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May 18, 1984

Michael A. Gentile, Esq.
Chief Counsel
Departmental Disciplinary Committee
Supreme Court, Appellate Division
First Judicial Department
41 Madison Avenue
New York, New York 10010

Re: Hyman Raffe
Docket No.: 689/84

Dear Mr. Gentile:

We are writing in response to your letter dated May 3, 1984 concerning the complaint filed by Mr. Hyman Raffe ("Raffe").

Each of the conclusory allegations of wrongdoing contained in Mr. Raffe's letter to the Bar Association dated January 16, 1984 has repeatedly been made by Mr. Raffe and his attorney, George Sassower, Esq. ("Sassower"), in various actions and proceedings pending in the New York State Supreme Court, County of New York, and has uniformly been rejected by various justices. These very same allegations are also contained in a complaint (Exhibit "A") filed by Mr. Raffe in the United States District Court, Eastern District of New York (84 Civ. 9305 (EHN)) entitled "Hyman Raffe, et ano. v. Citibank, N.A., et al.", in which each of the law firms named in the grievance, former Mayor John V. Lindsay, Attorney General Robert Abrams, and the entire "Supreme Court of the State of New York, County of New York" are also defendants. In that action, there are <u>sub judice</u> motions by all defendants to dismiss the complaint. Finally, Mr. Raffe has repeatedly made these same complaints to District Attorney Robert Morgenthau, whose office has not acted upon them to the best of our knowledge.

The Parties Involved in the Dissolution of Puccini

We believe that this grievance may best be understood in the context of the five-year legal dispute between the shareholders of Puccini Clothes, Ltd. ("Puccini"). This dispute resulted in the dissolution of Puccini by order of the New York State Supreme Court, New York County (Sinclair, J.) dated June 4, 1980 (the "June 4, 1980 Order") (Exhibit "B"). Raffe contends that he is entitled to all of the assets of Puccini which total approximately $650,000, a claim vigorously disputed by the remaining three shareholders.

Feltman, Karesh & Major ("FK&M") are the attorneys for Puccini and also for me in my capacity as the court-appointed permanent receiver for Puccini (sometimes the "Receiver"). Arutt, Nachamie, Benjamin, Lipkin & Kirschner, P.C. and Kreindler & Relkin, P.C. are respectively, the attorneys for Eugene Dann ("Dann") and Robert Sorrentino ("Sorrentino"), and for Citibank, N.A. and Jerome H. Barr as co-executors of the Estate of Milton Kaufman. Dann, Sorrentino and the Estate of Kaufman are each 25% shareholders of Puccini.

Raffe owns the remaining 25% of the outstanding shares of Puccini. Raffe's application to be appointed as receiver for Puccini was denied by the same order which appointed the Receiver. During the two years of the Receivership, Raffe has (a) unsuccessfully sought on five occasions to remove the Receiver; (b) unsuccessfully sought on three occasions to have FK&M disqualified and/or discharged as attorneys for the Receiver; (c) unsuccessfully made a motion for leave to commence an action against both FK&M and the Receiver under New York State Judiciary Law §487 and other unspecified tort law; (d) notwithstanding the denial of his motion for leave to sue FK&M, commenced such an action in the State Court, which action was thereafter dismissed; and (e) commenced the said action in Federal Court. Attacks such as these on attorneys and even justices of our Courts are, unfortunately, common tactics in the litigation arsenal of Raffe and Sassower. Annexed hereto as Exhibit "C" is a partial summary of such conduct.

Sassower was Raffe's attorney in several actions and proceedings involving Puccini until he was disqualified in all actions except one because of a disabling conflict of interest in that he previously represented Puccini, Dann and Sorrentino in related matters.

The Facts

The June 4, 1980 Order which dissolved Puccini appointed the Honorable John V. Lindsay as permanent receiver of all of the assets and property of Puccini. We are advised that Mr. Lindsay declined to accept the appointment in January, 1981. Subsequently, by order dated February 1, 1982 (Exhibit "D"), the June 4, 1980 Order was modified to the extent of appointing me as the permanent Receiver of Puccini. Thus, there was no Receiver acting for Puccini from its dissolution in June, 1980 until my appointment almost twenty months later in February, 1982. Raffe alleges in the grievance that it was during this period prior to my appointment, and prior to the retention in February, 1982 of FK&M as attorneys, that other law firms conspired to unlawfully dissipate Puccini's assets.

Shortly after FK&M's retention, due to certain questions that Raffe had raised concerning Puccini's financial affairs, FK&M made a motion on my behalf for leave to retain the accounting firm of Rashba & Pokart ("R&P") to review the books and records of Puccini. We advised the Court on the application that we recommended R&P because "that firm issued a prior financial statement, is familiar with Puccini's books and records and has retained its work papers in connection with the prior statement", and its retention would avoid a duplication of effort with its attendant cost to Puccini. Raffe, who contends in his grievance that FK&M conspired to cover up improprieties of other law firms in the conduct of Puccini's financial affairs, opposed the motion which sought aid in investigating these allegations, while at the same time making the identical allegations of conspiracy made herein.

Special Term (Rettinger, J.) rejected Raffe's allegations of conspiracy and granted our motion (Exhibit "E"), stating in his decision that Raffe's allegations of wrongdoing are "without merit".

Pursuant to the order subsequently entered on Judge Rettinger's aforesaid decision, in May 1983, the Receiver retained the accounting firm of R&P to prepare tax returns and to prepare a report based on a review of the books and records of Puccini (Exhibit "F"). In a subsequent letter dated November 10, 1983, the Receiver specifically requested that R&P include in their report, among other things,

> "whether (a) there are any assets of Puccini that we do not have in our possession, (b) the inventory of Puccini was disposed of in a commercially reasonable manner, (c) any assets of Puccini were disposed of between June 4, 1980 (the date Puccini was dissolved) and February 4, 1982 (the date the Receiver qualified), and (d) we have all the books and records of original entry that a company such as Puccini would normally maintain in the regular course of its business." (Exhibit "G")

R&P spent considerable time reviewing those books and records in the Receiver's possession and thereafter issued a written report.

However, R&P has confirmed that the accusatory and threatening letters written by Raffe to the Office of Professional Discipline, the District Attorney of New York County, and directly to R&P, and Raffe's service on them of a barrage of motions in the State Court, delayed the delivery of the very report that Raffe was demanding and which he claimed would confirm his unsubstantiated allegations of criminal larceny by law firms other than FK&M.

Because Raffe's improper conduct had and threatened to continue to interfere with the administration of the Estate of Puccini, we made a motion in the State Court for an order enjoining and restraining Raffe from communicating with R&P and from otherwise interfering with the administration of Puccini. The motion is sub judice.

In the meantime, we offered to make available for inspection by all shareholders and creditors of Puccini, its financial books and records in our possession as well as the books maintained by the Receiver. It was not until November 7, 1983 that Raffe and Sassower availed themselves of this opportunity. Made available for their review were the original ledgers maintained by Puccini, including the general journal, cash receipts, cash disbursements, purchases, petty cash, accounts receivable, accounts payable, general ledger and unit control ledgers, as well as Puccini's banking records.

In sum, contrary to the allegations of the grievance that the FK&M conspired with various other attorneys to conceal the unlawful and illegal dissipation of Puccini's assets, FK&M has pursued, and is continuing to pursue, a diligent course to ascertain whether Raffe's allegations of an improper dissipation of Puccini's assets have any factual basis. Instead of cooperating in this endeavor, Raffe has embarked on a campaign that has impeded this legitimate inquiry.

The remaining charges made by Raffe are similarly baseless. We categorically deny any agreement with the law firm of Kreindler & Relkin regarding our legal fees for representing the Receiver. After Raffe and Sassower were denied leave to intervene in connection with FK&M's application for interim legal fees, a hearing was conducted before Special Referee Frank B. Lewis on the reasonable value of FK&M's services. No opposition was made to the reasonable request of our firm. There is simply no illicit agreement between Kreindler & Relkin and FK&M concerning attorney's fees. In fact, FK&M has and continues to oppose Kreindler & Relkin's request for attorney's fees in one of the litigations involving Puccini.

Similarly, we have not submitted any perjurious affidavit or made any false filing of statements, as alleged by Raffe in paragraph 3 of his grievance. Since Raffe has not specified the affidavits and statements to which he refers, or stated the nature of the alleged perjurious and false statements, we are unable to respond further to this allegation.

The Receiver has not improperly refuse[d]" to compel the clients of the Arutt, Nachamie firm to file a "statement of affairs of Puccini". As I recently advised the State Court in responding to Mr. Raffe's motion for an order directing Dann and Sorrentino to file a statement of affairs:

> "Raffe contends that Messrs. Eugene Dann and Robert Sorrentino, shareholders of Puccini, should be required to file a Statement of Affairs concerning Puccini. The June 4, 1980 order directed Messrs. Dann and Sorrentino, as well as Raffe, to do so. Prior to receipt of Puccini's books and records, I did request each of the three individuals, including Raffe, to comply with this directive, to no avail.
>
> After receipt of Puccini's books and records, I determined to allow Puccini's accountants to glean the necessary information, believing that if they are able to do so, it would no longer be productive or necessary to make a motion to hold Messrs. Raffe, Dann and Sorrentino in contempt of court for failing to provide information that I was able to obtain from another source. Nevertheless, since the issue has been raised by Raffe (who himself is in contempt), I certainly have no objection to the entry of an appropriate order

> concerning the filing of a Statement of Affairs, as outlined in the June 4, 1980 order."

Thereafter, the clients of the Arutt, Nachamie firm did file a statement of affairs.

We believe that we pursued a practical approach to obtaining pertinent information that avoided the additional expense to Puccini of securing sanctions against the recalcitrant parties. It is Raffe who was derelict in his obligations. Indeed, the order which resulted from Raffe's motion once again directed Raffe, as well as Dann and Sorrentino, to file such a statement.

FK&M did not seek the appointment "of a partisan accounting firm, associated with the Kreindler and Arutt firms, in an attempt to conceal their wrongdoing", as Raffe contends. As we previously stated at page 3 supra, we recommended that firm because it "issued a prior financial statement, is familiar with Puccini's books and records and has retained its work papers in connection with the prior statement", and this retention would avoid a duplication of efforts with its attendant costs to Puccini. We are not aware of any relationship between the Kreindler & Relkin and Arutt, Nachamie law firms and Rashba & Pokart, except for that firm's prior accounting work for Puccini. No such relationship has ever been demonstrated despite Raffe's repeated, conclusory allegations to the contrary.

The Receiver did not file "with the Attorney General and the Court . . . false and misleading financial statements". The Receiver has duly filed annual verified statements with the Attorney General and the Court pursuant to BCL §1207 (Exhibit "H"). Because the Receiver was not required to file any "financial" statement, we are at a loss to understand this allegation.

The Receiver has not improperly neglected to file an accounting, as alleged by Raffe at paragraph 4 of his grievance. The Receiver has sought a court order extending the time to file a final accounting (Exhibit "I"). This extension is necessary in large part because the proliferation of outstanding claims by and against

Puccini precludes the finalization of the Estate of Puccini at this time. The Receiver has filed annual verified statements which detail the status of the Estate of Puccini.

The Principal Allegations of the Grievance Have Been Repeatedly Raised by Raffe in the State Court and Have Been Repeatedly Rejected

In opposition to FK&M's motion for leave to retain R&P as accountants, Raffe submitted an affidavit (Exhibit "J") which contained the same conclusory charges of conspiracy that are contained in the grievance.* Raffe contended, among other things, that the Receiver's effort to employ R&P was a "cover-up [of] a cover-up" of alleged wrongdoing by Puccini's other shareholders and their attorneys; that the Receiver was derelict in his duties; that Kreindler & Relkin had agreed to remain silent about an alleged disposition of a substantial portion of the inventory and other assets of Puccini by Dann and Sorrentino; the Kreindler & Relkin and Arutt, Nachamie law firms were acting in concert in various litigations; that those firms induced Mr. Lindsay to refrain from qualifying as Receiver; that said firms retained R&P to prepare a misleading financial statement about Puccini; that Puccini's assets were being "raped"; that FK&M and the Receiver "ha[ve] become part of the gang interested in raping the assets of Puccini"; and that the Kreindler & Relkin and the Arutt, Nachamie law firms never objected to any action performed or relief requested by the Receiver, and vice-versa.

In granting FK&M's motion and directly rejecting Raffe's aforesaid contentions, the Court pointed out that Raffe had not set forth any facts to support his conclusory allegations:

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*The exhibits to this and subsequent affidavits are omitted due to their extreme bulk.

