UNITED STATES DEPARTMENT OF COMMERCE
Office of Administrative Law Judge
Suite 6716
Washington, D.C. 20230

In the Matter of	)	
	)	
KAREN L. BOVARD, Director	)	Proceeding No. D95-03
Office of Enrollment and Discipline	)	
	)	
v.	)	
	)	
MICHAEL G. MARINANGELI	)	
Respondent	)	
	)	

INITIAL DECISION 1/

The Director charges in a complaint filed March 10, 1995, that the respondent violated the Patent and Trademark Office's Disciplinary Rules. The first count of the complaint charges the respondent with conduct involving moral turpitude in violation of PTO Disciplinary Rules 10.23 (c) (1) and 10.23 (b) (3). 37 C.F.R. §§ 10.23 (c) (1) and (b) (3). The second count charges that because the respondent has been suspended from the practice of law by the State of New York, he is in violation of PTO Disciplinary Rules 10.23 (c) (5) and 10.23 (b) (1). 37 C.F.R. §§ 10.23 (c) (5) and (b) (1).

The respondent responded to the complaint on April 10, 1995 and April 28, 1995. He did not deny the charges made by the Director; accordingly, pursuant to § 10.136 (d), the allegations were deemed admitted. On June 5, 1995, an oral hearing was held on the relief to be granted. On July 7, 1995, pursuant to § 10.153, the parties filed proposed findings, conclusions, and post hearing memorandums.

FINDINGS OF FACT

The respondent is a patent attorney registered to practice before the PTO; his registration number is 30,774. Respondent was admitted to practice before PTO in 1983 and he has been a member of the New York bar since July 30, 1984. He represents that his practice before PTO comprises 95% of his legal business.

1/ Scott A. Chambers and Kevin T. Kramer appeared for the Director and Michael G. Marinangeli appeared *pro se*.

In or about August 1991, to in or about October 1991, in the Southern District of New York, Respondent unlawfully, willfully, and knowingly stole from various mail boxes at an apartment building located at 1646 First Avenue, New York, New York, four credit cards and two bank checks. In case number 92-Cr. 188, a Grand Jury of the United States District Court for the Southern District of New York indicted Respondent on six counts. Those counts included: 1) Theft of Mail Matter pursuant to Section 1708 of Title 18 of the United States Code, 18 U.S.C. § 1708; 2) three counts of Credit Card Fraud pursuant to Section 1029 (a) (3) of Title 18 of the United States Code, 18 U.S.C. § 1029 (a); 3) Security Forgery pursuant to Section 513 (a) of Title 18 of the United States Code, 18 U.S.C. § 513 (a); and 4) Bank Fraud pursuant to Section 1344 (1) of Title 18 of the United States Code, 18 U.S.C. § 1344 (1).

Pursuant to a plea bargain, Respondent pled guilty to the count of Theft of Mail Matter and the United States dismissed the remaining counts in the indictment. On December 10, 1992, in case number 92-Cr. 188, Judge Kenneth Conboy of the United States District Court for the Southern District of New York convicted Respondent of one count of Theft of Mail Matter pursuant to Section 1708 of Title 18 of the United States Code. 18 U.S.C. § 1708.

Theft of Mail Matter is a federal felony. 18 U.S.C. § 1708. On or about December 10, 1992, the United States District Court for the Southern District of New York sentenced Respondent to three years probation -- for the first six months of the probation period he was under house arrest -- requiring urinalysis testing, treatment of narcotic addiction, and restitution of $21,734 -- the money Respondent misappropriated as a result of his criminal conduct.

As a result of Respondent's criminal conviction and sentencing and pursuant to Judiciary Law § 90 (4) (f), Respondent was placed on interim suspension by the Departmental Disciplinary Committee for the First Judicial Department of the State of New York (hereinafter "DDC"). DDC also instituted formal disciplinary proceedings against Respondent in the New York Supreme Court, Appellate Division, First Department. DDC moved the New York Supreme Court for an order temporarily suspending Respondent from the practice of law pursuant to Judiciary Law § 90 (4) (f) and directing him to show cause pursuant to Judiciary Law § 90 (4) (g) why a final order of censure, suspension, or disbarment should not be made.

