

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

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| QUN WANG, |) | |
| Complainant, |) | |
| |) | |
| v. |) | 8 U.S.C. § 1324b Proceeding |
| |) | OCAHO Case No. 2024B00110 |
| |) | |
| DROPBOX, INC., |) | |
| Respondent. |) | |
| |) | |

ORDER DIRECTING COMPLAINANT TO PROVIDE WORKING ADDRESS

I. BACKGROUND

This case arises under the unfair immigration-related employment practices provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Complainant, Qun Wang, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Dropbox, Inc., on June 4, 2024, alleging that Respondent, Dropbox Inc., discriminated against him on the basis of citizenship status. Compl. 6.

On June 11, 2024, OCAHO sent Respondent a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA) and a copy of the Complaint (collectively the Complaint package), via certified U.S. mail, to the address indicated in the Complaint. 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 NOCA 1-4.

The U.S. Postal Service website indicated that the Complaint package was delivered to a “front desk/reception/mail room” on June 17, 2024. The Court did not receive a return receipt confirming service upon Respondent. To date, Respondent has not filed an answer.²

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

² On August 20, 2024, Complainant also filed a Motion for Default Judgment and a Motion to Modify Complaint and Submit Evidence. The Court will adjudicate these in a future order.

II. LEGAL STANDARDS AND DISCUSSION

A unique aspect of OCAHO's Rules of Practice and Procedure is that "[s]ervice of [the] complaint" and "notice of hearing . . . shall be made" by the Court. 28 C.F.R. § 68.3(a). The Court may accomplish service by one of three methods allowed by OCAHO's Rules. 28 C.F.R. § 68.3(a)(1)-(3). Relevant to this case, OCAHO may effect service "[b]y mailing to the last known address of such individual, partner, officer, or attorney or representative of record." 28 C.F.R. § 68.3(a)(3). For OCAHO to effect service, it is important that complainants abide by the requirement that the complaint "be accompanied by a statement identifying the party or parties to be served . . ." 28 C.F.R. § 68.7(b)(5). Under the OCAHO Rules of Practice and Procedure, to contest a material fact alleged in the complaint, a respondent must file an answer. 28 C.F.R. § 68.9(c). A respondent's 30-day clock to file an answer begin upon service of the complaint. 28 C.F.R. § 68.9(a).

In the case presently before the Court, Complainant only provided a general address for the Respondent, without identifying a registered agent, officer, or director for the company. Because no individual was identified and the address provided was a general business address, the "manner of service was not reasonably calculated to advise Respondent of a matter pending before it (e.g., to the mailroom of a multinational company, rather than directed to the attention of an officer, director, or registered agent of the company)." Shater v. Shell Oil Co., 18 OCAHO no. 1504, 3 (2023). The Court therefore finds that service was not perfected per OCAHO's regulatory requirements.

Under OCAHO's Rules of Practice and Procedure, when OCAHO "encounters difficulty with perfecting service," it "may direct that a party execute service of process." 28 C.F.R. § 68.3(c). OCAHO's Rules do not specify the methods by which the party may execute service when OCAHO directs the party to do so. Because the "Federal Rules of Civil Procedure may be used" by the Court "as a general guideline in any situation not provided for or controlled by [OCAHO's] rule," the Court turns to Federal Rule 4(h) to clarify. 28 C.F.R. § 68.1. Rule 4(h), which addresses service on a corporation, partnership, or association, includes many of the same methods of service provided for by 28 C.F.R. § 68.3, including "delivering a copy of . . . the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process . . ." Fed. R. Civ. P. 4(h)(1)(B). Service may also be effected by any method identified in Rule 4(e)(1), which allows any method allowed by the state law of the state in which the district court is located or in which service is effected. Fed. R. Civ. P. 4(h)(1)(A), 4(e)(1).

The Complaint asserts the Respondent is located in California. Compl. 4.³ California's Code of Civil Procedure provides for several potential methods to serve a corporation. *See Cal.*

³ The Court uses the PDF pagination for the Complaint, rather than pagination provided at the bottom of the Complaint form.

Civ. Proc. Code § 416.10. California’s Code of Civil Procedure allows service “by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another [allowed] manner” Cal. Civ. Proc. Code § 415.50.

The Complainant’s Complaint was deficient for failing to identify an officer, director, or registered agent for the Respondent business. 28 C.F.R. §§ 68.7(b)(2), 68.7(b)(5), 68.3(a)-(b). The Court now offers Complainant options for both resolving the deficiency. Complainant may submit a supplement to the Complaint, identifying an officer, director, or registered agent, or stating that the address previously identified for the Respondent is incorrect and providing a working mailing address for Respondent. Alternatively, Complainant may request that the Court permit Complainant to serve Respondent. If the Complainant requests to effect service, service must be performed in a manner that satisfies Federal Rule of Civil Procedure 4(h). Finally, Complainant may instead request the Court permit an alternative form of service. Any submission must describe the proposed alternative form of service in detail, and offer an affidavit and argument demonstrating that no other form of service identified in the Federal Rules of Civil Procedure or OCAHO’s Rules of Practice and Procedure would reasonably appraise Respondent of the pending action. *See* Cal. Civ. Proc. Code § 415.50.

In this forum, “[w]hen a complaint cannot be served, the case may be dismissed without prejudice.” US Tech Workers et al. v. Cast 21, 19 OCAHO no. 1571, 2 (2024) (citing Ramirez v. Sam’s Club, 18 OCAHO no. 1525, 2 (2024)); *see also* Zajradhara v. Blossom Corp., 18 OCAHO no. 1523, 2 (2024), United States v. DJ’s Transport, 18 OCAHO no. 1488, 5 (2023) (“Should service not be accomplished, the Court may consider dismissal sua sponte.”).

The Court now puts Complainant on notice that if Complainant takes no action within 60 days of the date of this order, or offers no explanation for failing to effect service during the timeframe, the Court will dismiss the complaint without prejudice.

SO ORDERED

Dated and entered on August 21, 2024.

John A. Henderson
Administrative Law Judge