

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 932 Disciplinary Docket No. 3
: :
: Nos. 113 DB 2004
MICHAEL RADBILL : :
: Attorney Registration No. 17053
: :
PETITION FOR REINSTATEMENT : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 19th day of November, 2015, upon consideration of the Report and Recommendations of the Disciplinary Board, the Petition for Reinstatement is denied. Petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement, pursuant to Pa.R.D.E. 218(f).

A True Copy John A. Vaskov, Esquire
As Of 11/19/2015

Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 932 Disciplinary Docket No. 3
: :
MICHAEL RADBILL : No. 113 DB 2004
: :
: Attorney Registration No. 17053
: :
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 dated June 19, 2006, retroactive to July 29, 2004, the Supreme Court of Pennsylvania disbarred Michael Radbill. By Petition for Reinstatement filed on February 25, 2010, Mr. Radbill requested reinstatement to the bar of Pennsylvania. He subsequently requested leave to withdraw the petition, which was granted without prejudice on March 31, 2011. Mr. Radbill filed a second Petition for Reinstatement on

May 15, 2014. Office of Disciplinary Counsel filed a Response to Petition on September 15, 2014 and opposed reinstatement.

A reinstatement hearing was held on December 10, 2014, before a District I Hearing Committee comprised of Chair Alexander B. Giacobetti, Esquire and Members Karen M. Sanchez, Esquire and Sayde Joy Ladov, Esquire. Petitioner appeared *pro se*.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on April 22, 2015 and recommended that the Petition for Reinstatement be denied.

Petitioner filed a Brief on Exceptions on May 8, 2015 and requested oral argument before the Disciplinary Board.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on May 22, 2015.

Oral argument was held on June 11, 2015, before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on July 25, 2015.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Michael Radbill. He was born in 1943 and was admitted to the practice of law in the Commonwealth of Pennsylvania in 1973. His current attorney registration address is 1118 Warren Avenue, Cherry Hill, NJ 08002. Petitioner is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. At all times relevant hereto, Petitioner was a sole practitioner whose office was located at 1800 Callowhill Street, Philadelphia, PA 19130.

3. On September 18, 2003, Petitioner entered a plea of guilty to one count of Health Care Fraud, in violation of 18 U.S.C. §1347 and one count of Fraud and False Statement in connection with a federal tax return, in violation of 26 U.S.C. §7206(1). ODC-68.

4. On January 15, 2004, the Honorable Marvin Katz sentenced Petitioner to serve a term of imprisonment of one year and one day and three years of supervised release following Petitioner's release from prison; to make restitution in the amount of \$261,447.16; and, to pay a special assessment of \$200. ODC-68.

5. Petitioner's criminal conduct that led to his guilty plea occurred from 1995 through 2000. ODC-68.

6. Petitioner represented twenty-nine (29) clients in personal injury cases knowing that those clients were not injured and did not require medical treatment. ODC-68.

7. In those twenty-nine (29) fraudulent personal injury cases, twenty (20) insurance carriers were defrauded and their total loss amounted to \$261,447.16. ODC-68.

8. Over a thirty (30) year period, Petitioner used runners to solicit personal injury cases and knew that the majority of the clients he represented in personal injury cases were not injured. ODC-68.

9. Petitioner's federal tax returns for the years 1997 through 2000 contained false information, in that Petitioner underreported his earned income and exaggerated and falsified his business expenses. ODC-68.

10. Petitioner concealed his income by negotiating settlement checks at check cashing agencies or by depositing the settlement checks into his personal account as opposed to his escrow account. ODC-68.

11. Over the tax years 1997 through 2000, Petitioner reported less than 24% of his gross income. ODC-68.

12. Petitioner's underreporting of his income and falsifying and exaggerating business expenses resulted in the United States government incurring a total tax loss of \$235,788. ODC-68.

13. Petitioner was placed on temporary suspension by Order of the Supreme Court dated July 29, 2004, and he was disbarred from the practice of law by Order of the Supreme Court on June 19, 2006.

14. Before Petitioner's sentencing on January 15, 2004, he was directed by a presentence investigator to complete a financial affidavit that requested certain personal financial information. N.T. 116-117; ODC-52; ODC-68.

15. Petitioner failed to provide truthful information when completing the financial affidavit. N.T. 117-118; ODC-52; ODC-68.

16. On the financial affidavit, Petitioner left blank Section M, which, *inter alia*, inquired if someone else was holding assets on behalf of Petitioner. N.T. 121; ODC-52.

17. The presentence investigator questioned Petitioner about Section M on the financial affidavit and marked off "none" after receiving Petitioner's verbal response. *Id.*

18. Petitioner failed to disclose on the financial affidavit that he and his wife, Marilyn Radbill, had transferred joint ownership of 1118 Warren Avenue, Cherry

Hill, NJ (“the NJ house”) and an adjacent vacant lot to E.M., Inc. (“E.M.”), a company whose sole corporate owner and shareholder was Petitioner’s sister-in-law, Leonna Rothstein. N.T. 121-122; ODC-52.

19. Petitioner testified that he transferred the NJ house because he had \$100,000 in credit card debt and wanted to protect the NJ house from creditors; however, Petitioner’s testimony was not credible. N.T. 69-70.

20. In reality, the transfer was to protect the home from being utilized by the federal government to satisfy any restitution required of Petitioner based on his criminal conduct. In reality, Petitioner had a small credit card debt, much less than the amount he had testified to. N.T. 69-70, 109-110, 117-118; ODC-52.

21. Upon Petitioner’s release from prison in December 2004, a probation officer required Petitioner to complete a personal financial statement (“the 12/2004 statement”), which was again required to be completed in October 2005 (“the 10/2005 statement”). N.T. 127; ODC-59; ODC-60; ODC-62.

22. Based on review of the 10/2005 statement, the federal probation department determined that Petitioner’s monthly restitution payments should be increased from \$30.00 to \$500 per month. N.T. 128; ODC-60.

23. Thereafter, the United States Attorney’s Office deposed Petitioner on January 12, 2006 for the purpose of obtaining testimony with regard to Petitioner’s assets. N.T. 129-130; ODC-59.

24. Petitioner failed to disclose the existence of an individual retirement account and a joint investment account on any of the pertinent statements. N.T. 127-128, 130-131; ODC-59; ODC-60; ODC-63.

25. In May 2006, the probation department filed a petition to have Petitioner's supervised release revoked because:

a. He had failed to make restitution payments in the amount of \$500 per month;

b. He had failed to accurately disclose the security accounts that he owned; and

c. He, in fact, transferred the funds in the security accounts to another brokerage house.

N.T. 131-132; ODC-62.

26. Thereafter, by Order dated July 14, 2006, the United States District Court revoked Petitioner's supervised release, imprisoned him for three additional months and ordered him to serve a one-year term of supervised release. ODC-65.

27. Petitioner testified that he inadvertently failed to disclose on three different pre-sentence statements the existence of his retirement accounts. Petitioner's testimony is not credible as there is direct evidence contradicting the testimony by the statements he has made and other forms that he has filled out. N.T. 82-84.

28. Petitioner transferred title to his home in New Jersey to his two sons prior to the commencement of his prison term in order to insulate the house from being utilized to satisfy the court-ordered restitution and being subjected to a lien by the IRS. (N.T. 67-68; ODC-45; ODC-54) He was advised by the United States Attorney's Office that transferring ownership of the NJ house to Petitioner's sons could be considered a fraudulent transfer as to the restitution judgment entered against him in the criminal case. ODC-59; ODC-69.

29. Although Petitioner and his wife did not pay rent to their sons for residing in the NJ house, Petitioner falsely claimed on their New Jersey tax returns in 2004 through 2009 that they paid rent for residing in the NJ house. N.T. 139-140; ODC-1-5; ODC-69.

30. In December 2010, Erik Radbill, who is Petitioner's son, and Erik's wife filed a Chapter 7 bankruptcy action in the United States Bankruptcy Court for the District of New Jersey. (N.T. 86-87) The Chapter 7 Trustee discovered that Petitioner's son was a one-half owner of the NJ house. Thereafter, in April 2011, Erik Radbill and his wife received a Chapter 7 discharge and in May 2011, the two sons transferred the NJ house to their mother for \$1.00. N.T. 140-141; ODC-41.

31. In June 2012, the Chapter 7 Trustee filed an adversary complaint that sought to void the 2011 transfer to Petitioner's wife; Petitioner and his wife were named as defendants. N.T. 141-142; ODC-39; ODC-41.

32. During the course of the adversary proceeding, Petitioner, Mrs. Radbill, and Petitioner's two sons were deposed. ODC-42-45.

33. During his deposition, Petitioner again claimed that he had over \$100,000 in credit card debt and wished to transfer the NJ house to his sons because of concerns over that debt. He further stated that he had not discussed the deed with his wife or sons before signing over the deed to the NJ house to his sons. Petitioner also acknowledged that he had a current judgment against him for court-ordered restitution and finally stated that he had not paid any rent to his sons for the period 2004 through 2011, when he was living in the house. ODC-45.

34. In contrast, Petitioner's sons testified that they never had any conversation with their father with regard to why the house was transferred to them, nor

did they have any knowledge that Petitioner actually transferred the real estate to them. Further, they never paid any expenses associated with the maintenance and upkeep of the household and never received any rent payment from Petitioner or their mother. ODC-42, ODC-43.

35. Petitioner's testimony at the 2006 deposition for the United States Attorney's Office relating to his reasons for transferring the NJ house to his sons, his conversations with his wife and his sons about the transfer, and his sons' payment of expenses for the NJ house, is inconsistent with Petitioner's later testimony at the adversary deposition and the deposition testimony of Mrs. Radbill and Petitioner's two sons.

36. In a Memorandum Opinion dated July 16, 2013, the Bankruptcy Court found that Petitioner had intended to transfer the entire interest in the NJ house to the two sons, at the 2006 deposition Petitioner characterized the transfer to the sons as a legitimate transfer of interests, but in the adversary proceeding Petitioner characterized the transfer as motivated by his pending incarceration, credit card debt and restitution judgment, and that the deed conveying the house to Petitioner's sons did not reserve any rights in favor of Petitioner or his wife. The Court found valid the 2004 transfer from Petitioner and his wife to their sons, and voided the 2011 transfer of the NJ house to Mrs. Radbill. ODC-41

37. Petitioner offered testimony at the reinstatement hearing that either lacked candor or was false:

- a. Petitioner falsely testified that his private practice of law consisted "mostly of collection work" and that he only had "one or two

personal injury cases a year”; the record shows that the majority of his practice was personal injury work. N.T. 61, 78; ODC-51; ODC-52

b. Petitioner falsely testified that when he transferred the NJ house to E.M., he owed “close to \$100,000 in credit card debt”; Petitioner’s actual credit card debt was no more than \$35,000. N.T. 69-70, 109-11; ODC-52.

c. Petitioner testified that the Bankruptcy Trustee filed the adversary proceeding against Petitioner and Mrs. Radbill to force the sale of the NJ house in order to obtain \$150,000 from the sale to satisfy Petitioner’s court-ordered restitution; in fact, a settlement agreement reached in the adversary proceeding between the Trustee and Mrs. Radbill provided that the Trustee received \$62,000 from the sale of the NJ house to be used to pay Erik Radbill’s creditors. N.T. 87-89, 159-160; ODC-38.

d. Petitioner misrepresented at the hearing that in August 2012, his employment at Fiesta Publications, Inc. was terminated because his employer had discovered that Petitioner had been named as a defendant in the adversary proceeding; Petitioner’s employment at Fiesta was terminated in August 2013 due to insufficient work for Petitioner. N.T. 91-92; 182-183, 188-191; ODC-32; ODC-48; Questionnaire No. 11.

38. Petitioner has made significant omissions in other circumstances:

a. Petitioner failed to disclose on the Reinstatement Questionnaire the adversary proceeding and a subsequently filed civil case against the bankruptcy Trustee. These matters concluded in

February and March, 2014, shortly before Petitioner completed and filed the Questionnaire. N.T. 186-188; ODC-31 – 41; Questionnaire No. 10.

b. Petitioner failed to disclose on the Questionnaire that he had not paid in full his federal tax obligation for tax years 2011, 2012 and 2013. He also failed to disclose that he and his wife had begun making monthly payments toward repaying a mortgage that they had received from the South Jersey Federal Credit Union. N.T. 192-198; 201-203; ODC-12-14, 16-24, 29-30; Questionnaire 10(d).

c. Petitioner failed to disclose that he was employed at Prestige Motor Cars Imports, Inc. and did not disclose the amount of his compensation or the duration of his employment.

d. Petitioner did not disclose his 2010 and 2011 IRA distributions from different sources.

e. Petitioner failed to disclose that he had claimed his son as a dependent on his federal income tax returns from 2009 through 2013 notwithstanding the fact that Petitioner's son did not reside with Petitioner and received no financial support from him. N.T. 199-201; ODC-10-14, 25-28; Questionnaire 11-12, 14.

