

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. 92A00104
FANCY THAT, INC. AND	)
NEW FANCY THAT, INC.,	)
d.b.a. THE GREAT ALASKAN	)
BUSH COMPANY	)
Respondent.	)
_____	)

ORDER TO SHOW CAUSE WHY ANSWER SHOULD  
BE ACCEPTED

Procedural History

On May 23, 1991, pursuant to its statutory authority, Complainant served a Notice of Intent to Fine on Respondent, alleging that it had violated section 274A of the Immigration and Nationality Act, 8 U.S.C. 1324a, hereinafter Act. Upon Respondent's undated request for a hearing before the Administrative Law Judge, received by Complainant on June 21, 1991, a complaint was filed with the Office of the Chief Administrative Hearing Officer on May 12, 1992. On May 13, 1992, this case was assigned to me.

The Notice of Hearing On Complaint and Notice of Acknowledgment, along with a copy of the pertinent regulations, were sent to the parties on May 13, 1992 and May 19, 1992, respectively. However, on June 4, 1992, this Court was notified that the Notice of Hearing along with the Complaint had been returned to the Office of the Chief Administrative Hearing Officer by the U.S. Postal Service as "Unclaimed" despite two notices to the addressee of the need to claim the certified mail.

Since there was no proper service of the Complaint on Respondent, I issued an order to Complainant on June 9, 1992 directing it to

effectuate service within ten (10) days of receipt of that Order or else to file a motion to dismiss the case without prejudice. On June 22, 1992, I was notified by Complainant that service had been effectuated on June 17, 1992 by serving the statutory agent, Thomas P. McVay, Esquire. Based on this proper service, a legally sufficient Answer was due to be filed with this Court on June 17, 1992. 28 C.F.R. 68.3; 68.9.<sup>1</sup> As none was filed, Complainant filed a Motion for Default Judgment on August 14, 1992. 28 C.F.R. 68.9. On August 19, 1992, Respondent filed its hand written Answer.

#### Discussion

Respondent's late filing of its Answer has raised several procedural issues which must be remedied before this case can proceed. First, under the pertinent regulation, 28 C.F.R. 68.6, any motion or pleading filed with this court must be accompanied by a Certificate of Service showing that a copy of the document has been served, i.e. legally delivered, on the other parties in the case. In addition, the Certificate of Service must include the date and manner of service. Although Respondent states that she has sent a copy of this document to Complainant, the Answer is not accompanied by a Certificate of Service nor any of the other required information. Respondent must remedy this deficiency.

I have considered Respondent's assertion that she is seventy-five (75) years old, apparently pro se at this time, and "somewhat confused by all of this." Respondent's Answer at 1. As such, in the interests of justice, fairness, and judicial economy, I am returning a copy of Respondent's Answer to her with a sample Certificate of Service form. Respondent must, within fifteen (15) days of receipt of this Order, return to this court a copy of her Answer with an attached Certificate of Service showing that Complainant, i.e. the Immigration & Naturalization Service, has been served with a copy of the Answer.

The second procedural issue is the untimely filing of Respondent's Answer. Under 28 C.F.R. 68.9, an Answer must be filed within thirty (30) days of service of the Complaint. Respondent has been given notice of this requirement both in the Notice of Hearing on Complaint

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<sup>1</sup> Citations are to the OCAHO Rules of Practice and Procedure for Administrative Hearings as amended in the Interim Rule published in 56 Fed. Reg. 50049 (1991) (to be codified at 28 C.F.R. Part 68) (hereinafter cited as 28 C.F.R. Section 68).

Regarding Unlawful Employment and in the Notice of Acknowledgment.

As Respondent's Answer was late, Complainant is entitled to file a Motion for Default, which in my discretion I may grant. 28 C.F.R. 68.9. Should I grant this motion, Respondent will lose her right to a hearing and be subject to the imposition of the civil penalty that I order. As noted in the procedural history of this case, I have such a motion pending before me. Under the pertinent regulations, whenever a motion is filed with this court by a party, the other party or parties must be given a reasonable opportunity to respond to the motion. See 28 C.F.R. 68.9(a). In this case, Respondent's response to the Motion for Default is due on August 24, 1992. See 28 C.F.R. 68.8; 28 C.F.R. 68.11.

I have determined that, in the interests of fairness and justice, I will defer ruling on this motion at this time so that Respondent may first file a Motion for Extension of Time to File Answer. Therefore, I am sua sponte directing Respondent to file this motion within fifteen (15) days of receipt of this Order which should comply with the regulations which accompany this Order, i.e., it should contain the legal caption, a title, signature, date, and a Certificate of Service. Copies of the motion should be served on Complainant, with the original being filed with this Court. The motion must contain a request for extension of time to file an Answer and must contain reasons of good cause why I should grant the request. Upon receipt of this motion, Complainant will have time to respond before I rule.

Further, with this Order, I am granting Respondent an extension of time to respond to Complainant's Motion for Default. Should I deny Respondent's Motion for Extension of Time to File an Answer, at that time, I will set a due date for the response.

I note that Respondent, in her Answer, has requested that copies of "notices" be sent to "Attorney McVay" who I assume is the same person as the statutory agent who received service of the Complaint. However, Respondent has requested that she continue to receive copies of all "notices" also. Thus, it is unclear what function Mr. McVay is serving in this case.

Respondent, of course, has the right to represent herself or to have legal counsel represent her at her own expense. 28 C.F.R. 68.32. However, due to the legal nature of this proceeding, Respondent's

admitted confusion, and the possibility of imposition of civil penalties, Respondent is encouraged to engage legal counsel. Therefore, should Mr. McVay, or another attorney, be serving as counsel for Respondent, a Notice of Appearance must be filed. At that point, all legal documents required in this case should be prepared and filed by said counsel. Respondent is directed to inform this Court, in writing within fifteen (15) days of receipt of this Order as to Mr. McVay's status in this case and/or whether or not she will be represented by counsel.

Respondent has also requested that any hearing be held in Phoenix, Arizona. Under the statute, a hearing is held in the nearest practicable place to where Respondent resides or to where the alleged violation took place. Section 274A(e)(3)(B) of the Act. As Respondent lives in Phoenix, Arizona and the alleged violations took place in that location also, any hearing that needs to be held in this case, should settlement not be possible, will be held in Phoenix, Arizona.

**IT IS SO ORDERED** this 21st day of August, 1992, at San Diego, California.

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E. MILTON FROSBURG  
Administrative Law Judge