NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Michael JOFFE, D2018-0012

Respondent

FILED
NOV 17 2022

ON BEHALF OF EOIR: Paul A. Rodrigues, Disciplinary Counsel

ON BEHALF OF DHS: Toinette M. Mitchell, Disciplinary Counsel

IN PRACTITIONER DISCIPLINARY PROCEEDINGS
Notice of Intent to Discipline Before the Board of Immigration Appeals

Before: Malphrus, Deputy Chief Appellate Immigration Judge, Creppy, Appellate Immigration Judge, Liebowitz, Appellate Immigration Judge

Opinion by Malphrus, Deputy Chief Appellate Immigration Judge

MALPHRUS, Deputy Chief Appellate Immigration Judge

The respondent was suspended from the practice of law before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security ("DHS") for 2 years, effective April 18, 2018. On August 1, 2022, he filed a motion seeking reinstatement to practice. The Disciplinary Counsel for the Executive Office for Immigration Review ("EOIR") and the Disciplinary Counsel for DHS oppose the respondent's motion for reinstatement. The respondent's motion for reinstatement will be denied.

On January 4, 2018, the Appellate Division of the Supreme Court for the First Judicial Department in the State of New York issued an order suspending the respondent from the practice of law in New York for 2 years, effective 30 days from the date of its order. The suspension was based on the respondent's misconduct concerning immigration clients.

The Disciplinary Counsel for DHS petitioned for the respondent's immediate suspension from practice before that agency on April 2, 2018. The Disciplinary Counsel for EOIR asked that the respondent be similarly suspended from practice before the Board and the Immigration Courts. We granted the petition on April 18, 2018. Further, because the respondent did not file a timely answer to the allegations contained in the Notice of Intent to Discipline and because the proposed sanction of a 2-year suspension was appropriate considering his suspension in New York, our May 21, 2018, final order suspended the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS for 2 years, effective April 18, 2018.

The respondent now asks to be reinstated to practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. He claims that he has been reinstated to the practice of law in New York and that he meets the definition of attorney contained in 8 C.F.R. § 1001.1(f).

See 8 C.F.R. § 1003.107(a)(1) (discussing requirements for reinstatement). In support of his motion, he has presented evidence that he has been reinstated to the practice of law in New York (Respondent's Mot, Exh. 1). *See* 8 C.F.R. § 1003.107(a)(1).

The Disciplinary Counsels for EOIR and DHS do not dispute that the respondent meets the definition of attorney set forth in 8 C.F.R. § 1001.1(f). The Disciplinary Counsels, however, oppose the respondent's motion for reinstatement on the ground that he has not complied with his period of suspension. *See* 8 C.F.R. § 1003.107(a)(3) (indicating that, if a practitioner failed to comply with the terms of his or her suspension, the Board shall deny the motion for reinstatement).

In particular, the Disciplinary Counsels maintain that the respondent has practiced before EOIR and DHS while suspended. The Disciplinary Counsels describe 2 instances in which the respondent submitted Notices of Entry of Appearance and falsely stated that he was not subject to any suspension order and 1 instance in which the respondent was listed as the preparer and attorney on certain forms even though he was suspended at the time the forms were filed. The Disciplinary Counsels also list 3 instances in which the respondent's name and address were listed as the "in care of" address for a petitioner during the respondent's period of suspension. Finally, the Disciplinary Counsels note that the respondent appeared in Immigration Court in New York on behalf of a client on March 23, 2022, and did not inform the Immigration Judge that he was suspended. The Disciplinary Counsels have submitted evidence to support these allegations (Joint Opposition to Mot., Attachment 1-8).

On August 19, 2022, the respondent submitted an answer to the Disciplinary Counsels' opposition to his motion for reinstatement. In the answer, the respondent claims that he did not violate this Board's suspension order. In particular, he contends that, in the first two violations alleged by the Disciplinary Counsels, he signed the forms before he was suspended and the clients filed the forms, without his knowledge, after the suspension took effect (Respondent's Answer at 1). In addition, he maintains that he did not represent or perform any legal work for the individuals who listed his address as an "in care of" address on their immigration forms (Respondent's Answer at 1-2).

The respondent further admits that he submitted a Notice of Entry of Appearance (Form G-28) prematurely for a client in December 2021, but he claims that he did not perform any legal work for this client until after he was reinstated to practice in New York (Respondent's Answer at 2). Finally, the respondent states that he appeared on behalf of a client in Immigration Court after he had been reinstated in New York because he believed his reinstatement in New York allowed him to represent clients before EOIR and DHS (Respondent's Answer at 3). The respondent has not requested a hearing.

The respondent's explanations, which are not supported by an affidavit or other evidence such as statements from clients, are not sufficient to establish that the respondent did not violate the terms of his suspension before the Board of Immigration Appeals, the Immigration Courts, and DHS as the Disciplinary Counsels allege. The respondent's claim that his clients filed forms without his knowledge is not persuasive. There is no explanation as to why the clients would have waited months to make the filings and then not communicated with the respondent or any

explanation as to why the respondent would not have learned of the filings through some communication from the United States Citizenship and Immigration Services. Further the respondent admittedly and knowingly filed a Form G-28 before he was reinstated in New York, and our May 21, 2018, order suspending the respondent informed the respondent of the process for reinstatement. We accordingly deny the respondent's motion for reinstatement. 8 C.F.R. § 1003.107(a)(3). Further, because it appears that the respondent violated the terms of his suspension on several occasions and did not admit to these violations in his motion for reinstatement, the respondent shall remain suspended for an additional 6 months, effective immediately upon issuance of this order.

ORDER: The respondent's motion for reinstatement is denied.

FURTHER ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS for 6 months, effective immediately upon issuance of this order.

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

FURTHER ORDER: The contents of this 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.