> "Raffe opposes the branch of the motion which seeks to retain the accounting firm of Rashba & Pokart on the basis of allegations of conspiracy and other misconduct on the part of the other shareholders of Puccini, the respective attorneys and the receiver and his law firm as well as the accounting firm, to rape Puccini's assets. Much of Raffe's affidavit in opposition to the Feltman motion and in support of his own cross-motion deals with matters apparently at issue in another, related lawsuit. No documents or specific facts are submitted in support of Raffe's allegations of several conspiratorial understandings and agreements between the various parties involved in the dissolution of Puccini."
>
> Raffe's contentions are without merit. His allegations of conspiracy are unsupported . . ." (Exhibit "K")

Despite the express rejection of his contentions, Raffe continued to level the same charges in subsequent motions. For example, by notice of motion dated February 4, 1983 (Exhibit "L"), Raffe sought an order in the State Court removing the Receiver and compelling him to account. Raffe claimed that the Receiver was concealing financial data regarding Puccini by failing to file an accounting (when in fact the Court had extended the time in which to file a final accounting due in part to the numerous outstanding lawsuits and claims by and against Puccini). This motion was denied by the order and decision of the New York State Supreme Court (Ascione, J.), dated June 2, 1983 (Exhibit "M").

Thereafter, Raffe again sought an order in the State Court removing the Receiver and requiring the various parties to "explain in detail their activities . . . ." (Exhibit "N"). Raffe requested such relief based on an alleged "larceny of funds in the custody of the court" (paragraph 2 of said affidavit) and again mentioned many of the same alleged acts that are the subject of the grievance, including that (i) FK&M and the Receiver have refused to recover Puccini's alleged illegally diverted assets and to uncover information which would disclose other diversions of assets; (ii) that Barr, Citibank, Dann and Sorrentino and their attorneys have dissipated Puccini's assets; and (iii) that FK&M and the Receiver became "an active participant in this rape, particularly in their attempt to conceal from [plaintiff] and the court this diversion of assets to the prejudice of their trust -- Puccini!" This motion was denied by the State Court, which noted the prior two unsuccessful motions to remove the Receiver (Exhibit "O").

Thereafter, Raffe moved yet another time (Exhibit "P") for an order discharging the Receiver based upon alleged misconduct and betrayal of his trust. On this motion, Raffe again claimed that Puccini's assets had been dissipated as a result, among other things, of the payment of monies to the Arutt, Nachamie law firm, Puccini's former counsel, and that FK&M and the Receiver continued to participate in a conspiracy which is the subject of the grievance by failing to furnish information regarding Puccini to the New York State Supreme Court which would have unearthed the unlawful payments and dissipation of Puccini's assets. In this particular affidavit, Raffe also alleged that Kreindler & Relkin, attorneys for the co-executors of the Estate of one of Puccini's deceased shareholders, did not oppose FK&M's interim application for legal fees. This particular motion of Raffe is <u>sub judice</u>.

Raffe's next motion on these very same issues was made less than one month later (Exhibit "Q"). Once again, Raffe sought an order, <u>inter alia</u>, discharging the Receiver "for misconduct in concealing and/or destroying the books and records of Puccini . . . ."

In support of this motion, Raffe relied, among other things, on the following allegations: that an inspection of Puccini's books and records by Raffe's employee revealed a "criminal larceny", that the Receiver concealed such larceny, and that R&P conspired to delay the dissemination of the accounting for Puccini. That motion is still sub judice.

Shortly thereafter and at approximately the same time that Raffe filed this grievance, he commenced an action in the United States District Court, Eastern District of New York (84 Civ. 9305(EHN)) entitled "Hyman Raffe, et ano. v. Citibank, N.A., et al.", in which he sued each of the law firms named in the grievance, their clients, including the Receiver, former Mayor John V. Lindsay, Attorney General Robert Abrams, and the entire "Supreme Court of the State of New York, County of New York". Raffe sought damages of $50,000,000, essentially alleging that all of the defendants had conspired to deprive him of his civil rights, and also sought again to remove the Receiver. The complaint (Exhibit "A") advances precisely the same allegations of wrongdoing that are contained in the grievance. Thus, Raffe alleges that the Kreindler & Relkin and Arutt, Nachamie law firms and their clients "unlawfully took possession and control of Puccini, its assets and affairs, and began to dissipate its assets as suited their individual and joint private purposes, all of which [was] made possible by the cooperation by defendant, Lindsay, in this matter"; that "the illegal and unlawful control of Puccini . . . was pursuant to a conspiratorial agreement between them, and was only made possible by the cooperation and inaction of Lindsay, who is under mandate to expeditiously take possession and control of Puccini, as an agent of the [Supreme Court]"; that immediately upon appointment, FK&M and the Receiver entered into the said conspiracy and concealed the alleged unlawful dissipation of funds; that in furtherance of the conspiracy, FK&M and the Receiver had the Supreme Court approve the appointment of Rashba & Pokart as the accountants for Puccini without revealing the prior affiliation of R&P with the original conspirators; that FK&M failed to compel certain shareholders to file a statement of affairs; that FK&M failed to disclose the alleged perjurious false statements made by Kreindler & Relkin; that the Kreindler & Relkin and Arutt, Nachamie law firms refused to resist any claims made by the Receiver or FK&M and "in fact conduct themselves in order to increase their money claims"; and that the Supreme Court of the State of New York and the Attorney General are aware of the unlawful dissipation of assets, but have deliberately failed to take any action. The motions by all defendants to dismiss the complaint are sub judice.

