

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1476 Disciplinary Docket No. 3
: :
: No. 192 DB 2008
KENNETH ANDREW RUBIN : :
: Attorney Registration No. 71949
: :
PETITION FOR REINSTATEMENT : (Philadelphia)

ORDER

PER CURIAM

AND NOW, this 21st day of March, 2024, the Petition for Reinstatement is granted. Petitioner is ordered to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement. See Pa.R.D.E. 218(f).

A True Copy Nicole Traini
As Of 03/21/2024

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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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. FACTUAL FINDINGS

The Board makes the following findings of fact:

Background

1. Petitioner is Kenneth Andrew Rubin, born in 1959 and admitted to practice law in the Commonwealth of Pennsylvania in 1994. Petitioner is currently a disbarred attorney and is subject to the jurisdiction of the Disciplinary

Board of the Supreme Court of Pennsylvania.

2. Following his admission to the bar, Petitioner practiced law in Philadelphia, with part of his practice devoted to personal injury litigation and part devoted to representing businesses. 6/22/23 N.T. 276, 277.
3. On March 27, 2009, Petitioner executed a Resignation Statement based on several instances of misappropriation of entrusted funds of clients and third parties which he converted for his personal use; neglect of client matters; and failure to communicate with clients and misrepresentations made to clients during the course of his legal representation from 2004 through 2008, at a time when he was a sole practitioner. ODC-1 at page 19 and ODC-2, Reinstatement Questionnaire, Response to Question #9(b)(vii).
4. By Order dated May 11, 2009, the Supreme Court of Pennsylvania accepted Petitioner's Resignation Statement and disbarred Petitioner on consent. ODC-1, page 1.
5. Petitioner filed his first Petition for Reinstatement on May 19, 2017 ("2017 Petition"), seeking readmission to the bar.
6. Following a reinstatement hearing and a Report filed by the Hearing Committee recommending denial of Petitioner's 2017 Petition, the Board issued its Report on June 6, 2019, and recommended that Petitioner's 2017 Petition be denied. ODC-1. The Board concluded that Petitioner had not met his burden of demonstrating that during his disbarment, he engaged in sufficient rehabilitation. ODC-1 at page 22. Critical to the Board's

recommendation was its determination that Petitioner “was aware that there were additional complaints not contained in the [underlying] Petition for Discipline and that clients were owed monies,” as well as Petitioner's admission that “he did not know the universe of his clients when he stated on his Questionnaire that he did not know who his clients were and where they could be located.” ODC-1 at page 21.

7. The Board expressed that Petitioner was more reactive in addressing the consequences of his misconduct than proactive. Moreover, though sympathetic to Petitioner's struggle with depression, the Board essentially determined that Petitioner had moved beyond his struggle such that he was capable of investigating whether there were other clients who had not yet been made whole. ODC-1 at page 22.
8. Based on the Board's June 6, 2019 Report and prior to the Court issuing any decision, Petitioner filed a request to withdraw his 2017 Petition on June 21, 2019, which the Court granted by Order dated June 28, 2019.

The 2022 Petition for Reinstatement

9. On August 10, 2022, Petitioner filed a second Petition for Reinstatement, accompanied by a Reinstatement Questionnaire. ODC-2.
10. By letter dated January 31, 2023¹, Office of Disciplinary Counsel (“ODC”) set forth its concerns relative to Petitioner's 2022 Petition and Reinstatement Questionnaire, with the main concern being whether

¹Marked as Petitioner's Exhibit No. 3.

Petitioner had taken sufficient steps to determine whether there were other clients whose funds he had misappropriated and if so, whether Petitioner had undertaken sufficient efforts to make those clients whole. Petitioner's Brief at page 3.

11. Following a prehearing conference on May 1, 2023, a District I Hearing Committee ("Committee") conducted a hearing on Petitioner's 2022 Petition for Reinstatement on June 21, June 22, and June 27, 2023.
12. Petitioner testified on his own behalf and presented the additional testimony of two expert witnesses and five character witnesses. He introduced exhibits, which were admitted into evidence. ODC did not present witnesses.

