

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

May 22, 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

FINAL ORDER OF DISMISSAL - ABANDONMENT

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.

This case has a lengthy procedural history detailed in its prior order, *United States v. JS Design and Build, LLC*, 17 OCAHO no. 1460d (2024).¹ For purposes of this Order, on September 5, 2023,

¹ 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>.

the parties filed a Joint Status Report asking the Court to grant Complainant’s Motion for Leave to File Second Amended Complaint (SAC), allow Respondent thirty days to file an answer, and reset the dispositive motion deadlines. 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 a 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. Complainant then filed a Motion for Default Judgment on March 28, 2024. To date, Respondent has not filed a response to either motion.

As a result, on April 18, 2024, the Court issued a Notice and Order to Show Cause. *JS Design and Build, LLC*, 17 OCAHO no. 1460d. The Court notified the parties that if Respondent failed to file an answer to the SAC and did not respond to the Order to Show Cause, the Court might find Respondent’s request for hearing abandoned and dismiss the case. *Id.* at 4 (citing 28 C.F.R. § 68.37(b)(1); *United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023)). The Court ordered Respondent to submit a filing showing good cause for why the 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 by May 3, 2024. To date, Respondent has not filed a response.²

² Counsel for Respondent disregarded the following court orders: 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, an Answer to the Second Amended Complaint, and an Order to Show Cause for why the case should not be dismissed as abandoned. Counsel also did not file a Response to Complainant’s Motion for Summary Decision or Motion for Default.

“All persons appearing in proceedings before an [ALJ] are expected to act with integrity, and in an ethical manner.” *United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416e, 7 (2023) (CAHO order) (quoting 28 C.F.R. § 68.35(a)). In *Koy Chinese*, the CAHO issued a public reprimand where Respondent’s counsel repeatedly failed to participate in the case on his client’s behalf and repeatedly failed to respond to orders or invitations to file issued by OCAHO adjudicators, finding the counsel’s conduct to “fall well short of the applicable standards of ethical and professional conduct.” *Id.* at 8.

“OCAHO looks to the ethics rules of the appropriate state bar to determine whether an attorney has committed an ethical violation.” *Id.* at 7. Here, the Court will look to the ethics rules for the state bar of Arizona as Respondent’s attorney is licensed and located there. *See* Attorney Search, STATE BAR OF AZ., www.azbar.org/for-lawyers/practice=tools-management/member-directory/ (last visited January 29, 2024). The Arizona Rules of Professional Conduct state, “[a] lawyer shall act with reasonable diligence and promptness in representing a client.” AZ RULES OF PRO. CONDUCT r. 1.3., *accord* MODEL RULES OF PRO. CONDUCT r. 1.3 (AM. BAR ASS’N 2023). Similar to *Koy Chinese*, Respondent’s Counsel in this case repeatedly ignored the orders of this Court, and

II. LEGAL STANDARDS AND DISCUSSION

As this Court previously warned, under OCAHO’s Rules of Practice and Procedure, “a request for hearing may be dismissed upon its abandonment by the party or parties who filed it.” 28 C.F.R. § 68.37(b). “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.” *Id.* Because Respondent has not responded to the Court’s Notice and Order to Show Cause and has disregarded or filed untimely responses to almost all of the Court’s orders, the Court now finds that the Respondent has abandoned its request for hearing pursuant to 28 C.F.R. § 68.37(b)(1). *See Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (finding that the respondent abandoned its request for hearing when it failed to respond to the court’s orders); *United States v. Dubose Drilling, Inc.* 18 OCAHO no. 1487b, 2-5 (2024) (finding the respondent abandoned its request for hearing when it failed to respond to two court orders).

“[I]n cases where the respondent timely requests a hearing but then abandons that request, the [Notice of Intent to Fine (NIF)] becomes the final order, and the NIF service date would be the date of assessment.” *United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1470b, 6 n. 9 (2023) (CAHO Order).

The Complaint is hereby DISMISSED, and the NIF becomes the final agency order in this matter.

SO ORDERED

Dated and entered on May 22, 2024.

Honorable Jean C. King
Chief Administrative Law Judge

as the record does not contain a prehearing statement, an Answer to the Second Amended Complaint, a response to Complainant’s motion for summary decision, or a response to the Order to Show Cause, the Court has little choice but to dismiss the case as abandoned. Accordingly, I find a written reprimand appropriate.

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.