IN RE: SABA B. HASHEM

NO. BD-2015-114

S.J.C. Judgment Denying Reinstatement entered by Justice Gaziano on June 24, 2019.[1]

Page Down to View Hearing Panel Report

[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 SABA HASHEM Petition for Reinstatement	S.J.C. No. BD-2015-114

HEARING PANEL REPORT

I. Introduction

On October 1, 2018, Saba Hashem filed with the Supreme Judicial Court a petition for reinstatement after an order of suspension for eighteen months, entered on July 27, 2016, retroactive to the date of his temporary suspension on December 29, 2015. See Matter of Hashem, BD-2015-114, 32 Mass. Att'y Disc. R. 219 (2016) (Ex. 6). The suspension was based on a criminal conviction for assault and battery upon a woman with whom the petitioner was having an extramarital affair.

A public hearing on the petition was held on January 14 and 28, 2019. Represented by counsel, the petitioner testified on his own behalf and called six other witnesses. Bar counsel called no witnesses and opposed reinstatement. Twenty-eight exhibits were admitted in evidence, including one over the petitioner's objection. For the reasons set forth below, we recommend that the petition for reinstatement be denied.

II. Standard

An attorney who petitions for reinstatement bears the burden of proving he has met the requirements of 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). That rule establishes two distinct requirements, focusing on (i) the personal characteristics of the petitioner and (ii) 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 determining whether the petitioner has met those requirements, a hearing panel considering a petition for reinstatement considers "(1) the nature of the original offense for which the petitioner was [suspended], (2) the petitioner's character, maturity, and experience at the time of his [suspension], (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).

III. Disciplinary Background

The petitioner was admitted to the Massachusetts bar on June 14, 1999. At the time of his misconduct in 2015, he was practicing law in a small firm in North Andover, D'Angelo & Hashem, LLC. (E.g., Ex. 9, n.4 at SBH000067). His practice consisted largely of representing personal injury clients. (Tr. I:162, petitioner). At that time, the petitioner was having an extramarital affair with Dr. Laura Hitchmoth.[1] (Ex. 26, Ex. 27 at p. 3, SBH000427; Tr. I:129, Farrah; I:252, petitioner; II:455, petitioner).

The specific circumstances of the petitioner's misconduct are particularly relevant to our findings and recommendations, so we recite them in detail, drawing from his testimony before us, the plea colloquy in the criminal case (Ex. 27), the petitioner's amended answer and

[1] Throughout the exhibits, the victim is referred to as "Dr." In testimony given at one of the hearings in the criminal case, she explained that was a psychiatric nurse practitioner, not a physician. (Ex. 28, at p. 3, SBH000438). For consistency, we refer to her as "Dr. Hitchmoth."

stipulation in response to the petition for discipline (Ex. 2), and the board's published summary of the disciplinary proceeding (Ex. 6). We also cite Exhibit 28, a transcript of a dangerousness hearing in the criminal case,[2] which was admitted over the petitioner's objection, but only to provide details of what is otherwise undisputed.[3] Matter of Segal, 430 Mass. 359, 364-365, 15 Mass. Att'y Disc. R. 544, 550-551 (1999) (transcript of lawyer's criminal trial properly admitted in evidence in bar discipline proceeding because the witnesses had been subjected to cross-examination at trial by the lawyer's counsel).

The petitioner and Dr. Hitchmoth began their affair in 2013. (Ex. 28, at p. 4; SBH000439). On the evening of October 8, 2015, the petitioner repeatedly called and texted Dr. Hitchmoth, who said she was going to bed, but that there was someone else in her apartment. The petitioner then went to her apartment in North Andover. Through a window, he saw a man in the apartment. He threw a rock against an apartment window and then gained access to the building, whereupon he banged on her apartment door. Dr. Hitchmoth opened the door, and the petitioner picked her up by her shoulders and pushed her down a flight of stairs outside her apartment. While she was on the ground, he choked her by putting both hands around her neck

[2] See Mass. Gen. Laws c. 276, § 58A "The commonwealth may move, based on dangerousness, for an order of pretrial detention . . . for a felony offense . . ."

[3] At the close of the evidence, bar counsel offered a certified copy of the transcript of the dangerousness hearing, which was held on October 14, 2015. The panel chair asked why the transcript was being offered after testimony had been concluded. Bar counsel explained that he had not initially intended to use the transcript because he assumed the petitioner's testimony would mirror the facts he admitted when he pleaded guilty to criminal charges and when he stipulated to bar discipline. After hearing the petitioner's testimony and realizing that it deviated from his disciplinary stipulation, bar counsel offered the transcript as rebuttal evidence because it contained Dr. Hitchmoth's "account of the incident." (Tr. II:472-475).