Witness testimony

Judith Axelrod

13. Petitioner's fiancée, Judith Axelrod appeared before the Hearing Committee on June 21, 2023. Ms. Axelrod testified that she and Petitioner met in 2008 and have been engaged to be married for about two years. N.T. 25. Ms. Axelrod initially became aware of Petitioner's misconduct shortly after they met in 2008 and was familiar with the circumstances leading to his disbarment. N.T. 26, 27. She credibly testified that Petitioner took full responsibility for his misconduct and was remorseful for his actions. N.T. 27, 28. Ms. Axelrod testified that Petitioner had been suffering with depression prior to when they met and was actively receiving treatment for

his depression during their relationship from Alex Robboy. N.T. 28, 29 30, 31. Ms. Axelrod testified that since his disbarment, Petitioner has not engaged in the practice of law, nor has he held himself out as an attorney. N.T. 31. Ms. Axelrod credibly testified that Petitioner has been working regularly and contributing to the household finances. N.T. 33, 34. She testified that she lent Petitioner approximately \$40,000², which loan was the subject of a promissory note that Petitioner repaid in full and was never in arrears. N.T. 35, 36. Ms. Axelrod testified regarding Petitioner's volunteer work with the United States Coast Guard Auxiliary and with their synagogue. N.T. 36, 37, 38. Ms. Axelrod testified that Petitioner is generally known in the communities to which they belong as a truthful and honest person, as well as a peaceful and law-abiding person. N.T. 39.

Harry Alba

14. Harry Alba appeared on behalf of Petitioner on June 21, 2023. Mr. Alba is currently the vice-president of business development for the American Association for Physician Leadership and in the past was the associate publisher for Legal Communications in Philadelphia, publisher of *The Legal Intelligencer* and *Pennsylvania Law Weekly*. Mr. Alba testified that he originally met Petitioner in 1987 or 1988 while Petitioner worked as an accountant for Petitioner's father's business and Mr. Alba was an

²On cross-examination by the ODC, it was determined that the loan amount was, in fact, \$47,500. N.T. 51. While referenced, the promissory note was not marked as an exhibit during these proceedings. N.T. 53, 54.

advertising representative for the yellow pages. N.T. 83, 84, 85. Mr. Alba credibly testified that Petitioner had advised him about his disbarment and was honest and forthright about the misconduct that led to it, and that Petitioner had accepted full responsibility for his misconduct and was remorseful relative to same. N.T. 85, 86. Mr. Alba testified that Petitioner is generally known in the communities to which they belong as a truthful and honest person, as well as a peaceful and law-abiding person. N.T. 87. Mr. Alba also testified regarding Petitioner's depression and advised that Petitioner "is in a great place." N.T. 88, 89.

Thomas Oram

15. Thomas Oram appeared on behalf of Petitioner on June 21, 2023. Mr. Oram is a former educator and school administrator and was a member of the Coast Guard Auxiliary, which serves as the reserve for the Coast Guard, and in that capacity was Petitioner's Commander for a period of time while Petitioner volunteered for the Auxiliary. N.T. 110. Mr. Oram testified that Petitioner is generally known in the community to which they both belong as a truthful and honest person, as well as a peaceful and law-abiding person. N.T. 103, 104. Mr. Oram credibly testified that he was generally familiar with the circumstances relative to Petitioner's misconduct, that Petitioner was remorseful, and he had accepted full responsibility for his misconduct. N.T. 104, 105. Mr. Oram testified that he would not have any hesitation in recommending Petitioner's reinstatement to the practice of

law. N.T. 105, 106.

Rabbi Yehuda Shemtov

16. Rabbi Yehuda Shemtov appeared on behalf of Petitioner on June 21, 2023. Rabbi Shemtov is the senior rabbi in several synagogues, including Petitioner's synagogue, and has known Petitioner for about 13 years. N.T. 116. He testified that Petitioner participates in services and has joined programs at the synagogue, and attends dinners at the Rabbi's home. N.T. 116, 119. Rabbi Shemtov testified that he was aware of the misconduct leading to Petitioner's disbarment. N.T. 117. He further credibly testified that Petitioner took full responsibility for his misconduct and showed remorse for his victims and for the disgrace he brought upon the legal profession. N.T. 117, 118. He also advised that in speaking with Petitioner, he generally knew that Petitioner was not reinstated following his 2017 Petition because "there wasn't evidence that all the money was returned," but "apparently now that has been corrected." N.T. 124.
17. Rabbi Shemtov credibly testified that Petitioner is generally known in the synagogue community to which they belong as a truthful and honest person, as well as a peaceful and law-abiding person. N.T. 120, 121. Rabbi Shemtov testified that he would not have any hesitation in recommending Petitioner's reinstatement to the practice of law. N.T. 121, 122.

Geoffrey Rorabaugh

18. Geoffrey Rorabaugh appeared as an expert witness on behalf of Petitioner

on June 21, 2023. Mr. Rorabaugh testified that he has been a Certified Public Accountant since 2006 and is currently a partner at Brinker Simpson LLC in Media, Pennsylvania. N.T. 135,136. Mr. Rorabaugh first met Petitioner during the latter's employment with Lawyers Funding Group. N.T. 136. Mr. Rorabaugh explained that he was retained by Petitioner to perform an analysis of money that came into Petitioner's IOLTA account during a certain date range and to track checks that got paid out of the account. According to Mr. Rorabaugh, Petitioner had advised him that he had taken client funds and "needed to show which funds were repaid and which ones weren't." N.T. 137,138. Mr. Rorabaugh advised that Petitioner did not equivocate and confirmed that "he took the money." N.T. 137.

19. Mr. Rorabaugh's report of his findings was marked as P-11 at the hearing. He credibly testified that P-11 shows amounts that were deposited into Petitioner's IOLTA account and tracks payment to Petitioner's clients who were paid out of his IOLTA account. Furthermore, P-11 describes the steps taken by Mr. Rorabaugh to help Petitioner determine to which client funds were possibly still owed. N.T. 139, 140. The IOLTA account deposits covered by P-11 are from January 30, 2004 through April 17, 2018. N.T. 140. While Mr. Rorabaugh could delineate those clients paid from Petitioner's IOLTA account, he conceded that he could not account for Petitioner's clients that may have been paid from some other source, such as the Pennsylvania Lawyers Fund for Client Security (the "Fund"). N.T.

148. He testified that Petitioner advised him regarding clients who had been paid from the Fund and that he (Mr. Rorabaugh) did not verify that information with the Fund. N.T. 149. There were some clients of Petitioner for whom Mr. Rorabaugh could not discern from what source they might have been paid. N.T. 150. Petitioner had advised that as to those clients, he would create a list to present to the Committee "to then be able to explain how, when, or if these individuals were ever repaid." N.T. 150.

20. Mr. Rorabaugh conceded on cross-examination that in preparing his report (P-11), he did not have access to any of Petitioner's fee agreements, nor did he have any access to any statements of distribution relative to any of Petitioner's client settlements. N.T. 157, 158 and 159.

21. Mr. Rorabaugh also conceded on cross-examination that he did not offer any advice to Petitioner on what steps Petitioner could take to reconcile any discrepancies relative to whether certain clients had been paid or not. N.T. 166,167. He further testified that Petitioner was aware that certain client payments would not be reflected on his then IOLTA account and in that circumstance, a list would be created of clients for whom payment could not be determined. N.T. 167, 168, 169, 170. Finally, Mr. Rorabaugh testified that he was aware that Petitioner withdrew his 2017 Petition and was aware of Petitioner's rationale for the withdrawal. N.T. 167, 168.

22. On redirect examination, Mr. Rorabaugh credibly advised that Petitioner would have difficulty procuring bank records from 2004 through 2008, and

that Petitioner did not have any records from his old law practice. N.T. 173.

Alan Zibelman

23. Alan Zibelman, Esquire, is Petitioner's current employer and appeared on Petitioner's behalf on June 21, 2023.
24. Mr. Zibelman has been admitted to practice law in the Commonwealth for 30 years and has a solo law practice, Zibelman Legal Associates, where he handles negligence and business cases N.T. 194. He also has a litigation finance company, Lawyers Funding Group, that he started in 2003 or 2004. N.T. 194. Mr. Zibelman first met Petitioner when they were law students at Widener University in the early 1990s, but primarily he came to know Petitioner when Petitioner became a customer of Lawyers Funding Group. N.T. 197, 198.
25. Mr. Zibelman hired Petitioner about 13 years ago to work at Lawyers Funding Group in a non-legal capacity to assist with underwriting functions. N.T. 199. Since that time, Petitioner's role in the business grew, as he eventually became controller and then served as director of operations, his current role. N.T. 200, 201, 204. Mr. Zibelman testified that Petitioner fulfilled his expectations as an employee "100 %." N.T. 208.
26. Petitioner never worked as a paralegal, was never an employee of Mr. Zibelman's law practice, nor has he held himself out as an attorney during his time of disbarment. N.T. 201, 204, 208.

27. Mr. Zibelman testified that he knew about Petitioner's misconduct and that Petitioner took responsibility for his misconduct. He further credibly testified that he trusted Petitioner and that Petitioner always handled funds of the Lawyers Funding Group business appropriately. N.T. 201, 202, 203. Mr. Zibelman worked closely with Petitioner, knew Petitioner felt bad about what had happened, and believed that Petitioner appreciated the opportunity he was given at Lawyers Funding Group. N.T. 202.
28. Mr. Zibelman testified that Petitioner is remorseful for his misconduct and is generally known in the communities to which they belong as a truthful and honest person, as well as a peaceful and law-abiding person. N.T. N.T. 207, 214. Mr. Zibelman is aware of the reasons why Petitioner withdrew his 2017 Petition. N.T. 239, 240.

Kenneth Andrew Rubin, Petitioner

29. Petitioner testified on his own behalf on June 22, 2023.
30. Petitioner testified that he graduated from Temple University in 1980 with a degree in accounting. N.T. 264. After graduation, he worked for his father in the family business, Al Rubin Appliances, then later attended Widener Delaware Law School, from which he graduated in December 1992. N.T. 266, 267. Petitioner's relationship with his father deteriorated due to his decision to pursue a career in the law rather than remain with the family business. N.T. 267, 268. He reconciled with his father in 2008 when Petitioner's marriage started to fall apart, moving back in with his father

when he had no place to go. Petitioner's father passed away in 2018. N.T. 269.

31. Petitioner married in 1980 and divorced in 2012. N.T. 269. He was extremely depressed beginning in 2003 and 2004 and his relationship with his wife had changed. N.T. 277, 278.
32. Petitioner credibly testified and admitted that he ignored and mishandled 11 client files and misappropriated client funds starting around 2004 while he was depressed. Petitioner explained that he converted funds in an attempt to extinguish financial pressure that he was experiencing. N.T. 280, 281, 282, 285. He ceased misusing client funds when he learned he was being investigated by the Disciplinary Board. N.T. 281.
33. Petitioner credibly admitted that he was "very wrong" to convert his clients' funds. He testified that "my actions hurt a lot of people... I am so sorry about it and I wish I hadn't done it." Petitioner acknowledged that his clients, the legal profession, and his family were affected by his wrongful actions. 6/22/23 N.T. 285, 286.
34. Petitioner further testified, "I'm beyond sorry. It was stupid. It was – I can't even fathom how I did what I did and how I hurt who I hurt. So many people were affected. Am I sorry for what I did? Without question. Remorseful, still angry with myself for doing this. So, yes, extremely sorry for the effect of what I did. For what I did, of course, but for all of these people that I caused harm to." 6/22/23 N.T. 358.

35. Petitioner resigned and accepted disbarment on consent in 2009 and since that time, has not at all engaged in the practice of law nor held himself out as an attorney. N.T. 289, 290. He has not worked as a paralegal during this time. N.T. 290.
36. Petitioner initially did not advise all courts of his disbarment due to his state of mind. N.T. 291, 292. Due to the amount of time that had passed, Petitioner did not think he needed to notify other courts of his disbarment. N.T. 292. He subsequently was advised that he needed to notify the other courts, and he did so. N.T. 292.
37. Petitioner began working for Alan Zibelman of the Lawyers Funding Group in a non-legal capacity in approximately 2009 or 2010. N.T. 294, 295.
38. Petitioner confirmed that he never worked for Mr. Zibelman's law firm, nor has he ever worked as a paralegal for Mr. Zibelman. Petitioner confirmed that he currently serves as director of operations for the Lawyers Funding Group. N.T. 296.
39. Petitioner supplemented his income from Lawyers Funding Group by working for Limor Goodman, PC, an accounting practice. N.T. 301, 302.
40. Petitioner testified to his relationship with his fiancée, Judith Axelrod. N.T. 303. Petitioner credibly testified regarding money Ms. Axelrod lent to him and that it was the subject of the promissory note previously referenced. N.T. 304. He also credibly testified that since he was able to put Ms. Axelrod on his health and cell phone plans with the Lawyers Funding Group, that

the money saved by Ms. Axelrod in not having to pay for her own plans was sufficient to satisfy the money she lent to him. N.T. 312, 313.

41. Petitioner testified regarding his long-standing therapy with Alex Robboy to address depression issues. Petitioner sought psychological help beginning in 2004 or 2005. In 2006, Petitioner stopped treatment, but in 2008 resumed his treatment with Ms. Robboy, which continued for many years. N.T. 316.
42. Petitioner testified extensively about how beneficial the treatment has been. As a result of therapy, he no longer feels depressed and can engage in the practice of law without being impaired by any depression, anxiety, or emotional issues. N.T. 319, 320.
43. Petitioner worked with Ms. Robboy to not only understand his depression, but to determine what triggered his depression and how to avoid it in the future. Petitioner testified that he now understands the causes of his past depression and handles things differently. N.T. 420-421.
44. Petitioner testified that Ms. Robboy does not feel that Petitioner needs to seek further treatment with her, and he now "checks in" with her a few times a year. N.T. 320:7-11.
45. Petitioner was diagnosed with Attention Deficit Disorder (ADD) during the time frame of his depression. N.T. 283, 284. Petitioner was prescribed medication for this disorder that he continues to take. N.T. 284.
46. During his disbarment, beginning in approximately 2012 or 2013, Petitioner

