SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of

GEORGE SASSOWER,

Petitioner,

For a Judgment Under Article 78 of the Civil Practice Law and Rules

-against-

HON. CARL A. VERGARI, District Attorney, County of Westchester, RONALD GOLDSTOCK, Assistant New York Attorney General, and ROBERT ABRAMS, Attorney General of the State of New York,

Respondents.

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DECISION, ORDER & JUDGMENT

Index #92-16682

LANGE, J.

This is an Article 78 proceeding wherein petitioner, pro se, seeks an order directing respondents Carl A. Vergari and Ronald Goldstock to provide petitioner access to the Grand Jury; and prohibiting respondent Robert Abrams from representing himself and others.

Petitioner, George Sassower, was granted poor person status, and brought this proceeding contending that he is a judgment creditor of the Estate of Puccini Clothes, Ltd., and a trustee of the Estate of Paul Kelly.

On August 3, 1992, petitioner wrote a ten-page letter to the foreperson of the Westchester County Grand Jury, alleging official misconduct, i.e., "egregious criminal racketeering" by respondent Attorney General Robert Abrams. Specifically, petitioner asserts that respondent Abrams and co-conspirators have concealed larcenous conduct of the Surrogate presiding over the Puccini and Kelly estates; that the Surrogate approved a fictitious accounting for the Puccini Trust; and that "Abrams and his co-conspirators, including referee Diamond, enter sham orders, [and] 'fix' the judges in White Plains, ..."

By letter dated August 5, 1992, petitioner wrote an 11-page letter to respondent Ronald Goldstock, Director, New York State Organized Crime Task Force, setting forth similar allegations.

By three separate notices of cross motion, respondents move to dismiss the instant proceeding, and respondent Attorney General Abrams further seeks an order imposing sanctions against petitioner pursuant to 22 NYCRR Part 130, and enjoining petitioner from filing further pro se lawsuits in the State of New York.

An Article 78 proceeding in either the nature of mandamus or prohibition is an extraordinary remedy, and is available in only limited circumstances. See Matter of Legal Aid v. Scheinman, 53 NY2d 12, 16, and Klostermann v.

Cuomo, 61 NY2d 525, 537. The Court in Klostermann, supra, went on to hold at page 539 as follows:

> Traditionally, '[m]andamus lies to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought' [cite omitted]. The long-established law is that '"[w]hile a mandamus is an appropriate remedy to enforce the performance of a ministerial duty, it is well settled that it will not be awarded to compel an act in respect to which the officer may exercise judgment or discretion"' [cites omitted].

The Appellate Division, Second Department, in Peirez v. Caso, 72 AD2d 797, has also stated:

> An article 78 proceeding in the nature of mandamus does not lie unless the act sought to be compelled is ministerial, nondiscretionary and nonjudgmental, and is premised upon specific statutory authority mandating performance in a specified manner. (Emphasis added)

See, also, Matter of Bonanno, 148 AD2d 532.

It has also been pointed out by the Appellate Division, Third Department, in Matter of Murphy v. Kelley, 116 AD2d 967:

> Although in certain instances mandamus to compel is available in a criminal case, that relief is confined to performance of a clerical or ministerial act [cite omitted].

The Court of Appeals, in Matter of Doe v. Axelrod, 71 NY2d 484, 490, again characterized the remedy of prohibition as extraordinary and

> available only where there is a clear legal right, and only when an officer acts without jurisdiction or in excess of powers in a proceeding over which there is jurisdiction 'in such a manner as to implicate the legality of the entire proceeding' [cite omitted].

In this case, respondents Vergari and Goldstock enjoy

> wide latitude and discretion to allocate and utilize both the manpower and resources of [their respective] office in the manner believed to be most effective to the discharge of [their duties] [cites omitted]. Thus, it is well settled that the District Attorney's office need not prosecute every violation or offense [cite omitted].

Matter of Murphy v. Dwyer, 101 AD2d 376, 378. This Court is without the authority to direct respondents Vergari and Goldstock to permit petitioner to testify before the Grand Jury or to direct them to investigate petitioner's allegations. Whether to investigate these allegations is a discretionary, judgmental, nonadministerial act to be performed by respondents Vergari and Goldstock.

Nor does this Court have the authority to prohibit respondent Attorney General Abrams from representing himself or other State employees. There is no clear legal right to the relief requested by petitioner. Nor is there any indication that respondent Abrams is acting in excess of his powers. Moreover, Public Officers Law, Section 17, dictates the Attorney General to provide representation for State officers and employees.

Accordingly, respondents' cross motions to dismiss the instant petition seeking relief in the nature of mandamus and prohibition is granted. The instnat petition is devoid of merit.

Cross motion for sanctions and/or injunction

While the instant petition could be characterized as "frivolous conduct" as defined in 22 NYCRR, Subpart 130-1 (conduct which is completely without merit in law or fact and cannot be supported by a reasonable argument for extension, modification or reversal of existing law), the imposition of monetary sanctions in this case would be meaningless. In support of his application to proceed as a poor person, petitioner submitted an affidavit setting forth his lack of finances. Based on that affidavit, the filing fees in this case were waived. Petitioner is on public assistance, which includes a monthly food stamp allowance of

$111.00 and maintains a bank account with approximately $5.00.

In support of respondent Attorney General Abrams' application that petitioner be enjoined from filing any further pro se lawsuits in the State of New York, respondent points to the Federal Court system which has barred petitioner from filing further lawsuits without permission in the Second, Third, Fourth, Sixth, Eighth and Ninth Circuit Courts of Appeals, and to three New York State cases.

First, in Kelly v. Sassower, 78 AD2d 502, the Appellate Division, First Department, affirmed petitioner's guilty finding of civil contempt, and reasoned:

> [Sassower] has chosen to disobey the court orders directing him to account, and by reliance upon legal technicality has succeeded in weaving a complex and tortuous procedural thicket through which he has attempted to frustrate accountability.

In Matter of Jerome H. Barr, et al., as Executors of Milton Kaufman, Deceased, Petitioners, for the Dissolution of Puccini Clothes, Ltd. Lee Feltman, Appellant-Respondent; George Sassower, Respondent-Appellant, 121 AD2d 324, 325, the Appellate Division, First Department, confirmed a referee report finding George Sassower guilty of 63 counts of criminal contempt. And, in Sassower v. Signorelli, 99 AD2d 358, 359, the Appellate Division, Second Department, affirmed an injunction which enjoined George Sassower "from instituting further actions or proceedings in connection with [that] matter." The Court recognized that public policy mandates free access to the Courts, however, a litigious plaintiff such as petitioner "pressing a frivolous claim can be extremely costly to the defendant and can waste an inordinate amount of court time, ..." The court went on to reason, at page 359:

> ... when, as here, a litigant is abusing the judicial process by hagriding individuals solely out of ill will or spite, equity may enjoin such vexatious litigation [cites omitted].

It is also noted that this Court (Donovan, J.) recently issued a decision and order of dismissal dated January 7, 1993 in three separate actions brought by George Sassower, i.e., George Sassower v. John McFadden and 40 others, Index #21410/92; George Sassower v. Carolyn C. Olsen and 50 others, Index #22560/92; and George Sassower v. Mead Data Control, Inc. and 34 others, Index #20523/92. In that dismissal, Judge Donovan ruled that George Sassower failed to comply with CPLR Section 1101 for approval or permission to proceed as a poor person. The court ordered that:

> Any future applications for such relief

> in connection with these three actions shall not only be in strict compliance with the provisions of [CPLR Section 1101], but shall, assuming proper motion is made, be accompanied by a certificate of an unrelated licensed attorney stating not only that he or she 'has examined the action and believes there is merit to the moving party's contentions' [1101(b)] but shall also, and as part of that assessment, attest to the fact that, upon review of all actions previously brought and decided and all injunctive orders previously issued against plaintiff by both Federal and State Courts, the proposed action is not likely to be found subject to res judicata, collateral estoppel or issue preclusion findings by the Court or violative of all legal injunctions previously issued.

Based upon petitioner's previous conduct and his frivolous conduct in this proceeding, respondent Attorney General's motion for injunctive relief is granted to the extent that petitioner, George Sassower, is enjoined from instituting any further actions or proceedings in connection with this matter as a pro se litigant in Westchester County, unless a certificate of an unrelated licensed attorney sets forth that he or she has examined the action or proceeding and believes there is merit to Sassower's contentions, and attests to the fact that upon review of all actions and proceedings previously brought and decided and all injunctive orders previously issued against plaintiff by both Federal and State courts, the proposed action or proceeding is not likely to be found subject to res judicata, collateral estoppel or issue preclusion findings by the Court or violative of all legal injunctions previously issued.

The Court considered the following papers on this application:

1. Motion by petitioner dated September 24, 1992, with accompanying petition verified on September 24, 1992, and Exhibits A and B;

2. Motion by petitioner dated September 1992, with affidavit sworn to on September 24, 1992, and Exhibit A; and affidavit in support of application for waiver of filing and service fees and costs and to proceed as a poor person sworn September 24, 1992.

3. Motion to dismiss dated October 2, 1992 by respondent Carl A. Vergari, with affidavit in support and memorandum of law;

4. Motion to dismiss dated October 20, 1992 by respondent Ronald Goldstock, with affidavit in support;

5. Cross motion by respondent Robert Abrams dated October 26, 1992, with memorandum in support thereof;

6. Affidavit of petitioner sworn to on October 27, 1992;

7. Petitioner's memorandum of law dated October 27, 1992;

8. Affidavit of petitioner sworn to on October 30, 1992, with Exhibits A, B and C;

9. Proposed order of petitioner with notice of settlement for November 9, 1992;

10. Letter to the Court dated November 5, 1992 from John J. Sullivan, Assistant Attorney General;

11. Copies of letters dated November 9, 1992 from petitioner to John J. Sullivan, Assistant Attorney General, and to the Federal Bureau of Investigation;

11-B. Proposed order of petitioner with certification of service dated November 9, 1992;

12. Letter to the Court from petitioner dated November 16, 1992, with accompanying copy of4-page letter dated November 16, 1992 to Chief Administrator Matthew T. Crosson;

13. Copy of letter dated November 19, 1992 to petitioner from Daniel D. Angiolillo, Law Secretary to Hon. Kenneth H. Lange;

14. Proposed order by petitioner with notice of settlement on December 14, 1992, with affidavit in support thereof;

15. Affidavit of petitioner sworn to December 7, 1992 in answer to the cross motion of Robert Abrams, with Exhibits A and B;

16. Letter to the Court from petitioner dated December 14, 1992; and

17. Letter to the Court from petitioner dated December 18, 1992, with copy of summons with notice.

The foregoing constitutes the decision, order and judgment of this Court.

Dated: White Plains, New York
March 8, 1993

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