

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. 2023A00057
DJ'S TRANSPORT,)	
)	
Respondent.)	
_____)	

Appearances: Hazel L. Gauthier, Esq., for Complainant
Juan Quinones, 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, as amended, 8 U.S.C. § 1324a. On May 4, 2023, 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) alleging that Respondent, DJ's Transport, failed to prepare or present Forms I-9 for three individuals and failed to ensure proper completion of Forms I-9 for four individuals, all in violation of 8 U.S.C. § 1324a(a)(1)(B).

The complaint reflected that DHS served Respondent with a Notice of Intent to Fine (NIF) on July 15, 2022, Compl., Ex. A, and Respondent thereafter timely requested a hearing before this Court. *Id.*, Ex. B. Complainant asked OCAHO to serve the complaint on Respondent at an address in El Paso, Texas (Address A).¹ *Id.*, 28 C.F.R. § 68.7 Attach.

¹ Complainant previously identified Address A as Respondent's address in the NIF. *Id.*, Ex. A.

On May 15, 2023, OCAHO's Chief Administrative Hearing Officer (CAHO) attempted to serve Respondent at Address A via United States Postal Service certified mail with (a) the complaint, (b) a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), (c) the NIF, and (d) Respondent's request for a hearing before this Court (collectively the Complaint package). As is its standard practice, OCAHO requested a tracking number for the Complaint package and proof of service in the form of a U.S. Postal Service certified mail domestic return receipt (PS Form 3811). Service however was unsuccessful. The U.S. Postal Service returned the Complaint package to OCAHO on June 26, 2023, with an unexecuted return receipt. A label affixed to the receipt and dated June 21, 2023, read, "Return to Sender, Attempted – Not Known, Unable to Forward."

The CAHO also attempted on May 15, 2023, to serve Respondent with the Complaint package at the address identified for Respondent in its request for a hearing (Address B). Compl., Ex. B. According to the U.S. Postal Service website's certified mail tracking service, it attempted to deliver the Complaint package on May 22, 2023, but left a notice instead because "[n]o [a]uthorized [r]ecipient [was] [a]vailable." The most recent entry on the U.S. Postal Service website's certified mail tracking service is a reminder for Respondent to reschedule delivery of the Complaint package at Address B or "your item will be returned to sender." To date, OCAHO has not received a certified mail return receipt for the Complaint package mailed to Address B or anything from Respondent that would reflect receipt of the complaint.

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 (2023),² 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).³

² 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-regulations>.

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

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
- (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). Whichever method is chosen, "[s]ervice of [the] complaint . . . is complete upon receipt by [the] addressee." *Id.* § 68.3(b).

III. DISCUSSION

Here, Complainant provided OCAHO with two addresses in El Paso, Texas, for Respondent. Address A is the address listed for Respondent in the NIF⁴ and the address at which Complainant requested OCAHO serve Respondent with the Complaint package, pursuant to 28 C.F.R. § 68.57. Address B is the address

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 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 <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

⁴ Although Complainant listed Address A in the NIF, it served the NIF on Juan Quinones, identified as being the owner of the Respondent business, in person at Complainant's field office in El Paso, Texas. Compl., Ex. A.

Respondent listed in its request for a hearing before this Court. As discussed above, the U.S. Postal Service returned to OCAHO on June 26, 2023, the Complaint package sent to Respondent at Address A. Likewise, the U.S. Postal Service was unable to deliver the Complaint package to Respondent at Address B; it left a notice instead. The Court therefore finds that service of the complaint on Respondent has not been effectuated at either address 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." *United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431, 4 (2022) (quoting 28 C.F.R. § 68.3 and then citing *United States v. Dolan*, 2 OCAHO no. 388, 727, 728 (1991)). Here, OCAHO has been unable to perfect service on Respondent at either address provided by Complainant. The Court therefore orders Complainant to execute service of process by personally serving the complaint, the NOCA, the NIF, and the request for a hearing 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).

Should it perfect service on Respondent, Complainant shall file with the Court proof of personal service of the Complaint package. In its filing, Complainant or its agent 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). *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's attestation of service may include 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 Vector Xpress, Inc.*, 16 OCAHO no. 1431a, at 3.

OCAHO's rules "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). 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.

Should service not be accomplished, the Court may consider dismissal sua sponte. *See United States v. Rios-Villatoro*, 14 OCAHO no. 1364, 1 (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). When service cannot be effectuated, OCAHO courts have dismissed the complaint without prejudice such that the 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, Complainant 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 July 19, 2023.

Honorable Carol A. Bell
Administrative Law Judge