

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 Complainant
A-1 Roofing & Construction, Co., Respondent

ORDER ON SERVICE OF COMPLAINT AND
NOTICE AND ORDER TO SHOW CAUSE REGARDING ANSWER

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. On February 23, 2024, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, A-1 Roofing & Construction, Co. The complaint 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 Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it personally served on Respondent through Mr. Felipe Martinez on July 6, 2022, seeking a fine of \$8,524 for the alleged violations, and a request for a hearing before an Administrative Law Judge (ALJ) signed by Mr. Martinez on behalf of Respondent on July 13, 2022 (“request for hearing”).¹ Compl. Exs. A–B.

¹ Mr. Felipe Martinez signed Respondent’s request for hearing, however, OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions

Complainant also attached to the complaint a request that OCAHO serve the complaint on Respondent through Mr. Martinez at an address in El Paso, Texas.² *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.

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.

Consequently, on April 10, 2025, the Court issued an Order Directing Complainant to Serve Complaint. *United States v. A-1 Roofing & Constr., Co.*, 21 OCAHO no. 1657 (2025).³ Because “the record [was] ambiguous as to service of the Complaint package on Respondent at the address provided by Complainant,” the Court ordered Complainant “to personally serve the Complaint package on Respondent in a manner that complies with 28 C.F.R. § 68.3(a)(1).” *Id.* at 4 (citing *United States v. DJ’s*

contained in 28 C.F.R. part 68 (2024), require that he file a notice of appearance if he intends to represent Respondent in this case. *See* 28 C.F.R. § 68.33(f). Likewise, should Respondent retain counsel in this matter, its counsel shall file a notice of appearance. *See id.* OCAHO’s Rules, which generally govern these proceedings, 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>.

² This address matches the address on the request for hearing and the address at which DHS personally served the NIF on Respondent.

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 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>.

Transp., 18 OCAHO no. 1488, 4–5 (2023)). Additionally, the Court ordered Complainant to “file proof of personal service with the Court” once service was accomplished. *Id.* This proof was to contain an attestation of the personal service, the name and title of the individual who effected service, the name, title, and relationship to Respondent of the individual served, the date service was made, and that it was made in accordance with 28 C.F.R. § 68.3(b). *Id.* (citing *United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431, 4 (2022); *United States v. Dolan*, 2 OCAHO no. 388, 727, 728 (1991)). Finally, the Court ordered 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” *Id.* at 5 (citing *United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431a, 3 (2022)). The Court directed Complainant to personally serve Respondent with the Complaint package no later than thirty days from the date of the Order and required it to file its submission with the Court five days after service. *Id.*

On May 14, 2025, Complainant filed a Notification of Service of Process, along with the cover letter dated May 13, 2025, in which it explained that it had to resubmit the filing “[d]ue to a clerical error” that resulted in the incorrect case number being used. Not. Serv. Process 6.⁴ Complainant explained that, “[i]t was not undersigned counsel’s intention not to comply with the court’s scheduling order.” *Id.* Complainant’s Notification of Service of Process affirmed that, on April 30, 2025, Complainant personally served the Complaint package on Respondent, through Mr. Felipe Martinez, at the El Paso, Texas, address listed on the attachment to the complaint. *Id.* at 1. According to Complainant, Mr. Martinez confirmed that the El Paso, Texas, address on file with the Court is Respondent’s correct mailing address. *Id.*

II. LEGAL STANDARDS AND DISCUSSION

A. Timeliness of Complainant’s Notification of Service of Process

Before the Court is Complainant’s Notification of Service of Process. Through this filing, Complainant attests to personally serving Respondent with the Complaint package on April 30, 2025. The Court first addresses the question of timeliness of the filing given Complainant’s acknowledgement that a clerical error resulted in a one-day filing delay, and its representation that it did not intend to fail to comply with the Court’s Order requiring it to file proof of service five days after service. Not. Serv. Process 6; see *A-1 Roofing & Constr., Co.*, 21 OCAHO no. 1657, at 5. Given that OCAHO’s Rules of Practice and Procedure for Administrative Hearings exclude weekends from the computation of time periods of seven days or less, see 28 C.F.R. § 68.8(a), and permit an additional five days to be added to the prescribed period for filings by mail, see *id.* § 68.8(b)(2), any delay here was slight. Further, Complainant

⁴ Pinpoint citations to Complainant’s Notification of Service of Process are to the page numbers of the PDF version of the Notification on file with the Court.

quickly corrected its filing's clerical deficiency, and the Court credits its representation that it sought to comply with the Court's filing deadline. Therefore, the Court now exercises its discretion pursuant to 28 C.F.R. § 68.11(b) and accepts Complainant's Notification of Service of Process as a filing in this case.

B. Service of the Complaint Package

The Court finds that Complainant has effectuated personal service of the complaint and accompanying materials on Respondent in accordance with the Court's Order dated April 10, 2025, and in a manner that complied with OCAHO's Rules of Practice and Procedure for Administrative Hearings. Specifically, Complainant complied with 28 C.F.R. § 68.3(a)(1) which provides that a complaint may be served 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[.]"

