

Falls Church, Virginia 22041

---

---

File: D2012-136

Date:

AUG 01 2012

In re: EARL SETH DAVID, 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

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

On July 9, 2004, in Case No. D2004-089, we suspended the respondent from practice before the Board, Immigration Courts, and DHS for a period of 15 months. The suspension was based on the fact that on January 29, 2004, the respondent was suspended from the practice of law in New York for 15 months. The respondent has not been reinstated to practice law in New York, and has not been reinstated to practice by the Board.

The DHS initiated these new disciplinary proceedings on June 6, 2012, based on criminal proceedings involving the respondent. That is, on April 2, 2012, in the United States District Court for the Southern District of New York, the respondent pled guilty to "serious crimes" within the meaning of 8 C.F.R. § 1003.102(h). The respondent pled guilty to one count of conspiracy to commit immigration fraud, in violation of 18 U.S.C. §§ 1546(a) and 1001, a felony, and one count of mail and wire fraud conspiracy, in violation of 18 U.S.C. §§ 1341 and 1343, a felony.

The Superseding Indictment sets out, in Count One, that the respondent was suspended from the practice of law in New York in 2004, but "continued to participate in the scheme and to direct operations at the David Firm, but ceased using his name on paperwork filed with government agencies to avoid detection of his ongoing role" (Notice of Intent to Discipline, Exh. 3, at ¶ 9).

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline. 8 C.F.R. § 1003.105 (2012); 8 C.F.R. § 292.3(e). *See* 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012). The respondent's failure to file a response within the time period prescribed in the Notice constitutes an admission of the allegations therein, and he is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(2012); 8 C.F.R. § 292.3(e). *See* 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012).

The Notice of Intent to Discipline proposes that the respondent be disbarred from practice before the DHS, and the Disciplinary Counsel for the Executive Office for Immigration Review 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 proposed sanction contained in the Notice, unless there are considerations that compel us to digress from that proposal. 8 C.F.R. § 1003.105(2012); 8 C.F.R. § 292.3(e). *See* 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012).

Since the proposed sanction is appropriate in light of the respondent's "serious crimes related to criminal and unprofessional conduct in his continuing immigration law practice," Notice of Intent to Discipline, at ¶ 10, we will honor it. Accordingly, we will disbar the respondent from practice before the Board, the Immigration Courts, and the DHS.

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

**FURTHER ORDER:** The respondent shall maintain records to evidence compliance with this order.

**FURTHER ORDER:** The Board directs that the contents of this notice be made available to the public, including at Immigration Courts and appropriate offices of the DHS.

**FURTHER ORDER:** The respondent is 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(2012). *See* 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012).

A handwritten signature in black ink, appearing to be "DM" followed by a horizontal line.

---

FOR THE BOARD