

FILED

SID J. WHITE

JUN 7 1985

CLERK, SUPREME COURT

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

By _____
Chief Deputy Clerk

THE FLORIDA BAR

Supreme Court Case

No. 66,146

IN RE: ALAN SILVERSTEIN
(Petition for Reinstatement)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS: Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct reinstatement proceedings as provided for by article XI, Rule 11.11 of the Integration Rule of The Florida Bar, a hearing was held on April 25, 1985. All of the pleadings, notices, motions, orders, transcripts and exhibits are forwarded with this report and the foregoing constitutes the record of this case.

The following attorneys appeared as counsel for the parties:

For The Florida Bar: LOUIS THALER
 211 Rivergate Plaza
 444 Brickell Avenue
 Miami, Florida 33131

For the Petitioner: MALLORY H. HORTON
 Suite 410 Concord Building
 66 West Flagler Street
 Miami, Florida 33130

On February 26, 1980, Petitioner, ALAN SILVERSTEIN was adjudged guilty of "sale or delivery of controlled substance" and was sentenced to confinement for a term of eighteen (18) months in the State Penitentiary by Eleventh Judicial Circuit Court Judge Richard S. Fuller. After serving approximately two and one-half (2 1/2) months of the state prison time, Judge Fuller mitigated the sentence to time served and ordered Petitioner released to the Concept House Drug Program.

Petitioner was suspended from the practice of law on March 14, 1980 by reason of said felony conviction pursuant

to article XI, Rule 11.07 of the Integration Rule of The Florida Bar.

On October 4, 1984, Petitioner filed a Petition for Reinstatement. Prior to formulating a position with respect to the Petitioner's reinstatement, The Florida Bar conducted an investigation into Petitioner's fitness to resume the practice of law.

A copy of The Florida Bar Staff Investigator Gordon Sither's Report of Investigation was entered by stipulation of counsel as a joint exhibit at the Reinstatement Hearing (duly marked Exhibit S.1).

At the Reinstatement Hearing, counsel for The Florida Bar stated that it was The Florida Bar's position not to oppose the reinstatement of Petitioner and advised the undersigned as to two areas of concern. The first area of concern involved Petitioner's outstanding financial obligations as were evidenced by judgments against Petitioner for various debts. The second area of concern involved the facts and circumstances surrounding a particular judgment, that being the Final Summary Judgment awarded Nancy Elaine Lindgren against Petitioner and a third party in the amount of \$22,419.50 on June 24, 1983 (hereinafter referred to as the "Lindgren Judgment").

II. FINDING OF FACT: Petitioner appeared, with counsel, before the undersigned Referee at the Reinstatement Hearing. With regard to the first area of concern, Petitioner's outstanding financial obligations, I find that Petitioner has judgments or liens recorded against him in Dade County Circuit Court in favor of the Second National Bank of North Miami, the Internal Revenue Service, the Sun Bank and Nancy Elaine Lindgren, and a Dade County Court judgment against him in favor of Santos Battaglia.

I find that the Second National Bank of North Miami judgment was a result of a failed property deal in 1978 and that said creditor is now defunct; that Petitioner has a payment plan with the Internal Revenue Service; that Petitioner has a payment plan with Sun Bank, that Petitioner

has made no effort with regard to the Lindgren Judgment and that Petitioner has no knowledge of the facts and circumstances surrounding the Santos Battaglia County Court judgment.

At the Final Hearing, Nancy Elaine Lindgren, now known as Nancy Elaine Blankenship, and her attorney Stephen Rash, testified as to the second area of concern, the "Lindgren Judgment". I find that the facts and circumstances of the Lindgren Judgment were interconnected with the time of Petitioner's felony conviction and his addiction to cocaine. I further find that the facts and circumstances surrounding the Lindgren Judgment should not adversely reflect on his Petition for Reinstatement.

At the Final Hearing, Respondent produced several character witnesses on his behalf. From the testimony of Robert Reed, Executive Director of Concept House Drug Program, and other evidence, I find that Petitioner no longer has an addiction or dependency to cocaine and has rehabilitated himself. I note that Mr. Reed indicated that he does not use the word "rehabilitation" but would refer to Petitioner's condition as being in "remission" from a disease.

Having heard argument of counsel and after considering the evidence and testimony presented at the reinstatement hearing, and considering the two areas of concern raised by The Florida Bar, I find that Petitioner is fit to resume the practice of law.

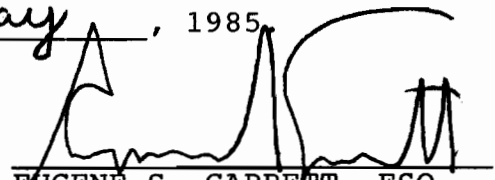
III. RECOMMENDATIONS AS TO REINSTATEMENT: I recommend that ALAN SILVERSTEIN'S Petition for Reinstatement be granted and that he be reinstated to the practice of law with the condition that Respondent forfeit his right to legally attack or avoid directly or collaterally in any state or federal court the judgments/liens set forth in The Florida Bar's Report of Investigation and as noted in Section II of this Report. This condition would insure that the persons or entities that have those judgments or liens against

Respondent would be in no better or worse shape than they are now in attempting to gain, through the legal system, satisfaction of these judgments because of Respondent's reinstatement. I further recommend that the costs of these proceedings be assessed against Respondent pursuant to article XI, Rule 11.11(2) of the Integration Rule of The Florida Bar as a condition to reinstatement. These costs are as follows:

Notice in Miami Review January 9, 1985	\$	90.80
Report of Investigation Staff Investigator Gordon Sither 79.1 hrs. x \$14.00/hr = \$1,107.40 507 miles x \$0.26/mile = \$ 131.82		1,239.22
Witness Travel Nancy Elaine Lindgren.....		94.00
Transcript of Reinstatement of Hearing April 25, 1985.....		<u>529.00</u>
Sub-Total	\$	1,953.02
Less Cost Deposit		<u>- 500.00</u>
TOTAL	\$	<u>1,453.02</u> =====

In light of the Petitioner's present financial situation, the Petitioner should be permitted to retire these costs through the establishment of a periodic payment schedule, the terms of which to be negotiated by and between Petitioner's counsel and the Director of Lawyer Regulation.

Dated this 24th day of May, 1985.


EUGENE S. GARRETT, ESQ.
Referee

Copies furnished to:
Louis Thaler, Esq.
Mallory H. Horton, Esq.