

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

United States of America, Complainant, v. James Q. Carlson, d/b/a Jimmy on the Spot, Respondent; 8 U.S.C. 1324a Proceeding; OCAHO Case No. 90100273.

DECISION AND ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DECISION  
AND APPROVING SETTLEMENT AGREEMENT

Procedural History and Statement of Relevant Facts

On September 4, 1990, the United States of America, by and through the United States Department of Justice, Immigration and Naturalization Service, ('`Complainant'') filed a complaint alleging in five (5) counts violations of 8 U.S.C. section 274A(a)(1)(B) of the Immigration and Nationality Act (the Act).

On October 1, 1990, James Q. Carlson, dba Jimmy on the Spot ('`Respondent''), answered the complaint, generally denying all allegations in the complaint.

On October 16, 1990, Complainant filed Motion to Strike Respondent's Answer. On November 2, 1990, I issued an Order granting complainant's Motion to Strike Respondent's Answer in part, striking: (1) Respondent's suggestion in his answer that he substantially complied with paperwork requirements of the Immigration Reform and Control Act ('`IRCA'') by photocopying the employees' driver's licenses as an affirmative defense U.S. v. Manos & Associates, OCAHO Case No. 89100130 (Order Granting in Part Complainant's Motion for Summary Decision, Decided February 8, 1990), but noting that this does relate to the mitigation of civil penalty; and (2) Respondent's allegations in his answer concerning settlement discussions and fines against Respondent by other government agencies which are not affirmative defenses, but show Respondent's financial condition in mitigation of the civil penalty.

On October 29, 1990, Respondent filed a Motion to Dismiss based upon the following arguments: (1) the individuals respondent hires

are not the type that are undocumented aliens; (2) as the sole owner of a small business, agents of the Immigration and Naturalization Service (INS) should have met with him personally to discuss the requirements of IRCA; (3) IRCA was passed ``to watch over those who are in business where it is common practice to hire undocumented, unspecialized persons;' ' and (4) he has filed bankruptcy. Complainant filed its answer to Respondent's Motion to Dismiss on November 2, 1990. On November 8, 1990, I issued an Order Denying Respondent's Motion to Dismiss the Complainant, in which I explained the inadequacies of Respondent's arguments as affirmative defenses to the IRCA violations.

On January 8, 1990, Complainant filed a Motion for Summary Decision, pursuant to 28 C.F.R. 68.36, arguing that a partial summary decision should be granted because no genuine issue of material facts exists as to Respondent's liability.

On January 28, 1991, Respondent filed his Answer to Motion for Summary Decision. In his Answer to Motion for Summary Decision, Respondent renews several arguments he unsuccessfully raised in previous pleadings: (1) he substantially complied with IRCA's paperwork requirements by personally photocopying each employee's driver's license for his file; (2) INS did not contact him, personally, concerning the policy and requirements of IRCA; and (3) ``he has all but closed his business' ' since he has ``gone broke.' '. He additionally asserts that he ``feels he is being `characterized' by the Complainant and has filed a complaint with his congressman in regards to this issue.' '

On February 1, 1991, I issued an Order of Preliminary Finding Granting Complainant's Motion for Summary Decision.

On February 8, 1991, I held a telephonic conference in this matter. Complainant offered to settle this case for the minimum fine amount of \$500.00. Respondent stated that it would like the case dismissed or a hearing.

On February 13, 1991, the parties filed with my office an executed document entitled Settlement Agreement and Stipulated Motion to Approve Settlement Agreement. By these documents and based upon my Order of Preliminary Finding Granting Complainant's Motion for Summary Decision, the parties have tendered an agreed disposition which contemplates a final order by me and which forms the basis for this Decision and Order.

Legal Standards for a Motion for Summary Decision

Summary decision is appropriate in cases where there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law. 28 C.F.R. 68(c): See also Fed. R. Civ. Proc. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-27 (1986); United States v. J. Dittman d/b/a/ Ready Room Rest., 8 U.S.C. 1324a Proceeding, Case No. 90100027 (OCAHO, Hon. ALJ Robert B. Schneider, decided July 9, 1990); United States of America v. Boo Bears Den., 8 U.S.C. 1324a Proceeding, Case No. 89100097 (OCAHO, Hon. ALJ Robert B. Schneider, decided July 19, 1989); United States v. USA Cafe, 8 U.S.C. 1324a Proceeding, Case No. 88100098 (OCAHO, Hon. ALJ Robert B. Schneider, decided February 6, 1989); 3 K.C. Davis, Administrative Law Treatise, Section 14:7 (2d ed. 1980).

**Legal Analysis Supporting Summary Decision**

After examining the pleadings and reviewing the legal arguments presented by both sides in this case, I conclude that there is no genuine issue of material fact as to Respondent's liability for violations of section 274A(a)(1)(B) of the Immigration and Nationality Act and that respondent is entitled summary decision on that issue. 8 C.F.R. 68.36(c).

The declaration of Merle Stethem and attachments thereto establish that Respondent failed to comply with the employment verifications requirements set forth in that provision by failing to record and/or examine documentation establishing the identity of the employees named in the complainant. Moreover, by failing to answer Complainant's Request for Admissions, Respondent is deemed to have admitted that those matters set forth therein as true. 28 C.F.R. 68.19(b). These admissions establish that Respondent concedes the genuineness of the Forms I-9 preferred by Complainant and concedes that persons named in the complaint were employees of the Respondent, hired after November 6, 1986.

Respondent has advanced three arguments in opposition to Complainant's Motion for Summary Decision which can be characterized as defenses. These defenses and my reasons for rejecting them are set forth below.

Respondent alleged that he complied with the paperwork requirements of IRCA by photocopying documents. As I have previously held, attaching a photocopy of documents to the Form I-9 without completing the form itself does not constitute ``substantial compliance'' and, therefore, is not an affirmative defense. United

States. v. Manos and Associates, dba Bread Basket, Case No. 89100130 (Order Granting in Part Complainant's Motion for Summary Decision Decided February 8, 1989).

Respondent's argument that Complainant had an affirmative duty to personally educate him, individually, must likewise be rejected. First, ignorance of the statutory requirements is not at defense to charges of IRCA violations. United States v. Mester, 879 F.2d 561 (9th Cir. 1989). Moreover, even assuming that Complainant had a duty to educate the Respondent, it had no duty to personally visit and discuss this matter with the owner of the business. See United States v. Basim Aziz Hanna, dba Ferris & Ferris Pizza, Case No. 89100331 (Decision and Order on Civil Monetary Penalty Decided July 19, 1990).

Respondent states that his business has fallen into financial distress. As I have previously held, Respondent's financial condition is not defense to liability but may be a factor in mitigation of the civil penalty. United States v. James O. Carlson, dba Jimmy on the Spot, Case No. 90100273 (Order Denying Respondent's Motion to Dismiss the Complainant Decided November 8, 1990 citing, U.S. v. United Potter Manufacturing and Accessories, OCAHO Case No. 89100047 (April 21, 1989) (Judgment by Default), aff'd by CAHO (May 19, 1989); U.S. v. Covered Bridge Farm Market, OCAHO Case No. 89100240 (March 2, 1990); U.S. v. Dodge Printing Center, OCAHO Case No. 89100453 (Jan. 12, 1990); and U.S. v. DAR Distributing, OCAHO Case No. 89100087 (June 5, 1989).

Finally, Respondent's statements that he feels the claims against him are ``harassment'' and that he has ``filed a complaint with his congressman'' are not arguments which present a legal defense to the charges set forth in the Complaint.

#### Proposed Settlement Agreement

The parties have executed a document entitled Settlement Agreement and a Stipulated Motion to Approve Settlement Agreement. I find that the proposed Settlement Agreement is a fair and equitable resolution of this matter and that there is no reason why I should not accept it.

#### Findings of Fact, Conclusions of Law, and Order

I have considered the pleadings, memoranda, briefs and affidavits of the parties submitted in support of and in opposition to the Complainant and Motion for Summary Decision the Settlement

Agreement. Accordingly, I make the following findings of fact and conclusions of law:

1. As previously found and discussed, I determine that no genuine issue as to any material facts exist with respect to all counts of the Complaint; and, that, therefore, pursuant to 8 C.F.R. 68.36, Complainant is entitled to a summary decision as to all counts of the Complaint as a matter of law.

2. That Respondent violated 8 U.S.C. 1324(a)(1)(B), in that Respondent hired, for employment in the United States, the individuals identified in the Complaint without complying with 8 C.F.R. 274a.2(b)(1)(ii) (A) and (B).

3. That the Respondent agrees to pay, in a compromise settlement, a civil penalty of five hundred dollars (\$500.00), that amount representing one hundred dollars (\$100.00) per count due on or before May 1, 1991.

4. I conclude that the settlement agreement is fair and satisfactory, and there is no reason to reject it, within the contemplation of 28 C.F.R. 68.12.

**ACCORDINGLY, IT IS HEREBY ORDERED:**

1. That Complainant's Motion for Summary Decision is granted as to liability;

2. That the Stipulated Motion to Approve Settlement Agreement is granted;

3. That the respondent pay a civil monetary penalty of \$500.00 for violating counts 1 through 5;

4. That each party bear its own attorney fees and other expenses and costs incurred by such party in connection with any stage of these proceedings;

5. That this Decision and Order has the same force and effect as a decision and order after a full administrative hearing;

6. That this Decision and Order is based on the entire record of these proceedings;

7. That the parties waive any further procedural steps before the Administrative Law Judge;

8. That the parties waive their right to challenge the validity of this Decision and Order;

9. That the hearing previously scheduled is cancelled; and

10. That, as provided in 28 C.F.R. 68.52 of the Rules of Practice and Procedure, this Decision and order shall become the final order of the Attorney General, unless within thirty (30) days from this date the Chief Administrative Hearing Officer modifies or vacates the order.

**IT IS SO ORDERED:** This 22nd day of February 1991, at San Diego, California.

ROBERT B. SCHNEIDER  
Administrative Law Judge