SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. SAMUEL G. FREDMAN

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MILTON BRESLAW,

Plaintiff,

- against -

EVELYN BRESLAW,

Defendant.

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Index No.: 22587/86

DECISION AND ORDER

On June 22, 1989, this Court signed an Order to Show Cause presented to it by the substituted attorneys for the defendant herein, Evelyn Breslaw (hereinafter referred to as "Evelyn"), brought on pursuant to Judiciary Law Section 754, in which they sought an order: (1) holding Evelyn's former attorney, Doris L. Sassower, P.C. and/or Doris L. Sassower, Esq., individually (hereinafter referred to as "Sassower"), in contempt of Court, for refusing to turn over Evelyn's file in this matter to the substituted attorneys, and directing Sassower to otherwise comply with the orders of this Court, or in the alternative, fining Sassower for such conduct; and (2) imposing sanctions against Sassower, all flowing from an April 12, 1989 Order of then Judicial Hearing Officer Martin Klein (hereinafter referred to as "Klein") making the directions I was being asked to enforce.

Thus began for this jurist a veritable nightmare of

experience which I earnestly hope will never again occur to me, and certainly to none of my colleagues, to all of which activity I will make only as brief a reference as is possible in this Decision and Order, first because I have previously issued several decisions in this matter, and also in an attempt to prevent this decision from becoming a tome, but which requires more than a casual approach if I am to be true to my purpose and my oath of office.

From the relatively simple molehill of potential issues which could possibly arise from such conduct, Sassower has created a mountain of legal, factual and even political abacadabra. Her actions have taken an inordinate amount of this Court's time and tested its patience beyond the wildest imagination. The absolute and ultimate end of this entire contempt proceeding could have been accomplished on or before the return date of the motion, July 10, 1989, eighteen days later, by Sassower turning over the file, which she eventually did, repaying Evelyn the amount Sassower owed her, which she eventually paid, and by expressing her regret that the whole proceeding had taken place. Unfortunately, that was not the case.

Without repeating, except in an abbreviated form, the series of Decisions and Orders this Court has made since its introduction to this proceeding, all of which is already public, the record will show that Decisions and Orders were issued by me

on July 13 and August 14, 1989 and April 20, 1990, all of which are incorporated herein by reference with the same full force and effect as if fully and at length set forth herein. It must be said, however, in supplementation of an earlier comment in one of those Decisions, that on July 10, the date of the original hearing, Sassower neither appeared nor sent a representative to explain her absence. Her excuse, subsequently rejected by me, was as unworthy of a lawyer of the style and substance she had held herself out to be as have been a series of destructive, mean-spirited and ad hominem attacks rifled at me, in the press and otherwise. Whatever has flowed since this matter began dates back to that original failure to comply with this Court's original directive, a still never fully or properly explained inaction, although far less provocative than her conduct prior or subsequent thereto. Justice Samuel G. Fredman was not and is not an issue in this proceeding; the sole issue is whether Sassower is above the law and can do as she pleases when it comes to compliance with the law. It is this Court's determination that she is not and cannot, and that she should be so advised as strongly as the law permits me to do so, as minimal as that may seem in the final analysis.

This Court's Decision and Order of July 13, 1989 was based upon that failure of appearance. Even then, despite her failure to have appeared on July 10, all that I did at that time was to direct a hearing on July 27, 1989 to inquire and render

judgment "as to the turnover of the file, the repayment of all the monies previously ordered (on April 11, 1989) by the Judicial Hearing Officer therein" to be repaid Evelyn by Sassower within sixty days of the service of that order with notice of entry, "and Sassower's conduct throughout these proceedings".

It should be noted that Sassower had sought in the Appellate Division to obtain a temporary stay of the aforementioned April 11 Klein Order but that the motion for that stay was denied by that Court on May 18, 1989, so that Sassower had no alternative on that latter date but to turn over the file to the replacement attorneys "within five days of the service of that order with notice of entry" which she had of course failed to do. When Evelyn's motion reached this Court formally on July 10 (as stated, I had signed the Order to Show Cause on June 22), Sassower was already substantially late (by Appellate Division fiat, let alone all the time which had passed since the Klein Order) returning a file which had already been held back from Evelyn for the long period of time (15 to 16 months at time of the transfer, although the entire Sassower representation of her had lasted only 6 months) which had transpired since she originally sought to change attorneys. Even if she had 60 days from April 12 (or May 1, when the Klein April 12 Order was "clarified technically"), by July 10 she was also already late on the repayment to Evelyn of the pittance of monies due the latter. That repayment, as well as the turnover of the file, took place

(perhaps not in a totally satisfactory manner, but I had no desire to prolong the case on technical grounds) late in the afternoon of July 26. Consequently, on July 27 when she entered my Courtroom to seek to rebut her responsibility to have returned the file and make the directed repayment at an earlier time, she was already with unclean hands on both those issues.

Having heard me state so specifically at the July 27 hearing before me that I was not about to permit my long-time friendship with her to interfere with my oath of judicial office, Sassower obviously chose to counter by use of the principle that the best defense is a good offense. Both in papers supporting her application, an Order to Show Cause brought on her behalf by a distinguished former federal judge, and at oral argument subsequent thereto, Sassower sought for the first time my recusal from further involvement in the proceeding upon grounds so flimsy that I express herein, on a retrospective review of the entire voluminous file, my own amazement that so distinguished a lawyer as she chose to represent her would seriously present such specious argument to a court. I made clear in my twelve page Decision and Order of August 14, 1989 why I would not act favorably toward the written aspect of that application, and the 33 page transcript of the argument made on Sassower's behalf the very next day (at which time I granted her then attorney's application to have time to seek yet another stay in the Appellate Division) only emphasized my distaste for the continued

hectoring of me and obfuscation of the issues which marked almost every effort made on her behalf by the bevy of counsel who appeared on her behalf, not excluding herself. In making this rather challenging statement about the efforts of Messrs. Weininger, Frankel, Diament, and Eaton, her first four lawyers, I want to make clear that I did not find that any of these attorneys went beyond the bounds of good lawyery, much as I believe personally that I would not have "accepted the brief" each did, at least in part, because I would hope, even now, so long after the event, that I would have had sense enough and faith enough in the judicial system to have demanded that the client turn over the file and return Evelyn's money first, had I chosen to wage this battle on behalf of a client. Lawyers must understand that their duty to the court is as important as is their duty to their client; no lawyer has the right to present fraudulent or extraneous or insincere argument in the name of protecting a client's rights, and no client may expect that lawyers will present such argument from a false position.

The period between August 15 and the May 21, 1990 final hearing before me continued to be occupied with Sassower's hit and run tactics. During that period, although successful in obtaining a number of adjournments from me on the grounds that she was physically and mentally unable to attend hearings in this court, including the submission of unsworn statements of professional people to that effect, it is now my absolute

knowledge that she was simultaneously engaging in the practice of law, obviously picking and choosing the work she was willing to do without cause or concern that her applications were without substance and indeed, in some respects, outright lies.

It is more than merely interesting to note, in this regard, the following excerpt from a memorandum decision issued on April 23, 1990 by United States District Judge Gerald L. Goettel in the case of Sassower et al. v. Field et al., Case Number 88 (Civ. 5775 in the Southern District of New York) p. 2-3:

> "... Essentially her objections attempt to argue the underlying facts and continue to claim that it would be a danger to her health to be deposed in this case. We find it very strange that filing motions, conducting depositions, negotiating a change in the escrow money status on the contract at issue, and, in general, performing the functions of an attorney, are apparently not threatening to her health, but that to appear as a witness answering questions at a deposition purportedly would be. According to the Gannett Westchester Newspaper of April 12 1990 (page 11), there have been contempt proceedings pending against Doris Sassower in Westchester County Supreme Court for about a half year. They have had to be adjourned three times because of her claim of ill health. It is not surprising that she should feel under some stress and prefer not going forward with that proceeding. However, she has been very vigorous in her litigation of this case ...
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> It is patently clear that Doris L. Sassower has been guilty of attempting to manipulate the court by appearing as attorney on those matters which could assist her case while refusing to be deposed

herself, claiming health problems" (all emphasis supplied). [1]

Her own psychiatrist having testified before me on April 13, 1990 that Sassower understood the nature of the action and was quite capable, physically and mentally, of defending her position, if she chose to do so, I ordered a final hearing for May 21, 1990. In my decision of April 20, making reference to the scope of that hearing, I indicated that the only aspect of the matter which was still open was the testimony of Evelyn's attorney, Harvey Landau, Esq., (hereinafter "Landau") to support her contention that a certain part of his law firm's charges to her were occasioned solely by Sassower's unwillingness, until this Court had acted, to turn over Evelyn's file to his firm and to repay Evelyn the money still due her, all pursuant to the original Klein order. That April 20 Decision and Order of mine made clear (page 2) that Sassower was already in contempt when she failed or refused to turn over the file, that act of contempt having only been underscored when in the "eleventh hour" effort to accomplish the transfer of the file to Landau's firm as directed, she gave them less than its entirety.

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[1] In New York, a court may take judicial notice of a record of ... another action, Matter of Ordway, 196 NY 95, 89 N.E. 474. The state courts will also take notice of federal case law and in fact are required to do so by CPLR 4511(a).

At the May 21 hearing, Landau testified on behalf of his firm and was cross-examined by Sassower's then attorney, all at some length. This Court limited the breadth of Landau's alleged entitlement to being reimbursed by Sassower for services rendered to Evelyn solely with regard to the turnover of the file and the repayment of the monies directed by JHO Klein, a period between February, 1988, when he first moved to be substituted on her behalf, and April 30, 1990, so as to include all of his services rendered to Evelyn up to the date of that hearing itself.

It was Landau's testimony, and I find him credible as to the details thereof and supported by the evidence, including his firm's records, that he and his firm expended a total of 44.35 hours of their time related specifically to the matter as to which this contempt application refers. That time was spent in accordance with the following summary:

Bender & Bodnar

Attorney	Hours Spent	Billing Rate	Total
Landau	44.10	$200.00	$8,820.00
Bodnar	.25	275.00	206.25
			$9,026.25

In addition to the foregoing, there were claimed disbursements of $16.00, making a total of $9,042.25.

Landau testified that the foregoing time would

never have been used nor the monies earned except for Sassower's actions and/or inactions, and that there was no other way for his firm to be paid those monies, especially since Evelyn owed them at that time a sum much in excess thereof for the services rendered by them in the case in chief which, he also argued, was handled poorly by Sassower, requiring remediation work not a part of the foregoing.

Attorney Vigliano, on Sassower's behalf, waged a vigorous effort in support of his client's several positions. He not only participated fully at the May 21 hearing (as well as tangentially at several prior court sessions) but submitted both an affirmation (his) and several so-called Memoranda of Law within the extended (to June 18, 1990) period I gave him, on the basis of his pleas relating to his own busy schedule. His arguments to the contrary notwithstanding, I make the following findings with respect thereto:

1. I ought not even honor his totally naive "claim" which seems to be to the effect that I never actually found liability for contempt, "except at some unspecified time between August 30, 1989 and May 21, 1990". Since I presume, however, that it is made for the record in conjunction with an evidently forthcoming effort to overturn this decision in the Appellate Division, I call to his attention the statement made as part of my original Decision and Order of July 13, 1989 (page 2) when I wrote:

> "At that point, Sassower was under an absolute duty to turn over the file to the replacement attorneys at once, the five days having long since lapsed."

From that statement on that page until its conclusion, my Decision is replete with example after example of my listing of Sassower's contemptuous actions; she was already in contempt at that time, and she and Vigliano know from what I said and what I wrote that all later proceedings had to do only with the question of whether I would forgive her for her actions and/or inactions, or whether I would find that although not within the Judiciary Law definition of civil contempt, her "performance" throughout the proceedings entitled me to visit upon her the provisions of Part 130.1 of the Uniform Court Rules, and if so, to what extent. I consider that this kind of argument does not even reach the definition of specious. It is enough to make me suspicious of the probity of anything submitted to me by the attorney making it.

2. All of Vigliano's post-hearing efforts to brand me as one-sided or unfair to his client are hoist on the petard of the record. There is fortunately a transcript of each session, to much of which I have referred from time to time either in my prior Decisions and Orders, or in the body of the transcript itself. While he, unlike all of his predecessor attorneys, and his client sought repeatedly to incite me to a loss of composure, there is nothing in the record (nor could

