

Falls Church, Virginia 22041

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File: D2007-268

Date:

JUL 26 2011

In re: JAMES D. CHRISTO, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF RESPONDENT: Deborah N. Misir, Esquire

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

On April 3, 2009, in the United States District Court for the Southern District of New York, the respondent was found guilty of a "serious crime" within the meaning of 8 C.F.R. § 1003.102(h), relating to his immigration law practice. That is, the respondent was found guilty of one count of conspiracy to commit immigration fraud, in violation of 18 U.S.C. § 371.

Consequently, on April 22, 2009, the DHS initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the DHS. The Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) then asked that the respondent be similarly suspended from practice before EOIR, including the Board and Immigration Courts.

The respondent argued in an "Opposition to Petition/Motion for Discipline" that it was "premature" to suspend him from practice. Although a jury found him guilty on April 3, 2009, the respondent asserted that a conviction had not been entered against him, and he planned to file post-verdict motions. The Board considered the respondent's argument but entered an immediate suspension order on June 26, 2009, citing 8 C.F.R. § 1292.3(c)(1) and 8 C.F.R. § 1003.103(a).

The Board's June 26, 2009, decision considered, however, that attorney discipline proceedings may not be concluded "... until all direct appeals from an underlying criminal conviction have been completed." 8 C.F.R. § 1292.3(c)(3). Proceedings concerning the Notice of Intent to Discipline therefore were stayed "until the conclusion of the direct appeal of the respondent's criminal conviction."

The DHS has now filed a "Motion To Set Aside Order Staying Proceedings In This Matter And For Entry Of Final Order of Discipline", to which the respondent has not responded. The DHS presents evidence that the respondent's conviction was affirmed by the United States Court of Appeals for the Second Circuit on March 11, 2011. The DHS also presents evidence that on May 17, 2011, the respondent was suspended from the practice of law for a period of four years, nunc pro tunc to November 5, 2009, or for a period co-extensive with the respondent's period of federal probation, whichever is longer, by the New York Supreme Court, Appellate Division, First Judicial Department.

We find it appropriate to issue a final order on the government's charges. 8 C.F.R. § 1003.106(a)(1)(in summary disciplinary proceedings, Board may issue a final order when the respondent's answer does not make a prima facie showing that there are any material issues of fact in dispute); *Matter of Salomon*, 25 I&N Dec. 559, 560 (BIA 2011). The respondent fails to show that there is any material issue of fact in dispute in this matter. As the DHS' proposed sanction of expulsion is appropriate, in light of the respondent's criminal record, and suspension from the practice of law in New York, the Board will honor that proposal.

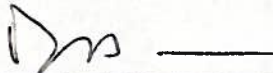
ORDER: The DHS Disciplinary Counsel's "Motion To Set Aside Order Staying Proceedings In This Matter And For Entry Of Final Order of Discipline", is granted.

FURTHER ORDER: The Board hereby expels the respondent from practice before the Board, the Immigration Courts, and the DHS.

FURTHER ORDER: 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.

FURTHER ORDER: 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).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. *See* 8 C.F.R. § 1003.105(d)(2)(2010); *Matter of Kronegold*, 25 I&N Dec. 157, 163 (BIA 2010).



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FOR THE BOARD