COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2015-102

IN RE: Douglas A. Parigian

JUDGMENT DENYING REINSTATEMENT

This matter came before the Court, Cypher, J., on a Petition for Reinstatement pursuant to S.J.C. Rule 4:01, § 18, and the Vote of the Board of Bar Overseers recommending that the Petition for Reinstatement be denied.

After a hearing was held on May 10, 2022, attended by the parties, and in accordance with the Memorandum of Decision of this date;

It is ORDERED and ADJUDGED that the petition be, and hereby is, denied. The lawyer may not apply for reinstatement until the one-year standard period.

By the Court, (Cypher, J.)

/s/ Maura S. Doyle

Maura S. Doyle, Clerk

Entered: June 10, 2022

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. BD-2015-102

MATTER OF DOUGLAS A. PARIGIAN

MEMORANDUM OF DECISION

The petitioner, Douglas A. Parigian, seeks reinstatement to the bar pursuant to S.J.C. Rule 4:01, § 18 (5), as appearing in 453 Mass. 1315 (2009), following the expiration of a three-year suspension. A hearing panel (panel) of the Board of Bar Overseers (board) recommended that the petition be denied, and that petitioner be permitted to reapply for reinstatement in six months. The board adopted the panel's recommendation that the petition be denied, but rejected the truncated reapplication period. On the record of proceedings before me, and after hearing, I affirm the board.

Background. The petitioner was admitted to the practice of law in Massachusetts in 1988, and thereafter practiced primarily as an appointed criminal advocate for indigent defendants. Between 2009 and 2011, the petitioner engaged in an insider-trading scheme amongst a group of golfing partners, which ultimately led to his conviction by guilty plea of conspiracy in violation of 18 U.S.C. § 371, and securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff(a). In connection with these activities, the petitioner violated the following Rules of Professional Conduct: 8.4(b)(criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness), 8.4(c) (dishonesty, fraud, deceit, and misrepresentation), and 8.4(h) (any other conduct reflecting adversely on fitness to practice). As a result of these violations and

his conviction of serious crimes as defined by S.J.C. Rule 4:01, § 12, as appearing in 425 Mass. 1313 (1997), the petitioner was appropriately suspended from the practice of law for three years, commencing August 17, 2015.[1] See Matter of Parigian, 33 Mass. Att'y Discipline Rep. 375 (2017).

On February 8, 2021, the petitioner filed a petition for reinstatement in the county court, which was transmitted to the board. See S.J.C. Rule 4:01, § 18 (4), as appearing in 453 Mass. 1315 (2009). A three-member panel held an evidentiary hearing, at which it received exhibits and testimony from the petitioner as the sole witness. The panel thereafter filed a report, in which it recommended that the petition be denied on the grounds that the petitioner failed to show sufficient learning in the law as to developments during the six years since his suspension, or sufficient evidence of current reform of his moral character, where his discussion of his convictions indicated he had not learned any significant ethical lessons, the panel did not receive any evidence of his good character from any third parties, and the evidence presented of his community contributions was minimal and lacking credibility. Nevertheless, the panel recommended that the petitioner be permitted to reapply for reinstatement in six months, rather than the one-year period ordinarily required by S.J.C. Rule 4:01, § 18 (8). Upon review, the board voted unanimously to adopt the panel's recommendation that the petition be denied, but declined to recommend a shorter reapplication period.

Discussion. "A petitioner for reinstatement must demonstrate that he or she 'has the moral qualifications, competency and learning in law required for the admission to practice law in this Commonwealth, and that his or her resumption of the practice of law will not be

[1] Although his term of suspension was for three years, the petitioner did not seek reinstatement for almost six years, until 2021.

detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.'" Matter of Leo, 484 Mass. 1050, 1051 (2020), quoting Matter of Weiss, 474 Mass. 1001, 1002 (2016) and S.J.C. Rule 4:01, § 18 (5). "The subsidiary findings of the hearing panel, as adopted by the board, shall be upheld if supported by substantial evidence, and the hearing panel's ultimate findings and recommendations, as adopted by the board, are entitled to deference, although they are not binding on this court" (internal quotations and citation omitted). Matter of Leo, supra. The hearing panel is the sole judge of credibility; accordingly, the panel's "credibility determinations will not be rejected unless it can be said with certainty that the finding was wholly inconsistent with another implicit finding" (internal quotations omitted). Matter of Haese, 468 Mass. 1002, 1007 (2014).

a. Learning in the law. The petitioner is required to demonstrate current competency and learning in the law. See S.J.C. Rule 4:01, § 18 (4) and (5). The petitioner has been suspended from practice since 2015. In 2018, he took the multistate professional responsibility examination. As of February 5, 2021, the petitioner had not taken any legal education courses since the suspension was imposed, but asserted he had "read many articles" and "discussed current law with many practicing attorneys" during that period, and "regularly" read the Massachusetts Lawyers Weekly. After the petition for reinstatement was filed, in April 2021, the petitioner supplemented his reinstatement questionnaire indicating that he had "watched many Legal Seminars on YouTube" during the Covid-19 pandemic and had taken a total of four hours of formal continuing legal education courses on G. L. c. 93A, restorative justice, and online legal research. The petitioner acknowledged that he would be required to take several formal continuing legal education courses in order to return to court-appointed representation of

indigent criminal defendants, but that he intended to do so only after his reinstatement to the practice of law.

At hearing before the panel, the petitioner testified that the hours he listed in his supplemental questionnaire were not accurate, and that he had actually completed "maybe twelve" or fourteen hours of formal continuing legal education since his suspension, although he was unable to provide any certificates of completion for such courses. The petitioner repeatedly emphasized his prior experience in criminal defense work, and offered by way of explanation for the paucity of formal legal education completed over the preceeding six years that "[i]t's difficult for somebody [like himself who has] twenty-five years experience [practicing law] to take a seminar from somebody who has . . . three years experience [practicing law].." The petitioner could not identify specific "legal seminars" he had viewed on YouTube, but admitted such videos were not part of a "recognized program" of legal education, and some videos were presented by individuals who were not admitted to practice law in this Commonwealth. When asked to describe the developments in criminal law during the approximately six-year period since his suspension, the petitioner asserted that "most of the law, search and seizure hasn't changed much except what is being done a lot of is racial profiling," and that "most of the new legal laws from judges, from the [this court] and the [A]ppeals [C]ourt deal with racial issues." Upon questioning as to his understanding of recent decisions of this court regarding the COVID-19 pandemic as a factor in bail or release from detention, the petitioner gave a vague answer mentioning overcrowding and testing, before discussing unrelated decisions regarding remote hearings and trials. The petitioner was wholly unaware of specific recent cases regarding the imposition of GPS monitoring as a condition of pretrial release, and the current boundaries of school zones and definition of parks in relation to certain narcotics distribution offenses.

I do not disturb the panel's credibility determination that the petitioner has only demonstrated completion of four hours of formal legal education, due to the petitioner's "inability to give [the panel] a single consistent story about his 'learning,'" and that further the petitioner has not stayed sufficiently abreast of current law during his suspension through self-directed study. See Matter of Haese, 468 Mass. at 1007. I agree with the panel's conclusion, adopted by the board, that "the petitioner's admitted focus on practical skills and lack of equal focus on the substantive law during his suspension is not enough, even conjoined with his prior practice and recognized competency," to meet his burden of showing that he presently has the learning in the law required for admission to practice. Given these considerations, "the substantial evidence supports the conclusion that the petitioner has not demonstrated current legal acumen," despite his prior practice experience. See Matter of Leo, 484 Mass. at 1052-1053 (total time studying law "equat[ing] to less than four work weeks" during fifteen-plus year period since suspension, along with hearing testimony reflecting lack of understanding of civil legal principles, insufficient to support reinstatement following thirteen-month suspension). See also Matter of Waitz, 416 Mass. 298, 306 (1993) (attendance at four legal education programs and reading legal publications for two to three hours weekly "scant and unconvincing" evidence of efforts to stay abreast insufficient to support reinstatement following indefinite suspension).

