UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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ISRAEL WEINSTOCK

Plaintiffs,

-against-

ROSLYN MAUSKOPF, ESQ., as United States Attorney for the Eastern District of New York, JAMES COMEY, ESQ., as United States Attorney for the Southern District of New York And JOHN ASHCROFT, ESQ. as Attorney General of the United States

Defendants
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Case No. cv- 02-3060

E.D.N.Y.

AFFIDAVIT IN SUPPORT OF MOTION PURSUANT TO RULE 60(b) AND RULE 6(e) OF THE FRCP

STATE OF NEW YORK)
COUNTY OF QUEENS) ss:

ISRAEL WEINSTOCK, being duly sworn, deposes and says:

1. While I am the Plaintiff in the above captioned action, the within action affects not only the Plaintiff but poses two issues which are fundamental to the functioning of our society and particularly the judicial system: can the rich and the powerful evade and avoid prosecution for their criminal behavior by retaining "prestigious" and "well-connected" attorneys, and can those "prestigious" and "well-connected" attorneys who participate in fraudulent schemes avoid prosecution because of their "connections"? As will be seen in the within Affidavit and verified Memorandum, the answer to those questions thus far is: indeed, the rich and the powerful are not only above the law but can use the law to legitimize their criminal behavior. The underlying case herein, the failure to prosecute the individuals who clearly committed a multitude of frauds and the attempted silencing of your deponent has become "the talk of the town"; it has damaged the credibility of the judiciary as well as the Executive branch of government. Petitions have been signed in behalf of thousands of people and are being submitted herewith, demanding a federal

investigation of the various frauds perpetrated by Handler/Roth/Cleary Gottlieb Steen & Hamilton. I respectfully urge this Court not to view this statement as being melodramatic, but to examine the facts underlying this case which spell out a clear pattern of multiple instances of felonious conduct. The evidence of multiple felonies is massive. Under "normal" circumstances (other players) the evidence would have resulted in numerous indictments and convictions. It is respectfully submitted, however, that the Defendants chose to turn a blind eye to the evidence available and inaccurately (mildly stated) informed the Court that this matter had been presented to a Grand Jury. That, apparently, was the reason that this Court determined that the within action *is moot.* That is because 'there are none so blind as those who will not see'. Clearly, the Grand Jury was not provided with readily available evidence of the various felonies.

Defendants Misled the Court

The above captioned action was dismissed pursuant to a Memorandum and Order of this Court, dated May 19, 2003. Contemporaneously, your deponent submitted a letter to the Court, also dated May 19, 2003, addressing only the fact that your deponent had no way of knowing the actual basis of the Motion to Dismiss made by the defendants inasmuch as the affidavit supporting the said Motion and the Memorandum of Law were submitted *ex parte* and *under seal*. Although your deponent's letter of May 19 did not purport to contain any new, relevant information bearing on the merits of the above captioned action, the Court treated the said letter as a Motion for Reconsideration. Your deponents letter of May 19 made reference to two events, one of them being the evasive and misleading nature of the response provided by the Department of Justice to Congressman Anthony Weiner as to the status of the investigation of the frauds perpetrated against the FDIC; the second "event" was the reference to your Honor viewing lying to the Court as a very serious matter and charges that an attorney lied to the Court are deemed by your Honor to be "a pretty astounding statement" which could get an attorney disbarred. By Memorandum and Order

dated May 30, 2003 the Court denied the "Motion" which your deponent never made, and stated: "Weinstock has failed to point to any decisions or data that will alter the Courts determination that it lacks jurisdiction over this matter." In the initial Memorandum and Order (May 19, 2003) the Court had determined that "*the action is moot* and dismisses the Complaint in its entirety pursuant to Federal R.C.P. 12 (b) (1)." It would appear from the foregoing that the defendants' Affidavits and Memorandum of Law, although filed *ex parte* and *under seal*, "inaccurately" informed this Court that the matters complained of had been presented to a Grand Jury and said Grand Jury did not return any indictments! Indeed, nothing could be further from the truth.

I first wrote to the U.S. Attorney on October 24, 2001; I never received a response to that letter, a copy of which is annexed to the Complaint. I was therefore not informed, as I am now, that the Grand Jury investigation had been concluded and that it allegedly "exonerated" Samuel Roth. When the captioned action was commenced in May 2002 your deponent had no knowledge that Samuel Roth, one of the principals in the various frauds, had appeared before a Grand Jury and had testified. The Office of the U.S. Attorney did not file an answer or make any motions with respect to the complaint until well into 2003. The fact that Roth testified and was allegedly "exonerated" was not known to your deponent until June 2002 (after the Complaint was filed and served) when Roth's testimony was elicited from him by his counsel in a defamation action which Roth, together with Handler, had commenced against me. Said Grand Jury testimony, of necessity, had to have been false as massive documentation exists which establishes that Roth participated in the various frauds.

What has only recently become evident since the Court has determined that the within action *is moot* is that the defendants have misled the Court by asserting that the evidence of the various frauds had been presented to a Grand Jury. Such an assertion (if in fact it was made) was false and was a fraud upon the Court.

Simply stated, the various frauds perpetrated by Handler/Roth and their attorneys reached an apex when Handler submitted a financial statement to the FDIC showing a negative net worth. Handler had sworn in a document submitted to U.S.D.C. Judge Robert Patterson that he was impoverished and subsisting on Social Security benefits and assistance from his daughter. In contrast, Handler had sworn in State Court proceedings that he was the owner of a multi-million dollar property. What ensued were hearings before U.S.D.C. Judge Robert Patterson in which it was demonstrated that Handler had "parked" millions of dollars worth of assets with Roth and other members of his family and was paying enormous legal fees to the various law firms from Roth's or his daughter's bank accounts. Handler's fraudulent statements and submissions and false testimony were exposed. As Judge Patterson noted, Handler's answers were false. Handler could not possibly escape prosecution. The F.D.I.C. investigators who reviewed the documentation and testimony concurred that the case against Handler and his aidors and abettors was airtight; Handler/Roth then turned to "well connected" attorneys. It is respectfully submitted that the presentation to the Grand Jury was a sham - no better than the "charade" presented to Judge Patterson.

U.S.D.C. Judge Robert Patterson Finds the Handler Presentation to be False and a "Charade" and Threatens to Jail Handler and His Aidors and Abettors

The observations made by U.S.D.C. Judge Robert P. Patterson, Jr.are annexed hereto as Exhibit 1. Judge Patterson's decision of February 23, 2000 is annexed hereto as Exhibit 2. The attention of the Court is called specifically to the observations by Judge Patterson which appear on pages 2, 3, and 4, and other judicial observations which appear on pages 6, 7, 8, and 9 of Exhibit 1. Thereafter Handler and his cohorts escaped further proceedings before Judge Patterson by filing a fraudulent Petition in Bankruptcy on May 8, 2002, thus effectively removing all proceedings from the District Court. The trustee in bankruptcy has found that millions of dollars were improperly "parked" with others.

Evidence of Obstruction of Justice, Extortion and Blackmail Not Presented to Grand Jury

Even if the Grand Jury heard testimony from Roth which allegedly "exonerated" him, it certainly could not have heard testimony with regard to the attempted extortion and blackmail practiced upon me by Handler and his associates, including Robert Saltzman and Susan Korenberg, so that the issues raised in my Complaint could hardly be referred to as *moot.*

What the prospective defendants have consistently done is to create a "compendium" of decisions which went against me with a view towards discrediting and vilifying me. They tried that ruse in the hearings before U.S.D.C. Judge Robert Patterson, and it didn't work. They tried that again in the defamation case before the jury, again it didn't work – the jury saw right through it. The jury found that the prospective defendants had been **using the Courts as a vehicle to commit frauds**. Deposition testimony given by Handler in the defamation case revealed that Handler's defense lawyers used that same "compendium" approach with the Office of the U.S. Attorney.

Indeed, counsel for the Grievance Committee, who your deponent maintains practiced the extortion upon your deponent, included one of the charges against your deponent in a disbarment proceeding which he knew the complainant had recanted under oath; he knew that the charges had been fabricated. That did not deter him from using those charges as a basis to carry out his extortionist threats.

In a recent case reported in the New York Times, *Shih Y. Su,* the Second Circuit ordered a man released because the prosecutor had used false testimony. The Court stated, "A conviction that is obtained through testimony the prosecutor knows to be false is repugnant to the Constitution. The prosecutor is an officer of the Court, whose duty is to present a forceful and truthful case to the jury, not to win at any cost."

