

THE STATE OF NEW HAMPSHIRE
SUPREME COURT



DOCKET # 2012-0252

2012 MAY -7 01:23:37

MAY 2012

APPEAL OF THOMAS F. DESTEPH

MOTION TO RECONSIDER
APPELLANT'S MOTION TO STAY

NOW COMES, the Appellant, **Thomas DeSteph, Pro Se**, and respectively asks this Honorable Court to reconsider Appellant's Motion to Stay. The Department's orders will irreparably harm Mr. DeSteph and although the Appellant carries the burden of proof, the State says it best in their Objection to the Motion to Stay when it said, "*the Supreme Court may order the suspension of such order pending the determination of such appeal or other proceeding whenever, in the opinion of the court, justice may require such suspension.*" Except for the statement above, the State's Objection to Appellant's Motion to Stay is meritless and attempts to distort the facts as to win over the Court. Mr. Marshall didn't even bother to send the complete pleading to Mr. DeSteph; leaving out an apparent appendix.

DUE PROCESS

FAIRNESS

COPY

1. The Insurance Department, in a recent decision, whereas the licensee was criminally convicted of a felony in a fraud action using the highest standard of proof, the Department issued a penalty of only 120 days suspension. (*See Elizabeth Kelley Ins. 08-028-EP*) Concluding a reasonable suspicion that the penalty of revocation of Mr. DeSteph's producer license for a bankruptcy decision of a business partner non dischargeable dept is an abuse of discretion and unreasonable; unfairly harsh.

2. Mr. DeSteph was not found to have defrauded Gembitsky by clear and convincing evidence and certainly not by Proof beyond a reasonable doubt but by the lowest standard of evidence, preponderance. The Court did not even seem to consider the evidence presented by Mr. DeSteph, partly outlined in paragraph 9 of this pleading. The revocation of a professional license is too high a cost to suffer to have it

based on such a low standard of evidence and in this case, puts an entire family on State Welfare without any chance of recovery. The devastating hardship of this action is too high a price for anything less than clear and convincing evidence and anything less violates a citizen's due process.

3. It is convenient for the State to ignore the real facts in the bankruptcy case as it has become very obvious, at least in this case, that justice is not the objective – only winning is important. If this were not true, the State's Objection to Stay would have not used descriptions like "Customer" as the facts prove that Nancy Gembitsky and Thomas DeSteph were romantically involve, even contemplating marriage; lived with each other in Connecticut and New Hampshire, traveled many times as a couple and wrote letters to the minor children's Guardian Ad Litem, the late Attorney and Gentleman, Scott Innes; certainly not a client or customer as newly used in the State's misrepresentation.

4. The State's argument that the Insurance Department's Show Cause Notice (See State's Objection to Stay page 5; ¶11) somehow gives notice to Mr. DeSteph that he is being reviewed because he cannot perform his duties as a producer is utterly ridicules and a deliberate misrepresentation. This writer is amazed at the downright disrespect of some attorneys as they misrepresent the facts in cases without fear of examination. The State omitted the fact that the notice attached a complete explanation of reasons for the notice and none of those reasons included Mr. DeSteph's ability to perform his duties; only the collateral estoppel of the bankruptcy opinion; and, violates Mr. DeSteph's ¹due process.

PUBLIC IS NOT AT RISK

5. The State's argument that the public is at risk has no merit. The disagreement to repay business startup funds to a former lover over nine plus years ago does not threaten the public, today or at any time during the Appellant's thirty-three years of service.

6. The Court should consider that a thirty-three year stretch of impeccable service to actual/real customers and clients without one grievance illustrates the Appellant's responsibility and commitment to his producer license.

¹ The Appellant will motion this court to include this question and argument in an addendum to the original appeal.

7. Mr. DeSteph does not attempt to interpret the reasons Bankruptcy Judge Vaughn's opinion does not mention any of the original documented 146 exhibits offered in the case; except that, the Court just got it wrong.

8. The opinion did not articulate that Mr. DeSteph's attorney, Mr. Clark, unknown to Mr. DeSteph, was under suspension and ordered not to take on new clients before representing Mr. DeSteph as he appeared at the bankruptcy hearing on the merits. It does not explain why Mr. Clark did not directly examine or cross examine Gembitsky or why he only asked Mr. DeSteph three or four questions - then said no when Judge Vaughn asked if he wanted to submit a written final argument. It does not explain why Mr. Clark did not advise Mr. DeSteph to submit a cross complaint for fraud against Gembitsky for her lies about the relationship, the General Partnership, the initial business agreement or any of the other counts of fraud on the court.

9. The opinion does not explain why Mr. DeSteph's video was returned to him months after the hearing on the merits by Attorney Catherine Costanzo. The video was an exhibit but when it was returned, it was included in a box compiled by Mr. Clark with all the other records on the case. The video showed Gembitsky, Mr. DeSteph and his minor children all talking about the infusion of the family with Gembitsky, their travels, vacations and business aspiration in a relaxed home-style video. The video proves Nancy Gembitsky and Mr. DeSteph were in a romantic relationship and involved in the startup of a business called TDA Advantage.

10. A small sampling of Original documents submitted as exhibits but not mentioned or obviously considered in the opinion are listed here:

- i. Documents showing Gembitsky used some the funds to purchase office furniture.
- ii. Documents confirming Gembitsky added DeSteph to her Sprint cellular telephone account.
- iii. Document showing Gembitsky wrote a letter to sprint announcing the couple was in business together.

- iv. An original document showing Gembitsky used a bank card from the account with her funds for travel expenses, this document shows the receipt and bank statement proving the funds being withdrawn in her name.
- v. Shows that Mr. DeSteph entered wages paid to Gembitsky in his 2003 tax return along with the 100% business use of the Vehicle purchased.
- vi. No original note/agreement was ever produced and the copy had unexplained dates and markings.
- vii. Gembitsky never entered this transaction on her 2005 New York application for mortgage or any tax return but Mr. Clark never examined this; this was on Gembitsky's answers to her interrogatories.

ARGUMENT

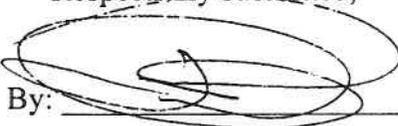
11. The public is not at risk and Mr. DeSteph will be forever unjustifiably harmed if the order is not stayed; and, there is "more" than a "preponderance of evidence" that show a finding of fraud is not crystal-clear in the bankruptcy decision. And, the harm arising from a collateral estoppel based penalty in such a case cannot be fairly called justice.

WHEREFORE, the Plaintiff requests this Honorable Court:

- A. Grant a stay on the Commissioner's order dated February 23, 2012
- B. Order other such relief that may be just and equitable.

Dated: May 3, 2012

Respectfully submitted,

By: 

Thomas DeSteph, Pro Se
Appellant
603-532-9318
tdesteph@aol.com

CERTIFICATION

I hereby certify that a copy of the foregoing has been forwarded this fourth day of May 2012, via first class mail, postage prepaid, to:

Commissioner
Department of Insurance
State of New Hampshire
21 Fruit Street
Concord, NH 03301

Office of the AG
State of New Hampshire
33 Capitol Street
Concord, NH 03301



Thomas DeSteph