

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

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. 1324a Proceeding
) CASE NO. 91100241
)
CLAUDE H. LINKOUS &)
MARTIN RILEY,)
d.b.a. C.M. HEALTH SERVICES,)
Respondent.)
_____)

ERRATA

On June 10, 1992, I issued an ORDER GRANTING COMPLAINANT'S MOTION FOR DEFAULT JUDGMENT which stated, on page 6, that the Order was signed on June 10, 1991. This Order corrects that typographical error so that the Order now reads, "IT IS SO ORDERED this 10th day of June, 1992."

IT IS SO ORDERED this 15 day of June, 1992, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge

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ORDER GRANTING COMPLAINANT'S MOTION
FOR DEFAULT JUDGMENT

On August 20, 1991, pursuant to the Immigration & Nationality Act, the Immigration & Naturalization Service (INS) served a Notice of Intent To Fine (NIF) on Mr. Claude H. Linkous, Executive Director of Respondent Corporation, advising that the INS intended to order it to pay a fine in the amount of fifteen hundred dollars (\$1,500) for violations of Section 274A of the Immigration Reform and Control Act of 1986 (Act).

In a letter dated September 4, 1991, Mr. Linkous requested a hearing before an Administrative Law Judge, as allowed by the Act. A Complaint, which incorporated the NIF, was then filed by the Service on December 30, 1991 in the Office of the Chief Administrative Hearing Officer (OCAHO). See 28 C.F.R. 68.3*.

On January 3, 1992, a Notice of Hearing On Complaint Regarding Unlawful Employment, along with a copy of the Complaint, was properly served on Respondent, as evidenced by a record copy of a certified return mail receipt signed by a representative of the

* All Regulatory Citations are to Interim Rule found at 56 Fed. Reg. 50049 (1991) (to be codified at 28 C.F.R. 68) (hereinafter cited as 28 C.F.R. Part 68).

Respondent. See 28 C.F.R. 68.3. The Notice of Hearing advised Respondent that it had thirty (30) days in which to file its Answer to the Complaint, notwithstanding any answer previously submitted to the NIF. Respondent was cautioned that in the event an Answer was not timely filed, the Administrative Law Judge assigned to the case could deem its nonresponse to be a waiver of its right to appear and contest the Complaint's allegations. Moreover a default judgment, along with appropriate relief, could be entered by the Administrative Law Judge.

On January 15, 1992, a Notice of Acknowledgment of the Complaint, along with a copy of pertinent regulations, was sent to Respondent, advising him again that a timely Answer was due within thirty (30) days of its receipt of the Complaint. On February 14, 1992, Respondent filed a letter, signed by "Martin O. Riley Partner" , which I assumed was to be Respondent's Answer. In toto it stated, "The officer was illegally on the property, and performed an illegal search."

As Respondent filed this document pro se and there was no Certificate of Service attached, as well as noncompliance with many other regulatory requirements for a proper Answer, I directed correspondence, dated February 20, 1992, to be served on the parties. Respondent was thus informed of the legal requirements of its Answer, and the consequences of not so filing, including the possibility of a Default Judgment being entered against it. Format copies of a Certificate of Service, a caption heading and the relevant regulations were also sent. Further, I granted Respondent until March 20, 1992 in which to file a proper Answer.

No Answer had been filed by the time I held a prehearing telephonic conference on April 3, 1992 wherein I discussed with Respondent the requirements, necessity and consequences of failing to file a proper Answer to the Complaint and allowed it another fifteen (15) days in which to do so. Disturbingly, to the present date, a proper Answer to the Complaint has not been filed.

By motion, filed April 20, 1992, the INS requested a default judgment in this matter and served said motion on both Mr. Linkous and Mr. Riley. The motion rested on the premise that the Respondent has failed to plead or otherwise defend. The failure of Respondent to file a timely Answer to the Complaint constituted a sufficient basis for entry of a judgment by default. 28 C.F.R. Part 68.9(b).

Although after reviewing the procedural history of this case, I was inclined to rule on Complainant's motion, I was concerned about Respondent's pro se status. I also took into consideration that, although it had not filed a legally sufficient Answer, Respondent had timely filed a document that could be construed by a lay person to be an Answer and affirmative defense to the Complaint.

Thus, in an Order dated April 3, 1992, I gave Respondent a final opportunity to comply with the controlling regulations and to proceed to hearing. Respondent was directed to file with this court, within fifteen (15) calendar days of that Order, a legally sufficient motion which was to include a request for leave to file a late Answer and a legally sufficient Answer which complied with 28 C.F.R. parts 68.6. and 68.9, as well as an explanation of Respondent's failure to have timely answered both the Notice of Hearing and the Motion for Default Judgment. Respondent was again cautioned that if he did not respond to the Order to Show Cause, I would thereafter consider Complainant's Motion For Default Judgment.

To date, Respondent has not filed any document with this court since its filing of its statement nor has it contacted this court or Complainant in any manner. Under OCAHO regulations, failure of the Respondent to file a timely Answer shall be deemed to constitute a waiver of the right to appear and contest the Complaint's allegations. 28 C.F.R. 68.9(b). Further, Respondent has not complied with the OCAHO regulations and has not complied with my Orders. Under these circumstances, I may, in my discretion, grant a default judgment. Id.

Based on a review of the relevant law and the facts in this case, I find that:

1. Respondent has been properly served with the Complaint;
2. No timely Answer has been filed in this case;
3. Respondent has waived its right to appear and to contest the allegations set forth in the Complaint filed October 7, 1991;
4. Complainant's Motion for Default Judgment is granted concerning liability only;
5. Civil money penalties will be considered upon receipt of Complainant's statement regarding 28 C.F.R. 68.52(c)(iv).

As such, I hereby grant Complainant's Motion For Default and find that Respondent has violated Section 274A as alleged in the Notice of Intent To Fine and in the Complaint, in that he has knowingly hired and continued to employ Jose Luis Rios-Montoya in violation of Section 274A(a)(1)(A) or, in the alternative, 274A(a)(2), as set forth in Count I of the Complaint and that he failed to prepare and/or to make available for inspection the employment eligibility verifications form (Form I-9) for the same individual, as stated in Count II of the Complaint, in violation of Section 274A(a)(1)(B) of the Act. Therefore, it is hereby Ordered that:

1. Respondent shall cease and desist from further violating 8 U.S.C. 1324a(a)(1)(A) and 1324a(a)(2);
2. The hearing scheduled in or around San Diego, California is canceled;
3. Civil money penalties will be considered upon receipt of statement from Complainant regarding 28 C.F.R. 68.52(c)(iv), to be submitted on or before June 22, 1992; and,
4. Respondent may submit a brief and/or statement regarding the determination of civil money penalties by the court pursuant to 28 C.F.R. 68.52(c)(iv) on or before June 22, 1992.

Review of this final order may be obtained by filing a written request for review with the Chief Administrative Hearing Officer, 5107 Leesburg Pike, Suite 2519, Falls Church, Virginia 22041. This Order shall become the Final Order of the Attorney General unless, within thirty (30) days from the date of this Order, the Chief Administrative Hearing Officer modifies or vacates the Order. 28 C.F.R. 68.53.

IT IS SO ORDERED this 10th day of June, 1991, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge