

**NO. BD-2002-065****S.J.C. Judgment of Reinstatement entered by Justice Botsford on September 21, 2011.¹****Page Down to View Memorandum of Decision**

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. BD-2002-0065

IN RE: KAREN R. GALAT

MEMORANDUM OF DECISION
ON PETITION FOR REINSTATEMENT AND MOTION TO IMPOUND

Karen R. Galat seeks reinstatement to the bar following her indefinite suspension effective November 22, 2002.¹ The Board of Bar Overseers (board) has recommended that the petition be allowed. The board also moves to impound those materials in the information filed that were impounded by the hearing panel. Bar counsel opposes Galat's reinstatement as well as the board's motion to impound. For the reasons explained below, I accept the board's recommendation; the petition for reinstatement and the motion to impound will be allowed.

Background. 1. Galat began working for Edmund E. Fleming, then a licensed Massachusetts attorney, in the late winter or spring of 1982, during her last year of law school.² She was admitted to the practice of law in Massachusetts on December 17, 1982. Before Galat was hired, Fleming had been appointed receiver for a corporate entity that was once part of a

¹ Galat also filed a motion for leave to engage in employment as a paralegal on May 31, 2011. However, this decision on the petition for reinstatement renders that motion moot.

² The facts recited in this section are taken from Matter of Galat, 18 Mass. Att'y Discipline Rep. 229 (2002).

fraudulent investment scheme, and when she joined Fleming, Galat worked on the receivership matter. At Fleming's direction, Galat used receivership assets to pay for office expenses and salaries, including her own salary. Occasionally, she paid herself interest-free advances on her salary from receivership funds, which she repaid by making deductions from later paychecks. Galat also made two interest-free loans to herself from the receivership assets in 1990 and 1992, which she repaid by depositing personal funds into the receivership account within a few weeks of the loan. When the judge requested an accounting of the receiver's legal fees, Galat assisted Fleming in creating after-the-fact records that overstated the number of hours they had worked. Galat also advised investors in the fraudulent scheme that Fleming would be seeking damages on their behalf, failing to recognize the conflict of interest. After the investors' claims were dismissed in 1987, she and Fleming waited until 1989 to advise them of the dismissal. Galat stopped working for Fleming in January, 1993; nonetheless, she continued to practice under the name of "Fleming & Galat." From 1993 to 2002, Galat conducted her own family law practice, and served on the lawyer referral services reduced fee panel. No complaints were filed in relation to her legal work during this time period.

In 2002, Fleming was disbarred for his misconduct. Galat cooperated with bar counsel's investigation of Fleming. In 2002 as well, Galat agreed to an indefinite suspension for her violation of multiple rules of professional conduct. In mitigation, the board noted that Galat was a recent admittee to the bar, relied on Fleming's judgment about how to handle the receivership funds, and was not the primary decision-maker.

2. In 2004, Galat moved to New Hampshire with her husband and began operating the

Snowvillage Inn through a corporate entity.³ She invested her own money, as well as money from trusts established by her mother and stepfather, into the business. It was not a success, and the inn was placed on the market. In the meantime, Galat continued to operate the inn in order to preserve its value, including taking reservations and deposits for weddings to be held at the property. She and her husband entered into a purchase and sale agreement with another couple, but the buyers backed out of the deal on the scheduled closing date in May, 2010, forcing the corporation that actually owned the inn property to file for bankruptcy in July, 2010. Galat was unable to return the deposits for the scheduled weddings that were to be held at the inn because the inn's assets were transferred to the bankruptcy trustee. She opened an email account for the purpose of providing information to depositors about the proceedings, and she requested that the bankruptcy trustee use the down payment from the failed sale, which remained in escrow, to repay the guests' deposits.

3. Galat filed a petition for reinstatement on September 2, 2009. On September 22, 2009, the petition was dismissed without prejudice. Galat filed a renewed petition for reinstatement on January 7, 2010, which bar counsel opposed. The matter was heard by a hearing panel of the board on two days in September of 2010. Galat, representing herself, was the sole witness. On November 23, 2010, the hearing panel issued its decision, recommending that Galat be reinstated on the condition that she attend, within six months of reinstatement, a trust accounting course acceptable to bar counsel and six hours of continuing education in family law. Bar counsel appealed the panel's report to the board on December 13, 2010; Galat filed an

³ The facts recited in this section are taken from the Hearing Panel Report on Reinstatement in this matter.

opposition to the appeal. On February 14, 2011, the board voted to remand the case to the hearing panel to address three issues: (1) its rulings on the admissibility of certain evidence that was excluded or admitted only for a limited purpose; (2) Galat's alleged failure to disclose debts, loans, and guarantees in the reinstatement questionnaire, and (3) Galat's moral qualifications and the likely impact of her reinstatement on the integrity of the bar. On April 22, 2011, the hearing panel filed its response to the remand vote, reaffirming its decision that Galat should be reinstated. Bar counsel then appealed from the hearing panel's response on May 9, 2011. Galat's opposition to bar counsel's appeal was filed on May 18. On June 13, 2011, the board voted unanimously to accept the hearing panel's findings of fact, conclusions of law, and recommendation that the petition for reinstatement be allowed.

