

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. 2022A00035
VECTOR XPRESS, INC., d/b/a)	
VECTOR XPRESS, LLC,)	
)	
Respondent.)	
_____)	

Appearances: Martin Celis, Esq., for Complainant
Carlos Estrada, pro se, for Respondent

NOTICE AND ORDER TO SHOW CAUSE REGARDING ANSWER

I. PROCEDURAL HISTORY

This case arises under the employment eligibility verification provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On March 9, 2022, the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, Vector Xpress, Inc., doing business as Vector Xpress, LLC, failed to prepare or present Forms I-9 for sixteen individuals and failed to ensure the proper completion of Forms I-9 for eighteen individuals, all in violation of 8 U.S.C. § 1324a(a)(1)(B).

The complaint reflects that ICE served Respondent with a Notice of Intent to Fine (NIF) on January 22, 2020, Compl. ¶ 2, and Respondent, through Mr. Carlos Estrada, thereafter timely requested a hearing before OCAHO on February 7, 2020. *Id.*, Ex. B.

On May 18, 2022, after OCAHO encountered difficulties serving the complaint, the Court issued an Order Directing Complainant to Serve Complaint. *See United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431, 3-4 (2022).¹ The Court ordered Complainant to serve Respondent personally with the complaint, a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the NIF, and Respondent’s request for a hearing. *Id.* at 5 (citing 28 C.F.R. § 68.3(a)(1)). The Court further ordered Complainant to file proof of service and provide a functional United States mailing address for Respondent. *Id.* (citing 28 C.F.R. § 68.3(b)).

On June 15, 2022, Complainant filed an Attestation of Service of Complaint and Notice of Case Assignment. In its filing, Complainant represented that it personally served Respondent with the complaint and accompanying materials on June 5, 2022. Attest. Serv. Compl. ¶ 1; *see id.*, Ex. A (materials served on Respondent). As proof of service, Complainant attached the affidavit of a special agent with the United States Immigration and Customs Enforcement, Homeland Security Investigations (HSI). *Id.*, Ex. B. The HSI special agent attested that he personally served the complaint and accompanying materials on Respondent through its president Carlos Estrada at Mr. Estrada’s residence (“the service address”). *Id.*, Ex. B. The agent stated that Mr. Estrada took the documents but refused to sign and date the certificate of service. *Id.*, Ex. B. The agent further noted that Mr. Estrada said that he would be contacting his attorney.² *Id.*, Ex. B. Complainant also attached to its filing a Texas Secretary of State Form 201, Certificate of Formation – For-Profit Corporation, identifying Carlos Estrada as Respondent’s registered agent and

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 accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” the LexisNexis database “OCAHO,” or on OCAHO’s homepage on the United States Department of Justice’s website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² An attorney has not entered an appearance on behalf of Respondent and Respondent’s request for a hearing before this Court was signed by Mr. Estrada. Should Respondent retain counsel in this matter, its counsel shall file a notice of appearance in accordance with 28 C.F.R. § 68.33(f).

director. *Id.*, Ex. C. The service address matched the business address of the registered agent and the registered office address for Respondent listed on the certificate of formation. *Id.*, Ex. C. Complainant confirmed to the Court that the service address is Respondent’s functional United States mailing address.³ *Id.* at 2.

II. LEGAL STANDARDS AND DISCUSSION

A. Service of the Complaint

The Court finds that Complainant has effectuated personal service of the complaint and accompanying materials in accordance with the Court’s order dated May 18, 2022, and in a manner that complies with OCAHO’s Rules of Practice and Procedure for Administrative Hearings, located at 28 C.F.R. part 68 (2022).⁴ Specifically, Complainant complied with 28 C.F.R. § 68.3(a)(1) which provides that a complaint may be served by “delivering a copy to the individual party, 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[.]” Here, as reflected in the sworn affidavit of the HSI special agent, Complainant served the complaint and accompanying materials on Mr. Carlos Estrada, the registered agent and director of the corporation. *See* Attest. Serv. Compl., Exs. B-C.

Mr. Estrada’s refusal to sign and date the certificate of service presented to him does not affect service nor alleviate Respondent of its responsibility to file an answer and comply with this Court’s orders. OCAHO’s rules clearly state that service of a complaint is perfected “upon receipt by [the] addressee.” 28 C.F.R. § 68.3(b). As reflected in the affidavit of the HSI special agent, Mr. Estrada “kept his copy” of the complaint and accompanying materials the agent handed him on June 5, 2022. Attest. Serv. Compl., Ex. B. Therefore, service of the complaint in this matter was perfected on June 5, 2022.

