. Then he ennumerates what he doesn't have from you.

A Go ahead.

Q Now, as a result of receiving the June 17th letter you telephoned him, didn't you?

A Not as a rule. I had made an appointment with him that I would come out there. We had a short discussion when we would finish the photostating. He wanted everything. May I answer it this way? He wanted everything, as far as he was concerned he wanted a photostat of everything. If I had papers in triplicate, he would copy what was in triplicate again in triplicate.

THE REFEREE: This is repititious. You have testified to that at least twice.

THE WITNESS: Let me clear it up in 30 more seconds. I had told him if I am going to come out within the next week --

THE REFEREE: That you would stay overnight.

THE WITNESS: --I would come out the 21st in the evening.

THE REFEREE: I have heard all this before.

Q When did you have this telephone conversation with him?

A It was not a telephone conversation. It was in person on the 15th. He wrote me a letter anytime you want to come, day

or night. I said I will look at my Court calendar, but I probably will come out on the 21st, the night before. I will have somebody drive me out.

Q What was the purpose of your telephone call to him on the 21st?

A Because, as Mr. Berger said, it's my peculiar habit in that if I have a case on in Court or anything I always call up the day before to make sure the other side is going to show up. I always call.

Q He didn't testify to that. He said he would get calls from you at the last minute concerning adjournments.

A No, he said I always called up the day before being in Court. Look, I want to call up to find out if the man is sick, if he is coming or not, so I could be prepared. On adjournments I always send an affidavit of actual engagement.

Q Now, on the 21st you didn't go out to Suffolk County that evening, did you?

A I waited for his call until 11:00 o'clock at night in New York at 233 Broadway.

Q And you went out to Court then on June 22nd?

A I did not go on June 22nd. I waited for his call. Look, the only purpose that the Judge wanted to see us was to say

that all the papers had been turned over, all copies had been turned over. I was at 233 Broadway in Dudley Gaffin's office. I called up his office, ready to go out there. His secretary said he is not in. Is he expected back? Yes. I said here is a number where I am, call me when he gets back, have him call when he gets back and I will go out there. I waited until 11:00 at night. I went there, I went to New York County, somebody at 233 Broadway, Dudley Gaffin's office -- I went to the New York County Bar Association and was doing some legal research. I went back after it closed at 10:00, to 233 Broadway, because they didn't call me, nobody called me from Berger's office. I mean, I was trying to accommodate.

Q So you didn't show up on the 22nd?

A I got home about 1:00 in the morning and I did other --

THE REFEREE: The answer is he didn't.

Q You weren't in Surrogates Court on June 22nd?

A that is correct, sir.

Q Then the next letter from Berger is dated August 5th, isn't that correct, exhibit 61?

A I don't know.

MR. GRAYSON: Your Honor, could I see exhibit 61, please?

A If you say so I will accept it.

Q In fact, exhibit 61 was annexed to the communication you received from Mr. Berger, is that correct?

A The communication with Mr. Berger or received from him?

Q Received from him.

A At that time I sent a check to Mr. Mastriani of the mortgage payment and the fire insurance.

Q That was mailed in July, is that correct?

A By the way, Your Honor, he said I mailed him a letter on July 26, 1977. I don't even have a copy of that letter.

Q I can show you the letter that you mailed to him that you say you don't have. (Handing to witness)

A Yes.

MR. SASSOWER: May I offer this letter in evidence, Your Honor?

MR. GRAYSON: Yes. No objection.

MR. SASSOWER: And the checks I sent him.

THE REFEREE: Two documents will be marked as CQ in evidence.

(Defendant's exhibit CQ in evidence)

THE WITNESS: There maybe other letters that I mailed. I don't remember. By the way, I may have responded to some of these letters.

THE REFEREE: The next question, please.

Q Now, you had previously been removed as executor?

A No, sir.

THE REFEREE: Are you arguing a legal point?

MR. GRAYSON: I am trying to phrase a question.

Q Surrogates Court had you removed as an executor and they had a public administrator appointed. You were ordered to turn over the assets of the estate and two months after the order was issued here you are writing checks to pay an estate debt. Isn't that correct?

A A check is valid when it is delivered. I delivered it to Mastriani. I did not deliver it to the payee. As far as I was concerned, I was still the executor, to this day.

THE REFEREE: Hold it, this is argumentative. He is asking a question. At this point in time you issued these checks as executor?

THE WITNESS: Yes, correct, Your Honor.

Q You testified that in June you turned over virtually everything to Berger or had Berger make copies of everything. Yet you didn't turn over these checkbooks, did you?

A No. I didn't have the checkbook with me even.

Q When did you turn this checkbook over to the public administrator?

A Can't be answered.

THE REFEREE: Did you turn it over?

THE WITNESS: It can't be answered.

THE REFEREE: I don't know what you mean by that.

THE WITNESS: I will tell you what happened and I will make it brief. They took the money out of the bank and transferred the account to Mastriani's name, so I took the checks and, you know.

THE REFEREE: Next question.

THE WITNESS: May I clarify one thing, Your Honor? When I said yesterday that I never turned over the assets to them, I don't want it to seem that I still have the assets. They just took the assets themselves. They sent in the letters testamentary to the bank and said we are withdrawing the money, we are now the administrator and they took the assets. So they took everything.

THE REFEREE: The only assets were bank accounts and the house. Is that correct?

Sassower - cross

THE WITNESS: Yes.

THE REFEREE: Next question.

THE WITNESS: There was nothing to turn over. They took it.

Q Did you destroy these books once you learned that the public administrator had obtained the funds from the bank?

THE REFEREE: You mean the checkbook?

Q The actual checkbook with the unused checks?

THE REFEREE: That is not important.

That is of no consequence.

Q MR. GRAYSON: Well, the following question, I think, ties it in.

Q Could you answer the first question, please.

THE REFEREE: He didn't turn it over.

Q What did you do with the unused checks?

A I don't know if I threw them away. I probably have them in the basement some place.

Q Did you ever inform the public administrator you had stopped writing checks on the account or that you had thrown out the checks or that you had ripped them up?

A The bank account was closed.

Q Isn't it true that on July 28 of 1977 you were

Withdrawing -- you withdraw \$1000 from the estate checking account in the West Side Federal Savings?

A If you give me something to refresh my recollection I will tell you. I will tell you what I used to do.

THE REFEREE: No, let's find out what he is talking about.

Q Here is a transcript of the action in the account on July 28, 1977, \$1000 withdrawal?

A Was there a deposit in the checking account.

Q I am not interested in that. I am interested in the withdrawal which is also noted in a letter from the bank.

A Okay. Probably to cover the two checks for fire insurance and the mortgage payment. I took money out of the savings account and put it in the checking account. I used to keep a minimal balance in the checking account, kept all the money in the interest savings account.

THE REFEREE: Mr. Grayson, doesn't the checking account show a comparable deposit at or about that time?

MR. GRAYSON: As of July 30th, for the month of July it does not show a deposit for \$1000.

THE REFEREE: What about August?

THE WITNESS: Could I see that letter

again? I don't remember. I know my accounting has been gone over many times.

MR. GRAYSON: I don't have the August with me, Your Honor.

THE REFEREE: Just a minute. I take it Mr. Grayson, you are not asking that question with the idea in mind that there was anything improperly done with the money?

MR. GRAYSON: Correct.

MR. REFEREE: But rather to show that Mr. Sassower continued to act as executor.

MR. GRAYSON: Correct, and refused, failed to turn over the assets, correct.

THE WITNESS: Excuse me, this letter does not say that. This letter from the West Side Savings Bank seems to indicate that they gave \$1000 check and then stopped payment on it, because they recredited the account with the \$1000.

Q There was a withdrawal and they stopped payment on the check that evidenced the \$1000.

A That's right. I was going to put -- I am beginning to remember. I took \$1000 to put into Chase Manhattan Bank into the checking account because I wrote two checks on July 26, 1977,

then I was notified by West Side Federal, after they received the communication from Mastrianni, that I should not use that check, and if I recall right, I sent the check back to them and they said he will credit the account again with the \$1000, but Judge, one thing, there is not a penny -- I don't want anyone to get the impression that I took a penny.

THE REFEREE: That is not the issue.

There is no issue about that.

Q This West Side Federal account would be the estate account you are familiar with?

A I was familiar with. I had an account at West Side Savings Bank. I think I had two accounts there, and I had one account in the Dimes Savings Bank with estate money.

MR. GRAYSON: Your Honor, I would like to offer the letter and the transcript of the of the actions in that account when Mr. Sassower was executor into evidence.

THE REFEREE: Is there anything subsequent to that July?

MR. GRAYSON: That is the last notice on the account, September 13, 1977, the balance of \$26,943.08, and I believe sometime after that, within a few months, that account was transferred to the

public administrator.

THE REFEREE: It is not disputed.

MR. GRAYSON: What I want to know is
was respondent still acting and holding the assets?

THE REFEREE: He admits it.

THE WITNESS: I admit that. I still say
I am the executor.

THE REFEREE: We have been over this so
many times. He is not disputing that.

Q After this exchange of a letter and checks
with Mr. Berger in July of 1977, on August 5, 1977, Mr. Berger
sent you another letter, which is our exhibit 61. Is that correct
sir?

A This is August 5th. This is the one you gave me
before.

Q That is what I am saying.

A Yes, and I sent the checks and he sent me back the
check. I sent him a check made out to State Farm Insurance
Company, and the mortgage.

Q That is not the point I want to get to. The
point is it is claimed that you failed to comply with the order
because you didn't turn over the assets. Now, in response to
this letter what did you send him?

A I don't remember. All I know is if you go beyond June 23, 1977 when I was arrested and incarcerated, you are talking about a very, very delicate time emotionally, as far as I was concerned.

THE REFEREE: That adds up to the fact that you don't recall what you did in response to this letter?

THE WITNESS: I don't recall. Well, I must have received the letter.

Q You don't recall communicating with Berger and informing him of your position in this matter, do you?

A Yes, I did communicate with him during the writ of habeas corpus proceedings before Judge McNierney.

Q In person or by phone?

A In person.

Q What did you tell him?

A As far as I am concerned, this is outrageous. As far as I am concerned, I am still the executor. As far as I am concerned, when a final order is entered, and as a matter of fact, I want to say this, Your Honor, when a final decree is entered then I have a right to appeal, and I intend at the present time to appeal what was done because then I can appeal all intermediate orders. Now, whether that includes directions of the

Court, that I don't know.

THE REFEREE: Next question.

Q If you considered yourself to still be the executor, then why did you turn over anything to them?

A That is a good question.

Q I am looking for an answer.

A There is just so much you can fight a Judge. It was a decision to be made.

THE REFEREE: You decided it was the practical thing to do under all the facts and circumstances?

THE WITNESS: Right.

Q You testified yesterday you didn't know you were in this so call war until June 15th --

THE REFEREE: This is argumentative.

MR. GRAYSON: Your Honor, can I follow through, please.?

Q If you didn't know you were in the war until June 15th, why did you just say that you couldn't fight the judge enough, and we are talking about the same day?

A I said June 23rd. When I found out that I had been charged, tried, found guilty and sentenced, all in my absence, and deputy sheriff --

THE REFEREE: Please --

THE WITNESS: May i?

A (cont'g) then I knew I was in a war. I was dealing with absolute irrational people.

Q How can you say you can only fight a judge enough as of June 15th when you just said you didn't realize you were in the war until June 23?

A That is why I gave the papers over. I said, look, what I am going to do. The guy is insisting that I turn the papers over. I wanted to be served formal papers so there would be an order of the Court which I could appeal, but he was doing it by way of direction. It was not by motions. It was by way of directions, which were non-appealable. So I said let me see motion papers. When the Judge refused and did it by a direction and directed me to turn over the papers, I said all right, I will turn over the papers. It was as His Honor said, as a practical matter, so I turned over the papers.

Q As a result of the August 5th letter, exhibit 61, did you inform the Court of your position concerning your failure to turn over the documents and the assets?

A I informed the Court of my position on July 23, 1977, and I informed the Court of my position by going to the Eastern District Federal Court with papers and sued Judge Signorelli

for what he had done.

Q On February 24, 1978, Mr. Berger sent you a letter, which is exhibit 62, didn't he?

A Yes.

Q And that letter also requests you to comply with the order to turn over the documents, doesn't it?

A I wouldn't say so. I communicated with respect to that letter.

Q Doesn't the letter talk of your "past failure and refusal to turn over such records and property?"

A Mr. Berger says a lot of things and people put a lot of self serving statements in their letters.

Q Did you turn over any documents in response to that letter?

A I communicated with the Internal Revenue Service.

Q By letter?

A By phone.

Q Who did you speak to?

A I might have communicated by letter also.

Q Who did you speak to at the IRS?

A The agent in charge. They gave me a name on one of the slips of papers. They originally contacted me and they wanted an examination.

Q Who is "they"?

A The IRS.

Q They wanted to examine?

A And I referred them to Peter Berger or Mastrianni. At a later date I told them if there is any information I can give them I will, but as far as I am concerned, I turned everything over. It is completely out of my hand.

Q Did you reply to Mr. Berger in response to his letter of February 24th?

A I replied before then. That is I was still the executor.

THE REFEREE: Did you reply to this letter?

THE WITNESS: I am guessing, Your Honor. I probably did not, but I -- Mr. Berger didn't bring his files. I don't know.

THE REFEREE: Next question.

Q Now, there were previous witnesses who testified here who had faulty memories, so to speak, and comments were made about their inability to recall certain things --

THE REFEREE: This is a preamble and it is argumentative. What is the next question?

A Let's say I did not.

Q On December 6, 1978, Berger sent you another letter, which is exhibit 63, didn't he?

A This does not request me I should do anything.

Q Doesn't the last paragraph state, "due to your failure to furnish the public administrator of your books, papers and records of the estate"?

A And he admits and you admit now there was no additional liability on Internal Revenue because of any failure on my part. This is the same type of letters that I would get. There was no damage to the estate --

THE REFEREE: Please, just a moment. This is not responsive, and the two of you are greatly disappointing me this morning in the argumentative exchanges. We are not having a lawlerlike question and answer.

MR. GRAYSON: Sorry, Your Honor.

Q The question goes to your failure to turn over the records. It does not go to the IRS tax.

A I turned over the records. I want to say 14 times I will it 14 times I turned over the records.

Q In response to December 6, 1978 letter, did you communicate with Berger?

A I probably did not.

Q And you didn't send him anything additional?

THE REFEREE: If he didn't communicate with him he didn't send him anything.

A Except I sent him papers in May of 81.

THE REFEREE: That is not responsive.

Q Did you ever inform Berger that you couldn't get papers from Baronosky?

A Sure. On the transcript of June 15, 1977, there is a statement that I don't have all the papers, Baronowsky has some of the papers. It is right in the transcript. It was read into evidence.

Q After that day, in response to the several letters, that went out to you, did you again inform Berger that you were unable to get them from Baronowsky?

A I don't understand your question in the context of these proceedings.

THE REFEREE: He is saying after this last letter did you again inform Berger that you were unable to --

THE WITNESS: There was no obligation on my part anymore. I was no longer the executor they said.

Q And in May of 1981 you made out what you termed duplicates to Mastrianni, correct?

A Office copies, office copies of my legal papers.
Some old bank books.

Q And you said there were duplicates. You called them garbage duplicates.

A They were of absolutely no use to them are no use to them. They were the papers that I had. It maybe some of my letters to Berger were among those papers.

Q If those documents were as you just described them, why did you go to the effort of mailing them to the public administrator?

THE REFEREE: Why do you ask the question?

I think we are wasting time with an awful lot of this unless you take the position, Mr. Grayson, that what was mailed in May of 1981 was material that could be used to the benefit of the estate by the public administrator. Now, my impression up to this point is that is not your position, because your witnesses don't even know what they got in May of 1981. In any event, they do not take the position that this was material which if they had received before they could have used, and that they do not take the position that this was material that lack of the possession of which was detrimental to the estate. Now, if that be so, then

the import of this question really has no great relevance.

MR. GRAYSON: You are correct, Your Honor.

Q I would like to follow that up with one question. If, as you claim, you are still the executor, why did you mail these documents in May of 1981?

THE REFEREE: We have been over this.

Q How many times were you at the Kelly house after he died?

A At the house?

Q At the house or on the grounds?

A I would say a dozen, just to use a ballpark estimate.

Q Beginning in April of '72 and continuing through when?

A I think it was shortly after the signing of the contract of sale or shortly after the contract of sale; so that would bring it up to December of '76 or January of '77.

Q Were you familiar with the condition of the house from '72 to '77?

A Generally familiar with it.

Q What was the condition of the interior of the house--

THE REFEREE: What is the purpose of this

line of questioning?

MR. GRAYSON: The condition of the house deteriorated while respondent was executor because, as he admitted, he lived 80 miles away and had difficulty taking care of the property.

If he had such difficulty with the property, I want to know if he considered resigning or in fact going along with the order removing him so that the property could be properly maintained.

THE REFEREE: That is the purpose of this line of inquiry?

MR. GRAYSON: Yes.

THE REFEREE: That is excluded.

Q You testified that you really didn't have a conflict with Signorelli until you were arrested and brought to Court on June 23?

