File: D2003-016 Date: JUL 25 2005

In re: ANTHONY E. RAMOS, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

APPEAL

ON BEHALF OF DHS: Rachel A. McCarthy
Associate Ethics Officer

ON BEHALF OF GENERAL COUNSEL: Jennifer J. Barnes, Bar Counsel

ON BEHALF OF RESPONDENT: Pro se

On March 17, 2005, an Immigration Judge, acting as the adjudicating official in this case, ordered the respondent expelled from practice before the Immigration Courts, Board of Immigration Appeals, and Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service). The respondent has filed an appeal with the Board. The appeal will be dismissed.

BACKGROUND

The respondent was disbarred from the practice of law by the Supreme Court of Florida on December 18, 1997. The court approved the November 12, 1997, report of referee Howard H. Harrison, Jr. The referee noted that the respondent was given numerous opportunities to respond to the Florida Bar's complaint but chose not to do so (Referee's Report, at p. 3). The referee also noted that the respondent had failed to appear at a hearing concerning the proper sanction in the case. *Id.* After reviewing Ramos' numerous disciplinary violations, the referee stated that "reduced to its bare essence, this is a theft case. For a period of 6 years, respondent did not have sufficient funds in his trust account to handle all client liabilities. At its zenith, there was a total trust account shortage of $396, 765.02." *Id.* at 48. In addition to the misappropriation of client funds, the respondent forged clients' signatures on settlement drafts. *Id.* at 49. The referee stated, "as with misuse of client funds, the Supreme Court of Florida takes a very dim view of forgery." *Id.* at 50. The referee also found that the respondent had failed to obey a court order, and deliberately lied to a tribunal. *Id.* The referee further found that the respondent "has engaged in a myriad of other unethical conduct . . . which would warrant disbarment several times over." *Id.* at 52. Such unethical conduct included misrepresentation to successor counsel, collecting excessive fees, and representing a client without authority, among many other things. *Id.* The referee therefore found it appropriate to recommend that the respondent receive "enhanced disbarment", meaning that he cannot apply for reinstatement in Florida for 20 years. *Id.* According to the referee, "[the] respondent has brought into play almost every aggravating factor in The Florida Standards." *Id.*

Consequently, on October 25, 2004, the DHS initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the DHS. *See* 8 C.F.R. § 1292.3. On November 4, 2004, the Office of General Counsel for the Executive Office for Immigration Review (EOIR) asked that the respondent be similarly suspended from practice before EOIR, including the Board and immigration courts. On December 6, 2004, we granted the government's petition for immediate suspension.

As the respondent requested a hearing on the charges in the Notice of Intent to Discipline, the record was forwarded to the Office of the Chief Immigration Judge under 8 C.F.R. § 1003.106, which states that, in attorney discipline cases, that office shall appoint an adjudicating official (an Immigration Judge) when an answer is filed. *See also* 8 C.F.R. § 1292.3(f); *Matter of Gadda*, 23 I&N Dec. 645, 647-48 (BIA 2003), *aff'd*, *Gadda v. Ashcroft*, 377 F.3d 934 (9th Cir. 2004).

On March 17, 2005, the Immigration Judge expelled the respondent from practice before the Immigration Courts, Board, and DHS. The Immigration Judge determined that an evidentiary hearing was not necessary, as the respondent contested only jurisdiction, which had been established. The Immigration Judge issued another order on March 29, 2005, in which he declined to reconsider his final order. The respondent filed a timely appeal with the Board on April 14, 2005, and the parties thereafter filed briefs. *See* 8 C.F.R. § 1292.3(f); 8 C.F.R. § 1003.106(c) (providing that the Board has jurisdiction to review the decision of the adjudicating official and conducts a de novo review of the record); *see also Matter of Gadda*, *supra*, at 647.

ANALYSIS

As alleged by the DHS in its Notice of Intent to Discipline, Ramos has been disbarred in the state of Florida. 8 C.F.R. § 1292.3(b); 8 C.F.R. § 1003.102(e)(1). We find that there are therefore grounds for discipline of Ramos.

