

"Statement of the Case", Mr. Weinstein, who thereafter recites that the complaint for purposes of this motion "is assumed to be true"¹, represents my Verified Complaint as follows:

"Plaintiff pro se brings this action under 42 U.S.C. §1983, claiming that defendants deprived her of her constitutional rights by acting, individually and in concert, and with improper motive, to suspend her professional license to practice law during an underlying disciplinary proceeding pending against her. (Complaint ('Compl. '), ¶¶1 and 26." (p. 2, emphasis added)

Examination of the aforesaid ten allegations of my Verified Complaint, including paragraphs 1 and 26 cited by Mr. Weinstein, shows his representation that my Verified Complaint claims an "underlying disciplinary proceeding" to be completely false and diametrically opposite to said allegations. Ironically, the relevance of paragraph 26 is that it alleges that the Attorney General has, through "perjury and deceit", covered up the misconduct of Defendants--and Mr. Weinstein's has given further demonstrative evidence of same by his Dismissal Motion and Answer.

As to the Answer filed by Mr. Weinstein, it is no less sanctionable. Quite apart from the fact that Mr. Weinstein has lumped all the different Defendants together in a single Answer--thereby representing identical levels of knowledge--the Answer is completely false and fraudulent.

Overwhelmingly, Mr. Weinstein, on behalf of his clients, "denies" or "denies knowledge and information sufficient to form a belief" as to virtually all the allegations of the Verified Complaint. Yet, the majority of allegations cite court documents--examination of which requires said allegations to be admitted as true.

Indeed, in December 1994, Mr. Weinstein, who was arranging to obtain from me a stipulation extending his time to answer, was informed by my daughter that the truth of the factual allegations of the Verified Complaint could be further verified by comparing them to the allegations of a 54-page document entitled "Chronology", annexed to my Article 78 proceeding, which was annotated with precise record references--even including page citations--to the disciplinary files, as organized and previously

¹ See, last sentence on page 2 of Mr. Weinstein's Memorandum of Law

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 DORIS L. SASSOWER,

4 Plaintiff,

5 v.

94 Civ. 4514 (JES)

6 HON. GUY MANGANO, PRESIDING JUSTICE
7 OF THE APPELLATE DIVISION, SECOND
8 DEPARTMENT OF THE SUPREME COURT OF
9 THE STATE OF NEW YORK, and the
10 ASSOCIATE JUSTICES THEREOF, GARY
11 CASELLA and EDWARD SUMBER, Chief
12 Counsel and Chairman, respectively,
13 of the GRIEVANCE COMMITTEE FOR THE
14 NINTH JUDICIAL DISTRICT, GRIEVANCE
15 COMMITTEE FOR NINTH JUDICIAL DISTRICT,
16 Does 1-20, being present members
17 thereof, MAX GALFUNT, being a Special
18 Referee, and G. OLIVER KOPPELL,
19 Attorney General of the State of
20 New York, all in their official and
21 personal capacities,

22 Defendants.

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New York, NY
February 3, 1995
12:15 p.m.

23 Before:

HON. JOHN E. SPRIZZO,

District Judge

24 APPEARANCES

25 DORIS L. SASSOWER
Pro se

JAY T. WEINSTEIN
Attorney for Defendants
New York State Department of Law

Also Present: ELENA SASSOWER

1 (Case called)

2 THE COURT: I have reviewed the motion papers. I
3 am convinced that the issues are not only colorable but
4 require a response, so you have to respond to the motion.

5 MS. SASSOWER: Morning, your Honor. I'm Doris
6 Sassower. I'm the plaintiff.

7 THE COURT: You have to respond to his motion.

8 MS. SASSOWER: May I be heard, your Honor?

9 THE COURT: On this issue?

10 MS. SASSOWER: Yes.

11 THE COURT: No, not on this issue. All I have
12 decided is that you have to --

13 MS. SASSOWER: But his motion is sanctionable,
14 your Honor, because it is --

15 THE COURT: -- respond to his motion.

16 MS. SASSOWER: -- fraudulent and based on a
17 strictly false and misleading statement.

18 THE COURT: I already told you once before you do
19 not talk while I talk.

20 MS. SASSOWER: I'm sorry, your Honor. I meant no
21 disrespect.

22 THE COURT: I know, but you were here before, and
23 we went through this the last time.

24 I told you that you do not need to be heard on
25 the issue of whether you need to respond to his motion

1 because the answers that you think you have to his motion
2 shall be put in your responding papers. I have only decided
3 that I am going to hear the motion on papers. That is all I
4 have decided. The merits of the motion I have not decided.
5 So all I am directing you to do is to file a response to his
6 motion papers, that is all. If you have consequences and if
7 you have arguments based upon the issue of sanctions, I will
8 reserve until after I hear the motion, because I am not
9 going to decide a sanction question before I resolve the
10 merits of the motion. Sanctions are premature at this
11 point. So when do you want to file your response to his
12 motion?

13 MS. SASSOWER: There are several things I believe
14 the Court should be apprised of.

15 THE COURT: First of all, answer my question.

16 MS. SASSOWER: Yes.

17 THE COURT: When do you want to respond to his
18 motion?

19 MS. SASSOWER: Well, I would like to apprise the
20 Court that, as I stated last time, I was going to file a
21 petition for a writ of cert to the United States Supreme
22 Court. That has been done now. And I would like to offer
23 up to the Court a copy of the petition.

24 THE COURT: What does that have to do with the
25 motion?

1 MS. SASSOWER: Well, it has everything to do with
2 the motion because the issues that are being presented are
3 issues which Mr. Weinstein in fact had stated should be
4 determined by the Supreme Court of the United States and
5 what I believe, in the interests of judicial economy and, as
6 your Honor recognized last time, requires that this Court,
7 to the extent that --

8 THE COURT: What do you want to do? You want me
9 to suspend the case until the Supreme Court rules? You want
10 to suspend the case until the Supreme Court rules?

11 MS. SASSOWER: No, absolutely not, your Honor,
12 but I did suggest last time and your Honor did agree that
13 there was nothing wrong with the idea of placing the case in
14 suspense or deferring the motion to await the outcome of the
15 proceedings before the Supreme Court of the United States.
16 Obviously I don't have the resources of the State Attorney
17 General's Office so that I can fight a war on two fronts.
18 If the Supreme Court of the United States grants my petition
19 for cert, then there will be a necessity for my preparation
20 of a brief which has to be submitted. And I would like to
21 hand up to the Court, if I may --

22 THE COURT: Well, are you saying to me that if
23 the Supreme Court denies cert you will dismiss this action?

24 MS. SASSOWER: Not at all.

25 THE COURT: Then why should I dispense it?

1 MS. SASSOWER: Because the petition for cert of
2 denial, as you know, is not an adjudication on the merits;
3 it's a discretionary right, it's not an absolute right. On
4 the other hand, if they grant it, because I am challenging
5 the constitutionality of the disciplinary law of the State
6 of New York, clearly this Court would want to have the
7 authoritative voice of the Supreme Court of the United
8 States --

9 THE COURT: Well, I don't know.

10 MS. SASSOWER: -- bearing on the allegations in
11 this civil rights action.

12 THE COURT: There may be issues raised by his
13 motion that have nothing to do with those issues. Let me
14 ask Mr. Weinstein, will the Supreme Court's decision resolve
15 all the issues raised by your motion?

16 MR. WEINSTEIN: I haven't reviewed her petition
17 for cert.

18 THE COURT: Do you want to suspense this case?

19 MR. WEINSTEIN: The petition is before the
20 courts. My motion papers are pending.

21 THE COURT: You don't want to suspend it?

22 MR. WEINSTEIN: No. We agree to withdraw with
23 prejudice.

24 MS. SASSOWER: I gave Mr. Weinsten the
25 opportunity to peruse the petition for cert which was served

1 on his office at the beginning of the week, and he refused
2 to avail himself of the hour or so while waiting for this
3 case to be called to examine the dispositive legal arguments
4 that I have presented showing the unconstitutionality of the
5 law and the unconstitutional manner in which it has been
6 employed and the illegality of my suspension.

7 THE COURT: The bottom line is, if he is a party
8 here and he had a complaint pending against him and he has
9 made a motion which I think requires a response, he is
10 entitled to have it responded to. And I will not suspense
11 the case over his objection. So I'm back to my question,
12 when do you want to respond to his motion?

13 MS. SASSOWER: I would say that if your Honor
14 would suspend it -- or defer it --

15 THE COURT: I have already ruled on that.

16 MS. SASSOWER: -- until the outcome; if not, then
17 I would say 120 days to allow adequate time.

18 THE COURT: 120 days? I will give you 60 days.
19 No, I will give you 90 days, since I will not be able to
20 hear your motion until October anyway. And by that time the
21 Supreme Court will have acted on your petition for cert. I
22 will give you 90 days to respond to the motion, and that
23 will be June 23rd. 25 pages or less.