there be) to indicate their success (I apologized to the Appellate Division and to Sassower when I learned that I could not fine her even the minimal sum of $50 without a separate hearing at a time when I found myself unable to control her in-court performance, including her interruptions of and shouting at me when I sought to require her to observe the simplest courtesies as a witness in a courtroom). Vigliano's attempt to brand me as unfair by saying that I did not give her a chance to be heard in her own defense belies the facts, as the record shows. Had I been willing to give her the stage she sought, Sassower, who wasted almost a year of my time merely bringing her to the portals of justice, might have spent another year in condemnation of me, the judicial system, and just about anyone else whom she could blaspheme and criticize. Even his attempt to refer to August 30, 1989 as the first hearing and May 21, 1990 as the second is but a revisionist rewrite of history, excising as it does the months of actual court time spent in permitting Sassower to perserve her rights by trick and chicanery beyond the concept of almost any lawyer who practices in our courts. She is indeed sui generis in her actions, but she who litigates by the stiletto must face its rebound when it falls the other way.

3. I have referred previously to Sassower's attempt to distinguish herself from Doris L. Sassower, P.C., a gossamer thread on which paragraph 3 of Vigliano's affirmation rests its head. The argument is a weary one, too tired to be

raised as serious, but nevertheless Vigliano does it, maintaining that she was never in privity with Evelyn, as if the latter knew or cared whether her file was being withheld by some mysterious third party called "P.C." That argument may attract substantial approval in the tax community; it has no standing with me in this proceeding, as I have so advised the Sassower team on several previous occasions. That did not stop Vigliano from raising it again.

4. Even Vigliano should be ashamed of his paragraph 4. It does not begin to speak a single truth except that I permitted Landau to testify in narrative form. If the thrust of his argument is that Landau's firm should have expended even more monies hiring outside counsel or using one of its partners or associates to question him, the result might have cost Sassower more than the amount she is being directed to pay hereunder. Furthermore, I gave Vigliano every opportunity to cross-examine Landau, which he did at length.

5. Nowhere in Vigliano's affirmation or in his and Sassower's strategy does the underlying purpose of their vitriol against this Court rise to the surface more clearly than in the closing segments of his paragraph 6 wherein he seeks to tie in a reputed "political relationship" between Landau and/or his firm and this Court. I will have occasion to refer to this aspect of the Vigliano affirmation at a subsequent point in this Decision, but I do not want to tie it into what I would call its

"body" because it has no legal significance and did not enter into the decision-making process in this matter.

6. The entire thrust of the Vigliano affirmation, and of the Sassower affidavit which accompanies it, fails in view of the tremendous effort made by Sassower to avoid the day of reckoning for her actions. Sassower is accustomed to "getting away with murder" in the Court System; there is not a single one of my colleagues who would go to bat for her or accept her word; this is also true as to her confreres at the Bar, very few of whom, if any, would raise a finger in her defense. She has walked to the edge of the ledge of contempt and/or sanction, including for this very same offense, on prior occasions. I said she comes to court with unclean hands, and she has proved it, not only to me and to Judge Goettel, but to a broad cross-section of the New York Bar. I invite the Grievance Committee to study the record of this proceeding to determine if someone who so misstates and mistreats the American legal system ought to be afforded the opportunity to continue to harass the weak and the downtrodden as she has evidently done, time and time again. In this regard, there has been brought to my attention, among other similar matters, the shocking and strikingly revealing decision of Justice Anthony Ferraro, formerly of this Court, on September 4, 1987 in the case of Muscolino v. Muscolino, Supreme Court, Westchester County, Index Number 2252/1986: [2]

> "In this matrimonial action plaintiff makes application to the Court to punish Doris L.

> Sassower, Esq., her former attorney, for contempt of court by reason of her failure to turn over the file in this action together with a check in the amount of $659.09 representing the difference between her fee and the monies held in escrow for appraisal and accountant fees.
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> By decision and order dated May 28, 1987 ... this Court directed the aforesaid Doris L. Sassower to turn over the file with the balance due within 20 days.
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> On June 11, 1987 Ms. Sassower obtained an Order to Show Cause for leave to re-argue the aforesaid Order ... by decision and order dated July 14, 1987 the re-argument was denied ... The failure to turn over the file to the plaintiff has necessarily handicapped her ability to proceed with this case for an unduly protracted period of time. The Court cannot understand the refusal of Ms. Sassower to comply with its order ... The Court ... finds no justification for the continued refusal to obey the Court order. She is an officer of the Court with full knowledge of its mandate (all emphasis supplied)".

