

[J-106-1999]
IN THE SUPREME COURT OF PENNSYLVANIA

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| IN THE MATTER OF LAWRENCE D. | : | No. 762 Disciplinary Docket No. 2 |
| GREENBERG, | : | |
| | : | Disciplinary Board No. 93-DB-90 |
| | : | Attorney Reg. No. 12561 |
| | : | (Montgomery County) |
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| | : | SUBMITTED: July 14, 1999 |
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DISSENTING OPINION

MR. JUSTICE CAPPY

DECIDED: MARCH 22, 2000

Contrary to the unanimous recommendations by both the Hearing Committee and the Disciplinary Board to readmit Lawrence Greenberg to the practice of law, the majority denies Mr. Greenberg's petition for reinstatement. I respectfully dissent.

This court has set forth a two-part analysis to be used when considering whether reinstatement is appropriate. First, the court must determine whether the petitioner has shown that his breach of trust was not so egregious as to preclude the court from even considering his petition for reinstatement. In re Verlin, 731 A.2d 600, 601 (Pa. 1999). If the petitioner's conduct is not so egregious as to preclude court consideration of the petition for reinstatement, the court then determines whether petitioner has met his burden of proving that his current resumption of the practice of law 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 this Commonwealth. Pa.R.D.E. 218(c)(3)(i); Verlin, 731 A.2d at 602.

The majority concludes that while Mr. Greenberg's actions were not so egregious so as to vitiate our consideration of his petition for reinstatement, a position with which I agree, he is not fit to resume the practice of law at this time. Based on the facts of this case, I believe this holding to be unwarranted.

Contrary to the majority's conclusion, the evidence establishes, and the lower tribunals found, that Mr. Greenberg should be readmitted to the practice of law. Mr. Greenberg fraudulently transferred funds from a failing metals business to preserve cash in hopes of funding another company to continue operations. Of the funds transferred to the new company, \$500,000 was transferred back to the failing company to meet then-existing obligations. When the troubled company went into bankruptcy, Mr. Greenberg and the primary owner of the business failed to disclose the transfer of funds.

As noted by the Disciplinary Board, this is a case of an individual giving his all to a failing company and when problems became insurmountable, he resorted to illegal conduct to preserve operations. Moreover, while a small percentage of the diverted funds were used for Mr. Greenberg's personal use, the vast majority of the funds were moved to the new company's accounts.

Like the Disciplinary Board, I would also find that he has satisfied the criteria for readmission to the bar. Contrary to the analysis conducted by the majority today, our court has stated that "[t]he object of concern is not solely the transgression which gave rise to the lawyer's suspension or disbarment, but rather the nature and extent of the rehabilitative efforts he has made since the time the sanctions were imposed and the degree of success

achieved in the rehabilitative process.” Philadelphia News. Inc. v. Disciplinary Board of the Supreme Court, 363 A.2d 779, 780-81 (Pa. 1976).

Mr. Greenberg’s wrongful misconduct occurred thirteen years ago. He has been disbarred for nine years. During this time period, Mr. Greenberg has engaged in meaningful rehabilitation. When released from prison, Mr. Greenberg no longer had a home, any assets, or a wife. Mr. Greenberg obtained employment with a non-profit organization, and significantly, he continued volunteering for the homeless, even after his community service requirement was satisfied. Additionally, he has rebuilt a relationship with his children. Furthermore, Mr. Greenberg is current in the law, having attended numerous Pennsylvania Bar Institute courses. Finally, Mr. Greenberg has the moral requisites required to be readmitted to the bar, as evidenced by substantial character and rehabilitation evidence. In sum, as found by the lower tribunals, “Mr. Greenberg is a fundamentally skilled lawyer and a moral person, who made a bad error in judgment.” Opinion of the Hearing Committee 2.03, p.8; Report and Recommendation of the Disciplinary Board, 11/17/98, p.7.

Finally, while I disagree with the conclusion reached by the majority, I am more deeply troubled by the majority’s focus in this case. Looming large in the majority decision is the dollar amount that Mr. Greenberg misappropriated. Indeed, the amount of money transferred becomes the mantra of the majority and is used to dismiss the evidence offered in favor of reinstatement. The majority has, in essence, created a dollar bar to reinstatement. While two million dollars is without question a large sum of money, the majority allows this figure to color its judgment as to whether to allow reinstatement. Is the misappropriation of two million dollars from a multi-million dollar corporation more egregious than absconding with twenty dollars from a pauper? Simply stated, it is unwise and unjust to focus so intently on the dollar amount at issue where it is the underlying character flaw that is truly relevant.

For the above-stated reasons, I disagree with the conclusion reached by the majority that Mr. Greenberg should not be permitted to resume the practice of law and would grant his petition for reinstatement.