

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

August 8, 2023

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2022A00052
)	
MSNF FOODS 4 LLC)	
D/B/A DOMINO’S PIZZA,)	
Respondent.)	
_____)	

Appearances: Janelle Cleary, Esq., for Complainant
Spencer Robbins, Esq., for Respondent

NOTICE THAT COURT MAY IMPOSE DISCOVERY SANCTIONS, OR DEEM REQUEST
FOR HEARING AS ABANDONED AND RESETTING CASE SCHEDULE

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, 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) on August 18, 2022. Complainant alleges that Respondent, MSNF Foods 4 LLC d/b/a Domino’s Pizza, engaged in multiple violations of 8 U.S.C. § 1324a(a)(1)(B).

On October 20, 2022, the Court issued an Order to Show Cause for Respondent’s answer. At the January 12, 2023 prehearing conference, the Court discharged the October 20, 2022 Order to Show Cause, accepted Respondent’s October 31, 2022 answer, and set a case schedule.

On January 24, 2023, the parties filed a Joint Motion to Refer Matter to OCAHO Settlement Officer Program. Following the Settlement Officer Program referral, the Court issued an April 5, 2022, Order Resetting Case Schedule. The Court set discovery to close on June 19, 2023.

On May 9, 2023, Complainant filed a Motion to Compel. On May 24, 2023, the Court denied that Motion to Compel. *United States v. MSNF Foods 4 LLC*, 17 OCAHO no. 1459a, 1 (2023).¹

On June 21, 2023, Complainant filed a (Renewed) Motion to Compel. On July 5, 2023, the Court granted this Motion to Compel. *United States v. MSNF Foods 4 LLC*, 17 OCAHO no. 1459b, 1 (2023). The Court advised Respondent of consequences should it not respond to Complainant's discovery requests. *Id.* at 2 (citing 28 C.F.R. §§ 68.23(c))². The Court then ordered Respondent to respond to the discovery by July 19, 2023, with dispositive motions due on August 19, 2023. *Id.* at 3.

On August 1, 2023, Complainant filed "Motions to Dismiss Respondent's Request for a Hearing and Enter Default Judgment on Both Liability and Penalty Amount" (the Mots.).³ Complainant first moves the Court to dismiss the request for a hearing based on a finding of abandonment under 28 C.F.R. § 68.37(b). *See* Mots. 2 (citations omitted). Complainant states in the motion that it has not received the compelled discovery from Respondent, and therefore Respondent did not comply with the Court's July 5, 2023, Order. *Id.* Complainant also argues that Respondent did not comply with the Court's October 20, 2022, Order to Show Cause requiring Respondent to explain why it did not timely file an answer. *Id.* Complainant also moves the Court to enter default based on Respondent's non-compliance with these same Orders. *See id.* at 2–3 (citations omitted) (noting that OCAHO caselaw "effectively treats a respondent's abandonment of a request for hearing as a default judgment.").

II. DISCUSSION

As an initial matter, the Court discharged the October 20, 2022, Order to Show Cause at the January 12, 2023, prehearing conference. While Respondent did not initially provide its reason for the late-filed answer, the Court was ultimately satisfied with the response provided at the prehearing conference, and the Court therefore does not consider this to be an instance of failure to respond to the Court's order.

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," or in the LexisNexis database "OCAHO," or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

³ OCAHO's regulations provide that a party has ten days to file an opposition to a motion. *See* 28 C.F.R. § 68.11(b). The Court has not received a response.

When a party fails to comply with a discovery order, OCAHO's regulations empower the Administrative Law Judge (ALJ) to take the actions set forth at 28 C.F.R. § 68.23(c)(1)–(7). A finding of abandonment or entry of default is not among these actions, although the regulations do permit the ALJ to rule that the discovery would have been adverse to Respondent or the matters concerning which the order was issued be taken as established adversely to the party. 28 C.F.R. § 68.23(c)(1)–(2). Moreover, OCAHO caselaw militates toward abandonment only after the respondent has received notice that it did not comply with an ALJ order. *See, e.g., United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023) (citations omitted) (finding that the respondent abandoned its request for a hearing when it failed to respond to an order to show cause and an abandonment notice).

Given the preference for resolving cases on the merits, *see United States v. MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407c, 3 (2022), the Court provides Respondent with an opportunity to address why it did not respond to the Motion to Compel or otherwise respond to Complainant's discovery requests and to advise the Court whether it intends to pursue its request for a hearing and litigate this case. Respondent's submission is due by August 22, 2023.

Respondent is put on notice that failure to provide a submission may result in the Court deeming Respondent liable, and finding the penalty factors for which Complainant requested discovery to be adverse to Respondent. The Court will also consider whether to deem Respondent's request for hearing abandoned or enter default.

The Court also finds it appropriate to reset the upcoming dispositive motions deadlines. The new case schedule is provided below.

III. RESET CASE SCHEDULE

- Respondent's submission due: August 22, 2023
- Dispositive motions due: September 21, 2023
- Oppositions to dispositive motions due: October 20, 2023
- Tentative hearing: January 2024 in Newark, NJ

SO ORDERED.

Dated and entered on August 8, 2023.

Honorable Jean C. King
Chief Administrative Law Judge