

Falls Church, Virginia 20530

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File: D2012-149

Date: **DEC 13 2013**

In re: BENNETT LLOYD GROSSMAN, ATTORNEY  
IN PRACTITIONER DISCIPLINARY PROCEEDINGS  
FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF DHS: Diane H. Kier  
Associate Legal Advisor

The respondent will be suspended from practice before the Board, the Immigration Courts, and the Department of Homeland Security (DHS) for 90 days, effective November 13, 2013.

On August 22, 2013, the Supreme Court of Florida issued a final order approving the respondent's Conditional Guilty Plea and Consent Judgment and suspended the respondent from the practice of law in Florida for 90 days, effective September 22, 2013. Consequently, on October 21, 2013, the Disciplinary Counsel for the Executive Office for Immigration Review initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. The Department of Homeland Security (DHS) then asked that the respondent be similarly suspended from practice before that agency. Accordingly, on November 13, 2013, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent has filed an "Answer to Petition for Immediate Suspension." In substance, however, his filing is akin to a timely answer to the allegations contained in the Notice of Intent to Discipline because the filing mainly deals with the timing of any discipline to be imposed by the Board. *See* 8 C.F.R. § 1003.105(c)(1) (2013); *see also* EOIR Disciplinary Counsel's "Motion For Summary Adjudication" at 1.

In his filing, the respondent does not meaningfully dispute the allegations in the Notice of Intent to Discipline. The respondent instead admits the allegations and waives his right to a hearing. The respondent, however, argues that his suspension should run concurrently with the suspension imposed in Florida. In other words, he asks this Board to deem his suspension to have commenced on September 22, 2013, the date his suspension commenced in Florida. In support of his request, the respondent asks the Board to take into account certain mitigating factors in his case, including his lack of awareness of his associate's unethical conduct, his actions upon being made aware of this conduct, and the pro bono work he has done throughout his career. The respondent also claims that he provides help to many individuals who have little or no money for legal services and he asserts that it would be unfair to deprive these individuals of legal services by not deeming his suspension to have commenced on September 22, 2013.

The EOIR Disciplinary Counsel opposes the respondent's request for a retroactive effective date for his suspension. She notes that the respondent has not alleged that he timely complied with his duty under 8 C.F.R. § 1003.103(c) to inform her of the August 22, 2013, suspension order issued by the Supreme Court of Florida, and she points out that, in June 2013, an Immigration Judge notified the respondent of his obligation to provide her with notice. She claims that it is inappropriate to retroactively give the respondent credit for time that he did not serve when he did not inform the EOIR Disciplinary Counsel of his suspension.

Because the respondent does not dispute the allegations in the Notice of Intent to Discipline, we find it appropriate to issue a final order on the charges made by the EOIR Disciplinary Counsel. See 8 C.F.R. § 1003.106(a) (2013) (indicating that, if the respondent's answer to a Notice of Intent to Discipline does not make a prima facie showing that there are any material issues of fact in dispute, the Board shall issue a final order); *Matter of Salomon*, 25 I&N Dec. 559, 560 (BIA 2011). Further, we agree with the EOIR Disciplinary Counsel that a retroactive effective date for the respondent's suspension is not appropriate.

The regulations governing disciplinary proceedings state that a final order of disbarment or suspension creates a rebuttable presumption of professional misconduct. See 8 C.F.R. § 1003.103(b)(2). Disciplinary sanctions shall follow in such proceedings unless the attorney can rebut the presumption by providing "clear, unequivocal, 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. *Id.*; see also *Matter of Salomon*, 25 I&N Dec. 559 (BIA 2011); *Matter of Kronegold*, 25 I&N Dec. 157, 160-61 (BIA 2010).

The respondent does not claim any due process violation or infirmity of proof in his disciplinary proceedings in Florida. In addition, the respondent has not shown that imposing identical reciprocal discipline would result in "grave injustice" if the period of discipline does not run concurrently with his 90-day suspension in Florida. 8 C.F.R. § 1003.103(b)(iii). Hardships and difficulties attendant to disbarment or suspension do not equate to injustice, and, as the EOIR Disciplinary Counsel noted, the respondent did not notify EOIR concerning his suspension as he was required to do. See 8 C.F.R. § 1003.103(c) (notice requirement); see also *Matter of Kronegold*, *supra*, at 162 (discussing what amounts to grave injustice). Accordingly, we deny the respondent's request to apply a retroactive effective date to his suspension, and we suspend the respondent from practice before the Board, the Immigration Courts, and the DHS, for 90 days, effective November 13, 2013.

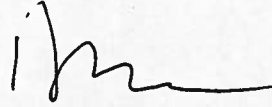
**ORDER:** The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for 90 days, effective November 13, 2013.

**FURTHER ORDER:** 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.

**FURTHER ORDER:** The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107(2013).

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FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2) (2013).

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FOR THE BOARD