ORIGINAL

IN THE SUPREME COURT OF OHIO

In re:	:	
Application of	:	Case No. 2014-1555
Joseph Victor Libretti, Jr.	:	

APPLICANT JOSEPH V. LIBRETTI, JR.'S MOTION TO STRIKE
PURSUANT TO S.Ct.Prac.R. 12.01 and Ohio Civ.R. 12(F)

Now comes the Applicant, Joseph Victor Libretti, Jr. and moves the Court pursuant to S.Ct.Prac.R. 12.01 and Ohio Civ.R. 12(F) for an Order striking the following items from the Panel Report and Recommendation ("Report") in this matter: inaccurate restatements of testimony taken at the hearing, an inaccurate summary of expenditures that Applicant objected to at the hearing, and an unsourced assertion not based on any evidence presented at the hearing.

Applicant realizes that the record in this matter comprises approximately 800 pages and that some errata are perhaps inevitable. Nevertheless, it is respectfully requested that the enumerated items be stricken, as inaccuracies cannot be material to the present matter, and these inaccuracies in particular are scandalous and highly prejudicial to Applicant.

Respectfully submitted,

Deborah Zaccaro Hoffman (0071599)
Law Office of Deborah Zaccaro Hoffman
The Jefferson Centre Building
5001 Mayfield Road, Suite 201
Lyndhurst, Ohio 44124
(216) 381-3400 (o)
(216) 381-3856 (f)
dzh@dzh-law.com (e)

MEMORANDUM

Joseph Libretti was approved by the Admissions Committee Cleveland Metropolitan Bar Association to register as a candidate for admission to the practice of law on June 6, 2013. Subsequently a hearing was held before a panel of the Board of Commissioners on Character and Fitness on November 15, 2013 and January 7, 2014. The resulting Report certified to this Court on September 5, 2014 recommended the applicant not only be disapproved but that he never be permitted to re-apply.

The Report, distilled from a record of approximately 800 pages, contains inaccurate restatements of testimony from the hearing, an inaccurate summary of expenditures that Applicant objected to at the hearing, and an unsourced assertion not based on any evidence presented at the hearing. They are:

1. That Applicant ran profits through his bank account in order to help another individual avoid child support garnishments (Report 3);

The only evidence on the record is Applicant's testimony that he along with another individual received a share of sales profits, and that *Applicant's own share* would have been at risk of seizure had it been initially placed in that individual's account instead of his own (Tr. 95). The other individual was free to take his share of the sales profits and apply it to any child support arrearages that were his responsibility.

No testimony or evidence was presented that Applicant's motivation was to assist another individual in avoiding child support garnishments and hence there is no basis for this conclusion.

2. That Applicant sold a legal product and chemicals to manufacture it to wholesalers located in Colorado (Report 4).

There is no evidence on the record to support this assertion. Testimony was given that the product was sold to wholesalers in Wyoming (Tr. 400-401).

3. That Applicant expended in excess of $360,000 to purchase materials for later resale (Report 8, CMBA Ex. 89);

Applicant's counsel objected to this summary exhibit at the hearing and reserved the right to file a Motion to Strike if it was not corrected (Tr. 669). The exhibit inaccurately summarizes Applicant's expenditures in that it double-counts invoiced amounts with amounts on a funds transfer document that represent payment on the invoice. The summary also refers to a Key Wire Transfer dated 8/6/10 in the amount of $27,500 that allegedly forms part of Ex. 88 pp 1-2, which is another document entirely. There is no 8/6/10 Key Wire transfer among the exhibits. Finally, Applicant testified that between late 2010 and March, 2011, when he ceased all involvement with the legal product in question, materials purchased were shipped to an Arizona LLC which reimbursed him for the cost along with 42% of any profit made based on those materials (Tr. 418-423). Any expenditures listed on this summary exhibit that were subsequently reimbursed would net out at a zero. The exhibit fails to take this into account and instead includes all of the amounts in its "totals expended" (CMBA Ex. 89).

The Report's claim that Applicant expended in excess of $360,000 to purchase materials for resale is simply not accurate, and hence there is no basis for this conclusion.

4. That Applicant was not forthcoming during the bar application process about his sale of a legal product (Report 8) and Applicant's failure to list it on a separate Form 10 in his initial application was "purposeful" (Report 13);

There is simply no evidence in the record to support these assertions. Applicant testified that he discussed his past sale of the product with the Admissions Committee of the Cleveland Metropolitan Bar Association at his interview (Tr. 492). Both local admissions committee members confirmed at the panel hearing that Applicant discussed the sale of the product during his initial interview (Tr. 586, Tr. 603, 652, CMBA Ex. 45 p. 5, CMBA Ex. 46 p. 3, CMBA Ex. 49 p. 4) and one specified that he took that information into consideration in recommending Applicant be approved (Tr. 603, Tr. 606). Applicant's initial interview with the local Admissions Committee lasted close to 3 hours, as opposed to the usual ½ hour (Tr. 650). One member specifically described Applicant as "forthcoming" (Tr. 661) in explaining his decision to recommend Applicant be approved. Applicant provided his bank statements and tax returns to the panel, brought the topic up at the panel hearing (Tr. 88-89, 91, 94, and elsewhere), and discussed the 2011 Schedule C containing reported income with the panel (Tr. 401). While Applicant may have erred in realizing his purchase and sale of a product in late 2010-early 2011 along with the financing assistance he provided to others to sell the product should have

been listed as a "business enterprise" on the Application it is simply not accurate to say that he was not forthcoming regarding his sale of the product during the bar admissions process.

Nothing in the record reflects the conclusion that Applicant was "not forthcoming" regarding his sale of a legal product and that his failure to list it on his Application was "purposeful,"' and hence there is no basis for this conclusion.

5. That Applicant did not disclose his apartment had been searched (Report 10);

Page 1 of CMBA Exhibit 46, completed by one of the interviewers of the local admissions committee, provides that the Applicant reported the following supplement: "Civil litigation he brought in USDC NDOH, Case No. 1:13-CV-00932-DAP seeking compensation and *return for property taken in search* associated with criminal prosecution (for which he was acquitted)." (Emphasis added).

The record reflects that the Report's assertion that Applicant did not disclose his apartment had been searched is blatantly untrue, and hence there is no basis for this conclusion.

6. That Applicant did not include a request made for immunity in response to a question about a grant of immunity "because it would have led to questions" about possession of a chemical (Report 10);

There is absolutely no evidence on the record to support this assertion. Question 20B of the Application inquires "Have you ever been granted immunity from prosecution?" and Applicant responded truthfully as regards an earlier grant of immunity. Since the question did not ask about whether Applicant had ever requested immunity, it would have been inaccurate and untruthful to have answered the question any other way. Even if Applicant erred in not specifically mentioning his 2011 request for immunity in response to a question about a grant of immunity, the record contains no indication that he attempted to conceal information by responding to the question on the application in a straightforward fashion.

There is no evidence on the record to support the assertion that Applicant did not include a request made for immunity in response to a question about a grant of immunity "because it would have led to questions" about possession of a chemical, and hence there is no basis for this conclusion.

7. That Applicant's letter containing a Freedom of Information Act request for any immunity agreement or policy on granting oral immunity contained statements that were "knowingly false" (Report 11)

Applicant's FOIA request indicated it was made "for the purposes of scholarly research and for educational purposes" and "for an educational purpose and not for a commercial purpose." No inquiry was conducted of Applicant regarding the reason for

the phrasing or whether he was using the information obtained for a purpose independent of also providing them to the Board. The panel had no evidence before it to conclude that Applicant's use of the material was commercial or non-educational. It had no evidence before it to conclude that Applicant's statements in his FOIA request were untrue.

No evidence supports the assertion that Applicant's FOIA request contains "knowingly false" statements, and hence there is no basis for the conclusion.

8. That the Report includes an unsourced explanation of a legal product's nature, effect, and potential for harm when none was presented at the hearing (Report 3);

The Report relies on unsourced language in a footnote which asserts that the product in question is a synthetic analogue of a controlled substance but whose effects "can be much stronger" (Report 3), information that could have been introduced at the hearing but was not. The opening statement at the hearing did assert that evidence would be provided to that effect (Tr. 22), but despite diligent efforts during the questioning of Applicant and witnesses (Tr. 190-191, Tr. 272-273, Tr. 275, Tr. 504, none was introduced. Applicant had no opportunity to be confronted with this unsourced statement and to challenge either its trustworthiness or accuracy.

No evidence supports the Report's explanation of a legal product's nature, effect, and potential for harm, and hence there is no basis for its inclusion in the Report as an accurate, reliable, or truthful description.

9. That the legal product sold by Applicant caused harm to anyone or resulted in an effect that was "not positive" (Report 16).

The Report asserts that "Neither the panel nor Libretti can measure the cumulative effect of his conduct" in participating in sales of a legal product. Not one word of evidence was presented to support any effect – cumulative or non-cumulative, positive or negative – that resulted from Applicant's sales of a legal product. Yet the Report opines, "One thing is clear, the effect is not positive." (Report 16).

The Report's claim Applicant's sale of a legal product caused an effect that was "not positive" is not supported by any evidence, and hence there is no basis for the conclusion.

CONCLUSION

Pursuant to Ohio Civ. R. 12(F), a Court may order stricken from any pleading any "insufficient claim or defense or any redundant, immaterial, impertinent or scandalous matter." Applicant submits that inaccuracies cannot be material to the present matter, and these inaccuracies in particular are scandalous and highly prejudicial to Applicant.

WHEREFORE, Applicant requests that the above material be stricken from the record in this case. Alternately, Applicant requests that this matter be remanded to the Board as to the above issues, or to the Admissions Committee of the Cleveland Metropolitan Bar Association to conduct further investigation pursuant to Gov. Bar Rule I(12)(C)(4).

Respectfully submitted,

Deborah Zaccaro Hoffman (0071599)

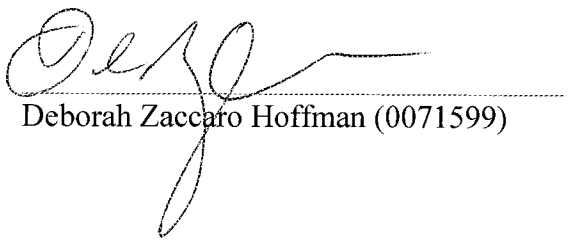
CERTIFICATE OF SERVICE

A true copy of the Motion to Strike has been served by email (as to Paul G. Crist) and by U.S. mail (as to the Bar Admissions Committee) this 7th day of October, 2014 upon the following:

Paul G. Crist (0011894)
2233 Wellington Circle
Hudson, Ohio 44236
pgcrist@yahoo.com
Attorney for Cleveland Metropolitan
Bar Association (CMBA)

Cleveland Metropolitan Bar Association
Bar Admissions Committee
1375 East 9th Street, Floor 2
Cleveland, OH 44114-1785

Respectfully submitted,



Deborah Zaccaro Hoffman (0071599)