2/2/89

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPT.

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In the Matter of GEORGE SASSOWER, an attorney and counselor-at-law, GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner,

-against-

GEORGE SASSOWER,

Respondent.

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Upon reading the annexed affidavit of GEORGE SASSOWER, duly sworn to on the 2nd day of February, 1989, and all pleadings and proceedings held herein, let the petitioner show cause at a Stated Term of the Appellate Division of the Supreme Court: Second Judicial Department, held at the Courthouse thereof, 45 Monroe Place, in the Borough of Brooklyn, City and State of New York, on the   day of February, 1989, at 10:00 o'clock in the forenoon of that day or as soon thereafter as Counsel may be heard, why an Order should not be entered granting to the respondent a temporary affirmative order permitting him to practice law in the state courts with respect to DENNIS F. VILELLA ["Vilella"]; restraining any interference with such right, (1) pending the return date of this motion, and thereafter if the Court is so advised; (2) until the determination of this motion; (3) the determination of respondent's unopposed motion in this proceeding, dated November 12, 1988, returnable on November 25, 1988; and (4) the proceeding, dated January 3, 1989, returnable January 31, 1989 in the Appellate Division, First Department; and it appearing to the satisfaction of this Court that (1) respondent was admitted to practice law in the courts of the State of New York in 1949; (2) respondent was disbarred "forthwith" on February 23, 1987; (3) such disbarment Order was based only on respondent's actions in the litigation involving PUCCINI CLOTHES, LTD. ["Puccini"]; (4) respondent has no present intention of representing any other person in any Puccini litigation, or any other litigation; (5) such disbarment Order was issued after a substantial period had elapsed after the hearings; (6) arguably the Court in issuing such "forthwith" disbarment Order did not adequately consider the prohibition in the United States Constitution, regarding the "impairment of contracts" (Article 1, §10); (7) arguably the Court in issuing such disbarment Order did not adequately consider the prohibition contained in 11 U.S.C. §525; (8) arguably the Court in issuing such "forthwith" disbarment Order did not balance the federal rights of respondent's Amendment VI and XIV clients rights to counsel of their choice, as against the state's right to disbar respondent in unrelated litigation; (9) arguably the disbarment Order, by reason of subsequently surfacing facts, revealed such Order was invalid; (10) Vilella was a client of respondent when respondent was disbarred "forthwith"; (11) Vilella, by reason thereof, opted to defend himself pro se; (12) Vilella discharged his appellate counsel more than one (1) year ago; (13) this and other courts were advised that such appellate attorney was affording Vilella perfidious representation and/or had been discharged; (14) Vilella, in good faith, retained substitute appellate counsel; (15) notwithstanding same, such prior appellate attorney filed a brief which arguably constituted perfidious and usurped representation; (16) by reasons, not the fault of Vilella, the second appellate attorney failed to file a brief with this Court; (17) the appeal having been argued before this Court on December 22, 1988 wherein neither the representative for the People or the prior appellate attorney advised the Court of the aforementioned; (18) present counsel for Vilella has been unable to obtain the Vilella file from such appellate attorney although diligent has been made; (19) respondent having represented Vilella in the federal courts for a period of almost two (2) years <u>after</u> such state disbarment, and is familiar with the facts herein; (21) arguably Vilella, who has been incarcerated under a conviction for approximately eighteen (18) months, for crimes which were never committed, and/or committed by him, and/or under legally infirm circumstances warranting dismissal of the indictment; (22) Vilella desires that respondent cooperate in his representation in this Court, the aforementioned disbarment Order notwithstanding; and the Court having balanced the equities herein, including the irreparable damage being caused to Vilella by the delay not attributable to him, it is

ORDERED, that pending the return of this motion, with respect to the criminal proceedings against DENNIS F. VILELLA, the disbarment of the respondent be and the same is hereby stayed, and it is further

ORDERED, that respondent may represent DENNIS F. VILELLA in the state courts, without compensation, until such time as PETER J. GRISHMAN, Esq. obtains the Vilella file from his prior attorneys, and has a reasonable opportunity to familiarize himself with same, or such authority is revoked by this Court.

Sufficiently cause having been shown, let a copy of this Order, together with the papers upon which it was obtained, be served upon the petitioner's attorney, District Attorney DENIS DILLON, PETER J. GRISHMAN, Esq., ROBERT RIVERS, P.C., and DENNIS F. VILELLA, personally or by certified mail, at their last known address, on or before the day of February, 1989, shall be deemed good and sufficient service.

Dated: White Plains, New York
February , 1989

Associate Justice, Appellate Division, Second Judicial Department

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPT.

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In the Matter of GEORGE SASSOWER, an attorney and counselor-at-law, GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner,

-against-

GEORGE SASSOWER,

Respondent.

---x

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

GEORGE SASSOWER, Esq., first being duly sworn, deposes, and says:

1a. This affidavit is made in support of a temporary affirmative order permitting deponent to practice law in the state courts (Unicorn v. Koppers, 366 F.2d 199, 203-206 [2d Cir.]); restraining any interference with such right, (1) pending the return date of this motion, and thereafter if the Court is so advised; (2) until the determination of this motion; (3) the determination of deponent's unopposed motion in this proceeding, dated November 12, 1988, returnable on November 25, 1988; and (4) the proceeding, dated January 3, 1989, returnable January 31, 1989 in the Appellate Division, First Department (Geo. Sassower v. Murphy et el.).

b. The aforementioned are incorporated herein by reference.

2a. Deponent has no intention or desire to practice law on behalf of anyone but himself, including DENNIS F. VILELLA ["Vilella"], irrespective of the outcome of the aforementioned proceedings, since it would unfair and prejudicial for <u>any</u> client to be associated with your deponent in <u>any</u> judicial tribunal.

b. Furthermore deponent, in the past two (2) years, or since his state disbarment, has become very comfortable with the media, and has no desire to jettison such free environment in favor of the restrictive judicial forum, where truth is sometimes penalized.

c. However necessity, arising out of a unique situation, mandates that deponent subvert his own personal preferences and desires in favor of a former client.

3a. Vilella discharged ROBERT RIVERS, P.C. ["Rivers"] more than one year ago, and is presently represented by PETER J. GRISHMAN, Esq ["Grishman"].

b. For the past several weeks, Mr. Grishman has attempted to obtain the Vilella file from Mr. Rivers but there has been unresponded letters, unreturned telephone calls, and personal visits, where his secretary has always stated that he is not in.

c. Several months ago, Mr. Rivers removed himself from 50 Clinton Street, Hempstead, New York 11550, leaving no forwarding address.

d. Thereafter he was located at 20 Vesey Street, New York, New York 10007, but has now apparently removed himself from that address, again leaving no forwarding address.

e. Thus while Vilella remains incarcerated for crimes never committed, and certainly not by him, through no fault of his own, he has been unable to obtain his file since June of 1988.

4a. Deponent has offered to give Mr. Grishman all the information he has, except for confidential sources, an offer which was also made to Mr. Rivers, who never accepted same.

b. Nevertheless, in view of the serious charges that could be made herein, indeed mandated to be made for the advancement of Mr. Vilella's legitimate rights, it would be unfair and unwise for Mr. Grishman to set same forth through deponent's affidavit under his legal back.

c. This Court must understand that deponent personally investigated this matter before he was disbarred, personally was present during the entire trial, and represented Mr. Vilella in the Southern District of New York and Eastern District of New York.

d. Thus, deponent is very comfortable in making serious charges, based upon the evidence which he personally knows, but which no attorney, not personally privy to such information, can or should assert when alternatives exist.

e. Such alternative does exist in deponent's co-representation, until Mr. Grishman, with the Vilella file, is ready to fully go forward.

6a. Rivers became suspect to Vilella more than one (1) year ago, as letters by Vilella reveal, and shortly thereafter was effectively discharged.

b. Independently, deponent came to the same conclusion at the end of February and March 1988.

c. From then until December of 1988, deponent literally inundated the state and federal forums with the information that Rivers was betraying Vilella and had been discharged.

d. Included in the aforementioned was deponent's Order to Show Cause with deponent's affirmation of April 30, 1988 from the United States District Court for the Eastern District of New York, and deponent's thirteen (13) page affidavit of April 26, 1988, submitted to this Court on the motion of April 29, 1988.

e. In early June of 1988, the Vilella family retained MARTIN OZER, Esq. ["Ozer"], to replace Rivers, and several weeks later gave him a check along with cash for such purpose (Exhibit "A").

f. In July of 1988, Mr. Ozer's assistant visited Mr. Vilella in Elmira, and thereafter made a second visit to him.

g. Additional monies and another check was given for Mr. Ozer (Exhibit "A"), and it was not until November 1988, that anyone knew that something was amiss.

h. The endorsement on the checks were apparently forged by such assistant (Exhibit "B"), and Mr. Ozer claims to know very little about the Vilella case.

i. Since this matter is being handled by Dillon's Office and the Nassau County Police, the Dillon Office was aware of such facts on December 22, 1988 (when the Vilella appeal was argued), and apparently are concealing these facts from this Court as well.

7. The factual findings to support this Order to Show Cause, as set forth in such proposed Order are true and fairly set forth.

8. The original appointment was made for the Courthouse in Brooklyn, for February 1, 1989 to present this Order to Show Cause, but petitioner's attorney refused to attend, consequently as a matter of respondent's convenience he is presenting same in White Plains.

9. Deponent does not expect to be compensated for his services if this application is granted.

10. No previous application has been made to this or any other court or judge for the relief sought herein.

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

GEORGE SASSOWER

Sworn to before me this
2nd day of February, 1989

Gretchen Barbieri

GRETCHEN BARBIERI
Notary Public, State of New York
No. 4776146
Qualified in Westchester County
Commission Expires Jan. 31, 1989

Exhibit "A"

NANCY R. LOMENZO
16 DARTMOUTH DR.
GLEN COVE, NY 11542

250

6/22 19 88

1-7230/2260

PAY TO THE ORDER OF Martin Ozer, Esq. $ 1300 00/xx

Thirteen hundred 00/xx DOLLARS

Bayside Federal
34-36 Village Square
Glen Cove, N.Y. 11542

For Dennis Vilella

Nancy R Lomenzo

⑆226072304⑆ 81200 1468 6⑈ 0250 ⑈0000130000⑈

NANCY R. LOMENZO
16 DARTMOUTH DR.
GLEN COVE, NY 11542

275

8/12 19 88

1-7230/2260

PAY TO THE ORDER OF Martin Ozer $ 1000 00/xx

One thousand 00/xx DOLLARS

Bayside Federal
34-36 Village Square
Glen Cove, N.Y. 11542

Dennis Vilella

Nancy R Lomenzo

⑆226072304⑆ 81200 1468 6⑈ 0275 ⑈0000100000⑈

2 JE '88 24 2

FRB NY
PAY ANY BANK, BANKER
PAY ANY BANK, BANKER
OR TRUST CO., P.E.G.
JUN 23 88
INDEPENDENCE SAVINGS BANK
OF BROOKLYN, NEW YORK
1-7121 MAIN OFFICE 1-7121

JE '88 24
PAID
S.B.
JUN 23 1988
676

Frank Boveio
0167194011

AG '88 15
PAID

INDEPENDENCE SAVINGS BANK
OF BROOKLYN, NEW YORK
1-7121 MAIN OFFICE 1-7121
AUG 12 88
PAY ANY BANK, BANKER
OR TRUST CO., P.E.G.
1-7121 1-7121

S.B.
AUG 12 1988
715

F. Boveio
0167194011

BAYSIDE FEDERAL SAVINGS & LOAN ASSOCIATION

FORGERY AFFIDAVIT

STATE OF NEW YORK }
COUNTY OF NASSAU } ss:

MARTIN OZER being duly sworn deposes and states that:
my office is at ~~I reside at~~ 250 West 57th Street New York NY

and have examined the attached check purported to have been (endorsed) (~~signed~~) by me and further described as follows:

Maker: NANCY R. LOMENZO

Drawee bank: BAYSIDE FEDERAL SAVINGS Account No 812001465-6

Date: 6-22-88

Number: 250

Amount: $ 1300.00

Payee: MARTIN OZER ESQ

Endorsements: MARTIN OZER

FRANK BOCCIO

I further state that I did not (endorse) (~~sign~~) this check nor did I authorize anyone else to do so on my behalf and that such (endorsement) (~~signature~~) is a forgery.

I further state that I did not receive any part of the proceeds of this check nor did I authorize anyone to receive any part of the proceeds of the check on my behalf. Furthermore, no one in my household or living with mesigned or endorsed my name to this check.

I make this affidavit in order to induce Bayside Federal to make full restitution in an amount of ONE THOUSAND THREE HUNDRED & 00/xx Dollars ($1300.00)

for the above described check mo ~~which was charged to my account on~~ ......, with full knowledge that the bank and/or subsequent endorsers will rely on the statements contained herein and may use such statement as a basis for criminal prosecution.

mo I ~~agree to indemnify and hold Bayside Federal harmless against any and all loses and expenses, including attorney's fees, and all claims and demands, in law or in equity which Bayside Federal and/or subsequent endorses may suffer or incur as the result of its acting in reliance upon the statements contained herein.~~

To the best of my knowledge, my signature was forged by ~~[illegible]~~ mo person unknown

X [signature]

BAYSIDE

Subscribed and sworn to before me

this 22nd day of March, 1988

[signature]

STEPHANY K. SAUNDERS
NOTARY PUBLIC, State of New York
No. 03-4763538
Qualified in Bronx County
Commission Expires 3/30/89

Exhibit 1/31/[illegible]

BAYSIDE FEDERAL SAVINGS & LOAN ASSOCIATION

FORGERY AFFIDAVIT

STATE OF NEW YORK
COUNTY OF NASSAU } ss:

MARTIN OZER .... being duly sworn deposes and states that:
my office is at ~~I reside at~~ 250 West 57th St New York, N.Y. ....
.... and have examined the attached check purported to have been (endorsed) (~~signed~~) by me and further described as follows:

Maker: NANCY R. LUMENZO ....

Drawee bank: BAYSIDE FEDERAL .... Account No 8120014 68-6

Date: 8-12-88 ....

Number: 275 ....

Amount: $ 1000.00 ....

Payee: MARTIN OZER ....

Endorsements: M OZER ....
F. BOCCIO ....

I further state that I did not (endorse) (~~sign~~) this check nor did I authorize anyone else to do so on my behalf and that such (endorsement) (~~signature~~) is a forgery.

I further state that I did not receive any part of the proceeds of this check nor did I authorize anyone to receive any part of the proceeds of the check on my behalf. Furthermore, no one in my household or living with me signed or endorsed my name to this check.

I make this affidavit in order to induce Bayside Federal to make full restitution in an amount of ONE THOUSAND and 00/xx .... Dollars ($1000 xx)

for the above described check ~~which was charged to my account on~~ .... with full knowledge that the bank and/or subsequent endorsers will rely on the statements contained herein and may use such statement as a basis for criminal prosecution.

MO I ~~agree to indemnify and hold Bayside Federal harmless against any and all loses and expenses, including attorney's fees, and all claims and demands, in law or in equity which Bayside Federal and/or subsequent endorses may suffer or incur as the result of its acting in reliance upon the statements contained herein.~~

To the best of my knowledge, my signature was forged by .... MO person unknown
....

x [signature]

Subscribed and sworn to before me this 22nd day of November 1988

[signature]

STEPHANY K. SAUNDERS
NOTARY PUBLIC, State of New York
No 03-4763534
Qualified in Bronx County
Commission Expires 3/28/89