



In the Matter of the qualifications of:

EDWARD A. SLAVIN, JR.

ARB CASE NO. 04-172

DATE: April 12, 2005

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER

On October 20, 2004, this Board issued a Final Order Suspending Attorney from Practice before the Administrative Review Board. The Board took that action in response to the August 27, 2004 decision of the Supreme Court of Tennessee suspending the Respondent, Edward A. Slavin, Jr., from the practice of law for two years.¹ *Bd. of Prof. Resp. of the Sup. Ct. of Tenn. v. Slavin*, 145 S.W.3d 538 (Tenn. 2004). Prior to issuing the October 20, 2004 suspension order, we issued an order directing the Respondent to show cause why we should not give reciprocal effect to the Tennessee Supreme Court's order. Order to Show Cause (Sept. 14, 2004). On September 24, 2004, the Respondent filed a Response to Order [to] Show Cause and Motions for Recusal, to Vacate Order to Show Cause and to Order Full Disclosures of Ex Parte Contacts, and Alternative Motion to Order Briefing Schedule. In concluding that issuance of a reciprocal discipline order was proper, our October 20, 2004 order rejected the motions and the arguments that the Respondent advanced in that September 24, 2004 pleading. Fin. Ord. Suspending Atty. from Practice before the ARB at 2-12.

By facsimile on December 19, 2004, and by regular mail on January 5, 2005, the Respondent filed with this Board a Motion to Vacate October 20, 2004 Order, Have Case

¹ The Tennessee Supreme Court order suspended the Respondent from the practice of law for a period of two years, but afforded the Respondent an opportunity to apply for reinstatement after one year from the date of the court's August 27, 2004 order.

Decided by Secretary Chao and Motion to Grant Unopposed October 13th [sic] Motions (hereinafter referred to as Motion to Vacate).² The Motion to Vacate contains paragraphs numbered one through thirty-one. As we explain below, the majority of the points that the Respondent raises do not warrant in-depth examination. However, the Respondent does contend that we failed to dispose of motions that he had filed in this matter on October 19, 2004. Motion to Vacate at p. 1, ¶ 2; *see id.* at p. 6, ¶ 27. In the interest of clarifying the record, we will discuss that contention in detail.

Summary dispositions

Several of the paragraphs in the Motion to Vacate present unsupported challenges to the reasoning that was set forth in our October 20, 2004 Order. *See, e.g.*, Motion to Vacate at p. 1, ¶¶ 4-5 (citing *Theard v. United States*, 354 U.S. 278 (1957)). Other paragraphs restate the Respondent's assertion that this Board is biased against him. *See, e.g.*, Motion to Vacate at p. 3, ¶ 12; p. 4, ¶ 14. None of the foregoing contentions warrant discussion beyond that which we provided in the October 20, 2004 suspension order. *See* Fin. Ord. Suspending Atty. from Practice before the ARB at 2 – 13.

In addition, the Motion to Vacate contains numerous objections to the alleged participation of the Solicitor of Labor in this case. Motion to Vacate at pp. 4-5, ¶¶ 16 – 18; p. 6, ¶¶ 24 - 26. The Solicitor did not participate, through the filing of a brief or otherwise, in the show cause proceeding that culminated in issuance of our October 20, 2004 suspension order. The Respondent's contentions regarding the Solicitor are thus wholly irrelevant to our issuance of a reciprocal discipline order and we will not address them further.

The Motion to Vacate also contains extraneous references to the Department of Labor Office of Administrative Law Judges (OALJ). Motion to Vacate at p. 1, ¶ 5; p. 2, ¶ 7; p. 3 ¶¶ 9, 11, 13. Contrary to the Respondent's suggestion, our reciprocal discipline proceeding did not involve an appeal of an OALJ decision. As the Board's October 20, 2004 suspension order explains, the ARB initiated a show cause proceeding upon receiving notice that the Respondent's licensing jurisdiction had suspended him from the practice of law. Fin. Ord. Suspending Atty. from Practice before the ARB at 2 – 4, 6 - 7. We undertook that entirely independent, sua sponte action to protect the interests of affected parties in cases pending before us. *See id.* Although OALJ officials provided evidence in the Tennessee Board of Professional Responsibility proceedings that led to issuance of the Tennessee Supreme Court's suspension order, the OALJ played no role in the reciprocal discipline proceedings here. *See id.* at 5 – 6; *see also Bd. of Prof. Resp. v. Slavin*, 145 S.W.3d at 542-45 (discussing complaints filed against the Respondent and supporting testimony given at Bd. of Prof. Resp. hearing).

² The reference to October 13, 2004, in the title of the document that the Respondent filed on December 19, 2004, and January 5, 2005, should be read as October 19, 2004. *See* Motion to Vacate at p.1, ¶ 2; p.6, ¶¶ 26, 27; discussion *infra*.

The Respondent also requests that “the Secretary herself” decide this matter. Motion to Vacate at p. 1; *see id.* at p. 4, ¶ 16. The ARB is “assigned responsibility to act for the Secretary of Labor in review or on appeal” of matters arising under various statutes. Secretary’s Ord. 1-2002, ¶ 4, 67 Fed. Reg. 64272 (Oct. 27, 2002). As we indicated in the October 20, 2004 suspension order, the Secretary’s delegation of authority to this Board encompasses the responsibility to ensure the integrity of proceedings before this tribunal. Fin. Ord. Suspending Atty. from Practice before the ARB at 7-8 and authorities there cited; *see* Secretary’s Ord. 1-2002, ¶ 9, 67 Fed. Reg. at 64273. That delegation of authority does not provide for Secretarial review of ARB orders. *See id.*; *cf. Newsome v. Mitchell, McNutt & Sams, P.A.*, ARB No. 04-082, slip op. at 4, n.4 (ARB Sept. 14, 2004) (dismissing petition for review because Secretary’s Order 1-2002 did not authorize ARB to review Wage and Hour district director’s Fair Labor Standards Act determination, but granting the petitioner’s alternative request that the ARB forward the petition to the Secretary for her consideration).

The motions filed October 19, 2004

On October 19, 2004, the Respondent filed a pleading by facsimile that was entitled:

Motion to Reschedule Briefing in Response to Solicitor’s Brief[,] Notice of Filing and Motion to Take Judicial Notice, Motion to Disqualify DOL Solicitor’s Office, Response to Order on *Amicus Curiae* Brief and Motion to Grant Unopposed Motions for Recusal and Disclosures, to Vacate Order to Show Cause, to File Whistleblower Program Evaluations, and to Order Full Disclosures of *Ex Parte* Contacts, and Alternative Motion to Modify Briefing Schedule.

The Respondent had included ARB case number 04-172 in the caption of the October 19, 2004 pleading, and thus identified the document as related to this reciprocal discipline matter. But the substance of the October 19, 2004 pleading concerned proceedings in a separate appeal pending before this Board.

As stated above, the Solicitor played no role in the show cause proceedings in this reciprocal discipline matter. The Solicitor, as representative for the Assistant Secretary for Occupational Safety and Health, had participated in a separate case before the Board that also involved the question of the Respondent’s qualifications to represent parties in Department of Labor adjudications. Specifically, the Solicitor had filed an *amicus curiae* brief in the Respondent’s appeal from the Order Denying Authority to Appear that Associate Chief Administrative Law Judge Thomas M. Burke issued March 31, 2004. That appeal was jointly filed by the Respondent and his client in the underlying

whistleblower case, and was docketed as ARB No. 04-088. *See In the matter of the qualifications of Edward A. Slavin, Jr., Counsel for Complainant in Daniel Somerson, Complainant v. Eagle Express Lines, Inc., Respondent, 2004-STA-12, ARB No. 04-088, ALJ Nos. 2004-MIS-2, 2004-STA-12, Notice of App. and Ord. Establishing Briefing Sched. (ARB Apr. 27, 2004).* In addition, the October 19, 2004 pleading begins with the following statement:

Mr. Somerson only received the Solicitor's brief yesterday and he and his counsel respectfully request[] an extension until November 19, 2004 within which to respond to the current Solicitor's brief, given the lack of notice in advance [that] the Solicitor wanted to file a brief and the importance of the issues to First Amendment rights of workers and counsel.

October 19, 2004 Motion to Reschedule Briefing in Response to Solicitor's Brief at p.1, ¶ 1. Neither Mr. Somerson nor any other complainant is involved in this reciprocal discipline matter. As the foregoing excerpts from the October 19, 2004 pleading demonstrate, the substance of that pleading clearly indicated that the document was intended to be filed in support of the appeal pending in ARB No. 04-088, in which the Solicitor had filed a brief and in which Mr. Somerson was the Complainant. The Board accordingly associated the October 19 pleading with the record of proceedings in ARB No. 04-088.

Furthermore, all the motions that were included in the Respondent's October 19 pleading that could possibly be considered relevant to the show cause proceedings in this reciprocal discipline matter were addressed in our October 20, 2004 suspension order. We addressed those motions in our October 20, 2004 order because the motions were raised in the Respondent's response to the Board order to show cause in this case. On September 24, 2004, the Respondent filed his Response to Order [to] Show Cause and Motions for Recusal, to Vacate Order to Show Cause and to Order Full Disclosure of *Ex Parte* Contacts, and Alternative Motion to Order Briefing Schedule. The Respondent's September 24, 2004 motions for recusal, to vacate order to show cause, to order full disclosure of ex parte contacts and alternative motion to order briefing schedule were examined and denied in the Board's October 20, 2004 suspension order. Fin. Ord. Suspending Atty. from Practice before the ARB, slip op. at 2-6. We therefore reject the Respondent's assertion that the Board's October 20, 2004 suspension order failed to address motions that the Respondent had filed in the course of the show cause proceeding in this reciprocal discipline matter.

CONCLUSION

We accordingly deny the motions that the Respondent filed by facsimile on December 19, 2004, and by regular mail on January 5, 2005. The Final Order Suspending Attorney from Practice before the Administrative Review Board that we issued October 20, 2004, remains in effect.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge