IN RE: MATTER OF DANIEL W. GOLDSTONE
BBO NO. 551753

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

In the Matter of	)	
DANIEL W. GOLDSTONE,	)	**SJC No. BD-2005-006**
Petition for Reinstatement	)	
	)	

HEARING PANEL REPORT

I. Introduction

On June 7, 2023, the petitioner, Daniel W. Goldstone, filed his petition for reinstatement with the Supreme Judicial Court after being disbarred by a judgment entered on January 25, 2006. See Ex. 10[1] (Matter of Goldstone, 445 Mass. 551, 21 Mass. Att'y Disc. R. 288 (2005); 22 Mass. Att'y Disc. R. 348 (2006) (judgment of disbarment after rescript)). We held a remote hearing on December 15, 2023 and February 2, 2024. The petitioner, represented by counsel, testified on his own behalf and called four witnesses: Boris Maiden, Esq., Joshua Burlingham, Esq., John McNamara, and John J. O'Connor, Esq. Bar counsel called no witnesses. Thirty-four exhibits were admitted into evidence. Exs. 1 – 34(A and B). At the end of the hearing, the petition was opposed by bar counsel. Tr. II :34, First Assistant Bar Counsel. After considering the evidence and testimony, we recommend that the petition for reinstatement be denied.

[1] The transcript is referred to as "Tr.[vol.]:[page]." and the hearing exhibits are referred to as "Ex.__." We have considered all of the evidence, but we have not attempted to identify all evidence supporting our findings where the evidence is cumulative. We credit the testimony cited in support of our findings to the extent of the findings, and we do not credit contradictory testimony. In some instances, we have specifically indicated testimony that we do not credit.

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 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, 32 Mass. Att'y Disc. R. 263, 264-265 (2016). The S.J.C.'s rule establishes two distinct requirements, focusing on (1) the personal characteristics of the petitioner and (2) the effect of reinstatement on the bar and the public. Matter of Gordon, 385 Mass. 48, 52, 3 Mass. Att'y Disc. R. 69, 73 (1982).

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 disbarred, (2) the petitioner's character, maturity, and experience at the time of his disbarment, (3) the petitioner's occupations and conduct in the time since his disbarment, (4) the time elapsed since the disbarment, and (5) the petitioner's present competence in legal skills.'" Matter of Alfred C.W. Daniels, 442 Mass. 1037, 1038, 20 Mass. Att'y Disc. R. 120, 122-123 (2004), 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 History

A. Goldstone and Sudalter, P.C.

The petitioner was admitted to the bar of the Commonwealth in 1988. Ex. 1. In 1991, when he was approximately three years into practice, the petitioner entered negotiations to purchase the practice of a deceased lawyer, Attorney Sudalter ("Sudalter"), from Sudalter's

widow. Ex. 10, at BC0676. The petitioner formed Goldstone and Sudalter, P.C. to purchase the practice. Id. He was the sole shareholder.

Prior to his death, Sudalter had been the primary debt collection attorney for Sears, Roebuck and Co. ("Sears") in eastern Massachusetts. Ex. 10, at BC0676. Sudalter's wife, Janice, had worked in Sudalter's office for many years until her husband's death , including preparing the monthly billings for Sears. Id. The petitioner had never worked with Sudalter or discussed the firm's billing practices with him. Id.

Sudalter had a contingency fee arrangement with Sears. Id. Before 1987, Sears paid Sudalter one-third of all sums he collected and reimbursed Sudalter's court costs. Id. Beginning in 1987, as a result of a new contingency agreement, Sears paid Sudalter forty-five percent of all sums he collected for Sears but Sudalter was then responsible for all costs which were not reimbursed by the debtor. Id. In other words, Sears was no longer reimbursing Sudalter for his costs, although Sudalter could attempt to recover the costs from the debtor. Pursuant to the 1987 Agreement, Sudalter sent all funds he collected to Sears on a monthly basis. Sears would then pay Sudalter the forty-five percent contingency fee. The petitioner knew he was bound by the terms of the 1987 agreement when he purchased Sudalter's practice. Id.

At some point, the petitioner observed that Sears had decreased the number of cases that it was sending to his firm. The petitioner spoke to a Sears employee who informed him that the firm's declining case load was due to its low collection ratio which resulted from the fact that Sudalter had "never closed a file in fifteen years." Id., at BC0677. The Sears employee encouraged the petitioner to close files. The petitioner then spoke to another Sears employee, in-house counsel for Sears, who also told him to close Sudalter's files. According to Mrs. Sudalter's testimony in the underlying disciplinary proceeding, the Sudalter firm considered

Sears' files to be internally closed at the firm when payment in full was received, the debtor filed for bankruptcy, or the debtor became judgment proof. However, Mrs. Sudalter testified that she did not notify or otherwise report to Sears that the firm considered the files to be "closed." Ex. 10, at BC0676. Consequently, the petitioner began reviewing and "closing" files without informing Sears of the sheer number of inactive files left over from Sudalter or how exactly he was calculating what fees and costs were due and owing on those files.

Between early 1992 and early 1994, the petitioner billed Sears for allegedly unpaid costs and attorneys' fees totaling $1.1 million concerning over 15,000 old cases. Id. The petitioner based his bills for costs on handwritten notations on the outside of file jackets. He based his bills for attorneys' fees upon his own estimate of the time that Attorney Sudalter, whom the petitioner had never met, would have spent on each file. Id. He did not adequately inquire of Sudalter employees, particularly Mrs. Sudalter, whether fees or costs had already been paid by Sears on the files. Id. Sears paid the petitioner over $833,000. Id.

During this time, the petitioner also performed debt collection work for Sears on active files. Pursuant to the 1987 agreement, the petitioner understood that he was entitled to forty-five percent of the amount he collected on the active accounts but that he was not entitled to any reimbursement for his costs. Id. Despite this knowledge, the petitioner began deducting costs he incurred on new collection matters from the funds he received from the debtors and remitted only the balance to Sears, effectively skimming off the top. Id. Finally, when Sears raised questions about the petitioner's billings on the old cases, the petitioner threatened to deduct his costs and fees for closed cases from monies collected for active Sears accounts.

