

Filed May 16, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 12-R-15449
)	
JOSEPH LEIB SHALANT,)	OPINION
)	
Petitioner for Reinstatement.)	
_____)	

In 2006, the California Supreme Court disbarred Joseph Leib Shalant in his fifth discipline case; that same year, the federal district court ordered him reciprocally disbarred, which took effective in 2009 after an unsuccessful appeal. Shalant filed a petition for reinstatement in the hearing department in July 2012. The judge denied it, finding Shalant did not prove “his rehabilitation or the moral qualities required to be reinstated to the practice of law.” The judge specifically found that Shalant refused to accept responsibility for past wrongdoing, failed to promptly pay restitution, and committed additional misconduct after his disbarment, including violating an order that designated him as a vexatious litigant.

Shalant seeks review. He argues he proved his rehabilitation, as evidenced by his prompt payment of restitution, his refusal to admit wrongdoing he does not believe he committed, and testimony from his character witnesses. The Office of the Chief Trial Counsel of the State Bar (OCTC) supports the hearing judge’s decision.

After independently reviewing the record under rule 9.12 of the California Rules of Court, we find the hearing judge’s 42-page decision presents a detailed and objective summary of the evidence (including Shalant’s five prior discipline cases) and soundly applies governing law. We fully adopt it, and summarize the significant findings.

I. PROCEDURAL HISTORY

Shalant's first two attempts to seek reinstatement were unsuccessful due to deficiencies in his petitions for reinstatement. He withdrew the first petition because he failed to take and pass the Attorneys' Examination before filing for reinstatement, as required under rule 9.10(f)(3) of the California Rules of Court. After passing the exam, he filed his second petition, which was denied. He did not comply with rule 5.441 of the Rules of Procedure of the State Bar, requiring that, prior to filing his petition, he pay all discipline costs and reimburse all payments made by the Client Security Fund (CSF) associated with his misconduct.¹ After Shalant fulfilled those financial obligations, he filed his third petition for reinstatement, resulting in this proceeding.

II. SHALANT'S PRIOR DISCIPLINE CASES

Shalant has amassed a record of five disciplinary cases, stipulating to the misconduct in two. He has been involved in the State Bar's disciplinary process for 28 of his 38 years of practice. His misconduct adversely affected 15 clients in ten separate matters.

A. **First Discipline Case: Private Reproval (1979)** ***In the Matter of Joseph Leib Shalant (January 11, 1979, Cal. State Bar Ct. No. L.A. 2932)***

In January 1979, Shalant was privately reproved for failing to competently perform while representing a couple and their two minor children in a personal injury matter in 1976. The couple was unhappy with the settlement Shalant negotiated and refused to sign required releases. In turn, Shalant refused to take further action in the case. The court scheduled a hearing to dismiss the case because Shalant did not file a certificate of readiness. Shalant never informed the couple about the hearing or that he would not attend it. The couple filed a State Bar complaint after the court dismissed their case. No aggravation was discussed, but Shalant was credited for acting in good faith and because the clients suffered no harm.

¹ CSF is a victim's restitution fund created to mitigate financial injury to clients resulting from dishonest conduct by California attorneys.

B. Second Discipline Case: Public Reproval (1983)
***Shalant v. State Bar* (1983) 33 Cal.3d 485**

In a published opinion in February 1983, the Supreme Court publicly reproved Shalant for failing to communicate with a client in 1979, and for indirectly communicating with a represented party in 1980. Shalant had settled a personal injury case for a client who had been previously represented by another attorney. The former attorney rejected the fee Shalant unilaterally decided to give him and sued Shalant and the client. Shalant did not mention the lawsuit to the client, who remained unaware of it for nearly a year. Ultimately, the client retained new counsel to defend against the lawsuit, and filed a cross-complaint against Shalant. Thereafter, Shalant inappropriately tried to communicate with the former client to resolve the matter. The Supreme Court considered Shalant's prior discipline in aggravation but did not discuss any mitigation.

C. Third Discipline Case: Two-Year Stayed Suspension (1994)
***In the Matter of Joseph Leib Shalant on Discipline* (August 31, 1994, S040608)**
Cal. State Bar Ct. Nos. 90-O-12685; 90-O-15979; 91-O-02814; 92-O-12927 (Cons.)

Effective September 1994, the Supreme Court imposed a two-year stayed suspension on Shalant and placed him on probation for two years for misconduct that he stipulated to in six client matters from 1984 to 1991. Shalant had commingled funds, communicated with a represented party, and failed to employ means consistent with the truth when he falsely witnessed a deceased client's signature on an insurance release. He also failed to perform legal services competently in three cases where he negotiated and disbursed settlement funds on behalf of deceased clients without notifying the insurance companies of their deaths. As mitigation, the parties stipulated to cooperation, community service, delay in prosecution, and the passage of considerable time since the misconduct. Despite Shalant's prior record of discipline, the parties did not stipulate to any aggravating factors.

D. Fourth Discipline Case: Private Reproval (2000)
In the Matter of Joseph Leib Shalant (May 19, 2000, Cal. State Bar Ct. No. 96-O-00694)

Effective June 7, 2000, the State Bar Court privately reproved Shalant with conditions for a period of one year. Shalant stipulated that he failed to obey a court order in 1984, in violation of Business and Professions Code section 6103, when he settled the personal injury claims of three minors. Shalant had dismissed their claims without obtaining required court approval of the settlement. The parties stipulated that Shalant's prior disciplinary record was an aggravating factor and, in mitigation, the clients suffered no harm and OCTC excessively delayed disciplinary proceedings.

E. Fifth Discipline Case: Disbarment (2006)
In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829

In 1998, Shalant accepted a \$5,000 fixed fee from Stuart Smith to research a possible medical malpractice claim. Shalant filed a \$10 million lawsuit on Smith's behalf without consulting him. Shalant later informed Smith of the case and of his intention to pursue it on a contingency fee basis under the Medical Injury Compensation Reform Act (MICRA). In June 1999, three days before Smith's deposition, Shalant told his client that he would not handle the case without a fee modification because he feared the case might not be successful. He demanded a non-refundable \$25,000 fee that he would credit against any future contingency fee. Smith initially declined, but Shalant ultimately coerced him into paying the fee. Smith later fired Shalant and retained new counsel, who sought return of the \$25,000 as it violated MICRA limits. When Shalant refused to return the money, Smith filed a State Bar complaint.

The hearing judge in the disciplinary trial found Shalant culpable of charging an illegal fee under MICRA, and of an act involving moral turpitude for pressuring Smith into modifying the fee agreement and paying the \$25,000 fee. The judge recommended a two-year actual suspension and four years of probation.

Shalant appealed to this court. In a published decision, we agreed with the hearing judge that Shalant had charged an illegal fee and violated his fiduciary duties by demanding additional money, a coercive act that constituted moral turpitude. We also agreed that this misconduct was minimally mitigated by community service and aggravated by indifference and client harm. However, we disagreed with the two-year suspension and recommended disbarment, finding that Shalant’s “extended history of inattention to his fiduciary responsibilities to his clients, together with his failure to learn from his past misdeeds, create[d] a grave risk that additional harm will result to his clients.” (*In the Matter of Shalant, supra*, 4 Cal. State Bar Ct. Rptr. 892, 842.) The Supreme Court denied Shalant’s petition for review and ordered him disbarred effective January 13, 2006.

III. LEGAL PRINCIPLES

Under rules 5.441 and 5.445 of the Rules of Procedure of the State Bar of California, Shalant must do the following before he may be reinstated to the practice of law: (1) pass a professional responsibility examination within one year prior to filing the petition; (2) establish rehabilitation; (3) establish present moral qualifications for reinstatement; (4) establish present ability and learning in the general law by providing proof of passing the Attorney’s Examination by the Committee of Bar Examiners within three years before filing the petition; and (5) prior to filing the petition, pay all discipline costs and reimburse payments made by CSF as a result of his prior misconduct. Shalant must prove these requirements by clear and convincing evidence.² (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Since the hearing judge correctly found that Shalant passed the required examinations and paid CSF and his discipline costs, the only disputed issues are whether Shalant proved he is rehabilitated and has the present moral

² Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

qualifications for reinstatement. To do so, Shalant must present overwhelming proof of reform (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547), which we consider in light of the moral shortcomings that led to his disbarment. (*Roth v. State Bar* (1953) 40 Cal.2d 307, 313; see *In re Glass* (2014) 58 Cal.4th 500, 520 [the more serious the misconduct, the stronger the showing of rehabilitation must be].) Like the hearing judge, we find that Shalant did not meet his burden.

IV. SHALANT'S REHABILITATION EVIDENCE

A. Character Witnesses

Shalant presented 21 character witnesses who testified about his legal acumen, humility, and honest character. They included two judges, two former legislators, eight attorneys, a medical doctor, a publisher, five former clients, his former legal secretary, and his ex-wife's son. One judge knew Shalant for nearly 50 years and testified that he is an honest, well-respected attorney of high integrity. Another judge who has known Shalant over 30 years testified that, despite his disbarment, he still believed Shalant is "a man of high integrity" and "good moral character." A former congressman who has known Shalant for 40 years testified that Shalant is "straightforward, candid, honest, and a person of very good character." The attorney witnesses held similar opinions.

Several witnesses testified that Shalant has become more humble and willing to consider the perspective of others since his disbarment. However, many of these witnesses also offered character testimony during Shalant's 2005 disciplinary proceeding and, despite his disbarment, believed that his prior misconduct neither violated MICRA nor involved moral turpitude. Some witnesses commented that Shalant proved his change for the better because he hired an attorney to represent him in this reinstatement proceeding, something he had not done before. However, they were not aware that Shalant was self-represented until a few days before trial.

B. Shalant's Testimony

Shalant characterized himself as a changed man, humbled by his disbarment. He explained that the experience made him more patient and introspective, citing his closer relationship to his stepson and his reconciliation with his former wife. He also pointed to his charitable acts, such as making sizable monetary gifts to Tel Aviv University, the Technion, the Washington Institute, the Jewish Federation Council, and UCLA Law School. And he described traveling to India where he contributed money to improve the lives of impoverished farmers.

Although Shalant claimed he was rehabilitated, some of his testimony is contrary to his professed reform. For example, he dismissed his stipulated discipline in 2000 as “really not a Bar issue” because he believed he did not commit any misconduct in that matter. Further, he felt his disbarment was a “grave injustice” because he disagrees with the finding that he violated MICRA: “It was wrong on the law and it was wrong on the facts.” Despite five discipline cases, Shalant has concluded that he “never breached a fiduciary duty to a client,” and that “it’s been 20 years . . . since [he] had a real Bar issue . . . where [he] did something wrong.”

V. OCTC'S REBUTTAL EVIDENCE

The State Bar presented evidence rebutting Shalant's evidence of rehabilitation and present moral qualifications, including that he (1) accepts no responsibility for his past wrongdoing, (2) failed to voluntarily pay restitution, and (3) committed misconduct after disbarment.

A. Shalant's Refusal to Accept Responsibility for Past Misconduct

Shalant does not accept the subsequent adverse court decisions that stemmed from his misconduct in his disbarment case. In making his position known to the reviewing courts and in his present petition for reinstatement, he has expressed disrespect for the courts and impugned the integrity of certain judges who ruled against him.

1. The Federal Courts

In March 2006, the United States District Court for the Central District of California sought to impose reciprocal discipline on Shalant due to his California disbarment. Shalant opposed it on the grounds that he committed no misconduct and that the hearing judge had conspired to disbar him. The district court rejected his arguments and ordered him disbarred, finding that he lacked evidence to prove the hearing judge committed any misconduct.

Shalant appealed the federal disbarment order to the Ninth Circuit Court of Appeals. In addition to the arguments he raised in the district court, Shalant claimed that the basis for his stipulated discipline in 2000 was erroneous. He described the district judge's actions as "outrageous" and "draconian," and the State Bar Court judge's actions as "imperious." On January 8, 2009, the court of appeals affirmed the district court's disbarment order and denied Shalant's requests for panel rehearing and rehearing en banc. Shalant's federal court disbarment became effective March 2, 2009.

2. The Superior Court

On March 23, 2010, Shalant filed a petition for writ of mandate in Los Angeles County Superior Court to set aside a requirement that he reimburse CSF for monies paid to Smith in his disbarment case.³ Shalant reasserted the same arguments the federal courts had rejected more than a year earlier — i.e., he committed no misconduct in the Smith case and his stipulated discipline in 2000 was erroneous. More importantly, Shalant again alleged the hearing judge conspired to disbar him and "was thoroughly corrupt and dishonest." He also proclaimed that the California Supreme Court did not meaningfully review his case or arguments.

³ Rather than refund Smith the illegal fee he had collected, Shalant sued him in Los Angeles County Superior Court for additional fees on January 27, 2006, which was two weeks after his disbarment. Since Shalant refused to repay Smith, CSF paid him \$25,000 on March 26, 2006.

The Los Angeles County Superior Court denied Shalant's petition on December 16, 2010. It evaluated Shalant's contract in the Smith case and concluded it violated MICRA. It also found our decision in *In the Matter of Shalant, supra*, 4 Cal. State Bar Ct. Rptr. 829 to be "a reasonable interpretation of the law" and not "merely a different interpretation" of it. The court considered Shalant's allegation against the hearing judge to be "grasping at straws" and "at best excessive and outlandish."

3. Shalant's Reinstatement Petition

In his petition for reinstatement, Shalant reiterated the same unsuccessful arguments he asserted before the California Supreme Court, the federal courts and the superior court. He also claimed the Supreme Court did not provide "legitimate or actual appellate review" of his appeal in the Smith case and described the Supreme Court's action as "abject capriciousness." Additionally, Shalant questioned for the first time the propriety of the Supreme Court's approval of the finding that he improperly communicated with a represented party in his 1983 discipline.

B. Shalant's Serious Post-Disbarment Misconduct

1. False Declaration and Client Trust Account (CTA) Violations

After his disbarment, Shalant committed misconduct involving his CTA because he: (1) falsely declared he distributed all former clients' funds; (2) commingled at least \$10,000; and (3) cannot account for approximately \$63,000 still in his CTA. When the Supreme Court disbarred Shalant in 2006, it required him to comply with former rule 955 of the California Rules of Court.⁴ On January 31, 2006, Shalant declared under penalty of perjury that he delivered to his clients all property to which they were entitled. However, this was not true. After he filed his declaration, he disbursed approximately \$25,000 to eight clients between March 2006 and

⁴ This rule is currently rule 9.20, and it imposes duties on disbarred attorneys that include notifying clients of disbarment and disqualification to further act as their attorney, delivering property to clients to which they are entitled, and refunding unearned fees.

May 2010. Since Shalant made no deposits into his CTA after disbarment, the \$25,000 was in his CTA when he filed his declaration. Therefore, he falsely declared that he had returned all property to his clients.

Shalant also commingled funds in his CTA after disbarment. He admitted that before his disbarment became effective in 2006, he was entitled to withdraw \$10,000 from his CTA as his own fee. However, he did not withdraw the fee until after OCTC made his CTA an issue in his 2013 reinstatement proceeding.

Nearly seven years after his disbarment, Shalant still maintained \$106,552.82 in his CTA. Besides the \$10,000 that he admitted commingling, Shalant explained that nearly \$33,000 belonged to a client who had not cashed a pre-disbarment distribution check. He could not account for the remaining \$63,000 in his CTA; he testified he did not know why it was still in his CTA, and presumes it is not his. He hopes “at some point when I have the time, and my bookkeeper Marla Brown has the time, we’ll try to figure it out and see that they all get their money.”

2. Conviction for Two Counts of Contempt for Disobeying a Court Order

On April 22, 2009, a superior court found Shalant guilty of two counts of contempt for his failure to pay court-ordered spousal support. Shalant withheld support payments to try to force his wife to sign loan documents for a line of credit. Ultimately, Shalant paid the full amount owed, which was \$60,365.50, and avoided serving jail time.

At his disciplinary trial, Shalant contended he could not meet his support obligation without obtaining the line of credit. The hearing judge found his testimony lacked credibility since Shalant had an adjusted gross income of \$317,000 in 2009. In this proceeding, Shalant continued to justify his refusal to pay the court-ordered support as a reasonable means to “bring [his wife and her attorney] to their senses.”

3. Violation of Vexatious Litigant Prefiling Order

On February 26, 2002, four years before his disbarment, a Los Angeles County Superior Court judge declared Shalant a vexatious litigant and ordered that he be “prohibited from filing *any* new litigation in propria persona in the courts of California without approval of the presiding judge of the court in which the action is to be filed.” (Italics added.) After his disbarment, Shalant violated this order in July 2009 when he filed a cross-complaint for damages against a former associate in small claims court without first obtaining court approval. Upon discovering that Shalant was on the vexatious litigant list, the judge assigned to small claims ordered Shalant to obtain consent to file his cross-claim from the supervising judge of the Santa Monica Courthouse. Shalant made the request, which was granted on July 20, 2009.

4. Inaccurate and Misleading Disclosures in Petition for Reinstatement

In support of his petition for reinstatement, Shalant had to provide information on a variety of topics. He was asked if he had ever been disciplined in any jurisdiction, where he had been admitted to the practice of law, and whether he was a party or claimed an interest in any civil case or bankruptcy proceeding since disbarment. In response, Shalant did not divulge either his federal disbarment effective March 2, 2009,⁵ or his lawsuit against CSF. Despite these nondisclosures, Shalant declared under penalty of perjury that his responses were true and correct.

VI. DISCUSSION

For reinstatement after disbarment, rehabilitation “may be manifested solely by a ‘state of mind’ which may not be disclosed by any certain or unmistakable outward sign.” (*In re Andreani* (1939) 14 Cal.2d 736, 749.) Whether rehabilitation exists “may be difficult to

⁵ The hearing judge did not rely on this nondisclosure to deny Shalant’s petition. However, we consider it as properly admitted evidence that establishes Shalant’s lack of rehabilitation.

establish affirmatively, but its *nonexistence* may be ‘proved’ by a single act.” (*Ibid.*, italics added.) Here, several post-disbarment acts of misconduct demonstrate Shalant is not rehabilitated: (1) his refusal to acknowledge any wrongdoing; (2) his failure to voluntarily pay restitution to Smith; and (3) the absence of sustained exemplary conduct.⁶

A. Shalant Refuses to Acknowledge his Wrongdoing

A petitioner seeking reinstatement “must show a proper attitude toward his or her misconduct. [Citations.]” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317.) While remorse alone does not demonstrate rehabilitation, “a candid admission of misconduct and full acknowledgement of wrongdoing [is] a step in the process” (*In re Conflenti, supra*, 29 Cal.3d at p. 124.) Shalant has not shown that he appreciates the gravity of his misconduct in several ways. First, following his disbarment, he continuously argued before the federal and state courts that he committed no wrongdoing in the Smith matter and that his *stipulated* discipline in 2000 was erroneous. Second, in his current reinstatement proceeding, he challenged the validity of his 1983 discipline for the first time. Most importantly, he repeatedly displayed disrespect for the courts by claiming the hearing judge conspired to disbar him, attacking the integrity of the district court judge, and asserting that the Supreme Court acted capriciously because it did not legitimately review his appeal.

We reject Shalant’s argument that his refusal to become a false penitent by accepting his prior misconduct supports, rather than rebuts, his rehabilitative showing. To the contrary, Shalant’s adamant denial of various courts’ findings “reflects a seeming unwillingness even to

⁶ See, e.g., *Feinstein v. State Bar, supra*, 39 Cal.2d at p. 548 (applicant’s repeated claim that he committed no wrong despite his criminal conviction evidenced lack of rehabilitation); *In re Andreani, supra*, 14 Cal.2d at p. 750 (whether failure to make financial amends reflects negatively on rehabilitation depends on ability to pay and attitude of “willingness, earnestness and sincerity” toward restitution); *In re Conflenti* (1981) 29 Cal.3d 120, 124 (truer indication of rehabilitation will be presented if petitioner can demonstrate sustained exemplary conduct over extended period of time).

consider the appropriateness of his statutory interpretation or to acknowledge that at some point his position was meritless or even wrong to any extent. Put simply, [Shalant] went beyond tenacity to truculence.” (*In re Morse* (1995) 11 Cal.4th 184, 209.) His disrespect for the courts and his lack of remorse prove he has not shown rehabilitation. (See *In the Matter of Ainsworth* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 894, 899 [petitioner’s continued denial of wrongdoing in writs and pleadings refuted showing of rehabilitation].)

B. Shalant Failed to Voluntarily Pay Restitution

“Restitution is fundamental to the goal of rehabilitation.” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) When misconduct “resulted in appreciable pecuniary loss to the applicant’s clients, [we] may properly consider the absence of an applicant’s efforts to make any restitution as an indicator of rehabilitation. [Citation.]” (*Ibid.*) Shalant refused to repay Smith the \$25,000 illegal fee, and instead unsuccessfully sued him for additional fees, forcing CSF to compensate Smith.

Shalant contends he “promptly paid the CSF” after he exhausted his avenues of appeal. He is incorrect. After he unsuccessfully sued CSF in superior court, he never sought review beyond the court of appeal and therefore did not exhaust all avenues of appeal. Although Shalant had the means to reimburse CSF and pay his outstanding disciplinary costs,⁷ he did not do so until his second reinstatement petition was dismissed due to these unpaid obligations. Having failed to promptly repay Smith and reimburse CSF demonstrates Shalant’s poor attitude toward the importance of restitution. (*In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 674 [applicants for reinstatement are judged by their ability to make restitution and their attitude toward payment].) Such evidence precludes a finding of rehabilitation.

⁷ From 2009 to 2011, Shalant’s adjusted gross income was \$317,000, \$616,000, and \$809,000, respectively.

C. Shalant’s Post-Disbarment Conduct Is Not Exemplary

The Supreme Court disbarred Shalant after he breached his fiduciary duty to a client in a manner that involved moral turpitude. For such serious misconduct, Shalant must prove his rehabilitation by “a lengthy period of exemplary conduct. [Citation.]” (*In the Matter of Ainsworth, supra*, 3 Cal. State Bar Ct Rptr. 894, 899 [describing rehabilitative showing required for misconduct that included breach of fiduciary duties and moral turpitude].) Shalant failed to make this showing.

Instead, he committed serious misconduct by filing a false declaration in 2006, violating a spousal support order and a vexatious litigant prefiling order in 2009, and commingling funds and making misleading disclosures in his current petition for reinstatement in 2013. We find that Shalant has failed to establish exemplary conduct for any length of time.

Shalant’s contention that there is no factual support to believe he would commit future misconduct wholly ignores the record. He did not establish his remorse, failed to display respect to the courts, and refuses to accept culpability in three of his five disciplinary matters. Rather than learn from his past misdeeds, he continues to repeat them, as evidenced by his post-disbarment misconduct. Shalant poses a grave risk of future misconduct if reinstated.

D. Shalant Did Not Prove He is Rehabilitated or Fit to Practice Law

Shalant wrongly argues that his testimony and that of his character witnesses “were indeed persuasive of rehabilitation.” We recognize “that testimonials from acquaintances, friends and employers with reference to their observation of the daily conduct of an attorney who has been disbarred are entitled to ‘great weight.’ [Citations.]” (*In re Menna* (1995) 11 Cal.4th 975, 988.) But no matter how laudatory or relevant the character testimony, it does not alone establish the requisite rehabilitation. (*Ibid.*) In fact, Shalant’s own testimony demonstrates his lack of rehabilitation. And, despite his stipulations to prior misconduct, Shalant stated he firmly

believes he never breached a fiduciary duty to a client or committed any misconduct in 20 years. The hearing judge correctly concluded that Shalant's character testimony does not prove his rehabilitation or present moral fitness to practice law. When the "record fails to show that [a petitioner] has sufficiently rehabilitated himself to be entrusted with the responsible duties of an attorney at law, his application for reinstatement should be denied. [Citation.]" (*Wettlin v. State Bar* (1944) 24 Cal.2d 862, 869.)

VII. CONCLUSION

We affirm the hearing judge's decision and deny Shalant's petition for reinstatement.

PURCELL, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.