

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

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| UNITED STATES OF AMERICA, |) |
| Complainant, |) |
| |) |
| v. |) 8 U.S.C. §1324a Proceeding |
| |) CASE NO. 92A00127 |
| ANDERS KAMPE, d.b.a |) |
| KAMPE MOTORS, LTD., |) |
| Respondent. |) |
| _____ |) |

DECISION AND ORDER ON DEFAULT

E. MILTON FROSBURG, Administrative Law Judge

Appearances: Frederick E. Newman, Esquire for Complainant
Randall J. Sundeen, Esquire for Respondent

I. Introduction

The Immigration Reform and Control Act of 1986 (IRCA) adopted significant revision in national policy on illegal immigration. IRCA introduced civil and criminal penalties for violation of prohibitions against employment in the United States of unauthorized aliens. Civil penalties are authorized when an employer is found to have violated the prohibitions against unlawful employment and/or the record- keeping verification requirements of the employer sanctions program.

II. Procedural History

On April 8, 1992, Complainant issued a Notice of Intent to Fine (NIF) which contained two (2) counts. Count I alleged that Respondent failed to prepare and/or failed to make available for inspection the employment eligibility verification Form (Form I-9) for twelve (12) individuals named in that Count, in violation of Section 274A(a)(1)(B) of the Act or, in the alternative, Section 274A(a)(1)(B) of the Act. Complainant requested a civil monetary penalty of three hundred

dollars (\$300) for each violation for a total civil monetary penalty of three thousand six hundred dollars (\$3,600) for those violations. In Count II, Complainant alleged that Respondent knowingly hired and/or continued to employ two (2) named individuals who were unauthorized for employment in the United States, a violation of Section 274A(a)(1)(A) or, in the alternative, Section 274A(a)(2). Complainant requested a civil money penalty in the amount of fifteen hundred dollars (\$1,500) for each violation which resulted in a three thousand dollar (\$3,000) total civil penalty for Count II. The total relief in the NIF requested for Counts I and II was six thousand six hundred dollars (\$6,600) for Counts I and II.

Respondent, as is its right under the statute, filed a written request, by and through its attorney, for a hearing before an Administrative Law Judge. Complainant, therefore, filed a Complaint on June 5, 1992 which incorporated the NIF.

By Notice of Hearing dated June 8, 1992, Respondent was advised of the filing of the Complaint, the opportunity to answer the Complaint within thirty (30) days after receipt of the Complaint, my assignment to the case, and that the hearing, would be held in or around Los Angeles, California. On June 6, 1992, I issued a Notice of Acknowledgment advising Respondent of my receipt of this case and cautioned Respondent that an Answer, pursuant to 28 C.F.R. part 68.9¹, must be filed within thirty (30) days of its receipt of the Complaint. To date, neither Respondent nor Respondent's counsel has filed an Answer or any other document.

By Motion for Default Judgment² dated July 24, 1992, INS argues that Respondent should be found in default based on the fact that Respondent had failed to plead, answer or otherwise defend within thirty (30) days after service of the Complaint.

III. Discussion

¹ 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).

² Complainant's motion was titled both MOTION FOR DEFAULT JUDGMENT FOR FAILURE TO ANSWER COMPLAINT PURSUANT TO 28 C.F.R. 68.9(b)" and "MOTION FOR SUMMARY DECISION PURSUANT TO 28 CFR 68.9(b)". It is obvious to the Court that the second title was in error and will be ignored.

In this case, Respondent was represented by competent counsel and simply did not file any Answer to the Complaint. As such, and pursuant to 28 C.F.R. 68.9(b), Complainant may file Motion for Default Judgment. Complainant has done so. Respondent's failure to file a timely Answer to the complaint constitutes a basis for entry of a judgment by default within the discretion of the administrative law judge pursuant to 28 C.F.R. §68.9(b).

I will follow my reasoning in K & M Fashions, Inc., 2 OCAHO 411 (3/16/92) wherein I did not issue an Order to Show Cause prior to finding Respondent, who had been properly served with the Complaint, who had not filed an Answer and who was represented by counsel, in default. In this case, I find that Respondent has been properly served with the Complaint, that Respondent has not filed a timely Answer, and that Respondent has waived its right to hearing. Therefore, based upon a review of the relevant law, my findings and my discretion, I am granting Complainant's Motion for Default as to liability only. 28 C.F.R. 68.9(b); see U.S. v. Carlos Cruz, OCAHO Case No. 92A00052 (9/11/92).

An Order regarding imposition of civil penalties will be issued subsequent to Complainant's filing of a brief and/ or memorandum regarding the application of 28 C.F.R. 68.52(c)(iv). Respondent may also file similar documents, if it wishes. Id. The parties may address any other relevant factors which affect a determination of the appropriate civil penalty amount. U.S. v. Pizzuto, OCAHO Case No. 92A00084 (8/21/92). Briefs are due on or before September 25, 1992. The hearing scheduled in this case is canceled.

This Decision and Order on Default shall become the final Order of the Attorney General, unless one of the parties files a written request for review of the decision together with supporting arguments with the Chief Administrative Hearing Officer, 5107 Leesburg Pike, Suite 2519, Falls Church, VA 22041, as prescribed in 28 C.F.R. 68.53, or the Chief Administrative Hearing Officer modifies or vacates it within thirty (30) days of the date of this Order. 28 C.F.R. 68.53.

IT IS SO ORDERED this 11th day of September, 1992, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge