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

In the Matter of:	)	
	)	
Feng Li,	)	
	)	**Proceeding No. D2014-36**
Respondent	)	
	)	

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

Pursuant to 37 C.F.R. § 11.24, Feng Li ("Respondent") is hereby excluded from the practice of patent, trademark, and other non-patent matters before the United States Patent and Trademark Office ("USPTO" or "Office") for violation of 37 C.F.R. § 11.804(h).

I. Background and Procedural History

At all times relevant to these proceedings, Respondent has been registered to practice in patent matters before the USPTO as an attorney (Registration No. 53,216). (Ex. 6, attachment 1 thereto). As a registered patent attorney, Respondent is bound by the USPTO Rules of Professional Conduct, found at 37 C.F.R. § 11.101 *et seq.*, which became effective May 3, 2013. (*Id.*)[1]

Background Litigation[2]

Respondent was admitted to the New Jersey and New York bars in 2004, and to the Pennsylvania bar in 2005. (Ex. 1, p. 2; Ex. 3; Ex. 9, ex. 32 thereto).

On January 3, 2005, [redacted] retained Respondent to file a lawsuit in connection with [redacted] retirement investments. (Ex. 1, p. 3). Thereafter, in September of 2005, [redacted] asked Respondent to take over litigation that had been pending in New York on behalf of a group of doctors, including himself. (Ex. 1, p. 3; Ex. 9). The lawsuit alleged, *inter alia,* that a former partner of the doctors,

[1] Prior to May 3, 2013, the USPTO Code of Professional Responsibility was in effect. *See* 37 C.F.R. §§ 10.20 *et seq.*
[2] Respondent's state discipline, and the instant reciprocal matter, stem from Respondent's conduct during a fee dispute between Respondent and several former clients following a separate civil litigation matter. The history of that fee dispute is lengthy and complicated. A comprehensive recitation of all the facts is not included in this final order. Rather, a summary of that history, based on Respondent's response and accompanying exhibits, as well as other publicly available documents, is provided.

[redacted], engaged in fraud in connection with a commercial property development in which they had been persuaded to invest. (Ex. 1, pp. 3-4; Ex. 9). Prior to Respondent's involvement, the doctors had been represented by at least two other attorneys over fifteen years of litigation. (Ex. 1, p. 4). Although Respondent wanted to be paid on an hourly basis, he agreed to a contingent fee with the doctors (hereinafter referred to as the clients). (Ex. 1, p. 5; Ex. 9 , ex. 4 thereto). Respondent prepared one fee agreement for all of the clients, using his New Jersey address and a New Jersey form retainer agreement. (Ex. 1, p. 5; Ex. 9, ex. 4 thereto).

The agreement provided, *inter alia*, that:

> the fee will be based on a percentage of the net recovery. Net recovery is the total recovered on Your behalf, minus Your costs and expenses . . . and minus any interest in a judgment pursuant to R. 4:42-ll(B). The
> fee will be as follows:
> 33-1/3% on the first $500,000 recovered;
> 30% on the next $50,000 net recovered;
> 25% on the next $500,000 net recovered; and
> 20% on the next $500,000 recovered.
>
> Fees on net recoveries exceeding $2,000,000.00 will be determined by the court by application for reasonable fee pursuant to R...:.. 1:21-7(f).

(Ex. 1, p. 6; Ex. 9. ex. 4 thereto).

In March, 2008, Respondent obtained a successful non-jury verdict in favor of his clients in the long-standing lawsuit. (Ex. 1, p. 7; Ex. 9). The total awarded to the clients was approximately $3.5 million. (Ex. 1, p. 7; Ex. 9). Respondent also successfully defended the judgment on appeal. (Ex. 1, p. 10; Ex. 9). Respondent did not discuss with his clients any fee arrangements for representing them on appeal or for collecting the judgment. (Ex. 1, p. 10; Ex. 9).

Fee Dispute

After Respondent successfully defended the judgment on appeal, Respondent received $3,548,506.91, representing the amount of the judgment, plus interest. (Ex. 1, p. 10; Ex. 9, p. 40; Ex. 9,ex. 24 thereto). On August 17, 2009, Respondent deposited that judgment proceeds in his trust account. (Ex. 1, p. 10; Ex. 9, p. 40).

On August 1, 2009, before the litigation funds were released to Respondent, the clients met with Respondent to discuss the terms of the distribution of the judgment funds. (Ex. 1, pp. 10-11). The clients and Respondent disputed the scope of the fee agreement. (Ex. 1, pp. 10-14). Respondent's clients sought to enforce the fee agreement as written, which made no provision for the taking of a contingent fee on prejudgment interest and provided a sliding scale to determine Respondent's percentage of recovery to the collective judgment rather than to each individual's share of the judgment. (Ex. 1, p. 12). Respondent's position was that he made a mistake in the drafting of the fee agreement. (Ex. 1, p. 12; Ex. 9). Among the errors claimed, Respondent stated that the fee agreement should have been drafted according to New York law, he should not have used a "sliding scale" calculation, and that interest should be included in calculation of his fee. (Ex. 1, p. 12; Ex. 9). The parties also disputed whether certain other proceeds should be included in the sum on which Respondent's legal fee was calculated.[3] (Ex. 1, pp. 13-14). Thereafter, on August 6, 2009 and August 7, 2009, the clients sent two letters to Respondent directing him to refrain from disbursing any of the funds until the fee dispute was settled. (Ex. 1, p. 13). Although he claims to have not received the correspondence, Respondent admitted that knew that his clients disputed his interpretation of the fee to which he was claiming entitlement. (Ex. 1, p. 37; Ex. 9, p. 43).

Prior to resolving the fee dispute with his clients, in August 2009, Respondent transferred an amount equal to his legal fee, calculated according to his own, disputed calculation, from his trust accounts to trusts for his children. (Ex. 1, pp. 15-16; Ex. 9, pp. 42-47). He calculated his fee to be recovered based on an amount equal to the judgment funds and the [redacted], minus legal expenses; he determined the clients' individual percentage shares of the amount recovered; and he calculated his fee by applying the "sliding scale" appearing in the retainer agreement to each client's share of the judgment. (Ex. 1, p. 15, Ex. 9, pp. 42-47). Respondent included prejudgment interest in the calculation of his legal fee. (Ex. 1, p. 15, Ex. 9, pp. 42-47). He then issued checks to the clients, dated September 8, 2009, with a summary of

[3] The "[redacted]" were the result of the sale of one of the commercial properties in which the clients had invested. (Ex. 1, p. 8). The proceeds of that sale had been held in a trust and not part of the litigation that was the subject of Respondent's representation, but the funds were ultimately dispersed upon a Petition filed by Respondent. *(Id.)*

his fee calculation. (Ex. 1, pp. 17-18; Ex. 9, pp. 42-47).

On September 11, 2009, the clients filed suit in New Jersey to resolve the fee dispute. (Ex. 1, p. 20). On September 23, 2009, a temporary restraining order was issued, which prohibited Respondent from dissipating the funds received on his clients' behalf. (Ex. 1, p. 21). Nevertheless, on the same day the restraining order was issued, Respondent's wife, at Respondent's direction, transferred all of the money he had taken from the attorney trust accounts (totaling $1,293,783.73)[4] to parties in China to pay personal debts. (Ex. 1, p. 22, 23, 27-29). Respondent also failed to comply with a later court order to return the money to his attorney trust account and to provide his clients with an accounting of the funds. (Ex. 1, pp. 24-25).

Meanwhile, Respondent filed a lawsuit against his former clients in Westchester County, New York in September 2009, seeking to enjoin the New Jersey state court matter on the basis that New York law governed the parties' retainer agreement and that his fee should be calculated as one-third of the recovery, including interest. (Ex. 1, pp. 21, 25; Ex. 9, p. 46, and ex. 26 thereto). However, on December 30, 2009, the New York court denied Respondent's motion for an injunction. (Ex. 1, p. 26). The Appellate Division in New York subsequently denied Respondent's application for a restraining order. (Ex. 1, p. 26, Ex. 10). The following day, Respondent filed for bankruptcy and names his former clients as creditors. *See Feng Li v. Peng*, 516 B.R. 26 (D.NJ. 2014) (attached hereto as Ex. 5). On January 18, 2011, the clients filed an adversary complaint in Respondent's bankruptcy matter seeking a judgment denying the discharge of the debt that they claimed was owed to them. (Ex. 1, p. 30).[5]

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[4] In his Response filed here, Respondent acknowledges that the amount of "$1.2 million" is "in fact correct." (Ex. 9, p. 26).

[5] On appeal from the findings of the bankruptcy court, the U.S. District Court, District of New Jersey found that Respondent was collaterally estopped from challenging the finding of the New Jersey Supreme Court that he knowingly misappropriated client funds, and therefore denied Respondent's request to discharge his debts to his former clients. (Ex. 5). In that opinion, the court upheld findings that Respondent also made misrepresentations in connection with his bankruptcy petition. *See id.* Respondent appealed the decision of the District Court on August 28, 2014. (Ex. 5).

