

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 911, Disciplinary Docket
: No. 2 – Supreme Court
: :
JOHN J. MOGCK, III : No. 78 DB 1992 - Disciplinary Board
: :
: Attorney Registration No. 27325
PETITION FOR REINSTATEMENT :
: (Philadelphia)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 218(c)(5) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania submits its findings and recommendations to your Honorable Court with respect to the above--captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

On April 8, 2002, Petitioner, John J. Mogck, III, filed a Petition for Reinstatement to the bar of the Supreme Court of Pennsylvania. Petitioner was disbarred on consent by Order of the Supreme Court of Pennsylvania dated January 8, 1993.

A reinstatement hearing was held on June 19, 2003, before Hearing Committee 1.04 comprised of Chair Michael J. Stack, III, Esquire, and Members Doron A. Henrik, Esquire, and Eugene D. McGurk, Jr., Esquire. Petitioner represented himself.

The Hearing Committee filed a Report on April 8, 2004, with the recommendation that the Petition for Reinstatement be denied.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of May 18, 2004.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner was born in 1950 and was admitted to the bar in Pennsylvania in 1978. He was admitted to the New Jersey bar in 1982. His current address is 233 Hopkins Road, Haddonfield NJ 08033.

2. In May 1989, Petitioner received the amount of \$3,872.28. This amount represented the proceeds from the sale of a decedent's house in an estate matter he was handling on behalf of his client, Margaret Hunter. Petitioner converted the entire sum to his own use.

3. Petitioner did not recall the specific purpose for which the funds were expended, but believed they were used for everyday purposes to make ends meet.

4. In June 1992 Petitioner sent Ms. Hunter a check for \$3,200 representing restitution of her monies

5. On December 10, 1992, Petitioner signed a resignation statement pursuant to Pa.R.D.E. 215. He was disbarred on consent by Order of the Supreme Court of Pennsylvania dated January 8, 1993.

6. Petitioner was disbarred by consent in New Jersey by Order of the Supreme Court of New Jersey dated October 26, 1992.

7. Petitioner's misconduct in New Jersey consisted of his having misappropriated client funds he received after settling two personal injury cases, misrepresenting to those clients the status of their cases to conceal his misconduct, and failing to maintain the required accounting records for his trust and business accounts.

8. Since Petitioner's disbarment he has been employed for various companies as a salesman and an insurance adjuster. He currently works for Ward North America in Trevese, Pennsylvania as an insurance adjuster.

9. Petitioner's efforts at keeping apprised of the law consist of perusing the Legal Intelligencer while checking the want ads. Petitioner believes his work as an insurance adjuster kept him current in that area of the law, although he took no formal courses towards that end.

10. Petitioner completed his required Continuing Legal Education courses.

11. Petitioner has a tax liability with the Internal Revenue Service currently in the amount of \$53,000. He has not made any payments since July 2001 to reduce this liability.

12. Petitioner's Reinstatement Questionnaire contains errors and omissions.

13. Petitioner's response to Question 5© failed to indicate that he made only partial restitution to Margaret Hunter. Petitioner converted \$3,872.28; however, he paid Ms. Hunter only \$3,200.

14. Petitioner's response to Question 10 stated that he had no documents showing the amount of monies he owed the IRS when in fact Petitioner was in possession of documents that indicated the amount of the tax liability.

15. Petitioner's response to Question 11 concerning his period of employment with Customcraft, Inc., is inconsistent with information Petitioner provided in response to Question 12 regarding the period he received unemployment compensation benefits from New Jersey.

16. Petitioner's response to Question 11, which represents that for a period in 1996, he was allegedly employed with Customcraft, Inc, is inconsistent with the W-2s attached to Petitioner's 1996 Federal Income Tax Return, which show that Petitioner was employed by other companies.

17. Petitioner presented the testimony of one character witness, Edward O'Halloran, Esquire.

18. Mr. O'Halloran was unaware that Petitioner engaged in misconduct in New Jersey that was different from his misconduct in Pennsylvania and that Petitioner's New Jersey misconduct formed the basis for Petitioner's agreeing to his disbarment by consent in that jurisdiction.

19. Mr. O'Halloran did not know any of Petitioner's coworkers or neighbors in the community and had not discussed Petitioner's case with anyone.

III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude immediate consideration of his Petition for Reinstatement.

2. Petitioner has not demonstrated, with clear and convincing evidence, that he possesses the moral qualifications, competence and learning in the law necessary to practice law in the Commonwealth of Pennsylvania and that the resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the bar or administration of justice nor subversive of the public interest.

IV. DISCUSSION

This matter comes before the Disciplinary Board on a Petition for Reinstatement filed by John J. Mogck, III. Petitioner was disbarred on January 8, 1993 by Order of the Supreme Court of Pennsylvania. Petitioner bears the burden of proof by clear and convincing evidence that he is qualified for readmission. Pa.R.D.E. 218(c)(3)(i).

Petitioner's request for reinstatement to the bar after disbarment is initially governed by the standard set forth by the Supreme Court of Pennsylvania in Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). As a threshold matter, the Board must determine whether Petitioner has demonstrated that his breach of trust was not so egregious that it precludes him from reinstatement.

Petitioner's disbarment was based on his conversion of one client's funds in the amount of \$3,872.28. While very serious in nature, this misconduct is not so egregious as to preclude consideration of Petitioner's Petition for Reinstatement. In re Costigan, 664 A.2d 518 (Pa. 1995). The Supreme Court has reinstated attorneys who have been disbarred for similar serious behavior. In re Anonymous No. 47 DB 82, 29 Pa. D. & C. 4th 304 (1995).

Having concluded that Petitioner's misconduct is not so egregious as to preclude reinstatement, the Board must now determine whether Petitioner has met his burden of proving by clear and convincing evidence that his resumption of the practice of law at this time would not have a detrimental impact on the integrity and standing of the bar, the administration of justice or the public interest, and that he has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania. Pa.R.D.E. 218(c)3(i). In order to make this determination the Board must consider the amount of time that has passed since Petitioner was disbarred as well as his efforts at rehabilitation. In re Verlin, 731 A.2d 600 (Pa. 1999).

Petitioner has been without a license to practice law since 1993. This is a lengthy period of time in light of the underlying misconduct and is sufficient to dissipate the taint of Petitioner's misconduct on the integrity of the bar and the public interest. However, the record is devoid of any convincing evidence that these ten years have been a time of rehabilitation for Petitioner. Petitioner did not fully reimburse his client for the monies he converted. In his questionnaire, he states that he did not pay any interest to Ms. Hunter, but on his own accord he did not subtract funds from the amount paid to Ms. Hunter representing the funds owed to Petitioner from previous work he had done for her. Petitioner appears to be quibbling about the amount he owes instead of plainly stating that he took \$3,872.28 and admitting that he owes restitution of that amount. The record is devoid of any explanations for his actions or expressions of remorse. Petitioner does not attempt to state how he would manage his practice in order to avoid future misconduct.

Petitioner has a tax liability of approximately \$53,000. He has made no payments to the IRS since approximately July 2001, although the record is clear that Petitioner has the means to make monthly payments. Petitioner earns \$55,000 per year and lives rent free with his parents. He does not contribute to many household bills and has few monthly expenses. Petitioner has cash savings and a 401(k). Petitioner indicated that if something happened to him his parents would make sure the IRS was paid, or he would pay it himself from his inheritance after his parents pass away. Petitioner made some ineffectual attempts to make payments of \$25 per month to the IRS a few years ago, and he met with two companies that assist individuals in compromising their tax liabilities,

but claimed to have no success. Petitioner has made no recent efforts to address his tax problems and appears indifferent to them.

Petitioner's reinstatement questionnaire contains some errors and omissions regarding the restitution he made to his client, his work history, and his IRS liability. These errors and omissions show carelessness and an inattention to detail that is bewildering for an individual interested in resuming his professional licensure.

Petitioner fulfilled his CLE credits but presented little evidence that he has kept apprised of the law in other ways, such as reading legal newspapers and journals.

Petitioner presented one character witness at his reinstatement hearing. This witness was unaware that the misconduct for which he was disbarred in Pennsylvania was different than that for which he was disbarred in New Jersey. Petitioner did not elicit any testimony regarding reputation from the witness.

The Hearing Committee recommended denying the reinstatement petition. The Committee emphasized Petitioner's failure to satisfy his tax liability and to timely file income tax returns. A suspended or disbarred attorney's failure to make a good faith effort to satisfy an obligation to taxing authorities may be an appropriate basis for denying reinstatement. In re Anonymous No. 74 DB 89, 691 Disciplinary Docket No. 2 (Pa. March 20, 1997). Where a petitioner has made a good faith effort to pay a judgment but has shown an inability to pay rather than an intent not to pay, the Supreme Court has granted reinstatement. In re Anonymous No. 56 DB 94, 47 Pa. D. & C. 4th 184 (1999).

The Board finds that the record as a whole is insufficient to support the granting of the petition for reinstatement. In addition to Petitioner's tax problems, he filed a deficient Reinstatement Questionnaire, he did not pay full restitution to his client, he showed little if any remorse for his misconduct, he has not actively kept abreast of Pennsylvania law but for the minimum CLE courses, and his single character witness shed no light on Petitioner's character and reputation in the community so as to enable the Board to determine Petitioner's moral qualifications and fitness. Each piece standing alone most likely would not prevent a petitioner from being reinstated if there was an otherwise strong case. All of these factors combined produce a record insufficient to support a finding that Petitioner has been rehabilitated and is fit to practice law at this time.

The Board recommends that the Petition for Reinstatement be denied.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that Petitioner, John J. Mogck, III , be denied reinstatement to the practice of law.

The Board further recommends that, pursuant to Rule 218(e), Pa.R.D.E., Petitioner be directed to pay the necessary expenses incurred in the investigation and processing of the Petition for Reinstatement.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Smith Barton Gephart, Member

Date: June 22, 2004

Board Member Rudnitsky did not participate in the May 18, 2004 adjudication.

PER CURIAM:

AND NOW, this 28th day of September, 2004, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated June 22, 2004, the Petition for Reinstatement is DENIED.

Pursuant to Rule 218(e), Pa.R.D.E., petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement.