

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

July 7, 2022

MARIA E. CONTRERAS,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2021B00055
)	
CAVCO INDUSTRIES, INC., D/B/A)	
FLEETWOOD HOMES,)	
Respondent.)	
_____)	

ORDER ON MOTION TO COMPEL

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Maria E. Contreras, filed a complaint, pro se, with the Office of the Chief Administrative Hearing Officer (OCAHO) on September 7, 2021, alleging that Respondent, Cavco Industries, Inc., d/b/a Fleetwood Homes (“Cavco”), violated 8 U.S.C. § 1324b. Respondent filed an answer to the complaint on October 27, 2021.

On February 3, 2022, the Court issued an Order Summarizing Prehearing Conference. The Court set the following case schedule: discovery closes and discovery motions are due on March 28, 2022; dispositive motions are due on April 27, 2022; responses to dispositive motions are due on May 27, 2022; and a tentative hearing date of Fall 2022.

On March 23, 2022, Respondent filed a Motion to Compel Discovery Responses. The Complainant did not file a response to the Motion to Compel.

On April 25, 2022, Respondent filed a motion to stay the “discovery cut-off, dispositive motions, and responses to dispositive motions deadlines.” Motion to Stay 1. Respondent noted Complainant has yet to respond to Respondent’s discovery requests. Motion to Stay 1, ¶¶ 4-5.

On May 18, 2022, the Court issued an order denying Respondent’s Motion to Stay Proceedings.

II. PROCEDURAL HISTORY OF DISCOVERY

On January 31, 2022, Respondent served on Complainant its initial disclosures and first set of discovery requests, requesting Complainant to respond within thirty days of service. Respondent's Memorandum of Law in Support of its Motion to Compel Discovery Responses 1 ("Resp't Mem.") (citing Ex. B-C).

On March 4, 2022, Respondent delivered to Complainant courtesy copies of its original discovery request and a letter requesting her response to the discovery requests. *Id.* at 2. (citing Ex. D).

On March 15, 2022, Respondent's counsel deposed Complainant via Zoom.¹ *Id.* During the deposition, Complainant admitted that she received "some of" the discovery requests and did not respond to them. *Id.* (citing Ex. F, 9:8-14). Complainant explained that she did not respond because she is "not really good at understanding" English, as her native language is Tagalog. *Id.* (citing Ex. F. 9:11-14). Complainant also stated that her husband can speak and read English but he cannot speak Tagalog. Mot. to Compel Ex. F. 9:10, 9:14. Respondent's counsel asked Complainant to respond to the discovery requests and Complainant agreed to do so. *Id.* at 9:10.

On March 19, 2022, Respondent sent Complainant another letter requesting for her response to the discovery request. Resp't Mem. 2 (citing Ex. G-H). According to Respondent, Complainant has not sent Respondent her responses to the discovery requests. *Id.*

III. STANDARDS FOR MOTION TO COMPEL

An OCAHO Administrative Law Judge (ALJ) may "compel the production of documents" and compel responses to discovery requests, pursuant to 28 C.F.R. § 68.23 and § 68.28. *See, e.g., United States v. Tuesday Line, Inc.*, 16 OCAHO no. 1425a, 2 (2022); *Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no. 1388, 2 (2021); *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016). A party may file a motion to compel responses to discovery if the responding party fails to respond to the request. 28 C.F.R. § 68.23. *See Tuesday Line, Inc.*, 16 OCAHO no. 1425a, at 2.

Pursuant to 28 C.F.R. § 68.23(b), a party's motion to compel must include:

- (1) the nature of the questions or request;
- (2) the response or objections of the party upon whom the request was served;
- (3) arguments in support of the motion; and

¹ "Zoom" is a video teleconference software platform.

(4) a certification that the movant has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the [ALJ].

Litigants in this forum “may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding . . .” 28 C.F.R. § 68.18(b). *See United States v. JR Contractors, Inc.*, 15 OCAHO no. 1406, 2 (2021). In the context of discovery, relevance is broadly construed “to encompass any matter that bears on, or that could reasonably lead to other matter that could bear on, an issue that is or may be in the case.” *See A.S. v. Amazon Web Servs., Inc.*, 14 OCAHO no. 1381L, 4 (2021) (citing *United States v. Autobuses Ejecutivos, LLC*, 11 OCAHO no. 1220, 3 (2014)).

Where advanced by a party, OCAHO has entertained objections to discovery requests, such as irrelevance, overbreadth, vagueness, and unduly burdensome. *See, e.g., Heath v. Ikon Systems*, 14 OCAHO no. 1377, 2-3 (2020). A party who fails to timely object to a discovery request waives “any objections which [that] party might have to the requests.” *See Ramirez v. County of Los Angeles*, 231 F.R.D. 407, 409 (2005) (internal citations omitted). *See also United States v. Employer Sols. Staffing Grp., LLC*, 11 OCAHO no. 1234, 3 (2014) (first citing *United States v. Westheimer Wash Corp.*, 7 OCAHO no. 989, 1042, 1045 (1998); then citing *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989); and then citing Fed. R. Civ. P. 33(b)(4)).

Separate from a party’s burden to lodge a timely objection, the Court has independent authority to decline to compel a party’s response to a discovery requests. *See* 28 C.F.R. § 68.23 (“Unless the objecting party sustains his or her burden of showing that the objection is justified, the Administrative Law Judge *may* order that [a response] be served.”)

IV. DISCUSSION

As a threshold matter, the Court finds that Respondent’s motion procedurally complies with Section 68.23(b). First, Respondent’s motion identifies the nature of the discovery requests: (1) Interrogatories, (2) Requests for Production of Documents, and (3) Requests for Admissions. *See* Mot. to Compel 1-2. Second, Respondent’s motion demonstrates that Complainant had no response at all to the discovery requests. *Id.* Third, Respondent’s motion displays several arguments in support of its motion. *See generally* Resp’t Mem. Finally, Respondent’s motion certifies that Respondent attempted to confer with Complainant on several occasions by way of written correspondence and during the deposition. *See* Mot. to Compel 1-2, Ex. F.

A. First Set of Requests for Production of Documents

In analyzing the Motion to Compel, the Court will group together certain requests based on the nature of the documents sought.

As to requests 1-9, 17-18, 24, 26, and 33 of Respondent's First Set of Requests for Production of Documents, each relates directly to the allegations asserted in the Complaint. *See* Mot. to Compel Ex. B 11-12. These document requests are directly "relevant to the subject matter involved in the proceeding." *See* 28 C.F.R. § 68.18(b). Moreover, there are no lodged objections to these requests. **Accordingly, the Court ORDERS Complainant to produce all documents responsive to those enumerated requests.**

As to request for production 10, Respondent requests "[a]ll documents and [c]ommunications relating to the amount of back pay [Complainant is] seeking in this [a]ction." *Id.* Document request 27 seeks documents and communications related to "any other employment [Complainant] applied to during the relevant time period" *Id.* These requests are "relevant to the subject matter involved in the proceedings" as they relate to damages. Moreover, there are no lodged objections to these requests. **Accordingly, the Court ORDERS Complainant to produce all documents responsive to those enumerated requests.**

Document request 11 pertains to Complainant's contacts with the Immigrant and Employee Rights Section of the United States Department of Justice's Civil Rights Division ("IER"). *See* Mot. to Compel Ex. B 13. This request may lead to discoverable information related to this forum's ability to hear this case. *See Ogunrinu v. Law Resources*, 13 OCAHO no. 1332, 4 (2019) (describing prerequisite IER filing activity prior to filing an anti-discrimination complaint with OCAHO) (internal citations omitted). This document request pertains to material "relevant to the subject matter involved in the proceeding." Moreover, there are no lodged objections to these requests. **Accordingly, the Court ORDERS Complainant to produce all documents responsive to this enumerated request.**

Document requests 12-15 and 23 cover: documents in Complainant's possession related to Respondent's employment eligibility verification process, as well as grievances, complaints, and notices regarding any alleged violations of law; and documents describing Complainant's application to work for Respondent and her subsequent employment with Respondent. *See* Mot. to Compel Ex. B 13-14. These document requests relate to assertions made in the Complaint. *See* Compl. 9. Therefore, these requests cover material "relevant to the subject matter involved in the proceeding." Moreover, there are no lodged objections to these requests. **Accordingly, the Court ORDERS Complainant to produce all documents responsive to those enumerated requests.**

Document requests 25 and 29-32 pertain to documents Complainant relied upon in preparing discovery responses and documents Complainant plans to introduce in these instant proceedings.² *See* Mot. to Compel Ex. B 14-15. These requests cover discoverable material.

² For example, document request 25 seeks "[a]ll Documents and tangible things identified in, relied on, or referred to in preparing [Complainant's] responses to Respondent's First Set of

Moreover, there are no lodged objections to these requests. **Accordingly, the Court ORDERS Complainant to produce all documents responsive to those enumerated requests.**

Document requests 20-22 seek documents related to Complainant's history of civil litigation. *See id.* at 13-14. Federal Rule of Civil Procedure 26(b)(1) provides that any party may obtain discovery regarding any non-privileged matter relevant to any party's claim or defense, which includes history of previous litigation. *Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362a, 6 (2020) (citing FED. R. CIV. P. 26(b)(1)). These requests cover discoverable material. Moreover, there are no lodged objections to these requests. **Accordingly, the Court ORDERS Complainant to produce all documents responsive to this enumerated request.**

Document request 19 asks Complainant to produce "documents relating to any criminal convictions or charges against [Complainant]." Mot. to Compel Ex. B 13. As drafted, the request is overbroad, having the potential to cull documents irrelevant to these proceedings. Conviction documents related to fraud or deception may bear on Complainant's credibility or truthfulness in this matter. *See generally* Federal Rule of Evidence 609.³ Therefore, the Court will narrow this request for production. *See Sharma*, 14 OCAHO no. 1362a, at 9 (modifying an overbroad discovery request). **Accordingly, the Court ORDERS Complainant to produce all documents related to criminal convictions or charges involving acts of fraud or deception.**

Lastly, the Court DENIES Respondent's motion to compel with respect to document request 16. *See* Mot. to Compel Ex. B 13. Document request 16 prompts Complainant to produce "[a]ll documents and communications relating to Respondent." *Id.* This request is overbroad and vague. *See Kamal-Griffin v. Cahill Gordon & Reindel*, 3 OCAHO no. 487, 6 (1993).⁴ Thus, Complainant need not respond to document request 16.

Interrogatories, served contemporaneously herewith." *Id.* Document requests 29-32 all pertain to documents Complainant plans to use for hearing. *Id.*

³ 28 C.F.R. § 68.40 provides that "[u]nless otherwise provided by statute or these rules, the Federal Rules of Evidence will be a general guide to all proceedings held pursuant to these rules." Federal Rule of Evidence 609 permits a party in a civil proceeding to introduce evidence of a criminal conviction to impeach a witness's character for truthfulness, under certain conditions.

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 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

Therefore, the Court ORDERS Complainant to respond to the following requests from Respondent's First Set of Requests for Production of Documents: 1-15, 17-18, 19 (as modified) and 20-33.

B. First Set of Interrogatories

The Court GRANTS Respondent's motion to compel with respect to all 18 interrogatories propounded by Respondent. *See* Mot. to Compel Ex. B 21-24. The interrogatories cover discoverable information. Further, Respondent did not file an opposition to discovery or to the motion to compel, leaving the Court to infer the requests are not unduly burdensome and there are no issues related to privilege.

Accordingly, the Court will ORDER Complainant to respond to all 18 interrogatories.

C. First Set of Requests for Admission

The Court GRANTS Respondent's motion to compel with respect to the entirety of Respondent's First Set of Requests for Admission. *See id.* at 30-34. Each request for admission pertains to discoverable material. The Complainant did not raise any concerns of burden or privilege.

Accordingly, the Court will ORDER Complainant to respond to all 17 requests for admission.

V. CONCLUSION AND ORDERS

The Court ORDERS Complainant respond to the following requests from Respondent's First Set of Requests for Production of Documents: 1-15, 17-18, and 20-33. Complainant must also respond to the modified document request 19. Complainant is not required to respond to document request 16.

The Court further ORDERS Complainant respond to all discovery requests contained in Respondent's First Set of Interrogatories and First Set of Requests for Admission.

The Court further advises Complainant that should she fail to respond as compelled by this Order, she may be subject to sanctions consistent with 28 C.F.R. § 68.23(c).

database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

Specifically, Complainant shall consider herself advised that, pursuant to section 68.23(c), the Court may “for the purposes of permitting resolution of the relevant issues and disposition of the proceeding and to avoid unnecessary delay, take the following actions:

- (1) Infer and conclude that the admission, testimony, documents, or other evidence would have been adverse to the non-complying party;
- (2) Rule that for the purposes of the proceeding the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party;
- (3) Rule that the non-complying party may not introduce into evidence or otherwise rely upon testimony by such party, officer, or agent, or the documents or other evidence, in support of or in opposition to any claim or defense;
- (4) Rule that the non-complying party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown; [and],
- (5) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

Finally, the Court ORDERS the following Modified Scheduling Order in these proceedings as follows:

August 4, 2022: Complainant serves compelled discovery on Respondent
August 11, 2022: Motions related to Discovery (if any) deadline
September 16, 2022: Motion for Summary Decision deadline
October 17, 2022: Response to Motion for Summary Decision deadline
December 2022: Hearing Timeframe

SO ORDERED.

Dated and entered on July 7, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge