

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of

GEORGE SASSOWER,

An Attorney.
-----x

M-2-238

[VLB]

Notice of Motion

S I R:

PLEASE TAKE NOTICE, that upon the annexed affirmation of GEORGE SASSOWER, Esq., dated May 13, 1987, and all the pleadings and proceedings had herein, the undersigned will move this Court before Hon. VINCENT L. BRODERICK, held at the Courthouse thereof, 40 Center Street, Foley Square, New York, New York, 10007, held at the Courthouse thereof, on the 28th day of May, 1987, at 9:30 o'clock in the forenoon of that day or as soon thereafter as Counsel may be heard for an Order to (1) summarily dismissing this proceedings by reason of the constitutional infirmities in the criminal convictions against respondent on which the state disbarment Order was entered; (2) alternatively, to modify and/or vacate, in part, the Order of U.S. Magistrate, JAMES C. FRANCIS IV, dated May 4, 1987; (3) together with such other, further, and/or different relief as to this Court may seem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE, that answering papers,
if any, are to be served and filed in accordance with the Rules
of this Court.

Dated: May 13, 1987

Yours, etc.,

GEORGE SASSOWER, Esq.
Attorney for respondent,
pro se.
51 Davis Avenue,
White Plains, N.Y. 10605
914-949-2169

cc: GEORGE G. GALLANTZ, Esq.
U.S. Magistrate JAMES C. FRANCIS IV (courtesy copy)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of

GEORGE SASSOWER,

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[VLB]

An Attorney.
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1a. This affirmation is made in support of respondent's motion (1) for summary judgment dismissing this proceeding by reason of the constitutional infirmities in the criminal convictions against your affirmant on which the state disbarment Order was entered; (2) alternatively, to modify and/or vacate, in part, the Order of U.S. Magistrate, JAMES C. FRANCIS IV, dated May 4, 1987 [hereinafter the "Order"]; (3) together with such other, further, and/or different relief as to this Court may seem just and proper in the premises.

b. In the process of preparation is respondent's motion for summary judgment based on the misconduct of ROBERT H. STRAUS, Esq., Counsel for the Grievance Committee; and a third motion for summary judgment under the theory that the Appellate Division, Second Department, was an unconstitutional tribunal in the matter at bar.

2a. As far as affirmant knows not a single jurist of the APPELLATE DIVISION, SECOND DEPARTMENT, has shown any inclination to represent to the SUPREME COURT OF THE UNITED STATES that such Disbarment Order was legally made.

b. Similarly, neither Chief Judge WILFRED FEINBERG, nor Circuit Judge IRVING R. KAUFMAN, nor Circuit Judge THOMAS J. MESKILL are willing to represent to the SUPREME COURT OF THE UNITED STATES that the affirmance of the criminal conviction of affirmant was legally correct or that their Court or the District Court had jurisdiction to find affirmant guilty of criminal contempt.

c. Justice Presiding THEODORE R. KUPFERMAN, the presiding jurist at all three (3) state court convictions, including Sassower v. Sheriff (651 F. Supp. 128 [EDNY, per Edelstein, J.]), has likewise been unwilling to represent to the SUPREME COURT OF THE UNITED STATES, that the conviction of affirmant was legally correct, or that His Honor's Court and nisi prius had jurisdiction to convict, without a trial.

3a. On May 4, 1987, affirmant wrote to the Chief Justice of the United States, with a copy to, inter alia, every jurist in the Appellate Division, Second Judicial Department, as follows:

"1. I most respectfully request that Your Honor's Court discharge the rule to show cause (U.S. , 107 S.Ct. 1365, 94 L.Ed.2d 682), until such time as a single member of the Appellate Division, Second Judicial Department is willing to swear under oath or affirm to Your Honor's Court that such Court gave good-faith obedience to the Constitution of the United States in disbarring me (Grievance Committee v. G. Sassower (A.D.2d , 512 N.Y.S.2d 203).

2a. Undoubtedly each and every learned member of that Court actually knows that the three (3) trial-less convictions for non-summary criminal contempt, were 'not entitled to respect' (Ex parte Terry, 128 U.S. 289, 307; United States v. Lumumba, 741 F2d. 12, 15-16 [2d Cir.]; Sassower v. Sheriff, 651 F. Supp. 128). Nevertheless, in the disciplinary proceedings, I was not permitted to controvert the validity of such convictions.

Each and every attempt by my adversaries to obtain a conviction by due process, simply failed, and consequently, these trial-less convictions were staged as a predicate for disbarment.

b. Undoubtedly also, in such quasi-criminal disciplinary proceedings (Matter of Ruffalo, 390 U.S. 544, 551), wherein I was denied all subpoena power, each and every member of that Court actually knows that such prohibition constituted a manifest violation of my VI and XIV Amendment rights.

c. In view of the aforementioned, I need not delve into the many other federal constitutional deprivations.

3. I strongly assert that the implied request by the Appellate Division, to Your Honor's Court to give recognition to such Disbarment Order, without disclosing its many constitutional decisive infirmities, is an affirmative act of deceit.

4a. Today, begins the eighty-fourth (84th) month since PUCCINI CLOTHES, LTD., was involuntarily dissolved, its assets and affairs becoming custodia legis under color of law, and despite multiple statutory mandates, there is still no filed accounting.

b. No true accounting can be filed without revealing the massive larceny of its judicial trust assets, and other criminal conduct, with judicial and official involvement.

c. Must the good repute of Your Honor's Court be made vulnerable, when the media and public learns that Your Honor's Court disbarred me for simply exposing judicial and official misconduct?

d. In every respect, the Appellate Division, wilfully practiced 'lynch law ... intent on on [my professional] death' (Holmes, J., dissenting in Frank v. Mangum, 237 U.S. 309, 350), in a sordid scenario to conceal criminal conduct.

b. On April 10, 1987, along with a copy of my response to the SUPREME COURT OF THE UNITED STATES, of the same date, affirmant wrote to Chief Judge, WILFRED FEINBERG, Circuit Judge, IRVING R. KAUFMAN, and Circuit Judge, THOMAS J. MESKILL, with a copy to the Chief Justice of the Supreme Court, as follows:

"Enclosed please find my response to the rule of the Supreme Court of the United States with respect to the above disbarment proceeding, wherein I claim entitlement to Brady v. Maryland (373 U.S. 83) material, and response to my United States v. Agurs 427 U.S. 97) demands.

My few and simple demands, in addition to my Brady v. Maryland (supra) request, are:

1. Individually, did Your Honors know on September 13, 1985, as a matter of ministerial compulsion, a federal district court judge did not have the jurisdictional power to convict anyone for non-summary criminal contempt, without a trial, absent a plea of guilty?

2. Did Your Honors have substantial evidence before September 13, 1985, conclusive or otherwise, that Kreindler & Relkin, P.C., and its clients, those in whose favor such criminal contempt convictions were rendered, had engineered the larceny of the judicial trust assets of PUCCINI CLOTHES, LTD.?

3. What have Your Honors or the Court done, if anything, concerning the information that these criminal convictions are being compounded for private considerations, reaching into sums of hundreds of thousand of dollars?

4. Even on an ex parte, inquest basis, was there a prima facie case for conviction of HYMAN RAFFE and/or myself, in the papers before Your Honors, for conviction for non-summary criminal contempt?

5. Is there any significant fact in my response to the Supreme Court of the United States, which Your Honors take exception to?

6. Is there any legitimate reason that Your Honors can advance for my not extensively publishing the happenings in this and related matters?"

c. A substantially similar letter was addressed to Presiding Justice, THEODORE R. KUPFERMAN, who, on appeal, was the panel presiding jurist in all three (3) of affirmant's state convictions.

d. These trial-less, and sometimes charge-less, barbaric convictions and incarcerations, were instituted for the purpose of "extortion" and "blackmail", when no possibility existed that convictions could be obtained with "due process" procedures.

e. To say more on this subject, would be supererogatory!

4. Alternatively, the Order of U.S. Magistrate JAMES C. FRANCIS IV, dated May 4, 1987 (Exhibit "A"), should be vacated and/or modified, in part.

a. U.S. Magistrate JAMES C. FRANCIS IV was, by Order dated April 24, 1987, mandated to hold a hearing and to issue a Report to Hon. VINCENT L. BRODERICK based on such hearings.

b. Simply stated, as a matter of a ministerial obligation, such Order of Judge VINCENT L. BRODERICK, must be given obedience by the United States Magistrate.

c. Respondent's presentation before Hon. VINCENT L. BRODERICK, by affirmations and oral argument, having convinced His Honor that a hearing was warranted, no coordinate jurist nor United States Magistrate has the power to modify such ministerial direction, or so respondent respectfully contends.

d. The pertinent portion of the Order of April 24, 1987, reads as follows:

"Mr. Sassower appeared this morning and requested a hearing, on the grounds that he was disbarred in state court without due process. The matter is referred to Magistrate James Francis to hold such a hearing, and then to report to the undersigned."

e. Instructively, the Order of April 24, 1987 in its direction for a hearing, found reaffirmation by His Honor, in the Order of April 30, 1987, which stated:

"While Mr. Sassower will have the opportunity, in the hearing before Magistrate Francis, to present the evidence which he wishes to have considered in the discipline, if any, to be imposed, it is appropriate that he be suspended in the interim from practice before this court."

5a. Furthermore, "the Order" of U.S. Magistrate appears to be a usurpation of statutory power.

b. Respondent verily believes that the powers of the U.S. Magistrate is governed and limited by 28 U.S.C. §636.

c. §636(b)(1)(A) provides that the United States Magistrate has no power, inter alia, to grant "summary" relief, "suppress evidence in a criminal case", and/or "to dismiss".

d. "The Order", read in conjunction with His Honor's oral remarks on May 4, 1987, is in respondent's good faith opinion, a manifest transgression of lawful statutory authority.

6a. This is a quasi-criminal proceeding (In re Ruffalo, 390 U.S. 544, 551; Erdmann v. Stevens, 458 F.2d 1205, 1210 [2d Cir.]), the procedural framework for which is set forth in the Application of Gault (387 U.S. 1), a case which was specifically cited by the Court in In re Ruffalo (supra).

b. In the Matter of Gault (supra), the Court very emphatically held that 5th Amendment rights are triggered in quasi-criminal proceedings (at 42-58; Boyd v. U.S., 116 U.S. 616).

c. Respondent presently does not see any serious problem with "the Order" insofar as it may require him, in general terms, to set forth or plead "special issues".

d. However insofar as "the Order" requires respondent to set forth "factual disputes", such requirement violates respondent's 5th Amendment rights (Spevack v. Klein, 385 U.S. 511).

e. His Honor, at the mandated hearing(s) will probably learn that respondent, as a consistent course of professional conduct, has invariably counseled the assertion of 5th Amendment rights, as a societal obligation of the innocent.

Additionally, as respondent has over the years, maintained, innocence, or the belief in same, is about the worst excuse for waiving such 5th Amendment rights.

f. Whatever burdens this Court lawfully places on the respondent, in the final analysis, the burden of proof on all essential issues lies with the court appointed prosecutor, George G. Gallantz, Esq.

g. Whatever non-vested ephemeral rights the courts have previously attached to the practice of law, Supreme Court of New Hampshire v. Piper (U.S. , 105 S.Ct. 1272) has clearly placed the right to practice law into a federal constitutional orbit as "fundamental" (at 1277).

7a. The "Order" limits respondent's contentions to those of a constitutional magnitude, a limitation which affirmant finds without support (In re Ruffalo, 390 U.S. 544, 551; Thread v. U.S., 354 U.S. 278; Matter of Isserman, 348 U.S. 1; Selling v. Radford, 243 U.S. 46; Erdmann v. Stevens, 458 F.2d 1205, 1210 [2d Cir.]; Association of the Bar v. Isserman, 271 F.2d 784 [2d Cir.]; U.S. v. Strawser, 800 F.2d 704 [7th Cir.]; Greer's v. Wilkes, 782 F.2d 918 [11th Cir.]; Matter of Thies, 662 F.2d 771 [D.C. Cir.]; Jones v. Hulse, 391 F.2d 198 [8th Cir.]; In re Noel (93 F.2d 5 [8th Cir.]; Matter of Klein, 407 F. Supp. 570 [SDNY, Edelstein, J.]; Disbarment in the Federal Courts, 85 Yale L.R. 975).

b. Thus, while most of respondent's objections are of constitutional magnitude, he respectfully should be relieved of the need to engage in a scholastic exercise as to whether such objections are or are not embraced within the protective umbrella of the United States Constitution, unless so directed by His Honor.

8a. Affirmant's initial communication from the Chambers of U.S. Magistrate JAMES C. FRANCIS IV, was by message from Ms. Ellen Drachman, who stated that Chambers had spoken to Mr. Straus and confirmed hearings for April 30, 1987, at 2:00 p.m., and that affirmant could date his subpoenas accordingly.

b. Such date was thereafter changed to May 4, 1987, upon request of GEORGE G. GALLANTZ, Esq.

c. On May 1, 1987, in anticipation of such hearings, subpoenas were served upon, inter alia, Judge EUGENE H. NICKERSON, the APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT, and several of the justices of that Court.

d. Before 9:30 a.m. on the morning of May 4, 1987, subpoenas were served upon, inter alia, Chief Judge WILFRED FEINBERG, Circuit Judge IRVING R. KAUFMAN, and Circuit Judge THOMAS J. MESKILL.

e. At about 10:20 a.m., His Honor, U.S. Magistrate JAMES C. FRANCIS IV entered the Courtroom and during the oral colloquy that followed, His Honor, sua sponte quashed all subpoenas served, and prohibited further issuance thereof, without a prior showing.

Magistrate Francis thereafter memorialized such sua sponte determination in "the Order" (Exhibit "A").

f. Affirmant, fully appreciates the psychological forces that burdened the Magistrate, even had His Honor not been communicated ex parte, and the events clearly indicates that there was undisclosed ex parte communications.

Except for a letter written to His Honor by Feltman, Karesh, Major & Farbman, Esqs., there was no open disclosure by anyone, before such sua sponte disposition, who had been served with subpoenas.

g. The law is clear that even in a civil proceeding, a judge may be called as a witness (Dennis v. Sparks, 449 U.S. 24), and there can be no doubt that a judge may be compelled to testify in a criminal or quasi-criminal proceeding (Amendment VI, U.S. Constitution).

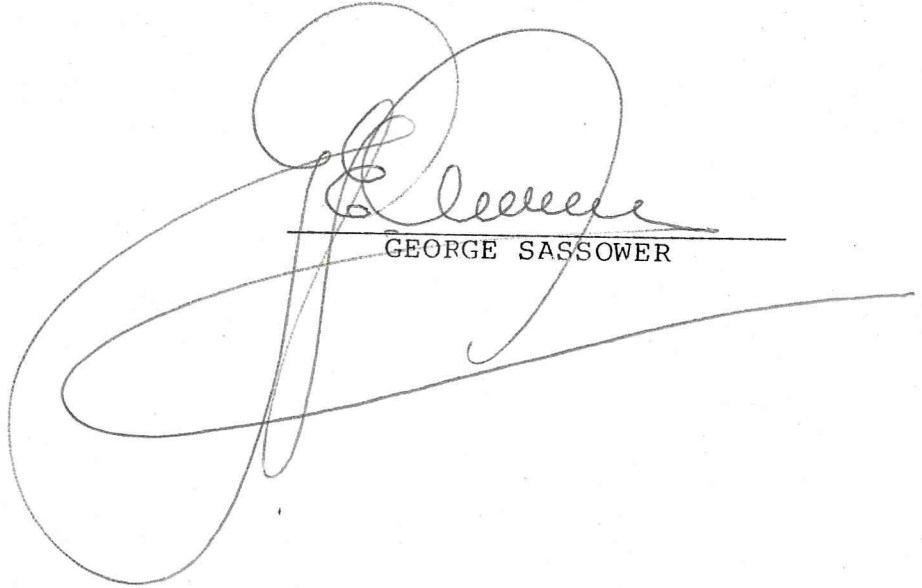
h. His Honor and Magistrate FRANCIS must understand and appreciate that affirmant is a seasoned attorney and would do nothing to cause needless embarrassment.

i. Your affirmant believes that Mr. Gallantz recognizes the testimony affirmant desires from the judicial-witnesses, and after discussing the matter with such potential witnesses, if Mr. Gallantz desires to stipulate as to the desired testimony, affirmant will consider such offer, if made.

9. This affirmation is made under penalty of perjury.

WHEREFORE, it is respectfully prayed that this motion be granted in all respects.

Dated: May 13, 1987



Handwritten signature of George Sassower, consisting of a large, stylized 'G' followed by a series of loops and a long horizontal stroke.

GEORGE SASSOWER