IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DANIEL KAPLAN, P.A., a Florida professional association, et al.,

Plaintiff,

GENERAL JURISDICTION DIVISION
CASE NO.: 17-007051 CA-01 (44)

vs.

RASCO & ASSOCIATES, P.A., a Florida professional association, et al.,

Defendants,

_____/

ROSENTHAL ROSENTHAL RASCO KAPLAN, LLC, a Florida limited liability company,

Counter-Plaintiff,

vs.

DANIEL KAPLAN, P.A., a Florida professional Association, DANIEL KAPLAN, an individual, KAPLAN LOEBL, LLC, a Florida limited liability Company, and LILIANA LOEBL, an individual,

Counter-Defendants.

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REPORT AND RECOMMENDATION OF SPECIAL MAGISTRATE

This matter is before the undersigned upon referral from the Court pursuant to the Amended Order Appointing Markenzy Lapointe As Special Magistrate. *See* Am'd Order, June 22, 2017. This dispute arose out of claims and counterclaims between former law firm partners, Plaintiff and Counter-Defendant Daniel Kaplan, P.A., ("Kaplan" or "DKPA") against Defendants and Counter-Plaintiffs Rasco & Associates, P.A. ("Rasco P.A."); Eduardo I. Rasco, ("Rasco"); K. Rosenthal & Associates, P.A. ("Rosenthal P.A."); Kerry E. Rosenthal ("Rosenthal"); Rosenthal Rosenthal Rasco, LLC ("RRR"); RRRingmasters, LLC ("Ringmasters"), a non-partner; and Rosenthal Rosenthal Rasco Kaplan, LLC ("RRRK"), in connection with the break-up of their law firm partnership (RRRK) and certain related financial

disputes. Specifically, the Court ordered, for the period of January 1, 2009 through November 30, 2016, that the undersigned:

a. Review all cash receipts and distributions pertaining to RRRK;

b. Evaluate the compensation paid to the partners of RRRK; and

c. Evaluate the "true-up" between the partners and claims that any of the partners received an unequal amount of compensation compared to the other partners.

See Am'd Order at 1. The Court also noted that I am "entitled to rely on all outstanding rules law and court orders…" *Id.* It is within those parameters that I submit this Report and Recommendation ("Report") to the Court. The Report is organized as follows: Part I sets forth the background and generally undisputed facts; Part II contains my findings and recommendations; and Part III provides the analysis and review in support of the findings and recommendations, which comprises the majority of the Report.

I. BACKGROUND AND GENERALLY UNDISPUTED FACTS

Although numerous defendants are named in the complaint, the instant disputes center on the RRRK law firm, a Florida limited liability company that formerly operated in Miami-Dade County. RRRK was a 3-member firm that operated from January 1, 2009, through November 30, 2016. It consisted of Kaplan through DKPA, Kerry Rosenthal through Rosenthal P.A., and Eduardo Rasco, through Rasco P.A. Rasco is party and counsel for the defendants; therefore, Rasco will be referred to consistently and interchangeably on behalf of the defendants and himself throughout this Report.

From its inception through its break-up, RRRK had three practice areas under the three partners: commercial litigation, real estate and family law. Kaplan led the family law practice, Rosenthal headed up the real estate practice and Rasco was in charge of commercial litigation. Each partner was to contribute $250,000 of accounts receivable from his respective practice to their new law firm. Revenues from the three practices were to be collected by the firm's accounting department and paid into a single operating account and all expenses were paid from that account. Each partner was entitled to one-third of the firm's net profits as well as equal salary and benefits.

As with many marriages, disagreements among RRRK partners, principally between Kaplan and the other two partners, arose to the point of irreconcilable differences and an inevitable divorce. Kaplan left the firm with his family law associate Liliana Loebl to form Kaplan Loebl LLC, while Rasco and his partners formed Rosenthal Rosenthal Rasco LLC. RRRK had no written operating agreement, which exacerbated the current dispute, as the parties disagree as to the terms and conditions of their operating agreement.

Chief among the disagreements is whether the partnership required unanimity or majority rule during the partnership. This issue is critical in that Kaplan contends that Rasco and Rosenthal made decisions without his approval. The resolution of this disagreement is also important because Rasco and Rosenthal, who have continued their relationship since the break-up, are perfectly aligned in their position, recollection, and representation of events, leaving

Kaplan alone with respect to his understanding of the terms of their relationship. The second issue, though no less important, is the application of the statute of limitations to some of the compensation disputes. Some of the claims asserted in this litigation go back many years. The resolution of this issue dictates whether any partner or RRRK itself is due any money.

In deciding these issues, the undersigned met with the parties and their counsel, interviewed a witness, and reviewed selected docket filings, written submissions and documents from the parties.[1]

II. SPECIAL MAGISTRATE'S FINDINGS AND RECOMMENDATION

As further discussed below, the undersigned finds and recommends to the Court:

As it relates to how RRRK operated and how the partners made their decisions, both the law and the facts stand squarely against Kaplan. In the absence of a written agreement, Florida law provides for majority rule in the affairs of a partnership. There was no written agreement among RRRK partners, and the facts overwhelming show that RRRK operated through majority rule.

As it relates to the application of the statute of limitations, again the law stands squarely against Kaplan's asserted position. Both the statutory scheme and the decisional law impose broad fiduciary duties upon partners toward each other and the partnership. In a dissolution action, the statute of limitations is not available to a partner who has caused injury to the partnership through violation of his fiduciary duties. Kaplan clearly violated those duties and therefore cannot avail himself of the statute of limitations defense in a timely brought dissolution action.

Last, Kaplan's fiduciary breaches during RRRK's existence (2009-2016) were numerous and caused financial damage to RRRK. A series of surreptitious bartering agreements with firm clients by Kaplan, with corresponding write-offs resulted in Kaplan compensating himself to the disadvantage of RRRK. Kaplan also kept income that clearly belonged to RRRK. There is clear correspondence between Kaplan and clients entering into these agreements that were kept from his partners. As set forth below in Part III, Kaplan currently owes RRRK $234,355.05 for the relevant time period, and Rosenthal owes RRRK $7,784.01.

III. ANALYSIS AND REVIEW IN SUPPORT OF RECOMMENDATION

A. RRRK Operated Through Majority Rule.

The parties assert diametrically opposite positions regarding the decision making process of the partnership. Kaplan contends that from inception to break-up, the partnership required unanimous vote on all major decisions. One exception to the unanimity requirement, according

[1] The level of acrimony between the parties was extreme and unfortunate. It became clear from the beginning, and the parties did not object, that it was best to meet separately to avoid the verbal wrath from one party to the other. In fairness, this largely came from Kaplan, who, despite this arrangement, continued with the unpleasant personal attacks toward his former partner Rasco both in my meeting with him and over the correspondence.

to Kaplan was when Rasco hired an attorney, Melissa Groisman, which both Kaplan and Rosenthal later ratified. The only other exception, he adds, had to do with partners being able to give discounts to a client. Rasco, on the other hand, contends that majority rule had always been the case and that Kaplan was fully aware of that and never complained until the breakup. A partner could give a relatively small discount to a firm client, according to Rasco, but any substantial discount would need majority approval.

The weight of the law and evidence overwhelmingly favors Rasco's contention that the firm operated by majority rule. The Florida Revised Limited Liability Company Act, Chapter 605 of the Florida Statutes ("the Act") establishes the statutory scheme governing a limited liability company ("LLC") and the relationship among its members. Typically, an LLC's operating agreement governs the relationship among the members of an LLC. *Fla. Stat.* § 605.0105. RRRK, however, chose to operate without a written operating agreement. Absent a written operating agreement, the Act provides ample guidance on the operation of an LLC's affairs. The plain language of the Act makes clear that majority vote is the default unless otherwise agreed and each member's vote is proportional to that member's proportional interest in the LLC's profits, as it provides:

605.04073 Voting rights of members and managers.—

(1) In a member-managed limited liability company, the following rules apply:

(a) Each member has the right to vote with respect to the management and conduct of the company's activities and affairs.

(b) Each member's vote is proportionate to that member's then-current percentage or other interest in the profits of the limited liability company owned by all members.

(c) Except as otherwise provided in this chapter, ***the affirmative vote or consent of a majority-in-interest of the members is required to undertake an act, whether within or outside the ordinary course of the company's activities and affairs…***

§ 605.04073 (emphasis added). Further, the Third District has expressly found that "[t]he governance and operation of an LLC in the absence of other written terms is a simple matter of majority rule." *See Kertez v. Spa Floral LLC*, 994 So. 2d 473, 474 (Fla. 3rd DCA 2008). Nothing other than a simple majority is noted anywhere in the statutory scheme or the decisional law.

The law is therefore squarely against Kaplan's contention. But so are the facts. Both Rasco and Rosenthal persuasively countered Kaplan's account and provided a list of examples where the LLC proceeded through majority vote. According to Rasco and Rosenthal, a few years before the partnership with Kaplan, Kaplan worked with Rasco and Rosenthal and that firm operated by majority rule. There was no credible evidence presented that they changed the majority rule once RRRK was formed. That would have crippled the firm's decision-making, with no clear benefit to Rasco and Rosenthal, particularly since they constituted a majority. Their long time accounting manager, Sharon Leech, whom I interviewed and who was in that capacity both when Kaplan was there as a non-partner and later at RRRK as a partner, attested to

the fact that unanimity was not the way the firm conducted business. Among the many examples of majority rule decisions are the following over the course of RRRK's existence:

a. Alan Rosenthal. Kaplan never wanted Alan Rosenthal, an attorney and brother of Kerry Rosenthal, to remain at the firm and wanted to terminate his employment. Kaplan was consistently outvoted 2-to-1 by Rasco on Alan Rosenthal's continued employment.
b. Project Newborn Contributions. Every year the firm made charitable donations to this non-profit. Kaplan consistently objected to the contributions to the non-profit. Kaplan was outvoted 2-to-1 by Rasco and Rosenthal, and the contributions were continually made.
c. Political Contributions. Every year the firm made certain political contributions to various elected officials. Kaplan consistently objected to the political contributions. Kaplan was outvoted 2-to-1 by Rasco and Rosenthal, and the contributions were continually made.
d. Lawsuit against building owner. Before RRRK's acquisition of the building, Rasco wanted RRRK to sue the building owner. Rosenthal and Kaplan outvoted Rasco 2-to-1, and, as a result, the firm did not move forward with the lawsuit.
e. Staff and Attorney Raises. Kaplan did not want to give raises to staff and attorneys. Rasco and Rosenthal outvoted Kaplan 2-to-1 every year, and raises were given.

This is merely a partial list of majority rule examples provided by Rasco. At Kaplan's deposition, part of which I reviewed, he was asked for the basis of his contention that unanimity was required, but provided none. Indeed, Kaplan admitted that he and Rasco made decisions without consulting with Rosenthal; however, he "assumed" that Rasco had Rosenthal's proxy. That says nothing of any unanimity requirement.

It is recommended, based upon these facts, and consistent with the statutory scheme and decisional law, the Court finds that RRRK operated on majority-vote and did not require unanimity.

B. The Statute of Limitations Does Not Apply.

The parties are also at odds with regard to the application of the statute of limitations to some of Rasco's claims (on behalf of RRRK). Rasco seeks to have Kaplan account for partnership funds, including some he distributed to himself through various arrangements going back many years during the partnership without disclosure to his partners. Kaplan contends that to the extent any such distribution or related transactions arose many years ago, Rasco is time-barred under the Act's two-year statute of limitations pursuant to Fla. Stat. §605.0406; the four-year statute of limitations pursuant to Fla. Stat. §§ 95.11(3)(o) and (k); and the-one year statute of limitations under the Statute of Frauds, pursuant to Fla. Stat. § 725.01. Rasco counters that the statutes of limitations are inapplicable.

Again the law stands squarely against Kaplan. As a backdrop, Rasco seeks judicial dissolution, among other things, contending that Kaplan entered into side deals and bartering agreements with certain RRRK clients, pocketing funds and other benefits from RRRK clients without accounting for or sharing such benefits with the firm. According to Rasco, Kaplan

routinely received and kept payments from firm clients and that constitutes theft of partnership asset.

As an elementary matter, any payment from any RRRK client to Kaplan for legal services on behalf of the firm belongs to the firm and should have been shared proportionally with the other partners—Rasco and Rosenthal. Such amounts should have been deposited in the firm's account, as with any other receipt of funds, for proportional distribution. To the extent Kaplan disagrees with that, he completely misapprehends his obligations as a partner under the Act.

The statute of limitations is inapplicable under these circumstances, as the duty to account for partnership assets implicates ***all claims and set-offs*** between and among partners. *Koros v. Doctors' Special Surgery Center of Jacksonville*, 717 So.2d 137, 139 (1998) ("[A]n action for a partnership accounting encompasses all claims, counterclaims and set offs between and among the partners involving matters related to the partnership, including claims for breach of a partner's fiduciary duty."). The Act is devoid of any limitations provision in the context of dissolution. In fact, the Act provides for broad fiduciary duties to the LLC and among its members that bind LLC members indefinitely to account for improperly benefiting from partnership assets. *Fla. Stat.* § 605.0491. As set forth in the Act, the duty of loyalty includes:

> (a) Accounting to the limited liability company and holding as trustee for it any property, profit, or benefit derived by the manager or member, as applicable:
>
> 1. In the conduct or winding up of the company's activities and affairs;
>
> 2. From the use by the member or manager of the company's property; or
>
> 3. From the appropriation of a company opportunity.

Id. The Act proscribes a whole host of additional activities during the winding up of the firm's activities and affairs, including "[r]efraining from competing with the company in the conduct of the company's activities and affairs before the dissolution of the company." *Id.*

A partner simply cannot use the statute of limitations as a shield during the winding up of the business under the Act once the partners decide to break up. *See e.g., Nayee v. Nayee*, 705 So. 2d 961, 963 (Fla. 5th DCA 1998) ("It has long been recognized at common law that a statute of limitations is inapplicable to shield trustees from their responsibilities to their beneficiaries."); *See Taplin v. Taplin*, 88 So. 3d 344, 349 (Fla. 3rd DCA 2012) (rejecting of applicability of Chapter 95 limitations period to claims against trustee where former section 737.307 not triggered); *Cassedy v. Alland Investments Corp.*, 982 So. 2d 719, 720 (Fla. 1st DCA 2008) (Chapter 95 limitations period not triggered where there has been no repudiation of the duty to provide a final accounting); *Browder v. Da Costa*, 91 Fla. 1, 6 (1925) ("There is no showing that the trust reposed in Barrs has been repudiated by him, and until this is done the statute of limitations must remain inoperative in all those jurisdictions where it is otherwise effective.").

In light of the statutory scheme providing for full accountability of partners, partners cannot hide behind the statute of limitations defense when a suit for dissolution is timely brought

in connection to improper benefits alleged to have been acquired *within the partnership period*. As explained below in Section C, there is very little question that Kaplan violated his fiduciary duties, resulting in financial injury to RRRK.

It is therefore recommended that the Court finds the statute of limitations is inapplicable here for claims that arose during term of RRRK (January 1, 2009 through November 30, 2016).

C. True-up of RRRK Claims.

The following represent the true-up recommendations in connection to RRRK. Rasco contends that Kaplan received compensation on numerous occasions from RRRK clients without sharing the compensation with the firm as required. According to Rasco, some of Kaplan's improper compensation came through discounts he granted clients to later receive remuneration for the discount without reporting the remuneration to the partnership. Others involve bartering arrangements between Kaplan and clients, the fair value of which were never accounted for on the firm's books. And some simply involve an outright recognition that payments to him actually were firm assets and should have been treated as such.

The documentary evidence overwhelmingly establishes that Kaplan engaged in improper compensation arrangements without providing the firm its proportional share. Kaplan made some of these arrangements without mentioning a word to his partners, to whom he owed an absolute duty, not only as a matter of fair dealing, but also as a fiduciary under the Act, to disclose and account for these transactions. *Fla. Stat.* § 605.0491.

