

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

Determination

RALPH DEL POZZO,

a Justice of the Germantown Town Court,
Columbia County.

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Henry S. Stewart, Of Counsel) for
the Commission

Honorable Ralph Del Pozzo, pro se

The respondent, Ralph Del Pozzo, a part-time justice of the Germantown Town Court, Columbia County, was served with a Formal Written Complaint dated January 25, 1984, alleging that he acted in cases in which the complainant was a client of his private business. Respondent filed an answer dated May 1, 1984.

By order dated June 6, 1984, the Commission designated Michael Whiteman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 11, 1984, and the referee filed his report with the Commission on October 18, 1984.

By motion dated November 16, 1984, the administrator of the Commission moved to confirm the referee's report and for a finding that respondent be admonished. Respondent did not file any papers in response thereto. On December 13, 1984, the Commission heard oral argument, at which respondent appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Germantown Town Court and has been since 1978.

2. On February 28, 1979, respondent was cautioned by this Commission not to allow his non-judicial relationships to influence his judicial conduct and not to lend the prestige of his office to advance private interests.

3. Since 1980, respondent has owned Ralph's Country Realty, a real estate agency in Germantown.

4. Hannelori Hinkein has worked for respondent at Ralph's Country Realty since October 1980. Rudolph James Skoda has worked for the firm since July 16, 1982.

5. In 1980 or 1981, Gordon Miller Zook listed with Ralph's Country Realty 5.26 acres of unimproved land that he owned across Route 9G from his home in Germantown.

6. Respondent was aware in 1980 or 1981 that Mr. Zook was trying to find a buyer for the land through respondent's agency.

7. On November 20, 1982, Mr. Zook had his former wife, Gloria Rae Zook, and his daughter, Sunshine, arrested for trespassing at his home across the road from the property listed with respondent's agency. Gloria Zook had been evicted from the home five days earlier.

8. Gloria and Sunshine Zook were arraigned after their arrest before respondent on charges of Criminal Trespass, Second Degree. Respondent committed the women to jail in lieu of \$500 bail each. The cases were adjourned to December 8, 1982. Sunshine Zook was released on November 20, 1982, after bail was posted. Gloria Zook was released in her own recognizance three days later.

9. Between November 15, 1982, and December 3, 1982, Mr. Zook listed his home with Ralph's Country Realty. Ms. Hinkein took the listing and notified respondent of it.

10. On December 3, 1982, Mr. Skoda showed the Zook house to a prospective buyer on behalf of Ralph's Country Realty.

11. Gloria Zook came to the house while Mr. Skoda was showing it and challenged Mr. Skoda's authority to show the house for sale.

12. Mr. Zook was notified of his former wife's presence at the house.

13. Respondent was told of the confrontation between Mr. Skoda and Ms. Zook.

14. Mr. Zook signed a second complaint, dated December 4, 1982, alleging that his former wife trespassed at his home. Mr. Skoda signed a supporting deposition.

15. On December 4, 1982, respondent signed a warrant for Gloria Zook's arrest on the second charge based on the complaint of his client, Mr. Zook, and the deposition of his employee, Mr. Skoda.

16. On December 8, 1982, Sunshine Zook appeared before respondent in connection with the first incident. Respondent disposed of the matter through an adjournment in contemplation of dismissal on the condition that Ms. Zook not reenter the home for six months.

17. Gloria Zook also appeared before respondent on December 8, 1982. Respondent disqualified himself from the cases and transferred them to another justice of the Germantown Town Court. The charges were adjourned in contemplation of dismissal.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(a), 100.2(c), 100.3(a)(1) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A, 2B, 3A(1) and 3C(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent arraigned Gloria and Sunshine Zook on the complaint of Gordon Zook nearly two years after he had listed for sale Mr. Zook's unimproved land. Thus, respondent and Mr. Zook had a business relationship at the time Mr. Zook's complaint came before him. Respondent's impartiality might reasonably have been questioned, and he should have disqualified or offered to disqualify himself. Section 100.3(c) of the Rules Governing Judicial Conduct.

Respondent acknowledges that he had been informed of the listing of Mr. Zook's land but claims that he was not conscious of it when he arraigned Gloria and Sunshine Zook. Nonetheless, by acting in a matter in which his client had a substantial interest, respondent created the appearance of impartiality. Furthermore, he had a duty to inquire and determine whether he had a conflict between his private business activities and his role as a judge.

After Gloria Zook's eviction, Mr. Zook listed his house with respondent's agency, and respondent acknowledges that he was aware of the listing. Nonetheless, respondent signed a warrant for Ms. Zook's arrest based on the second complaint of his client, Mr. Zook, and stemming from an incident which occurred while respondent's agent, Mr. Skoda, was showing the house. By this time, respondent and his real estate agency had become players in the Zook dispute, and respondent should have been in no way involved as a judge. In addition to signing the warrant, respondent disposed of the case against Sunshine Zook after becoming intimately involved in the matter.

"Public confidence in the integrity of the judiciary and the entire legal system is diminished when a judge has an interest in a matter over which he presides." Matter of Whalen, unreported (Com. on Jud. Conduct, Jan. 20, 1983) p. 9.

Respondent should have been especially careful to avoid any conflicts between his business and his judicial role in view of the Commission's previous caution concerning his business activities.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mrs. Robb, Mr. Bromberg, Mr. Cleary, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

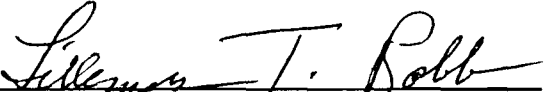
Mr. Bower dissents as to sanction only and votes that respondent be censured.

Judge Alexander, Mrs. DelBello and Mr. Kovner were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: January 25, 1985


Lillemor T. Robb, Chairwoman
New York State
Commission on Judicial Conduct

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DISSENTING
OPINION BY
MR. BOWER

I dissent as to sanction only.

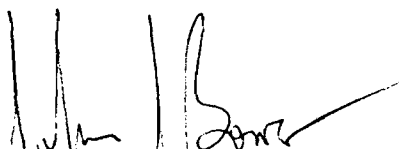
The referee before whom the matter was tried, rejected respondent's contention that on November 20, 1982, the respondent was not conscious of the business relationship with Gordon Zook when he arraigned Gloria and Sunshine Zook in his court.

More significantly, the respondent makes no bones about the fact that on December 3, 1982, he well knew that indeed, a business relationship existed between Gordon Zook and respondent's firm. Nonetheless, with awareness of that fact, respondent signed a warrant for Gloria Zook's arrest based on the complaint of his client and deposition of respondent's employee, Mr. Skoda. Astonishingly, a few days later respondent sat on the matter of Sunshine Zook, acted as a Judge and disposed of the matter through an A.C.D. on condition that she not re-enter the home which respondent's firm was trying to sell for six months.

Respondent's previous contact with this Commission resulted in a caution concerning the conflicts between his business activities and his duties as a Judge. That caution should have sensitized him to a high degree of awareness of his judicial duties vis-a-vis his business interests.

Upon the oral argument, respondent's defense to this charge was that he was without venal intention and that he habitually performs charitable acts that demonstrate his unselfish nature. I find these defenses scant mitigation for the obvious disrepute into which respondent brought his court. More than admonition is required. Respondent should have a clear expression of our disapproval. Accordingly, I vote to censure him.

Dated: January 25, 1985



John J. Bower, Esq., Member
New York State
Commission on Judicial Conduct