

IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.

ROSENTHAL & LEVY, P.A.,
A Florida professional association,

59 2007 CA 0231 86XXXX MB

Plaintiff,

vs.

 ANDREW FRISCH and
MORGAN & MORGAN, P.A.,
A Florida professional association,

Defendants.

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THOMAS R. BOGGS, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

**COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF
AND FOR DAMAGES**

Plaintiff, ROSENTHAL & LEVY, P.A. ("ROSENTHAL"), by and through its undersigned attorneys, sues Defendants, ANDREW FRISCH ("FRISCH") and MORGAN & MORGAN, P.A. ("MORGAN"), and alleges:

1. This is an action for temporary and permanent injunctive relief and for damages against Defendants which is within the jurisdiction of this Court.
2. ROSENTHAL is a Florida professional association which is engaged in the practice of law with its principal place of business in Palm Beach County, Florida.
3. FRISCH is a resident of Palm Beach County, Florida and is an attorney licensed to practice law in the State of Florida.
4. MORGAN is a Florida professional association engaged in the practice of law with offices throughout the State of Florida.
5. Venue is proper in Palm Beach County, Florida for the reason that Defendants are residents of Palm Beach County, Florida.

6. All conditions precedent to the bringing of this action have occurred or been performed.

7. From April 21, 2006 through November 21, 2007, ROSENTHAL employed FRISCH as an associate attorney to handle labor and employment matters. FRISCH'S employment terminated on November 21, 2007.

8. As an associate attorney employed by ROSENTHAL, FRISCH owed ROSENTHAL a fiduciary duty to act with the utmost loyalty and honesty and to treat as confidential information concerning ROSENTHAL'S clients and its cases.

9. As an associate attorney employed by ROSENTHAL and based upon FRISCH'S fiduciary duty to ROSENTHAL, ROSENTHAL provided FRISCH with client cases to work on with the understanding that the clients, client information and client case information was confidential and trade secret information to be used by FRISCH in the performance of his duties for ROSENTHAL and not for FRISCH'S own personal benefit and self-dealing.

10. ROSENTHAL provided FRISCH with access to confidential client information with the understanding that upon the termination of FRISCH'S employment he would return to ROSENTHAL all client information.

11. Prior to FRISCH terminating his employment with ROSENTHAL on November 21, 2007, FRISCH contacted clients of ROSENTHAL and began the process of soliciting ROSENTHAL'S clients to follow him to his new place of employment. We are attaching as Exhibit "A" to this Complaint, a note of a communication with a ROSENTHAL client confirming same.

12. Subsequent to the termination of FRISCH'S employment with ROSENTHAL, ROSENTHAL discovered that FRISCH had accepted employment with MORGAN in its Davie, Broward County office.

13. While employed as an associate attorney at ROSENTHAL, FRISCH was assigned labor and employment cases, including cases involving overtime pay and Americans with Disabilities cases. MORGAN, as evidenced in its website, also practices in these areas.

14. Subsequent to FRISCH'S termination of his employment with ROSENTHAL, ROSENTHAL discovered that FRISCH continued his solicitation of ROSENTHAL'S clients by corresponding with ROSENTHAL'S labor and employment clients. A copy of the letter FRISCH sent to ROSENTHAL'S clients is attached hereto and incorporated herein as Exhibit "B."

15. Prior to sending his unilateral solicitation letter to ROSENTHAL'S clients on MORGAN'S letterhead, FRISCH did not contact ROSENTHAL for the purpose of negotiating a joint letter to ROSENTHAL'S clients advising them that FRISCH was leaving the ROSENTHAL firm and advising the clients of FRISCH'S new address.

16. Instead, FRISCH and MORGAN surreptitiously and without ROSENTHAL'S knowledge or consent, solicited the most desirous of ROSENTHAL'S employment and labor clients in an attempt to have those clients transfer their cases to FRISCH and MORGAN.

17. Upon learning of FRISCH and MORGAN'S unilateral and impermissible solicitation of ROSENTHAL'S clients, ROSENTHAL forwarded a letter to FRISCH and MORGAN demanding that they cease and desist their impermissible solicitation of ROSENTHAL'S clients. A copy of ROSENTHAL'S letter to FRISCH and MORGAN is attached

hereto and incorporated herein as Exhibit "C." Despite ROSENTHAL'S demand, FRISCH and MORGAN have continued their wrongful solicitation of ROSENTHAL'S clients.