There is no indication in that decision whether Sassower finally turned over the file and paid what she owed that plaintiff or whether there was in fact a subsequent contempt proceeding, but her trip to the edge in that case certainly did not stop her from following almost the same exact script, to say the least, in the instant proceeding. If Sassower is to learn that she is not above the law, if she is to learn that she cannot hold an ex-client's files under these circumstances, if she is to

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[2] See footnote 1, Supra, page 8

learn that she must obey the lawful mandates of the courts, it is only through the full use of its powers by the Court affected that any such lesson can be taught.

7. Sassower's affidavit, in addition to repeating the almost constant charges that I prejudged her and never provided her with her day in court, as it were, indicates that I thereby stopped her from showing that her retainer agreement with Evelyn (initialled, as she puts it so strongly, as if it made any difference, in 17 places) was a "minimum, non-refundable retainer". That issue was never before me and could not be a subject for my hearing because Klein had already ruled on the refund and the Appellate Division subsequently supported his finding by unanimous vote. She could not litigate this issue in my Court, and she knew that or should have known it. Similarly, whether she was discharged without cause was not a matter before me. My sole involvement in the case had to do with her failure to turn over the file and the money. Although she refers in her affidavit to an appeal in which she is ostensibly involved, assuming there is something sui juris in the Appellate Division (I do not believe that is a fact, at least not at this point), it would have no effect on her post-Klein, post-Appellate Division determination related to the file. No stay has ever been issued by any court preventing me from going forward.

8. Sassower's affidavit makes reference to a

number of highly technical points relating to service of papers and the like, none of which has any effect on her failure to do what she was ordered to do, but her effort to explain the delay in doing so by stating that she did not turn over the file because Landau did not pay the so-called "experts' fees" was a smokescreen which grew into a red herring and did not rise to the legal effect of either.

9. Finally, with regard to the Sassower affidavit's rendition of the "defenses" which she claims I did not permit her to put forward, is the attack on Evelyn as being the perpetrator of a hoax upon me in the sense that Sassower wished to testify (obviously against her former client's best interests, if true) that Evelyn was seeking to delay the date of trial and her husband's divorce proceedings by discharging Sassower and retaining Landau, pointing to what she described as Evelyn's later "discharge" of Landau for the same reason. This latter statement, made by her under oath as one to which she would have testified at trial, is belied by the fact that this Court, as part of its efforts as an IAS judge, subsequently (during the period of time when Sassower's "illness" prevented the Court from completing this proceeding) was able to "reconcile" Evelyn and Landau by arranging to have Mr. Breslaw make an advance payment to Landau's firm against Evelyn's subsequent equitable distribution share (at the completion of the case) and I am in fact in position to state that Evelyn and Mr.

Breslaw have settled their case this past week before my colleague, Justice Nastasi, Landau having assisted in obtaining what I understand is a fair and reasonable settlement, satisfactory to all.

So much for the theory that it was Evelyn who sought delay. The fact is that the discovery and deposition process, which had been held up by Sassower for a year, was completed and their settlement reached, which is the way in which more cases should be disposed.

For the purpose of ending this aspect of this litigation, at least at the nisi prius level, this Court, while itself satisfied beyond any reasonable doubt of Sassower's willful wrongfulness, need not make such a determination in order to make Evelyn as whole as I believe I am entitled to do, or to protect other Evelyns in this State from the kind of shocking performance which has been the topic of all this discussion. As was pointed out by Landau in his original moving papers (Landau affidavit of June 20, 1988, page 5):

> "The conduct of Ms. Sassower is not only wrongful, but frivolous, simply engaged in to inflict further cost and expense to Mrs. Breslaw. The Court should consider imposing sanctions as more fully set forth in Uniform Court Rule 22 NYCRR Section 130.1 ... (emphasis supplied)".

Included in the definition of the term "frivolous" in the body of the statute itself is the following definition of when conduct meets that standard:

> " ... (2) it is undertaken primarily to delay or

prolong the resolution of the litigation, or to harass or maliciously injure another".

