

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

UNITED STATES OF AMERICA,)
)
Complainant,)
) 8 U.S.C. § 1324a Proceeding
v.)
) OCAHO Case No. 2024A00054
A-1 ROOFING & CONSTRUCTION, CO.,)
)
Respondent.)
)

Appearances: Hazel L. Gauthier, Esq., for Complainant¹
Felipe Martinez, corporate representative for Respondent²

ORDER DIRECTING COMPLAINANT TO SERVE COMPLAINT

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on February 23, 2024, against Respondent, A-1 Roofing & Construction, Co. Complainant alleges that Respondent failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for two individuals and failed to timely prepare the Form I-9 for two individuals, all in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶ 3. Complainant attached to the complaint the

¹ As provided in 28 C.F.R. § 68.33(f), “a government attorney filing a complaint pursuant to section 274A, 274B, or 274C of the INA” need not file a notice of appearance.

² Mr. Felipe Martinez signed Respondent’s request for hearing, however, if he intends to represent Respondent in this matter, he must file a notice of appearance in accordance with 28 C.F.R. § 68.33(f).

Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it served on Respondent through Mr. Martinez on July 6, 2022, seeking a fine of \$8,524 for the alleged violations, and a request for a hearing before OCAHO signed by Mr. Martinez on behalf of Respondent on July 13, 2022 (“request for hearing”). *Id.* Exs. A–B. Complainant also attached to the complaint a request that OCAHO serve the complaint on Respondent through Felipe Martinez at an address in El Paso, Texas. *Id.* at 6 (citing 28 C.F.R. § 68.7). Complainant did not identify Mr. Martinez’s relationship to the Respondent business.

On February 28, 2024, using the United States Postal Service (USPS) certified mail, the Chief Administrative Hearing Officer (CAHO) mailed the complaint, the NIF, the request for hearing, and a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA) (together, the “Complaint package”) to Mr. Martinez at the El Paso, Texas, address for the Respondent business listed in the complaint’s attachment. In the NOCA, the CAHO informed Respondent that an answer “must be filed within thirty (30) days after receipt of the attached complaint” and that “[i]f the Respondent fails to file an answer within the time provided, the Respondent may be deemed to have waived his/her right to appear and contest the allegations of the complaint, and the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief.” Notice Case Assign. ¶ 4 (citing 28 C.F.R. §§ 68.3(b), 68.9).

The USPS certified mail tracking service reflected that on March 4, 2024, Respondent’s address was “vacant,” but also that the Complaint package was “delivered, left with individual.” OCAHO did not receive a USPS Domestic Return Receipt Form (PS Form 3811) for the Complaint package mailed to Respondent.

II. REGULATORY AND LEGAL STANDARDS

OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024), generally govern these proceedings.³ OCAHO’s Rules explain that the filing of a complaint commences an adjudicatory proceeding before OCAHO. 28 C.F.R. § 68.2. However, “the formal stage of a case actually does not begin (the time deadlines do not start) until the OCAHO serves the

³ OCAHO’s Rules are available on the United States Department of Justice’s website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

original complaint on the respondent employer.” *United States v. Arnold*, 1 OCAHO no. 119, 781, 785 (1989) (internal citations omitted).⁴

OCAHO’s Rules require the complainant to identify “the party or parties to be served by the Office of the Chief Administrative Hearing Officer with notice of the complaint pursuant to [28 C.F.R.] § 68.3.” 28 C.F.R. § 68.7(b)(5). Complainant must include this information in a statement accompanying the complaint. *Id.* After receiving this information, OCAHO will serve the complaint through one of the following methods:

- (1) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney or representative of record of a party;
- (2) By leaving a copy at the principal office, place of business, or residence of a party; or
- (3) By mailing to the last known address of such individual, partner, officer, or attorney or representative of record.

Id. §§ 68.3(a)(1–3). Whichever method is chosen, “[s]ervice of [the] complaint . . . is complete upon receipt by [the] addressee.” *Id.* § 68.3(b).

III. DISCUSSION

⁴ 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 after 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,” the LexisNexis database “OCAHO,” or on OCAHO’s homepage on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Pursuant to 28 C.F.R. § 68.3(a)(3), the CAHO mailed the Complaint package to Respondent at the address in El Paso, Texas, that Complainant provided in the attachment to the complaint. The USPS certified mail tracking service provided contradictory delivery information, namely, that Respondent's address was vacant on March 4, 2025, but also that the Complaint package was "delivered, left with individual" at that location on that date. Further, OCAHO did not receive a USPS Domestic Return Receipt Form confirming receipt of the Complaint package by the addressee. The information before the Court therefore creates a question as to whether service of the Complainant package was effectuated in accordance with OCAHO's Rules. *See* 28 C.F.R. § 68.3(b) ("Service of complaint . . . is complete upon receipt by addressee."). Respondent has neither contacted OCAHO nor filed an answer to the complaint as required under 28 C.F.R. § 68.9(a).

