

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

In the Matter of:

JOHN T. RAFFLE,

Respondent.

Proceeding No. D2015-07

August 31, 2015

INITIAL DECISION ON DEFAULT JUDGMENT

The above-entitled matter is before this Court on a *Motion for Entry of Default Judgment and Imposition of Sanction* (“Default Motion”), filed on August 20, 2015, by the Director of the Office of Enrollment and Discipline (“OED Director”) for the U.S. Patent and Trademark Office (“USPTO”). John Raffle (“Respondent”) has failed to file a timely answer to the OED Director’s *Complaint and Notice of Proceedings Under 35 U.S.C. § 32* (“Complaint”), and has not responded to the *Default Motion*. 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 provide 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

On March 24, 2015, the OED Director filed the *Complaint* and served it on Respondent by mailing a copy via U.S. certified mail to Respondent’s listed home address, as well as to the correctional facility where Respondent is currently incarcerated. A return receipt was requested for each of the copies. The copy of the *Complaint* sent to Respondent’s home was returned, marked “return to sender unable to forward.” The copy sent to the correctional facility was received on May 18, 2015.

On June 24, 2015, the USPTO Director referred the *Complaint* to this Court. A *Notice of Hearing and Order* was issued on June 30, 2015, instructing Respondent to file an answer no later than July 30, 2015. To date, no answer has been filed. Respondent has also failed to respond to a letter sent to him by the OED Director, and has filed no response to the *Default Motion*.

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

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 a registered member of the USPTO patent bar. His USPTO registration number is 38,585.
2. On June 24, 2013, in U.S. District Court in Texas, Respondent pled guilty to one count of conspiracy to commit securities, mail, and wire fraud; and two counts of false statements.
3. On December 4, 2014, the U.S. District Court found Respondent guilty of all three charges, fined him \$25,000, and sentenced him to 80 months in a federal prison.

CONCLUSIONS OF LAW

1. As a registered member of the USPTO patent bar, Respondent is required to comply with the USPTO’s Rules of Professional Conduct.
2. Regulation 37 C.F.R. § 11.804(b) states that it is professional misconduct to commit a criminal act that reflects adversely on the practitioner’s honesty, trustworthiness, or fitness to practice patent law.
3. Respondent violated 37 C.F.R. § 11.804(b) by engaging in a conspiracy to commit fraud and by making false statements in furtherance of that conspiracy.
4. Regulation 37 C.F.R. § 11.804(c) states that it is professional misconduct to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
5. Respondent violated 37 C.F.R. § 11.804(c) by engaging in a conspiracy to commit fraud and by making false statements in furtherance of that conspiracy.

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 the profession?

Respondent's criminal behavior does not appear to be related to his work as a patent attorney. Regardless, as an attorney, he maintains an obligation to the profession and to the public to act honestly and honorably. He has failed in that duty, and has thus tarnished the reputation of the legal community in the eyes of the public.

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

Yes.² Fraud requires knowledge of falsity and an intent to deceive. Respondent's guilty pleas are therefore proof of his mental state. Specifically, Respondent intended to enrich himself and his co-conspirators—at the expense of stockholders—by artificially inflating the value of stock in a publically traded company. Moreover, his false statements were made with full knowledge of their falsity. A severe sanction is warranted.

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

There is no evidence in the record quantifying the extent of any actual injury suffered by anyone as a result of Respondent's actions. However, the potential damage to the company's stockholders and the investing public at large was significant. Respondent intended to create a false picture of the company's financial health, thereby encouraging others to invest in the company and increasing the value of his stock. This factor warrants a substantial sanction.

4. Are there any aggravating or mitigating factors?

The Court often looks to the American Bar Association Standards for Imposing Lawyer Sanctions ("ABA Standards") when assessing attorney disciplinary sanctions. See *In re Chae*, D2013-01 (USPTO Oct. 21, 2013). Respondent committed fraud and made false statements for selfish economic reasons. This constitutes an aggravating factor. Additionally, his criminal behavior continued for a period of approximately three years.

With regards to mitigating factors, the burden is on Respondent to raise any affirmative defenses or mitigating circumstances and specify their nexus to the misconduct, and any reason they may provide a defense or mitigation. 13 C.F.R. § 11.36(c) and 11.49. In defaulting, Respondent has failed to do so, and the OED Director has stated that the only mitigating factor is Respondent's lack of prior disciplinary history. Given the magnitude of Respondent's criminal conduct here, the fact that he has not faced previous discipline in his professional capacity carries little weight. Accordingly, a maximum sanction is appropriate.

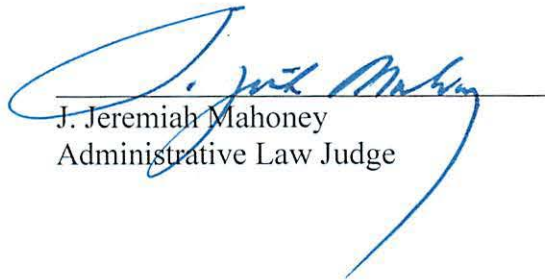
² Respondent has failed to appear in these proceedings and has, therefore, waived the opportunity to contest the OED Director's assertions as to this state of mind, which is deemed admitted by default.

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* will be **GRANTED**.

IT IS HEREBY ORDERED that Respondent John T. Raffle be **EXCLUDED** from practice before the U.S. Patent and Trademark Office in all matters.

So **ORDERED**.



J. Jeremiah Mahoney
Administrative Law Judge

Notice of Appeal Rights. Pursuant to 37 C.F.R. § 11.55, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 11.54, must be filed with the U.S. Patent and Trademark Office at the address provided in 37 C.F.R. § 1.1(a)(3)(ii) within 30 days after the date of this Initial Decision. Such appeal must include exceptions to the Administrative Law Judge's Decision and supporting reasons therefor. Failure to file such an appeal in accordance with 37 C.F.R. § 11.55 will be deemed both an acceptance by Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL DECISION ON DEFAULT JUDGMENT**, issued by J. Jeremiah Mahoney, Administrative Law Judge, in D2015-07, were sent to the following parties on this 31ST day of August, 2015, in the manner indicated:



Deon Long, Staff Assistant

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