



*In the Matter of the Qualifications of*

**EDWARD A. SLAVIN, JR.,**

**ARB CASE NO. 05-003**

**PETITIONER.**

**ALJ CASE NO. 2004-MIS-5**

**DATE: November 30, 2005**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

*For the Petitioner*

**Edward A. Slavin, Jr., pro se, St. Augustine, Florida**

## **FINAL DECISION AND ORDER**

### **BACKGROUND**

On February 11, 2004, the Supreme Court of Tennessee issued an order suspending Mr. Slavin from the privilege of practicing law for two years.<sup>1</sup> Consequently, on August 31, 2004, the United States Department of Labor Chief Administrative Law Judge (CALJ) issued an order directing Mr. Slavin to show cause why the Office of Administrative Law Judges should not give reciprocal effect to the Tennessee Supreme Court's suspension order. On September 28, 2004, the CALJ, citing the Supreme Court's

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<sup>1</sup> *Board of Prof. Resp. of the Sup. Ct. of Tenn. v. Slavin*, 145 S.W.3d 538 (Tenn. 2004). The Court originally provided that Mr. Slavin could petition for reinstatement at the expiration of one year from the date of its opinion. But on November 3, 2005, the Board of Professional Responsibility of the Supreme Court of Tennessee ordered that Mr. Slavin be disbarred. *In re: Edward A. Slavin, Jr.*, BPR #012341, Docket No., 2002-1320-0-LC. Mr. Slavin has sixty days from the date the Board issued the decision to appeal it. Tenn. Sup. Ct. Rule 9 § 8.3 (West 2005).

decision in *Selling v. Radford*<sup>2</sup> issued a Decision and Order Suspending Attorney (D. & O.) according the Supreme Court's suspension order reciprocal effect.<sup>3</sup> On October 3, 2004, Mr. Slavin filed a petition requesting the Administrative Review Board to review the CALJ's decision.<sup>4</sup>

On October 20, 2004, we issued a Final Order Suspending Attorney from Practice Before the Administrative Review Board in which, after evaluating the case under the *Selling* criteria, we gave reciprocal effect to the Tennessee Supreme Court's decision and accordingly, suspended Mr. Slavin's privilege to practice before the Board for the remainder of the time that he is suspended from the practice of law by the Tennessee Supreme Court.<sup>5</sup> Mr. Slavin did not appeal the Board's Final Order.

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<sup>2</sup> 243 U.S. 46 (1917). In *Selling*, the Court held that it would give reciprocal effect to a state court disbarment unless the disbarred attorney establishes that

from an intrinsic consideration of the state record, one or all of the following conditions should appear: 1. that the state procedure, from want of notice or opportunity to be heard, was wanting in due process; 2, that there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we could not, consistently with our duty, accept as final the conclusion on that subject; or 3, that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do. *Id.* at 50-51.

<sup>3</sup> *In the Matter of the Qualifications of Edward A. Slavin, Jr.*, No. 2004-MIS-5.

<sup>4</sup> Mr. Slavin also asked the Board to take "judicial notice" of "former DOL chief Judge Nahum Litt telling ABA that I am being 'persecuted' and he "renew[ed] my pending motions for recusal and to disclose *ex parte* contacts" and to "stay any action of 'reciprocal discipline' until such time as a hearing is finally held before an independent 5 U.S.C. § 3105 adjudicator and the matter of the Tennessee Supreme Court decision and stay request is resolved by the U.S. Supreme Court." Petition for Review of Judge Vittone's Illegal Order, Motion for Judicial Notice, Notice of Filing, Renewed Motion to Disclose *Ex Parte* Contacts, Renewed Motion for Recusal and Motion for Stay.

<sup>5</sup> *In the Matter of the Qualifications of Edward A. Slavin, Jr.*, ARB No. 04-172, slip op. at 13.

