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SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

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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, :
GEORGE SASSOWER, :

Respondent. :

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Brooklyn, New York

March 27, 1986

B e f o r e:

HON. M. MICHAEL POTOKER,
Referee

A p p e a r a n c e s:

ROBERT H. STRAUS, ESQ.
Chief Counsel, Grievance Committee

ARTHUR BLAUSTEIN
Certified Shorthand Reporter

1
2 MR. SASSOWER: May I make a few statments,
3 your Honor, very short statements?

4 THE REFEREE: Yes, sir.

5 MR. SASSOWER: First of all, I got a call
6 back from the Appellate Division, to back track
7 for a moment, if your Honor recalls --

8 THE REFEREE: You were here about a quarter
9 of eleven, and you wanted to go over to the
10 Appellate Division. So?

11 MR. SASSOWER: I did make inquiry and have
12 made inquiries as to the status of the pending
13 application before the Appellate Division. I made
14 inquiry yesterday.

15 I got a call back yesterday from Arnold
16 Edmunds who is the Deputy Clerk over there,
17 about four, four-thirty yesterday, and he told
18 me that no decision has been rendered with respect
19 to that application.

20 THE REFEREE: Was the application seeking to
21 disqualify me?

22 MR. SASSOWER: No. The issue -- the emergency
23 issue that has been pinpointed in the application
24 before the Appellate Division is the right of
25 subpoena power.

1
2 THE REFEREE: Yes, and the fact that you
3 wanted me disqualified too.

4 MR. SASSOWER: Yes, but the immediate issue --

5 THE REFEREE: I wanted to know if that was
6 the motion before the Appellate Division.

7 MR. SASSOWER: Right, but the immediate
8 issue is the subpoena power.

9 Secondly, and I can't go to the federal
10 court until they dispose of that motion, okay --
11 secondly, I got a call yesterday from a Judge
12 Burton Josephs in Nassau County, and his Honor
13 told me that she's sending me a letter that she
14 wants me out there, or his Honor wants me out
15 there on Tuesday, April 1st, either at 1:45 or at
16 2 o'clock, and I've advised his Honor's secretary
17 that I was on trial that day, and she asked me
18 if I would ask your Honor if I could be excused for
19 five minutes, for a short conference on a matter
20 before his Honor out there, and I said I'm sure
21 your Honor would excuse me for five minutes, except
22 that it takes me about an hour and a half to get
23 out to Suffolk County and about an hour and a half
24 to get back, so that the five minutes is three
25 hours and five minutes.

1
2 And, the secretary told me it's very important
3 that I go out there, et cetera, et cetera. To come
4 down to the bottom line, I said I can't speak for
5 your Honor, but I'm reasonably sure that his Honor
6 will not cancel the trial for three hours and five
7 minutes on Tuesday.

8 I said I would bring it to your Honor's at-
9 tention, and the secretary told me that I should
10 bring it to your attention, and she would like, or
11 his Honor would like to call you up and make the
12 request personally, or that you should call him
13 up, and, as I said, subject to my health being
14 able to get out to Suffolk County, I'll abide by
15 whatever decision, you, your Honor, and Judge
16 Josephs make between yourselves, but I'd like
17 to know by Monday as to where I have to be on
18 Tuesday.

19 I don't have Judge Joseph's number available
20 at the moment He's a County Court judge out in --

21 THE REFEREE: I don't want to get involved
22 with it.

23 We've tentatively scheduled sessions for
24 next Tuesday and Thursday.

25 MR. SASSOWER: Is your Honor's message to me

me that I can convey to --

THE REFEREE: Wait. The April 1 session I'll give you the time off.

We'll reschedule that for April 8, the following Tuesday.

MR. SASSOWER: So, I'm off April 1st.

MR. STRAUS: I know. I would object to adjourning it, and I want to state for the record, for an individual who has purportedly wanted to proceed directly five days a week, there have been numerous adjournments, all at Mr. Sassower's requests, delays so that he can make various applications.

If he wants to appear, I don't accept the representation that he must appear in Suffolk County. I'm not interested.

I'm interested in the fact that he has Monday, Wednesday and Friday of next week, and I don't think there is any indication that Judge Joseph would not take one of those dates.

MR. SASSOWER: No, the message got to me, he has made the conference with the other parties. There are at least five parties involved, for April 1st. I don't care, Mr. Straus --

1
2 MR. STRAUS: If you don't care, Judge, it's
3 my preference, and since Mr. Sassower has no
4 concern, I would ask that this matter proceed
5 as scheduled, and that we go on the 1st of April,
6 and the 3rd of April.

7 There's no reason for this adjournment.

8 He can certainly tell Judge Joseph that
9 he's on trial.

10 This is a public disciplinary proceeding,
11 which takes preference over other proceedings,
12 and it should not be adjourned for that purpose.

13 MR. SASSOWER: I told Judge Joseph's secre-
14 tary --

15 THE REFEREE: We'll have those sessions.
16 No sessions, next Tuesday. That will be re-
17 scheduled for Tuesday, April 8, but the session
18 after today is April 3rd, next Thursday.

19 MR. SASSOWER: You can wish me Happy Birth-
20 day on that day, your Honor.

21 MR. STRAUS: If we're still proceeding on
22 April 8, I might as well advise you now, April 8
23 is the date of our monthly grievance committee
24 meeting, which will be scheduled in Queens on
25 that day.

1
2 know where I got it from, and if I'm wrong,
3 correct me, somewhere along the line, I was
4 told or got the impression that as far as
5 having those minutes available to me, that
6 application should first go to your Honor.

7 Now, whether that was said --

8 THE REFEREE: I don't get it.

9 MR. SASSOWER: Your Honor will get a copy
10 of the minutes.

11 I'd like to make application to borrow those
12 minutes.

13 I'm not trying to cheat the stenographer, but
14 I can't pay for it. They tied up my account, so,
15 on a non-existent judgment, not even on a judgment,
16 on a non-existent judgment.

17 So, I'd like to borrow your Honor's.

18 MR. STRAUS: Mr. Sassower made application
19 for poor person relief, or, as I think, as he
20 described it, and I believe that either that ap-
21 plication has either been denied or it has not been
22 ruled upon at this point.

23 So, there is nothing before the Court to
24 indicate that Mr. Sassower is entitled to what
25 he terms quasi-poor person relief.

1
2 ment.

3 THE REFEREE: We have already gone through
4 that, sir.

5 MR. SASSOWER: Okay.

6 MR. STRAUS: If your Honor please, may I
7 also, for the record, before Mr. Sassower begins
8 his case, indicate to the Court that since we've
9 concluded our case, I'll be ordering and have
10 placed an order for the minutes of the previous
11 sessions so I can begin to work on our post-hear-
12 ing memorandum.

13 It is also clear that Mr. Sassower is free
14 to order the minutes from the Reporter as well and
15 to make the appropriate arrangements for the re-
16 ceipt of them.

17 THE REFEREE: All right, Mr. Sassower, you
18 have been made aware of it, so you will make
19 whatever arrangements --

20 MR. SASSOWER: I think, I've asked for
21 personal relief in the Appellate Division.
22 They've tied up all my money, without a judgment.

23 THE REFEREE: Sir, whatever you have to do,
24 you do.

25 MR. SASSOWER: My understanding is, I don't

1
2 THE REFEREE: All right, we'll make it
3 April 9, on Wednesday. Is that all right?

4 MR. SASSOWER: It's today, then April 9.

5 THE REFEREE: No, it's today and then
6 April 3rd.

7 MR. SASSOWER: And then April 9. This will
8 be 10 --

9 MR. STRAUS: That will be 10 o'clock on the
10 9th.

11 THE REFEREE: Yes, 10 o'clock, we might as
12 well.

13 Will we need another day after the 9th or will
14 we be able to conclude on the 9th?

15 I want to adjust my schedule.

16 MR. SASSOWER: I tell you very frankly, I
17 don't know.

18 THE REFEREE: If we do, then hold April 10
19 in abeyance.

20 MR. STRAUS: We'll try to reserve this
21 courtroom for that day, as well, so that will be
22 April 9 and 10, and April 3rd.

23 THE REFEREE: Third, 9 and 10.

24 MR. SASSOWER: I want the record to be clear
25 that I had nothing to do with the April 1st appoint-

1
2 MR. SASSOWER: I'm making the application
3 before --

4 THE REFEREE: You will make your application
5 again before the Appellate Division.

6 MR. SASSOWER: The impression that I got
7 is that I have to make the application before
8 your Honor to borrow your Honor's minutes.

9 THE REFEREE: All right, I have no objection
10 to it, provided you return them to me.

11 Are you ready to proceed, Mr. Sassower?

12 MR. SASSOWER: Your Honor, I'm ready to
13 proceed, under the most strenuous objection that
14 I'm being deprived of essential documents, and
15 essential witnesses.

16 THE REFEREE: Your exception is noted.

17 MR. SASSOWER: Can I have a minute and a half
18 to get some water and I'd like to get a cup, so --

19 THE REFEREE: What happened to that witness
20 you subpoenaed?

21 MR. SASSOWER: I called him up and, but he's
22 not in today.

23 That little document I can put in any time.
24 It's not a pre-condition.

25 THE REFEREE: All right. You wanted me to sign

1
2 a subpoena for you. I did. Returnable this
3 morning, and I don't see them here.

4 MR. SASSOWER: I don't want him. I wanted
5 a copy of the document.

6 THE REFEREE: Did you get a copy of the docu-
7 ment?

8 MR. SASSOWER: No, not yet. I mailed him a
9 copy of the subpoena, and, I assumed --

10 THE REFEREE: You spoke to him.

11 MR. SASSOWER: I called him but I didn't
12 get a return call.

13 THE REFEREE: All right, get your water.

14 (Short recess)

15 MR. SASSOWER: By the way, before I take the
16 stand, in view of the rulings of your Honor, I ask
17 Mr. Straus to produce or submit any, and when I
18 say rulings of your Honor, I mean about the inability
19 to have subpoena power, I ask Mr. Straus to
20 reveal any exculpatory and mitigating information
21 and documents, including his conversation with
22 Referee Diamond regarding the telephone conversat-
23 ion had by Mr. Raffo to me.

24 MR. STRAUS: I have no idea what Mr. Sassower
25 is talking about.

Mr. Sassower has asked many times, and just as frequently I told him, if we had any exculpatory material, we would have delivered it to him.

I'm not aware of any such material.

If it should come to my attention, I'll provide it to him, if there is; if there is anything in particular that he has reference to, I'd appreciate knowing it at his earliest convenience.

THE REFEREE: Mr. Sassower?

MR. SASSOWER: I got certain information --

THE REFEREE: Let's hear it. Mr. Straus, in response to your inquiry or demand said he's not aware of any exculpatory material.

If it comes to his attention that there is any, and, if he's able to obtain it, he will provide it for you.

What else could you, what else do you want him to say?

You are not specific, so he can't answer specifically.

MR. SASSOWER: Certain information.

THE REFEREE: What information? You keep saying, "Certain."

1
2 MR. SASSOWER: Your Honor, once I reveal
3 certain information, it becomes, obviously, what
4 my sources are, and that's the end of the sources.

5 MR. STRAUS: How can I give you something if
6 you don't identify it, and I don't know if I have
7 it.

8 And, second of all, I'm not sure if there
9 is such a thing, and, if you're not going to iden-
10 tify it further, my inclination is to believe
11 there isn't anything.

12 MR. SASSOWER: Your Honor, I wish your Honor
13 to take judicial notice of all papers in the pro-
14 ceedings before the Court, which are on file in
15 the County Clerk's Office, New York County,
16 Appellate Division, and the Court of Claims.

17 MR. STRAUS: If your Honor pleases, that's not
18 an appropriate subject of judicial notice.

19 THE REFEREE: I don't know what's in the
20 papers and I don't know what the relevance is,
21 if there is anything in those papers, to this hear-
22 ing.

23 MR. SASSOWER: Mr. Straus, for example,
24 has said your Honor will decide, based upon papers
25 submitted to your Honor, whether a certain motion

I made was contrary -- just to take an example --
to the order of Judge Schwartz.

How can your Honor decide that when he only
has part of the papers, not all the papers? I
don't know.

Therefore, if your Honor takes judicial notice
of that fact, since your Honor doesn't allow me
to subpoena those papers, in my memorandum to
the Court, I can go through every motion and show
that I did not violate Judge Schwartz' order, or
Judge Greenfield's order or Judge Sinclair's order,
or any other order. Okay.

Those, which are open, are up in the air.

That's all I'm asking but, for example,
tomorrow or Monday, I'll be in the County Clerk's
Office.

I'll try to photostat some original documents
so I can put it as part of my brief, my memorandum,
but if your Honor does not allow me to subpoena
the County Clerk's file, then all I say is, your
Honor should take judicial notice of those papers.

THE REFEREE: Mr. Sassower, I did not say
I'll not permit you to subpoena them

I said I'll not permit you to subpoena all

the records on file with the County Clerk's Office.

If you have any specific material, any specific order or any specific paper you want, that's another story.

MR. SASSOWER: I think you may have forgotten what I advised your Honor in that respect.

If I subpoena a particular affidavit, they will not send over that affidavit. They will send over the entire file.

THE REFEREE: We'll met that at the proper time.

MR. STRAUS: If your Honor please, also, I have not indicated any objection to Mr. Sassower introducing a photocopy of a document, nor, do I have any objection to him introducing documents which are in his possession as true copies, so long as they are relevant to this proceeding, and he has stated over and over again, and all the witnesses have stated he has all these documents in his possession.

MR. SASSOWER: I have said I haven't. How do you know? I don't know how he knows these things.

THE REFEREE: Mr. Sassower, we extended the courtesy to listen to you. You extend the same

courtesy to Mr. Straus.

MR. STRAUS: I have no objection on grounds of authenticity to any copies Mr. Sassower wishes to offer.

I've made that position clear time and time again.

His proposal is to, apparently, move trucks over to the various Clerk's Offices of the State of New York.

THE REFEREE: We went through it. He knows my position. I've stated it.

Are you ready, Mr. Sassower?

MR. SASSOWER: I call Mr. Straus to the stand.

MR. STRAUS: For what purpose? May we have an offer of proof?

THE REFEREE: Mr. Sassower, a moment ago you said you were ready to take the witness stand.

MR. SASSOWER: I want to call Mr. Straus to the stand.

THE REFEREE: For what purpose?

MR. SASSOWER: I want to ask him certain questions.

THE REFEREE: In what areas?

1
2 MR. SASSOWER: Let me make a record. It
3 won't take long.

4 MR. STRAUS: If you're going to call on op-
5 posing counsel to the stand without any prior
6 notice of an intention --

7 MR. SASSOWER: You knew it from the very
8 beginning.

9 MR. STRAUS: Never has Mr. Sassower ever
10 claimed that, and he's made no offer of proof.

11 If he can't make an offer of proof, then,
12 obviously, he can't call me to the witness stand,
13 because there must be some purpose to his mad-
14 ness.

15 MR. SASSOWER: I have said right from the
16 very opening motion before your Honor even entered
17 the picture that Mr. Straus is an essential witness.
18 Okay?

