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SJC-13791

IN THE MATTER OF VALERIANO DIVIACCHI.

December 26, 2025.

Attorney at Law, Suspension, Reinstatement. Board of Bar Overseers.

The petitioner, Valeriano Diviacchi, appeals from a judgment of a single justice of this court denying his third petition for reinstatement to the practice of law. Upon review of the petitioner's submissions and the underlying record, we affirm.¹

1. Background.² In 2016, Diviacchi was suspended from the practice of law for twenty-seven months for violating various Massachusetts rules of professional conduct in connection with his representation of a client in a lender liability action. We affirmed his suspension on appeal. See Matter of Diviacchi, 475 Mass. 1013, 1014-1017, 1021 (2016) (Diviacchi I). In January 2018, Diviacchi submitted his first petition for reinstatement. The petition was denied by a single justice of this court, and Diviacchi did not appeal. In December 2020, Diviacchi filed a second petition for reinstatement. The second petition was

¹ Diviacchi asserts that if the court is unwilling to order his reinstatement, conditioned upon passage of the Massachusetts bar examination, it "should disbar [him] without any further opportunity for reinstatement." We decline Diviacchi's apparent invitation to order his disbarment sua sponte.

² A more detailed summary of the underlying misconduct that led to Diviacchi's suspension can be found in Matter of Diviacchi, 475 Mass. 1013, 1014-1017 (2016).

similarly denied, and that decision was affirmed by this court on appeal. See Matter of Diviacchi, 491 Mass. 1003, 1003 (2022) (Diviacchi II).

In September 2023, Diviacchi filed his third petition for reinstatement, which is the subject of the instant appeal. A hearing committee of the Board of Bar Overseers (board) held a hearing on April 26, 2024, at which Diviacchi proceeded pro se. The panel subsequently issued a report recommending that Diviacchi's third petition be denied. The hearing committee further recommended that Diviacchi be prohibited from filing another petition for a period of two years, observing that Diviacchi "failed to show even a scintilla of effort at meeting the requirements set forth by the Court and highlighted by the two hearing committees in his previous attempts." The board voted unanimously to adopt the hearing committee's findings, conclusions, and recommendation that the third petition be denied. However, the board declined to adopt the hearing committee's recommendation to prohibit Diviacchi from seeking reinstatement for two years.

Upon reviewing the board's recommendation, the single justice entered judgment denying Diviacchi's third petition. The single justice observed that "the evidence as a whole is not materially different from the insufficient showings made in support of [Diviacchi's] previous two petitions for reinstatement, particularly in respect to knowledge of Massachusetts law and professional temperament." The single justice also reiterated an observation made by the hearing committee that "[Diviacchi] is noticeably fixated on flouting or fighting the established standards [for reinstatement] rather than focusing on meeting them." Diviacchi now appeals from the denial of his third petition.

2. Discussion. On appeal, "[w]e review the record to determine whether the single justice's decision is supported by substantial evidence, free from errors of law, and free from any abuse of discretion." Matter of Sargent, 496 Mass. 505, 509 (2025), quoting Matter of Tobin, 417 Mass. 92, 99 (1994). See Matter of Daniels, 442 Mass. 1037, 1038 (2004). In making this assessment, we remain cognizant that the hearing committee's "findings and recommendations, as adopted by the board, are entitled to deference, although they are not binding on this court." Matter of Ellis, 457 Mass. 413, 415 (2010).

A petitioner seeking reinstatement has the burden of demonstrating, inter alia, that he or she has the moral fitness to resume the practice of law. See S.J.C. Rule 4:01, § 18 (5),

as appearing in 453 Mass. 1315 (2009). See also Matter of Gordon, 385 Mass. 48, 52 (1982). On this front, we agree with the single justice that there are few material differences between Diviacchi's second, unsuccessful petition for reinstatement and his third. As before, "Diviacchi continues to insist that the findings underlying his suspension are factually false." Diviacchi II, 491 Mass. at 1005. Indeed, the "Statement of Facts" attached as an exhibit to Diviacchi's amended reinstatement questionnaire appears to be taken nearly verbatim from the preliminary memorandum that Diviacchi filed in Diviacchi II. As this court indicated in Diviacchi II, however, reinstatement proceedings do not afford an opportunity to relitigate the findings that led to the underlying suspension. See id. Those findings serve as "conclusive evidence that [Diviacchi] was, at the time, morally unfit to practice law, and it continued to be evidence of his lack of moral character . . . when he petitioned for reinstatement." Id., quoting Matter of Leo, 484 Mass. 1050, 1051 (2020).³ And while the passage of additional time since that misconduct is relevant to our assessment of current moral fitness, without more, it is not sufficient to establish a petitioner's reform. See Matter of Gordon, supra at 54; Matter of Hiss, 368 Mass. 447, 460 n.19 (1975).

Diviacchi also reasserts prior "complain[ts] about being made to prove his moral qualifications to a hearing committee that, in his view, is unqualified to decide this matter." Diviacchi II, 491 Mass. at 1006. He argues that relying on "performative acts" to assess an attorney's moral qualifications is flawed in any event because, in his view, attorneys have used such acts to "con" the board into recommending their reinstatement. While we have recognized that it may be difficult to speak to an individual's "true state of mind" with "certainty," see Matter of Hiss, 368 Mass. at 458, an attorney's demonstration of reform "must be manifested by some external evidence," Matter of Waitz, 416 Mass. 298, 305-306 (1993). Cf. Matter of Prager, 422 Mass. 86, 99-100 (1996) ("The requirement of positive action is appropriate for applicants for admission to the bar because service to one's community is an implied obligation of members of the bar" [citation omitted]). "It was

³ Although the hearing committee report does inaccurately refer to "the petitioner's disbarment" in explaining the relevance of his underlying misconduct, this errant reference to "disbarment" did not substantively affect the propriety of the hearing panel's subsequent analysis. See Diviacchi II, 491 Mass. at 1005, 1006.

incumbent on [Diviacchi] . . . to establish affirmatively that, during his suspension period, he had redeemed himself and become a person proper to be held out by the court to the public as trustworthy" (quotation and citation omitted). Matter of Dawkins, 432 Mass. 1009, 1010-1011 (2000). See Matter of Leo, 484 Mass. at 1051 ("It is not enough to show that he has not been sued or accused of a crime; the petitioner must also demonstrate that he understands and has taken responsibility for his actions, and that he has done his best to make amends").

