

New York Law Journal July 20, 1987
p.1

Ex-Lawyer Loses Federal Appeal In Contempt Case

By Alan Kohn

The U.S. Court of Appeals for the Second Circuit has set aside *habeas corpus* relief from a disbarred lawyer's convictions for criminal contempt and ordered his petition denied.

The Court held last week in *Sassower v. Sheriff*, 86-2458, that based on the "record," George Sassower, who was disbarred five months ago (NYLJ, Feb. 27), had "received all of the process he was due."

Lawyer's Role Cited

Judge George C. Pratt wrote the Court's twenty-page opinion. Concurring were Judges Ellsworth A. Van Graafeiland and Roger C. Miner. The decision reversed a ruling handed down last year by Judge David N. Edelstein in U.S. District Court for the Southern District of New York.

Mr. Sassower's problems, Judge Pratt stated, began when he was the attorney for a shareholder in Puccini Clothes, which was placed in receivership. Despite orders disqualifying him, the judge continued, Mr. Sassower had done the following:

- "Bombarded" federal and state courts with more than 300 motions,

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Lawyer's Contempt

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thirty-five lawsuits and forty Article 78 proceedings.

- Was held in criminal contempt four times and civil contempt twice for violating orders enjoining him from filing actions relating to the Puccini dissolution and disobeying a court order to appear at a deposition.

The Contempt Findings

The appeal involved Mr. Sassower being held in contempt on sixty-three counts and sentenced to thirty days in jail in a New York Supreme Court proceeding.

Mr. Sassower pleaded not guilty but did not deny he had filed the "outstanding papers" that were the basis for the contempt, Judge Pratt stated, and failed to appear at a scheduled hearing before a referee.

Last year, Magistrate Nina Gershon, of the Southern District Court, found Mr. Sassower had been denied his constitutional rights because he did not receive a full evidentiary hearing or public trial and because there was no indication the findings were based on evidence proving his guilt beyond a reasonable doubt.

Judge Edelstein adopted the Magistrate's findings and Mr. Feltman appealed, supported by the office of Attorney General Robert Abrams.

Error Cited

Judge Pratt found Judge Edelstein had erred by failing to distinguish petty contempt from serious crime for the "purpose of evaluating the constitutionality of the procedures afforded to Sassower."

Mr. Sassower's interest in liberty for thirty days, Judge Pratt found, was "outweighed by the virtually nonexistent risk of an erroneous determination and by the strong public interest in halting this costly litigation and in deterring Sassower's continued abuse of our legal system."

The judge also made the following observations:

- Mr. Sassower received adequate notice when he was served with a notice of motion and supporting papers that clearly informed him in detail of the nature of the charges, the facts underlying them, the possible penalties and the results of failure to appear.

- He also was given a "reasonable opportunity to be heard, an opportunity that he chose to pursue by filing three cross-motions and four affidavits in opposition ... Although he pleaded not guilty, Sassower never denied filing the papers offered in support of the contempt charges."

- Where it is clear from "unchallenged documentary evidence ... the defendant has continually and wilfully disobeyed court orders, a full-blown hearing is not required before the defendant may be held in contempt under New York Judiciary Law §751."

- Even if Mr. Sassower would have been entitled to an evidentiary hearing, he waived the right by failing to appear.

- In the "context of this record, we give no weight to the fact that the express words 'guilty beyond a reasonable doubt' were not used."

The case was considered on briefs that were submitted by Mr. Sassower, of White Plains, N.Y.; Donald F. Schneider and Edward Weissman, of Feltman, Karesh, Major & Farberman, for Mr. Feltman, the receiver; and Davis S. Cook and Christopher Keith, Assistant Attorneys General, for Mr. Abrams.