

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 19, 2024

PM-259-24

In the Matter of CHAZ ROBERT
FISHER, a Suspended Attorney.

COMMITTEE ON PROFESSIONAL
STANDARDS, Now Known as
ATTORNEY GRIEVANCE
COMMITTEE FOR THE
THIRD JUDICIAL
DEPARTMENT,

MEMORANDUM AND ORDER
ON MOTION

Petitioner;

CHAZ ROBERT FISHER,
Respondent.

(Attorney Registration No. 3995875).

Calendar Date: December 2, 2024

Before: Garry, P.J., Egan Jr., Reynolds Fitzgerald, Ceresia and Mackey, JJ.

*Monica A. Duffy, Attorney Grievance Committee for the Third Judicial
Department, Albany (Kelsey E. Roche of counsel), for petitioner.*

*Frankfurt Kurnit Klein & Selz, PC, New York City (John B. Harris of counsel),
for respondent.*

Per Curiam.

Respondent was admitted to practice by this Court, and in his home state of Massachusetts, in 2001. In March 2011, however, respondent was suspended from practice in Massachusetts by the Supreme Judicial Court for Suffolk County upon stipulated facts establishing his misconduct in connection with his management of a trust as cotrustee. Upon the subsequent application of petitioner, we similarly suspended respondent for a 90-day term by December 2011 order (90 AD3d 1138 [3d Dept 2011]). Respondent has now moved for his reinstatement for the first time, which motion petitioner opposed by affirmation of counsel, and respondent has submitted papers in reply. Upon our initial review, we referred the matter to a Character and Fitness subcommittee for hearing and report. The subcommittee's report recommended that respondent's application for reinstatement be granted, subject to certain conditions. While the parties were permitted to submit comments on the report, neither party availed themselves of that opportunity; thus, the matter is now ripe for our final disposition.

An attorney seeking reinstatement following a disciplinary suspension must satisfy a number of procedural and substantive requirements in order to be entitled to reinstatement by this Court.¹ As to the substantive requirements, "[a]ny attorney seeking reinstatement from a suspension must establish, by clear and convincing evidence, (1) that he or she has complied with the order of suspension and the Rules of this Court, (2) that he or she has the requisite character and fitness for the practice of law, and (3) that it would be in the public interest to reinstate the attorney to practice in

¹ A review of respondent's reinstatement materials indicates that he has satisfied the threshold procedural requirements in making his application for reinstatement. Notwithstanding this conclusion, we take this opportunity to remind the Bar that an attorney who has been suspended by an order of this Court for a set term of six months or less, but who has nonetheless not sought reinstatement for more than one year following the effective date of his or her suspension, must now comport with the requirements of Rules of the Appellate Division, Third Department (22 NYCRR) § 806.16 (b), as opposed to Rules of the Appellate Division, Third Department (22 NYCRR) § 806.16 (a). While the actual length of an attorney's suspension, not this Court's order suspending the attorney, previously controlled the requirements attendant to reinstatement (*see Matter of Jing Tan*, 164 AD3d 1515, 1518 [3d Dept 2018]), the 2022 amendments to our rules now control, and the explicit terms of that provision apply to an attorney who has been suspended for six months or less *pursuant to the terms of the order of suspension*.

New York" (*Matter of Becker*, 202 AD3d 1430, 1430-1431 [3d Dept 2022] [citations omitted]).

Turning first to respondent's compliance with this Court's Rules and the order of suspension, petitioner notes, and respondent confirms, that his affidavit of compliance (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.15 [f]; Rules for Atty Disciplinary Matters [22 NYCRR] part 1240, appendix B), was filed with the Court on April 6, 2022; thus, respondent seeks to have this deemed filed nunc pro tunc to a date within 30 days of his suspension. However, a review of our records reveals that, on January 5, 2012, he belatedly filed an affidavit of compliance pursuant to the Rules of the Appellate Division, Third Department (22 NYCRR) former § 806.9 (f). As respondent's affidavits of compliance acknowledge the 2011 suspension, confirm his compliance with the applicable rules and aver that he had no New York clients or matters at the time of his suspension, we accept the affidavit of compliance based on his January 5, 2012 filing. Moreover, inasmuch as the record reveals that respondent has not practiced law in this state since his suspension, we find respondent to be compliant with our Rules and with the order of suspension (*see Matter of Bruhn*, 206 AD3d 1225, 1226-1227 [3d Dept 2022]).

In evaluating the remaining prongs of the reinstatement analysis, "we consider both the conduct that led to the attorney's suspension, and his or her conduct following the order of suspension" (*Matter of Shmulsky*, 219 AD3d 1045, 1046 [3d Dept 2023]; *see Matter of Castro*, 200 AD3d 1387, 1389 [3d Dept 2021]). At the outset of our assessment, we note that respondent's misconduct remains significant despite the passage of time, particularly insofar as his misconduct involved his obligations to safeguard funds entrusted to him (*see generally Matter of Galasso*, 19 NY3d 688, 694 [2012]). However, we note respondent's contrite and remorseful testimony before the subcommittee, wherein he revealed that, despite his financial background, he was inexperienced in the area of trusts when he commenced such work, and had insufficient mentoring. The subcommittee's report credited respondent's testimony regarding what had occurred in the course of his representation of the trust, including the breakdown of communication with the other cotrustee and respondent's failure to remove the other cotrustee prior to resigning, among other facts. In this regard, the subcommittee noted respondent's appropriate hindsight that he should not have accepted the trustee assignment and, had he nonetheless accepted the assignment, that he should have asked for more assistance from more experienced attorneys. To this end, the record reveals that respondent has not had any instances of disciplinary infractions since his suspension in this state, that he has

been reinstated to the practice of law in Massachusetts and Florida and that he has been able to secure legal work in both jurisdictions.

In terms of the public interest in respondent's reinstatement, the subcommittee noted that respondent waited more than 12 years to apply for reinstatement, and that he was motivated to "remove the stain" from his record. However, respondent's testimony elaborated that, if reinstated, he hopes to assist family members in New York, as well as to complete legal work on behalf of his Massachusetts client, who does business in New York. Respondent affirmatively averred that he will not pursue work in the area of trusts and estates or serve as a trustee in New York and his materials confirm his assertions that he has refrained from any such work, including work as a trustee. Accordingly, we conclude that respondent has sufficiently established the requisite character and fitness to resume the practice of law in this state, as well as the public's interest in his reinstatement (*compare Matter of Chechelnitsky*, 194 AD3d 1241, 1242 [3d Dept 2021], *with Matter of Edelstein*, 150 AD3d 1531, 1532 [3d Dept 2017]). Notwithstanding this conclusion and respondent's sworn testimony before the subcommittee wherein he indicated that he would refrain from work in the area of trusts and estates, among other things, if reinstated, we find that additional safeguards are necessary to ensure that no detriment will inure to the public as a consequence of his reinstatement; thus, in reinstating respondent, we impose certain conditions on his return to the practice of law as provided for in this order (*see e.g. Matter of Watson*, 230 AD3d 921, 924-925 [3d Dept 2024]; *Matter of Matthews*, 187 AD3d 1482, 1485 [3d Dept 2020]).

Garry, P.J., Egan Jr., Reynolds Fitzgerald, Ceresia and Mackey, JJ., concur.

ORDERED that respondent's motion for reinstatement is granted; and it is further

ORDERED that respondent is reinstated as an attorney and counselor-at-law in the State of New York, effective immediately; and it is further

ORDERED that respondent's reinstatement to the practice of law shall be conditioned upon the following requirements: (1) respondent shall maintain, at his own cost, professional liability insurance in New York State, until further order of this Court; (2) respondent shall refrain from practicing in the areas of trusts and/or estates, until further order of this Court; (3) respondent shall, until further order of this Court, refrain from serving in any capacity as a trustee, including but not limited to, as a cotrustee; and

(4) respondent shall provide the Attorney Grievance Committee for the Third Judicial Department with quarterly reports certifying his compliance with the aforementioned conditions commencing on January 21, 2025, with subsequent reports to occur every 90 days thereafter; and it is further

ORDERED that respondent may move this Court to terminate the foregoing conditions after December 19, 2026.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court