

Falls Church, Virginia 22041

File: D2018-0327

Date:

NOV 21 2019

In re: Youry ZIANOVICH a.k.a. Youras Ziankovich a.k.a. Youry Ziankovich, Attorney

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Paul A. Rodrigues
Disciplinary Counsel

ON BEHALF OF DHS: Catherine M. O'Connell
Disciplinary Counsel

ON BEHALF OF RESPONDENT: Pro se

The respondent will be suspended from practice before the Board of Immigration Appeals ("Board"), the Immigration Courts, and the Department of Homeland Security ("DHS") for 3 months, effective as of the date of this order.

On October 31, 2018, the hearing board for the presiding disciplinary judge of the Supreme Court of Colorado suspended the respondent from the practice of law in Colorado for 1 year and 1 day, with 3 months to be served and the remainder to be stayed upon successful completion of a 2-year period of probation, effective immediately (Petition for Immediate Suspension, Exh. 1).

The hearing board for the presiding disciplinary judge of the Supreme Court of Colorado on June 20, 2018, issued an amended opinion (Petition for Immediate Suspension, Exh. 2). That opinion described how the respondent was admitted to practice law in New York in 2014, and is not admitted to practice law in Colorado. *Id.* at 3. The opinion further discussed how the respondent had moved to dismiss the case because he is not licensed in Colorado and his law practice is limited to federal immigration cases. *Id.* at 1. The motion was denied, and the Colorado Supreme Court dismissed the respondent's appeal. *Id.* at 2; Disciplinary Counsel for the Executive Office for Immigration Review ("Disciplinary Counsel for EOIR") "Response to Opposition to Motion for Immediate Suspension" at Exh. 1.

The hearing board opinion discussed how the respondent committed numerous disciplinary infractions concerning immigration clients (Petition for Immediate Suspension, Exh. 2 at 3-12). These included charging an unreasonable fee, and committing conduct involving dishonesty, fraud, deceit, or misrepresentation. *Id.* at 9-12. The decision of the hearing board for the presiding disciplinary judge of the Supreme Court of Colorado was affirmed by the Supreme Court of Colorado on February 1, 2019 (Disciplinary Counsel for EOIR "Response to Opposition to Motion for Immediate Suspension" at 3; Exh. 2).

The Disciplinary Counsel for EOIR petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts on January 29, 2019, and stated that the respondent remained suspended from the practice of law in

Colorado, as of the date of its filing. The Disciplinary Counsel for the DHS asked that the respondent be similarly suspended from practice before that agency. *See* 8 C.F.R. §§ 1003.103(a)(1) and (4) (discussing grounds for immediate suspension, including suspension by the highest court of any state).

We granted the immediate suspension order on March 21, 2019, after taking into consideration the respondent's argument that he is not subject to discipline in Colorado, as he is licensed only in New York and practices federal law.¹ We noted that the respondent's arguments had been rejected by the presiding disciplinary judge of the Supreme Court of Colorado, and by the Supreme Court of Colorado. While the respondent noted that he was then pursuing claims before the United States District Court for the District of Colorado, he remained suspended from the practice of law in Colorado and an immediate suspension order was therefore required by regulation. 8 C.F.R. § 1003.103(a)(4).

The Board's March 21, 2019, decision provided the respondent with 30 days to file an answer to the Notice of Intent to Discipline. The respondent filed an answer on April 20, 2019, and the Disciplinary Counsel for EOIR submitted a "Motion for Summary Adjudication." The respondent thereafter filed a "Response On Motion for Summary Adjudication And Cross-Motion For Summary Adjudication."

On May 24, 2019, we denied the respondent's motion to set aside the Board's March 21, 2019, immediate suspension order. We also ordered that, under the circumstances, the proceedings concerning the Notice of Intent to Discipline would be stayed until the United States District Court for the District of Colorado issued a decision in the respondent's federal case. The parties were ordered to file supplemental briefs within 30 days of the decision of the United States District Court for the District of Colorado concerning the respondent.

On August 2, 2019, we denied a motion filed by the respondent, which apparently sought reconsideration of our May 24, 2019, order. The respondent on August 12, 2019, submitted a Notice of Appeal, concerning the August 2, 2019, Board order. The appeal was rejected, as an appeal in an Attorney Discipline matter under 8 C.F.R. § 1003.106(c) is only appropriate upon issuance of a decision by an adjudicating official.

On September 27, 2019, the Disciplinary Counsel for EOIR filed a "Notice of Federal District Court Decision and Renewed Motion for Summary Adjudication," which is opposed by the respondent. *See* Respondent's "Response On Renewed Motion For Summary Adjudication and Cross-Motion for Summary Adjudication." The Disciplinary Counsel for EOIR, and the respondent, submit a September 18, 2019, decision of the United States District Court for the District of Colorado. *See Ziankovich v. Large*, No. 17-cv-02039-CMA-NYW, 2019 WL 4463283 (United States District Court, D. Colorado Sept. 18, 2019). The decision affirmed and adopted a recommendation of a United States Magistrate Judge, and dismissed the respondent's case with prejudice. *Id.*

¹ One Board Member issued a dissenting opinion concerning the immediate suspension order.

As the Disciplinary Counsel for EOIR argues, the respondent has not established that there is a material issue of fact in his case (Disciplinary Counsel for EOIR's "Notice of Federal District Court Decision and Renewed Motion for Summary Adjudication" at 2-3). In particular, the respondent has not made a prima facie showing that there is a material issue of fact regarding the basis of the proceeding (his suspension in Colorado), and the respondent has not shown that any of the exceptions to the imposition of disciplinary sanctions exist in his case, particularly where the United States District Court for the District of Colorado has now dismissed his federal action concerning the Colorado disciplinary proceedings. *See* 8 C.F.R. §§ 1003.102(e) (practitioner subject to discipline by Board when he is subject to a final order of suspension); 1003.106(a); 1003.103(b)(2)(i)-(iii).² While the respondent expresses disagreement with the decision of the United States District Court for the District of Colorado, he has not shown that it is likely that this decision will be revisited or reversed (Respondent's Response at 3-5).

The Disciplinary Counsel for EOIR's "Notice of Federal District Court Decision and Renewed Motion for Summary Adjudication," at 4, seeks to have the respondent's 3-month suspension effective as of the date of this order. The Disciplinary Counsel for EOIR presents evidence that the respondent has not complied with the Board's March 21, 2019, immediate suspension order. *Id.*; Exh. 2.

A transcript from an August 6, 2019, removal hearing in Denver, Colorado is presented, and the subject of that hearing (the respondent's client) stated that the respondent had only told him three days earlier that he could not represent him in Immigration Court. *Id.* at Exh. 2, 1-2. The respondent's client moreover testified that he had recently contacted the respondent about immigration paperwork received in July, 2019, and the respondent instructed the subject of the removal hearing to mail the paperwork to him. *Id.* at Exh. 2, 4-8. Based on this evidence, we concur with the Disciplinary Counsel for EOIR that the respondent did not promptly notify clients that he had been suspended by the Board, and has apparently continued to practice immigration law, despite the respondent's arguments to the contrary (Respondent's Response at 5; Exh. C). We consequently agree that the Board's final order of suspension should be effective as of the date of this order.

ORDER: The Disciplinary Counsel for EOIR's "Notice of Federal District Court Decision and Renewed Motion for Summary Adjudication" is granted.

FURTHER ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS for 3 months. The suspension is effective as of the date of this order.

FURTHER ORDER: The respondent must maintain compliance with the directives set forth in our prior orders. The respondent must notify the Board of any further disciplinary action against him.

² We note, moreover, that on October 7, 2019, the United States Supreme Court denied the respondent's petition for writ of certiorari to the Supreme Court of Colorado.

FURTHER ORDER: The contents of the order shall be made available to the public, including at the Immigration Courts and appropriate offices of the DHS.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, the Immigration Courts, and the DHS under 8 C.F.R. § 1003.107.



FOR THE BOARD