

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

UNITED STATES OF AMERICA,	)	
	)	
Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	
	)	OCAHO Case No. 2023A00038
CHILITTO PIKIN LLC,	)	
	)	
Respondent.	)	
_____	)	

Appearances: Ariel Chino, Esq., for Complainant  
Jodi Goodwin, Esq., for Respondent<sup>1</sup>

ORDER ACCEPTING RESPONDENT’S RESPONSE AND ANSWER  
AND DISCHARGING ORDER TO SHOW CAUSE

I. PROCEDURAL HISTORY

On January 18, 2023, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Chilitto Pikin LLC. The complaint alleges that Respondent violated the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Compl. ¶ 6. Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it served on Respondent on July 26, 2021, and the August 17, 2021, request for a hearing before this Court signed by Respondent’s counsel. *Id.* Exs. A, B.

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<sup>1</sup> The filing of Respondent’s request for a hearing with DHS constitutes an appearance by counsel. *See* 28 C.F.R. § 68.33(f).

On January 23, 2023, OCAHO's Chief Administrative Hearing Officer (CAHO) individually mailed Respondent and Respondent's counsel via United States Postal Service (USPS) certified mail the following documents: (a) the complaint, (b) a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), (c) the NIF, and (d) Respondent's request for a hearing (collectively, the Complaint package). The CAHO informed Respondent and Respondent's counsel that these proceedings would be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings located at 28 C.F.R. part 68 (2024)<sup>2</sup> and applicable case law. NOCA ¶ 2. The CAHO directed Respondent to answer the complaint within thirty days in accordance with 28 C.F.R. §§ 68.3(b), 68.9. *Id.* at ¶ 4.

According to the USPS website, the Complaint package addressed to Respondent was delivered on January 30, 2023. The Court received a USPS Domestic Return Receipt PS Form 3811 (return receipt) for the delivery, although it was not signed or dated. The Complaint package addressed to Respondent's counsel was returned to OCAHO as undeliverable. After OCAHO staff contacted Respondent's counsel and confirmed that her mailing address was correct, OCAHO sent another copy of the Complaint package to Respondent's counsel via USPS certified mail on March 7, 2023. At counsel's request, OCAHO staff notified her of the date of mailing and provided her with the certified mail tracking number to ensure proper service.

The USPS website confirmed that Respondent's counsel received the Complaint package on March 13, 2023. OCAHO also received a signed return receipt confirming service of the Complaint package on the addressee, Respondent's counsel. As such, Respondent's answer to the complaint was due by April 12, 2023. *See* 28 C.F.R. §§ 68.3(b), 68.9(a). Respondent did not file an answer by that date.

Not having received Respondent's answer, the Court issued an Order to Show Cause on July 6, 2023. *See United States v. Chilitto Pikin LLC*, 18 OCAHO no. 1486 (2023).<sup>3</sup> The Court ordered Respondent to file both an answer comporting

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<sup>2</sup> OCAHO's Rules of Practice and Procedure for Administrative Hearings are available on OCAHO's homepage on the United States Department of Justice's website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

<sup>3</sup> Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the

with 28 C.F.R. § 68.9 and a “response . . . in which it must provide facts sufficient to show good cause for its failure to file an answer to the Complaint in this case.” *Id.* at 5. The Court warned Respondent that if it failed to respond or demonstrate good cause, “the Court may enter a default against it pursuant to 28 C.F.R. § 68.9(b).” *Id.* The Court gave Respondent through July 26, 2023, to submit a filing showing good cause for its failure to answer the complaint and to file its answer. *Id.*

On July 28, 2023—two days after the Court’s deadline—OCAHO received Respondent’s Answer to Order to Show Cause (Response) and Answer to Complaint Regarding Unlawful Employment (Answer). Respondent’s certificates of service certify that both filings were served “by federal express courier” on Complainant on July 25, 2023. Resp. 3; Ans. 4.

## II. LEGAL STANDARDS

### A. Default Judgments

OCAHO’s Rules of Practice and Procedure for Administrative Hearings provide that a respondent’s failure to file an answer may “constitute a waiver of his or her right to appear and contest the allegations of the complaint.” 28 C.F.R. § 68.9(b). The Court then “may enter a judgment by default.” *Id.* Nevertheless, OCAHO courts, like federal courts, generally disfavor default judgments. *See, e.g., United States v. R & M Fashion Inc.*, 6 OCAHO no. 826, 46, 47-48 (1995). For instance, the United States Court of Appeals for the Fifth Circuit has held that “[d]efault judgments are a drastic remedy, not favored by the Federal Rules and resorted to by the courts only in extreme situations.” *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass’n*, 874 F.2d 274, 276 (5th Cir. 1989) (citations omitted).<sup>4</sup> It is

