

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

November 13, 1996

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. §1324a Proceeding
) OCAHO Case No. 97A00007
BUTTERFLY LEGWEAR, INC.)
D/B/A CLASSIC HOSIERY, INC.,)
Respondent.)
_____)

**ORDER GRANTING RESPONDENT COUNSEL'S MOTION
TO WITHDRAW**

On November 5, 1996, pursuant to 28 C.F.R. §68.33(c), Sharon Konits, Esq., filed a motion to withdraw as counsel for Respondent and for a stay of the proceeding to allow Respondent to secure other counsel or prepare papers *pro se*. In support of the motion, Ms. Konits filed an affidavit, a memorandum of law, and a copy of a letter dated October 31, 1996, from the president of Classic Hosiery discharging her as counsel. As support for the motion, Ms. Konits notes that she has not been paid by Respondent, that she has been discharged, and that pursuant to the New York disciplinary rules and New York case law, an attorney may be released if the client disregards an agreement with the lawyer as to compensation for expenses or fees.¹

The motion and other papers were served on the client, and I have received no objection from Respondent to the motion. Moreover, since the filing of the motion, although I have not received a formal

¹ While I am granting the motion to withdraw, I would note that this proceeding is governed by the OCAHO rules of practice and procedure, and not by the New York rules or cases.

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notice of appearance, an answer to the complaint has been filed on behalf of Classic Hosiery by an attorney, David Levinson, Esq., with a different law firm. Thus, it appears that Respondent has secured the services of another law firm. Given that situation, the motion to withdraw obviously should and is granted. Moreover, even if another attorney had not appeared on behalf of Respondent, the fact that the client has discharged counsel would be sufficient reason to grant the motion. Obviously an attorney cannot defend a client in a civil or administrative case who does not want her services. *See United States v. Guam Trans-Pacific Builders, Inc*, OCAHO Case No. 96A00014, Order Granting Respondent's Counsel's Motion to Withdraw as Counsel of Record, (May 8, 1996); *United States v. Pan American Supply Co.*, 5 OCAHO 804, at 3 (1995).

However, given the fact that Respondent has secured the services of another attorney and has filed its answer to the complaint, there is no reason to grant a stay of proceedings to permit Respondent to secure other counsel or prepare papers *pro se*.

ROBERT L. BARTON, JR.
Administrative Law Judge