Over the objection of the petitioner, we admitted the transcript but made no commitment to give it any weight. (Tr. II: 476). We have not relied upon this transcript in reaching our decision to recommend against reinstatement. Our concerns about the petitioner's testimony, explained in this report, are rooted in the discrepancies between his testimony at the reinstatement hearing and his earlier admissions when he pleaded guilty to criminal charges and then stipulated to facts warranting bar discipline. We confine our references to the transcript to matters not in dispute, such as the date the affair began and Dr. Hitchmoth's professional credentials.

and also spit in her face. He followed her into the apartment, choked her again and bit her upper lip. In the course of these encounters, one of Dr. Hitchmoth's fingers was injured. After speaking with the third person present, the petitioner left the apartment. (Ex. 3; Ex. 27, at p. 3, SBH000427; Ex. 7 at p. 3, SBH00050; Ex. 28, at p. 3, SBH000439; pp. 12-16, SBH000447-451; Tr. 91, Farrah).

Dr. Hitchmoth did not call the police. However, on October 11, 2015, the North Andover police received a call from an unidentified person about the incident. As a result of this call, the police made a well-being check on Dr. Hitchmoth (Ex. 27 at p. 3, SBH000427) and then filed an incident report. (Ex. 7, SBH000048-50). According to the report, on the evening in question, Dr. Hitchmoth was in her apartment with a friend. She then reported to the police as follows:

> She then heard a rock hit her window, and shortly after which the suspect, Saba HASHEM arrived banging on her door. Hotshmoth [sic] stated she opened the door, and that HASHEM picked her up by her shoulders and pushed her down the flight of stairs closest to her Apartment. While she was on the ground, she stated HASHEM choked her by placing his hands around her neck and spit in her face. The attack stopped, and Hotshmoth [sic] walked up the stairs back into her Apartment with HASHEM following behind. HASHEM then followed her into a separate room and again choked her and bit her upper lip. At this point, Hotshmoth's [sic] friend screamed to HASHEM to leave in which he then left the residence.

(Ex. 7, at SBH000050).

Criminal charges followed. On November 24, 2015, the petitioner admitted to sufficient facts in Lawrence District Court on one count of strangulation or suffocation in violation of G.L. c. 265, § 15D(b) and pleaded guilty to one count of assault and battery on a family/household member in violation of G.L. c. 265, § 13M(a). The first count was continued without a finding until November 24, 2017. On the second count, the petitioner was sentenced to two and one-half years in a house of correction, with six months to be served (with 42 days of credit for time served on pretrial detention following the dangerousness hearing) and the balance suspended

until November 24, 2017 on various probationary terms. (Ex. 6; Ex. 7, SBH000043).

During the plea colloquy, the judge asked the petitioner whether he admitted the facts stated by the assistant district attorney; the petitioner did not respond (Ex. 27, at pp. 7-8, SBH000431-SBH000432; Tr. II:454, petitioner). In the circumstances, where his sentence was to be determined and he would be expected to speak up if there was something he contested, his silence constituted an admission. Mass. Guide to Evidence § 801(d)(2)(B). In addition to the plea colloquy, the petitioner signed a waiver of rights, co-signed by his defense counsel, which states, among other things, that "I have decided to plead guilty, or admit to sufficient facts, freely and voluntarily .... My guilty plea or admission is not the result of force or threats, promises or other assurances." (Ex. 7, at SBH000042).

A notice of the petitioner's criminal conviction was filed with the Supreme Judicial Court on December 28, 2015. Under S.J.C. Rule 4:01, § 12A, he was temporarily suspended from the practice of law the next day. (Ex. 6; see Matter of Hashem, 31 Mass. Att'y Disc. R. 260 (2015), and S.J.C. Rule 4:01 § 12(9), "Lawyers Convicted of Crimes"). Bar counsel thereafter filed a petition for discipline that incorporated by reference a partial transcript of the plea colloquy. On July 6, 2016, represented by counsel, the petitioner signed an amended answer and stipulation (Ex. 2 at SBH000017), admitting the facts recited by the prosecutor in the plea colloquy. (Ex. 2, at SBH000015 (at ¶ 2), -000018 (petition, ¶ 3), -000022 (petition, Ex. 1); Ex. 7, at SBH000043, "Tender of Plea or Admission & Waiver of Rights"; and Ex. 27, at p. 3, SBH000427).

Even though it is duplicative of facts we have recited above, we set forth the board's summary of the events warranting discipline because they were expressly accepted by the petitioner in his amended answer and stipulation:

> The facts supporting the conviction involved an assault on a woman with whom the respondent had been in a dating relationship for two years. The respondent banged

> on the door of the woman's apartment. When she opened the door, he picked her up by the shoulders, pushed her down a nearby stairway, choked her on the ground by placing his hands around her neck and spit in her face. After the woman got up and went back to her apartment, the respondent followed her, again choked her and bit her upper lip. A friend of the woman then screamed at the respondent to leave, at which point the respondent left the apartment.

(Ex. 6, SBH000034).

The petitioner's criminal conduct violated Mass. R. Prof. C. 8.4(b) and 8.4(h). The petitioner was suspended for eighteen (18) months, retroactive to December 29, 2015.

IV. Findings

A. Moral Qualifications

A "fundamental precept of our system is that a person can be rehabilitated." Matter of Ellis, 457 Mass. 413, 414, 26 Mass. Att'y Disc. R. 158, 163 (2010). The conduct giving rise to the petitioner's suspension is "conclusive evidence that he was, at the time, morally unfit to practice law. . . ." Matter of Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95 (citations omitted). That misconduct "continued to be evidence of his lack of moral character . . . when he petitioned for reinstatement." Id.

"Reform is a 'state of mind' that must be manifested by some external evidence." Matter of Waitz, 416 Mass. at 305, 9 Mass. Att'y Disc. R. at 343 (1993). "It was incumbent on [the petitioner] . . . to establish affirmatively that, during his suspension period, he [has] redeemed himself and become 'a person proper to be held out by the court to the public as trustworthy.'" Matter of Dawkins, 432 Mass. at 1010-1011, 16 Mass. Att'y Disc. R. at 95 (citations omitted); see also Matter of Ellis, 457 Mass. at 414, 26 Mass. Att'y Disc. R. at 163-164.

We conclude that the petitioner has not met his burden of demonstrating that he now possesses the moral qualifications to be reinstated. We discuss the factors weighing for and

against that conclusion.

In favor of reinstatement, we note the following: Since his release from the house of correction, the petitioner has been gainfully employed. He worked as an Uber driver (Ex. 12); later he worked as a bill collector for Valentine & Kebartas, LLC in Lawrence (Tr. I:15-29, Cabral); after that, he worked (and continues to work) as an insurance producer for Durso Jankowski Insurance Agency, LLC in North Andover (Tr. I:40-46, Hayes); and since June 2018, he has worked (and continues to work part-time) as a paralegal for Attorney Danilo J. Gomez in Methuen. (Tr. I:201-202, 271-273, petitioner).

He is separated from his wife, and a divorce is pending; however, he continues to support his wife and children, and to co-parent with her. (Tr. II:341-343, petitioner). He is current on all marital obligations and child support payments. (Ex. 20, letter from petitioner's wife). He completed a 42-week batterers intervention program as part of his probation (Ex. 8; Tr. I:174-175, petitioner; II:343, petitioner), and he attended extra sessions on his own as part of his "deep self-reflection." (Tr. I:175, petitioner). He created a "wisdom journal" and hired a "life coach"; he goes to weekly spiritual fellowship meetings and engages in much introspection and other personal development activities. (Tr. I:85, 206, 246, petitioner; II:342-344, 449-451, 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); Matter of Wong, 442 Mass. 1016, 1018, 20 Mass. Att'y Disc. R. 540, 543-544 (2004). Here, the petitioner has engaged in several charitable and educational endeavors. Before his suspension he was a frequent volunteer speaker to young people about the dangers of distracted driving under the auspices of "End Distracted Driving," www.enddd.org; (Tr. I:196-199, 209-10, petitioner).

The petitioner's testimony was somewhat confusing about what he did pre-suspension and what he has done since his suspension; the activities listed in his Reinstatement Questionnaire (Ex. 1, at p. 5, SBH000005) mostly pre-date his suspension, but he has served food at the Pine Street Inn and Lazarus House and is in training to work as a volunteer to teach English as a second language. (Tr. I:210-212, petitioner). We acknowledge that charitable, educational and religious volunteer endeavors, as well as commitment to family, can be evidence of moral rehabilitation.

We acknowledge, and have carefully considered, the testimony of each of the six witnesses called on behalf of the petitioner.

Berta Cabral, his former supervisor at the debt collection agency, testified to his likeability, his skill at engaging in communications with debtors, and his adherence to the strict rules that govern the business of debt collection. (Tr. I:17-24, Cabral). She also testified to the petitioner's work ethic and that he never lost his temper. (Tr. I:26, 28, Cabral). However, she provided no testimony that demonstrated the petitioner's awareness of the true reasons for his suspension or that he has rehabilitated himself from an extremely serious incident of violent criminal conduct.

Lori Hayes, a former account manager at the insurance agency where the petitioner works, testified that he is calm and respectful with difficult clients, that everyone loves him, and that he has become one of her best friends and like an uncle to her young son. (Tr. I:43-48, Hayes). While she testified that the petitioner is "very remorseful of what happened" (Tr. I:48, Hayes), she likewise provided no testimony that showed the petitioner's awareness of the reasons for his suspension or any evidence of rehabilitation.

Attorney Michael Conley testified about the petitioner's pre-suspension volunteer work

for the distracted driver's program and his extensive involvement in the Massachusetts Academy of Trial Attorneys by way of volunteer work and fund-raising. (Tr. I:275-287, Conley). However, Conley "never got into the specific detail of the events" that led to the petitioner's conviction and has no "knowledge about what happened and [] can't speak to it." (Tr. I:278, 284, Conley). He likewise provided no testimony that demonstrated the petitioner's awareness of the reasons for his suspension or any evidence of rehabilitation.

Jessica Jiles, a former client of the petitioner, also testified on his behalf. She was formerly a homeless single mother, and the petitioner helped her find a job. Later she was seriously injured in a car accident (she was hit by a drunk driver); one foot was "almost hanging off," and the hospital wanted to amputate. She called the petitioner, who encouraged Jiles to seek a second opinion, which she did; her foot was not amputated. She credits her coming out of homelessness and later saving her foot and her recovery to the petitioner's support and encouragement to fight for herself. (Tr. I:291-295, Jiles). She praised the petitioner for his compassion and for being a lawyer who helped the poor. (Tr. I:298-300, Jiles). While Jiles said that the petitioner "deserves a second chance" (Tr. I:301-302, Jiles), she likewise provided no testimony that showed his awareness of the reasons for his suspension or any evidence of rehabilitation.

Attorney Patrick Comerford also testified, remotely from Texas, on behalf of the petitioner. (He was connected by videoconference to the hearing room; he testified at the end of the day but listened to the preceding testimony throughout the day. (Tr. I:324, Comerford).) He went to college with the petitioner, starting in 1989, although they lost contact afterwards. (Tr. I:305-306, Comerford). He was shocked when he was told of the petitioner's suspension and then read an online article about it. (Tr. I:308, 320, Comerford).

After his suspension, the petitioner reached out to Comerford to mentor him if reinstated, even though Comerford does defense work in Texas and the petitioner previously did plaintiff's personal injury work in Massachusetts. Comerford testified that he and the petitioner mentored each other. (Tr. I:312-314, 318-319, Comerford). Comerford never discussed with the petitioner the conduct that led to his suspension; he told the petitioner that "it doesn't really matter to me." (Tr. I:322, Comerford). Ultimately, Comerford testified that he believed the petitioner "has sufficiently accepted responsibility for his misconduct" and that he would "send him cases tomorrow if he got reinstated." (Tr. I:325, Comerford).

The testimony of those five witnesses is noteworthy for two different reasons. We credit and respect that the petitioner has impressed numerous people with his energy, his ability to express concern for others, and his strong desire to resume the practice of law in order to represent people who need help. But none of those witnesses provided any evidence whatsoever that the petitioner has come to terms with his past misconduct, that he has sincerely acknowledged and "owned" it, or that he has been able to change his life sufficiently to provide an assurance that he will never again engage in such serious misconduct.

In particular, we appreciate that Attorneys Conley and Comerford took time from their practices to appear before us. But being entirely unfamiliar with the reasons why the petitioner was suspended, they are in no position to testify that he has sufficiently reformed his behavior to have earned reinstatement

Attorney Louis Farrah also testified for the petitioner, whom he has known since the petitioner was a child, and with whom he has stayed in touch over several decades. (Tr. I:57-63, 83-86, Farrah). He now speaks with the petitioner nearly every day. (Tr. I:94, Farrah). Farrah was not aware of the petitioner's personal problems, his affair with Dr. Hitchmoth, or the

criminal charges until he read about them in the newspaper. (Tr. I:64, 86-88, 95, Farrah). When asked what the petitioner told him about the incident, Farrah said:

> He said that he went to her apartment, and there was another gentleman in the apartment. There was a disagreement, an argument. It was out in the hallway. And that he had touched her arm as she was inebriated, drunk. And the man came out or he -- I'm sorry, that Saba followed her into the apartment. And he saw the man there, and they had a – a discussion and that Saba left. That's what he told me.

(Tr. I:91, Farrah). On further questioning, Farrah testified that the petitioner told him he had "grabbed" or "pulled" "an arm" (i.e., not both arms), "pulled her into the hallways," and thereafter had a "heated discussion" with the man who was in Dr. Hitchmoth's apartment. (Tr. I:139-142, Farrah). As Farrah conceded, this account "sounds fairly innocuous" despite the fact that the petitioner was found by the court to be dangerous (Tr. I:92, Farrah). He readily agreed that the petitioner's account was "completely different" from "the incident . . . he pled guilty to." (Tr. I:104, Farrah).

Farrah was initially retained to represent the petitioner in the criminal case but was soon discharged at the request of the petitioner's then law partner. (Tr. I:65-66, 68-69, 109-110, Farrah). Prior to being discharged, Farrah retained a former state police detective to investigate the incident. (Tr. I:65-66, 89-91, 105-109, Farrah). Farrah testified that, in his opinion, the petitioner should not have pleaded guilty at all and that, based on his investigator's report, he did not believe the incident had happened as Dr. Hitchmoth claimed. (Tr. I:104-108, Farrah).

Farrah acknowledged that the petitioner's stipulation of facts, and his resulting suspension, imposed upon him the burden of proving he "has achieved reform" and is now "morally fit to resume the practice of law." He nevertheless testified, based on what the petitioner told him and the investigator's report, that the petitioner does not need to reform because what happened was "innocuous" and "do[es]n't bear out what happened here." (Tr.

I:132-134, Farrah).

Farrah testified that he "knows" the petitioner "got bad legal advice" when he decided to plead guilty to criminal charges and again when he stipulated to accept an eighteen-month suspension from the practice of law. (Tr. I:143-144, Farrah).[4] He agreed, however, that Bolan's "hands were pretty well tied" in defending the disciplinary case because of the conviction. (Tr. I:144, Farrah). Farrah opined that the petitioner's conduct was an aberration and said he did not believe it would ever happen again. (Tr. I:77-78, Farrah).

It appears to us that Farrah's opinion about the seriousness of the petitioner's conduct was based primarily on his conversations with Hashem. To the extent the petitioner misled Farrah by omitting facts or watering-down his description of the events of the night in question, that is a disservice to a lawyer who has been a life-long and devoted friend to the petitioner and his family, and it undercuts the petitioner's effort to assure us that he now owns his misconduct. This is not the first time a reinstatement panel has heard testimony from a petitioner's witness that, in effect, he did nothing wrong, or nothing that warranted a suspension. E.g., Matter of Flaherty, BD-2016-067, hearing panel report, at 6-7 (Jan. 23, 2018) (petitioner reinstated after "forcefully repudiating" the testimony of his witness that he had done nothing wrong), available at https://www.massbbo.org/Files?fileName=bd16-067-2.pdf. At best, such testimony does not aid a petitioner and, at worst, is detrimental to a case for reinstatement.

While we found the petitioner's witnesses to be credible, they were not helpful to the petitioner in meeting his burden of showing that he now has the moral qualifications necessary for reinstatement. As the Court has stated, testimony that does not distinguish the petitioner's conduct before and after his underlying conviction, that sheds little light on his rehabilitation, or

[4] The petitioner was represented by experienced counsel in both proceedings. Daniel Gelb served as his counsel in the criminal matter. (Tr. 162-165, 169, 237-238, petitioner). James Bolan was petitioner's counsel during the bar discipline proceeding. (Tr. 144-145, Farrah).

that does not acknowledge the petitioner's guilt, carries little weight. Matter of Corben, 31 Mass. Att'y Disc. R. 91, 101 (2015), citing Matter of Hiss, 368 Mass. 447, 464, 1 Mass. Att'y Disc. R. 122, 137-138 (1975), and Matter of Dawkins, 432 Mass. 1109, 1101, n.5, 16 Mass. Att'y Disc. R. 94, 96, n.5 (2000). See Matter of Lee, 28 Mass. Att'y Disc. R. 540, 549-551 (2012) (same). For example, one of the petitioner's witnesses, Mr. Comerford, did not distinguish the petitioner's conduct before and after his conviction, and he offered little information about his rehabilitation, other than to reiterate that everyone makes mistakes and that everyone deserves a second chance, and that the petitioner "spent the last year trying to figure out what do I do now based on his faith, based on what he does with his family, and living through some very difficult situations and still being a provider and still being a good father." (Tr. I:315-316, 327, Comerford).

By sharp contrast, several important factors weigh against reinstatement. First and foremost is the petitioner's refusal to acknowledge, and his sometimes outright denial or claimed lack of memory of, the criminal conduct to which he pleaded guilty and to which he later stipulated in his amended answer to bar counsel's petition for discipline. The most glaring example of the petitioner's backtracking on his prior admissions of misconduct is that despite having repeatedly agreed that he pushed his victim down a flight of stairs, strangled her while she was on the floor, bit her lip and spat on her, he apparently told Farrah that he merely "touched her arm while she was inebriated," leading Farrah to the blatantly inaccurate conclusion that the petitioner's conduct had been "innocuous."

There were other glaring discrepancies between the petitioner's prior admissions and his testimony before us. For example:

- He denied throwing a "rock" at Dr. Hitchmoth's window and said it was only a "pebble." (Tr. I:152, 257; II:361, 363).

- After he gained entrance to Dr. Hitchmoth's apartment building and she opened her apartment door, he denied grabbing her by the shoulders and lifting her up. At one time, he told us he grabbed her arm but "did not lift her up" (Tr. I:152, petitioner). Later he said his hands "were on her waist but I could be wrong." (Tr. II:365, petitioner).

- He denied pushing Dr. Hitchmoth down a flight of stairs, and said instead she had been drinking and, while he pushed her, she "did not fall downstairs" but that she fell "on stairs" (Tr. II:366; Tr. I:257-258 (admitted pushing her but she tripped; they were on a main level; she fell on ascending stairs); Tr. II:367 (she was on the stairs going up); Tr. I:155-156 (telling her "you tripped out there"; petitioner).

- He equivocated about whether he choked her while she was on the ground and whether he used one hand or two. (Tr. I:258, 259 ("I have no recollection of putting these two hands on her neck"); Tr. II:457 ("As I sit here today, I swear to God that I do not have a recollection of putting my hands on her neck").

- He admitted spitting on her and biting her lip, but said that was a separate incident, later in her bathroom, and not while she was on the ground outside her apartment, while he was choking her, and that he did not grab her at that time. (Tr. I:259-260; Tr. II:368 ("no. That I remember clear-cut as day. Not at all.)"; Tr. I:259-260 (he spit on her face in the bathroom, after they went back in, and not when they were outside her apartment). He also denied putting his hands on her neck a second time in the bathroom. (Tr. I:155; Tr. II:368, petitioner).

- During questioning, he changed the version of the facts to which he had pleaded guilty, a change that would make his conduct significantly less violent and culpable. The petitioner repeatedly told us that he had accepted the plea "under duress" (Tr. II:375, 457, petitioner), even though in the plea colloquy he testified under oath that he was not under duress (Ex. 27, at p. 9, SBH000433, lines 5-9). He testified before us that he told Gelb: "'This isn't -- That's not exactly what happened.' [Gelb] goes, 'You know, this will be tough, but just say yes, and this will be done.' And there it is. And I accepted whatever they were saying." (Tr. I:170, petitioner). He later testified "I wasn't thinking well when I took the plea." (Tr. I:238, 239, petitioner). He asserted that he had had no opportunity to correct mistakes in the plea colloquy or so-called scrivener's errors in the transcript of it (Tr. I:261, petitioner), but he identified no such "mistakes."

- Alternatively, he told us that he "just wasn't thinking too well that day" and he "just wanted out" to go home to celebrate his daughter's birthday. (Tr. I:167, 169, 173, petitioner; Tr. I:238 ("I was too trusting"); Tr. I:239 ("I wasn't straight"; "Dan [Gelb, his criminal defense lawyer] didn't seem to have an interest in the case"; "I wasn't thinking well when I took the plea)," petitioner; Tr. II:355 ("I wasn't thinking straight when I took the plea"); Tr. II:356 ("I just wasn't thinking clearly at that point").

We do not credit the petitioner's denials, lack of memory, and claims of "not thinking straight" at the time, all of which contradict his admissions to facts before the judge in his

criminal case, admissions he expressly reaffirmed in his disciplinary stipulation.

When asked in the Reinstatement Questionnaire to "describe the misconduct that led to your suspension," the petitioner cursorily referenced his conviction and the suspension order. (Ex. 1, at p. 2, SBH000002). His personal statement was also quite brief and did not address his misconduct or express any remorse for it. (Ex. 1, at p. 12, SBH000012).

A reluctance to acknowledge, or a denial of, previously admitted misconduct is almost inevitably fatal to a petition for reinstatement. E.g., Matter of Corben, 31 Mass. Att'y Disc. R. 91 (2015); Matter of Lee, 28 Mass. Att'y Disc. R. 540 (2012); Matter of Harrington, 28 Mass. Att'y Disc. R. 412 (2012). After a criminal conviction that is conclusive evidence that he strangled Dr. Hitchmoth, see S.J.C. Rules 4:01, § 12(1) ("conviction" includes "admission to sufficient facts") and § 12(2) (conviction is "conclusive evidence"), the petitioner's denial of that specific wrongdoing leaves us with the sense that, failing to fully recognize the extent of his wrongdoing, he cannot provide us with an assurance that he has undergone real reform that would prevent it from happening again. Cf. Matter of Lee, 28 Mass. Att'y Disc. R. 540, 544-549 (2012).

We are also troubled by other matters that illustrate a tendency on the part of the petitioner to fault others for his own mistakes. That tendency is particularly disconcerting because, in some instances, the petitioner blames his own lawyers for errors or judgment calls that he himself should take responsibility for making. The petitioner has a legal education, practiced law for many years, and presumably wants us to find him competent to return to the practice of law.

For instance, as to the plea colloquy in the criminal case, the petitioner would have us believe that he tried to tell his defense counsel that the prosecutor's summary of facts was "not

exactly what happened" and that Attorney Gelb supposedly told him to "just say yes." (Tr. I:170, petitioner). Likewise, while suspended, the petitioner signed his 2016 and 2017 federal income tax returns under the pains and penalties of perjury, incorrectly stating his occupation as "attorney." (Ex. 18, SBH000115, SBH000117). His explanation before us was that he did not prepare the returns; that his accountant had the correct information; and that he did not look carefully at the returns before signing the e-filing authorizations. (II:426-427, petitioner). He later referred to this as a scrivener's error, even though, as an attorney, he clearly understands the need to carefully review any document being signed under pains and penalties of perjury. (Tr. II:436, petitioner).

Evidence before us also showed that the petitioner and his law firm were sued in 2007 by a former employee, Jennifer Carrion. (Tr. I:240-241, petitioner; Ex. 1, at p. 9, SBH000009). The petitioner disavowed responsibility, saying he was sued only "because I was overseeing both office locations [Boston and Lawrence]. And then I was found jointly and severally liable for the law firm's portion of the suit." (Tr. I:191, petitioner). He blamed his former partner (D'Angelo), who he said handled all the litigation decision-making. (Id.). Specifically, he testified "I was in Lawrence and asked Steve D'Angelo what we should do about it. And he said, I need some time to think about it." (Tr. I:190, petitioner).

