

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

June 25, 2024

US TECH WORKERS ET. AL.,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00071
)	
THE NORTHERN TRUST COMPANY, D/B/A)	
NORTHERN TRUST,)	
Respondent.)	
_____)	

Appearances: John M. Miano, Esq. for Complainant
Ryan H. Vann, Esq., and Carly E. Gibbons, Esq., for Respondent

ORDER DISCHARGING ORDER TO SHOW CAUSE, GRANTING LEAVE TO REPLY
AND STAYING CASE

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Complainant, US Tech Workers, et al., filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 19, 2024, against Respondent, Northern Trust. Complainant alleges that Respondent engaged in discrimination based on citizenship status in hiring, in violation of 8 U.S.C. § 1324b(a)(1).

On April 8, 2024, the Chief Administrative Hearing Officer (CAHO) sent a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices (NOCA) and a copy of the Complaint to the address for Respondent listed on the Complaint by United States Postal Service (USPS) certified mail. The USPS website’s tracking service indicates that the copy of the NOCA and Complaint mailed to Respondent were “delivered, individual picked up at postal facility” on April 20, 2024. Therefore, Respondent’s answer to the Complaint was due no later than May 20, 2024. *See* 28 C.F.R. § 68.9(a).¹

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

On May 13, 2024, Complainant filed a Motion to Consolidate and for Leave to File a Consolidated Amended Complaint. On May 24, 2024, Respondent filed an Answer and Affirmative Defenses, as well as a Motion to Dismiss and an Opposition to Motion to Consolidate. Given that the regulatory answer deadline was May 20, 2024, Respondent's answer was untimely, but Respondent did not address why the answer was untimely. On May 30, 2024, this Court issued an Order to Show Cause, requiring Respondent to show cause for its untimely filing.

On June 11, 2024, Respondent filed a response to the Order to Show Cause, attaching the Answer and Motion to Dismiss. Also on June 11, 2024, Complainant filed a Response to Respondent's Motion to Dismiss as Motion for Partial Summary Judgment. On June 14, 2024, Respondent filed Respondent's Motion for Leave to File Reply and Motion to Stay Further Proceedings.

II. ORDER TO SHOW CAUSE

In Respondent's June 11, 2024, response to the Order to Show Cause, Respondent states that the late filing was due to a docketing error made in good faith by Respondent's counsel, that the Respondent date-stamped the Complaint on the date the legal department received the Complaint, but did not forward the envelope with the date the package was retrieved from the Company's post office box or note the date. Show Cause Response 2-3. Respondent indicates that counsel corresponded with complainant's counsel, who indicated that he did not oppose the pleadings being treated as timely and had not suffered prejudice. Vann Decl. ¶¶ 9-10. Complainant filed a response to the Respondent's Motion to Dismiss on June 11, 2024.

OCAHO's Rules provide that a respondent's failure to file an answer "may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default." 28 C.F.R. § 68.9(b). Such judgments are generally disfavored, and doubts regarding entry of default should be resolved in favor of a decision on the merits of the case. See *United States v. Vilaro Vineyards*, 11 OCAHO no. 1248, 5 (2015) (CAHO Order); *United States v. Jabil Circuit*, 10 OCAHO no. 1146 (2012) (CAHO Order).² In determining whether good cause to set aside an entry of default exists, OCAHO Administrative Law Judges (ALJs) have considered: (1) whether there was culpable or willful conduct; (2) whether setting the default aside would prejudice the adversary; and (3) whether the defaulting party presents a meritorious defense to the action. *Nickman v. Mesa Air*

² 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 after 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," the LexisNexis database "OCAHO," or on the United States Department of Justice's website at: <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

Grp., 9 OCAHO no. 1106 at 2-3 (2004) (citing *Kanti v. Patel*, 8 OCAHO no. 1007, 166, 168 (1998)).

The Court finds that Respondent has demonstrated good cause for its failure to file a timely answer. Respondent demonstrated that it intends to pursue the case and did not willfully avoid complying with the Order. Complainant indicated that it is not prejudiced by the delay and does not object to the answer being accepted, and Respondent filed a number of affirmative defenses and a motion to dismiss.

As such, the Order to Show Cause is discharged and the answer is accepted.

III. MOTION TO FILE REPLY

Respondent seeks to file a reply to Complainant's response to its Motion to Dismiss. Per OCAHO Rules of Practice and Procedure, parties are not permitted to file a "reply to a response, counterresponse to a reply, or any further responsive document," unless authorized by an ALJ. 28 C.F.R. § 68.11(b). Thus, parties "must seek leave of Court before filing a reply . . ." *United States v. Space Expl. Techs. Corp.*, 18 OCAHO no. 1499a, 4 (2023) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1093, 7 (2003)); *see also Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362g, 4 (2024).

An ALJ has full discretion to permit a reply. *See Space Expl. Techs. Corp.*, 18 OCAHO no. 1499a, at 4 ("[T]he decision whether to allow a reply or sur-reply 'is solely within the judge's discretion.'" (quoting *Diaz v. Pac. Mar. Assoc.*, 9 OCAHO no. 1108, 3 (2004))). OCAHO judges have considered whether the reply would "further record development and provide an opportunity for parties to be heard on novel issues or argument." *Sharma v. NVIDIA Corp.*, 17 OCAHO 1450j, 3 (2023) (citing *Heath v. Ameritech Global*, 16 OCAHO 1435, 3 (2022)); *see also United States v. Walmart Inc. (Bethlehem)*, 17 OCAHO no. 1475d, 7 (2023).

Respondent asserts that Complainant's response introduced new information and evidence, consisting of various webpages and comments from social media users, many of which are archived and not active. Mot. Leave File Reply 8. Respondent asserts it should have an opportunity to address this evidence. *Id.* Respondent also argues that the response is procedurally improper as that portion that is a motion for summary judgment should not be included in a response to a motion to dismiss. *Id.* at 7

The Court exercises its discretion under 28 C.F.R. § 68.11(b) to grant Respondent's Motion for Leave to File Reply. In introducing new evidence in its response, Complainant created cause for "further record development," as in *Sharma*, 17 OCAHO 1450j, at 3; Response Mot. Dismiss Exs. C & D. To the extent Respondent implicitly argues it was unable to effectively assess and respond to evidence in the complaint due to nonfunctioning links, the same rationale for a reply applies. Further, Respondent seeks to clarify "the exact nature of the dispute between the parties . . ." *Heath v. ASTA CRS, Inc.*, 14 OCAHO no. 1385b, 2 (2021). The Court also notes Complainant's lack of opposition to the motion. Given these factors, Respondent's June 14, 2024, Motion for Leave to File Reply to Complainant's Response to Motion to Dismiss is GRANTED.

III. STAY OF PROCEEDINGS

Respondent sought a stay of proceedings given the pending motion to dismiss and Complainant's motion to consolidate. *See Gulco v. Fraunhofer USA*, 19 OCAHO no. 1560 (2024). Per OCAHO rules, an ALJ is permitted to exercise "all appropriate powers necessary to conduct fair and impartial hearings" 28 C.F.R. § 68.28(a). This includes the authority to "regulate" and, thus, stay proceedings. *United States v. Black Belt Sec. & Investigations*, 17 OCAHO no. 1456b, 2 (2023) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1091, 5 (2003)); *see also Heath v. ConsultAdd*, 15 OCAHO no. 1395b, 2 (2022) (basing the Court's authority to issue a stay on its "inherent power to 'control the disposition of the cases on its docket with economy of time and effort" (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936))).

OCAHO ALJs have found judicial economy, fairness, lack of prejudice, and potentially dispositive case developments to justify a stay of proceedings. *United States v. Ron's Temp. Help Servs., Inc.*, 18 OCAHO no. 1496, 2 (2023) (judicial economy and fairness); *US Tech Workers v. Fifth Third Bank*, 19 OCAHO no. 1550, 3 (2024) (lack of prejudice); *Talebinejad v. Mass. Inst. Tech.*, 17 OCAHO no. 1464c, 3 (2023) (stay of proceedings due to pending motion to dismiss).

The Court finds a stay of proceedings is appropriate in this circumstance. A stay will serve the parties' interests in preserving time and resources as the Court considers the motions. Respondent's Motion to Dismiss seeks full dismissal and, if meritorious, would be case dispositive. *See also Fifth Third Bank*, 19 OCAHO no. 1550 at 3; *Zajradhara v. Hantang Ent. Corp.*, 19 OCAHO no. 1557, 2 (2024); *Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438b, 3, 5 (2022). Further, the Motion to Consolidate, if granted, would likely have an impact on how discovery is conducted. As such, in lieu of scheduling a prehearing conference, the Court will GRANT the motion to stay proceedings, and stay proceedings, including discovery (with the exception that Respondent may file the reply noted above). If the Court denies the motions, the Court will notify the parties of the date and time for an initial prehearing conference.

SO ORDERED.

Dated and entered on June 25, 2024.

Honorable Jean C. King
Chief Administrative Law Judge