
THE STATE OF NEW HAMPSHIRE
SUPREME COURT
2012 TERM

Docket No. _____

State of New Hampshire, Department of Insurance and Thomas F. DeSteph

Appeal under Rule 10

RSA 541 from Final Order of
Department of Insurance

APPEAL OF THOMAS F. DESTEPH

APPENDIX

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To Be Argued By: Thomas F. DeSteph

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**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Thomas F. DeSteph d/b/a The DeSteph Agency

INS No. 11-023-EP

**ORDER TO SHOW CAUSE
AND NOTICE OF HEARING**

The New Hampshire Insurance Department ("NHID") orders Thomas F. DeSteph, d/b/a The DeSteph Agency, to show cause why the Insurance Commissioner should not revoke his New Hampshire insurance producer license and impose the maximum fine allowed by law. In support of this Order to Show Cause and pursuant to RSA 541-A:31, the NIID states as follows:

I. THE RESPONDENT

Thomas F. DeSteph ("Mr. DeSteph") is a licensed New Hampshire insurance producer. Mr. DeSteph's business address is 1 Dustin Lane in Jaffrey, New Hampshire, and he does business under the registered trade name of "The DeSteph Agency."

II. STATEMENT OF THE FACTS

On or about April 22, 2009, Nancy Gembitsky ("Ms. Gembitsky"), a Connecticut consumer, sued Mr. DeSteph in the United States District Court for the District of New Hampshire. The Complaint alleged multiple counts, including common-law fraud, statutory fraud, unfair trade practices, breach of contract, conversion, constructive trust and negligent misrepresentation. In essence, Ms. Gembitsky alleged that she had invested \$100,000 with Mr. DeSteph, and that he promised her monthly interest and the return of her principal, but instead delivered nothing and used her money as his own.

Immediately upon instituting suit against Mr. DeSteph, Ms. Gembitsky also moved *ex parte* for a temporary restraining order and prejudgment attachment. Following an evidentiary hearing on April 29, 2009, the District Court granted Ms. Gembitsky's motion, finding she had established by clear and convincing evidence a likelihood of success on the merits of her claims against Mr. DeSteph.

A week after the April 29, 2009 evidentiary hearing, Mr. DeSteph filed a Suggestion of Bankruptcy with the District Court, stating he had filed "a voluntary petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Hampshire." Mr. DeSteph's Voluntary Petition identified Ms. Gembitsky as a creditor in the Bankruptcy Court proceeding, effectively terminating Ms. Gembitsky's District Court litigation.¹

To circumvent Mr. DeSteph's attempt to use the Bankruptcy Court proceeding to discharge the debt he owed her, Ms. Gembitsky instituted an adversary proceeding against Mr. DeSteph in Bankruptcy Court. The allegations in Ms. Gembitsky's Bankruptcy Court Complaint against Mr. DeSteph were identical to the allegations she had previously made against Mr. DeSteph in her District Court Complaint.

The Bankruptcy Court held a trial in the adversary proceeding beginning March 17, 2010 and issued its decision in a twenty-one page Memorandum Opinion dated May 26, 2010. Noting that "DeSteph's testimony was completely lacking in credibility" and "also inconsistent with his prior testimony in district court," the Court found, among other things, that Mr. DeSteph had defrauded Ms. Gembitsky and awarded her "actual damages

¹ On September 9, 2009, the District Court issued an order noting that Mr. DeSteph had filed for relief under the Bankruptcy Code and directing the clerk "to statistically close the case." The District Court further stated that "[n]othing contained in this Order shall be considered a dismissal or disposition of this matter, and should further proceedings become necessary, any party may move to reopen."

in the amount her \$127,030 plus interest accruing as of January 10, 2008.” (A copy of the Memorandum Opinion is attached hereto as NHID Exhibit 1, and is incorporated into and made a part of this Order to Show Cause.)

Mr. DeSteph did not appeal the Bankruptcy Court’s Memorandum Opinion to the United States Court of Appeals, First Circuit. Accordingly, the Memorandum Opinion is final.

III. STATEMENT OF ISSUES

The conduct outlined above implicates the following issue: Whether the Bankruptcy Court’s Memorandum Opinion of May 26, 2010 establishes that Mr. DeSteph engaged in fraudulent or dishonest practices or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in New Hampshire or elsewhere.

IV. NEW HAMPSHIRE INSURANCE LAWS VIOLATED BY RESPONDENT

As a result of the conduct outlined above, the NHID maintains that Mr. DeSteph violated RSA 402-J:12, I (h).

V. OTHER APPLICABLE LAW

Doctrine of collateral estoppel (*see, e.g., In Re Michael E. & a.*, No. 2011-115 (N.H. Supreme Court, September 22, 2011); and *Stewart v. Bader*, 154 N.H. 75, 80-81 (2006)).

VI. REQUEST FOR ADMINISTRATIVE PENALTIES

Based on his alleged misconduct, and pursuant to RSA 402-J:12, I and RSA 400-A:15, III, the NHID requests that the Hearing Officer (1) revoke the New Hampshire Mr. DeSteph ‘s producer license; and (2) impose a fine against Mr. DeSteph in an amount of not less than \$2,500.

VII. NOTICE OF HEARING

Pursuant to RSA 541-A:31 and Chapter Ins 200, the hearing in this matter shall commence on November 16, 2011 at 9:00 a.m. at the offices of the NHID, 21 South Fruit Street, Suite 14, Concord, New Hampshire.

The Insurance Commissioner or his representative shall act as the Hearing Officer at the hearing.

Any party may request a transcript of the proceeding. The party requesting a transcript of the proceedings shall file a written request for a certified court reporter with the Hearing Officer at least 10 days prior to the scheduled hearing date. The costs incurred for the services of a certified court reporter shall be borne by the requesting party.

Mr. DeSteph has the right to be represented by counsel at his expense. Should Mr. DeSteph elect to obtain counsel, said counsel shall file a notice of appearance with the Commissioner at the earliest possible date.

Richard P. McCaffrey shall appear as staff advocate, representing the interests of the NHID.

SO ORDERED.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Date: 10-24-11



Roger A. Sevigny, Insurance Commissioner

**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

21 SOUTH FRUIT STREET SUITE 14
CONCORD, NEW HAMPSHIRE 03301

Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

***STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT***

FINAL ORDER on HEARING

In Re: Thomas F. DeSteph d/b/a The DeSteph Agency

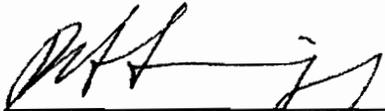
Docket No.: Ins 11-023-EP

Pursuant to the provisions of Ins 204.26(a)(4), the Proposed Order on Hearing issued on January 13, 2012 by Hearing Officer Jennifer Patterson is hereby ACCEPTED as a FINAL ORDER and DECISION.

This is the final action of the department. You have the right to request reconsideration of this final action within 30 days in accordance with RSA 541.

So ORDERED,

Date: February 23, 2012



Roger A. Sevigny, Commissioner

**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

**In re: Thomas F. DeSteph d/b/a The DeSteph Agency
Docket No.: Ins 11-023-EP**

PROPOSED DECISION and ORDER

Procedural History

Respondent Thomas F. DeSteph d/b/a The DeSteph Agency ("Mr. DeSteph") is a licensed New Hampshire insurance producer. On October 24, 2011, the New Hampshire Insurance Department ("Department") issued an Order to Show Cause and Notice of Hearing ("Show Cause Order") alleging that Mr. DeSteph violated RSA 402-J:12, I(h) and ordering that he show cause why his producer license should not be revoked based on his having committed fraudulent, coercive, or dishonest business practices or demonstrating incompetence, untrustworthiness or financial irresponsibility. The Department also sought an administrative fine of not less than \$2,500 under RSA 400-A:15, III.

On December 12, 2011, the Department held an adjudicative hearing pursuant to RSA 400-A:17-24, RSA 541-A:30-38 and N.H. Code of Admin. Rules Ins Part 200 on the Show Cause Order. Mr. DeSteph appeared at the hearing, represented by his attorney, Richard Samuels. The Department was represented by its enforcement attorney, Richard McCaffrey. Other Department staff present were Carolyn Petersen, assisting attorney McCaffrey, and Karen Cassin, acting as clerk to the hearing officer.

At the hearing, attorney McCaffrey offered nine exhibits into evidence in a bound volume.¹ Attorney Samuels did not object to these exhibits, but argued that Exhibit 5, a U.S. District Court order, should not be given preclusive effect.² Attorney Samuels offered one exhibit as a full exhibit without objection, and three exhibits to which attorney McCaffrey objected but which were marked for identification pending the submission of legal arguments. Both attorneys asked questions of Mr. DeSteph, who was the only witness, and made closing arguments. The hearing lasted approximately two hours and fifteen minutes, and was recorded electronically. Following the hearing both parties filed memoranda making legal arguments.

¹ Exhibits in this volume are referenced by exhibit number and by cumulative page number, rather than the internal page number for the document.

² This issue is discussed in footnote 5.

Statutory Provisions

This case arises out of the producer licensing and general enforcement provisions of the Insurance Code. RSA 402-J:12, I provides that

The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy a penalty in accordance with RSA 400-A:15, III or any combination of actions for any one or more of the following causes:

...
(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

RSA 400-A:15, III provides that "[a]ny person who knowingly violates any statute, rule, regulation, or order of the commissioner may, upon hearing, . . . be subject to [an] administrative fine not to exceed \$2,500 per violation. . ."

Burden of Proof

In this administrative proceeding, the Department bears the burden of proving, by a preponderance of the evidence, that Mr. DeSteph's insurance producer license should be revoked and a fine imposed. N.H. Code of Admin. Rules, Ins 204.05.

Summary of the Parties' Positions

The Department asserts that Mr. DeSteph's insurance producer license should be revoked based on findings made in a May 26, 2010 memorandum opinion issued by the United State Bankruptcy Court for the District of New Hampshire in an adversarial proceeding arising out of Mr. DeSteph's May 2009 chapter 13 bankruptcy filing. In the opinion, the bankruptcy court found that Mr. DeSteph had defrauded Nancy Gembitsky, the plaintiff in the adversarial proceeding. The court awarded Ms. Gembitsky monetary damages and denied Mr. DeSteph a discharge of Ms. Gembitsky's claim. Mr. DeSteph did not appeal the bankruptcy court's ruling.

The Department asserts that Mr. DeSteph is barred by collateral estoppel from relitigating the issues decided by the bankruptcy court, and that the bankruptcy court's findings and rulings are sufficient to establish, as a matter of law, that he used fraudulent business practices and demonstrated untrustworthiness within the meaning of RSA 402-J:12, I(h).

Mr. DeSteph disputes the Department's claim of collateral estoppel. He asserts that the issues in the two proceedings are not identical and that the hearing officer

(should consider anew Mr. DeSteph's testimony regarding his interactions with Ms. Gembitsky, as well as three documents that have already been considered by the bankruptcy court.³

Further, Mr. DeSteph argues that even if he is collaterally estopped from arguing that he did not commit fraud, license revocation under RSA 402-J:12 and the imposition of a penalty under RSA 400-A:15 rest in the Department's discretion and require consideration of any mitigating or aggravating circumstances as well as overall fairness. In other words, Mr. DeSteph asserts that imposition of a particular sanction is not automatic, and asks that the hearing officer consider the evidence submitted at the hearing in addition to the bankruptcy court's findings.

Findings of Fact

Mr. DeSteph is an insurance producer residing in Jaffrey, New Hampshire and licensed to sell life, accident and health insurance in the state. NHID Exhibit 1 at 1-2. Mr. DeSteph has worked in the insurance industry for 38 years and has been a licensed producer for 33 years. DeSteph testimony. In 1988 or 1989 he moved from Connecticut to his family's summer home in New Hampshire, but continued to have ties to Connecticut. DeSteph testimony.

Mr. DeSteph has in the past been licensed as a producer in other states, including Connecticut, Florida, Massachusetts, New Jersey and Wisconsin. NHID Exhibit 3. At present he is licensed only in Connecticut, Massachusetts and New Hampshire. Id., DeSteph testimony. Mr. DeSteph has no occupation or source of income other than his work as an insurance producer. DeSteph testimony. He has never been the subject of a formal complaint involving his work in the insurance business, and has not been involved in litigation other than his divorce and the matters detailed below regarding Ms. Gembitsky. DeSteph testimony.

The DeSteph Agency, a trade name registered with the New Hampshire Secretary of State's Office, held an insurance producer license at one time, but that license expired in 2006 and was not renewed. NHID Exhibits 2 and 4; DeSteph testimony.

Mr. DeSteph and Ms. Gembitsky met in Connecticut during the fall of 2002 when they were introduced to each other through a mutual friend. NHID Exhibit 9 at 82.⁴ At that time, Mr. DeSteph conducted business as The DeSteph Agency and kept a banking account for business purposes known as the TDA Advantage Trust. Id.

³ These documents were marked for identification but not admitted as full exhibits.

⁴ This paragraph and the following three paragraphs are taken from the "Background" section of the bankruptcy court's order, and the hearing officer views them as uncontested even apart from the issue of collateral estoppel. NHID Exhibit 9 at 83 (noting that "[a]ll other facts, including the reasons behind the \$100,000 transfer and the Note, remain in dispute." (emphasis added)).

Mr. DeSteph offered financial and investment planning advice to clients including Ms. Gembitsky. Upon such advice, Mr. DeSteph helped Ms. Gembitsky transfer some of her 401(k) plans into annuities issued by Allianz Life Insurance Company of North America and American International Group, Inc. Id.

In January 2003, Ms. Gembitsky gave Mr. DeSteph a check for \$100,000 made out to TDA Advantage Trust. Subsequently in March 2003, Mr. DeSteph executed a promissory note related to the \$100,000 transfer. Id. Mr. DeSteph never made any payments on the note. NHID Exhibit 9 at 83.

In April 2009 Ms. Gembitsky filed a complaint against Mr. DeSteph in the United States District Court for the District of New Hampshire seeking to recover on the promissory note based on a number of theories including statutory and common law fraud, unfair trade practices, breach of contract, conversion, constructive trust and negligent misrepresentation. NHID Exhibit 5 at 24 (District Court Order).⁵

On April 27, 2009, Ms. Gembitsky was granted a temporary restraining order attaching assets of Mr. DeSteph, and on April 29, 2009, the court held a preliminary injunction hearing at which Mr. DeSteph appeared *pro se*. Id. at 25.

On May 6, 2009, Mr. DeSteph filed a Chapter 13 bankruptcy petition with the United State Bankruptcy Court for the District of New Hampshire. NHID Exhibit 6 at 42. Mr. DeSteph filed the bankruptcy petition because he was afraid that he would not be able to provide for himself and his two daughters if his assets were encumbered due to the lawsuit. DeSteph testimony.

On May 7, 2009, the District Court issued an order granting Ms. Gembitsky's request for a preliminary injunction; the order prohibited Mr. DeSteph from using, transferring or encumbering any assets other than those needed to keep his first mortgage current and pay for other ordinary expenses. NHID Exhibit 5 at 38.

On May 8, 2009, Mr. DeSteph filed a Suggestion of Bankruptcy with the District Court suggesting that Ms. Gembitsky's action was subject to the automatic stay under the Bankruptcy Code.⁶ NHID Exhibit 6 at 41-42.

⁵ Mr. DeSteph asserts that he is not estopped from relitigating the findings of the District Court order, as it is not a final order on the merits. The hearing officer agrees with Mr. DeSteph that the factual and legal findings in the District Court order do not have collateral estoppel effect, and does not view these findings as conclusive. However, the hearing officer does accept the District Court order as evidence of the nature of Ms. Gembitsky's claims in the District Court action, and the procedural history of that case.

⁶ This filing is dated May 6, 2009, but bears the District Court's date and time stamp of 11:26 a.m. on May 8, 2009. To the extent the date of filing is disputed, the hearing officer concludes based on the evidence presented at the hearing that the stamp accurately reflects the date and time of filing.

On May 18, 2009, Ms. Gembitsky initiated an adversarial proceeding in Mr. DeSteph's bankruptcy case by filing a complaint for damages and objection to discharge. NHID Exhibit 8 at 56-75. The complaint asserted claims including statutory and common-law fraud, unfair trade practices, breach of contract, conversion, constructive trust and negligent misrepresentation. *Id.* All of the claims centered around the \$100,000 check and promissory note. The complaint included three exhibits: a copy of a handwritten note, NHID Exhibit 8 at 78; a copy of the \$100,000 check, NHID Exhibit 8 at 79; and a copy of the promissory note, NHID Exhibit 8 at 80.

On May 28, 2009, Mr. DeSteph filed his Chapter 13 Plan with the bankruptcy court. NHID Exhibit 7 at 45. In the plan, Mr. DeSteph proposed to avoid Ms. Gembitsky's claim, secured by the preliminary injunction, as preferential. NHID Exhibit 7 at 47.

On March 17, 2010, the bankruptcy court held an eight- or nine-day trial on Ms. Gembitsky's complaint. DeSteph testimony. Mr. DeSteph and Ms. Gembitsky both testified and were both represented by counsel. DeSteph testimony. Mr. DeSteph's attorney did not cross-examine Ms. Gembitsky, but had the opportunity to do so. DeSteph testimony. On May 26, 2010 the court issued its memorandum opinion. NHID Exhibit 9 at 81-101. Mr. DeSteph did not appeal. DeSteph testimony.

The bankruptcy court found, among other things, that Mr. DeSteph had committed fraud against Ms. Gembitsky and that her claim was not dischargeable in bankruptcy. NHID Exhibit 9 at 95.⁷ The court ordered Mr. DeSteph to pay Ms. Gembitsky \$124,030 (plus interest accruing as of January 10, 2008) and to turn over to her a 2003 Chrysler Town & Country van. NHID Exhibit 9 at 101.

At the hearing in this matter, Mr. DeSteph testified that he has been repaying Ms. Gembitsky in installments in accordance with his bankruptcy plan. He did not know the amount of the installments or what she had been paid in total. He also testified that, by agreement, he did not turn over the van to Ms. Gembitsky but instead paid her \$2000 and kept it. DeSteph testimony.

Collateral Estoppel Standard

The doctrine of collateral estoppel "bars a party to a prior action . . . from relitigating any issue or fact actually litigated and determined in the prior action." Petition of Kalar, 162 N.H. 314, 320 (2011). One major purpose of the doctrine is "to avoid repetitive litigation so that at some point litigation over a particular controversy must come to an end." Cook v. Sullivan, 149 N.H. 774, 777 (2003). The New Hampshire Supreme Court uses a five-part test to decide whether collateral estoppel applies in a particular case:

⁷ The court's specific findings and their effect in this proceeding are discussed further below.

[C]ollateral estoppel may preclude the relitigation of findings . . . when: (1) the issue subject to estoppel is identical in each action; (2) the first action resolved the issue finally on the merits; (3) the party to be estopped appeared in the first action or was in privity with someone who did; (4) the party to be estopped had a full and fair opportunity to litigate the issue; and (5) the finding at issue was essential to the first judgment.

Kalar, 162 N.H. at 320-21. The second, third and fourth factors of the collateral estoppel standard are clearly met in this case. There is no dispute that the bankruptcy court issued a decision on the merits which Mr. DeSteph did not appeal, that Mr. DeSteph was a party to the adversarial proceeding, and that he was represented by counsel in a multi-day trial, affording him the opportunity to fully litigate the issues.

The parties' arguments center on whether the issues in this license revocation proceeding are identical to those of the bankruptcy proceeding, and whether certain findings, particularly with respect to Mr. DeSteph's interactions with Ms. Gembitsky, were essential to the judgment in the bankruptcy matter. Mr. DeSteph disputes the Department's claim that the issues in the two proceedings are identical. The Department argues that the issues are identical and that Mr. DeSteph is estopped from relitigating them.

Application of Collateral Estoppel Standard

As a matter of law, determining the preclusive effect of a prior decision may require a detailed analysis of the cause of action and elements of proof of the earlier case. For example, in Stewart v. Bader, the New Hampshire Supreme Court was presented with the question of whether the defendant's conviction for first-degree murder carried within it a conclusive finding that the defendant's treatment of the victim was "wanton and malicious" for purposes of a finding of civil liability. Stewart v. Bader, 154 N.H. 75 (2006). The Court concluded that the jury's findings in the criminal case did have that preclusive effect, and barred the defendant from relitigating this issue in the civil case:

Here, there is no disputed issue of material fact regarding the defendant's conduct. The defendant was convicted in his criminal trial of first-degree murder. The jury found him guilty of "purposely caus[ing] the death of Vicki Bader." In this context, "purposely" means that his "conscious object [was] the death of another" and that his acts to further that object "were deliberate and premeditated." RSA 630:1-a, II (1996). We hold that this conduct, as a matter of law, was wanton.

malicious and oppressive and therefore justified an award of liberal compensatory damages.

Id. at 87. As in Bader, resolving the collateral estoppel issue requires a detailed examination of the earlier decision and the nature of the claims litigated in the bankruptcy adversarial proceeding.

Here, the critical finding was one of fraud. The bankruptcy court articulated the standard for New Hampshire common law fraud as follows:

Under New Hampshire law, in order to succeed on a claim of fraud, the party seeking to prove fraud must establish that the other party made a misrepresentation with knowledge of its falsity or with conscious indifference to its truth with the intention to cause another to rely upon it. In addition, the party seeking to prove fraud must demonstrate justifiable reliance.

NHID Exhibit 9 at 91 (quotations omitted, emphasis added).

The court found that Ms. Gembitsky had met her burden of proof with respect to all three elements of her fraud claim. First, the court concluded that Mr. DeSteph made four representations to Ms. Gembitsky with respect to the \$100,000 transfer and the promissory note:

(1) That Gembitsky would be investing in a limited partnership; (2) that Gembitsky would receive 6.15% interest per month on her investment; (3) that Gembitsky would be repaid her \$100,000 in January 2008; and (4) that Gembitsky would share in the profits of the TDA Advantage Trust.

NHID Exhibit 9 at 91.

Second, and most critically for the case at hand, the bankruptcy court found that Mr. DeSteph made these four representations with knowledge of their falsity. As a matter of law, the court found, "there can be no fraud if the maker represents a future intent to do something, unless the maker never intended to perform." NHID Exhibit 9 at 93.

The bankruptcy court concluded, based on the testimony and evidence before it, that Mr. DeSteph "never intended to perform." Id. Specifically, the court found that:

No part of Gembitsky's \$100,000 was ever invested into a limited partnership known as the TDA Advantage Trust. DeSteph deposited

Gembitsky's check on January 14, 2003 into the TDA Advantage Trust. When he did that, he comingled her funds with funds he used to pay premiums on behalf of another client. . . . Furthermore, the TDA Advantage Trust Account was without sufficient funds to cover the total amount of checks that had been written on the account until DeSteph deposited Gembitsky's check into the account . . . (Specifically, some of Gembitsky's money was used to pay Allianz on behalf of another client). Within a week of receiving and depositing Gembitsky's check, DeSteph transferred funds from the TDA Advantage Trust Account to his business account at the DeSteph Agency. Right away, DeSteph was using Gembitsky's money for purposes other than what he had promised her. The evidence clearly shows that at the time DeSteph represented to Gembitsky that he would invest her \$100,000, he never intended to follow through with his intention.

Id. The court went on to find that Mr. DeSteph's misrepresentations "continued up until 2008. DeSteph never made a single payment to Gembitsky . . . and each time Gembitsky requested documentation or inquired into her payments, DeSteph provided an excuse as to his non-action." NHID Exhibit 9 at 94.

The court concluded that Mr. DeSteph's false representations "induced Gembitsky to give DeSteph a check for \$100,000." Id. Third and finally, the court found that Ms. Gembitsky "justifiably relied on DeSteph's initial statements and his continuous misleading statements to her detriment." Id.

The hearing officer finds that, given the legal standard for fraud, the bankruptcy court's detailed factual findings regarding the falsity of Mr. DeSteph's representations to Ms. Gembitsky were essential to the court's finding of fraud. See Stewart v. Bader, 154 N.H. 75 (2006). These detailed findings, in particular that Mr. DeSteph never invested Ms. Gembitsky's money in a limited partnership, that he comingled her funds with those of other clients, and that he immediately transferred the funds into his own business account, demonstrate "fraudulent, coercive, or dishonest practices, or . . . incompetence, untrustworthiness or financial irresponsibility" within the meaning of RSA 402-J:12, I(h). Thus, the finding of fraud for purposes of the adversarial proceeding in bankruptcy, and the required finding for purposes of license revocation and imposition of an administrative fine are identical.

The hearing officer finds that all five criteria for collateral estoppel have been met and that based on the bankruptcy court's findings, Mr. DeSteph has engaged in fraudulent business practices within the meaning of RSA 402-J:12, I(h).

Whether to Consider Additional Evidence (Scope of Relitigation)

At the December 12 hearing, Mr. DeSteph's counsel sought to offer testimony and exhibits to which counsel for the Department objected on the grounds that it would constitute relitigation of issues or facts decided by the bankruptcy court. Specifically, Mr. DeSteph sought to explain and recharacterize his pre-2009 interactions with Ms. Gembitsky. Determining whether to consider this evidence requires an inquiry into whether these facts were "actually litigated" before the bankruptcy court. Petition of Kalar, 162 N.H. 314, 320 (2011). If so, Mr. DeSteph is collaterally estopped from relitigating them.

In its decision, the bankruptcy court detailed the two parties' versions of events separately, then made its own factual findings (entitled "What the Court Believes Actually Occurred") after weighing the credibility of the witnesses. NHID Exhibit 9 at 83-87. Among other things, Mr. DeSteph testified in the bankruptcy court trial that he was involved in a "romantic relationship" with Ms. Gembitsky, that she "showed a willingness to help" with his divorce litigation, and that he believed she was also willing to "assist him financially." NHID Exhibit 9 at 85. According to Mr. DeSteph's testimony in the bankruptcy matter, Ms. Gembitsky wrote him the \$100,000 check as part of a "joint venture," but also said he could use the money to pay himself a salary and to cover costs associated with his custody litigation and other incidental expenses. Id. When the romantic relationship ended, Mr. DeSteph testified, Ms. Gembitsky created the promissory note and asked Mr. DeSteph to sign it. Id. Despite the terms of the note, Mr. DeSteph's testimony was that Ms. Gembitsky told him "that he could make payments on the Note if and when he could. He was never able to make any payments." Id.

The bankruptcy court rejected Mr. DeSteph's testimony in its entirety, finding that it "was completely lacking in credibility" and "utterly unconvincing." In particular, the court found that Mr. DeSteph was acting as an investment advisor to Ms. Gembitsky, rather than in a personal capacity or as part of a "joint venture." The court found that Mr. DeSteph had successfully assisted Ms. Gembitsky with two previous investments prior to the time she wrote the \$100,000 check, which caused her to be justified in her reliance on his representations that she would eventually receive a return on her investment in the TDA Advantage Trust. NHID Exhibit 9 at 94-95. The court found Mr. DeSteph's insinuation that Ms. Gembitsky was the one who insisted on the inclusion of the term "limited partnership" on the memo line of the check "absolutely ridiculous," and dismissed as "[s]imilarly unbelievable" his testimony that Ms. Gembitsky simply "gave him \$100,000 to use for his custody battle and to draw salary for the DeSteph Agency in which Gembitsky held no interest." NHID Exhibit 9 at 86.

At the December 12 hearing, Mr. DeSteph gave some limited testimony and his attorney made an offer of proof regarding further testimony on issues relating to his

pre-litigation interactions with Ms. Gembitsky. This evidence was similar to the testimony considered and rejected by the bankruptcy court (the parties were romantically involved, the check was related to a joint venture, Mr. DeSteph believed he was going into business with Ms. Gembitsky, etc.). The hearing officer agrees with the Department that considering evidence that was explicitly rejected by the bankruptcy court would constitute relitigation, undercutting the finality of the court's decision. See Cook v. Sullivan, 149 N.H. 774, 777 (2003).

The hearing officer finds that testimony on the issue of the pre-2009 interactions between Mr. DeSteph and Ms. Gembitsky is barred by collateral estoppel. The hearing officer will not, therefore, consider Mr. DeSteph's testimony on these interactions, the three additional exhibits or the related offer of proof made at the conclusion of the hearing.

Mitigating or Aggravating Factors

The bankruptcy court's findings are sufficient to satisfy the Department's burden of proving that Mr. DeSteph used "fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere," within the meaning of RSA 402-J:12, I(h). However, the hearing officer agrees with Mr. DeSteph that even upon such a finding, the decision to revoke a license or to impose an administrative fine rests within the Insurance Commissioner's discretion (the "commissioner *may* place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or *may* levy a penalty . . .). RSA 402-J:12, I (emphasis added).

Therefore, the hearing officer will consider Mr. DeSteph's testimony on matters not ruled on by the bankruptcy court, as well as his attorney's arguments on appropriate sanctions, to determine whether there are aggravating or mitigating factors with respect to the issue of what, if any, penalty should be imposed. The bankruptcy court's finding that Mr. DeSteph's testimony in that proceeding was not credible does not have preclusive effect as to his testimony on other issues.

Attorney Samuels argued that revocation was not an appropriate sanction because (a) the conduct that was found to constitute fraud did not occur within Mr. DeSteph's insurance business; (b) the conduct was not the subject of criminal charges and Mr. DeSteph has no criminal record; (c) the conduct involved a single incident that occurred nearly nine years ago; and (d) license revocation would cause Mr. DeSteph hardship as his insurance business is his only means of support.

The hearing officer does not find any of these arguments persuasive. RSA 402-J:12, I(h) does not specify that an insurance producer's license may be revoked only for fraud in the insurance business; rather, the statute contemplates revocation based

on fraud "in the conduct of business" generally. The bankruptcy court found that the fraud occurred in the course of Mr. DeSteph's business as an investment advisor to Ms. Gembitsky. This satisfies the statutory requirement. Similarly, RSA 402-J:12, I(h) does not require a criminal conviction for fraud, and the Department has not alleged that Mr. DeSteph engaged in criminal conduct.

Nor is the "single incident" argument compelling. A single incident, if egregious enough, may well be enough to revoke a license. Engaging in fraud involving more than \$100,000 is precisely the type of behavior that justifies revocation. Nor is the incident as distant in time as Mr. DeSteph suggests. The bankruptcy court found that this particular fraud, far from ending nine years ago, continued at least until 2008, due to Mr. DeSteph's refusal to make any payments under the promissory note, his representations that profits were being cycled back into the business, and Ms. Gembitsky's expectation that she would be repaid once the five years was up.

Finally, Mr. DeSteph's personal circumstances of hardship do not constitute a mitigating factor, where he himself caused them, and his behavior continues to contribute to them. Notably absent from Mr. DeSteph's testimony was any acceptance of personal responsibility for the harm he has caused Ms. Gembitsky.

The hearing officer was also struck by Mr. DeSteph's somewhat bizarre refusal to acknowledge the findings contained in the bankruptcy court decision. Mr. DeSteph must surely have understood the importance of this document given that it was attached to the Show Cause order and formed the basis for the Department's action against him. Nevertheless, Mr. DeSteph testified that he had not read the court's decision thoroughly, stating that "I believe I've read some of it." Frankly, this testimony was shocking and raises the question of Mr. DeSteph's competence to assist consumers in reading insurance policies and other complex documents. He knew the December 12 hearing was crucial to his continued ability to conduct his business, yet he failed to acquaint himself with the document on which the license revocation issue would turn. In the hearing officer's view Mr. DeSteph's unwillingness or inability to understand the connection between his behavior and the consequences he now faces situation strengthens the case for license revocation.

Conclusion

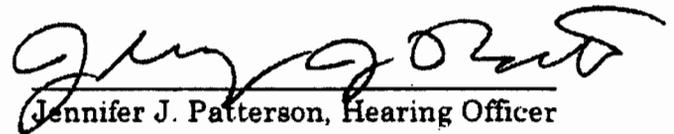
The findings of the bankruptcy court, taken in conjunction with the hearing testimony, demonstrate that it would not be in the best interest of New Hampshire consumers to allow Mr. DeSteph to retain his insurance producer license. Accordingly, and based on the findings and analysis above, the hearing officer recommends that Mr. DeSteph's license be revoked pursuant to RSA 402-J:12, I(h) and that he be ordered to pay a fine of \$2,500 pursuant to RSA 400-A:15, III.

Further Action

Pursuant to Ins 204.26(a), this proposed decision is hereby submitted to the Insurance Commissioner and the parties. Any party wishing to file exceptions and supporting memoranda of law for review by the Commissioner, or to request oral argument before the Commissioner, must do so within 20 days of the date of this proposed decision.

SO ORDERED.

Dated: January 13, 2012


Jennifer J. Patterson, Hearing Officer

STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In Re: Thomas F. DeSteph d/b/a The DeSteph Agency

INS No. 11-023-EP

STATEMENT OF EXCEPTIONS TO
PROPOSED DECISION AND ORDER

This statement is submitted to the Hearing Officer in the above-captioned case for the purpose of presenting respondent Thomas F. DeSteph's argument as to why his producer license should not be revoked.

Mr. DeSteph asserts that the Hearing Officer's proposed decision, to revoke DeSteph's producer license, is unnecessary and therefore inappropriate, for the following reasons:

- As found by the Hearing Officer, Mr. DeSteph has never been subject to a formal complaint involving his work in the insurance business and has not been involved in litigation, other than his divorce and the matters involving Ms. Gembitsky. The evidence was uncontroverted that Mr. DeSteph has never been charged with any crime, and the Bankruptcy Court's fraud finding involved a civil matter, not a criminal matter.
- Mr. DeSteph does not argue that a finding of fraud is insufficient to constitute "fraudulent...practices" in the conduct of non-insurance related business within the meaning of RSA 402-J:12I(h). Rather, he argues that the particular conduct does not support the sanction of revocation, which is a matter within the discretion of the Commissioner.
- Mr. DeSteph repeats the assertion that this was a single, isolated incident, occurring 9 years ago. Even if the Bankruptcy Court determined that the fraud continued until 2008, it is now 2012, and Mr. DeSteph has acknowledged the debt and been repaying it through the Bankruptcy Court Trustee, as required by his reorganization plan.
- Mr. DeSteph has been a licensed insurance producer for a total of 33 years, again with an unblemished record.
- The Hearing Officer mistakenly determined that Mr. DeSteph's "unwillingness or inability to understand the connection between his behavior and the consequences he now faces strengthens the case for

license revocation.” That conclusion mischaracterizes Mr. DeSteph’s disagreement with the conclusion that his license might be revoked, on the one hand, with inability to understand that it might result in such a consequence. If that reasoning were correct, the more strenuously a respondent disagrees, the more certain the Department would become that he is unwilling or incapable of understanding, further strengthening the conclusion that this license should be revoked. It is inconceivable and unjust that Mr. DeSteph’s own defense would be used to support the recommendation of revocation.

For the above reasons, Mr. DeSteph respectfully asserts that his producer license should not be revoked based on this isolated incident occurring outside the scope of his insurance producer activities.

Respectfully submitted,

THOMAS F. DeSTEPH

By His Attorneys
McLANE, GRAF, RAULERSON &
MIDDLETON, PROFESSIONAL ASSOCIATION

Richard A. Samuels, Esq. (#2241)
900 Elm Street, 11th Floor
P.O. Box 326
Manchester, New Hampshire 03105-0326
Telephone (603) 625-6464
richard.samuels@mclane.com

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In Re: Thomas F. DeSteph d/b/a The DeSteph Agency

INS No. 11-023-EP

**NHID'S REPLY TO RESPONDENT'S STATEMENT OF
EXCEPTIONS TO PROPOSED DECISION AND ORDER**

The New Hampshire Insurance Department ("NHID") submits the following Reply to the Statement of Exceptions to Proposed Decision and Order submitted by the Respondent, Thomas F. DeSteph ("the Respondent").

1. On October 24, 2011, the NHID issued an Order to Show Cause and Notice of Hearing alleging that the Respondent had violated RSA 402-J:12(h).
2. On December 12, 2011 an adjudicative hearing was held at the offices of the NHID, with Jennifer J. Patterson presiding as Hearing Officer. During the hearing, the Hearing Officer accepted evidence in the form of the Respondent's testimony, as well as documents introduced by the parties.
3. At the close of the hearing, the Hearing Officer granted the request of Respondent's counsel that the Respondent be allowed to file a Post-Hearing Memorandum, which was subsequently submitted to the Hearing Officer on December 15, 2011. The NHID filed a Response to Respondent's Post-Hearing Memorandum on December 22, 2012.
4. After considering the evidence introduced at the hearing, as well as the parties' post-hearing memoranda, the Hearing Officer submitted to the Commissioner a Proposed Decision and Order. The Hearing Officer's Proposed Decision and Order set forth various findings of fact

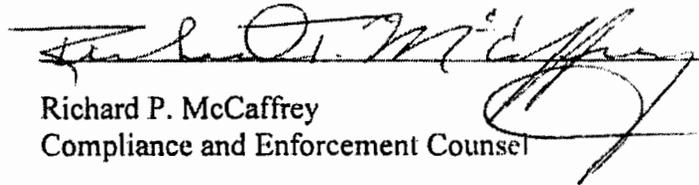
and rulings of law, and recommended that the Respondent's resident New Hampshire insurance producer license be revoked and that the Respondent pay a fine of \$2,500.

5. The Respondent has now submitted to the Commissioner a Statement of Exceptions to Proposed Decision and Order. This Statement asserts that "the Hearing Officer's proposed decision to revoke DeSteph's license is unnecessary and therefore inappropriate," and the Statement sets forth five reasons that purport to support the assertion that license revocation is "unnecessary" and "inappropriate." In fact, the Respondent's Statement contains nothing new. Whether at the hearing or in his Post-Hearing Memorandum, the Respondent previously relied on these five reasons, and the Hearing Officer rejected them, concluding the appropriate sanction for the Respondent's misconduct was license revocation and a \$2,500 fine.

6. The NHID requests that the Commissioner accept the Hearing Officer's Proposed Decision and Order, including the Hearing Officer's recommendation that the Respondent's resident New Hampshire insurance producer license be revoked and that he be fined \$2,500.

Respectfully submitted.

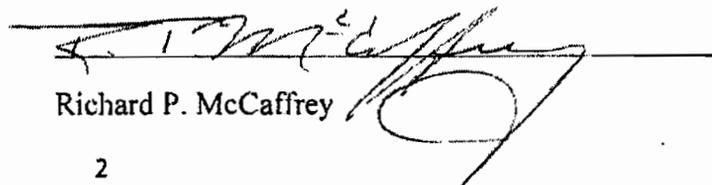
Date: February 6, 2012


Richard P. McCaffrey
Compliance and Enforcement Counsel

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing Reply to Respondent's Statement of Exceptions to Proposed Decision and Order was forwarded this day by email and first-class mail, postage prepaid, to Richard Samuels, Esquire, counsel for the Respondent.

Date: 2/6/2012


Richard P. McCaffrey

THOMAS DESTEPH

Coburn Woods
One Dustin Lane
Jaffrey, NH 03452
Phone (603) 532-9318
tdesteph@aol.com

Monday, April 2, 2012

Commissioner of Insurance
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301

Fax 603-271-1406
First Class Mail

Re: 11-023-EP
Subject: Rehearing

Dear Commissioner:

Attached is my Motion for rehearing for your consideration. A stay of your order, should you decline my rehearing argument, during the appeal process of this matter would be considerate and appreciated.

Thank you

Sincerely,

Thomas DeSteph

CC:
Richard P. McCaffrey
Compliance and Enforcement Counsel
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, New Hampshire 03301

STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In Re: Thomas F. DeSteph d/b/a The DeSteph Agency
INS No. 11-023-EP

MOTION FOR REHEARING

Mr. DeSteph, Respondent, Pro Se, asks the Commissioner for a rehearing in this case and in support of this request, says the following:

The New Hampshire Constitution, Bill of rights Article 18 and 33 demands the punishment is in reasonable proportion to the violation. The punishment of license revocation of Mr. DeSteph is cruel and unreasonable considering his thirty-three years of unblemished and dedicated service to his Insurance Clients, his family status,¹ his dedicated service to Country as a veteran and that the unrelated business failure was more than a decade ago.

Mr. DeSteph was not convicted of any crime nor was he found to have violated any law, regulation or rule by a jury of his peers. One Judge who ignored 144 exhibits that showed Nancy Gembitsky participated in the failed business and even used a bank card to purchase business related expenses decided the case. Mr. DeSteph did not have the resources to appeal this very lopsided decision.

And, at the fact-finding hearing, Mr. DeSteph's representative failed to prep or prepare Mr. DeSteph before the hearing; nor did he present all the evidence needed to make an educated, knowledgable and reasonable outcome.

¹ In 2005, Mr. DeSteph's minor children's mother was found to have abused and neglected the parties two young daughters; as a result, Mr. DeSteph was thrown into a financial nightmare as he had to stop most of his travels in his insurance production to care for his children 24/7. Mr. DeSteph had to rely on his liquid assets to support the family's daily needs. This status continues today as the children's mother is no longer able or available for the children and as of February 2012, the family was forced to apply for TANF benefits.

For the above reasons, Mr. DeSteph respectfully asserts that his producer license should not be revoked based on this isolated incident occurring outside the scope of his insurance producer activities.

Respectively Submitted this 22nd day of March 2012,

Thomas DeSteph
1 Dustin Lane
Jaffrey, NH 03452
603-532-9318
tdesteph@aol.com

STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT

In Re: Thomas F. DeSteph d/b/a The DeSteph Agency

INS No. 11-023-EP

NHID'S OBJECTION TO RESPONDENT'S MOTION FOR REHEARING

The New Hampshire Insurance Department ("NHID") objects to the Motion for Rehearing submitted by the Respondent, Thomas F. DeSteph ("the Respondent"). In support of this Objection, the NHID states as follows:

1. On February 23, 2012, Commissioner Roger A. Sevigny, pursuant to Ins 204.26(a)(4), accepted Hearing Officer Jennifer Patterson's Proposed Order on Hearing as the Final Order and Decision in the above-referenced matter.
2. The Respondent has now moved for a rehearing. However, the Respondent's challenge to the Final Order and Decision appears to be limited to the penalty. That is, the Respondent does not deny the findings that he violated New Hampshire insurance law by defrauding a customer, but instead challenges the revocation of his producer license. The Respondent asserts that the revocation of his license is "cruel and unreasonable" punishment.
3. Mr. DeSteph's assertion that the revocation of his license constitutes "cruel and unusual punishment" is utterly without merit. As the Hearing Officer observed in her Proposed Decision and Order, "[a] single incident, if egregious enough, may well be enough to revoke a license. Engaging in fraud involving more than \$100,000 is precisely the type of behavior that justifies revocation." (Proposed Decision and Order at p. 11). Because of the seriousness of the

Respondent's proven misconduct, the NHID requests that the Commissioner deny the Respondent's Motion and affirm the revocation of his producer license.

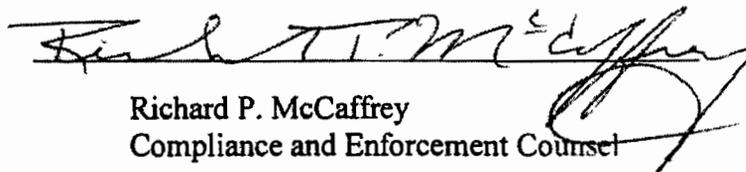
4. In the event his Motion for Rehearing is denied, the Respondent requests that the revocation of his license be held in abeyance until he can complete an appeal to the New Hampshire Supreme Court. The Commissioner should deny this request. The NHID is responsible for protecting New Hampshire consumers from unscrupulous insurance companies and the producers who sell their insurance. Based on the facts established at the hearing in this matter, the NHID would be shirking its responsibility to New Hampshire consumers if it allowed the Respondent to continue to sell insurance while he appeals to the Supreme Court. Accordingly, the NHID requests that the Commissioner deny the Respondent's request that he be allowed to retain his producer license pending appeal.

WHEREFORE, the NHID requests that the Commissioner:

- A. Deny the Respondent's Motion for Rehearing;
- B. Deny the Respondent's request that the revocation of his producer license be held in abeyance pending an appeal to the New Hampshire Supreme Court and order that the revocation of the Respondent's producer license shall remain effective pending any appeal; and
- C. Grant such other relief as may be just and fair.

Respectfully submitted,

Date: March 26, 2012


Richard P. McCaffrey
Compliance and Enforcement Counsel

**STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

ORDER ON MOTION FOR REHEARING

In re: Thomas F. DeSteph d/b/a The DeSteph Agency.

Ins No. 11-023-EP

A Final Order was issued on February 23, 2012, in this above captioned matter. That order provided for revocation of Thomas DeSteph's producer's license. The factual basis for the revocation was a finding and order from the United States Bankruptcy Court for the District of New Hampshire in the Chapter 13 bankruptcy of Mr. DeSteph, that Mr. DeSteph defrauded Nancy Gembitsky. Mr. DeSteph did not appeal this decision of the Bankruptcy Court.

Pursuant to RSA 541:3 any party may, within 30 days after I have issued a final order, apply for a rehearing in respect to any matter determined in the proceeding, or covered or included in the order. The requesting party must specify in the motion all grounds for rehearing. I may grant a rehearing if in my opinion, good reason for the rehearing is stated in the motion.

On March 23, 2012, the Department received from Thomas DeSteph a letter dated March 22, 2012, and Motion for Rehearing. In the letter attached to the Motion for Rehearing, Mr. DeSteph states "A stay of your order, should you decline my hearing argument, during the appeal process of this matter would be considerate and appreciated." This statement constitutes a request for stay pursuant to Ins 204.22 Stay of Department Orders and is consider together with the Motion for Rehearing. Both of Mr. DeSteph's motions are timely filed.

An objection to the Motion for Rehearing, addressing also the request for stay of the Final Order of February 23, 2012, was timely filed by the Department's Compliance and Enforcement Counsel, Richard McCaffrey on March 26, 2012.

A motion for rehearing must provide grounds that demonstrate that a final order is unlawful or unreasonable. The motion filed by Mr. DeSteph stated that the Final Order should be reconsidered and his producer's license should not be revoked, or should be stayed pending appeal to the Supreme Court, based on the following specific grounds:

1. The New Hampshire Constitution, Bill of Rights Articles 18 and 33 demand that any punishment shall be reasonable in proportion to any violation. The revocation of Mr. DeSteph's producer's license is cruel and unreasonable in light of 33 years of unblemished record as an insurance producer and service as a veteran.

2. The business failure at issue in the bankruptcy proceeding was unrelated to the business of insurance.
3. Mr. DeSteph was not convicted of any crime.
4. The order of the Bankruptcy Court was issued by a Judge and not a jury.
5. The judge ignored 144 exhibits that showed Nancy Gembitsky participated in the failed business.
6. Mr. DeSteph did not have the resources to appeal the decision of the US Bankruptcy Court.
7. Mr. DeSteph's representative failed to prepare Mr. DeSteph before the hearing and did not present all evidence necessary.

I have reviewed the grounds above presented in the motion and all necessary documents in the record before me related to this motion for rehearing.

I conclude that the grounds presented in the Respondent's motion for rehearing do not support a conclusion that the Final Order is unlawful or unreasonable. The grounds presented, consisting of matters impacting both findings of fact and conclusions of law, were either fully or fairly explored at the hearing where the Respondent had a full and fair opportunity to present arguments and evidence in rebuttal; or have no bearing upon the decision rendered or the reasonableness or lawfulness of that decision. These grounds do not, in my opinion, provide good reason to order a rehearing.

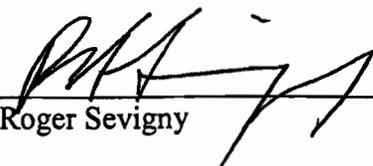
Neither do I find that there are sufficient grounds to support a stay of the Final Order of February 23, 2012.

The motion for rehearing is therefore denied. The request for stay is similarly denied.

The Final Order of February 23, 2012 stands and Mr. DeSteph's producer license is revoked.

Pursuant to RSA 541:6 the Respondent may, within thirty days after this denial, appeal this decision by petition to the New Hampshire Supreme Court.

SO ORDERED,



Roger Sevigny

3-30-12
Date

Subj: Hello
Date: 6/3/2008 7:38:56 P.M. Eastern Daylight Time
From: Gernbitn
To: Tdesteph

Hi, Thomas:

How are you and the girls doing?

Take care,
Nancy

Get trade secrets for amazing burgers. [Watch "Cooking with Tyler Florence" on AOL Food.](#)

29

KEY BRIDGE MARRIOTT

GUEST FOLIO

1167 GEMBITSKY/NANCY 119.00 12/31/02 06:46 5453
 ROOM NAME RATE DEPART TIME ACCT#
 AKV
 TYPE 12/27/02 12:01
 ARRIVE TIME
 29 10 DENNISON RDG
 ROOM MANCHESTER CT BKXXXXXXXXXXXX7557
 CLERK 06040-6837 ADDRESS PAYMENT MR#: 820110849R

DATE	REFERENCE	CHARGES	CREDITS	BALANCE DUE
12/27	PARKING	CBA		8.00
12/28	ROOMSERV	25001167		30.97
12/28	LONGDIST	1003-603		19.92
12/28	PARKING	NM		8.00
12/29	LOCAL	1640-LOC		1.00
12/29	PARKING	NM		10.00
12/30	PARKING	NM		10.00
12/30	ROOM	1167, 1	119.00	
12/30	STATETAX	1167, 1	5.36	
12/30	LOCALTAX	1167, 1	6.25	
12/31	CCARD-BK		218.50	
PAYMENT RECEIVED BY: VISA			XXXXXXXXXXXX7557	

.00

Take advantage of great winter weekend value rates at nearly 1,700 participating hotels. Rates start as low as \$44 per night. Book your reservation online at MARRIOTT.COM or call 1-800-747-5434 for stays between 11/21/02 and 1/31/03.

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MARRIOTT REWARDS ACCOUNT # 820110849
 DATE 12/27/02 - 12/31/02 REVENUE IF APPLICABLE \$206.89
 BASE POINTS EARNED: 2069 ADDITIONAL POINTS MAY APPLY
 FOR ACCOUNT ACTIVITY CALL 801-468-4000
 OR LOG ON TO WWW.MARRIOTTREWARDS.COM.

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 ARLINGTON, VA 22209

This statement is your only receipt. You have agreed to pay in cash or by approved personal check or to authorize us to charge your credit card for all amounts charged to you. The amount shown in the credits column opposite any credit card entry in the reference column above will be charged to the credit card number set forth above. [The credit card company will bill in the usual manner.] If for any reason the credit card company does not make payment on this account, you will owe us such amount. If you are direct billed, in the event payment is not made within 25 days after check-out, you will owe us interest from the check-out date on any unpaid amount at the rate of 1.5% per month (ANNUAL RATE 18%), or the maximum allowed by law, plus the reasonable cost of collection, including attorney fees.

To: President of Sprint PCS
Cc: Vice President of Customer Service
Subject: Prefix 268 not recognized in cell towers south of New York
Sprint
PCS Customer Solutions
PO Box 8077
London, KY 40742

Dear President of Sprint PCS:

COPY

With all that has been going on with my Sprint PCS phones I feel compelled to write to you to explain my very disappointing and frustrating experience with your phone service. I have been a customer of yours for several years now and have convinced others to participate in your service. As a matter of fact I recently switched to the family plan and purchased two new Sanyo Model Number 4900 phones. I have remained the primary account holder and have convinced Mr. Thomas DeSteph to participate in this program. Unfortunately, I have been quite embarassed by the recent experience we have had while vacationing in Washington, D.C. For 4 days now we have not had phone coverage with one of the phones (860-268-1460 Mr. Thomas DeSteph). This has not only been an inconvenience, but has been a major distraction and interruption from our stay here in that Mr. DeSteph cannot be reached nor call his children during this trip. The history leading up to this problem are as follows:

- I maintained my Sprint PCS number (949-929-9424 Miss Nancy Gembitsky) which I have had for several years now even though I no longer reside in that area code.

- Mr. Thomas DeSteph (860-268-1460) received a local phone exchange number for Connecticut, which was assigned to him at the Manchester, CT Sprint PCS store at the time of the purchase of these phones and plans.

- At the time of the purchase we identified the need for full nationwide phone coverage for both phones and were told the phones were programmed as such.

The current situation is as follows:

- We have spent over 5 hours on the phone with your technical solutions and customer service departments trying to resolve the problem with the 860 area code phone since we cannot receive calls (they go right to voicemail) nor place calls without going to the roaming service for an additional charge. However, the 949 area code phone can do this. We were given the ticket number of 5787947-021227 for this problem.

-After spending 1 1/2 hours Saturday at a local Washington, DC Sprint PCS store, at the direction of your technical solutions department, it appeared our phone was working correctly, yet needed to be programmed to receive and send calls in this area. We were told to call the technical solutions department since the phone did say it was in the Sprint service area.

- It then appeared that the 268 phone exchange for the 860 area code is not recognized by cell towers south of New York.

Needless to say this was quite a surprise in that all of this could have been avoided if this was determined at the time the 268 phone exchange was assigned to us. Since then we have used this number on stationary, business cards, etc. With all that has been going on I feel we should have the problem resolved as well as compensation be made to us for this time and inconvenience. Certainly with all of the problems listed above we are not merely looking for an offer of free minutes.

Although, at this time I thought this letter would be ending, I just received my invoice in the mail and therefore, must continue with the following issues. I have enclosed a copy of the invoice as well as a copy of the sales brochure we started our new plan with. To summarize, the issues are as follows:

- We selected the plan with 2000 anytime minutes with 2 lines and 2 phones. According to your

brochure, that plan is \$85 per month with unlimited nights and weekends, unlimited PCS Vision, all nationwide long distance included. Also under additional plan options, the second line to share is free and the PCS to PCS is free.

- Since I am an employee of Cigna, which offers a 20% discount, this comes to a \$68 charge.

In addition to the above mentioned problems with the service, you can see what we were charged is far from what we were quoted.

Lastly, in addition to the above mentioned problems with the 860 area code phone, plus the invoice for the new account 0120198547-7, I received my invoice on my former account 4101780668-0 which shows a credit balance of \$16.21. I have not seen this amount applied to my new account. Therefore, I assume I will be receiving a check in this amount.

We would like to take care of our bill as soon as possible, therefore, we look forward to hearing from you in the near future regarding this issue.

Thank you for your assistance and help with this matter as these issues are still outstanding.

COPY

*to wireless enable
to secure and e-mail address
for you or any of your UPS!*

Account Summary

www.sprintpcs.com

Customer	Account Number	Invoice Period	Invoice Date	Page
MS NANCY A GEMBITSKY	0120198547-7	Nov 23 - Dec 22	Dec 24, 2002	2 of 12

Summary of Individual Charges (Individual Usage Summaries begin on page 3)						
Individual Information	Monthly Service Charges	Additional Usage Charges	Other Charges	Promotions/Credits/Adjustments	Taxes*/Surcharges/Regulatory	Total
THOMAS DE STEPH 850-260-1460 ngembitsky100@sprintpcs.com tdosteph@sprintpcs.com	0.00	2.50	34.98	0.00	2.60	40.08
MS NANCY A GEMBITSKY 919-229-9424 ngembitsky01@sprintpcs.com	158.00	0.00	0.00	-31.60	14.84	141.24
Summary of Account Charges						
Description				Promotions/Credits/Adjustments	Taxes*/Surcharges/Regulatory	Total
Equipment On Account				105.98		105.98
Total Current Charges	158.00	2.50	34.99	74.38	17.44	\$287.31

* See below for a breakdown of Taxes, Regulatory and Other Surcharges and Fees if applicable.

National Volume Pricing Discount

(Informational Summary Only - Discount is reflected in the Current Activity Charges for the PCS Phone Number.)

Description	Charges
NATIONWIDE VOLUME BASE DISCOUNT	-31.60
	\$31.60

COPY

Additional Billing Information

Detail of Taxes, Regulatory and Other Surcharges and Fees

Description	Charges
Taxes and Regulatory Related Charges	
Connecticut State Sales Tax - Services & Usage	10.02
USA Federal Tax	3.98
Connecticut State 911 Surcharges	0.40
Connecticut State Telecomm. Relay Svc Surcharge	0.10
Other Surcharges and Fees	
USA Regulatory Obligations & Fees	2.94
	\$17.44

Billing Information

www.sprintpcs.com

Customer	Account Number	Invoice Period	Invoice Date	Page
MS NANCY A GEMBITSKY	4101780668-0	Nov. 13 - Dec. 12	Dec. 13, 2002	1 of 6

Previous Balance	\$56.01	Do not send payment. The amount below is a credit balance. -\$16.21
Payment on Dec. 9	-56.01	
Total Current Charges	-16.21	
Amount Due by Jan. 8	-\$16.21	

Sign Up for Autopay Using MasterCard!

If you have a MasterCard card, you can pay your PCS invoice automatically each month. To sign up, sign on to manage your account at sprintpcs.com and click on the My Invoice icon. It's a quick, easy and convenient way to pay your invoice.

Need to Change Your PCS Service Plan?

You can easily change to any of our popular service plans online. Just log on to sprintpcs.com and click on the My Plan icon. Next click on "Change Your Plan" and follow the prompts. It's that easy!

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www.sprintpcs.com

You may connect with PCS Customer Solutions by pressing *2 on your PCS phone, *3 to make a one-time payment on your account, or *4 to receive automated account information and change your invoice format. Additional assistance is available by dialing 1-888-788-4727.



COPY

Sprint PCS *

6004

#BWNMGZW **AUTO**5-DIGIT 06040

#4101780668 0#

00004761 1 AV 0.278 01 M1

MS NANCY A GEMBITSKY
10 DENNISON RD
MANCHESTER CT 06040-6837

|||||

Account Number: 4101780668-0

Do not send payment.

The amount below is a credit balance

-\$16.21

APPLICATION FOR ANNUITY

Allianz Life Insurance Company of North America

PO Box 59060

Minneapolis, MN 55459-0060

800/950-6979

ANNUITANT

Lancy A Gembitsky
Middle Last

Sex Male Female Date of Birth 09/23 Age 46

Social Security Number - 6791

Home Number Home (860) 646-1466

Work (860) 290-4338

Mailing Address 10 DENNISON RIDGE DRIVE

City, State, Zip Code Manchester CT 06040

OWNER (if other than the Annuitant)

Individual Corporation Partnership Trust

Joint (Owners are joint tenants with rights of survivorship)

Full Name

Relationship Date of Birth

Social Security, Tax or Employer ID#

Owner's Mailing Address

Contingent Owner, if applicable

Trust is named, please provide date of trust and trustee's name. Date of trust

Trustee

BENEFICIARY FOR ANNUITANT

Primary John Gembitsky / Jeffrey Gembitsky

Relationship to Annuitant Brothers

Contingent Justin Gembitsky / Ryan Gembitsky

Relationship to Annuitant Nephews

Trust is named, please provide date of trust and trustee's name. Date of trust

Trustee

In the following Community Property States: AK, AZ, CA, ID, LA, NV, NM, TX, WI and WA; if spouse is not named as primary beneficiary, please acknowledge by signing below, "I waive my Community Property interest and give my consent for someone other than myself to be designated as Primary Beneficiary to this policy."

Spousal Consent

REPLACEMENT

Do you have any existing life insurance policies or annuity contracts?

YES NO

Will life insurance or annuities be replaced if this annuity is issued?

YES NO

Complete the Replacement portion that follows.

YOUR COMPANY REPRESENTATIVE

Agent Name Thomas DeSteph Phone # (603) 924-9119 % Split 100 Agent # 272001095

Agent Name Phone # () % Split Agent #

HOME OFFICE CHANGES TO THE APPLICATION - (Not applicable in Pennsylvania or West Virginia)

5. ANNUITY PRODUCT (Select one of the following)

Single Premium:

- POWERHOUSE
IDEAL Index 75
Accumulator Bonus Maxx
IDEAL Annuity
Dominators Annuity
Power7 Annuity

Flexible Premium:

- 10% Cash Bonus
Elect monthly payout of bonus
Do NOT withhold taxes
FlexDex Bonus
Power Rate 5
Total Security Annuity
SelectDex Multi-Choice Annuity
FlexDex Multi-Choice
BonusDex

Immediate:

- WealthCare

Other PowerDex

Complete appropriate Statement of Understanding for this product and return to Home Office along with this application.

Premium payments are allowed during the first year ONLY.

Complete WealthCare Immediate Supplemental Annuity Application.

Complete Supplemental Annuity Application.

6. TYPE OF ANNUITY

Qualified Non-qualified
Rollover Transfer 1035 Exchange

IRA Roth IRA Simple IRA Tax Year

Other (SEP, 403b, KEOGH, etc.)

7. PREMIUMS

Cash submitted with application \$ 100,500

Estimated transfer/rollover/1035 amount \$

Billed premium amount \$

Select mode:

Single Annual Semi-Annually Quarterly

Monthly (Complete PAC authorization and provide void check.)

8. COMPLETE ONLY IF PAYROLL DEDUCTION

Premium mode desired

Employer's Name

Group ID # Add On New

Length of employment years months

Currently working full time (minimum 30 hours per week)?

YES NO

Employer's Contribution (if applicable) \$

9. SPECIAL REQUESTS

The agent and applicant must complete all applicable information in this section if the applicant has any **existing** life insurance policies or annuity contracts, **or** is contemplating **replacing** any policies or contracts. The agent **MUST give the applicant the option** of having the Replacement Notice contained in this application read aloud **in either case**.

In connection with a replacement transaction, answer the following question:

During the sales presentation:

I (agent) used Company approved sales materials and left a copy with applicant, or did not use any sales materials.

I (agent) used other Company approved sales materials, left a copy with applicant, and attached copy to application.

By signing this application, both the applicant and agent certify that the Replacement Notice has been read aloud by the agent, or that the applicant did not wish the Notice to be read aloud. A copy of the Notice has been left with the applicant.

Agent: Please proceed to the Replacement Notice and give the applicant the option of having the Notice read aloud. Complete all required information on the Notice. Signatures of both agent and applicant are required on the actual Notice, as well as the application. **NOTE: Signatures are required on Notice even if applicant has existing policies or contracts and is not replacing.**

AGREEMENT AND SIGNATURES

It is agreed that: (1) All statements and answers given above are true and complete to the best of my knowledge; (2) This application shall become part of any annuity contract issued by the Company; (3) If proof of the Annuitant's age is not given with the application, the Annuitant will furnish the Company such proof before annuity payments begin; (4) Any changes made in this application shall be subject to written consent of the Owner/applicant.

Signed at New, New Hampshire
City, State

on this 11th day of February, 2003
Month Year

[Signature]
Proposed Annuitant's Signature

To be answered by Licensed Resident Agent: I certify that the statements of the applicant have been correctly recorded in this application. To the best of my knowledge, the insurance applied for in this application will not or will replace existing insurance.

Owner (if other than Annuitant)

[Signature]
Agent's Signature