³ The service address matches the address found in the statement attached to the complaint in accord with 28 C.F.R. § 68.7(b)(5). Compl. at 6 (28 C.F.R. § 68.7 Attach.). The service address is likewise the same address to which the United States Postal Service delivered OCAHO’s certified mailing of the complaint and accompanying materials on March 24, 2022.

⁴ 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-decisions#LawsandRegulations>.

B. Answer to the Complaint

OCAHO's Rules of Practice and Procedure for Administrative Hearings permit a respondent thirty days to file an answer after being served with a complaint. 28 C.F.R. § 68.9(a). Given that Complainant effectuated personal service of the complaint on Respondent on June 5, 2022, Respondent's answer in this case was due no later than July 5, 2022. *See id.* OCAHO's Chief Administrative Hearing Officer (CAHO) communicated this thirty-day deadline to Respondent through the NOCA which was served along with the complaint. *See NOCA* at 3. The CAHO warned Respondent that its failure to file an answer may lead the Court to enter a judgment by default. *Id.* (citing 28 C.F.R. § 68.9(b)). To assist Respondent, the CAHO provided Respondent with a link to OCAHO's rules, practice manual, and contact information. *Id.* at 1-2. Yet Respondent, who requested a hearing before this Court, has failed to file an answer to the complaint in this matter.

Section 68.9(b) of OCAHO's rules provides that “[f]ailure of the respondent 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 [Court] may enter a judgment by default.” Should the Court enter a default judgement, “the [respondent’s] request for hearing is dismissed, AND judgment is entered for the complainant without a hearing.” *Nickman v. Mesa Air Group*, 9 OCAHO no. 1106, 1 (2004).

It has long been OCAHO's practice to issue an order to show cause before entering a default. *See United States v. Shine Auto Service*, 1 OCAHO no. 70, 444 (1989) (Vacation by the Chief Administrative Hearing Officer of the Administrative Law Judge's Order Denying Default Judgment). In *Shine Auto Service*, the acting CAHO explained:

Respondent must justify [in its response to the order to show cause] its failure to respond in a timely manner. Based on the Respondent's reply, the Administrative Law Judge shall determine whether the respondent has met the threshold for good cause. If the Administrative Law Judge determines that the Respondent possessed the requisite good cause for failing to file a timely answer, then the Administrative Law Judge may allow the Respondent to file a late answer.

Id. at 445-46. This Court will follow that practice here.

The Court now orders Respondent to file a response to this Order in which it must provide facts sufficient to show good cause for its failure to file an answer to the complaint in this case. The Court further orders Respondent to file an answer to the complaint simultaneously with the filing of its response showing good cause. Respondent's answer must comport with 28 C.F.R. § 68.9. Upon receipt of Respondent's filings, the Court will determine if Respondent has demonstrated the requisite good cause for failing to file its answer to the complaint and will decide whether to allow its untimely answer.

The Court puts Respondent on notice that, if it fails to respond to the Court's orders, the Court may conclude that it has abandoned its request for a hearing. *See* 28 C.F.R. § 68.37(b)(1); *see also United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777-78 (1994). Dismissal of Respondent's request for a hearing may follow. *See* 28 C.F.R. § 68.37(b).

III. ORDERS

IT IS SO ORDERED that, within twenty days of the date of this Order, Respondent, Vector Xpress, Inc., doing business as Vector Xpress, LLC, shall file a response with the Court in which it must provide facts sufficient to show good cause for its failure to file an answer to the complaint in this case.

IT IS FURTHER ORDERED that, within twenty days of the date of this Order, Respondent shall file with the Court an answer to the complaint that comports with 28 C.F.R. § 68.9.

If Respondent fails to respond as ordered or cannot show good cause for its failure to file a timely answer to the complaint, the Court may enter a default against it pursuant to 28 C.F.R. § 68.9(b). Failure to respond to the Court's orders may lead the Court to conclude that Respondent has abandoned its request for a hearing and result in the dismissal of its request for a hearing. 28 C.F.R. § 68.37(b).

SO ORDERED.

Dated and entered on August 3, 2022.

Honorable Carol A. Bell
Administrative Law Judge