

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

April 16, 2024

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2024A00003
)	
IN-POWER MOTORS, LLC.,)	
Respondent.)	
_____)	

Appearances: Tracy Riley, Esq., for Complainant
Ricardo Castro, pro se, for Respondent

ORDER TO SHOW CAUSE – HEARING REQUEST MAY BE DEEMED ABANDONED

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality (INA), as amended, 8 U.S.C. § 1324a.

On October 2, 2023, Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), against Respondent, In-Power Motors, LLC, alleging Respondent violated 8 U.S.C. § 1324a(a)(1)(B)(i).

On July 3, 2021, Complainant served a Notice of Intent to Fine (NIF) on Respondent. Compl. The NIF was sent via FedEx to an address in Laveen, Arizona. Compl., Attachment A.

Respondent timely requested a hearing.¹ *Id.*, Attachment B. In its hearing request, Respondent’s correspondence contained an alternate address in Phoenix, AZ (within the letterhead). *Id.*

¹ The request for hearing is undated, but Complainant acknowledges it was timely. Compl., Attachment B; Compl. at 2. “[T]he Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days . . .) of the date of the notice, a hearing respecting the violation.” 8 U.S.C. § 1324a(e)(3)(A).

On October 2, 2023 (more than two years after receiving the hearing request), Complainant filed its Complaint in this forum. Complainant requested OCAHO serve Respondent, and provided two addresses - a Laveen, AZ address (Respondent's principal place of business, *Id.* at 2, 6), and a Chandler, AZ address (the address of Respondent's statutory agent). *Id.* at 2, 6, Attachment C.

On October 2, 2023 (later that day), OCAHO sent via USPS mail the following documents to both addresses: the Complaint, a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the NIF, and Respondent's request for a hearing (collectively, the complaint package). *Id.* at 2, Attachment C.

In its November 29, 2023 Order, the Court ordered Complainant to personally serve Respondent with the Complaint, NOCA, NIF and request for hearing (for reasons outlined in that Order).² The Complainant was also ordered to file evidence of completed service.

On February 29, 2024, Complainant submitted a responsive filing. Complainant provided an Affidavit Regarding Service from an agent of Homeland Security Investigations (HSI). On January 17, 2024, two HSI agents went to Respondent's business location in Phoenix, AZ. Upon arrival, they found a sign saying the business was temporarily closed. Aff. Regarding Service, Attachment A. The HSI agents then went to Respondent owner's residence in Laveen, AZ, but they found no one. *Id.* The agents then proceeded to Respondent agent's residence in Chandler, AZ. *Id.* An individual answered the door, but refused to identify himself. *Id.* The individual seemed to understand the documents (i.e. the complaint package) were for him. *Id.* The individual informed the HSI agents they could leave the complaint package on a table. *Id.* The HSI agents explained they needed a signed receipt. *Id.* The individual refused to sign any paperwork, and ultimately caused the HSI agents to conclude their safety was at issue (based on his behavior). *Id.* The HSI agents left the complaint package on a vehicle located on the property. *Id.*

II. SERVICE COMPLETED BY COMPLAINT

Complainant's submission demonstrates it complied with the Court's November 2023 Order. Complainant completed service on Respondent's agent on January 17, 2024. Respondent agent's

² For reference, “[s]ervice of complaint and notice of hearing is complete upon receipt by addressee.” 28 C.F.R. § 68.3(b). Receipt by an addressee occurs when (among other ways) the complaint package is delivered to “the individual party, partner of a party, officer of a corporate party, registered agent . . . of a corporate party, or attorney or representative . . . of a party,” or when it is left “at the principal office, place of business, or residence of a party.” 28 C.F.R. § 68.3(a).

“refusal to sign and date the certificate of service presented to him does not affect service nor alleviate Respondent of its responsibility to file an answer and comply with this Court’s orders.” *United States v. Vector Xpress, Inc.*, 16 OCAHO no. 1431a, 3 (2022).³

III. RESPONDENT FAILED TO TIMELY FILE AN ANSWER - ORDER TO SHOW CAUSE

“Within thirty (30) days after the service of a complaint, each respondent shall file an answer.” 28 C.F.R. § 68.9(a).

On January 17, 2024, Complainant completed service. Aff. Regarding Service, Attachment A. Therefore, the answer deadline was February 16, 2024. *See* 28 C.F.R. § 68.9(a); 28 C.F.R. § 68.3(b). To date, Respondent has not filed an answer.

“A complaint or request for hearing may be dismissed upon its abandonment by the party or parties who filed it.” 28 C.F.R. § 68.37(b). If a party or its representative “fails to respond to orders issued by the Administrative Law Judge,” then “[a] party *shall* be deemed to have abandoned a complaint or a request for hearing.” *Id.* § 68.37(b)-(b)(1) (emphasis added).

Respondent is ORDERED to submit a filing demonstrating good cause for its failure to file an Answer alongside its Answer by May 6, 2024. If the Respondent fails to respond to this Order, the Court may deem its hearing request abandoned. 28 C.F.R. § 68.37(b)(1).

SO ORDERED.

Dated and entered on April 16, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

³ 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 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 subsequent to 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 in the Westlaw database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.