

NEW YORK, TUESDAY, MAY 24, 1994

Federal Judge Will Not Block Discipline Case Jurisdiction Held Lacking Over \$10 Million Claim

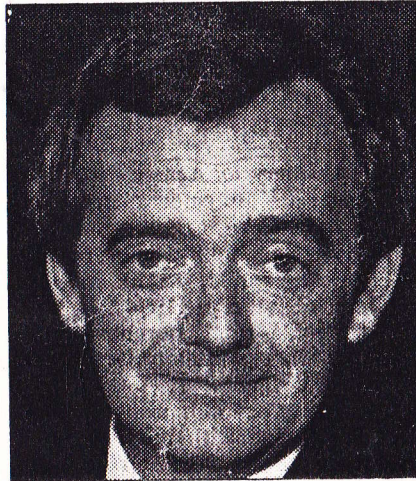
BY CERISSE ANDERSON

AN ATTEMPT by two Yonkers attorneys to have a federal judge enjoin state disciplinary proceedings investigating their alleged participation in fraudulent real estate transactions has failed with the dismissal of their \$10 million suit.

U.S. District Court Judge Raymond J. Dearie in Brooklyn ruled last week in *Thaler v. Casella*, CV 93-4061, that he lacked subject matter jurisdiction and was required to abstain from interfering with ongoing state disciplinary proceedings.

The attorneys, Howard M. Thaler and William B. Falow, had alleged that the Appellate Division, Second Department, moved to suspend them from their practices within weeks of receiving ex parte communications from the staff of the Grievance Committee for the Ninth Judicial District. The lawyers also claimed they were told that "secret files" were being kept on them at the clerk's office at the Second Department.

The Grievance Committee began investigating Messrs. Thaler and Falow in 1987 and in November 1990 recommended to the Appellate Division that the men be suspended while formal disciplinary proceedings were conducted. The Second Department authorized the commencement of the



Judge Raymond J. Dearie

proceedings and suspended the lawyers on June 10, 1991. A little more than two months later, the court vacated the suspensions.

Formal charges of professional misconduct were filed on May 8, 1992, and a hearing before a special referee is pending. Gary L. Casella, chief counsel for the 9th Judicial District Grievance Committee, declined yesterday to comment on the details of the charges or the status of the case. Mr. Thaler and Mr. Falow are still practicing.

They filed suit in the Eastern District of New York last fall for an injunction of the disciplinary proceedings, for access to the ex parte communications which were allegedly transmitted to Presiding Justice Guy J. Mangano's principal law assistant, and for \$10 million in damages.

Judge Dearie granted the state's motion to dismiss, noting that federal courts lack jurisdiction to review "fi-

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Injunction Denied

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nal" state judgments and "certainly lack jurisdiction to review the Appellate Division's non-final determination in the pending state proceedings here."

Doctrine of Abstention

Furthermore, the judge said the doctrine of abstention required the dismissal of the case because the attorneys have adequate opportunity to present their constitutional arguments, asserting that their due process rights were violated by the ex parte communications, in state court.

The constitutional issues can be presented to the special referee, and then the lawyers can oppose any adverse rulings from the referee to the Appellate Division and then to New York's Court of Appeals, he said.

"Implicit in plaintiffs' argument for federal intervention is the absurd proposition that the New York Court of Appeals will be insensitive to their cries of constitutional foul. There is no basis upon which to assume that the state courts will be less protective of plaintiffs' rights than will the federal courts," Judge Dearie wrote.

Ronald Cohen represented Mr. Thaler and Mr. Falow. Assistant Attorney General Abigail I. Peterson appeared for the state defendants.

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