

NOT FOR PUBLICATION

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

MATTER OF:

Maude LAROCHE-ST. FLEUR, D2022-0158

Respondent

FILED
JAN 09 2023

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

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

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

Notice of Intent to Discipline from a Decision of the Board of Immigration Appeals

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

Opinion by Deputy Chief Appellate Immigration Judge Malphrus

MALPHRUS, Deputy Chief Appellate Immigration Judge

The respondent will be suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security (“DHS”) for 18 months, effective September 29, 2022.

I. PROCEDURAL HISTORY AND ARGUMENTS

On March 25, 2022, the Commonwealth of Massachusetts’ Supreme Judicial Court for Suffolk County suspended the respondent from the practice of law in Massachusetts for 18 months, effective April 24, 2022. The suspension was based on the respondent’s misconduct in her own divorce proceedings. On September 8, 2022, the Disciplinary Counsel for the Executive Office for Immigration Review (“EOIR”) and the Disciplinary Counsel for 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 29, 2022.

On October 7, 2022, the respondent filed an answer to the Notice of Intent to Discipline. In the answer, the respondent conceded proper notice and that she was admitted to the practice of law in Massachusetts on June 15, 2012 (Answer to Joint Notice at 1). The respondent, without explanation, also conceded in part and denied in part the allegation related to her discipline in Massachusetts and the allegation that she had not notified Disciplinary Counsels of the

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

Massachusetts suspension. The respondent denied the allegation claiming that she had engaged in professional misconduct (Answer to Joint Notice at 1).

The respondent argues that she has shown good cause for setting aside the immediate suspension order entered against her. She also maintains that she has presented clear and convincing evidence to rebut the presumption that reciprocal discipline should follow from her Massachusetts suspension. In particular, she contends that she has shown that the Massachusetts disciplinary proceeding was so lacking in notice or opportunity to be heard that it constituted a violation of due process, that there was such an infirmity of proof establishing her professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject, and that the imposition of discipline would result in grave injustice (Answer to Notice at 2). In support of this argument, the respondent alleges that the judge presiding over her divorce did not consider key evidence and that the opposing party engaged in gaslighting tactics during the proceeding (Answer to Notice at 2-6). The respondent further claims that the Board of Bar Overseers blocked her from presenting evidence in her defense and reframed the facts of her divorce proceeding and her disciplinary case to fit its position (Answer to Notice at 6). The respondent has submitted evidence from her divorce proceeding and her disciplinary proceeding to support her claims and has requested oral argument, a request that we will construe as a request for a hearing.

The Disciplinary Councils have filed a motion for summary adjudication. In the motion, the Disciplinary Councils argue first that no good cause exists for setting aside the immediate suspension order. The Disciplinary Councils note that the proof in the record of the respondent's disciplinary suspension in Massachusetts is sufficient to establish that immediate suspension is warranted and that the respondent's evidence does not refute this (Gov't Motion for Summary Adjudication at 3). We agree with the Disciplinary Councils' arguments on this point. 8 C.F.R. § 1003.103(a)(4). The respondent has not claimed or established that her disciplinary suspension in Massachusetts is not final or that other good cause exists at this time for setting aside the immediate suspension order. 8 C.F.R. § 1003.103(a)(4). We accordingly will proceed to consider the charges in the Notice of Intent to Discipline.

While the respondent argues that discipline should not follow from her Massachusetts suspension, the Disciplinary Councils argue that there are no material issues of fact in dispute regarding the basis for discipline. The Disciplinary Councils maintain that the evidence submitted in support of the Petition for Immediate Suspension establishes that the respondent is subject to a final order of suspension in Massachusetts and therefore subject to reciprocal discipline in these proceedings. The Disciplinary Councils further contend that the respondent's allegations regarding lack of due process and infirmity of proof in her Massachusetts proceeding are not supported by the evidence she has provided (Gov't Motion for Summary Adjudication at 4). Specifically, the Disciplinary Councils state that the respondent's allegations that Board of Bar Overseers improperly blocked her from presenting evidence in her Massachusetts disciplinary proceeding are not corroborated by the hearing excerpts and other documents. The Disciplinary Councils further note that the respondent's evidence demonstrates that she participated in her disciplinary proceedings and had the opportunity to be heard (Gov't Motion for Summary Adjudication at 4-5). Finally, the Disciplinary Councils claim that the respondent has not

established that there are extraordinary or exceptional circumstances in her case to establish that the imposition of reciprocal discipline would be a grave injustice. The Disciplinary Councils contend that the respondent's alleged mistreatment in her divorce proceedings does not establish that she was treated unfairly in her Massachusetts disciplinary proceeding or that the imposition of discipline is unwarranted (Gov't Motion for Summary Adjudication at 5-6).

II. ANALYSIS

The Notice of Intent to Discipline charges that the respondent is subject to reciprocal discipline under 8 C.F.R. § 1003.102(e) because she has been suspended from the practice of law in Massachusetts due to professional misconduct (Notice of Intent to Discipline at 1-2). In particular, the Disciplinary Councils allege that, on March 25, 2022, the Commonwealth of Massachusetts' Supreme Judicial Court for Suffolk County suspended the respondent from the practice of law in Massachusetts for 18 months, effective April 24, 2022. *Id.* The Disciplinary Councils submitted a certified copy of the court's March 25, 2022, order and a copy of the court's March 24, 2022, memorandum of decision to support the charge (Petition for Immediate Suspension, Attachments 1 and 2).

The evidence of the respondent's suspension in Massachusetts is sufficient to establish that disciplinary proceedings are appropriate. *See* 8 C.F.R. § 1003.103(b)(2); *see also* 8 C.F.R. § 1003.102(e). When the Disciplinary Councils for EOIR and DHS bring proceedings based on a final order of suspension or disbarment, like the one in the respondent's case, the order creates a rebuttable presumption that reciprocal disciplinary sanctions should follow. *See* 8 C.F.R. § 1003.103(b)(2); *see also Matter of Kronegold*, 25 I&N Dec. 157, 160 (BIA 2010); *Matter of Truong*, 24 I&N Dec. 52, 54 (BIA 2006); *Matter of Ramos*, 23 I&N Dec. 843, 845 (BIA 2005). The respondent can rebut this presumption only by demonstrating by clear and convincing evidence that the underlying disciplinary proceeding resulted in a deprivation of due process, that there was "an infirmity of proof" establishing the misconduct, or that discipline would result in "grave injustice." 8 C.F.R. § 1003.103(b)(2).

The respondent argues that all of these exceptions apply in her case. She further has requested a hearing. To obtain a hearing, however, the respondent must make a prima facie showing that there is a material issue of fact regarding the basis for discipline or regarding one of the exceptions that preclude summary proceedings. *See* 8 C.F.R. § 1003.106(a)(1); 8 C.F.R. § 1003.103(b)(2).

There is no material issue of fact regarding the basis for discipline in this case. The respondent does not dispute that she has been suspended in Massachusetts due to professional misconduct (Answer to Notice at 1-6). The respondent instead maintains that deficiencies in both her divorce proceeding and the disciplinary proceeding in Massachusetts should preclude the Board from imposing reciprocal discipline.

The evidence the respondent has submitted with her Answer to the Notice of Intent to Discipline, however, is not sufficient to establish that she has a reasonable likelihood of showing, during a hearing, that the disciplinary proceedings in Massachusetts lacked due process or that there was an infirmity of proof in those proceedings (Documents for Rebuttal of Presumption of

Professional Misconduct, Exh. A-J). To the contrary, the certified copy of the docket sheet, the docket entries, the petition for discipline, the hearing reports and excerpts of hearing transcripts, and the information the respondent has provided from her disciplinary proceeding in Massachusetts, together with the Massachusetts court decision and order submitted by Disciplinary Counsels demonstrate that the respondent received a full and fair disciplinary hearing with the opportunity to be heard and present arguments and evidence in her own defense (Documents for Rebuttal of Presumption of Professional Misconduct, Exh. J; Petition for Immediate Suspension, Attachments 1 and 2). The evidence further establishes that there was ample proof of misconduct presented to the Massachusetts disciplinary authorities.

Moreover, the evidence does not establish that the respondent has a reasonable likelihood of establishing, during a hearing, that imposing reciprocal discipline based on a disciplinary suspension in Massachusetts will result in grave injustice. As noted above, the evidence of record establishes that there was a basis for disciplinary proceedings in Massachusetts. Further, the respondent's evidence regarding her divorce proceeding does not support the respondent's assertions that the conduct of the parties in the proceeding was egregious or somehow constitutes an exceptional or extraordinary circumstance that would cause the imposition of discipline to be a grave injustice (Documents for Rebuttal of Presumption of Professional Misconduct, Exh. A-I).

Based on the foregoing, we deny the respondent's request for a hearing. We further conclude that the respondent's evidence is not sufficient to rebut the presumption that reciprocal discipline should follow from the respondent's disciplinary suspension in Massachusetts. The Disciplinary Counsels for EOIR and DHS have sustained the charge against the respondent and have established that she is subject to reciprocal discipline due to her suspension in Massachusetts.

The Notice of Intent to Discipline proposes that the respondent be suspended from practicing before the Board of Immigration Appeals, the Immigration Courts, and DHS for 18 months. The proposed sanction is appropriate in light of the respondent's suspension in Massachusetts. We therefore will honor the proposed discipline and will order the respondent suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS for 18 months. Further, because the respondent currently is suspended pursuant to our September 29, 2022, order, we will deem her suspension to have commenced on that date.

ORDER: The Board hereby suspends the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS for 18 months, effective September 29, 2022.

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

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

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