Discussion. a. Reinstatement. When applying for reinstatement, a suspended attorney has the burden of proving "that he or she has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest." S.J.C. Rule 4:01, §18(5). See Matter of Shaughnessy, 456 Mass. 1021, 1022 (2010). In order to determine whether this standard has been met, this court must consider the following: "(1) the nature of the original offense for which the petitioner was [suspended], (2) the petitioner's character, maturity, and experience at the time of [her suspension], (3) the petitioner's occupation and conduct in the time since [her suspension], (4) the time elapsed since the [suspension], and (5) the petitioner's present competence in legal skills." Matter of Daniels, 442 Mass. 1037, 1038 (2004), quoting Matter of Prager, 442 Mass. 86, 92 (1996), and Matter of Hiss, 368 Mass. 447, 460 (1975). The hearing

panel found that Galat met all of these requirements, and the board accepted the panel's findings.

In reviewing the board's decision to approve the petition for reinstatement, "[t]he subsidiary facts found by the Board shall be upheld if supported by substantial evidence, upon consideration of the record, or such portions as may be cited by the parties." S.J.C. Rule 4:01, §18(5). "[A]lthough not binding on this court, the findings and recommendations of the board are entitled to great weight." Matter of Wainwright, 448 Mass. 378, 384 (2007), quoting Matter of Fordham, 423 Mass. 481, 487 (1996), cert. denied, 519 U.S. 1149 (1997). "[The court looks] to the board's recommendation, its experience, and its expertise to ... dispose of disciplinary matters uniformly." Matter of Daniels, *supra*, quoting Matter of Eisenhower, 426 Mass. 448, 455 (1998), cert. denied, 524 U.S. 919 (1998). "This is as true in considering the board's recommendation on a petition for reinstatement as it is in considering a recommended sanction." Matter of Daniels, *supra*, citing Matter of Hiss, *supra* at 461.

The hearing panel crafted careful, thorough decisions, both in its initial report and on remand. Relying on these detailed findings, the board determined that Galat has met her burden of proof and should be reinstated. While "passage of time alone is insufficient to warrant reinstatement," Matter of Daniels, *supra*, there is substantial evidence in the record to indicate that Galat has led "a sufficiently exemplary life to inspire public confidence once again" Matter of Prager, *supra*, quoting Matter of Hiss, *supra* at 452.

1. Nature of original offense. The misconduct that led to Galat's indefinite suspension included misuse of funds, inflated billing, misleading potential clients, failing to recognize conflicts of interest, and improperly holding herself out as being in a partnership. While these violations of the rules of professional responsibility were serious, they are somewhat mitigated

by Galat's status as a new attorney (discussed below). The hearing panel also found, and the board accepted its conclusion, that Galat's "competent conduct" of a domestic relations practice for nearly ten years after ending her work with Fleming and before her suspension was a factor that weighed in her favor. During this time, bar counsel received no complaints about her. Galat was frequently appointed as a guardian ad litem to represent the interests of minor children and served on the lawyer referral services reduced fee panel. The hearing panel also gave weight to the fact that Galat stipulated to a statement of facts regarding her misconduct and voluntarily agreed to an indefinite suspension, as well as the fact that she admitted wrongdoing in her testimony before the panel, and appeared to have reformed.⁴

2. Maturity at time of suspension. Galat's misconduct took place under the direction of Fleming, her first legal employer. At the time, Galat "was a newly admitted lawyer when she was hired by Fleming and relied on him for guidance in using receivership funds . . . she was not the decision-maker." Matter of Galat, 18 Mass. Att'y Discipline Rep. 229, 237 (2002). The hearing panel and board found Galat to have developed "a more mature sense of humility and of her limitations" since that time, "as well as a clear sense of the factors and circumstances that led to her misconduct."