Kaplan contends that Rasco made improper real estate payments to RRRingmasters without his approval. The real estate payment claims are addressed first below.

1. Real Estate Rent and Tax Payment (from Rasco and Rosenthal)

The most significant financial claim requesting a true-up from Kaplan relates to RRRK's real estate arrangement. Kaplan contends that Rasco and Rosenthal made improper payments to Defendant RRRingmasters through RRRK without his knowledge and approval. RRRingmasters is owned by Rasco and Rosenthal, and Kaplan "believes" that Rasco and Rosenthal paid RRRingmasters in excess of $70,000 and coded the payments as "real estate taxes" related payments. Kaplan further contends that he did not agree to these payments, and, if one were to have accepted his unanimity allegation, such payments or some portions of them are owed to Kaplan.

Based upon the credible evidence reviewed, it appears that months before RRRK was formed, Rasco and Rosenthal purchased an office condominium through RRRingmasters, to use as the law office of RRRK's practice. Rasco and Rosenthal invested $1,100,000.00 ($550,000.00 each) to acquire and build out RRRK's offices, and RRRK was paying RRRingmasters as the landlord some $13,000.00 plus sales tax, insurance, and maintenance fees, as part of a triple net lease. When Kaplan joined RRRK, Rasco and Rosenthal offered him an opportunity to buy into RRRingmasters. Kaplan declined the offer, saying it was a bad investment at the time.

In 2015, Rasco and Rosenthal decided to take advantage of the historically low interest rates and refinance RRRingmasters on the office condominium, thereby reducing the mortgage rent payment to RRRingmasters by $2,676.80. Kaplan was fully aware of the refinancing, according to Rasco and Rosenthal, and Kaplan has presented nothing to suggest otherwise. Kaplan at the time requested that RRRK's rent be reduced by the savings that RRRingmasters was enjoying as a result of the refinancing. Naturally, Rasco and Rosenthal refused, reminding him that he had a full opportunity to invest in RRRingmasters and, therefore, he was not entitled to the benefit of a reduced mortgage.

Consistent with RRRK's way of doing business, the partners did not put any of this in writing, including the lease obligations from RRRK to RRRingmasters. It is evident, however, that Kaplan was at all time fully aware of this arrangement and the payments, as he not only had access to RRRK's books but monitored the books regularly by all accounts. Likewise, it is undisputed that RRRingmasters belonged to Rasco and Rosenthal, and, accordingly, the benefit of any reduced mortgage payment belonged to them, not to Kaplan. As such, no true-up is warranted.

Recommended: Rasco and Rosenthal owes RRRK $0.00

2. Real Estate Rent Tax Payment True Up (from Kaplan)

The only true-up in connection to real estate is rent payment due from Kaplan. According to Rasco, when Kaplan decided to leave RRRK, the parties agreed for him to operate out of RRRK's office until he moved to another office. Kaplan did not pay rent owed for the last two months he occupied that office, according to Rasco. The rent amounts from RRRK for 2016 were $166,920.00, and the taxes due to Ringmasters totaled $25, 847.60. Based on these amounts, Rasco submits that Kaplan owes RRRK $10,592.18, including taxes paid.

Kaplan has not shown that he paid rent and taxes for the last two months, and unless that is shown, he owes RRRK the rent amount.

Recommended: Kaplan owes RRRK $10,592.18

3. Robert Witek Art Write-Off

RRRK client Robert Witek agreed to give Kaplan two photographs for credit toward his RRRK legal bill. Correspondence between the two unambiguously reveals that Witek gave Kaplan 2 *Peter Lik* photographs valued at $5000 each ($10,000) for RRRK legal work. (*See* EIR/DK 000204). In an email, Kaplan acknowledges giving Witek account credit and proceeded to provide Witek with a credit on his firm bill for the exact amount of $10,000. (*See* EIR/DK 000205). This only became known to Rasco during the current dissolution suit through discovery. The $10,000 value of the art belonged to the firm, not to Kaplan alone, and he had an obligation to share that with his partners.

Recommended: Kaplan owes RRRK $10,000.00

4. Isolina Azagoury Receivable

When RRRK was formed, each of the partners agreed to contribute $250,000 in accounts receivable to the firm for a total contribution of $750,000. One of the accounts receivable was of an original Kaplan client, Isolina Azagoury ("Azagoury account"), which came in at $70,018.26. On January 8, 2009, Azagoury paid DKPA $100,242.43. Instead of making a payment of $70,018.26 to RRRK, Kaplan transferred $31,650.83 to the firm. (*See* RRR 001928-1940). Kaplan has not offered any credible evidence to justify paying any amount less than the full amount due to RRRK for later proportional distribution.

Rather, the credible evidence establishes that when Rasco and Rosenthal found out about the underpayment, they reached out to Kaplan to reconcile the Azagoury account. According to Rasco and Rosenthal, Kaplan said it was his mistake and would ultimately pay back the partnership. Kaplan did not pay RRRK.

Recommended: Kaplan owes RRRK $38,367.43

5. Miscellaneous Receivable True-Up Due

At the beginning of the partnership, each partner was to provide $250,000 worth of accounts receivable. Kaplan's tally of accounts receivable actually came in at $269,815.12, meaning he was entitled to get back $19,815.12. (*See* RRR001930). However, a review of the records reveals that Kaplan withdrew $52,641.91 of accounts receivable from his initial batch, reducing his accounts receivable to $217,173.09. Kaplan thus received $32,826.91 more than he was entitled to from the accounts receivable withdrawal he made. That amount is due to RRRK.

Recommended: Kaplan owes RRRK $32,826.79.

6. Rosario Vythoulkas Barter and Write-off

This is a clear bartering arrangement with a firm client to Kaplan's benefit. Kaplan sent a $1,190.26 firm invoice to firm client Rosario Vythoulkas, owner of a dog grooming company, and asked Ms. Vythoulkas whether she "would like to barter," in lieu of payment, for services in connection to Kaplan's two dogs. (*See* RRR 002613). Kaplan reduced the client's bill over the next 8 months by $120 a month until the bill was reduced to zero. (*See* RRR 002614). At Kaplan's deposition, he was asked whether Rosenthal was entitled to the benefit of the dog grooming services of the client equally as he did since Rosenthal owned 3 dogs at the time. Kaplan answered that he did not know at the time Rosenthal owned any dogs. The benefit of such bartering agreement belonged to the firm, not to Kaplan alone; therefore that amount is due to the firm.

Recommended: Kaplan owes RRRK $1,190.26

7. Brett Friedman Barter and Write-off

Over an extended period, RRRK firm client Brett Friedman provided Kaplan with expensive tickets to certain events (i.e., SOBE Festival tickets) in exchange for RRRK services. There are numerous email strings between Kaplan and Friedman where Kaplan offered and Friedman agreed to invoice Kaplan tickets in return for Kaplan crediting the value of those tickets against his RRRK account. (*See* EIR/DK 000189-00194). The worst part of this is that Friedman was a paying client who could afford to pay. Yet Kaplan decided to enter into this bartering agreement that would primarily benefit him to the detriment of RRRK.

No good explanation was provided as to why this arrangement would not constitute a bartering agreement or why Kaplan was entitled to exclusively benefit from that arrangement. Kaplan explains that Friedman was a pro bono client; however, other than Kaplan's statement to that effect, nothing in this relationship suggested it was a pro bono relationship for a client who could afford to pay. Clearly the benefit of such a bartering agreement belonged to the firm, not to Kaplan alone. Rasco submits that the benefit to Kaplan amounted to $16,398.97.

However, Rasco and Rosenthal were given some of these tickets. Rasco admits that he and Rosenthal in fact each received 2 tickets each for two years, totaling $1,400. My calculation revealed that the total due from Kaplan is $10,057.38, counting the various credits to the client and the tickets to Rasco and Rosenthal. (*See* EIR/DK 000189-00194). Rasco contends that an account receivable of $18,430.60 remained when Kaplan left the firm, which he believes Kaplan likely collected through the same bartering agreement, and therefore RRRK is owed $18,430.60. While that may be true, given Kaplan's pattern of conduct, there is no basis to support that in the reviewed documents. Therefore, the amount is capped at $10,057.38.