State Disciplinary Proceedings

Respondent's former clients filed formal complaints against Respondent in the states of New York[6] and New Jersey.[7] In a report dated August 28, 2012, a special master concluded that Respondent violated several provisions of the New Jersey RPC, including that he knowingly misappropriated client funds by transferring the judgment and other proceeds to trust accounts for his children. (Ex. 1, p. 31). The special master recommended that Respondent be disbarred. (Ex. 1, p. 32).

Following a *de novo* review of the record, the New Jersey Disciplinary Review Board ("DRB"), in an April 3, 2013 decision in *In the Matter of Feng Li*, Docket No. DRB 12-310, determined that Respondent should be disbarred. (Ex. 1). The DRB concluded that Respondent knowingly misappropriated client funds, failed to safeguard disputed funds, misrepresented income on his bankruptcy petition, allowed his non-attorney wife to sign his attorney trust account checks, and failed to provide his clients an accounting as ordered by a judge. (Ex. 1).[8] With regard to Respondent's misappropriation of funds, the DRB noted that "[R]espondent pretended that he had entered into a fee agreement completely different from the one that his clients had signed." (Ex. 1, p. 38). Further, "[R]espondent's belief that he could take his fees in accordance with an imagined fee agreement was far from reasonable." (*Id.*) Finally, the DRB noted that Respondent's action after receiving notice of the fee dispute "lend support to the notion that [R]espondent did not maintain a good faith belief that he was entitled to the legal fees that he took", including attempting to "blackmail and bully" the clients and his "devious and appalling" method of disbursing his fees. (*Id.* at 38-43).

On May 22, 2013, the Supreme Court of New Jersey, based on its independent review and findings of the DRB, ordered Respondent's disbarment, effective immediately. (Ex. 3).[9] The Court stated that Respondent, based on its findings and the findings of the DRB, "lacked a reasonable, good-faith belief of

[6] Reciprocal disciplinary proceedings in New York are pending. (Ex. 9, exhibit 3 attached thereto).
[7] Respondent was also licensed in the state of Pennsylvania. However, on January 15, 2014 he was disbarred in reciprocal disciplinary proceedings in that state. (Ex. 4).
[8] Although there is a minority, dissenting opinion, it is worth noting that the dissent also found that "[i]t is beyond doubt that the respondent showed stupendously bad judgment, should not have distributed the funds under these circumstances, and patently violated several Rules of Professional Conduct." (Ex. 2).
[9] The case is cited as *In the Matter of Feng Li*, 65 A.3d 254 (N.J. 2013).

entitlement to the disputed funds and that his use of the contested funds constituted a knowing misappropriation of client funds for which disbarment is required." (Ex. 3).

USPTO Disciplinary Proceedings

On October 9, 2014, the Deputy General Counsel for General Law issued a "Notice and Order Pursuant to 37 C.F.R. § 11.24" ("Notice and Order") by certified mail (receipt no. 70140510000044243252), notifying Respondent that the Director of the Office of Enrollment and Discipline ("OED Director") filed a "Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24" ("Complaint"). (Ex. 6; Ex. 7). That Complaint requested that the Director of the USPTO exclude Respondent from the practice of patent, trademark, and other non-patent law before the USPTO based on having been disbarred on ethical ground by the Supreme Court of New Jersey in *In the matter of Feng Li*, D-105, September Term 2012, No. 072413.[10] (Ex. 3; Ex. 6). The Notice and Order provided Respondent an opportunity to file, within forty (40) days, a response opposing the imposition of reciprocal discipline identical to that imposed by the Supreme Court of New Jersey in *In the matter of Feng Li*, D-105, September Term 2012, No. 072413, based on one or more of the reasons provided in 37 C.F.R. § 11.24(d)(1). (Ex. 7).

On January 9, 2015, the Agency received Respondent's response to the Notice and Order.[11] (Exhibit 9). Respondent's lengthy response contests the imposition of reciprocal discipline, primarily based on his assertion that there is a "[l]ack of Geographical and Subject Matter Jurisdiction of the New Jersey Supreme Court." (Ex. 9, p. 13). In short, Respondent argues that only New York has jurisdiction over his conduct that occurs in New York and there is no nexus to the state of New Jersey. (Ex. 9). He further claims that he had no notice that New Jersey law would "assume jurisdiction over what is and what is not the proper legal fee and legal practice for a New York licensed attorney in a New York Case." (Ex. 9. pp. 29-32). As a result, he argues that he has suffered a lack of due process and an "infirmity of proof of

[10] *In the Matter of Feng Li*, 65 A.3d 254 (N.J. 2013).
[11] Based on Respondent's unopposed request for an extension of time to file a response to the Notice and Order, Respondent was given until January 9, 2015 to file his response. (Ex. 8).

misconduct." (Ex. 9, pp. 18, 25).

Respondent also argues that there was no trial before any court "as to the legal fee/contract law dispute and no judgment of any kind," which he characterizes as a due process violation. (Ex. 9, p. 27). In the absence of any such findings from litigation of the fee dispute, he also claims that the issue of his misappropriation "is a contested issue of fact" and "does not provide a ground to suspend me from the practice of law." (Ex. 9, p. 51).

Lastly, he contends that "[a] simple contract dispute motivated by the greed of the clients does not rise to the level of misappropriation" and is a "grave injustice." (Ex. 9, p. 66).

II. LEGAL STANDARD

Pursuant to 37 C.F.R. § 11.24(d), and in accordance with *Selling v. Radford*, 243 U.S. 46 (1917), the USPTO has codified standards for imposing reciprocal discipline based on a state's disciplinary adjudication. Under *Selling*, state disbarment creates a federal-level presumption that imposition of a reciprocal disbarment is proper, unless an independent review of the record reveals: (1) a want of due process; (2) an infirmity of proof of the misconduct; or (3) that grave injustice would result from the imposition of reciprocal discipline. Federal courts have generally "concluded that in reciprocal discipline cases, it is the respondent attorney's burden to demonstrate, by clear and convincing evidence, that one of the *Selling* elements precludes reciprocal discipline." *In re Kramer,* 282 F.3d 721, 724 (9th Cir. 2002); *In re Friedman*, 51 F.3d 20, 22 (2d Cir. 1995). "This standard is narrow, for '[a Federal court, or here the USPTO Director is] not sitting as a court of review to discover error in the [hearing judge's] or the [state] courts' proceedings.'" *In re Zdravkovich*, 634 F.3d 574, 578 (D.C. Cir. 2011) (quoting *In re Sibley*, 564 F.3d 1335, 1341 (D.C. Cir. 2009)).

The USPTO's regulation governing reciprocal discipline, 37 C.F.R. § 11.24(d)(1), mirrors the standard set forth in *Selling*:

> [T]he USPTO Director shall consider any timely filed response and shall impose the identical public censure, public reprimand, probation, disbarment, suspension, or disciplinary disqualification unless the practitioner clearly and convincingly demonstrates,

and the USPTO Director finds there is a genuine issue of material fact that:

(i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute deprivation of due process;

(ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;

(iii) The imposition of the same public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would result in a grave injustice; or

(iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

To prevent imposition of the reciprocal exclusion here, Respondent is required to demonstrate that he meets one of these criteria by clear and convincing evidence. *See* 37 C.F.R. § 11.24(d)(1). As discussed below, however, Respondent has not clearly and convincingly satisfied any of the criteria set forth in 37 C.F.R. § 11.24(d)(1).

A. Respondent Has Not Suffered a Deprivation of Due Process.

A state disbarment creates a federal-level presumption that imposition of reciprocal discipline is proper. *See Sellig, supra.* An attorney respondent may seek to defeat that presumption by showing clear and convincing evidence that the state proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process under 37 C.F.R. § 11.24(d)(1)(i). Here, Respondent has not shown by clear and convincing evidence that he suffered any such deprivation.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *In re Karten*, 293 Fed. Appx. 734, 736 (11th Cir. 2008) (citing *Mathews v. Eldridge,* 424 U.S. 319, 333 (1976) (internal quotation omitted)). In attorney disciplinary proceedings, the attorney is entitled to due process such as reasonable notice of the charges before the proceedings commence. *See In re Ruffalo*, 390 U.S. 544, 551 (1968). Due process requirements are met when the

attorney "attended and participated actively in the various hearings, and was afforded an opportunity to present evidence, to testify, to cross-examine witnesses, and to present argument." *In re Squire*, 617 F.3d 461, 467 (6th Cir. 2010) (citing *Ginger v. Circuit Court for Wayne County*, 372 F.2d 620, 621 (6th Cir. 1967)); *see also In re Zdravkovich*, 634 F.3d 574 (D.C. Cir. 2011) (stating that attorney could not satisfy claim of due process deprivation where he was given notice of the charges against him, was represented by counsel, and had a hearing at which counsel had the opportunity to call and cross-examine witnesses, make arguments, and submit evidence). Due process requirements are also met where a respondent is given "an opportunity to respond to the allegations set forth in the complaint, testify at length in [his] own defense, present other witnesses and evidence to support [his] version of events ..., [and is] able to make objections to the hearing panel's findings and recommendations." *In re Squire*, 617 F.3d at 467 (citing *In re Cook*, 551 F.3d 542, 550 (6th Cir. 2009)).

Here, a parsing of Respondent's lengthy response reveals two arguments couched under the guise of a due process argument. First, Respondent argues that only New York has jurisdiction over his conduct, which occurred in New York, and there is no nexus to the state of New Jersey. (Ex. 9). Further, he claims that he had no notice that New Jersey law would "assume jurisdiction over what is and what is not the proper legal fee and legal practice for a New York licensed attorney in a New York Case", in violation of his due process (Ex. 9. pp. 29-32). Finally, Respondent argues that there was no trial before any Court "as to the legal fee/contract law dispute and no judgment of any kind." (Ex. 9, p. 27).

For the reasons set forth below, Respondent has not clearly and convincingly proven that he has suffered a deprivation of due process such that reciprocal discipline should not be imposed.

1. Respondent was Licensed in New Jersey.

Respondent's primary argument is that the state of New Jersey lacked jurisdiction to bring the disciplinary matter against him. In his response, he repeatedly asserts some variation of the argument that "[t]his matter solely and exclusively arose and was conducted in the State of New York. At no time were any activities or proceedings conducted in the State of New Jersey." (Ex. 9, p. 4). However, because Respondent was licensed to practice law in the state of New Jersey, that state has unequivocal authority to

discipline Respondent for misconduct. This is so regardless of where his misconduct occurred.

States traditionally have exercised extensive control over the professional conduct of attorneys. *See Middlesex Co. Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 434 (1982). *See also Canatella v. State of California*, 404 F.3d 1106, 1110 (9th Cir. 2004). This extensive control has traditionally included the power to discipline attorneys for misconduct regardless of the jurisdiction in which it occurs. *See Canatella*, at 1110. *See also* ABA Model Rules of Professional Conduct, Rule 8.5 ("A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs."). "The States' long-arm regulatory authority over the attorneys they license derives in part from the nature of disciplinary proceedings", which is an investigation into the conduct of the attorney. *See Canatella*, at 1110. "The ultimate objective of such control is 'the protection of the public, the purification of the bar and the prevention of a re-occurrence.'" *Middlesex*, at 434 (citing *In re Baron*, 136 A.2d 873, 875 (N.J. 1957)). The judiciary as well as the public is dependent upon professionally ethical conduct of attorneys and thus has a significant interest in assuring and maintaining high standards of conduct of attorneys engaged in practice. *See Middlesex*, at 434. *See also In the Matter of Gallo*, 835 A.2d 682, 685 (N.J. 2003) (the purpose of the disciplinary review process is to protect the public from unfit lawyers and promote public confidence in our legal system).

"The State of New Jersey, in common with most States, recognizes the important state obligation to regulate persons who are authorized to practice law." *Middlesex*, 457 U.S. at 432-33. "New Jersey expresses this in a state constitutional provision vesting in the New Jersey Supreme Court the authority to fix standards, regulate admission to the bar, and enforce professional discipline among members of the bar." *Id.* (citing N.J. Const., Art. 6, § 2, ¶ 3). *See also Kaye v. Rosefielde*, 75 A.3d 1168 (N.J. 2013), certification granted in part, 91 A.3d 22. Thus, the Supreme Court established rules of court pursuant to its constitutional authority, which include the New Jersey Rules of Professional Conduct ("RPC").

Rule 8.5 of the New Jersey RPC, which is publicly available on the New Jersey Courts website (http://www.judiciary.state.nj.us/rules/apprpc.htm), states that "[a] lawyer admitted to practice in this

jurisdiction is subject to the disciplinary authority of this jurisdiction *although engaged in practice elsewhere*." N.J. R.P.C., Rule 8.5 (Emphasis added). Further, "[a] lawyer may be subject to the disciplinary authority of both [New Jersey] and another jurisdiction for the same conduct." *Id.* There is no geographic limitation on attorney misconduct for purposes of New Jersey's disciplinary authority. To the contrary, New Jersey rules issued under the constitutional authority of the Supreme Court of that state make clear that location of the purported attorney misconduct is irrelevant to the State's disciplinary authority. As Respondent was licensed in New Jersey, he was subject to the disciplinary authority of the New Jersey Supreme Court for any allegations of misconduct, regardless of where that misconduct occurred.

