

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

January 24, 2023

SOPHIE ACKERMANN,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2023B00004
)	
MINDLANCE INC.,)	
Respondent.)	
_____)	

Appearances: Sophie Ackermann, pro se Complainant
Kathryne Hemmings Pope, Esq., for Respondent¹

ORDER TO SHOW CAUSE

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On October 28, 2022, Complainant Sophie Ackermann filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) asserting claims of discrimination, retaliation, and unfair documentary practices arising under 8 U.S.C. § 1324b against Respondent Mindlance, Inc.

On October 31, 2022, this office sent Respondent a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA) and a copy of the complaint via U.S. certified mail. According to the United States Postal Service, these documents were served upon Respondent on November 3, 2022, making Respondent's answer due on December 3, 2022. *See* 28 C.F.R. § 68.9.

On November 30, 2022, this office received Respondent's Motion for Extension of Time to Respond to Complaint. Respondent requested a thirty-day extension of time to file an answer, which the Court granted in its November 30, 2022 Order Granting Extension of Time to Respond to Complaint.

¹ Although Christopher J. Gilligan, Esq. signed Respondent's Motion to Dismiss the Complaint, he has not filed a Notice of Appearance with the Court as required by 28 C.F.R. § 68.33(f). The Court exercises its discretion to accept this filing, given that Kathryne Hemmings Pope, Esq.—who has filed a notice of appearance—is also listed on the Motion, but Attorney Gilligan is directed to file a notice of appearance for clarity of the record.

On January 4, 2023, Respondent filed Respondent's Motion to Dismiss the Complaint.

Per OCAHO regulations, a respondent must file an answer to contest a material fact alleged in the complaint. 28 C.F.R. § 68.9(c). A respondent's failure to timely file an answer "may be deemed to constitute a waiver of the right to appear and contest the allegations, and [] the Administrative Law Judge may thereafter enter a judgment by default." *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015) (citing 28 C.F.R. § 68.9(b)).

Under the Federal Rules of Civil Procedure, a motion to dismiss filed under Rule 12 tolls the responsive pleading deadline until the motion is decided. *See* Fed. R. Civ. P. 12(a)(4) (serving a motion under Rule 12 may alter the time to serve a responsive pleading); 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1346 (3d ed. 2022) ("Service of a motion permitted by Rule 12 also may enlarge the applicable period of time for serving an answer or other responsive pleading . . ."). However, under OCAHO rules, "[t]he filing of a motion to dismiss does not affect the time period for filing an answer." 28 C.F.R. § 68.10. Thus, an order to show cause may be issued when a respondent files a motion to dismiss, but not a timely answer, to a complaint. *E.g., Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410, 2 (2022) (citing *Ndzerre v. Wash. Metro. Area Transit Auth.*, 13 OCAHO no. 1306, 4–5 (2017) (requiring respondent to show good cause for failure to file answer despite filing motion to dismiss)).

Although Respondent filed a motion to dismiss in this matter, the Court has, to date, not received Respondent's answer. The motion to dismiss filed by Respondent did not excuse or toll the deadline for filing its answer. *See* 28 C.F.R. § 68.10.

Therefore, Respondent is hereby ORDERED, within twenty (20) days of this order, to file a submission demonstrating good cause for its failure to timely file an answer, and to file an answer that comports with 28 C.F.R. § 68.9(c). Should Respondent fail to file an answer and show good cause regarding its untimely filing, the Court may enter a default judgment against Respondent, pursuant to 28 C.F.R. § 68.9(b).

The Court will defer decision on Respondent's Motion to Dismiss the Complaint at this time, and will rule on the motion in due course.

SO ORDERED.

Dated and entered on January 24, 2023.

Honorable Jean C. King
Chief Administrative Law Judge