

New Hampshire Supreme Court
Professional Conduct Committee

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* non attorney member

Holly B. Fazzino, Admin. Coordinator

Lebensbaum, Henry advs. Jacqueline Saltzman # 02-053

RESIGNATION

On December 13, 2005, the Professional Conduct Committee considered the request of Henry Lebensbaum to resign from the New Hampshire Bar pursuant to Supreme Court Rule 37(11). The Committee had before it a letter of Disciplinary Counsel dated November 9, 2005 to which was attached the following:

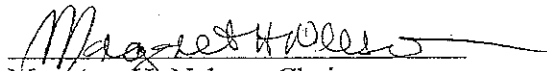
- a. Letter and Affidavit of Henry Lebensbaum dated September 20, 2005;
- b. Letter of September 19, 2005, from Assistant Bar Counsel to Board of Bar Overseers, enclosing Respondent's Amended Answer to Petition for Discipline and Stipulation of the Parties [Intended as an attachment to the Affidavit of Henry Lebensbaum] [More legible copy substituted];
- c. Petition for Discipline, dated January 26, 2005 [Intended as an attachment to Respondent's Amended Answer to Petition for Discipline and Stipulation]; and
- d. Answer of Respondent Henry Lebensbaum, Esq., dated March 15, 2005.

Based on the above-referenced materials, the Committee understands the pertinent facts to be as follows: In April 2002, Jacqueline Saltzman, a former client, filed complaints in both Massachusetts and New Hampshire before the respective disciplinary agencies, alleging various acts of professional misconduct associated with Attorney Lebensbaum's handling of a Massachusetts divorce proceeding. The New Hampshire Supreme Court Screening Committee referred the matter to Disciplinary counsel in July 2004 but no further action has been taken in this jurisdiction. However, disciplinary proceedings have moved forward in Massachusetts. The parties to that proceeding agreed to jointly recommend a six month suspension of Attorney Lebensbaum's Massachusetts license. That stipulation was approved by the Board of Bar Overseers and submitted to the Massachusetts Supreme Judicial Court for final approval.

Disciplinary counsel advised the Committee in her letter that it was her position that the Committee should recommend to the New Hampshire Supreme Court that it accept the resignation of Attorney Lebensbaum.

Having considered the record, and the requirements of Supreme Court Rule 37(11), the Committee voted to recommend to the Supreme Court that it accept the resignation of Attorney Lebensbaum. The Committee will forward this Order to the Court, along with the record.

April 27, 2006


Margaret H. Nelson, Chair

Distribution:

✓ Landya B. McCafferty, Disciplinary Counsel
Henry Lebensbaum, Esquire
File

New Hampshire Supreme Court

Attorney Discipline Office

James L. DeHart
General Counsel

Thomas V. Trevethick
Deputy General Counsel

Janet F. DeVito
Assistant General Counsel

4 Park Street, Suite 304
Concord, New Hampshire 03301
603-224-5828 • Fax 603-228-9511

Landya B. McCafferty
Disciplinary Counsel

James L. Kruse
Assistant Disciplinary Counsel

Craig A. Calaman, CPA
Staff Auditor

November 9, 2005

Hand-Delivered

Holly B. Fazzino, Administrative Coordinator
New Hampshire Supreme Court
Professional Conduct Committee
4 Park Street, Suite 304
Concord, New Hampshire 03301

Re: Lebensbaum, Henry advs. Jacqueline Saltzman - #02-053

Dear Ms. Fazzino:

Enclosed is a request to resign filed by Attorney Henry Lebensbaum pursuant to Supreme Court Rule 37(11). Mr. Lebensbaum is licensed to practice law in New Hampshire and in Massachusetts.

In April 2002, Jacqueline Saltzman, a former client, filed complaints in New Hampshire and Massachusetts alleging that Mr. Lebensbaum had engaged in various acts of professional misconduct. The allegations focus primarily on conflicts of interest associated with Mr. Lebensbaum's handling of a Massachusetts divorce proceeding.

The New Hampshire Supreme Court Complaint Screening Committee referred the matter to Disciplinary Counsel in July 2004. No formal disciplinary action has been undertaken in New Hampshire. However, in January 2005, the Office of the Bar Counsel, Board of Bar Overseers of the Supreme Judicial Court in Massachusetts completed its investigation of the matter and filed a Petition for Discipline. In September of this year, Mr. Lebensbaum agreed to amend his answer to the petition and stipulate to all of the alleged violations. The parties also agreed jointly to recommend a six-month suspension from the practice of law in Massachusetts. The Office of the

Page 2 of 2
Holly B. Fazzino, Administrative Coordinator
Re: #02-053
November 9, 2005

Bar Counsel advises that the Board has approved the recommendation and that final Court approval is pending.

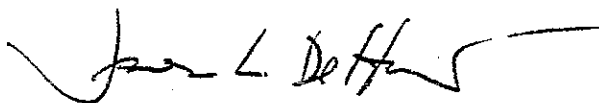
Notwithstanding good faith efforts on the part of Mr. Lebensbaum's New Hampshire attorney, undersigned counsel has had some difficulty assembling a complete package of legible materials in support of Mr. Lebensbaum's request to resign from the New Hampshire Bar. However, it now appears that his request satisfies the requirements of Supreme Court Rule 37(11).

Enclosed are the following:

- a. Letter and Affidavit of Henry Lebensbaum dated September 20, 2005;
- b. Letter of September 19, 2005, from Assistant Bar Counsel to Board of Bar Overseers, enclosing Respondent's Amended Answer to Petition for Discipline and Stipulation of the Parties. [Intended as an attachment to the Affidavit of Henry Lebensbaum] [More legible copy substituted]
- c. Petition for Discipline, dated January 26, 2005. [Intended as an attachment to Respondent's Amended Answer to Petition for Discipline and Stipulation]
- d. Answer of Respondent Henry Lebensbaum, Esq., dated March 15, 2005.

Disciplinary Counsel is satisfied that Mr. Lebensbaum's resignation under the circumstances serves to protect the public interest and that no further disciplinary action is warranted. Accordingly, we urge the Committee to file Mr. Lebensbaum's resignation with the New Hampshire Supreme Court with a recommendation that it be approved. New Hampshire Supreme Court Rule 37(11)(b).

Sincerely,



James L. DeHart
General Counsel

JLD/bg

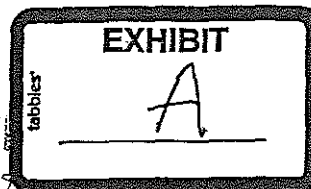
Enclosures

cc: Randall E. Wilbert, Esquire
Stephen W. Wight, Esquire

HENRY LEBENBAUM

ATTORNEY AT LAW

RECEIVED
978.749.3606
FAX 978.474.4475



46 LOVEJOY ROAD
ANDOVER, MA 01810

September 20, 2005

James L. DeHart, General Counsel
New Hampshire Supreme Court Committee on
Character & Fitness
4 Park Street, Suite 304
Concord, NH 03301

Re: In the Matter of Henry Lebensbaum, Esquire
Docket No. 02-053

Dear Mr. James L. DeHart:

I hereby tender my resignation to be effective on its receipt, ceding my right to practice law before the Courts of the State of New Hampshire, and resigning from the State of New Hampshire Bar Association. Accompanying this resignation is an Affidavit submitted pursuant to Supreme Court Rule 37(11).

If anything else is required to process my resignation, please feel free to contact my counsel, Randall E. Wilbert, 221 Main Street, Suite 201, Nashua, New Hampshire, 03060-2913, (603) 889-8443.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Henry Lebensbaum". The signature is stylized and somewhat cursive, with a large loop at the end.

Henry Lebensbaum

Cc: Randy Wilbert, Esq.

IN THE MATTER OF:

HENRY LEBENSBAUM, ESQ.

Docket No. 02-053

AFFIDAVIT OF HENRY LEBENSBAUM

I am Henry Lebensbaum, respondent in the above matter, and state under oath, as follows:

1. At present, I am an attorney admitted to practice in the Commonwealth of Massachusetts and the State of New Hampshire.
2. This Affidavit supports my accompanying letter to Mr. James L. DeHart, resigning my right to practice law in the State of New Hampshire and also ceding my membership in the Bar of the State of New Hampshire.
3. As evidenced by my Stipulation with the Board of Bar Overseers of the Supreme Judicial Court of the Commonwealth of Massachusetts, I have agreed to a suspension from the practice of law for six (6) months for the violation of certain rules of professional conduct. A copy of said Stipulation is attached to this Affidavit, as an exhibit.
4. My tendered resignation is free and voluntary, not the subject of any coercion or duress. I am fully aware of the implications of submitting the within resignation.
5. I am cognizant of the pending investigation into allegations about my professional misconduct, filed in April 2001, in Massachusetts and in New Hampshire. As described in the attached exhibit from the Commonwealth of Massachusetts, I acknowledge

and agree to the same material facts in both jurisdictions that arise from the identical complaints filed in both jurisdictions. I submit my resignation to the State of New Hampshire knowing that these same allegations that are predicated on the stated professional misconduct that is under investigation, with my intent and hope to resolve all matters with the State of New Hampshire by my action.

Respectfully submitted,


Date: September 20, 2005


Henry Lebensbaum

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Essex

Personally appeared the above named, Henry Lebensbaum, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and made oath that the foregoing statements subscribed by him are true to the best of his knowledge and belief.

Before me,


Notary Public/Justice of the Peace



BRIAN J. ARCHAMBAULT
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
MY COMMISSION EXPIRES
DECEMBER 20, 2007

09/29/2005 15:16 1617251

KIRKPATRICK LOCKHART

PAGE 02



OFFICE OF THE BAR COUNSEL
BOARD OF BAR OVERSEERS OF THE SUPREME JUDICIAL COURT
 99 High Street
 Boston, Massachusetts 02110
 (617) 728-8750
 Fax: (617) 482-2992
 www.mass.gov/obobbo

DANIEL C. CRANE
 BAR COUNSEL

September 19, 2005

Michael Fredrickson, Esq.
 General Counsel
 Board of Bar Overseers
 99 High Street
 Boston MA 02110

RE: BBO File No(s). C2-02-0116

Dear Mr. Fredrickson:

Enclosed please find for filing Respondent's Amended Answer to Petition for Discipline and Stipulation of the Parties in this matter. Pursuant to S.J.C. Rule 4:01, § 8(3), the parties recommend that the Respondent receive a six month suspension without further proceedings.

I ask that the matter be placed on the agenda for the Board's next meeting.

Thank you for your attention to this matter.

Very truly yours,


 Dorothy Anderson
 Assistant Bar Counsel

DA/tms
 Enclosure
 cc: Arnold R. Rosenfeld, Esq.

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL,

Petitioner

vs.

HENRY LEBENSBAUM,

Respondent

B.B.O. File No. C2-02-0116

RESPONDENT'S AMENDED ANSWER TO PETITION
FOR DISCIPLINE AND STIPULATION OF THE PARTIES

Bar Counsel and the respondent, Henry Lebensbaum, hereby stipulate and agree that this matter may be resolved without hearing and jointly recommend that a sanction of a six-month suspension from the practice of law be imposed. The parties further stipulate as follows:

1. The respondent represents that he is admitted to practice in the Commonwealth of Massachusetts and in New Hampshire, but in no other jurisdictions.
2. Subject to paragraph 9, the respondent withdraws his Answer and admits to the truth of the allegations of the Petition for Discipline, a copy of which is attached as Exhibit A.
3. Subject to paragraph 9, the respondent admits the disciplinary rule violations set forth in the Petition for Discipline, and the parties stipulate to conclusions of law that the respondent violated the rules cited in the petition.
4. Subject to paragraph 9, the parties waive their rights to an evidentiary hearing on the facts and disciplinary rule violations alleged in the petition for discipline and on matters in aggravation or mitigation. They stipulate that this matter may be considered by the full Board of Bar Overseers on the Petition for Discipline and this Amended Answer and Stipulation.

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5. On disposition, the parties stipulate and recommend that the respondent be suspended from the practice of law for six months, effective upon the date of entry of the Order of the Board of Bar Overseers. The parties acknowledge that a six-month suspension is appropriate discipline in this matter. *Matter of Morgan*, 17 Mass. Att'y Disc. R. 399 (2001) (reciprocal discipline case; Mass. R. Prof. C. 1.7(b) prohibits an attorney from allowing his interest in a sexual relationship with a client to adversely affect his duties to the client); *Matter of DiPippo*, 12 Mass. Att'y Disc. R. 89 (1996) (reciprocal discipline case in which lawyer suspended for three months for consensual sexual relationship with divorce client and misrepresentation to third party lender that client worked in his law office); *Matter of James v. Tawobearis*, 748 N.E. 2d 586 (Ind. 2001) (attorney suspended for engaging in sexual relationship with client in divorce, where attorney did not inform client how sexual relationship might affect his professional duties to her. Court found that "where a lawyer permits or encourages a sexual relationship to form with a client, that trust is betrayed and the stage is set for continued unfair exploitation of the lawyer's fiduciary position.")

6. In mitigation, the criminal charges against the complainant, described in paragraph 23 of the Petition for Discipline, were dismissed by the District Attorney in 2003, and the divorce proceeding was ultimately resolved to the complainant's satisfaction, by successor counsel.

7. The parties stipulate that they have reached this agreement after due evaluation of all available evidence both on the merits and on the issue of appropriate discipline; that they have taken into account all aggravating and mitigating circumstances which are or otherwise might have been presented; and that, in consideration of this agreement, each party has foregone other allegations or defenses and submission of evidence on the merits and disposition which might have been advanced had the case been litigated.

8. The respondent acknowledges that he been duly and adequately represented by counsel of his choosing in this matter.

9. The parties stipulate and agree that either party may appeal from a preliminary determination to recommend discipline that differs from the parties' joint recommendation and that, in the event the Board of Bar Overseers upholds such a preliminary determination, the parties reserve their right to a hearing and this stipulation will be void. In that event, pursuant to Section 3.19(e) of the Rules of the Board of Bar Overseers, the parties may amend their pleadings without prejudice, and the matter shall be assigned for hearing to an appropriate hearing committee or special hearing officer, a hearing panel of the Board, or the Full Board.

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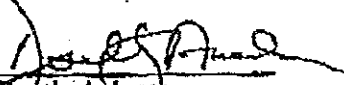
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KIRKPATRICK LOCKHART


RESPECTFULLY SUBMITTED,

DANIEL C. CRANE
BAR COUNSEL

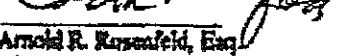
By 
Dorothy Anderson
Assistant Bar Counsel
99 High Street
Boston, MA 02110
(617) 728-8750
BBO No. 445040

Dated: 1/16/05

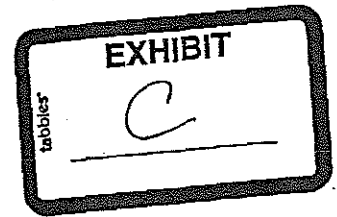
Henry Lebensbaum, Esq.
RESPONDENT

By 
Henry Lebensbaum, Esq.
46 Emory Road
Andover, MA 01810-4328

Dated: 9/14/2005

By 
Arnold R. Rosenfeld, Esq.
Kirkpatrick Lockhart Nicholson Graham
75 State St.
Boston, MA 02110

Dated: September 15, 2005



COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL,

Petitioner

vs.

HENRY LEBENSBAUM,

Respondent

B.B.O. File No. C2-02-0116

PETITION FOR DISCIPLINE

1. This petition is brought pursuant to Rule 4:01, Section 8(3), of the Rules of the Supreme Judicial Court and Sections 3.13(2) and 3.14 of the Rules of the Board of Bar Overseers.

2. The respondent, Henry Lebensbaum, is an attorney who was duly admitted to the Bar of Massachusetts on June 19, 1991

3. In April 2001, Jacqueline Saltzman ("Saltzman") engaged the respondent to represent her in a divorce from her husband, Leonard Saltzman ("Leonard").

4. In March 2001, Saltzman and Leonard entered into an agreement whereby Leonard agreed to provide Saltzman with an automobile and pay the rent for the Haverhill apartment, while Saltzman agreed to move out of the marital home on Hillcrest Road in Andover.

5. At the time Saltzman contacted the respondent in April 2001, she and Leonard had been separated for several weeks. Leonard was living in the

marital home in Andover, while Saltzman was living in an apartment in Haverhill.

6. On April 25, 2001, the respondent, on behalf of Saltzman, filed a divorce action in the Essex County Probate Court in Salem. On May 16, the parties entered into a stipulation for temporary orders, barring either party from disposing of or wasting marital assets. On the same day, the court issued an order incorporating the stipulation.

7. Shortly after the respondent began representing Saltzman, the respondent and Saltzman became involved in a sexual relationship. The sexual relationship continued from May 2001 until January 2002. During this time period, the respondent and Saltzman had sexual relations on numerous occasions.

8. The respondent did not at any time advise Saltzman that his interest in a personal relationship with her might or would affect his professional responsibilities to her.

9. The respondent did not inform Saltzman that revelation of the relationship to Leonard and his attorney could or would compromise her position in the divorce.

10. The respondent could not have reasonably believed that his representation of Saltzman would not be materially limited by his interest in maintaining a sexual relationship with her.

11. Saltzman did not give her informed consent to the respondent's conflict of interest.

12. On May 30, 2001, Saltzman learned that Leonard was out of the country. Saltzman decided to return, with her son, to the marital home in Andover. Without the knowledge or consent of Leonard, Saltzman and her son moved into the Andover home on about June 1, 2001.
13. Leonard came back to town on or about June 7, 2001, and discovered that Saltzman was living in the house. He promptly filed a motion in the Essex County Probate Court seeking an order that Saltzman vacate the premises. The court granted Leonard's motion on June 8, 2001, and ordered that Saltzman vacate the premises by June 9, 2001 at 6:00 p.m.
14. While Saltzman was packing to vacate the premises on June 9, 2001, the respondent went to the Andover house. The respondent knew that Saltzman had moved into the marital home without her husband's permission and that the court had ordered her to vacate the home by 6:00 p.m. that day.
15. On June 9, 2001, Saltzman and the respondent entered a locked ground-floor room that served as the office of Leonard's contracting business. In the respondent's presence, Saltzman searched the office and located \$2000 in cash, wrapped in aluminum foil, which appeared to them to have been purposely hidden.
16. The respondent advised Saltzman that she and Leonard jointly owned the cash. Based on the respondent's advice that the money was joint property, Saltzman took \$1900, and returned the remaining \$100 to its original hiding spot. The respondent did not adequately advise Saltzman of the legal risks of taking the money. The respondent did not advise Saltzman that if she did take

the money, the court order of May 16 obligated her to preserve it as marital assets.

17. While in Leonard's office, the respondent, or Saltzman with the respondent's knowledge, logged on to Leonard's computer, and searched his computer files for financial records of his contracting business. Upon locating such records, the respondent, or Saltzman's with the respondent's knowledge, sent several e-mails to the respondent's office e-mail address, to which they attached or attempted to attach business financial records. The respondent did not adequately advise Saltzman of the legal risks of logging on to Leonard's computer and e-mailing Leonard's documents to the respondent.

18. Leonard moved back into the house on June 10, 2001. He discovered that \$1900 in cash was missing and that e-mails had been sent from his account to the respondent's e-mail address. Leonard filed a police report accusing Saltzman of stealing the money, and of unauthorized use of his computer.

19. In June 2001, Andover police officer Glen Ota, requested a clerk's hearing, on charges against Saltzman for larceny over \$250 in violation of G. I. c. 266, § 30, and unauthorized access to a computer system in violation of G. L. c. 266, § 120(f).

20. The clerk's hearing took place on July 19, 2001. The respondent entered an appearance for Saltzman and represented her at the clerk's hearing

21. The respondent's interests materially limited his representation of Saltzman at the clerk's hearing because of the respondent's presence during the acts charged as criminal offenses. The respondent could not have reasonably

believed that his representation of Saltzman would not be materially limited.

Even if the respondent could have continued to represent Saltzman, he did not obtain her informed consent.

22. The respondent was likely to be a necessary witness at the clerk's hearing to Saltzman's state of mind at the time she allegedly committed the crimes charged

23. On July 30, 2001, the clerk issued complaints against Saltzman for larceny over \$250 and unauthorized access to a computer system.

25. Saltzman was arraigned on those charges on September 12, 2001. The respondent continued to represent Saltzman with respect to the criminal charges until March 2002.

26. The respondent did not advise Saltzman that his representation of her in the criminal matter was or might be materially limited by his own interest in concealing his presence at the time the cash was taken, the computer files were accessed and the e-mails were sent to his office, and by his personal relationship with her. The respondent could not reasonably have believed that his representation of Saltzman would not be materially limited by his own interests.

27. Saltzman did not at any time give her informed consent to the respondent's conflict of interest in representing her in the criminal matter.

28. On July 25, 2001, Saltzman and Leonard filed a stipulation in the Essex County Probate Court in which Leonard agreed to deliver to Saltzman by July 27, 2001, two round-trip tickets from Boston to Columbia that had been issued by Continental Airlines on February 12, 2001.

29. Leonard's attorney delivered the tickets to the respondent on August 31, 2001.

30. The respondent did not deliver the tickets to Saltzman.

31. The respondent initially made a number of excuses to Saltzman for not delivering the tickets and then falsely told Saltzman he had misplaced the tickets.

32. In the alternative, the respondent negligently misplaced the tickets.

33. Saltzman terminated the respondent's representation of her in March 2002. In March 2002, Saltzman went to his office to retrieve her file. She found the plane tickets, enclosed in a bright blue plastic travel agency envelope, in her file.

Disciplinary Violations

34. By engaging in a sexual relationship with Saltzman during a period of time in which he was representing her in her divorce from Leonard, the respondent engaged in a conflict of interest, in violation of Mass. R. Prof. C. 1.7(b), as set forth below.

