

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CARL W. FRANTZ, on behalf of : CIVIL ACTION
himself and all others :
similarly situated :
 :
v. :
 :
FIRST UNION NATIONAL BANK, :
successor to CORESTATES :
FINANCIAL CORP., successor to :
MERIDIAN BANCORP, INC., successor :
to the FIRST NATIONAL BANK OF :
ALLENTOWN : NO. 99-1124

MEMORANDUM AND ORDER

Fullam, Sr. J.

October , 1999

In 1970, in the course of various bank mergers and acquisitions, changes were made in certain pension and profit sharing plans. In 1992, an attorney named Harry A. Dower, Esquire brought suit on behalf of a class of employees allegedly adversely affected by these changes. A named plaintiff in that action was a gentleman named Kuhns. A class was certified. After a non-jury trial, Judge Cahn of this court, dismissed virtually all of plaintiffs' claims as time-barred, and otherwise lacking in merit. On appeal, the Third Circuit Court of Appeals upheld the dismissal, but also directed dismissal of the remaining claims, and remanded the action to the district court with instructions to enter final judgment in favor of the defendants. Plaintiffs sought reconsideration, but the

application was denied.

Undaunted, Mr. Dower sought further relief in the district court, appealed its denial to the Third Circuit, which not only affirmed the lower court, but sanctioned Mr. Dower.

This did not end the matter. In 1998, Mr. Dower, re-filed a virtually identical action in this court. The case was assigned to my colleague Judge Joyner, who, naturally, promptly dismissed it as barred by res judicata. Kuhns v. CoreStates Financial Corp., 998 F. Supp. 573 (E.D. Pa., 3/20/98).

Mr. Dower proved difficult to convince: In March 1999, on behalf of another member of the class, a gentleman named Frantz, and the same class involved in the previous actions, brought the present case. In May 1999, on motion of the defendants, I entered an Order dismissing this action with prejudice. Some seven weeks later, Mr. Dower wrote a letter to the Court which was apparently intended as a motion for reconsideration.

The Motion for Reconsideration will be denied as untimely. Even had it been timely filed, however, it is apparent that the dismissal was proper.

Defendants have, understandably, filed a Motion for Sanctions. Under ordinary circumstances, the motion would be granted without further ado. But because of the bizarre nature of Mr. Dower's submissions (letters suggesting mediation; letters

and other documents evincing a total lack of realization that the action has been finally dismissed, or that the earlier appellate decisions barred all attempts to resurrect these claims), it seems likely that Mr. Dower's sanctionable conduct may be the result of physical or mental infirmity.

An Order will therefore be entered which (1) prohibits Mr. Dower from attempting to further litigate the claims asserted in this action or the earlier actions, and (2) affords Mr. Dower an opportunity, by the submission of medical evidence concerning his health problems and competency to practice law, to demonstrate that the imposition of sanctions would be unjust. Counsel for the defendants is also invited to submit information on these subjects.

An appropriate Order follows.

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ORDER

AND NOW, this day of October, 1999, IT IS ORDERED:

1. Plaintiffs' Motion for Reconsideration is DENIED.
2. Plaintiff, members of the plaintiff class, and Harry A. Dower, Esquire are all enjoined from any and all further attempts to litigate the claims asserted in this action and the previous actions they filed against these defendants or their predecessors.
3. Harry A. Dower, Esquire is directed to show cause, if any, within 30 days, why he should not be sanctioned for filing and processing this lawsuit.

John P. Fullam, Sr. J.