When OCAHO "encounters difficulty with perfecting service," the Court "may direct that a party execute service of process." *United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431, 4 (2022) (quoting 28 C.F.R. § 68.3 and then citing *United States v. Dolan*, 2 OCAHO no. 388, 727, 728 (1991)). In this case, the record is ambiguous as to service of the Complaint package on Respondent at the address provided by Complainant. The Court now orders Complainant to personally serve the Complaint package on Respondent in a manner that complies with 28 C.F.R. § 68.3(a)(1). *See, e.g.*, *United States v. DJ's Transp.*, 18 OCAHO no. 1488, 4–5 (2023) (ordering DHS to personally serve the respondent with the complaint, the NOCA, the NIF, and the request for a hearing).

Once Complainant accomplishes personal service of the Complaint package on Respondent, it shall file proof of personal service with the Court.⁵ In that filing, Complainant shall attest to the personal service, the name and title of the individual who served the complaint and accompanying documents, the name, title, and relationship to Respondent of the individual served, the date upon which personal service was effectuated, and that service was perfected in accordance with 28 C.F.R. § 68.3(b). *See, e.g.*, *Vector Xpress, Inc.*, 16 OCAHO no. 1431, at 4 (directing the complainant to "attest that service has been perfected in accordance with 28 C.F.R.

⁵ Respondent has thirty days after service of the complaint to file an answer with the Court. 28 C.F.R. § 68.9(a). Failure to file an answer "may be deemed to constitute a waiver of [Respondent's] right to appear and contest the allegations of the complaint" and the Court may enter a default judgment against Respondent as to both liability and penalties. *Id.* § 68.9(b). Should Respondent fail to respond to this Court's orders, the Court also may conclude that Respondent has abandoned its request for a hearing and dismiss the complaint. *Id.* § 68.37(b).

§ 68.3(b) and describe how it perfected service"); *see also Dolan*, 2 OCAHO no. 388, at 728 (ordering the complainant "to make personal service of the complaint and notice of hearing . . . on Respondent by delivering the pleadings at his principal office, place of business or residence or otherwise" and to file a "notice of service including name of party serving the pleadings, date served, and method used"). Complainant shall attach an affidavit or declaration from the individual(s) or agent(s) who served the Complaint package on Respondent and any supporting documentation. *See, e.g., United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431a, 2–3 (2022) (describing the complainant's perfection of service and subsequent filing of an affidavit and state business record identifying the individual who was served as the registered agent and director of the respondent business). The Court further directs Complainant to confirm in its filing whether the El Paso, Texas, address listed in the attachment to the complaint is the best address for Respondent or, if it is not, to provide OCAHO with a functional U.S. mailing address for Respondent to which the Court may direct orders in this matter. *See Vector Xpress, Inc.*, 16 OCAHO no. 1431a, at 3.

OCAHO's Rules of Practice and Procedure for Administrative Hearings "do not permit Complainant or this Judge to waive service of the complaint." *United States v. Iniguez-Casillas*, 6 OCAHO no. 870, 510, 513 (1996). If Complainant is unable to serve the Complaint package on Respondent, it shall submit a filing detailing its service efforts. If it cannot effectuate service, Complainant may move to dismiss the complaint without prejudice, or the Court may dismiss the complaint *sua sponte*. *See, e.g., United States v. Rios-Villatoro*, 14 OCAHO no. 1364, 1 (2020) (dismissing complaint *sua sponte* after the complainant was unable to perfect service of the complaint); *see also United States v. Sea Dart Trading Co.*, 2 OCAHO no. 336, 304, 305 (1991) (noting that if service is not effectuated, dismissal may be considered *sua sponte*).

IV. ORDERS

IT IS SO ORDERED that, within thirty days of the date of this Order, Complainant shall personally serve Respondent with the complaint, Notice of Case Assignment for Complaint Alleging Unlawful Employment, the Notice of Intent to Fine, and Respondent's request for a hearing, all in a manner that complies with 28 C.F.R. § 68.3(a)(1).

IT IS FURTHER ORDERED that, within five days of effectuating service, Complainant shall file with the Court proof of personal service on Respondent of the complaint, Notice of Case Assignment for Complaint Alleging Unlawful Employment, the Notice of Intent to Fine, and Respondent's request for a hearing. In its filing,

Complainant shall attest to the personal service, the name and title of the individual who served the complaint and accompanying documents, the name, title, and relationship to Respondent of the individual served, the date upon which personal service was effectuated, and that service was perfected in accordance with 28 C.F.R. § 68.3(b).

IT IS FURTHER ORDERED that Complainant shall confirm in its filing whether the El Paso, Texas, address listed in the attachment to the complaint is Respondent's best address or, if it is not, provide OCAHO with a functional U.S. mailing address for Respondent to which the Court may direct orders in this matter.

IT IS FURTHER ORDERED that, should Complainant be unable to effectuate personal service on Respondent, it shall notify the Court in writing of its efforts to serve Respondent no later than thirty-five days from the date of this Order and may move to dismiss the complaint without prejudice.

SO ORDERED.

Dated and entered on April 10, 2025.

Honorable Carol A. Bell
Administrative Law Judge