NO. 92-1405

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

ELENA RUTH SASSOWER and DORIS L. SASSOWER,

Petitioners,

v.

KATHERINE M. FIELD, CURT HAEDKE, LILLY HOBBY, WILLIAM IOLONARDI, JOANNE IOLONARDI, ROBERT RIFKIN, individually, and as Members of the Board of Directors of 16 Lake Street Owners, Inc., HALE APARTMENTS, DeSISTO MANAGEMENT, INC., 16 LAKE STREET OWNERS, INC., ROGER ESPOSITO, individually, and as an officer of 16 Lake Street Owners, Inc.

Respondents,

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUPPLEMENTAL PETITION FOR REHEARING

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Ex "A"

As illustrative of the aberrant decision-making at issue, the Second Circuit's Decision (CA-6-19), on its face:

> (1) conflicts with Christiansburg v. E.E.O.C., 434 U.S. 412 (1978), by maintaining intact the District Court's $92,000 award under the Fair Housing Act, notwithstanding it vacated same based on Christiansburg (CA-12-13; Pet at 16-19)[3];
>
> (2) conflicts with Alyeska Pipeline v. Wilderness Society, 421 U.S. 240 (1975), by using inherent power to effect substantive fee-shifting[4] (Pet. at 19);
>
> (3) conflicts with Business Guides v. Chromatic Communications, 498 U.S. 533 (1991), by allowing the District Court's admittedly uncorrelated $50,000 award under Rule 11 (CA-

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[3] The unprecedented nature of the Second Circuit's "trumping" of the standard of Christiansburg was set forth in the Petition (at 17) as follows:

> "Research has failed to find a single case, before or after 1988, in which a federal court has resorted to inherent power to shift a totality of litigation fees against losing civil rights plaintiffs, where, as here (CA-13), the action was found not to be 'meritless' under the standards of Christiansburg."

[4] Such substantive fee-shifting is evident from the face of the Judgment (CA-23-4) affirmed by the Second Circuit (CA-20), which made distributive allocations to the respective Respondents solely according to the District Court's Fair Housing Act award (Pet. at 9; 13; 19). As pointed out in the Petition (at p. 19, fn. 14), the effect of the Second Circuit's vacatur of the award under the Fair Housing Act should have rendered the Judgment based thereon a nullity.

52-3) to remain intact, notwithstanding it vacated the Rule 11 award for failing to identify a single sanctionable document (CA-14; Pet. at 7, fn. 4; 19-20);

(4) conflicts with the plain language of 28 U.S.C. Sec. 1927 by keeping intact an unidentified portion of the $42,000 sanction awarded thereunder as to Doris Sassower (CA- at 14-6); which unidentified sum was totally uncorrelated to any sanctionable conduct--let alone to any "excess costs" "reasonably incurred" (CA-5; Pet. at 7-8; 19-21);

(5) conflicts with Chambers v. Nasco, 111 S.Ct. 2123 (1991)[5]--the sole authority on which it relies for its use of inherent power--by, inter alia,: (a) omitting the requisite finding that available sanctioning rules and provisions were inadequate so as to establish any "necessity" for such invocation; and (b) omitting the requisite finding that due process had been met before inherent power was invoked (Pet. at 21-24; Reply Br. 1-6);

(6) violates the Code of Judicial Conduct by including dehors the record matter, inadmissible hearsay, and knowingly false and defamatory

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[5] The NAACP Legal Defense and Educational Fund, which participated in this case as amicus curiae before the Second Circuit, recently cited the Second Circuit's Decision as "an unwarranted expansion of Chambers" "indicative of a growing trend too undermine the American Rule as explicated in Alyeska..." (see Appendix to Pet. for Rehearing, para. 6).

> material obtained ex parte and as to which Petitioners were given no notice or opportunity to be heard (Pet. at 10-11; Reply Br. at 7; Pet. for Rehearing at 4).

Not apparent on its face was the Second Circuit's disregard of United States v. Aetna Casualty & Surety Co., 338 U.S. 366 (1949), and Brocklesby Transport v. Eastern States Escort, 904 F.2d 131 (1990), when it denied--without discussion--Petitioners' threshold jurisdictional objection that the fully-insured defendants were not the "real parties in interest" and that the sanction award was a "windfall" to them, proscribed by countless decisions of this Court, including Hensley v. Eckerhart, 461 U.S. 424 (1983) (Pet. at 9; 10; 25-26; 27).

These and other deviant aspects of the Second Circuit's Decision were detailed--with citation to legal authorities--in Petitioners' Petition for Rehearing and Suggestion for Rehearing En Banc[6]. Said Petition further showed (at pp. 10-11) that the "facts" relied on by the Second Circuit to support its $92,000 fee-shifting award were wholly false and contradicted by the record[7]. The refusal of the judges of the Second Circuit--each of whom were furnished a copy of that Petition--to grant rehearing to Petitioners is, in view of that Petition, an abdication of their adjudicative responsibilities so extraordinary as to be confirmatory of a bias overriding those duties.

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[6] A copy of said Petition for Rehearing is on file with this Court as Exhibit "C" to Petitioners' December 2, 1992 motion to extend time to file their Petition for Certiorari.

[7] For the convenience of the Court, the pertinent excerpt from pages 10-11 was annexed as a Supplemental Appendix to Petitioners' Reply Brief.