

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1862 Disciplinary Docket No. 3
: :
JOSEPH A. GEMBALA, III : No. 21 DB 2012
: :
PETITION FOR REINSTATEMENT : Attorney Registration No. 44063
: :
: (Philadelphia)

ORDER

PER CURIAM

AND NOW, this 21st day of June, 2022, 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 06/21/2022

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

By Order dated October 25, 2012, the Supreme Court of Pennsylvania granted a Joint Petition in Support of Discipline on Consent and suspended Petitioner, Joseph A. Gembala, III, for a period of two years. The Order directed Petitioner to refund to complainants his share of fees he retained within 60 days of date of the Order. On March 26, 2015, Petitioner filed a Petition for Reinstatement. On May 3, 2017, Petitioner

filed a request to withdraw his Petition and the Court granted the request by Order dated June 12, 2017. On December 23, 2019, Petitioner filed a Petition for Reinstatement. On June 17, 2021, Office of Disciplinary Counsel (“ODC”) filed a response and raised concerns that it intended to explore at the hearing, which concerns focused generally on Petitioner’s finances and answers on the Reinstatement Questionnaire.

Following a prehearing conference on September 13, 2021, a District I Hearing Committee (“Committee”) held a reinstatement hearing on October 13, 2021. Petitioner offered exhibits, testified on his own behalf, and presented the testimony of five witnesses. ODC offered exhibits and did not present any witnesses.

On November 15, 2021, Petitioner filed a post-hearing brief to the Committee and requested that the Committee recommend to the Board that the Petition for Reinstatement be granted. On November 22, 2021, ODC filed a post-hearing letter in lieu of brief and advised the Committee that it would not file a brief opposing Petitioner’s reinstatement.

By Report filed on January 24, 2022, the Committee concluded that Petitioner met his reinstatement burden and recommended that the Petition for Reinstatement be granted.

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 Joseph A. Gembala, III, born in 1956 and admitted to practice law in the Commonwealth of Pennsylvania in 1985. Petitioner is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2. After admission to the bar, Petitioner worked for his father's law office in Philadelphia and then as a judicial law clerk. He later opened his own general law practice and handled criminal cases, estate work, and business matters, as well as some personal injury matters. N.T. 176-179.

3. In addition to practicing law, Petitioner taught undergraduate and MBA courses for 12 years as an adjunct professor at LaSalle University in Philadelphia, his alma mater. N.T. 177

4. Petitioner is married with two adult children. His wife has a doctorate in nursing and teaches at Temple University. N.T. 180, 181.

5. In the spring of 2009, Petitioner was introduced to the principals of Security Property Solutions ("SPS") by a friend and fellow attorney. N.T. 184, 185.

6. Petitioner understood that SPS modified mortgages for people in distress. He testified he was hired as general counsel to ensure SPS complied with New Jersey state laws, as Petitioner was licensed in New Jersey as well as in Pennsylvania. N.T. 185, 186.

7. Petitioner explained the payment arrangements with clients of SPS. Clients would send payment funds through Petitioner's attorney escrow account. The money went into the escrow account and Petitioner then transferred the money over to SPS. Petitioner testified he initially received as a legal fee \$250 per modification, but that amount was reduced over time because SPS was "unable to pay a retainer up front to secure my services." N.T. 187, 188.

8. In the summer of 2009, Petitioner advertised on the internet that he was performing mortgage modifications, but admitted at the hearing that he never performed those services. N.T. 188.

9. At some point in the fall of 2009, Petitioner discovered that SPS and its partners were "diverting money from the clients" and not completing the mortgage modifications. N.T. 189. SPS "diverted so much money that they were unable to continue the operations." N.T. 189.

10. Petitioner worked with the SPS partners to see if they could get a loan to keep the business going. N.T. 190.

11. At that time, Petitioner discovered SPS used his law firm name and pretended to modify the mortgages through his law firm. N.T. 190-191, 278.

12. In December 2009, several of the SPS employees came to Petitioner's law office in Philadelphia demanding payment of their wages. Petitioner began working with them to see if they could save the business, but testified that the SPS partners took all of the computers and files. N.T. 194, 195, 196.

13. Petitioner eventually cooperated with the Camden County, New Jersey authorities and no charges were ever brought against him. N.T. 195-196. Petitioner reported his conduct to ODC. N.T. 197.

14. By Order dated October 25, 2012, the Supreme Court of Pennsylvania granted a Joint Petition in Support of Discipline on Consent, suspended Petitioner for a period of two years, and directed that within 60 days of date of the Order, he refund to complainants his share of fees he retained from the loan modification fees. Exhibit P-2. Petitioner made full restitution to SPS clients as required by the suspension order. N.T. 205.

15. In the Joint Petition, Petitioner admitted that he violated Rules of Professional Conduct 1.3 involving diligence, 1.4(a) and (b) involving failure to properly communicate with clients, 1.16(d) involving terminating representation and causing prejudice, 5.3(b) and (c) involving failure to properly supervise employees, 5.4(a) involving sharing legal fees with nonlawyers, 7.5(a) involving use of an incorrect name for a business, 8.4(a) involving violation of disciplinary rules, and 8.4(c) involving deceit or misrepresentation. N.T. 197-199; Exhibit P-4.

16. After Petitioner's suspension, he complied with all requirements of the Pennsylvania Rules of Disciplinary Enforcement governing suspended lawyers. He ceased practicing law and notified New Jersey and federal courts of his suspension. N.T. 199, 200. Petitioner has not practiced law or held himself out as a lawyer during his suspension. N.T. 200.

17. On March 26, 2015, Petitioner filed a Petition for Reinstatement with the Disciplinary Board. After a hearing, both the Hearing Committee and the Board recommended denying the petition based on a variety of concerns that underscored Petitioner's lack of fitness to resume practice at that time, including Petitioner's failure to report a referral fee to the IRS, failure to use the referral funds to pay financial obligations, failure to seek compensated employment despite having financial obligations, failure to demonstrate remorse, attitude that he was a victim, and various omissions on his Reinstatement Questionnaire. As a result, Petitioner filed a request with the Supreme Court to withdraw the petition. By order dated June 12, 2017, the Court granted the request.

18. At the instant reinstatement hearing, Petitioner testified that he accepts full and complete responsibility for his misconduct:

I'm ashamed of myself and I'm ashamed of what I've done to the legal community. I've known various other attorneys who capitalized upon the misfortunes of others, and I have always shunned them. I feel sorry for the people that I was involved with the modification business who may have lost their homes. Once I found out the magnitude of the situation, I did everything in my power to make them whole. I do not know what more I could have done to help these people. I tried as much as I could with the help that I had, but I couldn't put this thing back on the rails. I apologize. I never thought I would find myself in a position like this. ... It's just a terrible thing to have done to the profession and to the poor people who were getting their mortgages modified. I apologize to [the Committee] for taking your time for this matter as well.

N.T. 209, 2010.

19. Petitioner testified that it was inexcusable of him to have let his guard down and he should have spent more time overseeing the actions of the SPS business. N.T. 211.

20. Petitioner admitted it was wrong for him to allow his attorney escrow accounts to be used and to then split fees with the other non-lawyer principals of SPS. He recognized that this was also an inexcusable error on his part. At the time, he did not see any harm in it, but he testified that he now realizes what he did was wrong. N.T. 211, 212.

21. Petitioner testified he made a major mistake in stating in an advertisement he had experience performing mortgage modifications and was holding himself out as an expert when he had no experience. He agreed he should not have done that and it was wrong. N.T. 213, 214.

22. Petitioner has gained perspective on his actions over the past nine years and has learned from his experience. N.T. 273-274.

23. At the time of Petitioner's first reinstatement proceeding in 2017, he viewed himself as a victim of SPS, but now agrees that he contributed to the misconduct and was not a victim. He further testified that he was only a victim of his own stupidity and arrogance. N.T. 223.

24. Petitioner reimbursed the Pennsylvania Lawyers Fund for Client Security in the amount of \$40,063.92 for claims paid to the victims of SPS. N.T. 226; Exhibit P-8.

25. Petitioner testified that several states and individuals sued him over the SPS collapse. Petitioner was sued by Massachusetts and resolved the complaint with a settlement. He was sued by Nevada and was able to resolve those issues. He was sued by class actions in Florida and Georgia and these lawsuits were resolved in Petitioner's favor. N.T. 200, 201, 202.

