

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA**

IN RE: ESTATE OF SEYMOUR BAUM

PROBATE DIVISION

Deceased.

ANNEEN NINA GLORIA BAUM,

Chief Judge John M. Harris

Petitioner/Plaintiff,

v.

Case #: 05-2012-CP-048323

Case #: 05-2013-CP-028863

DAVID A. BAUM, et al.,

Respondents/Defendants.

**PETITIONER/PLAINTIFF ANNEEN NINA GLORIA BAUM'S MOTION
TO DISQUALIFY THE COURT FOR DEMONSTRATED ACTUAL BIAS**

I, Anneen Nina Gloria Baum, being duly sworn, deposes and says:

1. I am the Petitioner/Plaintiff herein, unrepresented by counsel, and submit this affidavit in support of this motion to disqualify the Court for demonstrated actual bias, pursuant to Florida Statute §38.10; Rule 2.160, Florida Rules of Judicial Administration; and Canon 3E, Code of Judicial Conduct.

2. Once again, I am assisted by the same independent reviewer of the record whose "Procedural History" gave rise to my August 13, 2014 Amended Motion for Relief from Court Orders [hereinafter "Amended Vacatur Motion"], filed by my then counsel, Hoffman & Hoffman, P.A. In and of itself, any fair and impartial judge reading the "Procedural History" would have been compelled to summarily vacate the Orders, without an evidentiary hearing, after directing Mr. Hennessey's written response. Instead, this Court, upon receiving the "Procedural History", annexed as Exhibit 1 to my September 8, 2014 affidavit to the Fifth District Court of Appeal in support of its

relinquishment of jurisdiction to this Court for purposes of determining my Rule 1.540(b)(3) Amended Vacatur Motion, refused to accept same – and returned it to me, *without explanation*, along with the September 11, 2014 coverletter that had transmitted it (Exhibit A).

3. Rule 2.330 of the Florida Rules of Judicial Administration is entitled “Disqualification of Trial Judges” and applies to “county and circuit judges in all matters in all divisions of court.” While preserving a judge’s ability to disqualify himself “on his own initiative”, it furnishes a procedure by which a party may move for judicial disqualification, setting forth, in a sworn written statement, “specifically the facts and reasons upon which the movant relies as the grounds for disqualification”, with certification by counsel, that such is “made in good faith.” As grounds, the party must show that he or she “fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge”, which must be filed within “10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling.” Thereupon:

“The judge against whom an initial motion to disqualify...is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action.” (Rule 2.330(f), underlining added).¹

¹ Less restrictive is Florida Statute 38.10 entitled “Disqualification of judge for prejudice; application; affidavits; etc.”, stating, in pertinent part:

“Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith...”.

According to the Florida Senate’s Committee on the Judiciary December 2010 Interim Report (#2011-128) Review the Procedures and Standards Governing Judicial Disqualification (at p. 6):

“In Florida, the statutes provide the substantive right for the disqualification of a judge, while

4. According to the Florida Senate's Committee on the Judiciary December 2010 Interim Report (#2011-128), Review the Procedures and Standards Governing Judicial Disqualification²:

"The standard for review of a motion to disqualify is whether the facts alleged, which must be assumed to be true, would cause the movant to have a well-grounded fear that he or she will not receive a fair trial at the hands of the judge.^{fn37} The rationale for the movant's fear of judicial prejudice or bias must be 'objectively reasonable.'^{fn38}" (at p. 4),

citing, *Livingston v. State*, 441 So. 2d 1083 (Fla. 1983) and *State v. Shaw*, 643 So. 2d 1163, 1164 (Fla. 4th DCA 1994), respectively.

5. This motion is legally sufficient. As herein demonstrated, my "fears" that I will not get a "fair hearing" of my accompanying motion for rehearing of the Court's November 3, 2014 Order denying my Amended Vacatur Motion (Exhibit B) are "well-grounded" and "objectively reasonable", as they are FULLY substantiated by the record. Indeed, one need look no further than my record-based 32-page "Procedural History" to recognize that the November 3, 2014 Order is *prima facie* proof of a judge so pervasively and intractably biased and prejudiced as to have jettisoned his judicial function of rendering fair and impartial justice through findings of fact and conclusions of law.

6. On its face, the ½-page Order (Exhibit B) is devoid of facts and law, being completely conclusory, including as to what the Court "specifically finds" – reflective of the Court's knowledge that there is no basis in fact and law for the Order. Such Order is not an "adverse ruling", with which I "disagree", but a judicial fraud, which cannot be justified when compared to the record. It is the

the Florida Rules of Judicial Administration govern the procedures related to the disqualification of a judge.", citing *Cave v. State*, 660 So. 2d 705, 707 (Fla. 1995).