On July 13, 1993, the New York Supreme Court granted the DDC's motion, thereby suspending Respondent from the practice of law in New York. The New York Supreme Court found that the crime for which Respondent stands convicted is a "serious crime." The New York Supreme Court held that Respondent's "altered state of mind" due to his narcotic addiction did not decrease the seriousness of his crime. The New York Supreme Court also found that setting aside Respondent's interim suspension would be inconsistent with "the maintenance of the integrity and honor of the profession, the protection of the public, and the interest of justice" as provided by Judiciary Law 90 (4) (f).

On November 18, 1994, the DDC rendered Report and Recommendations of Hearing Panel regarding the length of Respondent's suspension from the practice of law in the State of New York.

The Hearing Panel recommended that Respondent be allowed to return to the practice of law in the State of New York on a conditional basis beginning December 10, 1995. The conditions recommended by the Hearing Panel on Respondent's return to practice include: 1) continued enrollment in the LAP Sobriety Monitoring Program of the New York State Bar Association's Committee on Lawyer Alcoholism and Drug Abuse; 2) compliance with random drug testing; and 3) restitution in full of the $21,734 he stole.

On June 13, 1995, the New York Supreme Court Appellate Division: First Department held that Respondent's suspension would continue until December 10, 1995 when he would be automatically reinstated after showing:

> evidence attesting satisfactorily to respondent's continued rehabilitation and abstinence from the use of alcohol and freedom from substance abuse, but contingent upon respondent's adhering to the schedule for restitution presently being monitored by his federal probation officer, and respondent's enrollment in the Sobriety Monitoring Program of the New York State Bar Association's Committee on Lawyer Alcoholism and Drug Abuse, including, but not limited to, such random testing as may be imposed with a report to be submitted to the Departmental Disciplinary Committee at the conclusion of the probation....
>
> [R]espondent, even after reinstatement, shall submit to the Committee reports from the monitor of the aforesaid program at six-month intervals for a further period of three years.

On August 19, 1993, the Supreme Court of New Jersey suspended Respondent from the practice of law in New Jersey pending resolution of ethics proceedings against him.

On or about April 19, 1993, Respondent responded to a routine PTO form survey of registered patent attorneys and agents. The PTO survey is Form PTO 107 A. The fifth question in the survey asked: "In the last five(5) years, have you been convicted of a felony or misdemeanor (other than a traffic violation) by any federal, State or other law enforcement authority? If YES, please attach a statement giving the date, charge, and place of the offense and explanation of the facts and circumstances leading to the conviction."

In his response to the PTO form survey, dated April 19, 1993, Respondent answered YES to question number 5. He attached a statement dated April 24, 1993, explaining that he "plead guilty to a charge of mail theft."

On May 5, 1993, Steve Morrison (hereinafter "Morrison"), an investigator with OED, sent a letter to Respondent requesting clarification of the PTO survey response. Morrison requested an explanation of Respondent's mail theft and evidence of addiction. OED requested that Respondent respond to the request by June 5, 1993. OED also sought an authorization and release from Respondent to conduct an investigation into Respondent's addiction and mail theft. On May 27, 1993, Respondent and Morrison held a telephone conference regarding Respondent's criminal conduct. As a

result of the conference, Morrison agreed that Respondent could have until August 3, 1993, to formally respond to the May 5, 1993 request for explanation and evidence.

On June 3, 1993, Respondent mailed a letter to OED summarizing his alcohol and cocaine addiction and explaining that on December 10, 1992, he was sentenced to three years probation for the act of mail theft. On August 6, 1993, Respondent submitted a formal response to OED's May 5, 1993 request for explanation and evidence. Respondent never gave PTO a formal authorization and release to conduct an investigation into Respondent's addiction and criminal conduct. On August 13, 1993, OED requested a copy of the complaint and July 13, 1993 order against Respondent in the New York Supreme Court. OED requested the documents be received by August 30, 1993. On August 29, 1993, Respondent mailed a copy of the July 13, 1993, order in the New York Supreme Court, but failed to provide a copy of the complaint.

