



NEW YORK POST

MONDAY, AUGUST 11, 2003 / A shower in the afternoon, 86 / Weather: Page 32 **

LATE CITY FINAL

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COURTING DISASTER

Man makes first bid to KO all rulings by 'conflict' judge

By DAREH GREGORIAN

A Manhattan man wants an appeals court to toss all of an embattled judge's rulings against him because of her alleged undisclosed conflicts of interest — the first in what could be a flood of such claims. The Post has learned.

Anthony DeRosa filed papers with the state Appellate Division arguing all of Justice Marilyn Diamond's rulings in his case should be declared "null and void" because she didn't disclose that she owned stock in — and had other ties to — his opponent in the case, JPMorgan Chase Bank.

That omission violates judicial law, the appeal says.

If successful, DeRosa's appeal could open the door to numerous other litigants to look to vacate rulings in other cases Diamond has presided over involving companies she owns stock in.

"It could certainly have ramifications," said DeRosa's lawyer, Tom Shahan. "Anytime there's even the potential for a conflict of interest, it has to be disclosed."

DeRosa, 37, brought suit against Chase in 2001 after the bank tried to foreclose on his apartment. The case

was assigned to Diamond, who eventually ruled for the bank.

DeRosa says she ignored evidence of the bank having handled the foreclosure improperly.

DeRosa, a Wall Street researcher, turned his talents on the judge, and found her retired judge husband, Franklin Weisberg, was doing work for a law firm that did work for Chase.

He then looked at their state financial disclosure records, which showed both owned stock in the bank.

Those ties had never been disclosed to DeRosa, an apparent violation of

state judiciary law, which requires a judge to reveal "ownership of shares of stock or other securities of a corporate litigant," the appeal says.

Monroe Freedman, a judicial ethics expert, said DeRosa should win his appeal.

"A judge should not have any financial interest in the matter," he said.

He added that if the judge failed to make disclosures in this and other cases, that could lead to disqualifications where "the judgment is vacated and the case starts all over again from scratch" before another judge, even if it's years old.

Diamond has presided over nine Chase cases since 2000, and five cases involving Verizon, another company she has a financial interest in. The Post reported last month that the lawyers in the Verizon cases were unaware of that interest.

Diamond recused herself from the Verizon cases a day after The Post story, and she's now recused herself from all Chase cases.

Lawyers for Diamond and JPMorgan Chase didn't return calls.

The FBI and state Commission on Judicial Conduct are investigating the conflict claims.



ART OF THE MATTER: The bequeathed Matisse painting, "The Young Sailor II."

EXCLUSIVE

By JOHN LEHMANN and DAREH GREGORIAN

FBI investigators probing possible conflict-of-interest charges against a Manhattan Supreme Court justice are now reviewing the judge's role in a multimillion-dollar estate case, The Post has learned.

The new turn in the investigation has agents looking at Marilyn Diamond's position as a trustee for the estate of Natasha Gelman, an art heiress who died in 1998 leaving behind a fortune estimated at well over \$400 million and an ugly fight over the money, a source close to the case said.

Gelman's cousin, Jaroslav Jung, who's suing Diamond over the estate in Manhattan federal court, told The Post he met with two agents from the FBI's Corruption Squad for more than three hours on Friday.

"We met for many hours and it went very well," said Jung, 56. "They were extremely interested in what we had to say."

A law-enforcement source confirmed the meeting took place, but declined to elaborate.

The suit by Jung and his wife, Alice, charges that Diamond and two other lawyers used "undue influence" to take advantage of Gelman after the Alzheimer-stricken heiress "was no longer of sound mind" for "the purpose of obtaining and consolidating [their] control over Mrs. Gelman's assets."

Two prior and related legal actions by the Jungs — one in Manhattan Surrogate's Court and one in arbitration in Lichtenstein — were unsuccessful, noted Diamond's lawyer, Paul Curran. He said he's moving to have the current action dismissed because the estate was left "the way Mrs. Gelman wanted it."

The FBI has been looking into Diamond since late last year because of information from "a dissatisfied litigant" charging she had an undisclosed conflict of interest in some bank cases over which she was presiding because her lawyer husband, retired state Supreme Court Justice Franklin Weissberg, now works for a law firm that did work for the bank, the source said.

