

Falls Church, Virginia 22041

File: D2007-062

Date:

SEP 26 2007

In re: ELIZABETH COHEN, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF DHS: Rachel A. McCarthy, Bar Counsel

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

ORDER:

PER CURIAM. The respondent will be expelled from practice before the Board, the Immigration Courts, and the Department of Homeland Security (the "DHS").

On March 1, 2007, the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, suspended the respondent from the practice of law for 2 years, effective March 30, 2007. Consequently, on April 12, 2007, the DHS initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the DHS. On April 17, 2007, 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. Therefore, on April 27, 2007, the Board suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding. A final order of discipline was entered against the respondent on May 23, 2007, after she failed to file a timely response to the Notice of Intent to Discipline. See 8 C.F.R. §§ 1003.105(c)(1); 1292.3(e)(3)(ii). The respondent moved that the Board set aside that decision. On July 20, 2007, the respondent's motion was granted, and she was given 30 days to submit an answer to the charges in the Notice of Intent to Discipline. Therefore, the respondent's answer was due, as extended, on August 20, 2007.

The answer was not filed until August 23, 2007. The respondent added a handwritten note to the certificate of service acknowledging that the answer was late, but she claimed that "my mother had surgery for ovarian cancer and this got stuck in the middle of all of that." Particularly where the time for filing an answer was already extended in the respondent's case, her vague and unsupported claims are insufficient to excuse her late-filed answer. The respondent's failure to file a response within the time period prescribed in the Notice, as extended, constitutes an admission of the allegations therein. 8 C.F.R. § 1292.3(e)(3)(ii).

As the Board stated when it originally issued a final order against the respondent, the Notice recommends that the respondent be expelled from practice before the DHS. The Office of General Counsel of EOIR asks that the Board extend that discipline to practice before the Board and Immigration Courts as well. As the respondent failed to file a timely answer, the regulations direct us to adopt the recommendation contained in the Notice, unless there are considerations that compel

us to digress from that recommendation. 8 C.F.R. §§ 1003.105(d)(2); 1292.3(e)(3)(ii). The recommendation is appropriate in light of the fact that the respondent was suspended from the practice of law in New York, in violation of 8 C.F.R. § 1292.3(b), as set forth in 8 C.F.R. § 1003.102(e)(1), and also violated 8 C.F.R. § 1292.3(b), as set forth in 8 C.F.R. § 1003.102(c), in that the respondent knowingly or with reckless disregard made a false statement of material fact or law, or willfully misled, misinformed, threatened, or deceived any person concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence. The respondent took these actions on or about December 16, 2002, when she submitted a letter and attachments to the Vermont Service Center. The respondent backdated documents that she filed with the now-DHS, and with the Department of Labor, and these actions amounted to "deliberate and intentional deception" that was "extremely serious." See March 1, 2007, order of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department.

Accordingly, the Board hereby expels the respondent from practice before the Board, the Immigration Courts, and the DHS. As the respondent is currently under the Board's April 27, 2007, order of suspension, her expulsion will be deemed to have commenced on that date. The respondent is instructed to maintain compliance with the directives set forth in the Board's April 27, 2007, order. The respondent is also instructed to notify the Board of any further disciplinary action against her.

The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107(b). In order to be reinstated, the respondent must demonstrate that she meets the definition of an attorney or representative, as set forth in 8 C.F.R. §§ 1001.1(f) and (j). *Id.* Therefore, the respondent must show that she has been reinstated to practice law in New York before she may be reinstated by the Board. See 8 C.F.R. § 1001.1(f) (stating that term "attorney" does not include any individual under order suspending her from the practice of law).



FOR THE BOARD