

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

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324a Proceeding
v.)	
)	OCAHO Case No. 2021A00028
SAL'S LOUNGE,)	
)	
Respondent.)	
_____)	

Appearances: Martin Celis, Esq., for Complainant
 Fernando Chacon, Esq., for Respondent

AMENDED NOTICE AND ORDER TO SHOW CAUSE REGARDING ANSWER
TO AMENDED COMPLAINT AND PREHEARING STATEMENT

The Court issued a Notice and Order to Show Cause Regarding Answer to Amended Complaint and Prehearing Statement in the above-captioned case on December 17, 2021. This Amended Notice and Order to Show Cause Regarding Answer to Amended Complaint and Prehearing Statement amends the Order dated December 17, 2021, and corrects solely for typographical and clerical errors.

I. PROCEDURAL HISTORY

On April 12, 2021, the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Sal's Lounge. The complaint reflects that ICE served Respondent with a Notice of Intent

to Fine (NIF) on February 1, 2021,¹ and Respondent, through counsel, thereafter made a timely request for a hearing on February 2, 2021.² Compl. 2.

On May 12, 2021, counsel for Respondent filed an answer to the complaint on behalf of Respondent. Through its Order for Prehearing Statements and Initial Disclosures dated May 27, 2021, the Court directed the parties to file prehearing statements and make initial disclosures. On June 23, 2021, Complainant filed its prehearing statement and an Amended Complaint Regarding Unlawful Employment.³ Through the amended complaint, Complainant sought to revise the charging language in the original complaint.

On July 16, 2021, the Court issued an Order on Amended Complaint in which it struck the amended complaint for failure to seek leave of Court or Respondent's written consent. *United States v. Sal's Lounge*, 15 OCAHO no. 1394, 3-4 (2021).⁴

After Complainant sought leave of Court to amend the complaint, on October 15, 2021, the Court issued an Order Granting Motion to Amend Complaint and

¹ The certificate of service on the NIF reflects that ICE initially served Respondent with the NIF on August 1, 2019, before serving the NIF on Respondent through counsel on February 1, 2021. Comp., Ex. A, 2.

² Pursuant to 28 C.F.R. § 68.33(f), the Court considers Mr. Chacon's request for a hearing on behalf of Respondent as a notice of appearance on behalf of Respondent in this matter.

³ Respondent's prehearing statement was initially due by July 26, 2021. Order for Prehearing Statements 4.

⁴ 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 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 "FIM-OCAHO," or in the LexisNexis database "OCAHO," or at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

Directing Respondent to File Answer and Prehearing Statement. *United States v. Sal's Lounge*, 15 OCAHO no. 1394a, 4 (2021). The Court ordered Respondent to file an answer to the amended complaint and a prehearing statement within thirty days of issuance of the order. *Id.* at 4. To date, the Court has not received either of Respondent's filings.

II. LEGAL STANDARDS AND DISCUSSION

Respondent has failed to respond to this Court's Order dated October 15, 2021, ordering it to file both an answer to the amended complaint and a prehearing statement. OCAHO precedent holds that the Court may order a party to show good cause for its failure to file a timely answer or to respond to an order requesting submission of prehearing statements. *See, e.g., United States v. Popo's Bar and Rest.*, 15 OCAHO no. 1398, 1 (2021); *United States v. Ferrantino Fuel Corp.*, 13 OCAHO no. 1335, 1 (2019). As such, the Court now orders Respondent to file a response showing good cause for its failure to file an answer to the amended complaint and a prehearing statement. The Court further orders Respondent to file an answer to the amended complaint and a prehearing statement simultaneously with the filing of its response showing good cause. The Court then will determine if Respondent possessed the requisite good cause for failing to file its answer and prehearing statement, and will decide whether to allow the late filings.

The Court puts Respondent on notice of the potential consequences should it fail to respond to this Notice and Order to Show Cause Regarding Answer to Amended Complaint and Prehearing Statement. Respondent already has failed to respond to the Court's Order of October 15, 2021. Under OCAHO's Rules of Practice and Procedure for Administrative Hearings,⁵ the Court may dismiss "a request for hearing" upon its abandonment by the party who filed it. 28 C.F.R. § 68.37(b). A party shall be deemed to have abandoned its request for a hearing if it "fails to respond to orders issued by the Administrative Law Judge." 28 C.F.R. § 68.37(b)(1); *see also United States v. AMA Repiping, LLC*, 15 OCAHO no. 1391, 2 (2021); *United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777-78

⁵ OCAHO's Rules of Practice and Procedure for Administrative Hearings are the provisions contained in 28 C.F.R. part 68 (2021). OCAHO's rules are available on OCAHO's homepage on the United States Department of Justice website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions#LawsandRegulations>.

(1994). The Court cautions Respondent that its failure to respond to this Order may result in the dismissal of its request for a hearing.

III. ORDERS

IT IS SO ORDERED that, within twenty days of the issuance of the Order dated December 17, 2021, Respondent, Sal's Lounge, shall file with the Court a response in which it must show good cause for its failure to file an answer to the amended complaint and a prehearing statement with the Court, in accordance with this Court's Order Granting Motion to Amend Complaint and Directing Respondent to File Answer and Prehearing Statement dated October 15, 2021.

IT IS FURTHER ORDERED that, within twenty days of the issuance of the Order dated December 17, 2021, Respondent shall file an answer to the amended complaint that comports with 28 C.F.R. § 68.9 and a prehearing statement that comports with 28 C.F.R. § 68.12 and the Court's May 27, 2021, Order for Prehearing Statements and Initial Disclosures.

The Court puts Respondent on notice that, if it fails to respond as ordered or cannot show good cause for its failure to respond to the Court's Order dated October 15, 2021, the Court may find that it has abandoned its request for a hearing pursuant to 28 C.F.R. § 68.37(b)(1), and, accordingly, may dismiss its request for a hearing.

ENTERED:

Honorable Carol A. Bell
Administrative Law Judge

DATE: January 11, 2022