



## Stephen A. Sharkey

### Member

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### Profile

Stephen is a trial attorney in the firm's litigation department with extensive experience representing financial institutions, medical groups, businesses, insurance companies and individuals in a wide variety of litigated matters in both federal and state courts.

His practice focuses on business and commercial litigation, employment litigation (enforcement of non-compete agreements and the defense of unlawful employment practices), real property litigation (contract disputes, zoning issues and tax assessment challenges), insurance litigation (first-party property, coverage and third-party liability defense) and class action defense. Stephen also has experience in litigating professional liability claims and attorney fee disputes. In addition, he regularly represents lenders and other creditors in workout matters and adverse bankruptcy proceedings. He also counsels a number of small businesses on corporate and business-related issues.

### Representative Matters

#### Business and Commercial

- Obtained complete dismissal of lawsuit brought against anesthesiology group by competitor alleging various business torts, including business disparagement/injurious falsehood and tortious interference with contract, arising from award of hospital contract to client.
- Procured dismissal of claims brought against not-for-profit religious entity by former priests revolving around alleged breach of retirement plan.
- Obtained dismissal of suit brought against emergency room physician group and its shareholders by former shareholder/physician asserting claims for, among other things, breach of contract, fraud, breach of fiduciary duty and conversion arising out of his departure from the group.
- Obtained dismissal of suit brought against purchaser of corporation and its purported parent entity by former shareholders of sold entity alleging the "wrongful acquisition" of corporation and other claims, as well as an award to clients of sanctions against plaintiffs and their counsel in the amount of roughly \$75,000 for instituting, and maintaining, frivolous claims against them.
- Successfully obtained stay and order compelling arbitration of suit brought by brokerage account holder against securities broker dealer and its CEO alleging claims of breach of contract, fraud, negligence and violation of § 349 of NY's

### Education

- University at Buffalo School of Law (J.D. 1998)
- State University of New York at Geneseo (B.A. 1995)

### Bar/Court Admissions

- New York
- U.S. Bankruptcy Court for the Northern District of New York
- U.S. Bankruptcy Court for the Western District of New York
- U.S. District Court for the Northern District of New York
- U.S. District Court for the Western District of New York

### Practices

- Municipalities
- Tax Assessment, Condemnation & Property Valuation
- Litigation
- Agribusiness
- Business Restructuring, Creditors' Rights and Bankruptcy
- Class and Collective Action Litigation

General Business Law arising out of claimed mismanagement and embezzlement of account by deceased former representative of broker dealer.

- Obtained dismissal of suit brought by commercial loan applicant against financial institution asserting claims of breach of contract, unjust enrichment, negligence and violation of § 349 of NY's General Business Law arising out of denial of loan application.
- Represented beverage company in multi-million dollar dispute with former representative of acquired companies over breach of an asset purchase agreement and the warranties thereunder.
- Successfully represented direct mail coupon publishing company in defense of \$2.9MM breach of contract action brought by printing company.
- Obtained verdict and judgment, with interest, in excess of \$1 million after trial on behalf of precision machine tool manufacturer in breach of contract suit against machine manufacturer and distributor arising out of defective machine.
- Successfully represented financial institution in defense of \$60MM breach of contract/fraud/tortious interference action brought by international imaging and photographic supply company.
- Represented credit card company in defense of breach of contract action commenced by software company.
- Obtained in excess of \$750,000 recovery on behalf of waste disposal provider in suit arising out of theft and fraudulent endorsement of check.
- Successfully defended a financial institution against a multi-million dollar breach of contract/fraud claim brought by mortgagee.

### **Employment**

- Obtained complete dismissal of all claims brought against automobile auction company by former sales manager alleging claims of age discrimination, retaliation and hostile work environment.
- Successfully defended veterinary group and its owners against complaint filed by former employee with the New York State Division of Human Rights asserting claims of age discrimination and hostile work environment.
- Procured dismissal of complaint lodged against clinical research and development company with the New York State Division of Human Rights by former employee alleging harassment, discrimination and retaliation.
- Achieved dismissal of lawsuit brought against property management company by former maintenance worker asserting, among other things, various claims arising under New York State Human Rights Law.
- Represented radiology group and its partner physicians in highly contentious lawsuit brought by former partner physician alleging claims of gender discrimination, retaliation, breach of contract and intentional infliction of emotional distress.
- Obtained dismissal of suit brought against orthopedic physician group by former employee alleging claims under the Employee Retirement Income Security Act ("ERISA") arising out of denial of benefits under a group disability insurance policy.
- Successfully defeated preliminary injunction application brought by medical staffing company against physician's assistant asserting irreparable harm arising

out of purported breach of professional services employment agreement.

- Successfully represented advertising company and its owner in suit brought by former employee alleging Labor Law wage violations and breach of contract.
- Defeated claims brought by former employee against lubricant distributing company attempting to circumvent contractual non-compete obligations.
- Successfully represented custom printing company in breach of employment contract action brought by former employee.
- Obtained temporary restraining order and injunctive relief on behalf of energy supply company in suit against former employee.
- Successfully represented medical products supplier in dispute with former marketing company and its principal arising out of the termination of their business relationship.
- Obtained prompt and favorable disposition of lawsuit brought against client's employee by former employer alleging conversion, unfair competition and breach of an employment contract.

#### **Real Property**

- Successfully represented student housing developer in mortgage foreclosure proceeding brought by financing company by prevailing in evidentiary hearing concerning value of student housing complex, as court adopted client's expert's valuation of the property, resulting in a reduction of deficiency judgment by over \$20 million.
- Prevailed on behalf of school district in lawsuit brought by purchaser of former school building seeking in excess of \$1MM in damages for breach of the sale contract and claimed property damage present in the building.
- Obtained injunctive relief on behalf of property owner against neighbor in nuisance action.
- Prevailed in Article 78 proceeding brought on behalf of non-profit photography organization challenging denial of charitable exemption from property taxation.
- Successfully represented a telecommunications provider in numerous cases involving municipalities' ability to limit cellular telephone service pursuant to the Telecommunications Act of 1996.
- Obtained favorable recovery for commercial warehouse owner in summary eviction proceeding brought against food distribution company tenant.
- Procured dismissal of lawsuit brought against commercial landowner by would-be purchaser in breach of contract and specific performance action revolving around proposed sale of mining property.

#### **Insurance/Negligence**

- Successfully obtained resolution on behalf of solar energy solutions provider in complex coverage dispute arising out of environmental incident occurring at solar construction project site.
- Obtained dismissal of suit brought against physician and his purported employer by other physician alleging claims of defamation, negligence and tortious interference with business relations arising out of aging provider medical evaluation.

- Successfully represented former officers and board members of not-for-profit company in defense of action brought by court-appointed receiver alleging claims of breach of fiduciary duty, fraud, waste and conversion following dissolution of company.
- Successfully represented life insurance company, including the recovery of its attorneys' fees, in several interpleader actions involving disputes by beneficiaries over the distribution of policy proceeds.
- Obtained in excess of \$500,000 recovery on behalf of insurance company against co-insurer of tortfeasor in underlying personal injury action.
- Successfully represented numerous insurance companies up through and including trial in actions involving the denial of fire loss claims on the basis of fraud/arson and/or the valuation of the loss.
- Obtained dismissal of lawsuit brought against insurance company by corporate insured arising out of extensive mold loss to commercial building.
- Obtained favorable resolution of action against HVAC contractor in \$6MM personal injury suit brought by plaintiff claiming controversial neurological condition reflex sympathetic dystrophy ("RSD") arising out of motor vehicle accident.
- Successfully represented numerous manufacturers, distributors and retailers in product liability suits.

#### **Class Action**

- Successfully defended international hotel chain and hotel and restaurant group in wage and hour class action brought on behalf of putative class of current and former employees, including procurement of dismissal of primary claim alleging tip appropriation in supposed violation of New York Labor Law § 196-d.
- Defeated class certification and obtained dismissal of minimum wage claim in class action brought against hotel and restaurant group on behalf of putative class of food and beverage servers.
- Obtained dismissal of wage and hour class action brought against international hotel chain and hotel and restaurant group brought on behalf of putative class of current and former service employees.
- Representing manufacturers of chemical products in suit brought by putative class of chemical producers alleging violations of federal antitrust laws revolving around the sale and supply of caustic soda.
- Obtained dismissal of complaint brought against regional furniture retailer by purported class of consumers alleging claims of deceptive business practices and false advertising.
- Successfully represented electrical inspection company in putative class action brought by current and former employees alleging statutory wage and hour claims.

#### **Reported Cases**

- *Miller v. Nat'l Property Mgmt. Assocs., Inc., et al.*, 191 A.D.3d 1341, 142 N.Y.S.3d 256 (4th Dept. 2021)
- *Reid v. Univera Healthcare*, 178 A.D.3d 1406, 116 N.Y.S.3d 453 (4th Dept. 2019)

- *Shenoy v. Kaleida Health, et al.*, 162 A.D.3d 1701, 79 N.Y.S.3d 810 (4th Dept. 2018)
- *In re Birch Grove Landscaping & Nursery, Inc.*, 547 B.R. 500 (Bankr. W.D.N.Y. 2016)
- *Mariglio v. Berthel Fisher & Co. Fin. Servs., Inc.*, 133 A.D.3d 1371, 19 N.Y.S.3d 653 (4th Dept. 2015)
- *621 Payne Ave., LLC v. Union Free School Dist. No. 1 of N. Tonawanda*, 2014 N.Y. Slip Op. 00761 (4th Dept. 2014)
- *Canestaro v. Raymour & Flanigan Furniture Co.*, 42 Misc.3d 1210(A), 984 N.Y.S.2d 630 (Sup. Ct. 2013)
- *National Fuel Gas Distribution Corp. v. City of Jamestown*, 108 A.D.3d 1045, 969 N.Y.S.2d 646 (4th Dept. 2013)
- *Rafi v. Rutgers Cas. Ins. Co.*, 59 A.D.3d 1057, 872 N.Y.S.2d 799 (4th Dept. 2009)
- *40 Gardenville, LLC v. Travelers Property Casualty of America*, 387 F. Supp.2d 205 (W.D.N.Y. 2005)
- *Zulawski v. Taylor*, 11 Misc.3d 1058(A), 2005 WL 3823584 (Sup. Ct. 2005) (unreported disposition)
- *American Ref-Fuel, Inc. v. Northeast Southtowns Solid Waste Mgmt. Bd.*, 291 A.D.2d 861, 737 N.Y.S.2d 494 (4th Dept. 2002)
- *Assurance Co. of America v. American & Foreign Ins. Co.*, 288 A.D.2d 888, 732 N.Y.S.2d 191 (4th Dept. 2001)
- *McSorley v. Tripoli*, 284 A.D.2d 900, 725 N.Y.S.2d 918 (4th Dept. 2001)
- *Hoehn v. Int'l Security Services and Investigations, Inc.*, 120 F. Supp.2d 257 (W.D.N.Y. 2000)

## Honors & Affiliations

- Listed in:
  - *The Best Lawyers in America*®, Commercial Litigation, 2022-2025
  - *New York Super Lawyers*®, Business Litigation, 2024 (listed for 10 years)
  - *Chambers USA* 2023, Litigation – Upstate New York
  - *Martindale-Hubbell*®, AV Preeminent Rated
  - *Buffalo Business First*, 2013 Western New York Legal Elite
- New York State Bar Association
- Erie County Bar Association
- New York State Assessors' Association
- Erie County Assessors' Association
- Western New York Trial Lawyers Association
- Western New York Defense Trial Lawyers Association
- Turnaround Management Association
- Buffalo Business First's Who's Who In Law 2011

## Representative Publications

- "Five Questions," *Buffalo Law Journal*, November 20, 2017
- Quoted in "Law Firms Take Notice of Cyber Threats," *Buffalo Law Journal*, November 20, 2017

### Other Activities

- Secretary, Town of Clarence Baseball Association, 2018-2020
- Member, SUNY Geneseo Alumni Regional Committee of Buffalo
- Long time mentor to first year law students at SUNY at Buffalo School of Law
- Member, Erie County Bar Association's Judiciary Committee, 2017-2018
- Board of Directors, SUNY Buffalo Law Alumni Association, 2013-2016
- Town of Clarence Youth Board, 2010-2011
- Volunteer youth baseball and hockey coach