

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

April 18, 2024

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022A00051
)	
JS DESIGN AND BUILD, LLC)	
D/B/A SPECTRA KITCHEN AND BATH,)	
Respondent.)	
_____)	

Appearances: James Harmony, for Complainant
Christopher L. Scileppi, Esq., for Respondent

NOTICE AND ORDER TO SHOW CAUSE

I. BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint against Respondent, JS Design and Build, LLC, with the Office of the Chief Administrative Hearing Officer (OCAHO) on July 11, 2022.

Respondent timely filed an answer. On August 31, 2022, the Court issued an Order for Prehearing Statements, directing that Complainant’s prehearing statement be filed on September 30, 2022, and Respondent’s prehearing statement on October 31, 2022. Complainant timely filed its prehearing statement, but Respondent did not file its prehearing statement by the deadline. The Court issued a Notice and Order to Show Cause on November 21, 2022, directing Respondent to file its prehearing statement, as well as a response showing good cause for its failure to timely file a prehearing statement, by December 11, 2022. Respondent did not file a prehearing statement or show good cause by that deadline.

The Complainant filed a Motion for Leave to Amend Complaint which the Court granted on December 16, 2022. *U.S. v. J.S. Design and Build, LLC d/b/a/ Spectra Kitchen and Bath*, 17

OCAHO no. 1460a (2022). In this Order, the Court also ordered Respondent to file an Amended Answer and provided Respondent one final opportunity to file a prehearing statement and a response showing good cause. Both filings were due no later than January 12, 2023.

On January 17, 2023, Respondent attempted to file a prehearing statement. However, Respondent did not include an explanation for why its prehearing statement was untimely as directed in the Court's Order. Moreover, Respondent did not file an Amended Answer. In an Order dated February 13, 2023, the Court directed Respondent to file its Amended Answer, and provided a final opportunity for Respondent to show good cause for its failure to timely file a prehearing statement and Amended Answer by March 6, 2023. Complainant filed a Motion for Default Judgment on March 13, 2023. On April 12, 2023, Respondent filed a Notice and Motion for Leave to File an Answer.

At a prehearing conference held on April 24, 2023, the ALJ accepted Respondent's Amended Answer, finding Respondent had shown good cause for the late filing, and rejected Respondent's Prehearing Statement, finding that Respondent had not shown good cause for the late filing. The ALJ orally denied Complainant's Motion for Default Judgment, citing the business owner's demonstrated commitment to defending himself in this matter. Lastly, the Court set a case schedule. *See* Order Summarizing Prehr'g Conf.

On June 28, 2023, the parties filed a Joint Motion to Reset Dispositive Motion Due Date, asking the Court to extend the dispositive motion deadline by 30 days due to ongoing settlement negotiations. The Court granted this request, ordering in relevant part that dispositive motions were due July 24, 2023. *See United States v. JS Design & Build, LLC*, 17 OCAHO no. 1460c (2023). After neither party filed a dispositive motion by this date, the Court ordered the parties to file a joint status report by September 1, 2023.

On September 5, 2023, the parties filed a Joint Status Report. The parties asked the Court to grant Complainant's Motion for Leave to File Second Amended Complaint (SAC) filed the same day, allow Respondent thirty days to file an answer, and allow the parties an additional sixty days to file any dispositive motions. *Id.*

The Court granted the motion, and set a new case schedule, setting a deadline for Respondent to answer the SAC, as well as setting a deadline of December 7, 2023, for dispositive motions and January 6, 2024, for responses to the dispositive motions. When Respondent did not file an Answer to the SAC by the time indicated, the Court scheduled another status conference, held October 25, 2023. Counsel for both parties attended. At the status conference, Respondent's counsel said that he would file an answer to the SAC. Mot. Default J. 1. No answer was filed.

On December 7, 2023, Complainant filed a Motion for Summary Decision. To date, Respondent has not filed a motion or a response.

Complainant filed a Motion for Default Judgment on March 28, 2024. To date, Respondent has not filed a response.

II. ORDER TO SHOW CAUSE

A. Standards

Under 28 C.F.R. § 68.37(b), “a request for hearing may be dismissed upon its abandonment by the party . . . who filed it. 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 issued by the Administrative Law Judge.” (emphasis added). Once a request for hearing has been deemed abandoned, the Administrative Law Judge (ALJ) “may . . . dismiss[]” it. *Id.* A final order of abandonment will result in the original Notice of Intent to Fine (NIF) served on Respondent becoming the final agency order. See *United States v. Dubose Drilling*, 18 OCAHO no. 1487b, 5 (2024) (find a request for hearing abandoned and rendering the Notice of Intent to Fine the final agency order).

Alternatively, a respondent’s “failure . . . to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint,” and the presiding ALJ may then “enter a judgment by default.” 28 C.F.R. § 68.9 (emphasis added). “A party that fails to answer a complaint within the time specified is already in default, whether or not that fact is officially noted.” *United States v. Quickstuff, LLC*, 11 OCAHO no. 1265, 4 (2015) (citations omitted). In this instance, the default must be excused before the party is permitted to answer. *Id.* (citations omitted). OCAHO ALJs have found that where no timely response was made to a request for the entry of a default judgment and the respondent proffered no good cause for the failure to file a timely answer, it was error for the ALJ to deny the government’s motion for entry of a default judgment and to permit a late filed answer. *Id.*, citing *United States v. Shine Auto Serv.*, 1 OCAHO no. 70, 444, 445-46 (1989); see also *United States v. Kirk*, 1 OCAHO no. 72, 455, 456-57 (1989) (granting default judgment where response to show cause order did not establish good cause for failure to answer).

B. Discussion

Counsel for Respondent has disregarded or filed untimely responses to almost all of the Court’s orders, in particular: Order for Prehearing Statement, Notice and Order to Show Cause for a prehearing statement, Order to File an Amended Answer, second Order to Show Cause for a late-filed pre-hearing statement, and an Answer to the Second Amended Complaint. Counsel also did not file a Response to Complainant’s Motion for Summary Decision, or a response to Complainant’s most recent motion for default judgment. While Respondent appeared at a prehearing conference in October, it has not participated in this litigation since. Respondent has consistently shown little regard for this Court’s deadlines and orders, resulting in numerous delays. Further, Respondent’s recent lack of participation has stymied the Court’s understanding of Respondent’s position.

Although Complainant’s Motion for Default Judgment serves as notice that the Court may deem the Complaint abandoned or enter a default judgment, in an abundance of caution, the Court gives Respondent a final opportunity to show cause as to why this case should not be dismissed as abandoned or subject to a default judgment.

Respondent is ORDERED to submit a filing showing good cause for why this case should not be dismissed as abandoned, show good cause for its failure to timely file an answer to the SAC, and file an answer to the SAC. The Court will then determine if Respondent has demonstrated good cause and decide whether to accept the late answer to the SAC, if filed.

The Court puts Respondent on notice that if it fails to respond to this order, the Court may find that it has abandoned its request for hearing and dismiss it. 28 C.F.R § 68.37(b)(1); *see United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023) (finding that the respondent abandoned its request for hearing when it failed to respond to the court's orders); *Dubose Drilling*, 18 OCAHO no. 1487b, 2-4 (2024) (finding the respondent abandoned its request for hearing when it failed to respond to two court orders).

Respondent's filings are due within fifteen days of the date of this Order.

SO ORDERED

Dated and entered on April 18, 2024.

Honorable Jean C. King
Chief Administrative Law Judge