

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. 2023A00057
DJ'S TRANSPORT,)	
)	
Respondent.)	
_____)	

Appearances: Hazel L. Gauthier, Esq., for Complainant
Juan Quinones, pro se, for Respondent

NOTICE AND SECOND ORDER TO SHOW CAUSE

I. PROCEDURAL HISTORY

This case arises under the employment eligibility verification provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. On May 4, 2023, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The complaint alleges that Respondent, DJ's Transport, failed to prepare or present Employment Eligibility Verification Forms (Forms I-9) for three employees (Count One) and failed to ensure that employees properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Forms I-9 for four employees (Count Two), all in violation of 8 U.S.C. § 1324a(a)(1).

Complainant attached to the complaint a Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act (NIF) dated July 15, 2022. Compl., Ex. A. On August 4, 2023, Respondent requested a hearing before this Court. *Id.*, Ex. B.

On July 19, 2023, after OCAHO encountered difficulties serving the complaint, the Court issued an Order Directing Complainant to Serve Complaint. *See United*

States v. DJ's Transport, 18 OCAHO no. 1488 (2023).¹ The Court ordered Complainant to serve Respondent personally with the complaint, a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the NIF, and Respondent's request for a hearing (collectively, the Complaint package) in a manner that complied with 28 C.F.R. § 68.3(a)(1).² *Id.* at 5; *see also* 28 C.F.R. § 68.3(c) ("the Administrative Law Judge may direct that a party execute service of process" where there has been "difficulty with perfecting service"). The Court further ordered Complainant to file proof that it perfected service in accordance with 28 C.F.R. § 68.3(b) and to provide a functional United States mailing address for Respondent. *DJ's Transport*, 18 OCAHO no. 1488, at 5.

On August 11, 2023, Complainant filed a Notification of Service of Process. In its filing, Complainant represented that it personally served Respondent with the Complaint package on August 7, 2023. Notification Serv. Process at 1. As proof of service, Complainant attached the affidavit of a special agent with the United States Immigration and Customs Enforcement, Homeland Security Investigations (HSI). *Id.*, Ex. 2. The HSI special agent attested that he personally served the complaint and accompanying materials on Respondent, through its owner Juan Quinones, at its place of business in El Paso, Texas (Address A).³ *Id.* According to the HSI special

¹ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after Volume 8, 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 in the Westlaw database "FIM-OCAHO," the LexisNexis database "OCAHO," or on the United States Department of Justice's website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² OCAHO's Rules of Practice and Procedure for Administrative Hearings are the provisions contained in 28 C.F.R. part 68 (2024). OCAHO's 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>.

³ This is the address where Complainant asked OCAHO to serve the complaint on Respondent in accordance with 28 C.F.R. § 68.7(b)(5). Compl. at 5.

agent, Mr. Quinones acknowledged receipt of the Complaint package by signing a certificate of service. *Id.* Complainant attached to its filing the certificate of service reflecting the date, manner, and location of personal service of the Complaint package on Respondent; the certificate bears signatures for both the HSI special agent and Mr. Quinones. *Id.*, Ex. 1. According to the HSI special agent, Mr. Quinones kept his copy of the Complaint package and said that he would review the documents. *Id.*, Ex. 2. According to Complainant, Mr. Quinones also provided the HSI special agent with a functional mailing address for Respondent. *Id.* at 1.

The NOCA with which Respondent was served on August 7, 2023, explained that these proceedings would be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings and that, under those rules, Respondent had thirty days to file an answer to the complaint. Notice Case Assign. ¶ 4 (citing 28 C.F.R. §§ 68.3(b), 68.9). As such, Respondent's answer was due by September 6, 2023.

On November 9, 2023, the Court issued an Order to Show Cause. After finding that Complainant perfected personal service of the Complaint package upon Respondent on August 7, 2023, the Court ordered Respondent, within twenty days of the date of its order, to file an answer to the complaint and a response providing facts sufficient to show good cause for its failure to timely answer the complaint. The Court further ordered Respondent to provide the Court with its best mailing address, including ZIP code, because of an issue with the mailing address that Mr. Quinones provided the HSI special agent.⁴

In the Order to Show Cause, the Court put the Respondent on notice that if it failed to respond to the Court's orders, the Court might find that it had abandoned its request for a hearing and dismiss its request pursuant to 28 C.F.R. § 68.37(b)(1).

