

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

August 30, 2023

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 2022A00052
	)	
MSNF FOODS 4 LLC	)	
D/B/A DOMINO'S PIZZA,	)	
Respondent.	)	
_____	)	

Appearances: Janelle Cleary, Esq., for Complainant  
Spencer Robbins, Esq., for Respondent

NOTICE THAT COURT MAY DEEM REQUEST FOR HEARING  
AS ABANDONED AND RESETTING DISPOSITIVE MOTIONS DEADLINES

On August 8, 2023, the Court issued a Notice That Court May Impose Discovery Sanctions, Or Deem Request For Hearing As Abandoned And Resetting Case Schedule.<sup>1</sup> *United States v. MSNF Foods 4 LLC*, 17 OCAHO no. 1459c, 1 (2023).<sup>2</sup> After discussing Complainant's August 1, 2023, motion and claim that Respondent did not respond to its discovery requests, the Court advised:

Given the preference for resolving cases on the merits, *see United States v. MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407c, 3 (2022), the Court provides

<sup>1</sup> The Court's August 8, 2023, Notice details the procedural history of this case.

<sup>2</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 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>.

Respondent with an opportunity to address why it did not respond to the Motion to Compel or otherwise respond to Complainant's discovery requests and to advise the Court whether it intends to pursue its request for a hearing and litigate this case. **Respondent's submission is due by August 22, 2023.**

Respondent is put on notice that failure to provide a submission may result in the Court deeming Respondent liable, and finding the penalty factors for which Complainant requested discovery to be adverse to Respondent. **The Court will also consider whether to deem Respondent's request for hearing abandoned or enter default.**

*Id.* at 3 (emphasis added).

This case now raises the spectre of abandonment. OCAHO's rules<sup>3</sup> provide that "[a] party *shall* be deemed to have abandoned a . . . request for hearing if [a] party or his or her representative fails to respond to orders by the [ALJ]." 28 C.F.R. § 68.37(b)(1) (emphasis added); *see United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416d, 5 (2023) (CAHO Notification of Administrative Review) (observing that this rule "suggests that a finding of abandonment is mandatory in certain circumstances").

Moreover, a respondent's lack of participation in a case "raises questions as to whether [it] has abandoned its request for a hearing before OCAHO." *United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1470b, 4 (2023) (CAHO Order) (citing *United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c (2023)); *see also United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416e, 6–8 (2023) (CAHO Order) (admonishing the respondent's counsel for repeated failure to participate in the action on his client's behalf and repeated failure to respond to orders or invitations to file by OCAHO).

Respondent did not respond to the Court's August 9, 2023, Notice or the Court's July 5, 2023, order compelling discovery. Indeed, Respondent last appeared before this ALJ in January 2023 when it jointly filed a motion for referral to OCAHO's Settlement Officer Program.<sup>4</sup> It appears that Respondent has stopped participating in these proceedings.

Respondent is given a final notice that the Court may deem its request for hearing as abandoned pursuant to 28 C.F.R. § 68.37(b)(1). The Court provides Respondent until September 14, 2023 to explain why this case should not be dismissed based on abandonment. If the Court deems Respondent's request for hearing abandoned, "the [Notice of Intent to Fine (NIF)] becomes the final order, and the NIF service date would be the date of assessment." *Edgemont Grp., LLC*, 17 OCAHO no. 1470b, at 6 n.9.

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<sup>3</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

<sup>4</sup> The Settlement Officer Program referral for this matter ended on April 3, 2023. To date, the Court has not received notice from the parties of a settlement.

The Court also finds it appropriate to reset the upcoming dispositive motions deadlines (in the event that the request for hearing is not deemed abandoned). The new deadlines are:

- Dispositive motions due: October 12, 2023
- Oppositions to dispositive motions due: November 13, 2023
- Tentative hearing: January 2024 in Newark, NJ

SO ORDERED.

Dated and entered on August 30, 2023.

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Honorable Jean C. King  
Chief Administrative Law Judge