

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. 2020A00075
	)	
BLISS HOSPITALITY LLC D/B/A	)	
BAYMONT INN & SUITES,	)	
Respondent.	)	
	)	

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Appearances: Jack D. Spencer, Esq., for Complainant  
Brijesh Patel, pro se, for Respondent<sup>1</sup>

ORDER

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 19, 2020. Complainant alleges that Respondent, Bliss Hospitality LLC d/b/a Baymont Inn & Suites, failed to prepare and/or present Forms I-9 for three individuals, and failed to ensure proper completion of Forms I-9 for four individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B). On January 7, 2021, Complainant filed its Motion for Summary Decision. On February 10, 2021, Respondent filed its “Response to Motion” (hereinafter, Opposition).

In its Opposition, Respondent presents multiple arguments related to its financial status. *See* Opp’n 2. Respondent asserts that revenue was low when Brijesh Patel acquired the hotel in 2019. *Id.* According to Respondent, the owner spent the first year of business bringing the hotel up to franchise standards with renovations, and the business was struggling even before ICE’s inspection. *Id.* Respondent states that its 2019 revenue was 15 percent lower than the previous year due to the cost of renovations. *Id.* In its second year of business, Respondent states that the

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<sup>1</sup> The Court notes that Brijesh Patel is the franchise owner of the hotel Bliss Hospitality LLC d/b/a Baymont Inn & Suites (i.e., Respondent). Opp’n 2–3. Patel requested the hearing before this office and has appeared on behalf of Respondent throughout these proceedings.

hotel industry experienced a significant decline due to the COVID-19 pandemic. *Id.* Respondent claims that as a result, its revenue declined another 25 percent in 2020. *Id.*

The Court construes Respondent's Opposition as arguing an inability to pay the proposed fine, a nonstatutory factor that the Court may consider in penalty assessment. *See* Zajradhara v. GIG Partners, 14 OCAHO no. 1363c, 3 (2021)<sup>2</sup> (citations omitted) (noting that pro se motions may be construed liberally); United States v. Kobe Sapporo Japanese, Inc., 10 OCAHO no. 1204, 6 (2013) (citation omitted) (acknowledging that the court may weigh a respondent's ability to pay the proposed penalty, even though it is not a statutory factor). This interpretation is consistent with statements in Respondent's Answer and Prehearing Statement. *See* Answer ¶ 2 (positing that Respondent is incapable of paying the fine as a "struggling business"); *see also* Prehr's Stmt ¶ 2 ("My business being in the hospitality industry was one of the hardest hit in [2020].").

However, Respondent did not substantiate its arguments with evidence. Admissible evidence in support of this claim might include affidavits, business records demonstrating profits and losses, balance sheets, or any other information supporting the claims of financial distress. *See* United States v. R&SL, Inc., 13 OCAHO no. 1333b, 32 (2022) ("[A]rgument is not evidence[.]"). "A party seeking consideration of a non-statutory factor, such as ability to pay the penalty, bears the burden of proof in showing that the factor should be considered as a matter of equity, and that the facts support a favorable exercise of discretion." United States v. Pegasus Family Rest., Inc., 12 OCAHO no. 1293, 10 (2016) (citations omitted).

Mindful of Respondent's pro se status, the Court permits Respondent to submit supplemental evidence on its inability to pay the proposed fine. *See generally* 28 C.F.R. § 68.40.<sup>3</sup>

Respondent's supplemental evidence is due 14 days from the issuance of this order. If Complainant wishes to respond, it may do so by 14 days thereafter. The Court emphasizes that

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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 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 in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

<sup>3</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

submissions must be limited to the issue of Respondent's present inability to pay the proposed fine.

SO ORDERED.

Dated and entered on December 2, 2022.

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Honorable John A. Henderson  
Administrative Law Judge