

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

UNITED STATES OF AMERICA,	)	
	)	
Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	
	)	OCAHO Case No. 2023A00059
DUBOSE DRILLING, INC.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Hazel L. Gauthier, Esq., for Complainant  
Kelli Gavin, Esq., for Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

On May 4, 2023, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The complaint alleges that Respondent, Dubose Drilling, Inc., violated 8 U.S.C. § 1324a(a)(1)(B) by failing to ensure that employees properly completed Section 1 and/or by failing to complete properly Section 2 or 3 of the Employment Eligibility Verification Form (Form I-9) for 101 individuals (Count One), failing to prepare and/or present Forms I-9 for four individuals (Count Two), and failing to ensure that employees properly completed Section 1 and/or failing to complete properly Section 2 or 3 of the Forms I-9 for three individuals (Count Three). Compl. at 2-6. The complaint further alleges that Respondent violated 8 U.S.C. § 1324a(a)(1)(A) by knowingly hiring two individuals who were not authorized for employment in the United States (Count Four). *Id.* at 6.

Complainant attached to the complaint its Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act (NIF) which it served on Respondent on November 4, 2019. Compl., Ex. A. Through the NIF, Complainant notified Respondent that it was seeking a fine for the above-referenced allegations

totaling \$222,456. Respondent, through its counsel, contested the NIF and timely requested a hearing before this Court.<sup>1</sup> *Id.*, Ex. B.

On May 15, 2023, OCAHO used United States certified mail to send Respondent and its counsel the following documents: (a) the complaint, (b) a Notice of Case Assignment Regarding Unlawful Employment (NOCA), (c) the NIF, and (d) Respondent's request for a hearing. Through the NOCA, OCAHO's Chief Administrative Hearing Officer (CAHO) advised Respondent that it had the right to file an answer to the complaint and that its answer must be filed within thirty days after it was served with the complaint. NOCA ¶ 4. The CAHO warned Respondent that if it failed to file a timely answer, it may be deemed to have waived its right to appear and contest the allegations of the complaint and that "the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief." *Id.* (citing 28 C.F.R. § 68.9(b)<sup>2</sup>). Respondent did not file an answer.

On July 19, 2023, the Court issued an Order to Show Cause. *United States v. Dubose Drilling, Inc.*, 18 OCAHO no. 1487, 1-5 (2023).<sup>3</sup> After determining that OCAHO perfected service of the complaint on May 22, 2023, the Court explained that Respondent's answer was due no later than June 21, 2023. *Id.* at 3 (citing 28 C.F.R. §§ 68.3(b), 68.9(a)). In lieu of entering a default, the Court ordered Respondent to file

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<sup>1</sup> The Court considers this signed request for a hearing to be a notice of appearance by counsel on behalf of Respondent. *See* 28 C.F.R. § 68.33(f).

<sup>2</sup> OCAHO's Rules of Practice and Procedure for Administrative Hearings are the provisions contained at 28 C.F.R. part 68 (2024). These rules are available online, including through OCAHO's homepage on the United States Department of Justice's website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

<sup>3</sup> Citations to OCAHO precedents in bound volumes one through eight include the volume and case number of the particular decision followed by the specific page in the bound volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after volume eight, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1 and is accordingly omitted from the citation. Published decisions may be accessed through the Westlaw database "FIM-OCAHO," the LexisNexis database "OCAHO," and on the United States Department of Justice's website: <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

an answer to the complaint and a response to the Order to Show Cause within twenty days of the date of the order. *Id.* at 4-5.

Through the Order to Show Cause, the Court put Respondent on notice of the potential consequences should it fail to respond to the Court's orders. The Court twice warned Respondent that the Court might conclude that Respondent had abandoned its request for a hearing and enter an order of dismissal. *See Dubose Drilling, Inc.*, 18 OCAHO no. 1487, at 4-5 (citing 28 C.F.R. § 68.37(b)(1)). The Court explained that "[a] final order of dismissal based on abandonment is analogous to entry of a default judgment under the Federal Rules of Civil Procedure." *Id.* at 4 (quoting *United States v. Vilardo Vineyards*, 11 OCAHO no. 1248, 4 (Vacation by the Chief Admin. Hr'g Officer of the A.L.J.'s Final Dec. and Order of Dismissal and Remanding for Further Proceedings) (4/15/15) (citing *United States v. Greif*, 10 OCAHO no. 1183, 6 (2013))). The Court repeated the CAHO's warning in the NOCA that the Court may enter a default against it pursuant to 28 C.F.R. § 68.9(b) should it fail to file an answer. *Id.* at 5. Despite these warnings, Respondent did not file an answer or a response showing good cause for its failure to file a timely answer. Both filings were due on August 8, 2023.

On September 13, 2023, the Court issued a Notice and Second Order to Show Cause. *United States v. Dubose Drilling, Inc.*, 18 OCAHO no. 1487a, 1-5 (2023). The Court ordered Respondent to show good cause for its failure to respond to the Court's Order to Show Cause dated July 17, 2023, and to advise the Court whether it intended to pursue its request for a hearing. *Id.* at 4. The Court further ordered Respondent to show good cause for failing to respond to the complaint and to file with the Court an answer to the complaint. *Id.* Citing OCAHO precedent and 28 C.F.R. § 68.37(b)(1), the Court put Respondent on notice that its failure to respond to the Notice and Second Order to Show Cause would "result in dismissal as the Court [would] deem Respondent to have abandoned its request for a hearing" and the NIF would become the final agency order. *Id.* at 3. The Court also repeated the warning that it had the discretion to enter a default judgment as to both liability and penalties against Respondent should it fail to file an answer. *Id.* (citing 28 C.F.R. § 68.9(b)). Respondent's filings and response to the Notice and Second Order to Show Cause were due by September 28, 2023. *Id.* at 4.