² <http://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-128ju.pdf>

culminating manifestation of the Court's pervasive actual bias, meeting the "impossibility of fair judgment" disqualification standard of *Liteky v. United States*, 510 U.S. 540, 555, 563, 564 (1994).³

7. Among the prior manifestations of the Court's pervasive actual bias, prejudicial to me, but which I chose to believe did not close the door to its unbiased judgment:

- (a) the Court's granting, on August 15, 2014, of Mr. Hennessey's August 14, 2014 motion to strike the evidentiary hearing for my Amended Vacatur Motion, scheduled for August 28, 2014 – *without giving my counsel, Hoffman & Hoffman, P.A., an opportunity to interpose opposition*;
- (b) the Court's return to me, *without explanation*, of my September 11, 2014 letter to the Court (Exhibit A) with its enclosed two affidavits from me – including my September 8, 2014 affidavit to the Fifth District Court of Appeal in opposition to Mr. Hennessey's August 26, 2014 motion to that Court for its withdrawal of its August 22, 2014 Order relinquishing jurisdiction to this Court for purposes of determining my Amended Vacatur Motion;
- (c) the Court's granting, on September 23, 2014, of the Hoffman firm's September 12, 2014 motion to withdraw, *over my objection that the motion not be granted until I had successor counsel in place for the October 21, 2014 evidentiary hearing on the Amended Vacatur Motion and until such counsel had secured turnover of files and information pertinent to the hearing from the Hoffman firm, such as service of subpoenas for testimony of witnesses and for documents*;
- (d) the Court's signing, on September 30, 2014, of the Hoffman firm's proposed order granting its motion to withdraw, which, *inter alia, concealed my objections to its withdrawal*, instead of my proposed order that *more accurately reflected what had taken place at the September 23, 2014 hearing*;
- (e) the Court's granting, *without reasons*, on October 20, 2014, the Hoffman firm's October 14, 2014 motion to quash my subpoena for the testimony and documents of Teresa Hoffman, Esq., notwithstanding my October 16, 2014 affidavit in opposition to the motion setting forth meritorious reasons why it should not be granted;
- (f) the Court's granting on October 21, 2014, *without reasons*, the October 20, 2014 motion made by my former counsel, Mark Guralnick, Esq., to quash my

³ See, pp. 35-36 of the Florida Court Education Council's Judicial Ethics Benchguide (January 2013): <http://www.flcourts.org/core/fileparse.php/260/urlt/JudicialEthicsBenchguide.pdf>.

subpoena for his testimony and documents, *without affording me any opportunity to be heard in opposition*;

- (g) *the Court's handicapping my hearing counsel*, Tino Gonzalez, Esq., at the October 21, 2014 evidentiary hearing by ordering his paralegal assistant – the independent reviewer of the record, who had authored the “Procedural History” – to leave the counsel table *for no reason other than her attempting to furnish him with notes and documents to assist his examination of witnesses* (Exhibit C: pp. 169-170) – the necessity of which was evident from his performance.

8. The Court's severely prejudicial conduct intensified at the November 3, 2014 continued evidentiary hearing, where it became evident that the Court's mind was made up and that the evidentiary hearing was a charade. Thus,

- (a) the Court insisted on ending the evidentiary hearing *without allowing me to put on rebuttal witnesses, including myself*, – notwithstanding its October 31, 2014 “Order Denying Motion for Continuance” had stated:

“Should her counsel desire to call Nina Baum in rebuttal to the Personal Representative's case, the Court would allow such testimony to be presented over the telephone...” (Exhibit D, at p. 2);

- (b) the Court granted Mr. Guralnick's October 31, 2014 motion to quash my second subpoena his testimony, notwithstanding the importance of his testimony with respect to the November 15, 2013 “Order Compelling Service”;
- (c) the Court denied the opportunity for closing statements;
- (d) The Court denied my request for sufficient time for post-hearing submissions of proposed findings of fact and conclusions of law – issuing its fact-less, law-less Order within four hours of its close of the hearing – and before Mr. Gonzalez could even file his submission (Exhibit E).

