
THE STATE OF NEW HAMPSHIRE
SUPREME COURT
2012 TERM

Docket No.
2012-0253

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

APPELLANT BRIEF

APPEAL TO SUPREME COURT - PURSUANT RULE 10

This Brief is supplemented with the Exhibits
Found in the Appeal of Thomas DeSteph Submitted in April 2012

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To Be Argued By: Thomas F. DeSteph, Pro Se

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B. QUESTIONS PRESENTED

1. Whether the Department erred when it revoked Mr. DeSteph's license and only income of thirty-three years, using Collateral Estoppels that relied on Preponderance of Evidence determining the discharge of a creditor in a non-insurance related bankruptcy proceeding determining business relations occurring more than nine years earlier.
2. Whether the Department erred, abused its discretion and violated New Hampshire Constitution Articles 18 and 33 when it revoked Mr. DeSteph's Professional license (property), in light of settled penalties for similar violations.
3. Whether New Hampshire Statute RSA 402-J: 12, I (h), is unconstitutional or too vague to be legal under Substantive Due Process or Void for Vagueness when used to strip the livelihood of a citizen?
4. Whether the Department erred when it failed to Notice, under RSA 541-A: 31 that his ability to assist his Clients was being reviewed?

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D. STATEMENT OF FACTS IN THE CASE

The two parties in the initial USC Title 11 Chapter 13 adversary action were romantically involved during a time when an exchange of money took place on January 13, 2003. Thomas DeSteph, a veteran, single father of two young daughters and insurance agent for thirty-three years was d/b/a The DeSteph Agency; whereas, Nancy Gembitsky, of Manchester, Connecticut, now of Stony Brook, New York, never married or had children but boast Double Masters in Business while working on her Doctorate and was the director of human resources with Cigna Insurance in Bloomfield, Connecticut when the two decided to enter into a general partnership. The following chronological events took place in late 2002 and early 2003.

In December 2002, after Nancy lost her job at Cigna, the couple talked about starting a business together they would name TDA Advantage Trust Club, after the name of a bank account owned by Thomas DeSteph, d/b/a The DeSteph Agency, a sole proprietorship. The exchange of money would be startup funds for the new business venture between the two.

After the funds were deposited into the TDA Advantage Trust Account, the pair began to use some of the exchange funds to purchase office furniture, (desk, chair and supplies) and equipment for a spare room in Nancy's home in Manchester, Connecticut (See ¹Appendix pages 2, 3) to be used as an office for the new project; a Dell computer for Nancy and a van for the new business that would be garaged at Thomas' home in Peterborough, New Hampshire were also purchased. Nancy and Thomas traveled to Washington DC, Southern Connecticut, Maine, New Hampshire and Florida during this

¹ The Exhibits in the Statement of Facts were presented in the Bankruptcy Adversary Action. Mr. Samuels meet with Mr. DeSteph a few minutes before the fact-finding hearing at the Department and said he would put in all the evidence; but, at the hearing, against Mr. DeSteph's wishes, Mr. Samuels would not submit the documents, later suggesting it would not have helped. Mr. DeSteph refutes his actions to this day.

era promoting their business. And, they were both reimbursed through the exchange funds for any business-related expenses incurred.

Nancy insisted that Thomas join her on a Sprint Communications account she established for herself, Thomas agreed and Nancy added him to the account; (See Appendix page 3, 4) a few months later, while in Washington DC, the couple had some difficulty with Thomas' cell phone. Nancy wrote a letter to Sprint articulating her displeasure with the company and while doing so, she explained that the two parties were in business together and had placed the telephone number on their business cards and stationary². (See Appendix page 4, 5)

Nancy's indiscretion in the presence of Thomas' minor children during a trip to Disney World sealed the demise of the relationship and the couple broke up in late February 2003; an agreement was drawn between the parties the following month which allowed Thomas five years to repay the funds the couple was to use for their new business venture. The document was to protect Nancy in the event the business was successful and she wanted to participate in the profit of the venture as a non-participating associate; but, when Nancy left the partnership in February 2003, prior to the agreement allowing Thomas to use the remaining funds for five years, the partnership immediately dissolved; a partnership cannot continue with only one person. Furthermore, Thomas was doing business as a sole proprietor as The DeSteph Agency; TDA Advantage remained as a bank account and nothing more.

² *This document clearly establishes the relationship Nancy had in the startup of the new business venture and plainly creates, along with other evidence, the understanding that this was not a security sold to a client or customer of Thomas' but is just one more indication that this was a business venture between the parties and nothing more. Further, Nancy accessed the exchange funds through Thomas' account with a debit card and the couple traded account, debit card and credit card information during their business venture and personal relationship. (See Appendix page 8)*

Although the two ex-lovers became carried away with their own little stipulations within the agreement, for example Thomas' insistence that Nancy pay a few dollars each month for the interest checks she insisted on, and Nancy's firmness that the agreement allow her to share in the profits if the business was successful as a sole proprietorship, it was the agreement's written provision that monthly interest checks must be sent to Nancy starting in April 2003 that defaulted the contract. Thomas determined he could not afford to pay the interest checks and the alleged note/agreement fell into default on April 1, 2003. This default should have started the clock running on the Statute of Limitations but was ignored by Judge Vaughn.

Nancy never complained, protested or contacted Thomas about the default (See Estoppel by Acquisition) and, except for a question about the computer Nancy purchased with the exchange funds, (See appendix page 9) Thomas never heard from Nancy for the next five-plus years until June 2008 when Nancy emailed Thomas asking how he and his minor children were doing. (See appendix page 10) Nancy said nothing about the funds, the agreement or anything else until late April 2009, when Nancy filed a complaint in the US District Court alleging Thomas sold her an unregistered security. The complaint took place after Nancy found that Thomas would seek protection under Chapter 13 if the entire loan was called in, which Thomas did on May 6, 2009.

