

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

United States of America, Complainant v. Prime Landscape Management, Inc., Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 90100163.

**DECISION AND ORDER ON DEFAULT**

(July 25, 1990)

**SYLLABUS**

Judgment in default will be ordered without issuance of Order to Show Cause Why Judgment By Default Should Not Issue where answer is more than two months late and there is no reason to conclude that service of the Notice of Hearing and of the motion for default was inadequate.

**MARVIN H. MORSE**, Administrative Law Judge

Appearances: **NANCY R. McCORMACK**, Esq., for the Immigration and Naturalization Service.

The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986), at section 101, enacted section 274A of the Immigration and Nationality Act of 1952 (INA or the Act), 8 U.S.C. § 1324a, introducing an enforcement program designed to implement the employer sanctions provisions prohibiting the unlawful employment of aliens.

On May 9, 1990 the Immigration and Naturalization Service (INS or the Service) filed a Complaint against Prime Landscape Management, Inc. (Prime Landscape or Respondent) alleging one count of unlawful employment of aliens and one count of paperwork violations of IRCA. The first count alleges that Respondent knowingly hired and/or continued to employ one named individual unauthorized for employment in the United States in violation of 8 U.S.C. § 1324a(a)(1)(A) and/or 8 U.S.C. § 1324a(a)(2). The second count alleges that Respondent failed to prepare, retain and present after request, the employment eligibility verification form (INS Form I-9) for such individual.

The Complaint attaches and incorporates a Notice of Intent to Fine (Exh. A), dated March 25, 1990 and served on Respondent on March 27, 1990, and Respondent's request for hearing (Exh. B) dated April 18, 1990, in the form of a letter signed by Darlene Laskey, Chief Executive Officer for Respondent.

The Complaint seeks a total civil money penalty of \$1,500.00: \$1,000.00 for knowingly hiring and/or continuing to employ an unauthorized alien and \$500.00 for the paperwork violation of such alien. Complainant also requests an order directing Respondent to cease and desist from further violations of 8 U.S.C. § 1324a(a)(1)(A) and § 1324a(a)(2).

By Notice of Hearing dated May 10, 1990 Respondent was advised of the filing of the Complaint, the opportunity to answer within thirty (30) days after receipt of the Complaint, and of my assignment to the case. A certified mail receipt addressed to Darlene Lasky and endorsed by Herb Lasky as recipient shows delivery of the Notice of Hearing with which the Complaint was enclosed on May 18, 1990. By motion dated June 21, 1990 INS moved for summary dismissal upon default. The motion, accompanied by an INS attorney's Declaration of Counsel, rests on the premises that ``Respondent has waived its right to appear in this proceeding and to contest the allegations contained in the Complaint.' ' 28 C.F.R. § 68.8(b).

The Rules of Practice and Procedure of this Office state that the respondent shall file an answer within thirty (30) days after service of the complaint, 28 C.F.R. § 68.8(a), and that the administrative law judge may enter a judgment by default if the respondent fails to file his or her answer within the time provided. 28 C.F.R. § 68.8(b). The Notice of Hearing advised Respondent to the same effect. Respondent has neither filed an answer nor any other pleading as of the date of this Decision and Order, now more than two months after receipt by Respondent of the Complaint.

In prior cases where there was reason to believe that respondent was inadequately notified or otherwise unaware that failure to file an answer within 30 days of receipt of the complaint would permit INS to request and obtain an order of default from the judge, I have issued orders to show cause why judgment by default should not issue. U.S. v. Elena Finishing Inc., OCAHO Case No. 89100581 (February 22, 1990); U.S. v. Elsinore Manufacturing, Inc., OCAHO Case No. 88100007 (May 20, 1988); modified by CAHO (June 16, 1988). This is not being the case here, however, default judgment issues without the need for such an order.

The Notice of Intent to Fine, the Notice of Hearing, and the motion for default all identify the same address for Respondent,

i.e., Respondent's return address on its request for hearing. In addition, the INS attorney's Declaration of Counsel recites that on May 21, 1990, three days after Respondent accepted for the Notice of Hearing, the U.S. Border Patrol received from Respondent a check for \$500.00 and a copy of the Notice of Intent to Fine. Based on the foregoing, I have no reason to conclude that Respondent was either inadequately notified of the Complaint or unaware of the consequences of not filing an answer.

The failure of Respondent to file a timely, or any, answer to the Complaint constitutes a basis for entry of a judgment by default within the discretion of the administrative law judge pursuant to 28 C.F.R. § 68.8(b). There being no reason to suppose that service was inadequate, but rather that it was proper and complete, I find that Respondent should have been aware of its obligations in this proceeding but has chosen neither to timely answer the Complaint nor provide any explanation for its untimeliness. Accordingly, I find Prime Landscape Management, Inc., Respondent, in default, having failed to plead or otherwise defend against the allegations of the Complaint.

**ACCORDINGLY, IN VIEW OF ALL THE FOREGOING, IT IS FOUND AND CONCLUDED,** that Respondent is in violation of 8 U.S.C. § 1324a(a)(1)(A) and/or 8 U.S.C. § 1324a(a)(2) for hiring and/or continuing to employ the individual named in the Notice of Intent to Fine, knowing that that person was unauthorized for employment in the United States, and in violation of 8 U.S.C. § 1324a(a)(1)(B) for failing to comply with the employment verification requirements with regard to the same individual.

**IT IS HEREBY ORDERED:**

(1) that Respondent pay a civil money penalty in the amount of \$1,500.00 for the violations in the Complaint; Respondent having paid \$500.00 toward such penalty, it owes a remaining balance of \$1,000.00;

(2) that Respondent cease and desist from further violating sections 274A(a)(1)(A) and (a)(2) of the Act, 8 U.S.C. §§ 1324a(a)(1)(A) and (a)(2);

(3) that the hearing in this proceeding is cancelled.

This Decision and Order on Default is the final action of the judge in accordance with 28 C.F.R. § 68.50. As provided at 28 C.F.R. § 68.51, this action shall become the final order of the Attorney General unless, within thirty (30) days from the date of this Decision and Order, the Chief Administrative Hearing Officer, upon request for review, shall have modified or vacated it.

**SO ORDERED.**

Dated this 25th day of July, 1990.

MARVIN H. MORSE  
Administrative Law Judge