

IN RE: ROBERT I. TATEL

S.J.C. Order Denying Reinstatement entered by Justice Ireland on February 7, 2007. ¹

REPORT OF REINSTATMENT HEARING PANEL

INTRODUCTION

The Petitioner, Robert I. Tatal, has filed a petition seeking reinstatement as a member of the bar of the Commonwealth of Massachusetts after a two-year suspension, which commenced on December 1, 1998. A hearing was conducted on the petition on September 22, 2005, and October 27, 2005. Petitioner was represented by Thomas Dwyer, Esq., while Robert I. Warner, Assistant Bar Counsel, appeared for the Office of Bar Counsel. In addition to his own testimony, Petitioner presented the testimony of nine witnesses: Julia M. Reade M.D., Leo Cushing, Jonathan Franzel, Michelle McCarthy, James Nentwig, Elizabeth Joyce, Barry Park, James Burke, and Robert Mullaly. Twelve exhibits were introduced. At the conclusion of the hearing, the Petitioner urged the panel to recommend his reinstatement, while Bar Counsel opposed reinstatement.

A Petitioner for reinstatement bears the “two-prong” burden of satisfying the requirements for reinstatement set forth in S.J.C Rule 4:01, § 18(5), namely, he must “demonstrat[e] that he ... has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth, and that his ... resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest.” See *Matter of Cappiello*, 416 Mass. 340, 342, 9 Mass. Att’y Disc. R. 44, 46 (1993). “In any disciplinary case, the primary factor for the court’s consideration ‘is the effect upon, and perception of, the public and the bar.’” *Matter of Daniels*, 442 Mass. 1037, 1038, 20 Mass. Att’y Disc. R. 120, 122 (2004) (rescript), quoting *Matter of Alter*, 389 Mass. 153, 156, 3 Mass. Att’y Disc. R. 3, 6 (1983), and *Matter of Keenan*, 314 Mass. 544, 547 (1943).

Bar Counsel opposes the petition for reinstatement, arguing primarily that Petitioner has not shown sufficient evidence of his rehabilitation, and that his resumption of practice would be detrimental to the integrity and standing of the bar. Specifically, Bar Counsel argues that the Petitioner has failed to prove that, after two suspensions from the practice of law, one for conviction of a crime, he now possesses the ability to conform his conduct to the ethical requirements of practice. In short, Bar Counsel argues, Petitioner has not shown that anything has changed.

We agree. The evidence shows that Petitioner has begun to take some steps to identify and address the character traits that led him into trouble on past occasions. However, this process has, at best, only just begun. While we do not foreclose the possibility that Petitioner’s continued rehabilitation through counseling, addressing of personal issues, and service to others may one day establish that he is fit to practice law, we cannot find that he has reached that point. As discussed below, the fact that we are confronted with Petitioner’s second suspension, and second petition for reinstatement, is not essential to our conclusion, but certainly reinforces it. We find that Petitioner has not met his burden of showing that his re-admission would not be detrimental to the bar or to the public interest.

BACKGROUND

Robert I. Tatel was admitted to the bar of the Commonwealth of Massachusetts on December 1, 1973. After his admission, he worked as legal counsel to the Highway Safety Bureau, and then in a non-legal position as an assistant secretary of administration of finance for the Commonwealth. Petitioner's first suspension from practice came in 1982, when he pled guilty to three violations of G.L. c. 268A § 9(a), arising out of a kickback scheme in which he made payments to public officials in return for referring legal business to him. He served four months in the house of correction and was placed on probation for two years. He also completed 500 hours of court-ordered community service. As a result of these convictions, he was indefinitely suspended from the practice of law, retroactive to his temporary suspension in 1982. Matter of Tatel, 4 Mass. Att'y Disc.R 1381984) (Exhibit 5).

In 1987, Petitioner filed a petition for reinstatement and a hearing was held. Petitioner presented twelve letters of recommendation and four live witnesses, who attested to his veracity and his excellent reputation in the community. Petitioner expressed remorse of this conduct, and testified that he "felt terrible about what he had done, for the cloud which he had placed upon his wife and children and that he sorely missed the practice of law." (Exhibit 8). He further testified that he had tried to benefit from his mistake, and "would like another chance" to practice law. The petition for reinstatement was granted by the Supreme Judicial Court for Suffolk County on August 2, 1989. Matter of Tatel, 6 Mass. Att'y Disc. R. 314 (1989 (Exhibit 9).

Petitioner apparently resumed private practice without incident until the spring of 1996, when he represented a buyer who was purchasing an ice cream shop. The day before the closing, Petitioner discovered a lien against the sellers' business assets. Petitioner's client wished to complete the transaction, and arrangements were made to escrow a portion of the purchase price to satisfy the lien.

Petitioner then entered into negotiations with counsel for the lien holder. In the course of these negotiations, Petitioner misrepresented the amount available to satisfy the lien, thereby inducing the lien holder to accept less than he was owed. Petitioner also violated the terms of the escrow agreement by paying funds to his client instead of to the sellers. After a disciplinary hearing, he was found to have violated Canon One, DR 1-102(A) (4) and (6), and Canon Nine, DR 9-102(A). He was suspended from the practice of law for a term of eighteen months. Matter of Tatel, 18 Mass. Att'y Disc. R. 522 (2001) (Exhibit 2).