Recommended: Kaplan owes RRRK $10,057.38

8. Harriet Shmuel Barter and Write-off

Firm client Harriet Shmuel, owner of a school uniform store, became unable to pay her dissolution of marriage bill, which totaled about $16,070.18 as of September 2013. Kaplan (and his partner Liliana Loebl) began writing off Ms. Shmuel's balance from about early 2016 until November 2016. (*See* RRR 005254-5255). Kaplan also gave various credits to the client throughout the years. According to Rasco, the credits and the write-offs were in exchange for credits at the client's local school uniform store and therefore RRRK is entitled to the sum total of write-offs and credits, totaling about $23,416.42.

Emails between Kaplan and the client indicate certain credits were in fact given to the client. Although Kaplan's pattern of engaging in secret bartering is clear, there is no documentary support to conclude this large write off was as a result of the bartering arrangement. Upon reviewing the billing statements, Rasco concedes that the total amount of provable credits came up to at most $1,838.00. Therefore, without more, Kaplan's debt to RRRK in connection to this client is $1,838 (not $23,416.42)

Recommended: Kaplan owes RRRK $1,838.00

9. Jeana Weinberg Payment to Daniel Kaplan

RRRK client Jeana Weinberg paid $3,500 directly to Kaplan (individually) on or about February 2014. Kaplan then proceeded to write off Weinberg's account balance of $4,446.07, including the $3,500 direct payment to him. (*See* RRR 005257). Kaplan provides no good explanation for this write-off; therefore it is owed to the partnership.

Recommended: Kaplan owes RRRK $4,446.07

10. Clark Hall Barter and Write-off

This is a clear bartering agreement with a firm client to Kaplan's benefit. Right before the firm break-up, RRRK client Clark Hall and Kaplan engaged in unmistakable bartering for legal services in exchange for Hall to do "tile work" for Kaplan. At one point, Kaplan wrote: "I'm disappointed that you still have not done the tile work that you agreed to do for me. I have gotten the State Attorney off the case and am now in a position to finalize your divorce." I have spent a substantial amount of time and money cleaning up your mess…" (*See* RRR 001944-1945). Kaplan was certainly not referring to RRRK "tile work" as Clark did not perform such work for RRRK. Kaplan thereafter cancelled a scheduled hearing in the matter and wrote off Hall's entire bill of $4,468.82. Clearly, the benefit of such bartering agreement belonged to the firm, not to Kaplan alone.

Recommended: Kaplan owes RRRK $4,468.82

11. Oliver Nicholich Barter and Write-off

Not long after RRRK's break-up, firm client Oliver Nicholich sent an email to Kaplan stating that "…just want to touch base with you and see if we can clear up the last bill that I owe you… I left unpaid a little over 5K so that you can apply and use in my Gallery…" (*See* EIR/DK 000206). Up to the time of that email, Nicholich had in fact been a RRRK firm paying client, according to RRRK's books, but left the unpaid balance of $6,390 with RRRK after February 2016. (*See* RRR 005258). The benefit of such bartering agreement belonged to the firm, not to Kaplan alone.

Rasco admitted to me that only $700 is the offset, as only $700 of art work was given to Kaplan, based upon a conversation with Nicholich.

Recommended: Kaplan owes RRRK $700.00

12. Jill Singer Mortgage Assignment to Kaplan Individually

On or about May 6, 2015, about a year before the breakup of RRRK, Kaplan received a mortgage pursuant to a settlement agreement on behalf of RRRK client Jill Singer for $55,000, ***without ever mentioning*** that to his partners. (*See* EIR/DK 000177-000179, RRR 001941-1943). Kaplan went on to reduce the client's account receivable the exact amount of $55,000, again without disclosing the mortgage to his partners. Once this was discovered, Kaplan was

asked to reassign the mortgage to RRRK, but he refused and to this day has not done so. Again this clearly belongs to RRRK and not to Kaplan and should be reassigned to RRRK.