9. The consequence of this virulent, pervasive bias is that the Court's November 3, 2014 Order is “so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause” of the United States Constitution, *Garner v. State of Louisiana*, 36S U.S. 157,163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960). It also flagrantly denies me equal

protection of the law by its willful disobedience to the black-letter law of *Kozel v. Ostendorf*, 629 So.2d 817 (Florida Supreme Court, 1993), and the mountain of caselaw based thereon precluding a court from doing what this Court did: dismissing a litigant's case for attorney error or misconduct for which the litigant is blameless. That caselaw, which I brought to the Court's attention in two affidavits, includes *Erdman v. Bloch*, 65 So. 3d 62 (5th DCA 2011), *Sanders v. Gussin*, 30 So. 3d 699 (5th DCA 2010), *Shortall v. Walt Disney World Hospitality*, 997 So. 2d 1203 (5th DCA 2008); *Scallan v. Marriott International, Inc.*, 995 So.2d 1066 (5th DCA 2008), *American Express v. Hickey*, 869 So. 2d 694 (5th DCA 2004),⁴ in addition to the two cases that Mr. Hennessey misrepresented in his advocacy to the Court: *Powell v. Madison County Sheriff's Department*, 100 So. 3d 753 (1st DCA 2012), and *Pixton v. Scotsman*, 924 So. 2d 37 (5th DCA 2006) – much as he misrepresented to the Court that I, rather than my attorneys was to blame for the failure to effect service of my pleadings, which was the material deceit without which he could not have procured the April 2, 2014 Order dismissing my will contest.

10. A court that refuses to give obedience to black-letter law, as to which it has NO discretion, is NOT fair and impartial – and plainly has some other agenda. Pursuant to *Kozel*, *Pixton*, and the caselaw resting thereon, the April 2, 2014 Orders must be vacated/reversed, *as a matter of law*, on my appeals, as the Court well knows. Consequently, the ONLY explanation for its refusal to vacate those Orders on a proper motion, such as mine, is that it is so virulently biased and prejudiced that it maliciously seeks to burden me with the effort and expense of appeals that is its duty to obviate by a ruling to which I am absolutely entitled – the Amended Vacatur Motion expressly identifying Mr. Hennessey's misrepresentations that service was not made “[a]s a result of Nina's delay” and because I had purportedly been “uncooperative” with my lawyers (§§7, 8, 18).

⁴ These decisions are Exhibits L-1 to L-5 to my October 14, 2014 affidavit clarifying, supplementing, &

11. That the Amended Vacatur Motion additionally seeks, by its “WHEREFORE” clause, “such other relief that may be necessary or just under the circumstances” (at p. 8) – such being consistent with the Court’s inherent power and interest-of-justice jurisdiction – only accentuates that the Court is disabled by bias and prejudice – all concealed by its completely conclusory November 3, 2014 Order, devoid of requisite findings and all law.

* * *

The Court’s Conclusory November 3, 2014 Order is a Manifestation of its Pervasive Actual Bias as the Record Dispositively Establishes a Multitude of Factual and Legal Grounds for Vacatur – Including Mr. Hennessey’s Material Fraud that I am to Blame for my Attorneys’ Failure to Effect Service

12. This Court’s November 3, 2014 Order reads as follows:

**“ORDER DENYING AMENDED MOTION
FOR RELIEF FROM JUDGMENT**

THIS CAUSE came before the Court in these related cases upon the Amended Motion for Relief From Judgment filed by or on behalf of Nina Baum (‘Petitioner’). After reviewing the motions filed in these cases; after considering the testimony of all of the witnesses presented over a six hour evidentiary hearing, including Petitioner, David Baum, David Baum’s attorney and other attorneys and process servers, after reviewing the transcripts from several prior hearings in this case; and after considering the argument of counsel and/or the case law submitted, the Court finds as follows:

A. Petitioner has been wholly unable to establish any legal or factual basis that would justify granting the relief she has requested in her Amended Motion;

B. Specifically, the Court finds no misrepresentation or misconduct on the part of Mr. David Baum or his attorney(s) regarding effectuating or avoiding service of process; entry of prior orders on the representation that all counsel had agreed that the order accurately reflected the scope and intent of the Court’s prior ruling; or any other matter that could even arguably establish a fraud upon the Court that lead to entry of the challenged orders.

further supporting my Amended Vacatur Motion. *Kozel v. Ostendorf* is Exhibit K-3, *Pixton v. Scotsman* is Exhibit K-2.

WHEREUPON, based on the foregoing and being otherwise fully advised, it is ORDERED AND ADJUDGED as follows:

1. The Amended Motion for Relief is hereby DENIED.”
(Exhibit A, capitalization in the original, underlining added).

13. Apart from the fact that my Amended Motion did NOT seek “Relief from Judgment”, but from Orders, the record before the Court establishes that even before the evidentiary hearing began on October 21, 2014, I had dispositively established legal and factual bases for vacatur, for which no hearing was even necessary. I had stated this, expressly, by affidavit dated October 14, 2014, filed with the Court on October 16, 2014. Its very title identified that it supplemented and supported my Amended Motion “Including for Purposes of Summary Determination Thereof”.

