UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of: JEFFREY A. GLAZER, Respondent.	Proceeding No. D2018-34 March 4, 2020

INITIAL DECISION ON DEFAULT JUDGMENT

This matter arises from a disciplinary complaint ("*Complaint*") filed by the Director for the Office of Enrollment and Discipline ("OED Director") for the United States Patent and Trademark Office ("USPTO" or "the Office") against Jeffrey A. Glazer ("Respondent") pursuant to 35 U.S.C. § 32 as implemented by 37 C.F.R. Part 11.[1] The OED Director has filed a *Motion for Entry of Default Judgment and Imposition of Disciplinary Sanction* and a *Memorandum in Support* (collectively, "*Default Motion*") seeking a default judgment and an order excluding Respondent from practice before the Office.

PROCEDURAL HISTORY

On May 30, 2019, after pleading guilty to a felony, Respondent was suspended from practice before the USPTO by Final Order issued by the USPTO Director. On May 31, 2019, the matter was referred to this Court pursuant to 37 C.F.R. § 11.25(b)(5) for the purpose of conducting a formal disciplinary hearing. On June 3, 2019, the Court issued a *Notice of Hearing and Order* scheduling a hearing to take place in October 2019 and setting forth various other deadlines, including a deadline for Respondent to file an Answer to the *Complaint*.

Respondent failed to timely file an Answer. After the deadline for him to do so had expired, the OED Director notified the Court that he anticipated filing a motion for default judgment and asked that the hearing date and all prehearing deadlines be vacated. The Court granted this request and vacated the hearing date and deadlines by order dated July 15, 2019.

Thereafter, on October 24, 2019, the OED Director filed a status report notifying the Court that Respondent had indicated his willingness to agree to an exclusion on consent pursuant to 37 C.F.R. § 11.27. The OED Director stated that he would file another status report as soon as the parties were able to conclude this process. Based on this information, the Court forbore from issuing a show cause or default order, even though Respondent was technically in default due to his failure to timely file an Answer to the *Complaint*.

[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 brought by the USPTO.

On December 30, 2019, the OED Director filed a status report stating that he had sent draft documents to Respondent's counsel on November 5, 2019, in an effort to finalize the exclusion on consent. However, signed copies had not yet been returned to USPTO. The OED Director also noted that Respondent's counsel had sent an email on December 16, 2019, stating that he would return the signed documents within a day or two, but the OED Director still had not received them. On January 13, 2020, this Court entered an order directing that, on or before January 23, 2020, Respondent must file a proposed answer to the *Complaint* and show cause why a default judgment should not be entered against him under 37 C.F.R. § 11.36(e).

On January 22, 2020, Counsel for Respondent filed a letter stating that Respondent "is not contesting the allegations in the Complaint that was issued against him on March 27, 2019 [sic]," and that Respondent "consents to the entry of a final judgment excluding him from practice before the [USPTO]." The letter requested, however, "that the exclusion be retroactive to May 30, 2019—the date of [Respondent's] suspension from practice before the USPTO."

The Court ordered the OED Director to respond to Respondent's letter on or before February 14, 2020. On February 14, 2020, the OED Director submitted a response stating that he does not object to Respondent's request that May 30, 2019 be the effective date of his exclusion. However, the OED Director requests that the Court's order of exclusion indicate that an effective date of May 30, 2019, does not obviate Respondent's duty to comply with 37 C.F.R. §§ 11.58 and 11.60. On February 21, 2020, the OED Director further submitted the *Default Motion* and a proposed decision on default judgment.

APPLICABLE LAW

USPTO Disciplinary Proceedings. The USPTO has the "exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it." Kroll v. Finnerty, 242 F.3d 1359, 1364 (Fed. Cir. 2001). This authority flows from 35 U.S.C. § 2(b)(2)(D), which empowers the USPTO to establish regulations governing patent practitioners' conduct before the Office, and 35 U.S.C. § 32, which empowers the USPTO to discipline a practitioner who is "shown to be incompetent or disreputable, or guilty of gross misconduct," or who violates the USPTO's regulations. The practitioner must receive notice and an opportunity for a hearing before such disciplinary action is taken. 35 U.S.C. § 32. Disciplinary hearings are conducted in accordance with the USPTO's procedural rules at 37 C.F.R. part 11, subpart C, and with section 7 of the Administrative Procedure Act, 5 U.S.C. § 556, by a hearing officer appointed by the USPTO. See 37 C.F.R. §§ 11.39(a), 11.44. The OED Director has the burden of proving any alleged violations by clear and convincing evidence. 37 C.F.R. § 11.49.