Most recently, still undeterred by the continuous rejection of his repeated claims, Raffe made yet another motion to deny compensation to FK&M for its representation of the Receiver (Exhibit "R"), once again making the same charges. This motion was submitted to Special Referee Donald Diamond, who had been appointed by Chief Administrative Judge Xavier C. Riccobono to oversee certain aspects of many of the litigations involving Puccini because of the "proliferation" of motion practice that had occurred.

Special Referee Diamond rendered a decision denying the motion (Exhibit "S"), in which he stated that "the issues of fact raised in that motion are resolved adversely to [Raffe]". Because the motion was obviously one for reargument, the Special Referee denied the motion without prejudice to a renewal of the application to the judge who decided the initial motion, stating that:

> "it is the third application for reargument made with respect to that order; . . . and in order to harmonize Judge Riccobono's order referring the disputed issues to me, I view the provisions of C.P.L.R. 2221, which require that a motion to reargue be made on notice to the judge who made the original determination, should be construed as to mean that any application to reargue must be made by order to show cause signed by judge who made the initial determination."

Accordingly, it is clear that Raffe has previously advanced, time and time again, the very same issues of conspiracy made at bar, and that those issues have been conclusively adjudicated against Raffe.*

In sum, the conclusory allegations of wrongdoing advanced by Raffe lack even the slightest factual basis. We firmly believe that this grievance is a continuation of the outrageous tactics of Raffe and his attorney, George Sassower, which include, among other things, two lawsuits against FK&M and continuous complaints filed with the District Attorney -- none of which has any merit and all of which have to date been unsuccessful. This grievance is yet another example of the conduct for which Sassower was strongly rebuked by the Appellate Division, Second Department in Sassower v. Signorelli (N.Y.L.J., March 7, 1984, p. 13). In that case, the Appellate Division affirmed an order enjoining Sassower from instituting any further actions or proceedings in any New York State court arising from certain rulings of Surrogate Signorelli requiring Sassower to account for his activity as a fiduciary. In language particularly apt to the activities of Sassower and Raffe in this case, the Court noted:

> "This appeal is the latest in a series of frivolous and repetitious claims, motions, petitions, collateral proceedings and appeals arising from the rulings of the defendant, the Surrogate of Suffolk County, which required plaintiff George Sassower to account

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*Raffe's attack against FK&M has not been limited solely to these conclusory allegations. Raffe and Sassower, as plaintiffs, previously brought an action in the Supreme Court of the State of New York against FK&M and Arutt, Nachamie, Benjamin, Lipkin & Kirschner, alleging that FK&M had acted improperly in its representation of the Receiver. The complaint was dismissed as against FK&M (Exhibit "T") on the ground that it failed to state a cause of action, and the appeal was subsequently dismissed by the New York State Supreme Court, Appellate Division, First Department (Exhibit "U").

> for his activities as a fiduciary. We affirm the order insofar as appealed from and utilize the opportunity to caution these plaintiffs as well as others, that this Court will not tolerate the use of the legal system as a tool of harassment.
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> * * *
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> To be sure, public policy mandates free access to the courts and zealous advocacy is an essential component of our legal system, and ordinarily, the doctrine of former adjudication will serve as an adequate remedy against repetitious suits.
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> Nonetheless, a litigious plaintiff pressing a frivolous claim can be extremely costly to the defendant and can waste an inordinate amount of court time, time that this court and the trial courts cannot afford to lose. Thus, when, as here, a litigant is abusing the judicial process by hagriding individuals solely out of ill will or spite, equity may enjoin such vexatious litigation.
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> That plaintiffs are attorneys does not bar the issuance of an injunction. Indeed, attorneys who participate in such manipulation of the legal process are subject to strong disciplinary sanctions.
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> In short, Special Term acted properly in putting an end to plaintiff's

> badgering of the defendant and the court system . . ." (citations omitted).

We shall of course promptly furnish any additional information that you may request.

Respectfully submitted,

Lee Feltman
For the Firm