

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

United States of America, Complainant, v. Tiki Pools, Inc., d/b/a/
California Pools and Spa, Respondent; 8 U.S.C. 1324a Proceeding; Case No.
89100250.

ORDER DENYING COMPLAINANT'S MOTION FOR DEFAULT AND DIRECTING
RESPONDENT TO FILE A MORE DEFINITE ANSWER

On July 31, 1989, Complainant filed a Motion for Default Judgment. The basis for Complainant's motion is that it does not view Respondent's answer, filed on July 5, 1989, to be sufficiently responsive to the Complaint.

I agree with the underlying substance of Complainant's motion, but disagree that Respondent's vague Answer constitutes a justifiable basis for rendering a judgment in default.

It is well established that under modern procedure, defaults are not favored by the law and any doubts usually will be resolved in favor of the defaulting party so as to allow the case to be tried on the merits. See e.g., Davis v. Parkhill--Goodloe Co., 302 F.2d 489 (5th Cir. 1962). Moreover, this general policy is supported by the view whenever a respondent ``appears'' and/or ``indicates a desire to contest the action,'' a court can exercise its discretion and refuse to enter a default. See, 10 Wright and Miller, § 2682, at 411 (1989). In this regard, I view Respondent's Answer, though unsatisfactory, to constitute an attempt to ``otherwise defend'' itself within the meaning of Rule 55(a) of the Federal Rules of Civil Procedure (``FRCP'').

Accordingly, Complainant's Motion is hereby denied, because it is my view that a defective general denial, in and of itself, is not a grounds for making a judgment in default for failure to file an Answer. In other words, it is my view, Complainant's motion might better have been characterized as a motion for a more definite statement. Cf. Rule 12(e) of the FRCP.

It is also my view, however, that Respondent's Answer, as filed by its legal representative, is inadequate because it does not com-

port with the regulations pertaining to the filing of an answer to the complaint in these proceedings. See, 28 C.F.R. section 68.6; see also, Weade v. Trailways of New England, Inc., 325 F.2d 1000 (D.C. Cir. 1963) (corporate defendant's denial of ''each and every allegation'' did not give ''plain notice'' of the allegations in the complaint sought to be placed in issue).

Specifically, I find that Respondent's Answer does not indicate whether or not it actually denies the allegations in the Complaint or whether it intends to plead any affirmative defenses. 28 C.F.R. § 68.6 (1) and (2).

Accordingly, pursuant to my authority in § 68.6(e), I direct Respondent to amend and/or supplement its Answer so as to initiate this proceeding on a more substantially focussed basis. Respondent shall file with this office, on or before August 15, 1989, an amended Answer that is consistent with 28 C.F.R. § 68.6.

SO ORDERED: This 1st day of August, 1989, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge
U.S. Department of Justice
Office of Administrative Law Judges
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San Diego, California 92101