

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. 2023A00064
MENDOZA MAINTENANCE	)	
GROUP, INC.,	)	
	)	
Respondent.	)	
	)	

Appearances: Ricardo A. Cuellar, Esq., for Complainant
Javier Mendoza, pro se, Respondent

ORDER ACCEPTING UNTIMELY ANSWER AND RESPONSE AND
DISCHARGING ORDER TO SHOW CAUSE

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. 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 6, 2023. Complainant alleges that Respondent, Mendoza Maintenance Group, Inc., failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) for nine individuals and failed to ensure proper completion of Forms I-9 for seventeen individuals, all in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶ 6.

Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) that it personally served on Respondent through Mr. Javier Mendoza, Respondent's president, on July 24, 2019, seeking a fine of \$46,954.70 for the alleged violations. *Id.*, Ex. A. Also attached to the complaint was Respondent's signed request for a hearing (request for hearing). *Id.*, Ex. B.

Complainant asked OCAHO to serve the complaint on Respondent through Mr. Javier Mendoza at an address in Laredo, Texas. Compl. Attach. (citing 28 C.F.R. § 68.7.).¹ On June 12, 2023, the Chief Administrative Hearing Officer (CAHO) served Respondent via United States certified mail with the complaint, a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the NIF, and Respondent's request for hearing (collectively "the Complaint package"). Through the NOCA, the CAHO informed Respondent that these proceedings would be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings and applicable case law. Notice Case Assignment ¶ 1. The CAHO included links to OCAHO's Rules and Practice Manual,² along with contact information for OCAHO. *Id.* ¶ 2. Pursuant to 28 C.F.R. § 68.9(a), the CAHO directed Respondent to answer the complaint within thirty days and informed Respondent that failure to timely answer the complaint could lead to judgment by default or other appropriate relief. *Id.* ¶ 4 (citing 28 C.F.R. § 68.9(b)).

The United States Postal Service's certified mail tracking service indicated that the Complaint package was delivered to Respondent's address on June 17, 2023. Respondent's answer therefore was due no later than July 17, 2023. *See* 28 C.F.R. §§ 68.3(b), 68.9(a). On July 11, 2023, Respondent filed a Motion to Dismiss on Grounds of Violations of Procedures (Motion to Dismiss), but it failed to file an answer to the complaint by the regulatory deadline.

The Court issued an Order to Show Cause on January 11, 2024. *See United States v. Mendoza Maint. Grp., Inc.*, 18 OCAHO no. 1516 (2024).³ The Court

¹ OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024), 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>. OCAHO's Rules require Complainant to identify "the party or parties to be served by [OCAHO] with notice of the complaint pursuant to § 68.3." 28 C.F.R. § 68.7(b)(5). After receiving this information, OCAHO will serve the complaint via delivery, personal service, or mail. *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).

² The OCAHO Practice Manual, which is part of the Executive Office for Immigration Review's Policy Manual, provides an outline of the procedures and rules applicable to cases before OCAHO. It is likewise available on the U.S. Department of Justice's website. *See* <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

³ 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

explained that Respondent's Motion to Dismiss did not excuse or toll the regulatory deadline for filing an answer. *Id.* at 3–4 (citing, inter alia, 28 C.F.R. § 68.10(a)). The Court ordered Respondent to file by January 31, 2024: (a) an answer comporting with the requirements of 28 C.F.R. § 68.9 and (b) a filing setting forth facts sufficient to show good cause for its failure to timely answer the complaint. *Id.* at 4.

On January 25, 2024, Respondent, through Mr. Jaime Mendoza,⁴ filed an Answer to Complaint (Answer), an Amended Motion to Dismiss on Grounds of Violations of Procedures (Amended Motion to Dismiss), and a filing entitled "Responses for failure to answer complaint in timely manner" (Response). Due to filing deficiencies, OCAHO staff rejected these filings on the date of receipt. Respondent remedied the deficiencies, and on March 5, 2024, it re-filed its Answer, Amended Motion to Dismiss, and Response.

