

IN RE: NATHAN S. GIBSON

NO. BD-1995-068

S.J.C. Judgment of Reinstatement entered by Justice Cordy on July 11, 2016.¹

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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.

“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.” Matter of Weiss, 474 Mass. 1001, 1002 (2016).

In making these determinations, a panel considering a petition for reinstatement “looks to (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 his [suspension], (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 Daniels, 442 Mass. 1037, 1038, 20 Mass. Att’y Disc. R. 120, 122-123 (2004) (rescript), quoting Matter of Prager, 422 Mass. 86, 92 (1996), and Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att’y Disc. R. 122, 133 (1975).

III. Disciplinary Background

The petitioner’s indefinite suspension, entered on September 8, 1999 but retroactive to October 2, 1995, was based on his 1995 federal court conviction, by guilty plea, to seventy counts of filing false statements and claims in violation of 18 U.S.C. § 1001. See Ex. 1 (BBO 15); Tr. 114-115 (Petitioner). This conduct was found to have violated the predecessor to rules 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(h) (conduct that adversely reflects on fitness to practice law). See Gibson, 15 Mass. Att’y Disc. R. at 221-222; Ex. 1 (BBO 14).

Beginning in 1988, the petitioner worked with his father at University Loan Services, Inc. (ULS), an organization founded by the father to service various Department of Education (DOE) student loan programs. Id. at 220; Ex. 1 (BBO 13); see Tr. 104-105 (Petitioner). DOE contracted with agencies that guarantee loans; in the event of default, the guarantee agency would pay the lender and would, in turn, be reimbursed by DOE. See Gibson, 15 Mass. Att’y Disc. R. at 220; Ex. 1 (BBO 13). In order to qualify for the federal guarantee, DOE’s regulations

required lenders to take particular “due diligence” actions to try to collect the debt, among them to make a certain number of telephone calls and to write a certain number of letters within thirty-day periods. Id.

A 1989 audit of ULS revealed that a substantial percentage of the loans of its largest client, which were more than thirty days delinquent, lacked one or more of the required due diligence collection activities. Tr. 107-108 (Petitioner). In response to this information, the petitioner and his father instructed their staff to falsify records and to back-date entries so as to demonstrate compliance with DOE regulations. See Gibson, 15 Mass. Att’y Disc. R. at 221; Ex. 1 (BBO 14); Tr. 110-112 (Petitioner). The petitioner and his father personally participated in these activities. Id. Although the Single Justice decision stated that the sum of \$196,879.61 was paid for seventy loans which, but for the falsified collection histories, would not have qualified for payment of the guarantee (see 15 Mass. Att’y Disc. R. at 221; Ex. 1 (BBO 14)), the actual criminal judgment, dated December 12, 1995, does not support this. It reflects that both the government and defense stipulated that “the loss figure overstates the seriousness of the offense.” Ex. 1 (BBO 20).¹ The petitioner was sentenced to concurrent terms of six months of imprisonment for all of the seventy violations, another six months to be served in home detention, followed by two years of supervised probation. Id. at 221-222; Ex. 1 (BBO 14, 16, 21; Tr. 115 (Petitioner)).

IV. Findings

A. Moral Qualifications

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

¹ At the hearing, the petitioner gave two reasons for the government’s agreement that the loss was overstated. First, even with collection activity, some loans would have defaulted. Next, the government was still able to collect on the loans, having at its disposal coercive means, including the IRS, to use to collect on unpaid obligations. Tr. 117-118 (Petitioner).

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. R. at 126.

“The act of reinstating an attorney involves what amounts to a certification to the public that the attorney is a person worthy of trust.” Matter of Daniels, 442 Mass. at 1038, 20 Mass. Att’y Disc. R. at 123; Matter of Centracchio, 345 Mass. at 348. In fact, “considerations of public welfare are dominant. The question is not whether the petitioner has been punished enough.” Matter of Cappiello, 416 Mass. 340, 343, 9 Mass. Att’y Disc. R. 44, 47 (1993).

