

Falls Church, Virginia 20530

---

File: D2007-062

Date:

NOV 21 2013

In re: ELIZABETH COHEN, ATTORNEY

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF DHS: Catherine M. O'Connell, Disciplinary Counsel

ON BEHALF OF RESPONDENT: Richard M. Maltz, Esquire

The respondent's opposed request for reinstatement to practice will be granted.

We issued a final order of discipline on September 26, 2007, expelling the respondent from practice before the Board, the Immigration Courts and the Department of Homeland Security (DHS). This order was based on a March 1, 2007, order of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, suspending the respondent from the practice of law for 2 years, effective March 30, 2007. In its order, the New York court found that the respondent backdated documents that she filed with the Vermont Service Center and the Department of Labor, and the court concluded that these actions amounted to "deliberate and intentional deception" that was "extremely serious." See March 1, 2007, Order of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department.

The respondent now seeks to be reinstated to practice before the Board, the Immigration Courts, and the DHS under 8 C.F.R. § 1003.107(b) (2013). The DHS opposes the respondent's motion.

According to 8 C.F.R. § 1003.107(b), an attorney who has been disbarred or who has been suspended for one year or more may file a petition for reinstatement directly with the Board "after one-half of the suspension period has expired or one year has passed, whichever is greater, provided that he or she meets the definition of attorney or representative" set forth in 8 C.F.R. §§ 1001.1(f) and (j). An attorney seeking reinstatement "shall have the burden of demonstrating by clear and convincing evidence that he or she possesses the moral and professional qualifications required to appear before the Board and the Immigration Courts or DHS, or before all three authorities, and that his or her reinstatement will not be detrimental to the administration of justice." 8 C.F.R. § 1003.107(b) (2013).

The DHS does not dispute the respondent's claim that she has been reinstated to the practice of law in New York. See Government's Response to Respondent's Petition for Reinstatement at 3; see also Exhibit C to Respondent's Petition for Reinstatement (March 28, 2013, Order of the Appellate Division of the Supreme Court of New York, First Department, reinstating respondent to the practice of law). The DHS nevertheless contends that the respondent should not be reinstated to practice before the DHS, the Board or the Immigration Courts due to the nature of her misconduct. The DHS points out that the respondent committed immigration fraud, lied about her involvement in the fraud during her disciplinary proceedings, and still fails to

acknowledge that she participated in the backdating of documents. The DHS claims that these acts strike at the heart of this country's immigration laws and undermine the integrity of the entire system. *See Matter of Krivonos*, 24 I&N Dec. 292 (BIA 2007). Accordingly, the DHS opposes the respondent's reinstatement.

The respondent, on the other hand, argues that she has presented sufficient evidence to establish that she possesses the moral and professional qualifications to be reinstated to practice before the DHS, the Board and the Immigration Courts. The respondent admits that her misconduct was serious, but she points out that it was an isolated incident and that she complied with the suspension order of the New York court and the expulsion order of the Board. She further maintains that the misconduct occurred more than 11 years ago and that she was suspended from practicing law for more than 6 years. She asserts that she underwent an arduous process to be reinstated to practice in New York, including a full hearing before a panel composed of fellow attorneys and one lay person, and she claims that the New York disciplinary authorities, like the Board, have a strong interest in insuring that a suspended practitioner has the requisite fitness to practice law before approving reinstatement. Accordingly, she argues that her reinstatement in New York constitutes strong evidence of her fitness to be reinstated to practice before the Board and other immigration authorities.

In support of her arguments, the respondent has submitted the decision of the panel that conducted her reinstatement hearing in New York and the letters she submitted to this panel attesting to her good moral character. *See Exhibits E and F to Respondent's Petition for Reinstatement*. The panel decision indicates that staff counsel for the Departmental Disciplinary Committee originally filed an affirmation in opposition to respondent's reinstatement. Staff counsel opposed reinstatement because the respondent had "failed to acknowledge her lack of candor, venality and lack of remorse, as determined by the Court." *See Exhibit E to Respondent's Petition for Reinstatement at 2*.

After a full hearing, however, including testimony from the respondent and a character witness and written submissions regarding the respondent's character, staff counsel withdrew his opposition to the respondent's reinstatement. *See Exhibit G to Respondent's Petition for Reinstatement*. Further, the panel, composed of three attorneys and one lay person, concluded that the respondent had presented clear and convincing evidence to establish that she possessed the requisite character and general fitness to practice law. *See Exhibit E to Respondent's Petition for Reinstatement at 2*.

In reaching this conclusion, the panel found the respondent's testimony "highly credible" and noted that she had been forthcoming in proffering information and answering questions. *Id at 2-3*. The panel further noted that the respondent had been in full compliance with her suspension order and had presented extensive testimony regarding the circumstances under which the backdating of documents had occurred. The panel stated that the respondent's testimony "gives us confidence that she will avoid any such conduct in the future." *Id at 3*. The panel went on to state that, while the respondent had not acknowledged that she directly participated in the backdating, she acknowledged that the misconduct was serious, that what happened was absolutely wrong, that it should not have happened, that she was responsible because the incident occurred in her office, and, if reinstated to practice, it would never happen again. *Id at 3*. In light of all of these circumstances, the panel found that reinstatement was clearly warranted and

recommended granting the respondent's petition for reinstatement. *Id* at 4. On March 28, 2013, the Appellate Division of the Supreme Court of the First Judicial Department of New York considered the disciplinary panel's findings and the other facts in the respondent's case and unanimously approved her petition for reinstatement. *See* Exhibit C to Respondent's Petition for Reinstatement.

While we agree with the DHS that the respondent's misconduct in 2002 was serious and that her failure to admit that she directly participated in the backdating of documents is concerning, the respondent's evidence establishes that she recognizes the seriousness of the misconduct, that she has acknowledged responsibility for the wrongdoing, and that she has pledged that it will not happen again. Considering these facts, together with her reinstatement in New York, the lack of other disciplinary violations, the length of her suspension, and her compliance with our order of expulsion, we find that the respondent has met her burden of establishing that she should be reinstated to practice. Accordingly, the respondent is reinstated to practice before the Board, the Immigration Courts, and the DHS as of the date of this order.

ORDER: The respondent is reinstated to practice before the Board, the Immigration Courts, and the DHS as of the date of this order.

FURTHER ORDER: Because the respondent has been reinstated, public notices regarding the respondent's suspension should reflect this reinstatement.

FURTHER ORDER: If the respondent wishes to represent a party before the DHS or the Board, she must file a Notice of Appearance (Form G-28 or Form EOIR-27), including any case in which she was formerly counsel prior to her suspension.



---

FOR THE BOARD