II. LEGAL STANDARDS

A. Default Judgments

OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that a respondent's failure to file an answer may "constitute a waiver of his or her right to appear and contest the allegations of the complaint." 28 C.F.R. § 68.9(b). The Court then "may enter a judgment by default." *Id.* Nevertheless, OCAHO courts, like federal courts, generally disfavor default judgments. *See, e.g., United States v. R & M Fashion Inc.*, 6 OCAHO no. 826, 46, 47–48 (1995). For instance, the United States Court of Appeals for the Fifth Circuit has held that "[d]efault judgments are a drastic remedy, not favored by the Federal Rules and resorted to by the courts only in extreme situations." *Sun Bank of Ocala v. Pelican*

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 the United States Department of Justice's website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

⁴ Mr. Jaime Mendoza has identified himself as Mr. Javier Mendoza's brother.

Homestead & Sav. Ass'n, 874 F.2d 274, 276 (5th Cir. 1989) (citations omitted).⁵ It is preferable that cases are resolved on their merits, rather than through default judgments. See 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2681 (4th ed. 2021). As such, OCAHO Administrative Law Judges (ALJs) generally will enter a default judgment only when “the inaction or unresponsiveness of a particular party is unexcusable and the inaction has prejudiced the opposing party.” *D’Amico, Jr. v. Erie Cmty. Coll.*, 7 OCAHO no. 927, 61, 63 (1997).

B. Good Cause

When a respondent fails to timely answer a complaint, the Court may issue an order to show cause as to why a default judgment should not be entered and ask the respondent to justify its failure to file its answer on time. *United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444, 445–46 (1989) (CAHO order). In deciding whether to accept a late-filed answer, the Court reviews the respondent’s response to its order and determines whether “the [r]espondent possessed the requisite good cause for failing to file a timely answer[.]” *Id.* at 446.

To determine whether good cause exists in this case, the Court will consider the following non-exhaustive factors: “(1) whether the failure to act was willful; (2) whether setting the [order to show cause] aside would prejudice the adversary; and (3) whether a meritorious claim has been presented.” *Effjohn Int’l Cruise Holdings, Inc. v. A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003); see also *Kanti v. Patel*, 8 OCAHO no. 1007, 166, 168 (1998) (applying factors). The Court need not consider all these factors and may consider other factors. See *In re Dierschke*, 975 F.2d 181, 183–84 (5th Cir. 1992). For example, the Court may consider whether the public interest was implicated, there was a significant financial loss to the party in default, and if the party acted expeditiously to correct the default. *Id.* at 184. As the Fifth Circuit Court of Appeals has explained, “[w]hatever factors are employed, the imperative is that they be regarded simply as a means of identifying circumstances which warrant the finding of ‘good cause’ to set aside a default.” *Id.*

III. DISCUSSION AND ANALYSIS

A. Respondent’s Untimely Submissions

As a threshold matter, the Court must determine whether to accept Respondent’s Answer and Response, given that they were filed after the deadline

⁵ The Fifth Circuit Court of Appeals is the appropriate circuit for review of this matter. See 28 C.F.R. § 68.56. As such, its precedent provides instructive guidance.

the Court set in the Order to Show Cause. The Court ordered Respondent to file by January 31, 2024, an answer to the complaint and a response setting forth facts demonstrating good cause for the failure to timely answer the complaint. While Respondent attempted to file its Answer and Response on January 25, 2024, OCAHO staff rejected the filings due to filing deficiencies, and the Answer and Response were not successfully filed until March 5, 2024.

“The Court has discretion to accept late filings.” *United States v. Chilitto Pikin LLC*, 18 OCAHO no. 1486a, 5 (2024) (citing *Villegas-Valensuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996)); *see also* 28 C.F.R. § 68.11(b) (“[T]he [OCAHO] ALJ maintains discretion to accept pleadings within a time period he may fix.”). The Court now exercises its discretion and accepts Respondent’s filings. In exercising this discretion, the Court has considered that Respondent attempted to file the Answer and Response before the Court’s deadline, but OCAHO staff rejected the filings due to their deficiencies. The Court weighs heavily the fact that Respondent then corrected the deficiencies and re-filed its Answer and Response. Although the corrected Answer and Response were filed thirty-four days after the deadline the Court set in its Order to Show Cause, the length of the delay is mitigated by Respondent’s pro se status, the serious medical issues of its president which have apparently affected the operations of the family-run business, and its efforts, although unsuccessful, to hire legal counsel in this matter. Resp. 1–2. *See United States v. De Jesus Corrales-Hernandez*, 17 OCAHO no. 1454, 4 (2022) (exercising discretion favorably to accept an answer and response to order to show cause filed seven days after the deadline, considering, inter alia, the short time elapsed and the respondent’s pro se status).

B. Discharge of Order to Show Cause

Next, the Court exercises its discretion and considers whether good cause exists to discharge the Order to Show Cause against Respondent. Given the information before the Court, including Respondent’s Response, the Court finds that the *Effjohn Int’l Cruise Holdings, Inc.*, factors weigh in favor of finding good cause for the late filings and discharging the Order to Show Cause.

First, the record does not reflect that Respondent willfully failed to timely answer the complaint. *See Effjohn Int’l Cruise Holdings, Inc.*, 346 F.3d at 563. Respondent submitted a filing within thirty days of service of the Complaint package, however, it was a Motion to Dismiss, rather than an answer. Respondent’s actions reflect its intention to defend itself in this litigation, albeit it acted without an understanding of OCAHO’s Rules of Practice and Procedure for Administrative Hearings. *See* 28 C.F.R. § 68.10(a) (explaining that “[t]he filing of a motion to dismiss does not affect the time period for filing an answer.”). Further, Respondent has presented to the Court additional factual circumstances that may have

contributed to its failure to timely answer the complaint, including Mr. Mendoza's serious medical issues, the effect on the day-to-day operation of the business, and Respondent's inability thus far to hire a lawyer to represent it in these proceedings. Resp. 1–2.

Second, the record does not reflect that Complainant will be prejudiced if the Court discharges its Order to Show Cause. *See Effjohn Int'l Cruise Holdings, Inc.*, 346 F.3d at 563. Although Respondent filed its Answer on March 5, 2024—232 days after the original regulatory deadline—OCAHO ALJs “have made it clear that ‘[m]ere delay alone does not constitute prejudice without any resulting loss of evidence, increased difficulties in discovery, or increased opportunities for fraud and collusion.’” *United States v. MRD Landscaping & Maint. Corp.*, 15 OCAHO no. 1407c, 8 (2022) (citing *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 3 (2004), and then citing *Wright & Miller, supra*, § 2699 (discussing types of prejudice and costs to the non-defaulting party)). While the delay here is significant, Complainant has not identified any prejudice it would suffer, and the delay will not affect the time available to the parties for discovery.

Third, Respondent raises several defenses to the complaint's allegations in its Answer. *See Effjohn Int'l Cruise Holdings, Inc.*, 346 F.3d at 563. Respondent generally denies the allegations in the complaint, asserts that it is a small business, and that it relied on statements by ICE that it did not need to fill out Forms I-9. Answer 1–2. “The purpose of looking at this factor is to ‘determine whether there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by default.’” *MRD Landscaping & Maint. Corp.*, 15 OCAHO no. 1407c, at 9 (quoting *Sinha v. Infosys*, 14 OCAHO no. 1373a, 5 (2021)). Given the defenses Respondent raises in its Answer, which pertain both to Respondent's liability and the appropriateness of Complainant's fine assessment, the Court finds that this factor weighs in favor of discharging the Order to Show Cause, given that the Answer raises defenses sufficient to “give the factfinder some determination to make.” *Kanti*, 8 OCAHO no. 1007, at 171 (citations omitted).

Therefore, after weighing the appropriate factors, considering OCAHO's strong preference for resolving cases on their merits, and having accepted Respondent's Answer and Response as filings in this case, the Court finds that good cause exists for Respondent's failure to timely file an answer to the complaint and discharges the Order to Show Cause.

IV. ORDERS

IT IS SO ORDERED that the untimely Response for Failure to Answer Complaint in Timely Manner and Answer to Complaint filed by Respondent, Mendoza Maintenance Group, Inc., are ACCEPTED as filings in this matter.

IT IS FURTHER ORDERED that, having found that good cause exists, the Order to Show Cause dated January 11, 2024, against Respondent, Mendoza Maintenance Group, Inc., is DISCHARGED.

SO ORDERED.

Dated and entered on June 18, 2025.

Honorable Carol A. Bell
Administrative Law Judge