

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
DORIS L. SASSOWER,

Petitioner,

Index No.  
95-109141

-against-

Affidavit in  
Support of Default  
Judgment

COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF NEW YORK,

Respondent.  
-----x

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

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

1. I am the Petitioner pro se in the above-entitled matter and personally familiar with all the facts, papers, and proceedings heretofore had herein.

2. This Affidavit is submitted to attest to the facts showing default on the part of Respondent, entitling me to a default judgment pursuant to CPLR §7804(e).

3. This Article 78 proceeding was commenced by personal service of a Notice of Petition and a Verified Petition upon Respondent on April 11, 1995, returnable more than twenty days thereafter, to wit, on May 3, 1995.

4. On the return date, Respondent appeared by the Attorney General, and, in my absence and without prior notification to me of his intention to do so, obtained an adjournment on behalf of Respondent Commission on Judicial Conduct to June 15, 1995.

5. When this Court's Administrative Judge, Hon. Stanley Ostrau, became aware of the adjournment so-procured by Respondent, contrary to its published rules requiring that notice be given to the other side of an intended oral application for adjournment, the case was restored to the May 11, 1995 calendar, with confirmatory notification to the parties of such fact (Exhibit "A").

6. On May 5, 1995, Assistant Attorney General Oliver Williams acknowledged to me, in our telephone conversation on that date, that he was the attorney who had applied for the adjournment in court on May 3rd. He was made aware by me at that time of the fact that the case had been restored to the May 11th calendar, and further that unless he submitted his responding papers by the May 11th adjourned return date, I would seek a default judgment against Respondent.

7. On May 9, 1995, Mr. Williams telephoned me to announce his intention to make oral application on the May 11, 1995 for another adjournment. In violation of this Court's published rules requiring counsel to confer with one another to resolve scheduling matters, Mr. Williams refused to provide me with any details as to the extent of the adjournment he intended to request or its basis.

8. I thereupon wrote a letter to the Honorable Stanley Ostrau, this Court's Administrative Judge, asking for his judicial intervention in enforcing this Court's published rules, just as he had done with respect to the aforesaid restoration to

the May 11th calendar. A copy of my letter, dated May 11, 1995, is annexed hereto as Exhibit "B".

9. However, I was advised that it would be necessary for me to appear in Court to present my position personally. At that point, I called Assistant Attorney General Williams, confirming his receipt of my letter and, again, attempted to avoid a needless burden on the Court with his application and my own. Although I offered Mr. Williams an additional week to submit his papers, rather than both of us having to spend time in making and opposing his adjournment requests, he flatly refused and stated his intention to again seek an adjournment of the matter on behalf of Respondent until June 15th date. I advised him I would be in Court to personally oppose it.

9. In that conversation, Mr. Williams admitted to me that the Attorney General is solely representing Respondent and that no one in that office is representing the People's interest--notwithstanding my Notice of Right to Seek Intervention upon them.

10. I, therefore, wish to apprise the Court that the Attorney General has no standing to seek a further adjournment, on behalf of Respondent and, indeed, had no standing to obtain an adjournment on the original May 3rd return date inasmuch as Respondent was then already in default.

11. Under CPLR §7804(c), Respondent's answer was required to be served "at least five days before" the return date. Under CPLR §7804(f), any objection in point of law that

Respondent desired to raise by motion had to be raised "within the time allowed for answer".

12. Respondent neither answered nor made a motion within the time allowed by law for it to do so. Consequently, it is and has been in default since April 27, 1995.

13. Respondent's default must be viewed as deliberate and contumacious. Mr. Williams was forewarned by me on May 5th that a default application would be made if he did not serve his papers on or before May 11th. Moreover, the Attorney General, who handles Article 78 proceedings on a volume daily basis, is knowledgeable of the required procedures, calling for Respondent's answer or motion five days prior to the return date. Such statutory requirement reflects the legislative intent that special proceedings and, particularly, those based on Article 78 of the CPLR, are to be expeditiously handled, with speed, dispatch, and minimum cost to the Petitioner. Siegel, New York Practice, 2d Ed., 1991, §547, et seq.

14. Based upon my three aforesaid telephone conversations with Mr. Williams, it is plain to me that Respondent has no good-faith defense to my Petition. Based on its deliberate default and dilatory and oppressive tactics, Respondent is not entitled to any exercise of this Court's discretion pursuant to CPLR §7804(e). This is particularly appropriate since Respondent is itself staffed with attorneys, who have been fully capable of representing it herein, without utilizing the Office of the Attorney General, which should be

representing the People's interest in this transcendingly-  
important case. *No previous application has been made  
for this or similar relief to any other court or judge.*  
WHEREFORE, it is respectfully prayed that a default  
judgment be granted in favor of Petitioner, together with costs  
and such other and further relief as this Court may deem just and  
proper. \*

*Doris L. Sassone*

Sworn to before me this  
11th day of May 1995

*Rose Karmel*  
\_\_\_\_\_  
NOTARY PUBLIC

ROSE KARMEL  
Notary Public, State of New York  
No. 51-5023472  
Qualified in New York County  
Commission Expires 2-7-96