During the hearing, Thomas was represented by Grenville Clark who missed opportunities in cross-examining Nancy on her misleading testimony. Mr. Clark never questioned why Nancy testified that she did not report the alleged investment on any of her tax returns while reporting all other bank, bond and stock investments; or, more importantly, why she committed mortgage fraud by not reporting the alleged investment/asset on her 2005 application for mortgage for her present home in New

York. Mr. Clark did not scrutinize or even bring up the testimony that Nancy said she asked for her money back a day or two after giving Thomas the funds on January 13, 2003, but then purchased an annuity for \$100,000.00 on February 11, 2003, from Thomas while staying in New Hampshire; or why Nancy wrote a three-page letter to the Late Gentleman, Attorney and Guardian Ad Litem, Scott Innes, about how she assimilated with Thomas' minor children. The end of the hearing was even more bizarre as Mr. Clark refused Judge Vaughn's request to have the two attorneys put together a final synopsis of their position in the case. Mr. Clark only said that he was sympathetic of Judge Vaughn's position, having to "sort-out the details of the case."

When the final order was issued by Judge Vaughn, Mr. DeSteph tried to contact Mr. Clark as to discuss the order but found that Mr. Clark was suspended during the time he represented him and was later disbarred by this Court. Mr. Clark never told Mr. DeSteph he was being suspended when they first made contact nor anytime thereafter.

More than two years had past when the Insurance Department contacted Mr. DeSteph with an order to appear for a fact-finding hearing. Mr. Richard Samuels represented Mr. DeSteph at the hearing as Pro Bono but did not agree to reserve appellate questions nor ask for a rehearing at the Department.

E. SUMMARY OF ARGUMENT

The Department's decision to revoke Mr. DeSteph's producer license was flawed and improper. First, the Department based its decision on evidence within an adversary case under Title 11; Chapter 13 of the United States Code whereas Mr. DeSteph was involved in an action to determine if a Nine-Year old business exchange of money was dischargeable. The Chapter 13 adversary case used the lowest means

of evidence to base its findings, Preponderance of Evidence. The Department used Collateral Estoppels to base their decision to revoke the income-producing license of Mr. DeSteph over this case in violation of his right to due process. The Department also used unfair and unsettled punishment against Mr. DeSteph in violation of NH Constitution, Article 18 and 33 as they recently set a penalty of only 120 days suspension against a licensee convicted of fraud in a criminal case. (See Elizabeth Kelley Ins. 08-028-EP) Furthermore, the Department did not notice Mr. DeSteph he was being reviewed as to his ability to service his clients as stated in paragraph 4 of page 11 in the final order.

F. ARGUMENT

- 1. Whether the Department erred when it revoked Mr. DeSteph's license and only income of thirty-three years, using Collateral Estoppels that relied on Preponderance of Evidence determining the discharge of a creditor in a non-insurance related bankruptcy proceeding determining business relations occurring more than nine years earlier.**

ARGUMENT - QUESTION 1

The Chapter 13 Adversary action was to determine whether or not the debt owed to Nancy was dischargeable. Nancy's complaint alleges that Thomas violated New Hampshire's Uniform Securities Act. N.H. Rev. Stat. Ann. §§ 421-B: 3 and 421-B: 5.4. New Hampshire's Uniform Securities Act is similar to the 1934 Act. Sections 421-B: 3 which prohibits fraud, untrue statements and omissions in connection with the offer, sale or purchase of any security. Section 421-B: 5 further prohibit manipulative or deceptive and fraudulent acts in connection with the sale or purchase of a security.

The statute of limitations for actions brought under § 421 can be found in § 421-

B: 25. Pursuant to § 421-B:25, “[a] person may not recover under this section in actions commenced more than 6 years after his first payment of money to the broker-dealer or issuer in the contested transaction.” N.H. Rev. Stat. Ann. § 421-B: 25, VII. A cause of action brought under chapter 421 begins to accrue at the time payment was made. By Nancy’s own allegations, payment was tendered to Thomas in connection with the contested transaction on or about January 13, 2003. Since Nancy’s complaint was filed more than six years after this date, her action under § 421 is time-barred. The Department did not take this into consideration nor did the Department consider that Thomas had 144 documents that clearly showed Nancy participated in the business venture making the alleged note or agreement to repay a private matter and not a security at all.

Mr. DeSteph argues during a trip to Southern Connecticut in the early stages of the parties’ relationship, Nancy offered emotional and financial help because she was setting up a future with Thomas. Nancy arranged to have her 401K and other financial conveyance transferred into an annuity that would profit and benefit Thomas and his agency. The Ninth Circuit (in an unpublished opinion) concluded that a \$5 million note from a limited partnership was not a security (See Piaubert v. Sefrioui, 208 F.3d 221 (Table), 2000 WL 194140 (9th Cir. 2000)). The lender made the loan to support the borrower, not as an investment. The lender had an ownership interest in the borrower. In addition, the note bore an interest rate below the prime rate and interest was payable at maturity (5 years).

Nancy was planning a future with Thomas and his minor children as she added him to her Sprint Cellular account and tried to get Thomas’ children to become familiar with her on weekends. The parties took trips, spent their weekends together and were

intimate. Nancy had a personal and financial motive to assure Thomas was personally and professionally successful; one example of this is clear as Nancy wrote a letter to Thomas' children's Guardian Ad Litem in an effort to include herself in the lives of the children. (See Appendix Page 11, 12, 13) Furthermore, Nancy shared information with Thomas only the closest of people would share, like account numbers, pins or secret codes, even security questions for financial accounts. (See Appendix Page 8) Although Nancy claimed, in her complaint then later in her testimony, she asked that her money be returned a couple days after giving it to Thomas in January 2003, she continued supporting Thomas by purchasing more annuities. One such annuity was purchased in Keene, New Hampshire on February 11, 2003. (See Appendix Page 14, 15, 16, 17, 18) This was a significant and major piece of evidence as it began with an impasse between the couple over the phone that day. Thomas would not leave New Hampshire without his children and Nancy wanted him in Connecticut. Thomas was ready to abandon the business venture and as proof of this, Thomas introduced his bank account at the Chapter 13 hearing clearly showing a withdrawal of Nancy's money from his account using a Cashier's Check to Nancy. Because the couple reconciled that night, the bank account shows a redeposit the very next day – this was in Keene, NH where the annuity application and check was signed by Nancy the same night. The Department also ignored a check given to Nancy for \$2,140.00 from the exchange money for the cell phones and a deposit for the computer that Nancy said was a business expenses. This is not normal protocol for someone that purchased an alleged security. (See Appendix Page 19)