35. The respondent's failure to explain to Saltzman the legal risks of taking cash from Leonard's office and logging onto and e-mailing financial records from Leonard's computer on June 9, 2001, to the extent reasonably necessary to allow her make an informed decision, violated Mass. R. Prof. C. 1.4, as set forth below.

36. The respondent's failure to advise Saltzman that if she took cash from Leonard's office, the probate court order prohibited her from wasting it, also violated Mass. R. Prof. C. 1.4, as set forth below.

37. By e-mailing, or participating in Saltzman's unauthorized e-mailing, of Leonard's business financial records to his e-mail address, in order to obtain information relevant to the divorce proceedings, the respondent violated Leonard's legal rights, in violation of Mass. R. Prof. C. 4.4, as set forth below.

38. The respondent's representation of Saltzman in a criminal matter in which the respondent had a personal interest in concealing his participation in the allegedly unlawful conduct, and while the respondent was involved in a personal relationship with Saltzman, and his failure to obtain informed consent if informed consent was possible, violated Mass. R. Prof. C. 1.7(b), as set forth below.

39. The respondent's representation of Saltzman in a criminal matter in which the respondent was likely to be a necessary a witness, violated Mass. R. Prof. C. 3.7(a), as set forth below.

40. By failing to safeguard and by failing to promptly deliver to Saltzman airplane tickets that had been delivered to the respondent on behalf of Saltzman, the respondent violated Mass. R. Prof. C. 1.3, and Mass. R. Prof. C. 1.15(b)(3) and (c), as set forth below.

41. In the alternative, by falsely telling Saltzman that he had misplaced the tickets and by intentionally withholding the airplane tickets from Saltzman, the

respondent violated Mass. R. Prof. C. 1.15(c), and 8.4(c) and (h), as set forth below.

42. The Rules of Professional Conduct applicable to the respondent's conduct are as follows:

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client. The lawyer should represent a client zealously within the bounds of the law.

Rule 1.4 Communication

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.7 Conflict of Interest: General Rule

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Rule 1.15 Safekeeping Property

(b) **Segregation of Trust Property.** A lawyer shall hold trust property separate from the lawyer's own property.

(1) Trust funds shall be held in a trust account, except that advances for costs and expenses may be held in a business account.

(2) No funds belonging to the lawyer shall be deposited or retained in a trust account except that:

(i) Funds reasonably sufficient to pay bank charges may be deposited therein, and

(ii) Trust funds belonging in part to a client or third person and in part currently or potentially to the lawyer shall be deposited in a trust account, but the portion belonging to the lawyer must be withdrawn at the earliest reasonable time after the lawyer's interest in that portion becomes fixed. A lawyer who knows that the right of the lawyer or law firm to receive such portion is disputed shall not withdraw the funds until the dispute is resolved. If the right of the lawyer or law firm to receive such portion is disputed within a reasonable time after notice is given that the funds have been withdrawn, the disputed portion must be restored to a trust account until the dispute is resolved.

(3) Trust property other than funds shall be identified as such and appropriately safeguarded.

(c) **Prompt Notice and Delivery of Trust Property to Client or Third Person.** Upon receiving trust funds or other trust property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or as otherwise permitted by law or by agreement with the client or third person on whose behalf a lawyer holds trust property, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

Rule 4.4 Respect for Rights of Third Persons

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (h) engage in any other conduct that adversely reflects on his or her fitness to practice law.

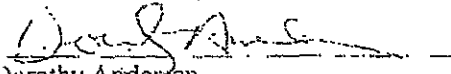
WHEREFORE, Bar Counsel requests that the Board of Bar Overseers:

- A. Consider and hear the matter set forth herein.
- B. Determine that public discipline of the said Henry Lebensbaum is required.
- C. If required, file an Information concerning these matters with the Supreme Judicial Court.

Respectfully submitted,

DANIEL C. CRANE
BAR COUNSEL

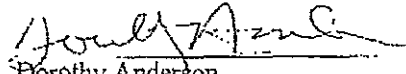
By


 Dorothy Anderson
 Assistant Bar Counsel
 99 High Street
 Boston, MA 02110
 617-728-8750
 BBO #445040

Dated: January 26, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Petition for Discipline by mailing a copy by first class mail, and by certified mail, return receipt requested postage prepaid to the respondent, Henry Lebensbaum, 46 Lovejoy Road, Andover, MA 01810-4528, and by regular mail to respondent's counsel, Thomas Drohan, Esq., Cosgrove, Eisenberg & Kiley, P.C., One International Place, Suite 1820, Boston, MA 02110.


Dorothy Anderson
Assistant Bar Counsel
B.B.O. #445040

Dated: January 26, 2005

FILE No. 288 11/04 '05 13:19
Monday, May 02, 2005 3:22 PM

ID: KIRKPATRICK & LOCKHART FAX: 1234567890
henry lebensbaum, esq. (978) 474-4475

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05/18/2005 13:39 FAX 617 335 8774

COSGROVE EISENBERG & RIL

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4. In March 2001, Saltzman and Leonard entered into an agreement whereby Leonard agreed to provide Saltzman with an automobile and pay the rent for the Haverhill apartment, while Saltzman agreed to move out of the marital home on Hillcrest Road in Andover.

ANSWER: The respondent admits that in about March 2001, Saltzman and Leonard entered into an agreement whereby Leonard agreed to provide Saltzman with an automobile and pay the rent for an apartment in Haverhill. Saltzman agreed to move out of the marital home on Hillcrest Road in Andover. Respondent further answers that the agreement was a written one with additional terms and the document best speaks for itself. The respondent played no role in the negotiation or drafting of the agreement.

5. At the time Saltzman contacted the respondent in April 2001, she and Leonard had been separated for several weeks. Leonard was living in the marital home in Andover, while Saltzman was living in an apartment in Haverhill.

ANSWER: Admitted.

6. On April 25, 2001, the respondent, on behalf of Saltzman, filed a divorce action in the Essex County Probate Court in Salem. On May 16, the parties entered into a stipulation for temporary orders, barring either party from disposing of or wasting marital assets. On the same day, the court issued an order incorporating the stipulation.

ANSWER: The respondent admits that on April 25, 2001, he filed among other documents a Complaint for Divorce in the Essex County Probate Court on behalf of Saltzman. The respondent admits that on May 16, 2001, the parties to that divorce action entered into a Stipulation on Temporary Orders, the terms of which are set forth within the document. The respondent admits that Judge Maazi of the Essex County Probate Court entered a Temporary Order on May 16, 2001 which expressly made the Stipulation on Temporary Orders of that date a part of the order.

7. Shortly after the respondent began representing Saltzman, the respondent and Saltzman became involved in a sexual relationship. The sexual relationship continued from May 2001 until January 2002. During this time period, the respondent and Saltzman had sexual relations on numerous occasions.

ANSWER: Admitted, generally.

8. The respondent did not at any time advise Saltzman that his interest in a personal relationship with her might or would affect his professional responsibilities to her.

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COSGROVE EISENBERG & KIL

0004

ANSWER: Denied. By way of further answer, the respondent states that he and Saltzman discussed whether their personal relationship would adversely affect or otherwise limit his professional responsibilities to her. They agreed that it would not, but if it reached a point where it did they would let each other know. The respondent further states that his personal relationship with Saltzman never in fact affected his professional responsibilities to her.

9. The respondent did not inform Saltzman that revelation of the relationship to Leonard and his attorney could or would compromise her position in the divorce.

ANSWER: Admitted in part. By way of further answer, the respondent states that the personal relationship between him and Saltzman did not compromise her position in the divorce.

10. The respondent could not have reasonably believed that his representation of Saltzman would not be materially limited by his interest in maintaining a sexual relationship with her.

ANSWER: Denied. By way of further answer, the respondent states that his representation of Saltzman was not materially limited by any interest in maintaining a sexual relationship with her.

11. Saltzman did not give her informed consent to the respondent's conflict of interest.

ANSWER: Denied. By way of further answer, the respondent denies a conflict of interest existed.

12. On May 30, 2001, Saltzman learned that Leonard was out of the country. Saltzman decided to return, with her son, to the marital home in Andover. Without the knowledge or consent of Leonard, Saltzman and her son moved into the Andover home on or about June 1, 2001.

ANSWER: Admitted as to the first sentence. Admitted as to the second sentence except that the respondent believes Saltzman and her son moved back into the Andover home on or about May 30, 2001.

13. Leonard came back to town on or about June 7, 2001, and discovered that Saltzman was living in the house. He promptly filed a motion in the Essex County Probate Court seeking an order that Saltzman vacate the premises. The court granted Leonard's motion on June 8, 2001, and ordered that Saltzman vacate the premises by June 9, 2001 at 6:00 p.m.

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CROVER EISENBERG & KIL

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ANSWER: Admitted as to the first sentence. Denied in part as to the second sentence, as the respondent believes that Leonard moved into a motel, and she filed his ex parte motion for relief thereafter. The respondent denies the third sentence, and answering further states that the court's order of June 8, 2001 ordered, "Defendant shall have exclusive use and occupancy of the former marital home located at 5 Hillcrest Road, Andover, MA effective June 9, 2001 at 6:00 p.m. Defendant shall pay June rent on Plaintiff's condominium as soon as Plaintiff re-locates."

14. While Saltzman was packing to vacate the premises on June 9, 2001, the respondent went to the Andover house. The respondent knew that Saltzman had moved into the marital home without her husband's permission and that the court had ordered her to vacate the home by 6:00 p.m. that day.

ANSWER: Admitted in part. The respondent does not know specifically what Saltzman was doing on June 9, 2001, and he adds that on the afternoon of June 9, 2001 he went to the Saltzman's Andover house at Saltzman's request since Saltzman was quite concerned and extremely fearful of her husband, whom she said had repeatedly threatened to have her killed. Saltzman wanted the respondent to be present when she returned the key to Leonard pursuant to the order of the court. The respondent denies the inference that Saltzman needed her husband's permission to move into the marital home prior to June 9, 2001.

15. On June 9, 2001, Saltzman and the respondent entered a locked ground-floor room that serves as the office of Leonard's contracting business. In the respondent's presence, Saltzman searched the office and located \$2000 in cash, wrapped in aluminum foil, which appeared to them to have been purposely hidden.

ANSWER: Denied as to the first sentence. By way of further answer, the respondent states that on June 9, 2001, Saltzman entered an open and unlocked ground floor room which served as the Saltzman family office area and asked the respondent to accompany her inside. The room and area contained, among other things, a computer, printer, fax, file cabinets, desks, and the alarm system for the house. The respondent lacks sufficient information to admit or deny whether the room "served as the office of Leonard's contracting business." Saltzman told the respondent that the area was used by her, her son, and Leonard. The respondent denies the second sentence to the extent it calls for the respondent to opine as to Saltzman's state of mind, belief, or motivations, but otherwise admits the balance of the second sentence.

16. The respondent advised Saltzman that she and Leonard jointly owned the cash. Based on the respondent's advice that the money was joint property, Saltzman took \$1900, and returned the remaining \$100 to its original hiding spot. The respondent did not adequately advise Saltzman of the legal risks of taking the money. The respondent did not advise Saltzman that if she did take the money, the court order of May 16 obligated her to preserve it as marital assets.

Tuesday, November 08, 2005 10:41 AM

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ANSWER: Admitted as to the first sentence. Denied as to the second sentence to the extent it calls for the respondent to opine as to Saltzman's state of mind, beliefs, or motivations. Respondent can neither admit nor deny, with regard to the second sentence, that Saltzman took \$1,900, and returned the remaining \$100 to its original spot, as he lacks such personal knowledge, but admits that Saltzman took some of the money she found. The respondent denies the third sentence. By way of further answer, the respondent states that he believed the property in the house was joint property, and so advised Saltzman. Admitted as to the fourth sentence. By way of further answer, the respondent states that he believed the property in the house was joint property, and so advised Saltzman. The respondent further states that he did not believe Saltzman's actions to be in violation of the May 16 court order.

17. While in Leonard's office, the respondent, or Saltzman with the respondent's knowledge, logged on to Leonard's computer, and searched his computer files for financial records of his contracting business. Upon locating such records, the respondent, or Saltzman's with the respondent's knowledge, sent several e-mails to the respondent's office e-mail address, to which they attached or attempted to attach business financial records. The respondent did not adequately advise Saltzman of the legal risks of logging on to Leonard's computer and e-mailing Leonard's documents to the respondent.

ANSWER: Denied as to the first sentence. By way of further answer, the respondent states that Saltzman used a password to log on to the computer in the room, and told respondent she was e-mailing documents. Saltzman told the respondent that she was searching for her husband's documents. She also told the respondent that the computer was used by her, her son, and Leonard, and was not exclusively owned by Leonard. Denied as to the second sentence. By way of further answer, the respondent states that Saltzman told him she was sending him e-mails. The respondent, however, never received any e-mails. Denied as to the third sentence. By way of further answer, the respondent states that Saltzman informed him that she and her son had logged onto the computer on other occasions during her stay in the house prior to June 9, 2001. Moreover, on or about May 31, 2001, Saltzman had obtained a modification of her restraining order against Leonard, whereby she obtained complete and exclusive control and custody of the marital home as against Leonard. The respondent can neither admit nor deny whether the computer was exclusively owned by Leonard. The respondent did not receive any e-mails of Leonard's documents from Saltzman.

18. Leonard moved back into the house on June 10, 2001. He discovered that \$1900 in cash was missing and that e-mails that had been sent from his account to the respondent's e-mail address. Leonard filed a police report accusing Saltzman of stealing the money, and of unauthorized use of his computer.

ANSWER: The respondent is without sufficient knowledge to admit or deny the first sentence. Denied as to the second sentence. By way of further answer, the respondent states that he received no e-mails from Leonard's account. The respondent lacks sufficient knowledge to admit or deny that \$1,900 was the amount of money in question. Denied as to the third sentence.

By way of further answer, the respondent states on information and belief that Leonard filed an incident report with the Andover Police Department.

19. In June 2001, Andover police officer Glen Cox, requested a clerk's hearing, on charges against Saltzman for larceny over \$250 in violation of G.L. c. 266, § 30, and unauthorized access to a computer system in violation of G.L. c. 266, § 120(f).

ANSWER: Admitted.

20. The clerk's hearing took place on July 19, 2001. The respondent entered an appearance for Saltzman and represented her at the clerk's hearing.

ANSWER: Admitted as in the first sentence. Denied as to the second sentence. By way of further answer, the respondent states that he did not file an appearance for Saltzman at the clerk's hearing, but did attend the hearing with Saltzman.

21. The respondent's interests materially limited his representation of Saltzman at the clerk's hearing because of the respondent's presence during the acts charged as criminal offenses. The respondent could not have reasonably believed that his representation of Saltzman would not be materially limited. Even if the respondent could have continued to represent Saltzman, he did not obtain her informed consent.

ANSWER: Denied. By way of further answer, the respondent states that his interests did not materially limit his representation of Saltzman at the clerk's hearing. Saltzman's defenses were based on ownership, authority, and license, in that the property at issue was joint marital property unless and until a possessory court order went into effect.

22. The respondent was likely to be a necessary witness at the clerk's hearing to Saltzman's state of mind at the time she allegedly committed the crimes charged.

ANSWER: Denied. By way of further answer, the respondent states that Saltzman's state of mind was not at issue and was not raised as an issue at the clerk's hearing. Saltzman's defenses were based on ownership, authority, and license, in that the property at issue was joint marital property unless and until a possessory court order went into effect.

23. On July 30, 2001, the clerk issued complaints against Saltzman for larceny over \$250 and unauthorized access to a computer system.

ANSWER: Admitted.

24. NO NUMBER 24.

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25. Salzman was assigned on those charges on September 12, 2001. The respondent continued to represent Salzman with respect to the criminal charges until March 2002.

ANSWER: Admitted. By way of further answer, the respondent states that the record speaks for itself.

26. The respondent did not advise Salzman that his representation of her in the criminal matter was or might be materially limited by his own interest in obtaining his presence at the time the cash was taken, the computer files were accessed and the e-mails were sent to his office, and by his personal relationship with her. The respondent could not reasonably have believed that his representation of Salzman would not be similarly limited by his own interests.

ANSWER: Denied. By way of further answer, the respondent states that his representation of Salzman in the criminal matter was not limited, materially or otherwise, by any interest in concealing his presence at the time the cash was taken by Salzman or the computer files were accessed by Salzman. The respondent lacks sufficient knowledge as to whether Salzman was e-mails to his office on June 9, 2001, but denies having received any. The respondent denies concealing the fact that he was present with Salzman in the family office on June 9, 2001. The respondent denies that his representation of Salzman in the criminal matter was limited, materially or otherwise, by his personal relationship with her.

27. Salzman did not at any time give her informed consent to the respondent's conflict of interest in representing her in the criminal matter.

ANSWER: Denied. By way of further answer, the respondent states that there was never a conflict of interest in his representation of Salzman in the criminal matter.

28. On July 25, 2001, Salzman and Leonard filed a stipulation in the Essex County Probate Court in which Leonard agreed to deliver to Salzman by July 27, 2001, two marriage records from Boston to Columbia that had been located by Continental Airlines on February 12, 2001.

ANSWER: Denied. By way of further answer, the respondent states that the Stipulation of Parties filed July 25, 2001 in the Essex County Probate Court stated, among other things, that with regard to "Planes Request", "The Respondent will deliver 2 records to the Plaintiff, no later than Friday, July 27th". The respondent admits that the intent of the parties was that this plane tickets be received by Leonard from Boston to Columbia.

29. Leonard's attorney delivered the tickets to the respondent on August 31, 2001.

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ANSWER: The respondent admits that Leonard's attorney delivered the tickets to him on or about August 31, 2001, but states that the tickets were inactive.

30. The respondent did not deliver the tickets to Saltzman.

ANSWER: Denied. By way of further answer, the respondent states that he delivered the tickets to Saltzman in March 2002.

31. The respondent initially made a number of excuses to Saltzman for not delivering the tickets and then falsely told Saltzman he had misplaced the tickets.

ANSWER: Denied. By way of further answer, the respondent states that he filed a motion for contempt in the Essex County Probate Court because the tickets he received on behalf of Saltzman were inactive, and that in contravention of a court order. The respondent states that while waiting for an order on that motion, he misplaced the tickets.

32. In the alternative, the respondent negligently misplaced the tickets.

ANSWER: The respondent admits that he misplaced the tickets but denies negligence. By way of further answer, the respondent states that the tickets were ultimately found and delivered to Saltzman in March, 2002.

33. Saltzman terminated the respondent's representation of her in March 2002. In March 2002, Saltzman went to his office to retrieve her file. She found the plane tickets enclosed in a bright blue plastic travel agency envelope, in her file.

ANSWER: Admitted as to the first and second sentences. Denied as to the third sentence. By way of further answer, the respondent states that he found the tickets in March 2002 in a box of financial documents which Saltzman had left with him previously. He turned the tickets over to Saltzman once he found them.

Disciplinary Violations

34. By engaging in a sexual relationship with Saltzman during a period of time in which he was representing her in her divorce from Leonard, the respondent engaged in a conflict of interest, in violation of Mass. R. Prof. C. 1.7(b), as set forth below.

ANSWER: Denied. By way of further answer, the respondent incorporates his responses to the factual allegations set forth above.

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COSGROVE BISENBERG & KIL

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35. The respondent's failure to explain to Saltzman the legal risks of taking cash from Leonard's office and logging onto and e-mailing financial records from Leonard's computer on June 9, 2001, to the extent reasonably necessary to allow her make an informed decision, violated Mass. R. Prof. C. 1.4, as set forth below.

ANSWER: Denied. By way of further answer, the respondent incorporates his responses to the factual allegations set forth above.

36. The respondent's failure to advise Saltzman that if she took cash from Leonard's office, the probate court order prohibited her from wasting it, also violated Mass. R. Prof. C. 1.4, as set forth below.

ANSWER: Denied. By way of further answer, the respondent incorporates his responses to the factual allegations set forth above.

37. By e-mailing, or participating in Saltzman's unauthorized e-mailing, of Leonard's business financial records to his e-mail address, in order to obtain information relevant to the divorce proceedings, the respondent violated Leonard's legal rights, in violation of Mass. R. Prof. C. 4.4, as set forth below.

ANSWER: Denied. By way of further answer, the respondent incorporates his responses to the factual allegations set forth above.

38. The respondent's representation of Saltzman in a criminal matter in which the respondent had a personal interest in concealing his participation in the allegedly unlawful conduct, and while the respondent was involved in a personal relationship with Saltzman, and his failure to obtain informed consent if informed consent was possible, violated Mass. R. Prof. C. 1.7(b), as set forth below.

ANSWER: Denied. By way of further answer, the respondent incorporates his responses to the factual allegations set forth above.

39. The respondent's representation of Saltzman in a criminal matter in which the respondent was likely to be a necessary witness, violated Mass. R. Prof. C. 3.7(a) as set forth below.

ANSWER: Denied. By way of further answer, the respondent incorporates his responses to the factual allegations set forth above.

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40. By failing to safeguard and by failing to promptly deliver to Saltzman airplane tickets that had been directed to the respondent on behalf of Saltzman, the respondent violated Mass. R. Prof. C. 1.3, and Mass. R. Prof. C. 1.15(b)(3) and (c), as set forth below.

ANSWER: Denied. By way of further answer, the respondent incorporates his responses to the factual allegations set forth above.

41. In the alternative, by falsely telling Saltzman that he had misplaced the tickets and by intentionally withholding the airplane tickets from Saltzman, the respondent violated Mass. R. Prof. C. 1.15(c) and 8.4(c) and (d), as set forth below.

ANSWER: Denied. By way of further answer, the respondent incorporates his responses to the factual allegations set forth above.

RESPECTFULLY SUBMITTED,
Henry Lebensbaum,
By his attorneys

COPY

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Date: March 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon Dorothy Anderson, Esq., Assistant Bar Counsel, Office of the Bar Counsel, 99 High Street, Boston, MA 02110 by hand delivery.

Dated: March 15, 2005

THOMAS B. DROHAN