

Falls Church, Virginia 22041

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File: D2012-004

Date: APR 26 2012

In re: RONALD S. SALOMON, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Paul A. Rodrigues  
Associate General Counsel

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

ON BEHALF OF RESPONDENT: Richard M. Maltz, Esquire

The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for 6 months, effective December 31, 2011.

On December 1, 2011, the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, suspended the respondent from the practice of law in New York for six months, effective December 31, 2011, and until further order of the Court.

Consequently, on January 12, 2012, 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. 8 C.F.R. § 1003.103(a)(2012); 77 Fed. Reg. 2011, 2014 (Jan. 13, 2012) (Board shall immediately suspend from practice individual who has been suspended by the highest court of a state). The DHS then asked that the respondent be similarly suspended from practice before that agency.

The respondent contended that an immediate suspension order should not issue. *Cf.* 8 C.F.R. § 1003.103(a)(4)(2012); 77 Fed. Reg. 2011, 2014 (Jan. 13, 2012) (immediate suspension order may be set aside "[u]pon good cause shown... when it appears in the interest of justice to do so"); *Matter of Rosenberg*, 24 I&N Dec. 744, 745 (BIA 2009).

We considered that this case presents unique factual circumstances. On February 3, 2011, we issued a final order in different proceedings, suspending the respondent from practice before the Board, Immigration Courts, and the DHS. *Matter of Salomon*, 25 I&N Dec. 559 (BIA 2011). The suspension was predicated on the respondent's October 14, 2010, suspension by the United States Court of Appeals for the Second Circuit, and other aggravating factors. *Id.* On June 28, 2011, the respondent was reinstated to practice by this Board. As noted, on December 1, 2011, the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, suspended the respondent from the practice of law in New York for six months, effective December 31, 2011, and until further order of the Court. The discipline was based on the October 14, 2010, Second Circuit suspension order, and noted this Board's prior discipline of the respondent.

After considering the facts and the arguments of the parties, on February 22, 2012, we 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, as extended, to the allegations contained in the Notice of Intent to Discipline on February 23, 2012. 8 C.F.R. § 1003.105(c)(1). On March 8, 2012, the EOIR Disciplinary Counsel filed a "Motion For Summary Adjudication". On March 21, 2012, the respondent filed a "Declaration In Response To Motion For Summary Adjudication", signed by counsel, and the EOIR Disciplinary Counsel responded to this filing on March 23, 2012.

Where a respondent is subject to summary disciplinary proceedings based on suspension from the practice of law, an attorney "must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii)." See 8 C.F.R. § 1003.106(a), 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012). Where no such showing is made, the Board is to retain jurisdiction over the case, and issue a final order. *Id.*; EOIR Disciplinary Counsel's "Motion for Summary Adjudication", at ¶ 4.

Although the respondent requested a hearing in his answer, he concedes in his "Declaration In Response To Motion For Summary Adjudication" that the Board should grant the government's "Motion for Summary Adjudication", and impose discipline upon him, albeit "with some qualifications."

The respondent first argues that his suspension should be imposed nunc pro tunc to December 31, 2011, the effective date of the respondent's suspension in New York (Respondent's "Declaration In Response To Motion For Summary Adjudication", at 1-2). The EOIR Disciplinary Counsel agrees that the respondent's suspension by the Board should run concurrently with his suspension in New York, as the respondent "informed EOIR Disciplinary Counsel in a timely manner about his suspension in New York State." EOIR Disciplinary Counsel's "Motion for Summary Adjudication" at ¶ 11, citing 8 C.F.R. § 1003.103(c).

The respondent also presents a New York disciplinary rule, which allows attorneys who are suspended for six months or less to, in essence, submit their request for reinstatement up to thirty days prior to expiration of the suspension period, after which time a New York attorney would be reinstated at the end of the suspension period. The respondent therefore requests that he be allowed to apply for "conditional" reinstatement before the Board thirty days before his New York suspension expires (Respondent's "Declaration In Response To Motion For Summary Adjudication", at 3-4).

The request is denied. The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107 (a) (2012); 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012). This regulation provides both that the suspension period imposed by the Board must have expired, and further provides that the respondent must meet the regulatory definition of an attorney. The respondent will need to present evidence that he has been reinstated to practice law in New York, before the Board will reinstate him to practice. EOIR Disciplinary Counsel's Response, at ¶¶ 2-3. The regulations relevant to practitioner disciplinary proceedings before the Board do not provide for "conditional reinstatement". *Id.*

ORDER: The EOIR Disciplinary Counsel's "Motion for Summary Adjudication" is granted.

FURTHER ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for 6 months, nunc pro tunc to December 31, 2011.

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: 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)(2012); 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012).



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FOR THE BOARD