

'Meritless' Suit Costs Plaintiff Costs and Fees

By Alan Kohn

What a judge termed an "already long and tortured history of litigation" in state courts will not continue in a Federal forum, Judge Eugene H. Nickerson, of the U.S. District Court for the Eastern District of New York, has decided.

Not only did Judge Nickerson dismiss a civil rights complaint last week in *Raffe v. Citibank*, 84-305, Aug. 1, but he also assessed attorneys' fees and costs against the plaintiff and his lawyer, finding the complaint "entirely without merit and duplicative" of litigation in state courts.

In his eighteen-page opinion, the judge described a tangled series of events that began in 1979 when the president of Puccini Clothes, Milton Kaufman, died. At the time, Hyman Raffe, the plaintiff in the Federal suit, was a quarter owner of the company, which imported men's clothing. A series of suits ensued in state courts involving the former owners, lawyers and accountants. Puccini was ordered dissolved in 1980.

Mr. Raffe's Federal suit was against his former partners, estate executors, receivers, lawyers and accountants. He sought \$50 million in damages for alleged violations of his civil rights, removal of the receiver for Puccini and transfer of a pending state suit to Federal court.

Judge Nickerson found the plaintiff "can hardly claim that he has not

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had a full and fair opportunity" to litigate his claims in state courts against eight of the Federal defendants, having brought "duplicative motions and appeals, over seventy-five in the last two years, in the same unsupported manner and seeking the same relief."

In ordering defendants to submit affidavits of hours spent, fees sought and costs incurred in defending the Federal suit, the judge ruled Mr. Raffe's lawyer, George Sassower, would be held jointly and severally liable for any amount awarded because the attorney "knew or should have known" his client would be "precluded" from litigating in Federal court and because of his "vexatious" manner of litigating.

Lawyers for defendants in the suit included Donald B. Relkin, Michael J. Gerstein and Edward Weissman, of Kreindler & Relkin; John I. Karesh, Donald F. Schneider, Ave Maria Brennan and Lee Feltman, of Feltman, Karesh & Major; Robert E. Meshel and Timothy P. Butler, of D'Amato & Lynch; Edward S. Weltman and Jonathan I. Price, of Schneck Weltman & Ives; Kenneth Kirschner, of Arutt, Nachamie, Benjamin, Lipkin & Kirschner; Charles T. Lee, of Webster & Sheffield; and David S. Cook, an Assistant Attorney General.

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