On December 6, 1993, OED requested information regarding patents and trademarks on which Respondent was still practicing before PTO. OED also requested information on whether every jurisdiction in which Respondent was registered had been apprised of his New York State disciplinary proceedings. Finally, OED requested information on the status of criminal proceedings against Respondent. On December 30, 1993 Respondent served a response to OED's request for information. In his December 30, 1993 response, Respondent noted that he was automatically suspended from the New York State Bar and was still awaiting a mitigation hearing to determine the recommended length of his suspension. Also, in his December 30, 1993, response, Respondent provided a list of patent and trademark application serial numbers which he was then prosecuting before the PTO. At the same time, Respondent indicated that he was still on criminal probation.

On January 25, 1994, Respondent conducted another telephone conference with Morrison. Morrison informed Respondent that as a result of the suspension from the practice of law by the New York State Bar and New Jersey State Bar, Respondent must cease prosecuting any trademark matters and could only practice as a "patent agent" before the PTO. On January 25, 1994, Respondent informed OED that he would cease practicing as an attorney before PTO, including prosecution of trademark matters.

On January 13, 1995, the PTO Committee on Discipline determined that there was probable cause to bring disciplinary charges against Respondent. 37 C.F.R. § 10.4.

Since his formal suspension from the practice of law in New York on July 13, 1993, and New Jersey on August 19, 1993, Respondent has practiced both patent and trademark law before PTO. In his December 30, 1993, response to OED's Request for Information, Respondent listed the following patent applications which he was then prosecuting before the PTO:

Serial No.	Applicant's Name
07/183,062	Allen
07/931,206	Ames

07/579,879	Dubevski
08/131,656	Carlucci
07/654,956	Chen
07/814,417	Chen
08/122,266	Chen
08/022,998	Delcroix
07/833,964	Delcroix
07/982,836	Dietzel
08/131,295	Douer
08/006,058	Eichhorn
08/141,214	Ferrer
08/019,278	Finesilver
07/244,801	Geuder
07/825,849	Giebmanns
07/701,675	Gottschald
07/923,581	Gottschald
07/939,981	Gottschald
08/055,570	Gottschald
07/940,092	Gottschald
07/701,674	Gottschald
08/120,955	Manlove
07/649,710	Meitzer
07/814,280	Pinkman

On December 14, 1993, a Declaration and Power of Attorney was filed in connection with design patent application serial no. 29/016,377 which named Respondent as the attorney to prosecute the application.

On April 26, 1994, an application was filed for an invention entitled Process and System to Machine and, in Particular, to Grind the Optical Surfaces and/or Circumferential Edge of Eyeglass Lenses. The named inventor appointed Respondent as one of the attorneys to prosecute the application.

On January 6, 1995, Respondent filed Applicant's Substitute Brief on Appeal in Response to Office Action Dated December 7, 1994 and Pursuant to 37 CFR § 1.192 in connection with patent application serial no. 08/022,998.

In his December 30, 1993, response to OED's Request for Information, Respondent also listed the following trademark applications which he was then prosecuting before the PTO:

Serial No.	Mark	Applicant
74/123,617	RAQUELLE	Misasa

74/175,168	RAQUEL	Misasa
74/336,907	LIBERTY LITES	Polycity Industrial
74/244,801	NEW YORK LITES	R & S Sales Co., Inc.
74/443,924	MANNEX	Unnex Industrial Corp.
74/387,340	HURRICANE ISLAND	GASTON

On December 16, 1993, Respondent filed a Responsive Amendment in connection with trademark application serial number 74/344,945.

On January 18, 1994, Respondent filed an application for the trademark HOLLYWOOD STARLETS.

On January 28, 1994, PTO received the HOLLYWOOD STARLETS trademark application.

CONCLUSIONS

The PTO has both statutory and inherent authority to discipline its registered practitioners for unprofessional conduct. 35 U.S.C. § 32; See Koden v. United States Dept. of Justice, 564 F.2d 228, 233 (7th Cir. 1977) ("It is elementary that any court or administrative agency which has the power to admit attorneys to practice has the authority to disbar or discipline attorneys for unprofessional conduct"); Herman v. Dulles, 205 F.2d 715, 716 (D.C. Cir. 1953) ("An administrative agency that has general authority to prescribe its rules of procedure may set standards for determining who may practice before it.").

Registered practitioners who violate a PTO Disciplinary Rule may be suspended or excluded from practicing before PTO. 37 C.F.R. § 10.130. See Weiffenbach v. Crabtree, DP87-1 (Comm'r Pat. 1987) (Crabree suspended for three years for federal income tax evasion in violation of PTO Disciplinary Rules); In re Littell, (Asst. Comm'r Pat. 1951) (Littell suspended for one year after imprisonment for conspiracy to conceal ownership of company in violation of PTO Disciplinary Rules).

A practitioner may be excluded from practice before PTO for a five year period before reinstatement will be considered. See 37 C.F.R. § 10.160 (b) ("A petition for reinstatement of a practitioner excluded from practice will not be considered until five years after the effective date of the exclusion."). PTO Disciplinary Rules are mandatory in character and state the minimum level of conduct below which no practitioner can fall without being subject to disciplinary action. 37 C.F.R. § 10.20 (b).

Respondent Engaged in Illegal Conduct Involving Moral Turpitude

PTO Disciplinary Rule 10.23 (b) (3) states that a practitioner shall not engage in illegal conduct involving moral turpitude. 37 C.F.R. § 10.23 (b) (3). PTO Disciplinary Rule 10.23 (c) (1) states that conduct involving moral turpitude includes conviction of a criminal offense involving moral turpitude, dishonesty, or breach of trust. 37 C.F.R. § 10.23 (c) (1). Respondent's conviction for Theft of Mail

Matter is a conviction of a criminal offense involving moral turpitude, dishonesty, or breach of trust within PTO Disciplinary Rules 10.23 (b) (3) and 10.23 (c) (1). 37 C.F.R. §§ 10.23 (b) (3) and 10.23 (c) (1). Respondent's conduct violated PTO Disciplinary Rule 10.23 (b) (3). 37 C.F.R. § 10.23 (b) (3).

Respondent's Suspension from the Practice of Law in New York and New Jersey Violates PTO Disciplinary Rules

PTO Disciplinary Rule 10.23 (b) (1) states that a practitioner shall not violate a PTO Disciplinary Rule. 37 C.F.R. § 10.23 (b) (1). PTO Disciplinary Rule 10.23 (c) (5) states that conduct which constitutes a violation of a PTO Disciplinary Rule includes suspension from practice as an attorney by any duly constituted authority of a State. 37 C.F.R. § 10.23 (c) (5). Respondent's suspensions from the practice of law in the states of New York and New Jersey constitute violations of PTO Disciplinary Rules 10.23 (c) (5) and 10.23 (b) (1). 37 C.F.R. §§ 10.23 (b) (1) and (c) (5).

Respondent's Violation of the Disciplinary Rules Warrants Suspension from Practice Before the Patent and Trademark Office

The PTO Disciplinary Rules set forth five factors to consider before suspending a practitioner from practice before the PTO:

(1) The public interest;
(2) The seriousness of the violation of the PTO Disciplinary Rule;
(3) The deterrent effects deemed necessary;
(4) The integrity of the legal profession; and
(5) Any extenuating circumstances.

37 C.F.R. § 10.154 (b).

OED urges that the seriousness of Respondent's criminal conduct requires his suspension from practice before the PTO; that his suspension will promote the public interest by reducing the rate at which serious crimes are committed; that his suspension will deter other patent practitioners from committing serious crimes; that his suspension will maintain the integrity of the legal profession; that the suspensions from practice imposed on the Respondent by New York and New Jersey were insufficient to the protect the PTO legal processes because they did not prevent Respondent from practicing patent and trademark law before the PTO; and that the state suspensions against the Respondent will not deter practitioners like the Respondent who primarily practice before PTO. OED argues that in order to deter practitioners from criminal activity, protect the public interest, and maintain the integrity of the legal profession, the Respondent should be suspended for two years.

The Respondent argues that he has already been disciplined sufficiently by the sentence he received in the federal court proceeding and in his suspension from the New York Bar and the New Jersey Bar. He urges that the Supreme Court of the State of New York recognized this in its recent decision which automatically ends his suspension this December. In addition, he claims that if he is

treated as similar wrongdoers have been, he should not be suspended. He claims that he is now sober and no longer is a substance abuser. Respondent maintains that, if he is unable to practice patent law as an agent, he will have no means of returning the money he stole since patent law is his primary means of support. He claims that a suspension would fail to recognize his rehabilitation. Respondent maintains that he accepts responsibility for his illegal conduct, although at the same time he urges that that responsibility should not include suspension from practice before PTO.

