

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

In the Matter of:

Michael A. Muhammad,

Respondent.

Proceeding No. D2013-21

January 28, 2014

INITIAL DECISION ON DEFAULT JUDGMENT

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 December 5, 2013, by the U.S. Patent and Trademark Office (“USPTO” or “Government”). Respondent Michael A. Muhammad (“Respondent”) has failed to respond in any way to the USPTO’s initial *Complaint*. 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 a failure to file a timely answer 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 October 2, 2013, pursuant to 37 C.F.R. §§ 11.35 (a)(2)(i). On that date, the Director of the Office of Enrollment and Discipline (“OED Director”) mailed a copy of the *Complaint* to Respondent via U.S. certified mail, and also e-mailed a copy of the *Complaint* to Respondent’s e-mail address of record. The mailed *Complaint* was signed for on October 7, 2013. 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 November 7, 2013.

On November 13, 2013, the OED Director sent Respondent a letter informing Respondent that no answer had been received, and that the OED Director would seek a default judgment unless Respondent responded by November 22, 2013. Respondent did not respond to the letter and did not file an answer.

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.

DEFAULT

Section 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 agent since March 14, 2003.
2. Respondent’s registration number is 53,886.
3. On or about October 29, 2011, Ms. Earnestine House hired Respondent to prepare, file, and prosecute a domestic patent application for her invention.
4. On or about October 29, 2011, Ms. House paid Respondent an \$800 advance for his patent services and provided him with design materials related to her invention.
5. Respondent did not prepare, file, or prosecute the patent application.
6. In January of 2012, Ms. House contacted Respondent for a status update on her patent application.
7. During that conversation, Respondent informed Ms. House that Respondent had received a “patent pending number,” which he would mail to her.
8. Respondent had not received a “patent pending number” from the USPTO.
9. Respondent did not mail any “patent pending number” to Ms. House.
10. During the January, 2012, conversation, Respondent promised Ms. House that he would engage in other services to market and produce Ms. House’s invention.
11. Respondent did not engage in any additional services.
12. Ms. House demanded the return of her \$800 advance and her design materials.
13. Respondent returned the design materials, but has not returned the \$800 advance.
14. On December 14, 2012, the OED sent Respondent a Request for Information letter (“RFI”) via U.S. certified mail seeking additional information related to Ms. House’s grievance.
15. Respondent signed a delivery receipt for the RFI on December 19, 2012.

16. Respondent did not respond to the RFI.
17. The OED mailed a second RFI on February 6, 2013.
18. Lois Muhammad signed for the second RFI on February 15, 2013.
19. Respondent did not respond to the second RFI
20. On May 2, 2013, OED e-mailed Respondent.
21. On May 7, 2013, Respondent responded to the e-mail, and promised to file a response at a later date.
22. On May 14, 2013, OED e-mailed Respondent and asked him to respond to the RFIs by June 1, 2013.
23. On May 14, 2013, Respondent replied that he would file his response by June 1, 2013.
24. On June 10, 2013, OED e-mailed Respondent to inform him that the Office had not received his response to the RFIs.
25. Respondent did not respond to the June 10, 2013, e-mail.
26. Respondent has not responded to the RFIs.
27. Respondent's actions were knowing.

CONCLUSIONS OF LAW

1. Regulation 37 C.F.R. § 10.112(c)(4) states that a practitioner must promptly pay or deliver to a client any funds, securities, or other possessions the client is entitled to receive.
2. Respondent violated 37 C.F.R. § 10.112(c)(4) by refusing to return Ms. House's \$800 advance despite not performing the patent services for which he was paid.
3. Regulation 37 C.F.R. § 10.23(b)(4) states that a practitioner may not engage in conduct "involving dishonesty, fraud, deceit, or misrepresentation
4. Respondent violated 37 C.F.R. § 10.23(b)(4) by claiming he had received a "patent pending number" and would send it to Ms. House when he knew he had not filed a patent application and so had not received a patent application number from the USPTO.

