

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

LEE L. HOLZMAN

a Judge of the Surrogate's Court,
Bronx County.

**AFFIRMATION IN OPPOSITION
TO RESPONDENT'S MOTION TO
DISMISS THE FORMAL WRITTEN
COMPLAINT AND TO STAY
FURTHER PROCEEDINGS**

EDWARD LINDNER, an attorney duly admitted to practice in the courts of the State of New York, affirms under the penalties of perjury:

1. I am a Deputy Administrator for respondent New York State Commission on Judicial Conduct. I make this affirmation in opposition to respondent's motion for an order: (1) dismissing the Formal Written Complaint without prejudice to re-file, or in the alternative (2) staying the proceedings pending the disposition of a criminal case against Michael Lippman, the former Counsel to the Public Administrator of Bronx County.

2. Respondent's motion to dismiss the Formal Written Complaint should be denied because the charges, the specifications to the charges, and the accompanying schedules were more than reasonably specific to apprise respondent of the alleged misconduct and allow him to prepare a defense.

3. Respondent's motion for an order staying the proceedings is premature because Lippman has not yet exercised his Fifth Amendment privilege before the Referee and, absent presentation of Commission staff's case in chief at a hearing, it cannot be said that

his testimony will be relevant to respondent's defense, let alone necessary. Nor has it been determined whether Lippman waived his Fifth Amendment privilege by testifying under oath during the Commission's investigation.

4. Respondent's assertion that Lippman's testimony is necessary for his defense is without merit because the allegations in the Formal Written Complaint are tailored to address respondent's conduct, not Lippman's, and the allegations are largely based on documents filed in the Surrogate's Court that have already been turned over to respondent's counsel during discovery. Respondent has not shown how Lippman's alleged criminal conduct could excuse respondent's failure to act based on the documentary evidence in his court and his bald assertion that Lippman's testimony is necessary to his defense is insufficient to stay this proceeding.

5. Respondent's argument that the Formal Written Complaint is vague and lacks specificity is belied by the Complaint itself. The allegations in the Complaint, together with the accompanying schedules and voluminous discovery materials, are more than reasonably specific to apprise respondent of his alleged misconduct.

6. Finally, respondent's motion should be denied as a matter of public policy. The Commission's constitutional and statutory mandate to promote public confidence in the judiciary is best served by a determination on the merits after hearing. Because respondent will reach mandatory retirement age at the end of this year, granting respondent's motion will effectively end this proceeding. This Commission should avoid that result unless and until respondent makes a strong, fact-specific showing that he cannot present an adequate defense.

The Procedural History

7. Respondent has been a Judge of the Surrogate's Court, Bronx County, since 1988. He may serve through December 31, 2011, at which time he will be required to retire because he has reached the mandatory retirement age of 70.

8. Respondent was served with a Formal Written Complaint ("Complaint") dated January 4, 2011, containing four charges.

9. Charge I of the Complaint alleged that from 1995 to 2009, in the cases set forth in Schedule A, respondent approved legal fees for Michael Lippman, Counsel to the Bronx Public Administrator's Office: (1) based on boilerplate affidavits of legal services that did not comply with the requirements of SCPA § 1108(2)(c) and (2) fixed the fees without considering the statutory factors set forth in SCPA § 1108(2)(c).

10. Charge II alleged that in 2005 and 2006, respondent failed to report Michael Lippman to law enforcement authorities or to the Departmental Disciplinary Committee upon learning that Lippman took unearned advance legal fees and/or fees that exceeded the amount prescribed by the Administrative Board Guidelines, and that he continued to award Lippman the maximum legal fee recommended in the Guidelines and/or awarded the fees without considering the statutory factors set forth in SCPA § 1108(2)(c).

11. Charge III alleged that from 1997 to 2005, respondent failed to adequately supervise and/or oversee the work of court staff and appointees, which resulted in: (1) Michael Lippman taking advance fees without filing an affirmation of legal services in the cases set forth in Schedule B, and/or taking advance fees that exceeded the maximum amount recommended in the Administrative Board Guidelines in the cases set

forth in Schedule C and Schedule D, (2) delays in the administration of the estates set forth in Schedule E, (3) individual estates with negative balances, (4) the Public Administrator placing estate funds in imprudent and/or unauthorized investments, and (5) the Public Administrator employing her boyfriend who billed estates for services that were not rendered and/or overbilled estates.

