

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

UNITED STATES OF AMERICA)
Complainant,)
)
v.) 8 U.S.C. § 1324a Proceeding
) Case No. 94A00138
BROADCASTERS UNLIMITED,)
INC.)
DBA KGRE AM RADIO,)
Respondent.)
_____)

FINAL DECISION AND ORDER GRANTING
COMPLAINANT'S MOTION FOR DEFAULT JUDGMENT

(December 14, 1994)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Leila Cronfel, Esq., for Complainant
Keith M. Ashton (Broadcasters Unlimited, Inc.),
pro se

I. Procedural History And Facts

On July 25, 1994, the Immigration and Naturalization Service (INS or Complainant) filed its complaint in the Office of the Chief Administrative Hearing Officer (OCAHO). The complaint included a Notice of Intent to Fine (NIF) issued by INS on September 9, 1993 and three counts in violation of the employment verification requirements of section 101 of the Immigration Reform and Control Act of 1986, as amended (IRCA), 8 U.S.C. § 1324a.

Count I charges Respondent with failure to make available for inspection the employment eligibility verification form I-9 for 36 named individuals. The civil money penalty for Count I is \$13,680.00. Count II charges Respondent with failure to properly complete section two of

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the form I-9 for ten named individuals and lists \$3,800.00 as the civil money penalty. Count III charges Respondent with failure to ensure that an employee properly completed section one and Respondent with failure to properly complete section two of the form I-9 for one named individual; the civil money penalty is \$380.00. INS demands a total of \$17,860.00 in civil money penalties. The complaint included a request for a hearing.

On July 28, 1994, this Office issued a Notice of Hearing (NOH), which transmitted the complaint to Respondent. The NOH cautioned Respondent that failure to answer the complaint within thirty (30) days of receipt might result in a waiver of the right to appear and contest Complainant's allegations. See 28 C.F.R. § 68.9(a)-(b).

On September 26, 1994, Respondent filed a notification of Chapter 7 bankruptcy proceedings. To date, no answer has been received. Complainant filed a motion for default judgment on September 29, 1994 alleging that Respondent waived its "right to appear and contest the allegations of the complaint" by failing to file an answer to the complaint within the 30 days. 28 C.F.R. § 68.9(a)-(b). On October 12, 1994, I issued an order to show cause why default judgment should not be issued. The Order stated that "[a]bsent an adequate showing of cause in response to this Order for failure to have timely answered the complaint, I may, without further notice, enter a judgment by default against Respondent."

On November 18, 1994, Respondent filed a letter which I accept as a response to the Order to Show Cause. Although the response asserts that Respondent is innocent of § 1324a violations, it acknowledges that "people who were in management [positions at Broadcasters Unlimited] . . . had destroyed computer records, misfiled employee records, financials and more. . . ." I understand the quoted remarks to be an explanation for Respondent's failure to produce form I-9s or to fill the forms out correctly. Unfortunately for Respondent, ignorance of IRCA's paperwork requirements is not a defense to a 1324a complaint. United States v. McDougal, 4 OCAHO 687 (1994) at 9; United States v. Onion River Sports, 4 OCAHO 673 (1994) at 6.

Respondent contends it is unfair to be subjected to INS fines while at the same time it loses its business in a bankruptcy proceeding. While I can sympathize with Respondent's contentions, OCAHO precedent provides that "bankruptcy does not automatically stay sanction proceedings. . . ." United States v. Carlson, 1 OCAHO 264 (1990) at 4 (citing U.S. v. United Pottery Manufacturing and Accessories, 1

OCAHO 57 (1989), U.S. v. Covered Bridge Farm Market, 1 OCAHO 135 (1990), U.S. v. Dodge Printing Centers, 1 OCAHO 125 (1990), U.S. v. DAR Distr., 1 OCAHO 60 (1989)).

Unfortunately for Respondent, because it failed to timely file an answer and did not provide an adequate explanation or indeed any explanation in response to the Order to Show Cause, it is in default. 8 C.F.R. § 68.9.

II. *Ultimate Findings, Conclusions And Order*

I have considered the complaint filed by the INS, the response to the Order to Show Cause, and other requests and supporting documents filed by each party. All motions and other requests not specifically ruled upon are denied.

For the reasons already stated, I find and conclude that:

1. Complainant's Motion for Default Judgment is granted;
2. As alleged in the complaint, Respondent is in violation of 8 U.S.C. § 1324a(a)(1)(B) with respect to each employee named in the complaint, as to whom Respondent is found to have:
 - a. (Count I) failed to make available for inspection the INS employment eligibility verification forms (Form I-9s) for 36 named individuals, at an assessment of \$380.00 for each individual, for a total civil money penalty of \$13,680.00.
 - b. (Count II) failed to properly complete section two of the Form I-9 for ten named individuals, at an assessment of \$380.00 for each individual, for a total civil money penalty of \$3,800.00.
 - c. (Count III) failed to ensure that one named employee properly completed section one and failed to properly complete section two of the Form I-9, at an assessment of \$380.00 total civil money penalty;
 - d. for an aggregate civil money penalty of \$17,860.00;
3. Respondent pay a civil money penalty in the amount of seventeen thousand, eight hundred and sixty dollars (\$17,860.00) for the violations charged in the complaint;

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4. The hearing is canceled.

Pursuant to 8 U.S.C. § 1324a(e)(7), this Final Decision and Order is the final administrative adjudication in this proceeding and shall become final "unless within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final decision and order. . . ." "A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order." 8 U.S.C. § 1324a(e)(8).

SO ORDERED. Dated and entered this 14th day of December, 1994.

MARVIN H. MORSE
Administrative Law Judge