

PUBLIC MATTER

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THE STATE BAR COURT HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 03-R-02650-PEM
STUART M. SHERMAN,)	DECISION ON PETITION FOR
Petitioner for Reinstatement.)	REINSTATEMENT
_____)	

I. INTRODUCTION

On September 18, 1995, Petitioner STUART M. SHERMAN pled *nolo contendere* to two felony counts of violating Penal Code section 487.1 [Grand Theft]. Petitioner was sentenced to three years of summary probation without any jail time. Along with the standard conditions of probation, Petitioner was ordered to pay \$200.00 as a restitution fine.

Petitioner tendered his resignation from the practice of law on October 6, 1995. His resignation was accepted by the Supreme Court, effective November 12, 1995. In November 1998, Petitioner was deemed to have successfully completed his probation and his felony convictions were reduced to misdemeanors.

This matter came before the Court on a petition for reinstatement to the practice of law filed by Petitioner Stuart M. Sherman ("Petitioner") on July 7, 2003. Petitioner was represented by Arthur Margolis. The Office of Chief Trial Counsel of the State Bar of California ("State Bar") was represented by Deputy Trial Counsel, Kevin Taylor. The matter was submitted for decision on October 27, 2004. The Court finds that Petitioner has clearly and convincingly satisfied the

1 requirements for reinstatement to the practice of law, and hereby recommends his reinstatement.

2 II. FINDINGS OF FACT

3 A. Petitioner's Criminal Convictions

4 Petitioner was admitted to the State Bar of California on June 17, 1987, and was a member
5 of the California State Bar until his resignation with charges pending was accepted by the Supreme
6 Court effective November 12, 1995. In 1987, Petitioner opened up his own law practice. Shortly
7 thereafter Petitioner became involved with a non-attorney, Hekop Semerdjian ("Semerdjian"), a
8 capper who unlawfully solicited personal injury cases and then referred those cases to Petitioner.¹
9 Petitioner paid Semerdjian for the referrals. In five or six of the cases which Semerdjian referred,
10 Petitioner misappropriated insurance reimbursements for medical expenses. Instead of distributing
11 these funds to the clients, Semerdjian and Petitioner divided the funds between themselves.²
12 Petitioner estimates that he inappropriately kept \$15,000.00.³ All the misappropriations occurred
13 prior to 1992.

14 In 1991, Petitioner stopped using Semerdjian after Semerdjian's arrest. At that time
15 Petitioner's office was also searched. In 1994 Petitioner's office was searched again and Petitioner
16 was arrested on numerous fraud and grand theft charges. The fraud charges were dismissed and in
17 September 1995, Petitioner pled *nolo contendere* to two felony counts of violating Penal Code
18 section 487.1 [Grand Theft]. Respondent was sentenced to three years probation and was required
19 to pay \$200.00 as a restitution fine. In October 1998, Petitioner petitioned for a change of plea, and
20 in November 1998, Petitioner was deemed to have successfully completed his probation and his
21 felony convictions were reduced to misdemeanors.

22
23 ¹ Respondent also worked with other cappers but Respondent's criminal convictions stem from
24 Petitioner's conduct with Semerdjian and certain clients Semerdjian referred to Petitioner.

25 ² Although unknown to Petitioner at the time, the claims of these particular clients were
26 fraudulent. As a result, these clients were never entitled to receive any reimbursement for medical
expenses.

27 ³ Petitioner admits that he received \$22,500.00 as his share of the medical reimbursement
28 payments. Of that \$22,500.00 Petitioner was entitled to \$7,500.00 as his payment under the fee
agreements.

1 **B. Petitioner's Rehabilitation and Moral Character**

2 Petitioner was a candid and credible witness at the hearing. His demeanor and testimony in
3 the courtroom evidenced a firm realization of what he had done and the harm he had caused, full
4 acceptance of responsibility for his misconduct, and successful efforts at addressing his problems.

5 According to Petitioner, his association with Semerdjian was due to his greed and
6 immaturity.⁴ At the time he worked with Semerdjian, Petitioner did not fully appreciate the inherent
7 danger of working with cappers. Because a capper's referral resulted in an individual receiving the
8 assistance of an attorney, Petitioner failed to see any harm in practicing with cappers. In retrospect,
9 Petitioner now realizes how a capper can negatively influence an attorney's independent judgment
10 by threatening to withhold referrals. Furthermore, Petitioner understands how a relationship with
11 cappers can easily result in the perpetuation of fraud.

12 Petitioner also continued his relationship with cappers because of his desire to maintain a
13 certain standard of living for his wife who was a diagnosed manic-depressive. Petitioner's ethics
14 and better judgment fell victim to his need to make money in order to satisfy financial obligations
15 incurred to maintain his family.

16 Petitioner divorced the spouse he had at the time of his misconduct. After his convictions
17 and resignation, Petitioner had to move back home and live with his parents. Petitioner remarried,
18 but that relationship also ended in divorce.

19 In 1996 Petitioner began working for a law office as a full-time law clerk. Since then,
20 Petitioner has worked in preparing insurance claims, drafted discovery and motions, and conducted
21 legal research.

22 Currently Petitioner is remarried and has two children. Petitioner states that he now has a
23 happy, stable home life with a fully supportive spouse. Petitioner also believes that since his
24 conviction, he has grown tremendously personally. According to Petitioner, since he feels more
25 grounded and secure, he is in better control of his life and the choices he makes. Petitioner seeks to
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27 ⁴ Petitioner was 28 when he first began his association with Semerdjian. Petitioner was 32 when
28 he terminated his relationship with Semerdjian and other cappers.

1 be a role model for his children and states that he would never do anything that could jeopardize the
2 trust they have in him. Based on his relationship with his family Petitioner realizes that there is more
3 to life than merely making money.

4 Since 2001, Petitioner also has devoted significant time to volunteer service. In early spring
5 of 2001, Petitioner became the first head softball coach with the Tri-Valley Special Olympics. In
6 October 2002, Respondent coached his team to a gold medal. From 2002 until the present Petitioner
7 has spent 3-4 hours every Saturday from June through October coaching his Special Olympics
8 softball team. Petitioner estimates that since 2001 he has devoted 160 hours of his time to Tri-Valley
9 Special Olympics.

10 On October 21, 2004, Petitioner donated \$15,000.00 to the Special Olympics. This
11 represents a disgorgement of funds equal to the amount Petitioner inappropriately retained from the
12 insurance medical reimbursements. Petitioner did not pay this money to his former clients as
13 restitution since these clients filed fraudulent insurance claims and were never entitled to the medical
14 reimbursements. Multiple individuals were prosecuted for the insurance fraud conspiracy. After
15 resolution of these and Petitioner's criminal matters, the court did not require Petitioner to reimburse
16 the insurance companies. Further, no insurance company sought restitution from Petitioner.

17 Petitioner takes full responsibility for the problems of his past. He is well aware of the harm
18 caused to his former clients as a result of his reliance on cappers.

19 **C. Petitioner's Character Witnesses**

20 **1. Vahe Dilanian**

21 Vahe Dilanian testified at the hearing in support of the petition for reinstatement. Dilanian
22 is a certified paralegal and realtor who is very involved with his community. He has known
23 Petitioner for 15-17 years and is aware of the fact that Petitioner resigned from the bar due to his
24 convictions for grand theft. Likewise, he is aware of the circumstances surrounding those
25 convictions. Dilanian has completed a number of real estate transactions with Petitioner. He
26 considers Petitioner one of his best clients. He finds that Petitioner deals with buyers and sellers
27 with the utmost honesty and integrity. He testified that he would trust Petitioner to hold money for
28 him.

1 2. Jan Maseda

2 Jan Maseda testified at the hearing in support of the petition for reinstatement. Maseda is
3 a paralegal and area director of the Tri-Valley Special Olympics.⁵ She has known Petitioner for three
4 years. She testified that Petitioner started the softball team and is the head coach of the team. She
5 finds Petitioner to be a dedicated volunteer and a great coach. She is aware of his resignation from
6 the bar due to convictions for grand theft. She testified that Petitioner made a donation of
7 \$15,000.00 to her organization.

8 3. William Margolin

9 William Margolin testified at the hearing in support of the petition for reinstatement.
10 Margolin has been an attorney since 1989. He met Petitioner in 1985. He is aware of Petitioner's
11 resignation from the bar and the circumstance surrounding that resignation. Despite Petitioner's
12 convictions for grand theft, Margolin finds that Petitioner is an honest person who is very remorseful
13 for his misconduct. Margolin testified that he would stake his life on Petitioner's integrity.