12. Charge IV alleged that in 2001 and 2003, respondent failed to disqualify himself from cases in which Michael Lippman appeared, notwithstanding that Lippman raised more than \$125,000 in campaign funds for respondent's 2001 campaign for Surrogate.

13. Respondent filed an Answer dated January 21, 2011, in which he denied the material allegations of the Complaint and asserted three affirmative defenses: (1) that the Complaint failed to state a cause of action, (2) that the factual allegations in the Complaint were unconstitutionally vague, and (3) that the Complaint violated his due process rights.

14. On January 25, 2011, the Commission designated the Honorable Felice K. Shea as referee to hear and report findings of fact and conclusions of law. Judge Shea scheduled a five-day hearing for May 9, 2011.

15. On February 9, 2011, as part of discovery, Commission counsel supplied respondent with copies of the transcripts of eleven witness statements, including that of Michael Lippman. A copy of Alan W. Friedberg's letter to David Godosky, dated February 9, 2011, is attached as Exhibit A.

16. On February 10, 2011, as part of discovery, Commission counsel supplied respondent with copies of other written witness statement and copies of documents that Commission counsel intends to present at the hearing. A copy of Alan W. Friedberg's letter to David Godosky, dated February 10, 2011, is attached as Exhibit B.

17. On February 10, 2011, Commission counsel supplied respondent with copies of relevant documents from the case files of the estates listed in Schedule A through E to the Formal Written Complaint. A copy of Alan W. Friedberg's letter to David Godosky, dated February 10, 2011, is attached as Exhibit C.

WHEREFORE, it is respectfully submitted that the Commission should deny respondent's motion to dismiss the complaint and direct that this matter be set down for hearing to develop a full record.

Dated: February 25, 2011
New York, New York



Edward Lindner
Deputy Administrator for Litigation
State Commission on Judicial Conduct
61 Broadway
New York, New York 10006
(646)386-4800

To: David Godosky, Esq.
Godosky & Gentile, P.C.
61 Broadway, Suite 2010
New York, New York 10006



ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

61 BROADWAY
NEW YORK, NEW YORK 10006

646-386-4800 646-458-0038
TELEPHONE FACSIMILE
www.scjc.state.ny.us

EDWARD LINDNER
DEPUTY ADMINISTRATOR

JEAN JOYCE
ROGER J. SCHWARZ
SENIOR ATTORNEYS

BRENDA CORREA
KELVIN S. DAVIS
STAFF ATTORNEYS

ALAN W. FRIEDBERG
SPECIAL COUNSEL

CONFIDENTIAL

February 9, 2011

Via Hand Delivery

David Godosky, Esq.
Godosky & Gentile, P.C.
61 Broadway, Suite 2010
New York, New York 10006

Re: Matter of Lee L. Holzman

Dear Mr. Godosky:

In preparation for the proceeding in the above-referenced, attached are
copies of transcripts:

- | | |
|--------------------|--------------------|
| 1. Lee L. Holzman | August 13, 2010 |
| 2. Mark Levy | June 28, 2010 |
| 3. John Reddy | July 23, 2010 |
| 4. Harry Amer | August 3, 2010 |
| 5. Michael Lippman | September 10, 2009 |
| 6. John Raniolo | September 22, 2009 |
| 7. Michael Lippman | November 4, 2009 |

David Godosky, Esq.

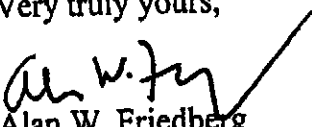
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|------------------------|-----------------|
| 8. Steven Alfasi | October 7, 2010 |
| 9. Bonnie Brooke Gould | July 21, 2010 |
| 10. Paul Rubin | July 20, 2010 |
| 11. Lonnie Elson | July 16, 2010 |

Thank you for your time and attention to this matter.