B. The Federal Lawsuit

Sears ultimately terminated its relationship with Goldstone in 1994 and sued the petitioner's firm, Goldstone and Sudalter, P.C., in federal court for breach of contract, breach of fiduciary duty, and violation of M.G.L. c. 93A. Id. Sears alleged that it was the victim of a "massive fraudulent double billing scheme perpetrated by Goldstone." Ex. 12. The petitioner's firm counterclaimed for the unpaid balance of the bills to Sears. Ex. 10, at BC0677. The parties filed cross-motions for summary judgment and, in February 1996, the federal court found in favor of Sears. Exs. 12-14. In the court's memorandum and order on the parties' cross motions for summary judgment, the judge wrote, "…the conclusion is inescapable that Goldstone devised a scheme to defraud Sears by billing it for hundreds of thousands of dollars of legal fees and costs that he had no good reason to believe were legitimate." Ex. 12, at BC0701. The judgment was affirmed on appeal by the First Circuit in 1997. Ex. 11. On January 15, 1997, final judgment entered in the amount of $833,409, plus interest, and attorneys' fees in the amount of $112,000. Ex. 14. The petitioner paid only $89,256.06 on the judgment. Ex. 10, at BC0677.

C. The Disciplinary Proceeding

A petition for discipline was filed by bar counsel on January 31, 2002. Ex. 7. Bar counsel also filed a motion for issue preclusion that was allowed, in part, by the Board Chair.[2] Ex. 10, at BC0675. The preclusion order held that certain facts had been thoroughly litigated in the prior proceeding in federal court and could not be litigated again in the disciplinary proceeding, including "the finding that [the petitioner] billed his client for court costs and hourly fees on contingent fee cases closed before he purchased the practice, the finding that he billed his client

[2] The petitioner unsuccessfully challenged this decision at each stage of the appellate process as unfair and a violation of his due process rights. Ex. 10, at BC0675-76.

for expenses on active cases when those expenses were included in the 45% contingent fee, or the finding that he threatened to withhold collected funds in order to force settlement of disputed bills." Ex. 10, at BC0675 and fn. 1.

The hearing committee found that "…the [petitioner's] actions in billing Sears for costs and fees totaling $1.1 million for approximately 15,000 files over an extended period of time, where the [petitioner] chose not to determine from Janice Sudalter whether these costs had in fact already been billed to and paid by Sears, constitutes willful blindness and intentional misconduct by the [petitioner]." Ex. 8, at BC0643-44. The hearing committee also found that the petitioner "wrongfully and intentionally withheld funds due to Sears on the active files and used those funds to defray expenses for which he was responsible…" Id., at BC0648. The hearing committee found that the petitioner's conduct violated the predecessor rules to Mass. R. Prof. C. 1.2, 1.5(a), 1.15, and 8.4(c) and (h) and recommended disbarment. Id.

The Board of Bar Overseers agreed, commenting that the petitioner "viewed the presence of the 15,000 files as a cash cow which he proceeded to milk until dry." Ex. 9, at BC0672. In addition, the Board stated that the petitioner "clearly intentionally over-billed and collected from his client hundreds of thousands of dollars in fees and costs to which he was not entitled. Where, as here, an attorney lacks a good faith belief he has earned and is entitled to the monies, such conduct constitutes conversion and misappropriation of client funds. His conduct deprived the client of its funds and was motivated purely by personal pecuniary gain." Id., at BC0673 (internal citations omitted).

The full bench of the Supreme Judicial Court adopted the recommendation of the Board and remanded the case to the county court for a judgment of disbarment to enter.[3] Ex. 10, at BC0682. The petitioner was ordered disbarred on January 25, 2006. Matter of Goldstone, 445 Mass. 551, 21 Mass. Att'y Disc. R. 288 (2005), 22 Mass. Att'y Disc. R. 348 (2006) (judgment of disbarment after rescript).

IV. Findings and Conclusions

Our findings and conclusions are set forth in three sections: competency and learning in the law, moral qualifications, and the public interest.

A. Competency and Learning in Law

Under S.J.C. Rule 4:01, § 18, a petitioner must demonstrate that he has the "competency and learning in law required for admission to practice law in this Commonwealth." SJC 4:01, sec.18(5). Although we usually begin by discussing a petitioner's moral qualifications, as it comes first in the order of reinstatement requirements set out by the SJC, we depart from that approach here because, for the reasons set forth below, we would deny the reinstatement petition on this basis alone.

Almost twenty years have passed since the petitioner's disbarment and we must assess his current legal skills. With respect to his recent learning in Massachusetts law, the petitioner's evidence was scant. He testified that he has taken a "handful" of MCLE classes (Tr. I:144 (petitioner)) and provided evidence of only three MCLE courses, all attended in 2022: How to Make Money & Stay Out of Trouble (Exs. 22-23), Artificial Intelligence and the Law (Ex. 30), and Fiduciary Duties, Responsibilities, Ethics & Liabilities of Nonprofit Board Members (Ex.

[3] Noting that in addition to the overbilling, the petitioner "intentionally and secretly withheld money from the client in violation of the 1987 agreement, and used those funds to pay costs that were his responsibility." Ex. 10, at BC0682.

31). He also attended the Practicing with Professionalism course offered by the Boston Bar Association in June of 2022. Ex. 24. For the past year and a half, he has had a subscription to Massachusetts Lawyers Weekly, but we heard no evidence about how often he reads it or anything of note that he has learned from his review (and we were provided with a receipt for only a single month's subscription). Ex. 26. Finally, he attended a bar review course in preparation for the Multistate Professional Responsibility Exam ("MPRE") (Tr. I:144, petitioner) and then received a passing score on the MPRE on March 28, 2023. Ex. 16.

We would have expected to see a more consistent pattern and dedicated, focused effort from a petitioner in attending continuing legal education courses and reviewing legal materials when he or she has been away from practice for close to two decades. See Matter of Dawkins, 432 Mass. 1009, 1011, 16 Mass. Att'y Disc. R. 94, 96 (2000) (rescript) (after eight-year absence from practice, reading the "advance sheets," an unidentified book on ethics and Massachusetts Lawyers Weekly when able to borrow a copy, insufficient to show competency and learning); Matter of Waitz, 416 Mass. 298, 304, 9 Mass. Att'y Disc. R. 336, 344 (1993) (after indefinite suspension, attendance at three or four MCLE practical skills courses and "studying the law" or reading legal publications for two or three hours weekly at another lawyer's office insufficient for reinstatement); Matter of Fleming, 27 Mass. Att'y Disc. R. 334 (2011) (after eight-year absence from practice, studying to pass the MPRE, "frequently" reading federal and state judicial opinions, and discussing "cases and trends in the law" with other lawyers, was too random an approach to show current learning in the law). In similar cases, where a petitioner has been away from the practice of law for such a long period, we generally look for a more thoughtful and careful track to resuming the practice of law. Often, a successful approach at establishing competency and learning in the law includes, as an initial step, seeking leave from the court to

work as a paralegal for a period of time before seeking reinstatement. See Matter of Sullivan, 25 Mass. Att'y Disc. R. 578 (2009) (the single justice described seeking leave to work as a paralegal as a "good step" in preparing for reinstatement). See also Matter of Stewart, 36 Mass. Att'y Disc. R. 418 (2020), and Matter of Gilpatric, 39 Mass. Att'y Disc. R. __ (2023), for recent instances of petitioners who have had a long absence from practice and worked as paralegals to acquire adequate knowledge of current law.

In this vein, the petitioner attempts to portray his on-the-job training at the Consumer Financial Protection Bureau ("CFPB") and the United States Department of the Treasury (both positions described in more detail below) as continuing legal education in the area of federal consumer protection laws. See Tr. I:141-142 (petitioner); Exs. 17 and 29. While we agree that he did a significant amount of training for these positions, they were not legal positions and his training does not qualify as the type of learning in the law that satisfies the reinstatement requirements. For example, many, if not most, of the trainings he listed were not legally focused and are more accurately defined as workplace training, such as harassment prevention training or skills training relevant to his specific role. See Ex. 29. If there were legal trainings contained in the petitioner's materials, they were difficult to parse out, lumped in as they were with a substantial number of all his other workplace trainings. The petitioner did not provide any additional context about these trainings in his testimony before us. Finally, and most importantly, none of the trainings were concentrated on Massachusetts law.

When an individual is reinstated to practice, he or she is reentered onto the roll of Massachusetts attorneys. Our rules do not allow us to proscribe what type of attorney he or she can be or what area of law he or she can practice in. The petitioner must persuade us that he is sufficiently competent and learned in the current law of the Commonwealth of Massachusetts

that we can confidently certify to the public that he has the capability to handle legal matters. We understand that the petitioner, if he were to be reinstated, intends to remain working for the federal government but transition into a legal role. Ex. 1, at BC0006; Tr. I:150-151 (petitioner). As such, training in Massachusetts law may not be necessary for his anticipated career move. However, we cannot mandate that he follow this currently intended career path. If reinstated, he would be free to leave his current career and practice law as he saw fit. While he may be competent to practice in a specific legal role with the U.S. Department of the Treasury, he has not convinced us that he has the requisite competency and learning in the law for admission to practice law in Massachusetts.

B. Moral Qualifications

Since we find that the petitioner lacks the required competence and learning in the law to be reinstated, we are not obligated to discuss in detail our findings with respect to the petitioner's moral qualifications. However, we do so here because we think it will be important for the petitioner to understand where his petition fell short in the event he intends to petition for reinstatement in the future.

The conduct giving rise to the petitioner's disbarment is affirmative proof that he lacked the moral qualifications to practice law. See Matter of Hiss, 368 Mass. at 460, 1 Mass. Att'y Disc. R. at 134. That the misconduct "continues to be evidence against . . . [the petitioner] with respect to lack of moral character at later times [is] in accordance with the principle that 'a state of things once proved to exist may generally be found to continue.'" Id. (citation omitted). "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 Alfred C. W. Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 123, Matter of Prager, 422 Mass. at 92; see Matter of Centracchio, 345

Mass. 342, 348 (1963). 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), quoting Matter of Keenan, 314 Mass. 544, 547 (1943). Cf. Matter of Nickerson, 422 Mass. 333, 337, 12 Mass. Att'y Disc. R. 367, 375 (1996) ("To make that the test would be to give undue weight to his private interests, whereas the true test must always be the public welfare.'") (citation omitted).

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. R. at 126. He can do this by proving he has reformed, since 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). "Reform is a 'state of mind' that must be manifested by some external evidence…[and] the passage of time alone is insufficient to warrant reinstatement." Matter of Waitz, 416 Mass. at 305, 9 Mass. Att'y Disc. R. at 343.

We divide our discussion of the petitioner's moral qualifications into the following subsections: (1) Lack of Insight into Misconduct; (2) Failure to Make Restitution to Former Client; (3) Work and Volunteer Activities; (4) Inadequate Preparation of Questionnaire and Lack of Financial Transparency; (5) Witness Testimony and Letters; and (6) Conclusions as to Moral Qualifications.

1. Lack of Insight into Misconduct

Before us, the petitioner attributed his misconduct to arrogance, immaturity, and being "intoxicated by my young success thinking that I know I'm owed this money and clients be damned as to what they think." Tr. I:123 (petitioner). The petitioner was candid about the

motivation for his misconduct, testifying that he was "blinded by greed and self-interest." Id. at 154. However, it was clear to us that, while seemingly regretful, the petitioner still does not have a true understanding or full appreciation for what he did wrong. When asked to articulate what happened in the past, he appears to still believe that he was owed the money he billed Sears. Or, at the very least, that his mistake was his "misinterpretation" of the contingency agreement with Sears and then threatening to sue his client for unpaid fees and costs. Id. at 150, 153.

At no point did the petitioner forthrightly acknowledge that he had no basis on which to bill Sears for attorney's fees that he had calculated by estimating the time spent on the file by an attorney (Sudalter) that he had never even met. In fact, when asked what intentional wrongdoing he admits to, the petitioner startlingly claimed, "I don't think there was an allegation of intentional wrongdoing." Tr. I:190 (petitioner). As described supra, the S.J.C. did not mince words; the petitioner's misconduct was more than a misinterpretation of a contingency agreement--he intentionally overbilled his client and collected hundreds of thousands of dollars in fees and costs which did not belong to him. See Ex. 10, at BC0682. He also intentionally "skimmed" money from his client by secretly withholding money from Sears and using it to pay costs that were his responsibility under the agreement with his client. Id. His conduct constituted conversion and misappropriation of client funds. Id. It is difficult for us to discern if the petitioner was purposely minimizing his conduct to appear in a more favorable light before us or if he honestly believes this narrative.[4]

[4] We understand that a petitioner for reinstatement need not admit guilt where he continues in good faith to deny it. For example, in Matter of Hiss, 368 Mass. 447, l Mass. Att'y Disc. R. l22 (1975), the Court reinstated Hiss where he supported his ongoing contention of innocence with "considerable evidence of his present good character, his exemplary behavior over a substantial time span, and the tributes paid him by eminent practitioners who have known him well during the period." Id., 368 Mass. at 467, 1 Mass. Att'y Disc. R. at 140- 141. For the reasons described herein, the petitioner has not made a similarly fulsome showing of present good character that could justify his reinstatement, especially in the absence of a full throated acceptance of responsibility for his misconduct.

In our view, the petitioner has failed to prove he understands the nature of his misconduct, a critical step in demonstrating sufficient moral character to resume the practice of law. Matter of Weiss, 474 Mass. at 1002. We are not persuaded that the petitioner has sufficiently acknowledged and confronted his wrongdoing in a manner that warrants our holding him out to the public as trustworthy. See Matter of Dawkins, 432 Mass. at 1011, 16 Mass. Att'y Disc. R. at 95. Remorse does not automatically indicate reform. Matter of Corben, 31 Mass. Att'y Disc. R. 91, 101 (2015), citing Matter of Lee, 28 Mass. Att'y Disc. R. 540, 549-551 (2012). We understand that the petitioner did not want to dwell on or "re-litigate" the circumstances leading to his disbarment, but he also cannot simply stuff the misconduct in the closet and wipe his hands clean of it. We needed to hear a more fleshed-out explanation of his conduct and what went wrong. Otherwise, we cannot conclude that the petitioner understands his misconduct, acknowledges it, and currently has the insight to avoid such conduct in the future if he is reinstated to practice.

2. Lack of Restitution to Sears

Our longstanding precedent has held that "[f]or purposes of reinstatement, making restitution is not simply a matter of making clients whole, but is an outward sign of the recognition of one's wrongdoing and the awareness of a moral duty to make amends to the best of one's ability. Failure to make restitution, and failure to attempt to do so, reflects poorly on the attorney's moral fitness…Voluntary payments, even in small amounts that a petitioner can afford, speak well of a petitioner's moral fitness." Matter of McCarthy, 23 Mass. Att'y Disc. R. 469, 470 (2007). Many cases highlight the importance of restitution in the reinstatement context. See, e.g. Matter of McPhee, 34 Mass. Att'y Disc. R. 315 (2018), citing Matter of Fletcher, 466 Mass. 1018, 1020, 29 Mass. Att'y Disc. R. 263, 266 (2013) (court notes, in upholding denial of

reinstatement, that the hearing panel properly relied on the petitioner's failure to make restitution); Matter of Dawkins, 432 Mass. at 1011, 16 Mass. Att'y Disc. R. at 95-96 (denying reinstatement because, among other things, Dawkins "failed to reimburse the clients' security board for what it had paid to a former client [and] failed to resolve outstanding Federal and State tax liabilities"); Matter of McCarthy, supra, 23 Mass. Att'y Disc. R. at 469 (principal reason for hearing panel's negative recommendation was the "failure to make restitution to his victims (or to reimburse the Client Security Board for the amounts it paid out)."); Matter of Wynn, 7 Mass. Att'y Disc. R. 316, 317 (1991) (reinstatement denied, single justice notes, among other things, that "[t]he lack of payment of moneys owed for taxes and payment of restitution to wronged clients…pose a *substantial impediment* to a finding that reinstatement would be in the interests of the bar and the public") (emphasis added). Generally speaking, a petitioner's failure to make restitution is an insurmountable obstacle to his/her showing of moral fitness.
But see Matter of Alfred C.W. Daniels, supra, (petitioner reinstated despite not making full restitution but debt was a corporate obligation, not the product of the petitioner's self-enrichment or his practice of law, and he had been making regular payments towards it "consistent with his means" for more than ten years).

The petitioner has attempted to justify his failure to make restitution to Sears by claiming that (1) he was not legally responsible for paying the judgment that entered solely against his firm, Goldstone & Sudalter, P.C.; (2) even if he were legally responsible, restitution was not feasible under the petitioner's financial circumstances; and (3) even if he were financially able to make restitution, Sears filed for bankruptcy and there is no method or mechanism for making voluntary restitution payments to an entity in bankruptcy proceedings.

The petitioner contends that he has no personal legal obligation to make restitution to Sears because the judgment in the federal lawsuit entered only against his law firm, Goldstone & Sudalter, P.C., and not against him personally.[5] Tr. I:119; Tr. II:21-22 (petitioner). As the petitioner points out, his former client, Sears, could have sued him personally but chose not to do so. Tr. II:23 (petitioner). While we note that the petitioner was the sole shareholder of his firm, we make no finding on the accuracy of the petitioner's legal argument here because it is irrelevant; our jurisprudence clearly, and unequivocally, holds that a petitioner has a moral duty to make restitution.[6] See Matter of McCarthy, supra ("The issue is not whether [the petitioner] has an enforceable legal obligation to reimburse his victims – he does not – but whether he recognizes that he still has a moral obligation to do so.").

The petitioner insists that, even if he was obligated to make restitution, he had no financial ability to make any payments to Sears. Ex. 1, at BC0003. The petitioner testified that he was the "principal source of income" for his wife and children. Ex. 1, at BC0004; see also Tr. II:22 (petitioner)("…you've got to go back in time. I had a one-year-old, a three-year-old, a 12-year-old, recently disbarred, not sure of whether I was going to have any income ability, to go ahead and make a voluntary payment to a third party for which I didn't at the time think that I had any, any obligation legal or otherwise, it never entered my mind."). He asserts that he has not had sufficient funds to make any meaningful payments during the entire period of his

[5] He further argues that the judgment has "long expired" and Sears did not renew it. Tr. I:120 (petitioner).

[6] The petitioner's firm did make an almost $90,000 payment on the judgment which he characterizes as "no small amount." Tr. I:119 (petitioner). This is true in a general sense but not in proportion to the total judgment. Further, this singular payment was paid out of the firm's remaining assets before it was closed following the petitioner's disbarment. See Ex. 1, at BC0003; Tr. I:193, 198 (petitioner). It is unclear to us if this payment was voluntary.

disbarment. We do not credit this testimony. The documentary evidence before us proves otherwise.

The petitioner simply chose, over the past eighteen years, to spend his money in other ways. He prioritized using his funds for his family, specifically paying for his three children to attend private schools. Tr. I:177-178 (petitioner) ("I had kids who had learning challenges…I thought it was in their best interest to go to a private school."). See Matter of McPhee, supra (denying reinstatement where the lawyer failed to make restitution to the clients he harmed and, instead, chose to use the money he earned to help his family by paying for a wedding, among other things). Of course, there is nothing inherently wrong with the petitioner making these decisions, but it is inaccurate in the circumstances for the petitioner to claim that he did not have available funds to make any attempt at restitution to the client from whom he had misappropriated hundreds of thousands of dollars.

In addition, as described in subsection four below, the petitioner and his wife had significant real estate holdings (including a second home in New Hampshire and the vacant lot beside it) that could have been utilized (e.g., leveraged or sold) to make payments to Sears. Indeed, under questioning before us, the petitioner admitted that he could have paid a sizable amount of the judgment against his law firm through the use of his home equity line on the family home in Wellesley, but he did not consider the judgment a personal obligation at the time. Tr. I:199-200 (petitioner). See McPhee, supra; see also Krokyn v. Krokyn, 378 Mass. 206, 213-214 (1979) ("Common sense and basic concepts of fairness support the notion that ownership of a valuable asset demonstrates ability to pay without further inquiry as to whether payment can be enforced directly against the asset").

