

1 requirement pursuant to Rule 64(c), Ariz.R.Sup.Ct., requiring Applicant to re-take the
2 Arizona Bar Examination be waived.

3 Background

4 Applicant was summarily suspended effective April 18, 2002 for nonpayment of bar
5 dues. Applicant filed his Application for Reinstatement on July 2, 2010.

6 Rule 64(f), Ariz.R.Sup.Ct., provides that because Applicant's Motion for
7 Reinstatement was not filed within two years of the effective date of suspension, he must
8 submit to formal reinstatement proceedings pursuant to Rule 65. Applicant must cure the
9 grounds upon which the suspension order was entered by payment of the amount of fees,
10 assessments and any administrative costs. Additionally, Rule 64(c), Ariz.R.Sup.Ct.
11 (Additional Requirements) provides that if the applicant has been suspended for a period of
12 five years at the time the application for reinstatement is filed, applicant shall be required to
13 apply for admission and pass the bar examination as required.

14 Applicant was also admitted to practice law in California in 1996 and was also
15 suspended for non-payment of dues. In May 2010, he paid his California bar dues and was
16 reinstated. Applicant is current with his continuing legal education requirements in
17 California and is in good standing.

18 After law school, Applicant operated his family business until it was sold in 1996
19 and then worked for a technology based firm in California starting up securities, venture
20 capital financing and initial and secondary public offerings from 1996 - 1999. In 1999,
21 Applicant became general counsel for *Selectia*, a publicly traded enterprise software
22 company in California. After leaving *Selectia*, Applicant did independent legal work for a
23 few months. In 2003, he moved to Nevada and owned/operated a real estate development
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² A copy of the Hearing Officer's Report is attached as Exhibit A.

1 and brokerage company. During that time, Applicant utilized various firms to handle legal
2 matters for his company.

3 Applicant stopped paying his dues because he did not plan to practice law in
4 Arizona. He now seeks reinstatement in order to be admitted to the Nevada bar. If
5 reinstated and upon admission to the Nevada bar, he intends to represent a Nevada
6 commercial property association in collection and lien enforcement actions.

7 The Hearing Officer recommends that the requirement requiring Applicant to re-take
8 the Arizona Bar Examination be waived as requiring him to do so would be punitive. *See*
9 Report, p. 5 ¶ 26. Applicant has remained current in the law and has worked as a
10 commercial real estate developer and broker. In Arizona and Nevada, real estate
11 development and sales work can be performed by a non-lawyer.

12
13 **Conclusion**

14 The Hearing Officer found that Applicant has proven by clear and convincing
15 evidence his competence, fitness to practice law, compliance with all applicable discipline
16 orders, and requirements regarding rehabilitation pursuant to Rule 65, Ariz.R.Sup.Ct. The
17 Commission agrees and therefore adopts the Hearing Officer's recommendation for
18 reinstatement, waiver of the bar examination requirement, and the payment of costs of these
19 proceedings.

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21 RESPECTFULLY SUBMITTED this 5 day of January 2011.

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23 Pamela M. Katzenberg
24 Pamela M. Katzenberg, Chair
Disciplinary Commission

25 Original filed with the Disciplinary Clerk
26 this 5th day of January 2011.

1 Copy of the foregoing mailed
this 7 day of January 2011, to:

2 Michael P. Kennedy
3 Applicant
4 9500 West Flamingo, Suite 205
Las Vegas, NV 89147

5 Steven P. Little
6 Bar Counsel
7 State Bar of Arizona
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8 Copy of the foregoing hand delivered
9 this 7 day of January 2011, to:

10 Hon. Louis A. Araneta
11 Hearing Officer 6U
12 1501 W. Washington, Suite 104
Phoenix, AZ 85007

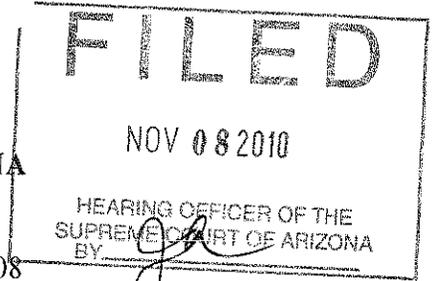
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EXHIBIT

A

BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA



IN THE MATTER OF A SUSPENDED)
MEMBER OF THE STATE BAR)
OF ARIZONA,)
)
MICHAEL PATRICK KENNEDY.)
Bar No. 015846)
)
APPLICANT.)

No. 10-6008

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

1. On July 2, 2010, Applicant Michael Patrick Kennedy (hereafter "Applicant") filed his reinstatement motion titled "Motion to Reinstate Applicants' License to Practice Law in the State of Arizona. Court of Arizona."
2. The motion required Applicant to undergo the detailed review process under Rule 65, Ariz. R. Sup. Ct. because Applicant had not filed for reinstatement within two years of his summary suspension from 2002 for nonpayment of dues.¹
3. On September 16, 2010, the hearing on the Motion was held with Applicant representing himself, and Counsel Stephen P. Little appearing for the State Bar. At the hearing, State Bar counsel agreed with the Motion and recommended reinstatement.

FINDINGS OF FACT

4. Applicant was first admitted to practice law in Arizona on October 22, 1994.²
5. Applicant was also first admitted to practice law in California in 1996. Joint Pre-Hearing Statement filed September 14, 2010.

¹ Ariz. R. Sup. Ct will hereafter be referenced with "Rule" followed by the relevant rule's numerical designation.

² Unless otherwise noted, the facts are taken from the transcript of the hearing, exhibits admitted, the Joint Pre-Hearing Statement or the Applicant's Hearing Memorandum dated September 14, 2010.

6. On April 18, 2002, Applicant was summarily suspended from the practice of law in Arizona for non-payment of dues.
7. Applicant was suspended from the California State Bar from August 16, 2007 until May 26, 2010 for nonpayment of dues.
8. Applicant paid the California State Bar what he owed and was reinstated without investigation or hearing in May, 2010. Transcript of Hearing (“T/H”) 88:6-12.
9. Applicant had completed all CLE requirements in California through 2007. He is current with all California CLE requirements through 2010. T/H: 87:17-20.
10. Applicant has paid all his financial requirements to the State Bar of Arizona to be eligible for reinstatement. Exhibit 2.
11. After law school graduation, Applicant first helped operate the family business which involved the sale of chemical and cleaning supplies to restaurants, hotels, and other customers. T/H 51:21-52:7.
12. Upon the sale of the family business in the summer of 1996, Applicant was employed as an associate at Gunderson, Dettmer, a technology-based law firm in Menlo Park, California from 1996 to August, 1999. In his practice he mainly did work for venture capitalists and small start up companies. His responsibilities were start up securities, venture capital financing, and initial and secondary public offerings. T/H 52:7-25.
13. In 1999, Applicant became general counsel for Selectica, Inc. a publicly traded enterprise software company located in San Jose California. Applicant was responsible for all of the company's legal matters including an initial public offering in 2000, merger and acquisition transactions and licensing agreements. T/H 53:1- 25.
14. Applicant testified that in 2002, after leaving Selectica, he did independent legal work for a few months while trying to figure out his future career choices. At the time he did not have

much income coming in and made the economic choice to stop paying his Arizona bar dues because he was not planning on returning to Arizona to work. T/H 89:19-90:14.

15. In September, 2003, Applicant moved from California to Las Vegas, Nevada to own and operate his own real estate development and brokerage company, Kennedy Properties Development, LLC (KPD) where he is currently employed.
16. In 2007, when the economic recession affected his own company, Applicant tried to reduce every nonessential expense and stopped paying his California bar dues. T/H 90:19:-91:6.
17. Applicant's company, KPD, built professional office buildings for sale. The majority of the buildings were sold. Applicant's company leased the few buildings that were not sold. T/H 55:20-25.
18. Since 2003 in Nevada and on an ongoing basis, Applicant has worked as a commercial real estate developer and broker. As in Arizona, Appellant's Nevada real estate development and sales work can be done by a non-lawyer. T/H 35:2-36:8 The work has involved lease agreements and real estate loan documents, purchase and sale agreements, and more recently due to the economic recession, real estate restructuring. T/H 93:1-24; Hearing Memorandum at pages 2-3.
19. When Applicant and his company have needed legal work to be done, Applicant has utilized various attorneys including Patricia Curtis of the Las Vegas law office of Snell and Wilmer or individual attorneys such as Mark Karris. Exhibit A and B.
20. Applicant seeks reinstatement to the Arizona Bar in order to be admitted to the Nevada Bar. The Nevada Bar requires that Applicant not be suspended from the bar of any other jurisdiction. If reinstated to the Arizona Bar and upon admission to the Nevada Bar, he plans to legally represent a Nevada commercial property association as needed, primarily in collection and lien enforcement actions. Such work will also help provide a more stable