In 1985, the USPTO issued regulations based on the ABA Model Code of Professional Responsibility to govern attorney conduct and practice. See Practice Before the Patent and Trademark Office, 50 Fed. Reg. 5158 (Feb. 6, 1985) (Final Rule) (codified at 37 C.F.R. §§ 10.20-10.112). These rules set forth the USPTO Code of Professional Responsibility and "clarif[ied] and modernize[d] the rules relating to admission to practice and the conduct of disciplinary cases." Id. at 5158. In May 2013, the USPTO replaced the USPTO Code with the USPTO Rules of Professional Conduct, which are fashioned on the ABA's Model Rules of

Professional Conduct. See Changes to Representation of Others Before the United States Patent and Trademark Office, 78 Fed. Reg. 20180 (April 3, 2013) (Final Rule) (codified at 37 C.F.R. §§ 11.101-11.901). By updating its regulations, the USPTO sought to "provid[e] attorneys with consistent professional conduct standards, and large bodies of both case law and opinions written by disciplinary authorities that have adopted the ABA Model Rules."[2] Id. at 20180.

Consequences for Failure to Answer Complaint. The USPTO's procedural rules set forth the requirement for answering the *Complaint* and the consequences for failing to do so: "Failure to timely file an answer will constitute an admission of the allegations in the complaint and may result in entry of default judgment." 37 C.F.R. § 11.36(e).

FINDINGS OF FACT

As a result of Respondent's failure to answer the *Complaint*, Respondent is deemed to have admitted the allegations in the *Complaint*, which are set forth below as the Court's findings of fact. See, e.g., *In re* Riley, Proceeding No. D2013-04 (USPTO July 9, 2013)[3] (granting OED Director's motion for default judgment when respondent failed to answer the complaint).

At all times relevant to the *Complaint*, Respondent has been registered to practice before the USPTO. Exhibits submitted with the *Default Motion* show that Respondent was admitted to practice law in New Jersey on December 16, 1998, and was registered as a patent attorney on February 4, 2002. Respondent's patent registration number is 50,699. However, since May 30, 2019, Respondent has been suspended from practice before the Office by Final Order issued by the USPTO Director.

The USPTO Director issued the order of suspension pursuant to 37 C.F.R. § 11.25(b) because Respondent had pleaded guilty to a felony. Specifically, on January 9, 2017, Respondent pleaded guilty to two counts of conspiracy to fix prices in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) at a plea hearing in the federal criminal case of United States v. Glazer, No. 2:16-cr-506-1 (E.D. Pa.). This offense carries a potential sentence of ten years imprisonment and a $1,000,000 fine. See 15 U.S.C. § 1. According to the Information filed in Respondent's criminal case, from 2013 to 2015, Respondent, an officer of a pharmaceutical company, engaged in a conspiracy to allocate customers, rig bids, and maintain collusive and noncompetitive prices for various pharmaceutical products by agreeing with competitors not to compete for customers and to fix prices. See Information, United States v. Glazer, No. 2:16-cr-00506-RBS (E.D. Pa. Dec. 12, 2016).

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes that Respondent violated the USPTO Rules of Professional Conduct as alleged. Specifically, Respondent violated 37 C.F.R. § 11.804(b), which provides that "[i]t is professional misconduct for a practitioner to . . . [c]ommit a criminal act that reflects adversely on the practitioner's honesty,

[2] Thus, the USPTO Code, the Comments and Annotations to the ABA Model Rules, and disciplinary decisions and opinions issued by state boards are useful to understanding the USPTO Rules. See 78 Fed. Reg. at 20180.

[3] All USPTO disciplinary decisions cited in this opinion are available at https://foiadocuments.uspto.gov/oed/.

trustworthiness or fitness as a practitioner in other respects." Respondent violated this provision when he, as an officer of a pharmaceutical company, engaged in a conspiracy to allocate customers, rig bids, and maintain collusive and noncompetitive prices for various pharmaceutical products by agreeing with competitors not to compete for customers and to fix prices, in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1).[4]

SANCTIONS

The OED Director asks the Court to sanction Respondent by entering an order excluding him from practice before USPTO. The primary purpose of legal discipline is not to punish, but rather "to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession." *In re* Brufsky, Proceeding No. D2013-18, slip op. at 8 (USPTO June 23, 2014) (citing Matter of Chastain, 532 S.E.2d 264, 267 (S.C. 2000)).

In determining an appropriate sanction, USPTO regulations require this Court to consider the following four factors: (1) whether the practitioner has violated a duty owed to a client, the public, the legal system, or the profession; (2) whether the practitioner acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the practitioner's conduct; and (4) the existence of any aggravating or mitigating factors. See 37 C.F.R. § 11.54(b); see also *In re* Halling, Proceeding No. D2019-10 (USPTO June 13, 2019); *In re* Whitney, Proceeding No. D2018-48 (USPTO Mar. 14, 2019); *In re* Lau, Proceeding No. D2016-37 (USPTO May 1, 2017); *In re* Schwedler, Proceeding No. D2015-38 (USPTO Mar. 21, 2016).