The Board must now decide whether Mr. Slavin has provided the Board with a compelling reason to depart from our previous decision that the Tennessee Supreme Court's suspension is entitled to reciprocal effect. Concluding that he has not, we affirm the CALJ's decision to accord reciprocal effect to the Tennessee Supreme Court's suspension of Mr. Slavin's privilege to practice law.

### JURISDICTION AND STANDARD OF REVIEW

The Board's jurisdiction to review the CALJ's D. & O. suspending Mr. Slavin from practicing before the Office of Administrative Law Judges derives from the Secretary's delegation of authority to the ARB to review recommended decisions of administrative law judges in whistleblower cases.<sup>6</sup>

With the exception of four whistleblower statutes, the Board reviews de novo both the factual findings and the legal conclusions on which an administrative law judge's recommended whistleblower decision is based.<sup>7</sup> The regulations implementing the four exceptions limit the Board's review of an administrative law judge's factual findings.<sup>8</sup> Specifically, those regulations require the Board to adopt the administrative law judge's factual findings if they are supported by substantial evidence considered on the record as a whole.<sup>9</sup> Because the various whistleblower programs within the ARB's jurisdiction require differing standards of review, we have determined that de novo review of the CALJ's factual findings and legal conclusions is appropriate.<sup>10</sup> We will thus provide Mr. Slavin with the fullest possible benefit of the Board's review regarding

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<sup>6</sup> Secretary's Ord. 1-2002, ¶ 4.c., 67 Fed. Reg. 64272, 64273 (Oct. 17, 2002); see 29 C.F.R. § 24.8; 29 C.F.R. §§ 1978.109(c), 1979.110, 1980.110, 1981.110; see generally *In the Matter of the Qualifications of Edward A. Slavin, Jr.*, ARB No. 04-172, slip op. at 7-8 (Secretary's delegation of authority encompasses responsibility for Board to ensure the integrity of proceedings before it).

<sup>7</sup> Compare 29 C.F.R. § 24.8 with 29 C.F.R. §§ 1978.109(b)(3), 1979.110(b), 1981.110(b) (2004); Notice of Final Rule, 29 C.F.R. Part 1980, 69 Fed. Reg. 52104, 52116 (Aug. 24, 2004) (text of § 1980.110(b)).

<sup>8</sup> The four exceptions are as follows: the Surface Transportation Assistance Act, 49 U.S.C.A. § 31105 (West 1997); the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century, 49 U.S.C.A. § 42121 (West Supp. 2005); the Sarbanes-Oxley Act of 2002, 18 U.S.C.A. § 1514A (West 2003); and the Pipeline Safety Improvement Act of 2002, 49 U.S.C.A. § 60129(a) (West Supp. 2005).

<sup>9</sup> 29 C.F.R. §§ 1978.109(b)(3), 1979.110(b), 1981.110(b) (2004); Notice of Final Rule, 29 C.F.R. Part 1980, 69 Fed. Reg. 52104, 52116 (Aug. 24, 2004) (text of § 1980.110(b)).

<sup>10</sup> Accord *In the Matter of the Qualifications of Edward A. Slavin, Jr.*, ARB No. 04-088, slip op. at 3 (Apr. 29, 2005).

those aspects of the D. & O.

## DISCUSSION

### 1. Petitioner's Motions

As an initial matter we will consider the Motions that Mr. Slavin filed with his petition for review. Mr. Slavin has asked the Board to take “judicial notice” of “former DOL Chief Judge Nahum Litt telling ABA that I am being “persecuted.” While we could take judicial notice of the fact that the ABA Journal eReport stated that Litt had made the reported declaration, judicial notice may not be used to circumvent the rules of hearsay and thus judicial notice could not be used to establish the truth of Litt’s statement. Therefore we deny Mr. Slavin’s motion that we take judicial notice of Litt’s statement.

As to Mr. Slavin’s intention to “renew my pending motions for recusal and to disclose *ex parte* contacts,” no such motions are currently pending before the Board, so there are no such motions to renew. In any event, we have twice denied such motions in prior cases involving Mr. Slavin’s suspension from practice<sup>11</sup> and it is thus unnecessary for us to further address these motions.

Finally we deny Mr. Slavin’s request that we “stay any action of ‘reciprocal discipline’ until such time as a hearing is finally held before an independent 5 U.S.C. § 3105 adjudicator and the matter of the Tennessee Supreme Court decision and stay request is resolved by the U.S. Supreme Court.” Mr. Slavin has averred neither facts nor legal authority that supports his contention that the CALJ is not independent, and we have found no factual or legal basis to grant Mr. Slavin’s motion. Furthermore, we take judicial notice of the United States Supreme Court docket that indicates that Justice Stevens denied Mr. Slavin’s application for a stay on October 4, 2004, and that although Justice Stevens granted an application for an extension of time to file a petition for a writ of certiorari until February 19, 2005, Mr. Slavin failed to file a petition.

### 2. Reciprocal effect of the Tennessee Supreme Court’s suspension

The CALJ in giving reciprocal effect to the Tennessee Supreme Court’s suspension of Mr. Slavin pursuant to the *Selling* factors<sup>12</sup> concluded that, “Mr. Slavin’s response to the Order to Show Cause does not establish that the Tennessee proceedings

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<sup>11</sup> *In the Matter of the Qualifications of Edward A. Slavin, Jr.*, ARB No. 04-088, slip op. at 5; *In the Matter of the Qualifications of Edward A. Slavin, Jr.*, ARB No. 04-172, slip op. at 2, 4-6.

<sup>12</sup> See n.2, *supra*.

were in violation of due process, were lacking in proof of misconduct, or that a grave injustice would result in giving effect to the Tennessee Supreme Court's judgment.<sup>13</sup> In our Final Order Suspending Attorney from Practice Before the Administrative Review Board, we evaluated Mr. Slavin's suspension from practice under the *Selling* criteria and we also held that the Tennessee Supreme Court's decision was entitled to reciprocal effect.<sup>14</sup> In so holding we

examined the suspension order that was issued by the Tennessee Supreme Court on August 27, 2004, and determined that it is neither procedurally defective nor lacking in proof of misconduct under the *Selling* criteria. We have also considered Mr. Slavin's September 24, 2004 response and have determined that it offers no basis for concluding that the implementation of discipline similar to that imposed by the Tennessee Supreme Court would not be wholly consistent with the *Selling* standard. Further, in view of Mr. Slavin's failure to contest the facts on which the Tennessee Supreme Court based its conclusions, either before that court or before this Board, we conclude that no further proceedings are warranted prior to our imposition of discipline.<sup>15</sup>

Ultimately, we held that "the lack of qualifications evidenced by the Tennessee B[oard of] P[rofessional] R[esponsibility] proceedings warrants suspension of Mr. Slavin from the practice of law before the Administrative Review Board for the remainder of the period that he is suspended from practice by the Tennessee Supreme Court."<sup>16</sup>

The only issue before the Board is whether, applying the *Selling* criteria, we should uphold the CALJ's D. & O. giving reciprocal effect to the Tennessee Supreme Court's suspension. But Mr. Slavin's brief in support of his petition for review does not mention the *Selling* factors; nor does it proffer any error in the CALJ's and the Board's application of these factors to the facts of his case. Thus, given Mr. Slavin's failure to suggest any reason that the Board should depart from its earlier holding that the

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<sup>13</sup> D. & O. at 1.

<sup>14</sup> *In the Matter of the Qualifications of Edward A. Slavin, Jr.*, ARB No. 04-172, slip op. at 13.

<sup>15</sup> *Id.*

<sup>16</sup> *In the Matter of the Qualifications of Edward A. Slavin, Jr.*, ARB No. 04-172, slip op. at 13.

Tennessee Supreme Court's order suspending Mr. Slavin is entitled to reciprocal effect and knowing of no such reason, we uphold the CALJ's D. & O. giving reciprocal effect to the Tennessee Supreme Court suspension order, and we **DENY** Mr. Slavin's appeal.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**