

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

October 20, 1997

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. §1324a Proceeding
) OCAHO Case No. 97A00073
EL CHARRO AVITIA, INC.,)
DBA: EL CHARRO AVITIA,)
Respondent.)
_____)

**ORDER DENYING A STAY OF THIS PROCEEDING BASED
 ON FILING OF BANKRUPTCY BY RESPONDENT**

On August 29, 1997, Respondent filed a Notice with the Court that, on or about July 29, 1997, it had filed for bankruptcy in the U.S. Bankruptcy Court for the District of Hawaii. Respondent stated that, unless otherwise ordered by this Court, it would be assumed that this action is automatically stayed pursuant to 11 U.S.C. §362(a)(1).

After receiving no response by Complainant to Respondent's Notice, in an Order issued on September 19, 1997, I informed the parties that this proceeding was not stayed, and that all procedural dates remained in effect. However, I ordered Complainant to file a response to the Notice not later than October 9, 1997. Complainant filed its Response on October 15, 1997.¹

¹Complainant's Response is dated October 1, 1997, and the certificate of service attached to the Response states that it was mailed to Respondent's counsel on October 1, 1997. There is no mention of when the Response was mailed to the Court. In any event, "file," as defined by the OCAHO Rules of Practice and Procedure, means that the pleading is received by our office. 28 C.F.R. §68.8(b) (1996). Given that it appears that the pleading was mailed on October 1, 1997, I will accept the late filed Response this time. In the future, however, Complainant should insure that pleadings are filed in a timely manner (by submitting a FAX or other expedited means) or the pleading may be rejected.

Although Respondent did not file a motion for a stay, but rather simply a notice of the bankruptcy filing, I am treating the Notice as a request for a stay. In its Response, Complainant states that the instant proceeding is not subject to the automatic stay provision of 11 U.S.C. §362(a)(1), citing OCAHO case law, including my recent decision in *United States v. Mac Specialities Ltd.*, 6 OCAHO 920, at 6–7 (1997).

Respondent relies on the automatic stay provision of the Bankruptcy Code, which provides that the filing of a petition in bankruptcy operates as an automatic stay of:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under [the bankruptcy] title, or to recover a claim against the debtor that arose before the commencement of the case under [the bankruptcy] title. . . .

11 U.S.C. §362(a)(1) (1994). However, the automatic stay provision does not apply to “the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit’s police or regulatory power.” *Id.* §362(b)(4). Prior OCAHO decisions, including one from the Chief Administrative Hearing Officer (CAHO), have determined that “the INS is exempted from the automatic stay provision of 11 U.S.C. 362(a) because it is a governmental unit acting to enforce its police and regulatory power.” *United States v. United Pottery Mfg. & Accessories*, 1 OCAHO 349, 355 (Ref. No. 57) (1989),² 1989 WL 433960, at *5³ (Memorandum of Law in Support of the Final Agency Order by the Chief Administrative Hearing Officer); *see also United States v. Mac Specialties LTD*, 6 OCAHO 920, at 6–7 (1997), 1997 WL 242198, at *4 (Order Regarding Respondent’s First Affirmative Defense); *United States v. A&A Maintenance Enter.*, 6 OCAHO 852, at 4 (1996), 1996 WL 382262, at *2–3 (Order Denying Complainant’s Motion for Default Judgment,

²Citations to OCAHO precedents in bound Volumes I-III, *Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Employment Practices Laws of the United States*, reflect consecutive decision and order reprints within those bound volumes; pinpoint citations to pages within those issuances are to specific pages, seriatim, of the pertinent volume. Pinpoint citations to OCAHO precedents in volumes subsequent to Volume III, however, are to pages within the original issuances.

³If available, parallel Westlaw citations will be given to OCAHO decisions. OCAHO decisions published in Westlaw are located in the “FIM-OCAHO” database.

Granting in Part and Denying in Part Complainant's Motion to Strike, Granting Respondent's Motion to Leave to File Late Answer, and Allowing 15 Days to Amend Affirmative Defenses); *United States v. Broadcasters Unlimited*, 4 OCAHO 719, at 2 (1994), 1994 WL 765379, at *2; *United States v. Carlson*, 1 OCAHO 1695, 1698 (Ref. No. 264) (1990), 1990 WL 512115, at *3 (Order Denying Respondent's Motion to Dismiss the Complaint); *United States v. DAR Distributing*, 1 OCAHO 368, 370 (Ref. No. 60) (1989), 1989 WL 433836, at *2 (Order Granting Complainant's Motion for Judgment by Default).

Consequently, the automatic stay provision of 11 U.S.C. §362(a)(1) does not apply, and, therefore, this proceeding will not be stayed.

ROBERT L. BARTON, JR.
Administrative Law Judge