Most times, Judges make the right decision based on their interpretation of the law, but they are also human and sometimes they make mistakes, fail to recognize

false testimony, and sometimes, make a bad choice, (See Coffey's Case JD-2007-003 and Petition of Judicial Conduct Comm., 151 N.H. 123, 126 (2004); Petition of Thayer, 145 N.H. 177, 181 (2000) The Bankruptcy Court ruled against the weight of the evidence in this case in an effort to make Ms. Gembitsky whole; and, the Department went along with the ruling even though the decision was based on the lowest means of evidence; this is a violation of Mr. DeSteph's Due Process. In an opinion on Mr. DeSteph's Motion to Dismiss in the Chapter 13 Adversary action, Judge Vaughn wrote phrases like, "it is plausible that the plaintiff could not have discovered that the Defendant's actions constituted negligent misrepresentation until sometime within the three year statutory time period for bringing such an action." The word **plausible** means "conceivable," "imaginable" – These words were used after Nancy testified and wrote in her complaint that she asked for her money back a day or two after she gave it to Thomas; and, if that was the case, she knew or should have known there was a problem, not six-plus years later. But none of this was considered in the Court's final order; furthermore, these are not words nearly strong enough to take the livelihood of a citizen which is why using collateral estoppels is not a legal (Constitutional) basis for this action in the Department. In The Grubb Company, Inc. vs. Department of Real Estate, the Appeals Court overturned the Department's decision to revoke a professional license because the evidence was based on a Preponderance of Evidence and not Clear and Convincing; other Courts have done the same. The idea of taking the only means of income on such flimsy evidence is unconstitutional and a violation of a citizen's Due Process.

APPEAL OF FINAL DECISION FROM THE ADVERSARY ACTION IN CHAPTER 13

Without a doubt, there should have been an appeal of the final order from the

adversary action. Mr. DeSteph called his attorney, Mr. Clark when the decision was issued in June 2010 but Mr. Clark said he could not help him and when Mr. DeSteph asked why, Mr. Clark only answered he was retired and hung up the telephone; it wasn't until Mr. DeSteph called the New Hampshire Bar Association when he was finally told that Mr. Clark was under suspension during his entire representation of the case. Mr. DeSteph was told an Attorney appointed by the New Hampshire Supreme Court would contact him for further issues in the case. Attorney Catherine Costanzo did contact Mr. DeSteph and said she was appointed by the New Hampshire Supreme Court to finish any outstanding issues left by the suspension of Mr. Grenville Clark and she would help with anything needed.

Mr. DeSteph told Ms. Costanzo an appeal was necessary and that Judge Vaughn was under the misunderstanding that Mr. DeSteph sold some sort of security and that the money was supposed to be invested into some imaginary entity; and, that perception was far from the truth; that the funds originated from the startup of a business and when the couple broke up the funds were loaned to Mr. DeSteph, d/b/a The DeSteph Agency for five years. Ms. Costanzo seemed to understand and said an extension of time to appeal was needed to allow her the opportunity to go through the case. Ms. Costanzo did file an extension (See Appendix Page 21) but, during a conversation over the telephone, Ms. Costanzo divulged she spoke to Nancy's attorney, Mr. Andrew Schuman and that he threatened to counter-appeal and go after Mr. DeSteph's home leaving his minor children on the street. Ms. Costanzo suggested Mr. DeSteph weigh the possibility of losing his home; but the very next day, July 16, 2010, Mr. DeSteph received an email with an attached letter (See Appendix Page 22, 23) indicating Ms. Costanzo would no longer represent him. The enormous challenge of

becoming familiar with alien Federal Rules of an Appeal in such a short amount of time was impossible. Calls to other attorneys were mostly negative suggesting they did not want to "Take on another Attorney's Mess."

A week or so later, Mr. DeSteph discovered that Nancy Gembitsky's Attorney, Mr. Andrew Schulman had a relative that practiced law as an attorney at the firm in which Ms. Costanzo also worked, Devine and Millimet Law Offices; the relative was his wife. Ms. Costanzo never listed a conflict of interest in her letter that refused to help Mr. DeSteph.

Due process is best defined in one word - fairness. Throughout the U.S.'s history, its constitutions, statutes and case law have provided standards for fair treatment of citizens by federal, state and local governments. These standards are known as due process. When a person is treated unfairly by the government, including the courts, he is said to have been deprived of or denied due process. This case, from the Chapter 13 through the taking of Mr. DeSteph's producer license has been the "Poster Boy" of how Due Process can be severely abused in the Judicial System. The attorneys in this case have been less than honorable; Mr. Clark's calamity, not cross-examining Nancy on key issues, like why she used part of the exchange funds, why she did not report the funds on tax returns or her 2005 mortgage application, or why Mr. Clark forgot to tell Mr. DeSteph he was under suspension. Mr. Schuman's threat if Mr. DeSteph appealed the Adversary action; Ms. Costanzo's failure to disclose Mr. Schuman's wife worked in her law firm and Attorney Richard Samuels extreme lack of representation at the fact-finding hearing and his refusal to preserve appeal questions or ask for a new hearing and his refusal to file an appeal even though he never filed a withdrawal in the case.

'Only a final judgment that is 'sufficiently firm' can be issue preclusive.' Luben Indus. v. U.S., 707 F.2d 1037, 40 (9th Cir.'83). To ascertain the 'firmness' of a judgment, courts look to various factors, including whether the decision was tentative, whether the parties were fully heard, whether the court supported its decision with a reasoned opinion, and whether the decision was subject to appeal or was actually reviewed on appeal. Luben, at 1040 (quoting Restatement (2d) of Judgments S 13 cmt g (1982)). Luben affirmed the district court's determination that an interlocutory order issued by another judge in the same district was not 'sufficiently firm' because 'it could not have been the subject of an appeal. 'Id. Mr. DeSteph was denied being fully heard when Mr. Clark did not Cross-examine Nancy at the hearing; furthermore, Mr. Clark failed to put-it-all-together in a final pleading that would explain the complexities of the exchange, the sole proprietorship and the General Partnership. Additionally, because of the suspension of Mr. Clark, the inadequate representation of Ms. Costanzo and threat of Mr. Schulman, Mr. DeSteph had no chance whatsoever to get the case appealed for review.