The petitioner asserts that even if it was economically feasible for him to make restitution payments to Sears, Sears filed for bankruptcy in 2018. Ex. 1, at BC0003. The petitioner testified that his counsel reached out to the bankruptcy trustee to find out if restitution payments could be made to Sears now and that those telephone calls were not returned. Tr. I:120 (petitioner). We make no finding on this testimony, which was unsupported by any documentary evidence. However, according to the petitioner, Sears did not file for bankruptcy until 2018, approximately twenty-one years after the final judgment in the underlying matter and approximately twelve years after the petitioner was disbarred. Ex. 34A, p.3. Undoubtedly, the petitioner could have made restitution payments before the bankruptcy filing or, potentially, negotiated the amount of the judgment. He failed to do so. Whether the petitioner can be reinstated in the future, despite the possible inability to make restitution to a now-bankrupt entity, is a question we do not reach because his petition fails on other independent grounds.

3. Work and Volunteer Activities

Following his disbarment, the petitioner initially continued his work of debt buying and collections through his company, Norfolk Financial, which he started in 1999. There was an overlap of a number of years where the petitioner was operating both his law firm and his debt collection agency. Tr. I:165 (petitioner). In 2014, the petitioner sold the Norfolk Financial office and its debt collection portfolio but continued to use the corporate name for other endeavors. Tr. I:164 (petitioner). For example, he engaged in real estate development projects in his local area from 2013 – 2017, which we discuss in greater detail in the next section. In 2017, the petitioner felt he needed the security of a steady paycheck and began working for the CFPB as a Consumer Compliance Examiner. Exs. 1 (at BC0004) and 15. The CFPB is a federal agency aimed at protecting consumers. Tr. I:48 (McNamara). He appears to have thrived at the CFPB, as

illustrated by his performance reviews. Ex. 19. In 2021, he began a new position in the Bureau of the Fiscal Service at the U.S. Department of the Treasury. Ex. 15. As the petitioner described, his job involves encouraging federal government agencies not to take checks and cash but to take electronic payments instead, thereby saving the government (and ultimately taxpayers) money. Tr. I:137 (petitioner). He is now in a management position and is doing well. Id. at 138; see Ex. 18 (performance reviews).

The petitioner takes pride in his seven years of public service for the federal government and we commend him for that work. Tr. I:123 (petitioner) ("…I'm happy to serve and I'm happy to have been a part of organizations that are returning millions of dollars to taxpayers.") He mentioned that he felt working for the CFPB was one way to make amends or a sort of restitution for his past misconduct. See Tr. I:121 (petitioner). While we do not agree that this work amounts to restitution, we credit the petitioner's industriousness in providing for his family as well as his pursuit of work that is meaningful to him and beneficial to the public. See id. at 148 ("…I view my future in public service as it's been for the last seven years. And it feels good and it's…personally rewarding and I think I can make a difference.").

Evidence of moral reform can be found in good works that demonstrate a sense of responsibility to others. See Matter of Wong, 442 Mass. 1016, 1017-1018, 20 Mass. Att'y Disc. R. 540, 544 (2004) (Court notes approvingly physical labor, active role in church community, participation in sons' activities and community work); Matter of Sullivan, supra ("[a] petitioner's moral character can be illustrated by charitable activities, volunteer activities, commitment to family, or community work."). With respect to non-work activities showing moral reform, the petitioner submitted minimal evidence. He spoke glancingly of time spent with his family during the early years of his disbarment and coaching his children's sports teams. Tr. I:133

(petitioner). Without more detailed elaboration than was provided by the petitioner, the petitioner's family caregiving responsibilities do not shed much light on his moral qualifications to practice law.

The petitioner submitted evidence of volunteering with an organization called Operation HOPE, Inc. in its "Banking on Our Future" program. He described it as a "five-week course" (Tr. I:134 (petitioner)) teaching financial responsibility to fifth graders, once per week. Exs. 21, 27-28. He did this for one or two schools. Id. at 175-176. We find that this was solid evidence of the type of volunteerism we credit highly in evaluating a petition for reinstatement. However, at most, this effort amounted to ten presentations in a single year (2007) over seventeen years ago. Tr. I:176 (petitioner). We had expected to see evidence of more recent, and frequent, volunteer activities in a petition for reinstatement. Finally, the petitioner has shown his strong commitment to community theater as an actor. While a worthwhile pursuit, it is difficult to say that his involvement in community theater is a charitable endeavor which demonstrates community work. Tr. I:132 (petitioner); Ex. 20. Nevertheless, we do give him some credit for it given its recognized public benefit.

On balance, given the length of time that the petitioner has been disbarred, his proof of good works was threadbare and it is insufficient in the context of the entire evidence to persuade us that he is currently of good moral character fit to resume the practice of law.

4. Inadequate Preparation of Questionnaire Responses and Lack of Financial Transparency

The petitioner's responses to the Reinstatement Questionnaires do not reflect due care in his approach to his Petition for Reinstatement, a proceeding in which he has the burden of proof. The original responses to the Reinstatement Questionnaires, Parts I and II, were inadequate,

incomplete, and reflected a lack of effort in a serious proceeding. See Exs. 1 and 3. He omitted some information entirely (e.g. a full list of his assets, real estate and otherwise, during the period of his disbarment) and failed to update other responses between the time of his initial filing in May 2023 and the first day of hearing in December 2023 (e.g. his residence and his pending divorce proceeding / spousal support order), despite understanding that he had the duty to do so. Tr. I:156-157 (petitioner); see Exs. 1 and 3.

Although the Reinstatement Questionnaires were updated before the second day of hearing, by leave of the hearing panel, this did not reflect well on the petition. See Exs. 34A and 34B. This is not the way the reinstatement process should work. See generally Matter of McPhee, supra at 331-332, 343 (denying reinstatement and discussing significance of careless approach to questionnaire, noting that it "should not have taken the petitioner four attempts to provide the basic information called for by the reinstatement questionnaire," and rejecting the argument that the reinstatement process is "iterative" and that "bar counsel has some duty to urge or aid a petitioner to be honest, accurate and complete."). Failure to disclose all matters on the reinstatement questionnaire reflects poorly on the petitioner's moral character. See Matter of Weekes, 31 Mass. Att'y Disc. R. 678 (2015). Further, we find that there was a marked lack of transparency with respect to the petitioner's true financial picture, which was exacerbated by the incomplete Reinstatement Questionnaire responses. There were two main areas which we found inadequate:

i. Real Estate

Part II of the Reinstatement Questionnaire required the petitioner to list "all real estate which you owned or record {sic} or in which you have or had a beneficial interest at any time from the date of the order of disbarment…to the present." Ex. 3, at BC0054. The petitioner

originally listed four properties[7]: (1) his family's home in Wellesley (fair market value at the time of filing his petition: approximately $2.4 million); (2) a property in New Hampshire[8] (fair market value: $740,000); (3) a vacant lot in New Hampshire[9] (fair market value $215,000); and (4) a condominium in Boston (fair market value: $945,000). Id. The petitioner indicated that the first three properties were owned by his wife.

The petitioner failed to list any of the properties involved in his real estate development projects during his disbarment, a total of seven properties that each sold for between $1.5 million and $3.3 million. See id. and Ex. 34B, at DG2040. From 2013 through 2020[10], the petitioner engaged in various real estate development projects where he "acquir[ed], develop[ed], market[ed], and [sold] luxury residential homes" in Newton and Wellesley. Ex. 15; Tr. I:115 (petitioner); Ex. 34B, at DG2040. The petitioner testified that he and other investors formed LLCs to purchase the properties (Tr. II:9 (petitioner)) and that he was not personally a member of the LLCs. Rather, he testified that the member was his company, Norfolk Financial, of which the petitioner was the sole shareholder.[11] Id.; Tr. I:160 (petitioner). He stated that he was

[7] We note that the combined value of these properties cast further doubt on the petitioner's claim that he never had the financial resources to make restitution to Sears.

[8] The petitioner testified that this was his family's "second home." Tr. II:25 (petitioner).

[9] The petitioner testified, "There's an abutting lot of land [to the family's second home] 20 years ago I purchased. Or we purchased I should say. It's always been titled in her name. Just kind of as an abutting lot of land. I think it was $65,000 when I bought it, you know, or when we bought it many years ago." Tr. II:25 (petitioner).

[10] The petitioner testified before us that he was involved in these projects from 2013-2017 but his updated Reinstatement Questionnaire, Part II, reflects that two of the properties sold in July and December of 2020 respectively. See Tr. I:115 (petitioner); Ex. 34B.

[11] By contrast, one of the petitioner's witnesses, Attorney Maiden, testified that he was involved in setting up the LLCs and that the petitioner, personally, was the member of the LLCs. Tr. I:100 (Maiden) ("Q: …it was awhile ago with some of these LLCs, and my question is whether you recall the members being Dan or his company, Norfolk Financial Corp., as the member of these LLCs that purchased the real estate? A: I do remember and it was Dan only. Q: Okay. For all of them? A: For all of them.). During the hearing, the petitioner produced two "Schedule A, Schedule of Members" for two of the LLCs, which show Norfolk Financial as the member. Attached hereto as Appendix A. However, he did not produce the Schedule of Members for six of the seven properties listed on his updated reinstatement questionnaire. See Ex. 34B, at DG2040. In fact, one of the Schedule

"surprised that [the development properties] were not listed" on the Reinstatement Questionnaire and explained:

> …I don't have a beneficial interest, Norfolk does. I'm a sole shareholder of Norfolk Financial, and so I thought that was far enough removed away. Removed and maybe I didn't even appreciate what beneficial interest fully meant.

Tr. I:115 (petitioner). This explanation is implausible; given the number and value of the properties and his active role in their development, the petitioner must have realized he was splitting the legal hairs too finely. In addition, there is a glaring inconsistency: in the resume that the petitioner drafted and submitted into evidence, he indicated that it was a company called Nightingale Development Corp. (about which we heard no testimony), and not Norfolk Financial, that was the managing member of various real estate investment LLCs. See Ex. 15. In fact, his description of Norfolk Financial Corp. does not mention real estate development at all. Id.

Despite being described by his real estate attorney and friend as "[v]ery meticulous about the numbers" (Tr. I:79 (Maiden)) regarding the transactions which they were involved in together, and although the petitioner was the manager of the LLCs, dealing with the checkbook, the lawyers, and the general contractors (Tr. I:117 (petitioner)), before us the petitioner had little memory of the projects and could not recall how much he profited, if at all, from any of the real estate ventures. Tr. I:117 (petitioner). We did not credit this testimony, given the petitioner's intimate involvement in these transactions, some of which only closed in 2020.

By contrast, Attorney Maiden estimated that the petitioner's share on each of these development projects was between $5,000 and $50,000 on any given transaction. Tr. I:88

A's, for 2 Lowell Partners LLC, appears to be for a property that is not even listed on the questionnaire. Id.; see Tr. I:182-183 (petitioner) (explaining that the LLCs were named for the street addresses of the properties, e.g., 26 Westgate Partners, LLC was formed to purchase 26 Westgate Road).

(Maiden). The petitioner testified that any income from those projects went to Norfolk Financial[12] which was, again, solely owned by the petitioner. Id. at 116. However, during this time period, some of the petitioner's tax returns reflect large losses which, in at least a few years, reduced his taxable income down to zero. See Ex. 5 (e.g., tax returns from 2015 showing a loss from Norfolk Financial of $122,681, at BC0149); Tr. I:183-186 (petitioner). The petitioner could not specifically recall what those losses were or explain what had happened on those projects. Tr. I:163; Tr: II:12 (petitioner). He testified generally that although Norfolk Financial was not losing money on a project-by-project basis, overall its operations' expenses exceeded its income. Tr. I:164 (petitioner). Yet some of those expenses included payments on one of the petitioner's cars as well as his health insurance payments. Id.

While we understand that the petitioner is not an accountant, he was a businessman and the manager of the LLCs, and we would have expected that he could provide some explanation or recall of the projects and any associated profits or losses. We were left with the distinct impression that we were not getting the full story in a proceeding in which the petitioner bears the burden of proof. This feeling was exacerbated by the petitioner's lack of transparency with respect to his family's personal properties. For example, the petitioner listed the Wellesley home as his mailing address on Part II even though the house was sold in May of 2023, the same month (and possibly even before) he filed his Petition. See Ex. 3, dated May 26, 2023; Tr. I:157 (petitioner). Then, when he was allowed the opportunity to update his Questionnaire after the first day of hearing, he failed to indicate the sale price of the home which was likely over $2

[12] Again, this testimony conflicts with the petitioner's resume (Ex. 15) which indicates that Norfolk Financial Corp. ceased operations in 2014 and that the petitioner was the founder and President of an entity known as "Nightingale Development Corp." from 2014-2016. We heard no testimony about this corporation. Further, the petitioner's tax returns contain numerous "Schedule C's" which identify him, personally, as the proprietor of various real estate LLCs. Ex. 5, at BC0143, 0145, 0246, 0248, 0250. These tax documents were not addressed or explained.

million. See Ex. 34B, at DG2040; Ex. 3, at BC0054 (the petitioner's original assessment of the fair market value of the home being $2.4 million).

