

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

SCOTT LEVINE,

Plaintiff,

-against-

PLATZER, SWERGOLD, LEVINE,  
 GOLDBERG, KATZ & JASLOW, LLP,  
 HENRY G. SWERGOLD, CLIFFORD A.  
 KATZ, and HOWARD M. JASLOW,

Defendants.

Index No.: 652616/2021

Mot. Seq. No. 1

**AFFIRMATION OF HENRY G.  
 SWERGOLD IN OPPOSITION TO  
 PLAINTIFF'S MOTION FOR A  
 TEMPORARY RESTRAINING  
 ORDER AND PRELIMINARY  
INJUNCTION**

**HENRY G. SWERGOLD**, an attorney admitted to practice before the Courts of the State of New York, affirms the following under penalty of perjury pursuant to CPLR 2106:

1. I am an individual defendant in this action and a partner at Platzer, Swergold, Goldberg, Katz & Jaslow, LLP (the "New Firm").<sup>1</sup> Prior to its dissolution on March 19, 2021, I was a partner at Platzer, Swergold, Levine, Goldberg, Katz & Jaslow, LLP (the "Old Firm") for over 40 years.

2. I submit this Affirmation in opposition to the Motion by plaintiff Scott Levine ("Levine" or "Plaintiff") for a Temporary Restraining Order and a Preliminary Injunction. I have personal knowledge of the facts set forth herein.

**My Experience**

3. I was admitted to the New York Bar in 1977 and became an associate at a predecessor of the Dissolved Firm that year. Soon thereafter, I became a partner.

<sup>1</sup> In this Affirmation, I will refer to myself and co-defendants Clifford A. Katz and Howard M. Jaslow collectively as the "Partners."

4. My practice focuses on bankruptcy law, corporation transactions, secured transactions, and commercial litigation.

5. The Dissolved Firm was a domestic limited liability partnership at will, with a principal place of business in New York City. It had roots going back more than 50 years, focusing on bankruptcy, debtor and creditor law, secured transactions, and corporate and commercial litigation.

6. Prior to his withdrawal, Plaintiff Levine was the putative, Managing Partner of the Dissolved Firm. Since at least March 22, 2021, he has been affiliated with the law firm of Moritt, Hock and Hamroff, LLP.

#### **Administration of the Dissolved Firm**

7. The Dissolved Firm did not have an operating agreement or other written partnership agreement. Without one, the partners determined compensation based on performance, originations, and billable hours – metrics largely dictated by Levine in recent years.

8. The Dissolve Firm's performance was historically strong and it was generally successful.

9. As an at-will partnership, the Dissolved Firm was subject to dissolution by operation of law in the event that any partner withdrew. Over the years, several partners, including founding partner Sydney Platzter, Steven Karlin, and Stan Goldberg, withdrew and retired from the Dissolved Firm and entered into voluntary separations to avoid dissolution and the havoc it could wreak on the Dissolved Firm and those involved.

10. In each instance, the separation agreements were negotiated and executed by Levine, as the Managing Partner. The separations were orchestrated pursuant to a "formula" that Levine himself had created, including a non-compete, for which Levine was the sole architect. The separation agreements also were directly correlated to the individual's performance

immediately prior to retirement. In the case of Sydney Platzer, Levine was instrumental in considerably reducing his retirement package based upon Mr. Platzer's reduced work hours and business generation.

11. As noted below, despite this "formula" being effectively utilized when all prior partners exited the Dissolved Firm, Levine refused to recognize it as the controlling payout basis for a separation agreement when he informed the Partners in 2020 that he would be retiring.

12. Instead, he chose threats and intimidation against the Dissolved Firm as a form of pressure negotiations.

**Plaintiff Expresses A Desire To Retire In The Summer Of 2020**

13. In 2019, the Dissolved Firm began evaluating ways to address and improve administration, cooperation, performance, cash flow, and employee contentment based in part on feedback from attorneys and staff. The Dissolved Firm retained an independent consulting company, at significant cost, to prepare a written report identifying issues and recommending solutions.

14. Before the COVID-19 Pandemic began, the consulting company interviewed every employee at the Dissolved Firm. It issued the report in July 2020 (the "Report") and identified areas for general improvement applicable to all firm partners. But the Report specifically identified ways in which Levine, the Managing Partner, could improve administration of the Dissolved Firm and treatment of attorneys.

15. The Partners were prepared to address the Report and its recommendations for improvement, but Levine was not. While the Partners made plans to assemble and discuss the Report and the many concerns it reflected, Levine did not want to participate. Instead, he informed his partners that he was going to resign and retire. He drafted a departure email and sent it to the Partners, although the Partners suggested that he not send the email to the entire staff until such

time as his separation was negotiated and finalized. A copy of that email is attached hereto as Exhibit 1.

16. Levine also said he was electing to retire in order to avoid having to deal with the recommendations in the Report, to work less and reduce his responsibilities in order to spend more time with his spouse, who had been ill.

17. Nothing in the Report referenced or limited Levine's ability to care for his wife or take the necessary time off for her care. In fact, the Partners never placed restrictions on any partner, including Levine, regarding the care of their families when necessary. There have been numerous instances that reflect this policy throughout the Dissolved Firm's history.

18. The Partners accepted Levine's decision.

19. To the Partners' surprise, almost immediately after announcing his retirement, we were advised that Levine had retained counsel, ostensibly to assist in negotiating a separation. Over the course of the following 8 months, we attempted to come to terms on a separation agreement.

20. During that period, Levine billed approximately 46 hours per month, and without handling any significant number of contingency cases. The Partners, on the other hand, collectively billed approximately 90 hours per month on average. The Partners shared administrative duties and labored to secure the financial future of the Dissolved Firm, including providing a COVID-safe environment for employees, maintaining the entire workforce, applying for two PPP loans, and working to renew the bank line to ensure liquidity during the pandemic.

21. All matters being handled by the Dissolved Firm continued without interruption.

22. Despite all of this, at the same time, the Dissolved Firm made payments to Levine of over \$400,000 in a showing of good faith and to facilitate settlement, which the Partners thought

was imminent. The Partners covered his American Express Card, car lease and insurance, country club membership and expenses, plus his medical, dental, life, and disability policies. During this period, Levine did not participate in managing the Dissolved Firm.

23. Meanwhile, while negotiating in good faith with the goal of keeping Levine on as a compensated “Of Counsel” and a very generous buyout, unbeknownst to them, Levine secretly sought to convince Dissolved Firm clients to follow him to a new law firm, which happens to be a long-time competitor of the Dissolved Firm (and the New Firm).

24. Also, during that time, Levine told employees of the Dissolved Firm that if he did not get the deal he wanted from the Partners, he was going to “shut down the firm” and stop it from continuing to operate.

25. In particular, in the week prior to his resignation, Levine called Tara Tomasello (the Dissolved Firm’s Office Administrator) as well as other employees and told them that he did not think the Partners were offering him a fair settlement, and that he was going to “blow up the firm.”

26. These comments were greatly distressing to Ms. Tomasello, and to the others who heard them, causing employees to fear for their livelihood. The Partners were left to manage the unrest.

**Plaintiff Resigns From The Dissolved Firm**

27. At some point prior to March 19, 2021, Levine found a new position at a Morrit Hock and Hamroff, LLP. This was all while Defendants continued to compensate Levine, and to present increasingly richer separation terms to him in order to facilitate an orderly transition and to ensure the growth and stability of the Dissolved Firm. Levine asked for more time to consider them, which was given.

