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

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| UNITED STATES OF AMERICA, | ) | |
| Complainant, | ) | |
| | ) | |
| v. | ) | 8 U.S.C. 1324a PROCEEDING |
| | ) | Case No. 90100170 |
| HEAD FOIL, INC. | ) | |
| d/b/a HEAD FOIL | ) | |
| CORPORATION, | ) | |
| Respondent | ) | |
| | ) | |

ORDER

The Respondent, by motion dated July 18, 1990, requested a continuance of the then-scheduled hearing in the captioned matter to a date subsequent to the final hearing in a related matter in Federal District Court, namely, a forfeiture proceeding wherein the United States Government is seeking forfeiture of a $50,000 airplane and an automobile which the government alleges were used by the Respondent in furtherance of the alleged unlawful employment of the two individuals in the instant proceeding.

The attorney for the Complainant did not oppose the Respondent's motion and, moreover, subscribed to the following:

> The Immigration and Naturalization Service does not object to Respondent's motion seeking continuance of the final (sic) hearing in the OCAHO proceeding, in OCAHO Case No. 90100170, to a date subsequent to the final hearing in Federal District Court which is now scheduled to be ready for trial on or before February 1, 1991, regarding the forfeiture of two conveyances owned by Respondent.

On July 26, 1990, I issued an Order granting Respondent's foregoing motion for a continuance, and rescheduling the hearing herein for March 4, 1991.

On February 7, 1991, the Complainant filed a Substitution of Attorney form, substituting the current INS attorney, Bernice L. Fields, for the former INS attorney, Mary Scarbrough.

On February 11, 1991, the Respondent filed another motion for continuance as a result of apparent delays in the District Court proceeding, and requested that the instant matter be continued from March 4, 1991, to a date subsequent to the final hearing in the District Court matter. The Complainant has opposed this motion for various reasons, and maintains that the hearing in the forfeiture matter is not likely to take place within an acceptable period of time.

In a memorandum received by telefax on February 28, 1991, the Complainant maintains that a continuance in this matter will adversely affect the Complainant's case because two of its witnesses are now serving in positions out of the country, and another witness is of advanced age. Further, the Complainant attached an affidavit executed by Patricia R. Cangemi, Assistant United States Attorney, who is the prosecutor in the forfeiture action which is entitled United States of America v. One 1976 Dodge and One 1981 Mooney Airplane, Civil No. 4-89-839. This affidavit states that it is not anticipated that the forfeiture matter will come to trial until "late in 1991" due to the complexity of international discovery of witnesses residing in London, England.

The Complainant's memorandum also states that:

> The Respondent will suffer no prejudice because of a denial of the requested continuance since he is obligated to present evidence of his hiring practices in both the seizure and sanctions cases. The Respondent alleges innocence as his defense. The evidence that would establish his innocence in the seizure matter should stand him in good stead in the sanctions matter. Therefore, how can Respondent be harmed by presenting his defense during the sanctions hearing. (Emphasis supplied)

During a conference call in this matter held on February 20, 1991, I advised the parties that, in order to attempt to accommodate both of their interests, I believed I had the authority to issue an order whereby the Respondent agreed to a settlement of the instant matter, but with a specific "non-admission" clause providing, in effect, that the Respondent was willing to pay the specified fine in order to avoid the expenses of litigation and was not admitting liability. Respondents' attorney, Richard Breitman, said that he believed this would be satisfactory and would check with his client. Ms. Fields stated that she did not believe I had the authority to issue such an

order or unilaterally accept a settlement agreement from the Respondent containing a non-admission clause. The parties agreed to research this issue. Additionally, the parties agreed to a one week postponement of the hearing from March 4, 1991 to March 12, 1991. Another conference call was scheduled for February 25, 1991, in order to obtain the positions of the parties regarding the proposed settlement, and to further explore settlement possibilities.

The February 25, 1991 conference call was held as scheduled. In addition to Ms. Fields, another INS attorney, Paul Stultz, also participated in the conference call. Mr. Breitman said he believed that I had the authority to issue the type of order I suggested during the initial conference call. He further stated that this was acceptable to his client, and that the Respondent would agree to a fine in the total amount of $3000. Ms. Fields stated that she believed I had no such authority. However, she indicated that the amount of the fine the Respondent was willing to pay appeared to be acceptable to the Complainant.

During the conference call other means of settlement were explored, including the possibility of entering into a conventional settlement agreement without the proposed non-admission clause, but containing a prospective indefinite date, namely, sometime subsequent to the final hearing in the District Court proceeding, for the effective date of the settlement. This would accommodate the Respondent's interests in insuring that the settlement could not be used as evidence against it in the District Court proceeding, as well as the Complainant's concerns that witnesses may be unavailable if the hearing is postponed until some indefinite time in the future. Mr. Breitman said he believed his client would be amenable to this proposal, and Ms. Fields said she would consult with her client in order to ascertain whether this would be acceptable. To date, there has been no response from the Complainant to this proposal, and since there is no reference to it in the February 28, 1991 memorandum, it appears that the Complainant is unwilling to enter into a settlement of this nature.

During the conference call, both parties requested that I promptly issue a final ruling on the Respondent's motion in order to give them sufficient time to serve subpoenas and otherwise prepare for the scheduled hearing. I advised the parties that I would issue an order by Friday, March 1, 1991.

Upon further consideration of the Respondent's foregoing motion and the positions and concerns of the parties, and because it appears that no proposed method of disposing of the instant case without potentially jeopardizing the Respondent's position in the forfeiture matter appears to be acceptable to the Complainant, and further, because I conclude that, under the circumstances, the interests of the Complainant herein are outweighed by those of the Respondent, who has demonstrated a willingness to settle this matter in any reasonable manner which will not potentially jeopardize its position in the forfeiture matter, and that it is likely, as represented by the Complainant in her foregoing memorandum, that the issues in the instant proceeding pertaining to the alleged unlawful hiring of the two individuals will be resolved in the forfeiture proceeding, I hereby issue the following,

Order

The Respondent's motion for a continuance in this matter to a date subsequent to the final hearing in the District Court forfeiture proceeding is hereby granted.

The hearing currently scheduled for March 12, 1991, is postponed indefinitely.

Dated: March 1, 1991

GERALD A. WACKNOV
Administrative Law Judge