

IN RE: SERGIO P. VESPA

NO. BD-2008-009

S.J.C. Order Denying Reinstatement entered by Justice Duffly on October 26, 2015.¹

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

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

In the Matter of)
SERGIO P. VESPA)
Petition for Reinstatement)
_____)

BBO File No. BD-2008-0009

HEARING PANEL REPORT

I. Introduction

On April 10, 2014, Sergio P. Vespa filed a petition for reinstatement from an order of indefinite suspension entered February 29, 2008.

A public hearing on the petition was held on May 20, 2015. Eighteen exhibits were admitted into evidence including, as Ex. 1, the petition for reinstatement and the petitioner's responses to the standard reinstatement questionnaire, Part I. The petitioner testified on his own behalf and called no witnesses. Bar counsel called no witnesses. For the reasons discussed below, we recommend that the petition for reinstatement be denied.

II. Standard

A petitioner for reinstatement to the bar bears the burden of proving that he has satisfied the requirements for reinstatement set forth in S.J.C. Rule 4:01, § 18(5), namely that he possesses "the moral qualifications, competency, and learning in the law required for admission to practice law in this Commonwealth, and that his . . . resumption of the practice of law [would] not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest." Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att'y Disc. R. 120, 122 (2004),

quoting S.J.C. Rule 4:01, § 18(5). See Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att’y Disc. R. 94, 95 (2000); Matter of Pool, 401 Mass. 460, 463, 5 Mass. Att’y Disc. R. 290, 293 (1988).

In determining whether the petitioner has satisfied these requirements, a panel considering a petition for reinstatement looks to “(1) the nature of the original offense for which the petitioner was [suspended or disbarred], (2) the petitioner’s character, maturity, and experience at the time of his [suspension or disbarment], (3) the petitioner’s occupations and conduct in the time since his [suspension], (4) the time elapsed since the [suspension], and (5) the petitioner’s present competence in legal skills.” Matter of Prager, 422 Mass. 86, 92 (1996); see Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att’y Disc. R. 122, 133 (1975).

The conduct giving rise to the petitioner’s suspension is affirmative proof that he lacks the moral qualifications to practice law. See Matter of Centracchio, 345 Mass. 342, 346 (1963). To gain reinstatement, the petitioner has the burden of proving that he has led “a sufficiently exemplary life to inspire public confidence once again, in spite of his previous actions.” Matter of Prager, 422 Mass. at 92, quoting Matter of Hiss, 368 Mass. at 452, 1 Mass. Att’y Disc. at 126.

III. Disciplinary Background

The petitioner was admitted to the bar in June 2001. Ex. 1 (BBO 3). A sole practitioner, he was indefinitely suspended effective February 29, 2008, after stipulating to various acts of misconduct, including intentional misuse of client funds with intent to deprive and with actual deprivation resulting; making intentional misrepresentations under oath to bar counsel; falsely representing to an insurer that he had witnessed his client’s signature; and numerous IOLTA violations. Ex. 1 (BBO 12-15). The misconduct occurred in the course of a single representation of a personal injury client: on two occasions, the petitioner received \$1,200 and converted it to

his own use. Ex. 1 (BBO 13-14). In the first instance, he neglected to inform his client or the Department of Revenue ("DOR") of the receipt in early November 2006 of a check made payable to the DOR, the client, and himself, and he signed both his own and his client's name to the check and deposited the funds into his IOLTA account. Ex. 1 (BBO 13). After receipt of a second \$1,200 check from another insurer about five months later, he converted those funds as well. He ignored the client's attempts to contact him -- fifteen to twenty times in 2006 and 2007 -- for information about the settlement. Ex. 1 (BBO 14). In response to bar counsel's investigation, initiated not because of this matter but after her receipt of notice of a dishonored check on his IOLTA account, he intentionally misrepresented under oath certain material facts concerning the receipt of money on the client's behalf. Id. It was not until November 19, 2007, well after bar counsel had begun her investigation, that the petitioner repaid the client the money he had converted, plus interest. Ex. 1 (BBO 15).

IV. Findings

A. Moral Qualifications

We find, and explain below, that the petitioner has affirmatively established that he is reformed and has been rehabilitated. See Matter of Waitz, 416 Mass. 298, 305, 9 Mass. Att'y Disc. R. 336, 343 (1993) ("[r]eform is 'a state of mind' that must be manifested by some external evidence").

We found credible the petitioner's claims of remorse. See Matter of Ellis, 457 Mass. 413, 416, 26 Mass. Att'y Disc. R. 162, 166 (2010) (identifying remorse as one of factors in support of successful showing of good moral character). He was detailed and explicit when describing his misconduct. Tr. 13-16 (Petitioner). He recognized that he had violated numerous ethical rules, and then compounded this by panicking and lying to bar counsel. Tr. 15-16

(Petitioner). He was frank about the fact that, lacking experience and knowledge as he did, he should never have opened his own law office. Tr. 21-22 (Petitioner). His petition reflects that he is the son of Italian immigrants who have no formal education, and that the day he was sworn in to the Massachusetts bar “was one of the proudest days in both my parents and my life.” Ex. 1 (BBO 10). He testified convincingly about the embarrassment and shame he has brought on himself, his family, the profession, his clients and his peers. Asked for assurances that he will not again commit this type of misconduct, he stated: “[F]or the last seven years I’ve had to live with the fact that I made a really stupid mistake. From beginning to end I made one bad decision after another. [For s]even years my father could not tell people ‘my son is a lawyer.’ You know, that was very important to him.” Tr. 26 (Petitioner). He acknowledged that his conduct was inexcusable and was his own fault, and that he deserved and earned the consequences imposed on him. Tr. 26-27 (Petitioner). Having observed the petitioner carefully during his testimony, we find him to be repentant and remorseful.

Turning to the petitioner’s occupation, he described his self-employment as the president/CEO of Maria’s Drapery, a family-owned and run business which manufactures handmade curtains and drapery and which he has owned since 1995. Ex. 1 (BBO 5). He testified that he lives with his parents and supports them through this business. Tr. 8-9; 17 (Petitioner). The petitioner also described involvement in the Italian Benevolent Society, an organization that helps Italian-Americans throughout the United States, and noted specifically his engagement in the organization’s continuing mission to assist young and old Italian immigrants. Tr. 17-18 (Petitioner); Ex. 1 (BBO 6). The petitioner explained that he has been associated with this organization since he was born. Tr. 18 (Petitioner). The society helped his parents adjust when they first came from Italy to the United States. Ex. 1 (BBO 6). The petitioner also assists

older people in the neighborhood, and gave as an example helping with shopping during the winter. Tr. 18 (Petitioner).

“A petitioner’s moral character can be illustrated by charitable activities, volunteer activities, commitment to family, or community work.” Matter of Sullivan, 25 Mass. Att’y Disc. R. 578, 583 (2009). Considering all the evidence with which we have been presented, we agree that the petitioner has shown moral fitness to resume the practice of law. See generally Matter of Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att’y Disc. R. at 95.

B. Competence and Learning in the Law

The petitioner’s pre-suspension practice predominantly consisted of personal injury work and criminal defense; he did this for three years as an employee of a law firm. Tr. 60-61 (Petitioner). After that, he was self-employed for about two years. Tr. 60 (Petitioner). While self-employed, he represented a client in one personal injury case, drafted a lot of wills and trusts and did some small claims work. Tr. 62-63 (Petitioner). He has experience dealing with property transactions in Italy and, since he is fluent in Italian, explaining the transactions to his Italian-speaking clients. Tr. 25; 67-68 (Petitioner).

The petitioner described his practice plans should he be reinstated. Although he thinks he was good at criminal law and personal injury law, if he were to be reinstated, the petitioner does not want to return to either practice area. Tr. 84-85 (Petitioner). He plans to open an office in his home in Newton, Massachusetts and work as a sole practitioner, but intends simultaneously to consult with others regarding cases and clients. Tr. 20-21 (Petitioner); Ex. 1 (BBO 9). His primary focus would be on real estate law, and he would like to return to estate planning work. Tr. 19, 64 (Petitioner). When pressed about the specifics of a real estate practice, the petitioner agreed that he is not quite ready to do closings, but would hope to work initially with Belmont

attorney Dale Tamburro. Tr. 66-67 (Petitioner). He described an aspirational arrangement whereby he would work as an independent contractor with Attorney Tamburro, going to real estate closings with him. Tr. 64-65 (Petitioner). He agreed that before doing closings on his own, he would go with Attorney Tamburro to at least five or ten, and then hope that Attorney Tamburro would accompany him for his first few. Tr. 66 (Petitioner). He would like to re-apply for a real estate broker's license and maybe do some real estate brokering.¹ Tr. 20 (Petitioner). He also expressed an interest in doing legal work for the Italian Benevolent Society, including explaining and translating issues concerning property and trusts and estates. Tr. 24-25 (Petitioner). He plans to use his business accountant to help him with his IOLTA accounts. Tr. 73-74 (Petitioner).

In the over seven years since his suspension, the petitioner has completed a three-day MCLE course entitled Litigating Real Estate Disputes (Tr. 1:19 (Petitioner); Ex. 17), as well as an IOLTA seminar presented by bar counsel. He has also taken a seminar in trusts and estates given by Attorney Tamburro. Tr. 19 (Petitioner); Ex. 1 (BBO 7). We have reviewed the course materials for this seminar (Ex.18), and find that the seminar lacks the rigor of an MCLE or similar course. Indeed, the petitioner acknowledged that the seminar was presented at a retirement home and was intended "for people who are getting older," i.e., non-lawyers. Tr. 1:47 (Petitioner). He has read a book on managing client funds and avoiding ethical problems. Ex. 1 (BBO 7). He regularly reads the New York Times and Washington Post, as well as a weekly ABA letter. Tr. 19 (Petitioner).

We do not find that the petitioner has demonstrated adequate competence and learning in the law. We note that prior to his suspension, he had only five years of practice, and that most of

¹ The petitioner lost his real estate broker license automatically once he was suspended from the practice of law. Ex. 1 (BBO 9).

that was spent working in areas he no longer plans to pursue: personal injury and criminal defense. Although the petitioner has expressed an interest in real estate law, he has never practiced extensively in that area. He has had seven years away from practice of any kind, a hiatus longer than his years of practice. In those seven years, he has taken only one three-day MCLE course, a two-day trusts and estates course and an IOLTA seminar. These total at most six days of study. We do not have in this case either the weight of an extensive pre-suspension practice, or a concentrated period of study and learning during the suspension. Nor do we discern an effort to stay abreast of developments in the law that reflects his appreciation of the law as a learned profession. The petitioner's limited track record pre-suspension and insubstantial study during it are not adequate to satisfy the competence and learning in the law criterion.

C. Effect of Reinstatement on the Bar, the Administration of Justice and the Public Interest

Having found the petitioner wanting in the learning in the law category, it is clear his petition for reinstatement must be denied. We observe, however, that there is nothing in the petitioner's materials to indicate that he would not have satisfied the "public interest" criterion. "In this inquiry we are concerned not only with the actuality of the petitioner's morality and competence, but also on the reaction to his reinstatement by the bar and public." Matter of Gordon, 385 Mass. 48, 53, 3 Mass. Att'y Disc. 69, 73 (1982). "The impact of a reinstatement on public confidence in the bar and in the administration of justice is a substantial concern." Matter of Waitz, 416 Mass. at 307, 9 Mass. Att'y Disc. R. at 345.

While we like to see letters of recommendation or testimony of other attorneys or public members, these things are not mandatory. We heard evidence that the petitioner had served, and would serve, an immigrant population, many of whom are elderly. We are convinced that the

public will perceive that its protection is our primary concern, that we are treating the petitioner's misconduct with sufficient gravity and that the deterrent effect of professional discipline will not be compromised by a decision to reinstate him once he pursues sufficient training. Matter of Ellis, 457 Mass. at 418, 26 Mass. Att'y Disc. R. at 168; Matter of Pool, 401 Mass. at 464, 5 Mass. Att'y Disc. R. at 298. These considerations, plus the other evidence we have reviewed, are sufficient, in the circumstances, to satisfy the public interest element. See generally Matter of Gordon, 385 Mass. at 52, 3 Mass. Att'y Disc. R. at 73; Matter of Waitz, 416 Mass. at 307, 9 Mass. Att'y Disc. R. at 345.

V. Conclusions and Recommendation

As indicated above, we conclude that the petitioner has not met his burden. While he has convinced us that he has the moral qualifications to practice, and while, except as indicated below, we do not think his reinstatement would have an adverse impact on the bar, the administration of justice or the public interest, we find that he lacks the competence and learning in the law necessary to resume practice.

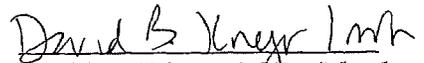
We have some specific suggestions that will strengthen any subsequent petition for reinstatement. First, since more than seven years have expired since the respondent's indefinite suspension and since bar counsel has indicated that she would assent to a motion to work as a paralegal for an appropriate attorney, we strongly urge the petitioner to file such a motion. See generally SJC Rule 4:01, § 18(3). Next, the petitioner would be well-advised to take additional MCLE courses in the areas where he plans to practice, including updating his learning in IOLTA and recordkeeping. Third, the petitioner should meet with LOMAP. Assuming he can accomplish these things in relatively short order, we recommend that the petitioner be permitted to reapply for reinstatement six months after the final decision on this petition. See SJC Rule

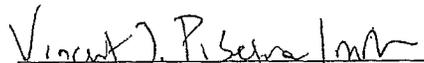
4:01, § 18(8) (court permission is necessary for lawyer to reapply for reinstatement within one year of adverse judgment on petition); Matter of Thalheimer, SJC No. BD-2008-016 (January 24, 2014) (leave given to file subsequent petition in less than a year). Accordingly, we recommend that the petition for reinstatement filed by Sergio P. Vespa be denied.

Dated: June 16, 2015

Respectfully submitted,
By the Hearing Panel,


Mary B. Strother, Esq., Chair


David B. Krieger, M.D., Member


Vincent J. Pisegna, Esq., Member