

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

-----X  
In the Matter of Doris L. Sassower,  
An Attorney and Counselor-at-Law,

GRIEVANCE COMMITTEE FOR THE NINTH  
JUDICIAL DISTRICT,

Petitioner,

Docket #90-00315

Oral Argument  
Requested

AFFIDAVIT IN SUPPORT  
OF MOTION FOR  
REARGUMENT, RENEWAL,  
AND RECONSIDERATION

DORIS L. SASSOWER,

Respondent.

-----X  
STATE OF NEW YORK

COUNTY OF WESTCHESTER

)  
) ss:  
)

DORIS L. SASSOWER, being duly sworn, deposes and says:

1. I am the Respondent, pro se, in the above proceeding, fully familiar with all the facts, papers and proceedings heretofore had herein.

2. This Affidavit is submitted in support of a motion to reargue, renew, and reconsider this Court's Decision and Order dated November 12, 1992 (Ex. "A"), wherein this Court, sua sponte, amended its July 31, 1992 Order (Ex. "B") so as to impose maximum allowable statutory costs of \$100 against me for having brought a motion to vacate this Court's June 14, 1991 Order suspending me from the practice of law "until the further order of the court" (Ex. "C"). I respectfully submit that such discretionary award is a harsh and unjust penalty for my having

sought a "further order of the Court" by bringing to this Court's attention a supervening decision of the Court of Appeals, which, as hereinafter shown, had legitimate bearing on the central issue my motion presented, i.e., my right to an order vacating the suspension.

3. My motion to vacate rested on the Court of Appeals' intervening May 5, 1992 decision In Re Russakoff, 72 N.Y.2d 520, 583 N.Y.S. 949, 593 N.E. 2d 1357 (1992)<sup>1</sup>. In that case, the Court of Appeals vacated an interim attorney suspension order of this Court made without factual findings.

4. My motion papers showed that the facts in my case were a fortiori and that vacatur of my suspension was mandated as a matter of law<sup>2</sup>. Like the Russakoff order, my own suspension Order (Ex. "C") was made without factual findings.

5. It is respectfully submitted that this Court overlooked the a fortiori facts presented, which made my case far more compelling than those in Russakoff:

(a) In my case, there was no hearing before the Grievance Committee or before any Referee appointed by the Appellate Division or before any other tribunal prior to entry of the June 14, 1991 suspension Order (Ex. "C"). Nor has there been any hearing ever afforded me since that date until the present.

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<sup>1</sup> The Russakoff decision was annexed as Exhibit "E" to my motion to vacate.

<sup>2</sup> See, 6/15/92 Affidavit in Support of Order to Show Cause, pp. 10-12; 6/22/92 DLS Affidavit in Reply and Further Support, pp. 2-4; 6/30/92 DLS ltr, p. 2.

By contrast, Mr. Russakoff, pleading his privilege against self-incrimination, expressly refused to attend a directed hearing before the Grievance Committee.

(b) In my case, all material factual allegations--including those bearing on jurisdiction<sup>3</sup>--were specifically controverted by me<sup>4</sup>, and my specific denials were fully documented in my written submissions in opposition to and in support of my motions to dismiss the motions made by Gary Casella, Chief Counsel to the Grievance Committee, to suspend me for alleged mental incapacity and for my alleged "failure to comply" with an order for a medical examination.

By contrast, Mr. Russakoff submitted an affirmation in which he made only general denials of the charges of misconduct alleged and declined to answer any specific questions concerning the material allegations of misconduct--as to which he asserted his privilege against self-incrimination.

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<sup>3</sup> Unlike Russakoff, I raised jurisdictional objections since the application for my interim suspension rested on a motion only--not an underlying formal petition. Moreover, it was undenied that I was never served with "a copy of the charges" on which the suspension was based or ever served personally therewith (6/15/92 Affidavit in Support of Order to Show Cause, pp. 7-9). Judiciary Law §90(6) explicitly requires compliance with both those prerequisites "before an attorney can be suspended".

<sup>4</sup> The full extent of my alleged "failure to comply" consisted of my retention of counsel to challenge an order of this Court deemed to be unlawful. Such is the right of a litigant and lawyer under our system of justice. This basic concept is reflected in EC7-22 of the lawyer's Code of Professional Responsibility: "Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or his lawyer may, in good faith and within the framework of the law, take steps to test the correctness of the ruling of a tribunal."

Even so, this Court stated that Mr. Russakoff's general denials refuted the Committee's claim that the charges of misconduct were completely "uncontroverted".

(c) In my case, no moral turpitude was claimed in connection with Mr. Casella's motion for my suspension for my alleged "failure to comply" which resulted in the June 14, 1991 suspension Order (Ex. "C").

By contrast, Mr. Russakoff was accused of mishandling client and estate accounts by his unexplained withdrawal of escrow funds. This charge was substantiated by unrebutted documentary evidence of Mr. Russakoff's bank statements and other evidence that the Committee had inspected following submission of his affirmation stating general denials.

(d) In my case, no immediate danger to the public interest was "clearly established" by admissions or uncontroverted proof--there being no admissions by me or any uncontroverted proof by Mr. Casella of either "immediate danger to the public" or "probable cause" to believe such was the case<sup>5</sup>.

By contrast, in Russakoff, the Court of Appeals, applying Padilla, 67 N.Y.2d 440, recognized that, absent admissions or uncontroverted proof of facts showing such immediate danger and probable cause, an interim suspension order

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<sup>5</sup> The Appellate Division's suspension Order (Ex. "C") made no predicate finding of a "public interest" need for my suspension without prior due process rights, 22 NYCRR §691.4(1)(1)--clearly defying the controlling holding in Matter of Padilla, 67 N.Y.2d 440. (see 6/15/92 Affidavit in Support of Order to Show Cause, pp. 9-10 (paras. 14-6); 6/22/92 DLS Affidavit in Reply and Further Support, p. 3 (para. 8))

without findings must be reversed where the normal pre-suspension hearing requirement has not been adhered to.

(e) In my case, no time limitation was specified in the June 14, 1991 order as to the duration of my interim suspension (Ex. "C") and the interim suspension order did not originate in any pending disciplinary proceeding and there was no related disciplinary proceeding pending. In the absence of "further order of the Court", the June 14, 1991 interim suspension can continue for the remainder of my life--with no requirement that I ever be afforded a hearing to determine whether there was a factual basis for the "failure to comply" charge.

By contrast, the duration of Mr. Russakoff's suspension was limited at least by the disposition of the pending proceedings against him, which were related to the reasons for his suspension.

(f) In my case, no post-suspension dispositional hearing as to my alleged non-cooperation has--a year and a half later--ever been held, despite my reiterated requests.

By contrast, in Russakoff, the Court of Appeals articulated the need for corrective action by this Court to eliminate the possibility of an indefinite interim suspension of an attorney's license.

In denying my vacate motion, it is respectfully submitted that this Court overlooked the Court of Appeals' unequivocal intentions on the subject and effectively may be

viewed as having endorsed, contrary to our High Court's mandate, "hearing-less", finding-less interim suspensions--free of any requirement that even a post-suspension hearing be held as to the charge for which the attorney was purportedly suspended.

6. Russakoff established my legal right to vacatur by its express holding that there must be factual findings to support an interim suspension order--which this Court did not make in my case (Ex. "C").

However, Russakoff also imposed another duty upon this Court, calling for its remedial action:

"...we do not reach respondent's alternative argument that the Appellate Division's interim suspension order was improper because no provision was made for a reasonably prompt post-suspension hearing. However, inasmuch as the matter is to be remitted, it is worthwhile to note that neither the Appellate Division Rules governing interim suspensions (22 NYCRR 603.4(e), 691.4(l), 801.4(f), 1022.19(f)) nor the specific order issued in this case provide for a prompt post-suspension hearing. Some action to correct this omission seems warranted (see, Barry v. Barchi, 443 US 66-68; Gershenfeld v. Justice of the Supreme Court, 641 F. Supp. 1419)". (emphasis added)

7. Examination of Barry v. Barchi, 443 U.S. 55, 66-68, 19 S.Ct. 2642, 2650-51, 61 L.Ed 2d 365 (1979), 66-681 (1978) and Gershenfeld v. Justices of Supreme Ct., 641 F. Supp. 1419, E.D. Pa. (1989), cited by the Court of Appeals in Russakoff, shows the far-reaching constitutional dimensions of interim suspensions of persons in licensed occupations. In Barchi, supra, a case construing a New York statute relating to harness racehorse trainers, the U.S. Supreme Court ruled unconstitutional a

statutory provision permitting interim suspension of a license without provision for a reasonably prompt post-suspension dispositional hearing. In Gershenfeld, supra, the Pennsylvania federal court interpreted Barchi as applicable to attorney suspensions, recognizing that a license to practice law is a property right similarly protected by due process<sup>6</sup>.

Thus, when the Court of Appeals in Russakoff favorably cited those two cases in calling for corrective action, it must be presumed to have done so with the reasonable expectation that this Court would implement such clear constitutional mandate.

