

Falls Church, Virginia 22041

File: D2017-0120

Date: **JUL 20 2017**

In re: Toan Q. THAI, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

ON BEHALF OF DHS: Jeannette V. Dever
Associate Legal Advisor

ON BEHALF OF RESPONDENT: Pro se

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

On April 13, 2017, the respondent was disbarred by the District of Columbia Court of Appeals. The court noted that the District of Columbia Board on Professional Responsibility found that the respondent had committed numerous violations of the District of Columbia Rules of Professional Conduct in connection with his representation of clients in immigration proceedings. These violations included failing to safeguard client funds, engaging in reckless or intentional misappropriation, neglecting clients’ cases, failing to communicate with clients, failing to return unearned fees, engaging in the unauthorized practice of law, failing to respond to District of Columbia Disciplinary Counsel’s inquiries, and committing criminal misconduct reflecting adversely on his honesty, trustworthiness, and fitness.

The District of Columbia Court of Appeals noted that the respondent did not file an exception to the District of Columbia Board on Professional Responsibility’s recommendation, although he filed a brief response to an order requiring him to show cause why the court should not enter an interim order of suspension pending final action.

On April 20, 2017, the Disciplinary Counsel for the Executive Office for Immigration Review filed a Notice of Intent to Discipline.¹ The respondent on June 12, 2017, filed an answer to the Notice of Intent to Discipline, after the Board granted an extension request.

¹ The EOIR Disciplinary Counsel did not petition for the respondent’s immediate suspension from practice pending final disposition of this proceeding, under 8 C.F.R. § 1003.103(a) (2017). The respondent is already under a previous suspension order issued by the Board in 2011.

Where a respondent is subject to summary disciplinary proceedings based on being disbarred from the practice of law, 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) through (iii).” See 8 C.F.R. § 1003.106(a)(2017).

Where no such showing is made, the Board is to retain jurisdiction over the case, and issue a final order. *Id.*; *Matter of Salomon*, 25 I&N Dec. 559, 560 (BIA 2011); EOIR Disciplinary Counsel “Motion for Summary Adjudication” at 1. 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) through (iii), this provides that a final order of disbarment 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. These are known as the “*Selling* factors”, announced in *Selling v. Radford*, 243 U.S. 46, 51 (1917). See *Matter of Kronegold*, 25 I&N Dec. 157, 160-61 (BIA 2010).

In considering whether reciprocal discipline is appropriate, the Board conducts a “deferential review” of the underlying proceedings. *Id.* See also *Federal Grievance Committee v. Williams*, 743 F.3d 28, 29 (2d Cir. 2014); *In Re Fallin*, 255 F.3d 195, 197-98 (4th Cir. 2001); *In Re Evans*, 834 F.2d 90, 91 (4th Cir. 1987) (acknowledging that in *Selling v. Radford* the Supreme Court “held that the decision of the highest court of a state, which has disbarred an attorney, will be accorded great deference”).

The respondent has not established that there is a material issue of fact in his case. In particular, the respondent has not made a prima facie showing that there is a material issue of fact regarding the basis of the proceeding (the order of the District of Columbia Court of Appeals), and the respondent has not made a prima facie showing that any of the exceptions to the imposition of disciplinary sanctions exist in his case. See 8 C.F.R. § 1003.103(b)(2)(i) – (iii). Specifically, he has not established, through clear and convincing evidence, that he was deprived of due process during the disciplinary proceeding in the District of Columbia, that there was an infirmity of proof in the District of Columbia proceeding, or that the imposition of discipline would result in grave injustice.

In his answer, the respondent takes issue with the District of Columbia Court of Appeals’ factual and legal findings, and implies that he was unable to defend himself in the underlying disciplinary matter. However, as noted, the District of Columbia Court of Appeals observed that the respondent did not file an exception to the District of Columbia Board on Professional Responsibility’s report and recommendation, and the court consequently issued a disbarment order. EOIR Disciplinary Counsel “Motion for Summary Adjudication” at 2. The respondent’s disbarment in the District of Columbia followed proceedings in which the respondent was accorded due process. We agree that disbarment is an appropriate sanction, in light of the respondent’s disbarment in the District of Columbia.

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Accordingly, we will disbar the respondent from practice before the Board, the Immigration Courts, and the DHS.

ORDER: The Board 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 February 9, 2011, suspension order in Case No. D2010-305.

FURTHER ORDER: The respondent is instructed to notify the Board of any further disciplinary action against him.

FURTHER ORDER: The Board directs that the contents of this notice be made available to the public, including at Immigration Courts and appropriate offices of the DHS.

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.



FOR THE BOARD