

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

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2021A00027
MRD LANDSCAPING & MAINTENANCE,)	
CORP.,)	
)	
Respondent.)	
_____)	

Appearances: Martin Celis, Esq., for Complainant
Cynthia Canales, Esq., for Respondent

ORDER ON RESPONDENT'S SUBMISSION

I. PROCEDURAL HISTORY

On April 12, 2021, the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Respondent, MRD Landscaping & Maintenance, Corp., violated the employer sanctions provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. The complaint reflects that ICE served Respondent with a Notice of Intent to Fine on October 1, 2019, and Respondent thereafter timely requested a hearing before OCAHO.

On May 21, 2021, Respondent filed an answer to the complaint. By order dated June 30, 2021, the Court directed the parties to file prehearing statements and make their initial disclosures. Both parties then filed their prehearing statements.

On July 26, 2021, Complainant filed a Motion for Leave of Court to Amend Complaint and an Amended Complaint Regarding Unlawful Employment. In its motion, Complainant sought the Court's leave to amend the complaint to remove

“‘timely’ from Count II, failure to timely prepare[,]” and to include information pertaining to civil monetary penalties. Mot. for Leave of Ct. to Amend Compl. 3. On December 17, 2021, the Court granted Complainant’s motion to amend the complaint in this matter and ordered Respondent to file an answer to the amended complaint within twenty days of the date of issuance of the order.

Not having received Respondent’s answer to the amended complaint, the Court issued a Notice and Order to Show Cause Regarding Answer to Amended Complaint (Order to Show Cause) on March 3, 2022. The Court ordered Respondent to file both a “response in which it must show good cause for its failure to file an answer to the amended complaint” and an answer to the amended complaint that comports with 28 C.F.R. § 68.9.¹ Order to Show Cause 3. Moreover, the Court warned that if Respondent failed to respond or demonstrate good cause, “the Court may find that Respondent has abandoned its request for a hearing and, consequently, dismiss that request.” *Id.* The Court gave Respondent through March 28, 2022, to submit a filing showing good cause for its failure to file its answer to the amended complaint and to file its answer to the amended complaint. *See* Order to Show Cause 3; 28 C.F.R. § 68.8(c)(2) (“Whenever a party . . . is required to take some action within a prescribed period after the service upon such party of a . . . notice . . . served by ordinary mail, five (5) days shall be added to the prescribed period unless the compliance date is otherwise specified”). As the Court explained in its Order to Show Cause, Respondent must file an answer that comports with 28 C.F.R. § 68.9.²

¹ The parties must familiarize themselves with OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2022). OCAHO’s rules are available on OCAHO’s homepage on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions#LawsandRegulations>.

² Specifically, 28 C.F.R. §§ 68.9(c) explains that an answer must include:

- (1) A statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation; a statement of lack of information shall have the effect of a denial (any allegation not expressly denied shall be deemed to be admitted); and (2) A statement of the facts supporting each affirmative defense.

On March 18, 2022, the Court received a letter dated March 16, 2022, from Respondent's counsel. The letter stated that Respondent will submit a "Reply Answer" to the Order to Show Cause and explained that Respondent had filed its "Answer" with the Court by facsimile on January 6, 2022, and served a copy of the "Answer" on Complainant via electronic mail and through the United States Postal Service. Respondent failed to include a certificate of service with its letter.

Several enclosures accompanied Respondent's letter to the Court. None of them were the answer to the amended complaint the Court ordered Respondent to file by January 6, 2022. Rather, Respondent enclosed a copy of a filing entitled "Respondent's Answer to Order Granting Motion to Amend Complaint and Directing Respondent to File Answer," stating that it did not oppose the Court's order granting Complainant's motion to amend the complaint. Respondent also enclosed copies of documents and communications reflecting its transmission of "Respondent's Answer to Order Granting Motion to Amend Complaint and Directing Respondent to File Answer" by facsimile to the Court on January 6, 2022,³ and its service of that filing on Complainant via electronic mail and U.S. mail.

On March 25, 2022, Respondent filed Respondent's Answer to Notice and Order to Show Cause Regarding Answer to Amended Complaint, and attached its answer to the amended complaint.⁴

³ Although Respondent transmitted its filing by facsimile to the Court on January 6, 2022, the original, signed filing was never received by the Court. *See* 28 C.F.R. § 68.6(c) (requiring the filer to forward "[a]ll original signed pleadings and other documents . . . concurrently with the transmission of the facsimile.").

⁴ On March 23, 2022, Respondent sent a copy of this filing to the Court by facsimile, accompanied by a certificate indicating service of the filing by electronic mail on Complainant. OCAHO's rules allow parties to file pleadings and briefs by facsimile where a time limit is imposed by statute, regulation, or order of the Court, but they may do so "only to toll the running of a time limit." 28 C.F.R. § 68.6(c). When filing by facsimile, OCAHO's rules also require that the filer certify in its certificate of service that the original pleading was served on the opposing party by facsimile or same-day hand delivery, or, if those methods are not feasible, by overnight delivery service. 28 C.F.R. § 68.6(c). Here, Respondent served Complainant by electronic mail. As OCAHO courts have explained, "[s]ervice by electronic mail is not listed among the acceptable concurrent filing methods." *See Yuyu Yang v. Zuora, Inc.*, 15 OCAHO no. 1402, 3 (2022). As such, the Court treats the March 23, 2022,

II. LEGAL STANDARDS

OCAHO's Rules of Practice and Procedure for Administrative Hearings require that all filings contain "a certification indicating service to all parties of record." 28 C.F.R. § 68.6(a). Likewise, OCAHO's rules prohibit ex parte communications with the Court that are not done for "the sole purpose of scheduling hearings, or requesting extensions of time." 28 C.F.R. § 68.36(a). Indeed, the Court may sanction a party who engages in prohibited ex parte communications. *See* 28 C.F.R. § 68.36(b).

III. DISCUSSION

Respondent's letter appears to be a prohibited ex parte communication to the Court. It is substantive in nature, discussing both an anticipated court filing and providing documentation pertaining to a prior filing. As explained above, OCAHO's rules prohibit ex parte communications with the Court that are not done for "the sole purpose of scheduling hearings, or requesting extensions of time." 28 C.F.R. § 68.36(a). Respondent's letter also lacks a certificate indicating its service on Complainant's counsel. As such, Respondent has run afoul of 28 C.F.R. § 68.6(a), which requires that all filings include a certification indicating service to all parties of record. The Court therefore rejects Respondent's letter and enclosures. The rejected submission is enclosed with this Order. Should Respondent wish to provide this information to the Court, it shall put the information in the form of a legal pleading with an appropriate case caption, attach the letter's enclosures as exhibits, and provide a certificate of service in accordance with 28 C.F.R. § 68.6(a).

IV. ORDER

IT IS SO ORDERED that, for the above-stated reasons, Respondent's submission of March 18, 2022, is REJECTED, and will not be considered by the Court. Respondent shall ensure that its submissions to this Court comply with OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the

facsimile transmission as a nullity. The effective date of filing is March 25, 2022. The Court will address this filing in a separate order.

provisions contained in 28 C.F.R. part 68 (2022), or they will likewise be rejected by the Court.

SO ORDERED.

Dated and entered on March 28, 2022.

Honorable Carol A. Bell
Administrative Law Judge