

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

May 29, 2024

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 2024A00003
)	
IN-POWER MOTORS, LLC.,)	
Respondent.)	
_____)	

Appearances: Tracy Riley, Esq., for Complainant
Ricardo Castro, pro se, for Respondent

FINAL ORDER OF DISMISSAL – HEARING REQUEST DEEMED ABANDONED

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality (INA), as amended, 8 U.S.C. § 1324a. On October 2, 2023, Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), against Respondent, In-Power Motors, LLC, alleging a violation of 8 U.S.C. § 1324a(a)(1)(B)(i).

On November 29, 2023, after encountering difficulty serving Respondent, the Court ordered Complainant to serve Respondent with the Complaint documents. *United States v. In-Power Motors, LLC*, 19 OCAHO no. 1545, 2 (2024).¹ Complainant was ordered to provide an update to the Court.

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 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 “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

On February 29, 2024, Complainant submitted a filing updating the Court, which included an Affidavit Regarding Service (from a Homeland Security Investigations (HSI) agent). The affidavit detailed the completed service on January 17, 2024. Respondent's answer was due February 16, 2024.

On April 16, 2024, the Court issued an Order to Show Cause, requiring Respondent to file an answer and articulate good cause for its failure to timely file an answer. *Id.* at 3. The Court placed Respondent on notice that failure to respond could result in the Court deeming Respondent's hearing request abandoned. *Id.* To date, Respondent has filed nothing.

II. LAW & ANALYSIS

"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 complaint or request for hearing if . . . [they] fail[] to respond to orders issued by the Administrative Law Judge." 28 C.F.R. § 68.37(b)(1).

Specific to cases arising under this part of the statute, when a Respondent fails to file an answer and fails to respond to an order, the Court can enter default² or deem a hearing request abandoned. Between the two, default is more generous to a Respondent in that it permits the Respondent to still be heard on penalties (default is a loss of opportunity to contest the allegations). By contrast, abandonment is a harsher outcome - the NIF simply becomes the Final Order, stripping the Respondent of the right to be heard on both liability and penalty. *United States v. Edgemont Grp., LLC*, 17 OCAHO no. 1470b, 6 n. 9 (2023) (CAHO Order) ("[I]n cases where the respondent timely requests a hearing but then abandons that request, the NIF becomes the final order."); *see e.g., United States v. Dubose Drilling, Inc.*, 18 OCAHO no. 1487b, 6 (2024); *United States v. Steidle Lawn & Landscape, LLC*, 17 OCAHO no. 1457c, 2 (2023).

This Respondent's actions show it merits the harsher option, abandonment, is appropriate here. The Respondent failed to keep Complainant apprised of its contact information, which caused a delay in processing its hearing request in this forum. More compelling, when Complainant engaged in serving Respondent with the Complaint (at the direction of the Court) the Respondent engaged in behavior designed to further frustrate³ the very process it requested.

The Court now finds Respondent violated 8 U.S.C. § 1324a(a)(1)(B)(i) as outlined in the Complaint. The Court now adopts the Notice of Intent to Fine served on Respondent on July 8, 2021 as the Final Order.

² Failure 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. The Administrative Law Judge may enter a judgment by default. 28 C.F.R. § 68.9(b).

³ As noted in a prior order, when HSI agents went to Respondent's agent's residence, he refused to sign any paperwork, and ultimately caused the HSI agents to conclude their safety was at issue (based on his behavior). 19 OCAHO no. 1545 at 2.

SO ORDERED.

Dated and entered on May 29, 2024.

Honorable Andrea R. Carroll-Tipton
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.