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SJC-12803

IN THE MATTER OF ROBERT S. LEO.

May 15, 2020.

Attorney at Law, Suspension, Reinstatement.

The petitioner, Robert S. Leo, appeals from the judgment of a single justice of this court denying his petition for reinstatement to the bar of the Commonwealth. We affirm.

Background. The petitioner was admitted to the practice of law in Massachusetts in 1975. Over the course of the next twenty-five years, he was subject to professional discipline twice. Then, in 2001, he was suspended for a term of thirteen months for conduct "involving dishonesty, fraud, deceit or misrepresentation," in violation of the rules of professional conduct then in effect, specifically S.J.C. Rule 3:07, Canon 1, DR 1-102 (A) (4) and (6), as appearing in 382 Mass. 769 (1981).<sup>1,2</sup> See Matter of Leo, 17 Mass. Att'y Discipline Rep. 371 (2001).

In 2017, the petitioner filed a petition for reinstatement in the county court, which was transmitted to the Board of Bar

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<sup>1</sup> The current version of the applicable rule is Mass. R. Prof. C. 8.4 (c) and (h), as appearing in 471 Mass. 1483 (2015).

<sup>2</sup> Although his term suspension was for thirteen months, the respondent did not seek reinstatement for more than fifteen years, until 2017.

Overseers (board).<sup>3</sup> See S.J.C. Rule 4:01, § 18 (4), as appearing in 453 Mass. 1315 (2009). A hearing panel of the board, as the fact finder, heard the testimony of four witnesses, including the petitioner, and accepted various exhibits. The panel issued a report of its findings and recommended that the petition for reinstatement be denied. The board voted unanimously to adopt the report and the recommendation. The record of proceedings was then filed in the county court. A single justice of this court held a hearing and thereafter denied the petition. This appeal followed.

Discussion. A petitioner for reinstatement must demonstrate that he or she "has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, the administration of justice, or to the public interest." Matter of Weiss, 474 Mass. 1001, 1002 (2016), quoting S.J.C. Rule 4:01, § 18 (5). "The subsidiary findings of the hearing panel, as adopted by the board, 'shall be upheld if supported by substantial evidence,' see S.J.C. Rule 4:01, § 18 (5), . . . and the hearing panel's ultimate 'findings and recommendations, as adopted by the board, are entitled to deference, although they are not binding on this court.'" Matter of Weiss, supra at 1001 n.1, quoting Matter of Ellis, 457 Mass. 413, 415 (2010).

a. Moral qualifications. The petitioner's term suspension is "conclusive evidence that he was, at the time, morally unfit to practice law, and it continued to be evidence of his lack of moral character . . . when he petitioned for reinstatement."<sup>4</sup> Matter of Dawkins, 432 Mass. 1009, 1010 (2000). See Centracchio, petitioner, 345 Mass. 342, 346 (1963). He therefore bears the burden of demonstrating that, during the period of suspension, he has "redeemed himself and become 'a

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<sup>3</sup> While the matter was pending, the petitioner sought and received leave to work as a paralegal. As a hearing panel of the board found, he worked on only one matter.

<sup>4</sup> To the extent the petitioner invites us to review underlying discipline, we decline the invitation. Our review is limited to the single justice's judgment on the petition for reinstatement.

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person proper to be held out by the court to the public as trustworthy.'" Matter of Dawkins, *supra* at 1010-1011, quoting Matter of Keenan, 313 Mass. 186, 219 (1943). See Matter of Ellis, 457 Mass. at 415.

The substantial evidence supports the conclusion that the petitioner failed to demonstrate that he has led "a sufficiently exemplary life to inspire public confidence once again, in spite of his previous actions."<sup>5</sup> Matter of Prager, 422 Mass. 86, 92 (1996), quoting Matter of Hiss, 368 Mass. 447, 452 (1975). It is not enough to show that he has not been sued or accused of a crime; the petitioner must also demonstrate that he understands and has taken responsibility for his actions, and that he has done his best to make amends. See Matter of Weiss, 474 Mass. at 1002. In this case, although the petitioner acknowledges that "he committed conversion and misrepresentation and deserved to be suspended," he has not made restitution of the full amount of the converted funds.<sup>6</sup> As we have said, restitution is an "outward sign of the recognition of one's wrongdoing and the awareness of a moral duty to make amends to the best of one's ability." Matter of Corbett, 478 Mass. 1004, 1005 (2017), quoting Matter of McCarthy, 23 Mass. Att'y Discipline Rep. 469, 470 (2007). There is ample evidence to support the panel's conclusion that, "even after all this time, the petitioner still lacks insight as to the nature and severity of his misconduct."

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<sup>5</sup> We acknowledge the petitioner's claim that the board and the single justice each was required independently to explain the basis for their respective decisions. That is incorrect. The hearing panel served as the fact finder. Pursuant to S.J.C. Rule 4:01, § 18 (5), as appearing in 453 Mass. 1315 (2009), we are required to accept those findings if supported by substantial evidence. In this case, after review, the board adopted the hearing committee's report and its recommendation. The single justice did the same.

<sup>6</sup> To resolve a criminal matter related to the conversion, the petitioner repaid a portion of the funds, gave a promissory note for the balance. See Matter of Leo, 17 Mass. Att'y Discipline Rep. 371 (2001). After he defaulted on the promissory note, the petitioner was tried and acquitted on a larceny charge.

In his revised reinstatement questionnaire, the petitioner acknowledged involvement in various non-law related occupations since his suspension.

Furthermore, although the petitioner called three witnesses to testify on his behalf at the hearing (including his domestic partner and brother), the hearing panel determined that the testimony bore "only faint traces of what we were looking for: credible and disinterested testimony that, since his suspension, the petitioner has shown introspection and moral rehabilitation." Likewise, while the petitioner submitted several letters in the nature of character references, they were conclusory and unpersuasive. See, e.g., Matter of Dawkins, 432 Mass. at 1011 n.5 (supportive letters given little weight given admissions that writers had little knowledge of petitioner's wrongdoing or disciplinary background).

While there is other evidence to support the hearing panel's findings, we are particularly troubled by the petitioner's actions in connection with an application for a criminal complaint that he filed against another driver involved in a 2011 motor vehicle accident. The petitioner testified that he did not intend to pursue the matter but, instead, filed it "to work out some sort of a settlement arrangement." As the panel recognized, this conduct is inconsistent with the rules of professional conduct. See Mass. R. Prof. C. 3.4 (h), as appearing in 471 Mass. 1425 (2015) (lawyer shall not "threaten to present criminal . . . charges solely to obtain an advantage in a private civil matter"). In short, the petitioner failed to "adduce substantial proof that he has such an appreciation of the distinctions between right and wrong . . . as will make him a fit and safe person to engage in the practice of law" (quotation and citation omitted). Matter of Hiss, 368 Mass. at 457.

b. Learning in the law. In addition to demonstrating moral fitness, the petitioner also was required to demonstrate current competency and learning in the law. See S.J.C. Rule 4:01, § 18 (4) and (5). The petitioner has been suspended from the practice of law since 2001. In 2003, he took the multistate professional responsibility examination. Beginning sometime after 2011, he represented himself as a plaintiff in litigation involving a motor vehicle accident. As to that, however, the hearing panel recognized there were inconsistencies in the pleadings he filed, and some of his claims were without merit. In addition, the petitioner's testimony before the hearing panel reflects a lack of understanding of the legal principles associated with releases and settlements in civil actions such as those he commenced.

The petitioner argues that, after the petition for reinstatement was filed, he viewed "dozens" of "on demand" legal education programming on a variety of topics, and read several legal periodicals and treatises. As the hearing panel found, however, "[t]he number of hours he has spent studying law equates to less than four work weeks -- a minuscule amount of time over seventeen years of not practicing law to maintain his legal competency." And he had only limited experience working in the legal field, see note 6, supra, during the fifteen-plus years that he was suspended." Given all of these considerations, the substantial evidence supports the conclusion that the petitioner has not demonstrated current legal acumen. See, e.g., Matter of Waitz, 416 Mass. 298, 306 (1993) (attendance at four legal education programs and reading legal publications for two to three hours weekly insufficient to support reinstatement following indefinite suspension).

Conclusion. In considering a petition for reinstatement, the question "is whether at the present time, in spite of his previous misconduct, the petitioner has rehabilitated himself sufficiently to inspire public confidence, that is, whether he currently possesses the moral character and legal acumen to be admitted to the bar of the Commonwealth." Matter of Ellis, 457 Mass. at 414). The hearing panel's findings, adopted by the board, are amply supported by the evidence. Giving deference to the board's recommendation, we conclude there was no error in denying the petition for reinstatement.

Judgment affirmed.

The case was submitted on briefs.

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