

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of	:	No. 883 Disciplinary Docket No. 3
	:	
	:	No. 108 DB 2001
JONATHAN M. LEVIN	:	
	:	Attorney Registration No. 38654
	:	
PETITION FOR REINSTATEMENT	:	(Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 7th day of November, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 16, 2007, 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.

A True Copy Patricia Nicola

As of: November 7, 2007

Attest: 

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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	:	No. 3
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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

By Order of February 19, 2004, the Supreme Court of Pennsylvania suspended Jonathan M. Levin from the practice of law for a period of two years. On February 14, 2006 Mr. Levin filed a Petition for Reinstatement to the practice of law. Office of Disciplinary Counsel filed a Response to Petition for Reinstatement on April 18, 2006

and stated its concerns regarding Petitioner's reinstatement and reserved the right to raise any objections at the time of hearing.

A reinstatement hearing was held on July 28, 2006 and concluded September 8, 2006, before a District I Hearing Committee comprised of Chair Brad S. Rush, Esquire, and Members Edward F. Shay, Esquire and Scott H. Mustin, Esquire. Respondent was represented by E. Harris Baum, Esquire. Petitioner called one character witness, one expert witness, two additional witnesses and testified on his own behalf. Office of Disciplinary Counsel introduced written Joint Stipulations of Fact and Law, joint exhibits, and additional exhibits. Office of Disciplinary Counsel did not call any witnesses.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 8, 2007 and recommended that the Petition for Reinstatement be denied.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on May 10, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner is Jonathan M. Levin. He was born in 1953 and was admitted to the bar of the Supreme Court of Pennsylvania in 1982. His current address is 210 Locust Street, Apt. 2-G, Philadelphia PA 19106.

2. By Supreme Court Order dated February 18, 2004, effective March 20, 2004, Petitioner was suspended from the practice of law in the Commonwealth of Pennsylvania for a period of two years.

3. Petitioner's suspension was a result of his commingling of fiduciary funds wherein he failed to separate his funds from those of his clients and third parties; and the intentional and knowing conversion of fiduciary funds wherein Petitioner allowed the balance in his escrow account to fall below the amount of funds entrusted to him on behalf of Aetna, Dwight Peterson, Esquire, and other third parties and clients. Petitioner violated Rules of Professional Conduct 1.15(a), 1.15(b) and 8.4(c).

4. On February 14, 2006, Petitioner filed a Petition for Reinstatement and Reinstatement Questionnaire with the Disciplinary Board.

5. In response to Question 10 of the Questionnaire, which asked, "Are there any judgments against you currently on court record as unsatisfied?", Petitioner responded "no."

6. Petitioner failed to list six open judgments. See Stip. 11, Exhibit-4, Exhibit -5 - Exhibit 8; Exhibit -26).

7. On or about April 28, 2006, following the filing of his Questionnaire, Petitioner satisfied the judgment in the amount of \$531.58 in Reporting Service Associates v. Levin.

8. On or about April 27, 2006, Petitioner satisfied the three judgments captioned City of Philadelphia v. Levin.

9. On or about May 25, 2006, Petitioner satisfied the judgment in Mellon Bank, N.A. v. Levin.

10. On or about June 7, 2006, Petitioner satisfied the judgment in Commonwealth of Pennsylvania v. Levin.

11. The above noted payments of outstanding judgments were made following Office of Disciplinary Counsel's investigation and disclosure of same to Petitioner.

12. In response to Question 10 in the Questionnaire, which also asked "Have you ever been involved in a civil action as a party or as one who claimed an interest?" and "Has any action in the nature of a malpractice action been filed against you?", Petitioner answered "yes" to both questions and attached dockets for three malpractice cases. Petitioner failed to list or attach dockets for eighteen other cases in which he was listed as a party.

13. Question 11 of the Questionnaire asked for a list of occupations engaged in by Petitioner. He stated that he had not left the job of Charter Board Captain when in fact his charter boat license expired prior to his filing of the Petition for Reinstatement.

14. By letter dated December 27, 2005, Petitioner's treating physician, Vincent E. Baldino, D.O., stated that Petitioner was "uncertifiable" as per the requirements set forth in Petitioner's Coast Guard renewal application; thereafter Petitioner's mariner's license expired on January 11, 2006.

15. On November 30, 2005, Petitioner executed a Claim for Refund and Request for Abatement in connection with his 2003 tax return wherein Petitioner stated that:

In June of 2003 I was involved in a serious motor vehicle accident where I was seriously permanently injured giving rise to years of physical therapy, ingestion of pain medication and innumerable [sic] doctors visits. I have enclosed copies of medical reports which are still ongoing. This disability, both physical+ psychological impaired my ability to attend to my business affairs from physical + psych disabilities.

Petitioner submitted medical documentation with his Claim. (Stip. 26, Exhibit-22)

16. On March 3, 2006, Petitioner executed a Claim for Refund and Request for Abatement in connection with Petitioner's 2004 tax return wherein Petitioner stated that:

In May of 2003 I was involved in a serious motor vehicle accident which left me permanently disabled both mentally + physically. I was involved in extensive orthopedic treatment/evaluation in 2004 which continues to date.

Petitioner submitted medical documentation with his Claim. (Stip. 28; Exhibit - 21)

17. Robert L. Tanenbaum, PhD, issued a report on October 24, 2005, summarizing his psychological findings regarding Petitioner.

18. Dr. Tanenbaum concluded that Petitioner "developed psychological problems as a direct result of his back injury on May 3, 2004, and, [sic] the failure to recover despite treatment and rehabilitation provided...Since [Petitioner's] physical condition remains chronic, his psychological prognosis will remain guarded and uncertain." (Exhibit-21)

19. The purpose of the report was to address the impact, if any, of Petitioner's May 2003 motor vehicle accident on Petitioner's emotional functioning in relation to the physical disabilities that prevent him from pursuing employment as an operator of a deep sea fishing charter business.

20. Dr. Tanenbaum was unaware that Petitioner sought abatement of his 2003 and 2004 federal taxes and Petitioner used the October 24, 2005 report to support his request for tax abatements based on his mental and physical disabilities.

21. Dr. Tanenbaum issued a June 9, 2006 report addressing Petitioner's readiness to be reinstated as an attorney. The report concluded that "any and all emotional reactions and/or diagnoses rendered in regard to [Petitioner's] loss have no significant bearing on his ability to perform the cognitive aspects of the practice of law. The fact that he had physical and psychological difficulties at the time he was tardy with his tax filing is an issue that was existent then but not now."

22. Dr. Tanenbaum was unaware that Petitioner had a ten year history of late tax filings and delinquent tax obligations.

23. Question 12 asked Petitioner to list any income in excess of \$500 that he received in any one year during the period of his suspension. Petitioner failed to list \$146,265 in referral fees that he received during his suspension.

24. Petitioner submitted with his Questionnaire an attachment titled "JONATHAN LEVIN SCHEDULE OF REFERRAL FEES" which shows he received \$36,736 in referral fees for 2004 and \$22,837 in referral fees for 2005.

25. In fact, Petitioner received \$109,000 in referral fees in 2005.

26. Petitioner failed to produce IOLTA records to Office of Disciplinary Counsel on request.

27. Petitioner handled fiduciary funds after the commencement of his suspension.

III. CONCLUSIONS OF LAW

1. Petitioner has not demonstrated by clear and convincing evidence that he has the moral qualifications required for admission to the practice of law in Pennsylvania. Pa.R.D.E. 218(c)(3)(i).

2. Petitioner has not demonstrated by clear and convincing evidence that his resumption of the practice of law within the Commonwealth will be neither detrimental to the integrity and standing of the bar nor subversive of the public interest. Pa.R.D.E. 218(c)(3)(i).

IV. DISCUSSION

Petitioner seeks reinstatement to the practice of law following a suspension of two years. In order to be reinstated Petitioner has the burden of demonstrating by clear and convincing evidence that he has 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 within the Commonwealth will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. Pa.R.D.E. 218(c)(3)(i).

In determining whether Petitioner demonstrated his present fitness, the Board must consider the nature of his misconduct, his present competence and legal abilities, his character, his rehabilitation and the degree of remorse expressed. Philadelphia Newspapers, Inc., v. Disciplinary Board, 363 A.2d 779 (Pa. 1976).

The Board concludes that Petitioner did not meet his burden of proving his fitness to resume the practice of law in two respects: Petitioner failed to prove that he is morally qualified; he failed to prove that his resumption of the practice of law would not be detrimental to the integrity and standing of the bar or administration of justice nor subversive of the public interest.

Petitioner intentionally omitted material information and intentionally provided inaccurate material information on his Reinstatement Questionnaire. When asked if he had any unsatisfied judgments against him currently on court records, Petitioner answered in the negative, when in fact he had six outstanding judgments against him. He further

failed to provide a copy of the dockets regarding the six outstanding judgments. Petitioner paid the judgments after Office of Disciplinary Counsel brought them to Petitioner's attention. Petitioner failed to list additional cases in which he was a defendant. Petitioner gave inaccurate information on the Questionnaire concerning his occupations, in that he stated he had a charter boat captain license when in fact it had expired the previous month. Petitioner was asked to list any income in excess of \$500 that he received in any one year during his suspension. He failed to list referral fees that he received, which totaled substantially more than \$500.

Petitioner did not fully cooperate with Office of Disciplinary Counsel in that he failed to produce his IOLTA records. ODC issued a subpoena to the bank for the records. The IOLTA records demonstrate that Petitioner handled fiduciary funds during his period of suspension. Petitioner had until March 20, 2004 to wind up his practice, which included disbursing all fiduciary funds. On April 2, 2004 and until August 17, 2004, the balance in the IOLTA was more than \$51,000.

Shortly before Petitioner filed his Petition for Reinstatement, he filed abatement forms with the IRS on the basis that he was permanently disabled both mentally and physically as a result of a car accident in 2003. The execution and filing of these forms was dishonest, in that the medical report attached in support of the abatement requests was issued to address Petitioner's pursuit of employment in the charter boat business. The author of the report, Dr. Tanenbaum, was unaware at the time that Petitioner was using the report to support his requests for tax abatements.

Taken as a whole, the Board is persuaded that Petitioner lacks the requisite moral qualifications for reinstatement. In presenting himself as a candidate for readmission, at the very least he should have been prepared to answer all questions in a full and honest manner, and to be helpful and forthcoming in the investigation of his reinstatement request. Petitioner's period of suspension should have been a phase of his life when he approached issues with candor. The record does not support such a finding. In short, Petitioner's reinstatement would be detrimental to the integrity and standing of the bar and the administration of justice and subversive of the public interest.

For the above reasons, the Board recommends that Petitioner be denied reinstatement.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Petitioner, Jonathan M. Levin, 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 B. Gephart
Smith Barton Gephart, Vice-Chair

Date: July 16, 2007