During this second suspension, Petitioner first worked as the managing director of the condominium, property and liability insurance division of B.K. McCarthy Insurance Agency. He then became employed as a loan processor for JMA Mortgage, Inc., a company affiliated with B.K. McCarthy. During his suspension, Petitioner took and passed the Multi-State Professional Responsibility Examination, took several MCLE courses, and read Lawyer's Weekly. Petitioner's term suspension expired on August 4, 2003, and he then became eligible to apply for reinstatement. The petition for reinstatement was filed on May 20, 2005.

In January 2005, Petitioner submitted to an evaluation by Dr. Julia Reade, a forensic psychiatrist to whom he was referred by his attorney. He met with Dr. Reade once, for approximately four and one-half hours (Transcript Volume I:39). Dr. Reade and Petitioner also met at the office of Petitioner's lawyer for approximately three hours shortly before the hearing. The purpose of this meeting was expressly confined to evaluation of Petitioner's psychological makeup and functioning, and in no way constituted either treatment or recommendations for treatment (Tr. I:74-75). Dr. Read's evaluation was based solely on her interaction with Petitioner and with information supplied by Petitioner's attorney. (Tr. I:81).

In February 2005, Petitioner first saw a mental health professional for therapeutic purposes. He consulted with Dr. Robert Mullaly, a trained psychotherapist who has known Petitioner socially since childhood. (Tr. II:97). Petitioner and Dr. Mullaly met approximately a half dozen times between February 2005 and the time of Dr. Mullaly's testimony on October 27, 2005. (Tr. II:114). Dr. Mullaly testified that, as of his most recent meeting with Petitioner, the

weekend before his testimony on October 27, 2005,

the struggle is to go forward to set up a regular rigor that sets in place all of these pieces. And that's to me right now the most important ingredient is to get on a regular schedule. And I think that is what we started to go forward with on this past weekend is to make that commitment that his is going to be a regular weekly ongoing process.

(Tr. II:128-129).

In addition to the testimony of Dr. Reade and Dr. Mullaly, Petitioner presented the testimony of seven non-medical witnesses all of whom were supportive of his petition for reinstatement.

FINDINGS OF FACT

Viewed as a whole, the testimony of the lay witnesses called by Petitioner establishes that he has been a conscientious and effective employee in the insurance and mortgage business since his reinstatement. He has the support of a number of friends and former clients, some of whom would be interested in retaining him to handle their legal matters in the future. He has professional contacts who might be expected to provide him with support and mentoring. In short, Petitioner's witnesses present the usual array of testimony expected on a reinstatement petition regarding competence and learning in the law, as well as the availability of support for his return to the profession. We are persuaded that Petitioner has the competence and learning in the law required for readmission.

We find Petitioner's evidence of moral qualifications to practice law to be less persuasive. While there was some evidence of Petitioner's community and fund-raising work with the Jimmy Fund and similar organizations, we do not see evidence of a deep or ongoing commitment to any activity outside of Petitioner's business interests. Nor do we see any evidence that Petitioner has in any meaningful and continuous way demonstrated a concern for the welfare of others, attempted to "give back" to the community, or in any other way demonstrated an intent to atone for his misdeeds. While the absence of this type of evidence, standing alone, might not bar a Petitioner's readmission, when combined with the circumstances of Petitioner's entry into therapy, we find in this case a troubling pattern of a Petitioner whose activities, and indeed rehabilitative efforts, tend toward the cosmetic and superficial, and have not yet demonstrated a deep, genuine and lasting desire for either for self-improvement or to help others in the community.

This conclusion is based on the testimony of the two mental health professionals, as well as our assessment of Petitioner's demeanor during his testimony at the reinstatement hearing. At some times, his responses seemed somewhat rote and programmed (Tr. II:27-31, II:46, II:52); at other times, he was argumentative or evasive on points that merited a simple, straight answer (see, e.g. Tr. II:47-52). This is quite troubling in a Petitioner who has already been through the reinstatement process on an earlier occasion, and successfully persuaded the hearing panel—wrongly, as it turned out—that he had learned from his suspension and would not commit any further ethical transgressions.

Furthermore, we are not persuaded that all of Dr. Reade's conclusions and observations square with the other evidence. For example, Dr. Reade testified that "what has changed over time is I think he felt extraordinarily ashamed and upset with himself for the way he managed this situation." (Tr. I:56). In fact, that description is neither qualitatively nor quantitatively different from Dr. Reade's description of Petitioner's self-described feelings after his first suspension, at which time Dr. Reade stated "he felt very remorseful about his actions in the first case. Felt ashamed that he brought dishonor on his family and his children and on the legal profession." (Tr. I:91).

