

Falls Church, Virginia 22041

File: D2015-0195

Date:

NOV 24 2015

In re: ARTURO SUAREZ-SILVERIO, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF DHS: Catherine M. O'Connell
Disciplinary Counsel

ON BEHALF OF EOIR: Jennifer J. Barnes
Disciplinary Counsel

ON BEHALF OF RESPONDENT: Frances E. Barto, Esquire

The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (DHS) for one year, nunc pro tunc to March 27, 2015.

On March 27, 2015, the United States Court of Appeals for the Third Circuit suspended the respondent from the practice of law in that court for one year. Consequently, on September 15, 2015, the Disciplinary Counsel for the DHS petitioned for the respondent's immediate suspension from practice before that agency. The Disciplinary Counsel for the Executive Office of Immigration Review (EOIR) then asked that the respondent be similarly suspended from practice before the Board of Immigration Appeals and the Immigration Courts. We granted the petition for immediate suspension on September 30, 2015.

On October 15, 2015, the respondent filed a "Motion for Stay Pending the Third Circuit's Decision On Petition for Reinstatement and Answer to Notice of Intent to Discipline". 8 C.F.R. § 1003.105(c)(1). The DHS Disciplinary Counsel thereafter filed a "Motion For Summary Adjudication", on October 22, 2015. The respondent submitted a reply on October 29, 2015. That filing attached a copy of the Third Circuit's October 20, 2015, order denying the respondent's petition for reinstatement as premature. Respondent's Reply, Exh. A ("This dismissal is without prejudice to re-filing a proper petition after the suspension period expires on March 27, 2016"). The respondent's motion for a stay is therefore moot. The respondent now acknowledges that he is subject to discipline by the Board. He argues only that his suspension should run concurrently with the suspension imposed by the Third Circuit; in other words, his suspension by the Board should be deemed to have commenced on March 27, 2015, the date of his suspension by the Third Circuit.

There are no material issue of fact in dispute, and the DHS Disciplinary Counsel's proposed sanction of one year is appropriate, in light of the respondent's suspension by the Third Circuit. The Board therefore will honor that proposal. Further, after consideration of the filings made by the parties, we will deem the suspension to be imposed nunc pro tunc to March 27, 2015, the date of the Third Circuit suspension.

In attorney discipline cases where a respondent is 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 Suarez-Silverio, request that the final Board discipline instead run concurrently with the discipline imposed by their state bars or other authorities.

The DHS Disciplinary Counsel argues that the respondent did not notify the DHS and EOIR Disciplinary Counsel of his Third Circuit suspension, as required by 8 C.F.R. § 292.3(c)(4) and 8 C.F.R. § 1003.103(c). These regulations provide that a practitioner has a duty to notify the DHS Disciplinary Counsel, and EOIR Disciplinary Counsel, within 30 days, when he has been suspended by a federal court. The DHS 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 DHS or EOIR Disciplinary Counsel of his Third Circuit suspension, as required by 8 C.F.R. § 292.3(c)(4) and 8 C.F.R. § 1003.103(c). The regulations do not specifically say that a failure to notify the DHS and 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. § 292.3(c)(4) and 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) date of the Third Circuit suspension. After considering the circumstances raised in the respondent's situation, we find that the presumption is rebutted in this case.

The respondent contends that he was represented by professional responsibility counsel, who did not remind him of the obligation under 8 C.F.R. § 292.3(c)(4) and 8 C.F.R. § 1003.103(c) to notify the DHS and EOIR Disciplinary Counsel of the Third Circuit suspension. The respondent acknowledges that he had the responsibility to be aware of the notification rule, but says that he was overwhelmed by the situation and relied entirely on professional responsibility counsel. The case does not appear to involve a willful failure to comply with 8 C.F.R. § 292.3(c)(4) and 8 C.F.R. § 1003.103(c).

The respondent also presents evidence that he has made rehabilitative efforts, including hiring an experienced immigration practitioner as his mentor, and taking continuing legal education, which includes courses concerning immigration law. He also argues, and it is not disputed, that his clients were not legally harmed. The respondent also asserts that the infractions which resulted in the Third Circuit suspension occurred when he was having marital issues, and substance abuse problems, but he has since recovered.

After consideration of all relevant factors, therefore, the Board's final suspension will be imposed nunc pro tunc to March 27, 2015, the date of the respondent's suspension by the Third Circuit.

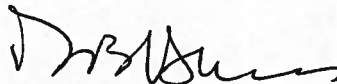
ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for one year, nunc pro tunc to March 27, 2015.

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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 him.

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.

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