

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. 2024A00055
BELLA VISTA CUSTOM HOMES, INC.,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Hazel L. Gauthier, Esq., for Complainant  
Edgar E. Garcia, pro se Respondent

ORDER DIRECTING COMPLAINANT TO SERVE COMPLAINT

I. BACKGROUND AND PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On February 23, 2024, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). The complaint alleges that Respondent, Bella Vista Custom Homes, Inc., violated 8 U.S.C. § 1324a(a)(1)(B) when it failed to ensure that twelve individuals properly completed section 1 and/or it failed to properly complete section 2 or 3 of the Employment Eligibility Verification Form (Form I-9). Compl. ¶ 3.

Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it personally served on Respondent through Mr. Edgar Garcia on February 8, 2022, seeking a fine of \$17,532 for the alleged violations. Compl. Ex. A. Also attached to the complaint was an email to DHS dated March 2, 2022, from Edgar E. Garcia, on behalf of Respondent, in which Mr. Garcia stated that he “would like to file an appeal” of the NIF.<sup>1</sup> *Id.*, Ex. B. Finally, Complainant attached to the

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<sup>1</sup> The Court understands this email to be Respondent’s request for a hearing before an Administrative Law Judge (ALJ) (“request for hearing”). *See* 8 U.S.C. § 1324a(e)(3)(A).

complaint a request that OCAHO serve the complaint on Respondent, through Mr. Edgar Garcia, at an address in El Paso, Texas. *Id.*, Attach. (citing 28 C.F.R. § 68.7).<sup>2</sup> Complainant did not identify Mr. Garcia’s relationship to the Respondent business.

On February 28, 2024, using the United States Postal Service’s (USPS) certified mail service, OCAHO’s Chief Administrative Hearing Officer (CAHO) sent Respondent—via Mr. Edgar Garcia—a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the complaint, the NIF, and his request for hearing (together, the “Complaint package”). Through the NOCA, the CAHO directed Respondent to answer the complaint within thirty days in accordance with 28 C.F.R. § 68.9(a). Notice of Case Assignment ¶ 4. Per its standard practice, OCAHO requested a tracking number for the Complaint package and proof of service through a USPS Domestic Return Receipt Form (PS Form 3811) (“return receipt”). Although the USPS certified mail tracking information for the Complaint package indicated that the Complaint package was “delivered, left with individual” on March 4, 2024, OCAHO did not receive a signed and dated return receipt for the Complaint package.

Because it was unclear whether Mr. Garcia had been served with the Complaint package, OCAHO mailed Respondent via the USPS certified mail another copy of the Complaint package on April 30, 2024. The Complaint package was returned to OCAHO with a label reading “Return to Sender – Insufficient Address – Unable to Forward.”

To date, OCAHO has not received a return receipt for either Complaint package or any communication from Respondent.

## II. REGULATORY AND LEGAL STANDARDS

Under OCAHO’s Rules of Practice and Procedure for Administrative Hearings, the complaint is “the formal document initiating an adjudicatory proceeding[.]” 28 C.F.R. § 68.2. Nevertheless, “the formal stage of a case actually does not begin (the time deadlines do not start) until the OCAHO serves the original complaint on the respondent employer.” *United States v. Arnold*, 1 OCAHO no. 119, 781, 785 (1989) (citing 28 C.F.R. § 68.3(b), (d)).<sup>3</sup>

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<sup>2</sup> 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. 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>.

<sup>3</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

A complainant is required to attach to the complaint a “statement identifying the party or parties to be served by the Office of the Chief Administrative Hearing Officer with notice of the complaint pursuant to § 68.3.” 28 C.F.R. § 68.7(b)(5). After a complaint has been filed, OCAHO will serve the complaint on the respondent 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). “Service of complaint and notice of hearing is complete upon receipt by addressee.” *Id.* § 68.3(b).

### III. DISCUSSION

Here, Complainant provided OCAHO with an address for Respondent in El Paso, Texas, and identified Mr. Edgar Garcia as the individual to whom the Complaint package should be addressed. The mailing address matched the NIF’s address for Respondent and was the same address at which DHS personally served the NIF on Respondent through Mr. Garcia. *See* Compl. Ex. A. Although the USPS certified mail tracking information reflected that the Complaint package was delivered to that address on March 4, 2024, it is unclear who received it. OCAHO did not receive a signed return receipt for the delivery, and the USPS certified mail tracking information did not identify the recipient by name. As such, it remains unclear whether the “addressee,” Mr. Garcia, received the Complaint package. Further, the copy of the Complaint package mailed to Respondent on April 30, 2024, was returned to OCAHO as being undeliverable. The Court therefore finds that service of the Complaint on Respondent

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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>.

has not be effectuated in accordance with OCAHO's Rules of Practice and Procedure for Administrative Hearings. *See* 28 C.F.R. § 68.3(b) ("Service of complaint . . . is complete upon receipt by addressee."); *see also id.* § 68.3(a)(1)–(3) (specifying permitted methods of service).

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). OCAHO's Rules do permit an ALJ to "direct that a party execute service of process" when OCAHO "encounters difficulty with perfecting service[.]" 28 C.F.R. § 68.3(c); *see United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431, 4 (2022). When an ALJ orders a party to perfect service in an OCAHO case arising under 8 U.S.C. § 1324a, it frequently requires the complainant to execute service of process "by personally serving the complaint, the NOCA, the NIF, and the request for hearing on Respondent in a manner that complies with 28 C.F.R. § 68.3(a)(1)." *United States v. DJ's Transp.*, 18 OCAHO no. 1488, 4 (2023); *see also United States v. Oil Patch Petroleum, Inc.*, 18 OCAHO no. 1508, 4 (2023); *United States v. Commander Produce, LLC*, 16 OCAHO no. 1428, 1–2 (2022); *Vector Xpress, Inc.*, 16 OCAHO no. 1431, at 4.

Because OCAHO has been unable to perfect service on Respondent in this case, the Court now follows that practice and orders Complainant to execute service of process by personally serving the complaint, the NIF, the request for hearing, and the NOCA on Respondent in a manner complying with 28 C.F.R. § 68.3(a)(1). *See United States v. Dolan*, 2 OCAHO no. 388, 727, 728 (1991) (ordering complainant to make personal service of the complaint and notice of hearing); *see also DJ's Transp.*, 18 OCAHO no. 1488, at 4 (accord).

After Complainant perfects service on Respondent, it shall file proof of personal service of the Complaint package with the Court. Complainant or its agent must attest in its submission to the personal service and that service was perfected in accordance with 28 C.F.R. § 68.3(a)(1), (b). Complainant also must include the name and title of the individual who served the complaint and accompanying documents, the name and title of the individual served, that individual's relationship to Respondent, and the date upon which personal service was effectuated. *See United States v. Sea Dart Trading Co.*, 2 OCAHO no. 336, 304, 305 (1991) (requiring the complainant to effectuate service of the complaint and notice of hearing and file "an explanatory pleading" advising the Court of the manner in which it served the respondent); *see also Dolan*, 2 OCAHO no. 388, at 728 (ordering the complainant to include in its filing the name of the party serving the pleadings, the date served, and the method used). Complainant may attest to service through an affidavit or declaration from its agent(s) and supporting documentation relevant to service. *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 also directs Complainant to provide OCAHO with a functional U.S. mailing address for Respondent. *See id.* at 3.

If Complainant is unable to perfect service, Complainant shall provide the Court with a filing describing its efforts to serve the complaint on Respondent and, if desired, it may move to dismiss the complaint without prejudice. *See Vector Xpress, Inc.*, 16 OCAHO no. 1431, at 4–5.

If service cannot be perfected on Respondent, the Court may dismiss the complaint sua sponte. *See United States v. Rios-Villatoro*, 14 OCAHO no. 1364, 1–2 (2020) (dismissing case sua sponte where the complainant was unable to perfect service of the complaint); *see also Sea Dart Trading Co.*, 2 OCAHO no. 336, at 305 (noting that if service is not effectuated, dismissal may be considered sua sponte). Dismissal due to an inability to perfect service is usually without prejudice. *See, e.g., US Tech Workers v. Cast 21*, 19 OCAHO no. 1571, 2 (2024) (“Complainant is further advised that when a complaint cannot be served, the case may be dismissed without prejudice.”). Complainant may then seek to “refile the complaint if it can locate the Respondent so that service may be effectuated in accordance with the [OCAHO’s] Rules of Practice and Procedure.” *Iniguez-Casillas*, 6 OCAHO no. 870, at 514.

#### IV. ORDERS

IT IS SO ORDERED that, within thirty days of the date of this Order, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, shall personally serve Respondent, Bella Vista Custom Homes, Inc., with the complaint, the Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act, Respondent’s request for hearing, and the Notice of Case Assignment for Complaint Alleging Unlawful Employment, 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, the Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act, Respondent’s request for hearing, and the Notice of Case Assignment for Complaint Alleging Unlawful Employment. In its filing, Complainant shall attest to the personal service and that service was perfected in accordance with 28 C.F.R. § 68.3(a)(1), (b). Complainant also shall provide to the Court the name and title of the individual who served the complaint and accompanying documents, the name and title of the individual served, that individual’s relationship to Respondent, and the date upon which personal service was effectuated.

IT IS FURTHER ORDERED that Complainant shall provide a functional United States 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 July 8, 2025.

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Honorable Carol A. Bell  
Administrative Law Judge