

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 2260 Disciplinary Docket No. 3
:
: No. 50 DB 2016
HERBERT KARL SUDFELD, JR. :
: Attorney Registration No. 24691
:
: (Bucks County)
PETITION FOR REINSTATEMENT :

ORDER

PER CURIAM

AND NOW, this 11th day of August, 2022, upon consideration of Petitioner’s response to the Court’s rule to show cause dated June 10, 2022, the rule is discharged, and the Petition for Reinstatement is **GRANTED**. Petitioner is directed 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).

Chief Justice Baer and Justice Brobson note their dissent.

A True Copy Nicole Traini
As Of 08/11/2022

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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PETITION FOR REINSTATEMENT : (Bucks County)

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 22, 2020, the Supreme Court of Pennsylvania granted a Joint Petition in Support of Discipline on consent and suspended Petitioner, Herbert K. Sudfeld, Jr., for a period of four years, retroactive to April 8, 2016, the date of Petitioner's temporary suspension from the practice of law. On March 15, 2021, Petitioner filed a Petition for Reinstatement. Office of Disciplinary Counsel ("ODC") filed a response on

June 7, 2021 and reserved the right to review the evidence before taking a final position on reinstatement.

A prehearing conference was held on September 27, 2021. The parties entered into a Joint Stipulation of Facts, which was filed on November 3, 2021. A District II Hearing Committee (“Committee”) held a reinstatement hearing on November 4, 2021. Petitioner testified on his own behalf and presented the testimony of seven additional witnesses. Petitioner offered five exhibits, which were admitted into evidence. ODC did not present any exhibits or witness testimony.

On December 22, 2021, Petitioner filed a post-hearing brief and requested that the Committee recommend to the Board that his Petition for Reinstatement be granted. ODC filed a post-hearing letter on December 30, 2021 and advised the Committee that it did not oppose reinstatement.

The Board adjudicated this matter at the meeting on April 13, 2022.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Herbert K. Sudfeld, Jr., born in 1951 and admitted to practice law in the Commonwealth of Pennsylvania in 1976. Petitioner’s current business address is 220 Farm Lane, Doylestown, Bucks County, PA 18901. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.
2. During his forty-year legal career, Petitioner practiced primarily real

estate, zoning, and land use law in the Philadelphia suburbs with his principal office situated in Doylestown, Bucks County. N.T. 14, 33.

3. Petitioner was a partner at the law firm of Fox Rothschild, LLP from 1999 until 2012. Joint Stipulation of Facts (“Jt. Stip.”) 4.

4. In or about August 2011, Harleysville Group, Inc. (“Harleysville”) was in discussions with Nationwide Mutual Insurance Company (“Nationwide”) regarding a merger deal. Nationwide was to acquire all of the publicly held shares of common stock of Harleysville for \$60.00 per share, in cash. Jt. Stip. 5.

5. Harleysville, a subsidiary of Harleysville Mutual Insurance Company, was a publicly traded insurance company. Harleysville stock was registered under Section 12(g) of the Securities Exchange Act of 1934 and was traded on the National Association of Securities Dealers Automated Quotations (“NASDAQ”) under the ticker symbol, “HGIC.” Harleysville specialized in commercial and casualty insurance policies. Jt. Stip. 6.

6. Nationwide is an insurance and financial service company, focusing on domestic property and casualty insurance. Jt. Stip. 7.

7. Harleysville was a client of Fox Rothschild. Jt. Stip. 8.

8. The merger discussions between Harleysville and Nationwide were material, non-public information. Jt. Stip. 9.

9. On or about September 27, 2011, Petitioner learned that his law firm partners represented Harleysville in the merger with Nationwide. Petitioner knew the merger was not complete, but imminent. Jt. Stip. 10.

10. Petitioner understood that the information about the impending merger was shared in confidence, and with the expectation that he would not risk exposing the confidence by engaging in stock trades. Jt. Stip. 11.

11. On or about September 28, 2011, in the morning, Petitioner directed his stockbroker to purchase 1,000 shares of Harleystown stock under Petitioner's wife's account. Jt. Stip. 12.

12. On or about September 28, 2011, in the afternoon, Petitioner directed his stockbroker to purchase 2,000 shares of Harleystown stock from Petitioner's personal account. Jt. Stip. 13.

