

Falls Church, Virginia 22041

File: D2003-273

Date: MAR 19 2004

In re: TODD NORMAN OSTERGARD, ATTORNEY

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 16, 2003 (effective 30 days from the date of the order), the respondent was suspended from the practice of law for 90 days, subject to other conditions, by the Supreme Court of Florida. The respondent was also ordered to pay an administrative fee of \$750. The Court approved the respondent's unconditional guilty plea and consent judgment for violation of Rule 4-8.4(b) of the Rules of Professional Conduct, for committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; to wit, driving under the influence and possession of cocaine.

On January 28, 2004, the Office of General 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. On February 2, 2004, the Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) asked that the respondent be similarly suspended from practice before that agency. Therefore, on February 18, 2004, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline but has failed to do so. *See* 8 C.F.R. § 3.105(c)(1). The respondent's failure to file a response within the time period prescribed in the Notice constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 3.105(d)(1), (2).

The Notice recommends that the respondent be suspended from practicing before the Board and the Immigration Courts, for a period of 90 days. The DHS asks that we extend that discipline to practice before it as well. 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. § 3.105(d)(2). Since the recommendation is appropriate in light of the sanctions imposed by the Supreme Court of Florida, we will honor that recommendation.

Accordingly, we hereby suspend the respondent from practice before the Board, the Immigration Courts, and the DHS for a period of 90 days. As the respondent is currently under our February 18, 2004, order of suspension, we will deem the respondent's suspension to have commenced on that date. 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.

Upon the completion of the respondent's period of suspension, the respondent may be reinstated to practice before the Board, the Immigration Courts, and the DHS, provided that the respondent meets the definition of an attorney or representative set forth in 8 C.F.R. § 1.1(f) and (j). *See* 8 C.F.R. § 3.107(a). Accordingly, the respondent is instructed to notify the Board of his bar standing and his ability to practice law in Florida at the conclusion of his period of suspension.

Finally, given the reciprocal nature of the discipline we impose, we advise the respondent that, should he be reinstated to practice in Florida prior to completion of his period of suspension, we may entertain a request for reinstatement before Board, the Immigration Courts, and the DHS if that request complies with the instructions set forth above.



FOR THE BOARD