14. My October 14, 2014 supplementing affidavit is entirely undenied and undisputed by Mr. Hennessey and adverse counsel, who chose not to question me about it, even as I attested to its truth from the witness stand at the October 21, 2014 hearing (p. 197).⁵ Of its 17 pages, more than half, pp. 7-17, are devoted to *Kozel*, the caselaw based thereon, and my *matter of law* entitlement to vacatur because of Mr. Hennessey’s misrepresentation that I was to blame for my attorneys’ failure to effect service of my pleadings – which I demonstrated as the material fraud without which he could not have procured the April 2, 2014 Order, effectively ending my will contest.

15. My October 30, 2014 Affidavit in reply to Mr. Hennessey’s October 15, 2014 Response to the Amended Vacatur Motion also devoted substantial discussion – at ¶¶17-24 – to that same *matter of law* entitlement. It, likewise, is completely undenied and undisputed by Mr. Hennessey and other adverse counsel.

16. Neither of these two affidavits are identified by the November 3, 2014 Order, nor their record-based showing, by the “Procedural History”, that Mr. Hennessey had NO evidence to

⁵ Annexed to my November 13, 2014 motion for rehearing and disclosure as Exhibit B.

support his repeated fraudulent misrepresentations to this Court that I was responsible for the failure to effect service and had been “uncommunicative” and “uncooperative” with my counsel. As stated by my October 14, 2014 affidavit:

“15. The ‘Procedural History’ (Exhibit 1) is a ‘bill of particulars’ to the Amended Vacatur Motion and its accuracy is uncontested by the Hoffman firm, to whom I furnished prior drafts so that its attorneys could flag any errors or misstatements. The extent of their corrections was as to a single aspect, which was thereupon modified. Based thereon and what I now know from my own examination of the record and applicable law, I am confident in attesting to its truth and accuracy.

16. As identified throughout the ‘Procedural History’ (Exhibit 1, pp. 4, 5, 7, 8, 22, 27), Mr. Hennessey had NO evidence to support his false claim to the Court that I, not my attorneys, was responsible for the failure to effect service of the pleadings in my two cases. That is why, to support his baseless accusations, he flooded the Court with prejudicial and inflammatory materials about me, having nothing to do with my conduct in my cases before the Court.

17. Mr. Hennessey’s pretense that I was responsible for the failure to serve was a material fraud upon this Court without which he could not have procured dismissal of my will contest, as failure to serve is, for all intents and purposes, not grounds for dismissal, unless the client is culpable for what is an attorney responsibility. The caselaw on the subject is black-letter – and includes *Pixton v. Scotsman*, 924 So. 2d 37 (5th DCA 2006) (Exhibit K-2), and *Kozel v. Ostendorf*, 629 So. 2d 817 (1993) (Exhibit K-3), cited and quoted in the ‘Procedural History’ (Exhibit 1, pp. 24-25, 27-28). Mr. Hennessey’s knowledge of these two cases is reflected by his inclusion of them in the binder he handed up to the Court in advance of the March 18, 2014 hearing on his motions to drop parties (Exhibit K-1). Even still, this did not prevent him from misrepresenting *Pixton* to the Court at the March 18, 2014 hearing (Exhibit K-4). *Pixton* does not ‘ultimately...say’ that where good cause and excusable neglect are not shown for failure to serve or where there is noncompliance with orders and rules, a court can blithely dismiss the case (Exhibit K-4, pp. 22-23). Rather it says – and the holding is set forth prominently at the outset of the decision in Mr. Hennessey’s binder:

‘that trial court was required, in determining whether dismissal was warranted, to conduct evidentiary hearing and to consider factors set forth in *Kozel v. Ostendorf*, including whether plaintiffs were involved or complicit in attorney’s conduct in misrepresenting to trial court the basis for requested extension of time for service process.’ (Exhibit K-2, at p. 1).

In the concluding words of the *Pixton* decision:

“an evidentiary hearing is mandated to determine the clients’ involvement or complicity in the attorney’s conduct. *See, e.g., Schlitt v. Currier*, 763 So. 2d 491 (Fla. 4th DCA 2000). Lacking such involvement or complicity by the client, the attorney’s misconduct should not result in a dismissal of the action. *E.g., Rose v. Fiedler*, 855 So. 2d 122 (Fla. 4th DCA 2003). Indeed, this court has held that ‘[b]ecause dismissal is the ultimate sanction, it should be reserved for those aggravated cases in which a lesser sanction would fail to achieve a just result.’ *American Express Co. v. Hickey*, 869 So. 2d 694, 695 (Fla. 5th DCA 2004). Further, ‘it is essential that attorneys adhere to filing deadlines and procedural requirements, sanctions other than dismissal are appropriate in those situations when the attorney, and not the client, is responsible for the error.’ *Id.* at 695. Accordingly, we reverse and remand to the trial court for purposes of reconsideration under *Kozel*.” (Exhibit K-2, at p. 3).”

17. Nor does the Court’s November 3, 2014 Order identify my sworn assertions, by my affidavits, of my constant efforts and entreaties to my attorneys to effect service and to expeditiously advance my will contest case – or the documentary proof I furnished: my e-mails with my attorneys, Kenneth Manney and Patrick Roche, Esqs., and with Mark Guralnick, Esq., which I excerpted and annexed as exhibits.

18. As for the evidentiary hearing, it only reinforced what these two affidavits had asserted: that I was no way responsible for the failure to effect service, contrary to Mr. Hennessey’s misrepresentations to the Court in securing the November 15, 2013 and April 2, 2014 Orders. Thus, Mr. Manney’s testimony:

[October 21, 2014 transcript, pp. 37-38 (Exhibit F)]

Mr. Gonzalez: “And what participation did Ms. Baum, Anneen Baum, have with your office in deciding how to attempt to serve process on David Baum in these matters?”

Mr. Manney: “She played no role in it, other than to inquire frequently as to what’s the status of service. And I would just inform her that it’s with the process server. And as soon as it’s done, I’ll let you know.”

Mr. Gonzalez: “Did Anneen Baum in any way hamper your office in effecting -- attempting to effect service of process on David Baum in these matters?”

Mr. Manney: “Nope.”

19. No challenge was made to this upon cross-examination by Thomas Karr, Esq., on behalf of David Baum and Mr. Hennessey, or by other adverse counsel. Nor did these counsel challenge my testimony, as to which the Court, as a further manifestation of its bias, prevented me from saying more than the bare minimum:

[October 21, 2014 transcript, pp. 183-184 (Exhibit G)]

Mr. Gonzales: “Ma’am, did you ever direct your attorneys as to how to attempt to effect service of process on David Baum in this action?”

Nina Baum: “How could I? I’m not –”

Court: “That would be end of it. Next question.”

Mr. Gonzales: “Ma’am, did you ever do anything to attempt to hamper your attorneys in effecting to serve process on your brother in this cause?”

Nina Baum: “Oh, just the contrary. I have –”

Court: “Okay. That’s a no. Next question.”

Court: “Ma’am, these are yes or no questions right now.”

Nina Baum: “Okay.”

Mr. Gonzales: “Ma’am, did you ever do anything to assist or hamper Mr. – your second attorney, Mr. Guralnick to effect service of process on David Baum in this action?”

Nina Baum: “Oh gosh no. But apparently under his watch, further restrictions –”

Mr. Karr: “Objection to the narrative answer and it’s all irrelevant.”

Court: “Next question.”

20. In cutting me off, the Court itself acknowledged what not only Mr. Manney had said, but what I had said – conceded by Mr. Karr:

[October 21, 2014 transcript, p. 188 (Exhibit H)]

Court: "...Well. The attorney earlier was pretty clear I thought that she did not direct him on how to serve anybody. And you want her to testify consistent with that?"

Mr. Gonzalez: "Yes, sir, I think she did."

Court: "I think she has. We've kind of covered that, right?"

Mr. Karr: "I don't think that's factually in dispute today." (underlining added)

Mr. Gonzalez: "Judge, I have no further questions of Ms. Baum."

21. The process server, Ronald Kostin, also testified that I had nothing to do with his failure to effect service upon David Baum – and this was not contested by adverse counsel in their cross-examination:

[October 21, 2014 transcript, p. 105 (Exhibit I)]

Mr. Gonzalez: "Sir, did you – have you ever had any contact through the course of attempting to effect service of process on Mr. Baum with Nina or Anneena Nina Gloria Baum?"

Mr. Kostin: "No."

[October 21, 2014 transcript, p. 132 (Exhibit J)]

Mr. Gonzalez: "Did anybody ever attempt to – between – in the month of September through October 2013 when you were attempting to serve process on Mr. Baum, did anybody call you and tell you how to do your job as far as attempting to serve process on Mr. Baum?"

Mr. Kostin: "Not at all."

22. As for Mr. Hennessey himself, he conceded that he had NO evidence that I was responsible for the failure to effect service – only allegations:

[October 21, 2014 transcript, pp. 170-171 (Exhibit K)]

Mr. Gonzalez: "Now regarding an issue of service of process, sir, do you have any evidence that Ms. Baum, Nina – Anneena Nina Gloria Baum did anything to interfere or prohibit your client from being served with the process in this cause?"

Mr. Hennessey: “Other than the allegations that I made in the pleadings that we filed, which is that she routinely hired – she was firing her counsel as deadlines approached. And so, we were dealing with a situation where we had a litigant who, when things were approaching, the deadlines were approaching, we were dealing with the switching of counsel. Which is – as it relates to the service itself and whether or not she directly interfered with service in a way where she told the process server, no. But David Baum’s allegation in this case was that her repeated hiring and firing of lawyers as well as what her lawyers had to say in their motions to withdraw was evidence of her interference.” (underlining added).

Mr. Gonzalez: “Well, she only had one lawyer, one law firm between May of 2013 and – well, actually, she had Mr. – she had two lawyers between May of 2013 and – up until the end of that year, correct? That was Roche & Manney and then thereafter Mr. Guralnick?”

Mr. Hennessey: “Roche & Manney, I believe they were discharged in November 13th or 12th. And Mr. Guralnick was lawyer through December 17th, at which point the Court allowed Mr. Guralnick to withdraw.”

Mr. Gonzalez: “Okay. Can you tell me how her termination of Roche & Manney and potentially Mr. Guralnick under these circumstances interfered with the process server’s ability to serve your client?”

Mr. Hennessey: “Well, the answer to that is my personal knowledge other than what I’ve told you is that I don’t know if she contacted – I was never even aware that they were attempting to serve David Baum...” (underlining added).

23. As for my e-mail chains, establishing that not only was I not responsible for my attorneys’ failure to effect service, but that I had done everything I could to advance service and the case, the Court sustained an indefensible objection by Mr. Karr, based on “relevance”, that Mr. Hennessey’s fraud had “nothing to do with” communications between myself and Mr. Manney on the subject of service:

[October 21, 2014 transcript, p. 37 (Exhibit F)]

Mr. Gonzalez: “And, in fact, was she pretty – would it be fair to state that she’s a fairly prolific e-mailer?”

Mr. Manney: “And – along with making phone calls, yes.

[October 21, 2014 transcript, pp. 77-81 (Exhibit L)]

Mr. Gonzalez: "...And, sir, as far as communication with Ms. Baum, Nina – Your Honor, I'm going to – may I approach the witness again?"

Mr. Karr: "I object, Your Honor. I object to this document on grounds of authenticity, rank hearsay. These are a compilation of e-mails that have been filed over and over and over and again. They appear to be excerpts. They are not the best evidence. I object to this document being used, Your Honor."

Court: "Well, it hasn't been offered into evidence at this point. He just asked to approach the witness with it, right?"

Mr. Gonzalez: "Yes, sir. See if he –"

Court: "Go ahead. You may approach."

Mr. Gonzalez: "Sir, based upon your representation of Ms. Baum, was there a series of e-mails that was communicated between her and you between May of 2013 and up until the end of 2013, into 2014?"

Mr. Manney: "There was – there were many e-mails and many, many phone calls."

Mr. Gonzalez: "Okay. Between you and Ms. Baum?"

Mr. Manney: "Correct."

Mr. Gonzalez: "So she was not hiding or noncommunicative with you as far as in your representation of her, correct?"

Mr. Manney: "Correct, except right at the very end when the relationship fell apart."

Mr. Gonzalez: "That was back in December?"

Mr. Manney: "That was November."

Mr. Gonzalez: "November 2013?"

Mr. Manney: "Yeah, right before I withdrew."

Mr. Gonzalez: "Did you ever have any problem communicating with her by telephone?"

Mr. Manney: "No."

Mr. Gonzalez: "Or communicating with her by way of e-mail?"

Mr. Manney: "No."

Mr. Gonzalez: "When you say many telephone calls or e-mails, would it be a fair statement that there was more than 30?"

Mr. Manney: "Probably more than a hundred, maybe 200, maybe 300. There were many, many telephone calls and many e-mail communications."

Mr. Gonzalez: "In those e-mails, what if anything did Ms. Baum communicate with you about regarding her interest in seeing that formal notice was served upon her brother?"

Mr. Karr: "Your Honor, I'm going to have to object --"

Court: "Hang on."

Mr. Karr: "I'm going to have to object to relevance here. We're getting off track. Again, this case is about whether or not Mr. Hennessey committed fraud. One of the allegations they made with this gentleman's affidavit is that he refused service. It has nothing to do with those communications between this gentleman and his client." (underlining added).

Mr. Gonzalez: "I think they opened the door, Judge, by this gentleman's line of questioning to Mr. Manney. And my next series of questions was going to be is this a compilation of those e-mails between you and Ms. Baum. And does accurately portray those e-mails between May of 2013 and January of 2014." (underlining added)

Court: "I'm going to sustain the objection. Move on."

24. Indeed, the transcript of the October 21, 2014 evidentiary hearing reflects that to prevent questioning and testimony that would expose Mr. Hennessey's fraud in purporting that I was to blame for the failure to effect service and had been "uncommunicative" and "uncooperative" with counsel, Mr. Karr purported that communications between me and my counsel were "not relevant", knowing full well that those communications showed precisely what I had sworn to in my affidavits and documented by my e-mails: that I continually inquired as to service of my pleadings, and was constantly communicating with my attorneys to advance the progress of my cases.

25. My October 14, 2014 and October 30, 2014 affidavits highlighted my entitlement to vacatur, *as a matter of law*, on all allegations of my Amended Vacatur Motion, except those pertaining to David Baum's dodging service and Mr. Hennessey's refusal to accept service – the only allegations of the Amended Vacatur Motion for which an evidentiary hearing was necessary. It is as to those allegations that the November 3, 2014 Order purports:

“Specifically, the Court finds no misrepresentation or misconduct on the part of Mr. David Baum or his attorney(s) regarding effectuating or avoiding service of process” (Exhibit B).

26. This is false – and conceals all facts, including as to the Court's prejudicial conduct at the hearings, preventing my introduction of evidence favorable to me and refusing to allow closing argument.

27. Thus, the Order conceals that the Court denied me the opportunity to put on a rebuttal case at the November 3, 2014 continued hearing so that I could prove the falsity of David Baum's testimony that he was unaware that Mr. Kostin was attempting to serve process upon him when he arranged with Mr. Bennett to call Mr. Kostin on October 18, 2013 about serving papers on me at the Melbourne Theatre. It also conceals that at the October 21, 2014 hearing the Court sustained Mr. Karr's bad-faith objection on grounds of “relevance” (pp. 176-177) to testimony from Regina Velez Bassone that on October 18, 2013 I was not in Melbourne.

28. As for Mr. Hennessey's testimony denying that he had refused to accept service of the pleadings from Mr. Manney, the Order furnishes no particulars as to the basis upon which the Court credits Mr. Hennessey's testimony – and, by not disclosing the Court's refusal to have allowed me closing arguments, conceals that I was thereby prevented from highlighting my written rebuttal on the subject contained at ¶¶40-48 of my October 30, 2014 affidavit.

29. As to the only other so-called “specific” in the Order:

“...no misrepresentation or misconduct...[in the] entry of prior orders on the representation that all counsel had agreed that the order accurately reflected the scope and intent of the Court’s prior ruling”,

this is utter nonsense as Mr. Hennessey’s drafted order that the Court signed on November 15, 2013 did not “accurately reflect[] the scope and intent of the Court’s ‘prior ruling’ and Mr. Hennessey repeatedly dodged and was evasive on the witness stand, while, additionally, Mr. Karr made frivolous objections about these being issued raised previously on rehearing and being untimely – falsehoods which the Court should have, but did not, condemn – as I had already exposed these deceptions as having been previously employed by Mr. Hennessey before the Fifth District Court of Appeal in his effort to prevent it from relinquishing jurisdiction to this Court for purposes of determining my Amended Vacatur Motion. Nor does the November 3, 2014 Order furnish any law for its proposition that an attorney’s material rewriting of a court’s oral order – as at bar – without notice of that fact to adverse counsel constitutes agreement, especially where his rewriting is entirely one-sided and in his client’s favor. Certainly, Mr. Hennessey did not purport, by his testimony, that he had ever alerted either Mr. Guralnick or the Court to the liberties he had taken – such that their purported “agreement” thereto was knowing, rather than inadvertent. Indeed, ¶16 of the Amended Vacatur Motion quotes from the December 17, 2013 hearing transcript to show that on December 17, 2013 Mr. Hennessey not only did not disclose what he had done in drafting the “Order(s) Compelling Service”, but affirmatively misrepresented to the Court what it had orally ruled at the November 12, 2013 case management conference and that the November 15, 2013 written Order was consistent therewith. This is even more dramatically particularized by the “Procedural History” (at pp. 10-11) – with its further showing (at pp. 15-16) of Mr. Hennessey’s repetition of this misconduct at the March 18, 2014 oral argument on Mr. Hennessey’s motions to drop parties.

