

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

July 20, 2022

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324A Proceeding
)	OCAHO Case No. 2022A00033
)	
COMMANDER PRODUCE, LLC,)	
Respondent.)	
_____)	

ORDER TO SHOW CAUSE - ANSWER

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 9, 2022, alleging that Respondent, Commander Produce, LLC, violated § 1324a.

On March 18, 2022, this office sent Respondent a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), a copy of the Complaint, the Notice of Intent to Fine (NIF), and Respondent’s request for a hearing, via certified U.S. mail. OCAHO sent these documents to the addresses listed on the Notice of Intent to Fine and Respondent’s Articles of Organization. The U.S. Postal Service website indicates that the documents were not served on Respondent as they were “Delivered, To Original Sender” and “Refused[.]”

On May 5, 2022, the Court issued an Order Directing Complainant Execute Service of Process instructing Complainant serve the complaint, NOCA, NIF, and request for hearing on Respondent, and confirm Respondent’s current address. *United States v. Commander Produce, LLC*, 16 OCAHO no. 1428, 1–2 (2022).¹ When Complainant effectuated service, it was to file a submission verifying service of process and confirming Respondent’s address. *Id.* at 2.

¹ 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

In the absence of a filing from Complainant identified in the May 5, 2022 Order, the Court issued an Order for Status Update on Service of Process on June 21, 2022, requiring Complainant provide a status update on the service of process.

On July 12, 2022, ICE filed Complainant's Status Update wherein it verified Respondent's address and Respondent's owner's residential address.² Complainant served the complaint, NOCA, NIF, and request for hearing on Respondent on June 6, 2022.

The Notice of Case Assignment directed Respondent to file an answer within thirty (30) days of receipt of the Complaint, that failure to answer could lead to default, and that proceedings would be governed by Department of Justice regulations.³ Thus, Respondent's answer was due no later than July 6, 2022. *See* 28 C.F.R. § 68.9(a).

To date, Respondent has not filed an answer.

"A party that fails to answer a complaint within the time specified is already in default[.]" *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015). To contest a material fact alleged in the complaint or a penalty assessment, a respondent must file an answer. 28 C.F.R. § 68.9(c). Failure to file "an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default." 28 C.F.R. § 68.9(b). "[F]ailure to respond to an Order may trigger a judgment by default." *United States v. Hotel Valet Inc.*, 6 OCAHO no. 849, 252, 254 (1996). "If a default judgment is entered, the request for hearing is dismissed, AND judgment is entered for the complainant without a hearing." *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004).

Respondent must submit a filing showing good cause explaining its failure to timely file an answer. Respondent must also file an answer pursuant to 28 C.F.R. § 68.9(c). Both filings must be submitted by August 10, 2022.

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>.

² Despite the untimeliness of Complainant's status update, the Court exercises its "discretion to accept late filings" and accepts the submission. *United States v. Sal's Lounge*, 15 OCAHO no. 1394c, 4 (2022) (citing *Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996)).

³ Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

If Respondent fails to file an answer and show good cause regarding its untimely filing, the Court may enter a default judgment against Respondent. 28 C.F.R. § 68.9(b).

SO ORDERED.

Dated and entered on July 20, 2022.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge