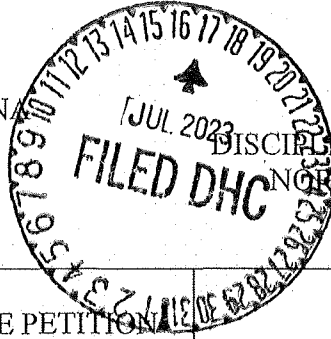


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE

DISCIPLINARY HEARING COMMISSION

NORTH CAROLINA STATE BAR

23 BCR 1

IN RE: THE MATTER OF THE PETITION
FOR REINSTATEMENT OF:

GREGORY BARTKO,

Petitioner.

**ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS PETITIONER'S
REINSTATEMENT PETITION**

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission consisting of James A. Davis, Chair, Jaye Meyer, and Jane B. Weathers. After considering the submissions of the parties, the Hearing Panel makes the following:

FINDINGS OF FACT

1. On November 18, 2010, Petitioner was convicted after a jury trial of one count of conspiracy to: commit mail fraud, sell unregistered securities, launder monetary instruments, engage in unlawful monetary transactions, make false statements, and obstruct Securities and Exchange Commission proceedings; four counts of mail fraud and aiding and abetting mail fraud; and one count of the sale of unregistered securities in the United States District Court for the Eastern District of North Carolina ("EDNC") in *United States of America v. Gregory Bartko*, case no.: 5:09-CR-00321-D-1.

2. On February 8, 2011, Petitioner was disbarred by order of the Wake County Superior Court.

3. On May 12, 2023, Petitioner filed a Petition for Reinstatement in the DHC in the above-captioned matter.

4. Petitioner's Petition for Reinstatement incorporated a Memorandum in Support of his Petition that included several attachments, among them a copy of an April 4, 2012 judgment against Petitioner in case number 5:09-CR-321-1-D sentencing Petitioner to: (1) serve a term of imprisonment of 276 months (i.e., 23 years) in the custody of the federal Bureau of Prisons ("BOP"); (2) serve a three-year term of supervised release upon completion of his term of imprisonment under the jurisdiction of the United States Probation Office; and (3) pay restitution totaling \$885,946.89 to more than 170 victims.

5. Under the CARES Act, the BOP transferred Petitioner to home confinement to serve out the remainder of his 23-year court-ordered term of imprisonment.

6. No court order has modified the requirement that Petitioner serve a 23-year term of imprisonment under the jurisdiction of the BOP.

7. Petitioner remains under the jurisdiction of the BOP and is still serving his mandatory term of imprisonment.

8. Petitioner has not completed the court-ordered term of imprisonment for the federal criminal conviction giving rise to Petitioner's disbarment.

9. No court order has modified the requirement that Petitioner serve a 3-year term of supervised release.

10. Petitioner cannot begin serving the court-ordered 3-year term of supervised release until he has completed the court-ordered 23-year term of imprisonment.

11. Petitioner has not complied with the court-ordered 3-year term of supervised release for the federal criminal conviction giving rise to Petitioner's disbarment.

12. Petitioner has not complied with the court order requiring him to pay \$885,946.89 in restitution for the federal conviction giving rise to Petitioner's disbarment.

13. Petitioner has not complied with, nor alleged compliance with, the orders and judgments of the District Court in the EDNC relating to the convictions resulting in his disbarment.

Based upon the foregoing Findings of Fact, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

14. The rules governing the reinstatement of lawyers to the practice of law in North Carolina require that a petition for reinstatement “identify each requirement for reinstatement and state how the petitioner has met each requirement.” 27 N.C. Admin. Code 01B .0129(a)(6). “The petitioner shall attach supporting documentation establishing satisfaction of each requirement.” *Id.*

15. Among the requirements for reinstatement that a petitioner must identify and establish in a petition for reinstatement is that the petitioner has “complied with the orders and judgments of any court relating to the matters resulting in [their] disbarment.” 27 N.C. Admin. Code 01B .0129(a)(3)(H).

16. The reinstatement rules authorize Respondent to file a motion to dismiss “if the petitioner fails to comply with any provisions of . . . Rule .0129(a).” 27 N.C. Admin. Code. 01B .0129(a)(9).

17. The North Carolina Rules of Civil Procedure govern proceedings before the DHC except where “specific procedures are set out in” the Rules of Discipline and Disability. In such cases, the Rules of Civil Procedure are “supplemental only.” 27 N.C. Admin. Code. 01B .0114(a).

18. Respondent filed a motion to dismiss pursuant to 27 N.C. Admin. Code 01B .0129(a)(9); in accord with Rule .0114(a), the Hearing Panel’s analysis of Respondent’s motion is informed by Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

19. “A claim should be dismissed under Rule 12(b)(6) where it appears that plaintiff is entitled to no relief under any statement of facts which could be proven; this will occur when there

is a want of law to support a claim of the sort made, an absence of facts sufficient to make a good claim, or the disclosure of some fact which will necessarily defeat the claim.” *Garvin v. Fayetteville*, 102 N.C. App. 121, 123 (1991).

20. “When documents are attached to and incorporated into a complaint, they become part of the complaint and may be considered in connection with a Rule 12(b)(6) motion without converting it into a motion for summary judgment. Moreover . . . the trial court can reject allegations that are contradicted by the documents attached, specifically referred to, or incorporated by reference in the complaint. Furthermore, the trial court is not required . . . to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. When reviewing pleadings with documentary attachments on a Rule 12(b)(6) motion, the actual content of the document controls, not the allegations contained in the pleadings.” *Wilson v. SunTrust Bank*, 257 N.C. App. 237, 244 (2017) (internal alterations omitted) (quoting *Moch v. A.M. Pappas & Assocs., LLC*, 251 N.C. App. 198, 206 (2016)).

21. As noted in paragraph 4, *supra*, the judgment against Petitioner—attached to the memorandum incorporated into his Petition for reinstatement—ordered Petitioner to: (1) serve a term of imprisonment of 276 months (*i.e.*, 23 years) in the custody of the federal BOP; (2) serve a term of supervised release of three years upon completion of his term of imprisonment under the jurisdiction of U.S. Probation; and (3) pay restitution totaling \$885,946.89 to more than 170 victims.

22. Petitioner’s own documentation, incorporated into his Petition through the Memorandum of Support, shows he cannot comply with the provisions of 27 N.C. Admin. Code. 01B .0129(a)(3)(H) as required by 27 N.C. Admin. Code 01B .0129(a)(9).

23. Though BOP transferred Petitioner to home confinement during the Covid-19 Pandemic under the CARES Act, Petitioner still has several years remaining on the 23-year term of imprisonment imposed by the EDNC in relation to the federal criminal conviction that gave rise to his disbarment.

24. Petitioner has not complied with the court-ordered 3-year term of supervised release in relation to the federal criminal conviction that gave rise to his disbarment,

25. Petitioner has not paid in full the \$885,946.89 in restitution ordered by the EDNC in relation to the federal criminal conviction that gave rise to his disbarment.

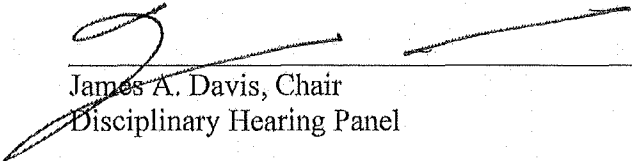
26. Respondent's Motion to Dismiss is therefore properly before this Hearing Panel pursuant to 27 N.C. Admin. Code 01B .0129(a)(9).

27. Petitioner is unable to allege or show that he has "complied with the orders and judgment of any court relating to the matters resulting in [his] disbarment." 27 N.C. Admin. Code. 01B .0129(a)(3)(H).

It is therefore ORDERED that Respondent's Motion to Dismiss Petitioner's Petition for Reinstatement is ALLOWED.

This, the 17th day of July, 2023.

Signed by the Chair of the hearing panel with the knowledge and consent of the panel members.


James A. Davis, Chair
Disciplinary Hearing Panel