b. Moral Qualifications. The petitioner's term suspension upon conviction for serious crimes is "conclusive evidence that he was, at the time, morally unfit to practice law, and it continued to be evidence of his lack of moral character" upon petition for reinstatement. Matter of Dawkins, 432 Mass. 1009, 1010 (2000). "He therefore bears the burden of demonstrating that, during the period of suspension, he has redeemed himself and become a person proper to be held out by the court to the public as trustworthy" (emphasis added, internal quotations omitted).

Matter of Leo, supra at 1051, quoting Matter of Dawkins, supra at 1010-1011. "Passage of time alone is insufficient to warrant reinstatement," id. at 306, quoting Matter of Hiss, 368 Mass. 447, 460 (1975), and the relevant "question is not whether the respondent has been 'punished' enough," but rather "the true test must always be the public welfare," Matter of Keenan, 314 Mass. 544, 547 (1943).

The substantial evidence supports the board's conclusion that the petitioner failed to demonstrate that he has reformed his character during the period since he was convicted and sentenced for serious crimes. Before the panel, the petitioner did not present any witnesses or any letters attesting to his current moral character. See Matter of Leo, supra at 1052 (value of "credible and disinterested testimony that, since his suspension, the petitioner has shown introspection and moral rehabilitation"). I accept the panel's credibility finding that the petitioner's claim that he did want to impose on such witnesses is unpersuasive, as such finding is consistent with the remainder of the record and the panel's findings. See Matter of Haese, 468 Mass. at 1007. Similarly, substantial evidence supports the panel's conclusion that the petitioner's vague testimony regarding time spent "sort[ing] out some material" and donating items to a Habitat for Humanity Restore should not be given great weight, particularly in light of the panel's credibility determination that the described activity implied "that the petitioner needed to dispose of goods in connection with a move to a new house, and this 'charitable work' . . . was opportunistically attached to that event." Likewise, substantial evidence supports the panel's conclusion that the petitioner's sports coaching should be given limited weight where it appeared to be related to the care and primary parenting of his own children, not the public good.

Most importantly, the record amply supports the panel's conclusion that the petitioner has failed to learn ethical lessons from his convictions, as evidenced by his equivocation as to the

extent of his guilt in the insider trading scheme. Some further background is illustrative. Prior to his conviction, the petitioner was not only an experienced criminal defense attorney, but also was experienced in trading stocks over several decades. Between the mid-1980's and the time of his conviction, the petitioner amassed retirement savings of approximately one million dollars, primarily through investing in mutual funds and stocks through his personal and IRA accounts. Between June 2009 and April 2011, as the petitioner admitted during his 2015 plea colloquy, he "willfully" traded shares of a particular company on six separate occasions based on emails he received from a friend, Eric McPhail, which tipped him off to "material, nonpublic" business activity information for a particular company, including the content of upcoming quarterly earnings reports or the existence of as-yet unannounced major contracts.[2] The scheme ended in April 2011, when the petitioner's last trade yielded a net profit of more than $200,000, and the

[2] In July 2009, the petitioner bought 1,200 shares after McPhail told him to "watch" the company's stock on July 30, 2009, when an earnings report was due to be released. Immediately after the earnings announcement, the petitioner sold 1,000 of his 1,200 shares, for a net profit of approximately $9,000. On September 29, 2009, the petitioner bought 1,100 shares in the same company after McPhail informed him that his "friend" was aware of an impending announcement of a large contract. On September 30, 2009, after the public announcement of the contract, the petitioner sold approximately 100 shares which he purchased the prior day, fir a profit of approximately $750. Around that same time, McPhail informed the petitioner that the company's next earnings report, due October 29, 2009, would be "as good as the last one". The petitioner replied that he would "be taking most of [his] gains and putting it ALL on Options before [October] 29." On October 16, the petitioner secured authorization from his brokerage to trade options in his account, and some time before October 28, bought 1,180 shares and sixty "call" options on the company's stock. After the earnings announcement, the petitioner sold 1,480 shares and all sixty call options, for a net profit of almost $6,000. In July 2010, the petitioner again received advance information of a positive earnings report, but ultimately did not make a profit on 1,500 shares he intended to sell, because the stock price declined despite the positive earnings report. On two occasions in October and December 2010, the petitioner actively sought out from McPhail advance information on the company's performance, asking if he had "any thoughts" on an upcoming earnings report, and if the stock should be a "buy" at a certain price.

company was subject to a class action suit alleging financial malfeasance.[3] The petitioner admitted that he had made all six trades "knowingly" and could "clearly" "infer" that the information upon which he acted was "confidential" from the content of McPhail's emails, including warnings to the petitioner to "SHHHHHHHH!!" and cautions against sharing the information with others because it might not "remain" "safe."[4] The petitioner also specifically admitted that it was clear to him that the information was coming from an "improper source," and that "at some point during the conspiracy, he realize[d] that the information he [was] getting from McPhail [was] coming from an insider at [the company]," whom the petitioner met on the golf course .

Nevertheless, the petitioner materially contradicted or, at minimum, substantially qualified these admissions in his reinstatement petition and hearing testimony. The petitioner asserted in his reinstatement petition that "[a]t the time, [he] did not think that trading on the tips was criminal in nature" because McPhail "passed along information received from his friend, without actually disclosing the source of the information." Similarly, the petitioner's hearing

[3] Just days after receiving information from McPhail in April 2011, that the company had lost a major client responsible for almost three-quarters of its profit, the petitioner liquidated his existing shares in the company, thereby avoiding future losses. At the same time, the petitioner spent $6,000 to buy 330 "put" options on the stock, essentially betting that the stock would drop in price during a specified period. After the company announced publicly the lost contract and earnings substantially below forecasts, the petitioner exercised his "put" options. The petitioner's combined losses and profits from this last set of trades, along with his prior trades detailed above, amounted to $295,235. The petitioner disgorged this amount, and paid a further $50,754 in prejudgment interest and $147,618 in civil penalties, as part of his settlement of a civil action with the Securities and Exchange Commission.

[4] Other courts have also observed that the confidentiality of McPhail's information was "clear" to the petitioner under the circumstances it was transmitted. See e.g. United States v. Parigian, 824 F. 3d 5, 5 (2016) ("Acting on obviously nonpublic information that a golfing buddy received from a corporate insider, Douglas Parigian made in excess of $200,000 trading in securities" [emphasis added]).

testimony emphasized that "at the time" he was making the criminal trades, he "didn't think . . . this [was] something [he was] really doing wrong here" because he was not getting the information directly from an "insider," and only realized the wrongfulness of his conduct after the last trade upon which he profited substantially. The petitioner repeatedly asserted to the panel that the indictment to which he pleaded guilty was erroneously based on a broader "knew or should have known" mens rea standard which should have been applied only in civil enforcement.[5] The petitioner emphasized that depending on the circumstances under which McPhail received the business activity information, he could have been "fine" and his conduct would not have violated criminal law.[6] The petitioner specifically disclaimed any knowledge that the information was confidential, emphasizing he never "knew what [it] meant" when McPhail stated he had "just had dinner with [his] friend" from whom he received confidential information. The petitioner minimized his awareness of the insider's identity and his role in passing confidential information to the petitioner through McPhail: the petitioner dismissed his meeting of the insider on the golf course as "just a hi, hi, and that was it," and implied he never

[5] On appeal of the petitioner's motion to dismiss the indictment, the First Circuit held that the petitioner had not raised the mens rea issue in the United States District Court before his plea, waiving the issue where it was only pursued for the first time in his appellate reply brief. Parigian, 824 F.3d at 12 ("[H]ad Parigian complained about the inconsistent levels of mens rea embodied in the indictment, he would have had a point. Whether such a complaint would have garnered much beyond a further amendment to the indictment, we do not know because Parigian never voiced any such complaint, directing his attention instead at whether the facts he was said to know or have had reason to know were sufficient to cover the elements of the crime....Only in his reply brief did Parigian belatedly try to argue that the 'knew or should have known' language in the indictment was problematic. And, even then, he limited the argument on what is a reasonably complicated issue to a single page").

