

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

October 19, 2022

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 2022A00049
	)	
STEIDLE LAWN & LANDSCAPE, LLC,	)	
Respondent.	)	
_____	)	

Appearances: Matthew Brunkhorst, Esq., for Complainant  
Eric J. Wulff, Esq., for Respondent

ORDER DISCHARGING ORDER TO SHOW CAUSE  
AND FOR PREHEARING STATEMENTS

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 8, 2022, alleging that Respondent, Steidle Lawn & Landscape, LLC, failed to present Forms I-9 for thirty-three individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B).

On June 14, 2022, this office sent a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), a copy of the complaint, the Notice of Intent to Fine, and Respondent's request for a hearing to Respondent via certified U.S. mail. The NOCA directed that an answer was to be filed within thirty (30) days of receipt of the complaint, that failure to answer could lead to default, and that proceedings would be governed by Department of Justice regulations.<sup>1</sup> Respondent's answer was due no later than July 21, 2022, *see* 28 C.F.R. §§ 68.3(a), 68.9(a). Respondent did not file an answer by that date.

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<sup>1</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

## II. ORDER TO SHOW CAUSE

On August 25, 2022, the undersigned 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 twenty-one (21) days of the date of the Order to Show Cause. On September 15, 2022, Respondent sent the Court an answer comporting with the requirements of 28 C.F.R. § 68.9(c) by fax and by first-class mail, but did not include an explanation for why it failed to timely file the answer.

Accordingly, the Court issued an Order on September 30, 2022, ordering Respondent to file a response with the Court by October 14, 2022, in which it must provide facts sufficient to show good cause for its failure to timely file an answer to the complaint in this case.

Respondent filed a response by facsimile on October 11, 2022 (R’s Reply). Respondent wrote that when it received the NOCA, it “expected to be personally delivered a copy from a sheriff deputy or process server,” as Respondent had “only been involved in State Court where personal service . . . is needed, before a Respondent becomes obligated to respond.” R’s Reply 2. Respondent also believed that its attorney would be served, but the email copy of the NOCA sent to its attorney was directed to an inactive part of his email account, and medical and personal issues at the law firm contributed to Respondent’s attorney not being aware of the NOCA. *Id.* Once Respondent’s counsel became aware of the NOCA, Respondent “immediately cooperated with Counsel to prepare an answer and Counsel prioritized the filing of the Answer above all other matters pending other courts and otherwise.” *Id.* at 2–3. Respondent further wrote that it “did not have the intention of thwarting the legal process” and “[i]t is not the intent or desire for the Respondent to abandon the request for an Administrative Hearing which was timely filed.” *Id.* at 3.

A final decision of abandonment equates to a judgment by default. Such judgments are generally disfavored, and doubts regarding entry of default should be resolved in favor of a decision on the merits of the case. *See United States v. Vilarado Vineyards*, 11 OCAHO no. 1248, 5 (2015); *United States v. Jabil Circuit*, 10 OCAHO no. 1146, 3 (2012).<sup>2</sup> The Court finds that Respondent has

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<sup>2</sup> 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>.

demonstrated good cause for its failure to file a timely answer. Respondent demonstrated that it is intending to pursue the case and did not willfully avoid complying with the Order to Show Cause, and Complainant is not prejudiced by the delay. Further, Complainant has not sought a default judgment.

As such, the Order to Show Cause is discharged, and the Court allows Respondent's late filed Answer.

### III. RULES GOVERNING PROCEEDINGS AND OCAHO PRACTICE MANUAL

Proceedings in this case will generally be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings, found at 8 C.F.R. pt. 68 (2022). All filings in this matter should be accompanied by a certification of service that comports with § 68.6(a). OCAHO's Practice Manual may be found within the Executive Office of Immigration Review's (EOIR) Policy Manual on the United States Department of Justice website.<sup>3</sup> The Court directs the parties' attention to two chapters located within the manual.

#### A. OCAHO's Electronic Filing Pilot Program

Chapter 3.7 of the Practice Manual describes OCAHO's Electronic Filing Pilot Program.<sup>4</sup> Through the program, the parties can electronically file all filings in this case and accept electronic service of case-related documents from OCAHO and the opposing party. The Court invites the parties to register for this program by completing the participant registration and certification forms, available on the United States Department of Justice website and enclosed here, and returning them to OCAHO.<sup>5</sup> Both parties must elect to become e-filers or the parties will continue to file case documents by the means set forth in 28 C.F.R. pt. 68 for the duration of the case.

#### B. OCAHO's Settlement Officer Program<sup>6</sup>

Chapter 4.7 of the Practice Manual describes OCAHO's Settlement Officer Program. This is a voluntary program through which the parties use a settlement officer to mediate settlement

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<sup>3</sup> <https://justice.gov/eoir/reference-materials/ocaho>.

<sup>4</sup> <https://www.justice.gov/eoir/ocaho-filing>.

<sup>5</sup> <https://www.justice.gov/sites/default/files/pages/attachments/2015/11/30/registration-form-and-certification.pdf>.

<sup>6</sup> <https://www.justice.gov/eoir/eoir-policy-manual/iv/4/7>.

negotiations as a means of alternative dispute resolution. The presiding Administrative Law Judge (ALJ) may refer a case to a settlement officer upon receive of written confirmation of consent to referral from each party and a determination by the ALJ that the case is appropriate for referral. The parties may request that the Court refer the case to a settlement officer at any time while proceedings are pending, up to thirty days before the hearing date scheduled in the matter.

#### IV. PREHEARING STATEMENTS

Pursuant to 28 C.F.R. § 68.12, the parties are further advised that the government, no later than **November 8, 2022**, and the company, no later than **November 21, 2022**, should file with this office and serve on each other, their respective written prehearing statements.

The parties' prehearing statements shall contain the following sections:

1. Issues: A statement of the perceived issues.
2. Proposed Stipulations: Such proposed stipulations and admissions of fact as will eliminate the necessity of taking evidence with respect to allegations as to which there are no genuine or substantial disputes.
3. Preliminary Witness List: Names and addresses of witnesses whose testimony the party intends to present.
4. Summary of Testimony: A brief summary of the testimony expected of each witness.
5. Preliminary Exhibit List: A list of the party's documentary evidence, including affidavits and other exhibits to be offered in evidence, specifying the number of pages in each. The parties will identify each exhibit with the designation to be used at the hearing. Complainant will identify its exhibits with the letter C and sequential numbers, e.g., C-1, C-2, and C-3, while Respondent will identify its exhibits as R-1, R-2, R-3, and so forth. The parties shall sequentially number the pages of any multipage exhibit. At this time, each party shall file an exhibit list, but not the exhibits themselves.
6. Discovery: A brief statement outlining what, if any, discovery the party thinks will be needed to prepare for the hearing. The parties may begin their discovery at any time. Discovery will be governed by 28 C.F.R. §§ 68.18–25.
7. Time Required: The party's best estimate as to the time it needs to present its case.
8. Other Matters: A brief statement describing any other matter relevant to the case.

The Court will set a telephonic prehearing conference as soon as practicable after the parties file prehearing statements. The conference will address questions and develop the scheduling order. The Court will contact the parties to determine an appropriate date.

#### V. INITIAL DISCLOSURES

The filing party shall, simultaneously with its prehearing statement, make its initial disclosure of documentary evidence to the other party without waiting for a formal discovery request to be made. Copies of any exhibits listed in Section IV, Number 5 are to be disclosed to the other party, not to this Court. If any exhibit on a party's preliminary exhibit list does not yet exist, the party must disclose that exhibit to the other party within two weeks of its creation.

Mandatory initial disclosures shall include the names and contact information for persons other than those individuals listed under Section IV, Number 3 who have knowledge or discoverable information about the matters at issue, unless the information would be solely for impeachment.

Supplementation of initial disclosures is required in the same manner as would be required pursuant to 28 C.F.R. § 68.18(d).

SO ORDERED.

Dated and entered on October 19, 2022.

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Honorable Jean C. King  
Chief Administrative Law Judge