

Falls Church, Virginia 22041

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File: D2009-193

Date:

OCT 27 2009

In re: JOSE EXPEDITO MANTAL GARCIA, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

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

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

On July 31, 2008, the Supreme Court of New York, Appellate Division, Third Judicial Department, suspended the respondent from the practice of law for 1 year, effective June 12, 2008. Consequently, on September 1, 2009, 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) has asked that the respondent be similarly suspended from practice before EOIR, including the Board and Immigration Courts. Therefore, on September 16, 2009, 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 submitted a timely answer on September 8, 2009. The respondent admits each allegation in the Notice of Intent to Discipline, and did not seek a hearing on the charges. The respondent also admitted that, on August 28, 2009, he was disbarred from the practice of law in Maryland. We therefore find it appropriate to issue a final order on the government's charges.

In its Notice of Intent to Discipline, the DHS charged that the respondent, on November 29, 2007, pled guilty to conspiracy to commit immigration fraud, in violation of 18 U.S.C. § 371 and 1546(a), in the United States District Court for the Eastern District of Virginia. The court issued its judgment on February 8, 2008, and the respondent was placed on supervised probation for 2 years. The DHS proposed in the Notice of Intent to Discipline that the respondent be expelled from practice by the Board.

In his answer, the respondent argues that the Board should instead issue a 1-year suspension, or an order of indefinite suspension. In support of his request, the respondent submits a "Position of the United States With Respect to Sentencing" (Respondent's Answer, Exh. A). In this memorandum, the Assistant United States Attorney mentioned the case of Gloria Salazar Calonge, who was the respondent's partner. *Id.* Calonge pled guilty to a single count of misprision of a felony, in violation of 18 U.S.C. § 4, before the same court. The Board on January 15, 2009, suspended Calonge for 2 years. The sentencing memorandum said that Calonge "was involved in a broader fraud and signed the bulk of immigration filings. In that sense, Calonge's conduct was worse than the [respondent's], although she pled guilty to misprision of a felony which carries a lower base offense level." *Id.* The respondent also presents an "Amended Sentencing Position of the United States" (Respondent's Answer, Exh. B), in which the Assistant United States Attorney stated that the respondent's "offense level should be reduced both for acceptance of responsibility and based on his role in the offense", and noted again that Calonge was "a larger player in the broader fraud."

The respondent also submits a "Presentence Investigation Report", prepared for the federal district court judge by a United States probation officer (Respondent's Answer, Exh. C). The report states that the respondent was a "minor participant" in the fraud, and "was not aware of the full scope of the conspiracy." *Id.*

The respondent also presents a February 8, 2008, transcript concerning sentencing, in which the federal district court judge said that he was giving the respondent "lenient" punishment, and that he hoped the respondent would receive only a suspension from the practice of law (Respondent's Answer, Exh. D).

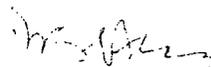
Given the evidence provided by the respondent with his answer, the Board finds that the respondent should be indefinitely suspended from practice before the Board, the Immigration Courts, and the DHS. As the respondent is currently under our September 16, 2009, order of suspension, we will deem the respondent's indefinite suspension to have commenced on that date.

ORDER: The Board hereby indefinitely suspends 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* 73 Fed. Reg. 76914, 76925 (December 18, 2008)(to be codified at 8 C.F.R. § 1003.105(d)(2)).



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FOR THE BOARD