

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

April 18, 2013

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 12A00019
	)	
MITCHELL GREIF, PRESIDENT,	)	
COAST POLY, LLC	)	
Respondent.	)	
_____	)	

FINAL DECISION AND ORDER OF DISMISSAL

This is an action arising under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2006). The Department of Homeland Security, Immigration and Customs Enforcement (ICE) filed a complaint in five counts alleging that Mitchell Greif, as President of Coast Poly, LLC, violated various requirements of the employment eligibility verification system. Greif filed an answer denying the material allegations of the complaint and raising ten affirmative defenses.

Prehearing procedures were undertaken, the parties filed their prehearing statements, and a telephonic prehearing conference was conducted on August 7, 2012, at which time a schedule was entered for further proceedings. The schedule called for a thirty-day stay for settlement discussions, and, in the event no settlement was reached, the close of discovery on December 6, 2012. Dispositive motions were scheduled to be filed on or before January 7, 2013, and responses by February 6, 2013.

Because no motions were filed and nothing further was heard from the parties, I issued a Request for Status Report asking the parties to notify this office whether discovery had been completed and what their intentions were regarding dispositive motions. Greif made no response, but the government filed a report indicating that the settlement attempts were unsuccessful. The government’s report did not answer either of the questions posed in the request for status report, but stated only that, “[r]espondent states that his company has been seized, is bankrupt, and exits

(sic) no more. ICE requests that a hearing in this matter be scheduled as soon as possible.”

An order of inquiry was then issued posing inquiries to each of the parties. The government was advised that even when settlement negotiations are unsuccessful, parties should not be put to the burden and expense of a hearing in the absence of any genuine issue of material fact, *see United States v. Nebeker, Inc.*, 10 OCAHO no. 1165, 2 (2013).<sup>1</sup> ICE was again asked to advise this office whether discovery had been completed and what its intentions were with respect to dispositive motions, and was requested in addition to inform this office what, if any, issues of material fact would require a hearing. Greif was directed to advise this office on or before March 29, 2013 whether he intended to pursue his request for hearing and litigate this case or whether he intended to abandon the request.

Once again, ICE responded to the inquiry; Greif did not. ICE’s response indicated that its discovery was complete and that it did not believe there were any material issues of fact, but that it was investigating whether any assets were recoverable and that it would either file a dispositive motion or request that the proceedings be terminated at the conclusion of its investigation.

In the absence of a response from Greif, however, it appears that the request for hearing in this matter has been abandoned. A request for hearing may be dismissed upon its abandonment by the party who filed it, 28 C.F.R. § 68.37(b),<sup>2</sup> and a party shall be deemed to have abandoned a request for hearing if the party does not respond to orders issued by the Administrative Law Judge. *See, e.g., United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777-78 (1994). 28 C.F.R. § 68.37(b)(1). An order was accordingly issued directing Mitchell Greif to show cause on or before April 17, 2013 why his request for hearing should not be deemed abandoned if he does not intend to defend this case. Greif did not respond to the order and the time for responding has now expired.

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<sup>1</sup> Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

<sup>2</sup> Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2012)

Order

Greif's request for hearing is deemed abandoned, the complaint is dismissed, and the Notice of Intent to Fine becomes the final order in this matter. DHS remains at liberty to continue its investigation.

SO ORDERED.

Dated and entered this 18th day of April, 2013.

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Ellen K. Thomas  
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.