Attorneys for Mr. Su stated. "When prosecutors engage in this kind of conduct it strikes at heart of fairness in a jury proceeding." In the disbarment proceedings counsel for the Grievance Committee, both Robert Saltzman and Susan Korenberg knew that Walker had recanted his assertion of coercion and had testified that Handler had asked him to create this claim, yet the Grievance Committee counsel used the Walker complaint as one of the bases to have me disbarred knowing full well that Walker had admitted that his claims of coercion were false.

Taking into account the points that follow, it appears to have been impossible for a Grand Jury not to have returned any indictments, unless the presentation by the U.S. Attorney to the Grand Jury was "tailored" so as to make it appear that the Grand Jury had in fact fully investigated the facts relating to clearly fraudulent conduct referred to the Office of the United States Attorney by Judge Robert Patterson, Jr.. Sadly, no such presentation was made.

- Sometime before the year 2000, U.S. District Court Judge Robert Patterson, Jr., of the Southern District of New York, referred the matter to the office of the U.S. Attorney for criminal investigation. Numerous findings had been made by Judge Patterson to the effect that **Emmerich Handler had submitted false sworn statements to the Court**; that an alleged transfer of an interest in a multi-million dollar property to a charitable organization *was proven false;* that Handler had parked assets with his partners and family in order to avoid payment of judgments, including funds owed to the Federal Deposit Insurance Corporation ("FDIC"); consequently, the financial statements that Handler had submitted to the FDIC *were false* and the loan documents submitted to Columbia Bank, a federally insured bank, were also false. **Thus, the FDIC was defrauded of up to $5 million and I was defrauded by Handler of several million dollars.** (please see Exhibit 1)

- In the defamation action brought against me by Emmerich Handler and Samuel Roth, a jury unanimously concluded that both Handler and Roth had defrauded the government and many others of millions of dollars "**using the courts as a vehicle**". (please see Exhibit 3)

- Judge Richard Bohanan of the U.S. Bankruptcy Court of the Southern District of New York found that Samuel Roth (Handler's partner) **knowingly filed a false claim** in connection with one or two of seven Handler instigated bankruptcies (96-44700; 96-44701; 96-44702). Roth also maintained a secret account under the name of yet a second charitable organization.

- An attempt was made to obstruct justice and to silence me through blackmail: either I cease my quest to expose the criminal activities of the persons (including their attorneys) who defrauded me or I would face serious consequences.

After the reference by Judge Robert Patterson, Jr. to the U.S. Attorney, deponent spoke to an assistant U.S. Attorney, David Greenwald, Esq., and offered to appear before the Grand Jury and provide documentary evidence as to the various frauds perpetrated by the Handler/Roth group and their attorneys. Of necessity, your deponent should have been called to testify before the Grand Jury as to the obstruction of justice, extortion and blackmail. That offer was declined for no given reason except that it "might not be appropriate". Additionally, your deponent is verily informed that the following witnesses who had evidence of the various frauds perpetrated by Handler/Roth and their attorneys were not contacted and whose personal knowledge on their part would have made an airtight case for additional counts against Handler/Roth and others:

a. Aaron Elbogen
b. Joel (Joseph) Singer
c. Jack Walker
d. Morton Silberberg
e. Michael Silberberg
f. Mark Lichtschein
g. Edward Rubin, Esq.
h. Eleazer Handler
i. Jerome Bloom
j. Rabbi Ungarisher [1]
k. Gary Herbst, the trustee in bankruptcy for Emmerich Handler and Rita Handler, who has asserted under oath that millions of dollars were concealed by the alleged creditors Emmerich Handler and Rita Handler and transferred to third parties such as Samuel Roth, Eleazer Handler, Hanshe Leibowitz, and others.
l. Chaim Tescher
m. Leon M. Reimer, CPA
n. Saul Seewald, CPA
o. Robert Saltzman
p. Susan Korenberg

There are many others not on this list who have direct knowledge of the frauds perpetrated. These persons should all be witnesses, subjects or targets of a Grand Jury investigation.

[1] These individuals came to my office when the first Grand Jury subpoenas were issued and pleaded with me to settle my cases against Handler so that others would not be placed at risk of prosecution. They stated that if I continued my quest for justice many so-called "innocent" (not Handler) people would be implicated and would face prosecution. They also promised that if I ceased my quest for justice the disbarment proceedings against me would be withdrawn.

U.S.D.C. Judge Patterson Threatens Handler and Associates With Jail; Handler and His Many Attorneys Attempt to Silence Your Deponent

An investigation by my office had revealed that at the time that Judge Patterson seemed to impress Handler with the prospect of his *going to jail* with his aidors and abettors, Handler retained prominent and well-connected criminal defense law firms to represent him in what he obviously understood would be an imminent criminal prosecution. Handler's criminal defense team (Handler's "Dream Team") thereupon *preemptively* authored and filed disciplinary charges against me with the Grievance Committee for the Second and Eleventh Judicial Districts in order to discredit and demonize me and minimize the consequences that Handler and his associates would face when the Office of the U.S. Attorney would be provided with massive evidence of the various frauds committed by Handler and his associates.

The "impoverished" Handler retained Andrew Maloney, a former U.S. Attorney for the Eastern District of New York; Morvillo Abramowitz Grand Iason & Silberberg[2], a firm that primarily consists of former Assistant U.S. Attorneys; and Cleary Gottlieb Steen & Hamilton ("CGS&H"), which describes itself as one of the most prestigious firms in the nation and which firm was demonstrated by me to have been *a participant* in the underlying fraud, and which firm had retained former White House Counsel Bernard Nussbaum who shortly thereafter became "acting Attorney General of the United States". In that underlying case Handler claimed that he owned (jointly with a charitable organization) 48% of a real estate corporation. The State Court Judge awarded Handler 100% of the corporation – thus exonerating CGS&H of its participation in

[2] Diana Parker, Esq., of the Morvillo Abromowitz firm had informed Judge Patterson that she represented Samuel Roth and upon a prior occasion represented Bienenfeld and Wertman (one of the many Handler retained firms). In sworn answers to interrogatories, Diana Parker, Esq., swore in May 1999 that her firm *had not performed <u>any</u> services in behalf of Emmerich Handler and Rita Handler* involving litigations, arbitrations and administrative proceedings in behalf of Emmerich Handler and/or Rita Handler. Subsequently, we discovered evidence that on July 8, 1998 she did perform services for Emmerich Handler and Rita Handler and that when she appeared before Judge Patterson as attorney for Samuel Roth, she had been representing Emmerich Handler. Mr. Roth was simply "running interference" for Handler. That is why Diane Parker did not comply with Judge Patterson's Order that she furnish us with the documentation relating to the Roth bank deposits, but instead filed them with the court "under seal", a procedure that was totally unwarranted under Federal Rules. The public can only view these legal gymnastics as an abomination.

the fraudulent Handler/CGS&H scheme[3]. Handler also retained the firm of Gentile Brotman Maltz & Benjamin. Mr. Michael Gentile of that firm was former counsel to the Grievance Committee in New York City. Additionally, Mr. Handler retained another criminal defense firm, the firm of LaRossa & Ross, former Assistant U.S. Attorneys. Mr. Ross has chaired the Committee on criminal advocacy in the Association of the Bar of the City of New York. Mr. Handler and his partner Samuel Roth, although they have clearly conflicting interests and conflicted stories, are currently being represented by Mel Barkan, Esq. of Brauner Baron Rosenzweig & Klein. Mr. Barkan was formerly an Assistant U.S. Attorney and Chairman of the New York City Civilian Complaint Review Board.

It Would Seem That U.S.D.C. Judge Robert Patterson, Jr. Referred The Matter to The U.S. Attorney For The Southern District, Yet The Matter Was "Disposed Of" in The Eastern District

Since the various falsehoods occurred in the U.S.D.C. for the Southern District of New York it would seem that U.S.D.C. Judge Robert Patterson, who stated that he had referred the matter to the Office of the U.S. Attorney, would have referred it to the U.S. Attorney for the Southern District. Your deponent can only be curious as to why the matter was "disposed of" in the Eastern District. Did the intervention of the former U.S. Attorney for the Eastern District, who appeared in behalf of Handler/Roth, influence the decision not to call key witnesses to the various frauds alleged to have been perpetrated by Handler/Roth and their attorneys?

All told, as seen from the chart annexed hereto as Exhibit 4, the Handler/Roth team engaged more than eighteen law firms, all of whom were paid although Handler continued to assert that he is without any funds or assets and is dependant upon his daughter and friends for support. U.S.D.C. Judge Patterson found such assertions to be false. According to Roth's

[3] George Weisz, Esq., senior litigation partner at CGS&H, testified at the defamation trial in behalf of Handler – the jury rejected his testimony.

testimony in the defamation case, the Grand Jury "exonerated" him. The jury found that Handler/Roth and their attorneys had defrauded me and the government, as well as other individuals, of millions of dollars. The jury implicitly rejected the testimony of George Weisz, Esq., a (now retired) senior partner with Cleary Gottlieb Steen & Hamilton and Kurt Beck, Esq., a former associate with Weil Gotshal & Manges.

Former U.S. Prosecutor Who Worked on the Handler/Roth Matter is Now an Associate With Handler/Roth Defense Firm

It is most telling that one Jonathan Sack, former Deputy Chief for criminal cases in the Office of the U.S. Attorney for the Eastern District of New York who was involved as a prosecutor in the investigation of the criminal conduct of Handler/Roth and their associates, has recently joined one of the Handler defense firms, to wit, Morvillo Abramowitz Grand Iason & Silberberg.

Further particulars with regard to the machinations of the Handler/Roth duo and their attorneys are related in a letter dated October 24, 2001, which was Exhibit "A" of the Complaint filed with the Court. Also annexed to the Complaint are two color charts which demonstrate how Handler/Roth, with the use of a multitude of law firms, managed to avoid criminal prosecution. (additional copies of the color charts are annexed hereto for the Courts convenience as Exhibit 4). Even a cursory review of the charts makes one wonder how it is possible for a person who is "impoverished" to have spent hundreds upon hundreds of thousands of dollars to retain some of the best "connected" law firms in the nation. Judge Patterson allowed your deponent to have access to the records of the various law firms as same pertained to the billings of Handler and payments in his behalf. Indeed, payments were being made by Roth and/or others in behalf of Handler. Since Roth's records were filed with the Court "under seal", what a lovely place in which to hide incriminating evidence. Roth claims that he was "exonerated" by the Grand Jury - why then the need to file records under seal?

Handler/Roth Attempt to Use Grand Jury Inquiry to Legitimize Their Frauds

Indeed the prospective defendants in the criminal proceedings attempted to use the Grand Jury inquiry to their benefit in the defamation trial so as to legitimize the frauds. The jury unanimously rejected the testimony, the Grand Jury alleged inquiry notwithstanding. On June 26, 2002 Samuel Roth was asked the following questions (on direct examination) and gave the following answers (at page 507):

> Q. Did you give - - in connection with any U.S. Attorney investigation, did you give testimony?
> A. Yes.
> Q. When did you give that testimony?
> A. About - - I would say about three, four years ago.
> Q. And what was the outcome of that investigation, were you - - were any charges brought?
> A. I was exonerated.

Additionally, Mr. Roth testified at the defamation trial (at page 528):

> Q. You paid $1,200,000 [to Handler] this is part of the payment?
> A. I proved it in front of the Grand Jury.

Evidence of Fraud Concealed; Filed With the Court Under Seal

Indeed, Diane Parker, Esq., Of the Morvillo Ambramowitz defense firm, who purportedly represented Roth but also represented Handler (which she denied under oath), had filed evidence of Roth's complicity with the Court *under seal,* and that evidence was withheld from the Grand Jury.

Notwithstanding his alleged "exoneration" by a Grand Jury, a unanimous jury in the defamation case concluded, inter alia, that Samuel Roth was a silent partner in crime with one Emmerich Handler who, together with his attorneys, shared "the proceeds of the mortgage so fraudulently obtained" and stated that "Handler shared the bulk of it with one of his cohorts who had acted as his silent partner in crime, Samuel Roth".

WHEREFORE: it is respectfully submitted that this court cannot countenance such conduct by so called "prestigious" members of the criminal bar. What is requested is that your Honor vacate his Order dismissing the Complaint and issue and Order directing the Office of the U.S. Attorney to allow me to appear before a Grand Jury and present the evidence which my office has accumulated over the course of many years and which demonstrate how major law firms have made a mockery of our Courts and a cesspool of the legal profession and the judicial system as a whole. One might ask, "why are the defendants, the law enforcement officials, opposed to my appearing before Grand Jury and providing the Grand Jury with evidence of various frauds committed involving many millions of dollars?

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Sworn to before me this 24 day of
October, 2003

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