

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

February 3, 2022

ROBERT PAUL HEATH,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00058
TRINGAPPS, INC.,)	
Respondent.)	
_____)	

Appearances: Robert Heath, *pro se*
Patrick Papalia, Esq., and Tanneika Minott, Esq., for Respondent

ORDER DISCHARGING ORDER TO SHOW CAUSE AND FOR PREHEARING
STATEMENTS

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant Robert Heath filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on September 20, 2021, alleging that Respondent Tringapps, Inc. discriminated against him based on his national origin and citizenship status, and engaged in unfair documentary practices, in violation of 8 U.S.C. § 1324b. On September 27, 2021, this Office sent Respondent a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA) and a copy of the complaint via U.S. certified mail. The NOCA directed that an answer was to be filed within thirty (30) days of receipt of the complaint, that failure to answer could lead to default, and that proceedings would be governed by Department of Justice regulations. Respondent's answer was due no later than December 6, 2021. Respondent did not file an answer by December 6, 2021. On November 5, 2021, Respondent, through counsel, filed a Motion to Dismiss.

II. ORDER TO SHOW CAUSE

On January 11, 2022, the undersigned issued an Order to Show Cause and on Motion to Dismiss. The order required Respondent to show good cause why it did not file an answer and to file an answer that comports with the requirements of 28 C.F.R. § 68.9(c). The undersigned warned that

the Court may enter a default judgment against Respondent, should Respondent fail to file an answer and show good cause regarding its untimely filing.

On January 25, 2022, Respondent filed “Tringapps’ Answer to the Complaint and Response to the January 11, 2022 Order to Show Cause.” In its supporting Memorandum of Law,¹ Respondent stated that it “mistakenly believed” filing a Motion to Dismiss would toll time to file its answer with OCAHO. Resp’t Memo. Law ¶ 1. Respondent also argued that the “good cause” factors discussed in OCAHO precedent support a favorable exercise of discretion in this case. *See id.* at 2–3 (citing *M.S. v. Dave S.B. Hoon – John Wayne Inst.*, 13 OCAHO no. 1305, 4–5 (2017), and then citing *Ndzerre v. Wash. Metro. Area Transit Auth.*, 13 OCAHO no. 1306, 6–7 (2017)).

OCAHO precedent has long held that default judgments “should not be granted on the claim, without more, because the [respondent] failed to meet a procedural time requirement.” *Yuyu Yang v. Zuora, Inc.*, 15 OCAHO no. 1402, 6 (2021) (quoting *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 2 (2004) (citations omitted)). Further, “[t]he Court has especially broad discretion when . . . seeking to set aside an entry of an order of default, rather than setting aside a default judgment.” *Nickman*, 9 OCAHO no. 1106, at 2.

The Court exercises its broad discretion to find that Respondent demonstrated good cause for its failure to file a timely answer. Respondent readily admits to its error on a procedural time requirement—that a motion to dismiss would toll the filing of an answer. After the Court issued its January 11, 2022 order, Respondent quickly filed an answer that responds to Complainant’s allegations and raises colorable defenses. Respondent established that it intends to defend itself in this forum. Moreover, Respondent has shown that Complainant is not prejudiced by the delay.

As such, the Order to Show Cause in the Court’s January 11, 2022 order is DISCHARGED, and Respondent’s answer to the complaint is ACCEPTED.

III. PREHEARING STATEMENTS

A. RULES GOVERNING PROCEEDINGS AND OCAHO PRACTICE MANUAL

Proceedings in this case will generally be governed by OCAHO’s Rules of Practice and Procedure for Administrative Hearings, found at 8 C.F.R. pt. 68 (2020). The parties must familiarize themselves with these rules, including the standards of conduct under § 68.35. All filings in this

¹ Respondent’s January 25, 2022 submission, “Tringapps’ Answer to the Complaint and Response to the January 11, 2022 Order to Show Cause,” does not utilize page numbers. For the supporting Memorandum of Law cited here, the Court interprets this sub-document to have four pages, with the first page as the title page.

matter should be accompanied by a certification of service that comports with § 68.6(a). OCAHO's Practice Manual may be found within the Executive Office of Immigration Review's (EOIR) Policy Manual on the United States Department of Justice website.² The Court directs the parties' attention to two chapters located within the manual.

1. OCAHO's Electronic Filing Pilot Program

Chapter 3.7 of the Practice Manual describes OCAHO's Electronic Filing Pilot Program.³ Through the program, the parties can electronically file all filings in this case and accept electronic service of case-related documents from OCAHO and the opposing party. The Court invites the parties to register for this program by completing the participant registration and certification forms, available on the United States Department of Justice website, and returning them to OCAHO.⁴ Both parties must elect to become e-filers or the parties will continue to file case documents by the means set forth in 28 C.F.R. pt. 68 for the duration of the case.

2. OCAHO's Settlement Officer Program

Chapter 4.7 of the Practice Manual describes OCAHO's Settlement Officer Program. This is a voluntary program through which the parties use a settlement officer to mediate settlement negotiations as a means of alternative dispute resolution.⁵ The presiding Administrative Law Judge (ALJ) may refer a case to a settlement officer upon receive of written confirmation of consent to referral from each party and a determination by the ALJ that the case is appropriate for referral. The parties may request that the Court refer the case to a settlement officer at any time while proceedings are pending, up to thirty days before the hearing date scheduled in the matter.

B. CONTENTS OF PREHEARING STATEMENTS

² EOIR Policy Manual, Part IV (Dec. 29, 2020), <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

³ EOIR Policy Manual, Part IV.3.7 (Electronic Filing Pilot Program) (Dec. 22, 2020), <https://www.justice.gov/eoir/eoir-policy-manual/IV/3/7>; *see also* OCAHO Filing, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/eoir/ocaho-filing> (June 4, 2021).

⁴ OCAHO Email Filing Program Form, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/sites/default/files/pages/attachments/2015/11/30/registration-form-and-certification.pdf>.

⁵ EOIR Policy Manual, Part IV.4.7 (Settlement Officer Program) (Jan. 12, 2021), <https://www.justice.gov/eoir/eoir-policy-manual/iv/4/7>.

Pursuant to 28 C.F.R. § 68.12, the parties in this matter shall file written prehearing statements of position with this Court and serve their statements on each other.

The parties' prehearing statements shall contain the following sections:

1. Issues: A statement of the perceived issues.
2. Proposed Stipulations: Such proposed stipulations and admissions of fact as will eliminate the necessity of taking evidence with respect to allegations as to which there are no genuine or substantial disputes.
3. Preliminary Witness List: Names and addresses of witnesses whose testimony the party intends to present.
4. Summary of Testimony: A brief summary of the testimony expected of each witness.
5. Preliminary Exhibit List: A list of the party's documentary evidence, including affidavits and other exhibits to be offered in evidence, specifying the number of pages in each. The parties will identify each exhibit with the designation to be used at the hearing. Complainant will identify its exhibits with the letter C and sequential numbers, e.g., C-1, C-2, and C-3, while Respondent will identify its exhibits as R-1, R-2, R-3, and so forth. The parties shall sequentially number the pages of any multipage exhibit. At this time, each party shall file an exhibit list, but not the exhibits themselves.
6. Discovery: A brief statement outlining what, if any, discovery the party thinks will be needed to prepare for the hearing. The parties may begin their discovery at any time. Discovery will be governed by 28 C.F.R. §§ 68.18–25.
7. Time Required: The party's best estimate as to the time it needs to present its case.
8. Other Matters: A brief statement describing any other matter relevant to the case.

The Court will schedule a telephonic prehearing conference as soon as practicable after the parties file prehearing statements. The conference will address any questions on discovery and develop the prehearing order.

Within ten (10) days after the filing of Respondent's prehearing statement, the parties are to consult and agree upon dates and times when they can be available for a telephonic prehearing conference with the Court. The parties shall provide the Court with written notice of a minimum of three proposed agreed dates and times in Eastern Standard Time for the conference. The Court will confirm the date of the conference as soon thereafter as practicable.

C. INITIAL DISCLOSURES

The filing party shall, simultaneously with its prehearing statement, making its initial disclosure of documentary evidence to the other party without waiting for a formal discovery request to be made. Copies of any exhibits listed in Section III, Number 5 are to be disclosed to the other party, not to this Court. If any exhibit on a party's preliminary exhibit list does not yet exist, the party must disclose that exhibit to the other party within two weeks of its creation.

Mandatory initial disclosures shall include the names and contact information for persons other than those individuals listed under Section III, Number 3 who have knowledge or discoverable information about the matters at issue, unless the information would be solely for impeachment.

Supplementation of initial disclosures is required in the same manner as would be required pursuant to 28 C.F.R. § 68.18(d).

IV. ORDERS

- A. IT IS SO ORDERED that Respondent's answer to the complaint is ACCEPTED, and the Order to Show Cause in the Court's January 11, 2022 order is DISCHARGED.
- B. IT IS FURTHER ORDERED that the parties shall file their written prehearing statements of position in accord with this Order.
- C. IT IS FURTHER ORDERED that Complainant, Robert Heath, shall file his prehearing statement with the Court within thirty (30) days of this Order.
- D. IT IS FURTHER ORDERED that Respondent, Tringapps, Inc., shall file its prehearing statement within sixty (60) days of this Order.
- E. IT IS FURTHER ORDERED that the parties shall provide the Court with written notice of a minimum of three proposed agreed dates and times in Eastern Standard Time for a prehearing conference, within ten (10) days after the filing of Respondent's prehearing statement.

SO ORDERED.

Dated and entered on February 3, 2022.

Jean C. King
Chief Administrative Law Judge