Jung's meeting with the feds was arranged by Wall Street researcher Anthony DeRosa, who said he's spoken to investigators "several times" over the past few months and has given them numerous documents relating to the conflict-of-interest probe.

DeRosa is a member of the so-called "Diamond support group," a group of about 30 people,

JUDGE DIAMOND IN A ROUGH SPOT

FBI probes new trustee \$\$ battle



MONEY MATTER: Relatives of art heiress Natasha Gelman (left, with husband Jacques, cousin-by-marriage Alice Jung and god-daughter Michelle Jung) say Marilyn Diamond (right) exercised "undue influence" to cut them from Natasha's will.



mostly men, who feel they've been treated unfairly by the judge.

DeRosa said he started looking into the judge's other cases because he felt she'd made several questionable rulings in his case, a foreclosure action that he lost.

"I'm a big boy and I can handle losing, but her rulings made no sense to me at all. I do research and due diligence for a living, so instead of working on a company, I went to work on" the judge, DeRosa said.

Two other people told The Post they've been questioned by the FBI in the probe — DeRosa's lawyer, Tom Shanahan, and Gary Jacobs, a "Diamond support group" member who went through a bitter divorce proceeding before the judge.

Diamond's lawyer, retired federal court judge Harold Tyler, has denied there was any wrongdoing or conflict on the part of the judge or her husband. Asked about Jung's meeting with the investigators, he said, "I can't comment on the FBI. They don't let you know when they're doing these things."

Jung, who immigrated to the United States from Czechoslovakia in 1968, has been sparring with Diamond and her two colleagues since Gelman, the widow of art-collecting movie producer Jacques Gelman, died in 1998.

Diamond was Natasha Gelman's lawyer until Diamond was elected to a judgeship in 1991, and her law partner took over the representation.

Jung's suit claims that, between 1991 and 1998, Diamond and the two other lawyers got Gelman to sign over control of her estate to them, and that they proceeded to cut the Jung family, Gelman's closest relatives, out of the will and estate planning.

kindly octogenarian, the Jungs stood to inherit \$21 million. In the end, they were left a total of \$10,000, Jung said. Jaroslav's daughter Michelle — the Jungs' goddaughter — was cut out completely, Jung said.

Diamond, meanwhile, received \$11 million, and gets an undisclosed amount in fiduciary commissions, the suit says.

The entire value of Gelman's estate is unclear. She left her

ow's life. The institute claims it was cheated out of \$11 million in a conspiracy, but it blames the other two lawyers for the "scheme to defraud," and not Diamond.

"No allegations of unlawful conduct herein are directed against Diamond," that suit says.

Jung and his family had also challenged Gelman's 1993 will, charging she was suffering from Alzheimer's at the time it was put together, but Manhattan Surrogate Court Judge Eve Preninger dismissed that action in late 2001, finding Gelman "was in all respects competent to make a will, and not under restraint," and that Preninger was "satisfied of the genuineness of the will."

In that action, Diamond's law partner contended Gelman was "mentally fit" when she made the changes to her will, trust and foundation, and that the Jungs were the ones who were trying to take advantage of a woman who'd given them plenty of money during her lifetime.

Jaroslav Jung said the Gelmans did help support him and found him a job when he first arrived in the United States, and that they were very generous to him and his family over the years.

"They were always extremely kind to us," he said. "That's why I will never stop fighting for them."

Marilyn Diamond took advantage of Natasha Gelman after the Alzheimer-stricken heiress "was no longer of sound mind."

Lawsuit by Jaroslav Jung, Natasha Gelman's cousin

Gelman, the suit says, was diagnosed with "progressive Alzheimer's disease" in 1995 but was obviously suffering from the effects of disease as early as 1991.

Nevertheless, in 1997, Gelman allegedly put together new by-laws for a trust she created in 1993, and named Diamond and her law partner co-trustees.

The suit says that before the trio of attorneys started taking "unlawful advantage" of the

\$300 million art collection — including works by Bonnard, Matisse and Picasso — to the Metropolitan Museum of Art, and her various trusts and foundations have been estimated to contain anywhere from tens to hundreds of millions of dollars.

