

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

November 21, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022A00051
)	
JS DESIGN AND BUILD, LLC)	
D/B/A SPECTRA KITCHEN AND BATH,)	
Respondent.)	
_____)	

NOTICE AND ORDER TO SHOW CAUSE

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer on July 11, 2022. Complainant alleges that Respondent, JS Design and Build, LLC, d/b/a Spectra Kitchen and Bath, failed to properly complete Forms I-9 for forty-two individuals, in violation of § 1324a(a)(1)(B).¹ On August 23, 2022, Respondent filed an answer and notices of appearance.

On August 31, 2022, the Court issued an Order for Prehearing Statements, directing that Complainant's prehearing statement was due on September 30, 2022, and Respondent's prehearing statement was due on October 31, 2022. On September 28, 2022, the Court received Complainant's prehearing statement. To date, the Court has not received Respondent's prehearing statement.

¹ The heading for Count II in the complaint and Notice of Intent to Fine (NIF) is "Failed to prepare and/or present the [Form I-9]," but Paragraphs B and C below this heading allege failure to properly complete Section 1 of the Form I-9 and/or failure to properly complete Section 2 or 3 of the Form I-9. Compl. 5; *id.* Ex. A, 5. In its answer, Respondent admits the allegations in Paragraph B and denies the allegations of Paragraph C of Count II, but without noting the discrepancy between the heading and these allegations. Ans. 3. While Complainant's prehearing statement contains a proposed stipulation and admission of fact that "Respondent failed to prepare or present the [Form I-9] for the twenty-three individuals listed in Count II of the [NIF], it does not appear that Complainant alleged failure to prepare or present." C's PHS 3.

OCAHO precedent holds that the Court may order a party to show good cause for its failure to file a timely answer or to respond to an order requesting submission of prehearing statements. *See, e.g., United States v. Popo's Bar and Rest.*, 15 OCAHO no. 1398, 1 (2021); *United States v. Ferrantino Fuel Corp.*, 13 OCAHO no. 1335, 1 (2019).

As such, the Court orders Respondent to file its prehearing statement, as well as a response showing good cause for its failure to timely file a prehearing statement, within twenty days of this Notice and Order to Show Cause. The Court will then determine if Respondent possessed the requisite good cause for its untimely prehearing statement, and will decide whether to allow the late filing.

The Court puts Respondent on notice of the potential consequences should it fail to respond to this Notice and Order to Show Cause. Under OCAHO's Rules of Practice and Procedure for Administrative Hearings, the Court may dismiss "a complaint or a request for hearing" upon its abandonment by the party who filed it. 28 C.F.R. § 68.37(b). A party shall be deemed to have abandoned its complaint or a request for a hearing if it "fails to respond to orders issued by the Administrative Law Judge." 28 C.F.R. § 68.37(b)(1); *see also United States v. Sal's Lounge*, 15 OCAHO no. 1394b, 3 (2022); *United States v. AMA Repiping, LLC*, 15 OCAHO no. 1391, 2 (2021); *United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777–78 (1994). Further, Federal Rule of Civil Procedure 55, a permissible guidance in OCAHO proceedings, *see* 28 C.F.R. § 68.1, instructs that a Court shall issue a default if a party against whom a judgment for relief is sought has failed to "otherwise defend." Fed. R. Civ. P. 55.

IT IS SO ORDERED that, within twenty (20) days of the issuance of this Order, Respondent JS Design and Build, LLC, shall file with the Court a prehearing statement as well as a response in which it shows good cause for filing an untimely prehearing statement, in accordance with this Court's August 31, 2022 Order for Prehearing Statements.

SO ORDERED.

Dated and entered on November 21, 2022.

Honorable Jean C. King
Chief Administrative Law Judge