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**BEFORE A HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA**

In the Matter of a Suspended Member)	
Of the State Bar of Arizona)	No. 08-6004
)	
THOMAS C. PICCIOLI)	Findings and Recommendation
Bar Number: 012546)	on
)	Application for Reinstatement
)	
)	

This constitutes the Findings and Recommendations of the assigned Hearing Officer, pursuant to Rule 65(b)(3) Ariz.R.Sup.Ct. on the Application for Reinstatement filed by Suspended Member Thomas C. Piccioli.

Prior Suspension Proceedings

Applicant was suspended from the practice of law in Arizona pursuant to an order of the Supreme Court made in Case No. 03-1481 and entered on November 29, 2005. The suspension was for a period of two years and six months, retroactive to June 16, 2003. The suspension, which was by consent, was based on the Applicant's plea of guilty and subsequent conviction for two felony counts involving wire fraud and conspiracy to commit wire fraud entered in the United States District Court for the Southern District of New York.

Compliance with Rule 65

Applicant has complied with all applicable requirements for reinstatement set forth

in Rule 65 Ariz.R.Sup.Ct.

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Recommendation of Bar Counsel

Pursuant to Rule 65(b)(1)(D), at the conclusion of the hearing, Bar Counsel recommended that the Applicant be reinstated.

Findings

Rule 65(b)(2) provides that the Applicant seeking reinstatement shall have the burden of demonstrating by clear and convincing evidence his rehabilitation, compliance with all discipline orders and rules, fitness to practice and competence.

The written and testimonial evidence presented showed the following.

At the time of his conviction, Mr. Piccioli's participation in the criminal fraud acts; which involved several other individuals; was described by Judge Batts of the District Court as that of a "minor participant". This is a formal finding allowing the judge to make a "downward departure" from the federal sentencing guidelines, enabling the sentence to be that of 15 months.

The original Hearing Officer's Report was based on a Tender of Admissions and Agreement for Discipline by Consent. The original recommendation was rejected by the Disciplinary Commission. An Amended Tender was filed and the Hearing Officer specifically found that, although the facts would have supported either suspension or disbarment, the wealth of mitigating factors called for suspension.

This amended recommendation was affirmed by the Disciplinary Commission and the Supreme Court.

1 Although Mr. Piccioli would normally have been sent to a minimum security federal
2 prison, he chose incarceration in a medium security prison near Tucson to be close
3 to his family. He earned the maximum amount of "good time" and was released in
4 13 months. He also was allowed frequent home visits of gradually increasing
5 duration.

6 The Applicant was released from prison in June 2004. He worked briefly as a
7 paralegal for a former associate, and two other attorneys, and in September 2004 he
8 went to work as a paralegal for the Tucson firm of Karp, Heurlin & Weiss (now
9 Karp & Weiss). He remained with that firm until March of 2007, although he was
10 also employed as a development consultant for Verde River Iron, Inc. In March
11 2007 he became employed as a development consultant for Clarkdale Metals
12 Corporation, and moved to Cottonwood where he now resides. It should be noted
13 that prior to becoming a member of the Arizona Bar in 1986, Mr. Piccioli was active
14 in real estate development.
15

16 From August 2006 until February 2007, Mr. Piccioli consulted with Martin Levy,
17 Ph.D., a clinical psychologist in order to reach an understanding of why he became
18 involved in the criminal acts for which he was convicted. Dr. Levy has been a
19 practicing psychologist for approximately 40 years, including seven years as the
20 initial chief of clinical psychology in the psychiatry department of the University of
21 Arizona College of Medicine. Dr. Levy had sixteen sessions with Mr. Piccioli. His
22 principal goal was to help the Respondent gain a full understanding of why he
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1 engaged in behavior which evolved from what he initially believed to be engaging in
2 business and financial venture to becoming part of a criminal conspiracy. Dr. Levy
3 testified that the Applicant understood that his motives were initially based on the
4 desire for financial gain, both for himself and for family members whom he had
5 persuaded to join him in investing in what became the financial scam. However,
6 according to Dr. Levy, Mr. Piccioli also came to an understanding that part of the
7 rationale for his acts was based on his desire to go along with and work with the
8 other participants in the scheme, all of whom had extremely impressive backgrounds
9 and credentials.
10

11 Dr. Levy also met with Mr. Piccioli shortly before the hearing, then about 18 months
12 after his last formal session, and reported that Mr. Piccioli had maintained the same
13 level of his self-understanding. Dr. Levy also expressed his professional opinion
14 that Mr. Piccioli would pose no danger to the public if he were re-admitted to the
15 practice of law.
16