A I did not try to have any conflict with him. He had a conflict with me.

Q Now, let's review the relationship based on the orders that were issued by his Court. March 9, 1976 he ordered your removal?

A No, I don't go along with that conclusion.

Q Well, is there an order in evidence that

orders you punished for contempt and removed?

THE REFEREE: Mr. Sassower's position is that was a conditional order; that that was to be the effect unless he complied within 30 days by supplying the accounting. That is his position. The existence of this paper he concedes. He does not concede the legal effect expounded by you and others.

A May I add to that, which would necessitate serving also the alternate administratrix.

MR. GRAYSON: Can I have exhibit AQ, please.

Q Now, you appeared in the Surrogates Court on July 6, 1976, didn't you?

A Correct, sir.

Q That was approximately four months after this order allegedly removing you?

A Correct, sir.

Q And you testified that on July 6th Surrogate Signorelli yelled at you, screamed at you, berated you?

A That is correct.

Q And it does not appear in the transcript?

A Correct, sir.

Q So three months after your first, let's say your negative encounter with the Court, meaning the order of

removal, here you are, in front of this Judge being berated in front of other people?

A For not showing up in June.

THE REFEREE: The question was your position is on this occasion you were berated by the Court.

THE WITNESS: For not showing up in June.

THE REFEREE: The answer is yes?

THE WITNESS: Yes.

Q Isn't it true that eight months later in March of 1977 the Surrogate appointed Mr. Mastrianni as public administrator?

A I don't know if I can really answer that question.

THE REFEREE: Did he enter a document designating him?

THE WITNESS: Yes, he entered a document.

Q And you had knowledge of the order of March of 1976 and you had knowledge --

A No, I had no knowledge of any order of March of 1976 removing me.

Q You said you didn't receive a copy of the decision?

A Go ahead.

Q Of January of 1976?

A That order was a conditional order of removal.

THE REFEREE: That is not the question.

The question was did you have knowledge of the entry of that order, regardless of its legal effect?

A I really don't know. It was served upon me or purportedly served upon me while I was ill. Whether I looked at it at that time or read it at that time I don't know. The first time that my attention was drawn to that document was in March of '77.

Q And the next order that was entered was the order of April 28, 1977, directing you to turn over all the papers. Isn't that correct?

A It was not an order. It was a direction, and I don't think it was even entered. It was a direction made.

Q Which you appealed?

A To which I filed a notice of appeal.

Q And you filed a notice of appeal April 30, 1977?

A Correct.

Q On that same day didn't you file motion papers disqualifying Signorelli, April 30, 1977?

A Approximately then. I think it was, about then, within a day or two.

MR. GRAYSON: Your Honor, could I have 51, please.

A Yes, there were three motions, one apparently April 30. I don't recall the date of the other two motions, but they are approximately within a couple of days.

Q So the same day you filed the appeal papers for the April 28th order you drafted papers to have the Surrogate disqualified, correct?

A Apparently.

Q And on May 4th you filed papers for second motion to disqualify the Surrogate?

A Correct, sir.

Q And two days later on May 6th the third motion, correct?

A I don't remember if it was May 6th, but approximately in the same period. They were all made returnable May 17th.

Q Sir, isn't it true there was a long budding conflict between you and the Surrogate?

THE REFEREE: I think the record is clear on this, what his position is. We have documents.

Q When did you move into your house in White-plains?

A November of 1980.

Q Who did you purchase it from?

THE REFEREE: What does that have to do with this?

MR. GRAYSON: Your Honor, this goes to credibility.

A We purchased it from Home Equity. The first name is HomeEquity, either Estate, Inc. or something Inc.

Q Are you party to a lawsuit brought by Home Equity?

A No.

Q Are you party to any litigation instituted by the City of White Plains against you concerning your house?

A No.

Q You are not involved in any litigation concerning that house?

A It was purchased by my wife under my wife's name. We went to contract. I will try to make it brief. We went to contract and we sold our house. They tried to sell it to somebody else, so we moved into the house. That is a short synopsis. We are now suing for specific performance for the contract of sale.

Q Is there a deed in your name?

A No, just a contract of sale.

MR. GRAYSON: I have no further questions.

THE REFEREE: Do you have any re-direct?

And I don't mean repetitions, re-direct.

Sassower - cross

MR. SASSOWER: I have no re-direct, Your Honor.

THE REFEREE: I have just a couple of questions then we will take a break. With respect to PP in evidence, undoubtedly you addressed this subject but at the moment I just don't recall. This is the letter of Mr. Berger to you of June 17, 1977. He said "I still do not have copies of ledgers, deeds, bank statements, cancelled checks, bank accounts, inventory of safe deposit boxes, tax receipts and other papers necessary for me to undertake the work required of the public administrator." In order to commence his duties as temporary administrator. Now, do I take it your position is there were no ledgers?

THE WITNESS: I told him there were no ledgers.

THE REFEREE: You told him there were none?

THE WITNESS: Yes.

THE REFEREE: When did you tell him?

THE WITNESS: On June 15th.

THE REFEREE: Deeds?

THE WITNESS: I had no deeds.

THE REFEREE: The only deed that would be

involved would be the deed to the Kelly house, correct?

THE WITNESS: Yes, Your Honor.

THE REFEREE: And you have no deed.

The deed was on public file.

THE WITNESS: Yes.

THE REFEREE: Bank statements and cancelled checks we have gone over. Bank accounts. I think it was your position you were unwilling to turn over the bank account because was an asset. Was that your position?

THE WITNESS: The bank books for photostatting. He could photostat all these documents.

THE REFEREE: The current bank account.

THE WITNESS: The current bank account, of course he could have photostated. They were inspected and looked at by him.

THE REFEREE: Inventory of safe deposit boxes?

THE WITNESS: That was not an asset of the estate, but that is also on file in the Surrogates Court. I think that is OO in evidence, Your Honor.

