

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR OF THE UNITED STATES PATENT AND
TRADEMARK OFFICE**

In the Matter of:

Francis H. Lewis, Jr.

Respondent

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Proceeding No. D2012-03

FINAL ORDER PURSUANT TO 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24(d), the suspension of Francis H. Lewis, Jr., (“Respondent”) is hereby ordered for violation of 37 C.F.R. § 10.23(b)(6) via 37 C.F.R. § 10.23(c)(5).

On January 25, 2012, a “Notice and Order Pursuant to 37 C.F.R. § 11.24” (Notice and Order) was mailed by certified mail (receipt no. 70111150000146352434) to the Respondent at the last address known to the Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline (OED Director). The Notice and Order informed Respondent that the OED Director had filed a “Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24” (Complaint) requesting that the USPTO Director impose discipline upon Respondent identical to discipline imposed by the Supreme Court of California in *In re Francis Hotchkiss Lewis, Jr.*, Case No. S192797 (Calif. July 8, 2011). The Notice and Order provided Respondent an opportunity to file, within forty days, a response opposing, based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1), the imposition of reciprocal discipline based on the Order in *In re Francis Hotchkiss Lewis, Jr.*, Case No. S192797 (Calif. July 8, 2011). On March 23, 2012, this mailing was returned as “unclaimed.”

Due to the inability to serve Respondent at his last known address, Respondent was served by publication, pursuant to 37 C.F.R. §§ 11.24 and 11.35, in the *Official Gazette* on April 24, 2012 and May 1, 2012. The service in the *Official Gazette* informed Respondent that the OED Director had initiated, on January 17, 2012, a proceeding to impose reciprocal discipline, based on the Order in *In re Francis Hotchkiss Lewis, Jr.*, Case No. S192797 (Calif. July 8, 2011). The notice in the *Official Gazette* also informed Respondent that, on January 25, 2012, a Notice and Order had been issued and mailed to his last known address, but was returned as unclaimed. The notice in the *Official Gazette* further provided directions on how Respondent could request a copy of the Notice and Order and the supporting documents that had been sent to him at his last known address. It has been more than forty days since the notice was last published in the *Official Gazette* (May 1, 2012), yet Respondent has not requested a copy of the Notice and Order and the supporting documents or filed a response to the Notice and Order.

Analysis

In light of Respondent's failure to file a response, it is hereby determined that: (1) there is no genuine issue of material fact under 37 C.F.R. § 11.24(d) and (2) reciprocal discipline of Respondent is appropriate.

ACCORDINGLY, it is hereby **ORDERED** that:

1. Respondent be (a) suspended from the practice of patent, trademark and other non-patent law before the USPTO for two years starting on the date the Final Order is signed and (b) placed on probation for two years starting on the date the Final Order is signed ;
2. Respondent be permitted to request reinstatement pursuant to 37 C.F.R. § 11.60

after serving a minimum of nine months of his two year USPTO suspension, and only after having made restitution to Camila Aguilar and Wernher Krutein in accordance with the California Supreme Court order in *In re Francis Hotchkiss Lewis, Jr.*, Case No. S192797;

3. If a petition requesting Respondent's reinstatement pursuant to 37 C.F.R. § 11.60 is granted by the OED Director, Respondent shall be permitted to practice patent law before the USPTO during the remainder of his probationary period provided that Respondent is not subsequently suspended or excluded from practice before the Office;
4. If a petition requesting Respondent's reinstatement pursuant to 37 C.F.R. § 11.60 is granted by the OED Director, Respondent shall be permitted to practice trademark and other non-patent law before the USPTO during the remainder of his probationary period provided that Respondent otherwise satisfies the conditions of 37 C.F.R. § 11.14(a) and provided that he is not subsequently suspended or excluded from practice before the Office;
5. (1) In the event the OED Director is of the opinion that Respondent, during the two year probationary period, failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director may:
 - (a) issue to Respondent an Order to Show Cause why the USPTO Director should not order that Respondent be immediately suspended for up to an additional fifteen (15) months for the violations set forth in the Final Order;

