

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

November 7, 1996

UNITED STATES OF AMERICA,)
Complainant)
) 8 U.S.C. 1324a Proceeding
vs.)
) OCAHO Case No. 96A00104
CONSTRUCTAMAX, INC.,)
Respondent)

ORDER DENYING COMPLAINANT'S MOTION FOR DEFAULT JUDGMENT

On October 29, 1996, complainant filed a pleading captioned Motion for Default Judgment, in which it seeks an entry of a default judgment based upon an allegation that respondent failed to file an answer within the 30-day statutory time period. See 28 C.F.R. § 68.9(a). A review of this matter discloses that an answer was to have been filed no later than October 21, 1996. Because respondent did not file an answer until October 30, 1996, it is found to be in default in this action. Accordingly, consideration of complainant's argument for the entry of a judgment by default is in order.

The pertinent procedural rule employs precatory, not mandatory, language by providing that an administrative law judge may enter a judgment by default if the respondent fails to file a timely answer. Id. at § 68.9(b). Therefore, the entry of a default judgment largely is left to the discretion of the administrative law judge. Because default judgments are not generally favored and since complainant has not shown that respondent acted willfully nor that he has been prejudiced by the late filing, complainant's request for a default judgment is hereby denied.

Accordingly, a prehearing telephonic conference will be shortly held, in the course of which a hearing will be scheduled to be conducted in or near Long Island City, New York on the earliest mutually convenient date. In addition, the undersigned shall hear arguments concerning respondent's demand for discovery.

Joseph E. McGuire
Administrative Law Judge

I hereby certify that on this 7th day of November, 1996, I have served copies of the foregoing Order Denying Complainant's Motion for Default Judgment to the following persons at the addresses shown, in the manner indicated:

Office of Chief Administrative Hearing Officer
Skyline Tower Building
5107 Leesburg Pike, Suite 2519
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Cathleen Lascari
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