

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

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2023B00078
)	
MARIANA PHARMACY,)	
Respondent.)	
)	

Appearances: Zaji Obatala Zajradhara, pro se Complainant
Janet King, Esq., for Respondent

SECOND ORDER TO SHOW CAUSE AND ORDER ON ELECTRONIC FILING AND
SCHEDULING PREHEARING CONFERENCE

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Zaji Obatala Zajradhara, filed a complaint with the Officer of the Chief Administrative Hearing Officer (OCAHO) on July 18, 2023. Complainant alleges that Respondent, Mariana Pharmacy, violated 8 U.S.C. § 1324a(a)(1)(B).

This office sent Respondent a Notice of Case Assignment Regarding Unfair Immigration (NOCA) and a copy of the Complaint on August 7, 2023, via certified U.S. mail. The NOCA directed that an answer was to be filed within 30 days of receipt of the Complaint, that failure to answer could lead to default, and that proceedings would be governed by U.S. Department of Justice regulations.¹

The U.S. Postal Service website indicates that the NOCA was served on Respondent on August 21, 2023, making Respondent's answer due no later than September 20, 2023. *See* 28 C.F.R. §§ 68.3(a), 68.9(a). Because Respondent did not file an answer by that date, on October

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

25, 2023, the Court issued an Order to Show Cause, directing Respondent to file an answer comporting with the requirements of 28 C.F.R. § 68.9(c), and explain why it failed to timely file an answer within 21 days of the date of the Order to Show Cause.

On November 15, 2023, Respondent sent the Court an answer comporting with the requirements of 28 C.F.R. § 68.9(c) by fax, but it did not include an explanation for why it failed to timely file the answer. The answer was not accompanied by a Notice of Appearance for Respondent's attorney.

On November 22, 2023, the Court invited the parties to OCAHO's voluntary electronic filing pilot program.² On November 26, 2023, Complainant submitted his e-filing registration form. On December 1, 2023, Respondent's counsel submitted her e-filing registration form.

II. ORDER TO SHOW CAUSE

As the Court noted in its Order to Show Cause, failure to file an answer "within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default." 28 C.F.R. § 68.9(b). Further, "failure to respond to an Order may trigger a judgment by default." United States v. Hotel Valet Inc., 6 OCAHO no. 849, 252, 254 (1996).³ "If a default judgment is entered, the request for hearing is dismissed, AND judgment is entered for the complainant without a hearing." Nickman v. Mesa Air Grp., 9 OCAHO no. 1106, 1 (2004).

Additionally, "[a] showing of good cause is a condition precedent to permitting a late answer, and where that showing is not made, a late answer may not be accepted." United States v. Steidle Lawn & Landscape, LLC, 17 OCAHO no. 1457, 2 (2022) (citing United States v. Medina, 3 OCAHO no. 485, 882, 889 (1993)).

Here, the Respondent proffered no good cause for its failure to timely file an answer. The Court may therefore enter a default judgement against it pursuant to 28 C.F.R. § 68.9(b). However, the Court's preference is to resolve cases on their merits. See Steidle Lawn & Landscape, 17

² See Office of the Chief Administrative Hearing Officer Electronic Filing Pilot Program, 79 Fed. Reg. 31143 (May 30, 2014), available at <https://www.justice.gov/eoir/ocaho-filing>.

³ 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 subsequent to Volume 8, where the decision has not yet 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," or in the LexisNexis database "OCAHO," or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

OCAHO no. 1457 at 2; United States v. MRD Landscaping & Maint. Corp., 15 OCAHO 1407c, 3 (2022). The Court offers Respondent a final opportunity to provide an explanation for its failure to timely file an answer. When it has received a response, the Court will determine if Respondent has demonstrated the requisite good cause for failing to timely file its answer and decide whether to allow its untimely answer.

The Court therefore ORDERS Respondent to file a response with the Court, within three weeks from the issuance of this order, providing facts sufficient to show good cause for its failure to timely file an answer to the complaint.

II. NOTICE OF APPEARANCE

All attorneys appearing before the Court, “except for a government attorney filing a complaint pursuant to section 274A, 274B, or 274C of the INA . . . shall file a notice of appearance.” 28 C.F.R. § 68.33(f). That notice should include “the name of the case or controversy, the case number if assigned, and the party on whose behalf the appearance is made” and should “be accompanied” by a compliant certificate of service certifying service upon all parties. Id.

In the present matter, Respondent’s attorney filed an Answer, but did not file a Notice of Appearance.

The Court therefore ORDERS Respondent to file a Notice of Appearance with the Court within three weeks from the issuance of this order.

III. ELECTRONIC FILING

The Court invited the parties to register for its pilot electronic filing program through which they would electronically file all filings in this case and accept electronic service of case-related documents from OCAHO and the opposing party. The Court has now received both parties’ e-filing registration forms. The Court will encrypt any decisions or orders sent electronically that contain personally identifiable information, such as names, email addresses, home addresses, and telephone numbers. OCAHO has instructed the parties how to access these encrypted files. *See* <http://go.usa.gov/ccUXR>. Therefore,

IT IS SO ORDERED that the parties shall electronically file all filings in this case in accord with the program instructions provided to them, unless otherwise permitted by the Court or its designee.

IV. PREHEARING CONFERENCE

The Court's common practice is to schedule new matters for an initial prehearing conference, where the Court would hear from the parties as to their discovery needs and any limitations, as well as discussing scheduling matters, in advance of entering a scheduling and discovery order. In light of the parties' physical distance from the Court, and the practical difficulties in scheduling a prehearing conference at a time which is convenient to all parties and the Court, the undersigned is inclined to dispense with the initial prehearing conference and rely on the parties' written prehearing submissions. However, the parties may advise in writing, by no later than January 8, 2024, as to whether they would like to be heard at an initial prehearing conference, and whether there are other matters which they would like to raise with the Court.

SO ORDERED.

Dated and entered on December 20, 2023.

Honorable John A Henderson
Administrative Law Judge