28. Then, on Friday at March 19, 2021 at 5:00 p.m. EST, Levine's counsel abruptly wrote an email to me (even though he was fully aware that I too was represented by counsel) to inform me that Levine was "resign[ing] . . . effective immediately."<sup>2</sup>

29. We were shocked. Remarking in dismay that all of our efforts to over-pay to reach an amicable solution were rewarded with an abrupt departure, competition, and a threat to shut down the Dissolved Firm, I wrote an email to my partners and said: "This is the response we received for our efforts to overreach and get this done. He is amazing. IO [sic] would like to stop paying him asap."<sup>3</sup>

30. I understand that Levine argues that this email shows that we "admitted" that we had not been negotiating "in good faith" and that it proves our "treachery." I believe this goes without saying, but when I said "our efforts to overreach" I was referring to our attempts to accommodate Levine's outrageous monetary demands – indeed, to bend over backwards for him – to try and get a deal done.

31. Our counsel responded formally two days later, "acknowledge[ing] and accept[ing] Mr. Levine's withdrawal . . . with immediate effect."<sup>4</sup> The letter noted, among other things, that we were arranging to have all of Levine's personal effects delivered to him at his home address, that he would be offered Cobra healthcare benefits, and that he would be permitted to assume life insurance policies previously maintained by the Dissolved Firm. Further, we acknowledged that Levine is entitled to an accounting, and to "his equity share of the [Dissolved] Firm pursuant to a dissolution-based analysis as of the Withdrawal Date."

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<sup>2</sup> A copy of that email is included in Exhibit C to Levine's Affidavit in Support of this Motion (the "Levine Affidavit").

<sup>3</sup> A copy of that email is also included in Exhibit C to the Levine Affidavit.

<sup>4</sup> A copy of that letter is attached as Exhibit D to the Levine Affidavit.

32. In a gesture of goodwill, after his resignation, the Partners agreed to pay Levine's last month's American Express Card, the next installment of the life insurance, and his remaining car lease.

33. On March 19, 2021, the Partners established the New Firm, maintaining every single employee of the Dissolved Firm. All but one of the Dissolved Firm's clients followed the Partners to the New Firm. Mr. Levine's name was promptly removed from the letterhead, correspondence, bank accounts, voicemail, and the website.

34. The Partners sought to assume the Dissolved Firm's lease obligations (amounting to over \$3 million through October 31, 2024), service contracts, an outstanding bank loan, and two PPP loans. We are also maintaining payroll and benefits to all employees.

35. In the weeks that followed Levine's withdrawal, the Partners (through counsel) repeatedly made clear to Plaintiff's counsel that we would immediately make the Dissolved Firm's books and records available. We also stated that we recognize that Levine is entitled to an accounting and proposed doing that on an expedited basis with a third-party neutral. Levine's counsel rebuffed all such offers.

36. On April 13, 2021, Levine's counsel sent an email to Levine and our attorney, attaching a letter that I am not including here because it contains settlement information. Levine replied to that email, with a copy to our attorney, writing (among other things): "It must be clear the release is mutual and theirs [sic] is effective on payment. *Firm can continue [o]nly if there's a deal and it is paid.*" (emphasis added). A copy of that email is attached hereto as Exhibit 2.

### **Levine's Motion**

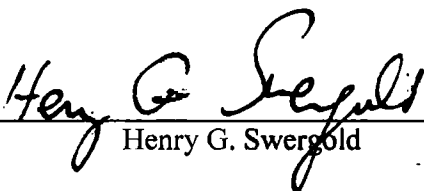
37. I have reviewed the Order to Show Cause that Levine filed. I understand that Levine seeks to restrain the Partners from "[c]onducting any business on behalf of the Firm that is inconsistent with, and outside the scope of, the ordinary course of winding up the Dissolved Firm's

affairs and distributing its assets” and to prohibit us from “disposing of any assets of the Firm . . . or taking any action other than in the ordinary course of winding up its affairs and distributing its assets.”

38. These prohibitions, as worded, would effectively freeze the New Firm and cause dramatic harm to its business, its clients, and its employees. It would leave dozens of employees without jobs in the midst of a pandemic, orphan thousands of active client files, and trigger far-reaching liability (including possible malpractice claims) in the process.

WHEREFORE, the Court should deny Levine’s application for a Temporary Restraining Order and a Preliminary Injunction.

Dated: New York, New York  
April 29, 2021

  
Henry G. Swergold