

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. 2022A00035
VECTOR XPRESS, INC., d/b/a)	
VECTOR XPRESS, LLC,)	
)	
Respondent.)	
_____)	

Appearances: Martin Celis, Esq., for Complainant
Carlos Estrada, pro se, for Respondent

ORDER DIRECTING COMPLAINANT TO SERVE COMPLAINT

I. PROCEDURAL HISTORY

This case arises under the employment eligibility verification provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On March 9, 2022, 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) alleging that Respondent, Vector Xpress, Inc., doing business as Vector Xpress, LLC, failed to prepare or present Forms I-9 for sixteen individuals and failed to ensure the proper completion of Forms I-9 for eighteen individuals, all in violation of 8 U.S.C. § 1324a(a)(1)(B).

The complaint reflects that ICE served Respondent with a Notice of Intent to Fine (NIF) on January 22, 2020, Compl. ¶ 2, and Respondent, through Carlos Estrada, thereafter timely requested a hearing before OCAHO on February 7, 2020. *Id.* at Ex. B. In the request for a hearing, Mr. Estrada—who did not identify his relationship to Respondent—represented that “Vector Xpress [was] no longer in [o]peration[.]” *Id.* Complainant asked OCAHO to serve the complaint on Respondent, through Mr. Estrada, at two addresses in El Paso, Texas. *Id.* at 6 (28 C.F.R. § 68.7 Attach.).

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 (2022),¹ 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 original complaint on the respondent employer." *United States v. Arnold*, 1 OCAHO no. 119, 781, 785 (1989) (internal citations omitted).²

OCAHO's rules require 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 § 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

¹ OCAHO's rules are available on OCAHO's homepage on the United States Department of Justice's website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions#LawsandRegulations>.

² 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 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 on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

(3) By mailing to the last known address of such individual, partner, officer, or attorney or representative of record.

28 C.F.R. § 68.3(a)(1)-(3). Whichever method is chosen, “[s]ervice of [the] complaint . . . is complete upon receipt by [the] addressee.” 28 C.F.R. § 68.3(b).

III. DISCUSSION

Here, Complainant provided OCAHO with two addresses for Respondent and Mr. Estrada. One of the addresses is the address Respondent gave in its request for a hearing and the address listed for Respondent in the NIF (Address A).³ Compl. Exs. A, B. The other address for Respondent is found only in the statement attached to the complaint in accord with 28 C.F.R. § 68.7(b)(5) (Address B).

On March 18, 2022, using United States Postal Service (USPS) certified mail, OCAHO attempted to serve Respondent at Addresses A and B with the complaint, a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the NIF, and Respondent’s request for a hearing. As is its standard practice, OCAHO requested proof of signature in the form of a USPS certified mail receipt (PS Form 3800). The USPS also provided OCAHO with tracking codes for the mailings. To date, OCAHO has not received a return receipt for Address A. Rather, the USPS website’s certified mail tracking service indicates that OCAHO’s mailing to Address A is being returned as of March 24, 2022, “because the address was vacant or the business was no longer operating at the location and no further information was available.” This information appears to be consistent with Mr. Estrada’s representation in the request for hearing insofar as Respondent is no longer operating at that address. Compl. Ex. B. The Court therefore finds that OCAHO’s service of Respondent at Address A was not effective.

As for serving Respondent at Address B, the USPS website’s certified mail tracking service reflects that the complaint and accompanying materials were delivered to “the front desk, reception, or mail room” for Address B on March 24, 2022. Although OCAHO received a return receipt for Address B, the receipt lacks a signature, name, or date confirming receipt of OCAHO’s mailing by Respondent or

³ Although ICE listed Respondent’s address as Address A in the NIF, ICE served the NIF on Respondent’s accountant in person at ICE’s field office in El Paso, Texas. Compl. Ex. A.

“the individual party, partner of a party, officer or a corporate party, registered agent for service of process of a corporate party, or attorney or representative of record of a party.” 28 C.F.R. § 68.3(a)(1). Because OCAHO is unable to verify whether Respondent received the complaint at Address B, the Court finds that service has not been effectuated as required by OCAHO’s rules. *See* 28 C.F.R. § 68.3(b) (“Service of complaint . . . is complete upon receipt by addressee.”).

When OCAHO “encounters difficulty with perfecting service,” the Court “may direct that a party execute service of process.” 28 C.F.R. § 68.3(c); *see also United States v. Dolan*, 2 OCAHO no. 388, 727, 728 (1991) (ordering the government to make personal service of the complaint and notice of hearing after the respondent avoided service by refusing his mail). Here, OCAHO has been unable to perfect service on Respondent at either address provided by Complainant. This difficulty is not surprising given that more than two years has passed between Respondent’s request for a hearing on February 7, 2020, and ICE’s filing of the complaint before OCAHO on March 9, 2022. *See United States v. Iniguez-Casillas*, 6 OCAHO no. 870, 510, 511-13 (1996) (denying motion to dismiss hearing request based on abandonment where the complainant was unable to serve or locate the respondent who may have “assumed that INS did not intend to pursue the matter” where almost two years passed between the NIF and the filing of the complaint). Indeed, according to Mr. Estrada, the business was no longer in operation, presumably at Address A, back in February 2020. *See* Compl. Ex. B. This fact may account for ICE’s decision on January 22, 2020, to serve the NIF on Respondent’s accountant in person at ICE’s field office in El Paso, Texas, rather than at either Address A or B. *Id.* at Ex. A.

Given the difficulties with serving Respondent at the addresses provided to OCAHO, the Court directs Complainant to execute service of process by personally serving the complaint and accompanying materials on Respondent in a manner that complies with 28 C.F.R. § 68.3(a)(1). *See Dolan*, 2 OCAHO no. 388, at 728 (ordering the complainant to make personal service of the complaint and notice of hearing). Complainant shall attest that service has been perfected in accordance with 28 C.F.R. § 68.3(b) and describe how it perfected service. *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). The Court likewise directs Complainant to provide OCAHO with a functional United States mailing address for Respondent.

OCAHO's Rules of Practice and Procedure "do not permit Complainant or this Judge to waive service of the complaint." *Iniguez-Casillas*, 6 OCAHO no. 870, at 513. Should Complainant be unable to perfect service, it may move to dismiss the complaint or the Court may consider dismissal *sua sponte*. See *United States v. Rios-Villatoro*, 14 OCAHO no. 1364, 1 (2020) (dismissing case where complaint was returned to OCAHO from address labeled "Vacant" and the complainant was unable to serve it); 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*). In instances where service cannot be effectuated, OCAHO courts have dismissed the complaint without prejudice such that Complainant may "refile the complaint if it can locate the Respondent so that service may be effectuated in accordance with the Rules of Practice and Procedure." See, e.g., *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 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, Respondent shall attest to the personal service, 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, 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 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 May 18, 2022.

Honorable Carol A. Bell
Administrative Law Judge