Recommended: Kaplan owes RRRK $55,000.00

13. Valerie Acebal Order

On October 27, 2016, just days before announcing his withdrawal from RRRK, Kaplan entered into a settlement agreement and obtained a court order directing RRRK family law client Valerie Aceba's attorney's fees, $35,000, be paid directly to Kaplan, individually. (*See* DKPA/EIR 000670-685). This is RRRK income which Kaplan should have never been assigned to himself to begin with. Yet Kaplan has refused to redirect payment to RRRK, even though this is RRRK money.

Recommended: Kaplan owes RRRK $35,000.00

14. Katherine Fleishchman

This is an account of RRRK client for which Kaplan did work during his last month with RRRK and after RRRK's break-up. Kaplan's ledger showed work billed in November for about $3,817.50. However, Kaplan blacked out a substantial part of the ledger showing additional work had been done. Whatever money collected during the time at RRRK to the very last day belongs to RRRK. I specifically asked Kaplan to provide me with an un-redacted copy of the billing records for the account, how much was billed and ultimately collected; Kaplan did not respond.

According to Rasco, Kaplan promised to settle this account with RRRK for $7,500. I have not been able to confirm this representation, therefore, for current purposes, only $3,817.50 is due to RRRK.

Recommended: Kaplan owes RRRK $3,817.50

15. Francis Simac

This is another account where an RRRK client was retained during the RRRK partnership in November 2016, with a retainer check of $3,500. Again, whatever money was collected during the time at RRRK or whatever money was earned during that time belongs to RRRK.

Recommended: Kaplan owes RRRK $3,500.00

16. Achikam Yogev and Jorge Mujica

These two are another set of accounts where RRRK clients were retained during the RRRK partnership, with retainer checks of $7,500 and $1,000 respectively. (*See* EIR/DK 000148). Again this money within the partnership time belonged to RRRK. The $1,000 check, however, was dated "12/1/16", therefore that will not be charged to Kaplan.

Recommended: Kaplan owes RRRK $7,500.00

17. Miscellaneous Partner Expense True-ups

Rasco has submitted a ledger for the years of the partnership (2009-2016) with the total compensation and credit card expenditures of each partner. (*See* August 30, 2017 letter to Special Magistrate (with Ledger Exhibit A)). According to the ledger, Rosenthal received $1,584,029.64 (including credit cards expenditures of $40,847.71); Rasco received $1,553,411.00 (including credit cards of $42, 624.45); and Kaplan received $1,591,296.25 (including credit cards expenditures of $56,401.16), totaling $4,728,736.89 of compensation. Of the $4,728,736.89 amount, each partner was entitled to one third, at $1,576,245.63. This submission from Rasco remains completely unrebutted from Kaplan. Anything any partner received beyond what that partner was entitled to is owed to the partnership. Under these circumstances, Rosenthal owes RRRK $7,784.01 and Kaplan owes RRRK $15,050.62.

Recommended: Kaplan owes RRRK $15,050.62
Recommended: Rosenthal owes RRRK $7,784.01

18. Health Insurance Premiums True-up

Kaplan contends that he is entitled to payment in connection to disproportionate health insurance premiums paid on behalf of Rasco. There is no question that the insurance premiums toward the latter years of RRRK (2014-2016) were greater for Rasco and Rosenthal as compared to Kaplan's. However, according to Rasco, from 2009 through 2013, Kaplan's wife and sister were dependents on Kaplan's health insurance, and they came off Kaplan's insurance in 2014. At the end of the day, to the extent that the entire time before 2014, RRRK was paying for premiums that supported Kaplan's wife and sister, the excess payments to Rasco and Rosenthal premiums more or less cancel each other out. Also, the partnership agreement among the partners, according to Rasco and Rosenthal, what that insurance premiums were one area that the partners agreed no true up was necessary. No true up is therefore warranted for insurance premiums.

Recommended: Health Insurance True up is $0.00.

Based upon the above, the undersigned finds and recommends that Kaplan owes RRRK a total of $234,355.05 and Rosenthal owes RRRK $7,784.01. Claims not addressed in this Report were either beyond the time period referred by the Court, not presented, or presented but not substantiated by the parties.

IT IS SO RECOMMENDED.

/s/ *Markenzy Lapointe*
MARKENZY LAPOINTE
Special Magistrate