THE REFEREE: Yes, I believe so. Tax receipts.

THE WITNESS: The first he copied. This I remember specifically, the first thing he copied was the entire tax return, everything.

THE REFEREE: Talking about tax receipts.

THE WITNESS: I have no tax receipts.

THE REFEREE: Well, I interpret this -- you don't get a receipt from the Internal Revenue Service. That is not the only kind of tax receipt.

THE WITNESS: What kind --

THE REFEREE: In other words, property taxes on the Kelly estate.

THE WITNESS: The bank paid that as part of the mortgage.

THE REFEREE: I don't know exactly what kind of tax receipts he was talking about, but you said you had nothing in any event.

THE WITNESS: I had none.

THE REFEREE: Okay. We will take a short recess.

(Recess taken)

(Following the recess)

THE REFEREE: Whenever you are ready, Mr. Sassower.

MR. SASSOWER: Your Honor, I know I expressed at the outset the appreciation of both Mr. Grayson as well as myself in saying that we appreciate the time and effort that you have put into this matter, and speaking for me personally, you have made a very arduous experience less arduous by your attention to this matter. I made motions at the end of petitioner's case to dismiss or to recommend dismissal. I now renew those motions at the end of the entire case.

THE REFEREE: Let the record reflect that you have made those same motions now at the end of the entire proceedings with the same arguments that were addressed thereto and any other that might now be relevant, and I will reserve decision on those motions.

THE WITNESS: I now move to recommend dismissal of each of the outstanding charges brought by the petitioner against me based on the fact that it has not sustained its burden of proof, as to these charges.

THE REFEREE: I will reserve decision on that.

MR. SASSOWER: Your Honor, I have been

practicing for 32 years. I have tried probably close to a thousand cases. I have handled between 100 and 150 appeals. It seems unfair that I should be subjected to disciplinary proceedings on one single matter where there is not involved any question of moral turpitude. I made judgment values and judgment values are subject to errors. Why I did certain things at that time, it was my best judgment. Judgments of other people may be different, they may be correct they maybe incorrect, but I will appreciate, Your Honor if Your Honor so finds the situation to be one not involving moral turpitude, so at the outset of your report to state quite quite clearly that the charges against me do not involve any question of moral ethics. I didn't steal any money from anyone. I didn't overreach. I have not committed a fraud. I did not perjure myself. I am not even charged with gross negligence. The best that I can say for the petitioner's charges is that I am charged with being neglectful or not doing certain things at certain times.

I have tried to be candid with the Court to the best of my ability, and I will still try to remain

candid with the Court, and yet in attempting to be candid I don't think Your Honor really appreciates what I was up against, when I went up against Judge Signorelli, and if I were to criticize any actions of Your Honor, I would choose only one, because somehow it was made it appear that my actions contributed to this conflict between Judge Signorelli and myself, and it is my belief that certainly until June 23, 1977 I was just passively involved. I tried to follow orders as best I could. I was not in a war or if I was in a war, I was not fighting it like a war. Whatever Judge Signorelli said I tried within limits to obey. I don't think there is any evidence to the contrary. I took abuse. I took yelling. I took screaming, and that is something I have never taken or experienced. I have seen judges become irrational at times and yell and scream and come back the next day and apologize. Those things normally happen during a trial, but I had never come across such sustained emotional problems in this respect as I encountered with Judge Signorelli. I still cannot understand how any human being, any civilized human being could yell and screech at me in July of 1976 for not being

there in June of 1976 when I was totally paralyzed. The only way I could have conveyed that message to Your Honor, I felt, by having the personal experiences of Mr. Grayson related on the record. For whatever it would show, because I am sure it would show that' Mr. Grayson had similar experiences with Judge Signorelli that I had. I am sure Mr. Grayson --

THE REFEREE: I don't think this is properly put in the record.

MR. SASSOWER: Right, and I ask Your Honor to rethink the matter --

THE REFEREE: The legal aspects of that is very clear to me. It is not properly a part of this record.

MR. SASSOWER: Let me go to what is part of this record, Your Honor. The transcript of January 25, 1978, where I said to Judge Signorelli, " I am due in the Appellate Division tomorrow morning." And Judge Signorelli said, and it is obvious from the words the tone he used, "You are before me now. You are to appear. I am directing you to appear."

Now, what is one to do in a situation where one has to be in a higher Court the following day and

you are directed by Judge Signorelli to appear? To me it was obvious I obeyed what I considered the mandate of the higher Court. Just as I tried to obey the mandate of the Appellate Division by appearing at these hearings and putting everything else aside. But what do you do when you deal with an irrational person of that nature. What do you do when a person tells you to sell property and to do other acts as executor and then holds that you had no authority to do those things? What would Your Honor have done under that situation? I mean, everybody asked me what I did and why I did it and how I did it, but nobody said what I should have done. I was removed in 1977 without notice, without hearing, without notice to the executrix in gross violation of the Surrogates Court procedure and in gross violation of the judiciary law, in violation of the Constitution of the State of New York, and the Constitution of the United States which requires due process. I was tried, sentenced and convicted in my absence, clearly unconstitutional.

Well, we know what we do when the Surrogate tells you to appear at a particular place and a higher Court tells you you have to appear in another place.

You obey the mandate of the higher Court and take your chances with Judge Signorelli holding you in contempt. But what did you do when Judge Signorelli tells you to do something and the mandate is from the constitution of the United States. That says unequivocally by all decisions you cannot be tried in a criminal case in your absence. I will not go into the one exception.

What Judge Signorelli did to me is reminiscent of the stark chamber proceedings, of the letters to Caches. It is because of those practices and practices of that nature that we decided to cut the threads with the British Empire. I don't know. When does and when does not the moral obligation come about to disobey? But aside from that -- which I think is the important issues, the moral issues, but besides that, the charges against me are such I obeyed. I think the petitioner would have a better case against me if they charged me with obeying something that was clearly unconstitutional. They wanted records turned over, I turned them over. What more do they want?

