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

UNITED STATES OF AMERICA,	)	
Complainant	)	
	)	
v.	)	8 U.S.C. §1324a Proceeding
	)	Case No. 92A00203
PEP BOYS,	)	
Respondent.	)	
	)	

ORDER
(October 20, 1992)

On September 14, 1992, the Immigration and Naturalization Service (INS) filed a complaint in the Office of the Chief Administrative Hearing Officer (OCAHO), enclosing copies of the Notice of Intent to Fine on Pep Boys (Respondent). The Complaint also enclosed a copy of the August 27, 1992 Request for Hearing by Respondent.

By notice of hearing issued September 16, 1992, OCAHO issued its notice of hearing which forwarded to Respondent both a copy of the complaint and of the rules of practice and procedure for cases before OCAHO administrative law judges. That notice cautioned Respondent that failure to file an answer to the complaint with the judge within 30 days after receipt might provide a basis for judgment by default. The notice of hearing with complaint attached was received by Pep Boys on September 23, 1992.

On October 16, 1992 I received, in duplicate, a letter to me on the letterhead of Pep Boys, 3111 West Allegheny Avenue, Philadelphia, Pennsylvania, 19132. That letter recites that "we have found that sixteen (16) of the alleged twenty-nine (29) violations are unfounded." The letter enclosed also copies of documentation claiming that certain of the allegations are incorrect. The letter states that Pep Boys "is seeking relief from" penalties for the sixteen (16) challenged violations and for penalties with respect to the apparently uncontested allegations. In violation of 28 C.F.R. §68.68.6, there is no evidence that this letter was served on INS.

Respondent is cautioned that the filing and its behavior in thrusting an unorganized mass of documents on the Judge violates sound judicial management principles in general, and the rules of practice and procedure of OCAHO in particular. A copy of the rules, 28 Part 68, as amended by the interim rules dated October 3, 1991, 56 Fed. Reg. 50049 et seq., were attached to Respondent's copy of the notice of hearing. Respondent's cavalier manner of responding to the notice of hearing and complaint is unacceptable.

Judges often accept facially inadequate filings in satisfaction of the requirement for filing of an answer. Such generosity reflects concern that an untutored and unsophisticated litigant may understandably not appreciate the need to fully comply with procedural requirements. For example, I have denied an INS motion for default for failure of a respondent to plead its defenses where "it appears from the short handwritten letter filed by Respondent that Respondent does not understand the severity and legal significance of this proceeding." U.S. v. El Dorado Furniture Manufacturing, Inc., 3 OCAHO 417 (4/2/92) at 2. Pep Boys, unlike respondent in El Dorado, is a national enterprise whose equities are traded on the New York Stock Exchange. As such, it is a sufficiently large enterprise that I am entitled to expect adherence to traditional norms of behavior of commercial litigants.

Pep Boys is advised that it is premature at this stage to file evidence with the Judge. As provided in the rules, evidentiary materials may only be filed in support of certain pleadings as specified in the rules, e.g., affidavits on motions for summary decision, 28 C.F.R. §68.38(b), and at the evidentiary stage of the hearing. Accordingly, the copy of this Order addressed to Pep Boys returns to it the two sets of Forms I-9 which were transmitted as enclosures to the October 15, 1992 letter. I retain only the letter. The copy of this Order addressed to INS transmits a copy of Respondent's October 15 letter.

This order provides Respondent a second chance to adequately answer the complaint. Respondent should not misuse this additional opportunity. In its answer, Respondent must expressly deny each allegation of the complaint, if it can truthfully do so. If the Respondent fails to deny an allegation, that failure will be treated as an admission of the allegation. Admissions can lead to a default judgment in favor of INS and against Respondent.

Respondent may timely respond to this Order by amended answer and response to be filed with the judge not later than November 2,

1992. Copies of all filings must be served on INS, and a certification that such service has been made must accompany every filing with the judge.

Respondent may, but is not required to, employ an attorney. In any event, Respondent will be expected in its filing to recite the authority of the person acting on behalf of respondent, and shall provide a typed or printed name, title, address and telephone number of such individual. See 28 C.F.R. §§68.7(a) and 68.33(b)(6).

Upon receipt of an amended answer which conforms to the requirement of this Order, and to the OCAHO rules, my Office will schedule a telephonic prehearing conference. During the conference the parties will be expected to discuss the issues, the potential for settlement and the scheduling of an evidentiary hearing as necessary.

Respondent is advised also that pleadings are to be filed in a format typical to judicial proceedings, and that I do not happily receive filings in letter form.

SO ORDERED.

Dated and entered this 20th day of October 1992.

MARVIN H. MORSE
Administrative Law Judge