5. Regulation 37 C.F.R. § 10.77(c) states that a practitioner may not neglect a legal matter entrusted to the practitioner.
6. Respondent violated 37 C.F.R. § 10.77(c) by failing to prepare, file, and prosecute the patent application on behalf of Ms. House after being hired to do so.
7. Regulation 37 C.F.R. § 11.801(b) states that a practitioner may not refuse to cooperate with an OED investigation or knowingly fail to respond to a request for information.
8. Respondent violated 37 C.F.R. § 11.801(b) by not responding to either of OED's RFIs after May 2, 2013.
9. Regulation 37 C.F.R. § 11.804(a) prohibits a practitioner from violating any USPTO Disciplinary Rule.
10. Respondent violated 37 C.F.R. § 11.804(a) by violating the Disciplinary Rules described above.
11. Regulation 37 C.F.R. § 11.804(d) prohibits a practitioner from engaging in conduct that is prejudicial to the administration of justice.
12. Respondent violated 37 C.F.R. § 11.804(d) by failing to respond to the RFIs, thereby failing to cooperate with the OED investigation.

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 an \$800 advance payment from Ms. House, and was therefore obligated to perform the agreed-upon patent services on Ms. House's behalf. Respondent did not perform those services and did not return the advance payment. When asked about the progress of the patent application, Respondent lied to his client. Respondent therefore failed in his central duty to his client. Put simply, he took Ms. House's money and ran. This factor demands a maximum sanction.

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

Yes. Respondent's actions and inactions were deliberate. Respondent refused to return Ms. House's money despite knowing he had not performed the requested patent services. He also told Ms. House that he had received a "patent pending number" despite knowing that no

such number existed. Finally, he refused to cooperate with the OED Director's investigation despite having received the RFIs and expressly informing the OED that he would file responses to the RFIs. This factor warrants a maximum sanction.

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

Ms. House has suffered an actual loss of \$800. Additionally, because her patent application was never filed, she may have lost out on intellectual property protection for her invention. It is unclear how substantial this potential injury may be. However, by failing to prosecute her patent application Respondent has placed her patent rights in peril. This warrants a significant sanction.

4. Are there any aggravating or mitigating factors?

Both aggravating and mitigating factors are present here. First, Respondent refused to participate in the OED investigation, as he is required to do. As documented above, the OED made repeated attempts to contact him, but, other than responding to two e-mails, Respondent has ignored them all. He has been similarly unresponsive to this disciplinary proceeding. To date, the Court has received no communication from Respondent whatsoever. This shows a disturbing lack of respect for the Court, the USPTO, and the patent bar.

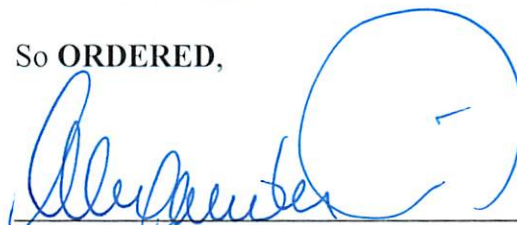
Additionally, Respondent kept Ms. House's \$800 payment despite knowing he had not earned it. If Respondent has a plausible explanation for his behavior, he has failed to reveal it. His silence suggests either guilt or indifference. In either event, a maximum sanction is appropriate.

However, this is Respondent's first violation of the USPTO's Disciplinary Rules. This should act as a mitigating factor. However, the brazen nature of Respondent's violations, and his apparent unwillingness to defend himself against this disciplinary action, persuades the Court that leniency would only serve to embolden Respondent.

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**.

So ORDERED,


Alexander Fernández
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing INITIAL DECISION AND DEFAULT JUDGMENT, issued by Alexander Fernández, Administrative Law Judge, in D2013-21, were sent to the following parties on this 28th day of January, 2014, in the manner indicated:


Cinthia Matos, Docket Clerk

VIA FIRST CLASS MAIL AND E-MAIL:

Michael A. Muhammad
South West Intellectual Property Consultants
P.O. Box 1108
Fayette, Mississippi, 39069
Patentagent1@swipc.com

Elizabeth Ullmer Mendel
Ronald K. Jaicks
Melinda DeAtley
Associate Solicitors
Mail Stop 8
Office of the Solicitor
P.O. Box 1450
Alexandria, VA 22313-1450
Pto-hudcases@uspto.gov