PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed April 10, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 12-R-18107
	)	
NORMAN DOUGLAS MULLIN,	)	OPINION
	)	
Petitioner for Reinstatement.	)	
	)	

Norman Douglas Mullin appeals a hearing judge's decision denying his reinstatement to practice law. Following his resignation with charges pending in 1989, Mullin engaged in the unauthorized practice of law (UPL), failed to comply with former rule 955 (now rule 9.20) of the California Rules of Court,[1] failed to voluntarily pay restitution or reimburse the Client Security Fund (CSF), and made material misrepresentations in his real estate broker's license application and in his 2009 and 2012 reinstatement petitions. Mullin argues that he proved his rehabilitation by the passage of time, his work as a mortgage broker, his church involvement, and character witness testimony. After independently reviewing the record (rule 9.12), we agree with the hearing judge's findings and deny Mullin's reinstatement to practice law.

I. PROCEDURAL HISTORY

This is Mullin's second reinstatement petition. He filed his first petition on August 31, 2009, but withdrew it because he omitted information. Mullin filed the instant petition on December 10, 2012. Following a two-day trial in July 2013, the hearing judge denied Mullin's petition on October 10, 2013.

[1] Further references to rules are to this source unless otherwise noted.

II. CHARGES PENDING AGAINST MULLIN AND HIS RESIGNATION

The Office of the Chief Trial Counsel of the State Bar (OCTC) filed a Notice to Show Cause against Mullin in February 1989. OCTC contended that Mullin committed misconduct in six client matters in 1979 and 1985. In each client matter, OCTC alleged that Mullin abandoned his clients, failed to communicate with them, failed to release their files, and failed to refund unearned fees. The allegations in one matter stated that the client obtained a $100,000 malpractice award against Mullin that remained unpaid. As additional misconduct, Mullin did not respond to the State Bar's investigative letters about each of these client matters.

Mullin tendered his resignation with charges pending on May 10, 1989, and was placed on inactive status. The Supreme Court accepted his resignation on August 31, 1989, and it was effective September 30, 1989.

III. LEGAL PRINCIPLES

Under rules 5.441 and 5.445 of the Rules of Procedure of the State Bar of California, Mullin must do the following before he may be reinstated to the practice of law: (1) pass a professional responsibility examination within one year prior to filing the petition; (2) establish rehabilitation; (3) establish present moral qualifications for reinstatement; (4) establish present ability and learning in the general law by providing proof of passage of the Attorney's Examination by the Committee of Bar Examiners within three years before filing the petition; and (5) prior to filing the petition, pay all discipline costs and reimburse payments made by CSF as a result of his prior misconduct. Mullin must prove these requirements by clear and convincing evidence.[2] (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) The hearing judge correctly found that Mullin passed the required examinations and paid his CSF and discipline

[2] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

costs. The only disputed issues are whether Mullin proved he is rehabilitated and has the present moral qualifications for reinstatement. To do so, Mullin must present overwhelming proof of reform (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547), which we consider in light of the moral shortcomings that led to his resignation. (*Roth v. State Bar* (1953) 40 Cal.2d 307, 313.) Like the hearing judge, we find that Mullin did not meet his burden.

IV. MULLIN'S REHABILITATION EVIDENCE

Mullin presented character witnesses and his own testimony to establish his rehabilitation and present moral fitness.

A. Mullin's Testimony

Mullin characterized himself as a good, honest, reliable person who does volunteer work for the Resurrection Lutheran Church he began attending in 1995. Each summer from 2003 through 2007, he spent three to four evenings helping to prepare the church for vacation Bible School. Additionally, Mullin helped to maintain the church facilities for about six months in 2008 or 2009.

Mullin "feels really bad" about his prior professional misconduct. He stated that he settled the $100,000 malpractice judgment by paying his client $20,000, but did not recall when he paid it. He believes the skills he developed after he became a licensed real estate broker in 1990 will assist him in his law practice. He testified he is able to manage a caseload, is prompt about returning phone calls, and timely completes all tasks.

B. Character Witnesses

Mullin presented the testimony of six witnesses and declarations from two individuals, all attesting to his good character. They included an attorney, real estate broker, entrepreneur, retired private investigator, two realtors, certified public accountant, and retired budget analyst. Without exception, they considered Mullin honest, trustworthy, and a wonderful father.

Attorney Robert K. Johnson knew Mullin for over 25 years. He was aware that Mullin had difficulty with his law practice beginning in the mid-1980's and surmised that he was a poor businessman. According to Johnson, Mullin seemed depressed and his ability to communicate with clients or handle cases diminished as he became more stressed. Johnson is also familiar with Mullin's work in real estate over the last 20 years. He is respected as a broker with a reputation of being straightforward and honest and representing his real estate clients in a competent professional manner. One of the realtors was an elder at the church Mullin attended and has known Mullin for seven years. He confirmed that Mullin helped prepare the church for vacation Bible School during the summers, and voluntarily maintained the church facilities for six months in 2010.

V. OCTC'S REBUTTAL EVIDENCE

OCTC presented evidence rebutting Mullin's rehabilitation evidence, including his UPL, failure to comply with former rule 955, belated restitution efforts, and misrepresentations in his real estate broker's license application and his 2009 and 2012 reinstatement petitions.

A. UPL after Filing his Resignation and in 1998

Mullin admitted that he continued to practice law after he was placed on involuntary inactive status. When he submitted his resignation with charges pending on May 10, 1989, he became ineligible to practice, but he filed at least five bankruptcy petitions for his clients after that date. He mistakenly believed that he was entitled to practice law until the effective date of the Supreme Court order accepting his resignation. Mullin did not file any other bankruptcy petitions after his resignation became effective on September 30, 1989, but he did not withdraw as counsel of record in his previously filed cases. In one case, he remained counsel of record until it was terminated in April 1990.

In 1985, Mullin opened the Bankruptcy Help Center (BHC), a paralegal service that assisted people with completing forms for pro per bankruptcies. He ran BHC and his law practice separately until his resignation, after which he continued to run BHC. In 1990, the District Attorney's Office investigated a complaint that Mullin was practicing law and "strongly suggested" that he retain an attorney for the business. Mullin then hired James Ball to supervise BHC until his wife, Marcia Mullin,[3] obtained her law license in 1996 and replaced Ball. BHC became a part of Marcia's practice where Mullin worked as a paralegal.

In 1998, James and Sherri Princell met with Mullin alone at Marcia's law office to discuss their financial problems and possibly file a bankruptcy petition. During the meeting, Mullin described the various types of bankruptcy, advised them to file a Chapter 7 bankruptcy, and offered advice, with Marcia's subsequent agreement, about listing a retirement account on the application. During the reinstatement hearing, Mr. Princell testified that Mullin stated he was an attorney.

The Princells lost approximately $195,000 of their retirement funds based on Mullin's and Marcia's advice, and complained to the State Bar. As a result, Marcia was publicly reproved for employing Mullin without complying with the disclosure requirements of rule 1-311(B) of the Rules of Professional Conduct. Mullin thereafter stopped meeting with clients in Marcia's office but performed other work for the business.

B. Failure to Comply with Former Rule 955

Despite being the attorney of record on numerous bankruptcy petitions at the time the August 31, 1989 Supreme Court order was filed, Mullin failed to comply with former rule 955, subdivisions (a) and (c). This rule required Mullin to notify clients, courts, and opposing counsel

[3] We refer to Marcia Mullin by her first name to avoid confusion.

in any pending matter about his resignation (by registered or certified mail), to return client files and unearned fees, and to file an affidavit with this court attesting to his compliance.

C. Failure to Make Restitution until 2008

In 1990 and 1991, CSF paid $3,538.30 to compensate three clients for unearned fees Mullin failed to return. Mullin testified that he initially failed to pay restitution because he was unable to do so. He also declared that he did not feel he owed fees to two former clients because he performed the required work for them. Finally, he acknowledged that he reimbursed CSF in September 2008 so he could become eligible for reinstatement.

D. Misrepresentations in Broker's License Application and Reinstatement Petitions

In 1990, Mullin provided a false or misleading answer on his application for a real estate broker's license to the California Department of Real Estate (DRE). In response to one question, he indicated he had never had a "Denied, Suspended, Restricted or Revoked" license. Even though he was suspended while his resignation was pending before the Supreme Court, Mullin certified under penalty of perjury that his answers were correct.

In his 2009 petition for reinstatement, Mullin listed his employment history after his resignation as "Self-employed Real Estate Broker during entire time." He failed to disclose that he owned BHC and that he worked in Marcia's law office. He later amended his 2009 petition to explain that he was a paralegal at BHC and performed various clerical and bookkeeping tasks in Marcia's law office since 1996 without compensation.

Mullin's first petition for reinstatement contained an additional inaccuracy. He attributed his prior misconduct to problems that arose after he agreed to substitute into an unexpectedly difficult case. He claimed that attorney "Mike Robb" made misrepresentations that persuaded him to take over the case. In 2010, the State Bar pointed out that there was no State Bar member

named Mike Robb. Even with this knowledge, Mullin provided the same incorrect name in his explanation in his 2012 petition. He claimed that the misidentification was a mistake.

VI. DISCUSSION

For reinstatement after a resignation with charges pending, rehabilitation "may be manifested solely by a 'state of mind' which may not be disclosed by any certain or unmistakable outward sign." (*In re Andreani* (1939) 14 Cal.2d 736, 749.) Whether rehabilitation exists "may be difficult to establish affirmatively, but its nonexistence may be 'proved' by a single act."[4] (*Ibid*.)

Here, the following post-resignation behavior demonstrates Mullin is not rehabilitated: (1) his failure to voluntarily pay restitution to former clients; (2) his failure to comply with former rule 955; and (3) the absence of sustained exemplary conduct.

A. Mullin Failed to Voluntarily Pay Restitution

"Restitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) When misconduct "resulted in appreciable pecuniary loss to the applicant's clients, [we] may properly consider the absence of an applicant's efforts to make any restitution as an indicator of rehabilitation. [Citation.]" (*Ibid*.) Although Mullin settled and paid the malpractice judgment against him, he failed to refund unearned fees to three clients. He acknowledged that he reimbursed CSF in September 2008 because it was a reinstatement requirement. His failure to promptly repay his clients and reimburse CSF demonstrates Mullin's poor attitude toward restitution. (*In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State

[4] Such rehabilitative evidence has included, *but is not limited to*, making amends for wrongdoing, paying restitution or debt, engaging in pro bono work, occupying a fiduciary position, or completing appropriate counseling. (See, e.g., *In re Menna* (1995) 11 Cal.4th 975, 990 [making amends to victim and community harmed]; *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 430 [pro bono legal work on capital case, volunteer work, and occupying fiduciary position nine years after misconduct ended]; *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317-319 [pro bono service and psychological counseling 15 years after criminal acts].)

Bar Ct. Rptr. 668, 674 [applicants for reinstatement are judged by their ability to make restitution and their attitude toward payment].) Such evidence precludes a finding of rehabilitation.

B. Mullin Violated the Supreme Court's Order Accepting His Resignation

Mullin violated the August 1989 Supreme Court order accepting his resignation by failing to comply with former rule 955. He claimed he had no clients as of the effective date of the Supreme Court order, but compliance with the rule is required "even though there were no clients or counsel to notify pursuant to subdivision (a) . . . ." (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) Moreover, Mullin's contention contradicts the record. He was the attorney of record in numerous bankruptcy matters when the Supreme Court order was filed. Yet he has never complied with former rule 955 and his "wilful violation of the rule is always an appropriate and significant consideration in bar disciplinary cases and related matters." (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1096.) On its own, Mullin's failure to comply would not support denial of reinstatement, but when "there is a significant infirmity in the showing of rehabilitation [as there is here], the failure to comply with rule 955 is proper consideration." (*Id*. at p. 1097.)

C. Mullin's Post-Resignation Conduct Is Not Exemplary

Mullin resigned with disciplinary charges pending against him that included repeated violations of his ethical and fiduciary duties to his clients. This misconduct requires him to " 'show by sustained exemplary conduct over an extended period of time that [he has] reattained the standard of fitness to practice law.' [Citation.]" (*In re Giddens* (1981) 30 Cal.3d 110, 116.) Mullin failed to make this showing.

Instead, he engaged in UPL in 1989 and 1998, violated the Supreme Court resignation order, omitted material information from his 1990 DRE broker's license application, made material omissions and misrepresentations in his 2009 reinstatement petition, and provided

inaccurate information in his current petition. We find that this misconduct precludes a finding of exemplary conduct.

Mullin's omissions and inaccurate statements in his DRE application and reinstatement petitions were made under penalty of perjury, which constituted acts of moral turpitude. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786 [signing inaccurate documents under penalty of perjury constitutes act of moral turpitude because it provides "the additional imprimatur of veracity" to those misstatements].) Signing his application and reinstatement petitions under penalty of perjury should have put him "on notice to take care that [his statements] were accurate, complete and true." (*Ibid.*)

We reject Mullin's contention that his DRE application omission is excused because he relied on a State Bar investigator's advice that he did not have to reveal his resignation. Mullin did not recall the name of the investigator. More importantly, he never checked with the DRE to ascertain if he was required to disclose his resignation.

We also reject Mullin's argument that the inaccuracies in his 2009 reinstatement petition do not undermine his rehabilitation. He amended the petition to include his employment with BHC and his wife's law office, but he only did so after the State Bar alerted him about the omission. Additionally, we cannot excuse that omission or his misidentification of "Mike Robb" as the attorney who gave him a difficult case. "The petition for reinstatement is not merely a paperwork exercise to hurdle on the way to readmission." (*In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 34) This process requires a " ' "high degree of *frankness* and truthfulness" ' and the ' "high standard of integrity." ' " (*In re Glass* (2014) 58 Cal.4th 500, 524.) "Whether it is caused by intentional concealment, reckless disregard for the truth, or an unreasonable refusal to perceive the need for disclosure, such . . . [omissions and misrepresentations are] . . . strong evidence that the [petitioner] lacks the 'integrity' and/or

'intellectual discernment' required to be an attorney. [Citation.]" (*In re Gossage* (2000) 23 Cal.4th 1080, 1102.) The "Mike Robb" misidentification repeated in his 2012 reinstatement petition is also troubling since the State Bar informed Mullin in 2010 that no such California attorney existed.

