

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

In the Matter of:)
)
 Florence Bruemmer,) Proceeding No. D2018-06
)
 Respondent.)
_____)

FINAL ORDER UNDER 37 C.F.R. § 11.24

Pursuant to 37 C.F.R. § 11.24, the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) hereby orders that Florence Bruemmer (“Respondent”) be reprimanded, placed on probation for one year, and required to complete a state-ordered CLE program (with an acknowledgement that the class has been completed) for violation of 37 C.F.R. § 11.804(h). The discipline is reciprocal discipline for her probation in the State of Arizona.

I. BACKGROUND AND PROCEDURAL HISTORY

1. On October 25, 1999, Respondent was admitted to practice law in Arizona. *See* OED Director’s Response to Respondent’s Answer to Complaint for Reciprocal Discipline Pursuant to 37 C.F.R. § 11.24 and 11.34 (“OED Director’s Response”), Ex. A. As a licensed attorney in good standing, Respondent is authorized to practice before the Office in trademark and non-patent matters pursuant to 37 C.F.R. § 11.14(a). Therefore, she is subject to the USPTO Rules of Professional Conduct set forth at 37 C.F.R. § 11.101 *et seq.*

2. Respondent’s client, Anthony Monte (“Client”), had contracted to buy a home for his ex-wife, to pay the mortgage on the home, and to make certain repairs. *See* Agreement For Discipline by Consent (“Consent Agreement”), at ¶ 3, 4. In approximately March of 2015, Client stopped paying the mortgage on the home. *Id.* at ¶ 13. Also in about March or April 2015, Client

informed Respondent that he stopped paying the mortgage and Respondent knew that Client intended to permit the home to be sold at a foreclosure sale. *Id.* at ¶14 and 15.

3. Client's ex-wife sued him for breach of contract in an Arizona state court based on his failure to make repairs to the home. *Id.* at ¶ 21. The court held an evidentiary hearing regarding damages. *Id.* at ¶ 29-30. Client testified during the evidentiary hearing but did not mention the status of the mortgage or disclose that he stopped paying the mortgage on the home and intended to allow the home to be sold at foreclosure. *Id.* at ¶ 31-33. Similarly, and despite the fact that Client informed Respondent that he stopped paying the mortgage and that he intended to permit the home to be sold at foreclosure, Respondent also did not disclose these facts to the court before, during, or after the October 28 evidentiary hearing. *Id.* at ¶ 33.

4. After the hearing, based upon the state court's assumption that Client had been paying the mortgage, the court entered an order awarding damages to the ex-wife. *Id.* at ¶ 36-39. The November 4, 2015 Order stated that Client paid the mortgage on the home and Respondent did not correct the state court by informing it of the missed mortgage payments. *Id.*

5. After the hearing, Client's ex-wife discovered that Client had stopped making mortgage payments. *Id.* at ¶ 42-43. The ex-wife then filed a motion for a new trial based on the newly discovered evidence. *Id.* The state court granted the new trial as to the issue of mortgage payments. *Id.* at ¶ 46.

6. In a January 19, 2016 minute entry, the state court found that Client had an obligation to disclose to his ex-wife the non-payment of the mortgage. *Id.* at ¶ 48. The state court further observed that Client created the impression that "all was well" with the property and "was not candid at trial." *Id.* at ¶ 48-49. More importantly, the state court concluded that a new hearing was justified because Client's "lack of candor was misconduct." *Id.* at ¶ 50.

7. On February 22, 2016, the state court held a new trial. *Id.* at ¶ 51. The state court observed that by concealing the fact that the mortgage was in default a second trial became necessary and had Client been forthcoming the “matter would have proceeded much more expeditiously.” *Id.* at ¶ 58.

Arizona Discipline

8. On August 3, 2016, the State Bar of Arizona, Lawyer Regulation Department, filed a complaint against Respondent based on the misconduct that occurred during the representation of Client. *See* Decision and Order Accepting Discipline by Consent (“Decision Accepting Consent Agreement”), at 1.

