IN RE: SERGIO P. VESPA

NO. BD-2008-009

S.J.C. Order Denying Reinstatement entered by Justice Budd on June 28, 2017.[1]

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

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

In the Matter of SERGIO P. VESPA Petition for Reinstatement	**BBO File No. BD-2008-0009**

HEARING PANEL REPORT

I. Introduction

On October 12, 2016, Sergio P. Vespa filed a second petition for reinstatement from an order of indefinite suspension entered February 29, 2008.

A public hearing on the petition was held on December 12, 2016. Eight exhibits were admitted into evidence including, as Ex. 1, the petition for reinstatement and the petitioner's responses to the standard reinstatement questionnaire, Part I (BBO 4 through BBO 24), and a "petition for reinstatement" dated November 4, 2016 (BBO 1 through BBO 3). The petitioner testified on his own behalf and called one witness, attorney Lawrence Gatei. Bar counsel called no witnesses. For the reasons discussed below, we recommend that the petition for reinstatement be denied.

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 the law required for admission to practice law in this Commonwealth, and that his . . . resumption of the practice of law [would] not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public

interest." Matter of Daniels, 442 Mass. 1037, 1038, 20 Mass. Att'y Disc. R. 120, 122 (2004), quoting S.J.C. Rule 4:01, § 18(5). See Matter of Dawkins, 432 Mass. 1009, 1010, 16 Mass. Att'y Disc. R. 94, 95 (2000); Matter of Pool, 401 Mass. 460, 463, 5 Mass. Att'y Disc. R. 290, 293 (1988).

In determining whether the petitioner has satisfied these requirements, a panel considering a petition for reinstatement looks to "(1) the nature of the original offense for which the petitioner was [suspended or disbarred], (2) the petitioner's character, maturity, and experience at the time of his [suspension or disbarment], (3) the petitioner's occupations and conduct in the time since his [suspension], (4) the time elapsed since the [suspension], and (5) the petitioner's present competence in legal skills." Matter of Prager, 422 Mass. 86, 92 (1996); see Matter of Hiss, 368 Mass. 447, 460, 1 Mass. Att'y Disc. R. 122, 133 (1975).

The conduct giving rise to the petitioner's suspension is affirmative proof that he lacks the moral qualifications to practice law. See Matter of Centracchio, 345 Mass. 342, 346 (1963). To be reinstated, 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. at 126.

III. Disciplinary Background

The petitioner was admitted to the bar on June 12, 2001. (Ex. 6, BBO 35). A sole practitioner, he was indefinitely suspended effective February 29, 2008, after stipulating to various acts of misconduct, including intentional misuse of client funds with intent to deprive and with actual deprivation resulting; making intentional misrepresentations under oath to bar counsel; falsely representing to an insurer that he had witnessed his client's signature; and numerous IOLTA violations. (Ex. 1, BBO 21-24). The misconduct occurred in the course of a

single representation of a personal injury client: the petitioner received two separate settlement checks, each in the amount of $1,200 and converted all of the funds to his own use. (Ex. 1. BBO 21 to BBO 25). In the first instance, he failed to inform his client or the Department of Revenue ("DOR") of the receipt in early November 2006 of a check made payable to the DOR, the client, and himself, and he signed both his own and his client's name to the check and deposited the funds into his IOLTA account. (Ex. 1, BBO 21). After receipt of a second $1,200 check from another insurer about five months later, he converted those funds as well.[1] The petitioner took the client funds to pay for supplies for his drapery business, because he needed the cash. (Tr. 79-80, petitioner).

He ignored the client's attempts to contact him -- fifteen to twenty times in 2006 and 2007 -- for information about the settlement. (Ex. 1, BBO 22). In response to bar counsel's investigation, after her receipt of notice of a dishonored check on his IOLTA account, the petitioner intentionally misrepresented under oath certain material facts concerning the receipt of money on the client's behalf. Id. It was not until November 19, 2007, well after bar counsel had begun her investigation, that the petitioner repaid the client the money he had converted, plus interest. (Ex. 1, BBO 22).

On April 14, 2014, the petitioner filed his first petition for reinstatement from the 2008 suspension. After a hearing, the panel recommended that he not be reinstated (Ex. 1, ¶ 10, BBO 2; Ex. 7) and the SJC adopted that recommendation, denying reinstatement on October 26, 2015. http://www.mass.gov/obcbbo/bd08-009-2.pdf . The hearing panel and SJC made four recommendations to the petitioner to strengthen his future attempt at reinstatement: (1) that he file a motion for leave to work as a paralegal; (2) that he take additional MCLE courses in the

[1] The record does not reflect whether he converted the second check directly upon receipt or whether he first deposited it into his IOLTA account before misusing the funds.

areas where he plans to practice; (3) that he update his learning in IOLTA and recordkeeping; and (4) that he meet with the Law Office Assistance Program (LOMAP). (Ex. 7, BBO 52 – BBO 53; Slip. op., at 9).[2]

The petitioner filed a motion for leave to work as a paralegal, which was allowed on January 13, 2016. http://www.mass.gov/obcbbo/bd08-009-3.pdf . Since then he has worked for attorney Lawrence Gatei of the Immigration and Business Law Group, LLP. (Ex. 1, ¶ 12, BBO 2 and ¶ 3(A), BBO 6;[3] Ex. 3, BBO 26). His work has consisted of doing research and writing, preparing motions and documents for clients, such as immigration applications and forms. (Tr. 11-13, Gatei; Tr. 30, petitioner).

IV. Findings

A. Moral Qualifications

As explained below, we find that the petitioner has affirmatively established that he is reformed and has been rehabilitated. See Matter of Waitz, 416 Mass. 298, 305, 9 Mass. Att'y Disc. R. 336, 343 (1993) ("[r]eform is 'a state of mind' that must be manifested by some external evidence"). The prior reinstatement panel found that the petitioner possessed the moral qualifications to be reinstated (Ex. 7, p. 3) and we agree.

We found the petitioner's claims of remorse to be credible. See Matter of Ellis, 457 Mass. 413, 416, 26 Mass. Att'y Disc. R. 162, 166 (2010) (identifying remorse as one of factors in support of successful showing of good moral character). While his testimony initially was equivocal, referring to his conduct as a "mistake" (Tr. 34-36, petitioner), and saying he did not

[2] Among other things, LOMAP provides assistance in financial management, how to take care of client money, law office financial management, and budgeting assistance, all of which are areas in which the petitioner appears to be lacking. Recommendations (2), (3) and (4) are discussed in detailed below in sections (B) and (C).

[3] We note that this paragraph of the 2016 reinstatement petition says he has been employed "since January 3, 2016" while the order allowing him to work as a paralegal entered on January 13, 2016. We assume the earlier date is an uncorrected error, the significance of which becomes apparent later.

know why he did it (Tr. 70-72, petitioner), on further questioning he conceded that his misconduct was intentional. (Tr. 36-38, petitioner). His petition reflects that he is the son of Italian immigrants who have no formal education, and that the day he was sworn in to the Massachusetts bar "was one of the proudest days in both my parents and my life." (Ex. 1, BBO 11). Having observed the petitioner carefully during his testimony, we find him to be repentant and remorseful.

Since his suspension and after beginning work as a paralegal, the petitioner described his self-employment as the president/CEO of Maria's Drapery, a family business in which he manufactures handmade curtains and drapery and which he has owned since 1995. Ex. 1 (BBO 5). He testified that he lives with his parents but they are self-supporting through their own pensions. (Tr. 39, Petitioner).

"A petitioner's moral character can be illustrated by charitable activities, volunteer activities, commitment to family, or community work." Matter of Sullivan, 25 Mass. Att'y Disc. R. 578, 583 (2009). Considering all the evidence with which we have been presented, we agree that the petitioner has shown moral fitness to resume the practice of law. See generally Matter of Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95.

B. Competence and Learning in the Law

The petitioner's pre-suspension practice predominantly consisted of personal injury and criminal defense work; he did this for three years as an employee of a law firm. After that, he was self-employed for about two years. While self-employed, he represented a client in one personal injury case, drafted a lot of wills and trusts and did some small claims work. He has experience dealing with property transactions in Italy and, since he is fluent in Italian, explaining the transactions to his Italian-speaking clients. (Ex. 7, first reinstatement hearing panel report, at

BBO 49).[4] When he was self-employed he was practicing law part-time, dividing his time between his law practice and his drapery business. (Tr. 69-70, petitioner). Accordingly, his actual legal experience before being suspended is quite limited and would provide little support for him if he were to be reinstated at this time.

The petitioner described his practice plans should he be reinstated. His prior plan, at his first reinstatement, was to associate with Belmont attorney Dale Tamburro. However, that is no longer a viable option. (Tr. 42-44, petitioner). Instead, if reinstated, he would close the family drapery business he owns and work full time as an associate for Attorney Gatei. (Tr. 49-51, petitioner).

Since his last reinstatement hearing, the petitioner has taken several additional MCLE courses and has twice taken bar counsel's IOLTA trust accounting seminar. (Ex. 1, BBO 8; Tr. 8, 11, 14, 16, Gatei; Tr. 30, 32, 44, 62, petitioner).

We find that the petitioner has demonstrated competence and learning in the substantive areas of practice law, but he is completely lacking in the area of trust accounting, as discussed in more detail below. While we would have preferred that the petitioner had read the *Massachusetts Lawyers Weekly* and the free slip opinions from the SJC and the Appeals Court, we are satisfied with the petitioner's having taken courses in criminal law and immigration, and we further credit the testimony of Attorney Gatei as to the good quality of the petitioner's research memoranda during his work as a full-time paralegal at the firm since January of 2016. (Tr. 7, 8, 11-13, Gatei).

However, because the petitioner has a lack of knowledge about trust accounting, he has not met his burden of demonstrating competence and learning in the law.

[4] Since this was the petitioner's second effort at being reinstated, no evidence was adduced concerning his pre-suspension practice of law. However, we have the benefit of the report from the first reinstatement panel, which was an agreed exhibit.

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

SJC Rule 4:01, § 18(5), provides that the hearing panel must determine, inter alia, whether the petitioner's reinstatement would be "detrimental * * * to the public interest." The petitioner's lack of competence and learning in the law, as it pertains to trust accounting, compels a finding that the petitioner has not satisfied the "public interest" criterion.

Putting aside the issues of letters of recommendation and attestations to the petitioner's knowledge of criminal law and immigration law, he has failed to abide by two of the recommendations that came from his first attempt to be reinstated: he failed to contact LOMAP (Tr. 59-60, petitioner) and he failed to become knowledgeable in IOLTA law and trust accounting. (Tr. 53-55, petitioner). The Petitioner candidly admitted at hearing that "I still cannot figure out reconciliation." (Tr. 54). The Petitioner's complete ignorance of how to perform a three-way reconciliation, and his cavalier attitude toward his failure to understand trust accounting requirements, record-keeping, and balancing a checkbook compels us to deny his petition for reinstatement at this time. When told he had commingled funds because he put IOLTA funds together with his business funds, and used money that was not his, he responded: "I'm not really sure about that. I understood that to also include commingling as if the funds that were in the IOLTA account I paid out to my business <u>because I used business funds to start the account</u>. Like I said, it's just one, it's one giant fiasco of many little parts, all my fault." (Tr. 73, petitioner; emphasis added). This was clearly wrong, or at least we hope it was. The respondent was not allowed to "fund" his IOLTA account with other money; it was only allowed to contain a nominal amount of attorney funds. Mass. R. Prof. C. 1.15(b)(2)(i). Therefore, the petitioner was wrong in believing that he could deposit his own funds into an IOLTA account and return these funds to his drapery business when he needed money to cover expenses, even for a short

period of time. (Tr. 79-80, 85-86, petitioner).

In addition, he repeatedly referred to over-drafting his business checking account as "misplacing a decimal point." (Tr. 54-58, petitioner). He acknowledged having treated his IOLTA account "just like a regular checking account." (Tr. 35, 72, petitioner). While he may be content to pay overdraft charges for his business checking account (Tr. 57-58, petitioner), overdrafts in an attorney's IOLTA account—such as the one that triggered the investigation of the petitioner's misconduct in 2007—that option is not open to attorneys when handling client funds, where a dishonored check is automatically reported to the Office of the Bar Counsel because it raises the specter of misuse of client funds.[5] See Mass. R. Prof. C. 1.15(h) (dishonored check notification). More importantly, he is responsible for accurate bookkeeping as part of his obligation to safeguard client funds under his control. Also his cavalier attitude towards his shortcomings as a bookkeeper causes us to be concerned with his ability to accurately track his billing for potential clients.

Clearly, the petitioner should not yet be allowed to handle client funds. The fact that he has no present plan to do so, because he would like to work for Attorney Gatei for the rest of his legal career (Tr. 48, 51-52, petitioner), is insufficient. As is often said, there are no guarantees in life, and that includes the prospect of the petitioner working for Mr. Gatei for the next twenty years, which is something he concedes. (Tr. 33, 48, petitioner). We are dissatisfied with his lack of any back-up plan. (Tr. 48-49, 51-53). More importantly, the petitioner has not prepared for that possibility of practicing on his own and he has not demonstrated learning and competence in the law as it pertains to trust accounts and handling client funds. This lack of learning and competence causes us to recommend against his being reinstated at this time, especially since the

[5] The petitioner's exact words were: "Accounting is more complicated to me than adding and subtracting. Like I said, if I put a decimal point number in the wrong column, I come up with the wrong number. If it's my own checking account, who cares?" (Tr. 56).

Court has said that a lawyer who is not fit to handle client funds is not fit to be reinstated. Matter of Shyavitz, 26 Mass. Att'y Disc. R. 612 (2010).

Our decision is reinforced by the careless and sloppy nature of the petitioner's paperwork. (Tr. 74-65, petitioner). Mr. Vespa's first (2014) reinstatement petition attempted to tap-dance around the very serious misconduct to which he had previously agreed. For example, it omits mention of his intentional misuse with deprivation and his making false statements to bar counsel in the course of her investigation. It also said "I improperly witnessed a personal injury release" when he never witnessed it being signed at all. (Ex. 8, BBO 58). His current (2016) reinstatement petition repeats this verbatim. (Ex. 1, BBO 5).[6] When questioned about this, the petitioner testified that he merely copied what his prior lawyer had written. (Tr. 74-76, petitioner). In the petitioner's own paperwork, which he cannot blame on prior counsel, he misstates a date which, if taken literally, would suggest he violated his suspension order by beginning work as a paralegal before the order allowing it had actually entered. See Ex. 1, at BBO 6, and footnote 1, above. He also acknowledged other mistakes on his reinstatement form. (e.g., Tr. 81-82).

As we told the petitioner at the hearing, we are very concerned about the careless nature of his paper work, particularly in a form-driven practice area such as immigration law, where such mistakes can have dire consequences for the clients. (Tr. 78-79). It troubled the panel that he could be so careless with his Petition and causes us to be concerned over the level of attention he will provide to matters he handles for his clients if he were to be readmitted.

We are charged with protecting the public when considering whether to recommend reinstatement of a suspended or disbarred lawyer. Matter of Shyavitz, 26 Mass. Att'y Disc. R. at

[6] The petitioner is spared a finding of failing to acknowledge his misconduct because bar counsel asked him to write a supplement which, paragraph 2, describes his prior intentional misconduct. (Ex. 1, BBO 1; Tr. 88-89).

