

11/16/73

Dear Mr. Whitson,

I have delayed responding to Mr. Montella's October 19 response to my inquiry of you in the hope that now seems futile, that I would have heard from you and/or Mr. Hamilton by now. It has been almost a month.

What I see is a repetition of the past, an attrition campaign to just drag things out and to never at any point really come to grips with what is at issue. I have in the past and I now again solicit your candor on this, for I do not want this to go where you may not want it to. However, non-responsiveness and not responding at all do limit my options.

Mr. Hamilton objected to my use of the word "fraud." I did not use it without having consulted counsel, first in Washington and then in New York, in both cases on display of some of the evidence only. If you or Mr. Hamilton have familiarized yourselves with the facts in this case to the degree making meaningful responses to me should, in my view, have required, we should not at this late date be dealing in semantics and evasions. Before I went to New York in May I left David know I was going there and would be filing an action. It is the accident of my having discovered the Dutton arrangement only that caused me to hold back, as I then told Mr. Macrae. Mr. Macrae led me to believe that I would be getting an acceptable settlement. My previous correspondence left no doubt the least I would find acceptable. Had it not been for this I would have filed against all of you in May.

If I have to, this is going to be a really nasty business. The unpardonable things that ~~are happened with the opening of the~~ ranged downward from opening all my mail, even from the League of American Writers. The character of the fraud ranges downward from giving me a list of utterly spurious "author's alterations" largely entirely non-existent, often consisting of typographical errors for which I could have not no responsibility, the correction of errors in editing and all of this in addition in open violation of the provisions of the contract, which I did invoke at the outset. These things are all susceptible of proof and despite the fact that I was then handicapped and could use one hand only, I did offer it in writing. It is difficult for me to believe that Mr. Hamilton can be unaware that in giving me what he did instead of what I had from the first demanded and been promised he actually gave me proof of additional mail fraud.

I have every reason to believe that I can substantiate an allegation of damages greatly in excess of the compromise I have offered. I regard it as a very considerable compromise. I am without doubt, after having talked to lawyers, that my prospects for collection are good. They tell me, in fact, that the cost of defending an action could easily exceed what I have offered to settle for and to this is added the cost of what I could win in court. Therefore, I do have difficulty understand how things could have come to this pass.

It is no secret that I want to avoid the unpleasantness of taking this to court for I have been frank about it. However, I cannot delay bringing this distasteful matter to a climax, whatever it may be. You and Mr. Hamilton are now just stalling. You, for example, have not yet responded to me on the questions I raised about the remainders, more than just what you shipped us. And on this, Mr. Montella's letter gives a count other than ours. Without opening each package and making a book-by-book count, which could increase the spread, we can account for receiving 1,910 copies only - and I did buy I believe some 4,000.

If you are determined that this matter go to court, would you please be kind enough to so inform me?

Sincerely,
Harold Weisberg



E. P. DUTTON & CO., INC. 201 Park Avenue South, New York, N.Y. 10003

October 19, 1973

Mr. Harold Weisberg
Route 8
Frederick
Maryland 21701

Dear Mr. Weisberg:

Mr. Whitson has asked me to furnish you with an accounting of the books we recently shipped to you.

I have contacted our warehouse and they advise that 2,046 copies of "Frame Up" were shipped in 76 cartons. Many of the cartons were the actual sealed cartons received from the binder, and I can only assume that the quantity listed on the outside is correct. Our perpetual inventory for that period reflected 2,031 copies, so as you can see, the 2,046 which we shipped seem to indicate a fairly close tie-in between our physical inventory and perpetual records.

If you have any further questions regarding this shipment, please feel free to contact me at your convenience.

Sincerely,

Fred A. Montella
Manager
Customer Service

FAM/gsw

cc: Ivor Whitson