

Falls Church, Virginia 22041

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File: D2011-121

Date:

In re: ERROL IVOR HORWITZ, ATTORNEY

JUN 16 2011

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Scott Anderson, Deputy Disciplinary Counsel

ON BEHALF OF DHS: Eileen M. Connolly  
Chief, Immigration Court Practice Section - East

The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for thirty days.

On April 14, 2011, the respondent was suspended from the practice of law for one year, stayed, with an actual suspension of 30 days, and probation for two years, by the Supreme Court of California. Consequently, on May 26, 2011, the Disciplinary Counsel for the Executive Office for Immigration Review petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. The DHS then asked that the respondent be similarly suspended from practice before that agency. Therefore, on June 10, 2011, the Board suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent filed a timely answer to the allegations contained in the Notice of Intent to Discipline on June 9, 2011. See 8 C.F.R. § 1003.105(c)(1). The respondent "does not dispute the material facts set forth in the statement as charged." The answer argues that the respondent's suspension should run concurrently with the discipline imposed in California. That is, the respondent argues that his suspension should be retroactive to May 14, 2011, the effective date of his suspension in California. The respondent did not request a hearing on the charges.

Where a respondent is subject to summary disciplinary proceedings based on suspension from the practice of law, the regulations now provide that the attorney "must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii)." See 8 C.F.R. § 1003.106(a)(2010); 73 Fed. Reg. 76914, 76925 (December 18, 2008). Where no such showing is made, the Board is to retain jurisdiction over the case, and issue a final order. *Id.*; Disciplinary Counsel's "Motion for Summary Adjudication" at 1. As there is no material issue of fact in dispute in this case, and as the Disciplinary Counsel's proposed sanction of thirty days is appropriate, in light of the respondent's suspension in California, the Board will honor that proposal.

Further, after consideration of the respondent's answer, as well as the government's response, the Board will deem the suspension to have commenced on June 10, 2011, the date of the Board's immediate suspension order.

The respondent makes no claim that he notified EOIR concerning his suspension under 8 C.F.R. § 1003.103(c). See Disciplinary Counsel's "Motion for Summary Adjudication", at 2. The Disciplinary Counsel argues that "[i]t is inappropriate to retroactively give Respondent credit for time that he did not serve when he did not inform the Disciplinary Counsel of his suspension." Disciplinary Counsel's "Motion for Summary Adjudication", at 2; citing 73 Fed. Reg. 76914, 76920-21 (December 18, 2008). See also 8 C.F.R. § 1003.103(a)(2)(if final administrative decision includes a period of suspension, time spent under immediate suspension order "may be credited toward the period of suspension imposed under the final administrative decision").

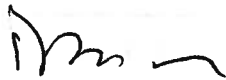
ORDER: The Disciplinary Counsel's "Motion for Summary Adjudication" is granted.

FURTHER ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for thirty days, effective June 10, 2011.

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(b).

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)(2010); *Matter of Kronegold, supra*.



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FOR THE BOARD