

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

United States of America, Complainant v. Broadway Tire, Inc.,
Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 90100183.

ORDER DENYING RESPONDENT'S MOTION TO DISMISS

On October 2, 1990, Respondent filed a ``Motion to Dismiss.``

In its Motion, Respondent argues that ``the Complaint fails to state a cause of action in that the seeks (sic) `an order directing Respondent to pay the civil penalty, of \$3550.00 as specified in the complaint' but fails to allege either a demand for said payment of non-payment by Respondent.``

Respondent further argues that ``in any claim for a monetary judgment it is an essential element that the demand had been made for recovery of the sum and that said sum was not paid.`` Respondent does not cite any cases or statutory or regulatory provisions in support of its arguments to dismiss.

The regulations applicable to these proceedings details the requirements for a complaint. See 28 C.F.R. section 68.6. The regulations state, inter alia, that the complaint set out ``(1) A clear and concise statement of facts, upon which an assertion of jurisdiction is predicated; (2) The names and addresses of the respondents, agents and/or their representatives who have been alleged to have committed the violation; (3) The alledged violations of law, with a clear and concise statement of facts for each violation alledged to have occurred; and (4) A short statement containing the remedies and/or sanctions sought to be imposed against the respondent.``

In United States v. Azteca v. Northgate, OCAHO Case #88100087 (November 8, 1988) (Order Ruling on Motion to Strike), a case involving paperwork violations under IRCA, one of Respondent's affirmative defense was ``that the Complaint failed to state a claim upon which relief can be granted.`` Complainant filed a Motion to strike the affirmative defenses. The Administrative law judge, in granting Complainant's motion stated that:

Motions to dismiss a complaint for failure to state a claim upon which relief can be granted are disfavored by the courts. Only in the most extraordinary circum-

stances are they granted. United States v. Redwood City, 640 F.2d 963, 966 (9th Cir. 1981). Viewing the pleadings more favorably to the INS, as I must when ruling on Azteca's affirmative defense #9, Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), I find that the Complainant sets forth the elements of a cause of action, which if the facts pleaded are true, would justify the relief sought by INS, Middletown Plaza Associates v. Dora Dale of Middletown, Inc., 621 F. Supp. 1163, 1164 (D.C. Conn. 1985).

According to Rule 8(a)(2) of the Federal Rules of Civil Procedure, ``the heart of an affirmative federal pleading need consist only of a short and plain statement of the claim showing that the pleader is entitled to relief. All that is necessary is that the claim for relief be stated with brevity, conciseness, and clarity (citations omitted). This portion of Rule 8 indicates the objective of the rules is to avoid technicalities (citations omitted) and to require that the pleading discharge the function of giving the opposing party fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved (citations omitted); the discovery process bears the burden of filling in the details (citations omitted).'' See, 5 Wright and Miller, Federal Practice and Procedure, Section 1215, 136-43 (1990).

Neither the regulations applicable to these proceedings nor the Federal Rules of Civil Procedure require a complaint to allege that demand has been made upon Respondent for recovery of the amount of the civil monetary penalty sought nor that Respondent failed to pay the penalty.

The Complaint clearly conforms to both the requirements of the regulation, statute and Federal Rules of Civil Procedure. More specifically, the Complaint alleges in four separate and detailed counts that Respondent violated the provisions of section 274A of the Immigration and Nationality Act, 8 U.S.C. section 1324a by (1) failing to prepare the employment eligibility verification form (Form I-9); (2) failing to properly complete section 2 of the Employment Eligibility Verification Form (Form (-9); (3) Failing to Update the Employment Eligibility Verification Form (Form I-9); and (4) Failing to ensure that employee properly completed Section 1 of the employment eligibility verification form (Form I-9).

Each count of the Complaint also lists the names of the employees hired for whom the verification process was allegedly not properly followed and describes the exact nature of the verification violation and the specific statutory and regulatory sections violated. Moreover, each count specifically states the amount of penalty sought by Complainant.

I find, for the reasons stated above, that the Complaint filed in this case fully complies with the regulations and requirements for affirmative pleading as set forth under the Federal Rules of Civil

Procedu and prior OCAHO ALJ decisions. See United States Capitol
and Frames, Inc. s
Motion s
mot to dismiss complaint because of ambiguity, vagueness and lack of

I further find, that neither the law nor the regulations applicable
affirmative pleadings in cases involving alleged violations of th
record a
complaint payment of the civil penalty was made
to Respondent and he or she failed to make payment.

DINGLY, Respondent's Motion to Dismiss the Complaint in thi
case is hereby denied.

SO ORDERE This 19 day of October, 1990, at San Diego, California.

ROBERT B. SCHNEIDER