This Court believes that Sassower, evidently unchallenged by prior trips down the same road (see Muscolino, supra, pages 14-15, perhaps angered by her replacement by Landau and by the Klein decision to make her turn over the file and return even the relatively small pittance of money, especially as against what she had received and retained, made a conscious determination to delay and prolong the resolution of the litigation, at the same time harassing and maliciously injuring Breslaw. This Court has considered, as it is duty bound to do under the statute, the circumstances under which Sassower's conduct took place, including the time available for investigating both the legal and factual basis of her conduct, and whether the conduct was continued (as it was) when its lack of legal or factual basis was apparent to her, as an experienced long-time member of the Bar, a recognized specialist in such matters, who had even trafficked previously in such tactics, as the Muscolino case proves. The period of time when she "played" sick in my Court (How else explain her ability to perform as she was doing at the very moment in Judge Goettel's part? How else explain the responses of her own psychiatrist, Dr. Cherbuliez, in response to this Court's questioning of him, having been forced to bring him in when I learned from other people in my own Courthouse that she was also involved at that very time in this

Court in a fee dispute with Eaton, one of the lawyers who had earlier represented her?) was meant to and did delay the day of justice for Evelyn. Her conduct unduly prolonged the litigation for a long period of time (it was said in Court that the procedure to obtain the file took longer than the full period of time she actually served Evelyn).

It hardly seems necessary to go on. I do so solely because it is my first such proceeding in the more than two years I have served on the Bench and I actually feel the need to explain myself and the displeasure I have even in being forced to make such a decision about a lawyer whose conduct in the matter I so deplore and find so objectionable.

It is therefore the decision of this Court, on the basis of the evidence presented to it, that Evelyn is entitled to the imposition of costs in the sum of $9,042.25 which this Court finds appropriate based upon its review of the circumstances, all as set forth herein. Evelyn may enter a judgment against Sassower in that amount, all in pursuance of Sections 130-1.1 and 130-1.2 of the Uniform Rules for Trial Courts.

Unfortunately, this decision requires a coda, which I add without glee or enjoyment of any kind.

I made reference at the outset of this decision to Sassower's introduction of a political element into this case, which I believe to have been totally unnecessary and certainly unwarranted. After this proceeding started before me, she and

attorney Vigliano, speaking on behalf of a so-called Ninth Judicial Committee, belatedly sought to overturn either or both the 1989 general election in which I was selected with the support of both of the major political parties and the 1990 general election in which three of my colleagues were similarly voted into office. Her lawsuit has been dismissed at both the Supreme Court and Appellate Division levels, but it may still be sub judice, based on what is reported in the press.

I have no desire to make any comments with regard to that suit nor to respond to any of the attacks Sassower or Vigliano have made about me in the myriad of newspaper articles in which she has been quoted. I do not choose to violate any of the standards of judicial ethics, whether by straightening out the record or otherwise. However, I must point out that in a letter to the Editor of the New York Times on June 9, 1991, Sassower stated that this instant proceeding was "undecided more than one year after final submission to him" (meaning me), itself an inaccurate comment, incidentally, since I had given Vigliano, at his plea, additional time to June 20 to complete his presentation because, he claimed, that he was too busy in other matters to complete this assignment), using that example to depict that "failure" as additional indication of what happens when party bosses become judges".

That smear to the contrary notwithstanding, I am aware that my reputation is such that even so talented a poison

pen writer as Sassower could never harm it, but I believe it necessary that I point out that I thought originally that it was only fair not to decide this application until first the Klein order had been finally put to bed at the Appellate Division level, which it subsequently has, secondly until the Sassower-led application to upset the 1990 judicial election of three of my colleagues had played itself out (so that there could not be even the slightest insinuation that one had anything to do with the other), which it may have, and finally because I had hoped the Breslaw case itself would have been completed before I had to rule, which it has.

These feelings may have been naive, but I held them. I did not expect to be chopped up for doing the right thing.

After the Sassower Letter to the Editor, I realized that there was no sense holding back even a moment longer. The Sassower taste for raw meat obviously can never be satisfied.

If my delay has had any negative effect on any of the participants, I very much regret any discomfiture I brought upon such person. I do not believe it did.

The foregoing represents the Decision and Order of this Court.

DATE: White Plains, New York
June 24, 1991

HON. SAMUEL G. FREDMAN
Justice of the Supreme Court

Harvey Landau, Esq.
Bender & Bodnar, Esqs.
11 Martine Avenue
White Plains, New York 10601

Dranoff & Johnson, Esqs.
One Blue Hill Plaza
Pearl River, New York 10965

Eli Vigliano, Esq.
1250 Central Park Avenue
Yonkers, New York 10704