UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of: Robert Schachter Respondent.	Proceeding No. D2013-20 January 28, 2014

INITIAL DECISION ON DEFAULT JUDGMENT

The above-entitled matter is before this Court on a *Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction* ("Default Motion"), filed on November 26, 2013, by the U.S. Patent and Trademark Office ("USPTO" or "Government"). Respondent Robert Schachter ("Respondent") failed to file a timely answer to the USPTO's initial *Complaint*, and has not responded to an *Order to Show Cause* issued by this Court on December 2, 2013. 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 state 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* is **GRANTED**.

PROCEDURAL HISTORY

On October 15, 2013, the Director of the USPTO's Office of Enrollment and Discipline ("OED") filed a *Disciplinary Complaint Under 35 U.S.C. § 32 and 37 C.F.R. § 11.25* ("Complaint") against Respondent. Copies of the *Complaint* were sent via U.S. certified mail to Respondent's two known addresses the same day. For unknown reason, Respondent did not receive the *Complaint* until November 8, 2013.

On November 15, 2013, the USPTO sent Respondent a letter informing him that the USPTO had not received his response[2] and that the *Default Motion* would be filed if Respondent did not respond by November 25, 2013. Respondent failed to respond to that letter.

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[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.

[2] A response is due 30 days after a *Complaint* is mailed, not when it is received. Respondent's answer was therefore due on or before November 14, 2013, giving Respondent less than one week to respond. Respondent did not file an answer and did not request additional time to do so.

On November 26, 2013, the USPTO filed the *Default Motion*, asserting that Respondent had failed to respond to the *Complaint.* On December 2, 2013, this Court issued an *Order to Show Cause* ordering Respondent to explain, on or before January 2, 2014, why the *Default Motion* should not be granted. To date, Respondent has not filed any answer to the *Complaint* and has not responded to the *Order to Show Cause.*

DEFAULT

Section 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 is not a registered patent practitioner, but he engaged in practice before the USPTO in trademark matters.

2. Respondent is a member of the New York State Bar, but has been suspended on an interim basis since October 11, 2012, and has not been reinstated as of the date of the filing of the *Complaint.*

3. Respondent was employed by the law firm of Robinson Brog Leinwand Greene Genovese & Gluck, PC ("the firm") from 1987 until the firm removed him on July 15, 2009.

4. On December 5, 2003, Respondent caused the firm to issue a check for $14,646.48 from the escrow funds of client Louis Litt to Respondent's personal American Express account.

5. Litt was unaware of the transfer and did not grant Respondent permission to make the transfer.

6. On March 1, 2004, Respondent caused the firm to issue a check for $11,980.00 from the escrow funds of Litt to Respondent's personal American Express account.

7. Litt was unaware of the transfer and did not grant Respondent permission to make the transfer.

8. On April 22, 2004, Respondent caused the firm to issue a check for $6,980.00 from the escrow funds Litt to Respondent's personal American Express account.

9. Litt was unaware of the transfer and did not grant Respondent permission to make the transfer.

10. On June.30, 2005, Respondent caused the firm to issue a check for $8,500.00 from the escrow funds of Litt to Respondent's personal American Express account.

11. Litt was unaware of the transfer and did not grant Respondent permission to make the transfer.

12. On October 3, 2005, Respondent caused the firm to issue a check for $9,811.11 from the escrow funds of client Chic Lady, Inc., to Respondent's personal American Express account.

13. Chic Lady, Inc., was unaware of the transfer and did not grant Respondent permission to make the transfer.

14. On October 31, 2005, Respondent caused the firm to issue a check for $8,249.64 from the escrow funds of Chic Lady, Inc., to Respondent's personal American Express account.

15. Chic Lady, Inc., was unaware of the transfer and did not grant Respondent permission to make the transfer.

16. On December 1, 2005, Respondent caused the firm to issue a check for $12,109.69 from the escrow funds of client Chic Lady, Inc., to Respondent's personal American Express account.

17. Chic Lady, Inc., was unaware of the transfer and did not grant Respondent permission to make the transfer.

18. On October 7, 2005, Respondent caused the firm to issue a check for $9,000.00 from the escrow funds of client Pasarela, Inc., to Respondent's personal American Express account.

19. Pasarela, Inc., was unaware of the transfer and did not grant Respondent permission to make the transfer.

20. On or about October 3, 2008, Respondent received a $5,000 advance payment from client Marlene Moncion.

21. Respondent did not inform the firm of his receipt of the payment from Moncion.

22. On June 23, 2009, Respondent caused the firm's accounting department to transfer $9,957.11 from the settlement of a case for client H.K. Worldwide into a Wachovia Bank account.

23. The Wachovia Bank Account was for Respondent's personal home equity line of credit.

24. The firm's shareholders were unaware of the transfer and did not grant Respondent permission to transfer the funds into his personal account.

25. In total, Respondent diverted $96,000 of firm and client funds for his personal use.

26. In July of 2009, Respondent admitted to the firm's managing partner that he had diverted firm and client funds for his personal use.

27. Respondent and the firm entered into a $250,000.00 settlement agreement, of which Respondent has so far paid approximately $160,000.00.

28. On September 21, 2009, the firm's managing partner informed the New York State Bar of Respondent's actions.

29. On December 15, 2009, Respondent submitted his resignation to the New York State Bar.

30. The New York State Bar rejected the resignation.

31. On October 11, 2012, the Appellate Division of the New York Supreme Court suspended Respondent from the practice of law in the state.

32. On December 28, 2012, after learning of Respondent's suspension from the New York State Bar, the USPTO's Office of Enforcement and Discipline sent, via certified mail, a Request for Information ("RFI") to Respondent seeking information about the alleged misappropriation of funds.

33. Respondent did not respond to the RFI.

34. On May 22, 2013, OED sent a second RFI to Respondent.

35. Respondent did not respond to the second RFI.

36. Respondent's actions and inactions were deliberate and knowing.

CONCLUSIONS OF LAW

1. Regulation 37 C.F.R. § 10.23(a) states that a practitioner shall not "engage in disreputable or gross misconduct."

2. Respondent violated 37 C.F.R. § 10.23(a) by diverting firm and client funds for his own benefit without the knowledge or consent of the firm or the affected clients.

3. Regulation 37 C.F.R. § 10.23(b)(4) states that a practitioner shall not "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

4. Respondent violated 37 C.F.R. § 10.23(b)(4) by diverting firm and client funds for his own benefit without the knowledge or consent of the firm or the affected clients.

5. Regulation 37 C.F.R. § 10.23(c)(5) states that conduct that constitutes a violation of §§ 10.23(a) and (b) includes "[s]uspension or disbarment from practice as an attorney or agent on ethical grounds by any duly constituted authority of a State or the United States. . . ."

6. Respondent violated 37 C.F.R. §§ 10.23(a) and (b) via § 10.23(c)(5) because he was suspended from practicing law in the State of New York on October 11, 2012.

7. Regulation 37 C.F.R. § 11.804(a) states that it is professional misconduct for a practitioner to "[v]iolate or attempt to violate the USPTO Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

8. Regulation 37 C.F.R. § 11.801(b) states that a practitioner in connection with a disciplinary or reinstatement matter shall not "[f]ail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, fail to cooperate with the Office of Enrollment and Discipline in an investigation of any matter before it, or knowingly fail to respond to a lawful demand or request for information from an admission disciplinary authority. . . ."

9. Respondent violated 37 C.F.R. § 11.804(a) via § 11.801(b) because he refused to respond to OED's RFIs and failed to cooperate with OED's investigation.

10. Regulation 37 C.F.R. § 11.804(d) states that it is professional misconduct for a practitioner to "[e]ngage in conduct that is prejudicial to the administration of justice."

11. Respondent violated 37 C.F.R. § 11.804(d) because he refused to respond to OED's RFIs.

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 to the profession?

Yes. Over the course of several years, Respondent deliberately diverted funds from clients' accounts into his own, without obtaining consent to do so. His actions directly violate the fiduciary duty an attorney has to his clients, and thus tarnish the image of the legal profession. This factor supports a maximum sanction.

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

Yes. Respondent has admitted that he appropriated firm and client funds in order to maintain his own lifestyle. He maintained this practice for approximately six years, and only stopped when his thefts were discovered. This factor demands a maximum sanction.

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

The firm and clients of Respondent suffered an actual loss of $23,000,[3] although Respondent's firm repaid the misappropriated funds to the affected clients. Had the law firm not discovered Respondent's misappropriation, however, the total loss would have been at least $96,000.00. This constitutes a substantial potential injury. Accordingly, this factor also supports a maximum sanction.

4. Are there any aggravating or mitigating factors?

There are several aggravating factors present in this case. First, Respondent's motive was selfish and dishonest. He took money from client accounts and his partners in the law firm and used it to pay his personal living expenses. Second, Respondent engaged in a pattern of stealing money from client escrow accounts for more than six years until he was caught by the firm. As a lawyer who had been practicing law for almost 30 years, he knew that his behavior was unethical and illegal.

Despite the fact that there are mitigating factors — the lack of a prior disciplinary record and the settlement agreement to repay at least some of the money Respondent had misappropriated — the OED Director asserts that exclusion is warranted in light of the misconduct in this case. The Court agrees.

Additionally, Respondent's total lack of participation in the instant case confirms his disinterest in accepting responsibility for his actions. He did not respond to the *Complaint* or to the *Order to Show Cause*, nor did he engage in any communication attempts with the USPTO. This further reflects his lack of fitness to practice before the USPTO.

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* is **GRANTED**.

IT IS HEREBY ORDERED that Respondent Robert Schachter be **EXCLUDED** from practice before the U.S. Patent and Trademark Office.

So **ORDERED**.

Alexander Fernández
Administrative Law Judge

[3] This amount only covers the claims that fall within the statute of limitations period. However, Respondent had been engaging in theft for a long period of time and, with additionally misappropriated funds in 2003 and 2005, he diverted at least $96,000.00 in total.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing INITIAL DECISION AND DEFAULT JUDGMENT, issued by Alexander Fernández, Administrative Law Judge, in D2013-20, were sent to the following parties on this 28th day of January, 2014, in the manner indicated:

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