

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. 2023A00037
SAI ENTERPRISE LIMITED,)	
D/B/A CRAZY DEALS,)	
)	
Respondent.)	
_____)	

Appearances: Mohammad Abdelaziz, Esq., for Complainant
Jayant Patel, pro se, for Respondent

FINAL ORDER OF DISMISSAL

I. PROCEDURAL BACKGROUND

On January 18, 2023, Complainant, the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, Sai Enterprise Limited, doing business as Crazy Deals, violated the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. Specifically, the complaint alleges that Respondent violated 8 U.S.C. § 1324a(a)(1)(A) by knowingly hiring an individual who was not authorized for employment in the United States (Count I) and violated 8 U.S.C. § 1324a(a)(1)(B) by failing to present Employment Eligibility Verification Forms (Forms I-9) for five individuals (Count II) and failing to ensure that employees properly completed Section 1 and/or by failing to properly complete Section 2 or 3 of the Forms I-9 for three individuals (Count III). Compl. ¶ 3.

Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it served on Respondent on June 8, 2022. Compl.

Ex. A. Through the NIF, Complainant notified Respondent that it was seeking a fine for the above-referenced allegations totaling \$18,453.60. *Id.* Respondent contested the NIF on June 9, 2022, and requested a hearing before this Court (“request for hearing”). *Id.* Ex. B.

On January 23, 2023, OCAHO’s Chief Administrative Hearing Officer (CAHO) used United States Postal Service (USPS) certified mail to send Respondent the complaint, a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the NIF, and Respondent’s request for hearing (collectively the “Complaint package”).

Through the NOCA, the CAHO informed Respondent that these proceedings would be governed by OCAHO’s Rules of Practice and Procedure for Administrative Hearings¹ and applicable case law. NOCA ¶ 2. The CAHO provided Respondent with contact information for OCAHO and links to OCAHO’s Rules and its Practice Manual.² *Id.* The CAHO directed Respondent to answer the complaint within thirty days after its receipt in accordance with 28 C.F.R. §§ 68.3(b), 68.9. *Id.* ¶ 4. The CAHO cautioned Respondent that its failure to file an answer could lead the Court to enter a judgment by default and all appropriate relief pursuant to 28 C.F.R. § 68.9(b). *Id.*

Respondent received the Complaint package on January 27, 2023, according to the USPS certified mail tracking service. The Court also received a signed and dated USPS certified mail domestic return receipt (PS Form 3811) confirming the January 27, 2023, delivery of the Complaint package. Under OCAHO’s Rules, “[s]ervice of complaint and notice of hearing is complete upon receipt by addressee,” 28 C.F.R. § 68.3(b), and a respondent must file an answer “[w]ithin thirty (30) days after the service of a complaint.” *Id.* § 68.9(a). Because Respondent received the Complaint

¹ OCAHO’s Rules of Practice and Procedure for Administrative Hearings 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-regulations>.

² The OCAHO Practice Manual, which is part of the Executive Office for Immigration Review’s Policy Manual, provides an outline of the procedures and rules applicable to cases before OCAHO. It is likewise available on the United States Department of Justice’s website. See <https://www.justice.gov/eoir/reference-materials/ocaho>.

package on January 27, 2023, its answer had to be filed with OCAHO by February 27, 2023.³ Respondent did not file an answer.

On June 6, 2023, Complainant filed a Motion for Default Judgment. Complainant argued that Respondent had waived its right to appear and contest the allegations of the complaint pursuant to 28 C.F.R. § 68.9(b) by failing to answer the complaint. Mot. Default J. at 2 (citations omitted). Respondent did not file a response to Complainant's motion. See 28 C.F.R. § 68.11(b) (providing that a party may file a response within ten days after a written motion is served).

On July 20, 2023, the Court issued an Order to Show Cause. *United States v. Sai Enter. Ltd.*, 18 OCAHO no. 1489 (2023).⁴ The Court held Complainant's Motion for Default Judgment in abeyance and ordered Respondent, within twenty days of the date of the Order, to file an answer to the complaint that comported with 28 C.F.R. § 68.9(b) and a response in which it provided facts sufficient to show good cause for its failure to timely answer the complaint. *Id.* at 5. The Court put Respondent on notice of the consequences should it fail to respond to the Court's orders. Specifically, the Court informed Respondent that pursuant to 28 C.F.R. § 68.37(b)(1), the Court may deem it to have abandoned its request for hearing if it failed to respond to the Court's orders. *Id.* (citing *United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023)). Dismissal of its request for hearing would follow. *Id.* (citing 28 C.F.R. § 68.37(b)). Quoting an order by the CAHO, the

³ Respondent was afforded thirty-one days to file its answer because the last day of the filing period, namely January 26, 2023, fell on a Sunday. In accordance with OCAHO's Rules of Practice and Procedure for Administrative Hearings, the filing period was extended to the next business day. 28 C.F.R. § 68.8(a).

