

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

DESTEFANO & ASSOCIATES, INC. and	:	COMMERCE PROGRAM
RICHARD DESTEFANO	:	
	:	JUNE TERM 2000
v.	:	
	:	NO. 2775
ROY S. COHEN; COHEN, SEGLIAS, PALLAS	:	
& GREENHALL, P.C.; ROBERT GENDELMAN;	:	<b>Control No. 051632</b>
and BOB GENDELMAN & CO., INC.	:	

ORDER

AND NOW, this 1st day of July 2001, upon consideration of the plaintiffs' motion to reinstate the claims of DeStefano & Associates against defendants Roy Cohen and Cohen, Seglias, Pallas & Greenhall, and the response of those defendants, and in accordance with the court's contemporaneously-filed opinion, IT IS HEREBY ORDERED that the motion is DENIED without prejudice to the trustee to assert the claims on behalf of the bankruptcy estate and without prejudice to DeStefano & Associates to assert the claims on its own behalf should the trustee abandon them.

BY THE COURT:

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JOHN W. HERRON, J.

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OPINION

On April 9, 2001, the court sustained a preliminary objection of defendants Roy Cohen and Cohen, Seglias, Pallas & Greenhall to the complaint and dismissed the claims of plaintiff DeStefano & Associates, Inc. (“DAI”) against those two defendants. DeStefano & Assocs. v Cohen, June 2000, No. 2775, op. at 3-5 (C.P.Phila. Apr. 9, 2001). The plaintiffs now move to reinstate the claims. The court denies the motion.

DAI filed for Chapter 7 bankruptcy on the same day that it filed this action. DAI’s causes of action that had accrued as of that time became property of the bankruptcy estate, and DAI lost standing to sue on those claims. 11 U.S.C. § 541(a)(1); In re Kollar, 176 F.3d 175, 178 (3d Cir. 1999); Rashid v. Kite, 934 F.Supp. 144, 146 (E.D.Pa. 1996). Because DAI lacked standing, this court dismissed DAI’s claims without prejudice to the trustee to assert the claims on behalf of the bankruptcy estate and without prejudice to DAI to assert the claims on its own behalf should the trustee abandon them.

On April 2, 2000, the bankruptcy court granted the trustee’s motion to employ Rothberg & Federman -- the attorneys for DAI and Richard DeStefano in this action -- to “represent the trustee, as

successor plaintiff, in pending state court litigation brought by the debtor (among other plaintiffs) against Roy S. Cohen and other defendants.” In re DeStefano & Assocs., No. 00-17881F, op. at 1 (Bankr.E.D.Pa.). The bankruptcy court limited its decision to allowing the trustee “to engage special bankruptcy counsel to prosecute” those claims. Id. at 4. The bankruptcy court did not address abandonment or DAI’s ability to pursue the claims on its own behalf.

The bankruptcy court’s decision does not support the plaintiffs’ motion to reinstate. The motion asks that DAI, not the trustee, be allowed to prosecute claims on its own behalf. Since DAI still lacks standing, the court denies the motion. Though this court would allow the trustee to join in this suit to assert claims on the estate’s behalf, and the bankruptcy court has allowed Rothberg & Federman to represent the trustee on such claims, the motion does not ask for joinder of the trustee.

The court will enter a contemporaneous order denying the plaintiffs’ motion without prejudice to the trustee to assert the claims on behalf of the bankruptcy estate and without prejudice to DAI to assert the claims on its own behalf should the trustee abandon them.

BY THE COURT:

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JOHN W. HERRON, J.

DATE: July 1, 2001