18. The unilateral solicitation letters sent by FRISCH were sent on the letterhead of MORGAN. Prior to sending their unilateral solicitation letters, MORGAN had no professional, business, familial or other relationship with ROSENTHAL'S clients.

19. After learning that FRISCH and MORGAN had impermissibly sent unilateral solicitation letters to ROSENTHAL'S clients, ROSENTHAL contacted its clients to alleviate any confusion that the receipt of the letters would cause clients.

20. In ROSENTHAL'S communications with its clients, ROSENTHAL learned that the unilateral solicitation letters sent by FRISCH and MORGAN confused ROSENTHAL'S clients and left them with the impression that ROSENTHAL either did not wish to continue representing the clients or that ROSENTHAL did not have the expertise to continue said representation. A copy of correspondence from a ROSENTHAL client setting forth his confusion upon receiving FRISCH and MORGAN'S unilateral and impermissible solicitation letter is attached hereto and incorporated herein as Exhibit "D."

21 The unilateral solicitation letters sent by FRISCH and MORGAN have caused ROSENTHAL'S clients confusion, anxiety and frustration. ROSENTHAL'S clients fear that their cases will be abandoned, that ROSENTHAL had closed its offices and that it would cost the clients more money to have their cases prosecuted.

22. The cases unilaterally solicited by FRISCH and MORGAN were cases in which either liability could be easily proven and/or damages were significant. FRISCH and MORGAN'S primary motivation in soliciting ROSENTHAL'S clients was for financial profit and gain.

23. In addition to tortiously interfering with ROSENTHAL'S advantageous business relationships with its clients and misappropriating ROSENTHAL'S confidential and trade secret information, the unilateral solicitation of ROSENTHAL'S clients by FRISCH and MORGAN constitutes unlawful solicitation and violation of §877.02, F.S., punishable as a first degree misdemeanor.

24. The unilateral solicitation of ROSENTHAL'S clients by FRISCH and MORGAN constitutes an impermissible tortious interference with ROSENTHAL'S advantageous business relationships with its clients for which injunctive relief and damages will lie.

COUNT I
(INJUNCTIVE RELIEF)

25. This is an action for temporary and permanent injunctive relief that is within the jurisdiction of this Court.

25. ROSENTHAL repeats and realleges the allegations set forth in Paragraphs 2 through 24 as though fully set forth herein.

26. As a result of FRISCH and MORGAN'S illegal and improper solicitation of ROSENTHAL'S clients, their tortious interference with ROSENTHAL'S advantageous business relationships with its clients, and their misappropriation of ROSENTHAL'S confidential and trade secret information, ROSENTHAL requests that this Court issue its temporary and permanent injunction to prohibit FRISCH and MORGAN'S continued solicitation of ROSENTHAL'S clients.

27. The granting of temporary injunctive relief is necessary to prohibit FRISCH and MORGAN'S continued use of ROSENTHAL'S confidential and trade secret information to solicit ROSENTHAL'S clients.

28. FRISCH and MORGAN continue to contact and solicit ROSENTHAL'S clients, including clients for whom MORGAN performed no legal services.

29. ROSENTHAL is entitled to the entry of temporary and permanent injunctive relief to prevent the continuing confusion to ROSENTHAL'S clients which has resulted from FRISCH and MORGAN'S unethical and impermissible solicitation of ROSENTHAL'S clients and to prevent further harm which will occur to the clients as a result of ROSENTHAL being deprived of its ability to represent its clients and protect their personal injury claims.

30. The granting of temporary injunctive relief will serve to maintain the *status quo* and serve to foster the policy of the State of Florida and The Florida Bar's ethical provision against attorneys preying upon susceptible and unprotected clients.

31. ROSENTHAL has a clear legal right to the relief requested for the reason that ROSENTHAL is counsel of record of clients in their cases and FRISCH and MORGAN have no cognizable, legal interest in and to ROSENTHAL'S clients' cases prior to the commencement of their unethical and impermissible solicitation of ROSENTHAL'S clients.

32. ROSENTHAL is without an adequate remedy at law for the reason that without the issuance of a temporary injunction by this Court, FRISCH and MORGAN will continue their unlawful and impermissible solicitation of ROSENTHAL'S clients, continue to deprive ROSENTHAL of its ability to represent its clients and otherwise cause serious and irreversible harm to ROSENTHAL'S clients who were placed in the precarious position of being confused, belittled and unsure of who will continue to represent their cases.

