

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

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2024A00027
)	
A&D MAINTENANCE LEASING AND)	
REPAIRS, INC.,)	
Respondent.)	
)	

Appearances: John G. Pope, Esq., for Complainant
Saul Zabell, Esq., for Respondent

AMENDED ORDER ON REQUEST FOR HEARING AND ANSWER

The Court issued an Order on Request for Hearing and Answer in the above-captioned case on August 29, 2024. This Order amends that order to correct a typographical error in referring to the parties.¹

I. BACKGROUND

This case arises under the employer sanctions provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. On December 27, 2023, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement (DHS or ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, A&D Maintenance Leasing and Repairs Inc., violated 8 U.S.C. § 1324a(a)(1)(B). Complainant attached as Exhibit A to the Complaint a copy of the Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act (NIF or ICE Form I-763), with attachments, which was served on Respondent's counsel on January 31, 2019. Complainant did not include a copy of the request for a hearing before OCAHO.

On March 19, 2024, Respondent filed a Motion to Dismiss and accompanying Memorandum of Law in Support of Respondent's Motion to Dismiss, moving to dismiss the Complaint, arguing that no violation occurred and that the claims are barred by the statute of

¹ The original order also stated that a General Litigation Order would be forthcoming. The parties should note that the General Litigation Order was issued on September 4, 2024.

limitations. *See generally* Resp. Memo. Law Support Resp. Mot. Dismiss. Complainant filed an opposition on April 29, 2024.

On April 30, 2024, the Court issued an Order of Dismissal. Because Complainant did not attach a request for hearing to the Complaint, and no such document was included in the record, the Court found that the “Complaint does not meet the regulatory requirements in 28 C.F.R. § 68.7(c) and is facially deficient.” Order Dismissal 2. Therefore, the Court dismissed the Complaint without prejudice, and denied Respondent’s Motion to Dismiss as moot. *Id.* at 2–3. As an aside, the Court noted that Respondent had not filed an answer to the Complaint, and that the filing of a motion to dismiss did not toll the deadline to do so. *Id.* at 2 n.2.

On May 23, 2024, the Chief Administrative Hearing Officer (CAHO) issued an Order Modifying the Administrative Law Judge’s Order of Dismissal and Remanding the Case for Further Proceedings (Remand Order). United States v. A&D Maint. Leasing & Repairs, Inc., 19 OCAHO no. 1568a (2024).² The CAHO determined that the Complainant’s violation of 28 C.F.R. § 68.7(c) could not support a sua sponte dismissal of the complaint without notice and an opportunity to respond. *Id.* at 16. The CAHO vacated the Order of Dismissal in its entirety (aside from footnote 1 allowing for substitution of counsel) and remanded the case for further proceedings consistent with the CAHO’s order. *Id.*

On June 3, 2024, Respondent filed a motion requesting leave to file an answer to the Complaint out of time. Respondent requests leave to file its Answer to the Complaint out of time, citing confusion as to whether the filing of a motion to dismiss tolls the deadline to file an answer under OCAHO’s Rules of Practice and Procedure for Administrative Hearings.

On July 17, 2024, Complainant filed a Motion to Schedule a Conference. Complainant requests a conference to discuss the issues in this case and a path forward, and attaches a letter from Respondent dated February 5, 2019, requesting a hearing before an Administrative Law Judge. Mot. Schedule Conf. Ex. B.³

² 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: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

³ Complainant also writes that it did not receive the CAHO’s May 3, 2024, Notification of Administrative Review until May 29, 2024, and did not receive the CAHO’s May 23, 2024, decision until May 31, 2024. To address these mail delays, the Court encourages the parties to consider registering to participate in OCAHO’s Electronic Filing Pilot Program. The Court invited the parties to participate in this program by letter dated July 18, 2024, and more information is available on OCAHO’s website at <https://www.justice.gov/eoir/ocaho-filing>.

II. REQUEST FOR HEARING

As the Court explained in its April 30, 2024 Order of Dismissal, Complainant did not include a copy of Respondent’s request for hearing with its Complaint, as required by 28 C.F.R. § 68.7(c).⁴ The CAHO explained in the May 23, 2024 Order that failure to comply with 28 C.F.R. § 68.7(c) was not a sufficient legal basis to warrant sua sponte dismissal of the Complaint in this instance given the non-jurisdictional nature of the requirement, Respondent’s waiver of a defense on this basis, and the lack of prejudice to Respondent. *See A&D Maint. Leasing & Repairs, Inc.*, 19 OCAHO no. 1568a, at 12. Even if it were, the CAHO held that the Court should have provided notice and an opportunity to respond to the parties before doing so. *Id.* at 16.

However, as the CAHO noted, OCAHO ALJs have previously required the filing of Notices of Intent to Fine or attachments thereto which were omitted from a complaint in cases arising under 8 U.S.C. § 1324a, citing compliance with 28 C.F.R. § 68.7(c). *Id.* at 14 (citing *United States v. Fresco Produce, Inc.*, 19 OCAHO no. 1530, 1 (2024) (“While Complainant stated in the complaint that it served Respondent with a [NIF] . . . , it did not attach a copy of the NIF to the complaint. . . . The Court ordered Complainant to file a copy of the NIF with proof of service on the Respondent”); *United States v. PJ’s of Texas, Inc.*, 18 OCAHO no. 1524a, 4 (2024) (noting that the ALJ directed the complainant to file “a copy of the complete NIF that it served on the Respondent . . . , including attachment(s),” which was evidently not included with the original complaint)).

Given that Complainant has now attached a copy of Respondent’s request for a hearing as Exhibit B to its Motion to Schedule a Conference, the Court finds that the requirements of 28 C.F.R. § 67.7(c) are met, and that the record is clear as to Respondent’s desire to challenge the allegations in the NIF in this forum.

III. LATE ANSWER

Turning to Respondent’s request to file its answer out of time, under the OCAHO Rules of Practice and Procedure, a respondent must file an answer to the complaint within 30 days after service. 28 C.F.R. § 68.9(a). Failure to file an answer “within the time provided may be deemed to constitute a waiver of [Respondent’s] right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.” *Id.* § 68.9(b).

A party that does not answer a complaint within the time specified is in default, whether or not that fact is officially noted. *See United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015). Therefore, before a late answer may be accepted, default must be excused. *Id.* Even so, OCAHO generally disfavors default judgment, “and doubts regarding entry of default should be resolved in favor of a decision on the merits of the case.” *United States v. Steidle Lawn & Landscaping, LLC*, 17 OCAHO no. 1457a, 2 (2022) (citations omitted).

⁴ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

Here, the Court finds that Respondent has shown good cause for its late-filed answer. *See Sapre v. Dave S.B. Hoon-John Wayne Cancer Inst.*, 12 OCAHO no. 1305, 4–5 (2017) (discussing factors a judge should consider in determining whether “good cause” exists for vacating an entry of default). Respondent explains that its failure to timely file its answer was due to confusion regarding Federal Rule of Civil Procedure 12(a)(4) (which provides that the filing of a motion to dismiss tolls the deadline for filing an answer), and 28 C.F.R. § 68.10(a) (which provide that the filing of a motion to dismiss does not toll the answer deadline). The Court has accepted late-filed answers in similar circumstances, as Respondent notes. *See Lowden v. Ann Arbor Elec. JATC*, 18 OCAHO no. 1490a, 2 (2024); *Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410a, 2 (2022) (finding good cause where Respondent “admitted to its error on a procedural time requirement—that a motion to dismiss would toll the filing of an answer,” and filed an answer quickly after the Court’s order to show cause). Moreover, through its subsequent participation in the case, Respondent has demonstrated its intention to continue to challenge the allegations against it, and its failure to timely file its answer does not appear to have been willful. *See United States v. Sanchez*, 13 OCAHO no. 1331, 2 (2019) (noting that OCAHO generally discourages default judgment solely on failure to meet procedural time requirements).

Therefore, the Court GRANTS Respondent’s motion to file its answer out of time, and ACCEPTS Respondent’s Answer, attached as Exhibit A to its motion.

IV. REQUEST FOR CONFERENCE

Complainant requests a conference to discuss the status of this case. Now that the Court has accepted Respondent’s answer, it will schedule an initial prehearing conference with the parties to discuss (among other things) setting a case schedule in this matter; as such, Complainant’s request is DENIED AS MOOT. *See* 28 C.F.R. § 68.5(a). The Court will issue a separate General Litigation Order with a date and time for an initial telephonic prehearing conference and guidance regarding these proceedings.

SO ORDERED.

Dated and entered September 10, 2024.

John A. Henderson
Administrative Law Judge