

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1612 Disciplinary Docket No. 3
: :
STEPHEN GREG DOHERTY : No. 69 DB 2010
: :
: Attorney Registration No. 80344
: :
: (Bucks County)
PETITION FOR REINSTATEMENT :

ORDER

PER CURIAM

AND NOW, this 27th day of October, 2017, 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).

A True Copy Patricia Nicola
As Of 10/27/2017

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. HISTORY OF PROCEEDINGS

On April 16, 2010, Stephen Greg Doherty, Petitioner, filed a verified Statement of Resignation with the Supreme Court of Pennsylvania. By Order dated July 19, 2010, the Court accepted the resignation and disbarred Petitioner on consent. Petitioner filed a Petition for Reinstatement on May 4, 2016. Office of Disciplinary Counsel filed a Response to Petition for Reinstatement on August 16, 2016.

A reinstatement hearing was held on December 9, 2016, before a District II Hearing Committee comprised of Chair Philip D. Press, Esquire, and Members Robert R. Hart, Esquire, and Michael Kuldiner, Esquire. Petitioner was represented by Ellen Brotman, Esquire. Petitioner introduced exhibits into evidence, introduced the testimony of four witnesses, and testified on his own behalf. Office of Disciplinary Counsel did not call any witnesses and did not offer any exhibits into evidence.

Following the submission of the parties' briefs, the Hearing Committee filed a Report on June 1, 2017, and recommended that the Petition for Reinstatement be granted.

The parties did not file exceptions to the Report and recommendation.

The Disciplinary Board adjudicated this matter at the meeting on July 21, 2017.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Stephen Greg Doherty. He was born in 1966 and was admitted to the bar in the Commonwealth in 1997. His attorney registration address is 101 Greenwood Avenue, Suite 600, Jenkintown PA 19046. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. On April 16, 2010, Petitioner voluntarily resigned from the practice of law.

3. Beginning in 1997, Petitioner and Jeffrey Bennett practiced law together as Bennett & Doherty, P.C. ("B & D") and also operated a title company, First County Abstract, LLC. Joint Stipulation ("Joint Stip.") 1.

4. Petitioner and Mr. Bennett formed Fountainville Associates, LLC ("Fountainville") for the purpose of holding title to an office condominium they purchased in or about 2004 at 1456 Ferry Road, Doylestown, Pennsylvania. Petitioner and Mr. Bennett later used Fountainville to receive funds from the sale of real property. Joint Stip. 1.

5. Beginning in or about 2002, B & D purchased lists of homes in foreclosure, which they used for their bankruptcy and foreclosure defense practice. Joint Stip. 3.

6. In or about 2003, Edward McCusker, a mortgage broker and an acquaintance of Petitioner, began referring some of his clients to B & D for title insurance. Joint Stip. 5.

7. Beginning in or about 2005, B & D began utilizing the list of homes in foreclosure to mail out marketing pieces under the name "Foreclosure Relief Services, LLC" ("FRS"), which shared a physical address with B & D and First County Abstract, and solicited homeowner clients by sending them a written advertisement that, among other things:

a. Explained that their mortgage company had started foreclosure proceedings to take their home;

b. Claimed that FRS could help stop the lawsuit and allow them to stay in their home;

c. Claimed that FRS provided a potential service with no up-front costs, no legal fees, no bankruptcy filing, and improved their credit rating;

d. Directed the homeowner to call "Steve" to schedule a free consultation; and

e. Promised to explain the mortgage foreclosure process "in as much detail as you want." Joint Stip. 6.

8. Petitioner was the individual identified as "Steve" in the flier. Joint Stip. 7.

9. The "service" described by the flier involved the sale of the client's home to a third party who would then lease it back to the homeowner, with the option to repurchase the home once the homeowner's financial situation stabilized. Joint Stip. 8.

10. When potential clients called, Petitioner met with them or arranged a telephone consultation to discuss potential responses to the foreclosure action, including: contesting the foreclosure in state court; negotiating a mortgage modification; filing a Chapter 7 or 13 bankruptcy; refinancing with the assistance of a relative; or, entering into a sale-leaseback transaction. Joint Stip. at 9.

11. Petitioner often either initiated a bankruptcy proceeding or entered his appearance and filed preliminary objections on behalf of the homeowner as a first response to the foreclosure process. In some cases, these actions afforded clients the time they needed to reinstate or modify their mortgage or sell their home. In other cases,

these steps merely slowed the foreclosure process pending completion of a sale-leaseback. Joint Stip. 10.

12. Petitioner charged clients separately for the above services. Joint Stip. 11.

13. Homeowners interested in a sale-leaseback transaction or possible refinance, and who had sufficient equity in their homes, were referred to Edward McCusker, who proceeded in some cases to arrange for the sale of the individual's home to a straw purchaser. Joint Stip. 12.

14. Despite the statement made in the advertisements, FRS had no actual involvement in the sale of the home and the subsequent sale-leaseback arrangement. Instead, other entities owned and controlled by the co-conspirators handled the transaction. Joint Stip. 13.

15. Petitioner and Mr. Bennett prepared the FRS flier described above, as well as the Indenture and the Option Agreement, and a disclaimer, which provided, among other things, that B & D did not represent the former homeowner in connection with the transaction. Joint Stip. 14.

16. Sometimes, the above documents were not provided to clients in advance of settlement for their review, but instead were handed to them to sign on the date of settlement along with other documents. Joint Stip. 15.

17. Mr. Bennett handled all but one of the property closings. Joint Stip. 16.

18. First County Abstract acted as the title insurance agent at each settlement and received a fee for each settlement from the sellers' net equity in the property, rather than from the purchasers. However, the HUD-1 form falsely reflected that the payment was made by the purchaser. Joint Stip. 17.

19. For most of these transactions, Petitioner and Mr. Bennett had negotiated an arrangement whereby Mr. McCusker paid Fountainville the commission normally received by the mortgage broker for placing the mortgage. Joint Stip. 18.

20. That commission generally amounted to 2% of the new mortgage, and ranged from approximately \$5,000.00 to more than \$17,000.00 per transaction. Joint Stip. 19.

21. In most instances, the combination of commission and fees received by Petitioner and Mr. Bennett was in excess of what Petitioner would have realized had he represented the individual in a federal bankruptcy case. Joint Stip. 20.

22. At the time he referred borrowers to Mr. McCusker, Petitioner did not disclose, either orally or in writing, that he would receive any fees beyond the title insurance from the sale-leaseback transaction. Joint Stip. 21.

23. Other than advising that his company would handle the title insurance, at the time he referred these individuals to Mr. McCusker, Petitioner did not disclose, either orally or in writing, the role he, Mr. Bennett, and their various companies would play in connection with the sale and leaseback of the properties. Joint Stip. 22.

24. At the time he referred his clients to Mr. McCusker, Petitioner did not disclose to the clients, either orally or in writing, the fact that neither he nor his law firm would represent them in connection with the proposed transaction. Joint Stip. 23.

25. Other than the details included in the HUD-1 form, borrowers were not provided with any written documents accounting for how the equity in their home would be spent. Joint Stip. 24.

26. Other than the details included in the HUD-1 form, borrowers were not provided with any written documents accurately reflecting the fees and charges taken out of their equity at settlement. Joint Stip. 25.

27. As found by the Court in *USA v. McCusker, et al.* No. 09-771-5 (Order dated March 11, 2014, (ODC -2), “the defendants used some false documents including forged purchase and sale agreements, lease agreements, and loan applications to get the loans approved as quickly as possible. ***The HUD - 1s were also false.***” (ODC-2) (emphasis added). Joint Stip. 26.

28. Among other things, the HUD-1 forms did not reflect the amount of the seller’s equity used to pay Mr. McCusker or the straw purchasers. Joint Stip. 27.

29. Petitioner was indicted in 2009 and pled guilty in the United States District Court for the Eastern District of Pennsylvania to all 15 counts of the indictment, including mail fraud, wire fraud, bankruptcy fraud, and money laundering. The indictment alleged that millions of dollars of losses had been caused by Petitioner and his co-conspirators. Joint Stip. 28

30. On March 5, 2014, Petitioner was deemed a minor participant by Judge Mary McLaughlin with respect to the criminal aspect of these transactions. Joint Stip. 28.

31. Petitioner was sentenced to twelve months and one day imprisonment for each of the counts, to be served concurrently, and two years of supervised release at each count, to be served concurrently. Joint Stip. 28.

32. Petitioner served his incarceration for nine months, with the balance on home detention. His probation expired on or around March 5, 2017. Joint Stip. 33.

33. The court did not order restitution, but entered a forfeiture judgment against Petitioner and his former law partner Mr. Bennett, in the amount of \$202,644.33, as well as an assessment of \$1,500.00 and a fine of \$7,500.00. Joint Stip. 31.

34. Petitioner paid the fines and forfeiture judgment from the escrowed proceeds of his home on May 14, 2014. Joint Stip. 32.

35. At the reinstatement hearing, Petitioner credibly testified on his own behalf.

36. Petitioner testified about the underlying misconduct that caused his disbarment on consent. He felt “ashamed” and “terrible” about permitting his law firm to get involved with the sale-leaseback transactions, and that the conducted stopped in 2006 when he stopped referring anyone to Mr. McCusker, and told his law firm partner that they could no longer engage in the transactions. N.T. 109.

37. After his guilty plea, Petitioner waited more than four years for his criminal sentencing. N.T. 122.

38. Prior to sentencing, Petitioner calculated all the profits earned by B & D for the sale-leaseback transactions and placed that money in escrow to be paid as potential restitution. N.T. 120-121, 148.

39. In his letter to the sentencing court, Petitioner wrote “to say that I am sorry is to not even begin to scratch the surface of my frustration with myself and others, my anger at my own ignorance and weakness, and my profound regret for the pain, loss and heartache that my actions and inactions have caused.” Pet. Ex. 10.

40. At the reinstatement hearing, Petitioner testified that, during the sale-leaseback transactions, he did not disclose everything he should have disclosed and that he led individuals who consulted with him into situations where they were not properly protected. N.T. 107-109; 147. Petitioner admitted that he had profited from these arrangements. N.T. 147-149.

41. Petitioner testified that he realized he had wrongly overlooked conflicts of interest and other problems with the sale-leaseback transactions out of an admitted lack of character and lack of commitment to his practice. He is now “a lot more careful, a lot more engaged in what I’m doing in the practice of law, a lot more committed to it, and a lot less distracted than I was then.” N.T. 149.

42. In his testimony, Petitioner reflected on his misconduct: “I regret it every day. I wish I could take it back. I know that I can’t and I’ve tried to do everything I can to make up for it, really...selling the house, selling the car, putting the money in escrow.” N.T. 150.

43. Currently, Petitioner is employed as a paralegal at the law firm of Faruqi & Faruqi LLP, in Jenkintown, Pennsylvania, which specializes in class action litigation. N.T.125-126. If Petitioner is reinstated, he plans to continue working at the firm as an attorney. N.T. 127-128.

44. Petitioner maintained currency in the law through his employment as a paralegal, and reviewed various legal periodicals, including Law 360, Bloomberg Reports, the ABA Journal, and Lexis Advance. Petitioner fulfilled Continuing Legal Education requirements necessary for reinstatement. Reinstatement Questionnaire No. 19.

45. Petitioner testified concerning personal struggles, including the death of his first wife from cancer in 2001 and Petitioner's subsequent efforts to care for his young son, who experienced anxiety following the loss of his mother. N.T. 85-87, 88; Pet. Ex. 2.

46. Petitioner remarried in 2003 and had two more children. N.T. 90; Pet. Ex. 10.

47. Petitioner presented the credible testimony of four character witnesses.

48. Peter Kohn, Esquire, is a member of the Pennsylvania bar and a partner and chair of the antitrust practice at the Faruqi law firm. Mr. Kohn has practiced law for approximately twenty-five years. N.T. 17.

49. Mr. Kohn was instrumental in hiring Petitioner as a paralegal at the Faruqi law firm, and is Petitioner's supervising attorney. N.T. 18, 38-39.

50. Petitioner began working at the Faruqi law firm in June 2015. In Mr. Kohn's opinion, "[Petitioner] is probably the best paralegal in the world, given his legal training...and [I] get output from him that many lawyers wouldn't be able to give to me." N.T. 28-29; Pet. Ex. 13.

51. Mr. Kohn has known Petitioner since they were in law school together and considers him a good friend. Mr. Kohn testified that the aftermath of the death of Petitioner's first wife was a very difficult time for Petitioner, and Mr. Kohn sensed that Petitioner was very distracted. N.T. 19-20. Mr. Kohn and his wife introduced Petitioner to his current wife, Diana Loukedis. N.T. 21-22.

