

STATE OF MICHIGAN

Attorney Discipline Board

In the Matter of the Reinstatement
Petition of David Robb, P19480,

Petitioner/Appellant.

Case No. 90-16-RP

Decided: June 14, 1991

BOARD OPINION

Petitioner David Robb's license to practice law was revoked effective March 29, 1984. The misconduct which led to Robb's disbarment stemmed from his actions as bankruptcy trustee for Securities Investor Protection Corporation, to wit, misappropriation, conversion and forgery. He was subsequently convicted of embezzlement.

Robb's petition for reinstatement was filed with the Michigan Supreme Court on January 29, 1990. Hearings were conducted before Tri-County Hearing Panel #66 on August 9, August 30 and November 13, 1990. On January 29, 1991, the hearing panel entered its order denying the petition for reinstatement. This matter is before the Attorney Discipline Board on the filing of a petition for review seeking reversal of the hearing panel's order.

Based upon a review of the record and the statements of petitioner's counsel in oral arguments, the Board believes that certain criteria for reinstatement considered by the panel may now be satisfied. Evidence of any such subsequent actions on the part of the petitioner is not contained in the record below and may not be considered by the Board at this time. Therefore, the Board is persuaded that the appropriate action is to remand this matter to the hearing panel to give the petitioner an opportunity to present additional evidence regarding his eligibility for reinstatement.

The evidence available to the panel at the time supports its decision. However, in his oral argument of April 18, 1991, petitioner's counsel informed this Board that several areas of concern to the panel have since been resolved.

The first concern is the civil judgment against Robb involving Securities Investor Protection Corporation (SIPC). Robb testified that the balance owing on that judgment was approximately \$350,000. Robb, through counsel, contested the payment of the judgment. In his oral argument, counsel stated that Robb testified repeatedly that the matter had been placed in the hands of his counsel to negotiate. As noted in its report, the panel viewed the contesting of the judgment as an attempt to "thwart" the aggrieved party.

Counsel informed the Board that an Order for Partial Payment had recently been entered, pursuant to a motion he filed approximately one

year ago. He also stated that approximately \$120,000 has been paid or credited to the judgment, leaving a balance of approximately \$175,000.

The second concern is Robb's obligation to the State Bar Client Security Fund (Fund). Robb testified that he did not know if payments had

been made to the Fund - It was his understanding that the Fund was to receive payment from the SIPC judgment and this matter was also in the hands of his counsel.

Douglas Sweet of the State Bar of Michigan Client Security Fund testified that \$15,000 was paid out of the Fund on behalf of Robb in 1985. As of that time, only \$705 had been credited to the Fund pursuant to the agreement with SIPC

In his closing argument before the panel, counsel stated that the Board of Commissioners had accepted Robb's proposal regarding the Fund at its October 26, 1990 meeting.

In his oral argument, counsel apprised the Board that the original agreement between the Client Security Fund and SIPC called for the Fund to receive forty percent of the amount collected on the judgment by SIPC- It was his position that SIPC had been collecting payment on the judgment since 1983 and remitted nothing to the Fund and that the Fund did nothing to enforce the agreement.

Counsel stated that Robb has subsequently received full clearance from the Fund, his account with the Fund was up-to-date and the debt to the Fund was two-thirds paid.

The final concern is Robb's income tax situation. AGC counsel cited Robb's sworn statement of June 12, 1990, in which he stated that he had filed tax returns for 1986, 1987 and 1988. She then produced copies of Robb's tax returns for 1986 and 1987, signed and dated August 8, 1990. Robb testified that his answers in the sworn statement were truthful and consistent with his knowledge at the time and he learned at a later date that the returns had not actually been filed.

Petitioner's counsel informed the Board that Robb was meeting regularly with an Internal Revenue Service agent and they were recreating returns. He further stated that although the tax returns in question were not technically or physically "filed", the IRS treated Robb "[a]s though they had been filed because they had been recreated and they had electronic records - - - Everything was under control as far as the IRS was concerned." (Board Transcript, p. 12)

In summary, we find that although the testimony and evidence presented to the hearing panel supports its decision to deny reinstatement, the statements of petitioner's counsel to this Board regarding recent developments in the payment of the SIPC judgment, the Client Security Fund and Robb's income tax situation are persuasive. We therefore remand this matter to Tri-County Hearing Panel #66 to take further testimony and evidence regarding those matters and to file a supplemental report and order following the additional hearing.

John F. Burns, Elaine Fieldman, Hanley M. Gurvin, Linda S. Hotchkiss, M.D. and Theodore P. Zegouras

(Board Members George E. Bushnell, Jr. and Remona Green recused themselves and did not participate in the discussion or decision in this case. The Board's Executive Director, John F. VanBolt, did not advise the Board In connection with its deliberations or decision.)