CENTER for JUDICIAL ACCOUNTABILITY

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BY HAND

October 3, 1994

Mr. Joseph Berger
Westchester Bureau Chief
The New York Times
235 Main Street, 4th Floor
White Plains, New York 10601

Dear Mr. Berger:

Enclosed, per your request, is a copy of the Appellate Division, Second Department's June 14, 1991 interim suspension order (Exhibit "A"), which suspended my mother from the practice of law immediately, indefinitely and unconditionally.

On its face, you will see that the order states no reasons and makes no findings[1]. Since at the time it was issued the Appellate Division, Second Department's own rules (Exhibit "C-1")[2] and decisional law of the Court of Appeals (Exhibit "C-2")[3] required reasons and findings, that order was unlawful.

Yet, for more than three years, the Appellate Division, Second Department has perpetuated this unlawful order by repeatedly--and without reasons--refusing to vacate it--even after the 1992 decision of the Court of Appeals in Matter of Russakoff (Exhibit "D")[4]. That decision reiterated that interim suspension orders without findings must be vacated as a matter of law.

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[1] So as to permit you to understand what "findings" and "reasons" are, I enclose the Appellate Division, Second Department's recent interim suspension order in Matter of Jenny M. Maiolo, published in the September 16, 1994 issue of The New York Law Journal (Exhibit "B"). You will readily see the contrast between that order and the Appellate Division, Second Department's June 14, 1991 interim suspension order against my mother.

[2] 22 N.Y.C.R.R. §691.4(l)(2)

[3] Matter of Nuey, 61 N.Y.2d 513, 474 N.Y.S.2d 714 (1984)

[4] Matter of Rusakoff, 72 N.Y.2d 520, 583 N.Y.S.2d 949 (1992)

Ex "O"

Moreover, notwithstanding that in Russakoff the Court of Appeals recognized that an attorney is entitled to a prompt post-suspension hearing, where there has been no hearing prior thereto, the Appellate Division, Second Department, which did not afford my mother a hearing before it suspended her, has repeatedly--and without reasons--refused to direct a post-suspension hearing.

The Appellate Division's deliberate refusal to direct a hearing reflects its knowledge that the June 14, 1991 suspension order is a criminal fraud--which would be exposed at any hearing held on the subject. Such knowledge can also be inferred from that court's failure to set forth any reasons or findings in its suspension order (Exhibit "A"). Plainly, if there were any evidentiary or legal basis for such order, the Appellate Division would have had no difficulty in setting that forth, as the law required it to do.

We are ready to prove to you--indisputably and based on the underlying files--that there is no legal or factual basis for the suspension and that its issuance and perpetuation by the Appellate Division, Second Department is a vicious retaliation against my mother for her activities as a judicial "whistleblower". Such serious contention was first raised by my mother immediately upon her suspension more than three years ago and repeated in my mother's October 24, 1991 letter to Governor Cuomo, calling for the appointment of a special prosecutor (Exhibit "E").

My mother's letter outlined the politically sensitive case of Castracan v. Colavita, which she brought as pro bono counsel to our grass-roots citizens' group, then called the "Ninth Judicial Committee"[5]. It also described the Appellate Division's finding-less suspension of her license as having been issued within days of publication by The New York Times of her "Letter to the Editor", discussing the Castracan case[6].

In Castracan v. Colavita, my mother charged judges, would-be judges, and prominent political leaders of both major parties in the Ninth Judicial District[7] with criminal conduct. This included the violation of fundamental Election Law requirements

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[5] The Center for Judicial Accountability is the successor to the Ninth Judicial Committee.

[6] A copy of my mother's "Letter to the Editor" is annexed as part of Exhibit "E".

[7] The Ninth Judicial District is comprised by Westchester, Putnam, Dutchess, Orange, and Rockland Counties.

at judicial nominating conventions and the disenfranchisement of voters by a corrupt and unethical political deal. By such deal, Democratic and Republican party leaders traded seven judgeships through cross-endorsements, contracted for judicial resignations, and pledged patronage.

My mother's October 24, 1991 letter reported to Governor Cuomo that at every level in Castracan v. Colavita and in the companion case of Sady v. Murphy the courts had disregarded elementary legal standards and falsified the factual record to sustain dismissals of those two Election Law cases. This included the New York Court of Appeals' denial of review by the pretense that the issue of whether judicial cross-endorsements disenfranchises the voters is not a "substantial constitutional question".

It should be borne in mind that notwithstanding Article VI, subdivision 6(c) of the New York State Constitution gives voters the right to elect Supreme Court justices, judicial cross-endorsement is a "way of life" in this state, with a substantial proportion of Supreme Court justices relying on judicial cross-endorsement to gain and/or maintain their seats on the bench[8].

My mother supported her request for the appointment of a special prosecutor by urging the Governor to requisition the files in Castracan v. Colavita and Sady v. Murphy and proffering the files relating to her suspension.

What is evidenced by those files--which we are ready to show and explain to you--is that where the issues involve judicial fraud, corruption, and collusion, the state courts jettison all standards of law and adjudication.

Indeed, the Article 78 proceeding, about which I tried to interest you, exemplifies the brazenness with which law and standards are totally abandoned so as to cover-up of judicial corruption.

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[8] As illustrative, in Castracan, the panel of the Appellate Division, Third Department which denied the case the mandatory preference to be heard before election day--to which it was entitled under the court's own rules, as well as the Election Law, was comprised of five judges--each one cross-endorsed: two judges having been cross-endorsed by four parties; two judges having been cross-endorsed by three parties; and one judge cross-endorsed by two parties. As to the panel which ultimately heard the case--and sustained dismissal--three of its members had been cross-endorsed judges, including the presiding justice, with a triple cross-endorsement. Neither panel made any disclosure that in a case challenging cross-endorsement so many of its members were themselves the product of cross-endorsement.

In that case, entitled Sassower v. Hon. Guy Mangano, et al., my mother sued the Appellate Division, Second Department, charging it with criminal conduct in manipulating the disciplinary mechanism--which it controls--to retaliate against her for judicial "whistleblowing". This includes its fraudulent suspension of her license.

What happened in that case? Although Judiciary Law §14, as well as §100.3(c) of the Rules Governing Judicial Conduct explicitly prohibit a judge from deciding a matter in which he is a party or has an interest in the outcome (Exhibit "F"), the Appellate Division, Second Department refused to recuse itself from my mother's Article 78 proceeding against itself[9]. Instead, it granted the dismissal motion of its own attorney, the Attorney General.

By so doing, the Appellate Division, Second Department--aided and abetted by our state's highest law officer--not only flouted elementary conflict-of-interest rules mandating judicial disqualification, but, even more egregiously, destroyed the Article 78 remedy. Such remedy is a bulwark of democracy since its very purpose is to provide citizens aggrieved by governmental misconduct with independent review of their allegations.

So much for democracy and our rule of law--subverted by the judges of our courts and the New York State Attorney General, who defends them when they are sued. Oh well.

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9 Annexed hereto as Exhibit "G" is a copy of my mother's recent complaint against the justices of the Appellate Division, Second Department, who violated their mandatory duty to disqualify themselves from adjudicating her Article 78 proceeding. That complaint, filed on September 19, 1994 with the Commission on Judicial Conduct, is deserving of a story in and of itself.

Indeed, I would point out that The Times has written extensively during the last few months--both in articles and editorials--about "conflict of interest" issues. The most recent article appeared on September 20, 1994, and is annexed for your convenience (Exhibit "H"). As reflected therein, various ethics experts were quoted on the subject. Assuredly, were you to consult such experts relative to my mother's September 19, 1994 complaint, they would be unanimous in strong condemnation of the unprecedented--and suspect--behavior of the Appellate Division, Second Department in failing to recuse itself.

The above description of lawlessness should enable you to recognize that there is an important connection between the Times' September 27th editorial "No Way to Pick a Judge" (Exhibit "I-1") and its September 17th editorial "New York's Mystery General" (Exhibit "I-2"). What the September 27th editorial (Exhibit "I-1") describes is a despicable and cynical horse-trade in judgeships. However, when such manipulation of judgeships is challenged, the courts not only disregard the law to dump the case brought, but use their power to go after the lawyer who brought it. This brings us to the September 17th editorial (Exhibit "I-2") because when that lawyer--in this case, Doris Sassower--sues the judges for retaliating against her by an unjustified suspension of her license, they are defended by the Attorney General. And how does the Attorney General defend his judicial clients? By disregarding the law and arguing without any legal authority that his judicial clients are not disqualified from deciding their own case. And who does the Attorney General argue this to? None other than to his own judicial clients, who are only too happy not to allow allegations that they have engaged in criminal conduct to be decided by an independent and impartial tribunal.

And so, judgeships continue to be traded. The party bosses know they are protected by those they have put on the bench and who need their support to remain on the bench--and to be advanced. Besides, there are very few fearless lawyers[10] willing to challenge this "business as usual" politicking in judgeships, when to do so means putting their licenses and livelihoods on the line.

Believe me, what we are presenting you is more than a prize-winning story, it is a major scandal in state government.

Perhaps you will mention as much to Kevin Sack, who in his August 21, 1994 Times' article on Governor Cuomo stated:

> "Remarkably, his administration has been untouched by major scandal."

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[10] My mother's credentials are reflected in her 1989 listing in the Martindale Hubbell law directory, annexed to her October 24, 1991 letter to the Governor (Exhibit "E"). As reflected therein, my mother has been in the forefront of legal and judicial reform. Indeed, in 1989 she was elected to be a Fellow of the American Bar Foundation, an honor reserved for less than one-third of one percent of the practicing bar of each state.

I would add that on December 10, 1993, at a meeting at the State Capitol, I confronted Governor Cuomo with his lack of response to my mother's October 24, 1991 letter--and the two follow-up letters she thereafter sent him[11]. Perhaps you read my exchange with Governor Cuomo, as reported by the Times on Saturday, December 11, 1993. Members of Ansche Chesed did--and heralded me for having "taken on the Governor". I annex a copy as Exhibit "J" in case you missed it.

I also annex (as Exhibit "K") my September 25, 1994 letter to the Editor, detailing the necessity that candidates for New York State Attorney General be required to address the issues raised by my mother's Article 78 proceeding. If this is not an aspect of the story that you wish to handle--please immediately recommend it to the reporters who are covering the race for Attorney General.

