

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

In the Matter of

Steven Horowitz,

Respondent

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Proceeding No. D2009-52

Final Order

Enrollment and Discipline Director Harry I. Moatz ("OED Director") and Steven Horowitz ("Respondent") have submitted a Proposed Settlement Agreement to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office ("USPTO Director") or his designee for approval.

The OED Director and Respondent's Proposed Settlement Agreement sets forth certain stipulated facts, legal conclusions, and sanctions to which the OED Director and Respondent have agreed in order to voluntarily resolve a disciplinary complaint against Respondent. The Proposed Settlement Agreement, which satisfies the requirements of 37 C.F.R. § 11.26, resolves all disciplinary action by the United States Patent and Trademark Office ("USPTO" or "Office") arising from the stipulated facts set forth below.

Pursuant to such Proposed Settlement Agreement, this Final Order sets forth the parties' stipulated facts, legal conclusions, and agreed upon discipline.

Jurisdiction

1. At all times relevant hereto, Respondent of New York, New York, has been a patent agent registered to practice before the Office and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq.*

2. The USPTO Director has jurisdiction over this matter and the authority to approve the proposed settlement agreement pursuant to the provisions of 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.20 and 11.26.

Stipulated Facts

3. Respondent of New York, New York, is an attorney registered to practice patent law before the Office (Registration Number 31,768) and is subject to the USPTO Disciplinary Rules set forth at 37 C.F.R. § 10.20 *et seq.*

4. At all relevant times, Respondent maintained a business/operating account and a client trust account for his patent law practice.

5. Respondent did not keep sufficiently formal accounting records for the deposits into and disbursement from his business/operating account and, at times, deposited unearned fees for patent legal services into his business/operating accounts.

6. From October 2004 through March 2007 Respondent signed and submitted to the Office eight (8) checks drawn on his business/operating account that were returned to the USPTO for insufficient funds. The returned checks totaled three thousand, five hundred, and sixty-nine dollars (\$3,569.00).

7. After receiving notice that the checks presented had been drawn on a bank account having insufficient funds, Respondent made good on all returned checks and returned check fees.

8. It does not appear that the submission of the eight checks drawn on insufficient funds resulted in harm to the client's patent or trademark applications.

9. Respondent represents a family illness, in part, adversely affected his management of his law office; nevertheless, Respondent acknowledges that his accounting practices were not in compliance with the USPTO Code of Professional Responsibility.

10. Since this matter has been brought to his attention by the Office of Enrollment and Discipline, Respondent has taken the following remedial action:

a. He has consulted with another licensed attorney and has become thoroughly versed in the rules of ethics regarding financial recordkeeping and the segregation of client funds from business/operating funds.

b. The financial institution where Respondent opened and maintains a trust account has agreed to provide a report to the New York State Lawyer's Fund for Client Protection whenever a check from Respondent's trust account is returned for insufficient funds. See generally 22 N.Y.C.R.R. § 1300.1. The financial institution's report that a check has been returned for insufficient funds will typically trigger an audit of Respondent's trust account by the Bar of the State of New York.

c. He established and maintains both a ledger book with separate pages for each client and an electronic accounting system for client funds.

d. He employs a part-time bookkeeper and retained the services of a law practice management consultant, which he continues to consult on as needed basis.

Legal Conclusions

11. Based on the information contained in paragraphs 3-10, Respondent acknowledges that his conduct violated 37 C.F.R. § 10.112(a) by depositing, at times, into his business/operating account certain fees that were considered unearned by the USPTO for patent legal services; 37 C.F.R. § 10.112(c)(3) by not maintaining complete records of client funds; and 37 C.F.R. §§ 10.23(b)(6) by submitting checks to the USPTO that were returned for insufficient funds.

Mitigating Factors

12. Respondent has been a registered patent practitioner for over 25 years and has no prior disciplinary history.

13. Respondent unequivocally accepts responsibility for his deviations from the USPTO Code of Professional Responsibility and is deeply remorseful.

14. Respondent's current means of handling client funds exceeds USPTO requirements in so far as Respondent he places funds he receives in advance for costs and expenses in his trust account not his business/operating account. See 37 C.F.R. § 10.112(a) ("other than advances for costs and expenses").

Sanctions

15. Respondent agreed, and it is ORDERED that:

- a. Respondent be, and hereby is, publicly reprimanded;
- b. the OED Director publish the Final Order at the Office of Enrollment and Discipline's Reading Room electronically located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>;
- c. the OED Director publish the following Notice of Reprimand in the *Official Gazette*:

Notice of Reprimand

Steven Horowitz of New York, New York, registered patent attorney (Registration Number 31,768). Mr. Horowitz has been publicly reprimanded by the United States Patent and Trademark Office ("USPTO" or "Office") for violating 37 C.F.R. § 10.112(a) by depositing, at times, unearned fees for patent legal services into his business/operating account; 37 C.F.R. § 10.112(c)(3) by not keeping sufficiently formal accounting records for the deposits into and disbursement from his business/operating account; and 37 C.F.R. § 10.23(b)(6) by submitting checks to the USPTO that were returned for insufficient funds.

Mr. Horowitz signed and submitted to the Office eight (8) checks drawn on his business/operating account that were returned for insufficient funds. The returned checks totaled Three Thousand, Five Hundred and Sixty-Nine Dollars (\$3,569.00). He made good on all the checks, and the clients involved do not appear to have been harmed. Mr. Horowitz represents that a family illness, in

part, adversely affected his management of his law office. Since this matter has been brought to his attention by the Office of Enrollment and Discipline, he has taken the following remedial action: he has consulted with another licensed attorney and has become thoroughly versed in the rules of ethics regarding financial recordkeeping and the segregation of client funds; the financial institution where he opened and maintains a trust account has agreed to provide a report to the New York State Lawyer's Fund for Client Protection whenever a check from Mr. Horowitz's trust account is returned for insufficient funds, see generally 22 N.Y.C.R.R. § 1300.1 (and the financial institution's report that a check has been returned for insufficient funds will typically trigger an audit of his trust account by the Bar of the State of New York); he established and maintains both a ledger book with separate pages for each client and an electronic accounting system for client funds; he employs a part-time bookkeeper and retained the services of a law practice management consultant, which he continues to consult on as needed basis.

The following mitigating factors were taken into consideration: (a) Mr. Horowitz has been a registered patent practitioner for over 25 years and has no prior disciplinary history; (b) Mr. Horowitz unequivocally accepted responsibility for his mistakes and is deeply remorseful; and (c) Mr. Horowitz's current means of handling client funds exceeds USPTO ethical requirements. Those mitigating factors are reflected in the agreed-upon discipline imposed in this case.

This action is the result of a settlement agreement between Mr. Horowitz and the OED Director pursuant to the provisions of 35 U.S.C. § 2(b)(2)(D) and 37 C.F.R. §§ 11.26 and 11.59. Disciplinary decisions involving practitioners are posted at the Office of Enrollment and Discipline's Reading Room located at: <http://des.uspto.gov/Foia/OEDReadingRoom.jsp>.

- d. pursuant to 37 C.F.R. § 11.59, the OED Director give notice 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

- e. the OED Director and Respondent bear their own costs incurred to date and in carrying out the terms of this agreement.

AUG - 2 2010

Date



William R. Covey
Deputy General Counsel for General Law

on behalf of

David J. Kappos
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

Harry I. Moatz
Director Office of Enrollment and Discipline
U.S. Patent and Trademark Office
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New York, New York 10017

Notice of Reprimand

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