WHEREFORE, Plaintiff, ROSENTHAL & LEVY, P.A., moves this Court for the issuance of a temporary and permanent injunction:

A. prohibiting Defendants, ANDREW FRISCH and MORGAN & MORGAN, P.A., their agents, employees and those acting in concert with them from soliciting ROSENTHAL'S clients;

B. prohibiting Defendants, ANDREW FRISCH and MORGAN & MORGAN, P.A., their agents, employees and those acting in concert with them from continuing to use ROSENTHAL'S confidential and trade secret information concerning ROSENTHAL'S clients for the purpose of soliciting ROSENTHAL'S clients;

C. awarding Plaintiff, ROSENTHAL & LEVY, P.A., its reasonable attorney's fees and costs in connection with the prosecution of this matter; and

D. for such other and further relief as this Court deems just and proper.

COUNT II
(TORTIOUS INTERFERENCE)

33. This is an action for damages in excess of \$15,000.00 exclusive of interest, costs and attorney's fees which is within the jurisdiction of this Court.

34. ROSENTHAL repeats and realleges the allegations set forth in Paragraphs 2 through 24 as though fully set forth herein.

35. Prior to November 21, 2007, ROSENTHAL enjoyed substantial advantageous business relationships with its personal injury clients.

36. Prior to November 21, 2007 and prior thereto, FRISCH and MORGAN have tortiously interfered with ROSENTHAL'S advantageous business relationships with its personal injury clients by impermissibly soliciting them to transfer their cases to FRISCH and his firm, MORGAN.

37. FRISCH and MORGAN'S tortious interference with ROSENTHAL'S advantageous business relationships with its clients was unjustified and not protected by any privilege or right.

38. As a result of FRISCH and MORGAN'S tortious interference with ROSENTHAL'S advantageous business relationships, ROSENTHAL has suffered damages, including special damages by way of lost profits.

39. FRISCH and MORGAN'S tortious interference with ROSENTHAL'S advantageous business relationships with its clients was willful, intentional and undertaken with the knowledge that it constituted an impermissible attempt to solicit clients with the knowledge that it would adversely impact upon ROSENTHAL professionally and financially. Consequently, upon proof, ROSENTHAL is entitled to seek punitive damages from FRISCH and MORGAN.

WHEREFORE, Plaintiff, ROSENTHAL & LEVY, P.A., demands judgment against Defendants, ANDREW FRISCH and MORGAN & MORGAN, P.A., jointly and severally, for compensatory damages, costs and for such other and further relief as the Court deems just and proper. Plaintiff, ROSENTHAL & LEVY, P.A., further reserves its right to amend its claim to seek punitive damages from Defendants in compliance with §768.72, F.S.

COUNT III
(UNFAIR COMPETITION)

40. This is an action for damages in excess of \$15,000.00 exclusive of interest, attorney's fees and costs and is within the jurisdiction of this Court.

41. ROSENTHAL repeats and realleges the allegations set forth in Paragraphs 2 through 24 as though fully set forth herein.

42. FRISCH and MORGAN wrongfully, illegally and impermissibly solicited ROSENTHAL'S clients and willfully and wantonly interfered with ROSENTHAL'S advantageous business relationships with those clients.

43. The purpose of FRISCH and MORGAN'S improper and unlawful conduct was to maliciously and unlawfully interfere with ROSENTHAL'S attorney client relationships with

its clients so as to gain for themselves an unfair, competitive advantage which FRISCH and MORGAN would not otherwise have had.

44. FRISCH and MORGAN reasonably believed, knew or should have known that their conduct and actions would permit them to gain an unfair, competitive advantage over ROSENTHAL by enabling them to represent ROSENTHAL'S clients.

45. FRISCH and MORGAN lured away ROSENTHAL'S clients through unfair competition involving the use of ROSENTHAL'S confidential and trade secret client information to impermissibly solicit ROSENTHAL'S clients.

46. At all times material and relevant hereto, MORGAN wrongfully solicited clients of ROSENTHAL with whom it had no prior relationship for the purpose of inducing the clients to transfer their cases from ROSENTHAL to MORGAN.

