

Falls Church, Virginia 22041

File: D2003-138

Date: DEC - 7 2004

In re: JAVIER LOPERA, 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 August 28, 2003, the United States District Court for the Southern District of Florida, Miami Division, entered a judgment against the respondent in a criminal case. The respondent was found guilty, in a 19-count indictment, of violating 18 U.S.C. § 371 (conspiracy to commit offenses against the United States); 18 U.S.C. § 1001 (making false statements); and 18 U.S.C. §§ 1324(a)(1)(A)(iii) and (a)(1)(B)(I) (harboring aliens). He was sentenced to imprisonment for 100 months, as to counts 13-19, and 60 months for counts 1-12, to run concurrently, and was fined \$12,500. The crimes are "serious crimes" within the meaning of 8 C.F.R. § 1003.102(h). On May 20, 2004, the respondent was disbarred from the practice of law by the Supreme Court of Florida.

Consequently, on October 7, 2004, 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 October 13, 2004, 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 November 4, 2004, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline. *See* 8 C.F.R. § 1003.105(c)(1); 1292.3(e)(3)(ii). The respondent submitted a "Response to the Notice of Intent to Discipline." The respondent admits that he was found guilty of the crime described above, admits he has been disbarred, and admits he is no longer a practitioner. The respondent states that it is not necessary to impose any further sanction upon him, since he is incarcerated. The respondent does not request a hearing on the charges, and that opportunity is therefore waived. *See* 8 C.F.R. § 1003.105(c)(3). We therefore find it appropriate to issue a final order on the government's charges.

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. Since the recommendation is appropriate in light of the respondent's

criminal record, and disbarment in Florida, we will honor that recommendation. The respondent's claim that he should not be expelled from practice, either because he is incarcerated, or because he does not intend to practice before EOIR or DHS again, is without substance. Accordingly, we hereby expel the respondent from practice before the Board, the Immigration Courts, and the DHS. The respondent is instructed to maintain compliance with the directives set forth in our prior order.



FOR THE BOARD