24 MS. SASSOWER: I would ask your Honor, because of
25 the fact that this motion made by Mr. Weinsten contains a

1 pivotal, deliberately-false statement as well as other
2 misrepresentations and omissions of material fact, I wish to
3 start the Rule 11 clock here and now. I asked Mr. Weinstein
4 to repeat his statement which he said he stands by and will
5 repeat it, and for that reason we have asked the court
6 reporter to be present.

7 THE COURT: Well, I don't know. I have no idea
8 what you are talking about.

9 MS. SASSOWER: What I'm talking about is a
10 statement in his dismissal motion. The first paragraph
11 starts out with the pivotal, pivotal statement that the
12 suspension arose out of an underlying disciplinary
13 proceeding pending against me. Now, that is a lie. It has
14 been stated --

15 THE COURT: Is it a lie? I take a very dim view
16 of lawyers telling me lies. Is this a lie?

17 MR. WEINSTEIN: It is not a lie, your Honor.

18 THE COURT: If it is a lie, Rule 11 will be the
19 smallest sanction you face. Suspension of practicing in the
20 court will be the one you will likely face.

21 MS. SASSOWER: At the bottom of page --

22 THE COURT: I am not going to deal with the
23 merits of all of this now. Look behind you. Do you see a
24 lot of people waiting?

25 MS. SASSOWER: Yes, I do, yes, I do.

1 THE COURT: They are not going to wait while we
2 hear all of your arguments about the merits of the motion.
3 That is why I have scheduled it for a response and oral
4 argument. You will get 10 or 15 minutes on the day of
5 argument to say whatever you want to say that is relative to
6 the motion. All I have decided now is file your papers by
7 June 23rd. I will hear it October 27th at 1:00.

8 MS. SASSOWER: I'm saying that Rule 11 would
9 dispense with a need to burden this Court with a motion or
10 burden me --

11 THE COURT: I already resolved the Rule 11 issue
12 when I decided that his motion requires a response, which
13 means I have already determined that his papers are
14 colorable. Now, if my decision as to colorability can be
15 satisfactorily proved, it was based upon his misrepresenting
16 facts to me, I will hear that on October 27th.

17 MS. SASSOWER: And he will be sanctioned as of --

18 THE COURT: He will or will not be, depending
19 upon what I find to be true.

20 MS. SASSOWER: It takes only two minutes today
21 to --

22 THE COURT: I am not going to determine it today
23 because due process requires -- you are a lawyer. You are
24 supposed to know this. Due process requires a fair
25 opportunity to be prepared and be heard, and I will not

1 resolve it summarily. I will resolve it on October 27th. I
2 have ruled on that already three times. And if I hear one
3 more word out of your mouth directed to an issue I have
4 already ruled upon as to which I now say I do not want to
5 hear anymore, you will be in contempt of court.

6 I will see you on October 27th at 1:00. Make
7 whatever arguments you have to make in your brief and on the
8 day of the argument.

9 Next case.

10 MS. SASSOWER: I wish to make a cross-motion,
11 your Honor --

12 THE COURT: File your cross-motion.

13 MS. SASSOWER: -- for summary judgment as well as
14 for Rule 11 sanctions.

15 THE COURT: I am telling you right now I will not
16 hear your motions for Rule 11 sanctions until such time as I
17 have ruled upon the merits of the motion. That motion is
18 denied right now as premature without prejudice to being
19 renewed after I rule upon the motion.

20 MS. SASSOWER: May I make a cross-motion for
21 summary judgment?

22 THE COURT: You can make a cross-motion for
23 summary judgment. By June 23rd you can make a motion.

24 You may reply only to her cross-motion for
25 summary judgment by July 15th. 15 pages or less for your

1 reply.

2 I will take no other papers. See you on October
3 27 at 1:00.

4 MR. WEINSTEIN: Will your Honor --

5 THE COURT: Who are you, by the way?

6 MS. E. SASSOWER: Her daughter.

7 THE COURT: I don't care. You have no standing
8 here, so do not stand up to speak to me.

9 MS. E. SASSOWER: I was just getting --

10 THE COURT: You stood up and was going to address
11 me.

12 MS. SASSOWER: No, she was getting up to go, I
13 think.

14 THE COURT: I am telling her to keep her seat.

15 MS. SASSOWER: I'm sorry, your Honor.

16 THE COURT: This conference is over.

17 MS. SASSOWER: May I ask if your Honor would care
18 to have a copy of the petition for --

19 THE COURT: No. Put it in your papers.

20 MS. SASSOWER: Yes, I will.

21 MR. WEINSTEIN: Your Honor, should the plaintiff
22 choose to oppose my motion for dismissal, can I --

23 THE COURT: Rule 11 sanctions go both ways. That
24 is why I am deferring the ruling.

25 MR. WEINSTEIN: Can I have some time to reply if

1 she opposes the motion to dismiss?

2 THE COURT: No. I do not take reply papers to a
3 motion to dismiss because all of the arguments to which you
4 would be replying should be in your papers already. To the
5 extent that you are making a motion to dismiss, you are
6 arguing to me that the pleadings construed in your favor or
7 in her favor, giving her papers the most generous reasoning
8 I can, she is entitled to no relief; therefore, there is
9 nothing in your papers that you should reply to.

10 Now, to the extent that she argues that the
11 statements are false contained in your papers, if I think I
12 need a factual hearing under oath which requires the taking
13 of testimony, I will schedule one on October 27th and I will
14 make fact findings. And if I find that a lawyer has
15 testified falsely, I will make an appropriate recommendation
16 to the Bar Association as to the offending party. So do not
17 be loose with the truth, and especially do not be loose with
18 the truth under oath because I have very little patience
19 with that. That is true of you, true of her.

20 This is not a place where anyone gets a free
21 ride. Whatever you do and whatever you say in my courtroom
22 you will be asked to account for. There will be
23 consequences here. So be careful what you say in your
24 motion papers. They better be true.

25 You will get your opportunity to respond to her

1 motion on the day of argument, but to the extent that she
2 makes a cross-motion, I will give you an opportunity to
3 reply to that. My rules do not permit reply papers for the
4 very simple and practical reason that I usually wind up in
5 the reply brief getting a rehash of what is in the main
6 brief, and I do not want to waste my time with reading
7 another brief which says the same thing as the first one
8 says. So I only take reply papers to cross-motions.

9 Now, if she puts in a factual affidavit which
10 requires a factual response, I will permit you to file an
11 affidavit responding to the factual allegations set forth in
12 her affidavit if you claim them to be untrue, that I will
13 permit, but that is not a memorandum, that is not a brief,
14 that is an affidavit. Understood?

15 MR. WEINSTEIN: Yes, your Honor.

16 THE COURT: So, as far as the legal issues are
17 concerned, I expect them to be briefed in your main brief.
18 If she makes a statement in an affidavit which you say is
19 false and which you deny, we will have a hearing and I will
20 make credibility findings and woe to the lawyer against whom
21 most credible findings go.

22 MS. SASSOWER: Excuse me, your Honor. May I ask
23 for additional relief?

24 THE COURT: No, not at this point.

25 MS. SASSOWER: No, you haven't heard my

1 application.

2 THE COURT: Relief? What relief?

3 MS. SASSOWER: The defendant

4 THE COURT: I will tell you what I will do. I
5 will hear you both at the end of the calendar.

6 MS. SASSOWER: Thank you.

7 THE COURT: I am not going to keep anybody
8 waiting for you anymore.

9 MS. SASSOWER: Thank you, your Honor.

10 THE COURT: To the extent that you have been
11 forced to wait here for an additional period of time because
12 the application she makes did not have to be made, I will
13 give you Rule 11 sanctions against her for wasting the time
14 for the next hour that you sit here.

15 MR. WEINSTEIN: Thank you, your Honor.

16 THE COURT: So think about whether it is worth
17 raising at this time. If it is not, you will pay for his
18 time.

19 MS. SASSOWER: It's worth waiting, your Honor.

20 THE COURT: All right, then, as long as you know
21 what the ground rules are.

22 MS. SASSOWER: Thank you.

23 (Continued on next page)

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25

1 (At 1:15 p.m.)

2 THE CLERK: Sassower v. Mangano.

3 THE COURT: What application did you have?

4 MS. SASSOWER: I would ask your Honor for
5 permission, if I require advance permission of the Court, to
6 make a motion for a preliminary injunction. I seek to,
7 among other things, enjoin the Appellate Division, Second
8 Department, from persisting in adjudicating cases in which I
9 am involved, in light of their absolute disqualification by
10 reason of their interest in the matters which they are
11 adjudicating. Illustrative of this is a recent decision of
12 the Appellate Division, Second Department.