(b) send the Order to Show Cause to Respondent at the last address of record Respondent furnished to the OED Director pursuant to 37 C.F.R. § 11.11(a); and

(c) grant Respondent fifteen (15) days to respond to the Order to Show Cause; and

(2) in the event after the 15-day period for response and consideration of the response, if any, received from Respondent, the OED Director continues to be of the opinion that Respondent, during the two year probationary period, failed to comply with any provision of the Final Order or an Disciplinary Rule of the USPTO Code of Professional Responsibility, the OED Director may:

(a) deliver to the USPTO Director: (i) the Order to Show Cause, (ii) Respondent's response to the Order to Show Cause, if any, and (iii) argument and evidence supporting the OED Director's conclusion that Respondent failed to comply with any provision of the Final Order or any Disciplinary Rule of the USPTO Code of Professional Responsibility during the two year probationary period, and

(b) request that the USPTO Director immediately suspend Respondent for up to an additional fifteen (15) months for the violations set forth in the Final Order;

6. Nothing shall require the OED Director to take the action(s) described in paragraph 5 of this Order if Respondent has not yet been reinstated to practice before the Office; instead, the OED Director may (a) consider Respondent's purported failure to comply with any provision of the Final Order or any

Disciplinary Rule of the USPTO Code of Professional Responsibility in connection with any request for reinstatement made by Respondent and/or (b) seek discipline against Respondent in accordance with the provisions of 37 C.F.R. §§ 11.34 through 11.57 for Respondent's purported failure to comply with any Disciplinary Rule of the USPTO Code of Professional Responsibility.

7. The OED Director shall publish the following notice in the *Official Gazette*:

NOTICE OF SUSPENSION

This notice concerns Francis H. Lewis, Jr. of Daly City, California, a registered patent attorney (Registration Number 27,684) licensed to practice law in the State of California. In a reciprocal disciplinary proceeding, Mr. Lewis has been suspended for two years from the practice of patent, trademark, and other non-patent law and placed on probation for two years by the United States Patent and Trademark Office ("USPTO") for violating 37 C.F.R. § 10.23(b)(6) via 37 C.F.R. § 10.23(c)(5) by having been suspended on ethical grounds by a duly constituted authority of the State of California. After completing a minimum of nine months of his USPTO suspension and making restitution to two clients, Mr. Lewis may request reinstatement pursuant to 37 C.F.R. § 11.60. If reinstated, Mr. Lewis will be permitted to practice patent law, and trademark and non-patent law provided he satisfies 37 C.F.R. § 11.14(a), before the USPTO during his probationary period, provided he is not subsequently suspended or excluded from practice before the Office.

Via a July 8, 2011 order, the Supreme Court of California in *In re Francis Hotchkiss Lewis, Jr.*, Case No. S192797, suspended Mr. Lewis for two years, stayed that suspension, placed him on a two-year probation, and suspended him for a minimum of the first nine months of his probation and until he makes restitution to two clients. The discipline was predicated upon a determination that Mr. Lewis violated the following California Rules of Professional Conduct: rule 3-310(C)(1) by representing three clients without their informed written consent, in a landlord-tenant matter, when the interests of the clients potentially conflicted; rule 3-310(D) by representing three clients and entering into an aggregate settlement of the claims of the clients, without the informed written consent of each client; rule 4-100(B)(3) by failing to render appropriate accounts to a client; rule 4-100(B)(4) by failing to promptly resolve a dispute with his clients before disbursing funds to himself; and rule 4-100(A) when Respondent's client trust funds account balance fell below the value of the balance of

settlement funds he was holding in trust for clients. Further, the discipline was predicated on a determination that Mr. Lewis violated California Business and Professions Code § 6106 by misappropriating at least \$7,687.84 of his client's funds.

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32 and 37 C.F.R. §§ 11.24. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline's Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

8. Direct such other and further relief as the nature of this cause shall require.

Respectfully Submitted,

JUN 21 2012

Date


James O. Payne
Deputy General Counsel for General Law
United States Patent and Trademark Office

on behalf of

David Kappos
Under Secretary of Commerce For Intellectual
Property and Director of the United States Patent
and Trademark Office