Please call me sooner--rather than later. With the elections just six weeks away, time is of the essence.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability

Enclosures

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11 At that December 10, 1993 meeting, I gave a duplicate of the October 24, 1991 letter to the Governor's aide, who was accompanying him.

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.

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.

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

Ex "A"

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.

ENTER:

MARTIN H. BROWNSTEIN

Martin H. Brownstein
Clerk

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 JUN 14 1991 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 said Court on JUN 14 1991

Clerk

NYLJ 9/16/94
p. 28

By Mangano, P.J.; Thompson, Bracken, Sullivan and Rosenblatt, JJ.

MATTER OF JENNY M. MAIOLO, an attorney and counselor at law. Grievance Committee for the Second and Eleventh Judicial Districts, pet (Maiolo, res)—Motion by the petitioner (1) to suspend the respondent; Jenny M. Maiolo, from the practice of law until further order of this court, pursuant to 22 NYCRR 691.4(l), upon a finding that she is guilty of professional misconduct immediately threatening the public interest, based upon her failure to cooperate with the legitimate investigation of the Grievance Committee into several complaints of professional misconduct against her and upon uncontroverted evidence of professional misconduct; and (2) to authorize petitioner to institute and prosecute a disciplinary proceeding against her. The respondent was admitted to the practice of law by this court on March 25, 1959.

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

ORDERED that the motion is granted to the extent that the respondent is immediately suspended based upon uncontroverted evidence of professional misconduct; and it is further,

ORDERED that the respondent, Jenny M. Maiolo, pursuant to 22 NYCRR 691.4(l), 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 the respondent, Jenny M. Maiolo 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 to Judiciary Law § 90, during the period of suspension and until the further order of this court, the respondent, Jenny M. Maiolo, 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; and it is further,

ORDERED that the Grievance Committee for the Second and Eleventh Judicial Districts is hereby authorized to institute and prosecute a disciplinary proceeding in this court, as petitioner, against Jenny M. Maiolo, based on the charges of professional misconduct set forth in the affirmation in support of the motion to suspend; and it is further,

ORDERED that Robert H. Straus, Chief Counsel to the Grievance Committee for the Second and Eleventh Judicial Districts, 210 Joralemon Street, Room 1200, Brooklyn, New York 11201, is hereby appointed as attorney for the petitioner in the proceeding; and it is further,

ORDERED that the petitioner Grievance Committee shall serve upon the respondent, the Special Referee, and file, with this court, a petition within 10 days after receipt of this decision and order on motion; and it is further,

ORDERED that the respondent shall serve an answer to the petition upon the petitioner and the Special Referee and file same with this court within 10 days after her receipt of the petition; and it is further,

ORDERED that the issues raised by the petition and any answer thereto are referred to the Honorable Harwood, a retired Associate Justice of the Appellate Division, Second Judicial Department, c/o Jaspan, Ginsberg, Schlesinger, Silverman & Hoffman, 300 Garden City Plaza, Garden City, New York 11530, as Special Referee to hear and report, together with his findings on the issues; and it is further,

ORDERED that a hearing shall be conducted with respect to the basis of the suspension, within 30 days after service of this decision and order on motion upon the respondent.

The complaints of professional misconduct pending against the respondent allege numerous instances of dishonored checks, and failure by the respondent to safeguard escrow funds.

When questioned under oath concerning her escrow account and the allegations of conversion, the respondent asserted her Fifth Amendment privilege against self-incrimination. The respondent's attorney stated on the record that his client would assert that privilege with regard to all questions concerning the escrow funds entrusted to her. The respondent also asserted her Fifth Amendment privilege when asked to produce the records of her escrow account.

The requested records are required to be maintained pursuant to DR 9-102. DR 9-102(h) (22 NYCRR 1200.46[h]) specifically states that all financial records required to be kept pursuant to the Rule, shall be produced in response to a notice issued in connection with a complaint before, or any investigation by, the appropriate Grievance Committee. The respondent and her counsel were advised of this rule but continued to assert the privilege.

When the respondent would not turn over her bank records, counsel served a subpoena decus tecum on Chase Manhattan Bank, and has received the respondent's escrow records from December 1992 through June 10, 1994. These bank statements reveal over 20 dishonored checks, as well as numerous instances in which the account was overdrawn.

With respect to one complaint, the bank records indicate a deposit of $16,558.55 into the respondent's attorney trust account on June 9, 1993. $16,345.14 of these funds represent fire insurance proceeds on behalf of the client. By June 15, the balance in that account had been depleted to $14,816.43. By June 22, the balance was only $14.43, well below the amount the respondent was required to be holding in escrow for her client.

As to a second complaint, the respondent acknowledges that between September 16, 1993, and at least November 9, 1993, she was required to hold in escrow approximately $161,000 in proceeds from a real estate transaction. The balance in the respondent's escrow account on October 13, 1993, was $13,476.76.

As to a third complaint, the respondent has acknowledged in her answer to that complaint that she is required to be holding a down payment of $40,000 plus interest in escrow. The balance in the respondent's attorney trust account has repeatedly fallen below that amount.

In her affirmation in opposition, the respondent argues that the Grievance Committee is improperly attempting to have her disciplined for asserting her constitutional privilege against self-incrimination with respect to her escrow records.

With respect to the evidence of conversion in the bank records, the respondent explains that on November 24, 1993, the respondent's office was burglarized and her escrow checkbook was stolen. The respondent reported the burglary to the New York City Police Department. As a result, in December 1993 the respondent was forced to close her escrow account and open another. The respondent relies on this fact to explain the escrow difficulties.

The respondent's papers fail to explain where the moneys are which were entrusted to the respondent as fiduciary. It is clear from the bank records that all escrow monies in question were depleted shortly after their deposit. Further, there is no question that the account was overdrawn on numerous occasions. The respondent has refused to provide her escrow records and has failed to account for thousands of dollars of escrow funds. In a surreply, the respondent again argues that she is entitled to invoke the Fifth Amendment privilege with respect to her escrow records. She also argues that the financial records subpoenaed from the bank, without substantiating affidavits from the aggrieved parties, do not rise to the level necessary to grant the relief requested.

Nevertheless, the bank records reveal that on numerous occasions the respondent's escrow account fell far below the amount she was required to be holding for her clients. The respondent's explanation that the burglary of her escrow checkbook required her to close her account does not explain the depletion of funds from her escrow account.

We find prima facie evidence that the respondent is guilty of professional misconduct immediately threatening the public interest based upon the aforesaid uncontroverted evidence of professional misconduct. This evidence has led us to find that the respondent constitutes an immediate threat to the public interest if not suspended from the practice of law. Accordingly, respondent is suspended pursuant to 22 NYCRR 691.4(l)(1)(iii), effective immediately and continuing until further order of this court. The petitioner is directed to conduct a hearing with 30 days after service of this decision and order on motion upon the respondent.

Ex "B"

either personally or by certified mail upon the attorney or the attorney's failure to comply with any of the lawful demand of this court or the grievance committee made in connection with any investigation, hearing or disciplinary proceeding; or

(ii) a substantial admission under oath that the attorney has committed an act or acts of professional misconduct, or

(iii) other uncontroverted evidence of professional misconduct.

(2) The suspension shall be made upon the application of the Grievance Committee to this court, after notice of such application has been given to the attorney pursuant to subdivision six of section 90 of the Judiciary Law. The court shall briefly state is reasons for its order of suspension which shall be effective immediately and until such time as the disciplinary matters before the Committee have been concluded, and until further order of this court. (Add, eff Jan 1, 1987; sub (l), par (1), opening subpar and subpar (i), am, eff Feb 21, 1989.)

§ 691.5. Investigation of professional misconduct on the part of an attorney; subpoenas and examination of witnesses under oath.—(a) Upon application by the chairman or acting chairman of any such committee, or upon application by counsel to such committee, disclosing that such committee is conducting an investigation of professional misconduct on the part of an attorney, or upon application by an attorney under such investigation, the clerk of this court shall issue subpoenas in the name of the presiding justice for the attendance of witnesses and the production of books and papers before such committee or such counsel or any subcommittee thereof designated in such application, at a time and place therein specified.

(b) Any such committee or a subcommittee thereof is empowered to take and cause to be transcribed the evidence of witnesses who may be sworn by any person authorized by law to administer oaths.

§ 691.6. Reprimand; admonition; letter of caution; confidentiality.—(a) The chairman or acting chairman of any such committee may, after investigation and upon a majority vote of the full committee, issue a reprimand or an admonition or a letter of caution in those cases in which professional misconduct, not warranting proceedings before this court, is found. A reprimand is discipline imposed after a hearing. An admonition is discipline imposed without a hearing. A letter of caution may issue when it is believed that the attorney acted in a manner which, while not constituting clear professional misconduct, involved behavior requiring comment. In cases in which an admonition or a letter of caution is issued, the attorney to whom such admonition or letter of caution is directed may, within 30 days after the issuance of the admonition or letter of caution, request a hearing before the committee or a subcommittee thereof, and after such hearing, the committee shall take such steps as it deems advisable. In cases in which a reprimand is issued, the attorney to whom such reprimand is issued, may within 30 days of the issuance of the reprimand, petition this court to vacate the reprimand. Upon such petition, this court may consider the entire record and may vacate the reprimand or impose such other discipline as the record may warrant.

(b) A copy of any admonition or letter of caution given pursuant to this section shall be filed with this court.

(c) A confidential record of the proceedings resulting in such admonition or letter of caution shall be permanently maintained by such committee (except that the complainant shall be notified of any reprimand or admonition or letter of caution which has become final and is not subject to further review) and may be considered in determining the extent of discipline to be imposed in the event other charges of misconduct are brought against the attorney subsequently.

(d) The provisions for confidentiality contained this or any other section of this Part are not intend to proscribe the free interchange of informati among the committees. (Amd, dated Apr 26, 1985.)

§ 691.7. Attorneys convicted of serious crime record of conviction conclusive evidence.—(a) Up the filing with this court of a certificate that an att ney has been convicted of a serious crime as herein ter defined in a court of record of any State, territo or district, including this State, this court shall cau formal charges to be made and served upon t respondent and shall enter an order immediately r ferring the matter to a referee, justice or judge a pointed by this court to conduct forthwith disciplina proceedings, whether the conviction resulted from plea of guilty or nolo contendere or from a verdi after trial or otherwise, and regardless of the pe dency of an appeal.