14 4. Moshon Reuveni

15 Moshon Reuveni is a real estate agent who got his licence to sell real estate in 1976. He is
16 a real estate agent who is very involved with an organization called the Association of Peace and
17 Understanding in the Middle East. He testified in support of the petition for reinstatement. He first
18 met Petitioner in 1998 through a real estate transaction. He is aware of Petitioner's felony
19 convictions for grand theft and his subsequent resignation from the bar. He has continued to do
20 business with Petitioner. He finds Petitioner to be an honest person and would trust him with his
21 money.

22 5. Brian Weinberger

23 Brian Weinberger has been admitted to the State Bar since 1992. He first met Petitioner in
24 1982 in a study group. In 1996 he and Petitioner reconnected when Petitioner became employed in
25 his law office as a paralegal/law clerk on a full time basis. He is aware of Petitioner's convictions
26 for grand theft and his subsequent resignation from the bar. He testified that Petitioner feels remorse

27 ⁵ The Special Olympics sponsors programs of sports training for individuals of limited
28 intellectual or physical abilities.

1 for his past misconduct and that Petitioner is a very moral man. Mr. Weinberger also knows about
2 Petitioner's legal abilities, and as to this issue, he stated that Petitioner is very good at finding,
3 researching and analyzing the law. Mr. Weinburger strongly endorses Petitioner's petition for
4 reinstatement.

5 **6. Richard Steinbeck**

6 Richard Steinbeck received a degree in business from the University of Southern California
7 ("USC") in 1991. Steinbeck and Petitioner were in the same fraternity at USC. He is aware of
8 Petitioner's convictions for grand theft and his subsequent resignation from the bar. Steinbeck states
9 that he has seen remarkable changes in Petitioner since his conviction. He observed that Respondent
10 is more humble and is not as cocky or brazen as before and that Petitioner is filled with remorse for
11 his past misconduct. He completely trusts Petitioner and in 2000 made Petitioner the executor of
12 his will.

13 **7. Lon Titen**

14 Lon Titen is a chiropractor currently in private practice. He testified in support of the petition
15 for reinstatement. He has known Petitioner for approximately eight years and sees Petitioner once
16 a week. He also socializes with Petitioner's family and believes that Petitioner has an outstanding
17 relationship with his children. In his opinion, Petitioner maintains the highest regard for honesty and
18 integrity. He would trust Petitioner to handle his money and believes that Petitioner deserves a
19 second chance.

20 **D. Petitioner's Present Learning and Ability in the Law**

21 Petitioner took and passed the Multistate Professional Responsibility Examination on
22 November 7, 2003. Petitioner has worked as a legal assistant for attorney Brian Weinberger since
23 1996. Moreover, at trial the parties stipulated Petitioner possesses present learning and ability in
24 the general law.

25 **III. CONCLUSIONS OF LAW**

26 **A. Petitioner's Rehabilitation and Good Moral Character**

27 In a reinstatement proceeding, a petitioner bears a heavy burden of proving his or her
28 rehabilitation and "must show by the most clear and convincing evidence that efforts made towards

1 rehabilitation have been successful.” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092.) In
2 an application for reinstatement, the petitioner “should be required to present stronger proof of his
3 present honesty and integrity than one seeking admission for the first time whose character has never
4 been in question.” (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) However, “reformation is a
5 state of mind which ‘may be difficult to establish affirmatively’ and ‘may not be disclosed by any
6 certain or unmistakable outward sign.’” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State
7 Bar Ct. Rptr. 309, 315, quoting *In re Andreani* (1939) 14 Cal.2d 736, 749.) “The law looks with
8 favor upon the regeneration of erring attorneys and should not place unnecessary burdens upon
9 them.” (*Resner v. State Bar* (1967) 67 Cal.2d 799, 811, citing *In re Gaffney* (1946) 28 Cal.2d 761,
10 764; *In re Andreani, supra*, 14 Cal.2d at p. 749.)

11 During his testimony, Petitioner acknowledged unequivocally the seriousness of his
12 wrongdoing, expressed remorse, and described changes in his behavior and attitude that he believes
13 would prevent future misconduct if he were reinstated. This is evidenced by Petitioner’s need to be
14 a role model for his children and the athletes with whom he works. He is not as cocky and more
15 humble. Petitioner also acknowledges that there is more to life than making money. Such testimony
16 is a significant factor in favor of his reinstatement. “Reformation is a ‘state of mind’ [citation] and
17 ‘the applicant must show a proper attitude of mind regarding his offense before he can hope for
18 reinstatement [citation].” (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.)

19 Another consideration is the passage of an appreciable period of time since Petitioner’s
20 misconduct. (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1095.) “Where the evidence is
21 uncontradicted . . . and shows exemplary conduct extending over a period of from eight to ten years
22 without even the suggestion of wrongdoing, it would seem that rehabilitation has been established.”
23 (*Werner v. State Bar* (1954) 42 Cal.2d 187, 198 (conc. opn. of Carter, J.)) Although Petitioner’s
24 criminal misconduct occurred prior to 1992, his convictions did not occur until 1995. Since 1995,
25 Petitioner has performed his work and private affairs with diligence, integrity and responsibility.

26 Petitioner’s charitable work is another significant factor supporting his reinstatement. (*In*
27 *the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 675.) Petitioner has
28 devoted considerable time and energy to the Special Olympics.

1 Petitioner's character witnesses also help demonstrate Petitioner's rehabilitation and good
2 moral character. Two witnesses at the hearing were attorneys, including Petitioner's employer of
3 over eight years. Favorable character testimony and reference letters from employers and attorneys
4 are entitled to considerable weight. (*Feinstein v. State Bar, supra*, 39 Cal.2d at p. 547.) Another
5 witness, Mr. Steinbeck testified that he has made Petitioner the executor of his estate. Mr.
6 Steinbeck's willingness to place Petitioner in such a fiduciary position is of significant probative
7 value. (See, *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 430, citing
8 *Werner v. State Bar, supra*, 42 Cal.2d at p. 194.)

9 The State Bar argues that Petitioner is not rehabilitated from his past misconduct because
10 he continued to fail to return funds he stole while engaged in the criminal conduct which led to his
11 resignation.

12 The only restitution Petitioner was required to pay was a court imposed restitution fine of
13 \$200, which Petitioner paid. Although Petitioner had no legal obligation to pay restitution, he had
14 a moral obligation to do so. (*Brookman v. State Bar* (1988) 46 Cal.3d 1004, 1008.) Petitioner did
15 not know to whom the money should be returned since the clients who filed fraudulent claims were
16 not entitled to receive it. Furthermore, Petitioner maintains that the insurance companies were
17 reimbursed for their loss by those who were criminally prosecuted for the insurance fraud conspiracy.

18 In light of the fact that Petitioner was suffering the ignominy of felony criminal convictions,
19 dealing with the consequences of his resignation from the bar, managing the emotional turmoil of
20 two divorces, and adapting to financial difficulties that required him to move back home with his
21 parents, the Court finds credible Petitioner's testimony that it did not occur to him to donate the
22 money to a charity or the Client Security Fund. It was not until he was asked why he did not make
23 restitution in this manner during his deposition by the State Bar, that it became clear to Petitioner
24 that this would be a fair disposition of the funds. Since the criminal court did not order restitution
25 and since the true recipients of restitution were undetermined, the Court accepts as reasonable
26 Petitioner's delayed disgorgement of the \$15,000.00 and deems the charitable donation to the Special
27 Olympics satisfactory restitution.

28 Petitioner's restitution efforts further support his petition for reinstatement. While restitution

1 in and of itself is not necessarily determinative in proving reformation, it is a factor in the overall
2 showing by one seeking reinstatement. (*Hippard v. State Bar*, *supra*, 49 Cal.3d at p. 1093.)
3 Restitution forces attorneys to "confront in concrete terms" the harm caused by their misconduct.
4 (*Brookman v. State Bar* (1988) 46 Cal.3d 1004, 1009, quoting *Kelly v. Robinson* (1986) 479 U.S.
5 36, 49, fn. 10.) "The Court has stressed that the weight to be accorded to restitution depends on the
6 petitioner's attitude, as evidenced by a spirit of willingness, earnestness, and sincerity." (*In the*
7 *Matter of Miller*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 430, citing *Resner v. State Bar*, *supra*, 67
8 Cal.2d at p. 810; *In re Gaffney*, *supra*, 28 Cal.2d at pp. 764-765; *In re Andreani*, *supra*, 14 Cal.2d
9 at p. 750.) Petitioner's testimony illustrated a genuine willingness, as well as a recognition of a
10 moral obligation, to make restitution.

11 The State Bar also contends that Petitioner made a material misrepresentation of fact to the
12 Nevada court in his 2001 divorce proceedings.

13 From August 2001 to November 2001, Petitioner resided in Las Vegas for a portion of each
14 week and virtually every weekend for the purpose of searching for possible investment property.
15 Although Petitioner intended to remain in Nevada indefinitely, Petitioner continued to maintain a
16 Los Angeles residence while he stayed in a condo in Las Vegas owned by a friend. Petitioner
17 testified that upon acquiring an investment property in Las Vegas, his intent was to move into one
18 of the apartments. He continued to live in Las Vegas, without interruption, with the intent to do so
19 indefinitely. It was during that time that he filed for divorce in Nevada.

20 The State Bar asserts that Petitioner was not a legal resident of Nevada given his traveling
21 back and forth between Nevada and California. Therefore, according to the State Bar, Petitioner
22 misrepresented his Nevada residency status when he filed a Complaint for Divorce and affidavit in
23 support thereof.

24 Petitioner was represented by experienced Nevada counsel in his marital dissolution. That
25 attorney concluded that Petitioner qualified under Nevada law as a legal resident, and he proceeded
26 with the divorce on Petitioner's behalf. There was no challenge to Petitioner's assertion of
27 residency.

28 Nevada law relating to residency necessary to confer jurisdiction in a marital dissolution is

1 well established. It is necessary for a plaintiff to satisfy a jury of his physical presence in Nevada
2 for the whole statutory period preceding and including the date of commencement of his action, and
3 to intend to remain there permanently, or at least for an indefinite time. After review of applicable
4 Nevada law, the Court finds no misrepresentation by Petitioner regarding his Nevada residency when
5 he caused to be filed a Complaint for Divorce on November 1, 2001.⁶

6 In deciding whether Petitioner has met his burden in this matter, this Court must view the
7 evidence presented in light of the moral shortcomings which resulted in his resignation. (*Tariff v.*
8 *State Bar, supra*, 27 Cal.3d at p. 403.) Petitioner's conduct that led to his resignation was due to
9 greed and immaturity. Petitioner has gained insight into the causes of his prior misconduct and has
10 taken appropriate steps to rectify his prior problems. Viewing the evidence in its totality, this Court
11 finds that Petitioner has clearly and convincingly shown his rehabilitation and present moral fitness.

12 **B. Present Learning and Ability in the Law**

13 The Court also finds by clear and convincing evidence that Petitioner has established the
14 present learning and ability in the law required for reinstatement.

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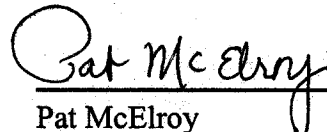
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25 ⁶Another issue the State Bar raised is the fact that Petitioner attests in his affidavit in
26 support of divorce that he moved to Clark County, Nevada, in April 2001 which is incorrect. At
27 trial, the State Bar accepted Petitioner's explanation that the April date was a mistake because
28 Petitioner would have nothing to gain by using the April 2001 date because Nevada law required
a residency of no more than six weeks. Furthermore, Petitioner filed an amended affidavit which
correctly reflects a residency date of August 2001.

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IV. RECOMMENDATION

For the foregoing reasons, the Court concludes that Petitioner has sustained his burden of establishing by clear and convincing evidence: (1) that he is rehabilitated and does possess the present moral qualifications for reinstatement to the State Bar of California; (2) that he possesses present ability and learning in the general law; and (3) that he has passed the Multistate Professional Responsibility Examination. Therefore, the Court recommends that the Petition be granted and that Petitioner be reinstated to the practice of law.

Dated: November 23, 2004


Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 23, 2004, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ARTHUR LEWIS MARGOLIS
2000 RIVERSIDE DR
LOS ANGELES CA 90039 3758

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

KEVIN B TAYLOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 23, 2004.**



Lauretta Cramer
Case Administrator
State Bar Court