The regulations provide for summary disciplinary proceedings against a practitioner who has been disbarred by the highest court of a state, like the respondent. Where the DHS brings proceedings based on a final order of disbarment, such an order creates a rebuttable presumption that disciplinary sanctions should follow. 8 C.F.R. § 1292.3(c)(3). Such a presumption can be rebutted only upon a showing 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 injustice. *Id. See Matter of Gadda*, *supra*, at 648.

The DHS correctly notes in its brief that the respondent set forth 7 issues for review in his Notice of Appeal, which were restructured into several issues in the respondent's brief (DHS Brief, at p. 3). We also note that the respondent filed a "Reply Brief" on June 10, 2005. We agree with the DHS that the issues raised by the respondent are without merit.

First, the respondent argues that the disciplinary proceedings are unwarranted, because he was disbarred in 1997, and, the respondent seems to claim, he could have been reinstated by 1998, had the DHS initiated these proceedings in 1997 (Respondent's Br., at pp.12-13). The respondent refers to

8 C.F.R. § 1003.107, which allows for reinstatement to practice before the Board, immigration courts, and DHS. *See also* 8 C.F.R. § 1292.3(f). A practitioner who has been expelled may petition the Board for reinstatement after one year. *See* 8 C.F.R. § 1003.107(b). As the DHS argues, however, reinstatement is not automatic, simply by the passage of time (DHS Brief, at p. 4). Even had the respondent been expelled from practice before the Board, immigration courts, and DHS at an earlier date, he would not be eligible for reinstatement. That is because he would have to meet the definition of an attorney or representative under 8 C.F.R. § 1001.1 (f) or (j), which he cannot do. *See* 8 C.F.R. § 1003.107 (b). Due to the respondent's egregious violations of the Florida Rules, he cannot be reinstated to practice law in Florida for 20 years. There is no evidence, nor does the respondent claim, that he has been readmitted to practice law in Florida. Moreover, he does not meet the definition of a "representative" under 8 C.F.R. § 1001.1(j), as he is not an accredited representative under 8 C.F.R. § 1292.1(a)(4), and does not otherwise show that he would be entitled to represent others as a "representative". *See* I.J. at 2, fn. 1.

The respondent also argues that the penalty imposed by the Immigration Judge, expulsion, was unfair because, he declares, other attorneys have not faced such a severe sanction (Respondent's Br., at pp. 12-13). Yet the regulations provide that explusion is one sanction that may be applied against an attorney. *See* 8 C.F.R. § 1003.101(a)(1). We agree with the Immigration Judge that expulsion is an appropriate sanction in this case. As noted above, the Supreme Court of Florida accepted a referee's report which found that the respondent had misused client funds, forged client signatures, charged excessive fees, and lied to a tribunal. As a result, the respondent received "enhanced disbarment" precluding reinstatement to the Florida Bar for 20 years. Given the Supreme Court of Florida's endorsement of the referee's report finding a "myriad" of unethical conduct committed by the respondent, it is more than appropriate that the respondent be expelled from practice before the Board, immigration courts, and DHS. *See Matter of Gadda, supra,* at 649 (expulsion from practice appropriate where respondent had engaged in "egregious and repeated acts of professional misconduct" which resulted in expulsion by the Supreme Court of California).

The respondent also argues that disciplinary sanctions may not be imposed against him because he is no longer an attorney, due to his disbarment (Respondent's Br., at pp. 13-19). The DHS correctly states that this argument is without merit (DHS Br., at p. 5). The regulations provide that disciplinary sanctions may be applied against an attorney who has been disbarred. *See id.*; 8 C.F.R. §§ 1292.3(b); 1003.102(e)(1); *Matter of Gadda, supra,* at 649; I.J. at 1. As the DHS argues, Ramos "seeks to render a nullity one of the most commonly charged grounds upon which disciplinary sanctions are imposed by adjudicating officials and the Board" (DHS Br., at p. 5). His argument is without merit, and he is subject to expulsion as a disbarred attorney.

To the extent that the respondent argues that he is not subject to sanctions, because he did not "practice" before the DHS, his argument is without merit, as we earlier found in issuing an immediate suspension order on December 6, 2004. As we stated then, the regulations make clear that any "practitioner" is subject to sanctions under the attorney discipline regulations. *See* 8 C.F.R. § 1292.3(a)(2). A "practitioner" includes any attorney, as defined at 8 C.F.R. § 1001.1(f). *See id.* Therefore, the government does not bear the burden of showing that the respondent has "appeared" before it. Rather, any practitioner who, like the respondent, has been disbarred by the highest court in a state, is subject to disciplinary proceedings. *See* 8 C.F.R. § 1292.3(c).

In any event, as we stated in our December 6, 2004, order, the DHS showed that the respondent is the executive director of "All American Immigration Association", and had submitted numerous "Notice of Entry of Appearance As An Attorney or Representative" (G-28) forms to the DHS, in which he claimed to be an "agent" for the party appearing before the DHS. *See* I.J. at 1. Given this, the respondent clearly "practiced" before the DHS. *See* 8 C.F.R. § 1001.1(i) (defining "practice" as "the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the [DHS], or any officer of the [DHS], or the Board").

The respondent also argues that the Immigration Judge did not provide him with sufficient time to prepare his case (Respondent's Br., at p. 20). He also makes accusations that the government defrauded the Immigration Judge and Board. His arguments are without merit, and his accusations unfounded. On January 11, 2005, the Immigration Judge issued an order directing the parties to present "a statement of issues to be decided at hearing, a detailed description of any evidence that they intend to present (including names of any witnesses and copies of any documents), and a statement clearly establishing the relevance of each item and evidence to an issue to be decided at hearing." The respondent argued in response that the Immigration Judge lacked jurisdiction to discipline him. As discussed above, his argument is without merit. The DHS presented evidence that the respondent has been disbarred, and also presented evidence that the respondent had practiced before the DHS after being disbarred, as established by appearance forms and other documents filed by the respondent with the DHS. *See* January 26, 2005, "U.S. Citizenship And Immigration Services Statement of Issues And Description Of Evidence And Statement of Relevance", Exhs. 1-4; DHS Br., at pp. 6-7. The respondent fails to show that he was denied adequate time to respond to the documents filed by the DHS, which clearly show that he "practiced" before the DHS.

Additionally, to the extent that the respondent attempts to rebut the presumption of professional misconduct established by his disbarment in Florida, such can be rebutted only upon a showing 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 injustice. *Id. See Matter of Gadda, supra*, at 648. As we found in our December 6, 2004, immediate suspension order, the respondent was given notice of the Florida proceedings, but chose not to answer the Bar's complaint, and later chose not to appear at a hearing concerning the sanction. (Referee's Report, at pp. 1-4). The referee's report clearly detailed the respondent's misconduct leading to his disbarment. The respondent fails to show that the proceedings in Florida were unfair, or that he required additional time to dispute the presumption that disciplinary sanctions should follow based on his disbarment.

The respondent finally argues that the Immigration Judge erred by issuing his decision without a hearing (Respondent's Br., at pp. 21-22). The Immigration Judge correctly decided that the respondent's pre-hearing statement failed to show that a hearing was necessary (I.J. at 1). There are no issues of material fact that would necessitate a hearing in this case. As noted, the final order of disbarment creates a rebuttable presumption that disciplinary sanctions should follow. 8 C.F.R. § 1292.3(c)(3). The respondent failed to present anything to suggest that the Florida proceedings were unfair. The respondent has identified no issues that would require an evidentiary hearing. *See Matter of Gadda, supra*, at 648.

In sum, with agree with the DHS that it established by clear, unequivocal and convincing evidence that it is in the public interest to discipline Ramos, based upon a final order of disbarment issued by the Supreme Court of Florida on December 18, 1997, and that expulsion is the appropriate sanction (DHS Br., at p. 7).

ORDER: The respondent's appeal is dismissed and he is expelled from practice before the Board, the Immigration Courts, and the DHS.

FOR THE BOARD