I hedged at first. I filed a notice of appeal. I asked that papers be forthcoming so I could answer

them, so that an order could be entered, so that I could properly appeal. I couldn't appeal on a direction. When Judge Signorelli refused and did it by way of direction, I complied. What did I do wrong on June 15, 1977? I left my briefcases there. They photostated what they wanted. There was a time when I went into the cafeteria; they were at liberty to take what they want and photostat whatever they wanted. They photostated the whole day that day. I was ready to come back on June 21st to finish the job. I made a telephone call. What more can I do. What should I have done?

Judge, the only charges, I don't want to repeat myself what I said before, Your Honor, and I know you dont want me to repeat what I said before on my motion to dismiss. I do want to say a few words with respect to charge three and a few words with respect to charge four.

With respect to charge three, I do not believe there is a basis for the contention that I culpably and in bad faith neglected the Kelly estate in 1975. Certainly not in any manner as would subject me to a disciplinary proceedings. Initially I must note and draw the Court's attention to the fact that the first

notice that I was given that my 1975 conduct would be subject to a disciplinary proceeding was at a recent session when paragraph 36 of the petition was amended so as to charge me with a violation of paragraph 33 instead of 35. Faced with this recent amendment to paragraph 36, I cannot sufficiently express to this Court the difficulties I have encountered in trying to refresh my recollection of the events which took place in 1975 to enable me to completely refute this charge. I have turned to my diaries, to papers contained in my files, which I handled during that period in order to jog my memory. One thing I am certain about and that is no matter how much I related to this Court about my actions in this and other matters in 1975, I will have omitted some important exculpatory information and evidence which now six years later I have completely forgotten about. The one thing I am sure about in 1975 is that I was working seven days a week, extra ordinary hours, not only on the Kelly matter, but on other matters. On the Kelly matter I was making telephone calls, taking care of things. Of course, certain things had to be neglected. I neglected my own personal

life. The recent death of Samuel Schacter has also prejudiced my case on this charge, since until 1976 and with the exception of the last checks for which I repeatedly asked Mr. Abuza for reimbursement to the extent of \$8.00, almost all my communications was with Sam Schacter and not Charles Abuza.

If one examines my letters and Court affidavit and affirmations which refer to telephone conversations between myself and the Abuza firm, one comes to the conclusion that except for the lost checks almost all conversations that I had until 1976 were with Mr. Schacter, and not with Mr. Abuza. And I draw Your Honor's attention to exhibits 31 to 33 which are the communications to the Court. Mr. Kelly communicated with Mr. Schacter. He knew what was going on. They knew all the assets of the estate. They knew pretty much the liabilities; that accounting didn't help them any. They had all the information. I think it becomes rather obvious that Mr. Abuza, for whatever reasons was looking to break my back. He had me filing accountings and accountings and accountings until accountings were coming out of my ears. I also ask Your Honor to look at

exhibit YY. It refers to conversations with Mr. Schacter. Certainly it would have been an easy thing to file an accounting. Instead I did the practical thing, I was trying to resolve an estate. The accounting helped no one. Were Mr. Schacter alive today and brought into testify he would have a great deal of hard explaining to do with respect to this conduct. I am sure that had Mr. Schacter testified as to the events which took place in 1975 charge 3 would have suffered the same fate as charges 1 and 2 and would have been dropped by the Grievance Committee. Had Mr. Schacter been here to testify or had at least been interviewed by the Grievance Committee, they would have learned that all the information contained in my accounting was known to him in May of 1975, and that he tacitly consented to the delay in filing the accounting. Certainly the evidence shows that Edward Kelly consented to the delay in the filing of the accounting.

As my March 14, 1975 affidavit to Surrogates Court -- by the way, the March 14, 1975 affidavit, is it in evidence?

MR. GRAYSON: That is WW in evidence.

MR. SASSOWER: As WW, which is my affidavit

of March 14, 1975 indicates, I was interested in one, completing accounting, final, finish this estate, finish it in an expeditious manner, try to do it inexpensively and conscientiously.

There are a number of reasons for such intention; a, I have never before or since handled any estate or trust where there has been more than one complete and final accounting except for the Kelly trust. B, I do not recall in 30 years of practice where I was the recipient of anything but one full complete accounting, although I am aware that in multi-million dollar estates where trusts extend over a number of years, you do have intermediate accountings. This was not the Kelly estate situation.

C, in only a very few cases has there ever been a need for a formal accounting. Usually I send my worksheets to the other interested party and or allow him to examine all the books and records. We strike a balance, dispensing with any need for a formal accounting. D, particularly in small and medium size estates, I believe it is my obligation to make every effort to minimize estate expenses and not waste time and money on numerous intermediate accountings where

they possibly can be avoided.

THE REFEREE: The Kelly estate was
\$70,000?

MR. SASSOWER: \$70,000, Your Honor. I
have inquired of colleagues of mine on estates of
more than this size. They have never had more than
one accounting, and most of them don't even have
accountings. You sit down with the other side and you
show them your books. You show them your records. You
show them your --

THE REFEREE: I think that is enough.

MR. SASSOWER: I will not belabor the point
just mentioned because I am convinced they have been
the experience and practice of most decent competent
and experienced attorneys.

