File: D2012-364 Date: JUL 08 2014

In re: DIANA BRONSTEIN, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF DHS: Diane H. Kier
Associate Legal Advisor

ON BEHALF OF RESPONDENT: Richard M. Maltz, Esquire

The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for two years, nunc pro tunc to June 1, 2012.

On March 12, 2014, the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, suspended the respondent for two years, effective June 1, 2012, and until further order of the court.

Consequently, on April 21, 2014, the Disciplinary Counsel for the Executive Office for Immigration Review petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. The DHS then asked that the respondent be similarly suspended from practice before that agency. Therefore, on May 13, 2014, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent filed a timely answer, as extended, to the allegations contained in the Notice of Intent to Discipline, on June 10, 2014. 8 C.F.R. § 1003.105(c)(1). The respondent acknowledges that she is subject to discipline by the Board. She argues only that her suspension should run concurrently with the suspension imposed in New York; in other words, her suspension by the Board should be deemed to have commenced on June 1, 2012, the effective date of her suspension in New York. The EOIR Disciplinary Counsel thereafter filed a "Motion For Summary Adjudication", on June 11, 2014.

There are no material issue of fact in dispute, and the EOIR Disciplinary Counsel's proposed sanction of two years is appropriate, in light of the respondent's suspension in New York. The Board therefore will honor that proposal. Further, after consideration of the respondent's answer, as well as the EOIR Disciplinary Counsel's filing, we will deem the suspension to be imposed nunc pro tunc to June 1, 2012, the effective date of the New York suspension.

In attorney discipline cases where respondents are placed under an immediate suspension order by the Board, pursuant to 8 C.F.R. § 1003.103(a), we typically deem the respondent's final discipline

to have commenced as of the date of such immediate suspension order. However, some respondents, such as attorney Bronstein, request that the final Board discipline instead run concurrently with the discipline imposed by their state bars.

The EOIR Disciplinary Counsel argues that the respondent did not notify the EOIR Disciplinary Counsel of her New York suspension, as required by 8 C.F.R. § 1003.103(c). This regulation provides that a practitioner has a duty to notify the EOIR Disciplinary Counsel, within 30 days, when she has been suspended. The EOIR Disciplinary Counsel argues that the Board therefore should impose discipline commencing on the date of the Board's immediate suspension order.

In this case, the respondent admittedly did not notify the EOIR Disciplinary Counsel of her New York suspension, as required by 8 C.F.R. § 1003.103(c) (Respondent's Answer, at 3). The regulation does not specifically say that a failure to notify the EOIR Disciplinary Counsel requires that the Board's final suspension must be deemed to have started on the date of the Board's immediate suspension order. However, the Board finds that the respondent's failure to meet the notice requirement under 8 C.F.R. § 1003.103(c) raises a non-conclusive presumption that the Board's final discipline should run from the date of the Board's immediate suspension order, rather than the (earlier) effective date of the New York suspension. After considering the circumstances raised in the respondent's situation, we find that the presumption is rebutted in this case.

The respondent states in her answer that she has not practiced before EOIR since being suspended in New York (Respondent's Answer, at 3-5). The respondent also says that she advised clients, including immigration clients, of her suspension in New York (Respondent's Answer at 3, Exh. C). The respondent does not specifically say, however, that she advised all of her immigration clients concerning the New York suspension.

The respondent contends that she was represented by professional responsibility counsel, who did not remind her of the obligation under 8 C.F.R. § 1003.103(c) to notify the EOIR Disciplinary Counsel of the New York suspension (Respondent's Answer at 3). The respondent acknowledges that she had the responsibility to be aware of the notification rule, but she also argues that immigration matters are a small part of her practice. *Id.* The case does not appear to involve a willful failure to comply with 8 C.F.R. § 1003.103(c).

The respondent also argues that, with respect to the disciplinary violations that gave rise to the New York suspension, she did not act venally or intentionally (Respondent's Answer at 2). Rather, the discipline related to escrow matters. The decision of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, at 5, suggested that, rather than being a result of depression due to emotional events, ". . . the respondent's admitted errors were a product of not having implemented basic accounting procedures to monitor her escrow account, which were compounded by her failure to review her bank statements or monitor her accounts online." The respondent argued in New York, and it was not contradicted in the New York court's decision, that no clients were harmed by her actions, and she acknowledges that a mistake concerning escrow funds must never happen again (Respondent's Answer at 2). The disciplinary violations that gave rise to the New York suspension do not appear to have related to immigration clients.

After consideration of all relevant factors, therefore, the Board's final suspension will be imposed nunc pro tunc to June 1, 2012, the effective date of the respondent's suspension in New York.

ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for two years, nunc pro tunc to June 1, 2012.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent is also instructed to notify the Board of any further disciplinary action against her.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R.§ 1003.107 (2013).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2)(2013).

FOR THE BOARD