IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-718

FLORIDA BOARD OF BAR EXAMINERS IN RE:
SCOTT ELLIOT ITKIN

BOARD FILE NO. 20868

REPLY TO ANSWER BRIEF

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ABREVIATIONS

1. Scott Elliott Itkin, Applicant, will be referred to herein as “Applicant.”

2. Formal Hearing Transcript will be referred to as “T” followed by the page number.

I. Standard of Review

This Court has stated the standard of review for cases arising from the Board of Bar Examiners is as follows:

“Further, when reviewing a recommendation of the Board with regard to whether an applicant should be admitted to the Bar, this Court is not precluded from “reviewing the factual underpinnings of its recommendation, based on an independent review of the record developed at the hearings.” Fla. Bd. Of Bar Exam’rs re McMahan, 994 So2d 335, 337 (Fla. 2006) citing Fla. Bd. of Bar Exam'rs re R.D.I., 581 So.2d 27, 29 (Fla.1991) (quoting Fla. Bd. of Bar Exam'rs re L.K.D., 397 So.2d 673, 675 (Fla.1981)).

II. Applicant’s Proof of Rehabilitation is Extremely Compelling and This Court Should Order He Be Admitted At This Time

Applicant has presented the live testimony of three members of The Florida Bar, Messrs. Rotella, Gleason, and Knee, each of whom have had a continuing relationship with Applicant for 19 or more years. Each of these lawyers were well informed of Mr. Itkin’s conviction and corroborated Applicant’s desire to conduct himself in an exemplary manner and each related personal experiences that
demonstrated that Applicant has so conducted his life since his resignation. (T at 31, 59-60, 93-94). Each of them also testified that they trust Applicant to handle important matters for them. Messrs. Rotella and Gleason, both have also been involved with Mr. Itkin in charitable work where Mr. Itkin has been placed in charge of the money from fund raising efforts. (T at 28 and 55) Mr. Gleason was also involved when Mr. Itkin purchased Mr. Gleason’s mother’s home and she took back a mortgage which was at all times current until it was paid off when Mr. Itkin sold the home to purchase his current home. (T at 54) Messrs. Rotella, Gleason and Knee also testified that Mr. Itkin should be readmitted to the Bar. (T at 30-31, 81-83, 84)

In addition to the live witnesses, Applicant submitted letters to the Board from other lawyers recommending that he be readmitted. (Appendix B Composite Exhibit G) In the letter from Donna Albert, she relates that she has been a member of The Florida Bar in good standing since 1985 and has served on a Bar Grievance Committee in Broward County. Of particular note is that she states she has been asked on a number of occasions to write this type of letter on behalf of other applicants, this is the first time I have agreed to do so. I not only agreed, but offered voluntarily as I feel strongly about Mr. Itkin’s qualifications for admission.”

Ms. Albert states that she contacted Mr. Itkin for tax advice many years ago after being referred to him by a nationally known attorney and:

Mr. Itkin insisted upon making full disclosure of his situation with the Florida Bar and the legal matters leading up to same. Although I preferred not to hear all of the details, Mr. Itkin advised me that he
felt obliged to make full and complete disclosure to me, which he did in a candid and forthright manner. At no time did he attempt to conceal any of the facts and he repeatedly requested that I make enquiries regarding anything I felt I should know. Scott expressed deep remorse for his actions and for the resulting embarrassment to himself, his family, his clients, and those who had trusted him over the years. Before readmission was ever a stated goal, Mr. Itkin sincerely expressed his desire to right his past wrongs in an honorable fashion. At no time did Scott make excuses for his conduct, nor did he attempt to minimize the severity of his wrongdoing.

Remarkably, Scott has never attempted to blame anyone other than himself for anything that has transpired with respect to the criminal or disciplinary matters. As an attorney involved in daily litigation where no-one seems to accept responsibility for their own actions, this is refreshing and unusual.

Following our initial discussion, I retained Scott Itkin to assist with tax matters in a non-legal capacity. His conduct and performance have been exemplary. Scott’s attention to detail, timeliness and concern for the quality of his work has been unsurpassed by any professional I have dealt with in this capacity. This has resulted in my referring clients, family, and friends, all of whom have been extremely impressed by his performance.

In addition to work, Scott has participated actively in charitable organizations raising money for charities such as St. Jude’s. Scott has made clear his desire to give something back to society and he has worked hard to do so.” (Appendix B Composite Exhibit B)

Just as Mr. Itkin told Ms. Albert of his prior criminal conviction and disbarment, Mr. Howard Lieb states in his letter of recommendation that Mr. Itkin told him of them over a decade ago and Mr. Lieb points out Mr. Itkin always took full responsibility for his wrongful conduct and “has worked hard to make up for his transgression both personally and professionally. He has served his community.
through charity work, not to curry favor, but out of genuine belief that it was the right thing to do.” (Appendix B Composite Exhibit G)

Mr. Kevin Flynn also submitted a letter on behalf of Mr. Itkin. Messrs. Itkin and Flynn practiced law together some 20 plus years ago when both worked for the IRS. They continued to be in regular contact “over the past many years, we have shared the joys and sorrows of relationships… Scott openly shared his errors with me never once trying to make excuses or seek my sympathy for his actions. Scott was sincerely remorseful for his failures.” (Appendix B Composite Exhibit G)

Mr. Steven Sciarretta submitted a letter with his “strongest possible support” for Mr. Itkin’s readmission. Mr. Sciarretta, an attorney from Boca Raton, has known Mr. Itkin for more than 25 years and worked with for more than 20 years. He states Mr. Itkin made certain detrimental choices that are without excuse and has spent the last ten years making reparation for those actions. “His personal character since his mistake has been unimpeachable. He shows no malice towards those involved in this long process, nor has he ever expressed blame towards anyone other than himself for his situation. It is without question that he is remorseful for his prior acts. He has been a tireless worker for local charities while also working long hours to provide for himself and his son.” (Appendix B Composite Exhibit G)
Mr. Itkin’s former spouse, Phyllis Hershman, also sent a letter recommending Mr. Itkin’s readmission. The Itkin’s marriage was dissolved in April 1997, five months after his conviction. Ms. Hershman writes:

‘Never have I been as impressed with another human being as I watched him rehabilitate himself over the past decade. To say that he is a good father is an understatement….Through the years I have also watched Scott give willingly and generously of his time to charitable organizations….He has taken such an active role in the Boys and Girls Club, St. Jude’s and Easter Seals…To his credit, he has taken on work with these organizations with such zeal that he is more than passionate about them and of course when asked we (his friends and family) all provide requested donations. My son is also actively involved with his father working with these organizations. I believe this exemplifies what is good about Scott, not only is he actively giving back to the community, but modeling this behavior for our son and encouraging him to do the same. “(Appendix B Composite Exhibit G)

Unlike applicants whom this Court has not readmitted, Mr. Itkin did not begin his charitable work as part of his application process. He has actively been involved in charitable work for more than a decade. Unlike applicants whom this Court has not readmitted, Mr. Itkin has devoted thousands of hours to charitable work. The range of time Mr. Rotella testified to was an average of 150 hours per year for 12-15 years for the Boys and Girls Clubs of Broward County and the same amount per year for St Jude Children’s Research Hospital for 6 years. (T 40-41) In addition, Mr. Gleason, who had been placed in charge of a golf fundraiser
for his son’s high school, testified that in the recent past he called Mr. Itkin for help.

I knew he had been involved with some charity golf tournaments. I said: Can you give me some notes or maybe, you know, your checklist or something? Well, forget that. He showed up and — at our—at an organizational meeting, I think it was, and had very helpful materials. And then he showed up at the golf tournament and worked a full day without being asked. And then a year later he showed up again and worked the golf tournament. (T 53-54).

As set forth in the Brief in Support of Petition for Review, pages 15-18, Mr. Itkin has averaged 300-400 hours per year of charitable work for more than a decade.

His dedication to making this a better world for the less fortunate among us is precisely the type of activity that this Court has looked for to determine that someone has been truly rehabilitated. It occurs over a period of time that demonstrates a serious commitment to rehabilitation. During this same period of time, Mr. Itkin has done all of the other things that prove he is a good member of society. He has supported and nurtured his son, found love, remarried, supported his new household while timely meeting all his financial responsibilities for 8 years as of the time of the formal hearing and 9 years as of this date.

It has now been 15 years since Mr. Itkin resigned from The Florida Bar and the Board has only two negative things to say about him in its Answer Brief, which it finds should overcome his clear and convincing proof of his rehabilitation. The
first is Mr. Itkin filed bankruptcy in 2002. (Ans. Br. 13-14) The Second is Mr. Itkin signed the Eastern Financial Credit Union loan application “containing misrepresentations and concealment of material information.” (Ans. Br. 14)