D. Mullin Did Not Prove He Is Rehabilitated or Fit to Practice Law

Mullin wrongly argues that he has made the requisite showing of rehabilitation and good moral character "in light of the moral shortcomings" that led to his resignation. His reasons include the following assertions: his misconduct, including the UPL, occurred over 20 years before he sought reinstatement; the hearing judge did not properly consider his 20 years of mortgage broker experience or his good moral character evidence; and his resignation misconduct is less egregious and his rehabilitation evidence is "far more convincing compared to that in any other reported reinstatement case." We do not agree.

"The passage of an appreciable period of time" constitutes "an appropriate consideration" in determining whether a petitioner has made sufficient progress toward rehabilitation. (*Hippard v. State Bar*, *supra*, 49 Cal.3d at p. 1095.) While Mullin's misconduct occurred many years ago, he committed UPL immediately after resigning and again almost 10 years later.[5] Moreover, he committed other acts of post-resignation misconduct as recounted above.

Mullin argues that the hearing judge undervalued his character witness testimony, community service activities, and work as a mortgage broker. "[T]estimonials from acquaintances, friends and employers with reference to their observation of the daily conduct of an attorney who has [resigned with charges pending] are entitled to 'great weight.' [Citations.]"

[5] We reject Mullin's argument that the evidence did not clearly and convincingly establish he committed UPL in 1998. The hearing judge's conclusion that Mullin engaged in UPL was based on a finding that Princell's testimony was credible, and we give great weight to the judge's credibility assessment. (Rules Proc. of State Bar, rule 5.155(A) [hearing judge's factual findings entitled to great weight]; *In the Matter of Brown, supra,* 2 Cal. State Bar Ct. Rptr. 309, 315.) Moreover, Princell's testimony was supported by his 2000 State Bar complaint.

(*In re Menna, supra,* 11 Cal.4th 975, 988.) But no matter how laudatory or relevant the character testimony, it does not alone establish the requisite rehabilitation. (*Ibid*.) While Mullin may be entitled to limited credit for his 20-year real estate broker career absent any discipline or complaints, this evidence falls short of establishing he is rehabilitated from his prior shortcomings. The record contains no evidence detailing his ability to fulfill his ethical and fiduciary obligations owed to his real estate clients.

Although Mullin's underlying misconduct was not as egregious as other cases where reinstatement was granted, the petitioners in those cases had little or no post-resignation wrongdoing (see *In the Matter of Brown, supra,* 2 Cal. State Bar Ct. Rptr. 309 [no misconduct]; *In the Matter of Miller, supra,* 2 Cal. State Bar Ct. Rptr. 423 [evasiveness about reason for leaving law practice]; *In the Matter of Salyer* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 816 [noncompliance with former rule 955].) Additionally, Mullin's post-resignation misconduct was more serious. Finally, Mullin's regular church attendance, several days of community service each week during four summers, and six months of church maintenance in 2008 or 2009 do not compare to the continuous community service presented in *In the Matter of Salyer, supra,* 4 Cal. State Bar Ct. Rptr. at p. 824 (extensive work with Little League for six years and weekly youth discussions for three years) and *In the Matter of Brown, supra,* 2 Cal. State Bar Ct. Rptr. at p. 317 (full day of weekly pro bono work for four years).

The hearing judge correctly concluded that, despite the passage of time, Mullin failed to prove his rehabilitation or present fitness to practice law. This conclusion is reinforced by other cases that have similarly resulted in denial of petitions for reinstatement. (See *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219 [reinstatement denied because petitioner displayed indifference toward creditors, made no effort to pay them, failed to comply with former rule 955, concealed disbarment from his employer, and omitted material information

from reinstatement petition]; *In the Matter of Giddens, supra,* 1 Cal. State Bar Ct. Rptr. 25 [reinstatement denied because petitioner omitted material information from reinstatement petition, as he had in prior petition; provided incomplete employment information; and maintained questionable lawsuit].) While we do "not require perfection from an applicant nor total freedom from true mistake" (*Giddens, supra,* 1 Cal. State Bar Ct. Rptr. at p. 37), Mullin has not established the requisite evidence of reform which " ' " 'we could with confidence lay before the world in justification of a judgment again installing him in the profession . . . . ' " ' [Citations.]" (*In re Menna, supra,* 11 Cal.4th at p. 989.)

VII. CONCLUSION

We affirm the hearing judge's decision and deny Mullin's petition for reinstatement.

HONN, J.

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.