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

United States of America, Complainant v. M.B. Builders Corp., Respondent; 8 U.S.C. § 1324a Proceeding; Case No. 89100602.

# DECISION AND ORDER GRANTING JUDGMENT BY DEFAULT

(March 26, 1990)

**MARVIN H. MORSE**, Administrative Law Judge

Appearances: **HANS BURGOS**, Esq., for the Immigration and Naturalization Service.
**LUIS A. AMOROS**, Esq., for Respondent.

The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986), at section 101, enacted section 274A of the Immigration and Nationality Act of 1952, (INA or the Act), 8 U.S.C. § 1324a, introducing an enforcement program designed to implement employer sanctions provisions prohibiting the unlawful employment of aliens.

On December 5, 1989, the Immigration and Naturalization Service (INS or the Service), filed a Complaint against M.B. Builders Corp. (M.B. Builders, or Respondent), alleging three counts of paperwork violations of IRCA.

Count One alleges that Respondent failed to prepare an employment eligibility verification form, INS Form I-9, for each of fourteen named individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B). Count Two alleges that Respondent failed to properly complete Section 2 of Form I-9 for each of four named individuals in violation of 8 U.S.C. § 1324a(a)(1)(B). Count Three alleges that Respondent failed to ensure that each of five named individuals properly completed Section 1 of Form I-9 and that Respondent as to those Forms I-9 failed to properly complete section 2, in violation of ⌊8 U.S.C. § 1324a(a)(1)(B).

The Complaint dated November 28, 1989, containing as Exhibit A a Notice of Intent to Fine (NIF) served October 27, 1989, contained

also, as Exhibit B, Respondent's request for hearing in the form of a letter dated November 27, 1989 to INS over the signature of Mildred Burgos Lopez, President, M.B. Builders Corp. Exhibit B, which appears to be on the letterhead of Respondent, shows an address in Rio Piedras, Puerto Rico.

The Complaint seeks as civil money penalties for the paperwork violations, for Count 1, $500.00 per violation, a total of $7,000.00; for Count II, $250.00 per violation, a total of $1,000.00 and for Count III, $250.00 per violation, a total of $1,250.00, for an aggregate civil money penalty of $9,250.00.

By Notice of Hearing dated December 8, 1989, Respondent was advised of the filing of the Complaint, the opportunity to answer within thirty (30) days after receipt of the complaint, my assignment to the case, and the approximate location of a hearing, i.e., in or around San Juan, Puerto Rico, ``pursuant to further notice . . . as to the specific date, hour and hearing location.'' The Notice stated in terms that the ``required answer is in addition to any answer filed in regard to the Notice of Intent to Fine issued by the INS,'' and cautioned that failure to timely answer might result in a judgment by default.

A certificate of service of the Notice of Hearing was filed with the judge on January 25, 1990. The certificate, executed by an INS agent, recites (with a copy of the Notice attached) that the Notice of Hearing was served on M.B. Builders at Rio Piedras, Puerto Rico on January 19, 1990. The certificate appears also to contain on behalf of Respondent the signature of Mildred Burgos Lopez as ``M.B. Builders Representative.''

By Motion for Default judgment dated March 2, 1990, INS asks that Respondent be found in default. The motion, accompanied by an INS attorney's Declaration of Counsel, rests on the premise that Respondent had ``failed to plead or otherwise defend within thirty days after the service of the Complaint as required by 28 C.F.R. § 68.6(a).'' INS did not tender a proposed decision and order to be entered by the judge.

On March 13, 1990, a ``Motion in Opposition of `Motion for Default Judgment''' and an Answer to the Complaint were filed on behalf of Respondent by an attorney who filed also an entry of appearance dated as were the pleadings on March 9, 1990.

The Opposition recites, inter alia, that ``Mrs. Mildred Burgos . . . didn't knew (sic) the true meaning and effects of not answering the complaint in time. . . . She understood that by requesting the hearing that she made in the letter of November 27, 1989, that could be sufficient in that regard.'' The putative Answer, although contending that ``[T]he complaint does not plead a cause of action upon

which relief can be granted,'' in effect concedes liability. Liability is largely conceded by Respondent's statement that as to Count I the Forms I-9 ``were prepared but possibly not the way it should have been done . . . ,'' and as to Counts II and III the failure properly to complete the Forms I-9 was attributable entirely to the fact that ``it'' had only recently been promulgated and Respondent ``wasn't well familiarized with the details and procedures of this new law.''

I have not hesitated in those cases where I have had reason to question whether service of the Notice of Hearing transmitting a complaint had been effected on a respondent to make appropriate inquiry before granting or denying a particular motion for default judgment. Here there is no question of effective service. All that Respondent proffers is ignorance of the effect of service of the Notice and Complaint and by its very proffer makes clear that it ignored the pertinent directions in the Notice. As quoted above, the Notice explicitly called on Respondent to file an answer with the judge even had it filed an answer (which it had not) with INS to the NIF.

Nothing contained in pertinent regulations of INS, i.e., 8 C.F.R. § 274a.9, including particularly subsection 274a.9(d), or of this Office, 28 C.F.R. § 68.8, provides a basis for a reasonable conclusion that request for hearing, without more, constitutes an answer to a complaint. Simply stated, nothing in statute or regulation is inconsistent with the plain command of the Notice of Hearing that a timely answer to a complaint must be filed within 30 days after a respondent receives the complaint. Since in this case the thirty day period began to run on January 19, 1990, it is obvious that an answer filed March 13, 1990 is out of time. Accordingly, Respondent's Opposition to the Motion for Default Judgment fails to provide an adequate basis for me, in the exercise of my discretion, to withhold entry of judgment against it.

The result reached here does not turn on the fact that Respondent's proposed late Answer substantially concedes liability. It is noted, however, that had an answer essentially to the same effect been timely filed it might well have been susceptible to the challenge that it failed to state a defense to the counts alleged.

Timely answer not having been filed, and having rejected as insufficient Respondent's justification for failure to so file, I hereby find Respondent in default.

**ACCORDINGLY, IN VIEW OF ALL THE FOREGOING, IT IS FOUND AND CONCLUDED**, that Respondent is in violation of ⌊8 U.S.C. § 1324a(a)(1)(B) for its failure to comply with the employ-

ment verification requirements with regard to the individuals named in Counts I through III of the Complaint.

IT IS HEREBY ORDERED:

(1) that Respondent pay a civil money penalty in the amount of $7,000.00 for the violations in Count I of the Complaint, $1,000.00 for the violations in Count II, and $1,250.00 for the violations in Count III, for a total civil money penalty of $9,250.00 and

(2) that the hearing in this proceeding is canceled.

This Decision and Order on Default is the final action of the judge in accordance with 28 C.F.R. § 68.51(a). As provided at ⌊28 C.F.R § 68.51(a), this action shall become the final order of the Attorney General unless, within thirty ((30) days from the date of this Decision and Order, the Chief Administrative Hearing Officer, upon request for review, shall have modified or vacated it. See also 8 U.S.C. § 1324a(e)(7), 28 C.F.R § 68.51(a)(2).

**SO ORDERED.**
Dated this 26th day of March, 1990.

MARVIN H. MORSE
Administrative Law Judge