The petitioner's claim of mere vicarious liability is belied by judicial decisions in the case. The superior court decision on Carrion's fee petition recited that the jury found that the petitioner had personally discriminated against her, as had the firm. Carrion v. Hashem, 2012 WL 2335297 (Mass. Super., Connolly, J., May 24, 2012) (Carrion I). The Appeals Court decision noted that the petitioner personally fired Carrion after learning of her pregnancy. Carrion v. Hashem, 86 Mass. App. Ct. 1123 (2014) (Carrion II). The superior court issued a

judgment against him individually for one amount and a separate judgment against him and the firm jointly and severally for a different amount. Carrion I, supra. Following a denial of the defendants' motion for JNOV, they appealed and lost. Carrion II, 86 Mass. App. Ct. 1123 (2014); further appellate review was denied. 470 Mass. 1106 (2015).

It was not until November 2018 that the petitioner reached a confidential settlement with Ms. Carrion. (Tr. I:192-193, 242-244, petitioner). Even though the original judgment against the petitioner was for $14,000 individually (Ex. 1, at p. 9, SBH000009; Tr. I:191, 245, petitioner; Carrion I, at *1), and he had substantial assets and could have paid the ex-employee during the last several years, he did not do so because, he claimed, the legal fees owed to the plaintiff were the obligation of the law firm and not the petitioner personally. (Tr. I:245-246, petitioner). That was not true; the superior court awarded legal fees against the petitioner and his firm jointly and severally. Carrion I, at *6. (From Carrion II, it appears there was no appeal from the award of attorneys' fees or from the adjudication of joint-and-several liability.)

In another instance of deflecting responsibility, while in the midst of his divorce and the lawsuit brought by the former employee, the petitioner filed a chapter 13 bankruptcy petition. (Ex. 3; Ex. 4, suggestion of bankruptcy filed in the divorce action). By the petitioner's own admission, this was "for strategic and tactical reasons" and to "get some negotiations going" with his wife, the ex-employee, and his former law partner. (Tr. I:193-195, petitioner; Tr. II:430-432, petitioner). He never gave his bankruptcy lawyer the required information concerning his assets and liabilities, despite being asked for them. (Tr. II:396-397, petitioner). The bankruptcy case was dismissed some five weeks later because the petitioner failed to comply with a court order to file certain documents. (Ex. 5).

Apart from filing a bankruptcy action for the purpose of delay (see Mass. R. Prof. C. 4.4),

the petition, which was signed under the pains of perjury, contained false statements as to his assets and liabilities. (Ex. 3, at p. 6, SBH000030; Tr. II:393-396, petitioner). The petitioner's explanation for his false swearing was that he was rushed; he had his minor son with him when he signed the petition; he did not want the boy to know what was going on; and he was on his way to take his son to basketball practice. (Tr. II:393-394, petitioner). This, too, he later attempted to minimize as a scrivener's error by his attorney, even though it was the petitioner himself who was signing the document under pains and penalties of perjury. (Tr. II:431, petitioner). We do not credit these excuses. If the petitioner equates his responsibility to be correct and truthful on his tax returns and bankruptcy filings with mere "scrivening," we question his ability to hold himself to standards of accuracy and honesty expected of all members of the bar.

The petitioner's firm represented personal injury clients, some of whom needed referrals to treatment providers and, thereafter, reports to support their claims. (Ex. 9, D'Angelo's letter, at pp. 1-3, SBH000058-SBH000060). During the course of the petitioner's affair with Dr. Hitchmoth, he or his firm referred clients to her for treatment. Dr. Hitchmoth did not bill their insurers because they allegedly would not cover her services; instead, she would be paid out of a recovery for the client, which effectively made these improper contingent payments. (Id.). The petitioner admitted these referrals and said there could have been four to six of them; he denied paying Dr. Hitchmoth personally ("no side deals") but conceded she was paid out of the clients' settlement proceeds. (Tr. II:400-406, petitioner).

The petitioner did not appear to grasp the prima-facie impropriety of referring clients to Dr. Hitchmoth without disclosing his ongoing affair with her, when his professional judgment on behalf of his clients might have been impaired and he was required to obtain client consent, if

possible; and he was evasive when asked if the referred clients knew of the relationship. (Tr. I:379-381, 402-404, petitioner). He later conceded that he did not understand the ethical conflict at the time, but said he does now. (Tr. II:458-460, petitioner).

We have unresolved concerns about the petitioner's willingness to accept responsibility for his actions. On occasions during his testimony, the petitioner made what appeared to be somewhat rehearsed confessions of remorse for his behavior, but those confessions were muddled by profuse apologies for the marital infidelity that preceded his violent attack on Dr. Hitchmoth. (Tr. I:149, "I bear the shame and the humiliation and the embarrassment"; I:154, embarrassed, shamed and humiliated; I:156, very immoral act of having an affair; I:260, "I felt enormous guilt for my immoral conduct"; Tr. II:349-350, petitioner). He testified at length about his soul-searching, introspection and religious studies in that regard. (Tr. I:202, soul-searching; I:186, 235, 261, 279, 326; Tr. II:351, introspection).

Those expressions of remorse are appropriate, but they are far too limited, and they largely miss the point. As the petitioner was reminded during his testimony, his suspension was due to his criminal conviction for a violent attack on a woman, not for his marital infidelity. (Tr. II:358). Remorse and intensive self-evaluation are laudable, but they are insufficient to establish the requisite "reform." E.g., Matter of Lee, 28 Mass. Att'y Disc. R. at 552-553. The petitioner has not convinced us that the violence he inflicted upon Dr. Hitchmoth, whom he described as the love of his life (Tr. I:151, "true love" "for the first time in my life"), and who left her husband for him (Ex. 28, at p. 5, SBH000440, Tr. 88, Farrah), was a transitory aberration that is not likely to recur.

The petitioner presented no evidence from either his therapist, Dr. Grace Chen (despite her being on his witness list), or his life coach (Anil Sakhuja). (Tr. II:448-450, petitioner). It

might have been helpful to us to have heard from Dr. Chen, or to have received her notes or report in evidence. Although Dr. Chen was primarily seen as a marriage counselor (Tr. II:446-448, petitioner), as the petitioner's treating therapist she might have been able to provide some reassurance that he is not likely to repeat his abusive and violent behavior. When asked by his own counsel how we could be assured that he would not re-offend, the petitioner's answer was basically that it was because he had engaged in extensive introspection. (Tr. II:345-348, 350-352, petitioner).

We conclude that the petitioner has not met his burden of demonstrating the moral qualifications to be reinstated to the practice of law.

B. Competence and Learning in the Law

The petitioner practiced for fifteen years before his temporary suspension on December 29, 2015. On June 6, 2018, a single justice of the Supreme Judicial Court allowed the petitioner to work as a paralegal for Attorney Danilo Gomez, and he has since done so on a part-time basis. (Tr. I:200-201, 271-273, petitioner; II:422-424, petitioner). However, there was no testimony as to his legal abilities or the quality of his work in that capacity.

The information provided on his Reinstatement Questionnaire (Ex. 1, at p. 7, SBH000007) concerning his learning in the law, and his knowledge of his ethical obligations, was perfunctory; his hearing testimony did not contribute much more, although Farrah testified that he "discuss[ed] the law and what we see in Lawyers Weekly" with the petitioner (Tr. I:78, Farrah). However, we recognize that the misconduct that resulted in the petitioner's suspension did not occur in the practice of law.

Since we conclude that the petitioner has not met his burden of proving that he has the moral qualifications to be reinstated, and that his reinstatement would be "detrimental . . . to the

administration of justice or to the public interest," we need not dwell on this element of the test for reinstatement.

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

S.J.C. Rule 4:01, § 18(5) requires the hearing panel to determine whether the petitioner's reinstatement would be "detrimental . . . to the administration of justice or to the public interest." "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 Daniels, 442 Mass. at 1038, 20 Mass. Att'y Disc. R. at 123; Matter of Prager, 422 Mass. at 93 (citations omitted); Matter of Centracchio, 345 Mass. at 348. "Passage of time alone is insufficient to warrant reinstatement." Matter of Daniels, supra. "[C]onsiderations 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). Matter of Ellis, 457 Mass. at 414, 26 Mass. Att'y Disc. R. at 164 ("Consideration of the public welfare, not [a petitioner's] private interest, dominates in considering the reinstatement of a disbarred [or suspended] applicant.").

The public's perception of the legal profession as a result of reinstatement, and the effect on the bar, must also be considered. "The impact of a reinstatement on public confidence in the bar and in the administration of justice is a substantial concern." Matter of Waitz, 416 Mass. 298, 307, 9 Mass. Att'y Disc. R. 336, 345 (1993). We regard that concern as particularly serious where the suspension resulted from a criminal conviction for a violent crime and the petitioner has not demonstrated his current moral fitness by a preponderance of the evidence. We therefore conclude the petitioner has not met his burden on this requirement.

V. **Conclusion**

We conclude that the petitioner has not met his burden of proving that he has morally

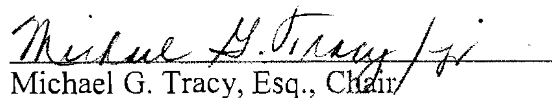
redeemed himself. He continues to deny his previously admitted misconduct, at least in significant part. In our opinion, the petitioner's case for reinstatement falls short primarily because of his failure to truly acknowledge the full extent of his misconduct, or the seriousness of it. His testimony concerning his false signatures on his tax returns and his bankruptcy petition, and about the plea colloquy in his criminal case, likewise displayed a tendency to deflect blame for matters that were squarely the petitioner's own responsibility to get right. That tendency to deflect responsibility also weighs against reinstatement.

In light of the discrepancies between the petitioner's hearing testimony and his prior admissions, and his lack of credibility on key issues, we also find that the public interest, and public confidence in the bar and in the administration of justice, would be undermined by the petitioner's reinstatement. We therefore recommend that his petition for reinstatement be denied.

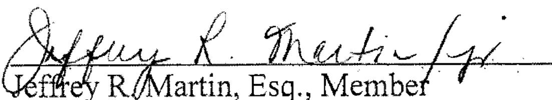
Date: 4/1/19

Respectfully submitted,

By the Hearing Panel,


Michael G. Tracy, Esq., Chair

Elisabeth O. da Silva, Member


Jeffrey R. Martin, Esq., Member