

Falls Church, Virginia 22041

File: D2004-192

Date: JAN 13 2005

In re: JOSEPH A. MORRIS

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF GENERAL COUNSEL: Jennifer J. Barnes, Esquire

ON BEHALF OF DHS: Eileen M. Connolly, Appellate Counsel

ORDER:

PER CURIAM. On October 22, 2004, the Office of General Counsel for the Executive Office for Immigration Review ("OGC") instituted disciplinary proceedings against the respondent.¹ The OGC alleged that the respondent violated 8 C.F.R. § 1003.102(k), in that he engaged in conduct amounting to ineffective assistance of counsel, as determined in an October 4, 2004, decision by this Board in the case of Arkadiy Leonidovich Kholyavskiy, A71-093-229. On October 26, 2004, the Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) asked that the respondent be similarly disciplined from practicing before the DHS.

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline. See 8 C.F.R. § 1003.105(c)(1). On November 29, 2004, after the time for filing an answer had expired, the respondent filed a "Motion For Extension of Time In Which to Answer." The motion stated that water pipes ruptured in the respondent's office, and the flood destroyed parts of files in the office, and the respondent therefore needed an extension to complete the answer. On December 7, 2004, we granted an extension of 15 days for the respondent to file an answer. We cautioned that a failure to file an answer within the time period would constitute an admission of the allegations in the Notice of Intent to Discipline. 8 C.F.R. § 1003.105(d)(1).

The respondent's failure to file a response within the time period prescribed in the Notice, as extended, constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(d)(1), (2).

The Notice recommends that the Board issue a public censure against the respondent. See 8 C.F.R. § 1003.101(a)(3). Because the respondent has failed to file an answer, the regulations direct us to adopt the recommendation contained in the Notice, unless there are considerations that compel us to digress from that recommendation. 8 C.F.R. § 1003.105(d)(2). We find that there are grounds for a public censure of the respondent. See 8 C.F.R. § 1003.102(k)(finding by Board that respondent has engaged in conduct that constitutes ineffective assistance of counsel is grounds for discipline).

¹The OGC did not petition for the respondent's immediate suspension from practice pending final disposition of this proceeding, under 8 C.F.R. § 1003.103(a).

Therefore the following order will issue.

ORDER: Pursuant to 8 C.F.R. §§ 1003.102(k) and 1003.101(a)(3), the respondent is censured for actions taken with respect to the removal case of Arkadiy Leonidovich Kholyavskiy, A71-093-229, as described in this order and in the Board's decision of October 4, 2004.



FOR THE BOARD