

Falls Church, Virginia 20530

File: D2013-293

Date:

JAN 30 2014

In re: YINKANG HU a.k.a. Kelvin Y. Hu, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

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

ON BEHALF OF RESPONDENT: Pro se

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

On September 25, 2013, the Supreme Court of Illinois disbarred the respondent as a foreign legal consultant. Consequently, on October 23, 2013, 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 November 25, 2013, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

On December 5, 2013, the respondent submitted a "Motion to Set Aside Immediate Discipline"¹. On December 9, 2013, the respondent filed a "Motion to Dismiss the Request of Summary Discipline", which will be construed as an answer to the Notice of Intent to Discipline, timely after the Board extended the time for filing an answer. On December 26, 2013, the respondent filed a "Motion To Clarify Determination of Attorney Under 8 C.F.R. § 1001.1". The respondent filed a "supplement" on January 24, 2014. The DHS has responded to the respondent's arguments.

The respondent argues that he is not subject to summary disciplinary proceedings. 8 C.F.R. §§ 1003.103(b)(2) (2013), 292.3(c)(3). His contentions are incorrect.

As noted, on September 25, 2013, the Supreme Court of Illinois disbarred the respondent as a foreign legal consultant. The Supreme Court of Illinois approved a May 2, 2013, motion of the Illinois Administrator of the Attorney Registration and Disciplinary Commission to confirm the February 27, 2013, report and recommendation of the Review Board of the Illinois Attorney Registration and Disciplinary Commission.

¹As this order results in a final order of discipline concerning the DHS' charges against the respondent, it is not necessary to separately rule on the respondent's "Motion to Set Aside Immediate Discipline". The arguments made in that motion were incorporated into later filings of the respondent, and have been considered as part of our final order of discipline.

The May 2, 2013, motion of the Illinois Administrator of the Attorney Registration and Disciplinary Commission set out how the respondent was admitted to practice law in Illinois as a foreign legal consultant, pursuant to Illinois Supreme Court Rule 712, in 1993 (May 2, 2013, mot. at ¶ 1). The respondent had been licensed to practice law in China in 1985, and is currently licensed to practice law in Michigan. *Id.* In Illinois, the respondent was authorized as a foreign legal consultant to give advice concerning the law of China, and was prohibited from providing legal service under the law of Illinois. *Id.* at ¶ 2. In 2005, the respondent requested that his active foreign legal consultant license be changed to inactive status. *Id.* at ¶ 3. In 2007, the respondent's name was removed from the Master Roll of Attorneys for failure to annually register his inactive status. *Id.*

The May 2, 2013, motion of the Illinois Administrator of the Attorney Registration and Disciplinary Commission further set out how the Review Board of the Illinois Attorney Registration and Disciplinary Commission found that the respondent engaged in the unauthorized practice of law from 2007 to 2009 in representing clients concerning legal matters in Illinois, and he did not indicate the jurisdictional limits of his foreign legal consultant license in communications about his services. *Id.* at ¶ 4. The Review Board also found that the respondent "engaged in conduct involving dishonesty, fraud, deceit or misrepresentation". *Id.* The Review Board also considered that the respondent had been censured in 2000 for similar conduct. *Id.* Given the respondent's "repeated misconduct", including impermissibly holding himself out as an attorney licensed to practice to law in Illinois, the Illinois Administrator of the Attorney Registration and Disciplinary Commission recommended that the respondent be disbarred, "in order to protect the public, maintain the integrity of the legal profession and protect the administration of justice from reproach", and the Illinois Supreme Court did so.

Under the circumstances, and contrary to the respondent's arguments, Respondent's "Motion To Clarify Determination of Attorney Under 8 C.F.R. § 1001.1", the respondent does not currently meet the definition of "attorney" under the regulations, such that he is eligible to represent individuals before the Board, Immigration Courts, or DHS. 8 C.F.R. §§ 292.1(a)(1); 1292.1(a)(1). That is, an "attorney" is defined as a person who is not "under any order . . . disbaring... him in the practice of law". 8 C.F.R. §§ 1.2, 1001.1(f). As the respondent is currently disbarred as a foreign legal consultant in Illinois, he does not meet the definition of "attorney" under the regulations. DHS "Response To Motion To Set Aside Order of Immediate Suspension"; "Response to Motion To Clarify The Definition of Attorney".

Also contrary to the respondent's arguments, he is a person subject to disciplinary sanctions under 8 C.F.R. §§ 1003.103(b)(2) (2013), 292.3 (a)(2), (b), (c)(3). That is, the respondent is an attorney who is subject to a "final order of disbarment" by the Supreme Court of Illinois. 8 C.F.R. §§ 1003.102(e), 292.3(b); DHS "Response to Motion To Dismiss the Request of Summary Discipline".

Where a respondent is subject to summary disciplinary proceedings based on having been disbarred, the regulations provide that the attorney "must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii)." *See* 8 C.F.R. §§ 1003.106(a)(2013), 292.3(c)(3). Where no such showing is made, the Board is to retain jurisdiction over the case, and issue a final order. *Id.*; DHS "Response To Motion To Dismiss The Request Of Summary Discipline", at ¶ 4; *Matter of Salomon*, 25 I&N Dec. 559, 560 (BIA 2011).

The Board agrees with the DHS Disciplinary Counsel that there are no material issues of fact at issue. DHS "Response To Motion To Dismiss The Request Of Summary Discipline", at ¶ 4. The respondent raises legal issues that may be addressed by the Board. We find it appropriate to issue a final order on the government's charges.

As to the "exceptions" set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii), this provides that a final disbarment order creates a rebuttable presumption that disciplinary sanctions should follow, and such a presumption can be rebutted only upon a showing, by "clear and convincing evidence", that the underlying disciplinary proceeding resulted in a deprivation of due process, that there was an infirmity of proof establishing the misconduct, or that discipline would result in grave injustice. *Matter of Kronegold*, 25 I&N Dec. 157, 160-61 (BIA 2010).

None of the exceptions contained in 8 C.F.R. § 1003.103(b)(2) are implicated in this case. The respondent seems to argue that discipline would result in injustice, in that he is currently licensed to practice law in the state of Michigan. Respondent's "Motion to Dismiss The Request of Summary Discipline". However, as the Supreme Court of Illinois disbarred the respondent as a foreign legal consultant, based on his repeated misconduct, it is indeed just that the respondent be disbarred by this Board, despite his being licensed to practice law in Michigan. DHS "Response to Motion To Clarify the Definition of Attorney". The respondent does not otherwise show that imposing discipline would result in grave injustice.

Accordingly, we hereby disbar the respondent from practice before the Board, the Immigration Courts, and the DHS. As the respondent is currently under our November 25, 2013, order of suspension, we will deem the respondent's disbarment to have commenced on that date.

ORDER: The Board hereby disbars 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 (2013).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2)(2013).



FOR THE BOARD