Dr. Reade further testified that Mr. Tatel was "involved in a relationship with a woman which

is a far healthier relationship, stopped using marijuana in 2000, and was very involved in a program called Overeaters Anonymous. She opined that he was “clearly very engaged in Overeaters Anonymous groups and attentive to his relationship with his advisor. In an ideal universe, I would like to see him in ongoing psychotherapy because I think it would help him understand more about himself and make him a happier person. And also even less likely to act out in the ways that I think he has acted out.” (Tr. I:69). In fact, although Petitioner told Dr. Reade that he was going to Overeaters Anonymous two or three times a week and speaking daily with his sponsor (Tr. I:99), Mr. Tatel’s own testimony was that he had last attended an OA meeting a couple of weeks before the hearing, and that before then he had not attended since before the summer started. (Tr. II:71-72).

We do not mean to suggest that attendance at Overeaters Anonymous is a sine qua non of reinstatement; however, we find troubling the inconsistency between what Petitioner told Dr. Reade he had done and what he actually did. This type of contradiction undermines the weight of Dr. Reade’s testimony, based, as it was, so extensively on what Petitioner related to her. Further, we find Petitioner’s sporadic involvement with OA typical of his other efforts at self-improvement and community service.

This discrepancy is particularly disturbing as it one of the bases for Dr. Reade’s opinion. Dr. Reade testified:

Q: If the same or similar stressful situations, circumstances occurred again, would Mr. Tatel react as the pugnacious Chelsea individual?

A: Well I don’t think you can take the Chelsea out of Mr. Tatel. I think it is in there for better or for worse. I think what is different now is that he understands some essential things. I think he changed after the ’82 suspension in certain ways. And I think he has changed subsequently in certain ways after his 2001 suspension. And I think he has looked more internally to try to cope better with the things that are difficult for him. And the things that are distressing for him.

So instead of eating uncontrollably or smoking marijuana to get away from it or just pretending it is going to go away and he doesn’t need to think about it, he really has made some significant changes in his life. He’s addressing his weight issue. He is not smoking marijuana anymore. And he has also consulted with a psychologist to try to repair his relationships with his daughters. I think he is working at those things in a way and is more thoughtful about himself and his predicament than he was in either 1982 or in 1996.

(Tr. 97-98).

Even viewing the evidence in the light most favorable to Petitioner, we agree with Assistant Bar Counsel’s assessment that “Petitioner may have begun the [rehabilitative] process, but it has not yet come to an end.” Our conclusion is based not only on our own observations of Petitioner, but on the testimony of the evaluative psychiatrist, Dr. Reade, who testified as follows in response to a question from the panel about why she would recommend psychotherapy for Mr. Tatel:

A: I would recommend it to Mr. Tatel for a couple of reasons. One is that I think he would gain a tremendous amount of self-knowledge by engaging in psychotherapy that would help him further expand his repertoire of tools, help him to take better care of himself, help to understand what’s happening to him when he starts to get heated up or when he’s going to start to see red or when someone might push his buttons, and how to learn different strategies for responding rather than simply putting up his dukes and going back to the streets of Chelsea,

The other reason I would recommend it is that I think he is a thoughtful guy who is capable of thinking about himself and quite curious about that. I think it is

evidence about a number of things.

One is watching him over the course of four and a half hours in my office, watching him become more interested and more engaged and starting to have the gears turn. And the other is that he has made use of this very brief consultation with the psychologist to try to improve his relationships with his daughter. So he's eager, sort of hungry for someone to help him figure this stuff out.

(Tr. I:131-132).

In our judgment, this testimony bespeaks a man who may have the potential for rehabilitation to such an extent that he would be fit to practice law again, and perhaps even a man who has begun the rehabilitation process. Nevertheless, we do not find it persuasive or reassuring as evidence that Mr. Tatel has reached the point where we can say with confidence that his return to practice would not be "detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest."

Our conclusion is reinforced by the fact that we are confronted with Petitioner's second suspension, and his second attempt at reinstatement. While it is not clear that a Petitioner seeking a second reinstatement is held to any higher standard, either in terms of the quantum of proof or the showing that must be made, it is clearly a factor to be considered. While we might expect the public to accept the idea that a lawyer who has erred is entitled to a second chance, we are concerned about how the public might view a lawyer who, having once been suspended for the commission of a crime involving dishonesty and resulting in jail time, nevertheless is unable or unwilling to conduct himself honestly and in accordance with the applicable ethical standards once reinstated. We do not mean to foreclose the possibility that circumstances might warrant a second reinstatement, but where, as here, the evidence presented by Petitioner is far from overwhelming and, in some cases, distressingly similar to that presented in his first reinstatement hearing, we cannot recommend that Mr. Tatel be reinstated at this time.

CONCLUSIONS OF LAW

For the reasons discussed in this report, the Hearing Panel concludes that the Petitioner, Robert I. Tatel, has not met his burden under S.J.C. Rule 4:01, § 18(5), of "demonstrating that... resumption of the practice of law will not be detrimental to the integrity and standing of the bar... or to the public interest." Consequently, the Hearing Panel recommends that Mr. Tatel's petition to be reinstated to the bar of the Commonwealth of Massachusetts be denied.

FOOTNOTES

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.