30. Here, too, the November 3, 2014 Order does not identify that the Court ended the

November 3, 2014 evidentiary hearing without permitting closing argument – thereby preventing me from furnishing the Court with the salient facts and law, including what my October 30, 2014 affidavit had set forth (at ¶¶36-39) as to the fraudulent manner in which Mr. Hennessey's Response to my Amended Vacatur Motion had dealt with the issue.

Charmaine H. Miller Baum
ANNEEN NINA GLORIA BAUM

Mailing Address:

229 East 85th Street, Unit Box #136
New York, New York, 10028

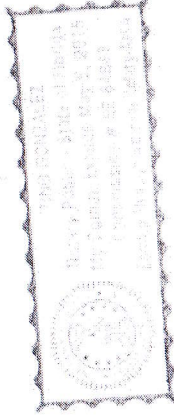
E-Mail Address: anneen@att.net

Telephone: 917-971-8768

Sworn to before me this
12th day of November 2014

Anneen N.G. Baum being personally
known to me


Notary Public



ATTORNEY'S CERTIFICATE OF GOOD FAITH
Pursuant to Florida Rule of Judicial Administration Rule 2.330(c)
& Florida Statute 38.10

As hearing counsel for Petitioner/Plaintiff Annen Nana Gloria Baum, representing her at the evidentiary hearing on her Amended Vacatur Motion, held on October 21, 2014 and continued on November 5, 2014, before Circuit Judge John M. Harris, I certify that Petitioner/Plaintiff's motion and affidavit for his disqualification for demonstrated actual bias, etc. are made in good faith.

TINO GONZALEZ, ESQ.

Florida Bar No. 378089
1600 Sando Road, Suite J
Melbourne, Florida 32935
Tel: (321) 751-9675
Fax: (321) 751-1293
tino@tinolegal.com

Dated: November 12, 2014
Melbourne, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served on November 13, 2014, *via* an automatic email generated by the Florida Courts E-Filing Portal to:

Chief Judge John M. Harris, Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida, Harry T. & Harriette V. Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, FL 32940-8006; c/o Judicial Assistant Jennifer Pastor: jennifer.pastor@flcourts18.org

David A. Baum, c/o William T. Hennessey, Esq., Gunster, Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 East, West Palm Beach, FL 33401
whennessey@gunster.com; dcarr@gunster.com; eservice@gunster.com

The Women's Zionist Organization of America, Inc., aka Hadassah, c/o William E. Boyes, Esq.,
3300 PGA Boulevard, Suite 600, Palm Beach Gardens, FL 33410
bboyes@boyesandfarina.com; asabocik@boyesandfarina.com;
czill@boyesandfarina.com

Chabad Trustees under the Chabad Trust, c/o David H. Jacoby, Esq.
2111 Dairy Road, Melbourne, FL 32904
d.jacoby@davidhjacobypa.com; j.sanchez@davidhjacobypa.com;
j.cason@davidhjacobypa.com

Friends of Israel Defense Forces, Inc., c/o Jonathan Bernstein,
1430 Broadway, Suite 1301, New York, NY 10018
jonathan.bernstein@fidf.org

Tino Gonzalez, Esq., 1600 Sarno Road, Suite 1, Melbourne, FL 32935
tino@tinolegal.com

s/ Anneen Nina Gloria Baum

ANNEEN NINA GLORIA BAUM

Mailing Address:

229 East 85th Street, Unit/Box #1361
New York, New York 10028

E-Mail Address: anbb@me.com

Telephone: 917-971-8763

TABLE OF EXHIBITS

- Exhibit A: Petitioner/Plaintiff's September 11, 2014 letter to the Court
- Exhibit B: November 3, 2014 "Order Denying Amended Motion for Relief from Judgment"
- Exhibit C: October 21, 2014 transcript: pp. 80-81, 169-170, 174
- Exhibit D: October 31, 2014 "Order Denying Motion for Continuance"
- Exhibit E: Tino Gonzalez' November 3, 2014 Memorandum of Law in Support of Motion for Relief from Court Orders Due to Respondent's Misrepresentation and Misconduct
- Exhibit F: October 21, 2014 transcript: pp. 37-38
- Exhibit G: October 21, 2014 transcript: pp. 183-184
- Exhibit H: October 21, 2014 transcript: p. 188
- Exhibit I: October 21, 2014 transcript: p. 105
- Exhibit J: October 21, 2014 transcript: p. 132
- Exhibit K: October 21, 2014 transcript: pp. 170-171
- Exhibit L: October 21, 2014 transcript: pp. 77-80