

IN THE MATTER OF DAVID A. MAXON,  
A Member of the State Bar of Michigan,  
Respondent.  
No. DP-116/80

Decided: November 16, 1981

OPINION OF THE BOARD

The respondent, David A. Maxon, was charged with two counts involving an alleged failure to perform services involving two different patents for the same client. The hearing panel found against the respondent on both counts and imposed a suspension of 120 days. We affirm as to Count II, but reverse the finding on Count I. We reduce the suspension to 30 days.

FACTS

Respondent, an experienced, registered patent attorney, was retained to conduct a patent search and render an opinion on the patentability of a glass crushing machine on November 13, 1978. The client paid \$500 and Maxon promised to perform an effective and thorough job, but did not expressly promise to render a written opinion or to produce documentary evidence which would substantiate that opinion.

Two weeks later, the client and Maxon agreed that Respondent would apply for a patent for a second invention, a portable can flattener. In return, Maxon was to be paid \$1,302, payable at \$217.00 a week. The client began making payments.

In February 1979, in response to the client's first inquiry about the status of both his cases, Maxon explained that he was awaiting a response from the U. S. Patent Office in Washington.

The following month, apparently dissatisfied with the progress on his two inventions, the client obtained a booklet from the Patent Office which indicated he should have signed certain documents, including the application and a power of attorney. Since claimant had signed no documents, he then contacted Maxon to inquiry why he had not been requested to do so. Maxon asked claimant to come to his office, and bring along the information obtained from the Patent Booklet. At that meeting, Respondent and Complainant signed a blank application provided with the booklet, and a blank power of attorney. Respondent assured Complainant that he would fill in the rest of the information required to complete the documents.

In response to a telephone call from Complainant in May 1979, Respondent assured Complainant that the patent application on the can flattener had been filed, but that there was still no news on the glass-crusher patent search.

In June 1979, Respondent went to Complainant's home to collect the final \$217 payment on the \$1,302 retainer. At that meeting, Respondent informed Complainant that Respondent had received some drawings from the Patent Office which indicated, in Respondent's opinion, that Complainant's idea for the glass-crusher had been preempted by other patents before Respondent had been retained. Respondent recommended that Complainant not pursue a patent on the glass-crusher, because it would be a needless waste of money. Respondent also said that he had the drawings of the previous patents at his office, and would send them to Complainant the following day. Again, Respondent assured Complainant that the patent application on the can-flattener had been filed. Following the June meeting, Complainant did not receive copies of the drawings, nor did he have any further communications with Respondent about the glass-crusher.

In November 1979, Complainant called the Patent Office to inquire about the progress of his application. He was told that there was no application on file under his name, and that he should obtain the application file number from his attorney. Complainant called Respondent who, after reassuring him that an application had indeed been filed, gave Complainant the docket number for the patent search on the glass-crusher rather than the file number for the can-flattener. Respondent, by letter sent to Complainant after the grievance was filed, admitted that he had lost Complainant's application.

After Complainant filed his grievance against Respondent, in December 1979, Respondent wrote to Complainant stating that he was willing to file a patent application on the can-flattener if Complainant would come to his office and sign the appropriate documents. Respondent also offered to show him the drawings of the glass-crusher patents already filed, and further offered to return half of Complainant's retainer on the patent application. Complainant refused Respondent's offers, and retained other counsel to obtain return of all monies paid to Respondent.

### DISCUSSION OF CHARGES

Maxon was charged with a two count complaint, one involving each invention. On Count I, involving the glass-crusher, the allegations were:

That Maxon did not perform the patent search or offer a written opinion on the patentability of Complainant's invention;

Respondent told Complainant that he carried out these services, but has not substantiated his statement with documentary evidence.

Count I charged violations of the following rules:

GCR 1963, 953 (2), conduct exposing the profession to contempt; (3), conduct contrary to justice; (4), conduct violating a standard of responsibility; (6), knowing misrepresentation of facts or circumstances surrounding a grievance complainant;

DR 2-106(A), entering into an agreement for, charging, or collecting an illegal or excessive fee based upon criteria for determining whether a fee is excessive in DR 2-106(B);

DR 1-102(A)(4), conduct involving dishonesty, fraud, deceit, or misrepresentation; (6), other conduct adversely reflecting on fitness to practice law;

DR 6-101(A)(3), neglect of a legal matter entrusted to him.

Regarding Count I, the panel found:

That Respondent told the Complainant that he had drawings of the previously filed patents obtained from the Patent Office, but failed to show them to Complainant;

That Complainant retained Respondent for a patent search, and paid Respondent \$500;

That Respondent advised Complainant later that similar patent applications have already been filed prior to the time Complainant first saw Respondent;

That Complainant would only lose money if he took further steps to patent the invention; and,

That a patent search was conducted.

Regarding Count II, involving the portable can-flattener, the Complaint alleged:

That the client paid a full \$1,302 for Respondent to apply for a patent for that invention;

That Respondent did not carry out a patent search, file an application for a patent, submit a written opinion on the patentability of the invention, or document the services which he performed.

Violations of GCR 1963, 953 (2-4), DR 2-106(A)(B), DR 1-102(A) (4)(6), DR 6-101(A)(3).

Regarding Count II, the panel found:

That Maxon did not file an application on this second invention.

Knowingly made false statements at least twice by telling Complainant that he had filed a patent application.

That Complainant received no services for his payment of \$1,302.

Violations of GCR 1963, 952 (2-4); and DR 6-101 (A) (3), and 2-106 (B) (4).

#### FINDINGS BY THE BOARD

We find that the allegations of Count I were not sustained by a preponderance of the evidence.

It was largely undisputed that Maxon in fact did initiate a patent search, although it may not have been performed as promptly as the client may have desired. It was further undisputed that Maxon did advise the client that the glass-crusher was not patentable, but a problem arose when Respondent promised to show the inventor several drawings of other inventions which, in his professional opinion, supported his advice. However, Mr. Maxon never sent the documents to the client, and never made a written report.

At the hearing, although the Complainant indicated he expected a written report, it appeared that what he really wanted was some documentation to support the lawyer's opinion. The hearing panel found that a patent search had been conducted, but that no report had been submitted.

However, it is apparent that the claimant acknowledged that the offer to send the drawing was made subsequent to the retainer agreement. Thus, although the parties agreed there would be a report, there was never an agreement that the report would be in writing. Therefore, to the extent contemplated by the original retainer agreement, he fulfilled his obligation to report to the client.

Accordingly, we reverse the findings of the panel on Count I. Respondent's other arguments being without merit, we sustain the findings on Count II.

Based on the record below and the Respondent's prior record of discipline, we suspended him for 30 days.

ALL CONCUR.