## IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETER KOSTYSHYN,	Ş	
Plaintiff Below, Appellant,	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	No. 451, 1999 Court Below: Superior Court of
V.	§ §	the State of Delaware in and for New Castle County
TOM GORDON, ET AL.,	\$ \$ \$ \$	C.A. No. 98A-09-010
Defendants Below, Appellees.	§ §	

Submitted: March 8, 2000 Decided: March 20, 2000

## Before WALSH, HOLLAND and HARTNETT, Justices.

## <u>O R D E R</u>

This 20<sup>th</sup> day of March 2000, it appears to the Court that:

(1) On October 1, 1999, the Court received the appellant's untimely

notice of appeal from the Superior Court's decision of April 28, 1999.

Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been

filed on May 28, 1999.

(2) On October 6, 1999, the Clerk issued a notice by certified mail directing the appellant to show cause why the appeal should not be dismissed as untimely filed. The return receipt was never returned by the U.S. Postal

Service ("the post office"), and the Clerk's office asked the post office to investigate the whereabouts of the return receipt. The post office was unable to find any record of the return receipt.

(3) On February 11, 2000, the Clerk's office remailed, by first class and certified mail, the notice to show cause that had been issued on October 6, 1999. The notice to show cause that was sent by certified mail was returned to the Clerk's office on March 8, 2000, marked "Unclaimed." The notice to show cause that was sent by first class mail has not been returned by the post office. The appellant having failed to respond to the notice to show cause within the required ten-day period, dismissal of this action is deemed to be unopposed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 3(b) and 29(b), that the within appeal is DISMISSED.

BY THE COURT:

Randy J. Holland

Justice