

# HODGSON RUSS HELPS CLEAR ALBANY-AREA BUSINESS OWNER OF TAX FRAUD CHARGES

April 5, 2012

On April 4, Warren County Court Judge John S. Hall dismissed tax fraud charges that had been filed against local businessman David Monsour, owner of two Concepts in Fitness stores located in Saratoga and Albany. Mr. Monsour had been indicted in November 2011 and charged in a six-count indictment with two counts of tax fraud in the third degree and four false filing counts.

The dismissal represents a complete exoneration of the criminal charges against Mr. Monsour.

The indictment was based on an erroneous and flawed investigation conducted by the New York State Department of Taxation & Finance, which had concluded that Mr. Monsour had failed to report nearly \$1 million in income in tax years 2006 to 2009. In a letter to the court dated April 1, 2012, Assistant District Attorney Marc Kokosa informed the court that after a thorough review conducted “at the behest of [Mr. Monsour] attorneys and with [Mr. Monsour’s] cooperation” it had been revealed that the Tax Department’s conclusions were “incorrect.” In addition, Mr. Kokosa noted that proof that Mr. Monsour had intended to cheat on his taxes was “lacking,” given Mr. Monsour’s reliance on the guidance of his accountant.

The evidence produced by the defense and reviewed by the district attorney established that the alleged “unreported income” that led to the Department’s incorrect findings was, in fact, the proceeds from sale of his personal residence (an exempt transaction), proceeds from refinancing his personal residence, funds transferred from one of his bank accounts to another of his accounts, proceeds from the sale of homes he built and that he had reported on his tax returns, advances from a line of credit, and other similar non-taxable sources of funds. As the district attorney correctly concluded, these amounts were not taxable income, and Mr. Monsour should never have been charged with a crime. As further noted in Mr. Kokosa’s letter, Mr. Monsour agreed to resolve the only remaining civil issues with the Department by paying \$7,408 in taxes and interest, a small fraction of the amount originally demanded by the Tax Department, which did not involve any criminal tax issues as the dismissal of the indictment makes clear.

Mr. Monsour was represented by Hodgson Russ partner William Comiskey, former Deputy Commissioner for Tax Enforcement at the Tax Department, where he served until September 2010 as New York’s chief tax enforcement officer. Mr. Comiskey is now head of Hodgson Russ’ Albany-based state tax practice. Mr. Monsour was also

## Attorneys

William Comiskey

## Practices & Industries

State & Local Tax

Tax Investigations & Defense

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represented by Glens Falls attorney Michael J. O'Connor.

In announcing the dismissal of these criminal charges, Mr. Comiskey stated, "Warren County District Attorney Kathleen Hogan and the court ended a criminal tax prosecution that should never have been brought against a hard-working and decent business and family man. Dave Monsour has suffered a nightmare that no one should endure. He is an innocent man who was wrongly accused of crimes that damaged his reputation, hurt his business, and forced him to incur the costs of defense. I commend District Attorney Hogan for keeping an open mind and for her careful review of the evidence produced by the defense and, more importantly, for doing the right thing by dismissing this unfounded indictment."

In the Media:

"Tax Fraud Charges Against Queensbury Businessman Dropped," *Post-Star*

"Businessman Exonerated of Tax Fraud Tries to Clear Name," WNYT-TV