

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE COMMISSIONER OF PATENTS AND TRADEMARKS**

In re Bernard Hoffman)	Decision on Petition To Seal the
)	Administrative Record from OED
)	Disciplinary Proceeding No. 99-01,
)	<i>Moatz v. Hoffman</i>

MEMORANDUM AND ORDER

Bernard Hoffman, respondent in the above-entitled disciplinary proceeding (Respondent), sent a letter to the Director of the Office of Enrollment and Discipline (Director) dated November 6, 1999, requesting that the administrative record from Disciplinary Proceeding No. 99-01 be sealed. This request is being treated as a petition to the Commissioner under 37 C.F.R. § 10.159(c) because the Director is without authority to grant such request. For the reasons set forth below, this petition is denied.

Background

On October 12, 1999, the Director and Respondent reached a settlement in Disciplinary Proceeding No. 99-01. This settlement was approved and a final order was issued by the Commissioner on October 13, 1999. This Order provided, in part, that Respondent would be suspended from practicing before the Patent and Trademark Office for a period of three months. During the course of the pre-hearing discovery and exchange, Respondent submitted evidence of his history of mental conditions, arguing that the mental illness was at least partially responsible for some of his inappropriate activity and asserting that his recovery should be considered in mitigation.

Respondent requests the entire disciplinary record be sealed because of reference to his history of mental illness, treatment and recovery. The request was initially forwarded by the

Director to the Commissioner in November 1999. The request was returned undecided by counsel for the Commissioner because there was insufficient showing in the request why the Respondent's desire to have this information kept confidential outweighs the public's right to access. See 37 C.F.R. § 10.159(c) ("The Director shall maintain records, which shall be available for public inspection, of every disciplinary proceeding where a practitioner is reprimanded, suspended, or excluded unless the Commissioner orders that the proceeding be kept confidential").

Counsel for the Director contacted counsel for Respondent on December 16, 1999, relating that there is insufficient showing in the November 6, 1999, letter to permit the Commissioner to make a fully informed decision regarding Respondent's request. Respondent's counsel later informed Director's counsel that Respondent had nothing to add to his request and to forward to the Commissioner "as is."

Opinion

As noted above, 37 C.F.R. § 10.159(c) provides that records from disciplinary proceedings will be available for public inspection unless the Commissioner orders that the proceeding be kept confidential. In determining whether or not to order a record (or selected parts of a record) sealed, the Commissioner must consider whether Respondent's desire to have this information kept confidential outweighs the public's right to inspect. Accordingly, a petition to seal a disciplinary proceeding record must be narrowly drafted and must adequately articulate a reason for keeping this information confidential.

Respondent's November 6, 1999, letter asking to seal the administrative record in Disciplinary Proceeding 99-01 provides no explanation why the *entire* record should be sealed

other than to say “because of the sensitive nature of the psychiatric information contained in my file.” However, the psychiatric information pertaining to Respondent’s mental condition is only part of a large record. In fact, most of the file contains specific evidence of misconduct without mention of Respondent’s mental condition. Counsel for the Director called counsel for Respondent to suggest that he file a more narrowly drafted request, *e.g.*, propose specific redactions with some showing why these redactions are necessary. Respondent’s counsel declined.

In addition, Respondent has failed to show why his desire to keep the psychiatric information confidential outweighs the public’s right to inspect the disciplinary record. Throughout the discovery and pre-hearing phase of the disciplinary proceeding, Respondent did not request any portion of the record or pre-hearing filings be kept confidential. Indeed, Respondent freely submitted all evidence relating to his mental condition in his pre-hearing exchange. Respondent offered these documents in an attempt to show why he engaged in the type of misconduct charged and why, based on his recovery, a lesser penalty should be imposed. This evidence of Respondent’s mental condition is directly relevant to the misconduct that was the subject of the disciplinary proceeding and is therefore of particular importance to the general public. Accordingly, the public’s right to have access to this information is compelling.

Because Respondent's request is overly-broad and offers no showing why his desire to have the entire record kept confidential outweighs the public's right to access, his request is denied.

FEB 16 2000

Date



Q. Todd Dickinson
Assistant Secretary of Commerce and
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