

**STATE OF MAINE  
MAINE BOARD OF BAR EXAMINERS**

**In re: Miklos M. Pongratz** ) **DECISION OF THE BOARD**  
 ) **pursuant to M.Bar Adm. R. 9(d)(5)(H).**

**FACTUAL AND PROCEDURAL BACKGROUND**

Miklos M. Pongratz is a convicted felon. Miklos [d.o.b. 12/20/1964, hereafter, at times, the Applicant ] and his brother Greg, together with a number of others, were indicted in October 1994 by a federal grand jury sitting in Arizona and Miklos was specifically charged with four counts of conspiracy to possess and distribute, and possession of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), 846 and 18 U.S.C. § 2. Board Exhibits 2 & 3.<sup>1</sup> The government alleged the transactions brought the conspirators approximately fourteen million dollars (\$14,000,000.00) in the aggregate. *Id.* According to the Criminal Complaint, this sum represented the delivery for sale of approximately 7000 pounds of marijuana *in toto*. Board Exh. 1.

When the Applicant and his brother were informed that arrest warrants had been issued for them, they voluntarily returned to Tucson and surrendered themselves to federal authorities. Transcript of February 24, 2004 Hearing [ T. ] at 48. Miklos Pongratz was detained at that time for four days prior to his arraignment. T. at 124. He and his brother subsequently pled guilty and the Applicant s plea to Count II, one count of conspiracy to possess marijuana with intent to distribute it, was entered on the Court s docket on July 19, 1996. Board Exh. 4. The Applicant

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<sup>1</sup> Counsel for the Board submitted 17 exhibits [ Board Exh. ] and the Applicant initially submitted 6 [ App. Exh. ]. Transcript of Hearing [ T. ] at 7-8. The parties stipulated to the admissibility of all but Board Exh. 17, *id.*, which the Board Chair admitted after hearing from the parties. T. at 12. The Applicant subsequently also offered the affidavit of his brother, Greg Pongratz, App. Exh. 7, which was also admitted over the objection of and after hearing argument from Board Counsel. T. at 18-20.

remained under pretrial supervision and subject to an agreement to cooperate with the ongoing investigation until his plea was accepted by the federal court in Arizona in July, 1998. T. at 124. On July 10, 1998, the Applicant was adjudged convicted of the offense charged in Count II of the amended indictment, a Class A felony, and sentenced to Time Served and, upon defendant's release from confinement to a SIXTY (60) MONTH term of supervised release in addition to reporting requirements, 100 hours of community service, and a five thousand dollar (\$5000.00) fine. Board Exh. 5. The other counts of the indictment were dismissed. *Id.* The Applicant satisfied his community service obligations by April, 1999, in accordance with the terms of his probation, and paid his fine by August, 1999. Board Exh. 6, & its Supplementary Exhibits. The Applicant's term of supervised release was terminated early, in March 2002, at the instigation of the Applicant, a release he credits to his exemplary behavior during its term. T. at 124-25.

The Applicant attended Western New England School of Law from August, 2000 through May, 2003, receiving his Juris Doctor degree that year. He applied to sit for and passed the testing portions of both the Maine and Massachusetts Bar Examinations in July 2003.<sup>2</sup> Neither the Applicant's educational qualifications nor his competence in the law are at issue in this proceeding.

A three member panel of the Maine Board of Bar Examiners, after reviewing the Applicant's file, securing more information and speaking with the Applicant by telephone, determined that doubt remained concerning the Applicant's good moral character and

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<sup>2</sup> Massachusetts admitted the Applicant to its bar without further investigation on December 11, 2003.

recommended that the Board hold a hearing pursuant to M.Bar Adm.R 9(d)(1). The hearing was held, after due notice and compliance with the preliminary procedures of Rule 9, on February 24, 2004, before six (6) members of the Board, including its Chair. The Applicant appeared and was represented by Karen Kingsley, Esq. The panel's position was presented by Assistant Attorney General Thomas Knowlton.

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**ISSUES FOR RESOLUTION**

Once an applicant for the bar has established he has the educational requirements to sit for the bar and has filled out an application and paid the requisite fees, he is allowed to do so. *See* 4 M.R.S.A. § 803. *See also* M.Bar Adm.R. 5, 6 & 10(c). To receive a Certificate of Qualification from the Board, however, which recommends an applicant's admission to the bar, an applicant must not only pass the bar examination but also demonstrate he possesses good moral character. M.Bar Adm.R. 8. The burden is on the applicant and is initially met by establishing in the completed application and additional materials required by Rule 5 the absence of any information adverse to the applicant's moral character. M.Bar Adm.R. 9(a).

If any such adverse information is provided in the application and additional materials, or otherwise received by the Board, the applicant has the burden of producing further evidence to explain or rebut such information sufficiently to satisfy the Board that the applicant is of good moral character. The attributes of character that are relevant to this determination are those pertinent to the trust placed in lawyers by the public and clients as well as to the requirement that lawyers in this state comply with the Maine Bar Rules.

*Id.* In addition, the Legislature has decreed that

A board of bar examiners shall issue a certificate of qualification stating that the applicant is a person of good moral character and possesses sufficient learning in the law to practice as an attorney in the courts of this State to each applicant who:

A. Produces satisfactory evidence of good moral character.

(1) The fact that an applicant has been convicted as an adult of a crime that is punishable by imprisonment of one year or more in this State or in another state or jurisdiction of the United States raises a presumption that the applicant has not met this requirement. ***This presumption may be rebutted by proof that a lawful pardon has been obtained, that extraordinary circumstances surrounded the commission of the crime or that a reasonable amount of time has passed since the applicant's conviction and completion of sentence and there is evidence of complete rehabilitation based on the applicant's subsequent history.***

(2) Nothing in subparagraph (1) precludes the board or the Supreme Judicial Court from considering a conviction as a basis for disqualification under this paragraph; . . .

14 M.R.S.A. § 805-A(2)(A)(1) & (2)(emphasis added).

The Applicant did not question that he had been convicted as an adult of a crime that is punishable by imprisonment of one year or more . . . . *See* T. at 17-18; *see also* T. at 160 (understood possibility of being sentenced from 10 years to life). He did not present any evidence that he had been provided a pardon. *See id.* at 21. Instead, the Applicant chose to meet his burden of rebutting the presumption his felony conviction raised against a finding of good moral character by asserting (1) that extraordinary circumstances surrounded his commission of the crime for which he was convicted and (2) that a reasonable amount of time has passed since his conviction and completion of sentence and there is evidence of complete rehabilitation based on the applicant's subsequent history. *See* T. at 21-24 (Applicant's counsel's opening statement of position).

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## DISCUSSION

### **I. Whether extraordinary circumstances surrounded the Applicant's commission of the crime for which he was convicted.**

The Applicant argued first, that the particular events affecting his family at the time he entered into the conspiracy justified or at least explained his participation in it and thus constitute extraordinary circumstances which should dispel the presumption that his conviction imparts to his application, and second, that the severity of the crime for which he was convicted should be compared to his minimal role in the conspiracy, thereby undercutting the significance of that conviction. The Board finds neither argument persuasive.

Both the Applicant and his brother Greg were born in the United States and are U.S. citizens. T. at 32. Indeed, the Applicant served in the United States Air Force from 1982 to 1988 and was honorably discharged. T. at 34 & Board Exh. 7. The Applicant's father, however, is Hungarian, who only relocated to the United States after his role in the 1956 Hungarian uprising forced him to flee the country. When Hungary rejected its communist government in the late 1980's, the Applicant's father returned to his native country, rather abruptly, apparently, leaving the Applicant and his brother in charge of a hog farm in Marana, Arizona which the Applicant contends was failing. T. at 32, 34-35. It was, he says, to help out his brother and a neighbor, whose farm was also failing, that he agreed to lend his credit cards and services as an intermediary to the marijuana smuggling operation in which his brother was already active as a broker.<sup>3</sup> T. at 36-38. According to the Applicant<sup>4</sup>, this participation went on for less than two

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<sup>3</sup> The Applicant is also a trained pilot. He had to surrender his license upon being convicted in 1998 but contends that the FAA determined he did not use his license in furtherance of the conspiracy because his license was not permanently revoked. T. at 39-40 & App. Exh. 3. He testified that he is now eligible to have the license reinstated and has applied to do so

years and he and his brother had already terminated their participation in the conspiracy at the time they were indicted. T. at 41, 44, 101.

When the Applicant decided to join his brother's criminal enterprise he was almost 30 years old and knew full well what he was doing, regardless of how big or small his role was. T. at 101. His explanation that he was just trying to help his brother, while perhaps true, does not excuse the fact that the way he chose to do so was to join a large criminal enterprise involving the smuggling into Arizona and sale of large amounts of marijuana to other criminal groups on the East Coast and to facilitate his brother's not insubstantial role as the broker between the two ends of the conspiracy.

The Board does not have any reason to doubt, however, the Applicant's testimony that the magnitude of his role (or lack thereof), was taken into consideration when he was sentenced<sup>5</sup> and accounts for the fact that, other than the four days pretrial detention he served when arrested, the Applicant received and served no jail sentence for this significant federal offense.<sup>6</sup>

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because, he stated, he wants to fly seaplanes in Maine. T. at 126. Regardless of what the FAA found, the Applicant's testimony is clear that he flew himself in and out of the airport near the Marana farms numerous times, T. at 98, for the primary objective of checking his local post office box but also to set up telephone contacts between his brother and Alan Jones, another co-conspirator. T. at 142. He delivered cash to Jones on at least one of these occasions. T. at 93.

<sup>4</sup> The Applicant's accounts of precisely when he began his participation and when he ended it varied from statement to statement and were one of the pieces of evidence relied upon by the Board's Counsel in arguing the Applicant lacked candor. *See* discussion at Part II *infra*.

<sup>5</sup> The Applicant testified that his probation officer told him that his sentence would be calculated based on attributing between 1600- 2900 pounds of marijuana to his participation in the conspiracy. T. at 100.

<sup>6</sup> This result, however, has not necessarily had a favorable effect on the Applicant. One of the aspects of the Applicant's presentation the Board found most troublesome and difficult to overcome was the almost conditional sense of responsibility the Applicant accepted for the crime

**II. Whether a reasonable amount of time has passed since the Applicant's conviction and completion of sentence and whether there is evidence of complete rehabilitation based on the Applicant's subsequent history.**

The Applicant quite rightly pointed out that although he was indicted in 1994 and signed a plea agreement in 1996, he agreed to have his sentencing postponed in order to cooperate with the investigation being conducted by federal authorities. T. at 49-50. He was under constant pretrial supervision during this period. *Id.* at 52. After his sentencing in 1998, he complied fully with its terms and was even released early from probation. T. at 124-25. The Applicant has run several export and real estate businesses, both concurrently during the period he was involved with the conspiracy and subsequent to that time. He has never run afoul of the law in these enterprises. He does not recall ever being convicted of any other offense in the last ten years, such as speeding. T. at 157.

He also admitted that he was under court supervision for this entire time and was in law school from the time he was released from probation in 2002 through his graduation the following year. T. at 120-121. Indeed, the Rule 9 panel questioned whether a reasonable time had passed since Applicant's completion of his sentence-- time sufficient to assess Applicant's moral character when he was not under constant supervision-- and part of what gave that panel pause was the Applicant's lack of complete candor in presenting facts in his application.

There were omissions in the application. For example, the Applicant did not disclose an arrest for possession of marijuana which occurred on July 29, 1994. *See* Board Exh. 16; T. at 57.

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he committed. The evidence the Applicant chose to cite to support his argument that extraordinary circumstances overcame the presumption his conviction raised, frankly, posed more questions about the Applicant's rehabilitation than it answered for the Board.

Although the Applicant stated in his application that the documents he attached (none of which revealed this arrest) were the only ones in his possession, Board Exh. 7, in fact when questions were raised about this arrest and the Applicant's failure to disclose it, the Applicant was able to have his brother go through other old files still in Arizona and find information about this arrest. T. at 131-132. He did not ask his brother to search for any other files. T. at 133. The Applicant did explain and the record showed that the arrest was pretextual—the stop having been orchestrated as part of the customs agents' investigation into the drug conspiracy, the charges were dismissed on that basis and he did not disclose it because he considered the incident as being part of the larger criminal proceedings relating to his conviction, which he did disclose. T. at 62-64 & App. Exh. 1.

Several misstatements were made on the Applicant's application for admission to the Maine Bar. On Board Exh. 7 (the Maine application), Form 5, Record of Criminal Cases, the Applicant represented that the date of the incident or time period involved in his criminal conviction was 1990-1991 which he admitted was incorrect (the period was from 1992 or thereabouts through part of 1994). T. at 108. *See also* T. at 74, 136-144; 161-62; *compare* Board Exh. 13 (last criminal act in May 1994). He had no explanation for this mistake but noted, as he did with many such discrepancies, that the true dates were readily ascertainable from the official documents (few of which, of course, were provided by him). For another example, the Applicant also represented on his Maine application that he had been released from probation on March 21, 2001—a year earlier than the date of his actual release and two years before he was scheduled to be released. Board Exh. 7. The date was problematic because the Applicant had submitted the same statement that same month (which he drafted on a home computer) to the



Massachusetts Board but the statement submitted to Massachusetts had the correct date.

*Compare* Board Exh. 6; T. at 116. The Applicant testified that the change was simply an editing mistake and that since he also submitted a copy of the court document authorizing his early release which did have the correct date, there was corroborative proof he intended no deception. T. at 109, 117.

The Applicant's description of his offense was exceedingly brief and less than informative about the sheer scale of the enterprise with which he involved himself. He contended he had no access to his case file, Board Exh. 7, Form 5 attachments, because it was sealed, T. at 110-111, but he also made no efforts to seek access to the documents, *id.* (*and see also* comments above relating to the specificity of the requests made to his brother). Assistant Attorney General Knowlton was able to obtain the court documents with a simple motion.

The Applicant was also vague when it came to acknowledging his ownership of property used in and involved with the conspiracy. He contended his name was on the Denver property his brother moved to in 1993 or 1994 but that he did not own it. T. at 46-47. He testified that he and his brother liquidated the Marana farm property to pay the debt, T. at 43 (*and see* Board Exh. 13, brothers allowed property to be foreclosed upon and auctioned off). He was not really sure he had any ownership interest in the property, however, T. at 122, *see also* T. at 129. He was absolutely sure the foreclosure proceedings never required any kind of legal procedure, T. at 124, and that he had never been a named party in any civil proceedings.

While the Applicant did disclose the fact of his conviction when applying to law schools, he underplayed his involvement and flippantly concluded that while selling drugs ostensibly to

save the farm provided financial relief at the time, in retrospect, the only ones who benefitted were the pigs at the farm, the attorneys and the government. Board Exh. 13.

The Applicant did not disclose his conviction to any of the attorneys who employed him while he was in law school, T. at 163; nor did he disclose his conviction to the Maine attorney who offered him a job if he passed the Maine bar, at least until this Board held up issuance of the Applicant's Certificate pending this hearing. T. at 172-73.<sup>7</sup>

At various points, the Applicant certainly did not appear to fully comprehend the nature of his burden in these proceedings. He submitted the barest minimum of information, believing that the Boards of Massachusetts and Maine would discover the rest when they conducted a full analysis of whatever particulars were necessary. T. at 115-116. *See also* T. at 64 (in explaining why he did not report his arrest for possession: . . .I expected wholeheartedly that the State of Maine the Board of Bar Examiners [*sic*] would look into the conviction, ascertain the exact terms of sentencing, ascertain all the unlawful activity that that fit under the umbrella of the conspiracy. ) Since Massachusetts never asked any questions, its Board was never given any particulars . T. at 115, 118 (did not provide copy of criminal complaint to Mass. Board).

The Board deliberated at length at the conclusion of the evidence. Members were troubled by the various omissions and misstatements which Asst. Attorney General Knowlton did an exemplary job in identifying and documenting for them, but also decided after listening to and observing the Applicant that he was probably motivated more by shame and embarrassment

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<sup>7</sup> Although initially very upset about the omission, especially since in the attorney's opinion the Applicant failed to consider what impact the information might have on the attorney's own reputation, to the Applicant's credit, this attorney appeared and testified for the Applicant at the hearing. T. at 173-175.

than by a desire to deceive. Given the length of time which has passed since the incidents giving rise to the criminal proceedings, the Applicant's now settled lifestyle which has for some time included a family, the absolute dearth of evidence that the Applicant has ever been involved in any other transgressions despite his ongoing involvement in a variety of businesses which might provide opportunities for such, his complete cooperation with federal authorities which resulted not only in a sentence which can only be described as minimal and his early release from even that *de minimis* restraint, the Board finds that the Applicant has cleared the hurdle of overcoming the presumption against a finding of good moral character and shown that, in these circumstances, a reasonable amount of time has passed since his conviction and completion of sentence and there is evidence of complete rehabilitation based on his subsequent history.

The Board also finds, however, that the Applicant almost missed that hurdle mostly due to his own overly technical efforts to keep licensing authorities and other lawyers from knowing the full truth about his background. The Applicant was almost too clever for his own good. Candor with courts and clients is a quality integral to professionalism at the bar. *E.g.* Maine Bar Rule 3.2, 3.4 & 3.7. It is because of the Board's concerns about the Applicant's lack of complete candor that it is taking the step of detailing its reasons for issuing a Certificate to him: the Applicant must understand that his past and specifically the fact of his conviction are matters which he may not conceal and which Maine people are entitled to know about if he is to be given a license to practice law in this state.

The Decision is:

A Certificate of Qualification shall be issued to Miklos Pongratz, accompanied by this Decision which also shall be forwarded to the Maine Supreme Judicial Court with notice that the Certificate has been issued and, pursuant to M.Bar Adm.R. 9(d)(5)(B), made available to the public by posting it on the Board's internet site.

All members of the hearing panel concurring,

For the Board,

Date:

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Catherine R. Connors, Esq.,  
Chair