47. FRISCH and MORGAN, through their illegal and wrongful conduct have engaged in unfair competition with ROSENTHAL.

48. As a result of FRISCH and MORGAN'S wrongful conduct, impermissible and unlawful solicitation of ROSENTHAL'S clients, their conduct as set forth above, and their diversion of ROSENTHAL'S clients for their benefit, ROSENTHAL has suffered damages, including as special damages, lost profits.

49. FRISCH and MORGAN'S conduct in engaging in unfair competition with ROSENTHAL, was willful, intentional, undertaken with the knowledge that it constituted an impermissible attempt to solicit ROSENTHAL'S clients and with the knowledge that it would adversely impact ROSENTHAL professionally and financially. Consequently, upon proof, ROSENTHAL is entitled to seek punitive damages from FRISCH and MORGAN.

WHEREFORE, Plaintiff, ROSENTHAL & LEVY, P.A., demands judgment against Defendants, ANDREW FRISCH and MORGAN & MORGAN, P.A., jointly and severally, for

compensatory damages, costs and for such other and further relief as this Court deems just and proper. Plaintiff, ROSENTHAL & LEVY, P.A., further reserves the right to amend its Complaint to seek punitive damages in compliance with §768.72, F.S.

COUNT IV
(BREACH OF CONTRACT)

50. This is an action for damages for breach of contract against FRISCH in excess of \$15,000.00 and is within the jurisdiction of this Court.

51. ROSENTHAL repeats and realleges the allegations set forth in Paragraphs 2 through 24 as though fully set forth herein.

52. On or about April 24, 2006, FRISCH entered into an oral Employment Agreement with ROSENTHAL.

53. FRISCH breached his Employment Agreement with ROSENTHAL by breaching his implied duty of good faith and fair dealing by impermissibly soliciting ROSENTHAL'S clients.

54. FRISCH further breached his Employment Agreement with ROSENTHAL by failing to properly discharge his duties as an associate attorney for ROSENTHAL.

55. As a result of FRISCH'S breach of his Employment Agreement with ROSENTHAL, ROSENTHAL has suffered damages, including special damages by way of lost profits.

WHEREFORE, Plaintiff, ROSENTHAL & LEVY, P.A., demands judgment against Defendant, ANDREW FRISCH, for compensatory damages, pre-judgment interest, costs and for such other and further relief as this Court deems just and proper.

COUNT V
(BREACH OF FIDUCIARY DUTY)

56. This is an action for damages in excess of \$15,000.00 against FRISCH for breach of his fiduciary duty to ROSENTHAL and is otherwise within the jurisdiction of this Court.

57. ROSENTHAL repeats and realleges the allegations set forth in Paragraphs 2 through 24 as though fully set forth herein.

58. As an associate attorney hired by ROSENTHAL, FRISCH owed a fiduciary duty to ROSENTHAL and to exercise the highest degree of honesty, loyalty and fair dealing with ROSENTHAL and its clients.

59. FRISCH breached his fiduciary duty to ROSENTHAL by misappropriating confidential and trade secret information concerning ROSENTHAL'S business and clients to permit FRISCH to solicit ROSENTHAL'S clients.

60. As a result of FRISCH'S breach of fiduciary duty, ROSENTHAL has suffered damages, including special damages by way of lost profits.

61. The conduct of FRISCH was willful, intentional and undertaken in disregard of FRISCH'S fiduciary duty to ROSENTHAL and its clients. Thus, ROSENTHAL reserves the right to amend its Complaint to assert a claim for punitive damages.

WHEREFORE, Plaintiff, ROSENTHAL & LEVY, P.A., demands judgment against Defendant, ANDREW FRISCH, for compensatory damages, pre-judgment interest, costs and for such other and further relief as this Court deem just and proper. Plaintiff, ROSENTHAL & LEVY, P.A., reserves the right to amend its Complaint to assert a claim for punitive damages pursuant to Florida Statute.

COUNT VI
(MISAPPROPRIATION OF TRADE SECRETS)

62. This is an action for injunctive relief and damages against FRISCH and MORGAN for misappropriation of ROSENTHAL'S trade secrets pursuant to §688.02, F.S. and §688.04, F.S.

63. ROSENTHAL repeats and realleges the allegations set forth in Paragraphs 2 through 24 as though fully set forth herein.

64. ROSENTHAL is the owner of information including without limitation, client names, addresses, client lists, client files and client information gathered and obtained in connection with ROSENTHAL'S practice of law.

65. The above information has independent, economic value from not being generally known or literally ascertainable by proper means by others in competition with ROSENTHAL and ROSENTHAL took reasonable efforts under the circumstances to maintain the secrecy of this information.

66. FRISCH originally acquired the above information through the scope of his employment with ROSENTHAL.

67. FRISCH and MORGAN misappropriated the above information at or near the time FRISCH terminated his employment with ROSENTHAL and used the trade secret information to solicit ROSENTHAL'S clients.

68. FRISCH and MORGAN have derived a commercial advantage from the confidential information FRISCH misappropriated from ROSENTHAL.

69. The misappropriation by FRISCH and MORGAN of confidential information was willful and malicious.

WHEREFORE, Plaintiff, ROSENTHAL & LEVY, P.A., respectfully requests the following relief from the Court against Defendants, ANDREW FRISCH and MORGAN & MORGAN, P.

A.:

- A. temporary and permanent injunctive relief on the authority of §688.003, F.S.;
- B. damages as set forth in §688.004(1), F.S.;
- C. exemplary damages under the authority of §688.004(2), F.S.;
- D. attorney's fees under the authority of §57.105, F.S. and §688.005, F.S.;
- E. the Court costs of this action; and
- F. any further relief as the Court deems just and proper.

COUNT VII
(CONVERSION)

70. This is an action for damages in excess of \$15,000.00 against FRISCH and MORGAN for their conversion of ROSENTHAL'S property.

71. ROSENTHAL repeats and realleges the allegations set forth in Paragraphs 2 through 24 as though fully set forth herein.

72. At or before the time of FRISCH'S termination of employment from ROSENTHAL, FRISCH and MORGAN misappropriated ROSENTHAL'S property, including but not limited to client names, client addresses, client lists, client files and other proprietary and confidential information of ROSENTHAL.

73. FRISCH and MORGAN utilized the property and information they converted and misappropriated from ROSENTHAL to illegally and improperly solicit ROSENTHAL'S clients and to tortiously interfere with ROSENTHAL'S advantageous business relationships with its clients.

74. As a result of FRISCH and MORGAN'S conversion of ROSENTHAL'S property, ROSENTHAL has suffered damages, including but not limited to special damages by way of lost profits

75. The conduct of FRISCH and MORGAN in misappropriating ROSENTHAL'S property was willful, intentional, malicious and undertaken with the intent to adversely impact ROSENTHAL'S business and its ability to represent its clients. As a result, ROSENTHAL reserves the right to amend its Complaint to assert a claim for punitive damages.

WHEREFORE, Plaintiff, ROSENTHAL & LEVY, P.A., demands judgment against Defendants, ANDREW FRISCH and MORGAN & MORGAN, P. A., jointly and severally, for compensatory damages, pre-judgment interest, costs and for such other and further relief as this Court deems just and proper. Plaintiff, ROSENTHAL & LEVY, P.A., further reserves the right to amend its Complaint to assert a claim for punitive damages pursuant to Florida Statute.

COUNT VIII
(CIVIL CONSPIRACY)

76.. This is an action for damages against FRISCH and MORGAN for their civil conspiracy in an amount in excess of \$15,000.00 and is otherwise within the jurisdiction of this Court.

77. ROSENTHAL repeats and realleges the allegations set forth in Paragraphs 2 through 24 as though set forth herein.

78. FRISCH and MORGAN conspired to tortiously interfere with ROSENTHAL'S advantageous business relationships with its clients, to misappropriate and convert ROSENTHAL'S confidential and trade secret information, and to engage in unfair competition and unfair and deceptive trade practices.

79. FRISCH and MORGAN have combined, organized, assisted and planned with one another to commit and/or assist the other in committing and taking the wrongful actions more fully described above.

80. As co-conspirators, FRISCH and MORGAN are each responsible and jointly and severally liable for each and every action and tort committed by the other and for all damages claimed in the above listed Counts.

WHEREFORE, Plaintiff, ROSENTHAL & LEVY, P.A., demands judgment against Defendants, ANDREW FRISCH and MORGAN & MORGAN, P.A., jointly and severally for compensatory damages, costs, interest and for such other and further relief as this Court deems just and proper.

Demand for Jury Trial

Plaintiff, ROSENTHAL & LEVY, P.A., demands trial by jury on all issues so triable.

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