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

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| **HARRY I. MOATZ,** | ) | |
| **Director of Enrollment** | ) | |
| **and Discipline** | ) | **Proceeding No. D06-02** |
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| | ) | |
| **Complainant,** | ) | |
| | ) | |
| **v.** | ) | |
| | ) | |
| **Mark Gordon-Lendvay** | ) | |
| | ) | |
| **Respondent** | ) | |

**ORDER GRANTING DIRECTOR'S MOTION FOR DEFAULT JUDGMENT**

**INITIAL DECISION**

This disciplinary proceeding was initiated under 35 U.S.C. § 32 and 37 C.F.R. part 10 against Mark Gordon-Lendvay ("Respondent") of White Plains, New York. Respondent, an attorney,[1] is registered (Registration No. 41,041) to practice before the United States Patent and Trademark Office ("PTO" or "USPTO"), engaging in the prosecution of patent applications before the PTO, and is subject to the PTO Disciplinary Rules of Professional Conduct, set forth in Section 10 of Title 37, Code of Federal Regulations. On March 8, 2006, the Director of Enrollment and Discipline for the PTO, Harry I. Moatz ("Complainant"), filed a Complaint and Notice of Proceedings Under 35 U.S.C. § 32 ("Complaint") alleging that Respondent committed several violations of the PTO Code of Professional Responsibility in 36 C.F.R §§ 10.23-10.112, concerning Respondent's representation of clients with respect to a provisional patent application. In the Complaint, Complainant requests entry of an Order pursuant to 37 C.F.R. § 10.154 suspending Respondent from practice before the USPTO.

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[1] Respondent is admitted as an attorney before the New York Bar.

The one Count in the Complaint alleges that Respondent, who was actively engaged in practice before the PTO, was contacted on or about January 25, 2005 by Ms. Jeannie Rinaldi and her sister (collectively "Rinaldi") concerning his potential review and filing of a provisional patent application on their behalf for an expandable fur accessory for boots. On that date, Rinaldi paid Respondent $420 to review and file such provisional patent application for an expandable fur accessory for boots.

Although Respondent represented to Rinaldi that he had filed on their behalf a provisional patent application with the PTO and provided Rinaldi with copies of documents and a check purporting to show such filing, the PTO has never received the provisional patent application or a check for the application. The Complaint asserts that Respondent's conduct and actions violated PTO Disciplinary Rules 10.23(b)(6), 10.36(a), 10.77(c), and 10.84(a)(2).

The record reflects that on March 8, 2006 a copy of the Complaint was sent to Respondent via certified mail, return receipt requested, at P.O. Box 101, White Plains, NY 10605, but the mail was returned to Complainant as unclaimed. *See* Complainant's Exhibits (C's Exs.") A, B. On May 10, 2006, Complainant sent to Respondent copies of the Complaint via Express mail and first class certified mail at 44 Prospect Street, White Plains, NY 10605, but both pieces of mail were returned as unclaimed or undelivered. *See* C's Exs. C, D, E.[2] Complainant then attempted service of the Complaint by certified mail, return receipt requested, sent to Respondent on June 14, 2006 at both the P.O. Box 101 and 44 Prospect Street addresses. *See* C's Exs. F, G, H. The Complaint sent to the post office box address was returned to Complainant because the post office box had been closed. *See* C's Ex. G. The Complaint sent to Respondent at 44 Prospect Street, White Plains, NY 10605, was not

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[2] Complainant states that the address for which separate notice was last received by the Director and the address last provided by Respondent to the PTO were: 44 Prospect Street, White Plains, NY 10605 and P.O. Box 101, White Plains, NY 10605. *See* Motion for Default Judgment at 1. Complainant acknowledges that the March 8, 2006 and May 10, 2006 certificates of service for the respective Complaints erroneously state that copies of the Complaint were sent to both the post office and street addresses. *See* Motion for Default Judgment at 2,ns. 1, 2.

returned to Complainant, and a computerized search for the mail using the receipt number confirmed that the Complaint was delivered at 8:45 am on June 24, 2006. *See* C's Ex. H.

Respondent has not filed an Answer.

On December 21, 2006, Complainant filed a Motion for Default Judgment,[3] asserting that every allegation in the Complaint should be deemed as admitted and that the Court should enter judgment against Respondent and order the relief requested. *See* 37 C.F.R. §§ 10.136(d) ("Failure to timely file an answer will constitute an admission of the allegations in the complaint"), 10.134(a)(4) ("a decision by default may be entered against the respondent if an answer is not timely filed"); *see also* 37 C.F.R. § 10.154 ("entry of initial decision"), Fed. R. Civ. P. 55(b)(1) (allowing entry of judgment on default upon request of plaintiff premised upon defendant's failure to appear").

**FINDINGS**

1. Based on this Tribunal's determination and finding that the Complainant has fully complied with the requirements for proper service of the Complaint, as set forth at 37 C.F.R. § 10.135, and that, despite such proper service, Respondent has failed to file an Answer, Respondent is hereby found to be in **DEFAULT.**

2. This Tribunal finds that Respondent's failure to timely file an Answer to the Complaint constitutes an admission of each and every allegation in the Complaint, as recounted below. The allegations in the Complaint, as well as the assertions in Complainant's

[3] The certificate of service accompanying the Motion for Default Judgment certifies that on December 21, 2006 a copy of the Motion and attached exhibits were sent to Respondent by first class certified mail at Respondent's last known address, 44 Prospect Street, White Plains, New York 10605. No response to the Motion has been received by this Tribunal or Complainant. Complainant notes that in addition to serving the Motion for Default Judgment on Respondent, it also attempted to telephonically contact Respondent but to no avail. Motion for Default Judgment at 4.

Motion for Default Judgment, including the accompanying Exhibits A through H, are incorporated into this Initial Decision by reference.

3. On information and belief, as of January 25, 2005, Respondent was actively engaged in practice before the USPTO as a solo practitioner.

4. On or about January 25, 2005, Ms. Jeannie Rinaldi and her sister (collectively "Rinaldi") contacted Respondent regarding his potential review and filing of a provisional patent application on their behalf.

5. As indicated by an invoice from Respondent to Rinaldi dated January 25, 2005, Rinaldi paid Respondent $420.00 to review and file a provisional application on her behalf directed towards "Expandable Fur Accessory for Boots."

6. Between January 25, 2005, and March 1, 2005, Rinaldi made several unsuccessful attempts to contact Respondent regarding the status of the application.

7. On March 1, 2005, Rinaldi contacted Respondent through a third party. Respondent subsequently provided Rinaldi with copies of several papers.

8. One paper was a copy of check number 1044, dated January 28, 2005, and made out for $100.00 to the USPTO. The "Memo" line indicates that the check was for the "Rinaldi Provisional." The copy of check number 1044 provided by Respondent to Rinaldi does not indicate that it was received or cashed by the USPTO; on information and belief, the USPTO has not received or cashed the check.

9. Respondent also provided Rinaldi with copies of documents purporting to relate to the filed Rinaldi provisional application, including a postcard and provisional application cover sheet (dated January 28, 2005 and bearing Respondent's signature). The postcard does not bear a stamp from the USPTO indicating that it was received.

10. On information and belief, Respondent represented to Rinaldi that he had filed a provisional application on her behalf.

11. On information and belief, the USPTO has never received a provisional application filed by Respondent on behalf of Rinaldi.

12. Respondent's conduct violated the following disciplinary rules of professional conduct as outlined in Section 10 of 37 C.F.R.:

    A. Rule 10.23(b)(6) by engaging in conduct that adversely reflects on Respondent's fitness to practice before the Office;

    B. Rule 10.36(a) by charging and collecting a clearly excessive fee;

    C. Rule 10.77(c) by neglecting a legal matter entrusted to him; and

    D. Rule 10.84(a)(2) by intentionally failing to carry out a contract of employment entered into [with] a client for professional services.

**CONCLUSIONS**

13. Under 37 C.F.R. § 10.130 an attorney who violates a Disciplinary Rule may be reprimanded, suspended, or excluded from practice before the PTO. In the instant matter, the Respondent, an attorney registered to practice before the PTO and who was actively engaged in practice before the PTO, has been found to be in default for failing to answer the Complaint properly served on him. The effect of this failure to answer the Complaint is that each of the allegations in the Complaint have been admitted by the Respondent, under operation of 37 C.F.R. § 10.136 (d).

14. The Complaint in this matter requests entry of an Order "suspending Respondent from practice before the USPTO." Complaint at 3. This Tribunal, in determining the appropriate sanction to be imposed, is to consider the public interest, the seriousness of the violation(s) of the Disciplinary Rule(s), the deterrent effects deemed

necessary, the integrity of the legal profession, and any extenuating circumstances. 37 C.F.R. § 10.154(b)(1)-(b)(5).

15. This Tribunal has fully considered each of the penalty factors listed above. The seriousness of the violations of the cited Disciplinary Rules, the public interest, the integrity of the legal profession, and the deterrent effects deemed necessary, when considered in the absence of any extenuating circumstances, warrant and require the sanction of suspension for a period of five (5) years.[4] Specifically, this Tribunal notes that Respondent's conduct involved the elements of deceit, misrepresentation, and fraud, and that such conduct adversely reflects on Respondent's fitness to practice before the PTO. Respondent's failure to file an Answer or to respond to the Motion for Default Judgment only serves to underscore the appropriateness of this sanction, which is fully warranted on the basis of the allegations in the Complaint alone.

## ORDER

After careful and deliberate consideration of the above findings and conclusions, as well as the factors identified in 37 C.F.R. § 10.154(b),

**IT IS HEREBY ORDERED that Respondent, Mark Gordon-Lendvay PTO Registration No. 41,041, be suspended from practice before the U.S. Patent and Trademark Office for a period of five (5) years.**

Respondent's attention is directed toward 37 C.F.R. § 10.158 regarding responsibilities in the case of suspension or exclusion, and 37 C.F.R. § 10.160 concerning any subsequent petition for reinstatement. **Pursuant to 37 C.F.R. § 10.155, any appeal by Respondent from this Initial Decision, issued pursuant to 35 U.S.C. § 32 and 37 C.F.R. § 10.154, must be filed in**

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[4] Although Complainant's Motion for Default Judgment seeks entry of an Order excluding Respondent from practice before the PTO, Complainant has not sought amendment of its Complaint to request Respondent's exclusion from practice.

**duplicate with the Director of Enrollment and Discipline, U.S. Patent and Trademark Office, P.O. Box 16116, Arlington, VA 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 Respondent of the Initial Decision and that party's waiver of rights to further administrative and judicial review.** The facts and circumstances of this proceeding shall be fully published in the U.S. Patent and Trademark Office's official publication.

Barbara A. Gunning

United States Administrative Law Judge[5]

Dated: March 29, 2007
Washington, D.C.

[5] This decision is issued by a United States Administrative Law Judge assigned to the U.S. Environmental Protection Agency ("EPA"). An Interagency Agreement authorizes Administrative Law Judges with the EPA to hear cases pending before the USPTO.

**In the Matter of *Harry I. Moatz, Director Office of Enrollment and Discipline, Complainant v. Mark Gordon-Lendvay, Respondent.***
**Proceeding No. D06-02**

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Director's Motion for Default Judgment Initial Decision**, dated March 29, 2007, was sent this day in the following manner to the addressees listed below.

Mary Angeles
Legal Staff Assistant

Copy by Certified Mail to:

Robert McManus
Sydney Johnson
Associate Solicitor
U.S. Patent and Trademark Office
P.O. Box 116116
Arlington, VA 22215

Copy by Certified Mail to:

Mark Gordon-Lendvay
44 Prospect Street
White Plains, NY 10605

**Dated: March 29, 2007**
**Washington, D.C.**