Here, we discern no error in the conclusion of the board and the single justice that Diviacchi failed to meet his burden. Notably, Diviacchi chose to provide less information as to his charitable and community endeavors in connection with his third petition than he had previously, based on his belief that the board had exhibited a "contemptuous" attitude toward his participation in such activities in the past. See Matter of Waitz, 416 Mass. at 299, 305-306 (reversing judgment of single justice allowing attorney's fifth petition for reinstatement where, inter alia, "the sole evidence of his civic, charitable, and social activities consisted of his repetition of evidence already heard at prior hearings"). Before the hearing committee, Diviacchi did not offer any witness testimony, apart from his own. He indicated that he was unwilling to call any character witnesses because he viewed it as "a waste of time," given his belief that the hearing committee was "going to do whatever [they wanted] to do, witnesses or not." While Diviacchi submitted letters in support of his reinstatement from seven individuals, we agree with the hearing committee that the letters provide somewhat limited insight into his rehabilitation, particularly given that a number of them appear to dispute Diviacchi's culpability for the underlying misconduct. See Matter of Hiss, 368 Mass. at 464 (discounting evidence offered by those who "did not accept [petitioner's] guilt of the crime for which he had been disbarred"). At the same time, one letter alluded to the petitioner's lack of restraint in expressing himself, which was consistent with the hearing committee's own observations of Diviacchi at the hearing.

With respect to the hearing committee's observations, Diviacchi contends that it was improper to consider his temperament in assessing his moral fitness to be reinstated. As an initial matter, it should be noted that the board explicitly rejected Diviacchi's contention that its recommendation was based on "his perceived 'intemperate' behavior." Regardless, Diviacchi's temperament was a relevant consideration. Here, as

the hearing committee observed, "[a]nger and an inability to control himself were problems closely associated with [Diviacchi's] underlying misconduct." The persistence of those issues is therefore relevant to determining the likelihood that Diviacchi will engage in the same behavior that led to his suspension, and we discern no error by the single justice or the hearing committee in considering it. Contrast Matter of Pool, 401 Mass. 460, 467 (1988) (petitioner "demonstrated that whatever weaknesses of character led to his serious misconduct, they no longer implicate his present fitness"). Cf. Diviacchi II, 491 Mass. at 1006 ("vituperative and hyperbolic manner" in which Diviacchi expressed open contempt for disciplinary system was proper consideration in assessing his moral qualifications).

Finally, Diviacchi asserts, in passing, that he "renews" various other objections that he raised in the underlying proceedings, which he contends were ignored by the hearing committee, the board, and the single justice. Such passing assertions do not rise to the level of appellate argument. See Matter of McBride, 449 Mass. 154, 166 n.10 (2007); Matter of Abbott, 437 Mass. 384, 395 (2002). To the extent that Diviacchi elaborates on these "renewed" objections, he appears to reference arguments that were previously raised in Diviacchi II -- namely, that the required disclosure of certain financial information on the reinstatement questionnaire constitutes an unlawful search and seizure, and that the court should not apply the same standard to an attorney subject to a term of suspension exceeding one year as it does to an attorney who has been disbarred. We previously addressed these arguments in Diviacchi II, and the petitioner has not provided a compelling reason to revisit these issues again here. See Diviacchi II, 491 Mass. at 1004 n.3, 1006.⁴

⁴ In arguing once more that our rules unjustly distinguish between suspensions of one year and suspensions of longer than one year, Diviacchi further asserts that the standard for reinstatement has been "unconstitutional[ly]" used as a means of imposing discipline on him well beyond the term of suspension ordered by this court. As we have previously recognized, using the reinstatement process "to extract further punishment for past acknowledged and sanctioned misconduct" would be improper. Matter of Weiss, 474 Mass. 1001, 1002 (2016). However, for the reasons discussed supra, we discern no error in the single justice's assessment of Diviacchi's current unfitness to be reinstated, based upon an assessment of the evidence Diviacchi chose to provide in support of his most recent petition for reinstatement. See id. See also Matter of Gordon, 385 Mass.

In sum, we agree with the single justice that there was substantial evidence to support the board's conclusion that Diviacchi did not meet his burden of establishing his current moral fitness to resume the practice of law, and the single justice did not commit an error of law or abuse his discretion in denying the third petition for reinstatement.⁵

Judgment affirmed.

The case was submitted on the record, accompanied by a memorandum of law.

Valeriano Diviacchi, pro se.

48, 53-54 (1982) (in assessing petitioner's fitness for reinstatement, central concern is public welfare, rather than petitioner's private interests).

⁵ Because we conclude that Diviacchi has not met his burden to establish his current fitness to practice law, we need not address his current legal competency in Massachusetts law, or the effect that his reinstatement would have on the public interest. See Matter of Gordon, 385 Mass. at 55. Matter of Carreiro, 27 Mass. Att'y Discipline Rep. 120, 123 n.1 (2011).