

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. 2023A00060
JLG BUSINESS VENTURES, INC.,)	
D/B/A RECIO AUTO SALES,)	
)	
Respondent.)	
_____)	

Appearances: Ricardo A. Cuellar, Esq., for Complainant
Jose Luis Gonzalez, pro se, for Respondent

ORDER TO SHOW CAUSE

I. PROCEDURAL HISTORY

On May 15, 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, JLG Business Ventures, Inc., doing business as Recio Auto Sales, failed to prepare and/or present Forms I-9 for four individuals and failed to ensure proper completion of Forms I-9 for eighteen individuals, all in violation of 8 U.S.C. § 1324a. The complaint reflects that Complainant served Respondent with a Notice of Intent to Fine (NIF) on July 30, 2019, Compl. ¶ 3, Ex. A, and Respondent, through its President Jose Luis Gonzalez,¹ made a timely request for a hearing on July 30, 2019. *Id.* ¶ 4, Ex. B.

¹ Should Respondent retain counsel in this matter, its counsel shall file a notice of appearance in accordance with 28 C.F.R. § 68.33(f).

On May 22, 2023, OCAHO's Chief Administrative Hearing Officer (CAHO) served Respondent via United States certified mail 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).² The CAHO informed Respondent that these proceedings would be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings located at 28 C.F.R. part 68 (2023)³ and applicable case law. NOCA ¶ 1. Links to OCAHO's rules and its Practice Manual⁴ were provided to Respondent, along with contact information for OCAHO. *Id.* at ¶ 2. The CAHO directed Respondent to answer the complaint within thirty days in accordance with 28 C.F.R. § 68.9(a). *Id.* at ¶ 4. The CAHO cautioned Respondent that its failure to file an answer could lead the Court to enter a judgment by default and any and all appropriate relief pursuant to 28 C.F.R. § 68.9(b). *Id.*

As is its standard practice, OCAHO requested a tracking number for the Complaint package and proof of service in the form of a United States Postal Service certified mail domestic return receipt (PS Form 3811). The Court did not receive a U.S. Postal Service return receipt confirming the delivery of the Complaint package to Respondent, but the U.S. Postal Service's certified mail tracking service indicated that the Complaint package was delivered on May 27, 2023. As service was perfected

² OCAHO's rules require Complainant to identify "the party or parties to be served by the Office of the Chief Administrative Hearing Officer with notice of the complaint pursuant to § 68.3." 28 C.F.R. § 68.7(b)(5). After receiving this information, OCAHO will serve the complaint via delivery, personal service, or mail. *Id.* § 68.3(a)(1)-(3). Whichever method is chosen, "[s]ervice of [the] complaint . . . is complete upon receipt by [the] addressee." *Id.* § 68.3(b). Here, Complainant asked OCAHO to serve the complaint on Respondent at an address in Laredo, Texas. Compl. 1; 28 C.F.R. § 68.7.

³ OCAHO's Rules of Practice and Procedure for Administrative Hearings are available on 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>.

⁴ The OCAHO Practice Manual, which is part of the Executive Office for Immigration Review's Policy Manual, provides an outline of the procedures and rules applicable to cases before OCAHO. It is likewise available on the United States Department of Justice's website. See <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

on May 27, 2023, Respondent's answer was due no later than June 26, 2023. *See* 28 C.F.R. §§ 68.3(b), 68.9(a). To date, Respondent has not filed an answer.

On July 18, 2023, Complainant moved the Court to enter a default judgment against Respondent. Mot. Default J. 2. Complainant requested that the Court enter a default pursuant due to Complainant's failure to plead or otherwise defend within thirty days of the receipt of the complaint as required by 28 C.F.R. § 68.9(a). Respondent did not file a response to Complainant's motion as provided for under OCAHO's rules. *See* 28 C.F.R. § 68.11(b).

II. DISCUSSION AND ANALYSIS

OCAHO's Rules of Practice and Procedure for Administrative Hearings permit a respondent thirty days to file an answer after being served with a complaint. *See* 28 C.F.R. § 68.9(a). Service of a complaint may be effectuated by "mailing [the complaint] to the last known address of such individual, partner, officer, or attorney or representative of record." *Id.* § 68.3(a)(3). Here, the Court began the thirty-day clock on May 27, 2023, being the date when OCAHO perfected service of the complaint on Respondent. *See id.* § 68.3(b) ("Service of complaint . . . is complete upon receipt by addressee."). As such, Respondent's answer was due no later than June 26, 2023. *See id.* § 68.9(a).

Despite the CAHO informing Respondent of the thirty-day deadline to file an answer to the complaint, no answer has been filed. *See* NOCA, ¶ 4. The CAHO likewise warned Respondent that if it failed to file a timely answer, the Court might deem it to have waived its right to appear and contest the allegations of the complaint, and that a judgment by default and other appropriate relief might follow. *Id.* (citing 28 C.F.R. § 68.9(b)). "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).⁵

⁵ 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,"

Complainant now has filed a Motion for Default Judgment, arguing that Respondent's failure to file a timely answer constitutes a waiver of its right to appear and contest the allegations of the complaint pursuant to 28 C.F.R. § 68.9(b). Mot. Default J. 2. Complainant requests that the Court enter a judgment for Complainant and order Respondent to pay the fine amount in the NIF, namely, \$41,822. *Id.*; Compl., Ex. A.

It has long been OCAHO's practice to issue an order to show cause before entering a default. See *United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444 (Vacation by the Chief Admin. Hr'g Officer of the A.L.J.'s Order Den. Default J.) (7/14/89). In *Shine Auto Service*, the Acting CAHO explained:

Respondent must justify [in its response to the order to show cause] its failure to respond in a timely manner. Based on the Respondent's reply, the Administrative Law Judge shall determine whether the respondent has met the threshold for good cause. If the Administrative Law Judge determines that the Respondent possessed the requisite good cause for failing to file a timely answer, then the Administrative Law Judge may allow the Respondent to file a late answer.

Id. at 445-46. This Court follows that practice in this case. Accordingly, it holds Complainant's Motion for Default Judgment in abeyance.

Respondent shall file a response to this Order in which it must provide facts sufficient to show good cause for its failure to file a timely answer to the complaint. The Court further orders Respondent to file an answer to the complaint simultaneously with the filing of its response showing good cause. Respondent's answer must comport with 28 C.F.R. § 68.9. Failure to file an answer may constitute a waiver of Respondent's right to appear and contest the allegations of the complaint. *Id.* § 68.9(b). Default may follow. *Id.*

Upon receipt of Respondent's filings, the Court will determine if Respondent has demonstrated the requisite good cause for failing to file a timely answer to the Complaint and will decide whether to allow its untimely answer.

the LexisNexis database "OCAHO," and on the United States Department of Justice's website: <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

The Court puts Respondent on notice that, if it fails to respond to the Court's orders, the Court may find that it has abandoned its request for a hearing and dismiss it. 28 C.F.R. § 68.37(b)(1). *See, e.g., United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023) (finding that the respondent abandoned its request for a hearing when it failed to respond to the court's orders). "A final order of dismissal based on abandonment is analogous to entry of a default judgment under the Federal Rules of Civil Procedure." *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)).

III. ORDERS

IT IS SO ORDERED that, within twenty days of the date of this Order, Respondent, JLG Business Ventures, Inc., doing business as Recio Auto Sales, shall file a response with the Court in which it must provide facts sufficient to show good cause for its failure to timely answer the complaint in this case. In this filing, Respondent shall confirm 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 twenty 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.

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 this Order to Show Cause, the Court may 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