UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE COMMISSIONER OF PATENTS AND TRADEMARKS

KAREN L. BOVARD, Director, Office of Enrollment and Discipline, v. MICHAEL G. MARINANGELI, Respondent.	)	Disciplinary Proceeding D95-03

DECISION ON REQUEST FOR RECONSIDERATION OF FINAL DECISION UNDER 37 C.F.R. § 10.156

Respondent Michael G. Marinangeli ("Marinangeli") requests reconsideration under 37 CFR § 10.156 of the Commissioner's Final Decision entered April 24, 1997. The Final Decision ordered that Marinangeli be suspended for two years from practice before the Patent and Trademark Office ("PTO")[1] for violation of PTO Disciplinary Rule (DR) 10.23(b)(3).[2] Based on my review of the record, I conclude that Marinangeli's arguments do not reveal any errors. Therefore, the relief requested in Marinangeli's Request for Reconsideration is denied.[3]

Marinangeli argues that it is wrongful and unconstitutional to punish him again for acts committed in 1991. Request for

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[1] Bovard v. Marinangeli, No. D95-03 (Comm'r Pat. April 24, 1997) (final decision).

[2] The PTO Disciplinary Rules are part of the PTO Code of Professional Responsibility, 37 C.F.R. ch. 10 (1996). See 37 C.F.R. § 10.20(b) (listing Disciplinary Rules). Thus, DR 10.23(b)(3) appears at 37 C.F.R. § 10.23(b)(3).

[3] The denial of relief includes denial of Marinangeli's request for an oral hearing.

Reconsideration (Recon.) at 3. The Fifth Amendment provides, in pertinent part, that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. CONST. amend. V. The Double Jeopardy Clause does not apply in this case.

Successive state and Federal prosecutions are not subject to the bar on double jeopardy. U.S. v. Mills, 964 F.2d 1186, 1193 (D.C. Cir. 1992). Thus, a New York state conviction and suspension from the New York bar do not preclude suspension of Marinangeli from practice before the PTO, a Federal agency.

Moreover, the protections of the Double Jeopardy Clause are limited to criminal punishments and prosecutions. An attorney disciplinary proceeding is not a "criminal" prosecution which would subject the attorney to criminal punishment. In re Brown, 906 P.2d 1184, 12 Cal. 4th 205 (1995); Attorney Grievance Committee v. Andresen, 379 A.2d 159, 161, 281 Md. 152, 155 (1977); cf. United States v. Ursery, 116 S.Ct. 2135, 2139-40 (1996)(civil forfeitures not subject to protections of Double Jeopardy Clause).

Marinangeli also argues that he is now an attorney in good standing in the state of New York and therefore suspension from practice before the PTO is a violation of the Equal Protection Clause of the U.S. Constitution. Recon. at 4-5. Marinangeli urges that he is being treated much more harshly than Respondent Lett in Weiffenbach v. Lett, DP87-02 (March 29, 1989). Recon. at 3; Reply to Director's Response (Reply) at 4.

To prevail on his Equal Protection Clause challenge, Marinangeli must first demonstrate that he has been or is being treated differently from persons who are similarly situated. Franklin v. Barry, 909 F.Supp. 21, 27 (D.D.C. 1995) (citing City of Cleburne, Tex. v. Cleburne Living Center, 105 S.Ct. 3249, 3254 (1985)). This Marinangeli has not done. Marinangeli was convicted of a serious felony and was suspended from the practice of law in both New York and New Jersey. Initial Decision at 2-3. Lett was not convicted of any crime. Marinangeli and Lett are not similarly situated. The fact that "different persons receive different treatment at the hand of Government does not, without more, demonstrate constitutional inequality." United States v. Bell, 506 F.2d 207, 221 (D.C. Cir. 1974); see also Boyd v. Browner, 897 F. Supp. 590, 594 (D.D.C. 1995) ("Different treatment of dissimilarly situated persons does not violate the Equal Protection Clause.").

Even if Marinangeli could demonstrate that he and Lett were similarly situated, Marinangeli would additionally have to show a discriminatory intent or purpose in order to prevail on his constitutional claim. E & T Realty v. Strickland, 830 F.2d 1107, 1113 (11th Cir. 1987); Boyd, 897 F. Supp. at 594. Marinangeli has not provided any evidence of intentional or purposeful discrimination. Allegations of potential motivation for perceived unequal treatment, Recon. at 3-4, are insufficient.

Marinangeli also argues that it is wrongful under the doctrines of laches to now punish him for acts committed in 1991.

Recon. at 3; Rep. at 7. An affirmative defense of laches requires a showing of both inexcusable delay and undue prejudice. Daingerfield Island Protective Soc. v. Lujan, 920 F.2d 32, 37 (D.C. Cir. 1990) ("[A] finding of laches cannot rest simply on the length of delay."). The record demonstrates, however, that the PTO did not delay in its efforts to investigate and discipline Marinangeli.

Marinangeli failed to notify the PTO of his 1992 conviction until his response in 1993 to a routine questionnaire. Initial Decision at 3. The PTO Office of Enrollment and Discipline ("OED") contacted Marinangeli just two weeks after receipt of the notification, seeking further information as well as authorization and release to conduct an investigation. Id. Marinangeli never returned the authorization and release form sent by OED.[4] From August through December, OED continued to request information from Marinangeli. Initial Decision at 4. OED notified Marinangeli in January 1994, that he must cease prosecution of trademark cases due to his bar suspension. Id. In 1995, the PTO Committee on Discipline found probable cause for disciplinary action against Marinangeli and a hearing was held before an Administrative Law Judge ("ALJ"). Marinangeli appealed the Initial Decision of the ALJ and a Final Decision was rendered in April of this year.

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[4] On May 5, 1993, OED sent Marinangeli a letter containing an authorization and release form to be signed and returned to OED. Record at 126-29. The form was never returned, and Marinangeli has not presented any evidence to the contrary.

Marinangeli has not submitted any evidence of unreasonable or unexcused delay by the PTO in the investigation or disciplinary proceedings. The present circumstances do not create an estoppel which would preclude the PTO from suspending Marinangeli.

The Patent Rules specifically state that the Commissioner may, after notice and opportunity for hearing, suspend any attorney who violates a Disciplinary Rule. 37 C.F.R. § 10.130(a). As pointed out in the Final Decision at 4-5, Marinangeli does not contest that he violated the Disciplinary Rules as charged. Thus, suspension of Marinangeli does not violate the Code of Federal Regulations as alleged. Recon. at 5-6; Rep. at 6.

In Marinangeli's Reply to the Director's Response to his Request for Reconsideration, Marinangeli claims that the PTO has not given comity to the final decision of the New York Bar, which reinstated him. However, if anything, the New York suspension actually supports a harsher penalty.[5] New York suspended Marinangeli for two and a half years. Suspension of Marinangeli from practice before the PTO for two years is consistent with the New York suspension.

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[5] Compare In re Bates, 635 N.E.2d 1096, 1098 (Ind. 1994), in which the Indiana Supreme Court suspended an attorney from practice for six months beginning May 1994, based on suspension by the California Supreme Court for six months beginning December 1990 for misconduct which occurred in 1985. Suspension was imposed despite recognition by the Indiana Supreme Court that Bates was diligent in his rehabilitation from alcoholism. Id. at 1097.

Marinangeli further objects to various findings of fact. Marinangeli challenges the finding in the Initial Decision that he "never gave PTO a formal authorization and release to conduct an investigation...." Initial Decision at 4. However, no evidence to the contrary has been provided. See supra at 4 n.3. Marinangeli also objects to the list of patent applications at pages 4-5 of the Initial Decision, but the Final Decision stated that the Initial Decision will be published with the information about specific patent and trademark applications deleted. Final Decision at 14. Finally, Marinangeli alleges that the Final Decision implies that he did not stop all trademark work upon final suspension as an attorney. However, the Final Decision at page 9, footnote 5, makes clear that the record does not support a finding that Marinangeli continued to prosecute trademark applications after OED told him to stop.

DECISION

For the foregoing reasons, the relief requested in Marinangeli's Request for Reconsideration of the Final Decision is denied.

ORDER

Upon reconsideration of the entire record, and pursuant to 37 C.F.R. § 10.130(a), it is

ORDERED that thirty (30) days from the date this order is entered, MICHAEL G. MARINANGELI of New York, whose PTO

Registration Number is 30,774, be suspended for two years from practice before the PTO under the conditions set forth in 37 C.F.R. § 10.158;

ORDERED that the patent application numbers and applicants' names, and the trademark application numbers, marks, and applicants' names, be deleted from the Initial Decision before publication; and

ORDERED that the Final Decision and this Reconsideration Decision in this proceeding be published.

APPEAL RIGHTS

Respondent is entitled to seek judicial review on the record in the U.S. District Court for the District of Columbia under 35 U.S.C. § 32 and Local Rule 213 of the U.S. District Court for the District of Columbia within thirty (30) days of the date of entry of this decision.

SEP - 5 1997
Date

BRUCE A. LEHMAN
Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks

cc: Karen L. Bovard
Office of Enrollment and Discipline

Michael G. Marinangeli
244 East 86th Street
New York, NY 10028

Scott A. Chambers
Kevin T. Kramer
Office of the Solicitor