[6] Specifically, the petitioner asserted that he couldn't defend himself under the "knew or should have known standard" because he didn't "know how [McPhail] got the information. [He] wasn't there when [McPhail] got the information. And that's what the whole case was based on. If [McPhail] got it in a private setting, [the petitioner] could be guilty. If [McPhail] got it in a bar where he was talking to [thirty] people, [the petitioner] is not guilty of anything."

thought to ask McPhail where the nonpublic business information was coming from because the information "wasn't always great stuff" that resulted in a windfall. The petitioner minimized the incriminating nature of emails amongst McPhail, himself, and others involved in the conspiracy, characterizing the emails as containing "a lot of joking going back and forth," and asserting that his email to the conspirators stating he was deleting all emails related to the company was "obviously . . . a joke because [he] never deleted a single email."

Based on this record, there is substantial evidence supporting the panel's credibility-based conclusion, adopted by the board, that in seeking reinstatement, the petitioner pursued a "self-serving and implausible insistence . . . that he did not know that insider trading could be a criminal offense, and that, even at the civil level, he was innocently caught up in a maze of uncertain legal rulings," leaving serious doubt "as to what [the petitioner] acknowledges he did wrong" and "what reform [the] panel should expect from him, and therefore, whether he has reformed at all." Like the panel, I conclude that the petitioner "back-track[ed] on [his] guilty plea," "confirm[ing] that he still has not fully accepted responsibility as a first step towards true reform." See Matter of Fletcher, 466 Mass. 1018, 1019 n.4 (2013), quoting Matter of Hiss, 368 Mass. at 459 ("lack of repentance is evidence, like any other, to be considered in the evaluation of a petitioner's character and of the likely repercussions of his requested reinstatement"). This equivocation, taken in the context of the otherwise weak evidence of the petitioner's moral reform during the last six years, fairly supports the board's determination that the petitioner has failed to meet his burden of demonstrating sufficient moral qualifications. See Matter of Dawkins, 432 Mass. at 1011 (reinstatement denied where petitioner "was not young or inexperienced when he committed the acts" leading to suspension, petitioner's "misconduct was not isolated nor minor," and petitioner "had [almost] no gainful employment during his

suspension" or "[significant] involve[ment] in any civic, social, or charitable activities that might be indicative of rehabilitation"). Indeed, it appears on this record that the petitioner's understanding of his ethical violations may have actually regressed, rather than improved, since the plea colloquy which preceded his suspension. Giving deference to the board's recommendation, I conclude that there was no error in denying the petition for reinstatement on the ground of moral qualification.

c. Period for Reapplication. The board unanimously rejected the panel's recommendation that the petitioner be allowed to reapply for reinstatement in six months, instead of the default one-year period set out in S.J.C. Rule 4:01, § 18 (8). If the infirmity in the petition for reinstatement was limited to the petitioner's present competence in recent developments in criminal law, the panel's recommendation may well have had merit, particularly in light of the petitioner's age. However, in light of the petitioner's failure to demonstrate any improvement in his moral character since his suspension, and given the deference which should be given to the board's recommendation, I conclude that the standard one-year period for reapplication is necessary to provide the petitioner sufficient time to reach a clear understanding of his ethical violations and accumulate evidence "that there has been a substantial change in the facts [of his character] that would justify reinstatement." See Matter of Waitz, 416 Mass. at 305-306. See also Matter of Dawkins, supra ("The fact that an attorney engages in misconduct later in life does not shield him or her from necessary and appropriate sanction").

In accordance with this Memorandum of Decision, a judgment denying Douglas A. Parigian's petition for reinstatement shall enter.

/s/ Elspeth B. Cypher
Elspeth B. Cypher
Associate Justice

Dated: June 10, 2022