

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

July 19, 2019

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 19A00018
)	
LAZY DAYS SOUTH, INC.,)	
Respondent.)	
_____)	

ORDER VACATING NOTICE OF ENTRY OF DEFAULT

I. BACKGROUND

On March 26, 2019, Complainant filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging violations of 8 U.S.C. § 1324a. On March 28, 2019, OCAHO sent a Notice of Case Assignment Regarding Unlawful Employment, a copy of the complaint, the Notice of Intent to Fine, and Respondent's request for hearing to Respondent, via certified U.S. mail. Respondent's answer was due on April 30, 2019. Respondent did not file an answer.

On May 15, 2019, the Court issued a Notice and Order to Show Cause requiring Respondent to show cause why its request for hearing should not be deemed abandoned, and ordered Respondent to file an answer by May 30, 2019. On May 24, 2019, Respondent filed a Motion for Enlargement of Time to File a Response. The Court granted the motion and ordered Respondent to file a response to the Order to Show Cause and an answer by June 13, 2019. Thereafter, Respondent filed its Response to the Order to Show Case, Motion to Dismiss, and Motion for Summary Disposition. Respondent did not file an answer.

On July 3, 2019, the Court issued a Notice of Entry of Default and explained that the Court may enter a default judgment if Respondent did not file an answer and show good cause why it failed to file an answer within fifteen days of the Notice of Entry of Default. On July 8, 2019, Complainant filed a response to the Motion to Dismiss and the Motion for Summary Disposition. On July 9, 2019, Respondent filed an Answer to Complaint and Response to Order to Show Cause.

II. STANDARDS

While OCAHO rules govern this proceeding, “the ‘Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled’ by OCAHO’s rules.” *U.S. v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016) (quoting 28 C.F.R. § 68.1). Under Federal Rule of Civil Procedure 55(c), “[t]he court may set aside an entry of default for good cause[.]” Default judgments are disfavored “because of the strong policy of determining cases on their merits.” *Florida Physician’s Ins. Co. v. Ehlers*, 8 F.3d 780, 783 (11th Cir. 1993); *Nickman v. Mesa Air Group*, 9 OCAHO no. 1106, 2 (2004). OCAHO case law states that default judgments “should not be granted on the claim, without more, because the [respondent] failed to meet a procedural time requirement.” *Nickman*, 9 OCAHO no. 1106 at 2 (citations omitted). “The Court has especially broad discretion when . . . a party is seeking to set aside an entry of an order of default, rather than setting aside a default judgment.” *Id.*

In determining whether to exercise discretion and whether good cause exists, the Court considers: “(1) whether there was culpable or willful conduct; (2) whether setting aside would prejudice the adversary; and (3) whether the defaulting party presents a meritorious defense to the action.” *Id.* at 3 (citing *Kanti v. Patel C/O Blimpie*, 8 OCAHO no. 1007, 166, 168 (1998)). The Court considers the same factors when considering setting aside an entry of default or a default judgment, but the Court applies the factors more leniently when considering an entry of default. *Id.*

III. DISCUSSION

Regarding the first factor, “courts usually focus on the defaulting party’s willfulness and consider whether the party intended to violate court procedures.” *Id.* In its Response to the Order to Show Cause, Respondent asserts that under the Federal Rules of Civil Procedure and Eleventh Circuit case law, if a respondent seeks to assert a defense under Rule 12(b)(6), it must file a motion to dismiss prior to filing an answer. Respondent argues that by following the standard federal practice of filing a motion to dismiss prior to filing an answer, it believed it was complying with the correct procedures.

Nothing in the record demonstrates that Respondent failed to answer the Complaint in a timely manner “because of a willful disregard or disrespect for the legal process.” *Nickman*, 9 OCAHO no. 1106 at 3. Rather, Respondent responded to the Order to Show Cause and filed a motion to dismiss and a motion for summary decision. Moreover, when Respondent received notice that the Court had entered a default, Respondent promptly filed an answer and its good cause statement. Similar to *Nickman*, the respondent has not ignored its responsibility to defend against this action or otherwise acted in bad faith. *Nickman*, 9 OCAHO no. 1106 at 3.

Additionally, Complainant did not move for an entry of default. Rather, Complainant filed a response to the motion to dismiss and motion for summary decision and did not mention the absence of an answer. Complainant has not alleged that it would suffer any harm if the Court vacates the entry of default and allows Respondent's late filed answer. "Mere delay alone does not constitute prejudice without any resulting loss of evidence, increased difficulties in discovery, or increased opportunities for fraud and collusion." *Id.* As such, there is no evidence that setting aside the entry of default would prejudice Complainant.

Finally, the Court must consider whether Respondent has presented any meritorious defenses to the Complaint. When moving to set aside an entry of default, the defaulting party does not need to establish its defenses conclusively. *Id.* (citing *Kanti*, 8 OCAHO no. 1007 at 171). In the Answer, Respondent denies the central allegations of the Complaint, and in its Motion to Dismiss, Respondent asserts that Complainant failed to state a claim upon which relief may be granted. The Court finds that Respondent's assertion of defenses weighs against entering a default judgment.

IV. CONCLUSION

The Court finds that the balance of factors weighs in favor of setting aside the entry of default. Respondent's failure to file an answer does not appear to be willful, Complainant has not shown that it will be prejudiced if the Court accepts Respondent's late filed answer, and Respondent has raised potentially meritorious defenses. The entry of default is VACATED, and the Court accepts Respondent's late filed Answer to the Complaint.

SO ORDERED.

Dated and entered on July 19, 2019.

Jean C. King
Chief Administrative Law Judge