52. Mr. Kohn testified that his opinion of Petitioner from the time of the misconduct until the current time has been consistent. Mr. Kohn described Petitioner as honest, forthright, responsible, compassionate and humane. He further described Petitioner as very bright, caring, diligent and conscientious. N.T. 22.

53. Mr. Kohn testified that Petitioner has felt extreme remorse for his past misconduct. He testified, "Steve has a lot of regret. I think that if he could turn the clock back and have certain do-overs, I think he would gladly have that occur. I think he's remorseful, and I think that the chances of anything like what happened ever happening again are zero. " N.T. 28-29.

54. Joseph Lukens, Esquire, is a member of the Pennsylvania bar and a lawyer at the Faruqi law firm. He has known Petitioner for approximately twenty-five years, since they attended law school together. N.T. 41, 42.

55. Mr. Lukens testified that Petitioner has the competency and learning in the law and the moral character to be reinstated to the bar. He noted that Petitioner had the highest integrity and had “stood up and acknowledged the behavior, pled to the behavior, paid for the behavior both in terms of the time he spent in prison, in terms of the money that he paid back...he stands up there... as one of the people I know that has more integrity despite having made a terrible mistake, because of what he did afterwards to take ownership of that and responsibility for it...So, to me, he is a paragon.” N.T. 54-55.

56. Douglas Eschbach has been the Executive Director at Generations of Indian Valley (“Generations”) for twenty-three years. Generations is an organization that helps older adults remain active and engaged in their communities. Generations runs the Meals on Wheels program for 15 municipalities. N.T. 57-58.

57. Mr. Eschbach met Petitioner through Petitioner’s wife. After Petitioner was disbarred, he looked for a meaningful way to fill his time. Mr. Eschbach offered Respondent a volunteer position in the meal prep program at Generations. N.T. 59-60.

58. Mr. Eschbach testified that when Petitioner began working at Generations, he “was a little shell-shocked. I mean, his world was kind of crumbling around him, the world that he might have planned on, but he was great in terms of dependability. He was great in terms of the way he interacted with people, his genuine caring about other volunteers. He was very engaged in the mission of our organization... I was very quickly impressed with him.” N.T. 61.

59. Mr. Eschbach testified that he was impressed with Petitioner's honesty regarding his criminal conduct. Mr. Eschbach testified that Petitioner was "very honest, that he was very sorry, and that he was remorseful, that he realized that what he had done caused pain to the people that were affected but, as well, to his wife, his family, to himself. You know, it was the kind of thing that I think he really would have loved to have taken back." N.T. 63.

60. Patricia Smith is a neighbor and close friend to Petitioner and his wife, and has known them for ten years. Ms. Smith is currently employed as a senior vice-president of sales and operations at Realtor.com. N.T. 70-71.

61. Ms. Smith testified that during the criminal case, she observed that "[Petitioner took] a lot of ownership of what was going on. You know, it was definitely not easy, and there was a lot of sadness and turmoil. But at the same time, [Petitioner and his wife] did everything they had to do and did it kind of matter of fact." N.T. 73-74.

62. Ms. Smith testified that "[Petitioner] is a stand-up guy and a caring guy, and, you know, a loving dad, a loving father, and a really great friend who really is selfless. He always puts other people before him. " N.T. 75.

63. Petitioner submitted numerous letters from family, friends and colleagues in support of his reinstatement. Pet. Ex 13, 14, 15.

64. Office of Disciplinary Counsel does not oppose reinstatement.

III. CONCLUSIONS OF LAW

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

2. Petitioner demonstrated by clear and convincing evidence that a sufficient period of time has passed since the misconduct, during which he engaged in a qualitative period of rehabilitation. *In re Jerome J. Verlin*, 731 A.2d 600 (Pa. 1999).

3. Petitioner demonstrated by clear and convincing evidence that he possesses the moral qualifications, competency and learning in the law required to practice law in the Commonwealth, and his resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or administration of justice, nor subversive of the public interest. Pa.R.D.E. 218(c)(3).

IV. DISCUSSION

Petitioner seeks readmission to the practice of law in Pennsylvania following his disbarment on consent by Order of the Supreme Court of Pennsylvania dated July 19, 2010. The misconduct giving rise to Petitioner's resignation was his criminal conviction for mail fraud, wire fraud, bankruptcy fraud, and money laundering. His misconduct was associated with a program of real property sales and lease-back transactions, intended to assist homeowners facing foreclosure. Petitioner participated in the scheme, knowing that transaction documents were false and that his conduct in failing to disclose his own personal financial interest in the transactions violated conflicts of interest rules.

Petitioner's burden of proof with respect to his request for reinstatement from disbarment is heavier than the burden of proof following a suspension. As the Supreme Court of Pennsylvania held in **Keller**, "[i]n the case of disbarment, there is no basis for an expectation by the disbarred attorney of the right to resume practice at some future point in time." *Id* at 875. The threshold issue in a disbarment matter is whether the misconduct that resulted in Petitioner's disbarment was of such magnitude so as to preclude the Board's consideration of his reinstatement. *Id*.

In light of the Supreme Court's previous holdings, we cannot say Petitioner's misconduct was so great that his reinstatement is precluded. There are numerous examples where the threshold question has been met in cases involving dishonest conduct. *See In re Lawrence D. Greenberg*, 749 A.2d 434 (Pa. 2000) (misappropriation of two million dollars and commission of perjury in bankruptcy proceeding); *In re William James Perrone*, 777 A.2d 413 (Pa. 2001) (improperly obtained public funds allocated for indigent legal representation by filing false fee petitions); *In the Matter of Milton E. Raiford*, 50 DB 1994 (D. Bd. Rpt. 2/16/2010) (S. Ct. Order 4/16/2010) (perpetration of fraud on the criminal justice system of Allegheny County by knowingly and intentionally allowing a client to misrepresent herself as another client, who had been charged with narcotics offenses); *In the Matter of Rosanne Kay Diehl*, 18 DB 2005 (D. Bd. Rpt. 11/15/2011) (S. Ct. Order 3/16/2012) (criminal conviction for conspiracy to commit bank fraud, met **Keller** standard but reinstatement denied on other grounds).

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

Following our analysis of the **Keller** threshold, we next consider whether Petitioner has established that he has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania 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. Pa.R.D.E. 218(c)(3). 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. **Verlin** at 602.

Following a careful examination of the record and the report and recommendation of the Hearing Committee, we conclude that Petitioner met his reinstatement burden

Petitioner has been disbarred from the practice of law for seven years. We conclude, based on a review of other reinstatement matters, that this has been a sufficient period of time to demonstrate rehabilitation. **In the Matter of Gerard Emmett Evans**, No. 10 DB 2001 (D. Bd. Rpt. 10/3/08) (S. Ct. Order 12/15/08) (reinstatement from disbarment after seven years; mail and wire fraud conviction); **In the Matter of Mark**

Allan Kovler, 172 DB 2002 (D. Bd. Rpt. 5/15/09) (S. Ct. Order 7/24/09) (reinstatement from disbarment after five years and eleven months; fraudulent conveyance of home to insulate from judgment in a pending malpractice action).

Petitioner fully acknowledged that he engaged in wrongdoing for not apprising his clients of his role in the mortgage transactions, as well as the false statements in HUD filings. Petitioner demonstrated genuine remorse and sorrow for his actions and their consequences. Petitioner underwent significant rehabilitation during his seven years of disbarment by serving time in prison, setting aside funds for restitution, raising his family, and volunteering his time and energy back into the community where he lives. Petitioner works as a paralegal and has earned the respect of his colleagues at the Faruqi law firm, who admire his honesty and good work, and want him to join the firm as an attorney upon reinstatement. The credible and compelling testimony of Petitioner's character witnesses and the character letters submitted by Petitioner demonstrated that he has the continued support of long-time friends, family, colleagues and community members, who are aware of the details of his misconduct, yet remain confident in Petitioner's character, ethics, skills and abilities.

Petitioner met his reinstatement burden by clear and convincing evidence that he is morally qualified, competent and learned in the law, and of equal importance, that his reinstatement will not be detrimental to the public or to the profession. Petitioner is fit to resume the practice of law. For all of the above reasons, we recommend that the Petition for Reinstatement be granted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that Petitioner, Stephen Greg Doherty, 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: 
Andrew J. Trevelise, Member

Date: September 13, 2017