1. Respondent violated a duty owed to the public and the legal profession.

Citing the American Bar Association's STANDARDS FOR IMPOSING LAWYER SANCTIONS (1992) ("STANDARDS"), the OED Director asserts that the most fundamental duty a lawyer owes to the public is "the duty to maintain standards of personal integrity upon which the community relies," as the public expects lawyers to be honest and to abide by the law. The Court agrees. The integrity of the legal profession "can be maintained only if the conduct of the individual attorney is above reproach." Disciplinary Counsel v. Dann, 979 N.E.2d 1263, 1268 (Ohio 2012). An attorney, more than a member of the general public, is expected to refrain from any illegal conduct. "Anything short of this lessens public confidence in the legal profession—because obedience to the law exemplifies respect for the law." Id. In this case, Respondent violated

[4] The OED Director alleges that, by reason of the same conduct, Respondent also violated 37 C.F.R. § 11.804(i), which states that it is professional misconduct for a practitioner to "[e]ngage in other conduct that adversely reflects on the practitioner's fitness to practice before the Office." However, because the Court has already found that Respondent's conduct violated § 11.804(b), and the OED Director has not identified any "other" conduct that would separately violate § 11.804(i), the Court has no basis to find a violation of this regulations. See *In re* Whitney, Proceeding No. D2018-48, slip op. at 8 (USPTO Mar. 14, 2019) (finding no basis for violation of § 11.804(i) where same conduct had already been found to violate other subsections of § 11.804); *In re* Flindt, Proceeding No. D2016-04, slip op. at 39 (USPTO Aug. 4, 2017) (stating that, if the same conduct violates other provisions of § 11.804, it cannot violate § 11.804(i)); *In re* Campbell, Proceeding No. D2014-11, slip op. at 7-8 (USPTO Apr. 29, 2014) (default order) (finding no violation where OED Director failed to allege "other conduct" of the sort envisioned under § 11.804(i)).

duties owed to the public and to the legal profession by failing to abide by the law and to display high standards of honesty and integrity. See Disciplinary Counsel v. Margolis, 870 N.E.2d 1158, 1160 (Ohio 2017) ("Respondent violated duties to the legal system and the general public by failing to conduct himself within the bounds of the law and to act in accordance with the highest standards of honesty and integrity.").

2. Respondent acted intentionally and knowingly.

Acting with intent constitutes the most culpable mental state and arises when a lawyer acts with a conscious objective or purpose to accomplish a particular result. See Preamble to STANDARDS; Att'y Grievance Comm'n v. Culver, 808 A.2d 1251, 1260 (Md. 2002) ("Clearly, one who acts with deliberation and calculation, fully cognizant of the situation and, therefore, fully intending the result that is achieved is more culpable than one who, though doing the same act, does so unintentionally, negligently or without full appreciation of the consequences"); e.g., *In re* Klagiss, 635 N.E.2d 163, 165 (Ind. 1994) (finding that attorney acted with highest degree of culpability when he engaged in neglect of a dependent because this constituted "a crime of intentional or knowing breach of trust"); *In re* Schuler, 818 P.2d 138, 141 (Alaska 1991) (finding attorney's conviction of theft to be conclusive proof that he acted with most culpable mental state, intent, as intent was a required element of the crime).

Here, Respondent's acts were intentional and knowing. Claims under section 1 of the Sherman Antitrust Act (the offense to which Respondent pled guilty) "are limited to combinations, contracts, and conspiracies, and thus always require the existence of an agreement." Howard Hess Dental Labs, Inc. v. Dentsply Int'l, Inc., 602 F.3d 237, 254 (3d Cir. 2010). Such an agreement requires "a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement." Id. (quoting Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 771 (1984)). Thus, Respondent's offense, which required an agreement with others to fix prices and allocate customers, was intentional and knowing.

3. The public was harmed by Respondent's misconduct.

Even though he did not compromise any client's interest, Respondent's misconduct harmed the general public when he engaged in a conspiracy to allocate customers, rig bids, and maintain collusive and noncompetitive prices for various pharmaceutical products by agreeing with competitors not to compete for customers and to fix prices. Respondent's offenses also harmed the public by unreasonably restraining trade in order to drive up the prices of pharmaceutical products.