13. Petitioner did not tell his broker he was trading on inside information, that he was not permitted to make these trades or that his law firm, Fox Rothschild, represented Harleystown in the merger. Jt. Stip. 14.

14. Petitioner did not disclose his purchases of Harleystown stock to the law firm prior to his trades, and did not obtain approval from the law firm to trade in Harleystown stock. Jt. Stip. 15.

15. Petitioner knew his undisclosed purchase of Harleystown stock, while in possession of material non-public information about Harleystown, violated his fiduciary and other duties of trust and confidence to the law firm's client, Harleystown, and violated the law firm's policy of not trading in securities issued by a law firm client without prior approval. Jt. Stip. 16.

16. On or about September 29, 2011, before the U.S. stock markets opened, the deal between Harleystown and Nationwide was publicly announced.

One day prior to the public announcement of the merger between Harleysville and Nationwide, Harleysville common stock traded in the range of \$31.57 to \$32.48 per share. Following the merger announcement, Harleysville shares rose to a high of \$58.40, an 85 percent increase over the share price prior to the announcement. Jr. Stip. 17.

17. On or about September 29, 2011, Petitioner sold 2,000 shares of Harleysville stock for \$58.30 per share. He also authorized the sale of 1,000 of his wife's shares for the same amount. Petitioner netted personal profits of approximately \$75,530 from his unlawful Harleysville trades, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17 Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and Title 18, United States Code, Section 2. Jt. Stip. 18.

18. On or about March 6, 2012, agents of the Federal Bureau of Investigation ("FBI") were investigating the insider trading activity described above. Jt. Stip. 19.

19. FBI agents questioned Petitioner regarding whether he possessed non-public information when he purchased and sold Harleysville stock. Jt. Stip. 20.

20. Petitioner stated to FBI agents that he was not aware of the Harleysville stock transactions until several days to a week after the trades occurred. Jt. Stip. 21.

21. This statement was false; Petitioner knew of and directed the trades. Jt. Stip. 22.

22. Petitioner stated to FBI agents that he told his broker he could not be involved in trades of Harleysville stock due to his position at the law firm. Jt. Stip. 23.

23. This statement was false; Petitioner did not make such statements to his broker. Jt. Stip. 24.

24. Petitioner stated to FBI agents that he did not discuss the Harleysville trades with his broker until after they were completed. Jt. Stip. 25.

25. This statement was false; Petitioner did discuss trades with his broker prior to their completion. Jt. Stip. 26.

26. Petitioner pleaded not guilty to the four-count indictment for securities fraud, in violation of 15 U.S.C. §§78j(b), 78ff, and 17 C.F.R. §§ 240.10b-5-2 (Count One) (“insider trading”); and making a false statement in violation of 18 U.S.C. §1001 (Counts Two, Three and Four). Jt. Stip. 27.

27. Between February 2, 2016 and February 5, 2016, a jury trial took place in ***U.S. v. Sudfeld***, No. 15-CR-330 (E.D.Pa.) before the Honorable Cynthia M. Rufe. Jt. Stip. 28.

28. At the conclusion of the jury trial, Petitioner was found guilty on all counts. Jt. Stip. 29.

29. On February 13, 2016, Petitioner filed a self-report with ODC pursuant to Pa.R.D.E. 214. Jt. Stip. 30.

30. On July 22, 2016, Judge Rufe sentenced Petitioner to six months imprisonment, followed by three years of federal supervision. Jt. Stip. 32.

31. The sentence imposed by Judge Rufe represented a significant downward departure and variance from sentencing guidelines, which suggested a range of 27-33 months incarceration; Judge Rufe rejected the Government's position that a departure/variance was unwarranted and that Petitioner should receive a sentence within the guidelines. Jt. Stip. 3.

32. Petitioner has paid all monetary penalties as part of the judgment of conviction. Jt. Stip. 33.

33. Petitioner's conviction for (1) Insider Trading, and (2) Making False Statements to Authorities, was an independent basis for attorney discipline. Pennsylvania Rule of Disciplinary Enforcement 203 (b)(1). Jt. Stip. 34.

34. After his conviction and sentencing, on March 24, 2016, ODC and Petitioner filed in the Supreme Court of Pennsylvania a Joint Petition to Temporarily Suspend an Attorney. Jt. Stip. 35.

35. By Order of the Supreme Court of Pennsylvania, dated April 8, 2016, the petition was granted and Petitioner was placed on temporary suspension pursuant to Rule 214, Pa.R.D.E. Jt. Stip. 36.

36. By Order dated June 22, 2020, the Supreme Court of Pennsylvania granted a Joint Petition in Support of Discipline on Consent and suspended Petitioner for a period of four years, retroactive to April 8, 2016, the date of the temporary suspension. Petitioner's Exhibit 2.

37. Petitioner served a federal prison sentence of six months at Fort Dix from approximately September 3, 2016 through March 2, 2017. He paid \$91,727

to the SEC, which satisfied the restitution judgment of \$75,000 plus interest. Petitioner's Exhibit 2; N.T. 29, 48.

38. Petitioner was required to complete 150 hours of community service as part of his sentence, and completed over 300 hours. N.T. 51-52.

39. Petitioner credibly testified on his own behalf.

40. During his legal career, Petitioner was active in the Bucks County Bar Association ("BCBA") and the Pennsylvania Bar Association ("PBA"), where he served on committees and in leadership roles, including on the board of directors and as president of the BCBA and on the PBA Board of Governors. N.T. 17-18.

41. Petitioner testified that he devoted his time to the bar associations because he enjoyed the camaraderie and helping others. N.T. 19.

42. Petitioner has been actively engaged with his community for many years through his volunteer efforts at Our Lady of Mt. Carmel Roman Catholic Church, State Street Players amateur theater group, Boy Scouts of America, Dance Theater of Pennsylvania amateur group, and Tabor Children's Services, a foster agency. N.T. 21-23.

43. Although Petitioner provided some services in order to fulfill the community service portion of his criminal sentence, during his suspension he continued to volunteer with organizations such as the Boy Scouts and State Street Players theater group. N.T. 59-60.

44. Petitioner testified that he has been involved in community service

through the years because he followed the example set by his father and wanted to be involved from the ground level with different organizations. N.T. 24-25.

45. Since his conviction, Petitioner has held positions of public trust and handled money for community organizations without impropriety. N.T. 167, 168-169, 170-171.

46. During his suspension, Petitioner maintained steady employment. In 2017, he worked for a short time as a paralegal for William Bolla, Esquire. Petitioner obtained his real estate license in 2018 and currently works as a real estate broker for Greenstreet Commercial Real Estate, located in Doylestown. N.T. 31-33, 72.

47. At Greenstreet, Petitioner serves as the Senior Director of Sales and Leasing. His responsibilities do not involve any law-related activity. N.T. 53, 56. Petitioner testified that he goes out of his way to tell people he is not a lawyer. N.T. 54.

48. If reinstated, Petitioner plans to continue working for Greenstreet. N.T. 63-64. Petitioner acknowledged that at the age of 70, he is semi-retired, and that one of his intentions in regaining his law license is to be able to be a member of the bar associations again and provide volunteer and pro bono work for those organizations. N.T. 65.

49. Petitioner satisfied the CLE requirements for reinstatement and maintained his knowledge in the law by reading the Bucks County Law Reporter and reviewing case law in the area of real estate. Petitioner's Exhibit 2; N.T. 29-

30.

50. Petitioner accepted full responsibility for his misconduct. N.T. 44, 45. He expressed sincere regret for his actions and testified that he thinks about what he did every day and regrets the embarrassment that he caused the profession, his law partners, his former law firm, family, and friends. N.T. 28-29.

51. Petitioner expressed remorse for his misconduct and any embarrassment he caused the legal community. He testified he has a sincere desire to earn back the respect of the legal community. *Id.*

52. Petitioner produced the testimony of Attorneys Christopher Serpico, William Pugh, V and Timothy Riley. These witnesses credibly spoke of Petitioner's abilities as an attorney, his work with the bar associations, and his high moral character. These witnesses all supported Petitioner's efforts to be reinstated. N.T. 90-112, 114-122, 124-135.

53. Petitioner produced the credible testimony of Daniel O'Donnell and Dr. George Corwell, who spoke of Petitioner's work with the community and his church and confirmed his high moral character. N.T. 144-156, 158-165.

54. Petitioner produced the credible testimony of Frank Lombardo, who is a commercial real estate broker at Greenstreet Commercial Real Estate where Petitioner has been continuously employed since 2018. Mr. Lombardo positively spoke of Petitioner's breadth of knowledge regarding real estate matters, his work ethic and loyalty to clients, and his high moral character. N.T. 69-80.

55. Mary Jo Sudfeld is Petitioner's wife of 44 years and testified credibly

that Petitioner is a loyal family man who has been very involved in his community for decades. N.T. 137-139.

56. Mrs. Sudfeld testified that Petitioner has a great sense of responsibility for his misconduct and understands that he let down his family, his friends, and his profession. N.T. 141.

57. Mrs. Sudfeld further testified that Petitioner has a yearning to regain the respect of all of those that he feels he let down. N.T. 142.

58. Several of the witnesses described Petitioner's misconduct as a one-time lapse in judgment and not consistent with the character of the person they knew for many years. N.T. 100, 119.

59. ODC did not present any witnesses or introduce any exhibits at the hearing, and did not file a brief in opposition to reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner demonstrated 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. Rule 218(c)(3), Pa.R.D.E.

2. Petitioner demonstrated by clear and convincing evidence that his resumption of the practice of law 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 readmission to the practice of law following his suspension on consent for a period of four years, ordered by the Supreme Court of Pennsylvania on June 22, 2020, retroactive to April 8, 2016, the date of Petitioner's temporary suspension. Pursuant to Rule 218(a)(1), Pa.R.D.E., an attorney who is suspended for a period exceeding one year may not resume the practice of law until reinstated by the Court.

Petitioner bears the burden of proving by evidence that is clear and convincing, that he is morally qualified, competent, and learned in the law and 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. Pa.R.D.E. 218(c)(3). A reinstatement proceeding must be a searching inquiry into a lawyer's present professional and moral fitness to resume the practice of law, as the object of concern is not solely the transgressions that gave rise to the lawyer's suspension, but rather, the nature and extent of the rehabilitative efforts made since the time the sanction was imposed and the degree of success achieved in the rehabilitative process. ***Philadelphia News, Inc. v. Disciplinary Board of the Supreme Court of Pennsylvania***, 363 A.2d 779, 780-781 (Pa. 1976).

Petitioner was suspended for his conviction of Insider Trading and Making False Statements to Authorities. For his criminal acts, Petitioner was sentenced to six months in prison, three years of federal supervision, restitution and community service. Petitioner fulfilled all requirements of his criminal sentence, which included satisfaction of the restitution judgment to the SEC in the amount of \$91,727.00 and satisfaction of 150

hours of community service. Although Petitioner's misconduct represented a serious breach of his professional ethics, upon this record we conclude that he has met his reinstatement burden and recommend that the Petition for Reinstatement be granted.

Petitioner presented clear and convincing evidence that he spent his suspension period engaged in genuine rehabilitation and he is fit to be reinstated to the practice of law through demonstration of his moral qualifications, competence, and knowledge in the law. See, *In the Matter of Patrick O'Hare Regan*, No. 191 DB 2017 (D. Bd. Rpt. 2/25/2022) (S. Ct. Order 4/1/2022); *In the Matter of Stacy Parks Miller*, No. 32 DB 2017 (D. Bd. Rpt. 8/3/2021) (S. Ct. Order 8/31/2021).

Petitioner's uncontradicted testimony established that he is fit to practice law and qualified for reinstatement. Petitioner was candid and forthcoming on his Reinstatement Questionnaire, during his direct testimony, and in response to ODC's cross-examination. The earliest expression of Petitioner's contrition for his misconduct can be found in his cooperation with ODC in jointly seeking temporary suspension of his law license, and his later consent to a lengthy suspension of four years.

At the reinstatement hearing, Petitioner accepted full responsibility for his misconduct and expressed genuine remorse for his criminal conduct and the embarrassment he caused to the profession, his law partners, his family and friends. Petitioner expressed a sincere desire to earn back the respect of the legal community, which he ably served for nearly forty years prior to his suspension.

During his period of suspension, Petitioner maintained steady employment. He worked as a paralegal for a short time, then obtained his real estate license and has

been employed at Greenstreet Commercial Real Estate since 2018, currently serving as Senior Director of Sales and Leasing. While suspended, Petitioner maintained his learning in the law by completing required CLE courses and reviewing the Bucks County Law Reporter, as well as case law focusing on zoning, land development and real estate. If reinstated, Petitioner intends to continue his current employment in real estate.

Petitioner has a long history of volunteer efforts for both the BCBA and the PBA, where he served on committees and in leadership positions. He intends to rejoin these bar associations if reinstated in order to perform volunteer work and pro bono service. Petitioner's active involvement with his church and community organizations such as Boy Scouts, a local theater group, a foster agency, and athletic associations, is equally longstanding and he served some of these organizations during his suspension. Petitioner credibly testified that he enjoys volunteering for the camaraderie and because he likes being helpful to his community.

Petitioner's seven character witnesses provided credible testimony that established Petitioner's moral qualifications and fitness to resume the practice of law. These witnesses have known Petitioner personally and professionally for many years. Attorneys Serpico, Pugh and Riley support Petitioner's reinstatement and credibly spoke of his abilities as an attorney, his dedicated work with the bar associations through the years, and his high moral character. Mr. Lombardo works with Petitioner at Greenstreet Commercial Real Estate and spoke positively of Petitioner's breadth of knowledge pertaining to real estate matters, his strong work ethic and loyalty to clients, and his high moral character. Dr. Corwell and Mr. O'Donnell credibly spoke of Petitioner's work with

the community and his church and confirmed Petitioner's high moral qualities. Several witnesses described Petitioner's misconduct as an aberration and not consistent with the character of the person they have known for many years. Petitioner's wife of 44 years provided credible insight into Petitioner's positive character attributes as a person of high integrity and a loyal family man who has contributed greatly to his community for decades. Mrs. Sudfeld credibly testified that Petitioner has a great sense of responsibility for his actions and he understands that through his serious misconduct, he let down his profession and family. She credibly conveyed that Petitioner has a yearning to regain the support and respect of those he let down. These witnesses have no hesitation in recommending Petitioner's reinstatement to the bar.

Under similar circumstances, attorneys have been reinstated to practice law in this Commonwealth. See, *In the Matter of Patrick O'Hare Regan*, No. 191 DB 2017 (D. Bd. Rpt. 2/25/2022) (S. Ct. Order 4/1/2022) (petitioner reinstated from a two year period of suspension that arose from his conviction of conspiracy to commit mail and wire fraud); *In the Matter of Robert Langston Williams*, No. 7 DB 2013 (D. Bd. Rpt. 12/11/2019) (S. Ct. Order 1/21/2020) (petitioner reinstated from a five year period of suspension that arose from his criminal conviction of misapplication of entrusted funds and two counts of willful failure to file federal tax returns); *In the Matter of Robert Toland, II*, No. 104 DB 2009 (D. Bd. Rpt. 11/1/2019) (S. Ct. Order 12/3/2019) (petitioner reinstated from a suspension for three years that arose from his conviction of multiple DUIs); *In the Matter of Peter C. Ibe*, No. 7 DB 2014 (D. Bd. Rpt. 10/28/2019) (S. Ct.

Order 12/3/2019) (petitioner reinstated after suspension for two and a half years for conviction of receiving stolen property and multiple counts of furnishing liquor to minors).

Like the petitioners in the above-cited matters, Petitioner demonstrated his rehabilitation from his criminal acts and his professional and moral fitness by fulfilling the terms and conditions of his criminal sentence, accepting responsibility for his actions and acknowledging the harm his misconduct inflicted on the legal profession, expressing contrition and sincere remorse, maintaining steady and consistent employment, maintaining knowledge of the current law, engaging in community service, and detailing a plan to reenter the profession. Petitioner further established the strong support of community members, who convincingly demonstrated that Petitioner's return to practice will not be detrimental to the public or the profession.

Upon this record, we conclude that Petitioner has met his burden of proof that he is morally qualified, competent and learned in the law, and 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. Petitioner has demonstrated clearly and convincingly that he is fit to practice law. The Board recommends that the Petition for Reinstatement be granted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Petitioner, Herbert K. Sudfeld, Jr., 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: Celeste L. Dee
Celeste L. Dee, Member

Date: 5/6/2022