

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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HAROLD WEISBERG,	:	Index No. 1845-1977
	:	
Plaintiff,	:	AFFIDAVIT OF HAROLD
	:	<u>WEISBERG</u>
v.	:	
	:	
DIMONDSTEIN BOOK COMPANY, INC.,	:	
	:	
Defendant	:	

.....

I, Harold Weisberg, being first duly sworn, depose as follows:

1. I am the plaintiff in the above-entitled action.
2. By a postcard dated May 17, 1971, defendant Dimondstein Book Company, Inc. wrote me as follows: "May we please have a current statement of our account."
3. My wife, acting as my bookkeeper, subsequently mailed Dimondstein a letter dated July 18, 1971, which enclosed a "Statement of Account" bearing that same date.
4. At no time after the mailing of the July 18, 1971, "Statement of Account" did Dimondstein ever dispute the accuracy of that statement. Nor did Dimondstein thereafter make request for a statement of our account or engage in further business transactions with me.

5. Because Dimondstein did not dispute the Statement of Account, I assumed I would be paid what Dimondstein owed me. Consequently, in 1971 and 1972 I did not consider taking legal action to collect what Dimondstein owed me. Had Dimondstein informed me that it disputed the accuracy of the Statement of Account and would not pay the sum due, I would have sought legal counsel at that time.

6. On January 5, 1973, still believing that Dimondstein would pay me, I wrote a letter to Mr. Herbert Dimondstein informing him that my wife and I urgently needed the money owed by his company. (See Plaintiff's Exhibit 2, a copy of which is attached hereto)

7. In May, 1973, while in New York on other business, I personally met with Mr. Carl T. Held, the Comptroller of the Dimondstein Book Company. I personally presented Mr. Held with a copy of the July 18, 1971, Statement of Account. (Plaintiff's Exhibit 1) I also presented him with documentary evidence that Dimondstein had received 1,000 copies of my book Whitewash which were originally misdelivered to Bookazine in New York City. I informed him that in addition to the sum stated in the July 18, 1971, Statement of Account, Dimondstein also owed me for the 1,000 copies of Whitewash which it had never acknowledged receiving.

8. Mr. Held acknowledged that Dimondstein owed me money and told me that I would be paid. He said he would be back in touch with

me after Dimondstein's bookkeeper returned from vacation. As I wrote Mr. Held on October 20, 1973, had it not been for this assurance I would have turned the case over to a New York lawyer when I was there in May. Relying on Mr. Held's assurances, I did not do so.

9. Notwithstanding the acknowledgments and promises made to me by Mr. Held in May, 1973, neither Mr. Held nor any other agent or employee of the Dimondstein Book Company ever contacted me after my May, 1973 visit.

10. In the decade before I became an author my wife and I established and maintained an internationally recognized poultry operation. But in 1964, as the result of several years of illegal military helicopter overflights which destroyed our poultry products, we were driven out of business. Although we retained a prominent Washington lawyer to represent us in our Federal Tort Claims Act and Tucker Act claims against the government, his firm let the statute of limitations run on most of our damages before filing a complaint and ultimately abandoned us. As a result we were forced to settle the case for \$13,500 in 1974, which was but a small fraction of the damages actually done us.

11. By destroying our chicken farm operation the government deprived us of our livelihood and reduced us to poverty. The Edward Bennett Williams law firm kept us there by failing to prosecute our claims against the government. So, too, did Dimondstein Book Company, by failing to pay what it owed us.

12. For more than a decade after the government drove us out of business my wife and I lived on very little income. I have had

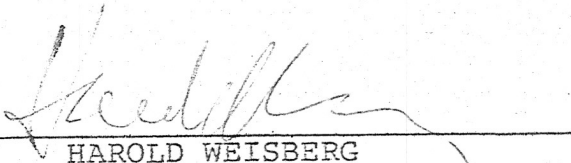
no regular income since 1963. My wife had a regular income only for the first three and a half months of each year from 1969 to 1976, as a tax consultant for H & R Block. Our joint income during this period was never large. Sometimes it was below what the government calls minimum subsistence.

13. Meeting the interest and principle payments on our mortgage were a great difficulty. Sometimes I had to borrow money from friends in order to make the payments. During this period our standard of living was such that I bought only one suit, a factory reject, for \$3.98. In all of this time (since 1964) I have not bought a tie or a top-coat. Most of my dress clothing consists of what others have given me after it went out of style and inexpensive wash-and-wear trousers. Our car is more than 13 years old and has been driven over 125,000 miles.

14. By 1973-1974 our personal financial situation had deteriorated to such an extent that we qualified for food stamps. Not until 1976 were we able to pay off debts which had accumulated after our poultry farm business had been destroyed. This included, for example, some \$2,700 in unpaid dental bills. In 1973-1974 Frederick County, Maryland provided medical care in excess of what was covered by our medical insurance. Although we were told that it was not necessary, in 1976 we repaid the State of Maryland \$550 for this medical care.

15. These harsh realities made it impossible for me to retain counsel to represent me in a suit against Dimondstein once I determined that I could not rely on the assurances of Mr. Held or my

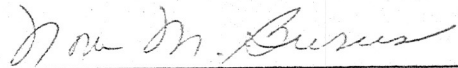
Attempts to obtain New York counsel willing to represent me without requiring a retainer in advance proved futile. If I had been financially able to do so, I would have paid a lawyer a retainer fee in 1974 to bring suit against Dimondstein at that time. Not being able to afford this, I had to wait until I could obtain the services of a lawyer willing and able to file suit without requiring a fee in advance. This is the reason for the delay in filing this suit once I decided Dimondstein was not going to pay me without going to court.


HAROLD WEISBERG

WASHINGTON, D. C.

Subscribed and sworn to before me this 6th day of May, 1977.




NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

MY COMMISSION EXPIRES DEC. 14, 1987

My commission expires _____.

1/5/73

Mr. Herb Dimondstein
Dimondstein Book Co., Inc.
3 Portman Road
New Rochelle, N.Y. 10801

Dear Herb,

Every year we send you a statement of how much you owe us and then there is silence for another year. You know the work I have done and you are the kind of man who can understand how it could be ruinous. It was. Our situation is really very bad. Therefore, I am asking that you give this your personal attention.

Our last statement was mailed you July 18, 1971, delayed by an accident to my wife. It shows a balance due of \$4,962.71.

In interest alone it has now cost me something like \$1,800 to carry this account.

Please pay it. Not only do you owe it, but we really need it urgently.

If you have any question, then please ask them.

I do hope that after all this time you will not pay promptly.

Sincerely,

Harold Weisberg

Noted

Plaintiff's Exhibit 3

5/17/71

May we please have
a current statement of
our account

Diamondstein
Accts Payable