19 Now, I have said that from the beginning over
20 and over again.

21 THE REFEREE: The fact that you said it,
22 doesn't make it so.

23 MR. SASSOWER: It's not out of a clear blue
24 sky.
25

1
2 THE REFEREE: Unless you can be specific
3 as to what testimony you wish to elicit --

4 MR. SASSOWER: One, on the charge that I
5 did not cooperate with the committee --

6 By the way, may I sit? I'm getting a little
7 dizzy.

8 On the charge that I did not cooperate with
9 the committee, I'd like to ask Mr. Straus a couple
10 of questions.

11 MR. STRAUS: The Committee's case is entirely
12 based on the documents, correspondence between --

13 MR. SASSOWER: I want to show that there is --

14 THE REFEREE: I'll permit you to examine
15 for that sole purpose.

16 MR. SASSOWER: Then I'll tell you the next
17 point.

18 THE REFEREE: No, you are not going to tell me
19 the next point.

20 MR. STRAUS: Is there any other point? Is
21 there any other purpose?

22 MR. SASSOWER: Let's take one thing at a time.

23 THE REFEREE: No, we're not going to take one
24 thing at a time.

25 MR. SASSOWER: May I have Mr. Straus on the

stand?

THE REFEREE: For that one purpose.

MR. STRAUS: Do you have any other purpose?

MR. SASSOWER: I'm not going to ask any questions of Mr. Straus --

THE REFEREE: Mr. Sassower, I'm telling you now, I'll not permit you, in view of your failure to respond to my question, to examine Mr. Straus as to any issue, except that which you are charged with, failing to cooperate with the Grievance Committee.

Mr. Straus?

MR. STRAUS: Do you want me to take the witness stand, your Honor?

THE REFEREE: Yes.

R O B E R T H . S T R A U S , 210 Joralemon Street,
Municipal Building, Twelfth Floor, Brooklyn, New York,
being duly sworn, testified as follows:

THE REFEREE: Go ahead, Mr. Sassower.

MR. SASSOWER: As far as the correspondence is concerned, I want the exhibits.

MR. STRAUS: Relating to Charge 7.

THE REFEREE: Exhibits 49 and 50.

1
2 DIRECT EXAMINATION

3 BY MR. SASSOWER:

4 Q Mr. Straus, your complaint or your initial
5 letter to me was mailed out, right, on December 5, is
6 that correct?7 A If that's what the letter says. Is that your
8 question?

9 Q Yes.

10 A Yes, it was mailed.

11 Q And --

12 THE REFEREE: That was December 5, 1984.

13 MR. SASSOWER: Right.

14 Q And, did you state at any time as to how long
15 you gave me in order to respond to it?

16 A Are you asking does the letter state that?

17 Q Either the letter or orally; did you tell me?

18 A I don't know if you're referring to any conver-
19 sation, Mr. Sassower.

20 Are you referring to the letter or a conversation?

21 Q Either one.

22 THE REFEREE: You have the letter.

23 THE WITNESS: The letter is in front of you.
24 It gives you a specific time period in which to
25 answer.

1

2

Q Ten days.

3

A Then that answers your question.

4

Q By mail you received my letter of December 14. Do you know what date you received it?

6

A The office copy would indicate, but, I'm sure it was close to the date.

8

Q And then, you sent me a letter of January 3rd, advising me that the unexcused failure to reply, et cetera, et cetera, and, you picked up that portion of my letter, which says, "I have not read it, do not intend to read it, plead not guilty."

13

And, did I have a conversation with you with respect to that letter, with you?

15

A Do you have a date in mind?

16

Q In that period of time.

17

A What period of time?

18

Q Didn't I tell you --

19

THE REFEREE: Between December 14 and January 3rd.

21

Q Between December 5 and January 3rd.

22

A I can recall, I believe, two conversations or having two conversations with you.

24

I'm not sure that I can recall the entire substance but, I can, during the conversations, reiterate

25

that you had an obligation to respond, to the allegations, you had failed to do so, and, I reminded you that your failure to do so would constitute professional misconduct, if it continued. That's the substance of the conversation..

Q Is there anything in your letter of January 3rd, which says that I have not responded to the complaint?

A Do you want me to look at the letter?

Q Yes. That I have not responded.

A Yes, I would say that.

Q No --

A You asked me a question.

As stated in my letter of December 5, 1984, this is a quote, "An unexcused failure to reply to a complaint, constitutes professional misconduct, independent of the merits of that complaint, and such behavior may be treated accordingly by the Committee. While acknowledging receipt of the complaint of your letter of December 14, '84, you stated, quote, ' I have not read it, do not intend to read it, plead not guilty and request, indeed, solicit, and demand a public hearing.' In view of this response, I must reiterate that you are required, underlined, 'required' to submit a written response to the allegations." "Allegations" underlined. "Of the complaint and that a failure to do so constitutes," quote, 'professional miscon-

Straus-direct

duct.' Unquote. "Which will be referred to the Committee for appropriate action."

Q The question is, --

A You asked me if there is anything in the letter.

Q That says I did not respond to it?

A I think that that would be clear enough to you that you hadn't responded.

The letter speaks for itself, as to all other respects.

Q Mr. Straus --

A Mr. Sassower, when a letter says you are again reminded of your obligations, that's what it indicates to me.

Q I'm asking you, is there anything in that letter that says I did not respond to the allegations of the complaint; yes or no?

A The language is very clear. I don't think it's ambiguous at all.

Q Do you know of your own knowledge whether that letter was written by somebody?

A Whether the letter was read to you or whether you read it yourself.

Q Do you have any idea as to whether other people may have read that complaint and my answer, and were satisfied

that it responded to the complaint?

A Certainly not. Thousands of people may have read it.

Q You don't even know whether that letter, which made the complaint by Mr. Schneider, was practically in haec verba portions of other allegations made by Mr. Schneider, which I did read?

THE WITNESS: Your Honor, I'm going to object to the question.

I don't know how it's relevant to the charge, which is a failure to cooperate.

what difference would it make if other people had other impressions?

THE REFEREE: Sustained.

Q I'm just saying --

A You are asking me questions.

THE REFEREE: I sustained the objection.

Q At any time, did you telephone and write me and say, in sum and substance, Mr. Sassower, "Mr. Schneider makes such and such an allegation, which we do not feel you responded to."?

A Do you want me to answer that question?

Q Yes.

A Yes. I had two telephone conversations with you,

1
2 in which I reiterated on both occasions more than once,
3 that you had not responded to the allegations, that you
4 were required to respond to the allegations, and that
5 your failure to do so, would subject you to a charge of
6 failure to cooperate, which was professional misconduct,
7 independent of the merits of the charges.

8 Q Now, you gave me your notes where you had any
9 conversations with me and informed me of what you are
10 now testifying.

11 A Are you asking me if I have notes of the conver-
12 sation?

13 Q Yes.

14 A The answer is I don't have notes of the conver-
15 sations, Mr. Sasssower.

16 Q Didn't you think it was important enough, that
17 the testimony you just give, to have put this in writing?

18 A No. As a matter of fact --

19 Q Okay, "No."

20 A May I complete my answer?

21 I didn't, because I was always hopeful that
22 you might, in fact, submit a response to the allegations
23 so I saw no need to write down any of our conversations.

24 My purpose was to persuade you to submit a
25 response, not to have you --

Q Fine. So, I told you, by the mere fact that -- I wrote you a letter on January 14, to refresh your recollection.

THE REFEREE: What exhibit is it?

MR. SASSOWER: That's Exhibit 52.

Q I said to you, by the mere fact that I did not read it, why should you assume that I don't know its contents? There are other ways of knowing the contents of a letter besides reading it.

A Are you putting a question to me or are you reciting your letter?

What's your question?

Q The question is, when you said that I didn't, quote me -- "That I didn't read it and do not intend to read it," didn't I write you a letter saying that you are making an assumption which is unwarranted?

A The letter is in evidence, Mr. Sassower. I offered it in evidence, so, I believe that you sent it.

Q But, you do not know of your own knowledge or by any admission, whether, in responding to the complaint, whether or not I did know what the contents of the complaint was?

A Yes. You were provided with a copy of the complaint.

THE REFEREE: The letter speaks for itself.

You responded.

MR. SASSOWER: I responded.

A You acknowledged receiving the complaint.

Q Then you wrote me on January 29, and, again, did you ever say in your letter of January 29, that Mr. Schneider has made a specific complaint and you did not answer that particular complaint; yes or no.

A Yes, I would say that, Mr. Sassower, when I direct your attention in this letter to your letter of January 28, in which you appeared to indicate in your opinion, that you are not permitted to respond to the allegations contained in the complaint, that I have brought to your attention, the fact that you have not responded to the allegations in the complaint.

Q That maybe, what you have --

A You are asking me -- that's what the letter says.

THE REFEREE: It speaks for itself.

A In answer to your question, that's what it says.

THE REFEREE: The letter is in evidence.

It was received as a Petitioner's exhibit.

It was dated January 29, 1985. Is this it?

Is this the same in the petition to the letters dated January 28 or January 30? I don't have

anything on January 29.

THE WITNESS: The letter dated January 28 would be Mr. Sassower's letter.

The letter of January 29 refers to a letter from Mr. Sassower of January 28, and then, I think the reference to January 30 has to do with the note on the bottom of the January 29 letter.

THE REFEREE: All right, Petitioner's 55 in evidence.

Q You don't date -- if you sent out your letter of January 29 and that was mailed, right --

A Obviously it was mailed. You responded to it.

Q It wasn't hand-delivered. That's what I'm trying to say.

The next day, presumably the date that I received it, I say to you, there is no way for me to properly respond underlined, properly, without violating the order mentioned. Okay?

I suggested to you that there were other ways to get the information because of an outstanding order.

Now, the question is, were you aware of the outstanding order?

A What outstanding order? Judge Gammerman's order?

Q Yes.

1
2 A I was aware of the order, yes.

3 Q Did Judge Gammerman prohibit me, in sum and sub-
4 stance, from communicating to the Grievance Committee. Yes
5 or no.

6 A The order speaks for itself. If you want my opin-
7 ion, I'd be happy to offer it to you, if that's what you
8 want me to give to you, but the language of the order speaks
9 for itself.

10 Do you want me to respond further than that?

11 Q No.

12 THE REFEREE: Is that order in evidence?

13 MR. SASSOWER: Yes.

14 Q In sum and substance, it prohibits me from
15 communicating with the Grievance Committee with respect to --

16 THE WITNESS: I'll object to Mr. Sassower's
17 comments.

18 THE REFEREE: I asked you if it was in evi-
19 dence.

20 What exhibit is it, and let me look at it.

21 THE WITNESS: It's one of the earlier exhibits,
22 your Honor.

23 THE REFEREE: That's Number 8.

24 Q Would you turn to it?

25 A Is there a page you want me to look at?

MR. SASSOWER: Draw it to his Honor's attention.

THE REFEREE: I have it in the pleadings.

MR. SASSOWER: It's Page 8 or 9.

A Did you want me to -- do you have a question that you're asking me?

Q Yes.

A What is the question?

Q You knew of Judge Gammerman's order at that point, January 30.

A I was well aware of the Judge Gammerman order.

Q Were you --

THE REFEREE: Where is there anything in Judge Gammerman's order that prohibits you from --

MR. SASSOWER: Have you got it in front of you?

THE REFEREE: -- from communicating with the Grievance Committee?

MR. SASSOWER: I'll show you.

A Certainly not, as I read it, that's for certain --

THE REFEREE: It's in your petition.

MR. SASSOWER: I have it all in the car, your Honor.

THE REFEREE: All right, I see it.

I'm not agreeing with your interpretation, but you pointed it out to me.

Q Let me read your letter.

In your letter of January 28, 1985, you appear to indicate in your opinion that you are not permitted to respond to the allegations contained in the complaint.

That was your interpretation.

You have provided what purports to be an excerpt of an order, which you contend, is a bar. As the document which you submitted is neither complete nor signed, you are requested to immediately provide a true copy of the order upon which you rely.

Now, and I said to you --

A Are you asking me a question?

Q Right. You asked me only for a copy of the Judge Gammerman order, a complete copy, because I only sent you a few pages and I said to you, in sum and substance, the day I received the letter --

THE WITNESS: If your Honor pleases, I move to strike the testimony.

Q Didn't I say, the day I received the letter, "Look, I don't want to get involved with this Judge Gammerman order at the present time?" You want a copy of the order, you can get it from other sources. Obviously Mr. Schneider.

Don't get me involved with Judge Gammerman's order."

A Are you asking me a question?

THE REFEREE: Did he say that to you?

A Are you asking me --

Did you say it to me orally?

Q Yes.

A Absolutely not. We had no conversation with respect to that.

Q How many conversations did I have with you?

A With respect to your failure to cooperate?

Q Everything.

A I couldn't count the number of conversations until recently, when I indicated that I would not speak to you any further on the phone.

Up to that time, you may have called me upwards of a dozen times.

Q And, you mean to say in all those dozen times, you did not keep any notes?

A That's correct.

Q Mr. Straus, but, you remember what I did say, and what I didn't say over a year ago.

A I certainly recall your failure to cooperate, the subjects pertaining to that.

Q "Your failure to cooperate," according to your

1 to your letter was that I only sent you three pages --

2 A Mr. Sassower, those are the only two conver-
3 sations that I can recall.

4 The other conversations which you had were
5 usually pertaining to your schedule, your various requests;
6 you called several times, to ask if the committee had made
7 a determination yet, if the court had made a determination,
8 if a referee had been appointed.

9 I didn't make any notes of those conversations.

10 Q I'm talking about the early part of '85. I'm
11 not talking about lately.

12 In the early part of '85, didn't I, in sum
13 and substance say to you --

14 THE REFEREE: Orally or in writing?

15 MR. SASSOWER: Orally and in writing.

16 THE REFEREE: Where is the writing?

17 MR. SASSOWER: It's in writing on

18 January 30.

19 Q Didn't I say to you, "Look, you are asking me for a
20 copy of the Gammernan order. I only sent you a few pages.
21 Don't get me involved with violating the Gammernan order.
22 Get the Gammernan order from some other sources. Don't bother
23 me. I don't want to have any correspondence with the
24 Gammernan order, unless, or until the legality is
25

1
2 is adjudicated." Didn't I tell you that?

3 A Are you asking me the same question again?

4 If you are asking me is what's at the bottom
5 of Exhibit 55, something that you said to me, yes, it's in
6 evidence, and you clearly wrote whatever that says. We had
7 no other conversation that I can recall.

8 Q Didn't I tell you in a telephone conversation
9 that it was my opinion that the Grievance Committee, since
10 Judge Gammerman was transgressing the jurisdiction of
11 the Appellate Division, that it was the obligation of the
12 Grievance Committee to come in and nullify, at least, that
13 part of the order, because it prohibited a person --

14 THE REFEREE: You're assuming that Mr.
15 Straus agrees with your interpretation of Justice
16 Gammerman's order.

17 He's already indicated that he does not
18 agree with your interpretation.

19 THE WITNESS: The statement made by Mr. Sassow-
20 er does prompt my recollection to this extent.

21 He made some statement to that regard, and
22 I told Mr. Sassower that it was clear from the
23 order that he was prohibited from making griev-
24 ances and filing complaints against attorneys,
25 that the order did not prohibit him from responding

to an inquiry from a disciplinary body against him, and furthermore, that I regarded what he was doing was a sham, since he had not, in any way, complied with Judge Gammerman's order in the past also.

Q What?

A That's correct.

Q Did you put that in writing?

A You wanted a conversation. I'm giving you the conversation.

Q When? Where? And, you took no notes.

A You made a statement which prompts my recollection as to the discussion we had; I reiterated it again.

Q May we have when and where?

A I don't know the dates, Mr. Sassower. It's about the time of the end of January, 1985, early February, but I distinctly told you again that you were required to submit a response to the allegations, that your failure to do so, constituted professional misconduct, independent of the merits of the complaint and I also told you, I believe, that you knew very well how to seek modification of an order, because you had done it literally dozens of times, and if you wanted to be relieved of the obligation, you could do so, and that's the conversation, the only conver-

sation that I can recall that I had with you.

Never did I tell you that you were relieved of the obligation to respond to these allegations.

Q Didn't I tell you that, and I say it, in order to properly respond to any inquiry, I would have to contravene Judge Gammerman's order, and I didn't want to be in the position of, on one hand --

THE WITNESS: If your Honor pleases, this is repetitive.

THE REFEREE: Your position is that you were barred by Judge Gammerman's order from communicating in any respect with whatever the Grievance Committee --

MR. SASSOWER: Not in any respect. In order to properly respond.

THE REFEREE: I know, but Mr. Straus indicated to you that that is not his interpretation.

MR. SASSOWER: That was my interpretation.

Q In fact, indeed, one day before your letter of January 29, I had written you --

Is this a letter that I wrote you?

THE REFEREE: That's Exhibit 56.

THE WITNESS: It's 54.

THE REFEREE: Sorry.

THE WITNESS: This is in evidence already,
Mr. Sassower.

Q I know. I'm drawing your attention to it.

A What is your question?

Q I'm asking you, didn't I also write to you
and say to you in --

A Are you asking me did you also write Committee
Exhibit 54 in evidence? Yes. You wrote 54 in evidence.
That's why it's in evidence.

THE REFEREE: That's a four-page document,
dated January 28, '85.

MR. SASSOWER: It's a one-page document.

THE WITNESS: I don't think it's essential
to have me on the witness stand to testify that
a document is in evidence.

Q On January 29 --

MR. SASSOWER: For the record, it's a one-page
document.

THE REFEREE: Four pages in evidence.

MR. SASSOWER: Three pages are part of the
order of Judge Gammerman.

Q Now, when I told you my interpretation of the
order, did you attempt to get -- you asked me for a full
copy of the order; in sum and substance, didn't I tell you

"Don't get me involved, get the order from somebody else"?

A I have no recollection of your ever telling me anything like that.

If you wrote something, then it speaks for itself.

Q Well, here --

A Are you again going to ask me -- it's in evidence.

THE REFEREE: These documents are in evidence.

Q Let me ask you this question.

Did you communicate with the Grievance Committee at any time, to this very day --

THE REFEREE: Pardon?

Q -- to this very day --

THE REFEREE: We're interested in up to the -- we're interested in where the complaint was filed.

MR. SASSOWER: As to the attitude, of the Grievance Committee, in the First Department, what Mr. Straus' attitude was towards that order.

THE REFEREE: We're not interested in attitudes, sir.

THE WITNESS: I would object to the question.

THE REFEREE: Sustained.

MR. SASSOWER: I was guided --

THE WITNESS: Object to his remarks.

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2 Q You wanted a copy of Judge Gammerman's order,
3 and you asked me for a copy, and I gave you a response.

4 Did you get a copy of Judge Gammerman's order from
5 somebody else?

6 A We must have gotten it from someone, Mr. Sassower.
7 It's in evidence. We offered it in evidence, so, obviously,
8 we obtained it from some source.

9 Q When did you get it from some other place?

10 A I don't recall when we received it. Probably, we
11 had a copy of it when Mr. Schneider made his initial complaint
12 which, I think, was in November of '84.

13 Q How Mr. Schneider could not have in his possession --

14 THE REFEREE: Sustained.

15 Q -- in November of '84 --

16 THE REFEREE: He doesn't know anything about
17 Mr. Schneider.

18 A I said that I probably got it when we received
19 the complaint.

20 THE REFEREE: Next question.

21 MR. SASSOWER: Judge --

22 THE REFEREE: Don't question him about
23 whether or not Mr. Schneider or anybody else had
24 anything.

25 Q Isn't it a fact that it was impossible for Mr.

Schneider to have, in November of 1984, an order of January of 1985?

A Then I didn't have it.

Q So, I'm asking you, when did you get the Gammernan order?

A I don't recall when I got it. I have no recollection.

I don't know that you need me on the witness stand to ask this question.

Why is this appropriate to any of the charges?

Q Because you are telling me that I didn't have a copy, when you had the Gammernan order in your file all the time, because I spoke to you; is that not true?

A Is that a question?

Q Yes.

A Mr. Sassower, the problem with the order, not an order, you sent us some typed pages which were neither signed nor were they complete, so, the request was that you send us a copy of whatever order it was that you maintain they came from. They wouldn't -- three pages or four pages, unsigned by a judge would not constitute anything.

THE REFEREE: Did you, subsequently, Mr. Straus, obtain a copy of Judge Gammernan's order of January 23rd, 1985?

THE WITNESS: We unquestionably did, because we included it in the charges.

Q When --

A Mr. Sassower, repeating it --

THE REFEREE: Was that prior to your initiating a grievance?

THE WITNESS: Yes. You mean the disciplinary proceeding.

THE REFEREE: Yes.

THE WITNESS: Of course.

Q Isn't it a fact that I had a conversation with you around the early part of February, 1985, where you in sum and substance, said to me, "You got the Gammerman order." Yes or no.

A Are you asking me that?

Q Yes.

A I don't recall any such conversation.

Q The question is, did you have the Gammerman order?

A Are you asking me --

Q Yes.

A I think I've answered that at least six times again, Mr. Sassower, and I'd object to your repeating the same question over and over again.

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Q I show you a letter of January 22nd.

A You are showing me 53 in evidence.

THE REFEREE: Oh, 53 in evidence.

A What's your question?

Q The question is, when you received that letter, or, at any time did you make any inquiry with respect to the allegations contained there, yes or no?

A Mr. Sassower, there was a continuing investigation going on from the time we received the complaint of Mr. Schneider, so, in -- that's the best answer I can give you to your question.

Q January 22nd was one day before the Gammerman order, was signed, and, is it not true that I drew your attention --

A Mr. Sassower, the letter speaks for itself.

If you have a question of me, I wish you'd ask it.

Q The question is, did you investigate the circumstances --

A I've answered your question. We were investigating the allegations of misconduct from the time we received the complaint.

Q Did you investigate the misconduct as to the manner in which the Gammeran order was secured, yes or no?

THE WITNESS: If your Honor pleases, I don't think it's appropriate for me to respond to that.

Do I have to take the witness stand to testify as to the subject of the investigation, or does he have to respond to the charges, is the question.

THE REFEREE: Mr. Sassower, as I indicated when I called Mr. Straus to the witness stand, I'll permit you to examine him with respect to the one issue and one issue only, and, that is with respect to Charge 7.

Q Mr. Straus, after February, after you received the copy of the Gammernan order --

THE REFEREE: February of 1985.

Q -- 1985, after you received the Gammernan order, in February of 1985, or whenever you did receive it, did you ever write to me and say "We want such information, that you didn't give us, or any other information that you didn't give us"? Yes or no. That's all.

THE WITNESS: Your Honor, do you want me to go beyond the bounds of the failure to cooperate as it's enumerated there?

I don't know that any subsequent behavior would have anything to do with the charge of failure to cooperate.

THE REFEREE: The last letter we have is

is January 29, 1985.

THE WITNESS: That's the last.

THE REFEREE: Is that the last letter you sent to Mr. Sassower with respect to failure to cooperate?

THE WITNESS: That's correct, your Honor.

Q Okay. It was just the Gammerman order. Okay.

Mr. Straus, I want an offer of proof, but it's in the form of a question. Mr. Straus, in examining all of the documents in this case that you examined or were given, do you find any judge in any court stating or holding that I violated the order of Judge Gammerman, Hilda Schwartz? Yes or no.

THE WITNESS: If your Honor pleases, this appropriate for this examination?

I don't think my opinion is called for here.

THE REFEREE: I set the guidelines. Now you are going beyond it.

MR. SASSOWER: If your Honor sustains the objection; it's part of an offer of proof.

THE WITNESS: I don't think you're entitled to put me on the stand to ask me for that type of response.

There is nothing which is required, or should be required of me.

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2 If we haven't established our case through
3 our witnesses, then we fail to do so.

4 THE REFEREE: Objection is sustained as to
5 that question.

6 Q I ask you the same question with respect to --

7 THE REFEREE: To any of this --

8 MR. SASSOWER: Right.

9 THE REFEREE: Objection sustained as to all
10 of them. Go ahead.

11 You have a continuing exception.

12 Q Mr. Straus, do you know, or did you inquire at any
13 time --

14 By the way, who's this young lady here?

15 THE REFEREE: It's a public trial, sir.

16 A Would you put your questions to me, Mr. Sassower?

17 THE REFEREE: You wanted a public trial, so
18 the door is wide open.

19 Are you going to be a witness in this pro-
20 ceeding, young lady?

21 VOICE: No.

22 THE REFEREE: Go ahead.

23 Q Mr. Straus, in drawing up the petition against
24 me, and I'm talking about the charge about repetitive
25 motions --

1 Straus-direct

1453.

2 THE REFEREE: Sir, I permitted you to call
3 Mr. Straus as a witness only with respect to
4 Charge 7.

5 MR. SASSOWER: Fine. So, if you're sustaining
6 the objection --

7 THE REFEREE: Are you all through with Charge 7?
8 I'll excuse Mr. Straus so he can go back.

9 MR. SASSOWER: Let me put the question on the
10 record.

11 THE WITNESS: I'll object to the tactic that
12 Mr. Sassower has followed throughout the proceed-
13 ing.

14 He has no legitimate questions to put to you.

15 MR. SASSOWER: I'm finished.

16 THE REFEREE: Make your point, and that's it.

17 Q In drawing up the petition, did you distinguish
18 between reargue and renewal as a matter of right?

19 THE WITNESS: I object to the question. I
20 think --

21 THE REFEREE: It will speak for itself.

22 MR. SASSOWER: I can't tell from the petition.
23 It's ridiculous. You read it.

24 THE REFEREE: It's your position that you did
25 not initiate new proceedings, that this was a

reargument of old proceedings before the Grievance Committee got involved?

MR. SASSOWER: No.

THE REFEREE: Tell me.

MR. STRAUS: Whatever Mr. Sassower's purpose, it's inappropriate to ask me.

MR. SASSOWER: There are three types of motions dealing with post-motion relief. There's argument--

THE REFEREE: I know, but the order of Judge Gammernan cited in the petition and the orders are in evidence, will speak for themselves.

We don't have to go through them.

MR. STRAUS: If your Honor pleases, Mr. Sassower says -- it's just delaying the proceedings further.

He called me on the stand because he doesn't want to go ahead with his case, that's all.

THE REFEREE: Are you through with Mr. Straus?

MR. SASSOWER: Are you a witness?

THE REFEREE: He's a witness up to this point.

MR. SASSOWER: I'm finished with Mr. Straus.

THE REFEREE: You're excused, sir.

MR. SASSOWER: I'm not finished, but I'm limited by your Honor's direction.

THE REFEREE: Yes, are you ready to proceed?

MR. SASSOWER: Yes.

THE REFEREE: Let's take a five minute recess.

(Recess ensues)

THE REFEREE: Are you ready, Mr. Sassower?

G E O R G E S A S S O W E R, 51 Davis Avenue, White Plains, New York 10605, being first duly sworn, testified as follows:

THE REFEREE: Do you want to testify in narrative form?

THE WITNESS: I'll have to do it very slow, so, if there are any objections, you can set them forth.

May I have the file on 21208?

MR. STRAUS: Do you want an exhibit?

THE WITNESS: The four or five motions.

MR. STRAUS: If you can refer to an exhibit that you want, we can give it to you.

THE REFEREE: Which motions are they?

THE WITNESS: It's the original, the first case, 21208 with the schedule attached to it.

THE REFEREE: What exhibit?

THE WITNESS: That's Exhibit 61.

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2 THE REFEREE: Yes. That's five motions
3 by Mr. Sassower in behalf of Hyman Raffe to
4 vacate summary judgment, granted by Mr. Justice
5 Lane, and the various rulings of the Appellate
6 Division affirming Judge Lane's order.

7 MR. SASSOWER: If you understand Barr 1,
8 what I call "Barr 1," everything else becomes
9 understandable.

10 Barr 1 was an action brought by Citibank
11 and Jerome Barr against Hyman Raffe, Eugene Dann,
12 and Robert Sorrentino for 75 percent of a note of
13 \$42,000 and against Puccini for 100 percent
14 of that note. Barr 1 was preceded by a telephone
15 call that I received from Hyman Raffe, who, at
16 that time, was my client for about 22, or 23 years.

17 THE REFEREE: When did you receive that tele-
18 phone call?

19 MR. SASSOWER: I'll give you the exact date
20 when we come back after lunch.

21 THE REFEREE: Approximately.

22 MR. SASSOWER: It was early fall of 1979.
23 Hyman Raffe used to play Gin Rummy with Eugene
24 Dann and Milton Kaufman and Jerome Barr, who was an
25 attorney, every week, religiously and on one of

those occasions, while playing Gin, Hyman Raffe became a fourth partner in Puccini.

Kaufman died in 1979, in the middle of 1979.

Kaufman was an extremely wealthy man.

When Kaufman died, Citibank was both a creditor of Puccini and also a fiduciary in Puccini and, as Mr. Raffe testified, there was a conflict in Citibank between them being a creditor and their being a fiduciary.

I was called in to attend a conference at the main office of Citibank.

At the conference was myself, Eugene Dann, who I think I met a few times before, but just was introduced to him -- didn't know him except by name -- Robert Sorrentino who I did not know, Barr and a number of other officials from Citibank.

I came as representative of Hyman Raffe, but since Hyman Raffe's position was precisely the same as Eugene Dann and Robert Sorrentino and, by the way, this is all in writing, while I'm representing Hyman Raffe, I'm also protecting the rights of Eugene Dann, Sorrentino and Puccini, and the thrust of the conversation was Citibank

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2 was in a conflict and the only way they knew to
3 get out of the conflict was by calling in the
4 guarantees it had on Puccini.

5 Now, to understand the arrangements that
6 Kaufman had with Citibank and Raffé had with
7 National Bank of North America, which is now
8 National Westminster Bank, you must understand
9 Kaufman and Raffé financed Puccini Clothes.
10 Sorrentino and Dann were the operators.

11 Now, Kaufman financed Puccini by telling
12 Citibank, "You lend whatever monies Puccini
13 needs up to a certain amount and I'll guarantee
14 it."

15 He didn't have to put any money of his own in,
16 except for possibly \$20,000 or \$25,000.

17 Raffé, when he became partner of Puccini,
18 did the same thing, except for a nominal investment
19 of, I think, \$25,000. They didn't invest anything.

20 Raffé told his bank, National Bank of North
21 American, "Lend Puccini whatever it needs." It
22 was a 61-39 ratio, which is unimportant at this
23 point and I'll guarantee it."

24 When Kaufman died, Citibank found itself as
25 a creditor of Kaufman and as a creditor of Puccini.

It also found that it was an executor of an estate.

The taxable estate was about sixteen million dollars.

It was also a fiduciary under the Kaufman will.

Obviously, its compensation as an individual fiduciary was far greater than it could make as a creditor, so it wanted to get out of the creditor position and remain with the fiduciary position.

And, at the meeting that was the problem, how was Citibank to get out and they wanted to get out and I said they could not, that their conflict was anticipated by them; they know there's always a conflict when they go looking to become trustees or executors under an estate, and, we have our problems. Citibank has to resolve its own problems but I'll cooperate with them to the fullest extent.

And I said, and, by the way, this is all in writing and it will all be produced this afternoon.

And, I said, "Look, fellows, we're all in the same boat, if I'm not here to hold Citibank up, but if we have to pay Citibank now, with our large

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2 inventory, we have to liquidate the inventory
3 at a tremendous loss, thereby decreasing Kauf-
4 man's equity in Puccini, that it pays for Citi-
5 bank financially and it pays for Kaufman finan-
6 cially too; one, if we have to pay off Citibank,
7 to pay it off as they agreed, not immediately,
8 which would cause a liquidation of Puccini's
9 assets and a tremendous loss; it just didn't make
10 sense, and everybody at Citibank agreed with me
11 right down the line, they would cooperate in the
12 orderly liquidation of Puccini, or, if Puccini
13 desired, to get new financing but this would take
14 time.

15 With one exception. The Fiduciary Department
16 in Citibank and the Commercial Department in
17 Citibank are two separate entities, and the
18 Fiduciary Department at Citibank and the Commercial
19 Department could only be described as something
20 like between Iraq and Iran. They don't get along.
21 They don't get along. At that time, they hated
22 each other and I was trying to placate the
23 Commercial Department.

24 A man by the name of Grady. I would deal
25 with the Fiduciary Department. I would deal with

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2 Grady, and Grady, if it was going to benefit
3 the Fiduciary Department, he would not cooperate,
4 and I was going back and forth between the two
5 dppartments, and, finally, the Fiduciary Department
6 said this, "Look, the only way we can solve this
7 problem, because we can't get along with Grady,
8 is, will you do your financing with another bank?
9 And I said, what's the difference to me, you guar-
10 antee a million dollars with another bank, I
11 don't care if it's Citibank, Manufacturers-Hanover,
12 or what other bank."

13 THE REFEREE: Who were you speaking for at that
14 time?

15 THE WITNESS: I was speaking for Raffé
16 and also for Puccini, Dann and Sorrentino, who
17 were just -- they went along because Raffé was
18 on the same side as all of them.

19 And, they -- Kaufman's son-in-law did
20 business with -- Raffé said it was Bank Leumi; it
21 was the Bank of Israel, Fifth Avenue and Forty-
22 second Street or Forty-third Street, and we went
23 up to the Bank Of Israel, all of us, including
24 Citibank, fiduciaries, and the Citibank fidicuaries
25 said to the officers involved -- they had lunch

there and everything else, and they said, "We'll guarantee Puccini a million dollars with Kaufman securities, because we want to get out of this conflict of interest, and again, we don't care who performs the obligations of Kaufman as far as the loans are concerned as long as they are performed." And Citibank, in all our presence, was making arrangements with the Bank of Israel. It's the Israel Discount Bank.

THE REFEREE: This is 1979.

THE WITNESS: Yes, 1979, right.

And, while we were there, we find out that --

THE REFEREE: When you say, "We," who is "We"?

THE WITNESS: The fiduciary department of Citibank, myself, Dann, Sorrentino, Barr, everybody, that Grady had -- from the commercial department had found out that the fiduciary department was taking out the guarantee from the commercial department and refused to roll over a \$42,000 note, called it in without notice, no notice at all, and seized Puccini's assets on deposit at Citibank.

What had happened about three days before, or five days before, I had learned through a chance

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2 conversation with Raffae, that they use Citibank
3 as a depository. It's a standard rule with me,
4 as far as my clients are concerned that wherever
5 possible, you do not deposit your monies in the
6 bank from which you borrow this loan.

7 If a bank from who you borrow wants to call in
8 a note, all they do is seize your assets at their
9 bank, which is their right, but if, and they can
10 throw you out of business overnight, while if your
11 assets deposited at another bank, they have to
12 sue.

13 So about three days before this happened,
14 since this Grady was crazy when it came to the
15 fiduciary department, I told Raffae, Dann and
16 Sorrentino, "You don't know what Grady is going to
17 do, take your money out of Citibank, put it into
18 another bank and leave \$500 on deposit just in case
19 Grady goes crazy."

20 They took out all the money from their ac-
21 count in Citibank, except for a thousand dollars.
22 Grady didn't know about it. So, he refused to roll
23 over a \$42,000 note from Puccini and Grady uses an
24 excuse that the executors of the Kaufman estate
25 which is the fiduciary department and Barr didn't

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2 write up their papers correctly, so the protection
3 for Grady seizing, not rolling over the note,
4 was that the fiduciary department properly prepare
5 papers. So, this was a war between Citibank and
6 Citibank. When Grady was going to use that as an
7 excuse for not rolling over the money, it seized
8 Puccini's assets at Citibank. Instead, there
9 turned out to be only a thousand dollars. Grady
10 had only seized a thousand dollars. So, he went
11 ahead and seized from Kaufman's estate, about
12 \$90,000, so the Kaufman estate, the
13 fiduciaries in the Kaufman estate at Citibank
14 went wild, and this was -- they went wild because
15 they now were short about, I'm using round numbers,
16 they were now short approximately \$90,000, but
17 they didn't know how to explain that they were
18 short, that Citibank was short because their own
19 commercial department had seized the fiduciary
20 department's assets.

21 THE REFEREE: What date --

22 THE WITNESS: I'll give you the date when
23 we come back.

24 THE REFEREE: Was it before January of '85?

25 THE WITNESS: Sure, very much so, yes.

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2 And this went back and forth. Citibank didn't know
3 what to do, and there's a fight going back and
4 forth.

5 I was on trial in the Family Court, Bronx in
6 the longest custody case ever held there. It went
7 on for six months and I got a call one day. A
8 Mr. Relkin called me and during one of the breaks I
9 called him and he told me that I have to come down
10 for a conference at his office within the next
11 two days; it's an emergency situation. Citibank's
12 fiduciary department is up in the air because
13 it's short about \$90,000 and they have to be paid
14 back because it's their trust account, which is
15 short.

16 I said, "Look, what do you want from me?
17 The commercial department seized this money.
18 Why should we suffer because of it? They got to
19 make up this thing."

20 And, I said, "Mr. Relkin" --

21 THE REFEREE: Did you go down to the confer-
22 ence, sir?

23 THE WITNESS: I was on trial. I told them
24 I can't.

25 THE REFEREE: All right.

1
2 THE WITNESS: But there's an important part
3 to this converaation.

4 I said, "I'm here all day every day by order
5 of the administrative judge. They have to finish
6 this case. It's now in its third or fourth month.
7 If you want, make a conference for after 6 o'clock in
8 the evening, I'll be happy to come down, not be-
9 fore six. Six, I'm here in the Bronx."

10 By this time, there were more monies that
11 became due and I said to Mr. Relkin, I said,
12 "Mr. Relkin, if Puccini has to liquidate its in-
13 ventory on a forced basis, it's Puccini which will
14 suffer, and since Kaufman is a 25 percent stockhold-
15 er in Puccini, it's he that will have to suffer."

16 There was no question that Puccini was solvent.
17 There was no question that Kaufman was going to get
18 every penny back.

19 THE REFEREE: No question --

20 THE WITNESS: In anybody's mind. Okay.

21 But, if --

22 THE REFEREE: Well, Mr. Raffe testified that
23 you represented him for twenty years or so in
24 collection matters, and that when there was dis-
25 solution about to start with reference to Puccini

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2 Clothes, that he then retained you as an attorney
3 to handle the dissolution.

4 THE WITNESS: No, that came later on. There
5 was no dissolution proceedings at this time, none
6 whatsoever. I'll bring the documents to show.

7 So, I told Relkin if they force Puccini to
8 liquidate --

9 THE REFEREE: Relkin was the attorney for the
10 estate of Kaufman?

11 THE WITNESS: Right.

12 THE REFEREE: Go ahead.

13 THE WITNESS: So Relkin, in sum and --
14 Relkin then told me -- I said it's needless
15 litigation, it's ridiculous litigation, and Relkin
16 told me, in exact words, that they are not looking
17 to liquidate Puccini, they just wanted to run up
18 a bill as legal services.

19 THE REFEREE: That's what Relkin told you.

20 THE WITNESS: Relkin told me.

21 THE REFEREE: When?

22 THE WITNESS: Early -- fall of 1979. I'll
23 give you the dates when I come back.

24 And, I said to Mr. Relkin, "First of all,
25 I'm stuck here in the Bronx. After six o'clock,

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2 I'll make a conference, I can't come down. What-
3 ever you do about estate-chasing, about being paid
4 of for your associate, recommending the estate
5 for Citibank, Citibank as an executor, I want
6 nothing to do with it. And, secondly, don't give
7 me a hard time, because I can't justify to my
8 clients a bill based on needless litigation."

9 That first month --

10 So, my clients -- when I say my clients,
11 I mean Raffe -- received a 3213 summons and complaint
12 for \$2,000, and the others received the same thing.

13 Now, there is no way that you think about that
14 summons, that you can avoid the conclusion that it
15 was needless litigation. They were fully secured.
16 They can only damage their position by hurting
17 Puccini, and, they were just -- Kreindler and Relkin
18 were just commencing litigation, only to funnel
19 fees from the estate to Kreindler and Relkin,
20 which is a normal practice with Citibank.

21 You bring in a will wherein Citibank is named
22 executor. When the person dies --

23 MR. STRAUS: If your Honor pleases, I'm
24 going to object at this point to Mr. Sassower
25 testifying.

THE REFEREE: Yes. They are not involved.

THE WITNESS: In Citibank, the first month, I think Kreindler and Relkin were retained the 20th of September or October -- in those ten days, the only work they performed was to send out --

THE REFEREE: How are you in a position to know what work they performed?

THE WITNESS: Because I have the exhibit.

THE REFEREE: Other than that, you don't know what time they spent?

THE WITNESS: Yes, I do. I'll show you how. Okay?

This came in later, and I'll show it to you. The first month, all they did was send a pro forma letter of a page and a half. That was in October, of 1979. That was in October of 1979.

For that one letter, their time sheets show 57.7 hours billing \$5,397.

THE REFEREE: Billing whom?

THE WITNESS: The estate.

THE REFEREE: You weren't involved in the estate of Kaufman.

THE WITNESS: But it ties in.

MR. STRAUS: If your Honor pleases, I can

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2 agree that a certain amount of background maybe
3 useful, but this testimony which Mr. Sassower --
4 I haven't objected, obviously -- aside from the
5 fact that it consists of hearsay, opinions and
6 various other matters which would make it in-
7 appropriate, has nothing to do with the charges.

8 THE WITNESS: It does, because -- I'm --

9 THE REFEREE: Sir, the fact that they over-
10 billed the estate of Mr. Kaufman has nothing to
11 do with the matter before us.

12 THE WITNESS: Yes, it does. Let me tie it in.
13 It's in evidence. Okay?

14 Is this document in evidence, by the way?

15 THE REFEREE: What document?

16 THE WITNESS: These motions.

17 MR. STRAUS: What motions are you referring
18 to?

19 You have Exhibit 61 in front of you.

20 It consists of a folder, a one-page key on the
21 front and the documents which are referred to,
22 which are five motions. The first one begins in
23 April of 1980.

24 THE WITNESS: So, therefore, when they started
25 this litigation 21208, I immediately put in on

behalf of everybody, a cross-motion.

THE REFEREE: You say on behalf of everybody.

THE WITNESS: On behalf of Dann, Raffe, Sorrentino.

THE REFEREE: Had you been retained by those persons?

THE WITNESS: Not really. They were hangers on.

While I was protecting Raffe, I put in an answer on their behalf. They're all on the same side.

If I helped Raffe, I helped Dann.

THE REFEREE: Did you hold yourself out as the attorney for the other persons?

THE WITNESS: Absolutely.

THE REFEREE: Or, did they retain you?

THE WITNESS: Well -

THE REFEREE: Orally or in writing?

THE WITNESS: Orally.

THE REFEREE: When?

THE WITNESS: From the time of the first conference.

THE REFEREE: When?

THE WITNESS: That was the summer of '79. But, I'll get you the exact date when we come back. I'll give you a ballpark figure now.

It was September of '79, and I handled the matter during this entire period.

THE REFEREE: Mr. Raffe testified that he attempted to have you retained by the other two surviving partners.

THE WITNESS: That came up later, much later.

THE REFEREE: And then, that shortly thereafter, they said, no.

THE WITNESS: That came much later, that came much later.

So, I represented all of them. We had -- during the course of this litigation, which ran into January, they asked for a couple of adjournments, and, finally, the motion was submitted in the early part of January, 1980.

THE REFEREE: In 1980.

THE WITNESS: Yes, to Mr. Justice Lane, L-A-N-E.

One thing you must understand at this point, they kept adjourning -- I never asked for an

adjournment.

THE REFEREE: Who is "They?"

THE WITNESS: Kreindler and Relkin. Which I didn't object to because there were two things for sure.

One way or the other Citibank had to get the money.

Two. All we wanted is time so that we could liquidate in an orderly way.

Three --

THE REFEREE: You said earlier that there was no question of any dissolution at this time.

THE WITNESS: There was no dissolution proceedings.

THE REFEREE: Just the word "Dissolution." Now, you're saying that they were going to liquidate.

THE WITNESS: They had a high inventory. They wanted to liquidate their inventory.

THE REFEREE: And remain in business as Puccini Clothes.

THE WITNESS: What their future was, was not my concern.

There was some question as to whether,

without Kaufman's financing, they should have a different style of operation.

I was not involved in that, but one thing was sure, if Kaufman had died at a high inventory scene, and they didn't want to get stuck with liquidating inventory, as a forced matter, so, as much as they adjourned it, it didn't bother me because they were getting more time.

The latter part of January, 1980 -- by the way, Citibank and Kreindler and Relkin were also interested in not rushing this lawsuit because they did not want Puccini to have a forced sale of its inventory because then they would lose on their twenty-five percent of their stock interest.

And, everything went along fine. I really didn't concern myself what Kreindler and Relkin were doing as long as it didn't hurt my clients.

I knew what they were doing, but I didn't get involved with that.

The end of January, Raffé -- I didn't bill my client, I didn't bill Raffé, I didn't bill Dann or Sorrentino -- the end of January, Dann and Raffé were going to Puerto Rico and I had mentioned that I had never been --

Sassower-

1475.

THE REFEREE: You say the end of January, of 1980, 1980?

THE WITNESS: Right. I had never been outside of continental USA since I got back from World War II and they said, "Look, let's take you to Puerto Rico at least for the work you are doing on Puccini."

It went back and forth and I said, "Okay."

The day that I left for Puerto Rico. While Barr Number 1 was pending, somebody was going to drive me to the airport, to their house first. At their house, they called my office for some other reason, and found out that I had been served with some papers, so, we went back to my house, picked up the papers, was driven to the plane, and the entire flight to Puerto Rico, and I think it was a couple of days that I spent in Puerto Rico, couldn't figure out why Kreindler and Relkin, Barr and Citibank wanted to dissolve Puccini and this was the involuntary dissolution proceeding, because there was no question that a dissolution proceeding cut down the value of a corporation considerably, and, since they were a twenty-five percent stockholder, why would a stockholder

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2 want to cut down on its own equity? It just
3 didn't make sense. They used it as a pretext that
4 a meeting was cancelled in January, a stockholder's
5 meeting was cancelled.

6 There was a stockholder's meeting in January.
7 Dann either got a heart attack or had a heart con-
8 dition or something of that nature, and wound up
9 in a hospital for the implantation of a pacemaker.

10 Since Dann was the operating officer, Sorren-
11 tino spent most of the time in Korea, Raffé knew
12 nothing about the business, Kaufman was dead --
13 to hold a meeting, without Dann, was nonsense.
14 He was in the hospital.

15 So, I cancelled the meeting until he got
16 out of the hospital and he was well enough.

17 Kreindler and Relkin --

18 THE REFEREE: Excuse me, it's ten after one.
19 What's your pleasure? Shall we recess for lunch?

20 MR. STRAUS: It's up to you, but I'll abide
21 by anything that Mr. Sassower wants to do.

22 THE WITNESS: I have only one request,
23 whether we take fifteen minutes extra for lunch-
24 time, because I have to run over to Manhattan, or we
25

1
2 cut by four o'clock. It doesn't matter which
3 way, but I have to deliver certain legal papers
4 to Manhattan.

5 Then I have to drag all my exhibits from the
6 car, but what I was going to say, your Honor --

7 MR. STRAUS: Why don't we --

8 THE REFEREE: We'll recess until 2:15 and
9 we'll leave at four o'clock.

10 We'll adjourn at four o'clock.

11 (Lunch recess)

12 oOo

13 THE REFEREE: Mr. Sassower, with reference
14 to your request for transcribed minutes, I under-
15 stand the procedure is that you must apply to
16 the Appellate Division, if you want to obtain the
17 minutes without cost.

18 That's the procedure.

19 MR. SASSOWER: I did apply and some place
20 along the line, I have to go through my papers,
21 there was an indication, whether it was made
22 orally or what, that I should first make the
23 request of you, because I had a different problem.
24 I didn't have a problem saying I'm a poor person.
25 I'm just saying that my funds are tied up and,

therefore, I ask for, as Mr. Straus correctly stated, I didn't ask for poor person relief, I asked for quasi-poor person relief.

So, I'll do whatever your Honor wants.

MR. STRAUS: That motion, I believe, was denied.

THE REFEREE: By the Appellate Division?

MR. STRAUS: That's correct.

THE REFEREE: Are you aware of that?

THE WITNESS: I'm aware that the whole motion was denied, but, this quasi-poor person relief, they said I should make application to your Honor first.

MR. STRAUS: Not the motion, just denied the application. I don't think there is anything --

THE REFEREE: May I suggest, I don't want to run afoul of any rules set by the Appellate Division, so you apply to them on that basis.

All right, continue.

THE WITNESS: So, it should be plainly understood, this whole thing came up during a very unusual period of my life.

I was always in court and I found a secretary needless because when I came back from court,

she had been going home.

So, I never really kept -- made written letters or documents of what was happening, and I was, at this period of time, becoming subject of what was the most expensive disciplinary in the histories of Westchester County, and my problem at that time was that, although I was convinced I was clean and innocent, I never really had any documentation to really prove the fact.

So that when the first IBM memory typewriter came out, and, realizing how essential it is to keep documentation, I purchased an IBM memory typewriter.

Then Exxon came up with their -- a QUIX it was called, the Intelligent Typewriter.

Then I bought an Exxon word processor so I started keeping whatever was said, whatever was done.

I would really pretty much confirm it by letter and really became pretty well documented, and although practically all my work was in court, I was, I was injured in World War II and for two months they sent me to typing school while recuperating, so, I became a very, very fast

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2 typist so that with the word processor age coming
3 through and my ability to type, I was able to
4 pretty much memorialize what was taking place in
5 the form of letters, in the form of documents, and
6 I'd like to, at this time, I don't expect your
7 Honor to read all the papers, because I'll pull
8 them out and make photostatic copies of the impor-
9 tant documents, which trace what happened here.

10 And, I'd like to mark into evidence, your
11 Honor, the Appellant's appendix in 21208 of 1979
12 to the Appellate Division, First Department.

13 MR. STRAUS: If your Honor pleases, I'd have
14 to object to those documents going in.

15 If there was a decision rendered in the case,
16 and I believe there are decisions pertaining to
17 21208, that would be appropriate, but Mr. Sassower
18 now proposes to submit documents, which he submit-
19 ed to the Court.

20 Unless they were adopted by the Court in some
21 way, I would object on grounds of relevancy.

22 THE WITNESS: For example, there are letters
23 to Citibank in response to their letters. There
24 are notes --

25 MR. STRAUS: You're including everything.

THE WITNESS: This was not before the Appellate Division; this was part of the proceeding.

All right, let me mark it for you.

THE REFEREE: They are marked UUU for identification.

(So marked)

THE WITNESS: Just as we were leaving for Puerto Rico --

THE REFEREE: You already returned and -- to your home to pick up some legal papers.

THE WITNESS: We went to Puerto Rico. I don't know for how long it was -- I hadn't gotten paid or billed; in fact, I never billed Dann or Sorrentino nor did I bill Hy Raffe or Puccini.

Went down to Puerto Rico and Dann and Hy Raffe are Gin players and the other friends of theirs that went down there are Gin players also, and I haven't played cards since World War II.

What little conversation there was about Puccini was all in the same context.

Why would anybody who had, one, a 25 percent equity in a corporation, and who also claimed that the corporation owed them \$600,000 or there-

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2 abouts, move to liquidate it because liquidation
3 would only hurt their equity, and possibly impair
4 the \$600,000 and Puccini was clearly solvent.

5 The claim was made in the moving papers, one,
6 that we cancel the meeting, which was true, because
7 Dann was in the hospital; and, two, that we owed
8 taxes of \$1500 or something like that; the taxes
9 weren't due until, I think, June or July. This was
10 January.

11 And, secondly, the money that was claimed due
12 for taxes, the claim was for only \$1500 due six
13 months from then, and it turned out that not only
14 was no money due for taxes, but the state owed
15 Puccini for overpayment of taxes, and the whole
16 proceeding did not make sense.

17 Now, it was in Puerto Rico that I had the
18 one and only private conversation with Eugene Dann
19 and he testified to what the conversation was,
20 and I'll try to --

21 MR. STRAUS: When? Where? When did Mr.
22 Dann testify?

23 THE REFEREE: When and where?

24 THE WITNESS: He testified before Referee
25 Lewis (phonetic) in 1982, and the minutes are in

1
2 in Supreme Court, New York County under 21208. I
3 don't have a copy of it, and I'll get the relevant
4 pages, and --

5 MR. STRAUS: Your Honor, I don't think any
6 of that would be relevant, any particular
7 pages and any of the testimony.

8 That would be clearly hearsay.

9 THE WITNESS: This is Dann's testimony, not
10 my testimony.

11 MR. STRAUS: That's correct, of Mr. Dann.

12 THE REFEREE: We haven't reached that point
13 yet.

14 THE WITNESS: Okay, but the only thing is,
15 he testified our only conversation -- didn't even
16 ask him -- our only conversation was that I tried
17 to explain to him Einstein's Theory of Relativity,
18 period.

19 That was the confidential conversation we had.

20 In any event, when I got back from Puerto
21 Rico, -- no -- I'll have to continue on that --
22 as far as Raffae was concerned, he was not really
23 interested in Puccini. His interest was --

24 THE REFEREE: He had a 25 percent interest in
25 the company.

1 THE WITNESS: Right, but money to Raffé --
2 Raffé is almost a millionaire. He's not in
3 Kaufman's league.
4

5 THE REFEREE: Kaufman is dead now.

6 THE WITNESS: Kaufman is dead, and this en-
7 tire litigation as far as Raffé was concerned at
8 this point in time was only to keep Puccini in ex-
9 istence so that Dann would have a job. Dann, at
10 that time --

11 MR. STRAUS: Your Honor, I'll object to the
12 state of Mr. Raffé's mind as testified by Mr.
13 Sassower.

14 THE WITNESS: This is what we talked about.
15 This was the conversation.

16 THE REFEREE: In any event, I don't see the
17 relevance of it.

18 THE WITNESS: It becomes relevant. You'll
19 see the whole picture.

20 That Raffé said, "Look, my only interest in
21 Puccini" -- it wasn't making that much money for
22 him -- and, his only interest was to keep Dann --

23 THE REFEREE: You say he left everything up
24 to you as far as the legal aspects of the proposed
25 dissolution was concerned?

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2 THE WITNESS: I had nothing to do with
3 the dissolution.

4 I didn't bring the proceeding.

5 THE REFEREE: I didn't say you did. Mr. Raffe
6 testified that at the point of the dissolution,
7 he retained you to handle his interest in the dis-
8 solution.

9 THE WITNESS: No. The dissolution --

10 THE REFEREE: You are saying that it's not
11 so.

12 THE WITNESS: It came in on June 4, a year
13 later.

14 In any event, my advice to all of them, and,
15 it wasn't really advice, it was discussion, was that
16 as we liquidate the inventory, we would take
17 enough money or they would take enough money, invest
18 it in certificates of deposit, or similar things,
19 make sure six percent interest was added to it, so
20 that whenever Puccini had to pay the money, it
21 would have the money in ready cash.

22 At this time, it was not only \$42,000 that was
23 due but closer to \$500,00 or \$600,000 due.

24 So, what Raffe and Dann and Sorrentino were
25 doing while the decision was in abeyance on the

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2 \$42,000, was taking the money, putting it in
3 CD's, getting approximately 18 percent interest
4 and with the knowledge that when they had to pay,
5 they would pay it and have to pay only six percent
6 interest.

7 So, it was a period of time when Puccini was
8 making probably more money than it ever made be-
9 fore, not on the purchase and sale of its product,
10 but because it didn't have to pay, one, the high
11 interest rates of about 24 percent; and, two,
12 well, that big expense, 23, 24 percent which was
13 prevalent at the time, didn't exist any more and
14 they knew that when they had to pay Citibank, they
15 would only have to pay 6 percent.

16 And, we were -- every time the conversation
17 arose was, we don't understand what Citibank is
18 doing. They are only suing for the \$42,000.

19 We're close to, we're close to \$600,000 due.

20 Puccini was making all this money on investing
21 that money and they are pursuing a dissolution
22 proceeding, which really didn't make any sense.

23 That motion was opposed by me and it went
24 to Mr. Justice Sinclair.

25 THE REFEREE: You say by you. On whose behalf?

THE WITNESS: On behalf of Dann, Sorrentino, Puccini and Raffe.

THE REFEREE: And had you been retained by Sorrentino and Dann and Puccini?

THE WITNESS: Informally. They would come over and I would generally have lunch at Raffe's place maybe once every two weeks. He has a very large office and dining facilities and about once every two weeks, I would be there, and, let's say on every third time that I would be there, Dann might stop over, Sorrentino was generally in Korea.

In the meantime, I was pretty friendly with some of the employees of Kreindler and Relkin, would meet them in court and it was obvious what was happening.

THE REFEREE: What year or month?

THE WITNESS: This was 1980.

THE REFEREE: Go ahead.

THE WITNESS: The last people who wanted Puccini to dissolve was Kreindler and Relkin, Citibank and Barr.

And, the matter was submitted to Mr. Justice Sinclair in February of 1980. Around -- I'll get

1
2 the date in a moment. Around May of 1980, the
3 decision of Mr. Justice Lane came down and in
4 sum and substance Mr. Justice Lane said that
5 the Kaufman estate could not recover for the
6 \$42,000 against Puccini because the CPLR 3213
7 proceeding was technically improper, but that
8 it was proper against the 75 percent stockholders,
9 which was Raffe, Dann and Sorrentino, and
10 therefore, gave Citibank an award of \$32,000.

11 There is no question in my mind or anybody's
12 mind that Mr. Justice Lane --

13 MR. STRAUS: Your Honor, I'll object to
14 Mr. Sassower testifying as to what he believes
15 is in other people's minds.

16 THE REFEREE: That's colloquy on his part.
17 Go ahead.

18 THE WITNESS: And, I remember the decision
19 coming down, and I remember having lunch at
20 Raffe's place, and Sorrentino and Dann came over
21 after lunch.

22 Actually, the decision had just come down.
23 I got a copy of it that day.

24 I knew I had to be at Raffe's place and he
25 didn't know I had the decision, and neither did

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2 Dann or Sorrentino, and we had lunch. I told
3 them the decision came down and Raffe said,
4 "Call up Dann and Sorrentino and we'll discuss the
5 matter."

6 Dann and Sorrentino came over after lunch,
7 and the thrust of it was, Dann said, "Well, what
8 can we do?"

9 And, I said, Well, there are several options.
10 Option Number 1 is, you pay the \$32,000 with six
11 percent interest plus costs, which probably comes
12 to a hundred dollars."

13 The one thing that I knew right along and
14 which was explained to them, because it's the
15 first thing that I look at when there is a guaran-
16 tee action, if there is a clause in the agreement
17 for attorneys' fees, the first thing I look for
18 is whether the attorney's fees clause is for of-
19 fensive as well as defensive or for only defensive
20 fees.

21 The clauses under these guarantees to the
22 extent that I had them were clearly defensive.

23 That means Raffe, Dann and Sorrentino were
24 only liable to the Kaufman estate for attorney's
25 fees that the Kaufman estate had to pay Citibank,

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2 so that if the Kaufman estate didn't pay Citibank
3 any attorneys' fees, Dann, Raffe and Sorrentino
4 didn't have to pay the Kaufman estate attorney's
5 fees.

6 Offensive attorney's fees would generally
7 include defensive attorney's fees also, means
8 that not only did you have to indemnify, in this
9 case, the Kaufman estate for any attorney's fees
10 paid Citibank, but you have to also pay the
11 attorney's fees that the Kaufman estate expended
12 in collecting the money from Dann, Raffe and
13 Sorrentino.

