

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. 93A00089
MINACO FASHIONS, INC.)
Respondent.)
_____)

ORDER
(June 29, 1993)

I. Background

The complaint in this case involves three counts which allege violation of the obligation of employers in the United States to comply with employment eligibility verification requirements pursuant to 8 U.S.C. §1324a. The complaint, demanding \$49,770.00, was served on Respondent's counsel on May 6, 1993. A timely answer was filed on May 18, 1993.

On May 26, 1993, Complainant filed a motion to strike the "First" and "Second" denials contained in the answer. Although the time for response to the motion has expired, 28 C.F.R. §68.11(b), Respondent has failed to respond.

Pursuant to agreement among the parties, by counsel, and the office of the judge, a telephonic prehearing conference was scheduled by order dated June 4, 1993. The conference was to be held June 24, 1993 at 2:30 p.m., EDT.

On June 24, 1993, approximately one hour before the scheduled conference, the secretary to Respondent's counsel of record, Lawrence M. Wilens (Wilens), notified my office that Wilens would not be available for the conference because he had been required to go to federal court. My secretary also was told that Wilens would not be available until mid-July. Wilens' office assured the judge's office that a substitute date would be agreed upon. Counsel for Complainant on behalf of counsel for Respondent today confirmed their availability for the conference on July 19, 1993 at 10:00 a.m., EDT.

II. *Discussion*

Respondent has defaulted as to Complainant's motion to strike certain denials of the answer. In any event, the motion is well taken. General denial of OCAHO jurisdiction and INS authority under 8 U.S.C. §1324a is insufficient as a matter of law. General denial that a notice of intent to fine was served is unavailing as a matter of fact when a request for hearing followed service of that notice. Similarly, general denial of the identity of the Respondent is unavailing where the answer fails to specially plead any defect in that identification. The motion to strike is granted.

Respondent is cautioned that counsel's failure to appear for a scheduled telephone conference, without prior judicial approval, is as serious as a failure to appear for a conference or hearing in situ. OCAHO Rules of Practice and Procedure make clear that respondents can be held to have abandoned their requests for hearing by unexcused failures to appear. 28 C.F.R. §68.37(b). Counsel's inability to meet his commitment is particularly troublesome where, as here, Respondent's representation is held out as consisting of more than an individual attorney practicing alone.

Diversion of lawyer resources to attend a court matter is no less an act in derogation of the judge's authority than is any other failure to adhere to a solemnly established court appointment. Failure to meet telephonic conference commitments imperils the efficiency of an entire adjudicative regime.

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This order reschedules the telephonic prehearing conference for 9:30 a.m., Monday, July 19, 1993.

SO ORDERED. Dated and entered this 29th day of June, 1993.

MARVIN H. MORSE
Administrative Law Judge