⁴ Specifically, Mr. Quinones provided the HSI special agent with the street address, city, and state that Respondent listed on its request for a hearing before OCAHO (Address B), *see DJ's Transport*, 18 OCAHO no. 1488, at 2, but gave the ZIP code for Address B as 79936, rather than 79938. Notification Serv. Process at 1. This information conflicted with the applicable ZIP code for Address B given on the United States Postal Service website, namely, 79938-4360. *See* <https://tools.usps.com/zip-code-lookup.htm?byaddress>. Given the conflicting information as to ZIP codes for Address B and to ensure proper service on Respondent, OCAHO sent copies of the Court's order to Respondent at Addresses A and B, including both ZIP codes for Address B.

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 Procedures.” *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 also repeated the CAHO’s warning in the NOCA that the Court may enter a default against Respondent pursuant to 28 C.F.R. § 68.9(b) if Respondent failed to respond as ordered or could not show good cause for its failure to file a timely answer to the Complaint.

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 November 29, 2023. Respondent has not communicated with the Court during the pendency of this case.

II. LEGAL STANDARDS AND DISCUSSION

Respondent failed to file a timely answer to the complaint in this matter and now has failed to respond to this Court’s Order to Show cause dated November 9, 2023. Although this Court could enter a default against Respondent, the forum has a strong “preference for evaluating and resolving cases on the merits.” *United States v. Dubose Drilling, Inc.*, 18 OCAHO no. 1487a, 3 (2023) (citing *United States v. MRD Landscaping & Maint. Corp.*, 15 OCAHO no. 1407c, 4 (2022); see also *United States v. R & M Fashion Inc.*, 6 OCAHO no. 826, 46, 48 (1995)). The Court thus issues this Notice and Second Order to Show Cause to afford Respondent a final opportunity to participate in this case. The Court now orders Respondent to show good cause for its failure to respond to the Order to Show Cause dated November 9, 2023, and to inform the Court whether it intends to pursue its request for a hearing. Respondent also shall file an answer to the Complaint and a response showing good cause for its failure to file a timely answer. In its response to this Order, Respondent shall confirm its best mailing address, including ZIP code, at which it shall receive service of the Court’s orders in this case.⁵

The Court puts Respondent on notice of the consequences of failing to respond to this Notice and Second Order to Show Cause by filing a response showing good cause for failing to respond to the Court’s Order to Show Cause dated November 9,

⁵ To ensure proper service on Respondent, OCAHO shall send copies of this Order to Respondent at Addresses A and B, including both ZIP codes for Address B.

2023, along with an answer and a response showing good cause for failing to file a timely answer. Noncompliance will result in a dismissal for abandonment, as the Court will consider Respondent to have abandoned its request for a hearing. *See* 28 C.F.R. § 68.37(b)(1); *see, e.g., United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777-78 (1994); *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 2 (2015); *United States v. Diamond Construction, Inc.*, 3 OCAHO no. 451, 577, 580 (1992). Abandonment will result in DHS's NIF becoming the final order. *See, e.g., United States v. Milwhite, Inc.*, 17 OCAHO no. 1469a, 2 (2023). Additionally, under OCAHO's Rules of Practice and Procedure for Administrative Hearings, the Court has discretion to enter a default judgment as to both liability and penalties against Respondent, "because it will have waived its right to appear and contest the allegations of the complaint by failing to timely answer the complaint." *Dubose Drilling*, 18 OCAHO no. 1487a at 4 (citing 28 C.F.R. § 68.9a(b); *United States v. Hui*, 3 OCAHO no. 479, 826, 829 (1992)).

III. ORDERS

IT IS SO ORDERED that, within fifteen days of the date of this Order, Respondent, DJ's Transport, shall file a response with the Court in which it must provide facts sufficient to show good cause for its failure to respond to the Court's Order to Show Cause dated November 9, 2023, and advise the Court whether it intends to pursue its request for a hearing. In this filing, Respondent shall also state its best mailing address, including ZIP code, at which it shall receive service of the Court's orders in this case.

IT IS FURTHER ORDERED that, within fifteen days of the date of this Order, Respondent shall file with the Court an answer to the complaint that comports with 28 C.F.R. § 68.9 and a response in which it must provide facts sufficient to show good cause for its failure to timely answer the complaint in this case.

If Respondent 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 November 9, 2023, the Court shall conclude that Respondent has abandoned its request for a hearing and dismiss the complaint. 28 C.F.R. § 68.37(b). Respondent's failure to file an answer "may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint" and the Court may enter a default judgment against Respondent as to both liability and penalties. *Id.* § 68.9(b).

SO ORDERED.

Dated and entered on January 11, 2024.

Honorable Carol A. Bell
Administrative Law Judge