File: D2008-032 Date: APR 11 2008

In re: ALBERT S. LEFKOWITZ, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

ON BEHALF OF DHS: Eileen M. Connolly, Appellate Counsel

ORDER:

PER CURIAM. The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for 3 months.

On December 20, 2007, the Appellate Division of the Supreme Court for the First Judicial Department of New York suspended the respondent from the practice of law for 3 months, effective January 22, 2008. Consequently, on February 1, 2008, the Office of General 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. On February 6, 2008, the DHS asked that the respondent be similarly suspended from practice before that agency. Therefore, on February 26, 2008, 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 to the allegations contained in the Amended Notice of Intent to Discipline on February 28, 2008. *See* 8 C.F.R. § 1003.105(c)(1). In the answer, the respondent admits that his conduct violated 8 C.F.R. § 1003.102(e)(1), as he is an attorney subject to an order suspending him from the practice of law for 3 months. The answer argues that he should be subject to the same discipline as imposed in New York, and the suspension should run concurrently with the discipline imposed in New York. The respondent did not request a hearing on the charges. 8 C.F.R. § 1003.105(c)(3). We therefore find it appropriate to issue a final order on the Office of General Counsel's charges.

The Office of General Counsel recommends that "Respondent's particularly egregious misconduct" warrants a departure from identical reciprocal discipline, to the extent that the respondent should be suspended from practicing before the Board and the Immigration Courts, for a period of 180 days (Amended Notice of Intent to Discipline, at ¶ 6). The respondent engaged in numerous instances of misconduct in immigration matters, and assisted a non-lawyer in the unauthorized practice of law. *See* Appellate Division of the Supreme Court for the First Judicial Department of New York's December 20, 2007, decision; 8 C.F.R.§ 1003.102(m). The court found that the respondent should have been aware of the prohibition against his conduct, and "openly participated in a business that blatantly engaged in the unauthorized practice of law and accepted improper fees from non-clients." *Id.* at 7. Nevertheless, the court also found that the respondent's

behavior was less egregious than in another similar disciplinary case, where the respondent received a 6-month suspension. *Id.* Moreover, the respondent had a "prior unblemished record and made prompt remedial efforts to reconfigure his law practice." *Id.*

The referee's report of August 18, 2006, which recommended a private reprimand, considered that the respondent had no prior disciplinary record, showed remorse, and demonstrated that he had no relationship to "snakeheads". Referee's Report, at 35. The referee also considered that "none of the complainants who testified seemed to bear [the respondent] any ill-will", and there was no claim of neglect. *Id.* Moreover, the respondent was compliant with New York law as it relates to immigration matters. *Id.* The referee also considered the respondent's age, past medical history, and "lack of venality." *Id.* In consideration of all the factors, the Board concludes that reciprocal discipline of 3 months is appropriate in this case.

Further, after consideration of the respondent's submissions in his answer, as well as the government's response, and the respondent's "Sur-Reply", the Board will deem the suspension to have commenced on February 26, 2008, the date of the Board's immediate suspension order. The respondent failed to notify the Office of General Counsel concerning his suspension, 8 C.F.R. § 1003.103(c), although he presents evidence that he so notified the Board and Immigration Court. The Office of General Counsel argues that "[i]f Respondent had self-reported as required, General Counsel would have been in a position to file the Notice of Intent to Discipline in a more contemporaneous manner so that the state and federal suspension periods could have run more closely together" (Government's Response to Answer, at ¶ 5). *See also* 8 C.F.R. § 1003.103(a)(2)(if final administrative decision includes a period of suspension, time spent under immediate suspension order "may be credited toward the period of suspension imposed under the final administrative decision").

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. We direct that the contents of this notice be made available to the public, including at Immigration Courts and appropriate offices of the DHS.

After the suspension period expires, the respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS. *See* 8 C.F.R.§ 1003.107(a). In order to be reinstated, the respondent must demonstrate that he 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 he has been reinstated to practice law in New York before he 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 him from the practice of law).

Edward R. Grant

FOR THE BOARD