

In re Maurice James Salem
Petitioner-Appellant

Supreme Court No. M.R. 29861
Commission No. 2019PR00035

Synopsis of Review Board Report and Recommendation
(April 2021)

Petitioner sought reinstatement following his January 2019 suspension for 90 days and until further order of the Court, for misconduct that included holding himself out to a judge as an Illinois attorney, when he was not licensed to practice law in Illinois.

Following the reinstatement hearing, the Hearing Board found that Petitioner had failed to prove that he met the requirements for reinstatement, and recommended that he not be reinstated to the practice of law. Petitioner appealed, asking the Review Board to recommend that he be reinstated.

The Review Board affirmed the Hearing Board's findings of fact, found no error in its legal analysis, and agreed with its recommendation that Petitioner not be reinstated to the practice of law.

**BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

MAURICE JAMES SALEM,

Petitioner-Appellant,

No. 6315093.

Supreme Court No. M.R. 29861

Commission No. 2019PR00035

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

Petitioner seeks reinstatement following his January 2019 suspension for 90 days and until further order of the Court, for misconduct that included holding himself out to a judge as an Illinois attorney, when he was not licensed to practice law in Illinois.

Following a hearing at which Petitioner represented himself, the Hearing Board found that Petitioner failed to prove that he meets the requirements for reinstatement, and recommended that he not be reinstated to the practice of law. Petitioner appealed, asking this Board to recommend that he be reinstated.

For the reasons that follow, we affirm the Hearing Board's findings of fact and agree with its recommendation that Petitioner not be reinstated to the practice of law.

BACKGROUND

The facts relevant to this matter are fully set out in the Hearing Board's report. They are briefly summarized here to the extent necessary to address Petitioner's arguments on appeal.

Petitioner was admitted to the New York bar in 2003. He moved to Illinois in 2004. In 2006, the Committee on Character and Fitness of the Supreme Court of Illinois recommended

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against his admission to the Illinois bar, and the Illinois Supreme Court accepted that recommendation. Consequently, Petitioner has never been admitted to practice in Illinois. He has, however, practiced extensively in the federal courts in Illinois and other states. He also has appeared *pro hac vice* in Illinois matters.

In 2016, the Administrator filed a disciplinary complaint against Petitioner, alleging that he had engaged in the unauthorized practice of law in Illinois, dishonestly held himself out to the public as an Illinois lawyer, and made false statements to two judges. The Hearing Board found that Petitioner had held himself out to a judge as an Illinois lawyer by sending a letter to the judge on letterhead that made it appear as if he were an Illinois lawyer. It declined to find that he had done so dishonestly. The Hearing Board recommended that he be censured.

The Administrator appealed, arguing that the Hearing Board erred in not finding that Petitioner had dishonestly held himself out to the public as an Illinois lawyer, and asking that he be suspended for 90 days and until further order for that conduct. The Review Board affirmed the Hearing Board's findings of misconduct. Two panel members agreed that he should be censured for his misconduct. A dissenting member found that Petitioner had held himself out to the public as an Illinois lawyer, but not dishonestly, and recommended that he be suspended for 30 days.

The Administrator filed a petition for leave to file exceptions to the Review Board's report and recommendation, again arguing that the Hearing and Review Boards erred in failing to find that Petitioner had dishonestly held himself out to the public as an Illinois attorney, and asking that he be suspended for at least 90 days and until further order.

Petitioner did not file an answer to the Administrator's petition. On January 19, 2019, the Court entered an order allowing the Administrator's petition and suspending Petitioner for 90 days and until further order of the Court.

In March 2019, the Executive Committee of the United States District Court for the Northern District of Illinois also suspended Petitioner for 90 days and until he is reinstated by the Illinois Supreme Court, retroactive to the date of his suspension in Illinois. In April 2019, Petitioner sought reinstatement in the U.S. District Court, notwithstanding the Executive Committee's order that he needed to be reinstated by the Illinois Supreme Court first. In its order denying his petition for reinstatement, the Executive Committee commented that, by allowing the Administrator's exceptions to the Review Board's report and recommendation, the Illinois Supreme Court "thus adopted the ARDC's detailed, 29-page filing, which presented and cited a variety of exhibits and testimony in support of a finding that Salem dishonestly held himself out to the public as an Illinois attorney" (Admin. Exh. 8 at 4.) The Executive Committee also denied his motion to reconsider its order as well as a second petition for reinstatement.

In March 2020, the New York Supreme Court, Appellate Division, also suspended Petitioner on a reciprocal basis for six months and until further order.

HEARING BOARD'S FINDINGS AND RECOMMENDATION

In determining whether to recommend that Petitioner be reinstated to practice, the Hearing Board looked to Supreme Court Rule 767(f), which instructs the hearing panel to "consider the following factors, and such other factors as the panel deems appropriate, in determining the petitioner's rehabilitation, present good character and current knowledge of the law:"

1. The nature of the misconduct for which Petitioner was disciplined;
2. The maturity and experience of Petitioner at the time discipline was imposed;
3. Whether Petitioner recognizes the nature and seriousness of the misconduct;
4. Whether Petitioner has made restitution;
5. Petitioner's conduct since discipline was imposed; and

6. Petitioner's candor and forthrightness in presenting evidence to support the petition.

Much of the Hearing Board's focus was on the fifth factor: Petitioner's conduct since discipline was imposed. The Hearing Board's report details the evidence, and the Hearing Board's findings based on the evidence, regarding Petitioner's conduct while suspended. In short, the Hearing Board found that Petitioner had intentionally deleted emails that he was required to keep pursuant to the Administrator's notice to produce. It further found that his email correspondence, which a computer forensic examiner was able to retrieve, indicated that Petitioner had continued to engage in legal work and advise clients during his suspension. It also found that Petitioner had not completed any Minimum Continuing Legal Education courses since his suspension began.

Based on the factors set forth in Supreme Court Rule 767(f), the Hearing Board concluded that Petitioner had not established rehabilitation, present good character, and current knowledge of the law. It found that he had failed to demonstrate that he fully recognizes the severity of his wrongdoing or that he respects the authority of the Illinois Supreme Court; that he engaged in the unauthorized practice of law during his suspension; that he was not candid or forthright in dealing with the Administrator during his reinstatement proceedings; and that he did not establish his general good character or current knowledge of the law. It thus recommended that his petition for reinstatement be denied.

ANALYSIS

On appeal, Petitioner challenges the Hearing Board's factual findings that led to its recommendation that he not be reinstated. He also raises some arguments that appear to be based on a fundamental misunderstanding of the procedure in disciplinary cases and the requirements for reinstatement. We find no error in the Hearing Board's thorough analysis regarding Petitioner's

reinstatement petition, nor in its conclusion that Petitioner failed to prove that he should be reinstated.

1. The Hearing Board's factual findings regarding whether Petitioner showed rehabilitation, present good character, and current knowledge of the law are not against the manifest weight of the evidence

An attorney who seeks reinstatement has the burden of proving, by clear and convincing evidence, that he should be reinstated. *In re Richman*, 191 Ill. 2d 238, 244, 730 N.E.2d 45 (2000).

There is no presumption in favor of reinstatement. *Id.* at 247-48. The petitioner must establish that he has been rehabilitated, that he is of present good character, and that he is currently knowledgeable about the law. *In re Livingston*, 133 Ill. 2d 140, 142, 549 N.E.2d 342 (1989).

The Hearing Board made factual findings as to each of the factors set forth in Rule 767(f) in determining Petitioner's rehabilitation, present good character, and current knowledge of the law. Because the Hearing Board is able to observe the demeanor of witnesses, judge their credibility, and evaluate conflicting testimony, we defer to its findings of fact insofar as they are supported by the record. *In re Prybylo*, 99 RT 2003 (Review Bd., May 11, 2001), at 2, *petition for leave to file exceptions allowed and reinstatement granted with conditions*, M.R. 16003 (Sept. 20, 2001) (citing *In re Fleischman*, 135 Ill. 2d 488, 533 N.E.2d 352 (1990); *In re Imming*, 131 Ill. 2d 239, 545 N.E.2d 715 (1989)).

Petitioner attacks the Hearing Board's findings primarily by reiterating his and his clients' testimony and arguing that that testimony supports reinstatement. In essence, he asks this Board to revisit all of the factual findings made by the Hearing Board, including its determinations of credibility and other fact-finding judgments, in order to reach a different conclusion.

Under the applicable standard of review, however, the issue is not simply whether we disagree with the Hearing Board's factual conclusions or might have reached a different conclusion if we had been the trier of fact. Rather, we defer to the factual findings of the Hearing Board, and will not disturb them unless they are against the manifest weight of the evidence. *In re Timpone*, 157 Ill. 2d 178, 196, 623 N.E.2d 300 (1993). A factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the finding appears unreasonable, arbitrary, or not based on the evidence. *Leonardi v. Loyola University*, 168 Ill. 2d 83, 106, 658 N.E.2d 450 (1995); *Bazydlo v. Volant*, 164 Ill. 2d 207, 215, 647 N.E.2d 273 (1995). That the opposite conclusion is reasonable is not sufficient. *In re Winthrop*, 219 Ill. 2d 526, 542, 848 N.E.2d 961 (2006).

Given this rigorous standard, Petitioner has not met his burden of showing that the Hearing Board's factual findings regarding the criteria set forth in Rule 767(f) were against the manifest weight of the evidence. The record contains substantial evidence on which the Hearing Board based its findings, including extensive witness testimony. The Hearing Board was able to listen to and observe the witnesses, including Petitioner, and make credibility findings and other inferences. Notably, it did not find Petitioner credible in his testimony regarding the deleted emails and his work with clients during his suspension. Petitioner asks this Board to disregard all of those credibility determinations, inferences, and findings of fact, but he has provided no basis whatsoever for us to do so. We therefore affirm the Hearing Board's findings of fact.

2. Neither the Hearing Board nor the Court made factual or legal errors that impact this matter

The remainder of Petitioner's arguments reflect his misapprehension of the disciplinary process and the law regarding reinstatement, and have no bearing on his petition.

- a. The Hearing Board did not misconstrue the nature of the misconduct that Petitioner was found to have committed

Petitioner contends that the Hearing Board misconstrued the misconduct that he was found to have committed when it found that the Illinois Supreme Court had “adopted” the Administrator’s petition for leave to file exceptions, in which the Administrator argued that Petitioner dishonestly held himself out to the public as an Illinois attorney. He claims that the Hearing Board incorrectly believed that the Court found he had committed additional, more egregious misconduct, and that the Hearing Board’s incorrect belief led it to wrongly conclude that he had not proved rehabilitation.

This argument is utterly without merit, because it is solely based on a quote that Petitioner wrongly attributed to the Hearing Board, which in fact was from an order of the Executive Committee of the U.S. District Court of the Northern District of Illinois. Moreover, not only did Petitioner misattribute the quote, but he also failed to understand or acknowledge that the Hearing Board expressly *declined* to follow the Executive Committee’s reasoning. (*See* Hearing Bd. Report at 6 (declining to make the assumption that the Court agreed with the totality of the Administrator’s arguments “without specific language or direction from the Court”).)

- b. The Court’s order imposing discipline did not deprive Petitioner of due process

Petitioner’s due-process argument appears to be based on his misunderstanding of Illinois Supreme Court Rule 753, regarding petitions for leave to file exceptions. He seems to believe that he was wrongly deprived of an opportunity to file an appellee’s brief, and that the Court simply granted the relief the Administrator requested. He further argues that, if the Court’s order imposing discipline adopted the facts alleged in the Administrator’s petition for leave to file exceptions, then it deprived Petitioner of a fact-finding hearing, which violated his due process rights.

Petitioner is wrong about the appellate process in the Court. The process followed in his disciplinary matter is the process followed in every disciplinary matter in which a party files a petition for leave to file exceptions. That process is governed by Illinois Supreme Court Rule 753, which was fully adhered to in this case.

Moreover, it ultimately is of no consequence whether or not the Court found additional misconduct, because the Hearing Board did not base its denial of reinstatement on an assumption that the Court found additional misconduct, but rather on its finding that, given all of the factors set forth in Rule 767(f) and the evidence presented at hearing, Petitioner failed to prove rehabilitation, present good character, and current knowledge of the law.

c. The 10th Amendment does not require reinstatement

Petitioner's final argument invokes the Tenth Amendment to the U.S. Constitution, which authorizes states to enact laws related to the health and safety of the public. He contends that this authority is what Illinois Supreme Court Rule 767, governing reinstatement, is based upon. He thus argues that the only issue before the Hearing Board was "whether [he] will harm the public if he gets his license back, not whether [he] committed some email violation." (Petitioner's Br. at 59.) He contends that the evidence shows that he will not be a danger to the public if he is allowed to practice law again.

Petitioner is flatly wrong about what the Hearing Board was required to consider in determining whether Petitioner should be reinstated. The Hearing Board is required to consider the six factors listed in Supreme Court Rule 767(f) when determining whether a disciplined lawyer has proved rehabilitation. It did so in this matter.

Moreover, it would seem that, at a minimum, Petitioner should know what he must do in order to practice again. But Petitioner's blatant failure to understand the very basics of what he must establish to prove that he should be reinstated – which, we note, is clearly set forth in Rule

767(f) – is a strong indication that he is not fit to be reinstated, in that it shows an utter lack of knowledge about Illinois law as well as a lack of respect for the Court and its procedures and authority. Equally important, his flippant comment about “some email violation” is further indication that he does not recognize or refuses to acknowledge the nature and seriousness of his misconduct.

In sum, we find that the evidence fully supports the Hearing Board’s determination that Petitioner failed to establish rehabilitation, present good character, and current knowledge of the and therefore failed to show that he should be reinstated at this time.

CONCLUSION

For the foregoing reasons, we affirm the Hearing Board’s findings regarding reinstatement, and recommend that Petitioner not be reinstated to the practice of law.

Respectfully submitted,

Leslie D. Davis
J. Timothy Eaton
Robert M. Henderson

CERTIFICATION

I, Kenneth G. Jablonski, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on April 7, 2021.

/s/ Kenneth G. Jablonski

Kenneth G. Jablonski, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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In the Matter of:

MAURICE JAMES SALEM,

Petitioner-Appellant,

No. 6315093.

Supreme Court No. M.R. 29861

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**PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD**

I, Andrea L. Watson, hereby certify that I served a copy of the Report and Recommendation of the Review Board on Petitioner-Appellant listed at the address shown below by e-mail service on April 7, 2021, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

Maurice James Salem
Petitioner-Appellant
salemlaw@comcast.net

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Kenneth G. Jablonski,
Clerk

/s/ Andrea L. Watson
By: Andrea L. Watson
Deputy Clerk