A. The 2002 Bankruptcy

As to the Bankruptcy, it was filed 8+ years ago. It was the result of the excessive spending Mr. Itkin had engaged in prior to his resignation. He testified he tried through an attorney to work out a payment plan and terms with the second mortgage lender whom had obtained a judgment against him when the home he owned before his resignation was sold to satisfy the first mortgage lender. The second mortgage lender had a judgment in excess of $100,000 and would not negotiate. (T 112) Mr. Itkin at the time of the bankruptcy had only $8,000 to $9,000 of post resignation debt that was subject to the discharge. Since that time, now 8+ years, Mr. Itkin has completely changed his approach to managing his finances. The proof of this change is that Mr. Itkin has made every payment on time since his bankruptcy and he has less than $1,000 of unsecured debt. His only secured debts are a mortgage payment ($1745.90 per month) that is well within his means and the car payment ($466 per month), also well within his means, which his wife, who is a residential realtor, uses to take around her clients. (Br. 19-21)

While the Board does not in its Answer Brief quarrel with any of the facts represented in Mr. Itkin’s Brief as to Mr. Itkin’s being current for eight plus years
on all of his financial obligations, it apparently takes the position that if he does not live in a less expensive house and have his wife drive a less expensive car that he has not rehabilitated himself. There is no rational relationship between those things. He has for 8+ years lived within his means and his testimony is that he fully intends to continue to do so. (T 116, 191) At any given time he has $500 to $1,000 of unsecured debt. He clearly has changed his financial life to one that stands as a positive example for the vast majority of the households in this country.

**B. The 2007 Loan Application**

Just as with the bankruptcy issue above, the Board does not dispute any of the facts or argument set forth in the Brief regarding the loan application. The Specification states: “Your responses to this application were incomplete, misleading, lacking in candor, and irresponsible in that many of the questions on the form were left unanswered, including a question about prior bankruptcies, and some information on the application was not accurate.” Mr. Itkin’s undisputed testimony was that the form was completed by the credit union staff before he arrived and that the only inaccuracy is it listed his income as $1 per month. The entire back page of the form had no responses including the portion regarding whether he had ever filed bankruptcy. Since he had been told before he arrived that he was preapproved for the credit line based on his credit score and his existing relationship with the credit union, he did not review the form but signed it as it was
presented to him. (T 117-118, 163, 170, 183-184) He agreed that he should have reviewed the form and he could have had them either fill in all of the blanks on the form or had them marked not applicable. He did not. He also testified that the balance on the line of credit is zero. (T 186) No one from the credit union has ever complained about the manner in which the form was completed or asked for more information. Mr. Itkin testified that he did not intend to mislead anyone and that the only inaccuracy on the application was the understatement of his income which only could work to his disadvantage. The Board did not introduce any testimony that the fact of Mr. Itkin’s bankruptcy was not already in the credit union’s possession from his credit report, nor did it introduce any testimony that the credit union wanted any more information filled in than was filled in by its employee. Certainly, failing to insist that a lender fully fill in its own form on a $5,000 line of credit cannot either be disqualifying or otherwise overcome Mr. Itkin’s 8+ years of doing all the right things including in excess of 3400 hours of volunteering.

C. Legal Analysis

The issue before the Court is whether Mr. Itkin should be readmitted to The Florida Bar having shown by extremely compelling evidence his rehabilitation. This Court has said that, “when reviewing a recommendation of the Board with regard to whether an applicant should be admitted to the Bar, this Court is not precluded from reviewing the factual underpinnings of its recommendation, based
on an independent review of the record developed at the hearings.” *Fla. Bd. of Bar Exam’rs re McMahan*, 944 So.2d 335, 337-38 (Fla. 2006) (citing *Fla. Bd. of Bar Exam’rs re R.D.I.*, 581 So.2d 27, 29 (Fla. 1991)).

In the case of W.H.V.D. the Court looked specifically at the requirement that the Board questions in this case. *Fla. Bd. of Bar Exam’rs re W.H.V.D.*, 653 So.2d 386 (Fla. 1995). In that case this court agreed with the board that W.H.V.D. did not appreciate the seriousness of his ills because he continued to act “in a brash, overbearing, or impulsive manner” and was “aghast” at the questioning of his ethics and he was unable to present any “corroboration that he wants to conduct his life in an exemplary fashion.” *Id.* at 387-88. Whereas Mr. Itkin accepts responsibility for his actions and offered corroborating evidence of his volunteer activities with live testimony and letters showing his dedication to Boys and Girls Club, Easter Seals and St. Jude Children’s Hospital among others.

Furthermore, in order to determine whether the applicant had shown sufficient rehabilitation, the Court in *McMahan* looked at the time the applicant had committed to community organizations. *McMahan*, 944 So.2d 335. *McMahan* volunteered over 700 hours at Teen Court over the course of the seven years prior to his hearing. *Id.* at 339. The Court reasoned that this equated to less than two hours per week for the past 7 years, which the court found inadequate to make a convincing demonstration of rehabilitation. *Id.* However, over the course of just
over the last decade, Mr. Itkin has volunteered between 3400 and 4400 hours. That computes to approximately six hours per week of volunteer work, every week, over the course of over a decade or, put another way. Mr. Itkin’s volunteer work is extremely compelling evidence sufficient to make a “convincing demonstration” of his rehabilitation.

In *Fla. Bd. of Bar Exam’rs re P.T.R.*, 662 So. 2d 334 (Fla. 1995), which is factually analogous to the case at bar, this court found, despite the board’s recommendation that *P.T.R.* be denied admission, that *P.T.R.* had proved his rehabilitation. *P.T.R.* had misappropriated estate funds 15 years prior to his reapplication to the bar. *Id.* at 335. At the hearing, *P.T.R.* presented evidence that: (1) he shut down his law practice and had no allegation of unlicensed practice of law; (2) he rehabilitated his good name demonstrated by writings and testimony of witnesses including lawyers and lay people; (3) his professional ability was acceptable; (4) he expressed no malice toward the state attorney or the bar for what happened; (5) he took full responsibility for what happened and took steps to rectify it, and the witnesses presented knew of the charges filed against him and that they believed he had rehabilitated himself and would lead an exemplary life; (6) he made restitution; (7) and he served as a volunteer for community organizations during his time away from the practice of law. *Id.* at 336-37. This
showing was sufficient to satisfy the burden on the applicant and for the court to overrule the board’s recommendation, thus granting *P.T.R.* admission.

*P.T.R.* is analogous to the case at bar in that Mr. Itkin also voluntarily shut down his practice as a result of the misappropriation of funds, has rehabilitated himself and his reputation as attested to by numerous witnesses cited above, he expressed no animosity toward the people or system that punished him, acknowledged that he is solely responsible for his actions and made restitution. Furthermore, the single issue the Court was concerned with in *P.T.R.*, that the volunteer activities the applicant worked for directly benefited him was decided by the Court to be acceptable. In Mr. Itkin’s case, the organizations for whom he volunteered benefited the community at large and Mr. Itkin received no direct benefit. Furthermore, numerous witnesses took the stand to discuss Mr. Itkin’s rehabilitation and new way of living, including his former spouse who testified, “Never have I been as impressed with another human being as I watched him rehabilitate himself over the past decade.” Thus, Mr. Itkin has shown by extremely compelling evidence that he has been rehabilitated and as such, this Court should admit Mr. Itkin to The Florida Bar.

**Conclusion**

Scott Itkin has dramatically and positively changed as a person in the last fifteen years. He has become a caring, mature, and thoughtful member of our
society. He not only meets all of his obligations, but, for at least the last nine years, has spent hundreds of hours per year volunteering to help others. He does this without fanfare and without looking for credit. Fifteen years ago he lived beyond his means and for a brief period of time, stole money to pay for his excesses. The person who did that is gone, but for his name and the loss of his privilege to practice law.

As Scott expressed in his testimony, he has changed his life and his way of thinking, in part, to demonstrate to his now teenage son, that a wrong can be righted. He also saw how his prior actions hurt so many people - including clients, friends, family, and the Bar. He has gone on to reestablish his life, volunteer for several charities, devote himself to being a good and involved father, establish a successful new career as a tax preparer and paralegal, and fallen in love and gotten remarried.

Scott has also striven to repair the pieces of his life that he damaged through wrong actions. This includes his ability to be trusted, which he has repaired to the extent that at least two large charitable organizations have him in charge of keeping track of the cash at two of their events, even though those in charge are aware of his past.

Obviously, the decision as to whether to readmit Scott is entirely this Court’s. While you cannot know Scott’s heart from reading the words in this
petition or the transcript, his deeds reflect that he has learned what is important in life and has done all of those things which outwardly manifest that his heart has changed and that he is rehabilitated. Scott now humbly asks this Court to grant his readmission to The Florida Bar.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Initial Brief in Support of Petition for Review was served via U.S. Mail this ___ day of July, 2011, upon Michelle A. Gavagni, Executive Director, Florida Board of Bar Examiners, 1891 Eider Court, Tallahassee, FL 32399-1750 and Robert G. Blythe, Office of General Counsel, Florida Board of Bar Examiners, 1891 Eider Court, Tallahassee, FL 32399-1750.

HARRIS K. SOLOMON, ESQ.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief has been typed using the Times New Roman 14 point font, and therefore complies with the font requirements of the Florida Rule of Appellate Procedure 9.210(a)(2).

HARRIS K. SOLOMON