⁴ 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," the LexisNexis database "OCAHO," or on OCAHO's homepage on the United States Department of Justice's website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Court explained that “[a] final order of dismissal based on abandonment is analogous to entry of a default judgment.” *Id.* (quoting *United States v. Vilarado Vineyards*, 11 OCAHO no. 1248, 4 (citing *United States v. Greif*, 10 OCAHO no. 1183, 6 (2013)). The Court repeated the CAHO’s warning that, should no answer be filed, the Court could enter a default judgment against Respondent pursuant to 28 C.F.R. § 68.9(b). *Id.* at 4, 5. The Court further explained that, if a default judgment was entered, Respondent’s request for hearing would be dismissed and it would enter a judgment for Complainant without a hearing. *Id.* at 3 (citing *Nickman v. Mesa Air Grp.*, 9 OCAHO no. 1106, 1 (2004)). Despite these warnings, Respondent failed to file an answer and a response showing good cause for its failure to file a timely answer by the Court’s deadline of August 9, 2023.

On November 27, 2023, Complainant filed its Second Motion for Default Judgment through which it argued that Respondent’s failure to file an answer constituted a waiver of its right to appear and contest the allegations of the complaint. Second Mot. Default J. 2. Complainant moved the Court to enter a default judgment against Respondent pursuant to 28 C.F.R. § 68.9(b) and issue an order directing Respondent to pay the fine specified in the NIF. *Id.* at 3. Respondent did not file a response to Complainant’s motion.

II. LEGAL AND REGULATORY STANDARDS

OCAHO’s Rules of Practice and Procedure for Administrative Hearings state that “[f]ailure of the respondent 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, as a result, the Court “may enter a judgment by default.” 28 C.F.R. § 68.9(b). OCAHO’s Rules also provide that “[a] complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it.” *Id.* § 68.37(b). In cases where a party or its representative “fails to respond to orders issued by the Administrative Law Judge,” OCAHO’s Rules state that “[a] party *shall* be deemed to have abandoned a complaint or a request for hearing.” *Id.* §§ 68.37(b)-(b)(1) (emphasis added).

OCAHO Administrative Law Judges (ALJs) have deemed a respondent who failed to submit an answer or respond to an order to show cause to have abandoned its request for hearing pursuant to 28 C.F.R. § 68.37(b)(1) and have dismissed the case pursuant to 28 C.F.R. § 68.37(b). *See, e.g., United States v. Milwhite, Inc.*, 17 OCAHO no. 1469a, 2 (2023) (dismissing case when respondent failed to file answer or respond to order to show cause); *United States v. Patmo Concrete, LLC*, 17 OCAHO

no. 1448b, 2 (2022) (accord); *United States v. Triple Crown Rest. Grp. LLC*, 16 OCAHO no. 1444b, 2-3 (2022) (accord). Although dismissal is a severe sanction, OCAHO ALJs have ordered dismissals based on abandonment where the pro se party was “warned of the potential consequences, including dismissal for abandonment, should it not respond to the Court’s orders.” *United States v. Nash Patio and Garden Ltd.*, 19 OCAHO no. 1543, 5 (2024) (dismissing case for abandonment of respondent’s request for hearing after the ALJ warned respondent of the potential consequences of not responding to the ALJ’s orders); *see also Rodriguez v. Tyson Foods, Inc.*, 9 OCAHO no. 1109, 3 (2004) (dismissing complaint for abandonment due to complainant’s failure to respond to the ALJ’s orders and comply with discovery orders after warnings that “noncompliance can result in dismissal.”).

II. DISCUSSION AND ANALYSIS

Since the early stages of this case, Respondent has been on notice of the rules governing this forum and the potential consequences should it not make the requisite filings. First, OCAHO’s CAHO explained to Respondent that these proceedings would be governed by OCAHO’s Rules of Practice and Procedure for Administrative Hearings and applicable case law, *see* NOCA ¶ 2, and that, under OCAHO’s Rules, if Respondent did not file a timely answer, the Court could deem it to have waived its right to appear and contest the allegations of the complaint and that “the [ALJ] may enter a judgment by default along with any and all appropriate relief.” *Id.* ¶ 4 (citing 28 C.F.R. § 68.9(b)). OCAHO’s Rules, a link to which was provided to Respondent, also describe dismissal for abandonment. 28 C.F.R. § 68.37(b).

The Court next put Respondent on notice of the potential consequences, including dismissal for abandonment and an entry of a judgment by default, should it not file an answer and fail to respond to the Court’s orders. The Court warned Respondent not once, but twice, in its Order to Show Cause that the Court might conclude that Respondent had abandoned its request for hearing and order a dismissal if it did not respond to the Court’s orders. *United States v. Sai Enter. Ltd.*, 18 OCAHO no. 1489, 5 (2023) (citing 28 C.F.R. §§ 68.37(b)-(b)(1)). The Court explained that such a dismissal would be analogous to entry of a default judgment for Complainant, *id.* at 5 (citations omitted), and repeated the CAHO’s warning that Respondent would not receive the hearing it requested if it waived its right to appear and contest the allegations raised in the complaint. *Id.* at 3 (citing 28 C.F.R. § 68.9(b)); *see also* NOCA ¶ 4. Respondent was then served with Complainant’s two motions seeking a default judgment, also citing 28 C.F.R. § 68.9(b). *See* Mot. Default J. at 2; Second Mot. Default J. 2.

None of the Court's orders or warnings have elicited a response from Respondent. Two years have passed since Respondent requested a hearing before this Court, and over sixteen months have passed since DHS filed the complaint in response to that request. Respondent has not participated in this litigation since it began. The Court's orders for an answer and a response to its Order to Show Cause have been ignored as was the CAHO's instruction to file an answer. Respondent has not filed an answer to the complaint, a response showing good cause, or any other filing, such as a response in opposition to Complainant's motions for default judgment, indicating that it intends to defend this action and pursue its request for hearing. The Court therefore finds that Respondent has abandoned its request for hearing before OCAHO by failing to respond to the Court's orders. 28 C.F.R. § 68.37(b)(1). Given this abandonment, dismissal is "entirely appropriate under 28 C.F.R. § 68.37(b)" as the CAHO found in a similar case where the respondent did not file an answer or a response to an order to show cause. *United States v. Cordin Co.*, 10 OCAHO no. 1162, 1, 4 (2012) (citations omitted).

Dismissal for abandonment is warranted here even though Respondent appeared without counsel. *See, e.g., United States v. Louie's Wine Dive, LLC*, 15 OCAHO no. 1404, 2 (2021) (dismissing case for abandonment of a request for hearing pursuant to 28 C.F.R. § 68.37(b)(1) where pro se respondent failed to file an answer or a response to an order to show cause). Service of the Complaint package and the Order to Show Cause was perfected on Respondent at its current business address in accordance with OCAHO's Rules of Practice and Procedure for Administrative Hearings, *see* 28 C.F.R. §§ 68.3(a)(3)-(b), and Respondent was provided with OCAHO's contact information and links to both the Court's rules and OCAHO's Practice Manual. *See* NOCA ¶ 2. The CAHO and/or the Court warned Respondent of the potential consequences of dismissal for abandonment or entry of a default judgment should it not file an answer and ignore the Court's orders. *Id.* ¶ 4; *Sai Enter. Ltd.*, 18 OCAHO no. 1489, at 3-5. Yet Respondent has not communicated with OCAHO during the pendency of this case and has left this Court with no choice but to dismiss this case pursuant to 28 C.F.R. § 68.37(b). *See, e.g., Nash Patio and Garden Ltd.*, 19 OCAHO no. 1543, at 5-6 (finding dismissal warranted where the ALJ warned respondent, who was operating without counsel's assistance, of the potential for dismissal for abandonment or entry of a default judgment should it fail to file an answer and respond to the ALJ's orders).

The wording of 28 C.F.R. § 68.37(b) suggests that this outcome is mandatory. The regulation specifies that "[a] party *shall* be deemed to have abandoned a complaint or a request for hearing" when "a party of his or her representative fails to

respond to orders issued by the [ALJ].” 28 C.F.R. § 68.37(b)-(b)(1) (emphasis added). The CAHO has explained that 28 C.F.R. § 68.37(b) “suggests that a finding of abandonment is mandatory in certain circumstances.” *United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416d, 5 (2023); *see also Cordin Co.*, 10 OCAHO no. 1162, at 3-4 (noting that “[t]he procedures governing abandonment and dismissal provide that ‘[a] party *shall* be deemed to have abandoned’ a request for hearing if the party ‘fails to respond to orders issued by the [ALJ].’”) (citing 28 C.F.R. § 68.37(b)(1)).

Dismissal pursuant to 28 C.F.R. §§ 68.37(b)-(b)(1) is analogous to entry of a default judgment on both liability and the civil money penalty amount as Respondent’s failure to participate in this litigation makes further inquiry into the penalty inappropriate. *See, e.g., United States v. Hui*, 3 OCAHO no. 479, 826, 828-29 (1992) (treating respondent’s abandonment of a request for hearing as a default judgment on liability and the penalty amount and noting that bifurcating the case to take evidence or argument on penalty would “result in delay, without providing any benefit to Respondent” where respondent was unavailable). The issuance of this dismissal moots Complainant’s Motion for Default Judgment and Second Motion for Default Judgment and they are denied as such. The Court now renders the original NIF that DHS served on Respondent on June 8, 2022, the final agency order.

III. ORDERS

IT IS SO ORDERED that, pursuant to 28 C.F.R. §§ 68.37(b)-(b)(1), this case which arose from the complaint filed on January 18, 2023, with the Office of the Chief Administrative Hearing Officer by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and the request for hearing dated June 9, 2022, by Respondent, Sai Enterprise Limited, doing business as Crazy Deals, is DISMISSED;

IT IS FURTHER ORDERED that Complainant’s Motion for Default Judgment and Second Motion for Default Judgment are DENIED AS MOOT; and

IT IS FURTHER ORDERED that Complainant’s Notice of Intent to Fine Pursuant to Section 274A of the Immigration and Nationality Act served on Respondent, Sai Enterprise Limited, doing business as Crazy Deals, on June 8, 2022, is rendered the final agency order.

SO ORDERED.

Dated and entered on June 11, 2024.

Honorable Carol A. Bell
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