In his petition for reinstatement, the petitioner expressed an understanding of the nature of his misconduct. He acknowledged that he has gained insight over the quarter of a century since his misconduct, and wrote that “[t]ruth and integrity are consistent with, rather than outweighed by, fealty to one’s parents. I should have balked . . . the moment my father and I undertook to add notations to accounts and believe [had I] done so I would have served him better while preserving my own integrity.” Ex. 1 (BBO 12). “I deeply regret my actions in 1989 and have tried to live my life with integrity since then.” Id. He again expressed remorse at the hearing, showing insight as to the pressures he felt from his parents and the reasons he broke the law, and reiterating that he regrets what he did and that it will never happen again. Tr. 112-114, 199 (Petitioner).

The petitioner’s witnesses included a long-time friend and his former colleague/boss. The friend, Paul Yeomelakis, has known the petitioner since they were freshmen in college; they became roommates in 1979. Tr. 35-36 (Yeomelakis). Yeomelakis also knows the petitioner’s parents, children and wife. Tr. 36 (Yeomelakis). He knew about the petitioner’s “legal difficulties” contemporaneously, even visiting him in the halfway house where he was incarcerated. Tr. 45-47 (Yeomelakis). The witness works currently as a senior vice president and senior operations manager for Bank of America. Tr. 36 (Yeomelakis). He recommended the petitioner to his former colleague, John Piazza, when John left banking to work in a temporary

staffing agency. Tr. 48-49 (Yeomelakis).² The witness chose the petitioner to be the godfather of one of his children. Tr. 51 (Yeomelakis). He explained his decision as follows: “Nathan is one of the more selfless, loyal, intelligent, insightful and good people that I know, and I just – I have called him, considered him my best friend for at least 35 years. I just could not imagine a better role model for any of my children.” Tr. 52 (Yeomelakis). The witness told us that, if federal regulations did not prevent him from hiring the petitioner due to his felony convictions, he would do so. Tr. 60 (Yeomelakis).

The colleague/boss, Ronald Fuccillo, had worked with the petitioner at a staffing company from 1998 until 2014. Tr. 11-12 (Fuccillo). The company grew steadily throughout the years; the witness described the petitioner’s important work overseeing payroll and billing, roles requiring “a high level of involvement, someone who is very professional and conscientious” Tr. 12, 19-20 (Fuccillo). Asked about the petitioner’s character, Fuccillo described him as a “trusted advisor,” a “great peer,” “somebody [to] strategize with”; and “just a good guy.” Tr. 29 (Fuccillo). Asked about the petitioner’s past, the witness stated that the petitioner was forthcoming with him about “some legal issues” which involved him being disbarred. Tr. 17-18 (Fuccillo). On cross examination, Fuccillo admitted that the petitioner had not told him, and he had not known, about the incarceration, but stated that after learning about the legal issues, he decided not to dig into the petitioner’s background any further because “he seemed like the perfect gentleman to me,” and Fuccillo trusted the company’s vetting process. Tr. 33-34 (Fuccillo).³

The third witness, Matt Hills, has known the petitioner for at least ten years through their work together on various political campaigns and school initiatives in the City of Newton. Tr. 68 (Hills). Hills was aware that the petitioner had been president of the PTO at the elementary school his children attended. *Id.* Hills got to know the petitioner and his wife well when he ran

² Piazza’s company hired the petitioner; Piazza submitted a glowing letter of reference on his behalf. Ex. 3 (55).

³ In his letter, Fuccillo praised the petitioner’s honesty, integrity and intelligence. Ex. 3 (BBO 50-51).

for School Committee in Newton and they chaired his opponent's campaign in a "very hotly contested race." He found that "of all the people . . . in that other campaign, [the petitioner and his wife were] the most regularly nice and decent to me." Tr. 70, 71 (Hills). Hills testified that "[h]e is the kind of guy you want when it comes to community effort where you have to persuade people but in particular where you have to organize things" Tr. 81 (Hills). Hills was aware that the petitioner had been incarcerated and that his crime involved changing records or financial fraud. Tr. 82-83 (Hills). Nonetheless, he did not find this particularly troubling, noting that he has "had nothing but great experiences with [the petitioner]. I have had . . . no interaction with him . . . where I've seen anything other than a straight guy, a standup guy." Tr. 82 (Hills).

In addition to witness testimony, the petitioner presented eight letters in support of the reinstatement petition from a variety of people who have known him for many years. Barbara Miranda, an acquaintance for more than twenty-five years who has worked with him on political campaigns, is familiar with the events of 1995 and nonetheless considers the petitioner to be "an honest and law-abiding citizen," whose integrity she has never had any reason to question. Ex. 3 (BBO 49). John Piazza, the current CEO of the company where the petitioner is employed, who has known him for seventeen years, describes his "great intellectual capacity," as well as "leadership, guidance and mentorship," and also cites him as "someone who maintains the highest level of integrity and displays strong passion toward his family, friends, and the community." Ex. 3 (BBO 55). Warren Tolman, who ran for Attorney General, notes that the petitioner co-hosted an event for him during the campaign, an association he would not have allowed "if [he] did not believe that Nathan has the moral character and is fit to practice law in the Commonwealth." Ex. 3 (BBO 53). State Sen. Michael J. Barrett, citing kindnesses paid to him by the petitioner's parents, while admitting he "[did] not know the details of the business situation" writes that "it should not cancel out, forever, a lifetime of integrity and decency lived as a son, husband, father, and citizen. Ex. 3 (BBO 56). Other letters, from the retired principal

of the elementary school where the petitioner volunteered, Paul Yeomelakis, and an attorney in private practice, sound a similar theme and describe the petitioner's "extraordinary" commitment to the children, parents and teachers at the school where he worked as PTO president; his honesty, integrity and loyalty; and his dedication to hard work. Ex. 3 (BBO 52, 57, 58-59).

A "fundamental precept of our system is that persons can be rehabilitated." Matter of Ellis, 457 Mass. 413, 414, 26 Mass. Att'y Disc. R. 162, 163 (2010). See Matter of Lonardo, No. BD-2006-037 (March 24, 2015) (reinstating lawyer after fraud conviction and incarceration). We credit the petitioner's testimony that he understands the nature and seriousness of his misconduct and has gained the insight necessary for true reform. His witnesses confirmed that his inner reform is manifested in his objective conduct. Considering all the evidence with which we have been presented, we conclude that the petitioner has shown the moral fitness sufficient to resume the practice of law.

B. Learning in the Law

S.J.C. Rule 4:01, § 18(5) requires that, in order to be reinstated, a petitioner demonstrate that he has the "competency and learning in law required for admission to practice law in this Commonwealth."

The competency and learning in law requirement is the area that gives us the most pause, and the only area about which bar counsel expressed some concern. The petitioner graduated from law school in 1985 and practiced in Boston for approximately two years, from September 1985 to September 1987. Tr. 102 (Petitioner). He did not thereafter practice law. He left his law firm job to join the Dukakis for President campaign and, upon his return, began working with his father at ULS in 1988. Tr. 102-104 (Petitioner). After his incarceration and a few short-term engagements, he began work in 1998 for the predecessor to the staffing company he currently works for. Ex. 1 (BBO 4); Tr. 122-124 (Petitioner). In his present capacity, he manages the independent contractor compliance group, reviews evaluation of workers as

independent contractors, and managed implementation of the Affordable Care Act for a payrolling group. Ex. 1 (BBO 5).

We find the petitioner to be highly knowledgeable in the discrete area of employer and independent contractor law. See Tr. 153-161 (Petitioner). He maintains a blog in this area, where he looks for cases and articles regarding the classification of workers as employees or independent contractors, provides links to articles and posts excerpts. Tr. 151-152 (Petitioner). On cross-examination, he identified other law-related aspects to his job, including researching per diem regulations and reviewing statutes to make sure the company was properly handling sales tax. Tr. 174-176 (Petitioner).

When he initially submitted his answers to Part I of the reinstatement questionnaire, the petitioner indicated that he had taken no courses “to acquire or maintain learning in the law and knowledge of [his] ethical obligations.” Ex. 1 (BBO 7). In a supplement to his questionnaire, filed shortly before the hearing, the petitioner has identified recent courses and seminars on topics, including “How to Handle Residential Real Estate Closings,” “Drafting Incorporation Documents & LLC Agreements,” “Trial Preparation and Techniques in Divorce Cases,” and “How to Make Money & Stay Out of Trouble.” Ex. 2 (BBO 25). Other listed courses concern workplace issues. Ex. 2 (BBO 25-26).

All of the MCLE courses he has listed were taken between October 21, 2015 and March 30, 2016, corresponding time-wise to the dates between the petitioner’s filing of his reinstatement petition on October 2, 2015 and the April 20, 2016 hearing date. In response to the panel’s concerns about the educational value of this apparently last-minute “cramming,” the petitioner pointed out two things: first, he had not taken courses earlier because he did not expect to come back to the law; and second, although he did not have documentation, he had remained current on the law pertinent to his job. See Tr. 191-192 (Petitioner).

The petitioner was candid about the fact that although he was eligible to do so in 2000, because he believed that he would be able to stay in his field – and perhaps at his company –

indefinitely, he has not before now applied for reinstatement. Tr. 173-174 (Petitioner). However, his company and the staffing business generally have undergone many changes, and he is hoping to widen his options by being reinstated. See Tr. 95-96 (Petitioner).⁴

The petitioner stated explicitly that he does not really want to practice law and does not plan to do so if reinstated. Ex. 1 (BBO 9); Tr. 179, 197-198 (Petitioner). He does not envision commencing a solo practice; the only thing he thinks he is qualified for is representing people who felt their employee status was misclassified. Tr. 179-180 (Petitioner). His first choice, were he to practice law at all, would be to work in the legal department of his or another staffing company. Tr. 180 (Petitioner). Should he be readmitted, the petitioner has identified five lawyers he intends to rely on as advisers. Ex. 1 (BBO 10). Two of these are connected with his present employer, Randstad Professionals, US. *Id.* One is his wife. *Id.*; see Tr. 123 (Petitioner). He has undertaken no effort to be covered by professional liability insurance since, as indicated, he does not have any current plans to practice law if reinstated. Ex. 1 (BBO 10).

The panel finds that the combination of the petitioner's expertise in the law of employee classification and related matters and the seminars he attended after filing his petition demonstrate sufficient competency and learning for reinstatement. However, because reinstating the petitioner will mean that he is entitled to practice generally, the panel recommends conditioning reinstatement on the petitioner's commitment to broaden his knowledge base.

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

We find that the petitioner has satisfied the "public interest" prong of the reinstatement test. "Consideration of the public welfare, not [a petitioner's] private interest, dominates in considering the reinstatement of a [suspended] applicant." Matter of Ellis, 457 Mass. at 414, 26

⁴ A further stated reason for the petitioner's desire for reinstatement is that when he is Googled, the Order of Indefinite Suspension appears prominently in the search results. Tr. 96 (Petitioner). Recognizing that any potential employer would know of the suspension, he would like it to be preceded on Google by an order of reinstatement, and he would like to be able to say that he has been reinstated. Tr.100-101; Ex. 1 (BBO 10):

Mass. Att’y Disc. R. at 164. Further, the public’s perception of the legal profession as a result of the reinstatement and the effect on the bar must be considered. “In this inquiry we are concerned not only with the actuality of the petitioner’s morality and competence, but also [with] the reaction to his reinstatement by the bar and public.” Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att’y Disc. R. 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. 298, 307, 9 Mass. Att’y Disc. R. 336, 345 (1993).

We have reviewed, cited and summarized evidence adequate to convince us that the public interest will not be harmed by the petitioner’s reinstatement. His witnesses spoke to three major areas of his life – his work and professional reputation; his capacity for friendship; and his reputation in and dedication to the community. The letters he submitted rounded out the picture, portraying a decent and repentant man who is devoted to his family and his community and who has gained wisdom and discernment in the decades since his crimes.

We note that the petitioner served his criminal sentence and has been away from the law much longer than his indefinite suspension required. While his crimes were serious, the record before us demonstrates a reformed man of good moral character. The public will not be concerned about the integrity of the bar and its disciplinary system if a person like the petitioner is allowed to return to the law. Nor, on this record, will the bar receive the impression that the board has relaxed its diligence. The even-handed administration of justice will not be prejudiced by the petitioner’s reinstatement.

V. Conclusions and Recommendation

Based upon the petitioner’s written submissions, his own testimony, and that of his witnesses, we recommend that the petitioner be reinstated on the condition that he take fifteen

hours of CLE each year for the next two years. The legal CLEs selected by the petitioner should be relevant to and complement his legal practice or employment and be approved by bar counsel. Subject to these requirements, we recommend that the petition for reinstatement filed by Nathan S. Gibson be allowed.

Respectfully submitted,
By the Hearing Panel,

Regina E. Roman /mrh
Regina E. Roman, Esq., Chair

Francis P. Keough /mrh
Francis P. Keough, Member

John J. Morrissey /mrh
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Dated: May 24, 2016