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

December 28, 1990

United States of America, Complainant v. Dynasty 21 Car Wash, Inc., Respondent; 8 U.S.C. 1324a Proceeding; OCAHO Case No. 90100310.

ORDER GRANTING COMPLAINANT'S MOTION FOR DEFAULT JUDGMENT

On October 15, 1990 the Immigration and Naturalization Service (Complainant) filed a complaint with this Office against Dynasty 21 Car Wash (Respondent) alleging violations of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986). Specifically, complainant alleged that Respondent had hired an individual for employment, knowing that individual to have then been unauthorized to work in the United States in violation of 8 U.S.C. § 1324a(a)(1)(A), and had also failed to comply with the employment verification requirements of ⌞8 U.S.C. § 1324a(a)(1)(B).

On October 22, 1990, Respondent was served with a copy of the complaint. Under the pertinent procedural rules, Respondent had thirty (30) days after service of the complaint, or until November 21, 1990, to file its answer with the undersigned. 28 C.F.R. § 68.5(a), 28 C.F.R. § 68.8, Fed. Reg. 48593 (1989) (to be codified at 28 C.F.R. pt. 68). The rules also provide that in the event that Respondent fails to file an answer within the time provided the administrative law judge may enter a judgment by default. 28 C.F.R. § 68.8.

On December 14, 1990, in the absence of a timely answer having been filed by that date, Complainant filed a Motion for Default Judgment accompanied by a pleading captioned Declaration of Counsel.

On December 17, 1990 Respondent filed a response to that motion, attaching thereto a copy of its answer to the complaint. Also attached to the copy of that answer was a notarized certification by Mr. Howard L. Baker, counsel of record for Respondent, in

which he affirmed that, as an attorney admitted to practice in the courts of New York State, he had served a copy of his answer by mail on November 13, 1990 upon Mr. Lloyd Munjack, counsel of record for Complainant.

Attached to the answer to complainant's motion was a separate certification in which counsel for Respondent also affirmed that he had served Complainant with a copy of that document[1] on November 13, 1990, even though the Answer to Motion is dated December 15, 1990. In addition, Respondent's counsel advised that he has been in constant communication with Complainant's counsel in an attempt to settle this matter.

However, Respondent's counsel made no mention of having served a copy of his answer with the administrative law judge as required under the pertinent regulations, 28 C.F.R. § 68.5(a), and as he was also instructed to do in the third paragraph of the October 15, 1990 Notice of Hearing.

The rules specifically provide that once an administrative law judge is assigned to a case, all pleadings are to be filed with such judge and shall be accompanied by a certification indicating service to all parties of record, 28 C.F.R. § 68.5(a). Respondent, therefore, was required to file its answer with the undersigned, notwithstanding the fact that the parties may have then been involved in settlement negotiations. Respondent's answer was not filed with the undersigned until December 17, 1990, and therefore was not timely filed.

The provisions of 28 C.F.R. § 68.8(b) provide that the failure of Respondent to file an answer within 30 days of its receipt of the complaint shall be deemed to constitute a waiver of its right to appear and contest the allegations of the complaint and may result in the issuance of a judgment by default. 28 C.F.R. § 68.8(b). As noted previously, the pertinent Notice of Hearing herein, which was mailed to Respondent's counsel of record on October 16, 1990, also contained that admonition.

Although Respondent's counsel has presented proof that he served Complainant with his answer within the required time period, the irregularities in such proof and Respondent's counsel's failure to have timely served the answer upon the administrative law judge as required, result in a finding that Respondent has failed to file a timely answer and has also failed to demonstrate

[1]It should be noted that although the certification attached to the Answer to Motion states that counsel ``served the within ANSWER'' upon complainant, its attachment to the Answer to Motion indicates that such certification refers to that pleading.

the requisite good cause for having failed to do so. See U.S. v. Shine Auto Service, OCAHO Case No. 89100180 (June 16, 1989); vacated by CAHO (July 14, 1989). Thus, Respondent has waived its right to appear and contest the allegations of the complaint. Therefore, Respondent is in default and, resultingly, a default judgment is in order.

Accordingly, Respondent is found to have violated 8 U.S.C. § 1324a(a)(1)(A), for having hired an individual for employment, knowing that individual to have been unauthorized to work in the United States, as set forth in Count I of the complaint. It is further found that Respondent violated 8 U.S.C. § 1324a(a)(1)(B) by having failed to comply with the employment verification requirements of IRCA, and as set forth in Counts II, III, and IV of the complaint.

Respondent is hereby ordered to pay a total civil monetary penalty of $9,000, consisting of $2,000 for Count I, $3,500 for Count II, $1,250 for Count III, and $2,250 for Count IV, and is further ordered to cease and desist from further violating the provisions of 8 U.S.C. § 1324a(a)(1)(A).

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

This order may be appealed in accordance with the applicable provisions contained in 28 C.F.R. Sections 68.1 through 68.52, Rules of Practice and Procedure for Administrative Hearings before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-Related Employment Practices.