

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. 2023A00068
ALCO CONSTRUCTION, INC.,)	
)	
Respondent.)	
_____)	

Appearances: Ricardo A. Cuellar, Esq., for Complainant
Terri Corbett, pro se, for Respondent

ORDER TO SHOW CAUSE

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. The United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on June 23, 2023. Complainant alleges that Respondent, ALCO Construction, Inc., failed to prepare and/or present Employment Eligibility Verification Form (Form I-9) for fifty-four individuals and failed to ensure that employees properly completed Section 1 and/or failed to properly complete Section 2 or 3 of the Form I-9 for forty-six individuals, and all in violation of 8 U.S.C. § 1324a(a)(1)(B). Complainant attached to the complaint its Notice of Intent to Fine Respondent and the December 14, 2018, request for a hearing before this Court signed by Respondent's President, Terri Corbett.¹

¹ Should Respondent retain counsel in this matter, its counsel shall file a notice of appearance in accordance with 28 C.F.R. § 68.33(f).

On June 27, 2023, the Chief Administrative Hearing Officer (CAHO) mailed Respondent via United States certified mail the following documents: (a) the complaint, (b) a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA), (c) ICE's Notice of Intent to Fine Respondent, and (d) Respondent's request for a hearing (the Complaint package). The CAHO informed Respondent 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 (2023)² and applicable case law. Links to OCAHO's rules and its Practice Manual³ were provided to Respondent, along with contact information for OCAHO. The CAHO directed Respondent to answer the complaint within thirty days in accord with 28 C.F.R. § 68.9(a). The CAHO cautioned that failure to file an answer could lead the Court to enter a judgment by default and any and all appropriate relief pursuant to 28 C.F.R. § 68.9(b).

The United States Postal Service website indicated that it delivered the Complaint package to Respondent on July 3, 2023. The Court received a signed certified mail return receipt (PS Form 3811) for the delivery. As such, Respondent's answer was due by August 2, 2023. To date, Respondent has not filed an answer.

II. LEGAL STANDARDS AND DISCUSSION

OCAHO's Rules of Practice and Procedure for Administrative Hearings permit a respondent thirty days to file an answer after being served with a complaint. *See* 28 C.F.R. § 68.9(a). Service of a complaint may be effectuated by "mailing [the complaint] to the last known address of such individual, partner, officer, or attorney or representative of record." *Id.* § 68.3(a)(3). Here, Respondent's answer was due no later than August 2, 2023, being thirty days after OCAHO after perfected service of the complaint on Respondent on July 3, 2023. *See id.* § 68.9(a).

² 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>.

³ The OCAHO Practice Manual, which is part of the Executive Office for Immigration Review's Policy Manual, provides an outline of the procedures and rules applicable to OCAHO cases. *See* <https://www.justice.gov/eoir/eoir-policy-manual/part-iv-ocaho-practice-manual>.

OCAHO's CAHO communicated the thirty-day deadline to Respondent through the Complaint package's NOCA. See NOCA at 3. As noted above, the CAHO warned Respondent that its failure to file an answer could lead the Court to enter a judgment by default. *Id.* (citing 28 C.F.R. § 68.9(b)). To assist Respondent, the CAHO provided it with contact information for OCAHO as well as links to OCAHO's rules and its Practice Manual. *Id.* at 1-2. Yet Respondent, who requested a hearing before this Court, has failed to file an answer to the complaint.

Section 68.9(b) of OCAHO's rules provides that "[f]ailure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The [Court] may enter a judgment by default." Should the Court enter a default judgement, "the [respondent's] request for hearing is dismissed, AND judgment is entered for the complainant without a hearing." *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004).⁴

It has long been OCAHO's practice to issue an order to show cause before entering a default. See *United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444 (Vacation by the Chief Admin. Hr'g Officer of the A.L.J.'s Order Den. Default J.) (7/14/89). In *Shine Auto Service*, the Acting CAHO explained:

Respondent must justify [in its response to the order to show cause] its failure to respond in a timely manner. Based on the Respondent's reply, the Administrative Law Judge shall determine whether the respondent has met the threshold for good cause. If the Administrative Law Judge determines that the Respondent possessed the

⁴ 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 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 "FIM OCAHO," the LexisNexis database "OCAHO," or on the United States Department of Justice's website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

requisite good cause for failing to file a timely answer, then the Administrative Law Judge may allow the Respondent to file a late answer.

Id. at 445-46. This Court follows that practice in this case.

Respondent shall file a response to this Order in which it must provide facts sufficient to show good cause for its failure to file a timely answer to the complaint. The Court further orders Respondent to file an answer to the complaint simultaneously with the filing of its response showing good cause. Respondent's answer must comport with 28 C.F.R. § 68.9. Failure to file an answer may constitute a waiver of Respondent's right to appear and contest the allegations of the complaint. *Id.* § 68.9(b). Default may follow. *Id.*

Upon receipt of Respondent's filings, the Court will determine if Respondent has demonstrated the requisite good cause for failing to file a timely answer to the Complaint and will decide whether to allow its untimely answer.

The Court puts Respondent on notice that, if it fails to respond to the Court's orders, the Court may find that it has abandoned its request for a hearing and dismiss it. 28 C.F.R. § 68.37(b)(1). *See, e.g., United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023) (finding that the respondent abandoned its request for a hearing when it failed to respond to the court's orders). "A final order of dismissal based on abandonment is analogous to entry of a default judgment under the Federal Rules of Civil Procedure." *United States v. Vilardo Vineyards*, 11 OCAHO no. 1248, 4 (Vacation by the Chief Admin. Hr'g Officer of the A.L.J.'s Final Dec. and Order of Dismissal and Remanding for Further Proceedings) (4/15/15) (citing *United States v. Greif*, 10 OCAHO no. 1183, 6 (2013)).

III. ORDERS

IT IS SO ORDERED that, within twenty days of the date of this Order, Respondent, ALCO Construction, Inc., shall file a response with the Court in which it must provide facts sufficient to show good cause for its failure to timely answer the complaint in this case. In this filing, Respondent shall confirm its best mailing address at which it shall receive service of the Court's orders in this case.

IT IS FURTHER ORDERED that, within twenty days of the date of this Order, Respondent shall file with the Court an answer to the complaint that comports with 28 C.F.R. § 68.9.

If Respondent fails to respond as ordered or cannot show good cause for its failure to file a timely answer to the complaint and response to this Order to Show Cause, the Court may conclude that Respondent has abandoned its request for a hearing and dismiss the complaint. 28 C.F.R. § 68.37(b). Respondent's failure to file an answer "may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint" and the Court may enter a default judgment against Respondent as to both liability and penalties. *Id.* § 68.9(b).

SO ORDERED.

Dated and entered on January 11, 2024.

Honorable Carol A. Bell
Administrative Law Judge