

Falls Church, Virginia 20530

File: D2014-266

Date: **DEC 10 2014**

In re: RUNAN ZHANG, 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: Pro se

The respondent will be disbarred from the practice of law before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security (DHS).

On July 21, 2014, the respondent was disbarred from the practice of law in Maryland, by the Court of Appeals of Maryland. The court found that the respondent represented her niece in an annulment/divorce matter in Virginia despite a conflict of interest with her representation of her niece's husband in an immigration matter and despite not being licensed to practice law in Virginia.

In representing her niece, the court found, the respondent made misrepresentations to co-counsel concerning key issues, including communication and settlement agreements, and took steps to conceal her role in the representation of her niece. The court found that the respondent's misconduct "involved dishonesty, misrepresentations, and false statements of material fact." Court of Appeals of Maryland July 21, 2014, dec. at 44.

On August 27, 2014, the respondent was suspended on a reciprocal basis from the practice of law in the District of Columbia, by the District of Columbia Court of Appeals, pending final disposition of that proceeding.

On September 11, 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.

We granted the immediate suspension order on September 30, 2014. The respondent filed an answer to the Notice of Intent to Discipline. The EOIR Disciplinary Counsel thereafter submitted a “Motion for Summary Adjudication”, to which Zhang responded.¹

Where a respondent is subject to summary disciplinary proceedings based on being disbarred from the practice of law, the regulations provide that the attorney “must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i) through (iii).” See 8 C.F.R. § 1003.106(a)(2013). Where no such showing is made, the Board is to retain jurisdiction over the case, and issue a final order. *Id.*; *Matter of Salomon*, 25 I&N Dec. 559, 560 (BIA 2011); EOIR Disciplinary Counsel “Motion for Summary Adjudication”, at 1. We find it appropriate to issue a final order on the government’s charges.

As to the “exceptions” set forth in 8 C.F.R. § 1003.103(b)(2)(i) through (iii), this provides that a final order of disbarment creates a rebuttable presumption that disciplinary sanctions should follow, and such a presumption can be rebutted only upon a showing, by “clear and convincing evidence”, that the underlying disciplinary proceeding resulted in a deprivation of due process, that there was an infirmity of proof establishing the misconduct, or that discipline would result in grave injustice. These are known as the “*Selling* factors”, announced in *Selling v. Radford*, 243 U.S. 46, 51 (1917). See *Matter of Kronegold*, 25 I&N Dec. 157, 160-61 (BIA 2010).

In considering whether reciprocal discipline is appropriate, the Board conducts a “deferential review” of the underlying proceedings. *Id.* See also *Federal Grievance Committee v. Williams*, 743 F.3d 28, 29 (2d Cir. 2014); *In Re Fallin*, 255 F.3d 195, 197-98 (4th Cir. 2001); *In Re Evans*, 834 F.2d 90, 91 (4th Cir. 1987)(acknowledging that in *Selling v. Radford*, *supra*, the Supreme Court “held that the decision of the highest court of a state, which has disbarred an attorney, will be accorded great deference”).

¹ The EOIR Disciplinary Counsel contends that the respondent only contests the level of discipline to be imposed, and does not dispute the fact that she should be disciplined. The EOIR Disciplinary Counsel was justified in making this argument, given language in the response to the Notice of Intent to Discipline. Compare Respondent’s Answer, at 2, 34 (Board should impose nonidentical discipline) with Respondent’s Answer, at 22 (disputing procedure that led to Maryland disbarment). However, the respondent’s opposition to the government’s motion for summary adjudication makes it clear that she does, in fact, argue that she should face no discipline.

The respondent has not established that there is a material issue of fact in her case. In particular, the respondent has not made a prima facie showing that there is a material issue of fact regarding the basis of the proceeding (the order of the Court of Appeals of Maryland), and the respondent has not made a prima facie showing that any of the exceptions to the imposition of disciplinary sanctions exist in her case. *See* 8 C.F.R. § 1003.103(b)(2)(i) – (iii). Specifically, she has not established, through clear and convincing evidence, that she was deprived of due process during the disciplinary proceeding in Maryland, that there was an infirmity of proof in the Maryland proceeding, or that the imposition of discipline would result in grave injustice.

The respondent's disbarment in Maryland resulted after proceedings in which she was provided a hearing before a hearing judge, followed by oral argument, before the Court of Appeals of Maryland, after which the court issued a thorough, 49-page decision, taking into account her arguments. The Court of Appeals of Maryland determined, after careful consideration, that disbarment, and not suspension, from the practice of law in Maryland was warranted. Moreover, the respondent has taken the opportunity to file a reconsideration motion with the court (Respondent's Answer, at 21). Accordingly, summary disciplinary proceedings are appropriate, and we deny the respondent's request for a hearing. *See* 8 C.F.R. § 1003.106(a)(1). We also agree that disbarment is an appropriate sanction, in light of the respondent's disbarment in Maryland.

Accordingly, we hereby disbar the respondent from practice before the Board, the Immigration Courts, and the DHS. As the respondent is currently under our September 30, 2014, order of suspension, we will deem the respondent's disbarment to have commenced on that date.

ORDER: The Board hereby disbars the respondent from practice before the Board, the Immigration Courts, and the DHS.

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