

Falls Church, Virginia 22041

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File: D2010-071

Date:

**AUG 18 2010**

In re: THOMAS ARCHER, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF DHS: Rachel A. McCarthy, Disciplinary Counsel

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

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

On March 24, 2010, in the United States District Court for the Eastern District of New York, a jury found the respondent guilty of "serious crimes" within the meaning of 8 C.F.R. § 1003.102(h), relating to his immigration law practice. That is, the respondent was convicted of one count of conspiracy to commit visa fraud, in violation of 18 U.S.C. §§ 371 and 3551, and three counts of visa fraud, in violation of 18 U.S.C. §§ 1546(a), 2 and 3551.

Consequently, on June 16, 2010, the DHS initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the DHS. The Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) then asked that the respondent be similarly suspended from practice before EOIR, including the Board and Immigration Courts. Therefore, on July 8, 2010, 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. *See* 8 C.F.R. §§ 1003.105(c)(1); 1292.3(e)(3)(ii). 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. § 1292.3(e)(3)(ii).<sup>1</sup>

The Notice of Intent to Discipline proposes that the respondent be expelled from practice before the DHS. The Disciplinary Counsel for EOIR asks that we extend that discipline to practice before the Board and Immigration Courts as well. As the respondent failed to file a timely answer, the regulations direct us to adopt the proposed sanction contained in the Notice, unless there are considerations that compel us to digress from that proposal. 8 C.F.R. §§ 1003.105(d)(2); 1292.3(e)(3)(ii).

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<sup>1</sup>The regulations note that attorney discipline proceedings may not be concluded "... until all direct appeals from an underlying criminal conviction shall have been completed." 8 C.F.R. § 1003.103(b); Notice of Intent to Discipline, at ¶ 11. Nothing has been presented to the Board indicating that the respondent has filed a direct appeal concerning his conviction, or plans to do so.

Since the proposed sanction is appropriate in light of the respondent's "serious crimes related to criminal and unprofessional conduct in his immigration law practice," Notice of Intent to Discipline, at ¶ 6, we will honor it. Accordingly, we hereby expel the respondent from practice before the Board, the Immigration Courts, and the DHS. As the respondent is currently under our July 8, 2010, order of suspension, we will deem the respondent's expulsion to have commenced on that date.

ORDER: The Board hereby expels the respondent from practice before the Board, the Immigration Courts, and the DHS.

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. *See* 8 C.F.R. § 1003.105(d)(2)(2010); *Matter of Kronegold*, 25 I&N Dec. 157, 163 (BIA 2010).



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FOR THE BOARD