monthly revenue source since his company already performs some commercial property management services on certain projects. T/H 59:1-60:3; 79:7-19.

21. Local Phoenix attorneys Michael Donahey and William Wichterman testified in support of Applicant's character, fitness to practice and his competence. Mr. Donahey has continuously known Applicant since he was a summer associate at the Snell and Wilmer law firm in 1993. Mr. Wichterman has known Applicant since 1990 when they were law school roommates at the Georgetown University Law Center. Mr. Donahey has done some legal work for Applicant's company over the years. Mr. Wichterman works for a commercial real estate development company that performs work similar to that of Applicant. Both attorneys stated Applicant is honest, has high character and that he remains extremely fit and competent to practice law. T/H 18:21-19:14; 32:5-18; 35:9-37:3.
22. The affidavit of attorney Patricia Curtis a lawyer in the Las Vegas office of Snell and Wilmer also confirms Applicant's competence and fitness to practice law. Exhibit B. Ms. Curtis has worked closely with Applicant on both restructuring and foreclosures. T/H 93:25-95:2. The affidavit of attorney Mark Karris also confirms Applicant's current knowledge of real estate law and competence. Exhibit A; T/H 96:13-7.
23. As noted, Applicant is a member in good standing with the California bar and he is current in his CLE requirements after having been reinstated in May, 2010. Applicant has also been a licensed real estate broker since 2000 and in Nevada since 2003 and has never been subject to any disciplinary actions regarding his state licenses. T/H 55:14-19.
24. Applicant also demonstrated a history of strong financial responsibility having satisfied personal school and vehicle loans and credit card obligations (T/H 74:23-75:12) and resolving his business financial responsibilities despite the adverse economic impact on commercial real estate in Nevada. T/H 82:11-84:17.

CONCLUSIONS OF LAW

25. This Hearing Officer finds that pursuant to Rule 65 (b) 2, Applicant has proven by clear and convincing evidence that he should be reinstated to active status as a member of the Arizona State Bar.
26. This Hearing Officer also finds that Applicant's circumstances are similar to those of the applicant in *In re Trester*, SB 06-6003 where suspension is the result of nonpayment of dues and not disciplinary misconduct. Applicant has remained licensed in another jurisdiction (California) for the majority of the time of the Arizona summary suspension. He is current in his California CLE requirements. During the time of his Arizona suspension he has continuously worked in relatively sophisticated commercial real estate transactions for his company. This work has kept him up to date in the law particularly in the area of real estate law which he seeks to practice in Nevada. Consistent with the holding in *In re Trester*, to require Applicant to re-take the Arizona Bar exam would be punitive.

RECOMMENDATION

27. As the owner and operator of his own real estate development company, Applicant has been engaging in functional, practical experience that has kept him up to date in the law, particularly, the area of real estate law which he seeks to practice in Nevada.
28. Based on the above facts and circumstances, this Hearing Officer recommends to the Disciplinary Commission that Applicant be reinstated as an active member of the Arizona State Bar. This Hearing Officer also recommends that Applicant pay all costs incurred by the State Bar in these reinstatement proceedings. Applicant shall also pay all costs incurred by the Disciplinary Clerk's Office and the Supreme Court in this matter.

DATED this 8 day of November, 2010.

Louis A. Araneta
Honorable Louis Araneta
Hearing Officer 6U

Original filed with the Disciplinary Clerk
this 8 day of November, 2010.

Copy of the foregoing mailed
this 9 day of November, 2010, to:

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