3. Occupation and conduct since suspension. Most of bar counsel's objections to the board's decision arise from Galat's conduct in nonlegal matters since the time of her suspension. The hearing panel fully considered and rejected by each objection, and the board accepted the

⁴ In her testimony before the hearing panel, Galat expressed remorse for the conduct that led to the suspension. Although she admitted that she had been "gullible," she took responsibility for the misconduct, stating "my acts were wrong" and "the allegations . . . were ultimately accurate." The hearing panel credited this testimony and accepted it.

panel's findings. Bar counsel argues that Galat lacks the moral integrity to be reinstated because she was dishonest with the inn's guests about the return of their deposits, failed to cooperate with bar counsel's investigation when asked to provide certain documents, and failed to disclose two loan guarantees on her reinstatement questionnaire.

The hearing panel's conclusion, accepted by the board, that Galat did not behave dishonestly in relation to the deposits was explicitly based on the panel's evaluation of Galat's credibility. The hearing panel is the "sole judge of the credibility of the testimony presented at the hearing," S.J.C. Rule 4:01, §8(5)(a), and the panel's credibility determinations may not be rejected unless it is certain that a finding was "wholly inconsistent with another implicit finding." Matter of Balliro, 453 Mass. 75, 84 (2009), quoting Matter of Barrett, 447 Mass. 453, 460 (2006). I will not disturb the hearing panel's findings as to Galat's credibility because they are consistent with each other and with other facts in the record.⁵

The record also fully supports the hearing panel and board's conclusion that Galat provided extensive documentation regarding her business finances and family trusts in a good faith attempt to cooperate with bar counsel's investigation. Likewise, I accept the finding, supported by Galat's credited testimony, that her failure to disclose explicitly in her reinstatement questionnaire that she was a personal guarantor of two bank loans to Snowvillage Inn was.

⁵ The record shows that although she was unable to follow through with her plan to file suit in county court to recover the deposits on behalf of the guests due to the bankruptcy filing, Galat remained in contact with the guests rather than ignoring their inquiries. She also provided the name and contact information of her real estate agent who held the down payment in escrow. At the bankruptcy hearing, Galat specifically asked that the deposits be returned: "[T]here's about \$23,000 in advance deposits and gift certificates. And I'm hoping that at some point you can seize the money [in the escrow account from the sale that fell through] and see that it's distributed to those people."

inadvertent. Galat did not attempt to conceal the loans; she referenced them in another portion of the document.

4. Time elapsed since suspension. Galat was indefinitely suspended from the practice of law on November 22, 2002, nearly nine years ago.

5. Present competence in legal skills. The record reflects, and the hearing panel and board found, that in order to regain proficiency, Galat has voluntarily pursued continuing legal education and independent reading in family law, evidence, and handling client funds. She also has identified an attorney and an accountant whom she can use as resources if questions arise in her practice.

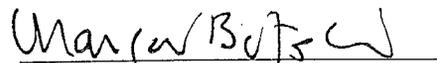
In sum, the hearing panel and board concluded that Galat possesses the necessary moral qualifications and learning in the law to be reinstated as an attorney, and that her reinstatement would not be detrimental to the public interest or the administration of justice. Galat's prior instances of misconduct took place when she was a junior attorney, and that the misconduct ended nearly twenty years ago. Galat has expressed remorse for her role in those events and conducted herself appropriately since that time, including preparing herself to reenter the practice of law. I agree with the board's recommendation that she be reinstated.

b. Impoundment. For good cause shown, the board has the power to "issue a protective order prohibiting the public disclosure of specific information otherwise privileged or confidential." S.J.C. Rule 4:01, § 20(4). The hearing panel granted Galat's motion to impound certain documents, including a tax return for the corporate entity operating the inn and the inn's profit and loss statement for 2009, on the ground that these documents were the subject of a confidentiality agreement between the one-time prospective buyers of the inn and Galat. Bar

counsel raised an objection to the impoundment order in her appeal of the hearing panel report. Although the board's vote recommending allowance of the petition for reinstatement did not specifically address bar counsel's objection, the objection was later overruled by the board's chair and the board has moved in this court to have the documents impounded. While bar counsel is correct that the documents may properly be used as evidence in this proceeding, there is no reason otherwise to interfere with the confidentiality agreement by lifting the impoundment of the specific documents at issue.

In accordance with the above, a judgment shall enter reinstating the petitioner, Karen R. Galat, to the practice of law on condition that she attend, within six months of reinstatement, a trust accounting course acceptable to bar counsel and six hours of continuing education concerning family law.

Further, an order shall enter affirming that the materials impounded by the hearing panel in this matter remain impounded.



Margot Botsford
Associate Justice

DATED: 21 September 2011