8. Consequently, rather than denying my motion based on Russakoff and, four months later, exercising its discretion, sua sponte, to amend its order so as to impose \$100 motion costs

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<sup>6</sup> In Barchi, supra, the U.S. Supreme Court held a licensing statute unconstitutional where, although it required a post-suspension hearing, it provided no time in which the hearing was to be held and allowed "as long as thirty days after the conclusion of the hearing in which to issue a final order adjudicating a case". The failure to assure the licensee a prompt final disposition of the charges was an acknowledgement that "the consequences of even a temporary suspension can be severe", and that "...the opportunity to be heard must be 'at a meaningful time and in a meaningful manner', Barchi, supra, 443 U.S. at 66, 99 S.Ct. at 2650. Gershenfeld likewise emphasized that the risk of irreparable injury, the need for business continuity, and the possibility of erroneous deprivation are so great that even in cases where the need for emergency action is uncontroverted, suspension of a constitutionally-protected right to work--be it in the practice of law or other licensed occupation--constitutes impairment of a valuable property right, which cannot be sustained, if 'meaningful' opportunity for post-deprivation hearing is not afforded. "The guarantee of a prompt dispositional post-deprivation hearing...is a critical factor in determining the constitutional validity of the previously invoked interim or temporary deprivation processes". Id., at 1424, citing numerous U.S. Supreme court cases for the proposition that a prompt post-suspension dispositional hearing is a constitutional requirement.

upon me, it is respectfully submitted that this Court should have, sua sponte, rendered an order taking the corrective action called for by Russakoff.

9. Certainly, once I made a formal motion under Russakoff, it is respectfully submitted that such controlling legal authority mandated that this Court grant my request for vacatur of my interim suspension, or at very least, direct an immediate hearing as to the charge of my alleged "failure to comply".

10. This Court, however, in neither vacating nor directing an immediate hearing on my interim suspension seems to have misapprehended Russakoff and its mandate for corrective action. Consequently, and based on the foregoing, I respectfully submit that reargument is appropriate so that this Court can revisit its sua sponte decision of November 12, 1992, and upon such reargument, vacate its discretionary award of \$100 costs against me (Ex. "A") and, sua sponte, vacate the July 31, 1992 Order itself (Ex. "B").

11. If reargument is denied, I respectfully request, in the alternative: (a) clarification of this Court's reasoning in imposing such discretionary maximum \$100 cost award against me; and (b) certification by this Court as a question of law to the Court of Appeals pursuant to CPLR 5612(b), of the applicability of Russakoff to the case at bar.

12. By way of renewal, I wish to advise this Court of the fact that I sought review as of right by the Court of





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

3186b  
B/nl

(NOT TO BE PUBLISHED)

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
THOMAS R. SULLIVAN  
VINCENT R. BALLETTA, JR., JJ.

90-00315

In the Matter of Doris L. Sassower,  
a suspended attorney.

Grievance Committee for the Ninth  
Judicial District, petitioner;  
Doris L. Sassower, respondent.

DECISION & ORDER ON MOTION

On the court's own motion, it is,

ORDERED that the decision and order of this court dated July 31, 1992, in the  
above-entitled case, is amended so as to provide for the payment by the respondent of \$100 costs  
pursuant to CPLR 8202.

MANGANO, P.J., THOMPSON, BRACKEN, SULLIVAN and BALLETTA, JR., *concur.*

SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION SECOND DEPT.

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme  
Court, Second Judicial Department, do hereby certify that I have compared  
this copy with the original filed in my office on **NOV 12 1992** and that  
this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed  
the seal of this Court on **NOV 12 1992**

*Martin H. Brownstein*

ENTER:

MARTIN H. BROWNSTEIN

Martin H. Brownstein

November 12, 1992

MATTER OF SASSOWER, DORIS L.

*EX "A"*

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16.8/5/92

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

9785N  
C/rl

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
THOMAS R. SULLIVAN  
VINCENT R. BALLETTA, JR., JJ.

90-00315

In the Matter of Doris L. Sassower,  
a suspended attorney.

DECISION & ORDER  
ON MOTION

Grievance Committee for the Ninth  
Judicial District, petitioner;  
Doris L. Sassower, respondent.

Motion by the respondent, *inter alia*, (1) to vacate this court's decision and order dated June 14, 1991, suspending her from the practice of law based upon her failure to comply with the October 18, 1990, decision and order of this court, which directed that she be examined by a qualified medical expert to determine whether she is incapacitated from continuing to practice law, (2) to vacate the underlying decisions and orders of June 12, 1991, and October 18, 1990, respectively, as well as subsequent decisions and orders based thereon, (3) for an immediate disciplinary investigation of the petitioner's Chief Counsel, (4) for a stay of all disciplinary matters and proceedings pending the outcome of this motion, including appeals in unrelated litigation involving the respondent, and (5) for leave to appeal to the Court of Appeals in the event the instant application is denied.

