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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92068736
Party	Plaintiff South Bay Mental Health Center Inc.
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Submission	Opposition/Response to Motion
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Signature	/Lauren Spahn/
Date	12/17/2018
Attachments	South Bay Mental Health Center Inc Response to Respondent Motion 12.17.18.pdf(91510 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Registration No. 5488370

For the Mark SOUTH BAY COMMUNITY SERVICES

Registered: June 5, 2018

SOUTH BAY MENTAL HEALTH CENTER, INC.

Petitioner

Cancellation No.: 92068736

v.

SOUTH BAY COMMUNITY SERVICES,

Respondent.

RESPONSE TO RESPONDENT’S MOTION FOR RELIEF FROM FINAL JUDGMENT

Petitioner, South Bay Mental Health Center, Inc. respectfully requests that Respondent’s Motion for Relief from Final Judgment be denied.

In Respondent’s Motion, Respondent admits that Respondent’s attorney address is correctly stated in the filings for this matter. Despite this fact, Respondent claims that a mistake was made and that the Notice of Default and the Notice of Institution were never received by Respondent. Respondent has not met the standards set forth under Fed. R. Civ. P. 60(b), as required by TBMP 312.03, for relief from final judgment.

Respondent’s lack of response in this matter was not due to any mistake made on the part of Petitioner. Respondent’s address has been correctly stated on all of the filings in this proceeding. Respondent was put on notice of the Petition for Cancellation through a mailing sent by Petitioner on June 5, 2018. Respondent has had a chance to respond to the Petition since June 5, 2018. There have been multiple filings in this matter since its commencement, and despite Respondent being

on notice of the commencement of the proceeding and Respondent's correct address being associated with all of the subsequent filings, Respondent has failed to respond. Respondent neglected its duty to monitor the proceeding and failed to respond properly and timely within the forty (40) day response window assigned by TTAB in its Notice of Institution in accordance with TBMP Rule 310.01.

It is of note that Respondent's Motion merely states that Respondent did not receive the Notice of Default and the Notice of Institution. Importantly, Respondent does not state that Respondent did not receive the Petition for Cancellation or the Default Judgment. As such, Respondent was on notice of the commencement of this proceeding since its filing on June 5, 2018, and it can be inferred that Respondent received the Default Judgment entered in this action on October 13, 2018.

In addition, Respondent incorrectly cites to TBMP 312.02 in its Motion. TBMP 312.02 is the proper rule with regards to setting aside notices of default. However, in the matter at hand, not only was a Notice of Default filed on August 2, 2018, but a Default Judgment was entered by the Trademark Trial and Appeal Board on October 13, 2018. The Default Judgment was entered prior to Respondent filing its Motion. As such, TBMP 312.03, as the rule regarding setting aside default judgments, is the rule that governs the matter at hand and correctly reflects the status of this proceeding. In the last paragraph of Respondent's Motion, Respondent utilizes the standard from TBMP 312.02 as the standard governing its request. By contrast, the correct rule, TBMP 312.03, states that judgments may only be set aside in accordance with Fed. R. Civ. P. 60(b), and sets forth a different, stricter standard. TBMP 312.03 further acknowledges that the "stricter standard" contained in Fed. R. Civ. P. 60(b) "reflects public policy favoring finality of judgments and termination of litigation." Therefore, as Respondent has failed to meet the lower standard for relief from a notice of default, Respondent has most certainly failed to meet the stricter standard required by TBMP Rule 312.03 and Fed. R. Civ. P. 60(b).

A decision in favor of Respondent would cause great harm to Petitioner. Petitioner has taken the necessary steps to file this action and has paid the necessary fees to obtain a judgment.

For the foregoing reasons, Petitioner respectfully submits that Respondent's Motion for Relief from Final Judgment should be denied, and Registration No. 5488370 should be cancelled in accordance with the Default Judgment.

Respectfully submitted,

Dated: December 17, 2018

/s/ Lauren M. Spahn

Lauren M. Spahn, Esq.

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Attorney for Petitioner,

SOUTH BAY MENTAL HEALTH CENTER, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **RESPONSE TO RESPONDENT'S MOTION FOR RELIEF FROM FINAL JUDGMENT** has been served on Lawrence A. Maxham by forwarding said copy on December 17, 2018, via email and first class mail to:

Lawrence A. Maxham
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Dated: December 17, 2018

/s/ Lauren M. Spahn
Lauren M. Spahn
Attorney for Petitioner