Diamond and the other lawyers are also being sued by the scientific Weizmann Institute, which was also cut out of Gelman's estate in the latter years of the wid-

New York Law Journal



Web address: ht

NEW YORK, WEDNESDAY, FEBRUARY 4, 2004

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Foreclosure Suit Becomes Hot Potato for City Judges

BY TOM PERROTTA

DOZENS OF lawsuits are randomly assigned to Civil Court judges in Manhattan each day, but there seems to be one litigant that none of the jurists at 60 Centre Street want in their courtroom: Anthony DeRosa.

In the last three weeks, five Supreme Court justices have recused themselves from Mr. DeRosa's dispute over the foreclosure of his Upper West Side apartment — three of them since last Friday. Four of the five have taken a pass on Mr. DeRosa without being asked to do so. Three have given reasons, two have not.

Attorneys who both represent and oppose Mr. DeRosa, however, point to an unspoken reason for this rare and fast-moving game of hot potato: the reputation Mr. DeRosa has built for himself in the last few years as a relentless litigant who is more than willing to make his case in the press.

When J.P. Morgan Chase foreclosed on his Upper West Side apartment and sold it at an auction in 2001, Mr.

DeRosa sued to get it back, claiming he was never notified of the sale.

Supreme Court Justice Marilyn G. Diamond ruled against him, but Mr. DeRosa appealed, arguing that Justice Diamond should not have heard his case because she has investments in Chase, and that her husband also has a relationship with the bank. The allegations, as well as an investigation into Justice Diamond by the FBI, have been widely reported in the press. Mr. DeRosa said he is cooperating with the FBI investigation and his appeal is pending in the Appellate Division, First Department.

Justice Diamond's ruling was only the beginning, though. A subsequent action — filed by Semyon Pesochinsky, who bought Mr. DeRosa's apartment at auction — has bounced through the chambers of five judges, landing on the desk of a sixth one, Acting Justice Jane S. Solomon, yesterday afternoon.

Mr. Pesochinsky had sued to force

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Foreclosure Suit Is Hot Potato for City Judges

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Mr. DeRosa to pay maintenance on the co-op, in which Mr. DeRosa still resides. The case was first assigned to Acting Justice Shirley Werner Kornreich, but Mr. DeRosa asked the judge to recuse herself from the case since she, too, owned stock in J.P. Morgan Chase. In court papers, he noted his previous case before Justice Diamond, as well as the FBI investigation and the press attention it received. Justice Kornreich stayed on the case and, in December, ruled in Mr. Pesochinsky's favor, ordering Mr. DeRosa to pay thousands of dollars in back maintenance.

In January, though, Justice Kornreich's name appeared in a New York Post article that reported on an alleged FBI investigation that had been broadened to include the judge. She then recused herself, citing a concern that she might appear to be biased against Mr. DeRosa as the case continued. An FBI spokesman said the agency does not confirm or deny investigations.

Justice Kornreich stepped aside on Jan. 13 and since then four judges have said no to Mr. DeRosa — all of

their own volition. Justice Richard F. Braun declined to take the case because he lives in the same building as Jeffrey M. Eilender of Schlam Stone & Dolan, one of Mr. Pesochinsky's attorneys.

Justice Sheila Abdus-Salaam held a hearing last week, saying she was "aware that there had been a lot of difficulties" surrounding the case, according to a transcript. She proceeded to discuss any disclosures either side expected her to make.

After a brief recess, though, Justice Abdus-Salaam said she was aware that the Daily News is planning a story on alleged conflicts of interest of Manhattan judges — a story that she said would likely focus on her, among others. Although the judge said "I believe whatever the Daily News is about to say about me is totally unfounded," she had decided to recuse herself. She suggested that Mr. DeRosa's lawyer, David B. Cohen of Scarsdale, move for a change of venue out of Manhattan.

On Monday, the case was assigned to Acting Justice Harold B. Beeler, who recused himself without reason. The court's random computer program spat out another name yester-

day — Acting Justice Marcy S. Friedman — and she recused herself, without reason. Then, Justice Braun was randomly assigned again, but he had already recused himself. Justice Solomon was the last to receive the case yesterday, and she called for a hearing this morning.

While judges may explain their decision to recuse themselves, they are not required to do so, according to David Bookstaver, Office of Court Administration spokesman.

If there is one thing that both attorneys for Mr. DeRosa and Mr. Pesochinsky agree on, it is that few strong reasons — under the law — have been offered for the rash of recusals.

"It think it's just become a political hot potato and they just don't want to touch it," said Mr. Cohen of the judges. "They think it is going rub off on them." Mr. Cohen argues that Mr. DeRosa can no longer receive a fair hearing in Manhattan, and he intends to move for a change of venue. He said he almost did so before Justice Abdus-Salaam was assigned the case, but he thought she was a fair jurist "who calls them like she sees them."

Mr. Eilender and his co-counsel, John McFerrin-Clancy, have a different view of the matter, and sum it up with the word "extortion."

"These judges saw what happened to Justice Diamond in the press, they saw [Mr.] DeRosa's threat against Justice Kornreich, which was carried out," Mr. McFerrin-Clancy said. "This is rank extortion depriving us of our day in court. Mr. Cohen and Mr. DeRosa run the courthouse now."

Mr. Eilender said he has filed a complaint against Mr. Cohen to the disciplinary committee; Mr. Cohen said sanctions are appropriate against Mr. Eilender, though he does not think he could win them.

Mr. DeRosa, for his part, said he just wants his apartment back, and that he can easily raise the money needed to pay off the mortgage. "What am I doing wrong?" he said. "I am trying to save my home."

Mark C. Zauderer, a partner at Piper Rudnick and the chair of a commission on jury reform, said he had never seen anything like this in all his years of practice.

"Generally, for good policy reasons, judges should not recuse themselves from cases unless there is a reason to do so, because the obligation to sit on a case comes with the job," Mr. Zauderer said. "I cannot recall a situation like this where a case has gone through the dockets of this many judges. I don't presume to know the reason for it, but it is certainly unusual."

Justice Solomon's turn is next.

Feds probing Diamond

FBI investigates cases of the letter-threat judge

By MICHELE MCPHÉE
DAILY NEWS POLICE BUREAU CHIEF

The FBI has launched an investigation into Manhattan Supreme Court Justice Marilyn Diamond, focusing on possible conflict of interest from the bench, the Daily News has learned.

FBI Special Agent Matthew McPhillips has interviewed two men in the so-called Diamond Support Group, a cadre of 21 former litigants who say the judge ruled against them because of political alliances and personal vendettas — a claim the judge's lawyer has denied.

Separately, Sherrill Spatz, the inspector general for the state Office of Court Administration, also has opened a probe into Diamond's decisions, sources said.

Last year, The News reported that NYPD investigators suspected Diamond was sending herself threatening letters to justify an around-the-clock police detail, a theory bolstered by a respected criminal profiler.

Police were not able to prove their theory that Diamond wrote the letters, and her lawyer, retired Federal Judge Harold Tyler, denied she did so.

Now, McPhillips and the bureau's Corruption Unit are poring through piles of financial documents and decisions relating to Diamond and her cases, two law enforcement sources told The News.

Wall Street researcher and Diamond Support Group member Anthony DeRosa, 37, said he has been questioned by FBI agents dozens of times since January, when the investigation of Diamond began. DeRosa said he also has spoken to Spatz about the case.

"These agents are digging every day," he said. "This judge should be taken down."

DeRosa said FBI agents told him investigators are trying to determine whether there are any questionable ties between Diamond and JP Morgan Chase Bank — a banking giant the judge has ruled in favor of numerous times. DeRosa was a plaintiff in front of Diamond in a case involving the bank three years ago, and lost.

Diamond's husband, former state judge Franklin Weissberg, is an attorney with a firm that represents JP Morgan Chase, according to Diamond's lawyer.

DeRosa's lawyer, Tom Shanahan, also was questioned by the FBI, he said.

"I can say I answered their questions, but I've been asked



Justice Marilyn Diamond

not to discuss it," Shanahan said. Tyler said he was shocked by news of the FBI probe.

"I am amazed. I am truly amazed. As if the FBI doesn't have better things to do right now," he said. "I'm speechless. I'm shocked."

Tyler said Diamond was not aware that her husband's firm did legal work for JP Morgan Chase.

"Judge Weissberg does not discuss the firm's clients with his wife," said Tyler, who pointed out that the FBI has not subpoenaed Diamond's files.

David Bookstaver, a spokes-

man for the Office of Court Administration, would not comment on the FBI probe. He also refused to confirm that his agency is conducting an investigation.

