NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Owolabi M. SALIS, D2022-0211

Respondent

FILED
FEB 28 2023

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF EOIR: Paul A. Rodrigues, Disciplinary Counsel

ON BEHALF OF DHS: Toinette M. Mitchell, Disciplinary Counsel

IN PRACTITIONER DISCIPLINARY PROCEEDINGS
Notice of Intent to Discipline Before the Board of Immigration Appeals

Before: Malphrus, Chief Appellate Immigration Judge, Brown, Temporary Appellate Immigration Jude, Noferi, Temporary Appellate Immigration Judge[1]

Opinion by Malphrus, Chief Appellate Immigration Judge

MALPHRUS, Chief Appellate Immigration Judge

The respondent will be disbarred from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security ("DHS"), effective December 21, 2022.

On November 29, 2022, the Supreme Court of the State of New York disbarred the respondent from the practice of law in New York, effective immediately. On December 12, 2022, the Disciplinary Counsel for the Executive Office for Immigration Review and the Disciplinary Counsel for the Department of Homeland Security ("DHS") jointly petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. We granted the petition on December 21, 2022.

On or about January 3, 2023, the respondent filed an answer to the Joint Notice of Intent to Discipline ("NID"), seeking to set aside the immediate suspension order (Respondent's Answer) (unpaginated).[2] On January 19, 2023, the Disciplinary Counsels moved for summary adjudication pursuant to 8 C.F.R. § 1003.106(a)(1). On January 27, 2023, the respondent filed a supplemental response the Disciplinary's Counsels' motion for summary adjudication.

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See* 8 C.F.R. § 1003.1(a)(4)

[2] We have construed the respondent's submission as an answer to the Notice of Intent to Discipline.

The respondent admits, inter alia, that he has been disbarred from the practice of law in New York, effective November 29, 2022. The respondent seeks to set aside the Board's December 21, 2022, immediate suspension order in the "interest of justice" under 8 C.F.R. § 1003.103(a)(4). An immediate suspension order may be set aside "[u]pon good cause shown . . . when it appears in the interest of justice to do so." 8 C.F.R. § 1003.103(a)(4); *Matter of Rosenberg*, 24 I&N Dec. 744, 745 (BIA 2009). Given that there is no dispute the respondent is currently disbarred from the practice of law in New York, and the respondent does not argue the disbarment is currently subject to any direct appeal, the respondent has not established good cause exists to set aside the immediate suspension order.[3]

Next, we discern no basis to refer these proceedings for a hearing. Specifically, the respondent has not made a prima facie showing that there is a material issue of fact in dispute regarding the basis for the instant disciplinary proceedings. *See* 8 C.F.R. § 1003.106(a)(1). The respondent does not dispute the alleged fact that he has been disbarred from the practice of law in New York (Respondent's Answer) (unpaginated). Thus, the respondent's New York disbarment provides the basis for summary disciplinary proceedings. *See* 8 C.F.R. § 1003.103(b)(2).

The respondent has also not made a prima facie showing that there is a material issue of fact in dispute regarding any of the exceptions to imposing reciprocal discipline. 8 C.F.R. §§ 1003.103(b)(2)(i)-(iii) and 1003.106(a)(1). When the Disciplinary Counsels for EOIR and DHS bring proceedings based on a final order of suspension or disbarment, like the one in the respondent's case, the order creates a rebuttable presumption that reciprocal disciplinary sanctions should follow. *See* 8 C.F.R. § 1003.103(b)(2); *see also Matter of Kronegold*, 25 I&N Dec. 157, 160 (BIA 2010); *Matter of Truong*, 24 I&N Dec. 52, 54 (BIA 2006); *Matter of Ramos*, 23 I&N Dec. 843, 845 (BIA 2005). The respondent can rebut this presumption only by demonstrating 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." 8 C.F.R § 1003.103(b)(2).

The respondent argues that all of these exceptions apply in his case. In particular, he contends that the New York disciplinary proceeding was so lacking in notice or opportunity to be heard that it constituted a violation of due process, that there was such an infirmity of proof establishing his professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject, and that the imposition of discipline would result in grave injustice (Respondent's Answer) (unpaginated). The respondent's arguments are conclusory, and apart from submitting over 1,800 pages of documents from his New York disciplinary proceedings, he does not specifically point to any evidence that supports his contentions. The respondent's arguments and evidence regarding his New York disciplinary proceedings are essentially a collateral attack and, absent a direct pending appeal, we will not go behind the court's final decision disbarring the respondent in New York. *See Matter*

[3] As noted by the Disciplinary Counsels, the respondent has submitted evidence indicating that he has filed a motion to vacate his disbarment in New York, but he has not shown that he is not currently disbarred in New York (Government's Opp. at 3-4).

of Bogart, 15 I&N Dec. 552, 561 (BIA 1976) ("the Board of Immigration Appeals is not a court of general jurisdiction," and "[r]elitigation before the Board of matters of state or even constitutional law previously litigated before a state supreme court thus seems particularly inappropriate."); *see also Matter of Kronegold*, 25 I&N Dec. at 160 (holding that in determining whether to impose reciprocal discipline on an attorney who has been suspended or disbarred by a State court, the Board conducts a deferential review of the proceedings that resulted in the initial discipline). We agree with the Disciplinary Counsels that the respondent has not shown the Referee and the Appellate Division of the Supreme Court of New York did not have minimally sufficient evidence to sustain the charges of professional misconduct (Government's Opp. at 5-6). *See Matter of Bogart*, 15 I&N Dec. at 561 (reliance on the state decision-making process is not improper where "minimum procedural due process was afforded in the hearing" and the evidence against respondent was "minimally sufficient").

Moreover, the evidence does not establish that the respondent has a reasonable likelihood of establishing, during a hearing, that imposing reciprocal discipline based on a disciplinary disbarment in New York will result in grave injustice. As noted above, the evidence of record establishes that there was a basis for disciplinary proceedings in New York. Further, the respondent's evidence regarding his New York disciplinary proceeding does not support the respondent's assertions that the proceeding was egregious or somehow constitutes an exceptional or extraordinary circumstance that would cause the imposition of discipline to be a grave injustice.

In light of the Supreme Court of New York's final disbarment order, we conclude that imposition of reciprocal discipline in these proceedings is appropriate and warranted. Based on the foregoing, as summary disciplinary proceedings are appropriate, we will retain jurisdiction over the case and issue a final order. 8 C.F.R. § 1003.106(a)(1).

The Disciplinary Counsels have presented sufficient evidence to establish the respondent is subject to reciprocal discipline due to his disbarment in New York. *See* 8 C.F.R § 1003.102(e).

The NID proposes the respondent be disbarred from practicing before the Board of Immigration Appeals, the Immigration Courts, and DHS, effective December 21, 2022. The proposed sanction is appropriate in light of the respondent's disbarment in New York. We therefore will honor the proposed discipline and will order the respondent disbarred from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS.

ORDER: The Board hereby disbars the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS, effective December 21, 2022.

FURTHER ORDER: The respondent must maintain compliance with the directives set forth in our prior order. The respondent must notify the Board of any further disciplinary action against him.

FURTHER ORDER: The contents of the order shall be made available to the public, including at the Immigration Courts and appropriate offices of the DHS.

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.