13 THE COURT: Is that in your complaint?

14 MS. SASSOWER: I beg pardon?

15 THE COURT: Do you have a request for injunctive
16 relief in your complaint?

17 MS. SASSOWER: Yes, your Honor.

18 THE COURT: Put it in your motion papers.

19 MS. SASSOWER: In other words, I am free to make
20 such a motion.

21 THE COURT: I assume if you want to make a
22 motion, put it in your motion papers.

23 MS. SASSOWER: I do wish to make the motion,
24 because the Appellate Division, Second Department, is
25 proceeding without jurisdiction, and prejudicing my rights

1 and advantaging their own inasmuch as I have eight
2 allegations of my complaint relating to the case of
3 Wolstonecraft --

4 THE COURT: Put it in your motion papers.

5 MS. SASSOWER: Yes, I will make such a motion.

6 THE COURT: And when you reply, reply to that
7 too, so you don't need to put in additional papers.

8 MS. SASSOWER: When you say --

9 MR. WEINSTEIN: Your Honor --

10 THE COURT: She is going to cross-move.

11 MR. WEINSTEIN: I understand it, but I was under
12 the impression that at this time we were going to discuss
13 her request for sanctions.

14 THE COURT: Sanctions? No. She says she wants a
15 premotion conference in order to include in the motion
16 papers, if I hear her correctly, an application for a
17 preliminary injunction, which of course will turn upon the
18 merits of the underlying case anyway. Therefore, I will
19 hear it at the time that I hear the motion. All I am saying
20 to you is that she is going to cross-move for summary
21 judgment, but she is going to add to that a motion for
22 injunctive relief. I will let you reply to that in your
23 motion papers in response to her cross-motions, and I will
24 give you five pages, in addition to the fifteen you would
25 ordinarily have, to respond to her request for injunctive

1 relief. But, obviously, the issue of whether there should
2 or should not be injunctive relief will rise or fall, then,
3 on the merits of the underlying lawsuit. ~~At~~ the underlying
4 lawsuit is not meritorious, obviously there will be no basis
5 to enjoin anyone. So I will hear them all on the same day.

6 MR. WEINSTEIN: Yes, your Honor.

7 MS. SASSOWER: In connection with Mr. Weinstein's
8 concern about the sanctions aspect, I did wish, in light of
9 your Honor's cogent clarification of the test of a dismissal
10 motion, to point out that I have eight allegations of my
11 complaint which deny that -- excuse me -- ten allegations of
12 my complaint --

13 THE COURT: Why is everybody so reluctant to
14 argue the merits of this motion on the day which I fixed for
15 it?

16 MS. SASSOWER: If your Honor please, this is only
17 for clarification of the record.

18 THE COURT: It doesn't need to be clarified.
19 File your motion papers, put it in your papers, and I will
20 hear it on the 27th.

21 MS. SASSOWER: But, if your Honor please, will
22 you just hear this?

23 THE COURT: Why should I get into the merits at
24 all?

25 MS. SASSOWER: It is not the merits. The point

1 is, the test on a dismissal motion --

2 THE COURT: That is the merits.

3 MS. SASSOWER: -- is that the factual allegations
4 are assumed to be true, as your Honor pointed out.

5 THE COURT: Right.

6 MS. SASSOWER: And I have ten allegations of my
7 complaint stating that my suspension was unrelated to any
8 pending disciplinary proceeding, that there was no
9 underlying disciplinary proceeding. Mr. Weinstein
10 predicates his dismissal motion on a false statement; in
11 other words, he is not accepting it to be true. He is
12 representing to the Court that my complaint says the
13 opposite of what it says. My complaint does not state that.

14 THE COURT: That goes to the merits of the
15 motion.

16 MS. SASSOWER: He is falsifying to the Court --

17 THE COURT: That is it. The record is closed. I
18 will see you on the 27th.

19 MS. SASSOWER: Thank you, your Honor.

20 THE COURT: I will hear all these arguments then.

21 MS. SASSOWER: I thought we could avoid burdening
22 the Court with the motion entirely.

23 THE COURT: It seems that you are just burdening
24 me twice. All right. Who is next?

25 MS. SASSOWER: The trouble is that I am being

1 burdened at the same time with a most oppressive motion.

2 THE COURT: The conference is over.

3 MS. SASSOWER: Thank you, your Honor.

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