9. On November 14, 2016, Respondent and the State Bar of Arizona entered into a Consent Agreement. *See* OED Director’s Response, Ex. B. (“Consent Agreement”); *see also* Decision Accepting Consent Agreement, at 1. Respondent was represented by counsel in negotiating the Consent Agreement. *See* Consent Agreement, at 15. Respondent admitted to the facts set forth in the Consent Agreement and admitted that conduct violated Rule 42, Ariz. R. Sup. Ct. Ethical Rules 3.2 (expediting litigation); 3.3 (candor toward the tribunal); and 8.4(d) (engaging in conduct that is prejudicial to the administration of justice). *See Id.* at 10. Furthermore, Respondent admitted in the Consent Agreement that her conduct “violated her duty to the legal system”, that she “acted knowingly when she failed to inform the court of the missed mortgage payments and intended foreclosure”, and that this conduct was in violation of the Arizona Rules of Professional Conduct. *See id.* at 12-13. Respondent also agreed that there was actual harm to the legal system. *Id.* at 13.

10. Furthermore, in signing the Consent Agreement, Respondent agreed that she:

“voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or

requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.”

Id., p. 1.

11. The Consent Agreement provided Respondent with the “opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel’s notice.” *Id.*, p. 2; Decision Accepting Consent Agreement, at 2. Respondent did not file an objection. *See* Decision Accepting Consent Agreement, at 2.

12. In the Decision Accepting Consent Agreement, dated November 18, 2016, the Presiding Disciplinary Judge observed that the Consent Agreement detailed a factual basis to support the admissions to the disciplinary rule violations. *See* Decision Accepting Consent Agreement, at 2. He concluded that:

“Ms. Bruemmer knew her client was submitting misleading statements to a Superior Court Judge and improperly withholding material information from the court. Those actions led the court to conclude her client had been paying required mortgage payments when he in fact had not and was intentionally permitting the home to be sold at foreclosure. She took no remedial action resulting in harm to the legal proceedings. The conduct of Ms. Bruemmer knowingly violated her duty to the legal system.”

Id.

The Presiding Disciplinary Judge also discussed the mitigating and aggravating factors that were weighed in determining an appropriate sanction. *Id.*

13. In the Final Judgement and Order, the Presiding Disciplinary Judge accepted the proposed Consent Agreement. *See* Final Judgement and Order, at 1. He ordered that Respondent be reprimanded, serve a one (1) year probation, and complete the CLE program, “Candor, Courtesy, Confidences: Common Conundrums” within ninety (90) days from the date of the Order. *Id.* at 1.

USPTO Proposed Disciplinary Proceeding

14. On February 1, 2018, the OED Director filed a Request for Reciprocal Discipline pursuant to 37 C.F.R. § 11.24, requesting that Respondent receive the identical discipline imposed by the Supreme Court of Arizona in its disciplinary matter against Respondent. The OED Director sought to impose reciprocal discipline upon Respondent for violating 37 C.F.R. § 11.804(h), by being reprimanded on ethical grounds by a duly constituted authority of a State. The Notice and Order was issued to Respondent on February 2, 2018.

15. On March 2, 2018, Respondent filed an “Answer To Complaint For Reciprocal Discipline Pursuant to 37 C.F.R. §§ 11.24 and 11.34” (“Response to Notice and Order”) with the USPTO Director. In that Response to Notice and Order, Respondent stated she “agrees with the allegations regarding the discipline received by the State Bar of Arizona.” *See* Response to Notice and Order, ¶ 1. However, she provides information that she contends “may be considered extraordinary circumstances and result in a grave injustice regarding the discipline.” *See Id.*, ¶ 2.

16. Respondent argues that the State Bar of Arizona proceeded with the discipline prior to determining if the home at issue in the state proceedings ever went into foreclosure. *See* Response to Notice and Order, ¶ 4. In Respondent’s view, it is significant that the house never went into foreclosure. *See id.* Further, she claims that she cooperated fully with the investigation by the State and believed she had a good faith defense based on a mistake, but ultimately accepted the public reprimand in the end. *See Id.*, ¶ 5. Because the case was finalized in November 2016, the State Bar of Arizona never had the chance to consider the facts that house never foreclosed and that Client’s ex-wife received money while living in the home free of charge. *See id.*

17. On March 7, 2018, the USPTO Director ordered the OED Director to respond to the Response to Notice and Order. In the OED Director's Response, the OED Director argues that "extraordinary circumstances" is not a legal test to determine a genuine issue of material fact under 37 C.F.R. § 11.24. *See* OED Director Response, at 7, n.4. Further, the OED Director argues that the Arizona discipline was not based upon Client's home actually being sold at a foreclosure sale but, rather, her conduct surrounding and during the trial. *See id.* at 11-12. At the time of Client's trial, Respondent knew that Client stopped making mortgage payments, but she withheld that material information from the court. *See id.* Thus, the OED Director contends whether Client's house actually ever went into foreclosure is completely irrelevant to the reasons that Arizona disciplined her. *See id.* Additionally, the OED Director asserts that Respondent's reprimand and probation based upon completion of a CLE is not a grave injustice because the ordered discipline "fits" the misconduct. *See id.*, at 8-10. Finally, as Respondent agreed to the discipline in her Arizona proceeding and signed the Consent Agreement, the OED Director believes she waived any defenses to reciprocal discipline. *See id.*, at 12.

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 reciprocal discipline 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)) (second and third alternations in original).

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.

Id.

To prevent the imposition of reciprocal discipline, Respondent is required to demonstrate that there is a genuine issue of material fact as to one of these criteria by clear and convincing evidence. *See id.* As discussed below, however, Respondent has not shown by clear and convincing evidence that there is a genuine issue of material fact with regard to any of the factors set forth in 37 C.F.R. § 11.24(d)(1).

III. ANALYSIS

A. Imposition of a Reciprocal Suspension Would Not Result in a Grave Injustice under 37 C.F.R. § 11.24(d)(1)(iii).

Respondent states that she “agrees with the allegations regarding the discipline received by the State Bar of Arizona.” *See* Response to Notice and Order, ¶ 1. Despite that, and despite signing a Consent Agreement in which she admitted to her misconduct, Respondent now proffers information she contends “may be considered extraordinary circumstances and result in a grave injustice regarding the discipline.” *See Id.*, ¶ 2. Respondent argues that the State Bar of Arizona proceeded with the discipline without knowing if the home that was the subject of the dispute between Client and his ex-wife ever went into foreclosure. *See Id.*, ¶ 4. In fact, she claims that the house never went into foreclosure and Client’s ex-wife was able to live in the home rent free for several months. *See Id.*, at ¶ 4-5. Because the State Bar of Arizona did not consider this information, and because she cooperated fully with the Arizona disciplinary investigation, she claims there “extraordinary circumstances” that results in her state discipline being a grave injustice.

The grave injustice analysis focuses on whether the severity of the punishment “fits” the misconduct and allows for consideration of various mitigating factors. *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”); *In re 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). “As

long as the discipline from the state bar was within the range of appropriate sanctions, it is not grave injustice for the [USPTO] to impose reciprocal discipline.” See *Persaud v. Director of the USPTO*, No. 1:16-cv-00495, 2017 WL 1147459, at *2 (E.D. Va. Mar. 27, 2017). “Extraordinary circumstances”, as referenced by Respondent, is not a standard or test to determine a genuine issue of material fact under § 11.24.¹ Further, a reciprocal discipline proceeding is “not an opportunity for an attorney to collaterally attack the findings or judgement of the original disciplining court.” See *In re Hermina*, 907 A.2d 790, 799 (D.C. 2006).

Here, the State Bar of Arizona and Respondent consulted the American Bar Association’s, *Standards for Imposing Lawyer Sanctions* and agreed that *Standard* 6.12 was the appropriate disciplinary standard. See Consent Agreement, at 12. That *Standard* states “[s]uspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is actually being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.” See *Id.* (citing *Standards for Imposing Lawyer Sanctions, Standard* 6.12); Decision Accepting Consent Agreement, at 2 (“[u]nder *Standard* 6.12 . . . the presumptive sanction is suspension.”) In applying this *Standard*, the parties reasoned that “Respondent knew that material information was improperly being withheld.” See Consent Agreement, at 12. Respondent knew of the non-payment of the mortgage and Client’s intent to allow a foreclosure sale, yet she did not take remedial action and inform the court. See *Id.* The parties agreed that Respondent “acted knowingly”, “caused harmed [sic] to the

¹ To the extent that Respondent attempts to make an argument under 37 C.F.R. § 11.3, which permits a suspension of the disciplinary rules “in an extraordinary situation, when justice requires”, any such request for relief under this provision is denied.

legal proceedings in that the court had to hold a second trial on damages” and engaged in conduct that “violated her duty to, and caused harm to, the legal system.” *Id.* at 12-13.

Despite suspension being the presumptive sanction under *Standard 6.12*, based on mitigating circumstances that included Respondent’s “absence of a prior disciplinary history” and Respondent’s “free and full disclosure to the disciplinary board or cooperative attitude toward proceedings”, the parties agreed to a lesser sanction comprised of a reprimand, a one-year probation, and a requirement that Respondent complete s CLE program. *See Consent Agreement* at 13-14.

In sum, Respondent’s reprimand, one-year probation, and requirement to complete the required CLE was within the appropriate range of sanctions and “fits” the misconduct here. In addition, there is no grave injustice due to Respondent having agreed to the discipline in the Consent Agreement. Courts have regularly found that there is no grave injustice in imposing reciprocal discipline when the underlying discipline was voluntarily agreed to by the practitioner. *See Haley v. Lee*, 129 F.Supp.3d 377, 390 (E.D.Va. 2015) (USPTO’s reciprocal discipline of practitioner that was predicated on practitioner’s voluntary resignation in lieu of discipline was not a grave injustice); *In re Lebowitz*, 944 A.2d 444, 453 (D.C.) (finding no grave injustice in imposing reciprocal discipline where respondent voluntarily resigned from practice of law in another state in the face of pending disciplinary charges); *In re Discipline of Steinberg*, 2009 WL 1324067 at *3 (W.D.Pa. 2009) (imposition of same discipline as that based on a voluntary resignation in another jurisdiction is not a grave injustice). Here, Respondent voluntarily agreed to the Consent Agreement, with the aid of counsel and with having the opportunity to object to the Consent Agreement, and admitted to both misconduct and the sanctions imposed in Arizona.

Having entered to the Consent Agreement she cannot now escape reciprocal discipline on the basis of a “grave injustice.”

Finally, Respondent’s argument that the State Bar of Arizona never had the chance to consider that the house was never foreclosed and that Client’s ex-wife lived in the home for several months rent free provides no ground to prevent reciprocal discipline here. The Arizona discipline was not based upon whether or not the home in question was actually sold at a foreclosure sale. Rather, the sole basis for Respondent’s discipline was her conduct during the trial, where she intentionally failed to disclose that Client stopped making mortgage payments on the house and intended to permit the house to go to foreclosure. *See* Decision Accepting Consent Agreement, at 2. At the time of Client’s hearing, Respondent “knew her client was submitting misleading statements to a Superior Court Judge and improperly withholding material information from the court.” *Id.* As the Presiding Disciplinary Judge found, “[t]hose actions led the court to conclude her client had been paying required mortgage payments when he in fact had not and was intentionally permitting the home to be sold at foreclosure.” *Id.* “Respondent took no remedial action resulting in harm to the legal proceedings.” *Id.* Thus, it was concluded that Respondent conduct violated her duty to the legal system. *Id.* It was the misrepresentation to the state court, and not the question of whether the house was actually foreclosed upon, that triggered discipline by the State Bar of Arizona. Whether Client’s house actually ever went into foreclosure was irrelevant. It is similarly irrelevant, and provides no basis to change, the wording of the Notice of discipline to be published in the Official Gazette.

In sum, Respondent’s conduct rises to the level of a suspension under the *Standards for Imposing Lawyer Sanctions, Standard 6.12*, as agreed to by the Arizona State Bar and Respondent. Yet, mitigating circumstance resulted in Respondent receiving a lesser sanction.

Because of this, Respondent's discipline is within the range of allowable penalties for her misconduct and she has not shown by clear and convincing evidence that it would be a grave injustice for her to receive reciprocal discipline by the USPTO Director.

ORDER

ACCORDINGLY, it is ORDERED that:

1. Respondent is publicly reprimanded;
2. Respondent is placed on probation for one year effective the date of this Final Order;
3. Respondent is required to complete the CLE program entitled "Candor, Courtesy, Confidences: Common Conundrums" within ninety (90) days from the date of this Final Order (with proof of having taken the course during her state-imposed probation sufficient to establish this condition. Such proof shall be provided to the OED Director during the term of the USPTO's reciprocal one-year probation);
4. The OED Director shall publish a Notice in the *Official Gazette* that is materially consistent with the following:

Notice of Reprimand

This notice concerns Florence M. Bruemmer, of Phoenix, Arizona, who is authorized to practice before the Office in trademark and non-patent matters. In a reciprocal disciplinary proceeding, the Director of the United States Patent and Trademark Office ("USPTO") has ordered that Ms. Bruemmer be reprimanded for violating 37 C.F.R. § 11.804(h), predicated upon being reprimanded and placed on probation for one year by a duly constituted authority of a State, the Supreme Court of Arizona as evidenced by the November 18, 2016 Final Judgment and Order in *In the Matter of Florence Bruemmer*, PDJ-2016-9079. Ms. Bruemmer is not authorized to practice before the Office in patent matters.

The Supreme Court of Arizona reviewed and accepted an Agreement for Discipline by Consent between Ms. Bruemmer and the State Bar of Arizona where Ms. Bruemmer admitted to violations of Rule 42, ERs 3.2 (expediting litigation); 3.3 (candor towards the tribunal); and 8.4(d) (conduct prejudicial to the administration of justice). Ms. Bruemmer knew that her client was submitting misleading statements to a Superior Court Judge and was improperly withholding material information from the court. Those actions led the Superior Court Judge to conclude her client had been paying required mortgage payments when her client was intentionally failing to make such payments in order to permit the home to be sold at foreclosure. Ms. Bruemmer took no remedial action thereby resulting in harm to the legal proceedings and violating her duty to the legal system.

This action is taken pursuant to the provisions of 35 U.S.C. § 32 and 37 C.F.R. § 11.24. Disciplinary decisions are available for public review at the Office of Enrollment and Discipline's FOIA Reading Room, located at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

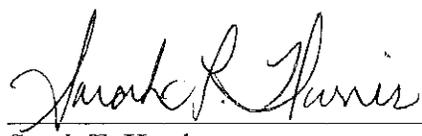
5. The OED Director give notice pursuant to 37 C.F.R. § 11.59 of the public discipline and the reasons for the discipline to disciplinary enforcement agencies in the state(s) where Respondent is admitted to practice, to courts where Respondent is known to be admitted, and to the public;

and

6. Respondent shall comply with the duties enumerated in 37 C.F.R. § 11.58. Pursuant to 37 C.F.R. § 11.57(a), review of the final decision by the USPTO Director may be had by a Petition filed with 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.

(signature page follows)

10/2/18
Date


Sarah T. Harris
General Counsel
United States Patent and Trademark Office

on delegation by
Andrei Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

cc:

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