

However, Dimondstein never notified plaintiff that it had received this shipment of 1,000 copies of Whitewash. Nor did Dimondstein ever pay plaintiff the \$2,475.00 which it owed him for these books. When plaintiff mailed Dimondstein statements of account which omitted this shipment of 1,000 copies of Whitewash and the \$2,475.00 which Dimondstein owed for them, Dimondstein did not correct these statements. Although plaintiff's statements of account were erroneous because they failed to reflect all the books received by Dimondstein, Dimondstein never set forth the true state of the account, either with respect to the number of books it had received or the amount owed. In fact, Dimondstein made no response at all to plaintiff's statement of account. Dimondstein failed to respond to plaintiff's statements of account or to set forth the true state of the account even though the firm of Samuel Aronowitz & Co., Certified Public Accountants, solicited statements of the account from plaintiff in connection with its audits of Dimondstein's books. Upon information and belief, Dimondstein failed to respond to plaintiff's statements of account because Dimondstein stood to benefit financially by concealing its receipt of the shipment of 1,000 copies of Whitewash.

4. In May, 1973 plaintiff traveled to New York City. While there he went to the offices of Bookazine, where he met with Bill and Ted Epstein and Bookazine's bookkeeper. During this meeting it was established that Bookazine had received a shipment of 1,000 copies of Whitewash which were transferred to Dimondstein on or about August 17, 1966.

5. The day after plaintiff learned of the transfer of 1,000 copies of Whitewash from Bookazine to Dimondstein he went to New Rochelle, New York, where he met with Mr. Carl T. Held, the comptroller for Dimondstein. At this meeting plaintiff presented Mr. Held with a copy of the most recent statement of account he had sent Dimondstein and a copy of the August 17, 1966 Bookazine receipt (attached hereto and numbered "5.1") which reflects the shipment of 1,000 copies of Whitewash to Bookazine and the transfer to Dimondstein on that date. At this time plaintiff made demand for payment of the entire debt owed him. During this meeting Dimondstein's bookkeeper, after checking the firm's records, confirmed that Dimondstein had picked up the 1,000 copies of Whitewash shipped via Bookazine. Mr. Held admitted that Dimondstein owed plaintiff for that shipment. He told plaintiff that he would get back in touch with him about settling the entire amount owed after the bookkeeper returned from a vacation she was about to take. Upon information and belief, Mr. Held made this promise to pay in order to stall plaintiff until the statute of limitations had run on his claims.

Subsequently, by letter to Mr. Held dated October 20, 1973, plaintiff repeated his demands for payment. Demand for payment was again made by plaintiff's attorney by letter dated February 19, 1974. After receipt of Dimonstein's June 7, 1977 order for a copy of Whitewash II, and plaintiff's filling of that order, a new statement of account, dated July 17, 1977, was mailed to Dimondstein

which included the \$2,475.00 owed for the shipment of 1,000 copies of Whitewash received by Dimondstein on or about August 17, 1966.

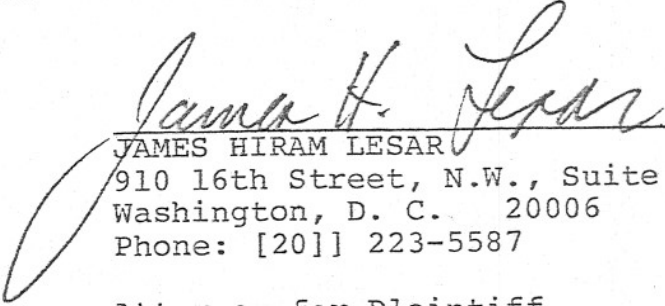
In addition, at a date which plaintiff cannot now recall he met Mr. Herb Dimondstein at a meeting of the American Booksellers Association held at the Hotel Shoreham in Washington, D. C. and asked that Dimondstein pay the money owed him.

6. In May, 1973 plaintiff personally presented Mr. Held with a copy of the last previous statement of account and a copy of the Bookazine receipt showing that Dimondstein had picked up 1,000 copies of Whitewash on or about August 17, 1966. This Bookazine receipt was presented to Mr. Held along with a demand for payment. A copy of the Bookazine receipt is attached hereto and numbered "5.1."

7. The sum of \$2,475.00 is arrived at by discounting 50% from the retail price of \$4.95 a copy and multiplying by 1,000.

8. The delivery receipt is the Bookazine debit slip dated August 17, 1966 which is attached hereto and numbered "5.1."

9. Plaintiff's residence and post office address is:
Route 12, Frederick, Maryland 21701.


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Washington, D. C. 20006
Phone: [20] 223-5587

Attorney for Plaintiff

V E R I F I C A T I O N

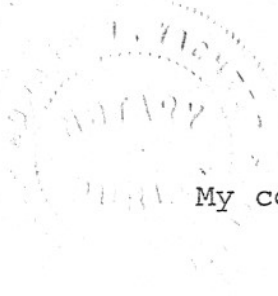
FREDERICK COUNTY, MARYLAND

I am the plaintiff in this action. I have read the foregoing Bill of Particulars and know the contents thereof; the same is true to my knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

Harold Weisberg
HAROLD WEISBERG

Subscribed and sworn to before me this 13 day of August, 1977.

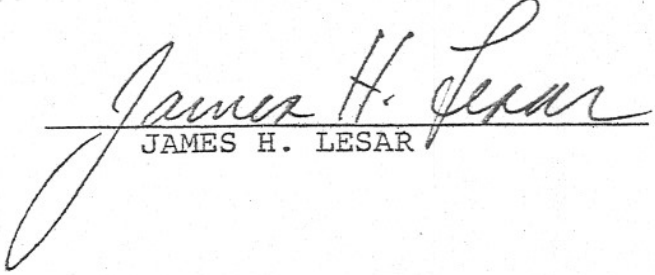
Howard W. Wachter
NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND



My commission expires *July 1, 1978*.

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of August, 1977 mailed a copy of the foregoing Bill of Particulars to Levine, Kirshon & Schaps, 1501 Broadway, New York, N. Y., 10036, attorneys for the defendant.



JAMES H. LESAR