File: D2005-252 Date: MAY - 4 2006

In re: RONALD FANTA, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

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

ORDER:

PER CURIAM. On June 4, 1998, the respondent was disbarred from the practice of law, by the New York Supreme Court, Appellate Division, First Judicial Department. The Court stated that the basis for the order was that the respondent was "automatically disbarred" after pleading guilty on September 29, 1997, in the United States District Court for the Southern District of New York, of one count of making false statements to the then-Immigration and Nationalization Service, in violation of 18 U.S.C. § 1001, a felony.

Consequently, on or about November 14, 2005, the Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service), initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the DHS. On November 10, 2005, 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 December 2, 2005, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

A Notice of Intent to Discipline seeking the respondent's expulsion from practice before the DHS was served on the respondent on November 8, 2005. Therefore, the respondent had 30 days, or until December 8, 2005, to submit an answer to the charges. *See* 8 C.F.R. §§ 1003.105(c)(1); 1292.3(e)(3)(ii). Both the regulations, and the Notice of Intent to Discipline, are clear as to where the answer is to be filed. That is, the answer is to be filed with this Board. *See* 8 C.F.R. § 1003.105(c)(1)("The practitioner shall file a written answer to the Notice of Intent to Discipline with the Board...")[1]; Notice of Intent to Discipline, at ¶ 7 ("The Rules provide that Respondent shall file with the Board a written answer to the Notice of Intent to Discipline within 30 days of the date of service").

[1]A copy of the relevant regulation was attached to the Notice of Intent to Discipline.

The respondent did not file an answer with this Board. Rather, the respondent sent a document entitled "Answer" to the DHS that was received on November 30, 2005. The case was then forwarded to the Office of the Chief Immigration Judge on January 20, 2006. On January 26, 2006, the DHS filed a motion with that office seeking a default order based on the respondent's failure to file a timely answer. That office then forwarded the file back to the Board to determine if the respondent had submitted a timely answer.

The Board provided the respondent the opportunity to respond to the DHS' assertion that he failed to file a timely answer. On April 17, 2006, the respondent sent a letter to the Board, and attached the "Answer" that he had previously sent to the DHS on November 30, 2005. In the letter, the respondent states that the answer was "duly and timely served upon the United States Department of Homeland Security in November 2005". The respondent does not contend that he filed the answer with the Board, and provides no reason for his failure to do so, despite being informed by both the regulations, and the Notice of Intent to Discipline, that any answer had to be filed with this Board. Therefore, the DHS properly argues that the respondent failed to file a timely answer in accordance with the regulations. The respondent's failure to file a response within the time period prescribed in the Notice constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1292.3(e)(3)(ii).

The Notice recommends that the respondent be expelled from practice before the DHS. The Office of General Counsel of EOIR asks that we 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).

We acknowledge that the respondent, in the "Answer" that he failed to properly serve with the Board, states that he did not receive the June 4, 1998, disbarment order. However, the New York Supreme Court, Appellate Division, First Judicial Department, sent a copy of its order to Jonathan Marks, Esq. The respondent claims in the "Answer" that he was never represented by Marks. However, Marks is identified as "attorney for respondent [Fanta]" by the New York Supreme Court, Appellate Division, First Judicial Department. We note that Marks also represented the respondent at the time of sentencing in the criminal case.

Since the government's recommendation is appropriate in light of the respondent's disbarment in New York, and the undisputed fact that the respondent "continued to hold himself out as eligible to represent applicants/petitioners before [the DHS]" on appearance forms filed with the DHS, Notice of Intent to Discipline, at ¶ 5, we will honor it. Accordingly, we hereby expel the respondent from practice before the Board, the Immigration Courts, and the DHS. As the respondent is currently under our December 2, 2005, order of suspension, we will deem the respondent's expulsion to have commenced on that date. 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.

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 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).

FOR THE BOARD