

THE STATE OF NEW HAMPSHIRE
Merrimack County Superior Court
163 N. Main Street
P. O. Box 2880
Concord, NH 03301 2880
603 225-5501

NOTICE OF DECISION

JOSHUA L GORDON ESQ
LAW OFFICE OF JOSHUA GORDON
26 SOUTH MAIN ST #175
CONCORD NH 03301

01-E-0386 Theodore Kamasinski vs. Honorable Philip McLaughlin et.al.

Enclosed please find a copy of the Court's Order dated 4/11/2003
relative to:

Order-Motion to Reconsider

04/15/2003

William McGraw
Clerk of Court

cc: Theodore Kamasinski
Joseph F. McDowell, III, Esquire
Daniel J. Mullen, Esq

THE STATE of NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT



Theodore Kamasinski

v.

**Hon. Philip McLaughlin, in his official capacity as
Attorney General of the State of New Hampshire**

&

**Martha Van Oot, in her official capacity as
President of the New Hampshire Bar Association**

Docket No. 2001-E-0386

ORDER ON PETITIONER'S MOTION TO RECONSIDER

Petitioner seeks reconsideration of the court's order of January 30, 2003, striking his appearances on behalf of others in all courts of this state and precluding him from the further practice of law as specifically defined by the order.

Pursuant to Superior Court Rule 59-A, a motion for reconsideration "shall state, with particular clarity, points of law or fact that the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present" While petitioner takes issue with many of the facts found and rulings made by the court, he overlooks the essential fact that the order arises from the petitioner's own failure to participate in discovery as ordered by the court on numerous occasions and failure to respond to the orders of the court regarding his default.

Petitioner was given every opportunity to show why he should not be required to provide the discovery sought by respondents and after consideration of his arguments, the court

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directed that he provide certain specific materials relevant to the scope of this action. Petitioner neither provided such discovery nor did he request an interlocutory appeal of the orders.

As a result of the petitioner's failure to provide discovery, and after several motions for default by respondents, the court on October 17, 2002, issued an order providing petitioner with one final chance to provide the ordered discovery. Petitioner was fully warned in that order that his failure to comply with discovery orders would "result in the dismissal of petitioner's petition and all well pleaded facts of respondents (would) be deemed confessed by petitioner." October 17, 2002 Order at p.2.

Even after the continuing refusal to provide discovery, petitioner was given an opportunity to further dispute the facts or argue that the facts taken as confessed would not entitle respondents to the relief sought. Petitioner did not avail himself of such opportunities. After respondents filed their pleadings in response to the court's order of October 17, 2002, petitioner filed no response. Petitioner asked for and received an extension of time to file such a response, but none was forthcoming. Although a hearing had been scheduled on all pending matters, given the lack of petitioner's response to respondent's pleadings, the court cancelled the hearing. See order of January 28, 2003.

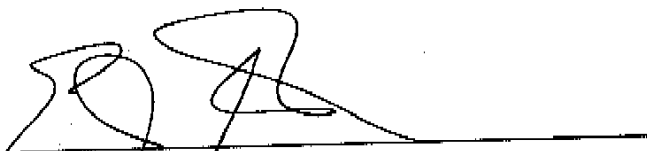
In summary, petitioner cannot now contest the facts deemed confessed by the court as he was given the opportunity to do so and did not. Petitioner was given every opportunity to provide the ordered discovery but failed to do so. In fact, petitioner could have been defaulted at a much earlier stage in the proceedings pursuant to Superior Court Rule 36. Petitioner was given ample warning of the result of his continued failures and did nothing. He has waived his right to now contest the orders of the court. His MOTION FOR RECONSIDERATION does not in any way establish that his failure to provide the ordered discovery was anything but willful and deliberate or that his failure did not prejudice the respondents' ability to prepare for trial. Further, given the abundance of opportunity petitioner was afforded to comply with discovery and respond

to the court's proposed sanction, it is clear that further opportunities or lesser sanctions would have been futile. Although the court would have preferred to decide this matter on the merits, it is clear from the record that petitioner did not want such a decision. Petitioner instead chose to challenge the authority of the court to order discovery necessary to insure a fair and orderly trial process. The court's ultimate findings and remedy are based solely on petitioner's own actions and failures to act which are firmly documented in the record and not on any point of law or fact which was misapprehended or overlooked by the court.

Petitioner's MOTION TO RECONSIDER is denied.

So Ordered.

Dated: April 11, 2003



Edward J. Fitzgerald, III
Presiding Justice