

Falls Church, Virginia 20530

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File: D2013-381

Date: FEB 04 2014

In re: FREDDY JACOBS, 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: Richard M. Maltz, Esquire

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

On October 18, 2013, in the United States District Court for the Southern District of New York, the respondent was convicted of conspiracy to commit immigration fraud in violation of 18 U.S.C. § 371 and sentenced to 24 months imprisonment. Consequently, on November 27, 2013, the DHS initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the DHS. The Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) then asked that the respondent be similarly suspended from practice before EOIR, including the Board and the Immigration Courts. On December 18, 2013, the Board 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 to the allegations contained in the Notice of Intent to Discipline. 8 C.F.R. § 1003.105(c)(1). In the answer, the respondent admits allegations one through four of the Notice of Intent to Discipline, and he admits allegation five to the extent that the allegation asserts that he may be subject to discipline on the basis of his criminal conviction. The respondent, however, claims that he is entitled to a full and fair hearing before any discipline is imposed. The respondent also contends that disbarment is not an appropriate sanction. The respondent instead asks that he be suspended from practice before the Board, the Immigration Courts and the DHS for 2 years or until he is reinstated to practice in New York. In the alternative, he asks that his case be held in abeyance until the disciplinary authorities in New York impose discipline.

In support of his assertion that he should be given a lesser sanction, the respondent notes that he has not been subjected to any other disciplinary proceedings and he submits two letters of reference from fellow practitioners attesting to his character. The respondent also cites to two cases from New York courts in which attorneys who committed similar crimes were given 2 year periods of suspension. Finally, the respondent argues that the fact that his misconduct occurred before immigration authorities should not lead to automatic disbarment.

With respect to his request for a hearing, the respondent contends that a hearing is necessary because there is a question of fact as to the context of his conduct and his plea of guilty. He claims that a grave injustice would occur if he is sanctioned without an opportunity to present mitigating evidence.

The DHS, on the other hand, has filed a motion for summary adjudication. In the motion, the DHS maintains that the respondent's answer does not show that any material issues of fact are in dispute regarding the basis for discipline. The DHS therefore argues that the Board has the authority to retain jurisdiction over the respondent's case and issue a final order of discipline. The DHS further contends that the Board should impose the recommended discipline of disbarment.

The parties agree that the respondent has been convicted of a serious crime as defined in 8 C.F.R. § 1003.102(h), and that he is subject to discipline due to this fact. *See* 8 C.F.R. § 1003.102 (stating that a practitioner who falls within one of the following categories "shall be subject to disciplinary sanctions"). The DHS therefore is correct that there is not a dispute over a material issue of fact regarding the basis for discipline in the respondent's case, and summary disciplinary proceedings are appropriate. *See* 8 C.F.R. § 1003.106(a)(1).

Further, we agree that disbarment is an appropriate sanction in light of the respondent's conviction for conspiracy to commit immigration fraud. We have noted in other decisions that immigration-related fraud strikes at the heart of this country's immigration laws and undermines the integrity of the entire system. *Matter of Krivonos*, 24 I&N Dec. 292, 293 (BIA 2007). The respondent claims that we should consider the context of his conduct and the context of his plea of guilty before imposing disciplinary sanctions, but the respondent has not submitted evidence regarding the specific circumstances of his crime. We therefore have only the letters of reference to consider as mitigating evidence, and we do not find these letters sufficient to establish that imposing disbarment would result in a grave injustice as the respondent claims.

In addition, we do not find it appropriate to hold the respondent's proceedings in abeyance until disciplinary proceedings are concluded in New York. The regulations instruct the DHS to "promptly" initiate summary disciplinary proceedings against practitioners like the respondent. *See* 8 C.F.R. § 1003.103(b). The regulations also provide that a practitioner who has been suspended or disbarred from practice before the DHS, the Board and the Immigration Courts and who meets the definition of attorney contained in 8 C.F.R. § 1001.1(f) may file a petition for reinstatement with the Board after half his period of suspension has expired or after one year has passed, whichever is longer. *See* 8 C.F.R. § 1007(b). Accordingly, if the disciplinary authorities of the State of New York impose a sanction less than permanent disbarment, and the respondent is reinstated to practice in that state, he may petition this Board for reinstatement. Delaying his proceedings to determine what discipline will be imposed in New York therefore is unnecessary.

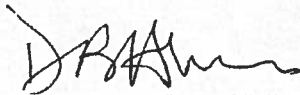
Based on the foregoing, the respondent is disbarred from practice before the DHS, the Board and the Immigration Courts. As the respondent is currently under our December 18, 2013, order of suspension, we will deem his disbarment to have commenced on that date.

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 also is 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, the Immigration Courts, and the 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).

A handwritten signature in black ink, appearing to read 'D. R. A. M.', is written above a horizontal line.

FOR THE BOARD