The petitioner testified repeatedly before us that certain assets, such as the home in Wellesley and the real estate in New Hampshire, belonged solely to his wife and not to him. Tr. I:198, 210-211; Tr. II:9 (petitioner). He pointedly referred to these assets as being titled only his wife's name. Yet, his Questionnaire responses made clear that he was the principal source of income for the family (Ex. 1, at BC0004), which is supported by the joint tax returns submitted by the petitioner (Ex. 5), and that they both carried the debt for these properties – both of their names were on the mortgages and the home equity lines of credits and they were both responsible for making the payments. See Ex. 3, at BC0055 (list of mortgages and home equity lines of credit for the properties); Ex. 4, at BC0118-0131 (statements for mortgages and home equity lines of credit). Finally, he testified before us that he and his wife received approximately $800,000 as the proceeds of the sale of the Wellesley house after paying off the mortgage, the home equity lines, and the broker's fees. Tr. II:21 (petitioner). We do not credit the petitioner's attempts to distance himself from the marital assets but not the marital debts. See McPhee, supra p. 12 ("We do not accept such a self-serving distinction between 'his' and 'hers' as to marital assets and debts.").

ii. Other Assets of Value

In his first response to Questionnaire, part II, the petitioner was also not forthcoming about his other assets. See Ex. 3, at BC0054. When asked to list "all other assets of value of or exceeding $1,000 to which you have or held title or in which you have had a beneficial interest at any time during the period of disbarment," he listed only his current car. Id. He was required to list all assets of value for the entire period of his disbarment – a span of seventeen years. Most

egregiously, he failed to include any of his retirement accounts on his original response, one of which was later revealed to be in excess of $400,000. See Exs. 3 and 34B; Tr. I:181-182 (petitioner). In addition, at the time of the hearing (and, potentially, before filing his original Questionnaires), the petitioner had sold the home in Wellesley and had placed substantial proceeds from the sale into a savings account. Tr. II:15 (petitioner). None of those proceeds is reflected in the original Questionnaire. See Ex. 3. He did provide a more fulsome description of his assets in his amended Questionnaire, part II (Ex. 34B), but only after questioning by bar counsel and the panel during the first day of hearing.

He also failed to update his Reinstatement Questionnaire to list his pending divorce proceeding (Tr. I:118-119 (petitioner)) or to update his monthly expenses, which changed significantly during the course of proceedings. Tr. I: 171 (petitioner); Ex. 5, at BC0116 (original monthly expenses); Ex. 32 (updated current weekly expenses). At the time the first monthly expenses were filed, he estimated his expenses at $26,767 per month on an annual salary of $125,000. Ex. 5, at BC0116; Tr. I:171-172, 210 (petitioner). He was approximately $16,000 or $17,000 in the red every month, which he paid for by using equity lines on his homes in Wellesley and New Hampshire. Id. He testified that in addition to private school expenses, "We lived in the community we lived in. There were certain expenses. So it was not a conscious decision to go and purposely put myself in debt, but rather, it was a, a kind of the way life goes." Id. at 178. With respect to his updated expenses, there were aspects of his finances that he could not satisfactorily explain. For example, he was unable to detail exactly why in his first response he was paying $6,000 a month for his daughters' tuition (Ex. 4, at BC0116) and now he is paying approximately $1,000. See Tr. II:20 (petitioner).

Rather than being fully transparent with us about his financial situation, the petitioner left us with more questions than answers. His testimony and purported lack of recall gave us the distinct impression that we were not getting the full story on his financial picture and that he might be dissembling about a variety of things. At best, clarity and attention to detail are at issue here (attributes required of all lawyers). At worst, we face the possibility that there was a deliberate obfuscation of the petitioner's finances to buttress his claim of inability to make restitution. Neither option is acceptable. Given that the petitioner's misconduct related to the misappropriation and conversion of client funds, it is troubling that he did not come to the reinstatement proceeding prepared to explore and explain all of his financial dealings (whether personally or through various corporations) during the period of his disbarment.

5. Witness Testimony and Letters

Four witnesses testified on the petitioner's behalf at the hearing. Two of the witnesses have known the petitioner since before his disbarment and two met him only afterwards. They all clearly hold the petitioner in high esteem and we credit that they believe him to be a good and trustworthy person. However, we find that much of what they said was not helpful to us in making our decision to certify that the petitioner is now worthy of the public's trust. With the exceptions of Mr. McNamara's and Attorney Maiden's testimony, their testimony was overall lacking in evidence or information that distinguishes the petitioner's conduct before and after his underlying discipline, and that sheds light on his rehabilitation. See Matter of Dawkins, 432 Mass. at 1011, n.5, 16 Mass. Att'y Disc. R. at 96, n.5; Matter of Corben, 31 Mass. Att'y Disc. R. at 101; Matter of Lee, 28 Mass. Att'y Disc. R. at 549-551. Further, although all were aware of the petitioner's misconduct, none discussed it in detail with him directly. Strikingly, despite this, they all appeared to diminish or dismiss the petitioner's misconduct. We are left to surmise that

this disconnect is due to the petitioner's own characterization of the events to them and his lack of insight into his misconduct.

Attorney John O'Connor, a partner at a Boston firm, testified that he began representing the petitioner and his firm, Sudalter & Goldstone, in approximately 1999. Tr. I:20 (O'Connor). He represented the petitioner as defense counsel on a number of matters involving consumer claims on collection-related issues. Id. at 21-22. He described the petitioner as a cooperative and truthful client; a "good client." Id. at 21. Attorney O'Connor also represented the petitioner / Norfolk Financial after the petitioner's disbarment. Id. at 23. Their contact was primarily professional for approximately fifteen years but they occasionally socialized together at "industry events." Id. at 26-27. O'Connor testified that he did not discuss the petitioner's disbarment with him in detail (see id. at 39) but it came up "indirectly" and he felt it was clear that the petitioner was "deeply regretful." Id.

John McNamara, the principal assistant director of markets and assistant director of consumer payments and deposits at the CFPB, testified before us. Tr. I:47-48 (McNamara). McNamara has known the petitioner since 2006 when McNamara owned a small debt collection agency and the petitioner's company, Norfolk Financial, was one of McNamara's clients. Id. at 50. They have been in touch several times a year since that time. Id. at 53. At some point, the petitioner reached out to McNamara for advice on how to obtain a position at the CFPB. Id. at 54-55. Once hired through an independent process, the petitioner reported directly to McNamara for a period of four months in 2019. Id. at 72. Although McNamara had googled the petitioner and knew he was a disbarred lawyer, it is unclear if the two ever directly discussed the misconduct leading to the petitioner's disbarment. Id. at 59-60. Regardless, McNamara had high praise for the petitioner's competence and work while at the CFPB. Id. at 55-59.

McNamara relayed a story that occurred post-disbarment in which the petitioner stood out for his honesty and integrity. McNamara testified that the petitioner received a payment from a consumer directly and then notified McNamara that he owed McNamara the money. Id. at 59. McNamara was impressed by this because it was common practice for debt buyers like Norfolk Financial not to inform McNamara's agency if they received a payment directly from a consumer, thus avoiding the contingency fee on the funds collected. We credit this testimony and it reflects well on the petitioner's character. However, it is not sufficient, on its own, to demonstrate the petitioner's moral qualifications in the fact of the other deficiencies in his petition.

Attorney Boris Maiden also testified on the petitioner's behalf. He is a Massachusetts attorney whose practice mainly focuses on commercial and residential real estate. Tr. I:75-76 (Maiden). Attorney Maiden met the petitioner when the petitioner was selling a condominium in 1998 or 1999. Id. at 76. They became friends and have continued to have a professional relationship as well wherein Attorney Maiden handles the petitioner's real estate matters. Id. at 76-77. Attorney Maiden also represented the petitioner and his partners when the petitioner was involved in the real estate development projects. Id. at 84-85. Attorney Maiden testified that he has always known the petitioner to be honest and competent. Id. at 79. When asked if he has seen a change in the petitioner's character over the years, Attorney Maiden explained that he "saw progression and maturity over the years where he became more – not as quick to make a decision, evaluating each and every process from every different perspective. He opened up all his cards. He did not hide anything. There was nothing tricky about him." Id. at 83. This was helpful testimony that hinted at reform, however, despite their friendship and professional

relationship, the petitioner also never discussed his misconduct with Attorney Maiden in detail. See id. at 91-93.

Finally, Attorney Joshua Burlingham testified on the petitioner's behalf. He met the petitioner in 2017, after the petitioner had been disbarred for many years, when they both started working at the CFPB. Tr. I:103 (Burlingham). Attorney Burlingham testified that he has always found the petitioner to be honest and to have integrity. Id. at 105. He testified that he has often relied on the petitioner's advice both professionally and personally. Id. Attorney Burlingham became aware of the petitioner's disbarment through coworkers at the CFPB. He then looked up the judgment of disbarment and read the decision himself. The petitioner did not disclose it to him and they only discussed it when the petitioner began the reinstatement process and asked Attorney Burlingham if he would be a witness. Id. at 109-110. Attorney Burlingham's understanding from his discussion with the petitioner was that there was a "billing dispute where [the petitioner] had made claims that he was owed funds that he was not owed, and those funds were paid by the person that [the petitioner] had demanded the funds from." When questioned whether the petitioner had admitted that his conduct was intentional, Attorney Burlingham answered, "He didn't indicate that his conduct was not intentional. He explained that he –what he did was in good faith. He believed that he was owed funds." Id. at 112. As discussed supra, the petitioner testified similarly before us.

We would have liked to hear from witnesses with whom the petitioner had shared the full scope of his misconduct. This would serve two purposes: (1) it would show insight, reflection, transparency, and acknowledgment of wrongdoing on the part of the petitioner, something which is significantly lacking in his petition, and (2) we would have greater confidence in the

witnesses' assessment of the petitioner's current character if it was clear that the witnesses knew the complete background.

6. Conclusions as to Moral Fitness

Given the above, we conclude that the petitioner has failed to carry his burden of demonstrating that he has the moral character required for readmission to the bar. In addition to other deficiencies, ultimately, a recommendation of reinstatement in the absence of at least a concerted effort at restitution and a realistic plan for payment would contravene long-standing precedent. See, e.g., Matter of Dawkins, supra (factor in denial of reinstatement was failure to make restitution); Matter of Heffernon, 14 Mass. Att'y Disc. R. 305 (1998) (denial of reinstatement "until some monies have been paid on the malpractice judgments against him and a realistic plan for full payment of both judgments is proposed"); Matter of Waitz, supra (denial of reinstatement based in part on lack of sufficient attempts to pay debt to IRS); Matter of Wynn, supra at 317 (failure to pay tax debt and lack of restitution to wronged clients "pose[d] substantial impediment to a finding that reinstatement would be in the interests of the bar and the public").]

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

"Consideration of the public welfare, not [a petitioner' s] private interest, dominates in considering the reinstatement of a disbarred applicant." Matter of Ellis, supra, 457 Mass. at 414, 26 Mass. Att'y Disc. R. at 164. 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, supra, 385 Mass. at 52, 3

Mass. Att'y Disc. R. at 73. "The impact of a reinstatement on public confidence in the bar and in the administration of justice is a substantial concern." Matter of Waitz, supra.

The petitioner's primary motivation for seeking reinstatement appears to be financial: he would like to be making more money and that higher salary would lead to a higher pension (if he stays in government service). Tr. I:147-151. Of course, there is nothing wrong with seeking career advancement and financial success. However, under the facts of this case, we agree with bar counsel that it is troubling that this was a primary motivator. Given our determinations above, we must conclude that the petitioner has not established that his reinstatement would be in the public interest. He has not carried his burden to prove his competence and learning in Massachusetts law. Further, he failed to establish that he presently has the moral qualifications necessary to practice law. Therefore, given the magnitude of the petitioner's misconduct that led to his disbarment, reinstatement at this point would be detrimental to the public interest and confidence in the integrity and standing of the bar.

V. Conclusions and Recommendation

Based upon the petitioner's written submissions, his own testimony, and that of his witnesses, the Hearing Panel recommends that the petition for reinstatement of Daniel W. Goldstone be denied.

Respectfully submitted,
By the Hearing Panel,

R. Michael Cassidy
R. Michael Cassidy, Esq., Hearing Panel Chair

Frank E. Hill, III
Frank E. Hill, III, Hearing Panel Member

Richard C. Van Nostrand
Richard Van Nostrand, Esq., Hearing Panel Member

Dated: June 18, 2024

2 Lowell Partners LLC

SCHEDULE A
SCHEDULE OF MEMBERS

Member	Initial Capital Contribution	Contribution Date	Assumed Debt	Tax Basis	Ownership
Norfolk Financial Corp	$46,500	09/28/18		46,500	Common Interest: 100
Blackfish LLC	$46,500	09/28/18		$46,500	Preferred Interest: 50
Brian Kanter	$46,500	09/28/18		$46,500	Preferred Interest: 50

2018

106 Suffolk

SCHEDULE A
SCHEDULE OF MEMBERS

Member	Initial Capital Contribution	Contribution Date	Assumed Debt	Tax Basis	Ownership
Blackfish, LLC	$100,000.00	11/15/18		$100,000.00	Common Interest: 100
Norfolk Financial Corp.	$100,000.00	11/15/18		$100,000.00	Preferred Interest: 50
Brian Kanter	$100,000.00	11/15/18		$100,000.00	Preferred Interest: 50

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