VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF MICHAEL MITRY HADEED, JR.

VSB DOCKET NO. 10-000-077606

ORDER OF SUSPENSION

THIS MATTER came before the Virginia State Bar Disciplinary Board (the "Board") for hearing on August 27, 2010, upon the Rule to Show Cause and Order of Suspension and Hearing (the "Rule") which was dated and mailed to the Respondent on May 27, 2010. Pursuant to Part 6, Section IV, Paragraph 13-22A of the Rules of the Supreme Court of Virginia, the Respondent's license had been summarily suspended upon the Board's notification that he had been convicted of a felony. The purpose of the hearing was to determine whether, in fact, he had been convicted and, if so, whether the Board should further suspend or revoke his license to practice law.

The hearing was held before the duly convened panel of the Board consisting of attorney members Martha JP McQuade, 2nd Vice Chair and presiding (the "Chair"), Paul M. Black, Raighne C. Delaney and Tyler E. Williams, III, and lay member Rev. W. Ray Inscoe. The Virginia State Bar ("VSB") was represented at the hearing by Assistant Bar Counsel Kathleen M. Uston (the "Bar"). The Respondent Michael Mitry Hadeed, Jr. (hereinafter "Respondent" or "Mr. Hadeed") was present and represented by Gregory M. Wade (hereinafter "Respondent's Counsel"), assisted by Matthew T. Sutter. The proceedings were recorded and reported by Tracy J. Stroh, a registered professional reporter with Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, 804-730-1222, after she was duly sworn by the Chair.

The Chair opened the hearing by polling the Board members to ascertain whether any of them had any personal or financial interest or bias which would affect, or could reasonably be perceived to affect, their ability to hear the case fairly, and all, including the Chair, answered in the negative.

I. MISCONDUCT PHASE

The Bar made an opening statement and, without objection, introduced into evidence Bar Exhibit 1, consisting of documents 1 through 9. These demonstrated, inter alia, that, on February 13, 2009, the Respondent had been convicted of the federal crimes of conspiring to commit immigration fraud under 18 U.S.C. Section 371 and having made a material false statement in an immigration application in violation of 28 U.S.C. Section 1001; the conviction was upheld on appeal; and the Respondent was thereafter expelled from practice before the Board of Immigration Appeals, the Immigration Courts and the Department of Homeland Security. The Bar also showed that the Respondent notified the Bar of his indictment and had voluntarily ceased practicing law at that time (which amounted to a period of at least 18 months preceding the instant hearing) and had been particularly cooperative with the Bar's investigation in the instant matter.

In his opening statement, Respondent's Counsel conceded that Mr. Hadeed had been convicted as set forth in the Bar's Exhibit.

Accordingly, the Chair announced that, without deliberation, the Board would adopt the determination that Mr. Hadeed, in fact, and based upon clear and convincing evidence, had been convicted as set forth in the Rule, and would proceed to hear evidence with respect to sanctions.

The Chair further announced that, pursuant to the Rule, the burden remained with the Respondent to show cause why his license should not be further suspended or revoked.

II. SANCTIONS PHASE

The Bar made a further statement and, without objection, introduced into evidence Bar Exhibit 2, the Respondent's disciplinary record consisting of a 2008 dismissal *de minimus* for failing to communicate with a client.

Respondent's Counsel then presented a number of witnesses including, inter alia:

* Attorney William B. Cummings, who represented Mr. Hadeed in the criminal case and who testified as to the lengths to which he felt the government went to pursue Mr. Hadeed and the limited overt acts which he was found to have committed in furtherance of the conspiracy of which he was convicted.

* Attorney Scott Sexauer, Mr. Hadeed's law partner of the past 20 years, who testified that: Should the Respondent be permitted to practice law in the future, he would be happy to work with him again; In his view, Respondent was a good attorney and has good moral character; and The law firm's staff hopes that the Respondent will return to the practice of law one day.

* Attorney Michael Chamowitz, who testified that the Respondent's reputation over the past 25 years was excellent and that if the Board permitted Respondent to practice law in the future, he would continue to refer cases to him.

* The Respondent who testified, inter alia, that his family came to America in 1905 to escape the persecution of Christians abroad; he was born in America and is a native

Alexandrian; he felt he was targeted in the federal investigation because of his Palestinian heritage; he should have used a professional interpreter to interview his non English speaking clients rather than the employer who would benefit from their successful immigration application, who later testified against him at trial and, as a result, received a lesser sentence with regard to charges of immigration fraud against him; Respondent should not have taken on such a heavy immigration caseload which caused him to have less personal involvement in the immigration application preparation than he should have had; he recognized that the jury found him guilty and accepted their judgement but said he believes himself to be innocent of the charges.

Further, and without objection, Respondent's Counsel introduced into evidence Respondent's Exhibit 1, consisting of documents 1 through 23, including, inter alia, the following:

* A transcript of the May 29, 2009 sentencing hearing during which the Judge: spoke of the respect and esteem in which the Respondent had been held during his many years of practice before the Court and, while declining to overturn the conviction, stated that "the nature of this case, while serious, [is] not nearly as egregious as other cases I've had against other attorneys involving this type of immigration fraud – in fact, I was surprised that the government, which I understand had been investigating this case for so long, had so little evidence, and as you know, I acquitted you on two of the four counts. And so, it's not the world's strongest case, and I think the sentence has to properly reflect those factors"; sentenced Respondent to three months of home incarceration, two years' probation and a $2,000 fine; stated that "In terms of

deterrence, there is no question that I would be absolutely amazed if there was ever going to be a problem in your behavior again"; also stated that "[A]nother attorney perhaps thinking about how to structure an immigration practice or handle certain clients within a practice would think twice about it when the word is out that there are ramifications for what happens, and so your conviction alone and the administrative consequences, in my view, are sufficiently general deterrence in this particular case."

* Approximately 65 letters in support of the Respondent from lawyers, clients, family members and friends. Some of the letters gave specific examples of the kind of ethical conduct taken in the past by Mr. Hadeed which made it hard for the writer to believe he had done what he was convicted of doing.

In closing arguments, both the Bar and Respondent's Counsel cited the American Bar Association's Standards for Imposing Lawyer Sanctions, especially as they relate to factors in aggravation and mitigation of misconduct.

The Board then recessed to deliberate the case.

III. AGGRAVATING AND MITIGATING FACTORS

In its deliberations, the Board found the following to be aggravating, mitigating or neutral factors in this case (Other factors were not applicable):

Although Mr. Hadeed's record is acknowledged, it is not found to be either an aggravating nor a mitigating factor.

Because the Respondent was not working for free and intended, from the outset, to be paid in the matters upon which his conviction was based, the Board found dishonest or selfish motive to be an aggravating factor.

With respect to the Respondent's refusal to acknowledge the wrongful nature of his conduct: The Board declines to question the basis of Mr. Hadeed's conviction. For purposes of this hearing, there is no question that he was convicted. Moreover, the Board sees particular steps that the Respondent could have taken to prevent his being in the position that led to his conviction. Indeed, the Judge, at sentencing, referenced the issue of "how to structure an immigration practice or handle certain clients within a practice" that might have led the Respondent to a different result and indeed could lead others to avoid such a result. However, Mr. Hadeed sincerely clings to his claim that he did not "knowingly" participate in a fraud, as found by the jury. His counsel's argument that his actions were "reckless," rather than intentional, are also noted. On balance, the Board finds that his refusal to acknowledge the wrongful nature of his conduct is neither an aggravating nor a mitigating factor.

The victim's vulnerability is an aggravating factor. The victim in this case is the United States immigration system. It necessarily relies on attorneys to act with the utmost care to ensure that applications for lawful entry and stays in this country are entirely truthful and meet the statutory requirements. The possible consequences of false statements to the officials operating the system are readily apparent.

The Respondent's level of experience was substantial and this is found to be an aggravating factor.

With respect to the Respondent's cooperative attitude with the Bar's investigation, it is a mitigating factor.

With respect to the Respondent's character and reputation, apparently, it remains excellent within his local legal community.

With respect to the imposition of other penalties or sanctions, the Board considered both the Respondent's sentence in the criminal court and the fact that he was "expelled" from practice before the federal immigration authorities. These are not mitigating factors, however, because the loss of the Respondent's ability to practice law, on a permanent or at least temporary basis, was repeatedly offered by the Respondent to the District Court as an argument towards a lighter sentence than might otherwise have been the case.

IV. BOARD's DETERMINATION

The Board's responsibility, in any case before it, is to hear the evidence and decide upon an appropriate sanction. In exercising this responsibility, the Board is obligated to consider the evidence presented in any particular case and the interests of the Bar, the Respondent and, most importantly, the public. In determining an appropriate sanction, the Board is mindful of the benefits of attempting to be consistent with sanctions imposed in other and similar cases. In its effort to be consistent, the Board looks to the ABA Standards for Imposing Lawyer Sanctions and to other cases decided by the Board.

According to the ABA standards, revocation of a license is not automatic upon the entry of a criminal conviction. As ABA Standard 5.11 states:

"Disbarment is generally appropriate when:

a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, . . . or conspiracy or solicitation of another to commit any of these offenses; or

b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."

On the other hand, ABA Standard 5.12 states:

> "Suspension is generally appropriate when the lawyer knowingly engages in criminal conduct which does not contain the elements listed in standard 5.11 and that seriously adversely reflect on the lawyer's fitness to practice."

In cases similar in terms of the nature of the misconduct, the Board has imposed a suspension of one to five years. For example, in *In the Matter of Calonge*, VSB No. 08-000-73258, the respondent filed similar immigration forms that asserted the alien was a caregiver, when, in fact, the alien was a casino dealer. In that case, the District Court imprisoned the respondent for 30 days and fined her $5,000. Ms. Calonge admitted her guilt, had no prior disciplinary record and she cooperated with the Bar's investigation. The Board suspended her license for two years. *See also In the Matter of Eskovitz*, VSB 96-000-0778, (four year suspension for making false statements to a financial institution); *In the Matter of Saul*, VSB No. 93-000-2308 (five year suspension for bank fraud), and *In the Matter of McClenny*, VSB Docket No. 91-000-0911 (three year suspension for obtaining money by false pretenses).

The Bar's interest is in the fair application of discipline against its members, including revocation when appropriate. However, the ABA guidelines, the pertinent rules of the Supreme Court of Virginia and the Board's own precedent do not establish a *per se* rule of revocation

upon criminal conviction. The Public's interest is that the Board protects the public from incompetent or dishonest attorneys. The Respondent's interest is that the Board takes into account the facts in his individual case, and weigh the facts with an eye toward prior precedent.

In this case, revocation of the Respondent's license does not seem fair. While the charges in the two cases are styled differently, the Respondent essentially was convicted of committing the same violation as Ms. Calonge, namely the submission of one alien's false employment history. The misrepresentation was not made to a court or tribunal. A review of the aggravating and mitigating factors does not lead the Board to believe that it should treat the Respondent any more severely than it treated Ms. Calonge. Thus, after due deliberation, the Board announced its sanction as suspension of Respondent's license to practice law for two (2) years, effective August 27, 2010. Although the Respondent's Counsel had requested that the suspension be entered *nunc pro tunc* to May 29, 2009, the Board declined to do so. Further the Board noted that, because the Respondent's license has been suspended for more than one year, his license shall not be reinstated unless and until he fully complies with the provisions of Part Six, Section IV, Paragraph 13-25H of the Rules of the Supreme Court.

V. **DISPOSITION**

ACCORDINGLY, it is ORDERED that the Respondent, Michael Mitry Hadeed, Jr., be, and hereby is, suspended from the practice of law for a period of two (2) years, effective August 27, 2010.

It is further ORDERED that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent

shall forthwith give notice by certified mail, return receipt requested, of the suspension of Respondent's license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in Respondent's care in conformity with the wishes of Respondent's client. Respondent shall give such notice within fourteen (14) days of the effective date of this order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of this order that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of this order, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, Section IV, Paragraph 13-9E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent, Michael Mitry Hadeed, Jr., at his address of record with the

Virginia State Bar, 607 Oakley Place, Alexandria, VA 22302, by certified mail, return receipt requested. The Clerk of the Disciplinary System shall also hand deliver a copy of this Order to Kathleen M. Uston, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, and by regular mail to Gregory M. Wade, Esquire and Matthew T. Sutter, Esq. at Wade, Friedman & Sutter, P.C., 616 North Washington Street, Alexandria, VA 22314.

ENTERED THIS 30th DAY OF September, 2010.
VIRGINIA STATE BAR DISCIPLINARY BOARD

Martha JP McQuade
Second Vice Chair, Presiding