39. Petitioner has consistently failed to provide complete and truthful answers on documentation submitted to governmental authorities as well as disciplinary authorities.

40. Petitioner has not shown any level of contrition with regard to his criminal and unethical misconduct in that he denied using runners during his thirty (30) years of handling personal injury cases; he denied knowing that the majority of his

personal injury clients were in fact not injured; he never made restitution payments until his probation officer suggested he do so at the rate of \$30.00 per month. N.T. 79-80, 211-212; 104-106; ODC-66.

41. Petitioner has not cooperated with Office of Disciplinary Counsel in that he contested his reciprocal disbarment by the United States District Court for the Eastern District when it was so ordered on March 13, 2007. ODC-46.

42. Petitioner's claim that he is remorseful for his criminal and unethical behavior is belied by his attempts to minimize his conduct and by his prior unwillingness to voluntarily make any restitution payments.

43. Petitioner presented three character witnesses.

44. Jonathan Alessandri did not actually offer any character testimony but instead testified about Petitioner's employment and work responsibilities. N.T. 10-11.

45. Dr. Harry Getzoff stated he had no knowledge about any aspect of Petitioner's criminal conduct. Further, he did not affirmatively state that he considered Petitioner trustworthy when asked that question by Office of Disciplinary Counsel and the Hearing Committee. N.T. 22, 24-26, 32-33.

46. Cheryl Lanuti believed Petitioner was a changed man after his release from prison, but did not discuss Petitioner's re-incarceration following his violation of terms of supervised release. Ms. Lanuti had no information about the details of Petitioner's criminal conduct. N.T. 43-44, 49, 52.

47. No members of the legal profession testified on Petitioner's behalf.

III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude consideration of his petition for reinstatement. *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872 (Pa. 1986).

2. Petitioner failed to prove by clear and convincing evidence that he has engaged in a sufficient period of qualitative rehabilitation during his disbarment. *In re Verlin*, 731 A.2d 600 (Pa. 1999).

3. Petitioner has failed to demonstrate by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required to practice law in 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 the administration of justice nor subversive of the public interest. Rule 218(c)(3), Pa.R.D.E.

IV. DISCUSSION

Petitioner seeks reinstatement to the bar of the Supreme Court of Pennsylvania following his disbarment by Order of the Supreme Court dated June 16, 2006, retroactive to July 29, 2004.

The threshold issue in this matter is whether the misconduct that resulted in Petitioner's disbarment was so egregious that his reinstatement would have a detrimental effect upon the integrity and standing of the bar or would be subversive of the public interest. *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872 (Pa. 1986).

Petitioner was disbarred because he engaged in criminal conduct consisting of fraud in representing twenty-nine clients in personal injury cases and fraud

in the filing of his federal tax returns. Over a thirty-year period, Petitioner used runners to solicit personal injury cases and was aware that the majority of the clients he represented were not injured.

The Hearing Committee concluded that such misconduct should forever bar Petitioner's reinstatement. Office of Disciplinary Counsel maintains the same position, insisting that Petitioner's fraudulent activities over a time span of three decades are so egregious as to prevent Petitioner's ability to practice law in the Commonwealth forever. We note that in only one case has the Supreme Court held that the magnitude of the breach of trust was so egregious that reinstatement was forever barred. *See, In the Matter of Romaine Phillips*, 801 A.2d 1208 (Pa. 2001). Phillips was involved in a conspiracy with a Common Pleas judge to commit bribery and to fix cases, and thus knowingly engaged in acts to subvert the truth-determining process.

There is no doubt that Petitioner's misconduct was serious and that his disbarment was the appropriate sanction. Nevertheless, we find that his misconduct was not so egregious that it should prohibit Petitioner's reinstatement. Petitioner's misconduct is similar to that of other attorneys who have been disbarred and who have sought and been granted reinstatement. *See, In re Greenberg*, 749 A.2d 434 (Pa. 2000) (misappropriation of two million dollars and commission of perjury in a bankruptcy not so egregious to warrant permanent disbarment); *In re Perrone*, 777 A.2d 413 (Pa. 2001) (disbarred attorney's misconduct in filing false and misleading fee petitions to obtain payment for legal services was not so deplorable as to preclude reinstatement); *In re Costigan*, 664 A.2d 518 (Pa. 1995) (theft conviction is not a breach of trust of sufficient magnitude to forever bar an attorney seeking readmission); *Office of Disciplinary Counsel v. Robert Edward Faber*, 13 DB 1997 (2007) (disbarred for

conviction of mail fraud, wire fraud and aiding and abetting the criminal conduct of others; prosecuted personal injury cases that were fabrications; accepted 16 cases and after learning the claims were false, did not remove himself and settled two of the cases; conduct not so egregious as to bar reinstatement).

Once the *Keller* threshold is passed, Petitioner bears the burden of proving by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required for admission to practice law in the Commonwealth and that his readmission would not have a detrimental impact on the integrity and standing of the bar, the administration of justice or be subversive of the public interest. Rule 218(c)(3), Pa.R.D.E. To that end, Petitioner must prove that his post-disbarment conduct and efforts at qualitative rehabilitation were sufficient to dissipate the detrimental impact of his conduct on the public trust. *In re Verlin*, 731 A.2d 600 (Pa. 1999). Following our careful consideration of the Hearing Committee's Report and recommendation, and the parties' recommendations and oral argument before the Board, we conclude that Petitioner has not met his burden.

At the time of the reinstatement hearing, Petitioner had been disbarred for a period of ten years and five months. The record is devoid of any compelling evidence to demonstrate that during his disbarment Petitioner has been rehabilitated. To the contrary, the record supports the conclusion that Petitioner is not fit to resume practicing law because he persisted in engaging in actions of a similar nature to that of the underlying misconduct. While some of Petitioner's actions described herein pre-date disbarment, they are relevant to illustrate the on-going pattern of dishonesty and lack of remorse that existed prior to the imposition of the disciplinary sanction and continued unabated during the period of disbarment. For example:

- Petitioner failed to provide truthful information on financial statements and affidavits required by the pre-sentence investigator and the probation office.
- Petitioner's supervised release was revoked due to his failure to make restitution payments and failure to disclose accounts, and he was imprisoned for an additional three months with an additional one year of supervised release. Petitioner did not testify credibly concerning these events.
- Petitioner and his wife transferred joint ownership of their New Jersey house to protect the house from being used to satisfy court-ordered restitution, but Petitioner later failed to testify credibly about this situation at the adversary proceeding and at the reinstatement hearing.
- Petitioner omitted certain information on his Reinstatement Questionnaire, such as employment and compensation, IRA distributions, tax information, and the existence of civil cases and proceedings.
- Petitioner contested his reciprocal disbarment by the federal court.
- Petitioner denied using runners and denied having knowledge that his personal injury clients were not actually injured.

The sum and substance of these acts demonstrates that Petitioner has not used his ten-year period of disbarment as a time to reflect on his past wrongdoing and make amends. In short, Petitioner has not changed. After all of these years and proceedings, he is still not amenable to acknowledging that he engaged in egregious

misconduct that warranted disbarment, and in no fashion did he demonstrate genuine remorse for his actions. He continues to make excuses in an attempt to wriggle out of his culpability. It is clear that Petitioner has not accepted that his actions were wrong, unprofessional and unbecoming of a member of the bar.

Petitioner endeavored to establish rehabilitation by offering character testimony from three witnesses. Of the two witnesses who actually offered character testimony, these witnesses had incomplete information as to Petitioner's criminal conduct. One witness could not state that Petitioner was trustworthy when given the opportunity to do so. These witnesses could not point to any specific instances where Petitioner exhibited contrition or conveyed any sense of remorse for the actions which led to his disbarment. We find, as did the Hearing Committee, that this evidence is not sufficiently weighty to support Petitioner's claim of rehabilitation.

Petitioner is not fit to resume the practice of law in the Commonwealth. He has failed to convince the Hearing Committee and this Board that he is not predisposed to commit further misconduct. Under these circumstances, we find that Petitioner has not met his burden by clear and convincing evidence that he is rehabilitated and morally qualified. Further, he has not met his burden of proving that his return to the legal profession will not have a detrimental impact on the integrity and standing of the bar and the administration of justice nor be subversive of the public interest.

The Board recommends that the Petition for Reinstatement be denied.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Michael Radbill's Petition for Reinstatement be denied.

The Board further recommends that, pursuant to Rule 218(f), 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: 

Andrew J. Trevelise, Board Member

Date: October 28, 2015