(b) The term *serious crime* shall include any felon not resulting in automatic disbarment under the pr visions of subdivision (4) of section 90 of the Judicia Law; and any lesser crime a necessary element which, as determined by the statutory or common la definition of such crime, involves interference with th administration of justice, criminal contempt of court false swearing, misrepresentation, fraud, willful failur to file income tax returns, deceit, bribery, extortion misappropriation, theft, an attempt or a conspiracy o solicitation of another to commit a "serious crime" o a crime involving moral turpitude.

(c) A certificate of the conviction of an attorney fo any crime shall be conclusive evidence of his guilt o that crime in any disciplinary proceeding institute against him based on the conviction, and the attorney may not offer evidence inconsistent with the essential elements of the crime for which he was convicted as determined by the statute defining the crime. (Am eff Jan 21, 1976.)

(d) Upon the filing with the court of a certificate that an attorney has been convicted of a crime not constituting a serious crime as hereinbefore defined in a court of record in any State, territory or district, including this State, this court shall either refer the matter to a committee appointed pursuant to section 691.4(a) of this Part for whatever action may be appropriate, or cause formal charges to be made and served upon the respondent and enter an order immediately referring the matter to a referee, justice or judge appointed by this court to conduct forthwith disciplinary proceedings, whether the conviction resulted from a plea of guilty or nolo contendere or form a verdict after trial or otherwise, and regardless of the pendency of an appeal.

(e) The clerk of any court within the judicial department in which an attorney admitted to practice in this State is convicted of a crime shall within five days of said conviction forward a certificate thereof to the clerk of this court and to the clerk of the Appellate Division of the Supreme Court in the judicial department in which said person was admitted to practice.

(f) Any such committee, upon receiving information that an attorney to whom these rules shall apply pursuant to section 691.1 of this Part, has been convicted of a crime in a court of record of any State, territory or district, shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate of the conviction to this court. If the certificate has not been forwarded by the clerk, such committee shall obtain a certificate of the conviction and forward it to this court. (Section title am eff Jan 21, 1976.)

§ 691.8. Effect of restitution on disciplinary proceedings.—Restitution made by an attorney or on his behalf to a client for funds converted, or to reimburse him for losses suffered as a result of the attorney's wrongdoing, shall not be a bar to the commencement or continuance of disciplinary proceedings.

In *Matter of Hernandez v. Blum:* Judgment affirmed, without costs.

In *Matter of Martin v. Blum:* Judgment appealed from and order of the Appellate Division brought up for review reversed, without costs, and the petition dismissed.

463 N.E.2d 30

61 N.Y.2d 513

In the Matter of Vernita NUEY, an Attorney, Appellant.

Departmental Disciplinary Committee for the First Judicial Department, Respondent.

Court of Appeals of New York.

April 3, 1984.

Attorney appealed from suspension order of the Supreme Court, Appellate Division, 98 A.D.2d 659, 470 N.Y.S.2d 325. The Court of Appeals held that although the Appellate Division is vested with power and control over attorneys and counselors at law and may censure, suspend from practice, or remove from office lawyers guilty of professional misconduct or other specific acts of malfeasance, it had no authority under the Judiciary Law to issue order purporting to suspend attorney pending determination of charges under consideration before a departmental disciplinary committee.

Order reversed.

1. Attorney and Client ⇐36(1)

Although the Appellate Divisions are vested with power and control over attorneys and counselors at law and may censure, suspend from practice, or remove from office lawyers guilty of professional misconduct or other specific acts of malfeasance, they have no authority under the Judiciary Law to issue an order purporting to suspend an attorney pending determination of charges under consideration before a departmental disciplinary committee. McKinney's Judiciary Law § 90, subd. 2.

2. Attorney and Client ⇐56

Finding by Appellate Division that attorney "is guilty" of professional misconduct or of one of the other statutorily specified acts is a prerequisite to interference with attorney's right to practice his or her profession. McKinney's Judiciary Law § 90, subd. 2.

3. Attorney and Client ⇐56

Finding of attorney misconduct by the Appellate Division would not be presumed from the fact of issuance of its suspension order, absent any reference thereto in the order or any recital of the basis on which such finding could have been made, and given the explicit reference therein to continuing pendency of the matter before departmental disciplinary committee. McKinney's Judiciary Law § 90, subd. 2.

Saul Friedberg and Lennox S. Hinds, [514] New York City, for appellant.

Alan S. Phillips and Michael A. Gentile, New York City, for respondent.

OPINION OF THE COURT [515]

PER CURIAM.

[1] Although the Appellate Divisions, 98 A.D.2d 659, 470 N.Y.S.2d 325, are vested with power and control over attorneys and counselors at law and may censure, suspend from practice, or remove from office lawyers guilty of professional misconduct or other specific acts of malfeasance, they have no authority under subdivision 2 of section 90 of the Judiciary Law to issue an order which purports to suspend an attorney pending determination of charges under consideration before a Departmental Disciplinary Committee.

In the case of the attorney before us, following a complaint by a former client to the Departmental Disciplinary Committee for the First Department, she appeared before counsel for the committee to answer questions on April 7, 1982. Thereafter, on June 3, 1982 she was served with a notice and statement of charges—one of improper conduct with respect to client's funds and the other of giving false testimony to the committee's counsel. After the attorney had filed an answer denying both charges, a hearing panel of the committee conducted extended hearings consuming almost a year and terminating on July 11, 1983. On the last day of the hearings the chairman of the panel announced to her that the charges had been sustained, issued an oral reprimand, and stated that the panel was going to recommend to the Appellate Division that she be disbarred. No further action had been taken, however, no formal findings had been prepared or adopted by the panel, and no application for the institution of disciplinary proceedings looking to disbarment had yet been made to the court when, on October 5, 1983, counsel for the disciplinary committee successfully moved in the Appellate Division to suspend the attorney until the matter, then still pending before the committee, was completed.

[2] A finding by the court that an attorney "is guilty" of professional misconduct or of one of the other statutorily specified acts is a prerequisite to interference with the attorney's right to practice his or her [516] profession.* Without such an adjudication of guilt by it, made on the basis of evidence and exhibits, if any, produced at the panel hearings (which are not shown by the record to have been before the court in this instance), the action of the Appellate Division in granting the committee's request was premature. The informal conclusion by a panel of the disciplinary committee with respect to wrongdoing was no substitute for the judicial determination required by the statute before the significant disciplinary measure invoked in this case could be imposed. In the normal progress of attorney disciplinary matters the court's determination of guilt of the offending lawyer occurs only after the findings rendered by a panel or referee have been confirmed on motion on which the attorney has an opportunity to submit argument challenging the findings or in mitigation of the offense or offenses, or both.

[3] The contention made by counsel for the committee in our court that a finding of misconduct by the Appellate Division in this instance may be presumed from the fact of the issuance of its order must be rejected in the absence of any reference thereto in the court's order, the absence of any recital of the basis on which such a finding could have been made, and the explicit reference to the continuing pendency of the matter before the disciplinary committee.

For the reasons stated, the order of the Appellate Division should be reversed, without costs, the suspension vacated, and the motion of the Departmental Disciplinary Committee denied.

COOKE, C.J., and JASEN, JONES, WACHTLER, MEYER, SIMONS and KAYE, JJ., concur in *Per Curiam* opinion.

Order reversed, etc.

* Subdivision 2 of section 90 of the Judiciary Law provides in relevant part: "2. The supreme court shall have power and control over attorneys and counsellors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice".

L.Ed.2d 262; *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816, 56 L.Ed.2d 305; *United States v. Biswell*, 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87; *Colonnade Corp. v. United States*, [1518]397 U.S. 72, 90 S.Ct. 774, 25 L.Ed.2d 60). This factor is thoroughly ignored and, indeed, inverted by the Court.

These auto dismantling business yards and the open fields of this vast State plainly do not fit under the proverbial "homes are our castles" mantle, a metaphor that has rightly gained cachet only in its proper application, under the Fourth Amendment and under New York's constitutional equivalent, article I, § 12.

VII.

The doctrine that State courts should interpret their own State Constitutions, *where appropriate*, to supplement rights guaranteed by the Federal Constitution is not in dispute. Indeed, we have shown our support for that doctrine *where appropriate* with our votes in a long line of cases (*see, e.g., Immuno AG. v. Moor–Jankowski*, 77 N.Y.2d 235, 566 N.Y.S.2d 906, 567, N.E.2d 1270, *supra*; *People v. Van Pelt*, 76 N.Y.2d 156, 556 N.Y.S.2d 984, 556 N.E.2d 423). Thus, the Court's accusation of our "distress" with the general proposition is puzzling (*People v. Scott*, majority opn., at 490, at 930 of 583 N.Y.S.2d, at 1338 of 593 N.E.2d). We do strenuously disagree with the Court, however, that the doctrine is being "cautiously exercised" (*People v. Reynolds*, 71 N.Y.2d 552, 557, 528 N.Y.S.2d 15, 523 N.E.2d 291, *supra*) and believe that the applications of the doctrine here create a sweeping, new and unsettling interpretation—not mere application of settled principles.

Moreover, we are concerned that, inasmuch as the Supremacy Clause of the United States Constitution does not apply in these cases, and inasmuch as this Court's self-imposed noninterpretative analysis has now been effectively scuttled by these two cases, New York's adjudicative process is left bereft of any external or internal doctrinal disciplines (*see*, U.S. Const., art. VI, ¶ 2; *People v. Harris*, 77 N.Y.2d 434, 568 N.Y.S.2d 702, 570 N.E.2d 1051, *supra*). It is that vacuum which we abhor and with which we disagree, respectfully and unabashedly.

After the many words of all the opinions, these two cases reduce to a fairly simple proposition. The common constitutional text and provision at issue in each case is a prohibition against "unreasonable searches and seizures", in which is embedded the attribute of a reasonable expectation of privacy. The United States Supreme Court in recent cases and the Appellate Division in the very cases under review have held definitively that the careful, deliberative police conduct in each case was reasonable. It is not reasonable, therefore, for this Court in these circumstances and on these bases to [1519]superimpose its preferred view of the constitutional universe. The Court has elevated subjective expectations of privacy to sovereign status by judicial fiat, thus reducing law to a State of mind rather than a set of reasonable, universal norms. The Court's method alters the words and analysis from the long-prevailing legitimate and reasonable expectations of freedom from unreasonable searches and seizures to purely subjective expectations of privacy. This supervening transformation is, in our view, unsupportable under this Court's own precedents and policies.

In *People v. Scott*: Order reversed, guilty plea vacated, defendant's motion to suppress granted and indictment dismissed.

KAYE, ALEXANDER and TITONE, JJ., concur with HANCOCK, J.

KAYE, J., concurs in a separate opinion in which ALEXANDER, TITONE and HANCOCK, JJ., also concur.

BELLACOSA, J., dissents and votes to affirm in another opinion in which WACHTLER, C.J., and SIMONS, J., concur.

In *People v. Keta*: Order reversed and case remitted to the Appellate Division, Second Department, for further proceedings in accordance with the opinion herein.

KAYE, ALEXANDER and HANCOCK, JJ., concur with TITONE, J.

KAYE, J., concurs in a separate opinion in which ALEXANDER, TITONE and HANCOCK, JJ., also concur.

BELLACOSA, J., dissents and votes to affirm in another opinion in which WACHTLER, C.J., and SIMONS, J., concur.

593 N.E.2d 1357
79 N.Y.2d 520

[1520]**In the Matter of Norman F. RUSSAKOFF, an Attorney, Appellant.**

Grievance Committee for the Second and Eleventh Judicial Districts, Respondent.

Court of Appeals of New York.

May 5, 1992.

In an attorney disciplinary proceeding, the Supreme Court, Appellate Division, ordered interim suspension. Attorney appealed. The Court of Appeals held that interim suspension was improper.

Order modified, and matter remitted.

Attorney and Client ⇐58

Interim suspension from practice of law was improper in proceeding which involved allegations concerning misrepresentation and violation of fiduciary and record-keeping responsibilities and in which attorney denied any intentional or willful misconduct; since Appellate Division did not state reason for order, there was no way of knowing whether decision was predicated on uncontroverted allegations about fiduciary and record-keeping responsibilities or on controverted allegations about misrepresentation. Code of Prof.Resp., DR 1–102, subd. A, par. 4, DR 9–102, McKinney's Judiciary Law App.

[1521]Nicholas C. Cooper, Brooklyn, for appellant.

[1522]Robert H. Straus, New York City, for respondent.

Hal R. Lieberman and Barbara S. Gillers, New York City, for the Departmental Disciplinary Committee for the First Judicial Dept., amicus curiae.

OPINION OF THE COURT

PER CURIAM.

Respondent attorney was suspended from the practice of law pending final disposition of charges that he had mishandled clients' funds. The issue in this appeal is whether the Appellate Division order of suspension complied with the requirements of *Matter of Padilla*, 67 N.Y.2d 440, 503 N.Y.S.2d 550, 494 N.E.2d 1050.

[1523]In the fall of 1989, in response to a client complaint, the Grievance Committee for the Second and Eleventh Judicial Districts initiated an inquiry into respondent's handling of his client bank accounts. The inquiry, which included an inspection of certain bank records furnished by respondent, revealed a number of unexplained withdrawals from several escrow accounts containing client and estate funds. This discovery prompted the Committee to direct respondent to appear and to give testimony regarding his "apparent conversion" of clients' funds.

After learning that the Committee intended to use any admissions he might make against him, respondent declined to appear in person and elected instead to submit an affirmation in which he "categorically denied" that he had engaged in conduct "involving 'fraud, deceit or misrepresentation.'" With regard to any specific questions about his handling of client funds, respondent affirmed that he had "no alternative but to exercise [his] constitutional right against self-incrimination."

Following the submission of this affirmation, the Committee moved by order to show cause for authorization to commence formal disciplinary proceedings against respondent. The Committee also sought an order suspending respondent during the pendency of the proceedings on the grounds that there was "uncontroverted

evidence of his professional misconduct" and that respondent was "guilty of professional misconduct immediately threatening the public interest." Submitted in support of this request for relief were the bank statements the Committee had inspected, as well as other documentary evidence demonstrating respondent's unexplained use of client funds. Also submitted was a copy of the Committee's proposed petition, which alleged that respondent had violated Code of Professional Responsibility DR 9–102 and DR 1–102(A)(1), (4) and (7). Once again, respondent's only reply was that he had not engaged in "any intentional or wilful misconduct."

By order dated October 31, 1991, the Appellate Division granted the Committee's motion and ordered respondent temporarily suspended immediately. The court also authorized the initiation of formal disciplinary proceedings, referring the matter to a Special Referee and directing service of the Committee's petition within 90 days. The order, however, did not include any other provisions regarding the timing of either the hearing or the final disposition of the charges [1524]against respondent. Significantly, the court did not set forth the reasons for its decision to suspend respondent. On respondent's subsequent application, this Court granted him leave to appeal to the Court of Appeals. We now conclude that the Appellate Division order of temporary suspension cannot stand.

In *Matter of Padilla, supra*, at 448–449, 503 N.Y.S.2d 550, 494 N.E.2d 1050, we held that in certain narrow circumstances the Appellate Division has the power to suspend attorneys charged with misconduct even though the disciplinary proceedings against them remain pending. Specifically, we held that interim suspensions are permissible where the misconduct in question poses an immediate threat to the public interest and is clearly established either by the attorney's own admissions or by other uncontroverted evidence *(id.)*. We further stated in *Padilla* that when the Appellate Division decides to issue an interim suspension order, it should articulate the reasons for its decision. While the failure to articulate the basis of an interim suspension decision may not be fatal in all cases, it is a defect that cannot be overlooked where the papers on which the decision was based leave room for doubt or ambiguity (*see, id.*).

Here, respondent had made no admissions. In fact, he affirmatively denied any "intentional or wilful" misconduct. While that denial may not have been sufficient to controvert charges that he had violated DR 9–102, which concerns attorneys' fiduciary and record-keeping responsibilities (*see, Matter of Harris*, 124 A.D.2d 126, 511 N.Y.S.2d 918; *Matter of Iversen*, 51 A.D.2d 422, 381 N.Y.S.2d 711), it did give rise to a question as to whether respondent violated DR 1–102(A)(4), which was cited by the Committee and has been held to require a showing of intent to defraud, deceive or misrepresent (*Matter of Altomerianos*, 160 A.D.2d 96, 559 N.Y.S.2d 712). Accordingly, it cannot be said that the Committee's charges of misconduct were completely "uncontroverted."

Further, because the Appellate Division did not state the reason for its interim suspension order, there is no way of knowing whether its decision was predicated on the uncontroverted allegations that DR 9–102 had been violated or was instead premised on the claimed violation of DR 1–102(A)(4), as to which there was considerable dispute. Thus, we cannot now determine whether the suspension order was issued in compliance with *Matter of Padilla (supra)*.

Because it is impossible to determine whether the Appellate Division acted within the guidelines set forth in *Padilla*, [1525]we conclude that the court's temporary suspension order must be reversed and the matter remitted to that court for further proceedings consistent with this opinion. In view of this disposition, 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 postsuspension 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]; 806.4[f]; 1022.19[f]) nor the specific order issued in this case provide for a prompt postsuspension hearing. Some action to correct this omission seems warranted (*see, Barry v. Barchi*, 443 U.S. 55, 66–68, 99 S.Ct. 2642, 2650–51, 61 L.Ed.2d 365; *Gershenfeld v. Justices of Supreme Ct.*, 641 F.Supp. 1419).

Accordingly, the order of the Appellate Division should be modified, without costs, by vacating so much of the order as suspended respondent from the practice of law pending the outcome of disciplinary proceedings, and the matter remitted to the Appellate Division, Second Department, for further proceedings in accordance with the opinion herein.

WACHTLER, C.J., and KAYE, TITONE, HANCOCK, BELLACOSA and YESAWICH, JJ.*, concur in PER CURIAM opinion.

SIMONS, J., taking no part.

Order modified, without costs, and matter remitted to the Appellate Division, Second Department, for further proceedings in accordance with the opinion herein.

593 N.E.2d 1359

79 N.Y.2d 526

[1526]**In the Matter of Josef MEISELS, Respondent,**

v.

Alexander UHR, Also Known as Chaim Uhr, et al., Appellants,

and

Tzvi M. Ginsberg, et al., Respondents.
(Proceeding No. 1.)

In the Matter of Alexander UHR, et al., Appellants,

v.

Josef MEISELS, Respondent.
(Proceeding No. 2.)

Court of Appeals of New York.

May 12, 1992.

Appeal was taken from judgment of the Supreme Court, Kings County, Golden, J., 145 Misc.2d 571, 547 N.Y.S.2d 502, vacating arbitration award entered by religious tribunal. The Supreme Court, Appellate Division, affirmed, 173 A.D.2d 542, 570 N.Y.S.2d 1007, and appeal was taken. The Court of Appeals, Wachtler, C.J., held that: (1) arbitration award was not improperly modified; (2) tribunal's reservation of jurisdiction to resolve disputes that might arise as parties undertook to satisfy award did not make award indefinite or nonfinal; and (3) arbitration agreements gave tribunal authority to settle disputes concerning title to partnership properties and to grant option to purchase.

Reversed.

1. Arbitration ⇐69

Religious tribunal's arbitration award was not invalid modification of prior award, where there was either no attempt to issue prior award or attempt to issue prior award was ineffective. McKinney's CPLR 7507, 7509.

2. Arbitration ⇐69

Appendix to religious tribunal's arbitration award describing terms of option to purchase real estate, together with document describing time table for satisfaction of award, at most clarified terms of option, and did not modify award for purposes of statutory notice requirements. McKinney's CPLR 7507, 7509.

3. Arbitration ⇐69

Even assuming that appendix to religious tribunal's arbitration award and document describing time table for satisfaction of award modified award and that statutory notice requirements were not followed, vacatur of award was not required, where party challenging award failed to demonstrate prejudice. McKinney's CPLR 7509, 7511(b), pars. 1, 1(iii).

4. Arbitration ⇐59

Religious tribunal's reservation of jurisdiction to resolve disputes that might

* Designated pursuant to N.Y. Constitution, article VI, § 2.