

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

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LAWRENCE J. BRACKEN, J.P.
EDWARD J. HART
WILLIAM D. FRIEDMANN
GLORIA GOLDSTEIN, JJ.
ANITA R. FLORIO, JJ.

94-02371

DECISION & ORDER ON MOTION

In the Matter of Bernard Hanft,
an attorney and counselor-at-law.

Grievance Committee for the Second
and Eleventh Judicial Districts,
petitioner;
Bernard Hanft, respondent.

The respondent was admitted to practice by this court on October 31, 1951. By decision and order on motion of this court dated May 11, 1994, the respondent was directed to be examined by a qualified medical expert pursuant to 22 NYCRR 691.13(b)(1) to determine his fitness to practice law. Although the petitioner made arrangements to have the respondent examined by Dr. Azariah Eshkenazi, the respondent failed to schedule an appointment as he was directed to do. By letter dated July 25, 1994, Dr. Eshkenazi proffered the opinion, based upon numerous letters written by the respondent and a large amount of discovery material, that there exists severe disturbance in the thinking process which will incapacitate the respondent from functioning as an attorney.

The petitioner now moves to suspend the respondent from the practice of law by reason of mental infirmity or illness pursuant to 22 NYCRR 691.13(b). The respondent cross-moves to (1) vacate the decision and order on motion dated May 11, 1994, on the ground that it violated the respondent's due process rights because the respondent was denied discovery of the confidential papers upon which that order was issued, (2) stay enforcement of the decision and order on motion dated May 11, 1994 and grant the respondent discovery of the Grievance Committee's application papers, and (3) deny the Grievance Committee's application for a medical suspension based upon Dr. Eshkenazi's "insufficient" report.

Upon the papers filed in support of the motion and the cross motion and the papers filed in opposition thereto, it is

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ORDERED, on the court's own motion, that the respondent, Bernard Hanft, pursuant to 22 NYCRR 691.4(1)(1)(i) of the Rules Governing the Conduct of Attorneys, is immediately suspended from the practice of law in the State of New York, until the further order of this court, based upon his failure to comply with the lawful demands of this court or the Grievance Committee made in connection with the investigation; and it is further,

ORDERED that Bernard Hanft shall promptly comply with this court's rules governing the conduct of disbarred, suspended and resigned attorneys (22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law § 90, during the period of suspension and until the further order of this court, the respondent, Bernard Hanft, is commanded to desist and refrain (1) from practicing law in any form, either as principal or agent, clerk or employee of another, (2) from appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission or other public authority, (3) from giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) from holding himself out in any way as an attorney and counselor-at-law; and it is further,

ORDERED, on the court's own motion, that the Grievance Committee for the Second and Eleventh Judicial Districts is hereby authorized to institute and prosecute a disciplinary proceeding in this court, as petitioner, against the said Bernard Hanft based on the respondent's failure to cooperate; and it is further,

ORDERED that Robert H. Straus, Chief Counsel to the Grievance Committee for the Second and Eleventh Judicial Districts, 210 Joralemon Street, Room 1200, Brooklyn, New York 11201, is hereby appointed as attorney for the petitioner in the proceeding; and it is further,

ORDERED that the petitioner Grievance Committee shall serve upon the respondent, the Special Referee, and file with this court, a petition within 20 days after receipt of the decision and order on motion; and it is further,

ORDERED that the respondent shall serve an answer to the petition upon the petitioner, the Special Referee, and file a copy of the answer with this court within 10 days after his receipt of the petition; and it is further,

ORDERED that the issues raised by the petition and any answer thereto are referred to the Honorable Jerome M. Becker, a former Judge of Criminal and Family Courts, 605 Third Avenue, New York, N.Y. 10158, as Special Referee to hear and report, together with his findings on the issues, and that a hearing shall be conducted within 30 days after service of this decision and order on motion upon the respondent; and it is further,

ORDERED that the motion and cross motion are denied.

It appears from the respondent's papers that he has no intention of submitting to an examination by a qualified medical expert as directed by this court. We find that there is prima facie evidence that the respondent is guilty of professional misconduct immediately threatening the public interest based upon his failure to cooperate. Accordingly, he is immediately suspended from the practice of law, pending further order of this court, and the Grievance Committee is authorized to institute and prosecute a disciplinary proceeding against him, with a directive to conduct an expeditious post-suspension hearing.

BRACKEN, J.P., HART, FRIEDMANN, GOLDSTEIN and FLORIO, JJ., concur.

ENTER:

Martin H. Brownstein
Clerk

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