

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

July 2, 2024

US TECH WORKERS ET. AL.,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2024B00084
)	
VALKYRIE TRADING,)	
Respondent.)	
_____)	

Appearances: John Miano, J.D., for Complainant
Christopher Mellee, for Respondent

ORDER STAYING PROCEEDINGS

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, Valkyrie Trading. 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 May 7, 2024. Therefore, Respondent’s answer to the Complaint was due no later than June 6, 2024. *See* 28 C.F.R. § 68.9(a).¹

On May 13, 2024, Complainant filed a Motion to Consolidate and for Leave to File a Consolidated Amended Complaint. On May 23, 2024, Respondent filed a Motion to Dismiss, to which Complainant filed a Response on June 3, 2024. On June 18, 2024, Respondent filed an Answer and Denial of All Allegations. Given that the regulatory deadline was June 6, 2024, Respondent’s Answer was untimely.

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

OCAHO's Rules of Practice and Procedure for Administrative Hearings provide that 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." 28 C.F.R. § 68.9(b). "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). "This means that the default must be excused before the party is permitted to answer." *Id.* The party must make a showing of good cause before the answer may be accepted. *Id.* (citing *United States v. Medina*, 3 OCAHO no. 485, 882, 889 (1993)). In determining whether good cause to set aside an entry of default exists, OCAHO Administrative Law Judges 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 Grp.*, 9 OCAHO no. 1106, 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 is intending to pursue the case by filing a motion to dismiss and subsequently the Answer with a number of affirmative defenses. *See, e.g., Zajradhara v. Guam Advance Enters.*, 18 OCAHO no. 1522a, 2 (2024). The Court also notes that Respondent appears to be represented by a company officer in this matter who has not indicated that he is an attorney. Answer 1. Complainant responded to the Motion to Dismiss with a Response, has not otherwise objected to the late filing, and thus has not been prejudiced by the delay. Respondent's Answer is ACCEPTED.

Given the pending Motion to Dismiss as well as the Motion to Consolidate, the Court will now sua sponte issue a stay of proceedings in this matter pending adjudication of the motions. *See Gulco v. Fraunhofer USA*, 19 OCAHO no. 1560, 1-2 (2024). Per OCAHO's Rules of Practice and Procedure for Administrative Hearing, 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 potentially case-dispositive 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 pending motions. Respondent's Motion to Dismiss seeks full dismissal and, if meritorious, would be case dispositive. *See Fifth Third Bank*, 19 OCAHO no. 1550, at 3; *Zajradhara v. Hantang Ent. Corp.*,

19 OCAHO no. 1557, 2 (2024). 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, proceedings are STAYED, including discovery. 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 July 2, 2024.

Honorable Jean C. King
Chief Administrative Law Judge