

Falls Church, Virginia 22041

File: D2011-132

Date:

OCT 27 2011

In re: ANDRE RAFAEL SOBOLEVSKY, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Scott Anderson, Deputy Disciplinary Counsel

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

The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for two years.

On July 8, 2011, the United States Court of Appeals for the Second Circuit issued an order publicly reprimanding the respondent and suspending him from the practice of law for at least two years.

The Second Circuit had, in May, 2009, referred the respondent to the court's Committee on Attorney Admissions and Grievances for investigation and a recommendation (Second Circuit's order, at 2). After responding in writing to the May, 2009, order, the respondent waived his right to a hearing before the Committee. *Id.* The Committee found that the respondent had "engaged in a pattern of willful neglect of his responsibilities to his clients and the Court, and that there was a strong possibility that his misconduct would continue in the absence of discipline." *Id.* The Committee found that the respondent had (1) filed poor quality briefs; (2) failed to supervise non-lawyer staff, and aided in the unauthorized practice of law; (3) failed to comply with scheduling orders, and neglected client matters; (4) filed petitions for review despite improper venue; and (5) made misstatements. *Id.*

After taking into account the respondent's response to the Committee's report, the Second Circuit concurred with the Committee's findings. *Id.* at 3. The Second Circuit stated that it was "particularly disturbed by [the respondent's] extremely poor briefing in the cases examined by the Committee, his inaccurate statements about those cases in the present proceeding despite being well aware that they were of central importance to the proceeding, his filing of pleadings drafted by non-lawyers, and his failure to respond to important findings in the Committee's report." *Id.*

Consequently, on August 17, 2011, 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 September 1, 2011, the Board suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The Notice of Intent to Discipline was served on the respondent on August 17, 2011. The Notice plainly stated that “[t]he Rules provide that Respondent shall file **with the Board** a written answer to the Notice of Intent to Discipline within 30 days of the date stated on the Proof of Service attached to this notice.” Notice of Intent to Discipline, at 2 (emphasis in original); 8 C.F.R. § 1003.105(c)(1). An answer was therefore due at the Board by September 16, 2011.

On September 20, 2011, the respondent sent a document to the Board by Federal Express, that was filed by the Board on September 21, 2011. The document is entitled “Affidavit In Opposition To the Petition For Immediate Suspension.” Despite the name given the document, the document in fact argues why the Board should not impose discipline reciprocal to that meted out by the Second Circuit, and therefore in substance constitutes an answer to the Notice of Intent to Discipline.

However, viewed as an answer to the Notice of Intent to Discipline, the answer was untimely filed. 8 C.F.R. § 1003.105(c)(1). No reason was provided for the lateness of the answer. Therefore, the untimely answer will not be considered by the Board. The respondent’s failure to file a response within the time period prescribed in the Notice of Intent to Discipline constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(d)(1), (2).

The Notice of Intent to Discipline proposes that the respondent be suspended for two years from practicing before the Board and the Immigration Courts. The DHS asked that the Board extend any discipline imposed to practice before it as well. As the respondent failed to submit a timely answer, this recommended sanction should be adopted unless “to do so would foster a tendency toward inconsistent dispositions for comparable conduct, or would otherwise be unwarranted or not in the interest of justice.” 8 C.F.R. § 1003.105(d)(2).

The proposed sanction is appropriate, given the Second Circuit’s order concerning the respondent’s representation of aliens in immigration appeals, which resulted after proceedings in which the respondent was permitted to be heard. The Board notes, moreover, that the respondent was the subject of prior disciplinary action. That is, on February 18, 2011, the respondent was informally admonished pursuant to 8 C.F.R. § 1003.104(c), for making a frivolous filing, in violation of 8 C.F.R. § 1003.102(j). *See* EOIR Disciplinary Counsel’s Response, Exh. D. The informal admonition became as matter of public record, as the pending Notice of Intent to Discipline was served and based on unrelated misconduct. 8 C.F.R. § 1003.108(b).

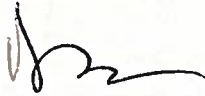
Accordingly, the Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for two years. As the respondent is currently under our September 1, 2011, order of suspension, we will deem the respondent’s suspension to have commenced on that date.

ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for two years.

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. *See* 8 C.F.R. § 1003.105(d)(2)(2010); *Matter of Kronegold*, 25 I&N Dec. 157, 163 (BIA 2010).



FOR THE BOARD