616-617 (denying reinstatement because the petitioner "cannot be trusted to protect client funds" or "to protect other interests of his client"); Matter of Ellis, 457 Mass. 413, 418 (2010) (imposing restrictions on petitioner's resumption of the practice of law and other conditions "to assure the protection of the public interest above all else"). We consider that responsibility to be even more serious when the suspension resulted from intentional misuse of client funds and resulting deprivation; and attempting to cover up the misconduct by false statements to clients and bar counsel.

V. Conclusions and Recommendation

As indicated above, we conclude that the petitioner has not met his burden. While he has convinced us that he has the moral qualifications to practice and is deserving of a second chance, we think his reinstatement could potentially have an adverse impact on the bar, and on the administration of justice or the public interest. The Petitioner was given a clear path to reinstatement by the first Hearing Panel Report issued on June 16, 2015 and he has failed to follow this path and we find as a result he is still not prepared to return to practice. He was advised to update his learning in IOLTA and has failed to do so. As set out above it is just not enough for the Petitioner to excuse his failure to learn the IOLTA rules by promising not to handle client funds in the future. He certainly can choose to work in an environment where he does not have the day to day responsibilities for compliance with the IOLTA rules but because we cannot limit his admission to working in such an environment, we must be sure he is capable of compliance with the IOLTA rules before we can recommend readmission.

He was advised to meet with LOMAP and he has failed to do so. It is a shame that he did not reach out to LOMAP because they very well may have been able to assist him in his plan for readmission.

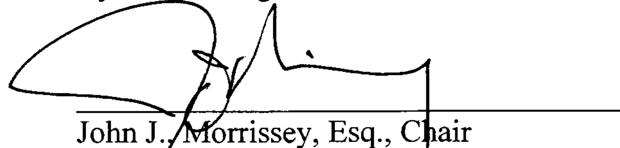
We have some specific suggestions that will strengthen any subsequent petition for reinstatement. First, the petitioner needs to understand trust accounting, IOLTA, bookkeeping and record-keeping. He apparently even needs to learn how to maintain and balance a checkbook.

Second, at such time as he may be reinstated, the petitioner intends to close his drapery business and work full-time as an associate lawyer. Before, and as a condition to, being reinstated, he should make full use of LOMAP's resources to learn trust accounting and law office management as a condition of reinstatement, should the need arise. We further recommend that, at such time as the petitioner may be reinstated, he be required to advise bar counsel if he goes out on his own or becomes a partner, or where he otherwise has responsibility for or access to client funds, and be required to enter into a two-year monitoring agreement acceptable to bar counsel of his law practice and his bookkeeping.

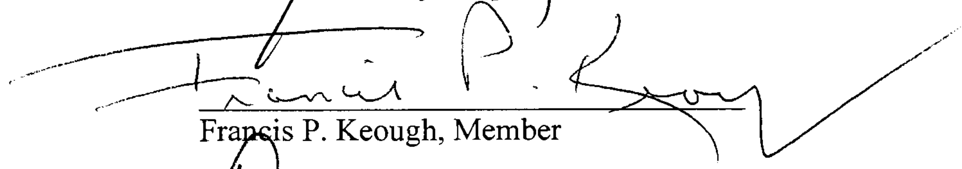
Accordingly, we recommend that the petition for reinstatement filed by Sergio P. Vespa be denied.

Date: 2/14/17

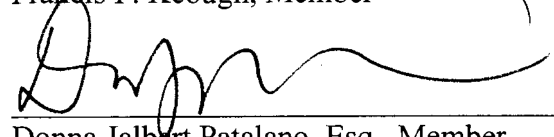
Respectfully submitted,
By the Hearing Panel,



John J. Morrissey, Esq., Chair



Francis P. Keough, Member



Donna Jalbert Patalano, Esq., Member