

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

September 15, 1993

UNITED STATES OF AMERICA,	)
Complainant,	)
	)
v.	) 8 U.S.C. 1324a Proceeding
	) OCAHO Case No. 93A00024
PRIMERA ENTERPRISES, INC.,	)
D/B/A J.B.'S LOUNGE,	)
Respondent.	)
_____	)

ORDER GRANTING COMPLAINANT'S MOTION  
FOR SANCTIONS

On July 6, 1993, complainant, acting by and through the Immigration and Naturalization Service (INS) filed a Motion to Compel Answers to Discovery, asserting that on May 11, 1993, it prepared and served by mail its First Request for Admissions and First Interrogatories and Request for Production of Documents, which were received by respondent's counsel on May 15, 1993.

Under the governing procedural rules, 28 C.F.R. §§68.19(b), 68.20(d), and 68.21(b), respectively, respondent was required to have fully answered those interrogatories, produced the requested documents, and replied to the request for admissions, or to have objected thereto, within 30 days of receipt of those discovery requests. Where, as here, the discovery requests were served by mail, five days are added to the response period. 28 C.F.R. §68.8(c)(2). Accordingly, respondent's responses were due by June 15, 1993.

Complainant advised in its motion that respondent had neither responded nor objected to its discovery requests and that each request for admission, interrogatory, and request for production of documents was relevant and not privileged. Complainant requested that

respondent be ordered to comply with its discovery requests, or to file proper objections thereto.

On July 7, 1993, the undersigned issued an Order Granting Complainant's Motion to Compel Answers to Discovery, in accordance with the provisions of 28 C.F.R. §68.23(a).

In that Order, respondent was ordered to make available to complainant answers to all interrogatories propounded by complainant, to provide complainant with copies of all documents requested by complainant, and to have responded to complainant's request for admissions, and to have done so within 15 days of its acknowledged receipt of the Order.

Respondent was further advised therein that in the event it failed to comply fully with the provisions of that Order, appropriate sanctions would be ordered from those enumerated at 28 C.F.R. §68.23(c).

The United States Postal Service Domestic Return Receipt Card attached to respondent's copy of the Order Granting Complainant's Motion to Compel was returned to this Office, indicating that the Order was received by respondent on July 13, 1993. Accordingly, respondent's response was due by July 28, 1993.

On September 13, 1993, because respondent had not responded to the July 7, 1993 Order, complainant filed a Motion for Sanctions, in which it requested that the undersigned impose sanctions because of respondent's failure to comply with the July 7, 1993 Order Granting Complainant's Motion to Compel Answers to Discovery.

As of this date, respondent has not provided any of the discovery replies or materials which they had been ordered to provide in the July 7, 1993 Order. Accordingly, consideration of complainant's Motion for Sanctions is in order.

In its motion, complainant requests that the undersigned impose sanctions from among those enumerated at 28 C.F.R. §68.23. In particular, complainant requests the following sanctions:

1. Infer and conclude that the admission, testimony, documents, or other evidence would have been adverse to the non-complying party; and

2. Rule that for the purposes of the proceedings the matter or matters concerning which the order was issued be taken as established adversely to the non-complying party.

28 C.F.R. §§68.23(c)(1) and (2).

Complainant's motion is granted, and the sanctions listed above are ordered. In addition, Complainant's First Request for Admissions are deemed as having been admitted by respondent.

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JOSEPH E. MCGUIRE  
Administrative Law Judge