In the Kelly estate matter there was almost
a daily array of telephone calls that had to be made
with respect to either the maintenance of the house
or inquiries made by various members of the Kelly
family, Particularly with Grace Dubois, who was not
employed during 1975. She made it almost a daily
practice to telephone me to discuss the estate matter
and any other thing that came to her mind which consumed

an inordinate amount of my time, nor should there be overlooked the accomplishments made through my efforts in 1975, including the settlement of five claims against the estate and getting the Kelly clan to sit down with each other and discuss with each other matters in a friendly attitude. This was no easy accomplishment, and was brought about primarily through my arrangement of dinners, at my own cost and expense. I was convinced that the only way to resolve this estate is by the amicable cooperation and friendly attitude between various members of the Kelly family. These efforts on my part were not unknown to Samuel Schacter, Esq., and during a greater part of 1975 he cooperated to the extent of not bothering me about any accountings and recognized my efforts to get the matter resolved.

Examination of the documents introduced in evidence will reveal that after May 1975 when my accounting was due, there was no letter, no document, no correspondence of any kind or nature from Samuel Schacter requesting me to do accounting. A clear recognition of the fact that he was consenting to the

procedures that I followed in trying to resolve this estate. Very important, in my opinion is the fact that there was no prejudice to anyone by reason of the delay in accounting for several months. I believe that it's evident that Mr. Abuza wanted me to file numerous accountings either to harrass me or to show a great deal of activiti on his part or to have the accountings filed for their own sake.

Mr. Abuza was not interested in the information but wanted accountings for accounting sake. An examination of the accounting as filed by me reveals that all information contained therein was within the knowledge of Abuza long before he filed any demand for an accounting. The assets of the estate were a house, which we know about, and about \$45,000 of cash in the banks, which he also knew about. Payments made by the estate were almost exclusively those to the mortgagee who had a mortgage on the house. The claims made against the estate were by Winifred Hucke Baranowsky, a funeral bill and a little over \$100.00 for federal services rendered to the deceased. To repeat, all this information was known to Mr. Abuza long before he made a demand for an accounting and therefore it was a

a purposeless act on my part to have filed same.

At the time I was supposed to file my accounting I was still not sure as to whether I had knowledge of all the assets and liabilities of the estate, and was only sure of that fact after December 20, 1975 when I received the approval of Edward Kelly to pay Albert Baranowsky, the Accountant, his claim against the estate.

THE REFEREE: How much was that?

MRS SASSOWER: Fifty dollars. Now, there was an error on my part. What I should have done is taken the \$50.00 out of my own pocket, pay Baranowsky and then gotten the information and said goodbye to the \$50.00. They didn't want to pay him the \$50.00 to get the information. They didn't want to pay two doctors, and it's a grand total of a little over \$100.00. They didn't want to pay the funeral director. So conscientious was I in prosecuting the affairs of the estate that I personally went over to the home of Edward Kelly in Queens and had him approve on the checks themselves the payment of the funeral bill, the bills to the two doctors for funeral services rendered to the deceased, and also the Baranowsky claim. As I stated, it was

Sassower - summation

only when I was assured by Albert Baranowsky that his claim was to be paid did I receive confirmation of the fact that my proposed accounting included all the necessary information therein. Furthermore, from Mr. Abuza's letter itself, dated 1976, which is exhibit BY, only then in 1976 did Mr. Abuza give me the necessary information so that I could file my tax returns. Again, I repeat, there was nothing in my accounting that was unknown to Mr. Abuza when he made his demand for an accounting, and the accounting itself, whether it was made in May of 1975 or December of 1975, caused no delay or prejudice to anyone. I believe my extensive and diligent work and efforts on behalf of the Kelly estate prior to 1975 has been on the issue involved in this charge.

The evidence reveals that I processed this estate expeditiously and properly, despite a host of obstacles, including an understandable by the Harrison and Seiden firm, who found this to be a very small matter and not deserving the particular attention. There was the lack of coping by Edward Kelly and his attorneys with respect to the maintenance or disposal of the house of the estate. The problems

I had with the vehicle owned by the deceased and the use of same by his brother Thomas, and with respect to innumerable and othr details when members of a family are not even talking to one another. The settlement took place between Harrison and Sieden firms only because of my prodding and preparation of the compromise papers necessary to effectuate the settlement. The vehicle situation necessitated the involvement by the police and the Bureau of Motor Vehicles. The taking care of a residential house located about 90 miles from my own was a daily problem and necessitated constant attention.

There was testimony that an incident of vandalism at the house of the deceased, a condition which I had to rectify and which I had to prevent from occurring again.

Briefly, by the petitioner attempting to find fault with my conduct is trying to find fault with the limitations of human beings. Certainly for anyone to say on Monday morning that I should have done this instead of that or that instead of this is unfair.

As a whole I believe that the evidence reveals that I did perform my duties in good faith with more

than the amount of dilligence and time that could be expected of me in such a situation, for aall of which I did not get a dime.

Again, I draw the attention of the Court that when I filed my accounting on December 20, 1975, all claims had been settled between that preceding May and the date of the filing, with the exception of the Hucke claim, with settlement and oompromise almost being reached wholly through my efforts. In all I believe the estate was better served by the filing in December of 1975 with claims being settled than a filing in May of that year with claims unsettled.

I deny any charge by the Grievance Committee of negligence and in fact, the Grievance Committee saw no negligence in my filing, my accounting after years of examination until recently when it decided to amend that charge and give it some facile viability. Were it left to Charles C. Abuza to decide he would have had me file 20 accountings, none of which would have advanced the interest of the estate one iota.

As His Honor knows, it has taken the public

administrator four years to file an accounting, and Charles C. Abuza did not make any motions directed against him. For Charles C. Abuza to have moved for my accounting one month after termination of my temporary letters clearly reveals the purpose to harass. Certainly such harassing purpose becomes clear when one examines his conduct in New York County on which matters he has recently told the Surrogates Court I still have not filed an accounting.

One thing for certain, whatever deficiencies the Grievance Committee may contend, nothing I did or did not do has any relationship to ethical or moral codes of conduct, which is the only matter before this tribunal.

May we have a few minutes recess?

THE REFEREE: Sure.

(Following the recess)

THE REFEREE: Proceed, please.

