

Falls Church, Virginia 22041

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File: D2003-139

Date: OCT - 8 2003

In re: FRANK DENNY WINSTON, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS.

FINAL ORDER OF DISCIPLINE

ON BEHALF OF DHS: Eileen M. Connolly, Appellate Counsel

ON BEHALF OF GENERAL COUNSEL: Jennifer J. Barnes, Esquire

ORDER:

PER CURIAM. On January 6, 2003, the respondent was suspended from the practice of law for 2 years, stayed, with an actual suspension of 5 months, by the Supreme Court of California. On March 21, 2003, the Review Department of the California State Bar Court temporarily stayed the respondent's actual suspension until April 20, 2003. Winston stipulated that he had violated the California Rules of Professional Conduct as to an immigration client by "intentionally, recklessly, and repeatedly failing to perform legal services with competence." Winston, moreover, misrepresented the status of that client's case, failed to respond to other clients, and violated other Rules of Professional Conduct.

Consequently, on August 4, 2003, 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 August 13, 2003, 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 August 19, 2003, 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 but has failed to do so. See 8 C.F.R. §§ 1003.105(c)(1); 1292.3(e). 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)(ii).

The Notice recommends that the respondent be suspended from practicing before the Board and the Immigration Courts, for a period of 5 months. The OGC asks that we extend that discipline to practice before it as well. Because the respondent has failed to file an 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. §§ 3.105(d)(2); 1292.3(e)(ii). Since the recommendation is appropriate in light of the sanctions imposed in California, we will honor that recommendation. Accordingly, we hereby suspend the respondent from practice before the Board,

the Immigration Courts, and the DHS for a period of 5 months. As the respondent is currently under our August 19, 2003, order of suspension, we will deem the respondent's suspension 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 seek reinstatement under appropriate circumstances. *See* 8 C.F.R. § 1003.107(b).



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FOR THE BOARD