As of the date of this Order, Complainant has not responded to the Court's Notice and Second Order to Show Cause dated September 13, 2023, and no answer has been filed. All orders in this matter have been served on both Respondent's counsel and Respondent.

## II. LEGAL STANDARDS

OCAHO's Rules for Practice and Procedure for Administrative Hearings provide that "[a] complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it." 28 C.F.R. § 68.37(b). In cases where a party or its representative "fails to respond to orders issued by the Administrative Law Judge," OCAHO's rules clearly state that "[a] party *shall* be deemed to have abandoned a complaint or a request for hearing." *Id.* § 68.37(b)(1) (emphasis added).

## III. DISCUSSION

From the beginning of this case, Respondent and its counsel have been on notice of the potential consequences should Respondent not make the requisite filings. First, OCAHO's CAHO warned Respondent in the NOCA that if it failed to file a timely answer, it may be deemed to have waived its right to appear and contest the allegations of the complaint. NOCA ¶ 4. Despite this, Respondent failed to answer the complaint DHS filed with this Court in response to its request for a hearing. Respondent then squandered the opportunities to show cause and file a belated answer the Court gave it through the Order to Show Cause issued July 19, 2023, and the Notice and Second Order to Show Cause issued September 13, 2023. Even the Court's simplest query as to whether Respondent intended to pursue its request for a hearing was met with silence. The Court repeatedly cited 28 C.F.R §§ 68.37(b)-(b)(1) and warned Respondent that failure to respond to the Court's orders could result in dismissal for abandonment of Respondent's request for a hearing dated November 12, 2019. Indeed, the Court plainly told Respondent in its most recent order that, "[i]f [it] fails to respond as ordered or cannot show good cause for its failure to file a timely answer to the complaint and response to the Order to Show Cause dated July 17, 2023, the Court shall conclude that Respondent has abandoned its request for a hearing and dismiss the complaint." *Dubose Drilling, Inc.*, 18 OCAHO no. 1487a, at 4 (citing 28 C.F.R. § 68.37(b)).

Abandonment has been found and dismissals ordered in OCAHO cases where respondents have failed to respond to orders akin to those in this case. *See, e.g., United States v. Milwhite, Inc.*, 17 OCAHO no. 1469a, 2 (2023) (finding that the respondent had abandoned its request for a hearing after respondent failed to respond to an order to show cause and then dismissing the complaint and declaring the NIF the final agency order); *United States v. Patmo Concrete, LLC*, 17 OCAHO no. 1448b, 2 (2022) (finding that the respondent had abandoned its request for a

hearing after it failed to respond to an order to show cause and a notice); *United States v. Cordin Co.*, 10 OCAHO no. 1162, 1, 4 (2012) (holding that it was “entirely appropriate” for an Administrative Law Judge (ALJ) to conclude that a respondent abandoned a request for a hearing under 28 C.F.R. § 68.37(b) when the respondent did not file an answer or respond to an order to show cause).

Neither Respondent nor its counsel, who requested a hearing before OCAHO, has communicated with the Court during the pendency of this case. The Court notes that a significant amount of time—almost three and a half years—elapsed between Respondent’s request for a hearing dated November 12, 2019, and Complainant’s filing of the complaint against Respondent with OCAHO on May 4, 2023. While the delay was substantial, once DHS filed the complaint and the NOCA was served, Respondent’s participation in this litigation became necessary.

By failing to respond to the Court’s orders, Respondent has brought this action to a standstill and left the Court with little choice but to follow the dictates of 28 C.F.R. § 68.37(b)(1) which provides that, “[a] party shall be deemed to have abandoned a complaint or a request for hearing if,” inter alia, it or its representative “fails to respond to orders issued by the [ALJ].” See *U.S. v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416d, 5 (2023) (noting that 28 C.F.R. § 68.37(b)(1) “suggests that a finding of abandonment is mandatory in certain circumstances,” namely, where a party fails to respond to an ALJ’s orders); *Cordin Co.*, 10 OCAHO no. 1162, at 3 (explaining that “[t]he procedures governing abandonment and dismissal provide that ‘[a] party *shall* be deemed to have abandoned’ a request for a hearing if the party ‘fails to respond to orders issued by the Administrative Law Judge.’” (citing 28 C.F.R. § 68.37(b)(1)) (emphasis in original).

Pursuant to 28 C.F.R. §§ 68.37(b)-(b)(1), the Court now finds that dismissal is warranted due to Respondent’s abandonment of its request for a hearing dated November 12, 2019, and its repeated failure to respond to this Court’s orders or participate in this litigation by filing an answer to the complaint. Accordingly, the complaint in this matter is dismissed, which renders the original NIF that DHS served on Respondent on November 4, 2019, the final agency order.

#### IV. ORDERS

IT IS SO ORDERED that, pursuant to 28 C.F.R. § 68.37(b)(1), the complaint filed on May 4, 2023, with the Office of the Chief Administrative Hearing Officer by

Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, is DISMISSED, and

IT IS FURTHER ORDERED that Complainant's Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act served on Respondent on November 4, 2019, is rendered the final agency order.

SO ORDERED.

Dated and entered on January 17, 2024.

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Honorable Carol A. Bell  
Administrative Law Judge

### Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.