- 2. Whether the Department erred, abused its discretion and violated New Hampshire Constitution Articles 18 and 33 when it revoked Mr. DeSteph's Professional license (property), in light of settled penalties for similar violations.**

ARGUMENT - QUESTION 2

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 debt is an abuse of discretion and unreasonable; unfairly harsh.

The Department was unreasonable in their decision to revoke Mr. DeSteph's license of 33-years of dedicated, complaint-free service while only suspending the licensee in the above case after a felony conviction of only 120 days. Mr. DeSteph has no criminal record nor was ever accused of anything. The entire case against Mr. DeSteph was whether or not a debt was dischargeable in a Chapter 13 Adversary hearing. The Department revoked Mr. DeSteph's only income indefinitely and that violates Mr. DeSteph's constitutional rights. The punishment is too harsh, does not fit the violation, does not take into consideration a perfect record, and goes against what is settled in the Department for this type of violation; further, does not take into consideration the low standard of evidence used in the Chapter 13 Adversary action.

The Department's actions are unreasonable as they had punished a Producer for what they believe or want to believe was an indiscretion over nine-years prior; no matter what the Department believes the business venture happened almost a decade ago and there has been no other disputed transaction prior or after that time. The Department has no evidence whatsoever of any complaints or disputed business transactions in thirty-three years and that is too positive a record to warrant such a harsh penalty; which makes the Department's action unreasonable.

- 3. Whether New Hampshire Statute RSA 402-J: 12, I (h), is unconstitutional or too vague to be legal under Substantive Due Process or Void for Vagueness when used to strip the livelihood of a citizen?**

ARGUMENT - QUESTION 3

Under "Substantive Due Process," the Supreme Court has developed a broader interpretation of the Due Process Clause, one that protects basic substantive rights, as well as the right to process. Substantive Due Process holds that the Due Process Clauses of the Fifth and Fourteenth Amendments guarantee not only that appropriate and just procedures (or "processes") be used whenever the government is punishing a person or otherwise taking away a person's life, freedom or property, but that these clauses also guarantee that a person's life, freedom and property cannot be taken without appropriate governmental justification, *regardless* of the procedures used to do the taking. In a sense, it makes the "Due Process" clause a "Due Substance" clause as well.

New Hampshire Statute RSA 402-J: 12, I (h) does not use the word "Insurance Business" within its meaning, however, it is difficult to believe that an insurance producer that also owns a restaurant and has a dispute with a customer whereas the customer wins a judgment against the producer and he is found to be financially irresponsible that the RSA would give credence to the Department to take his Producer License. In the instant case, Mr. DeSteph was not a Securities Broker and did not sell securities in any state. The adversary case in the Chapter 13 bankruptcy hearing had nothing to do with insurance and was solely based on an exchange used for the startup of a business venture between two romantically involved people. There was no evidence of being irresponsible and if it came up, Mr. DeSteph would have presented evidence to the contrary; as a result of his children being abused by their mother and being awarded full custody and financial responsibility of his minor children. Financial irresponsibility would surely have been disproven, as well as more evidence that

Laches would have been a viable defense since Nancy should have brought this action when she first knew of a contract breach in 2003.

New Hampshire Statute RSA 402-J: 12, I (h) is too broad to be constitutional. The Statute RSA 402-J: 12, I (h) allow the Department to be unreasonable against a licensee, as they have in this case.

4. Whether the Department erred when it failed to Notice, under RSA 541-A: 31 that his ability to assist his Clients was being reviewed?

ARGUMENT - QUESTION 4

The Department's notice was clear that it intended to review Thomas' license under the availability of Collateral Estoppels based on the final decision of the Chapter 13 Adversary action in the US Bankruptcy Court, District of New Hampshire and nothing more. Page 3 of the Show Cause Notice, (See the Record, Item 13) says "Based on his alleged misconduct" and nothing about Mr. DeSteph's ability to perform his duties as a licensed producer.

Procedural due process guarantees the right to be informed about government activities that may infringe on a particular right and the opportunity to be heard on the issue. The Department said nothing about reviewing Thomas' ability to perform his duties as a Licensed Producer and because the Department promulgated this allegation within their opinion revoking his license, they violated Thomas' Due Process.

In an appeal from an administrative agency, the burden of proof is on the appellant to show that the agency decision was clearly unreasonable or unlawful. Appeal of New Hampshire Fireworks, Inc., 151 N.H. 335,338 (2004) - The hearings officer's decision is assumed to be lawful, but will be reversed if its conclusions are unauthorized, affected by an error of law or clearly erroneous in view of all the evidence

presented Appeal of Lakeview Neurorehabilitation Center, Inc., 150 N.H. 205, 208 (2003).

The hearings officer's final proposed order on page 11, paragraph 4 says, in part, "Mr. DeSteph testified that he had not read the court's decision thoroughly, stating that "I believe I read some of it." Frankly, this testimony was shocking and raises the question of Mr. DeSteph's competence to assist customers in reading insurance policies and other complex documents. Because Mr. DeSteph testified that he only read some of the Chapter 13 Adversary final order, Jennifer Patterson concluded that because Mr. DeSteph testified he had not read the court's (*Bankruptcy*) decision thoroughly, he was somehow incompetent in his ability to read his clients insurance policies. This is absurd and an unethical act of irresponsibility by Patterson. The writings were malice in nature, and published only to cause as much pain, hardship and damage to Mr. DeSteph as possible; to cause hysteria within his client base.

The hearings officer's conclusion was clearly erroneous and an error of law. There was no evidence presented for any claim of Mr. DeSteph's performance or ability to perform his duties as a producer; and, no notice that it was being reviewed.

The Department, specifically, Jennifer J. Patterson, abused the office of the Commissioner by publishing such an outlandish claim; recklessly harming Mr. DeSteph, giving no notice or opportunity to allow Mr. DeSteph to defend himself of such an unethical and abusive accusation. The conduct of Jennifer Patterson was unscrupulous and slanderous; furthermore, Mr. DeSteph avers he has successfully completed all educational and procedural requirements to obtain his Professional License including his required continual education assignments each renewal for thirty-three years.

G. CONCLUSION

"Mr. DeSteph testified and remains committed to the truth that the alleged document (*Alleged Security/Payback Agreement*) is the byproduct of a failed business venture between Nancy Gembitsky and him and were not the offer or sale of any alleged note or security in any form. If the United States Supreme Court has agreed on anything concerning securities, it agrees that all notes are not securities and on May 26, 2009, the United States Supreme Court granted certiorari in Merck & Co. v Reynolds, No. 08-905, agreeing to resolve disagreements among circuit courts of appeals on when constructive discovery of fraud occurs for the purpose of triggering the running of the statute of limitations in federal securities actions brought under section 10(b) of the Securities Exchange Act of 1934; further, this action was brought against DeSteph on April 7, 2009, alleging the offering of an alleged unregistered security dated March 10, 2003; more than six-years after the fact. The action is barred in as much as it violates the Sarbanes-Oxley Act of 2002, PL 107-204, Title VIII, §804(b) (July 30, 2002) allowing 5 years to bring such actions. The exchange took place in Connecticut and therefore, the claim set forth in the case against DeSteph is barred by the applicable statute of limitations under Connecticut General Statute Sec. 52-584 in as much as it allows two years to bring such actions. Since no offers were made to the general public and there is only one holder of the alleged unregistered security, it is exempt from registration under Securities Act of 1933 - Sec. 4 - Exempt Transactions rule 501- 506 Limited offers with no advertising; additionally, Uniform Securities Act Sec. 402 (b) (9) exempts limited or "small" offerings allows an exemption; Sec. 36b-31-6e and Sec. 36b-31-21b-1, Exemption for isolated non-insurer

transactions would also offer exemption. The De Minimis Exemption would also apply under Connecticut Uniform Securities Act Sec. 36b-21 (b) (15) - Sec. 36b-21 (b) (10) and 36b-21 (e) for the purpose of Private Placement.

Collateral Estoppels should not have been allowed for the basis in the Department's fact-finding hearing as the Adversary action was flawed. The adversary action used the lowest standard of evidence and was decided against the real weight of the evidence; and the final decision was misleading. The actions of Mr. Clark and others that followed made it impossible for Mr. DeSteph to be fully heard or to appeal the decision. The Department took the producer's license from Mr. DeSteph because of a single judge's opinion that may not have understood the complexities of a sole proprietorship and the startup funding of a general partnership. The fact is that if this case was in the hands of a jury, Mr. DeSteph would have probably prevailed. There were too many holes in the Gembitsky case to be sure of anything but to be unsure of everything. Furthermore, the motive component was never looked at as Nancy testified that she thought Thomas would seek protection under the Bankruptcy laws and the only way to keep him from discharging the debt was to prove the loan was a security and it was fraudulent; she never did and this was a terrible misjudgment. The taking of a Producer's license under these circumstances (Collateral Estoppels) is salt in the wound and a violation of Due Process.

WHEREFORE, the foregoing reasons, the Court should vacate the Department's order revoking Mr. DeSteph's Producer License.

August 27, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. DeSteph', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 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 August 27, 2012, Jaffrey, New Hampshire

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

Thomas F. DeSteph, Pro Se

H. APPENDIX

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**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

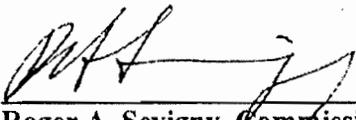
Docket No.: Ins 11-023-EP

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



STAPLES 365 SAVINGS

Low prices. Every item. Every day.
We 110% Price Match Guarantee It.

49 Putnam Blvd. Putnam Bridge Plaza
Glastonbury, CT 06033
(860) 657-0658

SALE 118704 3 001 68751
1268 01/11/03 08:24

QTY SKU OUR PRICE

***** Customer Order 9137809104 *****

1	Bush Westfield Colle	
	456249	229.99
1	Bush Westfield Colle	
	456242	239.99
1	Bush Westfield 2-Dra	
	456308	279.99
1	Bush Westfield Colle	
	456255	319.99
1	Bush Westfield 3-Dra	
	456253	169.99
1	Bush Universal Artic	
	456258	99.99

Questions on Customer Order 9137809104
Call Customer Service at 1-800-3STAPLES

1	FURNITURE ASSEMBLY	
	380586	159.99
2	STACKABLE LETTER T	
	030402160057	2.690 5.38
1	RECYCLED MONTHLY E	
	078973170044	9.69
1	RECORD BX 12.2X7.2	
	073333560312	24.99
SUBTOTAL		1539.99
Standard Tax 6.00%		92.40
TOTAL		\$1632.39
Novus		1632.39

Purchase activity

1004025



that was easy™

Customer Number	Member Since	Annual Purchases to Date
0172594491	08/25/1997	1539.99

Statement period 1/01/03 – 3/31/03

Total Purchases	Staples Bonus Rewards	Total Qualifying Purchases
1539.99	0.00	1539.99
Copy and Ship Purchases	Copy and Ship Center Reward	Total Reward
0.00	0.00	30.00

Transaction detail

Date	Total Purchases	Staples Bonus Rewards	Total Qualifying Purchases
01/11/2003*	1539.99	0.00	1539.99

* Points Adjustment
See page 1 for your \$30.00 Staples Business Rewards check.

Statement period rewards structure

1/01/03 – 3/31/03	
If the grand total* of your quarterly purchases is between:	You'll receive this reward check:
\$250 - \$399	2% reward
\$400 - \$499	3% reward
\$500 - \$599	4% reward
\$600 +	5% reward
Maximum Reward	\$30 per quarter

*Excluding computers, gift cards, postage stamps and sales tax. Staples reserves the right to revise or cancel this program at any time.

Benefit reminder

Get FREE delivery on all catalog and online supply orders.

Staples Business Delivery™
that was easy™





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 860-268-1460 ngembitsky10@sprintpcs.com tdcsteph@sprintpcs.com	0.00	2.50	34.98	0.00	2.60	40.08
MS NANCY A GEMBITSKY 949-929-9424 ngembitsky01@sprintpcs.com	158.00	0.00	0.00	-31.80	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	-31.80
	\$31.80

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

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

Subj: Re: Dell Computers
Date: 1/26/2004 1:55:19 PM Eastern Standard Time
From: Gembitn
To: Tdesteph

Hi!

I am not sure what information Dell has as you were the only one that had contact with them. Next time you can refer them to me.

Also, I got a statement today from Allianz and it listed the End of Year Cash Value as \$85,000. Please explain that to me as you were listed as the contact on my statement if I had any questions.

Are both John and Jeff the primary beneficiaries on all of my accounts?

Please let me know when you can return my suitcases -- as you had promised to do so.

Thanks!

Nancy

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Subj: Hello
Date: 6/3/2008 7:38:56 P.M. Eastern Daylight Time
From: Gembitn
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.](#)

Page 10

December 17, 2002

Dear Attorney Jones: -

My name is Nancy Ann Gumbert
and I reside at 10 Dennison
Ridge Drive in Groveland, CT.
I am an AHP in Human
Resources and have worked in
that capacity since 1984. Prior
to that I have been a public
school teacher in Hillsborough, N.J.
since my graduation from Rutgers
College in 1978 whereby I
received a B.S. in Special Education.
Since then I have received a
Master's in Education from Rutgers
as well as an MBA from Lehigh Valley
University in PA. I have
worked on my doctorate in
Counseling Psychology but have
not completed my thesis. I
am also an adjunct part time
at a local university.

As a friend of Thomas DeStefano
I feel compelled to mention
some unsolicited comments I
recently heard from his two
daughters, Rosemary and Patricia.

I would, however, like to request that this information be held in confidence as I understand there have been several problems regarding the DeStefanis and their divorce. If you cannot maintain my anonymity, I would like you to please contact me prior to divulging any of this information.

During a recent visit to my home both girls made comments to the fact that my house smelled nice because there was no smoke in the air. Throughout the week these comments came up and both girls unsolicited and in separate conversations mentioned that their mom smoked and they wished she didn't. As a point of reference, Felicia, mentioned to me on the morning of December 9th that she wished she didn't have to go to her mom's because of the smoke. She asked me if I ever smoked and I said no. She told me her mother

Smoked and that she, Felicia,
didn't like it. She asked me
if people can stop smoking.
So that question I stated "yes" and
suggested she let her mother
know that she did not like
the smoke.

As the girls were preparing
to leave, we opened a bag of
clothes their mother had packed
for them. Unfortunately, they reeked
of smoke and had to immediately
be washed & dried before the
girls could get them, on to
return to their rooms place.

If you have any further
questions please feel free to contact
me @ (800) 646-6666.
Thank you.

Sincerely,
Theresa White

APPLICATION FOR ANNUITY

Allianz Life Insurance Company of North America
PO Box 59060
Minneapolis, MN 55459-0060
800/950-6979

ANNUITANT

Nancy A. Gembitsky
Middle Last
 Male Female Date of Birth 09/23 Age 46
Social Security Number ██████-██-6791
Home (860) 646-1616
Work (860) 290-4338
Mailing Address 10 DENNISON RIDGE DRIVE
State, Zip Code Manchester #1 CT 06040

OWNER (if other than the Annuitant)

Individual Corporation Partnership Trust
Joint (Owners are joint tenants with rights of survivorship)
Name: _____
Relationship: _____ Date of Birth: ___/___/___
Social Security, Tax or Employer ID#: _____
Owner's Mailing Address: _____

Contingent Owner, if applicable: _____

If trust is named, please provide date of trust and trustee's name. Date of trust: ___/___/___

Trustee: _____

BENEFICIARY FOR ANNUITANT

Name: John Gembitsky / Jeffrey Gembitsky
Relationship to Annuitant: Brothers

Name: Justin Gembitsky / Ryan Gembitsky
Relationship to Annuitant: Nephews

If 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."

Spouse's 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 #: 2172001095

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:
<input type="checkbox"/> POWERHOUSE SM
<input type="checkbox"/> IDEAL SM Index 75
<input type="checkbox"/> Accumulator SM Bonus Maxxx SM #
<input type="checkbox"/> IDEAL SM Annuity
<input type="checkbox"/> Dominator SM Annuity
<input type="checkbox"/> Power7 SM Annuity | Flexible Premium:
<input type="checkbox"/> 10% Cash Bonus
<input type="checkbox"/> Elect monthly payout of bonus
<input type="checkbox"/> Do NOT withhold taxes
<input type="checkbox"/> FlexDex Bonus SM
<input type="checkbox"/> Power Rate 5 SM
<input type="checkbox"/> Total Security Annuity SM
(Payroll deduction or 403b)
<input type="checkbox"/> SelectDex Multi-Choice SM Annuity ♦♦
<input type="checkbox"/> FlexDex Multi-Choice SM ♦♦
<input type="checkbox"/> BonusDex SM ♦♦ |
|---|--|
- Immediate:
 WealthCareSM ♦
 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 \$ 100,000

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

REPLACEMENT

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:

Agent used Company approved sales materials and left a copy with applicant, or did not use any sales materials.

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 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

I agree that: (1) All statements and answers given above are true and complete to the best of my knowledge; (2) This application will 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/Witness

NANCY A. GEMBITSKY
10 DEMINSON RIDGE DR. PH. 860-640-6886
MANCHESTER, CT 06040

PAY TO THE ORDER OF

Remitted Personal check # 100

Fleet
MINIMUM COST
RECOVERY
PROGRAM
CONTRACT # 0002

MEMO *Amnesty*

⑆0190057⑆

⑆9274E 891746⑆

⑆888⑆

51-57119
941834726

DATE *2/11/03*

688

\$ *100,000.00*

DOLLARS

[Signature]

⑆888⑆

Allianz Life Insurance Company
North America
Box 59060
Minneapolis, MN 55459-0060
950-1962



PowerDex™ Annuity Statement of Understanding

Thank you for choosing to purchase the PowerDex flexible premium deferred annuity. We want to be sure that you are aware of all the benefits of your policy. Please read the following summary and sign the form to indicate your understanding.

Accumulation Value

- The Accumulation Value is equal to the greater of the Index Earning Value or the Vested High Water Value.
 - At issue, the Index Earning Value is equal to the initial premium. It is increased by any Interim Interest Account additions and any positive Index Adjustments. Positive Index Adjustments for the Index Earning Value may be subject to the Cap and the Participation Rate. The Index Earning Value is decreased by Withdrawals and negative Index Adjustments.
 - At issue, the High Water Value is equal to the initial premium. It is increased by any Interim Interest Account additions and may be increased by favorable index performance. The increase in the High Water Value due to favorable index performance is subject to the Cap and the Participation Rate. The High Water Value is decreased by Withdrawals. The High Water Value is not decreased by unfavorable index performance.
- The Vested High Water Value in years one through five is equal to premium received plus any interest earned minus any Withdrawals. The Vested High Water Value in years six and later is equal to the High Water Value five years prior (adjusted for any Interim Interest Account additions and any Withdrawals). The Vested High Water Value is not decreased by unfavorable index performance.
- Premium payments, subject to certain premium limitations, may be submitted during the first five policy years. Additional premium paid during a policy year will automatically be placed in the Interim Interest Account, until the end of the policy year, where it will earn interest at an annual effective rate no less than 3%. Interest will be calculated and credited monthly. At the end of the policy year, the Interim Interest Account will be added to the Index Earning Value and the High Water Value.

The Index Adjustment reflects the difference between the value of the Standard & Poor's 500* Index at the beginning of the policy year and the value of the Standard & Poor's 500 Index at the end of the policy year. The Index Adjustment may be subject to the Cap and the Participation Rate. The Index Adjustment does not reflect dividends being paid on stocks underlying the index. If the publication of the index is discontinued or the calculation of the index is changed substantially, we will substitute a comparable index upon receiving regulatory approval.

The Cap determines the maximum percentage that the High Water Value can increase in a policy year due to a positive Index Adjustment. The Cap is declared at the beginning of a policy year and is guaranteed for that policy year.

The Participation Rate determines the portion of the unadjusted index change used to calculate the Index Adjustment. The Participation Rate is guaranteed for the life of the policy.

For the purpose of this disclosure, Withdrawals consist of any partial surrender amounts, applicable partial surrender charges, and systematic withdrawal of credit payments. These terms are described below under Surrenders and Withdrawals.

The Accumulation Value is available if this policy is held in deferral for 10 policy years or if it is annuitized anytime after the fifth policy year for a period of at least five continuous years for interest-only or for a period of at least 10 years for all other annuity options.

Surrender Value

The Cash Surrender Value is the greater of the Guaranteed Minimum Value or the Accumulation Value minus the full Surrender charge. The 10 year decreasing surrender charge begins at 15% and decreases monthly beginning in policy year three, to zero beginning in policy year 11.

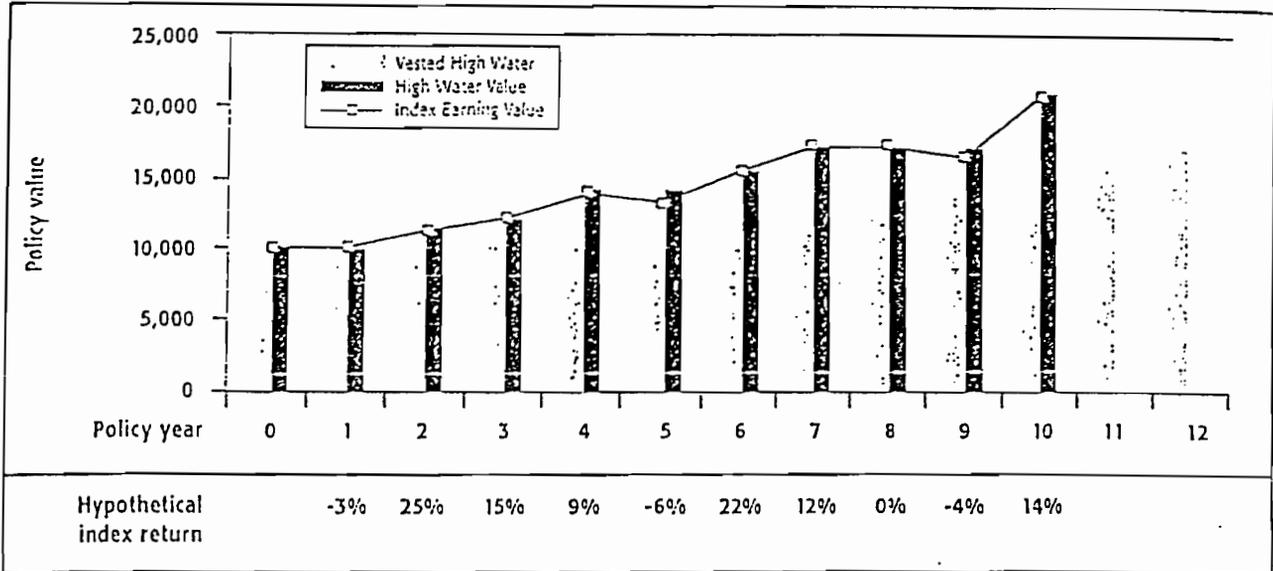
The Cash Surrender Value will be paid if any of the following events occur:

- annuity payments begin prior to the end of the fifth policy year;
- annuity payments are made for less than five years under the interest-only annuity option or less than 10 years under the other annuity options; or
- the policy value is requested in one sum prior to policy year 11.

The Guaranteed Minimum Value is equal to 75% of premium paid in the first policy year plus 67.5% of premium paid after the first policy year minus any Withdrawals, all accumulated at 3% interest, compounded annually. This value does not include Index Adjustments.

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Table 1 (continued)



Withdrawal example: This example shows how a Withdrawal affects policy values.

Assumes a Withdrawal of \$1,000 (includes applicable surrender charges) is taken at the middle of the third policy year. The policy values at the end of the third policy year in Table 1 would be affected as shown in Table 2. The policy values in later policy years would also be affected.

Table 2

Policy year	Hypothetical Index Return	Index Adjustment	Index Earning Value	High Water Value	High Vested Water Value	Accumulation Value
3	15.00%	\$1,575	\$12,075	\$12,075	\$9,000	\$12,075

Additional premium example: This example shows how additional premium affects policy values.

Assumes an additional premium of \$1,000 is made at the middle of the third policy year. The policy values at the end of the third policy year in Table 1 would be affected as shown in Table 3. The policy values in later policy years would also be affected.

Table 3

Policy year	Hypothetical Index Return	Index Adjustment	Index Earning Value	High Water Value	High Vested Water Value	Accumulation Value
3	15.00%	\$1,725	\$14,240	\$14,240	\$11,015	\$14,240

I have read the information above. The agent thoroughly explained the information and the examples to me, and has answered any questions I had. I have also read the PowerDex Annuity consumer brochure. I understand that any values shown, other than Guaranteed Minimum Values, are not guarantees, promises, or warranties.

Owner: [Signature] Date: 2/11/03

I have presented and explained a signed copy of this disclosure to the owner. I have not made statements that differ from the disclosure form and no promises or assurances have been made about the future values of the policy.

[Signature] Date: 2/11/03

Thomas F. DeSiphi
 4331
 01/17/2003
 \$300.00
 Three Hundred and 00/100
 BANK OF NEW HAMPSHIRE
 4331 70000030000

Account: [REDACTED]
 Amount: 300.00
 DIN: 601134082

601134082 20030124 06
 INCLEARINGS 13 090
 60310000114
 0628000350
 for Dep. F-014

Account: [REDACTED]
 Amount: 300.00
 DIN: 601134082

303060500 01-29-03 115.00
 One Hundred and Fifteen and 00/100
 BANK OF NEW HAMPSHIRE
 4360 70000011500

Account: [REDACTED]
 Amount: 115.00
 DIN: 303060500

303060500 20030125 00
 INCLEARINGS 07 003
 520343897 01 11-0048-1
 520343897 01 19-03
 TO THE
 ATTORNEY
 FOR DEPOSIT ONLY
 JOHNSON'S TOWING
 012300115

Account: [REDACTED]
 Amount: 115.00
 DIN: 303060500

Thomas F. DeSiphi
 4361
 01/24/2003
 \$60.00
 Sixty and 00/100
 BANK OF NEW HAMPSHIRE
 4361 70000006000

Account: [REDACTED]
 Amount: 60.00
 DIN: 303225431

303225431 240119 166027
 052200595 - 30
 303225431-240119 166027
 Tracy A. DeSiphi

Account: [REDACTED]
 Amount: 60.00
 DIN: 303225431

Thomas F. DeSiphi
 4362
 01/26/2003
 \$2,140.00
 Two Thousand One Hundred and Forty
 BANK OF NEW HAMPSHIRE
 601090198 70000021400

Account: [REDACTED]
 Amount: 2,140.00
 DIN: 601090198

FLEET
 601090198 06 01-03
 INCLEARINGS 11 020
 601090198
 601090198
 601090198
 601090198
 601090198

Account: [REDACTED]
 Amount: 2,140.00
 DIN: 601090198

5 Page 19

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.

Thomas DeSteph

From: Catherine Costanzo [ccostanzo@devinemillimet.com]
Sent: Friday, July 09, 2010 3:03 PM
To: Thomas DeSteph
Subject: RE: Consent

Dear Tom,

I filed your motion to extend deadlines and spoke with the clerk. The judge has the motion. I am hopeful that we will have a ruling this afternoon or tomorrow morning. I will be in touch Monday, if not this afternoon.

Catherine M. Costanzo
Devine, Millimet & Branch
111 Amherst Street
Manchester, NH 03101
603.695.8624
ccostanzo@devinemillimet.com

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From: Thomas DeSteph [<mailto:tdesteph@aol.com>]
Sent: Thursday, July 08, 2010 8:23 PM
To: Catherine Costanzo
Subject: Consent

Dear Catherine,

I have faxed the consent form back to you and have attached a motion I submitted to the court a few weeks ago. The motion was denied, surprise...surprise but wanted you to take a few minutes of your time so you can get a good taste of what I am fighting about; it may give you an idea of who you may recommend to give me good solid advise as to whether or not I should continue to fight.

As an indigent Vietnam Veteran, single custodial parent of two minor daughters, I feel beaten, abandoned and unfairly judiciously abused...but I must try to fight for my daughters sake. This was not fraud, it was a startup fund that both Nancy and I started that turned into a loan when we broke up; please read the motion, if nothing else it will be educational.

Thank you for all you have done, you are very kind to offer any help and all is very much appreciated.

Thomas F. DeSteph
The DeSteph Agency
603-532-8998

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July 16, 2010

CATHERINE M. COSTANZO
603.695.8624
CCOSTANZO@DEVINEMILLIMET.COM

VIA U.S. MAIL AND EMAIL

Mr. Thomas DeSteph
1 Dustin Lane
Jaffrey, NH 03452

Re: Gembitsky v. DeSteph

Dear Mr. DeSteph:

I am writing to confirm our conversations of this week.

First, as I have explained to you, neither I nor my firm represent you. We did agree upon a limited representation in order for you to obtain an extension on the deadline for you to file a notice of appeal. I obtained that extension and have filed a withdrawal from the above-named case (see enclosed). I will not be providing you any other services or any legal advice.

I understand that you have had difficulty in finding counsel to represent you. If you have not done so already, you may want to contact Lawyer Referral Services (220-0002) or the Pro Bono program (1-800-639-5290). You may also proceed, as you have been doing, on a pro se basis, i.e. representing yourself.

Second, as I advised you on July 9, the Court extended your deadline to file a notice of appeal to July 28. **If you intend to appeal, you must file your notice of appeal on or before July 28.**

Third, per our conversation of yesterday July 15, we have received your file from Attorney Clark. You stated that your preference was to pick it up yourself from my office at 111 Amherst Street in Manchester next week. I will not be here next week. However, I have left your file in a box in my office and I have left instructions for my secretary and paralegal to give you your file. You should call either my secretary Tammy Vaillancourt or my paralegal Renee Dubuque before you come to ensure that one of them is here when you arrive to transfer the file to you. They can be reached at 669-1000.

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Thomas DeSteph
July 16, 2010
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Mr. DeSteph, I know you are in a difficult situation. I truly wish you the best of luck going forward.

Very truly yours,

Catherine M. Costanzo

Enclosure