Here, as reflected in the sworn affidavit of the special agent with ICE's Homeland Security Investigations (HSI), Complainant served the complaint, the NOCA, the NIF, and Respondent's request for hearing on Respondent on April 30, 2025. Not. Serv. Process Ex. 1. Service was effectuated through Mr. Felipe Martinez, who was identified as Respondent's owner, at the El Paso, Texas, address for the business. *Id.* According to the HSI special agent, Mr. Martinez "kept his copy" of the Complaint package and signed and dated the certificate of service after he was served with the Complaint package. *Id.* The HSI special agent attached to his affidavit a copy of the certificate of service with the handprinted name "Felipe E. Martinez" and a corresponding signature. *Id.* The certificate of service also included a handwritten date of April 30, 2025, the special agent's handwritten name, and a signature next to the words "Served By" which appeared to be consistent with the special agent's signature on his affidavit. *Id.* OCAHO's Rules clearly state that service of a complaint is perfected "upon receipt by [the] addressee." 28 C.F.R. § 68.3(b). Therefore, personal service of the complaint in this matter was perfected on Respondent through its owner, Mr. Martinez, on April 30, 2025.

C. Answer to the Complaint

OCAHO's Rules of Practice and Procedure for Administrative Hearings afford a respondent thirty days to file an answer after being served with a complaint. 28 C.F.R. § 68.9(a). Given that Complainant effectuated personal service of the complaint on Respondent on April 30, 2025, Respondent's answer in this case was due no later than May 30, 2025. *See id.* OCAHO's CAHO communicated this thirty-day deadline to Respondent through the NOCA which was served along with the complaint. *See* Notice Case Assignment ¶ 4 (citing 28 C.F.R. §§ 68.3(b), 68.9). The CAHO also warned Respondent that its failure to file an answer may lead the Court to enter a judgment by default. *Id.* (citing 28 C.F.R. § 68.9(b)). To assist Respondent, the CAHO provided

Respondent with a link to OCAHO's Rules, its Practice Manual, and its contact information. *Id.* ¶ 2. Yet Respondent, who requested a hearing before this Court, has failed to file an answer to the complaint in this matter and has not communicated with OCAHO.

Section 68.9(b) of OCAHO's Rules provides that "[f]ailure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The [Court] may enter a judgment by default." Should the Court enter a default judgment, "the [respondent's] request for hearing is dismissed, AND judgment is entered for the complainant without a hearing." *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004).

Nevertheless, it is this Court's longstanding practice to issue an order to show cause before entering default judgment. *See United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444 (1989). A party who is subject to an order to show cause must file a response with the Court. In *Shine Auto Service*, the Acting CAHO explained that:

Respondent must justify [in its response to the order to show cause] its failure to respond in a timely manner. Based on the Respondent's reply, the [ALJ] shall determine whether the respondent has met the threshold for good cause. If the [ALJ] determines that the Respondent possessed the requisite good cause for failing to file a timely answer, then the [ALJ] may allow the Respondent to file a late answer.

Id. at 445–46. The Court follows that same practice in this case.

The Court now issues this Notice and Order to Show Cause. The Court orders Respondent to file a response to this Order in which it must proffer facts sufficient to show good cause for its failure to file a timely answer to the complaint. Additionally, the Court orders Respondent to file an answer to the complaint simultaneously with the filing of its response showing good cause. Respondent's answer must comport with 28 C.F.R. § 68.9. Both filings must be received by the Court no later than twenty days from the date of this Order. Upon receipt of Respondent's filings, the Court will determine whether Respondent has demonstrated the requisite good cause for failing to file a timely answer to the complaint and will decide whether to allow its untimely answer.

If Respondent fails to file an answer and a response, the Court may find that Respondent has waived its right to appear and contest the allegations of the complaint. 28 C.F.R. § 68.9(b). The Court may then enter a default judgment. *Id.*

If Respondent fails to respond to the Court's orders, the Court will find that it has abandoned its request for hearing and dismiss it pursuant to 28 C.F.R. § 68.37(b)(1). *See, e.g., United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023) (finding that the respondent abandoned its request for a hearing when it failed to respond to the ALJ's orders). "A final order of dismissal based on abandonment is analogous to entry of a default judgment under the Federal Rules of Civil Procedure." *United States v. Vilardo Vineyards*, 11 OCAHO no. 1248, 4 (2015). "Abandonment will result in DHS's NIF becoming the final order." *United States v. DJ's Trans.*, 18 OCAHO no. 1488a, 5 (2024).

III. ORDERS

IT IS ORDERED that, within twenty days of the date of this Order, Respondent, A-1 Roofing & Construction, Co., shall file a response with the Court in which it must provide facts sufficient to show good cause for its failure to timely answer the complaint in this case.

IT IS FURTHER ORDERED that, within twenty days of the date of this Order, Respondent shall file with the Court an answer to the complaint that comports with 28 C.F.R. § 68.9.

The Court puts Respondent on notice that its failure to file an answer and a response to this Order to Show Cause "may be deemed to constitute a waiver of his or her 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. 28 C.F.R. § 68.9(b). If Respondent fails to respond to the Court's orders, the Court shall conclude that Respondent has abandoned its request for a hearing and issue an order of dismissal. *Id.* § 68.37(b). The NIF will be rendered the final agency order.

SO ORDERED.

Dated and entered on July 15, 2025.

Honorable Carol A. Bell
Administrative Law Judge