17 Testimony was also presented by Leonard Karp, a Tucson attorney who had
18 employed Mr. Piccioli as a paralegal after his release from prison. He testified to
19 Mr. Piccioli's diligence, his careful observance of his role as a paralegal only, and
20 his openness concerning his criminal conviction, so that all the firm's clients who
21 dealt with him were aware of it. He stated unequivocally that he believed Mr.
22 Piccioli would do a fine job as a lawyer and that he has integrity and honesty. In a
23 letter of recommendation to the Bar, Mr. Karp recounted that Mr. Piccioli shared
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his criminal experience in depth with one particular client who was on the verge of making a very risky investment, jeopardizing not only his finances, but his marriage.

Mr. Karp believes that Mr. Piccioli's openness and honesty about his own background preserved the marriage and the financial situation of the client.

The Applicant testified concerning his criminal history and present status. The leader of the scheme, Paul Scribner, was the son of a highly respected Baptist minister in Branson, Missouri, who Mr. Piccioli knew by reputation from time spent in that town. The other participants were identified to Mr. Piccioli as an attorney with a major law firm in New York, an individual who the Applicant had previously met several times; and a gentleman who was a seat holder on the Chicago Board of Trade, whom the Applicant had also met at his place of business in Chicago. The final "participant"; the representative of a major Wall Street investment firm; turned out to be an FBI agent. Mr. Piccioli was extremely open and candid about what he did, fax an invoice from Las Vegas to New York, that he knew it was fraudulent, and that he knew it was wrong. He made no attempt to excuse or justify his actions.

The Applicant exhibited great remorse and regret over his actions. He stated that under no circumstances would he ever engage in such conduct again, and that he believed that the therapy of Dr. Levy has given him a clear understanding of why he acted as he did, so that now he would be aware of any trap before he acted again.

In addition to the letter from Mr. Karp, letters from Bruce Huerlin and Stephen Weiss, the other members of the firm where the Applicant worked as a paralegal,

attested to their belief in his rehabilitation and fitness to practice law again.

Legal Standard

As noted by Bar Counsel during the hearing, the leading case covering the standards to be applied in considering reinstatement are set forth most recently in the case of *In re Arrotta* 208 Ariz 509, 96 P.3d 213 (2004). In it the Supreme Court stated the following:

In evaluating an application for reinstatement, we consider four factors: . . . the applicant's character and standing prior to the disbarment, the nature and character of the charge for which he was disbarred, his conduct subsequent to the disbarment, and the time that has elapsed between the disbarment and the application for reinstatement.

While the language above refers to disbarment rather than the suspension at issue here, these considerations remain valid and valuable touchstones.

Applying these criteria we see the following.

The original suspension findings by the Hearing Officer noted the Applicants prior excellent reputation within the legal and general Tucson community; a fact pointed out in Mr. Karp's testimony as well.

The charge did not involve a legal client, or even the practice of law. It was a "paper" crime which, admittedly through no act of the Applicant, never came to fruition and thus injured no one. It was a single act and a single crime.

Mr. Piccioli's conduct since his suspension has been exemplary, showing not just remorse, but involving positive acts to arrive at an understanding of why he did what

he did and how to avoid future dangers.

1 And lastly, it has been over 5 years since the effective date of the Order of
2 Suspension, although just short of three years since the confirmation of that Order
3 by the Court.
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5 *Arrotta* also contains the following instructive language:

6 the bottom line must always be whether the applicant
7 has '*affirmatively shown that he has overcome those*
8 *weaknesses that produced his earlier misconduct,*' i.e.,
whether he has been rehabilitated. [*Emphasis of the Court*]

9 **Recommendation**

10 In light of the entire record, including the original Suspension Ruling and the
11 recommendation of Bar Counsel, it is determined that Applicant has met his burden
12 of proof and it is therefore recommended that Thomas C. Piccioli be reinstated as a
13 member of the State Bar of Arizona.
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15 Dated this 24th day of November, 2008

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19 Philip M. Haggerty
Hearing Officer 6K

20 , Original filed this 25th
21 day of November, 2008

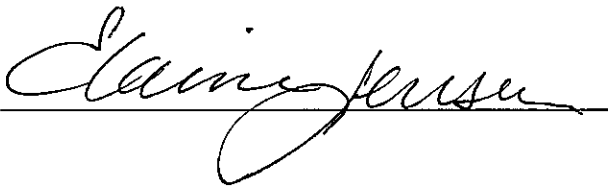
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