

UNITED STATES OF AMERICA
PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

THE DIRECTOR OF THE OFFICE OF ENROLLMENT AND
DISCIPLINE FOR THE UNITED STATES PATENT AND
TRADEMARK OFFICE,

COMPLAINANT,

v.

JAMES H. RILEY II,

RESPONDENT.

Proceeding No. D2013-04

July 9, 2013

INITIAL DECISION ON DEFAULT JUDGEMENT

The above-entitled matter is before this Court on a *Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction* (“Default Motion”), filed on May 3, 2013, by the U.S. Patent and Trademark Office (“USPTO” or “Government”). Respondent James H. Riley II (“Respondent”) has failed to file a timely answer to the USPTO’s initial *Complaint*, and has not responded to an *Order to Show Cause* issued by this Court on May 6, 2013. This Court is authorized to hear this proceeding and to issue this *Initial Decision* pursuant to 37 C.F.R. §§ 11.19 and 11.39.¹

USPTO regulations state that such a failure to respond constitutes an admission of all allegations and “may result in entry of default judgment.” 37 C.F.R. § 11.36(e). As Respondent has not filed any response, the *Default Motion* will be **GRANTED**.

PROCEDURAL HISTORY

The USPTO filed the initial *Complaint and Notice of Proceedings Under 35 U.S.C. § 32* (“Complaint”) on January 4, 2013, pursuant to 37 C.F.R. §§ 11.32 and 11.34.² The Director of the Office of Enrollment and Discipline (“OED Director”) attempted to serve the *Complaint* on

¹ Pursuant to an Interagency Agreement in effect beginning March 27, 2013, Administrative Law Judges of the U.S. Department of Housing and Urban Development are authorized to hear cases for the U.S. Patent and Trademark Office.

² The OED Director filed the *Complaint* with the Office of Administrative Law Judges for the U.S. Environmental Protection Agency (“EPA”). On April 16, 2013, the EPA entered an Order transferring this disciplinary proceeding to the USPTO for reassignment. On April 30, 2013, the USPTO received the file for this proceeding and promptly transferred it to this Court.

Respondent by mailing a copy of the *Complaint* via U.S. certified mail to the address on file for the Respondent. The *Complaint* was returned “unclaimed.”³

On March 5, 2013; and March 12, 2013, the *Complaint* was published in the *Official Gazette*. Respondent was therefore properly served with the *Complaint* as of March 12, 2013. 37 C.F.R. § 11.35(b). The *Complaint* notified Respondent that he had 30 days to file a response, and that “[a] decision by default may be entered against respondent if a written answer is not timely filed.” Accordingly, an answer was due no later than April 11, 2013.

On May 3, 2013, the OED Director filed the *Default Motion*, asserting that Respondent had failed to respond to the *Complaint*. On May 6, 2013, this Court issued an *Order to Show Cause* ordering Respondent to explain, on or before June 6, 2013, why the *Default Motion* should not be granted. To date, Respondent has not filed any answer to the *Complaint* and has not responded to the *Order to Show Cause*.

DEFAULT

Part 11.36 of Title 37 of the Code of Federal Regulations states that “[f]ailure to timely file an answer will constitute an admission of the allegations in the complaint and may result in a default judgment.” 37 C.F.R. § 11.36(e). Respondent has failed to timely submit an answer after being properly served with the *Complaint*. Accordingly, Respondent is deemed to have admitted each of the factual allegations recounted below.

FINDINGS OF FACT

1. Respondent has been registered as a patent attorney since December 30, 1983.
2. Respondent is a member of the Texas State Bar, but has been administratively suspended since 2010 for failure to pay dues.
3. On or around January 2011, John W. Hunt retained Respondent in order to prepare, file, and prosecute a patent application for his invention.
4. On or about April 1, 2011, Mr. Hunt paid Respondent \$2,000 for attorney fees and USPTO filing fees.
5. Respondent did not prepare, file, or prosecute a patent application on behalf of Mr. Hunt.

³ Before attempting to serve Respondent by mail, the OED Director verified Respondent’s mailing address by checking both the USPTO’s files and the web site for the State Bar of Texas, where Respondent was a member. The addresses listed in both locations were identical. However, when the OED Director returned to the State Bar’s web site on April 16, 2013, he discovered a new address for Respondent. The USPTO did not mail the *Complaint* to this new address, as service by publication had already been accomplished. It did, however, send the *Default Motion* to both addresses. The Court sent the *Order to Show Cause* to both addresses as well. The OED Director notes in the *Default Motion* that Respondent’s failure to timely inform the USPTO of his changed address is, itself, a violation of the Agency’s Disciplinary Rules.

6. Respondent did not incur any expenses in connection with his representation of Mr. Hunt.
7. On numerous occasions, Mr. Hunt inquired with Respondent about the status of his patent application.
8. After Respondent and Mr. Hunt initially exchanged information regarding Mr. Hunt's invention, Respondent never responded to any of Mr. Hunt's inquiries.
9. On or about June 13, 2011, Mr. Hunt mailed a certified letter, which was signed for on June 14, 2011, requesting an update on the status of his patent application.
10. Respondent did not respond to the certified letter.
11. As a result of Respondent's failure to respond to the certified letter, Mr. Hunt considered the relationship terminated.
12. Respondent has not returned the \$2,000 to Mr. Hunt.
13. On November 2, 2011, Mr. Hunt filed a civil lawsuit in the Harris County, Texas, Small Claims Court, Precinct 5, Place 2, to recover the \$2,000 he had paid Respondent.
14. On January 4, 2012, the Harris County Small Claims Court entered a judgment in favor of Mr. Hunt and against Respondent in the amount of \$2,000, plus costs of \$116.42.
15. As of the date of the filing of this *Complaint*, Respondent has not satisfied the January 4, 2012, judgment or otherwise made restitution to Mr. Hunt.

CONCLUSIONS OF LAW

1. Regulation 37 C.F.R. § 10.23(b)(4) states that a practitioner may not "[E]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."
2. Respondent violated 37 C.F.R. § 10.23(b)(4) by failing to prepare, file, or prosecute Mr. Hunt's patent application, as promised.
3. Regulation 37 C.F.R. § 10.23(b)(5) states that a practitioner may not "[E]ngage in conduct that is prejudicial to the administration of justice."
4. Respondent violated 37 C.F.R. § 10.23(b)(5) by failing to satisfy the judgment entered against him by the Harris County Small Claims Court.

5. Regulation 37 C.F.R. § 10.23(b)(6) states that a practitioner may not “[E]ngage in any other conduct that adversely reflects on the practitioner’s fitness to practice before the [USPTO].”
6. Respondent violated 37 C.F.R. § 10.23(b)(6) by failing to deliver the promised legal services, failing to return Mr. Hunt’s \$2,000 advance payment for said services, failing to return Mr. Hunt’s inquiries regarding those services, and failing to satisfy the Harris County Small Claims Court’s judgment against him
7. Regulation 37 C.F.R. § 10.77(c) states that a practitioner shall not “[N]eglect a legal matter entrusted to the practitioner.”
8. Respondent violated 37 C.F.R. § 10.77(c) by failing to prepare, file, or prosecute Mr. Hunt’s patent application, after accepting Mr. Hunt’s \$2,000 payment to perform those services.
9. Regulation 37 C.F.R. § 10.84(a)(3) states that a practitioner shall not intentionally “[P]rejudice or damage a client during the course of a professional relationship....”
10. Respondent violated 37 C.F.R. § 10.84(a)(3) by failing to prepare, file, or prosecute Mr. Hunt’s patent application and failing to return Mr. Hunt’s \$2,000 advance payment.
11. Regulation 37 C.F.R. § 10.112(c)(4) states that a practitioner shall “[P]romptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the practitioner which the client is entitled to receive.”
12. Mr. Hunt was entitled to the return of his \$2,000 advance payment, on account of Respondent’s nonperformance.
13. Respondent violated 37 C.F.R. § 10.112(c)(4) by failing to return the \$2,000 payment.
14. Respondents’ violations were knowing and material.

SANCTIONS

The OED Director requests that the Court sanction Respondent by excluding him from practice before the USPTO in patent, trademark, or other non-patent cases or matters. The Court must consider four factors, if applicable, before issuing such a sanction. 37 C.F.R. § 11.54(b).

1. Did the practitioner violate a duty owed to a client, to the public, to the legal system, or to the profession?

Yes. Respondent accepted a \$2,000 advance payment from Mr. Hunt, and was therefore obligated to perform the agreed-upon legal services on Mr. Hunt’s behalf. Respondent failed to

perform those services, ignored Mr. Hunt's inquiries, and refused to return the advance payment upon request. Additionally, by failing to honor his contractual agreement and disregarding a court judgment against him, Respondent has tarnished the image of the legal profession and thumbed his nose at the legal system itself. This factor supports a maximum sanction.

2. Did the practitioner act intentionally, knowingly, or negligently?

Yes. Respondent has offered no explanation for his actions, and has not participated in the instant proceeding in any way. He has therefore waived the opportunity to contest the USPTO's assertions as to his state of mind. Respondent's actions and inactions were deliberate. As the OED Director asserts, Respondent took Mr. Hunt's money, abandoned him, ignored Mr. Hunt's attempts at correspondence, and refused to return the money even after being ordered to do so by the Harris County Small Claims Court. The only conclusion that can reasonably be drawn is that Respondent intended to take Mr. Hunt's money with no intention of providing any legal work in return. This factor supports a maximum sanction.

3. What amount of actual or potential injury was caused by the practitioner's misconduct?

Mr. Hunt has suffered an actual loss of \$2,000. Additionally, his patent application was never filed, and so Mr. Hunt's intellectual property rights in his invention were never secured. This constitutes a substantial potential injury. Accordingly, this factor also supports a maximum sanction.

4. Are there any aggravating or mitigating factors?

There are several aggravating factors present in this case. First, Respondent has callously disregarded a court order to repay the \$2,000 to Mr. Hunt. This blatant disrespect for the legal system is particularly odious coming from a purported member of the legal profession.

The Court also notes that Respondent is currently suspended from the Texas state bar for nonpayment of membership dues. This is further evidence that Respondent lacks the discipline or desire to comply with his professional obligations. He is therefore unfit to practice before the USPTO.

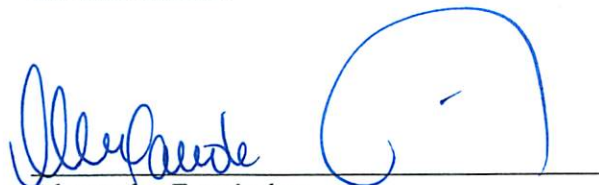
Finally, Respondent's total lack of participation in the instant case confirms his disinterest in accepting responsibility for his actions. He did not respond to the *Complaint* or to the *Order to Show Cause*, nor did he engage in any communication attempts with the USPTO, despite their repeated attempts to contact him. This appears to be patternistic behavior for Respondent, as he also ignored all communications from Mr. Hunt. Such a person has no place representing clients before the USPTO.

ORDER

On the basis of Respondent's deemed admissions, and after an analysis of all four enumerated factors, this Court concludes that Respondent's misconduct warrants the penalty of exclusion. Accordingly, the *Default Motion* is **GRANTED**.

IT IS HEREBY ORDERED that Respondent James H. Riley II, PTO Registration No. 31,131, be **EXCLUDED** from practice before the U.S. Patent and Trademark Office.

SO ORDERED.



Alexander Fernández
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION ON DEFAULT JUDGMENT**, issued by Alexander Fernández, Administrative Law Judge, Proceeding No. D2013-04, were sent to the following parties on this 9th day of July, 2013, in the manner indicated:

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