

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

August 14, 1992

UNITED STATES OF AMERICA, )  
Complainant, )  
 )  
v. ) 8 U.S.C. 1324a Proceeding  
 ) OCAHO Case No. 92A00006  
JOHN W. GUEWELL AND )  
ALFRED P. COOPER, d/b/a )  
WAGCO SECURITY SERVICES, )  
Respondent. )  
\_\_\_\_\_ )

ORDER GRANTING COMPLAINANT'S MOTION FOR SANCTIONS

By prior order dated June 24, 1992, respondents were required to have provided discovery responses, in the form of answers to interrogatories propounded by complainant on March 30, 1992, as well as documents described as the "WAGCO Book", time sheets, and respondents' partnership tax returns for the years 1990 and 1991, to the complainant within 15 days of respondents' receipt of that order, which respondents' counsel has acknowledged was received by regular mail on June 30, 1992.

On July 20, 1992, complainant filed a pleading entitled Complainant's Motion for Sanctions, requesting therein that certain sanctions, from among those enumerated at 28 C.F.R. §68.23, be imposed upon respondents for not having furnished the discovery replies and document copies which had been outlined in the June 24, 1992, order.

On July 24, 1992, respondents filed a Declaration in Opposition to Complainant's Motion for Sanctions, in which respondents advise that the files containing the requested information cannot be located, that

the respondents have filed for bankruptcy under Chapter 7, and that respondents' business office has recently been locked and respondents denied access to information and documents which are required to furnish further discovery responses.

The governing procedural rules applicable to this proceeding, are those codified at 28 C.F.R. §68.1 - .54, and more specifically 28 C.F.R. §68.23, which provides for certain sanctions in the event that a party, as here, fails to comply with an order for the production of documents or the answering of interrogatories.

Based upon the provisions of 28 C.F.R. §68.23(c), the following sanctions are hereby ordered:

1. That the undersigned infers and concludes that the answers to the interrogatories which were insufficient, unresponsive, or unanswered would have been adverse to all respondents. 28 C.F.R. §68.23(c)(1).

2. That for the purposes of this proceeding, the matter or matters concerning which the Order Granting Complainant's Motion to Compel Discovery is/are taken as having been established adversely to all respondents. 28 C.F.R. §68.23(c)(2).

3. That the respondents may not introduce into evidence or otherwise rely upon testimony by respondents, their officers or agents, nor may respondents, their officers or agents introduce into evidence or otherwise rely upon documents or other evidence, in support of or in opposition to any claim or defense. 28 C.F.R. §68.23(c)(3).

4. That the respondents may not be heard to object to the introduction and use of secondary evidence by complainant in order to show what the withheld admissions, documents, answers to the interrogatories, or other discovery replies would have shown.  
28 C.F.R. §68.23(c)(4).

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JOSEPH E. MCGUIRE  
Administrative Law Judge