MR. SASSOWER: Your Honor, Mr. Grayson, I believe charge four is legally and factually meritless as established law and uncontradicted facts reveal. Unquestionably everyone involved in this matter, including the Surrogates, the personnel of that Court

and all the attorneys recognize me as the executor of the estate of Eugene Paul Kelly for the years subsequent to March 9, 1976. My removal was first announced in March of 1977 without notice to me, the alternate executrix or any of the interested parties. Whether the Surrogate could so spontaneously take such action in 1977 is highly questionable under the Surrogates Court Procedure Act or under the Constitution which requires due process.

I have been cited no case nor have I been able to find any authority supporting such procedure. I wish to say not only did everyone recognize me as executor for a year subsequent to March 9, 1976, but during that period I was specifically requested to undertake various acts as executor, all of which I performed, including entering into a contract of sale of the estate's real property.

Paragraph 40 under this charge is even more egregious in that it contends that I was held in contempt, criminal contempt. Criminal contempt was entered after a trial and adjudication and a sentence all made in my absence while I was actually engaged

on trial in the case of Green against Green in Supreme Court, Bronx County before Honorable Joseph DiFede.

I challenge everyone, including the attorneys for the Grievance Committee to produce a single case to support such patently unconstitutional procedure.

As unquestionable construed, the Constitution of the United States requires that in all criminal cases the defendant is entitled to be present at all times and all stages of the proceedings, and before sentence is imposed the right of elocution must be given.

Significantly the amended petition by the Grievance Committee does not allege that any of the directions, orders or procedures of the Surrogate were legal, lawful or constitutional.

The undisputed evidence also reveals that I attempted to deliver the papers of the estate to the attorney for the public administrator and did actually deliver some of them long prior to March 8, 1978. Access to such papers would never -- were never denied to anyone and in fact a complete inspection

Sassower - summation

of my records was made by Eugene Hucke and Charles Abuza as far as back in 1976. This was a period where I was given contradictory and inconsistent directions by the Surrogate. On the one hand I was directed to sell the real property and file certain tax returns. On the other hand I was directed to turn over the papers which I needed for consummating the transactions, which I was also directed to perform. When conflicting directions are made as herein, of necessity there must be disobedience to some of the directions. In attempting to comply with all of the directions, whether lawful or not, I could only bide my time in the hope that the Surrogate will ultimately follow a rational course, and in the meantime I tried to navigate a middle course as best I could.

For whatever significance it may have, I draw His Honor's attention that I am not charged with violating an order of the Surrogate Court, but a direction. Had an order been entered, I could have appealed same and possibly obtain an interim stay. By alleging I violated a direction of the Surrogate Court no such

appellate remedy was available to me.

Again it should be noted that I am not here charged with violating the ethical code of attorneys, and I see little if nothing in this charge which has anything to do with the moral ethics, as I understand them.

I handled an impossible situation according to my best judgment. I believe that fairness mandates that the attorney for the Grievance Committee reveal his knowledge of the reputation of the Surrogate of Suffolk County, and also reveal his experience with him, because I believe that such evidence will reveal that we are dealing with an unstable personality.

I want to thank Your Honor for the time and attention.

THE REFEREE: Not at all. Do you wish to say anything, Mr. Grayson?

MR. GRAYSON: I would just like to correct one point. Charge three, the accounting which is refereed to in paragraph 33, 34, 35 and 36 is the same accounting. The amendment in October did not pertain to a second accounting. We are talking about one

Sassower - summation

accounting within the time period March '75 to April '76. I would also like to echo Mr. Sassower's sentiment of appreciation for the time and effort you have put into this proceeding, and I want to thank you.

THE REFEREE: I want to thank you, gentlemen, for your cooperation, both among yourselves and with me. You certainly have made a difficult task much easier.

Now, pursuant to an early conversation we had, I was very happy to hear Mr. Sassower's suggestion that counsel get together and submit a memorandum, basically collating agreed facts as much as possible, or at least to the extent possible, and in that connection, counsel for both sides wanted all the exhibits, which I will let them have, with the understanding that you, Mr. Grayson, will return the exhibits to me sometime next week.

MR. GRAYSON: Yes.

THE REFEREE: And that the memorandum be submitted no later than December 24th.

MR. SASSOWER: And possibly before then.

Proceedings

THE REFEREE: The sooner the better.

Thank you very much, gentlemen.

These proceedings are concluded, and I will
reserve decision.

* * *

MILLICENT ANGIULLI
SENIOR COURT REPORTER

Proceedings

THE REFEREE: The sooner the better.

Thank you very much, gentlemen.

These proceedings are concluded, and I will
reserve decision.

* * *

CERTIFIED TO BE AN ACCURATE TRANSCRIPT
OF THE PROCEEDINGS.



MILLICENT ANGIULLI
Sr. Court Reporter

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January 12, 1982

CONFIDENTIAL

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Re: Our File 1035
George Sassower, Esq.

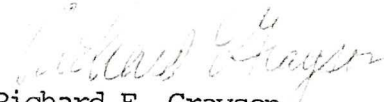
Dear Ms. Angiulli:

Thank you for your transcript of the December 4, 1981 hearing in the above matter.

Upon reviewing the transcript, we find that you inadvertently omitted a certification page. Please type such a page, and submit the original to Judge Aloysius J. Melia (c/o Room 359M), and a copy to me.

Thank you.

Sincerely,


Richard E. Grayson
Assistant Counsel

REG/meh

from the desk of
Millicent Angiulli

Rec'd PHJD
1-15-82

1/13/81

Dear Mr. Graison-

Pardon the omission,

and enclosed is the

Certification page requested.

I've retyped the last
page with certification

Thank you.

Millicent

January 11, 1982

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GEORGE SASSOWER, an attorney and counselor at-Law

December 4, 1981
Hearing
Before - SPECIAL REFEREE ALAYSIUS J. MELIA

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