Finally, Respondent's claimed ignorance as to the extent of New Jersey's disciplinary authority is rejected. New Jersey's exercise of disciplinary jurisdiction, along with the New Jersey RPC, is publicly available at the New Jersey Courts website. Consequently, Respondent was on notice as to the scope of New Jersey's disciplinary authority. Further, "ignorance of the disciplinary rules is no excuse." *See In the Matter of Hollendonner*, 504 A.2d 1174, 1178 (N.J. 1985) (citing *Matter of Eisenberg,* 383 A.2d 426 (1978)).

Respondent's due process argument as to the scope of New Jersey's disciplinary jurisdiction is rejected.

2. Respondent Fully Participated in the New Jersey Proceedings.

Respondent also claims there was no trial before any Court "as to the legal fee/contract law dispute and no judgment of any kind" in the fee dispute matter, which he characterizes as a due process violation. (Ex. 9, p. 27). However, the basis for Respondent's disbarment was not the substantive dispute. His disbarment was not in any way dependent on the existence or resolution of his fee dispute with his clients. Rather, his disbarment was the result of his conduct while the fee dispute was pending, specifically his use of the contested legal fee before the fee dispute was resolved, which violated New Jersey's RPC. Thus, the presence or absence of any court order resolving the underlying fee dispute is immaterial to this

reciprocal disciplinary matter.

As to the New Jersey disciplinary matter itself, Respondent does not, and cannot, claim that he did not participate in the disciplinary process in New Jersey. He was represented by counsel, he was deposed, an ethics hearing was held, and he was afforded all process due to him under the New Jersey rules, including a review of the charges against him by a special master and the DRB. (Ex. 1). Further, the New Jersey Supreme Court reviews all DRB decisions that recommend disbarment, *see* R. 1:20-16, and such review occurred here. (Ex. 3). Consequently, Respondent suffered no deprivation of due process during the state disciplinary proceedings.

B. The New Jersey Disbarment Did Not Suffer From an Infirmity of Proof.

A respondent may also seek to defeat the federal presumption that reciprocal discipline was proper by showing by clear and convincing evidence that there was such infirmity of proof establishing the conduct as to give rise to a clear conviction that the Office could not, consistently with its duty, accept as final the state's conclusion on that subject. *See* 37 C.F.R. § 11.24(d)(1)(ii). Respondent here argues that there is an "infirmity of proof of misconduct." (Ex. 9, pp. 18, 25). However, a review of the record proves that this claim is unavailing.

To successfully invoke infirmity of proof as a defense to reciprocal discipline, Respondent must demonstrate that there was "such an infirmity of proof" establishing the charges against him "as to give rise to the clear conviction" that accepting the state discipline would be "inconsistent with [our] duty." *See In re Zdravkovich*, 634 F.3d at 579. "This is a difficult showing to make. . . ." *Id.*

The facts, which are summarized here, are uncontested. In September of 2005, Respondent took over a pending civil litigation matter in New York on behalf of his clients. (Ex. 1, p. 3; Ex. 9). Although Respondent wanted to be paid on an hourly basis for his work, he agreed to a contingent fee. (Ex. 1, p. 5; Ex. 9). Respondent prepared the contingent fee agreement, which was based on a New Jersey form retainer agreement and which noted his New Jersey Office address. (Ex. 1, p. 5; Ex. 9, x. 4 thereto). The agreement stated that Respondent's fee would be based on a sliding scale percentage of the net recovery after expenses were deducted and exclusive of interest. (Ex. 1, p. 6; Ex. 9, ex. 4 thereto). The fee

agreement did not address any work on appeals or collection of the judgment, if any. (Ex. 1, p. 6; Ex. 9, ex. 4 thereto).

In March, 2008, Respondent obtained a successful non-jury verdict in on behalf of his clients, with the total amount awarded approximately $3.5 million. (Ex. 1, p. 7; Ex. 9). Respondent also successfully defended the judgment on appeal. (Ex. 1, p. 10; Ex. 9). Respondent received judgment proceeds including interest, in the amount of $3,548,506.91 on August 14, 2009. (Ex. 1, p. 10; Ex. 9). On August 17, 2009, Respondent deposited the judgment funds in his trust account. (Ex. 1, p. 10; Ex. 9).

Immediately after the appeal, the clients met with Respondent to discuss the terms of the distribution of the judgment funds. (Ex. 1, pp. 10-11; Ex. 9). The clients and Respondent disputed the scope of the fee agreement. (Ex. 1, pp. 10-14; Ex. 9). As of August 1, 2009, Respondent acknowledged that he knew that his clients disputed his interpretation of the fee to which he was claiming entitlement. (Ex. 1, p. 37; Ex. 9, p. 43). Nevertheless, prior to resolving the fee dispute, in August 2009, Respondent transferred an amount equal to his legal fee, calculated according to his own, disputed calculation, from his trust accounts to trusts for his children. (Ex. 1, pp. 15-16; Ex. 9, pp. 42-47). He issued checks to the clients, dated September 8, 2009, with a summary of his fee calculation. (Ex. 1, pp. 17-18; Ex. 9, pp. 42-47). Respondent acknowledges that the amount of the legal fee that he paid himself as a result of the litigation matter was "$1.2 million." (Ex. 9, p. 26).

On September 11, 2009, the clients filed suit in New Jersey to resolve the fee dispute. (Ex. 1, p. 20). On September 23, 2009, a temporary restraining order was issued, which prohibited Respondent from dissipating the funds received on his clients' behalf. (Ex. 1, p. 21). Nevertheless, on the same day the restraining order was issued, Respondent's wife, at Respondent's direction, transferred all of the money he had taken from the attorney trust accounts to parties in China to pay personal debts. (Ex. 1, p. 22, 23, 27-29). Respondent also failed to comply with a later court order to return the money to his attorney trust account and to provide his clients with an accounting of the funds. (Ex. 1, pp. 24-25).

These facts provide ample support for the May 22, 2013 Supreme Court Order finding that Respondent "lacked a reasonable, good-faith belief of entitlement to the disputed funds and that his use of

the contested funds constituted a knowing misappropriation of client funds for which disbarment is required," and effecting Respondent's immediate disbarment. (Ex. 3). Respondent doesn't challenge these facts. Rather, his arguments are limited only to accusations as to his former clients' motives[12] and attempts to offer excuses for his actions. However, Respondent's mere disagreement with the state's conclusions, or determinations regarding the credibility of the witnesses or documents, does not show "infirmity of proof." *See Zdravkovich*, 634 F.3d at 580 (determinations by the trier-of-fact regarding credibility of witnesses generally receive deference). Thus, Respondent has not clearly and convincingly satisfied his burden under 37 C.F.R. § 11.24(d)(1)(ii).

C. Respondent's New Jersey Disbarment was not a Grave Injustice.

As stated, an attorney respondent may seek to defeat that presumption that discipline is proper by showing by clear and convincing evidence that a "grave injustice" would result under 37 C.F.R. § 11.24(d)(1)(iii). Here, Respondent asserts here that "[a] simple contract dispute motivated by the greed of the clients does not rise to the level of misappropriation" and allowing this "attack" is a grave injustice. (Ex. 9, p. 66). This allegation, on its face, is insufficient to prohibit reciprocal discipline.

The grave injustice analysis focuses on whether the severity of the state ordered punishment "fits" the misconduct. *See In re Thav*, 852 F. Supp. 2d 857, 861-62 (E.D. Mich. 2012); *see also In re Kramer*, 282 F.3d at 727 (on challenge to imposition of reciprocal discipline, "we inquire only whether the punishment imposed by [the first] court was so ill-fitted to an attorney's adjudicated misconduct that reciprocal disbarment would result in grave injustice"); *In re Attorney Discipline Matter*, 98 F.3d 1082, 1088 (8th Cir. 1996) (no grave injustice where disbarment imposed by the state court "was within the appropriate range of sanctions"); *Matter of Benjamin*, 870 F. Supp. 41, 44 (N.D.N.Y. 1994) (public censure within range of penalties for misconduct and thus censure was not a grave injustice). The Supreme Court of New Jersey concluded that Respondent "lacked a reasonable, good-faith belief of entitlement to the disputed funds and that his use of the contested funds therefore constituted a knowing misappropriation of client

[12] The special master noted that the fee agreement was mistakenly prepared. (Ex. 1, p. 30). Further, he characterized the client's motives as deciding to "benefit from [R]espondent's mistake" by "taking advantage" of the fee agreement as drafted by him. (*Id.*) Thus, Respondent's accusations as to his client's motives were considered.

funds for which disbarment is required." (Ex. 3). Disbarment was undoubtedly within the range of allowable penalties for a finding of misappropriation of funds.

The imposition of final discipline in New Jersey "may include any of the following sanctions, all of which shall be public: (1) Disbarment. An attorney who is disbarred shall have his or her name permanently stricken from the roll of attorneys. . . ." R. 1:20-15A. For specific cases involving misappropriation of client funds, "the strictest discipline" is appropriate. *See In the Matter of Wilson*, 409 A.2d 1153, 1157-58 (N.J. 1979). Indeed, New Jersey case law has long held that there are few more egregious acts of professional misconduct of which an attorney can be guilty than misappropriation of a client's funds held in trust. *Id.* at 1155. Mitigating factors will rarely override the requirement of disbarment. *See Id.* at 1158. *See also In the Matter of Sigman*, 104 A.3d 230, 239 (N.J. 2014) (knowingly misappropriation of funds "will generally result is disbarment."); *Gallo*, 835 A.2d at 686 ("Our Court has disbarred attorneys who have violated the economic trust of their clients"); *Port-O-San Corp. v. Teamsters*, 833 A.2d 633, 639 (N.J. 2003) ("Misappropriation of trust funds almost invariably results in disbarment.")

Respondent's attempt to characterize the basis for his disbarment as a fee dispute does not change this analysis or the conclusion that disbarment was an allowable penalty. As previously discussed, Respondent's fee dispute with his clients, and the resolution thereof, were not the cause of his disbarment. Rather, it was Respondent's actions pending resolution of the fee dispute, which included misappropriating funds that he knew were disputed by his former clients and prior to resolution of that dispute, and not the existence of the fee dispute itself, that violated New Jersey RPC. Because disbarment is within the range of penalties for that violation of the rules, his disbarment was not a grave injustice.

ORDER

ACCORDINGLY, it is hereby ORDERED that:

1. Respondent is excluded from the practice of patent, trademark, and non-patent law before the USPTO effective the date of this Final Order;

2. The OED Director publish the following Notice in the *Official Gazette*:

NOTICE OF EXCLUSION

This Notice concerns Feng Li of Parsippany, New Jersey, who is a registered patent attorney (Registration Number 53,216). In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Mr. Li be excluded from practice before the USPTO in patent, trademark, and other non-patent matters for violating 37 C.F.R. § 11.804(h)(1), predicated upon being disbarred from the practice of law by a duly constituted authority of a State.

The Disciplinary Review Board and the Supreme Court of New Jersey found that: (1) the written fee agreement between Mr. Li and his clients did not authorize the $1.2 million fee that Mr. Li took from his clients; (2) Mr. Li wrote to his clients suggesting that he would charge additional fees and potentially inform authorities about alleged misrepresentations at trial unless the clients abandoned their challenge to his fees; and (3) Mr. Li deliberately deposited the unauthorized fees into his children's bank accounts for the purpose of concealing them or disavowing control of them, and then wired the funds to China, where they could not be retrieved, after he had been sued by his clients for the recovery of the funds. By Order dated May 22, 2013, in *In re Feng Li*, D-105 September Term 2012, No. 072413, the Supreme Court of New Jersey affirmed the Disciplinary Review Board's findings that Mr. Li violated ethical rules including: Rule of Professional Conduct ("RPC") 1.5(c) (failing to provide an accounting of disbursed funds), RPC 1.15(a) (knowing misappropriation of client funds), RPC 1.15(c) (failing to segregate disputed funds), RPC 1.15(d) and Rule 1:21-6 (record keeping violations), RPC 8.4(d) (conduct prejudicial to the administration of justice), and the principles of *In Matter of Wilson*, 81 N.J. 451 (1979).

This action is taken pursuant to the provisions of 35 U.S.C. § 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 available at: http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp.

3. The OED Director give notice pursuant to 37 C.F.R. § 11.59 of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;

4. Respondent shall comply with the duties enumerated in 37 C.F.R. § 11.58;

5. The USPTO dissociate Respondent's name from any Customer Numbers and the public key infrastructure ("PKI") certificate associated with those Customer Numbers;

6. Respondent shall not apply for a USPTO Customer Number, shall not obtain a USPTO Customer Number, nor shall he have his name added to a USPTO Customer Number, unless and until he is reinstated to practice before the USPTO; and

7. Such other and further relief as the nature of this cause shall require.

If Respondent desires further review, Respondent is notified that he is entitled to seek judicial review on the record in the U.S. District Court for the Eastern District of Virginia under 35 U.S.C. § 32 "within thirty (30) days after the date of the order recording the Director's action." *See* E.D.Va. Local Civil Rule 83.5.

APR 28 2015
Date

Sarah Harris
General Counsel for General Law
United States Patent and Trademark Office

on behalf of

Michelle Lee
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

Cc:
Director of the Office of Enrollment and Discipline
United States Patent and Trademark Office

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