

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. 95A00015  
SPARTAN BRANDS INC., )  
Respondent. )  
\_\_\_\_\_ )

FINAL DECISION AND ORDER GRANTING  
COMPLAINANT'S MOTION FOR DEFAULT JUDGMENT  
(April 4, 1995)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Patricia Gannon, Esq., for Complainant  
Michael Leavitt, Esq., for Respondent

I. Procedural History and Discussion

On January 30, 1995, the Immigration and Naturalization Service (INS or Complainant) filed its Complaint against Spartan Brands, Inc. (Spartan or Respondent) in the Office of the Chief Administrative Hearing Officer (OCAHO). The Complaint included a Notice of Intent to Fine (NIF) issued by the INS on February 16, 1994 and alleged four counts in violation of section 101 of the Immigration Reform and Control Act of 1986, as amended (IRCA), 8 U.S.C. § 1324a.

Count I charges Respondent with knowingly hiring and/or continuing to employ five named individuals not authorized for employment in the United States. The civil money penalty for Count I is \$2,475 (\$495 for each individual listed). Count II charges Respondent with failure to prepare and/or make available for inspection the employment eligibility verification form (Form I-9) for 25 named individuals. The civil money penalty for Count II is \$7,625 (\$305 for each individual listed). Count III charges Respondent with failure to ensure that 70 named indivi-

duals properly completed sections 1 and 2 of the Form I-9. The civil money penalty for Count III is \$20,825 (\$290 or \$365 depending on the individual listed). Count IV charges Respondent with failure to complete properly section 2 of the Form I-9 for two named individuals. The civil money penalty for Count IV is \$560 (\$280 for each individual listed). The total civil money penalty requested is \$31,485.

On January 31, 1995, this Office issued a Notice of Hearing (NOH) which transmitted the Complaint to Respondent. The NOH cautioned Respondent that failure to answer the Complaint within thirty (30) days of receipt might result in a waiver of the right to appear and contest Complainant's allegations. See 28 C.F.R. § 68.9(a) and (b).<sup>1</sup> To date, no answer to the Complaint has been filed by Respondent.

On March 16, 1995, Complainant filed a Motion for Default Judgment. Under OCAHO rules of practice and procedure, Respondent had 15 days to respond to this Motion. See 28 C.F.R. § 68.11(b) and § 68.8(c)(2). As I have stated before,

[i]t is my frequent although not invariable custom in cases where respondents are not represented by counsel to issue an order to show cause why default judgment should not issue, as an intermediate step before entering such a judgment. The considerations which favor such a step in cases involving pro se respondents do not, however, pertain where as here the record is clear that the respondent is represented by counsel.

United States v. Galvez-Melgarejo, 4 OCAHO 684, at 2-3 (1994).

Accordingly, as no response has been filed by Respondent to either the Motion for Default or the Complaint, I find Respondent in default. See 28 C.F.R. § 68.9(b).

## II. Ultimate Findings, Conclusions and Order

I have considered the Complaint filed by the INS and the Motion for Default Judgment. All motions and other requests not specifically ruled upon are denied.

For the reasons already stated, I find and conclude that:

1. Complainant's Motion for Default Judgment is granted;

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<sup>1</sup> See Ruler of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1994), as amended by 59 Fed. Reg. 41,243 (1994) (to be codified at 28 C.F.R. § 68.2(i), (k)) [hereinafter cited as 28 C.F.R. pt. 68].

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2. As alleged in the Complaint, Respondent is in violation of 8 U.S.C. § 1324a(a)(1)(A) and (B) with respect to each employee named in the Complaint, as to whom Respondent is found to have:
  - a. (Count I) knowingly hired and/or continued to employ five individuals unauthorized for employment in the United States, at an assessment of \$495 for each individual and a total civil money penalty of \$2,475;
  - b. (Count II) failed to prepare and/or to make available for inspection the Form I-9 for 25 named individuals, at an assessment of \$305 for each individual and a total civil money penalty of \$7,625;
  - c. (Count III) failed to ensure that 70 named individuals properly completed sections 1 and 2 of the Form I-9, at an assessment of \$290 for 63 of the named individuals and \$365 for seven of the named individuals, for a total civil money penalty of \$20,825;
  - d. (Count IV) failed to complete properly section 2 of the Form I-9 for two named individuals, at an assessment of \$280 for each named individual and a total civil money penalty of \$560.
3. Respondent pay a civil money penalty in the amount of thirty-one thousand four hundred eight-five dollars (\$31,485) for violations listed in the Complaint.
4. Respondent cease and desist from violating 8 U.S.C. § 1324a(a)(1)(A).
5. The hearing is canceled.

Pursuant to 8 U.S.C. § 1324a(e)(7), this Final Decision and Order is the final administrative adjudication in this proceeding and shall become final "unless within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final decision and order. . . ."

"A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order." 8 U.S.C. § 1324a(e)(8).

**SO ORDERED.**

Dated and entered this 4th day of April, 1995.

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MARVIN H. MORSE  
Administrative Law Judge