

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE**

In the Matter of:)
)
TIMOTHY JOSEPH SHEA, II,) **Proceeding No. D06-21**
)
Respondent)

INITIAL DECISION ON DEFAULT

On April 23, 2007, Harry I. Moatz, Director, Office of Enrollment and Discipline (OED) of the United States Patent and Trademark Office (PTO), instituted this disciplinary proceeding under 35 U.S.C. § 32 and the regulations promulgated thereunder at 37 C.F.R. Part 10 (Rules), against Timothy Joseph Shea, II (Respondent), an attorney registered to practice before the PTO (Registration No. 37,504). The Complaint charges Respondent with violating PTO Disciplinary Rule 10.23(c)(5) (37 C.F.R. §10.23(c)(5)) on the basis that he was disbarred from practice as an attorney on ethical grounds by a duly constituted State authority. For this violation, the Complaint seeks entry of an order excluding Respondent from practice before the PTO pursuant to PTO Rule 10.154 (37 C.F.R. §10.154). No Answer to the Complaint having been received from the Respondent, on September 13, 2007, the Director filed a Motion for Default Judgment.

A. Service

PTO Rule 10.135 provides in pertinent part that -

(a) A complaint may be served on a respondent in any of the following methods:

(1) By handing a copy of the complaint personally to the respondent

(2) By mailing a copy of the complaint by "Express Mail" or first-class mail to:

(i) A registered practitioner at the address for which separate notice was last received by the Director . . .

* * *

(b) If a complaint served by mail under paragraph (a)(2) of this section is returned by the U.S. Postal Service, the Director shall mail a second copy of the complaint to the respondent. If the second copy of the complaint is also returned by the U.S. Postal Service, the Director shall serve the respondent by publishing an

appropriate notice in the Official Gazette for four consecutive weeks, in which case the time for answer shall be at least thirty days from the fourth publication of the notice.

37 C.F.R. §10.135.

In the Motion for Default, the Director indicates that on April 23, 2007 he initially attempted to serve Respondent with the Complaint by sending it certified mail to Respondent at the address for which separate notice was last received by the Director, specifically 396 Washington St., Suite 322, Wellesley, MA 02481. On May 11, 2007, the U.S. Postal Service returned to the Director the envelope containing the Complaint sent to Respondent marked "REFUSED." See, Exhibit A to Motion for Default. On May 25, 2007, the Director mailed a second copy of the Complaint to the Respondent at the same address previously used pursuant to 37 C.F.R. §10.135(b). On May 31, 2007, the Director states the U.S. Postal Service again returned the envelope with the Complaint marked "ATTEMPTED, NOT KNOWN." See, Exhibit B to Motion for Default. As a result, for four consecutive weeks, specifically on July 17th, July 24th, July 31st, and August 7, 2007, the Director published an appropriate notice of the pending Complaint in the Official Gazette. See, Exhibits C-F to Motion for Default.

On the basis of the foregoing, and 37 C.F.R. §10.135, I find that adequate service of process of the Complaint upon Respondent has been made.

B. Default

In accordance with PTO Rule 10.135 (37 C.F.R. §10.135), the time for Respondent to file an Answer to the Complaint was 30 days from the fourth publication of the notice, or until September 6, 2007. The Motion for Default indicates that Respondent has not served the Director with an Answer to the Complaint. To date, this Tribunal has not received an Answer from Respondent nor a response to the Motion for Default which the Director sent on September 13, 2007 to Respondent at the address identified previously.

It is noted that the regulations provide at 37 C.F.R. § 10.143 that "[t]he administrative law judge will determine on a case-by-case basis the time period for a response to a motion...." However, in the context of a motion for default, where the respondent has not answered the complaint or otherwise appeared in the proceeding, it is not necessary to allow extended time for a response to the motion. The regulations provide at 37 C.F.R. § 10.136(d) that failure to file timely an answer "*will constitute and admission of the allegations in the complaint*" (emphasis added), and do not provide a requirement for a motion for default or a response thereto. See, Federal Rule of Civil Procedure 55(b)(1) (allowing entry of judgment on default upon request of plaintiff, for failure of defendant to appear).

Therefore, for his failure to file a timely Answer, Respondent is hereby found in default, and is deemed to have admitted all of the allegations in the Complaint.

C. Charges and Findings

The Complaint charges Respondent in one count. Specifically, the Complaint alleges that Respondent was disbarred from the practice of law by the Supreme Judicial Court of the Commonwealth of Massachusetts on "ethical grounds" on June 19, 2006. The Complaint states that the charges brought against Respondent in the Massachusetts disciplinary proceeding involved allegations of failing to return unearned portions of retainers to clients in violation of Mass. R. Prof. C. 1.16(d); intentionally converting funds of multiple clients in violation of Mass. R. Prof. C. 1.15(b), 1.15(c), 8.4(c), and 8.4(h); fabricating documents in an attempt to cover up his conversion of client funds in violation of Mass. R. Prof. C. 8.4(a), (c), (d), and (h); and failing to cooperate with a Bar Counsel investigation in violation of Mass. R. Prof. C. 3.4(c), 8.1(b), 8.4(d), and 8.4(g). It notes further that "after consideration and vote," on April 4, 2006, the Bar of Overseers recommended to the Massachusetts Judicial Court for Suffolk County that Respondent be disbarred, although exactly which charges were found to have been proven and warranted disbarment is unstated.

The Complaint further alleges that the entry of the Judgment of Disbarment against Respondent by the Supreme Judicial Court of Massachusetts constitutes a violation of "Disciplinary Rule 37 C.F.R. §10.23(c)(5)." Subsection (c) of 37 C.F.R. §10.23, however, merely provides that "[c]onduct which constitutes a violation of paragraphs (a) and (b) of this section [10.23] includes, but is not limited to . . . (5) [s]uspension or disbarment from practice as an attorney . . . on ethical grounds by any duly constituted authority of a State or the United States. . . ." **Thus, it is actually subsections (a) or (b) of Rule 10.23 (37 C.F.R. §10.23(a) and (b)), as more particularly described by Rule 10.23(c)(5), of which Respondent is accused of being in violation.**¹ Subsections (a) and (b) provide as follows:

- (a) A practitioner shall not engage in disreputable or gross misconduct.
- (b) A practitioner shall not:
 - (1) Violate a Disciplinary Rule.
 - (2) Circumvent a Disciplinary Rule through actions of another.
 - (3) Engage in illegal conduct involving moral turpitude.
 - (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
 - (5) Engage in conduct that is prejudicial to the administration of justice.

¹ PTO Rule 10.134(b) (37 C.F.R. §10.134(b)) provides that a complaint is sufficient if it fairly informs the respondent of the violation which is the basis of the disciplinary proceeding. The Complaint in this proceeding meets this standard.

- (6) Engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

37 C.F.R. §10.23(a) and (b).

Based upon the Order of the Supreme Court of Illinois suspending Respondent from the practice of law on ethical grounds, as alleged in the Complaint, I find Respondent to have engaged in professional misconduct justifying suspension or exclusion under 37 C.F.R. § 10.23.²

D. Penalty

As to penalty, the Director requests an entry of an Order pursuant to 37 C.F.R. §10.154 excluding Respondent from practice as an attorney before the U.S. Patent and Trademark Office. Rule 10.154(b) provides that in determining any penalty the following factors be taken into consideration:

- (1) The public interest;
- (2) The seriousness of the violation of the Disciplinary Rule;
- (3) The deterrent effects deemed necessary;
- (4) The integrity of the legal profession; and
- (5) Any extenuating circumstances.

37 C.F.R. § 10.154.

In this case, exclusion is appropriate because it appears that Respondent no longer holds a valid license to practice law in Massachusetts and while he might still hold such a license elsewhere there has not been a record developed indicating this or the circumstances surrounding the professional misconduct which would otherwise warrant mitigation of the penalty. Respondent's default has prevented such an inquiry. Respondent may show cause in the future as to why he failed to respond and may provide some explanation for the misconduct set forth and found herein and why a penalty other than exclusion effective this date may be more appropriate. Until he does so, however, his name should be removed from the rolls.

² Although it is unclear from the Complaint the exact charges upon which Respondent's disbarment from practice was based, all of the charges levied against Respondent rise to the level of disreputable conduct, adversely reflect upon his fitness to practice, involve dishonesty, and/or be prejudicial to the administration of justice such as to warrant a finding of misconduct under PTO Rule 10.23(b).

