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SDNY
94-CV-4514
SPRIZZO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

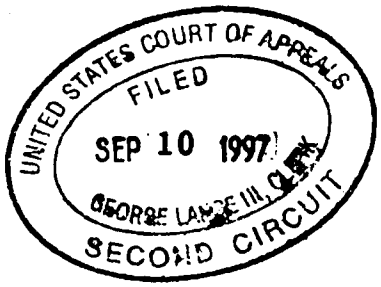
At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 10th day of September one thousand nine hundred and ninety-seven.

PRESENT: HON. THOMAS J. MESKILL,
HON. DENNIS JACOBS,

Circuit Judges,

HON. EDWARD R. KORMAN,*

District Judge.



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DORIS L. SASSOWER,

Plaintiff-Appellant,

-v.-

96-7805

GUY MANGANO, Hon., Presiding Justice of the Appellate Division, Second Department of the Supreme Court of the State of New York, THE ASSOCIATE JUSTICES THEREOF; GARY CASELLA and EDWARD SUMBER, Chief Counsel and Chairman, respectively, of the Grievance Committee for the Ninth Judicial Circuit, DOES 1-20, being present members thereof, MAX GALFUNCT, being a Special Referee and G. OLIVER KOPPELL, Attorney General of the State of New York, all in their official and personal capacities,

Defendants-Appellees.

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* Honorable Edward R. Korman, of the United States District Court for the Eastern District of New York, sitting by designation.

Ex "N-2"

APPEARING FOR APPELLANT: DORIS L. SASSOWER, pro se, White Plains, NY.

APPEARING FOR APPELLEES: JAY T. WEINSTEIN, Assistant Attorney General of the State of New York, New York, NY.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York (Sprizzo, J.), and was argued.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the District Court be and it hereby is **AFFIRMED.**

Pro se plaintiff Doris L. Sassower appeals from a May 24, 1996 judgment of the United States District Court for the Southern District of New York (Sprizzo, J.) that (i) denied her motions for summary judgment, a preliminary injunction, and reconsideration of a prior recusal motion; and (ii) granted summary judgment to defendants, who are several judges and officers of the State of New York. We affirm, substantially for the reasons stated in the district court's cogent Memorandum Opinion and Order, Sassower v. Mangano, 927 F. Supp. 113 (S.D.N.Y. 1996).

The complex facts and procedural history of this case are set forth in detail in the district court's opinion, see id. at 115-18, and are recounted here only in brief. Sassower was a member in good standing of the New York bar in October 1990, when she was ordered by a state bar regional grievance committee--pursuant to a pending disciplinary proceeding against her related to fee disputes--to undergo a medical examination to determine her mental fitness to practice law. Id. at 115-16. Sassower refused to comply with that order, and in June 1991 her license to practice law in the State was suspended; two supplemental disciplinary petitions were subsequently filed against her as well. Id. at 116. Over the course of the next several years, Sassower filed numerous appeals, motions, and independent actions challenging the suspension of her license, including, inter alia, a direct appeal of the suspension order to the New York State Court of Appeals, a proceeding under Article 78, N.Y. C.P.L.R. §§ 7801 et seq., and a petition for a writ of certiorari to the United States Supreme Court, pursuant to 28 U.S.C. § 1257(a). All of Sassower's actions, petitions, and motions (including motions for reargument) have been denied or dismissed. Sassower, 927 F. Supp. at 116-18.

In June 1994, Sassower filed the present action under various federal statutes, including 42 U.S.C. § 1983, alleging that the relevant New York attorney disciplinary regulations were unconstitutional, both facially and as applied, that the defendants had violated her constitutional rights by suspending her license to practice law, and that the defendants had intentionally inflicted emotional distress upon her (in violation of state law). Id. at 118. She sought declaratory relief, dismissal of the disciplinary and suspension orders, reinstatement of her license, compensatory and punitive damages, and costs and attorney's fees. Id.

The defendants moved under Fed. R. Civ. P. 12(c) for a judgment on the pleadings, arguing that the district court lacked subject matter jurisdiction, and that Sassower's claims were barred by res judicata, absolute immunity, and the Eleventh Amendment. Id. at 115. Sassower cross-moved for a preliminary injunction and for summary judgment, and moved for reconsideration of the court's prior ruling refusing to recuse itself from the case. Id. at 115, 118. The district court treated the defendants' motion for judgment on the pleadings as one for summary judgment (because of the extensive affidavits filed by the parties), and granted the motion, dismissing Sassower's complaint on the grounds that: (i) the court lacked subject matter jurisdiction under the Rooker-Feldman doctrine; (ii) Sassower's constitutional claims were barred by res judicata; (iii) her claims against both the judicial and non-judicial defendants in their individual capacities were barred by absolute immunity; and (iv) her claims for damages against the defendants in their official capacities were barred by the Eleventh Amendment. Id. at 118-121. Sassower's motions were likewise denied. Id. at 121.

We agree with the district court that it lacks subject matter jurisdiction under Rooker-Feldman, and affirm the dismissal of Sassower's complaint on that ground; we therefore do not address the district court's other rulings.

The Rooker-Feldman doctrine, "generally stated, is that inferior federal courts have no subject matter jurisdiction over cases that effectively seek review of judgments of state courts, and that federal review, if any, can occur only by way of a certiorari petition to the Supreme Court." Moccio v. New York State Office of Court Admin., 95 F.3d 195, 197 (2d Cir. 1996) (emphasis added). See Rooker v. Fidelity Trust Co., 263 U.S. 413, 414-16 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476-79, 482-85 (1983). Like any challenge to subject matter jurisdiction, a challenge under Rooker-Feldman "may be raised at any time by either party or sua sponte by the court." Moccio, 95 F.3d at 198; see also Gilman v. BHC Secs., Inc., 104 F.3d 1418, 1421 (2d Cir. 1997). "We review de novo the district court's determination that, as a matter of law,

jurisdiction did not exist." Moccio, 95 F.3d at 198.

The district court recited the axiom that Rooker-Feldman "bars not only claims which would involve direct review of a state court decision, but also claims which are 'inextricably intertwined' with a state court decision or which seek relief that, if granted, would modify a state court decision." Sassower, 927 F. Supp. at 119 (citing Feldman, 460 U.S. at 483 n.16; Rooker, 263 U.S. at 416). The court concluded that Sassower had raised all of her present claims in previous state proceedings, and that "[b]ecause all of the relief requested . . . would necessarily involve direct, or at a minimum indirect, review of the propriety of those state court decisions, Sassower's claims must be dismissed." Id.

On appeal, Sassower argues that her complaint does raise claims--such as her facial challenge to the constitutionality of New York's attorney disciplinary regulations--that either were not raised in her various state-court actions, motions, and appeals, or "do[] not require review of any state court decisions." Appellant's Brief at 71. She furthermore points for support to our statement in Moccio that "[s]ince Feldman, the Supreme Court has provided us with little guidance in determining which claims are 'inextricably intertwined' with a prior state court judgment and which are not." Moccio, 95 F.3d at 198.

At the outset, we disagree with Sassower's contentions of fact: we think that all of her present claims were raised in one form or another in the prior proceedings,[1] and that she now is "effectively seek[ing] review of judgments of [the] state courts," Moccio, 95 F.3d at 197, judgments that have deprived her of her license to practice law, and with which she is (understandably) displeased. In any event, we conclude that Sassower's claims are barred under Rooker-Feldman because she undoubtedly could have raised them in the state-court proceedings. Notwithstanding the "inconsistency" that the Moccio court noted among cases addressing Rooker-Feldman challenges, id. at 198, this Court concluded in Moccio that

> the Supreme Court's use of "inextricably intertwined" means, at a minimum, that where a federal plaintiff had an opportunity to litigate a claim in a state proceeding . . . , subsequent litigation of the claim will be barred under the Rooker-Feldman doctrine if it would be barred under the principles of [claim or issue] preclusion. . . . Accordingly, we decide

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[1] For example, Sassower's petition for certiorari to the Supreme Court specifically challenged the constitutionality of New York's attorney disciplinary regulations both facially and as applied. See Sassower, 927 F. Supp. at 117-18.

whether the Rooker-Feldman doctrine applies to [the plaintiff's] claims by turning to preclusion principles.

Moccio, 95 F.3d at 199-200.

Examining Sassower's complaint under contemporary preclusion principles, it is manifest that her present claims--as the district court determined--were effectively "raised and denied in the state proceedings," and consequently "are inextricably intertwined with her particular case." Sassower, 927 F. Supp. at 119-120. In these circumstances, the district court was without subject matter jurisdiction to hear Sassower's claims under Rooker-Feldman, and the court's dismissal of her complaint on that ground was therefore required.

Hon. Thomas J. Meskill

Hon. Dennis Jacobs

Hon. Edward R. Korman