

NOT FOR PUBLICATION

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

MATTER OF:

Beresford A. LANDERS, JR., D2022-0141

Respondent

FILED

DEC 05 2022

ON BEHALF OF RESPONDENT: Pro se

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

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

IN PRACTITIONER DISCIPLINARY PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Brown, Temporary Appellate Immigration Judge¹; Noferi, Temporary Appellate
Immigration Judge; Malphrus, Deputy Chief Appellate Immigration Judge

Opinion by Temporary Appellate Immigration Judge Brown

BROWN, Temporary Appellate Immigration Judge

The respondent was suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security (“DHS”) for 90 days, effective September 8, 2022, and remains suspended. On October 5, 2022, he filed a motion seeking reinstatement to practice. On November 2, 2022, the respondent filed a motion to set aside the Board’s October 20, 2022, final order of discipline. The Disciplinary Counsel for the Executive Office for Immigration Review (“EOIR”) and the Disciplinary Counsel for DHS oppose the respondent’s motion for reinstatement and motion to set aside. The respondent’s motions will be denied.

On June 2, 2022, the Supreme Court of Florida issued an order suspending the respondent from the practice of law in Florida for a period of 90 days, effective 30 days from the date of the order. On August 9, 2022, the Disciplinary Counsel for the Executive Office for Immigration Review (“EOIR”) and the Disciplinary Counsel for the Department of Homeland Security (“DHS”) jointly petitioned for the respondent’s immediate suspension from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. We granted the petition on September 8, 2022.

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See 8 C.F.R. § 1003.1(a)(4).

The respondent did not file a timely answer to the Notice of Intent to Discipline (“NID”) and did not dispute the allegations in the Notice. Given the respondent’s 90-day suspension from the practice of law in Florida, our October 20, 2022, final order of discipline suspended the respondent from practice before the Board, the Immigration Courts, and DHS for 90 days, effective September 8, 2022, the date of our immediate suspension order.²

We first address the respondent’s motion to set aside the final order of discipline. The regulations provide that a respondent may file a motion to set aside a final order that resulted from a failure to file a timely answer to the NID. 8 C.F.R. § 1003.105(d)(2). However, a respondent must show that the failure to file a timely answer was the result of “exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.” 8 C.F.R. § 1003.105(d)(2)(ii). The respondent does not demonstrate that his failure to file a timely answer was the result of “exceptional circumstances.”

The respondent contends he did not receive the NID, and thus, he was deprived of his due process right to respond to the charges or request a hearing (Respondent’s Mot. to Set Aside, at 2). The respondent has provided an undated affidavit from his assistant attesting to checking the respondent’s mail and nonreceipt of the NID (*Id.* at “Exhibit A”). The Disciplinary Counsels argue the NID was properly served on the respondent pursuant to 8 C.F.R. §§ 1003.103(a)(1)-(2), to wit, service by certified mail to the respondent’s last known address of record with EOIR; and the mailing address is the same the respondent identified in his motion, as well as with the State Bar of Florida. As noted by the Disciplinary Counsels, the tracking number for the certified mail envelope shows the mailing was returned as unclaimed after the U.S. Postal Service attempted delivery on August 13, 2022, as well as a reminder on August 18, 2022 (Government’s Opp. to Respondent’s Mot. to Set Aside at 3, and “Exhibit 1”).³ *See generally Matter of Grijalva*, 21 I&N Dec. 27, 37 (BIA 1995) (in the Orders to Show Cause context, holding that where “there is proof of attempted delivery and notification of certified mail, [with return receipt requested], a strong presumption of effective service arises”). The affidavit from the respondent’s assistant does not address the August 2022 time period when the U.S. Postal Service attempted delivery. Based on the record before us, the Disciplinary Counsels properly served the respondent with notice of the NID in accordance with the regulations, and the respondent has not established a due process violation nor “exceptional circumstances” based on not receiving actual notice of the NID.

We are also not persuaded to set aside the final order of discipline on the basis of the respondent’s current license to practice in Florida nor financial or client hardships. *Matter of Rosenberg*, 24 I&N Dec. 744, 746 (BIA 2009). The respondent has not filed an answer to the NID

² The Disciplinary Counsels state the Board did not address the respondent’s motion for reinstatement nor their opposition in our October 20, 2022, decision (Government’s Opp. to Respondent’s Mot. to Set Aside at 2, fn.3). However, due to internal administrative processing, the Board was not aware of these filings at the time of our October 20, 2022, decision.

³ The Disciplinary Counsels are strongly encouraged to include the certified mail receipt number in their certificates of service for the NID in the future.

apart from stating he denies any allegations in the NID (Respondent's Mot. to Reinstate at 2). The respondent's motions do not meaningfully address the merits of the Florida suspension, and basis for the immediate suspension and summary disciplinary proceedings here. Further, financial hardship is not, in itself, sufficient to set aside the final order. *See generally Matter of Kronegold*, 25 I&N Dec. 157, 162 (BIA 2010) ("If the financial hardship that accompanies suspension from the practice of law was in itself adequate to establish grave injustice, then almost any attorney whose livelihood was based on his legal practice could avoid similar reciprocal discipline."). Thus, we will deny the respondent's motion to set aside, and our October 20, 2022, final order of suspension remains in effect.

Next, we address the respondent's motion to be reinstated to practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. The respondent claims that he has been reinstated to the practice of law in Florida 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 Florida (Respondent's Mot., Exh. A). *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 the Board has not issued a final order of discipline. While the respondent's motion for reinstatement was premature when filed, as noted above, the Board has issued a final order of discipline.

The Disciplinary Counsels also object to reinstatement because the respondent's period of suspension has not expired, and thus his motion is premature on this basis. In response, the respondent again argues he did not receive the NID, and thus, he could not file an answer (Respondent's Response to Opp. at 2). We incorporate our discussion above regarding his due process arguments. Accordingly, as the respondent remains suspended under our final order of discipline, we will deny the motion to reinstate.

ORDER: The respondent's motion to set aside the final order of discipline is denied.

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