

Lawyer Is Ordered to Pay \$19,000 For Bringing a 'Meritless Lawsuit'

By ARNOLD H. LUBASCH

A Federal judge yesterday ordered a lawyer to pay \$19,000 in legal costs for filing a "meritless lawsuit" that accused the Victim Services Agency of racial discrimination.

The order, by Judge Henry F. Werker in Federal District Court in Manhattan, said the lawyer, Gabe Kaimowitz, must pay the costs the private agency had incurred in defending itself against the suit.

Mr. Kaimowitz, who was with the Puerto Rican Legal Defense and Education Fund at the time of the suit, said he had filed it with the approval of the fund. He said he would ask the New York Civil Liberties Union to represent him in appealing the judge's decision.

"This decision threatens every public-interest, legal-services and civil-liberties practitioner," Mr. Kaimowitz said, adding the decision could "seriously inhibit the bringing of Federal civil-rights complaints."

A staff counsel for the New York Civil Liberties Union, Richard Emery, said he had not decided whether to take the case. "It may very well turn out to be a very important case," Mr. Emery said, "because, if this precedent is permitted to stand, judges and defendants can stifle public-interest litigation that is brought in good faith."

The case grew out of a complaint that Mr. Kaimowitz filed last year for Terry Birmingham and Denise Santiago, who were dismissed from jobs at the Victim Services Agency, a nonprofit group that aids crime victims.

Judge Werker said the women, a black and a Hispanic, contended their dismissals were discriminatory. But, he said, they were discharged for using drugs at work.

After a hearing last June, the judge ruled that their complaint that "whites were treated differently" at the agency was "devoid of substantiating facts."

The women dropped their suit after the judge rejected their motion for a preliminary injunction.

In the nine-page decision that Judge Werker filed yesterday, he said, "The purpose of permitting attorney's fees to a defendant in certain circumstances is to prevent a defendant from being forced to litigate cases where there is no factual or legal basis.

"Where there is no substantiating evidence, a court is justified in determining that the complaint is meritless and unreasonable. Under these circumstances, I have discretion to award attorney's fees to the defendants."

The judge said he wanted to "fulfill the deterrent purpose" without causing "financial ruin to the plaintiffs." Therefore, he said, he was assessing each plaintiff only \$50.

"The remainder of the fees," he said, "will be allocated against plaintiffs' attorney, Mr. Gabe Kaimowitz, who is better able to afford the assessment of the costs. The record amply demonstrates that counsel is primarily responsible for the abuse of the judicial process."

Judge Werker said a lawyer who signed a complaint was "obligated to ascertain if there is a sufficient factual basis to support the allegations." He added that a sanction was "to tax the offending attorney with his opponent's legal fees."

"In bringing this baseless suit," he said, "Mr. Kaimowitz has wasted my time and the time and money of the defendants."

Noting that the Victim Services Agency is a division of the Metropolitan Assistance Corporation, Judge Werker said the group "performs an important public service for the citizens of New York City, particularly low-income citizens who are so often the victims of crime."