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specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents after Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1 and is accordingly omitted from the citation. Published decisions may be accessed through the Westlaw database “FIMOCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

<sup>4</sup> The Fifth Circuit Court of Appeals is the appropriate circuit for review of this matter. *See* 28 C.F.R. § 68.56. As such, its precedent provides instructive guidance.

preferable that cases are resolved on their merits, rather than through default judgments. See 10A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2681 (4th ed. 2021). As such, OCAHO Administrative Law Judges (ALJs) generally will enter a default judgment only when “the inaction or unresponsiveness of a particular party is unexcusable and the inaction has prejudiced the opposing party.” *D’Amico, Jr. v. Erie Cmty. Coll.*, 7 OCAHO no. 927, 61, 63 (1997) (citations omitted).

#### B. Good Cause

When a respondent fails to timely answer a complaint, the Court may issue an order to show cause as to why a default judgment should not be entered and ask the respondent to justify its failure to file its answer on time. *United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444, 445-46 (1989) (Vacation by the CAHO of the ALJ’s Order Denying Default Judgment). In deciding whether to accept a late-filed answer, the Court reviews the respondent’s response to its order and determines whether “the [r]espondent possessed the requisite good cause for failing to file a timely answer[.]” *Id.* at 446.

To determine whether good cause exists in this case, the Court will consider the following non-exhaustive factors: “(1) whether the failure to act was willful; (2) whether setting the [order to show cause] aside would prejudice the adversary; and (3) whether a meritorious claim has been presented.” *Effjohn Int’l Cruise Holdings, Inc. v. A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003) (citation omitted); see also *Kanti v. Patel*, 8 OCAHO no. 1007, 166, 168 (1998) (applying factors). The Court need not consider all these factors and may consider other factors. See *In re Dierschke*, 975 F.2d 181, 183-84 (5th Cir. 1992). For example, the Court may consider whether the public interest was implicated, there was a significant financial loss to the party in default, and if the party acted expeditiously to correct the default. *Id.* at 184. As the Fifth Circuit has explained, “[w]hatever factors are employed, the imperative is that they be regarded simply as a means of identifying circumstances which warrant the finding of ‘good cause’ to set aside a default.” *Id.*

### III. DISCUSSION AND ANALYSIS

#### A. Untimeliness of Respondent’s Filings

Before considering whether good cause exists to discharge the Order to Show Cause, the Court must address the untimeliness of Respondent's filings, namely, Respondent's Answer to Order to Show Cause and Answer to Complaint Regarding Unlawful Employment. Although these filings were dated and mailed on July 25, 2023, OCAHO did not receive them until July 28, 2023. OCAHO's Rules of Practice and Procedure for Administrative Hearings are clear that the date of filing is calculated using the date of receipt, not the date of mailing. *See* 28 C.F.R. § 68.8(b) ("Pleadings are not deemed filed until received by the [OCAHO], the [CAHO], or the [ALJ] assigned to the case."); *see also Kanti*, 8 OCAHO no. 1007, at 167 ("File' means that the document must be received in my office by the given date, not that it merely must be postmarked by then.") (citing 28 C.F.R. § 68.8(b)). Given that the filing deadline was July 26, 2023, Respondent's Response and Answer were filed two days late.

The Court has discretion to accept late filings. *See Villegas-Valenzuela v. INS*, 103 F.3d 805, 811 n.5 (9th Cir. 1996) (citing 28 C.F.R. § 68.11(b)) ("[T]he [OCAHO] ALJ maintains discretion to accept pleadings within a time period he may fix."); *see also United States v. Ricky Catalano*, 7 OCAHO no. 974, 860, 863-64 (1997) (explaining that "it was within the discretion of the [ALJ] to consider a late response."). Here, the Court exercises its discretion and accepts Respondent's untimely Response and Answer as filings in this matter. The Court has considered that Respondent mailed its filings before the July 26, 2023, deadline, and that it certified that it served both filings on Complainant by Federal Express courier on July 25, 2023, one day before the Court's deadline. Resp. 3; Ans. 4. Further, OCAHO received both filings only two days after the deadline, and the Court recognizes that OCAHO ALJs have accepted filings where the filing delay was more substantial. *See, e.g., Villegas-Valenzuela*, 103 F.3d at 811 n.5 (finding no abuse of discretion where OCAHO ALJ accepted a motion filed three days late); *see also Zajradhara v. Donghui Kengxindun Corp.*, 14 OCAHO no. 1382, 2-3 (2020) (accepting respondent's motion dated and mailed before the filing deadline but received twenty days late).

## B. Order to Show Cause

The Court next considers whether good cause exists to discharge the Order to Show Cause against Respondent dated July 6, 2023. The Court finds that the factors listed above weigh in favor of accepting Respondent's Answer and discharging the Order to Show Cause so that this case can be decided on its merits.

First, Respondent's failure to timely answer the complaint does not appear to have been willful. *See Effjohn Int'l Cruise Holdings, Inc.*, 346 F.3d at 563. In the Response, Respondent's counsel acknowledged her receipt of the Complaint package on March 13, 2023, and her awareness of OCAHO's requirement that Respondent file an answer within thirty days after receipt of the complaint. Resp. 2. Respondent's counsel explained that she was on a week-long, family vacation when the Complaint package was served. *Id.* Upon returning to the office, she reviewed a week's worth of mail, including the Complaint package, however, "through oversight and clear error in calendaring," she failed to input the filing deadline for the answer in her system. *Id.* The information before the Court supports the conclusion that Respondent's failure to timely answer the complaint was inadvertent, rather than willful. Despite the two-day delay in filing its Answer and Response, the Court also notes that Respondent attempted to act expeditiously to correct its failure to act and served its Answer and Response on Complainant before the deadline given in the Order to Show Cause. *See In re Dierschke*, 975 F.2d 181, at 184.

Second, the Court does not find any evidence that Complainant would be prejudiced if the Court discharges the Order to Show Cause. *See Effjohn Int'l Cruise Holdings, Inc.*, 346 F.3d at 563. Although Respondent's failure to file a timely answer resulted in a notable delay of 107 days in this matter from the original filing deadline until Respondent filed its Answer on July 28, 2023, "OCAHO courts have made it clear that '[m]ere delay alone does not constitute prejudice without any resulting loss of evidence, increased difficulties in discovery, or increased opportunities for fraud and collusion.'" *United States v. MRD Landscaping & Maint. Corp.*, 15 OCAHO no. 1407c, 8 (2022) (citing *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 3 (2004), and then citing *Wright & Miller, supra*, § 2699 (discussing types of prejudice and costs to the non-defaulting party)). This case is in its early stages, and discovery has not commenced. Respondent's Answer does not raise new issues, but rather, it generally denies the allegations in the complaint and offers two affirmative defenses. Finally, Complainant has not moved for default or asserted that it would be prejudiced by the Court's discharge of the Order to Show Cause against Respondent. *See, e.g., United States v. Sal's Lounge*, 15 OCAHO no. 1394c, 6 (2022).

Third, the Court finds that Respondent has presented sufficient defenses to the complaint. *See Effjohn Int'l Cruise Holdings, Inc.*, 346 F.3d at 563. As such, the Court finds that this factor weighs in favor of discharging the Order to Show Cause. "The purpose of looking at this factor is to 'determine whether there is some possibility that the outcome of the suit after a full trial will be contrary to the result

achieved by the default.” *MRD Landscaping & Maint. Corp.*, 15 OCAHO no. 1407c, at 9 (quoting *Sinha v. Infosys*, 14 OCAHO no. 1373a, 5 (2021)). In its Answer, Respondent denies many of the allegations in the complaint and raises the affirmative defenses of impossibility and “excessive fines.” Ans. 3. As to impossibility, Respondent asserts that it was “impossible for Respondent to complete Forms I-9 for individuals who no longer work with nor have contact with Respondent.” *Id.* As to excessive fines, Respondent argues that Complainant “incorrectly applied aggravating factors and the ‘matrix’ used for calculating fines severely overrepresents any alleged failures.” *Id.* These two affirmative defenses pertain to both Respondent’s liability for the alleged violations and the penalty amount. Although Respondent has not conclusively established these defenses, it need not do so for these purposes. There is enough in its Answer to “give the factfinder some determination to make.” *Kanti*, 8 OCAHO no. 1007, at 171 (citations omitted).

In summary, having weighed the factors discussed above and considered the strong preference for resolving cases on their merits, the Court accepts Respondent’s untimely filings, and, having found good cause for Respondent’s failure to timely answer the complaint, discharges the Order to Show Cause dated July 6, 2023, and accepts Respondent’s Answer. This case will be decided on its merits.

#### IV. ORDERS

IT IS SO ORDERED that the untimely Answer to Order to Show Cause and Answer to Complaint Regarding Unlawful Employment filed by Respondent, Chilitto Pikin LLC, are ACCEPTED as filings in this matter.

IT IS FURTHER ORDERED that, good cause having been found to exist, the Order to Show Cause against Respondent dated July 6, 2023, is DISCHARGED.

SO ORDERED.

Dated and entered on February 13, 2024.

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Honorable Carol A. Bell  
Administrative Law Judge