4. Aggravating and mitigating factors exist in this case.

The American Bar Association's STANDARDS set forth aggravating and mitigating factors for the Court to consider in determining an appropriate sanction. Citing § 9.22(b) and (i) of the STANDARDS, the OED Director contends that the following aggravating factors warrant a more severe sanction in this case: a dishonest or selfish motive and substantial experience in the practice of law.

This Court agrees. Respondent's offenses, which unreasonably restrained trade in order to drive up the prices of pharmaceutical products, clearly were committed for financial or personal gain. Respondent has over 19 years of experience practicing before the USPTO and should have known better than to engage in the misconduct demonstrated in this case. These aggravating factors, along with the injury Respondent caused to the public, the knowing and intentional nature of his conduct, and the fact that he violated duties owed to the public and his profession, warrant the severe sanction of exclusion.

The STANDARDS identify mitigating factors which, if they exist, are considerations or facts that may justify a reduction in the degree of discipline to be imposed. *See* STANDARDS §§ 9.31, 9.32. The only mitigating factor here is the "absence of a prior disciplinary record." See STANDARDS § 9.32(a). The Court finds this mitigating factor to be of little weight, given Respondent's misconduct as described above and the fact that he has already agreed to an order of exclusion. Accordingly, despite his lack of a prior disciplinary record, the Court concludes that exclusion is the appropriate sanction.

5. Effective date and conditions of exclusion.

A suspended or excluded practitioner is obligated to comply with the provisions of 37 C.F.R. § 11.58. In this case, because Respondent was suspended on an interim basis by the USPTO Director on May 30, 2019, he was required to comply with 37 C.F.R. § 11.58.

The USPTO Director's May 30, 2019 order of interim suspension granted Respondent 30 days of limited recognition to practice in order to facilitate compliance with the provisions of § 11.58(b). However, the OED Director states that Respondent has not submitted an affidavit or declaration of compliance as required by 37 C.F.R. § 11.58(b)(2). Thus, Respondent has not complied with § 11.58(b)(2), and it is unclear whether he has complied with any of the other provisions of § 11.58.

Pursuant to 37 C.F.R. § 11.60(c), "[a]n excluded or suspended practitioner who has violated any provision of § 11.58 shall not be eligible for reinstatement until a continuous period of time in compliance with § 11.58 that is equal to the period of suspension or exclusion has elapsed." In this case, Respondent has requested that his exclusion "be retroactive to May 30, 2019—the date of [Respondent's] suspension from practice before the USPTO." Even though Respondent has not complied with the requirements for this Order of exclusion to be *nunc pro tunc* to May 30, 2019, the OED Director does not object to Respondent's request. For this reason, this Order shall be applied *nunc pro tunc* and Respondent's period of exclusion shall be deemed to have started running as of May 30, 2019. However, this does not obviate Respondent's duty to comply with 37 C.F.R. §§ 11.58 and 11.60.

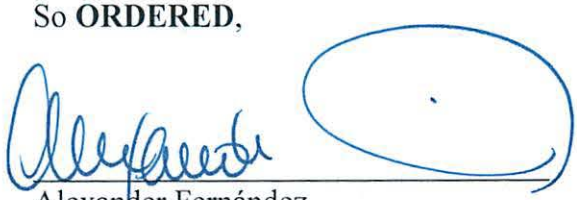
CONCLUSION AND ORDER

Because Respondent has consented to entry of default and has failed to answer the *Complaint*, Respondent is found to be in **DEFAULT** and to have admitted all the allegations in the *Complaint*.

Based on the facts hereby admitted, this Court finds that Respondent has violated the USPTO Rules of Professional Conduct as discussed above.

After analyzing the factors enumerated in 37 C.F.R. § 11.54(b), the Court concludes that Respondent's misconduct warrants the sanction of exclusion. Accordingly, Respondent shall be **EXCLUDED** from practice before the U.S. Patent and Trademark Office in patent, trademark, and other non-patent matters.[5] This Order shall be applied *nunc pro tunc* and Respondent's period of exclusion shall be deemed to have started running as of May 30, 2019. However, Respondent shall comply with 37 C.F.R. §§ 11.58 and 11.60.

So **ORDERED**,



Alexander Fernández
United States Administrative Law Judge

Notice of Required Actions by Respondent: Respondent is directed to refer to 37 C.F.R. § 11.58 regarding his responsibilities in the case of suspension or exclusion.

Notice of Appeal Rights: Within thirty (30) days of this initial decision, either party may file an appeal to the USPTO Director pursuant to 37 C.F.R. § 11.55.

[5] An excluded practitioner is eligible to apply for reinstatement no earlier than five years from the effective date of the exclusion. *See* 37 C.F.R. § 11.60(b). Eligibility is predicated upon full compliance with 37 C.F.R. § 11.58.