ORDER

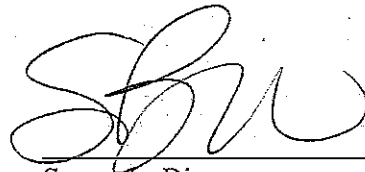
After careful and deliberate consideration of the above facts and conclusions as well as the factors identified in 37 C.F.R. § 10.154(b),

IT IS HEREBY ORDERED, that Respondent, **Timothy Joseph Shea, II**, 396 Washington Street, Suite 322, Wellesley, MA 02481, PTO Registration No. 37,504, **be excluded from practice as an attorney before the Patent and Trademark Office.**

The Respondent's attention is directed to 37 C.F.R. § 10.158 regarding responsibilities in the case of exclusion, and 37 C.F.R. § 10.160 concerning petition for reinstatement.

The facts and circumstances of this proceeding shall be fully published in the Patent and Trademark Office's official publication.

DATE: September 18, 2007



Susan L. Biro
Chief Administrative Law Judge³


Pursuant to 37 C.F.R. § 10.155, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 10.154, must be filed in duplicate with the Director, Office of Enrollment and Discipline, U.S. Patent and Trademark Office, P.O. Box 16116, Arlington, Va. 22215, within 30 days of the date of this Decision. Such appeal must include exception to the Administrative Law Judge's Decision. Failure to file such an appeal in accordance with § 10.155, above, will be deemed to be both an acceptance by the Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

³ This decision is issued by the Chief Administrative Law Judge of the United States Environmental Protection Agency. The Administrative Law Judges of the Environmental Protection Agency are authorized to hear cases pending before the United States Department of Commerce, Patent and Trademark Office, pursuant to an Interagency Agreement effective for a period beginning March 22, 1999.

In the Matter of Timothy Joseph Shea, II, Respondent
Proceeding D06-21

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **Initial Decision On Default**, dated September 18, 2007, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Legal Staff Assistant

Dated: September 18, 2007

Copy by Regular Mail to:

U.S. Patent and Trademark Office
Office of Enrollment and Discipline
Nathan Kelley
Sydney Johnson
Associate Solicitors
P.O. Box 15667
Arlington, VA 22215

Copy by Regular Mail and Certified Mail Return Receipt To:

Timothy Joseph Shea, II
396 Washington Street, Suite 322
Wellesley, MA 02481

Timothy Joseph Shea, II
18 Maugus Road
Wellesley, MA 02481



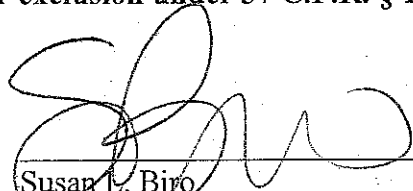
**UNITED STATES PATENT AND TRADEMARK OFFICE
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)
TIMOTHY JOSEPH SHEA, II,) **Proceeding No. D06-21**
)
Respondent)

ERRATUM

On September 18, 2007, this Tribunal issued an Initial Decision on Default. That Order contained a minor typographical error in the final paragraph of section "C. Charges and Findings" thereof, which is hereby amended to read as follows:

Based upon the Order of the Supreme Judicial Court of Massachusetts suspending Respondent from the practice of law on ethical grounds, as alleged in the Complaint, I find Respondent to have engaged in professional misconduct justifying suspension or exclusion under 37 C.F.R. § 10.23.



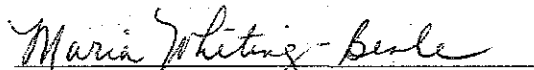
Susan L. Biro
Chief Administrative Law Judge

Dated: December 3, 2007
Washington, D.C.

In the Matter of Timothy Joseph Shea, II, Respondent
Proceeding D06-21

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **Erratum**, dated December 3, 2007, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Legal Staff Assistant

Dated: December 3, 2007

Copy by Regular Mail to:

U.S. Patent and Trademark Office
Office of Enrollment and Discipline
Nathan Kelley
Sydney Johnson
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Arlington, VA 22215

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