

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  
 ) OCAHO Case No. 95A00122  
PANAMERICAN SUPPLY )  
COMPANY, INC., )  
Respondent. ) Judge Robert L. Barton, Jr.  
\_\_\_\_\_ )

ORDER GRANTING RESPONDENT COUNSEL'S MOTION TO  
WITHDRAW  
(October 11, 1995)

Respondent's counsel has filed a Motion to Withdraw as Counsel asserting as grounds that he has been unable to communicate with his client since the beginning of August 1995 because the company's telephone number has been disconnected and the company has not responded to counsel's letters which have been sent to the Respondent's last address by certified mail, return receipt requested.

On September 18, 1995 I issued an Order Respecting Respondent Counsel's Motion to Withdraw, allowing Respondent twenty days to object to counsel's motion. To date I have received no communication from Respondent.

However, I have received a response from Complainant objecting to the motion. Complainant states that it is unknown whether Respondent has been served with a copy of the Complaint. Complainant cites United States v. Midtown Fashion, Inc., 4 OCAHO 657 (1994), and argues that because Respondent's counsel is the only person authorized to receive documents on behalf of Respondent and his law office is the

only address for delivery of documents pertaining to this case, the motion to withdraw should not be granted

Respondent's counsel responded by stating that he sent a letter, with the Complaint attached, to his client by certified mail and the return postal receipt was signed on September 12, 1995. Thus, Respondent did receive a copy of the Complaint.

Respondent's counsel has refuted Complainant's assertion that it is unknown whether Respondent has been served with a copy of the complaint. However, aside from the question of whether Respondent received the Complaint, it is clear that its counsel was served with the Complaint and service on counsel constitutes proper service under the Rules of Practice. See 28 C.F.R. § 68.3(a)(3). The Complaint was served on Respondent's counsel by certified mail, and the certified receipt card indicates that Respondent's counsel, Kenneth Harder, received the Complaint on September 5, 1995.

The Rules of Practice provide in pertinent part that a complaint may be served on a party, among other means, by mailing to the attorney of record. 28 C.F.R. § 68.3(a)(3). Mr. Harder had filed the Request for Hearing for Respondent on May 19, 1995. The filing of a Request for Hearing constitutes an appearance by counsel. 28 C.F.R. § 68.33(b)(5). Mr. Harder had not withdrawn his appearance prior to September 5, 1995 when the Complaint was received by him on behalf of Respondent. Thus, at the time the Complaint was served by certified mail on August 30, 1995 and received on September 5, 1995 Mr. Harder was the counsel of record for Respondent. Therefore, contrary to Complainant's suggestion, proper service of the Complaint has been effectuated.

Further, as to the Complainant's argument that Respondent's counsel is the only person authorized to receive documents on Respondent's behalf and his law office is the only address for delivery of documents, it is the Respondent's duty to keep both the Court and the opposing party informed as to its current mailing address and telephone number. Thus, Complainant may continue to serve papers on the Respondent at its last known address, which is the address indicated in the certificate of service attached to this Order.

Persuasive case law suggests that the motion in this case should be granted. An Administrative Law Judge recently granted a complainant counsel's motion to withdraw when a significant and irreconcilable difference of opinion arose between the attorney and his client. See Naginsky v. Department of Defense, Order Granting Motion to With-

draw and Complainant's Motion for Continuance, 5 OCAHO 795 (August 31, 1995). Even more to the point, federal courts have commonly granted motions to withdraw when an attorney has been unable to communicate with his client despite conscientious efforts to maintain communication. See Classic Gallery, Inc. v. Classic Gallery Company, 1994 WL 159502 (E.D. Mich. 1994). In Midstar v. United States, 33 Fed.Cl. 669 (1995), the Court granted the corporate plaintiff counsel's motion to withdraw when counsel experienced great difficulty in obtaining the cooperation of the client in answering discovery requests promulgated by the opposing party and when counsel had been unable to contact the company president or other company principals after repeated attempts. The Court found that it was appropriate to grant the motion to withdraw based on the fact that counsel was unable to communicate and receive direction from the client. Id. at 671.

Here, Respondent's counsel asserts that his client has not responded to his correspondence and that the Respondent's telephone number has been disconnected. While counsel has not alleged that he has repeatedly attempted to contact his client, it appears that he has made a reasonable effort. An attorney cannot be expected to attempt to represent a party in civil litigation when he cannot communicate with that party. Therefore, the motion to withdraw is granted. The Court and the parties shall continue to effect service upon the Respondent at its last known address. It is Respondent's obligation either to represent itself in this litigation, or to secure other counsel.

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ROBERT L. BARTON, JR.  
Administrative Law Judge