volunteered for the Coast Guard Auxiliary, which required extensive training about boats and rescues. N.T. 320, 321, 322, 323, 324. In the summer, Petitioner volunteers about 10-20 hours per week and has been a commander of the flotilla for two years. N.T. 324, 325.

47. Petitioner is active with his synagogue, through which he helped to create the Newtown Businessperson's Association, an organization that helps people in the area network with each other. Petitioner also is involved with fundraising for the synagogue. N.T. 327, 328, 329.
48. Petitioner testified as to his continued knowledge and learning of the law through taking the 36 hours of Continuing Legal Education courses required for reinstatement, as well as many additional hours, and reading legal opinions as well as *The Legal Intelligencer*, *Bloomberg Business Law*, and *Law 360*. N.T. 328, 329, 330.
49. Petitioner testified about the Board's concerns with his 2017 Petition and the steps he has taken to address the concerns. N.T. 332, 333.
50. Petitioner explained that at the time of his 2017 Petition, he presumed given the amount of time that had elapsed between 2008 and his 2017 Petition, any aggrieved clients would have sought redress with either ODC or the Fund. N.T. 333. After reading the Board's June 6, 2019 Report, he knew and understood that he needed to do more. N.T. 333, 334.
51. Petitioner testified that at that time, he no longer had any of his old client files that had been placed in storage. He explained that while he was still

going through his depression, he went through a period of time when he could not afford the storage fees, and that someone else had purchased his storage locker and presumably, discarded his client files and his computer that contained some client data. N.T. 334, 335. He recovered a box of documents in possession of his counsel from the 2017 Petition proceedings. P-14.

52. Petitioner testified that in response to the Board's June 6, 2019 Report, he made affirmative efforts to ensure that all clients who may have been affected by his misconduct were located and made whole. N.T. 338. Petitioner gathered information as he was able and prepared a spreadsheet to ascertain exactly who was paid and who was not. Petitioner retained Mr. Rorabaugh to assist him.
53. A summary of Petitioner's efforts is contained in an August 19, 2022 letter to ODC, marked as P-13 and enclosing an August 26, 2021 letter written by Petitioner (P-10). N.T. 339. The August 26, 2021 letter sets forth each client and the steps Petitioner undertook to locate and disburse funds owed to the clients. P-13 is Petitioner's efforts to follow up on what Mr. Rorabaugh had summarized in his report (P-11). N.T. 339.
54. Petitioner testified that there are presently no clients who have not been contacted or from whom he misappropriated funds or neglected files that he has not contacted or tried to contact without success. N.T. 340:1-8, 353.
55. Petitioner testified that he has repaid all of the monies to both the Fund,

and, as applicable, to clients directly from whom he misappropriated funds from 2004 to 2008. N.T. 340, 353.

56. Petitioner read the names of all clients whom he has made whole following his misconduct (generally N.T. 341 to 353); to wit: Charles Byers, Jerome Cooper, Sherry and Herman Klingberg, Jason Brown, Jeffrey Wilkins, Cherita Odums, Autura Taylor,³ Abraham Polokof, Noel Pena,⁴ Jerome Watson,⁵ Susie Gomberg, Lee Datts, Tasheena Jennings and Ikeymia Jennings.
57. Petitioner has employed all efforts to locate all possible aggrieved clients in response to the Board's June 6, 2019 Report. N.T. 353, 354.
58. Petitioner does not owe any taxes, and has no liens, malpractice cases or judgments⁶ against him. N.T. 354.
59. Petitioner explained the discrepancy regarding his Reinstatement Questionnaire, advising that he included in response to Question No. 4 what he should have provided in response to Question No. 9. N.T. 354, 355. He also advised that he included in response to Question No. 9B7 what he

³Mr. Wilkins, Ms. Odums, and Ms. Taylor were all paid by the Fund, which sums Petitioner repaid for all of these clients, with 10% interest. (N.T. 344:15-25; 345:1-3).

⁴Petitioner recalls that a check was mailed to Mr. Pena, but that efforts to locate Mr. Pena have not been successful.

⁵Mr. Watson died, but a check was given to his nephew, Ray Watson. (N.T. 346:16-25; 347:1-13).

⁶Petitioner sent a letter dated October 7, 2022 to ODC clarifying erroneous information that indicated that judgments were entered against him and clarifying that all information/judgments had been satisfied. N.T. 360:17-25; 361:1-23.

should have provided in response to Question No. 10A. N.T. 355, 356. He advised that he answered all questions completely, and that there was nothing left out of the Questionnaire. N.T. 355.

60. Petitioner expressed sincere remorse for his misconduct, and in particular for the harm he caused people. N.T. 358.
61. While he has no definitive plans, if reinstated Petitioner expressed interest in working for a firm where there are resources and other lawyers, as opposed to a solo practice. Petitioner indicated he looks forward to practicing again, as he destroyed his life's dream and wants to have another chance. N.T. 359, 360.

Alex Caroline Robboy

62. Alex Caroline Robboy, CAS, MSW, ACSW, LCSW appeared as an expert witness on behalf of Petitioner on June 27, 2023. Ms. Robboy is a licensed clinical social worker who began treating Petitioner in approximately 2005 for marital issues and depression, with a short cessation in treatment followed by a resumption in 2008. N.T. 26, 29, 30.
63. Ms. Robboy testified that Petitioner was also seeing a psychiatrist at this time who prescribed medication related to some of his conditions.
64. Ms. Robboy testified that Petitioner had an unhealthy co-dependency with his wife. N.T. 32.
65. Ms. Robboy credibly testified that when Petitioner's marriage broke up, "his life was in shambles." N.T. 38. She further testified that Petitioner's co-

dependency on his wife “contributed to the serious misconduct that he engaged in” and that his depression played a role in his misconduct. N.T. 43.

66. Ms. Robboy testified that Petitioner has made progress and that he is “happy, making good choices and in a supportive environment.” N.T. 51. She also stated that in response to Petitioner’s reinstatement denial in 2019, because of the progress he had made, he had better coping mechanisms and “handled it with grace.” N.T. 56.

67. Ms. Robboy does not frequently see Petitioner at this time, but confirmed that he “checks in” with her from time to time. N.T. 57, 58. She testified that Petitioner is not depressed, no longer has any co-dependency issues and has a good sense of self. N.T. 58, 59, 60, 61.

68. Ms. Robboy testified that in her opinion, Petitioner does not suffer from any emotional, psychological, or cognitive issues that would prevent him from being able to resume the practice of law. N.T. 62,63.

The procedural history below

69. After the close of the record on June 27, 2023, on August 18, 2023, Petitioner filed a post-hearing brief to the Committee in support of his reinstatement.

70. On August 21, 2023, ODC submitted a letter to the Committee and advised that it was not filing a brief. ODC does not oppose Petitioner’s reinstatement.

71. By Report filed on December 8, 2023, the Committee concluded that Petitioner met his reinstatement burden and recommended to the Board that the Petition for Reinstatement be granted.
72. The parties did not take exception to the Committee's Report and recommendation.
73. The Board adjudicated this matter at the meeting on January 23, 2024.

II. 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. John J. Keller*, 506 A.2d 872 (Pa. 1986).
2. Petitioner met his burden of proof by clear and convincing evidence that a sufficient period of time has passed since the misconduct, during which he engaged in rehabilitation. *In the Matter of Jerome J. Verlin*, 731 A.2d 600 (Pa. 1999).
3. Petitioner met his burden of proof by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law in the Commonwealth. Pa.R.D.E. 218(c)(3).
4. Petitioner met his burden of proof by clear and convincing evidence that his resumption of the practice of law in the Commonwealth of Pennsylvania 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).

III. DISCUSSION

The primary purpose of the lawyer disciplinary system is to protect the public from unfit attorneys and to maintain the integrity of the legal system. *Office of Disciplinary Counsel v. John Rodes Christie*, 639 A.2d 782, 785 (Pa. 1994). When a disbarred attorney seeks reinstatement, the Board and the Court must first examine whether the magnitude of the breach of trust is so egregious as to preclude further reconsideration of the petition for reinstatement. *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986).

Petitioner's conduct that led to his disbarment was egregious. Misappropriation of entrusted funds is the type of misconduct that erodes the public's confidence in the legal profession. However, in light of the Court's previous holdings, we cannot say that Petitioner's misconduct was so great as to preclude his reinstatement. There are numerous examples where the threshold question has been met in cases involving conversion of entrusted funds. See *In the Matter of Lawrence D. Greenberg*, 749 A.2d 434 (Pa. 2000) (misappropriation of two million dollars and commission of perjury in bankruptcy proceeding); *In the Matter of Grahame P. Richards, Jr.*, No. 43 DB 1996 (D. Bd. Rpt. 8/23/2016) (S. Ct. Order 9/21/2016) (misappropriation of more than one million dollars in client funds); *In the Matter of John Louis D'Intino, Jr.*, No. 48 DB 2009

(D. Bd. Rpt. 1/4/2019) (S. Ct. Order 3/13/2019) (misappropriation of \$250,000 in client funds).

The above-cited cases contain examples of serious and deplorable acts by Pennsylvania lawyers, all of whom met the threshold standard for reinstatement. The Board concludes that Petitioner's acts of misconduct, while extremely serious and a breach of his ethical responsibilities, are not so egregious as to prevent reinstatement.

Following our analysis of the *Keller* threshold question, we next consider whether Petitioner has met his burden of proving that his current resumption of the practice of law would not be detrimental to the profession, the courts, or the public. *Office of Disciplinary Counsel v. William James Perrone* 777 A.2d 413, 416 (Pa. 2001). To that end, Petitioner must demonstrate that a sufficient period of time has passed since his misconduct and must prove that his post-disbarment rehabilitation efforts were sufficient to dissipate the detrimental impact of his serious misconduct on the public trust. *Verlin* at 602.

More than 14 years have passed since Petitioner's disbarment on consent and more than 16 years since his misconduct that occurred between 2004 and 2008. The evidence of record demonstrates that Petitioner's period of disbarment has been a time of genuine rehabilitation that has dissipated the breach of trust caused by his serious misconduct. Petitioner has rehabilitated himself from his misconduct by addressing the underlying causes and repairing the damage inflicted by his wrongdoing.

Petitioner's rehabilitation began when he resigned from the bar and accepted disbarment on consent, thereby acknowledging his wrongdoing, accepting responsibility, cooperating with ODC, and alleviating the need for ODC to commence a formal disciplinary proceeding against him. Following his disbarment in 2009, Petitioner petitioned for reinstatement in 2017, but upon reviewing the Board's June 6, 2019 Report that recommended denial and examining the bases for the Board's concerns, Petitioner withdrew his 2017 Petition.

The Board's main concern in its June 6, 2019 Report was Petitioner's failure to conclusively show that he made every effort to find his victims and make them whole. Petitioner testified at the instant hearing that at the time of the 2017 Petition, he presumed that any aggrieved clients would have sought redress with ODC or the Fund. After reading the Board's Report, Petitioner understood that he needed to do more to ensure that clients were refunded monies owed to them from his misconduct.

Petitioner presented compelling evidence that he addressed the Board's concerns. After withdrawing his 2017 Petition, Petitioner took affirmative steps to locate victims of his professional misconduct and reimburse them. He searched for hard copy files and created a spreadsheet of checks and deposits, then hired Mr. Rorabaugh, a CPA who performed a forensic analysis of Petitioner's IOLTA account to determine whether clients from whom he had misappropriated funds had been made whole and issued a report. Petitioner followed up on Mr. Rorabaugh's report and ensured that clients received their monies. Petitioner credibly testified that he has employed all possible efforts to locate

aggrieved clients, there are presently no clients who have not been contacted, and he has repaid all monies either directly to clients or by way of reimbursing the Fund for claims it paid to victims.

Petitioner presented other compelling evidence of his rehabilitation efforts during disbarment. The record reflects that Petitioner addressed mental health issues by seeking professional help through treatment with Alex Robboy, a licensed clinical social worker, and received therapy for many years. Petitioner credibly testified that his treatment was beneficial, as he worked with Ms. Robboy to address his depression, identify the triggers, and learn coping mechanisms to avoid depression in the future. Petitioner forthrightly and candidly described the circumstances of his life that led to his depression and treatment, which included the dissolution of his marriage. He also discussed his ADD diagnosis, for which he takes prescription medication. Currently, Petitioner does not suffer from depression and testified that he is able to practice law without being impaired by any depression, anxiety, or emotional issues. By her credible testimony, Ms. Robboy confirmed that Petitioner has made progress and no longer treats with her on a regular basis, as he is not depressed and treatment is not indicated, but he continues to check in with Ms. Robboy on occasion. Ms. Robboy described Petitioner as happy, making good choices, and in a supportive environment, and credibly testified that Petitioner does not suffer any emotional, psychological, or cognitive issues that would prevent him from resuming the practice of law.

The evidence of record established that during his disbarment, Petitioner maintained steady employment. In approximately 2009, Petitioner began working for Lawyers Funding Group, a business owned by Alan Zibelman, Esquire. While employed at Lawyers Funding Group, Petitioner worked his way up from assisting with underwriting to controller, then to director of operations, his current position. While holding this employment, Petitioner has not practiced law or held himself out as eligible to do so. Mr. Zibelman's credible testimony confirmed Petitioner's employment and that Petitioner does not practice law. In addition to his employment during disbarment, Petitioner remained active in his community through his volunteer efforts with the Coast Guard Auxiliary and his synagogue. Petitioner offered credible evidence of his financial stability in that he does not owe any taxes, and has no liens, malpractice cases or judgments against him.

To maintain his competency and learning in the law during disbarment, Petitioner completed CLE courses and reviewed legal opinions and journals. If reinstated, Petitioner indicated he has no established plan, but would be interested in practicing in a law firm setting, as such a setting would provide the support that he feels he lacked as a sole practitioner.

Significantly, Petitioner offered compelling evidence of his acceptance of responsibility and feelings of remorse. Petitioner's credible testimony reflects his genuine contrition for his wrongdoing. He admitted that he converted client funds in order to extinguish some of the financial pressures he was experiencing at that time. Petitioner

testified that his actions in converting entrusted funds and mishandling client files were “very wrong” and “stupid” and affected his clients, his family, and the legal community and he is still angry with himself for what he did.

Petitioner testimony as to his remorse and acceptance of responsibility was corroborated by the credible testimony of five character witnesses who have known Petitioner for a long time. These witnesses testified regarding Petitioner’s admission of wrongdoing, his community service, his ability to hold gainful employment while seeking readmission to the bar and his open acknowledgment that he had engaged in misconduct relative to his clients. Moreover, most of these witnesses testified that Petitioner had advised them that he withdrew his 2017 Petition so that he could determine those clients who had not yet been made whole following his misconduct. Finally, the witnesses confirmed through their testimony that Petitioner is known in the communities to which they belong as a truthful and honest person, as well as a peaceful and law-abiding person, and they have no hesitation in recommending his reinstatement to the bar.

While Petitioner’s breach of trust was great, the uncontroverted evidence of record demonstrates that he engaged in sufficient rehabilitation during his lengthy disbarment that dissipated the impact of his misconduct on the public trust. Petitioner’s concerted efforts to locate clients and reimburse monies owed, successful treatment for mental health issues, steady employment, community service, learning in the law, demonstration of financial stability, expressions of true remorse, understanding of wrongdoing and acknowledgement of culpability, as well as persuasive and credible

evidence of his good character and morals, all weigh in favor of Petitioner's reinstatement. In previous matters, the Court has reinstated disbarred attorneys who met their heavy burden to show rehabilitation and fitness to practice after a disbarment period similar in length to that of the instant Petitioner. See, *In the Matter of Paul Joseph Staub, Jr.*, No. 36 DB 2010 (D. Bd. Rpt. 5/12/2023) (S. Ct. Order 8/10/2023) (disbarred attorney reinstated on his second attempt after the Board concluded that Staub's 13 years of disbarment during which he engaged in sufficient rehabilitation established his fitness to resume the practice of law); *In the Matter of William Jay Gregg*, No. 2010 DB 2019 (D. Bd. Rpt. 11/2/2022) (S. Ct. Order 12/2/2022) (disbarred attorney reinstated on his second attempt after the Board found that the passage of 12 years combined with a clear demonstration of rehabilitation during that time frame established Gregg's fitness to resume practice); *In the Matter of Philip G. Gentile*, No. 54 DB 2007 (D. Bd. Rpt. 2/20/2018) (S. Ct. Order 3/16/2018) (disbarred attorney reinstated after the passage of 10 years and satisfactory efforts at rehabilitation); *In the Matter of Jay Ira Bomze*, No. 149 DB 2002 (D. Bd. Rpt. 11/21/2017) (S. Ct. Order 12/26/2017) (disbarred attorney reinstated after the passage of 15 years and the demonstration of rehabilitation during those years).

Upon this record, we conclude that Petitioner met his reinstatement burden by clear and convincing evidence. Petitioner is fit to resume the practice of law in the Commonwealth, as he is morally qualified, competent, and learned in the law. Because Petitioner has amply demonstrated his qualifications for readmission, we further conclude

that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or the administration of justice, nor subversive of the public interest.

RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Petitioner, Kenneth Andrew Rubin, be reinstated to the practice of law.

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: 

John C. Rafferty, Jr., Vice-Chair

Date: 2/15/2024