FBI spokesman, Special Agent James Margolin, would not confirm or deny whether the agency is investigating Diamond.

But the FBI has interviewed at least one other litigant who had a case in front of Diamond and wants to talk to others — including a group of men whom she fingered as suspects behind the series of threatening missives she received.

"I got the sense the FBI was taking this very seriously and were asking me a lot about my lawyer, who also worked for Chase Bank," said Gary Jacobs, a Manhattan real estate broker interviewed by agents last month about his dealings with Diamond during his 1998 divorce. "My dealings with Judge Diamond were peculiar, to say the least, and I told them that. She demoralizes you."

Cop posed as waiter

The NYPD was so convinced Diamond was sending herself the bizarre letters that a detective posed as a waiter at her favorite upper East Side bistro to get her fingerprints. She was followed through the aisles of Saks Fifth Avenue by undercover

cops.

A camera was positioned outside her home. Mail at the judge's upper East Side post-office branch, and in the lower Manhattan courthouse where she worked, was searched for letters addressed to Diamond before it was sent out. A handwriting analyst compared her signature on court documents to scrawled words like "Die bitch."

Her garbage was routinely rifled through. She and her husband were followed to see whether they made "mail drops."

Diamond at one time handled high-profile divorce cases, including the breakups of billionaire tycoon Ron Perleman and art mogul Alex Wildenstein. In recent years, she has presided over general civil cases, Bookstaver said.

Tom Snowdon, a Park Ave. businessman who claims he was ruined financially by Diamond's rulings during his divorce from fashion designer Cathy Hardwick, said he was relieved the judge was under scrutiny.

Snowdon, a Diamond Support Group member, said he was tailed and questioned by detectives after Diamond suggested he write the threatening letters.

"I think she's quite corrupt, and I'm grateful something might be done about it," Snowdon said.

JUDGE IS BENCHED

Sidelined amid conflict probes

EXCLUSIVE

By DAREH GREGORIAN

A controversial Manhattan judge who's being investigated by the FBI is no longer being assigned new cases, The Post has learned.

State Supreme Court Justice Marilyn Diamond has been quietly moved from an "individual assignment section" part at 60 Centre St. to a "hybrid general trial" part — meaning she's no longer getting new court cases to preside over, court sources said.

Diamond, 62, has been the subject of an FBI investigation into conflict-of-interest allegations since this past December, and she's also being probed by the state Commission on Judicial Conduct, the panel charged with disciplining judges.

Both probes are looking at the judge's stock holdings.

The Post reported earlier this year that Diamond was presiding over cases involving JP Morgan Chase and Verizon, even though she never told the case participants that she owned stock in those two companies.

State judiciary law requires that a judge reveal "ownership of shares of stock or other securities of a corporate litigant." Lawyers concerned about any potential conflicts of interest could then ask the judge to step down from the case.

Altogether, Diamond has presided over dozens of cases involving firms she has a financial interest in. Her lawyer, Harold Tyler, has said the judge was unaware of what stock she

owned until earlier this year. Nevertheless, David Bookstaver, a spokesman for the state Office of Court Administration, insisted that Diamond's new assignment is procedural and not punitive.

"To characterize this as a punishment would be wrong," he said. "This is certainly not a punishment in any way, shape or form."

He added that the chief judge of Diamond's courthouse, Jacqueline Silbermann, reassigned Diamond around mid-summer "in the interest of keeping cases moving efficiently."

While she won't be getting new cases, Diamond will keep the more than 300 cases she still has pending before her, and will be available to preside over trials for other judges who have scheduling conflicts.

A courthouse source said the move was necessary because Diamond has recently started recusing herself from a large number of the cases she already had and a large number of new cases that were coming in to her because of her holdings.

Anthony DeRosa, who uncovered the judge's financial ties to Chase after losing a case before her against the bank, said the development makes him "feel validated."

"I'm incredibly satisfied that all my hard work is paying off," he said.

DeRosa — whose information sparked the FBI investigation — is appealing Diamond's ruling in his case, arguing all of her rulings should be declared "null and void" because she didn't disclose her stock interest.



CASE KISS-OFF: Justice Marilyn Diamond, the subject of an FBI probe, has been reassigned to a new post in which she will not handle new cases. Juan Gonzalez