Upon the papers filed in support of the motion and the papers filed in opposition thereto it is,

ORDERED that the motion is denied, with costs.

MANGANO, P.J., THOMPSON, BRACKEN, SULLIVAN and BALLETTA, JJ., concur.  
SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPT

MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court  
Second Judicial Department do hereby certify that I have compared this copy with  
the original filed in my office on

JUL 31 1992

and ENTER:

this copy is a correct transcription of said original  
IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of  
Court on

MARTIN H. BROWNSTEIN

JUL 31 1992

July 31, 1992

Clerk

Martin H. Brownstein  
Clerk

MATTER OF SASSOWER, DORIS L.

544

EX "R"

# 015445  
SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

7404T  
B/kr

GUY JAMES MANGANO, P.J.  
WILLIAM C. THOMPSON  
LAWRENCE J. BRACKEN  
JOSEPH J. KUNZEMAN  
THOMAS R. SULLIVAN, JJ.

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90-00315 Atty.

In the Matter of Doris L. Sassower,  
an attorney and counselor-at-law.

DECISION & ORDER ON MOTION

Grievance Committee for the Ninth  
Judicial District, petitioner;

Doris L. Sassower, respondent.

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By decision and order of this court dated October 18, 1990, the petitioner's motion to suspend the respondent from the practice of law for an indefinite period and until the further order of this court based upon the respondent's incapacity and for an order directing that the respondent be examined by a qualified medical expert to determine whether the respondent is incapacitated from continuing to practice law was granted to the extent that the respondent was directed to be examined by a qualified medical expert, to be arranged for by Chief Counsel for the Grievance Committee for the Ninth Judicial District, to determine whether the respondent is incapacitated from continuing to practice law pursuant to § 691.13(b)(1) of the Rules of this Court [22 NYCRR § 691.13(b)(1)], and the motion to suspend the respondent from the practice of law was held in abeyance pending the receipt and consideration of the report of the medical expert.

The petitioner now moves to suspend the respondent from the practice of law for an indefinite period and until further order of this court based upon the respondent's failure to comply with the October 18, 1990 order of this court.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

June 14, 1991

MATTER OF SASSOWER; GRIEVANCE COMMITTEE FOR THE NINTH  
JUDICIAL DISTRICT

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Ex "C" 545

ORDERED that the motion is granted; and it is further,

ORDERED that the respondent, Doris L. Sassower, pursuant to Section 691.4(1) of the Rules Governing the Conduct of Attorneys (22 NYCRR 691.4[1]) is immediately suspended from the practice of law in the State of New York, until the further order of this court; and it is further,

ORDERED that Doris L. Sassower shall promptly comply with this court's rules governing the conduct of disbarred, suspended and resigned attorneys (22 NYCRR 691.10); and it is further,

ORDERED that pursuant Judiciary Law § 90, during the period of suspension and until the further order of this court, the respondent, Doris L. Sassower, is commanded to desist and refrain (1) from practicing law in any form, either as principal or as agent, clerk or employee of another, (2) from appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission or other public authority, (3) from giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) from holding herself out in any way as an attorney and counselor-at-law.

MANGANO, P.J., THOMPSON, BRACKEN, KUNZEMAN and SULLIVAN, JJ., concur.

SUPREME COURT, STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPT.

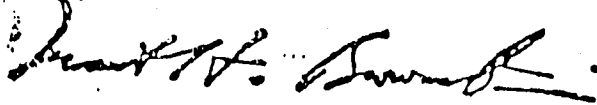
ENTER:

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on **JUN 14 1991** and that this copy is a correct transcription of said original.

MARTIN H. BROWNSTEIN

Martin H. Brownstein  
Clerk

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Court on **JUN 14 1991**

  
Clerk

June 14, 1991

MATTER OF SASSOWER; GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT

Page 2.

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State of New York,  
Court of Appeals

At a session of the Court, held at Court of  
Appeals Hall in the City of Albany  
on the.....eighteenth.....day  
of.....November.....A. D. 1992

Present, HON. RICHARD D. SIMONS, Acting Chief Judge, presiding.

Mo. No. 1208 SSD 99

In the Matter of Doris L.  
Sassower, a Suspended Attorney.  
Grievance Committee for the Ninth  
Judicial District,

Respondent,

Doris L. Sassower,

Appellant.

The appellant having filed notice of appeal in the above  
title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is  
dismissed without costs, by the Court sua sponte, upon the ground  
that the order appealed from does not finally determine the  
proceeding within the meaning of the Constitution.

*Donald M. Sheraw*

Donald M. Sheraw  
Clerk of the Court