The Respondent does not address the elements of § 10.154 (b) such as the need to protect PTO from becoming a place where wrongdoers can continue to practice after they have been suspended from other areas of local and federal practice. In that regard, there is no indication that Respondent's conviction of a serious federal crime and suspension by the bars of two states caused him to comply with PTO Disciplinary rules. Respondent did not report his suspension until he was asked to do so and he continued to represent trademark applicants, even though the rules prohibited him from doing so, until he was asked to stop. Even then he appears to have continued in that prohibited activity despite a rule requiring that he stop and a direct promise, on his part to PTO, that he would not practice before PTO in patent and trademark matters. Moreover, Respondent failed to fully cooperate with the investigation carried out by OED. The Respondent's behavior indicates that the integrity of PTO processes were not protected by actions taken elsewhere. While the Respondent blames his criminal conduct on chemical and alcohol abuse, his failure to comply with the PTO Disciplinary rules occurred when he claims to have no longer been an abuser. In any event, Respondent's actions are not excused by his use of alcohol and drugs. Lawyers are held to a higher standard of behavior precisely because their work is one of public trust involving the public interest. Respondent's behavior, in that regard, is being monitored by two states and a federal court and they have found that he should not currently practice law or be free from constant observation. While the New York Supreme Court has indicated that his suspension may end in December, he will be monitored for an additional three years. New Jersey has taken no action that would lift Respondent's suspension from practice there.

Respondent has not submitted reliable evidence that state and federal courts will protect the public interest in his relationship with PTO. His self-serving statements about the quality of his PTO practice are uncorroborated -- an important fact given the circumstances of this case. What this record demonstrates is that, until Respondent was called to account by PTO for his violation of the PTO Disciplinary rules, he did nothing to fulfill his obligation under the rules to protect the integrity of the PTO processes. 2/ Under these circumstances, in order to protect the public interest, deter others from serious violations of PTO Disciplinary rules, and protect the integrity of PTO practice, the two year suspension sought by OED is appropriate.

2/ Respondent's reliance on Weiffenbach v. Lett, DP87-02 is misplaced. Lett was not convicted of a serious crime. Instead, Lett's violations of PTO Disciplinary Rules were directly related to his practice before PTO. In such cases, OED points out, PTO has the ability to appoint practice monitors to oversee the practitioner accused of violating PTO Disciplinary Rules. In this case, PTO does not have the option of appointing a monitor to scrutinize the activities of Respondent's daily life and protect against future criminal actions.

ORDER

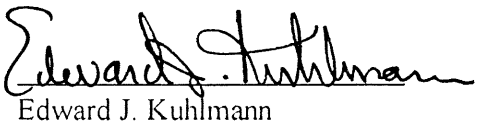
After careful and deliberate consideration of the above facts and conclusions,

IT IS ORDERED that the Respondent, Michael G. Marinangeli, 244 East 86th Street, Apartment 23, New York, New York 10028, PTO Registration No. 30,774 be, and the same hereby is, suspended for two years from practice as an attorney and agent before the Patent and Trademark Office.

The respondent's attention is directed to 37 C.F.R. § 10.158 regarding responsibilities in the case of suspension or exclusion, and 37 C.F.R. § 10.160 concerning petition for reinstatement.

The facts and circumstances of this proceeding shall be fully published in the Patent and Trademark Office's official publication.

DATE: July 18, 1995



Edward J. Kuhlmann
Administrative Law Judge

Pursuant to 37 C.F.R. Section 10.155, any appeal by the Respondent from this Initial Decision, issued pursuant to 35 U.S.C. Section 32 and 37 C.F.R. Section 10.154, must be filed in duplicate with the Director, Office of Enrollment and Discipline, U.S. Patent and Trademark Office, P.O. Box 16116, Washington, D.C. 22215, within 30 days of the date of this Decision. Such appeal must include exceptions to the Administrative Law Judge's Decision. Failure to file such an appeal in accordance with Section 10.155, above, will be deemed to be both an acceptance by the Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.

CERTIFICATE OF MAILING

I certify that I have sent the attached document by certified mail, return receipt requested and by first class U.S. mail, postage prepaid to the following persons:

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and Commissioner of Patents and Trademarks
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July 18, 1995
Date

Williemae Waddell
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Support Services Assistant