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

March 26, 1996

UNITED STATES OF AMERICA, Complainant,	)	
v.	)	8 U.S.C. §1324a Proceeding OCAHO Case No. 95A00147
HOTEL VALET INC., Respondent.	)	

FINAL DECISION AND ORDER ENTERING DEFAULT JUDGMENT

Introduction

This is an action arising under the Immigration and Nationality Act, as amended, 8 U.S.C. §1324a (INA), in which the United States Immigration and Naturalization Service (INS) is the Complainant and Hotel Valet (Hotel or Respondent) is the Respondent. INS filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on October 25, 1995. A Notice of Hearing, together with copies of the Complaint and the applicable rules of practice and procedure[1], was mailed to Respondent on November 2, 1995 by certified mail, return receipt requested. No return receipt was ever received, but on January 11, 1996, an Answer was filed which was a accompanied by a cover letter from Respondent's counsel dated December [sic] 5, 1995.

Also filed on January 11, 1996 was Complainant's Motion for Default Judgment based on the late Answer. In the absence of a return receipt for service of the Complaint, and in view of the fact that

[1] Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1995).

all mail received in my office between December 18, 1995 and January 10, 1996 was date-stamped as having been received January 11, 1996,[2] I found it impossible to state with certainty when the Answer was actually due, and, if it was late, *how* late it was.

Therefore, on February 7, 1996, although the Motion was unopposed, I issued an Order denying Complainant's Motion for Default Judgment and ordering a preliminary conference of counsel to complete certain undertakings prior to the scheduling of a telephonic prehearing conference. In so doing, I noted that the purpose of the rule regarding default judgments is not to penalize litigants for minor technical errors or delays but to ensure "that litigants who are vigorously pursuing their cases are not hindered by those who are not." *Johnson v. Gudmundsson*, 35 F.3d 1104, 1117 (7th Cir. 1994), quoting *Stevens v. Greyhound Lines, Inc.*, 710 F.2d 1224, 1230 (7th Cir. 1983). I was reluctant to conclude on the basis of a possible few days delay in filing an Answer that Respondent was not pursuing the case.

Recent developments, however, call that reluctance into question. The record reflects that Complainant made a request for production of documents and propounded interrogatories which were served upon Respondent on December 21, 1995, that Respondent made no response thereto, and that on February 6, 1996, Complainant filed a Motion to Compel Responses to Complainant's First Set of Interrogatories and First Request for Production of Documents. No objections have been raised to the discovery requests, no response has been made to the Motion to Compel, and it now appears that Respondent's counsel has been instructed not to respond. Attempts to schedule the telephonic pre-hearing conference with the parties subsequent to the last Order have, moreover, been wholly unavailing.

On March 12, 1996, Complainant filed a Motion to Deem Abandoned Respondent's Request for Hearing, together with a Declaration of Counsel by Complainant's counsel, Jason Raphael. The declaration indicated that the preliminary conference of counsel I ordered did not take place due to lack of cooperation by Respondent. Further, Mr. Raphael stated that Respondent's attorney had told him Respondent did not intend to respond to Complainant's discovery requests or to Complainant's Motion to Compel Responses.

[2] Official notice is taken of a federal government shutdown during the period December 18, 1995 through January 10, 1996.

On March 13, 1996, I received a letter from Respondent's counsel indicating that Respondent was no longer in business and confirming that counsel had been instructed to take no further steps on Respondent's behalf.

Discussion

OCAHO rules provide that a party shall be deemed to have abandoned a request for hearing if the party or his representative fails to respond to orders issued by the Administrative Law Judge. 28 C.F.R. §68.37(b)(1). Pursuant to this authority, I deem the request for hearing to have been abandoned, and find further that the Respondent has effectively waived its right to appear and contest the allegations of the Complaint.

OCAHO caselaw demonstrates that failure to respond to an Order may trigger a judgment by default. *United States v. Rodeo Night Club,* 5 OCAHO 812, at 2 (1995). As the Respondent has failed to respond to my Order of February 7, 1996 and has further indicated that it has no intent to cooperate in discovery, to participate in prehearing conferences, or to take any action to defend in this matter, it has invited a judgment by default.

Ordinarily, prior to entering a judgment by default I would issue an Order to Show Cause giving the defaulting party an opportunity to remedy any default on a showing of good cause. Where, as here, it is clear to a certainty that this would be futile act, I find that judgment by default should be, and it hereby is, entered against Respondent in this matter.

Findings, Conclusions, and Order

1. Hotel Valet Inc. d/b/a New York Valet is a New York Corporation which at all times relevant to the complaint did business at 509 West 38th Street, New York, New York, 10018.

2. A Notice of Intent to Fine (NIF) was served on the Respondent on August 17, 1995, and Respondent made a timely request for hearing.

3. Respondent subsequently abandoned its request for hearing and waived its right to appear and contest the allegations of the Complaint.

4. Respondent hired the following 19 individuals after November 6, 1986 for whom it failed to prepare and/or make available for inspection Form I–9.

    1. Teodoro CARABELLO
    2. Vincente De MORALES
    3. Sakuntala DHANNA
    4. Maria DURAN
    5. Carol ELLIOTT
    6. Juan FRANCISCO
    7. Miguel GARCIA-CARDOSO
    8. Suresh LALLA
    9. Ramon MANGUA
    10. Aliff MOHAMED
    11. Aqueda NEGRON
    12. Carmen OTERO
    13. Taran PERSAD
    14. Paulina RAMOS
    15. Danilo RIVERA
    16. Armando RODRIGUEZ
    17. Leonardo RODRIGUEZ
    18. Jean STEVENS
    19. Patrick WRIGHT

5. Respondent hired the following 4 individuals after November 6, 1996 for whom it failed to complete Section 2 of Form I–9:

    1. Margaret BRYANT
    2. Lucille BURWELL a.k.a. Lucille BURNWELL
    3. Johnny MELENDEZ
    4. Ingrid ROGERS

5. Respondent hired the following 17 individuals after November 6, 1986 for whom it failed to complete Section 2 of Form I–9 within three business days:

    1. David CLAUDIO

    2. Albert DALMACI

    3. Anthony FERRARO

    4. Jose GARCIA

    5. Wilnese JEROME

    6. Rafaela JOSE

    7. Bruce LEVY

    8. Glenn LEVY

    9. Christine MCNEIL

    10. Dhanmatee NANHOO

    11. Rokhaytou NIASS-FATTAH

    12. Shirley PULLMAN

    13. Paulina RAMOS

    14. Amparo REYES

    a.k.a. Amparo MENDOZA REYES

    15. Edwin THOMAS

    16. Anthony TRONE

    17. William WHITE

Each instance of failure to complete, or to complete properly, Form I–9 constitutes a separate violation of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. §1324a(1)(B).

Penalties are assessed in the amount of $470.00 for Miguel Garcia-Cardoso and $330.00 for each of the other 18 individuals in paragraph 3 ($6,410.00); $310.00 for each of the 4 individuals in paragraph 4 ($1,240.00); and $260.00 each for 17 individuals in paragraph 5 ($4,420.00) for a total penalty of $12,070.00 as requested.

SO ORDERED.

Dated and entered this 26th day of March, 1996.

ELLEN K. THOMAS
Administrative Law Judge

Appeal Information

This order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§1324a(e)(7) and (8), and 28 C.F.R. §68.53.