NO. BD-2008-058

S.J.C. Judgment of Reinstatement Denied entered by Justice Cordy on July 7, 2011.[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
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

SUFFOLK, SS No. BD-2008-058

IN RE: Joseph M. Carreiro, Jr.

MEMORANDUM OF DECISION

The present matter concerns the petition for reinstatement of Joseph M. Carreiro, Jr., filed pursuant to and in compliance with S.J.C. Rule 4:01, § 18. Petitioner was suspended for two years on February 4, 2009, retroactive to June 5, 2008, the date his temporary suspension commenced. That period ended on June 5, 2010. Because of the lack of candor in petitioner's testimony before the hearing panel considering his petition for reinstatement, the board recommended against his reinstatement. I concur in the board's finding that the petitioner has not established the moral qualifications required for admission to practice law in this Commonwealth. Consequently, his petition is denied.

Original Suspension

Petitioner's suspension arose from false representations he made to his employer concerning the transfer of client fees to the firm's account. In an attempt to prove that the funds had been deposited into that account, petitioner fabricated a check.

The incident unfolded as follows. After petitioner left the law firm of George Katsarakes, Katsarakes discovered a discrepancy surrounding the invoice of one of petitioner's clients. The invoice showed that the clients had paid their fees but did not show a corresponding deposit into the firm account. Katsarakes requested an explanation. As proof that Katsarakes deposited the funds himself, petitioner supplied him with a fabricated check. The check was composed of the front of a valid IOLTA check, into which petitioner filled the client's information, along with the back of a separate IOLTA check that Katsarakes had actually endorsed. The check was later confirmed as fraudulent by the manager of the bank upon which it was supposedly drawn. Upon notice from bar counsel that Katsarakes had filed a complaint, petitioner provided restitution in full, with interest.

Reinstatement

A. The Standard for Reinstatement

S.J.C. Rule 4:01, § 18(5) sets forth the standard that a disciplined attorney must meet for reinstatement.

> [T]he petitioner . . . shall have the burden of demonstrating that he . . . has [1] the moral qualifications, [2] competency and learning in law required for admission to practice law in this Commonwealth, and [3] that his . . . 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 also Matter of Waitz, 416 Mass. 298, 304 (1993). Judgment of whether petitioner has met these

standards involves balancing the circumstances surrounding his misconduct against the action he has taken to show his rehabilitation. Matter of Daniels, 442 Mass. 1037, 1038 (2004). The balance considers a number of factors:

> (1) the nature of the original offense for which the petitioner was [suspended]; (2) the petitioner's character, maturity, and experience at the time he was [suspended]; (3) the petitioner's occupation 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 Ellis, 457 Mass. 413, 415 (2010).

B. The Board's Vote

The board voted unanimously to deny this petition, basing its decision largely on the lack of candor petitioner showed throughout the reinstatement process. The board's recommendation is entitled to substantial deference, and its subordinate hearing panel is the sole judge of credibility regarding witness testimony. Matter of Finneran, 455 Mass. 722, 730 (2010). Still, the "ultimate duty of decision" rests with the Court. Matter of Allen, 400 Mass. 417, 421 (1987).

C. Moral Qualifications[1]

Petitioner's suspension in 2009 was "conclusive evidence that he was, at the time, morally unfit to practice law." Matter of Dawkins, 432 Mass. 1009, 1010 (2000). To be eligible for reinstatement, therefore, it is incumbent upon him to establish that "he has redeemed himself and become a person proper to be held out by the court to the public as trustworthy." Id. (citations omitted). Further, "candor and trustworthiness . . . directly affect . . . [the] capacity to practice law." Matter of Eisenhauer, 426 Mass. 448, 456 (1998).

Petitioner's testimony at the reinstatement hearing was repeatedly contradicted by that of his employers, as to both the circumstances surrounding the initial misconduct *and* other significant events that occurred during his employment. The hearing panel found the testimony of the employers to be "thoroughly credible," and as noted above, the panel is the "sole judge" of the credibility of witness testimony given at the

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[1] Because petitioner has not established the necessary moral qualifications for reinstatement, it is unnecessary to consider whether he possesses the requisite competence and learning in the law, and what effect his reinstatement would have on the bar and the public interest. It should be noted, however, that the board found him lacking in both. The detrimental effect reinstatement would have on the bar is shown by the extreme reservations that both of his former employers expressed regarding his fitness for reinstatement. His lack of competency was not controlling, and the board noted that had he displayed the required moral character, his reinstatement could have been conditioned on further CLE attendance.

hearing. Matter of Finneran, 455 Mass. 722, 730 (2010); see also Matter of Saab, 406 Mass. 315, 328 (1989).

A major point of contention at the hearing was petitioner's recommendation of a paralegal to Charles Perrault, the partner of a law firm he worked for after voluntarily leaving the Katsarakes firm in January, 2006. Shortly after he joined, Perrault decided that he needed an additional paralegal to assist with his real estate practice. Based on his experience with her at Katsarakes's firm, petitioner recommended Mrs. F., and Perrault did not seek additional references from her because of the strength of petitioner's endorsement. Petitioner, however, was aware that Mrs. F.'s employment at the Katsarakes firm had been terminated due to her theft of IOLTA funds. Subsequently, in 2008, Perrault discovered $20,000 worth of checks drawn on his IOLTA account that were payable to entities unrelated to any client or transaction of the firm. The checks were traced to Mrs. F. who he subsequently fired.

At the reinstatement hearing, petitioner repeatedly testified that Perrault was aware of the circumstances of Mrs. F.'s termination before he hired her. Perrault, however, repeatedly contradicted that testimony, and maintained that had he been aware of any such allegation, he would not have hired her; that in the least, he would have contacted Katsarakes for a fuller explanation.

Petitioner testified that he himself told Perrault in their first conversation about her, but that he recommended her anyway because she contested the allegations and he did not want to get between his friend and his previous employer. Perrault flatly denied this.

Petitioner further testified that Perrault learned of the allegations when he called Katsarakes seeking a recommendation of Mrs. F. Both Katsarakes and Perrault testified that no such call took place. In separate hearings, they each testified that the first telephone correspondence they had was *after* Perrault had discovered the funds were missing, when he called Katsarakes to see if anything similar had happened in the past.

The false representations petitioner made to the hearing panel of the board are comparable to those made to a court. Matter of Sprei, 7 Mass. Att'y Discipline Reps. 246, 249 (1994). The "less than candid" approach he took towards his reinstatement hearing casts a poor light on his claimed moral reform. Matter of Waitz, 416 Mass. 298, 302 (1993).

Testimony regarding the recommendation of Mrs. F. was not the only point on which he was contradicted. Petitioner testified that Katsarakes did not have an IOLTA account at the time he began employment, and that Katsarakes instructed him to keep his open and to use it. Katsarakes testified that he *did* have an IOLTA account, and that he would not have told petitioner to

maintain his own personal IOLTA account, as there would be no need for it. Petitioner further testified that Katsarakes had previously fired paralegals *other than* Mrs. F. for theft; Katsarakes testified that he had never had such a problem before Mrs. F. Finally, petitioner maintained that he had recommended a number of paralegals to Perrault in addition to Mrs. F. Perrault denied this and stated that Mrs. F. was the only paralegal about whom petitioner approached him.

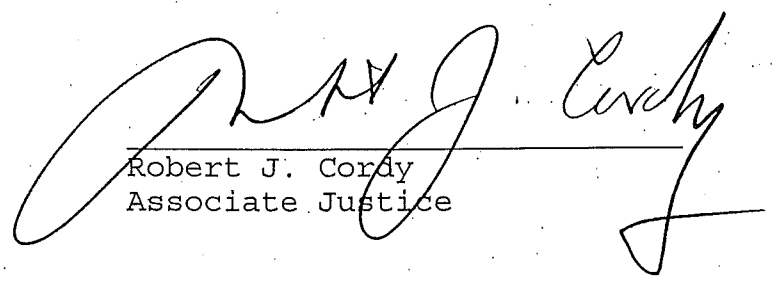
Moral reform must be "manifested by some external evidence," and petitioner's lack of candor and forthrightness do not assist him towards his burden of providing that evidence. Matter of Allen, 400 Mass. 417, 425 (1987). His blind adherence to a story directly contradicted by two credible witnesses, both of whom are members of the bar in good standing, represents a "lack of forthrightness and truthfulness . . . [that] does not bode well for [his] ability to perform legal work in a professional manner." Matter of Efron, 7 Mass. Att'y Discipline Reps. 89, 90 (1991).

Beyond petitioner's substantially disputed testimony, the poor judgment he showed by recommending Mrs. F. weighs heavily against him. It is undisputed that he was aware of the circumstances of Mrs. F.'s termination at the time he recommended her. Outside the issue of whether Perrault was actually aware of the allegations, petitioner's recommendation of a paralegal who

had pending criminal theft charges directly resulted in considerable harm to Perrault. Petitioner's decision to put his friendship with Mrs. F. above his responsibility to Perrault was remarkably unwise, and he has not shown that the flaw of character resulting in his error has been mended. See Matter of Allen, 400 Mass. 417, 425 (1987).

Disposition

Because petitioner has not met his burden of demonstrating that he has the moral qualifications necessary for admission to practice law in this Commonwealth, and for the foregoing reasons, an order shall enter denying the petition for reinstatement.



Robert J. Cordy
Associate Justice

ENTERED: July 7, 2011