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THE STATE OF NEW HAMPSHIRE  
SUPREME COURT  
2012 TERM

Docket No.  
**2012-0253**

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**APPEAL OF THOMAS F. DESTEPH**  
(New Hampshire Department of Insurance)

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**APPELLANT REPLY BRIEF**

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APPEAL TO SUPREME COURT - PURSUANT RULE 10

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Thomas F. DeSteph, Appellant, Pro Se  
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**B. TABLE OF AUTHORITIES**

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**C. SUMMARY OF ARGUMENT**

The Department’s decision to revoke Mr. DeSteph’s producer license was flawed and improper. The Department used Collateral Estoppels to take property from a Citizen that was not fully heard in the case they based their action. The Department further tries to limit what can be argued in the appeal by taking advantage of Mr. DeSteph’s misfortune of being represented by unreliable and ineffective attorneys; one of which was disbarred by this Court. The Department continues their battering by claiming they can use their discretion to harm certain licensees more than others for the same alleged violations of the same rule; which sounds more like abuse of office than it does discretion. (See Elizabeth Kelley Ins. 08-028-EP) Violations of NH Constitution, Article 18 and 33 is not a discretionary practice, it’s a violation of Due Process. Charging that a licensee cannot perform his duties without notice is not discretion; it’s a violation of Due Process.

#### **D. ARGUMENT**

The Department begins their brief stating untrue facts of the case. The Bankruptcy case did not find that Thomas DeSteph defrauded a client; in fact, the opinion of the Court, (Vaughn, C. J.) first says the parties had some kind of relationship. The adversary action in the Chapter 13, if nothing else, was clear that Ms. Gembitsky was not a client but a romantic partner. This makes the action by the Department ridiculous. This thinking would allow the Department to pull the license of every domestic partner that accuses each other of deception in family court.

All the evidence in the bankruptcy adversary action assertively points toward the disagreement between two domestic/romantic partners and overwhelming and clearly indicates that this was not a sale of some unregistered security but the agreement between the parties over the startup funds of a failed business project both parties started.

**Collateral Estoppels** must not be used in an action where the party was not fully heard in the initial case. The Department did not allow testimony about the adversary action in the chapter 13 that would have explained why Thomas was not fully heard. Thomas' representative, Mr. Samuels, never sat down with Thomas about the Departments' action or fact-finding hearing except for about four minutes before the fact-finding hearing began; Mr. Samuels, in an email the weekend before the fact-finding hearing, asked Thomas to forward any documents that Thomas thought would be needed at the hearing but then never submitted the documents nor did Mr. Samuels examine or reexamine Thomas or even prompt Thomas to testify at the hearing. Mr. Samuels did not preserve appellate questions or appeal this action.

No Reasonable Person would agree that Thomas was fully heard in the Adversary action that the Department relies in this case. Mr. Gray, unknown to Thomas, appears in the adversary action under suspension and does not cross-examine Nancy Gembitsky on any of her testimony, let alone the key issues; does not object to hearsay or other rule violations; does not summarize the case for Judge Vaughn to explain the details of the exchange and or sole proprietorship; does not explain the order to Thomas when issued; does not explain the appellant procedures and fails to preserve higher Court questions of law. Mr. Gray's replacement by this Honorable Court during his suspension, Ms. Costanzo, does not read over the final order to preserve questions of law or even explain the technical issues or appeal the order as she first indicated she would.

The Department argues that it would not consider evidence from the adversary case because Thomas was not creditable according to the Court; (Vaughn, C. J.) but, having documents in which Nancy Gembitsky testifies that she signed indicating she had access to her money, spent some of the funds on travel and business equipment, receives checks from the account that held her funds; endorsed and deposited them into her own personal bank account, and testifies she wrote a letter to sprint signifying she was in business with Thomas - should cause the department to take notice and allow testimony on the record that would show this was not an act of misconduct but a scorned lover with an agenda to stop any discharge of the debt in a Chapter 13 proceeding.

Finally, Thomas DeSteph asked the Department to provide a transcript of the fact-finding hearing because he wanted to show the injustice of his treatment and the incompetence of his representation at the hearing. Mr. DeSteph could certainly not

afford the cost of the transcript, especially after the department took his only means of income but the department declined as shown in the emails attached herein to the Appendix.

### **E. CONCLUSION**

Thomas was not fully heard in the adversary action and could not appeal the decision that was ruled against the weight of the evidence; furthermore, Thomas' representation at the Department's fact-finding hearing was so ineffective that injustice was inevitable. The representation in both the adversary and the fact-finding hearing was more than just incompetent, it was unfair, unreasonable and on some levels, it was illegal. There have been so many wrongs in this case; the only right thing to do is to reverse the Department's decision, anything less would be an injustice beyond reason.

October 24, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas F. DeSteph', written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2012 I served the foregoing Appeal under Rule 10 from Final Order of the Department of Insurance, State of New Hampshire by mailing a copy thereof by first class mail, postage prepaid, to the Commissioner of Insurance, State of New Hampshire, 21 South Fruit Street, Suite 14, Concord, NH 03301. Additionally, I certify on the same date I sent a copy to the Office of the Attorney General, 33 Capitol Street, Concord, NH 03301.

Dated October 24, 2012, Jaffrey, New Hampshire

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal stroke, positioned above a solid horizontal line.

Thomas F. DeSteph, Pro Se

## F. APPENDIX

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A. Email . . . . .	1
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## Thomas DeSteph

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**From:** Marshall, Christopher [Christopher.Marshall@doj.nh.gov]  
**Sent:** Wednesday, July 18, 2012 5:51 PM  
**To:** Thomas DeSteph  
**Subject:** RE: DeSteph Appeal to N H Supreme Court

OK That is clear enough.

Chris Marshall

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**From:** Thomas DeSteph [mailto:tdesteph@aol.com]  
**Sent:** Wednesday, July 18, 2012 5:39 PM  
**To:** Marshall, Christopher  
**Subject:** Re: DeSteph Appeal to N H Supreme Court

Just so we are very clear, I want a transcript but cannot afford the cost, I have asked the department to provide one at their expense which was denied, according to your email.

Sent from my iPod

On Jul 17, 2012, at 4:46 PM, "Marshall, Christopher" <Christopher.Marshall@doj.nh.gov> wrote:

Mr. DeSteph:

I am preparing the record for filing with the court, which requires that I also file the transcript if you want one. I take it from your email below that you do not want to arrange for a transcript, so I will file the record without one.

Regards,  
Chris Marshall

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**From:** Marshall, Christopher  
**Sent:** Friday, June 29, 2012 10:09 AM  
**To:** 'Thomas DeSteph'  
**Subject:** RE: DeSteph Appeal to N H Supreme Court

Mr. DeSteph:

The Department is not willing to pay the cost of a transcript. You are welcome to obtain a quote from some other service, but it must be from a certified stenographic service agency. Regardless of who does it, the Department would make the arrangements for the transcript and you would pay for it.

Regards,

Chris Marshall