14 It was clear that this was only for defensive
15 attorney's fees, that the plaintiffs in Barr Numb-
16 er 1, never even sued for attorney's fees because
17 the Kaufman estate didn't pay Citibank any at-
18 torney's fees and the instrument in question, did
19 not provide for offensive attorney's fees.

20 So, we sat down and I listed out the options
21 that they could follow.

22 The first thing I said is, "Look, you can
23 pay it off."

24 And, I said, "Of course, what you can do is
25 file a bond, appeal the Lane judgment," because

I felt there were some technical errors there although there was no question that there was \$32,000 due.

I just didn't think that a 3232 proceeding was technically proper in such a case.

I said, "If you appeal it and it's affirmed, the most you will have to pay is the amount of the judgment, plus six percent interest."

THE REFEREE: Plus the cost of the appeal.

THE WITNESS: Wait a second. Plus the bond, plus the cost of appeal.

In the meantime, there was no indication by Citibank that they were suing to recover the other, approximately \$550,000, and here Dann is making so much money just on the not paying interest, expenses, which, at that time, was at the peak, and Raffe said to Dann -- I said -- "Dann, what, you know, what if Puccini folds up?" First of all, there was this involuntary dissolution proceeding, and, secondly, Dann didn't really know whether -- Puccini had expanded quite a bit, could keep on going, unless it had Kaufman guarantee behind it. Because it had to pay a lot of money for its merchandise; it had to pay in Korea. It needed to

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2 to finance it, and Raffee's financing, to the
3 extent that he was willing to go, was just not
4 that sufficient for an expanded operation. So,
5 Raffe said to Dann, you know, "You have a heart
6 condition, let's face it, we're old men already.
7 Let's bond the judgment."

8 I told him that even if the thing was rushed,
9 you wouldn't get a decision for six months.

10 In six months you collected on your CD's
11 approximately 18 percent, you only have to pay
12 six percent, you have a 12 percent spread and Dann
13 said, "Is this legal?"

14 And Raffe said -- I was sitting quietly there,
15 because I didn't know Dann that well, and I didn't
16 know Sorrentino at all, and Raffe is telling
17 Dann, he says, "Look, to me it doesn't matter, but
18 here you can make \$60,000 a year by doing nothing"
19 and Dann says, "Is it legal?" and Raffe is saying
20 to him, "Is it legal, that's how banks are making
21 money. They pay you a certain rate of interest,
22 they lend out the money and get greater interest.
23 You're doing the same thing, but to the bank. What
24 you're doing is you're going to pay the judgment."

25 Eventually --

1
2 THE REFEREE: Can we shortcircuit this?

3 THE WITNESS: Yes, okay.

4 And, while this conversation is going on and I'm
5 just sitting there quietly, for them to decide
6 which option they want to go, Dann turns to me
7 and says, "Well, if you take an appeal, how much
8 is it going to cost?"

9 So, I said, "The printing expenses will
10 probably run about \$300."

11 MR. STRAUS: If your Honor pleases, first
12 of all, aside from the fact that these are all
13 hearsay conversations, which seem to be absolutely
14 irrelevant to the charges --

15 THE WITNESS: This is what Raffe testified
16 to.

17 THE REFEREE: Let's go on.

18 THE WITNESS: I'll make it short.

19 THE REFEREE: Speed it up.

20 THE WITNESS: I'll speed it up.

21 THE REFEREE: Then what happened?

22 THE WITNESS: So, Dann turns --

23 THE REFEREE: Then what happened?

24 THE WITNESS: So, Raffe, so, I said, "Well,
25 I can either get paid on a time basis or I can

1
2 take a percentage."

3 So, Dann says to me, "How much of a percent-
4 age would you want?"

5 So, I said, "Twenty-five percent."

6 So, Raffe says, "This is found money," he
7 says. "I'll give you 50 percent."

8 And, Dann said, "I don't want lawyers as a
9 partner."

10 And, Raffe starts calling Dann a schmuck,
11 and they got into a fight.

12 THE REFEREE: Mr. Sassower, let's get --
13 we don't want a play by play blow of every little
14 thing here.

15 THE WITNESS: This was the fight between Dann
16 and Raffe.

17 I said, "As far as I'm concerned, I'll take
18 it on a time basis. I'll take it on a contingent
19 basis, whatever you decide."

20 This fight happened, and that was the end of
21 it.

22 Immediately thereafter, or just about the same
23 time, it was a matter of days, the involuntary
24 dissolution decision comes down from Judge Sinclair.

25 THE REFEREE: Who?

1
2 THE WITNESS: From Judge Sinclair, so,
3 you have the judgment by Judge Lane, and the in-
4 voluntary dissolution by Judge Sinclair, all
5 within a few months, and Dann, financially, Dann,
6 Sorrentino and Raffe are ecstatic, happy about
7 this whole thing.

8 We have been able to liquidate a substantial
9 part of their inventory in the ordinary course
10 of the business.

11 They made a lot of money. They saved a lot
12 of money, and, in the meantime, Raffe had bonded
13 on his own that \$32,000 judgement of Lane.

14 THE REFEREE: What's the relevance of this?

15 THE WITNESS: It's relevant.

16 THE REFEREE: Give me --

17 THE WITNESS: I'll show you later why it is
18 relevant.

19 A \$32,000 judgment of Lane, because things
20 were in a turmoil between him and Dann and he wanted
21 to protect the status quo.

22 We had one more conversation, me, Raffe,
23 Dann; Sorrentino, was not there.

24 It was at Raffe's place and we just couldn't
25 figure out what Kreindler and Relking were going

to do.

THE REFEREE: What?

When did they enter the picture?

THE WITNESS: Right from the beginning.

THE REFEREE: As what?

THE WITNESS: As the attorney for Citibank
and Barr.

It served no advantage.

I had told Dann and Raffé right along that from
the papers and from certain conversations with
certain employees of Kreindler and Relkin, that
they didn't really, and, it was obvious, want to
pursue the dissolution proceeding because it was
counterproductive and it was strictly a matter
of funneling attorney's fees from the estate.

THE REFEREE: Did there come a time when
Sorrentino and Dann told you, "We do not want
you to represent in the dissolution because of a
conflict of interest?"

THE WITNESS: No.

THE REFEREE: Never happened?

THE WITNESS: No. Let's go on.

THE REFEREE: You heard Mr. Raffé testified to
that.

THE WITNESS: No, he did not say that.

MR. STRAUS: That was my recollection as well.

THE WITNESS: He did not say that.

THE REFEREE: The record will speak for itself.
Go ahead.

THE WITNESS: Because, up to that point,
there was never any conflict of interest between --

THE REFEREE: I didn't say there was a con-
flict of interest.

THE WITNESS: -- no, no, there was a letter to
that effect, but I'll put all of the letters together.

Now, the next thing I knew, was that Raffie
heard that Dann and Sorrentino were now going
to the Arutt firm, as attorneys, and he looked at
me, and he says, "You're really going to have a
substantial drop in income," saying it sar-
castically, because I never got a penny from
Dann and Sorrentino.

THE REFEREE: Did they tell you they did not
want you to represent them?

THE WITNESS: No, I got this from Mr. Raffie,
and, the next thing I got was --

THE REFEREE: When was this, that Mr. Raffie
told you that Mr. Dann and Sorrentino no longer

wanted you to represent them?

THE WITNESS: I just heard that they are going to some different lawyers. Okay. Something of that nature.

THE REFEREE: In any event, he testified earlier that they did not formally --

You testified earlier that they did not formally retain you either in writing or orally.

THE WITNESS: I would say they retained me orally, some kind of implied retainer.

I did work on their behalf and they accepted it.

THE REFEREE: You were working for Mr. Raffe and they took advantage of the fact that --

THE WITNESS: No question. I put it in writing; in fact, it's all in writing. You have a letter to that effect.

THE REFEREE: Then there came a time where you were no longer representing Dann and Sorrentino?

THE WITNESS: Right.

THE REFEREE: When was that?

THE WITNESS: Sometime towards the middle of June.

THE REFEREE: Of '85?

1 THE WITNESS: Of '81.

2 THE REFEREE: Of '80.

3 THE WITNESS: '80. You have to understand,
4 June 4, the order came down from Judge Sinclair,
5 which nominated John Lindsay as the receiver.
6

7 Now, Raffae had only one interest in Puccini
8 at that point, and that was that Puccini pays
9 off National Bank of North America its loans,
10 because Raffae had guaranteed the loans by
11 National Bank of North America to Puccini. Do
12 you follow me, your Honor?

13 THE REFEREE: Go ahead.

14 THE WITNESS: So, when the order of June 4
15 came down, and nominated John Lindsay as receiver,
16 we were all very happy.

17 When I say, "All very happy," Raffae was
18 happy and I was happy, because we knew there would
19 be an honest receivership.

20 Lindsay was a member of Webster and Sheffield,
21 which was about as prestigious a law firm as you
22 can find.

23 We knew that there had been an honest receiver-
24 ship, and if there was an honest receivership,
25 National Bank of North America would be paid off.

Raffe would have no obligations under his indemnity. Citibank would be paid off because Puccini was clearly solvent.

About a week or two later, I got a night telegram from the Arutt-Nachamie firm saying in sum and substance, and I'll produce all these documents in chronological order, saying in substance, that they have been retained by Dann and Sorrentino and I spoke to Barr-Nachamie and in sum and substance said, you know for --
"Gold bless you, you can have him."

"And, the only thing is on the papers I hold for them, I need them equally for Raffe because it was the same papers for all three of them, and if you want me to reproduce them, just -- I'll give them out to a photostat guy and whatever they charge me, you know, and also I'm entitled to the reasonable value of my services that I rendered to them, and subject to my attorney's lien, they're yours."

And, simultaneously with the night letter, came orders to show cause substituting them in my favor and I didn't oppose the motion except to say that I am entitled to my attorney's lien.

Now, I had several conversations with Nachamie and there was something wrong, you know. I couldn't put my finger on it at the time.

Why would a firm want to get into a case of this nature when it's over?

Puccini was dissolved by court order. Dann wasn't really interested in keeping Puccini up as I understood it without a Kaufman guarantee. He was at odds with Raffe at this point. The money was due, \$42,000, but they only had a judgment for \$32,000. We were clearly ahead.

What the heck did they want with Dann and Sorrentino at this point?

And, in my conversations, I tried to -- there were some loose ends. It just didn't make sense. As far as Raffe was concerned, he was only concerned that John Lindsay was there, that's all, because he knew John Lindsay would do an honest job. Nobody is going to question John Lindsay's honesty, and we really forgot about Puccini.

I would have lunch at Raffe's place.

THE REFEREE: How long did Mayor Lindsay serve as receiver?

THE WITNESS: Wait a second.

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THE WITNESS: I can't answer the question?

THE REFEREE: You know when Mr. Feltman was appointed to replace him?

THE WITNESS: He never served.

THE REFEREE: When did he decline the nomination?

THE WITNESS: In January of the next year.

THE REFEREE: He was appointed on June 4 and he did nothing between June 4 and January '81, and in January of '81, he declined the nomination?

THE WITNESS: That's not really true.

THE REFEREE: That's what you just said.

THE WITNESS: Right, but to answer your question, but it's still a half-truth.

In August of 1981, I got a call from Raffe --

THE REFEREE: Wait. January '81 he declined the nomination.

THE WITNESS: He didn't decline it.

THE REFEREE: What then? He asked to be relieved?

THE WITNESS: He wrote a letter to the court saying -- this was seven and a half months after he was appointed, that he declined the nomination.

THE REFEREE: That's what he said.

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2 THE WITNESS: But, there's something else
3 that happened.

4 THE REFEREE: All right. January '81, then you
5 say in August of '81, what happened?

6 THE WITNESS: August '80.

7 THE REFEREE: '80?

8 THE WITNESS: Right. Up to that point,
9 you have to understand receiverships, when a man
10 is appointed receiver, --

11 THE REFEREE: Sir --

12 THE WITNESS: You have to understand this.

13 THE REFEREE: -- he declined.

14 THE WITNESS: We don't know he declined.

15 THE REFEREE: You just testified --

16 THE WITNESS: Judge, we thought he was
17 there June 4.

18 THE REFEREE: What's the difference?

19 THE WITNESS: It's a big difference.

20 THE REFEREE: Continue. What happened in
21 August or '80?

22 THE WITNESS: No. In August of '80, I got a
23 call from Raffae stating that he got a summons
24 and complaint from the estate.

25 We didn't start any action so far. He got

1
2 a summons and complaint from the estate asking
3 for 75 percent of the balance due which was
4 approximately \$450,000.

5 THE REFEREE: Of \$400,00 due?

6 THE WITNESS: No, no.

7 THE REFEREE: Or the \$32,000?

8 THE WITNESS: No, no. The same plaintiff
9 as in Barr 1 were the plaintiffs in Barr 2, okay?

10 MR. STRAUS: Could we have Mr. -- Mr. Sassow-
11 er may know what Barr 1 and Barr 2 are.

12 Can we have an index number?

13 THE WITNESS: Barr 1 is 21208 of 1979.
14 Barr 2 is 16792 of 1980.

15 Bar 1 and Barr 2 are the same plaintiffs.
16 Barr 1 and Barr 2 are based on the same instruments.
17 The liabilities, the rights of all parties in Barr 1
18 and Barr 2 are precisely the same.

19 There's only two minor differences.

20 One is really of no legal significance.

21 Barr 2 is for a different amount than Barr 1.

22 And the second thing is that Barr 1 --
23 Barr 2 does not -- sues only Raffo for 75 percent
24 under an order, not a 3213 action.

25 Raffo calls me up and, as a second cause of

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2 action for attorney's fees, and a third cause
3 of action for costs and disbursements, and Raffé
4 calls me up and tells me that he has the summons
5 and complaint for 75 percent and I'm talking to
6 him, and he said, "Hey, it doesn't make sense.
7 First, of all, nobody sues without making a demand
8 first or asking for the money or writing a letter
9 or making a telephone call, "You owe so much
10 and so much money, please pay it."

11 Secondly, nobody sues for 75 percent when
12 there's 100 percent indemnitor available.

13 So that in Barr 2 they sued Raffé -- I'll get
14 the exact figures in a moment -- they sued Raffé
15 for 75 percent or \$375,000 leaving out Puccini
16 who owed, let's say, \$484,000. Let's take round
17 numbers.

18 Now, nobody -- if Puccini was insolvent,
19 or didn't have enough money, then we could under-
20 stand suing only a guarantor, but you never sue
21 a 75 percent guarantor without suing the 100 per-
22 cent principal, and I talked to Raffé, went over
23 to Raffé and in August, we didn't understand,
24 it just didn't make sense.

25 Now, the second cause of action which was

garbage -- the third cause of action for costs, and disbursements also was a defensive, no offensive, so, that was out.

Why? And the question always in August and September between Raffé and myself -- mainly I brought it up -- I said, "Hey, something smells here, something is wrong, because again and again, you don't sue a guy for 75 percent when you can get 100 percent. They are not throwing away \$120,000 for nothing.

At all these conversations, we had assumed Lindsay was in there taking care of Puccini.

In my experience, when a receiver is appointed, the first thing he does is go over there, take his oath of office and file his bond, because once he files his bond, and takes his oath of office, and if the case is settled, the next thing, he's entitled to his fee.

So, you always find that the bonding company calls the receiver up as soon as the order is signed because they get a first copy, tell the receiver, "We'll file your bond for you, go down there, take your oath of office" and they always do it like the same day so that if the case is settled,

they have their fee.

This went back and forth, and, I would call up Kreindler and Relking and it just didn't make sense.

I got evasive answers. I would speak to Miller, particularly and I got crazy answers.

THE REFEREE: Why didn't you get in touch with Mayor Lindsay?

THE WITNESS: No.

THE REFEREE: You knew he was the receiver.

THE WITNESS: He was not involved in the suit.

THE REFEREE: Why did you inject his name just now?

THE WITNESS: Who?

THE REFEREE: You..

THE WITNESS: We thought Lindsay was taking care of the store.

THE REFEREE: I know, but then when you heard from Kreindler and Relkin, you --

THE WITNESS: They didn't tell us that Lindsay didn't qualify.

THE REFEREE: Go ahead.

THE WITNESS: We just didn't know what was -- what it was all about, and I made a motion, so,

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2 I figured the only reason that Kreindler and
3 Relkin is suing on the guarantee is because, pos-
4 siblyt the might contend that they were entitled
5 to attorney's fees for Barr 1, in Barr 2 and
6 the law is clear that you cannot get attorney's fees
7 in a subsequent action for a prior cause of action.

8 Relkin came back with an affidavit saying
9 it's abjured. We are only suing for attorney's
10 fees in Barr 2. We are not suing for attorney's
11 fees in Barr 1.

12 Couldn't understand it.

13 I made a second motion just to try to find out
14 what was happening because it didn't make sense.

15 In the end of December, I was in trial in
16 Supreme Court, Westchester County.

17 During the luncheon recess, I heard that
18 Mr. Raffe had called that he had a notice of meeting
19 of the stockholders of Puccini, and the purpose
20 of the meeting was to transfer all of Puccini's
21 assets to the Kaufman estate and to Kreindler and
22 Relkin.

23 I called up Raffe. We talked about it and
24 I said, "Hey, it doesn't make sense. First of all,
25 how can they transfer the assets to themselves?

There is a receiver. They want to transfer to themselves more money?"

Because I was doing fast computations.
"More money than is actually due to them? It doesn't make sense."

So, I ran back, typed out a fast order to show cause, asked the judge if I could have an extra half hour for lunch, ran back, was fast ordered to show cause returnable in Manhattan. I think it was Judge "Baysham." (phonetic)

And, I remember talking to him, and, to his Honor, and saying "I don't understand what's going on, it doesn't make sense."

I went through the whole scenario.

I said, "Judge, can I have January 5th off? I must go down to New York and argue this motion. Not that it's important to argue, but I don't understand what's happening. It doesn't make sense."

So, he let me off for January 5th and we appeared before Judge Greenfield. I walked into Special Term, Part 1 and I go over to Kreindler and Relkin. They had my order to show cause, and after the greeting, I said, "Do you have any

any papers for me?" and they said, "No."
Relkin was there also.

We argued before Judge Greenfield. Judge Greenfield asked them two or three questions and the answers just didn't sound right.

THE REFEEEEE: Pardon?

THE WITNESS: The answers didn't sound right. There was something wrong.

THE REFEREE: Whose answers?

THE WITNESS: Relkin's answers to Judge Greenfield, just didn't sound right.

The meeting was for 2 o'clock in the afternoon of January 5.

Judge Greenfield said, "Phone me at quarter to two, or 2 o'clock, I'll give you an oral decision, and you can pick up the written decision later today or tomorrow, but you will have a decision by 2 o'clock, the time of the meeting."

Went up during the luncheon hour, to Kreindler and Relkin, 500 Fifth Avenue. We were in a big conference room and the first guy that I'm looking for is John Lindsay or somebody from his office and they make us sign our names, identify ourselves.

There must have been about fifteen people there.

They had a whole stick of people from Kreindler and Relkin and nobody is there from John Lindsay; and nobody is there from Webster and Sheffield and questions asked of Judge Greenfield, also, assume that John Lindsay was in possession, because the questions Judge Greenfield asked Relkin were "How can you hold a meeting and transfer assets to yourself? What about the receiver?" and he got a funny kind of answer.

THE REFEREE: What was his oral decision at 2 o'clock?

THE WITNESS: At 2 o'clock, he said "You can hold meeting, but it's of no legal effect. You cannot transfer any assets when a receiver is in possession. Only the receiver can do it."

So, they were stymied during the meeting. We had the meeting anyway, but it was a nullity.

They took minutes of the meeting of January 5 and I'm asking "Why are you holding a meeting when Judge Greenfield made a decision that was just read, that's of no legal effect? You can't transfer it. Where is the receiver?" And I still get

the same kind of crazy answers. Left the meeting. Hy Raffe was there at the meeting and his wife was at the meeting.

I said, "Hey, I don't believe it. I just don't believe it."

THE REFEREE: Don't believe what?

THE WITNESS: "But I think we have all been under -- we assumed something we had absolutely no right to assume and he says, "I don't know what's going on with Lindsay. I just don't understand what's going on with Lindsay."

"I'm not sure, but something is wrong there."

Two days later, or three days later, I got a letter from Kreindler and Relkin. It's the Honorable John V. Lindsay, care of Mr. Burett (phonetic) saying in sum and substance, "Go ahead and qualify now" and the same day, the very day that I got that letter, and recognized that Lindsay did not qualify, was not in possession of the assets -- don't forget, the assets are custodial -- custodia legis -- they are in custody of the court assets. They are judicial assets. They don't belong to anybody else. As soon as I get that letter, and realize that Lindsay had not

qualified.

THE REFEREE: What happened next?

THE WITNESS: I write a letter -- I wrote a letter to Mr. Lindsay, and, I said, "I suspect that the assets were unlawfully dissipated, so, look into it."

The very day that Lindsay got that letter, I called up --

THE REFEREE: Pardon?

THE WITNESS: I called up and I spoke to Barrett.

I think Lindsay was on the phone also. There was somebody else on the phone, and I thought it was Linday, at least, he was on part of the conversation, and I spoke for about ten or fifteen minutes. I told him about this lawsuit for 75 percent and we came to the, we both came to the same conclusion that there had to be stealing. There was no other conclusion, no other conclusion that could be drawn.

I said, "By heavens sake, will you please get in there as soon as possible and let's not" --

THE REFEREE: Get who there?

THE WITNESS: Lindsay should qualify as soon

as possible.

THE REFEREE: But he didn't qualify from June 4 1980 to January 7 or 8 of 1981.

THE WITNESS: So, when he heard -- when we all came to the same conclusion, that there was stealing going on.

THE REFEREE: Who came to that conclusion?

THE WITNESS: Barret, myself, whomever was on the phone who I thought was Lindsay or who I assumed was Lindsay.

THE REFEREE: Don't assume anything.

THE WITNESS: That there was no other rational conclusion.

THE REFEREE: Then what happened?

THE WITNESS: The next thing I got was a letter from Lindsay to the court saying "I'm very busy now and I decline the appointment."

This was seven and a half months later. So the whole question was what happened to the assets in seven and a half months that they were in court custody, and believe, me, I went through all the books, all the cases all the cases held that -- and, it never happened before, it never happened before, but all the cases held that it is the

1
2 court's responsibility. They are liable. It
3 took -- I'm going to inject -- it took the
4 court from January 15 to February -- January 15,
5 1980 to February 1st -- by the way -- there are
6 two Greenfields -- don't get it mixed up, the first
7 with the second.

8 It took the court twelve and a half months
9 to appoint a new receiver.

10 THE REFEREE: When?

11 THE WITNESS: They appointed him February 1st,
12 1982. There was no question that --

13 THE REFEREE: That receiver was Mr. Lee Feltman.

14 THE WITNESS: Let's go back.

15 There was no question in my mind -- I mean, I
16 didn't say it openly, but in my own mind there was
17 no question that there was stealing between
18 June 4 and January 5.

19 THE REFEREE: Who was stealing?

20 THE WITNESS: Kreindler and Relkin, et cetera.
21 Okay.

22 THE REFEREE: That was in your mind?

23 THE WITNESS: That was my mind. I expressed
24 to Hy Raffe, that would be in violation of law,
25 that would be in violation of Judge Sinclair's order.

1
2 The one thing that never entered my mind
3 was that they were stealing after Judge Green-
4 field's order of January 5, 1981, because in such
5 clear language I couldn't conceive that there was
6 stealing after Judge Greenfield's order because
7 that --

8 THE REFEREE: What do you base your opinion
9 on?

10 THE WITNESS: That was my opinion.

11 THE REFEREE: Based on what?

12 THE WITNESS: I'll show you how I proved it.

13 THE REFEREE: Based on what?

14 THE WITNESS: That was my analysis.

15 THE REFEREE: Based on what, or did you just make
16 your mind up?

17 THE WITNESS: No, no, no. This was -- nothing
18 else made sense.

19 I'll go a step further and show you how
20 I proved it to Raffo and to everybody else without
21 any hard evidence.

22 THE REFEREE: Who's everybody else?

23 THE WITNESS: The Grievance Committee in
24 Westchester. One thing you must understand -- two
25 things. During this period of time --

1 THE REFEREE: That's between January '81
2 and February '82.

3 THE WITNESS: Yes, particularly towards
4 '82, I was under disciplinary hearings at 60
5 Center Street. We used to ride in together
6 myself and the two attorneys for the disciplinary --
7

8 MR. STRAUS: If your Honor pleases --

9 THE WITNESS: We discussed it, everything was
10 in the open.

11 THE REFEREE: What's the relevance of it?

12 THE WITNESS: You asked me a question.

13 THE REFEREE: You answered it. Next item.

14 THE WITNESS: So that the appointment of a
15 second, of a new receiver when Lindsay declined --

16 THE REFEREE: He was already appointed, you
17 just testified to that, on February 1, '82. Let's
18 go on.

19 Lindsay was out of the picture.

20 THE WITNESS: No, no, no. Okay. I assumed
21 that there was stealing. I had no proof. My
22 assumption was that the Arutt firm was part of it.

23 THE REFEREE: So, Kreindler and Relkin and
24 Nachamie and Arutt --

25 THE WITNESS: Arutt, Nachamie. I had no evidence.

1
2 So, I said -- we used to discuss this --
3 Hy Raffe and I used to discuss this very often.

4 I said "I can't get ahold of the books and
5 records. There's only one way that I can break
6 up what I suspect to be stealing by both firms,
7 stealing with the law firms involved and that was
8 in Barr 2 sending out a summons and complaint
9 against Dann and Sorrentino and Puccini, as third-
10 party defendants.

11 THE REFEREE: To what effect, charging them
12 with what?

13 THE WITNESS: Charge? I'll explain that right
14 now.

15 THE REFEREE: Go ahead.

16 THE WITNESS: Charging that if Raffe owed
17 money to the Kaufman estate, then Puccini had to
18 fully indemnify Raffe and if Raffe owed money to
19 the Kaufman estate, Dann and Sorrentino had to
20 contribute two-thirds, if there was an insufficiency.

21 In this way, I placed the Arutt firm opposite
22 Kreindler and Relkin.

23 Do you follow that, because that's the most
24 important concept throughout this litigation.

25 THE REFEREE: And, Arutt-Nachamie represented

1
2 Sorrentino and Dann.

3 THE WITNESS: Right. Under CPLR 108, a
4 third-party defendant in his answer or in their
5 answer can assert third-party defenses and also
6 first part defenses.

7 I met Bart Nachamie in the early part of
8 April, at 60 Center Street.

9 We had hearings on the question of my fees.

10 I had a conversation with Nachamie and I
11 said, "Bart" --

12 THE REFEREE: Please --

13 THE WITNESS: This is important.

14 MR. STRAUS: It's also hearsay.

15 THE WITNESS: It's not hearsay. I'll bring
16 Bart Nachamie here, in front of Dann, I said --

17 THE REFEREE: You did what?

18 After you conversed with people, what did you do,
19 if anything or what did anyone else do?

20 THE WITNESS: They sent me a third-party
21 answer which was a couple of days late.

22 THE REFEREE: Then what?

23 THE WITNESS: Wait. That third-party answer
24 did not contain any first-party defenses. I took
25 it. I sent it back to Nachamie. Called me up and

1
2 and I said, "Bart, I want you as part of your
3 third-party."

4 I told him outright there's stealing there.
5 "I want you as part of your third-party defenses
6 to assert that there was stealing by the Kreindler
7 firm or else give me an affidavit to the effect
8 that there was no stealing."

9 Because they had --

10 THE REFEREE: Did you get the affidavit?

11 THE WITNESS: No.

12 THE REFEREE: Did you get a confession from
13 Nachamie?

14 THE WITNESS: Your Honor, let me proceed.

15 THE REFEREE: No.

16 THE WITNESS: Let me present my case.

17 THE REFEREE: You are proceeding, but you
18 are going minute by minute.

19 THE WITNESS: I'm talking faster, if your
20 Honor can understand faster, I'll talk faster.

21 THE REFEREE: It's not a question of talking
22 faster.

23 THE WITNESS: I said Nachamie --

24 THE REFEREE: You're --

25 THE WITNESS: I said, "Nachamie, you're on

1
2 my side because the more the Kaufman estate
3 recovers against Raffe, the more Raffe recovers
4 against your client," so I am interested in you
5 coming into the case, so you don't have to worry
6 about an affidavit of merit, you don't have to
7 worry about a reasonable excuse."

8 At that time, the law was very, very strict
9 on law officers, the Sorrentino case and the rest
10 of them.

11 In any event, --

12 THE REFEREE: To go back, Justice Schwartz
13 relieved you as counsel, and you were directed to
14 turn over the legal files.

15 THE WITNESS: I did. I testified to that.
16 No. And it's that case that thing Judge Schwartz
17 said we had the right to intervene and it was an
18 appeal made by Kreindler and Relkin. We were
19 totally satisfied with the Schwartz decision. We
20 didn't oppose it.

21 First of all, I didn't want Dann and Sorrent-
22 ino as clients. They were not paying clients, and
23 God bless them, let them go where they want to go
24 as far as the Schwartz motion. We didn't oppose
25 it and nobody ever said we didn't comply with it.

1
2 I was happy with it.

3 MR. STRAUS: If I may, I didn't --
4 I'm wondering, is Mr. Sassower, are you saying
5 that you didn't oppose the original order to show
6 cause?

7 THE WITNESS: Of Schwartz.

8 MR. STRAUS: Which resulted in the Schwartz
9 order?

10 THE WITNESS: We opposed it only to the ex-
11 tent that we wanted my lien for attorney's fees.
12 That's the only extent as far as I'm concerned.

13 An attorney always has the right to discharge
14 a client, and if it's a judicial proceeding, and
15 it may interfere with a judicial proceeding, subject
16 to a court order.

17 I never opposed the transfer. Never would.

18 THE REFEREE: You were relieved by Justice
19 Schwartz as attorney.

20 THE WITNESS: I wasn't relieved. I consented
21 to it.

22 THE REFEREE: Consented to what?

23 MR. STRAUS: You were disqualified according
24 to the order.

25 THE WITNESS: No, no, no.

1
2 MR. STRAUS: You were disqualified, someone
3 was substituted and you were directed to turn over
4 your files to Arutt and Nachamie.

5 THE WITNESS: I did. Nobody ever complained
6 that I didn't comply with it.

7 You won't even find a letter saying I didn't
8 comply with it.

9 There was total compliance with it. I was
10 happy. It was Kreindler and Relkin who objected.

11 MR. STRAUS: Judge, could we have the witness
12 proceed?

13 THE WITNESS: You asked me the question.

14 MR. STRAUS: I wish I could withdraw the
15 question.

16 Anything to move forward.

17 THE WITNESS: I'll move forward.

18 THE REFEREE: Go ahead.

19 THE WITNESS: I said, "If I don't get a
20 first-party defendant or an affidavit from you
21 that all the assets are"-- you have to understand,
22 why the assets are important to me or to Raffe --
23 if Raffe has to pay money to the Kaufman estate,
24 he's entitled to 100 percent indemnification from
25 Puccini, so, any judgment by the Kaufman estate

1 against Raffe is meaningless to Raffe, he couldn't
2 care less because he gets indemnified from the
3 Kaufann estate from Puccini, so, it's important
4 for Raffe that the assets are intact." That
5 clear, your Honor?

6 THE REFEREE: Go ahead.

7 THE WITNESS: That's the most important thing.
8 Raffe doesn't care how much the Kaufman estate
9 because it's only 25 percent -- sues him for, as
10 long as the assets are intact, because he's fully
11 indenified, and if you are fully indemnified, you
12 don't care if it's 100 bucks more or one hundred
13 bucks less.

14 So, it wasn't the stealing that was important
15 to me or Raffe. It was indemnification.

16 Also the law is clear without any exception,
17 impair the right of the indemnification and you have
18 impaired the guarantee.

19 So that Kfuaman's guarantee -- Raffe's
20 guarantee to Kaufman under the cross-guarantees
21 depends -- that depends on Puccini's assets
22 not being impaired because if they impaired
23 Puccini's assets, the guarantee is impaired.

24 So, I said to Nachamie, "Give me the
25 affidavit or put up a first-party defense,"

1
2 because he had the Puccini books, according to
3 Hilda Schartz' order, I had to turn over all the
4 records to Arutt-Nachamie.

5 THE REFEREE: Did you?

6 THE WITNESS: I did, right after June 4, even
7 before Hilda Schwartz's decision came down, I
8 didn't need those books and records or whatever
9 records I did have, I had no use for them. What-
10 ever I didn't need, I gave them beforehand; be-
11 cause, actually, at that time, I didn't know that
12 they were a part of Kreindler and Relkin, so,
13 I was really being cooperative.

14 THE REFEREE: Who?

15 THE WITNESS: Arutt-Nachamie, because they
16 were really on my side, because at that point, I
17 suspected Kreindler and Relkin were stealing. Okay.

18 In any event, and Bart Nachamie and I got
19 along very, very well. The few conversations we
20 had we got along very, very well.

21 THE REFEREE: What year or what month are we
22 up to now?

23 THE WITNESS: We're in the early part of '80,
24 around March and April.

25 MR. STRAUS: of 1980.

1
2 THE REFEREE: We're past that.

3 THE WITNESS: Of '81. I'm sorry, '81.

4 MR. STRAUS: I thought we were up to the
5 point where Mr. Feltman had been appointed the re-
6 ceiver which was February of '82.

7 THE WITNESS: When he didn't give me that,
8 I said, "Make a motion." In making a motion, he
9 had to show, one, law office, that it wasn't as
10 a result of law office negligence and a meritorious
11 defense so when he made his motion --

12 THE REFEREE: Whose motion?

13 THE WITNESS: Arutt, to be relieved of his
14 default.

15 THE REFEREE: When?

16 MR. STRAUS: What default? You didn't mention
17 a default.

18 THE WITNESS: They were a few days later in their
19 third-party answer.

20 THE REFEREE: When?

21 THE WITNESS: Around March of '81. When they
22 were a few days later, they refused to give me
23 an affidavit that there was no stealing because
24 they had the books.

25 I said, "Make your motion." They made their

1 motion. For their excuse, they gave that Dann
2 was out of the country, at the time when Dann was
3 right in the Supreme Courthouse at 60 Center Street
4 testifying and Nachamie was with them, so that was
5 a complete lie.
6

7 THE REFEREE: Well, if they were aware of it --

8 THE WITNESS: And for this affidavit of merit,
9 they had no affidavit of merit.

10 THE REFEREE: Let's get through with '81
11 already.

12 THE WITNESS: Judge, this is important, because
13 this is where they switched the papers and
14 disqualified me and I'll show you why I couldn't
15 be disqualified.

16 THE REFEREE: Go ahead. Who switched what
17 papers?

18 THE WITNESS: I'll show you, so, their motion
19 to interpose an answer, a third-party answer was
20 denied without prejudice with leave to renew with
21 a valid excuse, not this phony excuse that their
22 client was out of the country, when, in fact, he was
23 testifying.

24 THE REFEREE: Sir --

25 THE WITNESS: This was a Judge's decision.

1
2 Wait a second. And an affidavit of
3 merit, I called up Bart Nachamie again. I
4 said, "Bart, I'm not giving you a hard time.
5 I want a clear affidavit. You got the records.
6 The books. Was there stealing? Because Raffe's
7 right of indemnification depends upon the integ-
8 rity of Puccini's assets."

9 THE REFEREE: And?

10 THE WITNESS: He refused to, he made the
11 motion again. The motion was denied again.
12 I don't know if it was denied with leave or without
13 leave, because it was denied, because he refused
14 to put in an affidavit of merit.

15 THE REFEREE: Then what happened?

16 THE WITNESS: In the meantime, I served interr-
17 ogatories upon the Plaintiffs, about 32 interro-
18 gatories.

19 THE REFEREE: When?

20 THE WITNESS: February and March of '81.
21 When they didn't respond to the interrogatories,
22 you have to understand, the response to the interro-
23 gatories would have revealed whether they were
24 stealing.

25 When they didn't respond to the interrogator-

1
2 ies; I made a motion for sanctions against
3 Kreindler and Relkin. They back-dated --

4 THE REFEREE: What happened?

5 THE WITNESS: They back-dated a motion for
6 summary judgment and asked for summary judgment
7 against Raffe.

8 THE REFEREE: What do you mean they back-
9 dated?

10 THE WITNESS: They back-dated. I'll show
11 you the actual papers. They back-dated it.

12 My motion for sanctions was one date. As soon
13 as they got my motions for sanctions they back-
14 dated a motion for summary judgment.

15 THE REFEREE: That doesn't mean they back-dated.
16 They may have prepared sanctions against you pre-
17 viously.

18 THE WITNESS: No sanctions. They made a motion
19 for summary judgment.

20 THE REFEREE: Or a motion for summary judg-
21 ment, I should say. The fact that it bears an
22 earlier date doesn't mean that they backdated it.

23 THE WITNESS: I can prove they did. I'll give
24 you all the papers.
25

1
2 THE REFEREE: In any event, let's get
3 to '82 already. Let's get up to February of
4 1982.

5 THE WITNESS: No; '81 is important. That's
6 the most important part of the case. After '82 --
7 when, under 3214B when you make a motion for summary
8 judgment, it automatically stays disclosure.

9 When they were looking to stay disclosure, I
10 was more certain that they were stealing. I, in
11 opposing summary judgment alleged that they were
12 stealing.

13 THE REFEREE: Then what happened?

14 THE WITNESS: Wait a second.

15 THE REFEREE: Did anybody at any time --

16 THE WITNESS: Will you listen? I can give
17 you a confession. I'll give you the confessions.
18 I'll give it to you. Just wait. I'll give you
19 the confessions, okay?

20 You know, you have to wait until the end of
21 Perry Mason, Judge.

22 THE REFEREE: You're still in 1980.

23 THE WITNESS: Will you believe me, by the time
24 you're finished, I'll give you the evidence of
25 the stealing.

1
2 THE REFEREE: You said you had two --
3 you said they confessed. You don't have to waste
4 time with it.

5 Don't keep me in suspense until the end of
6 the hearing.

7 THE WITNESS: Why not? When they made their
8 motion for summary judgment, and I alleged steal-
9 ing, because it was the only thing that could make
10 sense --

11 THE REFEREE: When was that?

12 THE WITNESS: Wait a second.

13 THE REFEREE: When?

14 THE WITNESS: It's '81 we're talking about.

15 THE REFEREE: There are twelve months in '81.

16 THE WITNESS: The motion was around June.
17 Is started in March, April. You want the exact
18 dates, I'll give you the exact dates, okay?

19 It was around the middle of '81. You see,
20 there's a time lapse between the making of the
21 motion and --

22 THE REFEREE: What finally happened to your
23 motion?

24 THE WITNESS: I opposed saying they were
25 stealing. I also cross-moved against the Arutt

1
2 firm.

3 THE REFEREE: Mr. Sassower --

4 THE WITNESS: Judge, listen to me.

5 THE REFEREE: What was the ultimate -- what
6 was the ultimate decision?

7 Did somebody decide that you were right?

8 THE WITNESS: No.

9 THE REFEREE: Is it still pending?

10 THE WITNESS: If you don't understand what
11 happened here, you will never understand what
12 happened afterward. Okay.

13 THE REFEREE: I want to lead you to the next
14 important date.

15 That's February 1, 1982.

16 THE WITNESS: No. If you understand this, you
17 will understand '82.

18 When they moved for summary judgment against
19 Raffae, I alleged a defense that they were steal-
20 ing and I wanted disclosure, so, I could see for
21 myself.

22 I also cross-moved against the Arutt firm
23 saying that if the judge grants Kaufman estate's
24 motion --

25 THE REFEREE: You wanted them to indemnify you.

1 THE WITNESS: There was no question that
2 the third-party defendants were liable to Raffe.

3 MR. STRAUS: Mr. Sassower, you have repeat-
4 ed that at least eight times.

5 THE WITNESS: Wait a second, okay?

6 THE REFEREE: You alleged they were stealing.
7 What happened with that allegation?

8 THE WITNESS: The Arutt firm who was in de-
9 fault, at this time, cross-moved against me to
10 disqualify me.

11 THE REFEREE: As --

12 THE WITNESS: Because --

13 THE REFEREE: -- as what?

14 THE WITNESS: As against Dann.

15 THE REFEREE: As attorney for Mr. Raffe.

16 THE WITNESS: Against Dann, Sorrentino and
17 Puccini because I had been representing them.

18 THE REFEREE: We've gone through it.
19 You accepted Judge Schwartz' order.

20 You had turned over your papers three months
21 before.

22 THE WITNESS: Yes.

23 THE REFEREE: So we're past that.

24 THE WITNESS: Wait a second. When I got those
25

papers in, I was on trial for six weeks before Judge Lockman, L-O-C-K-M-A-N. The motion was returnable, the motion and cross-motion was returnable on a Tuesday. I remember coming home.

THE REFEREE: In Nassau County?

THE WITNESS: No, New York County, but I was on trial in Nassau County.

THE REFEREE: On Puccini matters?

THE WITNESS: No.

THE REFEREE: All right.

THE WITNESS: Judge, follow me, please.

THE REFEREE: I am following.

THE WITNESS: You are not following.

THE REFEREE: If I wasn't following, I couldn't be able to --

THE WITNESS: Judge, listen, please. You have to be a mathematician.

THE REFEREE: I happen to be a mathematician.

THE WITNESS: I went to engineering school, then, you know, about --

THE REFEREE: Let's get up to February of '82.

THE WITNESS: When I got that cross-motion, I looked at it, and I put it in my papers.

Now, the cross-motion had as a title, Puccini,

1
2 Barr 1, Puccini, and I looked at it and I said,
3 "What the heck do they want to disqualify me from
4 Barr 1? That case has been dead for two years
5 now?" and, clearly, on Puccini, I'm on the same
6 side.

7 THE REFEREE: So what did you do?

8 THE WITNESS: So, I answered the cross-
9 motion.

10 I said it doesn't make --

11 THE REFEREE: Then what happened?

12 THE WITNESS: Wait a second.

13 THE REFEREE: I'm waiting for hours; not
14 seconds.

15 THE WITNESS: You're not.

16 THE REFEREE: You're repeating yourself.

17 THE WITNESS: I'm not.

18 THE REFEREE: Yes.

19 THE WITNESS: I put in an affidavit. It made
20 perfect sense. I sent it in on a Saturday night
21 or Sunday morning and I also sent a copy to my
22 service.

23 The motion was submitted on Tuesday.

24 THE REFEREE: To whom?

25 THE WITNESS: To Judge Sinclair.

Sassower

1536.

THE REFEREE: He was sitting in Special 1.

THE WITNESS: Right.

THE REFEREE: Allright.

THE WITNESS: Sometime later, I got an order with -- I never saw the decision -- I got an order with notice of settlement, that says I'm disqualified in Barr 2, not Barr 1, but Barr 2. and I'm disqualified, not totally, partially, disqualified, in Puccini 1, and this came down a couple of months later.

THE REFEREE: When?

MR. STRAUS: Mr. Sassower, are you referring to Judge Sinclair's orders which are E and F in evidence?

THE REFEREE: That's February 1, 1982.

THE WITNESS: No, the order, but the decision came down in October.

THE REFEREE: Of '81.

THE WITNESS: Of '81. I never got the decision. When I got those orders with notice of settlement, I had broken my arm and I was hospitalized, and when I got out of the hospital, I couldn't manipulate my hands.

THE REFEREE: Are we up to February of '82

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THE WITNESS: Wait a second. Yes. Now --

THE REFEREE: You wanted to leave at this time.

When did you want to leave?

THE WITNESS: Now. I want to serve some papers in New York.

MR. STRAUS: Are we leaving at the point where --

THE REFEREE: We're leaving in February of '82.

MR. STRAUS: This is when?

THE REFEREE: February of '82. Let's not go back to '80 and '81.

THE WITNESS: Two minutes.

THE REFEREE: I'll let you conclude.

THE WITNESS: What I intend to do, is to give a fast review of the whole thing, and then give you a pile of documents that will go through the whole thing, and you can use it. That's in the official records.

THE REFEREE: All right. We'll meet again Thursday, April 3.

THE WITNESS: Happy birthday. I'll be 62.

THE REFEREE: Good luck to you. We'll meet

Proceeding

1538.

at 10 o'clock.

MR. SASSOWER: Could we make it 10:30?

THE REFEREE: There we go again.

MR. SASSOWER: Could --

MR. STRAUS: Could we make it at ten o'clock?

At the rate we're going, maybe ten o'clock would
be better. We might be able to --

MR. SASSOWER: Fine.

THE REFEREE: He's alerting us to the fact
that he might get stuck.

oOo

LIST OF EXHIBITS

RESPONDENT

UUU id.

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