Very truly yours,


Alan W. Friedberg
Special Counsel

Enclosures



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ADMINISTRATOR & COUNSEL

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NEW YORK, NEW YORK 10006

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Via Hand Delivery

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Godosky & Gentile, P.C.
61 Broadway, Suite 2010
New York, New York 10006

Re: Matter of Lee L. Holzman

Dear Mr. Godosky:

In preparation for the proceeding in the above-referenced, attached are copies of materials:

1. Statements of funds held by Esther Rodriguez, Bronx Public Administrator (12/31/05);
2. Complaint, memorandum and notes of interview of Ann Penachio and documents;
3. Memorandum and notes of interview of Bernice Liddie, Memorandum and notes of interview of Michael Sullivan, Esq., Memorandum and notes of interview of Sharon Gentry (2), Memorandum and notes of interview of Mary Thurber, Esq., Memorandum and notes of interview of Robert Southern, Memorandum and notes of interview of Lorraine Coyle, Esq. (2) and documents;

4. Correspondence of Bonnie Gould (6/9/09),
Memorandum and notes of interview of Charles Ginsberg,
Memorandum and notes of interview of Sanford Glatzer, Esq.,
Memorandum of Ethan Beckett concerning Accounting Department Inquiry (2),
Memorandum and notes of interview of Michelle Scotto, Esq.,
Memorandum and notes of interview of Tom Finnegan,
Memorandum of interview of Regina Rabinoff,
Memorandum of interview of Christina Fremer,
Notes of interview of John Reddy, Esq.
Memorandum of interview of Richard Byrnes,
Memorandum of interview of Brian Cahalane, Esq.,
Memorandum and notes of interview of Jason Lilien, Esq. and Carl Distefano, Esq.
Memorandum of interview of Esther King,
Memorandum of interview of Jason Reback,
Memorandum and notes of interview of Richard Costa,
Memorandum and notes of interview of Joseph Rafalowicz and correspondence (1/18/06);
Memorandum of interview of Hugh Campbell,
Memorandum and notes of interview of Lewis Finkelman, Esq.,
Memorandum and notes of interview of Mary Thurber, Esq.,
Memorandum and notes of interview of Sharon Gentry,
Memorandum and notes of interview of Christina Fremer,
Memorandum of interview of Mark Levy, Esq.,
Memorandum of interview of Tom Finnegan,
Memorandum of interview of Regina Rabinoff,
Memorandum and notes of interview of Jason Reback and documents;
5. Six month report (period ending 6/30/10);
6. Memorandum of interview of Brian Cahalane, Esq.,
Memorandum and notes of interview of John Fisher,
Memorandum and interview of Esther King;
7. Correspondence of Richard Cerbone (10/4/08),
Correspondence of Michelle Scotto, Esq. (11/4/08),

- Memorandum and notes of interview of Charles Ginsberg,
Memorandum and notes of interview of Michelle Scotto, Esq.,
Memorandum and notes of interview of Richard Cerbone and
Documents;
8. Correspondence of George Malatesta (4/1/09), memorandum of
interview of George Malatesta,
Memorandum of interview of Michael Friedman, Esq. and documents;
 9. Correspondence of Bernice Liddie (8/8/08),
Memorandum and notes of interview of Sandra Prowley, Esq. (2),
Memorandum and interview of Bernice Liddie and documents;
 10. Various Reports of Public Administrator;
 11. Reports of the Commission on Fiduciary Appointments (2/05);
 12. Various Financial Disclosure Statements of the Committee to Re-Elect
Lee L. Holzman, Surrogate;
 13. Audit Report of the NYC Comptroller (3/18/09);
 14. Various Trial Balance Reports;
 15. Audit Report of the NYC Comptroller (6/24/04);
 16. Fax of Mark Levy, Esq. (9/28/08) and documents;
 17. Various documents in:
 - Matter of Eng;
 - Matter of Demick;
 - Matter of Patane;
 - Matter of Schnell;
 - Matter of Thrash;
 - Matter of Danziger;
 - Matter of Glasco;
 - Matter of Santiago;
 - Matter of Vasquez;
 - Matter of Kreisher;

David Godosky, Esq.

February 10, 2011


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Matter of Cerbone;

Matter of Coakley;

Matter of Waks and Matter of Sinclair.

Very truly yours,


Alan W. Friedberg
Special Counsel

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Dear Mr. Godosky:

In preparation for the proceeding in the above-referenced, enclosed are copies of the case files in Schedules A-E.

Thank you for your time and attention to this matter.

Very truly yours,


Alan W. Friedberg
Special Counsel

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