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

United States of America, Complainant v. Lea's Party Rentals, Inc., Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100366.

ORDER DENYING COMPLAINANT'S MOTION FOR DEFAULT

On September 26, 1989, Complainant filed a Motion for Default. The basis of Complainant's Motion is that Respondent had failed, as of September 26, 1989, to file an answer or otherwise defend itself against the charges alleged in the Complaint, which was filed on July 31, 1989.

On October 6, 1989, Respondent filed an Answer, an Attorney's Declaration in Opposition to Motion for Default (``Declaration''), and a Response in Opposition to Motion for Default.

In its Answer, Respondent, through counsel, generally denies the allegations in the Complaint which incorporate by reference the Notice of Intent to Fine.

In its Declaration, Respondent, through counsel, states that until September 29, 1989, Respondent was without the assistance of counsel and lacked the necessary expertise to file an appropriate answer. In addition, Respondent's attorney declares under penalty of perjury that Respondent ``has a strong defense on the merits.''

Though reasonably flexible in my understanding of the difficulties faced by pro se parties in these proceedings, I do not look favorable on even the appearance of dilatory defense tactics. There are simply too many cases and too few administrative resources to unnecessarily protract procedural considerations beyond those generally provided for in the regulations governing these proceedings. See, 28 CFR part 68 (1989).

As revised and issued pursuant to the Attorney General's Order 1377-89 on November 24, 1989, it is clear that under normal circumstances the Rules of Practice and Procedure for Administrative Hearings before Administrative Law Judges in cases involving allegations of unlawful employment of aliens will be read narrowly with respect to a party's failure to file an answer within the proscribed 30 day time. See, 28 CFR § 68.8(b).

It is clear, in the case at hand, that Respondent failed to file a timely answer. Moreover, Respondent made no timely effort to request by any reasonable manner a continuance for more time to file an answer or obtain the assistance of legal counsel.

Nevertheless, it is well-established that modern procedure law discourages defaults, and doubts are generally resolved in the favor of the defaulting party. See e.g., Wright and Miller, Fed. Prac. and Pro., section 2681, at 402-403. As stated in an old case:

> The default of a party to an action is always a harsh measure, and no party should ever be defaulted, unless the grounds upon which such default is authorized are clearly and authoritatively established and are in such clear and certain terms that the party to be defaulted can know, without question that he is subject to default if he does act in a certain manner. See, Janoske v. Porter, 64 F.2d 960-961 (emphasis added).

Though disturbed by the unexplained delay in Respondent's filing of the Answer, I am persuaded its contesting of the Complaint, in conjunction with its attorney's sworn declaration that it has a ``strong defense on the merits,'' warrants further consideration of this proceeding.

Accordingly, pursuant to my discretionary authority in section 68.8(b) to consider motions for default, I hereby deny Complainant's Motion for Default and ORDER the parties to initiate pre-hearing discovery consistent with my Order Directing Pre-Hearing Procedures as issued on October 13, 1989.

SO ORDERED: This 11th day of December 1989, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge