

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

In the Matter of)	
)	
David N. Caracappa,)	
)	Proceeding No. D2015-37
Respondent)	
_____)	

FINAL ORDER

Pursuant to 37 C.F.R. § 11.27(b), the Director of the United States Patent and Trademark Office (“USPTO” or “Office”) received for review and approval from the Director of the Office of Enrollment and Discipline (“OED Director”) an Affidavit of Resignation Pursuant to 37 C.F.R. § 11.27 executed by David N. Caracappa (“Respondent”) on December 17, 2015. Respondent submitted the three-page Affidavit of Resignation to the USPTO for the purpose of being excluded on consent pursuant to 37 C.F.R. § 11.27.

For the reasons set forth herein, Respondent’s Affidavit of Resignation shall be approved, and Respondent shall be excluded on consent from practice before the Office in patent, trademark, and other non-patent matters commencing on the date of this Final Order.

Jurisdiction

Respondent of Henderson, Nevada, is a registered patent attorney (Registration No. 30,736). Respondent is subject to the USPTO Code of Professional Responsibility, 37 C.F.R. § 10.20 *et seq.*, and the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*¹

¹ The USPTO Code of Professional Responsibility applies to practitioner misconduct that occurred prior to May 3, 2013, while the USPTO Rules of Professional Conduct, 37 C.F.R. § 11.101 *et seq.*, apply to a practitioner’s misconduct occurring after May 2, 2013.

Pursuant to 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. § 11.27, the USPTO Director has the authority to approve Respondent's Affidavit of Resignation and to exclude Respondent on consent from the practice of patent, trademark, and other non-patent law before the Office.

Respondent's Affidavit of Resignation

Respondent acknowledges in his December 17, 2015 Affidavit of Resignation that:

1. His consent is freely and voluntarily rendered, and he is not being subjected to coercion or duress.
2. He is aware that there is a disciplinary complaint pending against him (Proceeding No. D2015-37) which alleges that:
 - a. Between 2008 and 2013, he conspired with another registered practitioner, [REDACTED]. In summary, Mr. [REDACTED] was an employee of [REDACTED], and was authorized to hire outside contractors to do patent work on behalf of [REDACTED]. Respondent was an outside contractor who did legal work on behalf of [REDACTED]. On multiple occasions, Mr. [REDACTED] assigned work to Respondent, but performed the work himself. Mr. [REDACTED] then authorized payment to him for work that he did not do. He then rerouted the majority of the payment back to Mr. [REDACTED]. In the course of this scheme, he and Mr. [REDACTED] defrauded [REDACTED] in the amount of \$2.4 million dollars.
 - b. On March 20, 2015, he appeared in the U.S. District Court for the Eastern District of Pennsylvania and pled guilty to 18 U.S.C. § 1349 (conspiracy to commit wire fraud – one count) and 18 U.S.C. § 1956(h) (conspiracy to commit money laundering – one count).
 - c. He received a Request for Information from the USPTO Office of Enrollment and Discipline (“OED”) investigating the criminal charges against him, but did not respond to the Request.
 - d. He never contacted OED regarding the criminal charges against him or reported his criminal conviction to OED.
3. He is aware that the disciplinary complaint filed against him alleges that he violated the following provisions of the USPTO Code of Professional Responsibility: 37 C.F.R. §§ 10.23(a) (gross misconduct); 10.23(b)(3) (conduct involving moral

turpitude); 10.23(b)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation); 10.23(a) and (b) via 10.23(c)(2)(i) (knowingly giving false or misleading information or knowingly participating in a material way in giving false or misleading information to a client); and 10.84(a)(3) (intentionally prejudicing or damaging a client during the course of a professional relationship); as well as the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. §§ 11.801(b) (knowingly failing to respond to lawful demands for information from a disciplinary authority); 11.804(b) (committing a criminal act that reflects adversely on the practitioner's honesty, trustworthiness, or fitness); and 11.804(d) (conduct that is prejudicial to the administration of justice.

4. Without admitting that he violated any of the Disciplinary Rules of the USPTO Code of Professional Responsibility and/or Rules of Professional Conduct which are the subject of the disciplinary complaint in Proceeding No. D2015-37, he acknowledges that, if and when he applies for reinstatement to practice before the USPTO in patent, trademark, and/or other non-patent matters under 37 C.F.R. § 11.60, the OED Director will conclusively presume, for the purpose of determining the application for reinstatement, that (a) the allegations regarding him in the complaint filed in Proceeding No. D2015-37 are true and (b) he could not have successfully defended himself against such allegations.

5. He has fully read and understands 37 C.F.R. §§ 11.5(b), 11.27, 11.58, 11.59, and 11.60, and is fully aware of the legal and factual consequences of consenting to exclusion from practice before the USPTO in patent, trademark, and other non-patent matters.

6. He consents to being excluded from practice before the USPTO in patent, trademark, and other non-patent matters.

Exclusion on Consent

Based on the foregoing, the USPTO Director has determined that Respondent's Affidavit of Resignation complies with the requirements of 37 C.F.R. § 11.27(a). Accordingly, it is hereby ORDERED that:

7. Respondent's Affidavit of Resignation shall be, and hereby is, approved;

8. Respondent shall be, and hereby is, excluded on consent from practice before the Office in patent, trademark, and other non-patent matters commencing on the date of this Final Order;

9. The OED Director shall electronically publish the Final Order at the Office of Enrollment and Discipline's electronic FOIA Reading Room, which is publicly accessible at <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>;

10. The OED Director shall publish a notice in the *Official Gazette* that is materially consistent with the following:

Notice of Exclusion on Consent

This notice concerns David N. Caracappa, a registered patent attorney (Registration No. 30,736). The Director of the United States Patent and Trademark Office ("USPTO" or "Office") has accepted Mr. Caracappa's affidavit of resignation and ordered his exclusion on consent from practice before the Office in patent, trademark, and non-patent law.

Mr. Caracappa voluntarily submitted his affidavit at a time when a disciplinary complaint was pending against him. The complaint alleged that Mr. Caracappa had pled guilty to 18 U.S.C. § 1349 (conspiracy to commit wire fraud) and 18 U.S.C. § 1956(h) (conspiracy to commit money laundering) in connection with a scheme to defraud a client. Mr. Caracappa conspired with another registered practitioner, who was in house counsel, to have patent work for the in house counsel's employer sent to Mr. Caracappa. On multiple occasions, in house counsel assigned work to Mr. Caracappa, but performed the work himself. Mr. Caracappa submitted bills to the company and in house counsel authorized payment to Mr. Caracappa for work that he did not do. In exchange, Mr. Caracappa rerouted the majority of the payment back to in house counsel. In the

course of this scheme, Mr. Caracappa and in house counsel defrauded their client of \$2.4 million dollars.

Mr. Caracappa acknowledged the complaint alleged that his conduct violated these provisions of the USPTO Code of Professional Responsibility: 37 C.F.R. §§ 10.23(a) (gross misconduct); 10.23(b)(3) (conduct involving moral turpitude); 10.23(b)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation); 10.23(a) and (b) via 10.23(c)(2)(i) (knowingly giving false or misleading information or knowingly participating in a material way in giving false or misleading information to a client); and 10.84(a)(3) (intentionally prejudicing or damaging a client during the course of a professional relationship); as well as the following provisions of the USPTO Rules of Professional Conduct: 37 C.F.R. §§ 11.801(b) (knowingly failing to respond to lawful demands for information from a disciplinary authority); 11.804(b) (committing a criminal act that reflects adversely on the practitioner's honesty, trustworthiness, or fitness); and 11.804(d) (conduct that is prejudicial to the administration of justice).

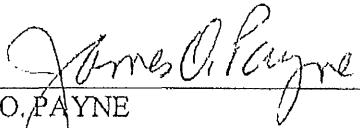
While Mr. Caracappa did not admit to violating any of the Disciplinary Rules of the USPTO Code of Professional Responsibility or the USPTO Rules of Professional Conduct as alleged in the pending complaint, he acknowledged that, if and when he applies for reinstatement, the OED Director will conclusively presume, for the limited purpose of determining the application for reinstatement, that (i) the allegations set forth in the OED investigation against him are true and (ii) he could not have successfully defended himself against such allegations.

This action is taken pursuant to the provisions of 35 U.S.C. §§ 2(b)(2)(D) and 32, and 37 C.F.R. §§ 11.27 and 11.59. Disciplinary decisions involving practitioners are posted for public reading at the Office of Enrollment and Discipline Reading Room, available at: <http://e-foia.uspto.gov/Foia/OEDReadingRoom.jsp>.

11. Respondent shall comply fully with 37 C.F.R. § 11.58; and
12. Respondent shall comply fully with 37 C.F.R. § 11.60 upon any request for reinstatement.

[SIGNATURE ONLY FOLLOWS ON NEXT PAGE]

JAN - 5 2016



JAMES O. PAYNE
Deputy General Counsel for General Law
United States Patent and Trademark Office

Date

on behalf of

Michelle K. Lee
Deputy Under Secretary of Commerce for Intellectual Property and
Deputy Director of the United States Patent and Trademark Office

cc:

Director of the Office of Enrollment and Discipline
U.S. Patent and Trademark Office

Mr. David N. Caracappa
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