26. Petitioner was sued by a Maryland regulatory agency and a judgment was entered against him in 2015 for \$350,000.00. N.T. 202, 241; Exhibit P-12. Petitioner testified that he did not hire a lawyer to defend him in that matter because he could not afford to do so. N.T. 202.

27. Petitioner testified he has not been able to pay anything toward the 2015 Maryland judgment because he lacks funds and resources. N.T. 242. Petitioner contacted the Maryland agency approximately two weeks prior to the October 2021 reinstatement hearing, but was unable to speak with anyone. N.T. 275. Petitioner testified that if he is reinstated, it is his intention to try to resolve the judgment or at least attempt to make payments. N.T. 242, 274.

28. Petitioner testified that he and the principals of SPS were sued for sexual harassment. Petitioner testified that he never sexually harassed any employees and had not met with employees, other than the ones who showed up in his office in late 2009. N.T. 203-204. Petitioner hired a lawyer and settled for \$5,000 for each of the three complainants, with no admission of liability. N.T. 204; Exhibit P-10. Petitioner testified that he settled because it was less expensive to settle than to try and defend the cases. N.T. 204, 205.

29. During his suspension, Petitioner has worked for Bruce Friedman, Esquire, as an office administrator. Petitioner is an independent contractor and works several days per week performing tasks such as opening the office, checking the mail, answering phones, checking messages, and scheduling appointments. NT. 218, 220, 221.

30. Petitioner and Mr. Friedman sent Notices of Engagement required under Pa.R.D.E. 217(j) to ODC, registering Petitioner's employment at Mr. Friedman's office. N.T. 233, Exhibits P-10, P-20.

31. During the pandemic, Mr. Friedman shut down his law office; thereafter Petitioner has worked from Mr. Friedman's house, which is near Petitioner's home. N.T. 221.

32. After Petitioner was suspended in 2012, he received a referral fee of \$210,000 and failed to report it on his 2013 tax returns. N.T. 224, 225.

33. Petitioner testified that the reason he did not timely report income was because he was trying to have monies to pay back the Pennsylvania Lawyers Fund for Client Security and to make claimants whole. N.T. 225.

34. Petitioner hired an accountant, William Bradley, to amend his tax returns and is now paying \$700.00 per month to the IRS. He has reduced the tax due from \$61,000.00 down to \$19,000.00. N.T. 227, 228, 229; Exhibit P-17.

35. Petitioner paid \$25,000.00 to the City of Philadelphia for taxes owed. N.T. 230; Exhibit P-15. Petitioner paid \$6,900.00 to the Pennsylvania Department of Revenue for taxes owed. N.T. 231; Exhibit P-14.

36. Petitioner's tax returns stated he was employed as a lawyer. Petitioner testified that he has not held himself out as a lawyer and did not realize that such was reflected on his tax returns, which were prepared by his accountant. N.T. 235, 236, 237, 238.

37. ODC questioned Petitioner concerning his failure to list on his Reinstatement Questionnaire a lien filed against him by the Commonwealth of Pennsylvania. Petitioner credibly testified that it was a negligent omission on his part. N.T. 262-263. He testified that he had so many judgments against him that he forgot about the lien. N.T. 263. Petitioner satisfied that lien. N.T. 263; Exhibit P-10.

38. Petitioner testified that he neglected to list on his Reinstatement Questionnaire the tax court as a jurisdiction in which he was admitted. Petitioner credibly testified that he forgot he was admitted in the tax court as he had only been there on one occasion years ago. N.T. 268.

39. Petitioner testified that currently, he lives on income from his wife's salary, Social Security, and income earned from his work for Attorney Friedman. N.T. 242-243.

40. During his suspension, Petitioner performed charitable and community work. He worked with Vietnam veterans at the American Legion Post, and through the Legion Post, volunteered for food drives and holiday toy drives. N.T. 216, 217, 285.

41. For a period of time, Petitioner volunteered at the Blind Museum by reading to convert magazines into Braille. N.T. 216, 217, 284.

42. Petitioner spent a great deal of time in the early part of his suspension taking care of his elderly mother and father-in-law. He took them to medical appointments and helped with their meals, which enabled them to remain in their homes. Petitioner's father-in law died in 2017 and his mother died in 2018. N.T. 218, 219.

43. Petitioner mentors a mentally handicapped adult that he met through his fishing club. Petitioner fishes and hunts with this individual. N.T. 283, 311-313.

44. Petitioner fulfilled his Continuing Legal Education requirements for readmission as well as excess credit hours during the period of suspension. Exhibit P-16; N.T. 234, 235. Petitioner kept abreast of the law by reading *The Legal Intelligencer* on a daily basis. N.T. 235.

45. If reinstated, Petitioner plans to practice with Attorney Friedman and hopes to reestablish his estates practice. Petitioner also shared that he is interested in doing court appointments in criminal matters and expressed an interest in working with his son, who is admitted to practice law in Pennsylvania. N.T. 244-247.

46. Petitioner's testimony was credible.

47. Petitioner presented the testimony of five witnesses at the reinstatement hearing.

48. Alonzo Abner is a retired Certified Public Accountant who has known Petitioner as a friend for approximately five years. Mr. Abner testified that he is aware of Petitioner's status as a suspended lawyer and his misconduct. Mr. Abner testified that Petitioner has an excellent reputation in the community as a peaceful and law-abiding individual and as a truthful and honest person. N.T. 31, 32, 33, 37.

49. Mr. Abner testified that Petitioner accepted full responsibility for his misconduct and expressed remorse. N.T. 32-33, 39.

50. Mr. Abner has no hesitation in recommending Petitioner be reinstated to the bar. N.T. 33.

51. William J. Bradley is a Certified Public Accountant and is Petitioner's accountant. N.T. 48-49. Mr. Bradley testified he has worked with Petitioner since approximately 2014 to amend his tax returns and to work out payments with the IRS, Commonwealth of Pennsylvania, and City of Philadelphia. N.T. 50, 51, 52.

52. Mr. Bradley confirmed that Petitioner is up to date on all tax filings and has been making payments to the IRS in the amount of \$700.00 per month. He also confirmed payment to other tax entities. N.T. 50, 53, 54, 55.

53. Mr. Bradley testified that Petitioner's reputation in the community as truthful and honest, peaceful and law-abiding is impeccable. N.T. 55, 56.

54. Calvin Taylor, Esquire has practiced law in the Commonwealth for more than 35 years and has known Petitioner for many years. N.T. 102.

55. Mr. Taylor testified that Petitioner told him about his suspension and confirmed Petitioner's expressions of remorse for his misconduct. Mr. Taylor

testified that Petitioner was “devastated” by what happened to the victims. N.T. 103, 104.

56. Mr. Taylor testified to Petitioner’s good reputation in the community as a peaceful and law-abiding person and as a truthful and honest person, and has no hesitation recommending Petitioner’s reinstatement to the practice of law. N.T. 106, 107.

57. Vito Canuso, Esquire has practiced law in Pennsylvania for fifty years and has known Petitioner since their fathers, who were both lawyers, practiced in the same suite of offices. N.T. 118.

58. Mr. Canuso testified that Petitioner has expressed great sorrow and disappointment about his misconduct and expressed real remorse. N.T. 120.

59. Mr. Canuso testified to Petitioner’s excellent reputation in the community as a truthful and honest person and as a peaceful and law-abiding person. N.T. 122.

60. Mr. Canuso has no hesitation in recommending Petitioner’s reinstatement to the practice of law. N.T. 123.

61. Bruce Friedman, Esquire has practiced law in Pennsylvania for 37 years. He has known Petitioner for at least a dozen years. N.T. 134-136, 148.

62. Mr. Friedman testified that Petitioner has worked for him in an administrative capacity since approximately 2012 or 2013. N.T. 136-137, 149. He testified that Petitioner works two to three days per week, making appointments for clients, ensuring that paperwork is filed, and completing other administrative

tasks. N.T. 140,141. Mr. Freidman pays Petitioner as an independent contractor. N.T. 139, 140.

63. Mr. Friedman testified that Petitioner has never held himself out as a practicing lawyer since his suspension and has not given legal advice. N.T. 142.

64. Mr. Friedman testified to Petitioner's excellent reputation in the legal community as a peaceful and law-abiding person, and as a truthful and honest person. N.T. 143.

65. Mr. Friedman testified that Petitioner accepted full responsibility for his misconduct and noted that Petitioner felt very badly about what he had done and had tried to help the victims when SPS collapsed. According to Mr. Friedman, Petitioner has expressed real remorse. N.T. 144 - 145.

66. Mr. Friedman testified that he and Petitioner have spoken about working and forming a law practice together if Petitioner is reinstated. Mr. Friedman trusts Petitioner and thinks he would be a great addition to his practice. N.T. 145-146.

67. Mr. Friedman has no hesitation in recommending Petitioner's reinstatement to the practice of law. N.T. 146, 147.

68. Petitioner's witnesses were credible.

69. ODC did not file a brief in opposition to Petitioner's reinstatement.

III. CONCLUSIONS OF LAW

1. Petitioner demonstrated by clear and convincing evidence that he has the moral qualifications, competency and learning in 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 two years, ordered by the Supreme Court of Pennsylvania on October 25, 2012. Pursuant to Pa.R.D.E. 218(a)(1), 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). This burden is not light, and reinstatement is not automatic. A reinstatement proceeding is a thorough and searching inquiry into a lawyer's present professional and

moral fitness to resume the practice of law. 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).

The Hearing Committee weighed the evidence and recommended that Petitioner be reinstated. ODC does not oppose reinstatement. Upon our independent review of the record, we conclude that Petitioner met his reinstatement burden and recommend that the Petition for Reinstatement be granted.

Petitioner is 65 years of age and has been suspended since October 2012, a period approaching ten years. Petitioner's suspension was the result of his misconduct that occurred in the spring of 2009 through December 2009, whereby he failed to properly supervise the activity of SPS mortgage modification company after he was hired as the general counsel. Petitioner admitted that he failed to oversee the principals properly; the principals then used his law firm name to entice people to use SPS's services while the principals were misusing the funds. Further, Petitioner allowed fees to be funneled through his attorney escrow account and misrepresented in an advertisement that he was experienced in mortgage modifications. In the late fall of 2009, SPS went under and no longer could do business. Employees of the business confronted Petitioner at his office, and though he attempted to save the business, ultimately SPS collapsed and many people did not get the mortgage modifications they paid for and did not get the

monies they paid returned to them. Petitioner cooperated with authorities investigating the business collapse, was not charged with any wrongdoing, and reported his conduct to ODC.

Petitioner's first attempt at reinstatement in 2015 culminated in his withdrawal of the petition following the Board's recommendation that reinstatement be denied due to Petitioner's failure to report a referral fee to the IRS, failure to use all of the referral funds to pay financial obligations, failure to seek compensated employment despite his many financial obligations, failure to demonstrate remorse, attitude that he was a victim, and various omissions on his 2015 Reinstatement Questionnaire. Petitioner sought reinstatement a second time in 2019 and by the unrefuted evidence of record, established that he addressed the prior issues of concern and currently is fit to practice law.

The record demonstrates that Petitioner spent his period of suspension engaged in genuine, qualitative rehabilitation. Petitioner conveyed complete and full acceptance of responsibility for his serious misconduct. At the reinstatement hearing, Petitioner made clear he understands he was not the victim of the SPS scheme, as he had intimated during his testimony in his earlier reinstatement request, but part of the problem. Petitioner credibly communicated his shame, regret, and disappointment in himself with regard to his misconduct and its impact on the victims and legal community.

Petitioner put forth evidence that during his suspension, he rehabilitated himself from his underlying bad acts by reimbursing victims and resolving litigation against him arising from the collapse of SPS. The Court's October 25, 2012 Order directed

Petitioner to refund to complainants his share of fees he retained from the loan modification fees; Petitioner complied with the Order. Petitioner addressed a number of regulatory lawsuits filed against him and was able to resolve those suits with settlement payments in Massachusetts and Nevada. He was sued by class action in Florida and Georgia and resolved those matters in his favor. Petitioner was sued for sexual harassment by three employees of SPS. Petitioner credibly testified that he had never met the employees or had dealings with them. He settled each of those cases for \$5,000 because the cost to litigate would have been more than the settlement.

Petitioner was sued by a Maryland regulatory agency and in 2015, a \$350,000.00 judgment was entered against him, which remains unsatisfied. Petitioner acknowledged that while he has worked to address his numerous other debts and obligations, he has not made payments on the Maryland judgment. Petitioner contacted the agency approximately two weeks prior to the reinstatement hearing in October 2021, but was unable to communicate with anyone at that time. Other than this one effort, Petitioner candidly admitted that he was overwhelmed by his many financial obligations and basically ignored the Maryland judgment, as he does not have funds to pay off the debt. Petitioner credibly testified that he fully intends to satisfy the judgment.

The full satisfaction of all debts is not a prerequisite to filing a petition for reinstatement, and failure to satisfy debts has not prevented reinstatement, under certain circumstances. See, *In the Matter of Robert P. Maizel*, No. 26 DB 214 (D. Bd. Rpt. 10/15/2018) (S. Ct. Order 11/16/2018) (Court reinstated petitioner who had outstanding debt, failed to disclose debt related to taxes and omitted judgments on reinstatement

questionnaire; established that he maintained continuous employment and arranged for payment plans in order to address debt); ***In the Matter of Bruce R. Akins, Sr.***, No. 58 DB 1989 (D. Bd. Rpt. 4/4/2017) (S. Ct. Order 5/12/2017) (Court reinstated petitioner who established that he was attempting to resolve his obligations by entering into repayment agreements); ***In the Matter of Richard M. Corcoran***, No. 74 DB 2009 (D. Bd. Rpt. 6/22/2016) (S. Ct. Order 8/11/2016) (Court reinstated petitioner who had significant debt and testified to attempts to satisfy obligations, maintained continuous employment during period of suspension; Board found that reinstatement would increase petitioner's opportunities for greater income to help pay off debt); ***In the Matter of Andrew Keith Fine***, No. 115 DB 1995 (D. Bd. Rpt. 1/24/2014) (S. Ct. Order 5/23/2014) (Court reinstated petitioner who had numerous judgments and made a good faith effort to resolve the debt).

In the above-cited cases, the petitioners established good faith efforts to address their debts, which efforts were found to demonstrate rehabilitative intent sufficient for reinstatement. However, a failure to demonstrate good faith efforts can be a bar to reinstatement. In ***In the Matter of Brian Joseph Smith***, No. 236 DB 2018 (D. Bd. Rpt. 11/10/2021) (S. Ct. Order 3/18/2022), the Board recommended reinstating a suspended attorney even though the petitioner had not made any payments to satisfy financial obligations that occurred as the result of his professional misconduct and had not entered into payment plans or even communicated with his creditors. Smith testified that his limited income prevented him from making payments and he did not want to contact his creditors to engage in payment arrangements until he knew he would have some ability to make payments. He further testified that he fully intended to address the debt once

reinstated and earning more money. While the Board found Smith credible and concluded that he met his reinstatement burden that he was fit and qualified to resume practice, the Court denied reinstatement following the issuance of a rule to show cause directing the petitioner to address good faith efforts to satisfy outstanding debts.

Like the petitioners in *Maizel*, *Akins*, *Corcoran*, and *Fine*, the totality of the facts of record demonstrate that Petitioner has made good faith efforts to address his financial obligations arising from the many lawsuits that occurred as the result of the collapse of SPS, which collapse caused victims to lose money. While Petitioner has resolved many, the Maryland judgment from 2015 in the amount of \$350,000.00 remains unresolved due to Petitioner's lack of funds. It is clear that Petitioner has made serious inroads into resolving the numerous claims against him and has addressed the vast majority of his obligations during the course of his suspension. Based on this record, we conclude that Petitioner's failure to satisfy the Maryland judgment should not preclude his reinstatement at this time. Similar to the analysis in *Corcoran*, reinstatement serves to increase Petitioner's ability to earn more income and pay off the judgment. In our view, keeping Petitioner in a holding pattern to address this last unresolved judgment would be patently unfair, in light of his demonstrated good faith efforts as a whole to address his debts.

Further bolstering Petitioner's rehabilitation and fitness is the fact that he addressed the tax issues that troubled the Board at his first reinstatement proceeding, wherein he received a substantial referral fee but failed to report it on his tax returns. Petitioner credibly testified that he hired an accountant, William Bradley, to amend his tax

filings and address his tax deficiencies. Currently, Petitioner pays \$700.00 per month to the IRS and has reduced his tax obligation from \$61,000.00 to approximately \$19,000.00. Petitioner also paid a \$25,000.00 tax bill to the City of Philadelphia and a \$6,900.00 tax bill to the Commonwealth of Pennsylvania. Mr. Bradley testified at the reinstatement hearing and confirmed Petitioner's tax filings.

Petitioner addressed omissions on his 2019 Reinstatement Questionnaire concerning a lien and a jurisdiction to which he had been admitted. Petitioner credibly testified that the omissions were an oversight for which he expressed regret.

Petitioner's employment, charitable activities, and efforts to maintain knowledge in the law establish his qualifications to resume the practice of law. While suspended, Petitioner obtained employment with Bruce Friedman, Esquire as an administrator for Mr. Friedman's law office. Mr. Friedman and Petitioner have known each other for more than 12 years. Petitioner is compensated as an independent contractor and works several days a week handling the mail, answering phones, checking messages, and scheduling appointments. Petitioner has not engaged in the practice of law nor has he held himself out as eligible to practice; Petitioner's tasks are strictly administrative. Petitioner and Mr. Friedman filed the required employment engagement notices with the Board. Petitioner and Mr. Friedman have discussed forming a law practice if he is granted reinstatement. Mr. Friedman credibly testified that he trusts Petitioner and believes he will be a great addition to his practice.

Petitioner's charitable activities during suspension included volunteering at the Blind Museum in Philadelphia by reading magazines for conversion to Braille and

volunteering at the American Legion with Vietnam veterans, along with food drives and toy drives at the Legion. Petitioner also testified he mentors a mentally challenged individual he met through his fishing club. During the initial years of Petitioner's suspension until approximately 2018, Petitioner devoted a substantial amount of hours per week caring for his elderly mother and father-in-law, driving them to medical appointments and assisting with meals, which assistance enabled his family members to remain in their homes prior to their deaths.

As relates to his learning in the law, Petitioner satisfied the 36 hours of Continuing Legal Education required for reinstatement and completed additional hours during his suspension. In order to keep apprised of the current law, Petitioner reads *The Legal Intelligencer* on a daily basis. Petitioner discussed his plan to reenter the legal profession upon reinstatement and intends to practice with Attorney Friedman. Petitioner indicated his interest in reestablishing his estates practice, possibly accepting court appointments in criminal matters, and potentially handling some matters with his son, who is a Pennsylvania lawyer.

In addition to Petitioner's own candid and forthright testimony concerning his qualifications for reinstatement, Petitioner presented the credible testimony of five character witnesses, two of whom are longstanding Pennsylvania attorneys in Petitioner's community who have known him for many years. The witnesses confirmed that Petitioner has accepted full responsibility for his misconduct and feels great remorse. The witnesses shared that Petitioner has a good reputation in the community as a truthful and honest person, and as a peaceful and law-abiding person, and all of the witnesses fully support

Petitioner's return to practice. Petitioner's strong character testimony was not refuted and weighs heavily in favor of reinstatement, as it established that Petitioner does not pose a danger to the public and the integrity of the bar.

Under similar circumstances, attorneys have been reinstated to practice law after serving a period of suspension. See ***In the Matter of Madeline E. Schwartz***, No. 77 DB 2010 (D. Bd. Rpt. 6/10/2019) (S. Ct. Order 7/22/2019) (the Court reinstated Schwartz on her second reinstatement attempt after the Board was satisfied that Schwartz had come to terms with her misconduct and addressed her financial problems); ***In the Matter of James L. Heidecker, Jr.***, No. 22 DB 1999 & 48 DB 2000 (D. Bd. Rpt. 5/18/2012, pp. 11-12) (S. Ct. Order 1/30/2013) (following the withdrawal of an earlier reinstatement petition, the Board recommended granting Heidecker's second reinstatement request after he showed, *inter alia*, "good faith efforts" to satisfy multiple judgments and tax debts, even if all of the debts were not extinguished; the Court accepted the Board's recommendation and reinstated Heidecker).

Upon this record, we conclude that Petitioner has met his reinstatement burden by clear and convincing evidence that he is morally qualified, competent and learned in the law, and that his resumption of the practice of law within the Commonwealth after nearly ten years on suspension will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. The Board recommends that the Petition for Reinstatement be granted.

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RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Petitioner, Joseph A. Gembala, III, be reinstated to the practice of law.

The Board further recommends that, pursuant to Rule 218(f), Pa.R.D.E., the 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., Member

5/10/2022